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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 905 and 944

[Docket No. FV98–905–2 FIR]

Oranges, Grapefruit, Tangerines, and Tangelos Grown in Florida and Imported Grapefruit; Relaxation of the Minimum Size Requirement for Red Seedless Grapefruit

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department of Agriculture (Department) is adopting as a final rule, without change, the provisions of an interim final rule changing the regulations under the Florida citrus marketing order and the grapefruit import regulations. This rule relaxes the minimum size requirement for Florida red seedless grapefruit and for red seedless grapefruit imported into the United States from size 48 (3$^{9}/_{16}$ inches diameter) to size 56 (3$^{5}/_{16}$ inches diameter). The Citrus Administrative Committee (Committee), the agency that locally administers the marketing order for oranges, grapefruit, tangerines, and tangelos grown in Florida, unanimously recommended this change. This change allows handlers and importers to ship size 56 red seedless grapefruit through November 8, 1998.

EFFECTIVE DATE: May 20, 1998.

FOR FURTHER INFORMATION CONTACT: William G. Pimental, Southeast Marketing Field Office, F&V, AMS, USDA, P.O. Box 2276, Winter Haven, Florida 33883; telephone: (941) 299–4770, Fax: (941) 299–5169; or Anne M. Dec, Marketing Order Administration Branch, F&V, AMS, USDA, room 2522–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 720–2491, Fax: (202) 205–6632. Small businesses may request information on compliance with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, F&V, AMS, USDA, room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 720–2491, Fax: (202) 205–6632.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement No. 84 and Marketing Order No. 905 (7 CFR Part 905), as amended, regulating the handling of oranges, grapefruit, tangerines, and tangelos grown in Florida, hereinafter referred to as the ''order.'' The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.''

This rule is also issued under section 8e of the Act, which provides that whenever specified commodities, including grapefruit, are regulated under a Federal marketing order, imports of these commodities into the United States are prohibited unless they meet the same or comparable grade, size, quality, or maturity requirements as those in effect for the domestically produced commodities.

The Department of Agriculture is issuing this rule in conformance with Executive Order 12866.

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

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

There are no administrative procedures which must be exhausted prior to any judicial challenge to the provisions of import regulations issued under section 8e of the Act.

The order for Florida citrus provides for the establishment of minimum grade and size requirements with the concurrence of the Secretary. The grade and size requirements are designated to provide fresh markets with fruit of acceptable quality and size, thereby maintaining consumer confidence for fresh Florida citrus. This helps create buyer confidence and contributes to stable marketing conditions. This is in the interest of growers, handlers, and consumers, and is designed to increase returns to Florida citrus growers. The current minimum grade standard for red seedless grapefruit is U.S. No. 1. The minimum size requirement for domestic shipments is size 56 (at least 3$^{5}/_{16}$ inches in diameter) through November 8, 1998, and size 48 (3$^{9}/_{16}$ inches in diameter) thereafter. The current minimum size for export shipments is size 56 throughout the year.

This rule continues in effect a change to the order's rules and regulations relaxing the minimum size requirement for domestic and import shipments of red seedless grapefruit. This action allows for the continued shipment of size 56 grapefruit. This rule relaxes the minimum size from size 48 (3$^{9}/_{16}$ inches diameter) to size 56 (3$^{5}/_{16}$ inches diameter) through November 8, 1998. Absent this change, the minimum size would be size 48 (3$^{9}/_{16}$ inches diameter). The Committee met on October 14 and December 16, 1997, and unanimously recommended this action.

Section 905.52 of the order, in part, authorizes the Committee to recommend minimum grade and size regulations to the Secretary. Section 905.306 (7 CFR 905.306) specifies minimum grade and size requirements for different varieties of fresh Florida grapefruit. Such requirements for domestic shipments are specified in § 905.306 in Table I of paragraph (a), and for export shipments in Table II of paragraph (b). This rule adjusts Table I to reflect the minimum size of 56 through November 8, 1998. Minimum grade and size requirements for grapefruit imported into the United States are currently in effect under § 944.106 (7 CFR 944.106). Export

requirements are not changed by this rule.

The Committee originally met to discuss this issue on October 14, 1997, and recommended releasing size 56 red grapefruit for a limited time period this season. They voted to allow handlers to ship size 56 red seedless grapefruit through January 11, 1998, to give the Committee time to determine the market effect of size 56.

The Committee met again on December 16, 1997, through an emergency telephone meeting. The meeting was called to determine whether the Committee wanted to release size 56 for the remainder of the season. The Committee voted unanimously to extend the release of size 56 through November 8, 1998.

While wanting to give handlers the opportunity to continue to market size 56, the Committee also wanted the opportunity to review the effect of size 56 on the domestic market after the percentage of size rule expired November 30, 1997 (62 FR 58633; October 30, 1997). The percentage of size rule controlled the volume of sizes 48 and 56 that was shipped in a given week, to both domestic and export markets. There is a limited market for small sizes. However, the largest part of this market is to export markets. The Committee is not sure to what extent there is domestic demand for size 56. This minimum size change pertains to the domestic market, and does not change the minimum size for export shipments which will continue at size 56 throughout the season.

To determine if there is a domestic market for size 56, and the effect of its presence on the market, the Committee recommended, on October 14, 1997, allowing shipments of size 56 red seedless grapefruit through January 11, 1998. The Committee agreed to revisit the issue to evaluate the impact of size 56 on the market after the expiration of volume regulation.

The Committee revisited the issue during the meeting December 16, 1997, and determined that size 56 should be released until November 8, 1998. In making its recommendation, the Committee considered estimated supplies and current shipments. The Committee examined the size distribution information available for the current season. On December 12, 1997, the Florida Agricultural Statistics Service (FASS) reduced the marketable crop estimate for red seedless grapefruit by two million boxes, or approximately seven percent for the 1997–98 season. FASS also reported that red seedless grapefruit size as measured in November, was 30.6 percent size 56 and smaller as compared to 35.5 percent as measured in November last year. This in turn compares to only 16.8 percent measuring size 56 or smaller in November of 1995. So, even though red seedless grapefruit are running larger than last season, there are a fair number of small grapefruit.

The Committee also reviewed shipment data available through November 23 of this season. Thus far, size 56 red seedless grapefruit represents only 3.7 percent of total domestic shipments. Comparatively, through the same time period, 11 percent of all red seedless grapefruit shipments from Florida, domestic and export was size 56. Of the size 56 red seedless grapefruit shipped, 18 percent went to the domestic market, while 82 percent was shipped to the export market.

In its discussion, the Committee recognized that fruit was continuing to size. One member commented that fruit that had measured size 56 in October, had sized up one size. This was helping to match supplies of size 56 with demand. The Committee did have several concerns. One topic that was raised was the currency and economic problems currently facing the Pacific Rim countries. These countries traditionally have been good markets for size 56 grapefruit. The Committee was concerned that current conditions could reduce demand, and alternative outlets would need to be available. The Committee agreed that it would be advantageous to have the ability to ship size 56 red seedless grapefruit to the domestic market should problems materialize in the export market.

One Committee member asked whether Texas was planning to market size 56 grapefruit this season. The Committee was informed that Texas would be selling size 56 for the entire season. The Committee believes that some domestic markets may have been developed for size 56 and that handlers should continue to supply those markets.

Based on the available information, the Committee unanimously recommended that the minimum size for shipping red seedless grapefruit to the domestic market should be size 56 through November 8, 1998.

This rule will have a beneficial impact on producers and handlers since it will permit Florida grapefruit handlers to make available those sizes of fruit needed to meet anticipated market demand for the 1997–98 season. This will provide for the maximization of shipments to fresh market channels during this period. Additionally, importers will be favorably affected by this change since the relaxation of the minimum size regulation will also apply to imported grapefruit.

Section 8e of the Act provides that when certain domestically produced commodities, including grapefruit, are regulated under a Federal marketing order, imports of that commodity must meet the same or comparable grade, size, quality, and maturity requirements. Since this rule relaxes the minimum size requirement under the domestic handling regulations, a corresponding change to the import regulations is necessary.

Minimum grade and size requirements for grapefruit imported into the United States are currently in effect under § 944.106 [7 CFR 944.106]. This rule relaxes the minimum size requirements for imported red seedless grapefruit to $3\frac{5}{16}$ inches in diameter (size 56) through November 8, 1998, to reflect the relaxation being made under the order for grapefruit grown in Florida.

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

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

There are approximately 80 Florida citrus handlers subject to regulation under the marketing order, about 11,000 citrus producers, and about 25 grapefruit importers. Small agricultural service firms, which include grapefruit handlers and importers, have been defined by the Small Business Administration (13 CFR 121.601) as those whose annual receipts are less than $5,000,000, and small agricultural producers are defined as those whose annual receipts are less than $500,000.

Based on the Florida Agricultural Statistics Service and Committee data for the 1995–96 season, the average annual f.o.b. price for fresh Florida red grapefruit during the 1995–96 season was $5.00 per $\frac{4}{5}$ bushel cartons for all grapefruit shipments, and the total shipments for the 1995-96 season were

23 million cartons of grapefruit. Approximately 20 percent of all handlers handled 60 percent of Florida grapefruit shipments. In addition, many of these handlers ship other citrus fruit and products which are not included in Committee data but would contribute further to handler receipts. Using the average f.o.b. price, about 80 percent of grapefruit handlers could be considered small businesses under the SBA definition and about 20 percent of the handlers could be considered large businesses. The majority of handlers, growers, and importers may be classified as small entities.

Florida shipped approximately 44,224,000 cartons of grapefruit to the fresh market during the 1996–97 season. Of these cartons, about 25,586,000 were exported. In the past three seasons, domestic shipments of Florida grapefruit averaged about 18,798,000 cartons. During the period 1991 through 1996, imports have averaged 734,800 cartons a season. Imports account for less than five percent of domestic shipments.

Section 905.52 of the order, in part, authorizes the Committee to recommend minimum grade and size regulations to the Secretary. Section 905.306 (7 CFR 905.306) specifies minimum grade and size requirements for different varieties of fresh Florida grapefruit. This rule relaxes the minimum size requirement for domestic shipments of red seedless grapefruit from size 48 (3$^{9}/_{16}$ inches diameter) to size 56 (3$^{5}/_{16}$ inches diameter) through November 8, 1998. No change is being made in the minimum size requirement for export shipments of size 56. Absent this rule, the minimum size requirement for domestic shipments would be size 48. The motion to allow shipments of size 56 red seedless grapefruit through November 8, 1998, was passed by the Committee unanimously.

The Committee originally met to discuss this issue on October 14, 1997, and recommended releasing size 56 red grapefruit for a limited time period this season. They voted to allow handlers to ship size 56 red seedless grapefruit through January 11, 1998, to give the Committee time to determine the market effect of size 56.

The Committee met again on December 16, 1997, through an emergency telephone meeting. The meeting was called to determine whether the Committee wanted to release size 56 for the remainder of the season. The Committee voted unanimously to extend the release of size 56 through November 8, 1998.

In its discussion, the Committee recognized that fruit was continuing to size. One member commented that fruit that had measured size 56 in October, had sized up one size. This was helping to match supplies of size 56 with demand. The Committee did have several concerns. One topic that was raised was the currency and economic problems currently facing the Pacific Rim countries. These countries traditionally have been good markets for size 56 grapefruit. The Committee was concerned that current conditions could reduce demand, and alternative outlets would need to be available. The Committee agreed that it would be advantageous to have the ability to ship size 56 red seedless grapefruit to the domestic market should problems materialize in the export market.

One Committee member asked whether Texas was planning to market size 56 grapefruit this season. The Committee was informed that Texas would be selling size 56 for the entire season. The Committee believes that some domestic markets may have been developed for size 56 and that handlers should continue to supply those markets.

During the discussion of this rule, the Committee considered the costs and benefits of this action. Several members stated that with the volume of grapefruit available, the stagnant demand, and concerns regarding the Asian export markets, it was important to take advantage of any market available. There was also discussion that Texas was planning to ship size 56 this season. Some members stated that if they eliminated size 56, they would be losing markets. Members agreed that maximizing fresh shipments helps grower returns. The Committee has released size 56 for the past seven seasons. There should be no production adjustment costs associated with this rule.

This rule is expected to have a positive impact on growers and handlers, as it will permit the shipment of smaller sized red seedless grapefruit to the domestic market, allowing the industry to meet anticipated demand through November 8, 1998. This will provide for the maximization of shipments to fresh market channels during this period.

This regulation lowers the minimum size to size 56. This minimum applies to all handlers of red seedless grapefruit. The costs or benefits of this rule are not expected to be disproportionately more or less for small handlers or growers than for larger entities.

In 1996, imports of grapefruit totaled 15,000 tons (approximately 705,880 cartons). The Bahamas were the principal source, accounting for 95 percent of the total. Remaining imports were supplied by the Dominican Republic and Israel. Imported grapefruit enters the United States from October through May. Imports account for less than five percent of domestic shipments.

Section 8e of the Act provides that when certain domestically produced commodities, including grapefruit, are regulated under a Federal marketing order, imports of that commodity must meet the same or comparable grade, size, quality and maturity requirements. Because this rule changes the minimum size for domestic red seedless grapefruit shipments, this change will also be applicable to imported grapefruit. This rule relaxes the minimum size to size 56. This regulation will benefit importers to the same extent that it benefits Florida grapefruit producers and handlers because it allows shipments of size 56 red seedless grapefruit into U.S. markets through November 8, 1998.

The Committee discussed alternatives to this action. One alternative discussed was the elimination of size 56 grapefruit all together. Several members expressed concern that a viable market has been developed for a portion of the size 56 grapefruit crop. Not allowing handlers to supply this market could result in throwing business and money away. Other members pointed out that it could be detrimental to supply this market for smaller sizes if that market is not profitable and the result is depressed prices for all sizes of grapefruit.

In addition, the Committee recognized that through November, regulation was in place to control the amount of size 56 red seedless grapefruit entering the market. Under the percentage of size rule, the quantity of sizes 48 and/or 56 red seedless grapefruit that may be shipped by a handler during a particular week is calculated using a recommended percentage. This percentage of size rule was in effect through November 30, 1997. The Committee agreed that, for the remainder of the 1997–1998 season, no further restriction on size 56 was necessary. A motion to eliminate size 56 was rejected.

This rule will not impose any additional reporting or recordkeeping requirements on either small or large red seedless grapefruit handlers or importers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information collection requirements and duplication by industry and public sectors.

In addition, as noted in the initial regulatory flexibility analysis, the

Department has not identified any relevant Federal rules that duplicate, overlap or conflict with this rule. However, red seedless grapefruit must meet the requirements as specified in the U.S. Standards for Grades of Florida Grapefruit (7 CFR 51.760 through 51.784) issued under the Agricultural Marketing Act of 1946 (7 U.S.C. 1621 through 1627).

Further, the Committee's October meeting was widely publicized throughout the citrus industry and all interested persons were invited to attend the meeting and participate in Committee deliberations. Like all Committee meetings, the October 14, 1997, meeting was a public meeting and all entities, both large and small, were able to express their views on this issue. Finally, interested persons were invited to submit information on the regulatory and informational impacts of this action on small businesses.

An interim final rule concerning this action was published in the **Federal Register** on January 22, 1998. Copies of the rule were mailed by the Committee staff to all Committee members and grapefruit handlers. In addition, the rule was made available through the Internet by the Office of the Federal Register. That rule provided for a 60-day comment period which ended March 23, 1998. No comments were received.

In accordance with section 8e of the Act, the United States Trade Representative has concurred with the issuance of this final rule.

After consideration of all relevant material presented, including the Committee's recommendation, and other information, it is found that finalizing the interim final rule, without change, as published in the **Federal Register** (63 FR 3247, January 22, 1998) will tend to effectuate the declared policy of the Act.

List of Subjects

7 CFR Part 905

Grapefruit, Marketing agreements, Oranges, Reporting and recordkeeping requirements, Tangelos, Tangerines.

7 CFR Part 944

Avocados, Food grades and standards, Grapefruit, Grapes, Imports, Kiwifruit, Limes, Olives, Oranges.

PART 905—ORANGES, GRAPEFRUIT, TANGERINES AND TANGELOS GROWN IN FLORIDA

PART 944—FRUITS; IMPORT REGULATIONS

Accordingly, the interim final rule amending 7 CFR parts 905 and 944 which was published at 63 FR 3247 on January 22, 1998, is adopted as a final rule without change.

Dated: April 14, 1998.

Sharon Bomer Lauritsen,

Acting Deputy Administrator, Fruit and Vegetable Programs.

[FR Doc. 98–10259 Filed 4–17–98; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Part 1

[INS Order No. 1868–97]

RIN 1115–AE87

Amendment of the Regulatory Definition of Arriving Alien

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Interim rule with request for comments.

SUMMARY: This rule amends the Immigration and Naturalization Service (Service) regulations by changing the regulatory definition of an arriving alien. Under section 235(b)(1)(A)(i) of the Immigration and Nationality Act (Act), which was effective on April 1, 1997, certain arriving aliens are subject to expedited removal procedures. The existing regulatory definition of arriving alien includes parolees whose parole is terminated, without regard to the date of parole or the circumstances under which parole was granted. As a matter of policy, the Service has decided that it is appropriate to exempt from the new expedited removal procedures aliens who were paroled into the United States before April 1, 1997, as well as aliens who, either before or after April 1, 1997, return to the United States pursuant to a grant of advance parole that they applied for and obtained while physically present in and prior to their departure from the United States. This rule clarifies that these two types of parolees will not be subjected to expedited removal.

DATES: *Effective Dates:* The interim rule is effective April 20, 1998.

Comment Date: Written comments must be received on or before June 19, 1998.

ADDRESSES: Please submit written comments in triplicate to the: Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, 425 I Street, NW., Room 5307, Washington, DC 20536. To ensure proper handling, please reference INS number 1868–97 on your correspondence. Comments are available for public inspection at the above address by calling (202) 514–3048 to arrange for an appointment.

FOR FURTHER INFORMATION CONTACT: Linda Loveless, Assistant Chief Inspector, Immigration and Naturalization Service, 425 I Street NW., Room 4064, Washington, DC 20536, telephone number (202) 616–7489.

SUPPLEMENTARY INFORMATION: The Illegal Immigration Reform and Immigrant Responsibility Act of 1996, Pub. L. 104–208, which was enacted on September 30, 1996, created new expedited removal procedures for aliens attempting to enter the United States through fraud or misrepresentation or without proper documents. This provision was effective on April 1, 1997, and is applicable to aliens who are ''arriving in the United States'' as contained in section 235(b)(1)(A)(i) of the Act.

The existing regulatory definition of arriving alien includes parolees, starting that ''[a]n arriving alien remains such even if paroled pursuant to section 212(d)(5) of the Act.'' Including certain parolees in the definition of arriving aliens is consistent with section 212(d)(5) of the Act, which states that ''* * * such parole of such alien shall not be regarded as an admission of the alien and when the purpose of such parole shall, in the opinion of the Attorney General, have been served the alien shall forthwith return or be returned to the custody from which he was paroled and thereafter his case shall continue to be dealt with in the same manner as that of any other applicant for admission to the United States.'' Existing regulations on the termination of parole are also consistent with the classification of certain paroled aliens as arriving aliens, stating that ''* * * he or she shall be restored to the status that he or she had at the time of parole.'' 8 CFR 212.5(d)(2)(i).

The definition as currently in effect, though consistent with the Act and prior regulations, encompasses certain groups not best regarded as arriving aliens for purposes of the applicability of expedited removal, such as aliens initially paroled before (often well before) the effective date of the expedited removal provisions, and aliens previously present in the United States (in some cases for long periods) who departed from and returned to the United States pursuant to advance parole. Because the Act does not contain a definition of ''arriving alien,'' it is left to the Attorney General to define the term in a manner that conforms with

congressional intent as embodied in the Act. This rule clarifies that aliens who were paroled before April 1, 1997, and aliens who return to the United States pursuant to advance parole that they applied for and obtained while physically present in and prior to their departure from the United States, will not be subject to expedited removal when their parole is terminated. This exception does not alter the legal status of these parolees; these paroled aliens remain applicants for admission as in the past.

This rule also amends the arriving alien definition by replacing the reference to an alien who ''seeks admission to or transit through the United States'' with a reference to an ''applicant for admission coming or attempting to come into the United States at a port-of-entry, or an alien seeking transit through the United States at a port-of-entry.'' The new language better conveys the intent of the definition, which is to delineate a particular segment of those aliens described in section 235(a)(1) of the Act, which defines aliens deemed to be applicants for admission. The term ''applicant for admission'' is a term of art under the Act as revised by IIRIRA. Section 235(a)(1) of the Act makes clear that an alien coming from abroad to a port in the United States may be considered an applicant for admission regardless of whether he or she subjectively desires admission. To the extent that the word ''seeks'' in the existing § 1.1(q) suggests that an alien must have a subjective intent to gain admission in order to be an arriving alien, it may be susceptible to interpretations that are not consistent with the statute. Replacing the term ''seeks'' in the arriving aliens definition with the term ''coming or attempting to come'' prevents the possibility of such confusion.

Finally, the rule removes the reference to 8 CFR part 235, which deals with inspection of persons applying for admission. This reference is not necessary and its removal will streamline the definition of arriving alien.

Good Cause Exception

This interim rule is effective on publication in the **Federal Register**, although the Service invites post-promulgation comments within a 60-day comment period and will address any such comments in a final rule. For the following reasons, the Service finds that good cause exists under 5 U.S.C. 553(b)(B) and (d)(3) for implementing this rule as an interim rule without the prior notice and comment period ordinarily required under that provision. First, in certain respects, this rule simply clarifies issues that may appear ambiguous in the existing regulation defining arriving aliens. Second, to the extent that this rule substantively changes Service regulations, it simply provides more advantageous treatment for the limited number of parolees involved by exempting them from expedited removal procedures. Early implementation will be advantageous to the intended beneficiaries of this rule. Therefore, it is unnecessary and contrary to the public interest to delay the implementation of this rule until after a notice and comment period.

Regulatory Flexibility Act

The Attorney General, in accordance with 5 U.S.C. 605(b) has reviewed this regulation and, by approving it, certifies that this rule will not have a significant impact on a substantial number of small entities because of the following factors: This rule makes two changes to the existing § 1.1(q). First, by changing the arriving alien definition to provide that the expedited removal provisions will not apply to aliens paroled into the United States prior to April 1 or pursuant to advance parole which the aliens applied for and obtained in the United States, this rule simply provides that, where appropriate, a finite number of aliens will be subject to removal proceedings under section 240 of the Act, rather than to expedited removal under section 235(b)(1)(A)(i) of the Act. This change will not affect small entities. Second, this rule also changes the arriving alien definition to use language that is clearer and more consistent with the Act. This change does not alter the meaning of the regulation and does not affect small entities.

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by section 804 of the Small Business Regulatory Enforcement Act of 1996. This rule will not result in an annual effect on the economy of $100 million or more, a major increase in costs or prices, or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

Executive Order 12866

This rule is not considered by the Department of Justice, Immigration and Naturalization Service, to be a ''significant regulatory action'' under Executive Order 12866, section 3(f), Regulatory Planning and Review and the Office of Management and Budget has waived its review process under section 6(a)(3)(A).

Executive Order 12612

The regulation 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 rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Executive Order 12988 Civil Justice Reform

This interim rule meets the applicable standards set forth in sections 3(a) and 3(b)(2) of E.O. 12988.

List of Subjects in 8 CFR Part 1

Administrative practice and procedures, Aliens, Immigration, Reporting and recordkeeping requirements.

Accordingly, part 1 of chapter I of title 8 of the Code of Federal Regulations is amended as follows:

PART 1—DEFINITIONS

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

Authority: 8 U.S.C. 1101, 8 CFR part 2.

2. Section 1.1 is amended by revising paragraph (q) to read as follows:

§ 1.1 Definitions.

* * * * *

(q) The term *arriving alien* means an applicant for admission coming or attempting to come into the United States at a port-of-entry, or an alien seeking transit through the United States at a port-of-entry, or an alien interdicted in international or United States waters and brought into the United States by any means, whether or not to a designated port-of-entry, and

regardless of the means of transport. An arriving alien remains such even if paroled pursuant to section 212(d)(5) of the Act, except that an alien who was paroled before April 1, 1997, or an alien who was granted advance parole which the alien applied for and obtained in the United States prior to the alien's departure from and return to the United States, shall not be considered an arriving alien for purposes of section 235(b)(1)(A)(i) of the Act.

* * * * *

Dated: February 13, 1998.

Doris Meissner,

Commissioner of the Immigration and Naturalization Service.

[FR Doc. 98–10354 Filed 4–17–98; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–CE–42–AD; Amendment 39–10476; AD 98–08–27]

RIN 2120–AA64

Airworthiness Directives; SOCATA—Groupe AEROSPATIALE Model TBM 700 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that applies to certain SOCATA—Groupe AEROSPATIALE (Socata) Model TBM 700 airplanes. This AD requires modifying the airplane's left-hand (LH) front side lower panel. This AD is the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for France. The actions specified by this AD are intended to prevent interference between the side trim of the LH front side lower panel and the roll control compass on the LH wheel assembly, which could result in loss of directional control of the airplane.

DATES: Effective May 31, 1998.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of May 31, 1998.

ADDRESSES: Service information that applies to this AD may be obtained from SOCATA—Groupe AEROSPATIALE, Support Client/Customer Support, Aerodrome Tarbes-Ossun-Lourdes, B P 930, F65009 Tarbes Cedex, France; telephone: (33) 62.41.73.00; facsimile: (33) 62.41.76.54, or the Product Support Manager, SOCATA-Groupe AEROSPATIALE, North Perry Airport, 7501 Pembroke Road, Pembroke Pines, Florida 33023; telephone: (954) 964–6877; facsimile: (954) 964–1668. This information may also be examined at the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 97–CE–42–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Karl Schletzbaum, Aerospace Engineer, FAA, Small Airplane Directorate, 1201 Walnut Street, suite 900, Kansas City, Missouri 64106; telephone: (816) 426–6934; facsimile: (816) 426–2169.

SUPPLEMENTARY INFORMATION:

Events Leading to the Issuance of This AD

A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to certain Socata Model TBM 700 airplanes was published in the **Federal Register** as a notice of proposed rulemaking (NPRM) on February 5, 1998 (63 FR 5898). The NPRM proposed to require modifying the airplane's left-hand (LH) front side lower panel. Accomplishment of the proposed action as specified in the NPRM would be in accordance with SOCATA Service Bulletin No. SB 70–061–25, dated June, 1995.

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

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

The FAA's Determination

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

Cost Impact

The FAA estimates that 40 airplanes in the U.S. registry will be affected by this AD, that it will take approximately 4 workhours per airplane to accomplish this action, and that the average labor rate is approximately $60 an hour. Parts cost approximately $15 per airplane. Based on these figures, the total cost impact of this AD on U.S. operators is estimated to be $10,200 or $255 per airplane.

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

98–08–27 Socata—Groupe Aerospatiale: Amendment 39–10476; Docket No. 97–CE–42–AD.

Applicability: Model TBM 700 airplanes, serial numbers 24, 26, 27, 29 through 32, 34,

36 through 106, and all serial numbers equipped with modification MOD 70–019–25 or Supplemental Type Certificate (STC) SA2786CE, certificated in any category.

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

Compliance: Required within the next 100 hours time-in-service (TIS) after the effective date of this AD, unless already accomplished.

To prevent interference between the side trim of the left-hand (LH) side lower panel and the roll control compass on the LH wheel assembly, which could result in loss of directional control of the airplane, accomplish the following:

(a) Modify the LH front side lower panel in accordance with part ''B. MODIFICATION'' of the ACCOMPLISHMENT INSTRUCTIONS section of SOCATA Service Bulletin No. SB 70–061–25, dated June, 1995.

(b) The instructions in this AD take precedence over part ''A. CHECK: DURING EACH PREFLIGHT INSPECTION'' of the ACCOMPLISHMENT INSTRUCTIONS section in SOCATA Service Bulletin No. SB 70–061–25, dated June, 1995.

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

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

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

(e) Questions or technical information related to SOCATA Service Bulletin No. SB 70–061–25, dated June, 1995, should be directed to SOCATA—Groupe AEROSPATIALE, Support Client/Customer Support, Aerodrome Tarbes-Ossun-Lourdes, B P 930, F65009 Tarbes Cedex, France; telephone: (33) 62.41.73.00; facsimile: (33) 62.41.76.54, or the Product Support Manager, SOCATA—Groupe AEROSPATIALE, North Perry Airport, 7501 Pembroke Road, Pembroke Pines, Florida 33023; telephone: (954) 964–6877; facsimile: (954) 964–1668. This service information may be examined at the FAA, Central Region, Office of the Regional Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri.

(f) The modification required by this AD shall be done in accordance with SOCATA Service Bulletin No. SB 70–061–25, dated June, 1995. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from SOCATA—Groupe AEROSPATIALE, Support Client/Customer Support, Aerodrome Tarbes-Ossun-Lourdes, B P 930, F65009 Tarbes Cedex, France, or the Product Support Manager, SOCATA—Groupe AEROSPATIALE, North Perry Airport, 7501 Pembroke Road, Pembroke Pines, Florida 33023. Copies may be inspected at the FAA, Central Region, Office of the Regional Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

(g) This amendment becomes effective on May 31, 1998.

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

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–10180 Filed 4–17–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–CE–108–AD; Amendment 39–10478; AD 98–08–29]

RIN 2120–AA64

Airworthiness Directives; Alexander Schleicher Segelflugzeugbau Model ASK 21 Sailplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that applies to certain Alexander Schleicher Segelflugzeugbau (Alexander Schleicher) Model ASK 21 sailplanes. This AD requires removing certain pages from the sailplane flight manual and replacing these pages with new pages having different information regarding spin and stall recovery. This action is the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for Germany. The actions specified by this AD are intended to prevent operators from using inaccurate stall and spin recovery information provided in the sailplane flight manual (SFM), which could result in the inability to recover from a spin or stall during flight.

DATES: Effective May 18, 1998.

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

ADDRESSES: Service information that applies to this AD may be obtained from Alexander Schleicher, Segelflugzeugbau, 6416 Poppenhausen, Wasserkuppe, Federal Republic of Germany; telephone: 49.6658.890 or 49.6658.8920; facsimile: 49.6658.8923 or 49.6658.8940. This information may also be examined at the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 97–CE–108–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

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

SUPPLEMENTARY INFORMATION:

Events Leading to the Issuance of This AD

A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to certain Alexander Schleicher Model ASK 21 sailplanes was published in the **Federal Register** as a notice of proposed rulemaking (NPRM) on February 5, 1998 (63 FR 5904). The NPRM proposed to require removing certain pages from the sailplane flight manual and replacing these pages with new pages having different information regarding spin and stall recovery. Accomplishment of the proposed action as specified in the NPRM would be in accordance with Alexander Schleicher ASK 21 Technical Note No. 23, dated January 29, 1991.

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

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

The FAA's Determination

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

Compliance Time of this AD

This action, the German AD, and Alexander Schleicher Technical Note No. 23, dated January 29, 1991, differ on the compliance time. The German AD and the technical note require that the replacement of the SFM pages be accomplished at the next annual inspection.

The FAA is requiring a calendar compliance time instead of the next annual inspection because the calendar compliance will ensure that all of the owners/operators of the affected sailplanes have changed the flight manual and be aware of the new information at approximately the same time.

Cost Impact

The FAA estimates that 30 sailplanes in the U.S. registry will be affected by this AD, that it will take approximately 1 workhour per sailplane to accomplish this action, and that the average labor rate is approximately $60 an hour. The SFM pages are provided by the manufacturer at no cost to the owner/operator. Inserting the pages into the SFM may be performed by the owner/operator holding at least a private pilot certificate as authorized by section 43.7 of the Federal Aviation Regulations (14 CFR 43.7), and must be entered into the aircraft records showing compliance with this AD in accordance with section 43.9 of the Federal Aviation Regulations (14 CFR 43.9). Based on these figures, there is no cost impact of this AD on U.S. owners/operators because this action can be accomplished by the owner/operator.

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

98–08–29 Alexander Schleicher Segelflugzeugbau: Amendment 39–10478; Docket No. 97–CE–108–AD.

Applicability: Model ASK 21 sailplanes, serial numbers 21001 through 21495, certificated in any category.

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

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

To prevent operators from using inaccurate stall and spin recovery information provided in the sailplane flight manual (SFM), which could result in the inability to recover from a spin or stall during flight, accomplish the following:

(a) Remove pages 2, 22, 24, 33, and 34 from the Alexander Schleicher Model ASK 21 SFM, and replace these pages with new pages of the same numbers that have footnote ''TN 23 dated Jan 1991'', in accordance with Alexander Schleicher ASK 21 Technical Note No. 23, dated January 29, 1991.

(b) Incorporating the SFM revisions, as required by this AD, may be performed by the owner/operator holding at least a private pilot certificate as authorized by section 43.7 of the Federal Aviation Regulations (14 CFR 43.7), and must be entered into the aircraft records showing compliance with this AD in accordance with section 43.9 of the Federal Aviation Regulations (14 CFR 43.9).

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

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

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

(e) Questions or technical information related to Alexander Schleicher ASK 21 Technical Note No. 23, dated January 29, 1991, should be directed to Alexander Schleicher, Segelflugzeugbau, 6416 Poppenhausen, Wasserkuppe, Federal Republic of Germany; telephone: 49.6658.890 or 49.6658.8920; facsimile: 49.6658.8923 or 49.6658.8940. This service information may be examined at the FAA, Central Region, Office of the Regional Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri.

(f) The replacements required by this AD shall be done in accordance with Alexander Schleicher ASK 21 Technical Note No. 23, dated January 29, 1991. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Alexander Schleicher, Segelflugzeugbau, 6416 Poppenhausen, Wasserkuppe, Federal Republic of Germany. Copies may be inspected at the FAA, Central Region, Office of the Regional Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

Note 3: The subject of this AD is addressed in German AD No. 91–112 Schleicher, dated June 19, 1991.

(g) This amendment becomes effective on May 18, 1998. Issued in Kansas City, Missouri, on April 9, 1998.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–10179 Filed 4–17–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 96–CE–54–AD; Amendment 39–10474; AD 98–08–25]

RIN 2120–AA64

Airworthiness Directives; Twin Commander Aircraft Corporation 500, 680, 690, and 695 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes Airworthiness Directive (AD) 96–12–08 on certain Twin Commander Aircraft Corporation (Twin Commander) 500, 680, 690, and 695 series airplanes, which currently requires replacing the nose landing gear (NLG) drag link bolt with one that has been manufactured with the proper heat-treatment. This action will retain the requirements of AD 96–12–08, add an additional model and additional serial numbers to the applicability section of the AD, and require replacing bolt part number (P/N) ED10055 with bolt P/N 750076–1 on certain Models 690D and 695A airplanes. This action is prompted by a defective manufacture of a certain lot of drag link bolts used in the NLG. The actions specified by this AD are intended to prevent the NLG from collapsing caused by a failed drag link bolt, which could result in loss of control of the airplane during landing operations.

DATES: Effective May 18, 1998.

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

ADDRESSES: Service information that applies to this AD may be obtained from Twin Commander Aircraft Corporation, 19010 59th Dr. NE, Arlington, Washington, 98223–7832; telephone (360) 435–9797; facsimile (360) 435–1112. This information may also be examined at the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket 96–E–54–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Jeffrey Morfitt, Aerospace Engineer, FAA, Seattle Aircraft Certification Office, 1601 Lind Ave. S.W., Renton, Washington, 98055-4056; telephone: (206) 227–2595; facsimile: (206) 227–1181.

SUPPLEMENTARY INFORMATION:

Events Leading to the Issuance of This AD

A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to certain Twin Commander 500, 680, 690, and 695 series airplanes that do not have a nose landing gear drag link bolt with the manufacturer's serial number, manufacture date, and the last three digits of the drawing number 055 on the bolt head, was published in the **Federal Register** on May 9, 1997 (62 FR 25563). The action proposed to require:

- replacing the NLG drag link bolt with an approved heat-treated bolt that has the manufacturer's serial number, manufacture date, and the last three digits of the drawing number (055) on the bolt head,
- including Model 680V in the applicability of the AD;
- including additional serial numbers of the already affected models; and
- changing the bolt part number (P/N) to be installed on Models 690D and 695A from P/N ED10055 to P/N 750076–1.

Accomplishment of the proposed action would be in accordance with Twin Commander Service Bulletin (SB) No. 224, Revision C, dated July 25, 1996.

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

The FAA's Determination

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

Cost Impact

The FAA estimates that 54 airplanes in the U.S. registry will be affected by this AD, that it will take approximately 1 workhour per airplane to accomplish this action, and that the average labor rate is approximately $60 an hour. The manufacturer is providing parts and one hour labor free of charge. With this in mind, this AD imposes no cost impact upon the U.S. operators of the affected airplanes.

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by removing Airworthiness Directive (AD) 96–12–08, Amendment No. 39–9650

and by adding a new AD to read as follows:

98–08–25 Twin Commander Aircraft Corporation: Amendment No. 39–10474; Docket No. 96–CE–54–AD; Supersedes AD 96–12–08, Amendment No. 39–9650.

Applicability: The following model and serial number airplanes, certificated in any category:

Models	Serial Nos.
500S ...	3185, 3228, 3230, 3262, and 3291
500U ...	1765
680F ...	1195
681	6027
680V ...	1677
690	11035, 11053, 11068, and 11074
690A ...	11111, 11134, 11146, 11153, 11173, 11177, 11205, 11215, 11237, 11249, 11271, 11273, and 11282
690B ...	11360, 11382, 11409, 11424, 11451, 11455, 11463, 11491, 11513, 11521, 11535, 11536, 11539, and 11566
690C ...	11638, 11643, 11676, 11689, and 11719
690D ...	15041
695	95010, 95033, 95044, and 95066
695A ...	69010, 69041, 69056, and 69061

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

Compliance: Required within the next 75 hours time-in-service (TIS) after the effective date of this AD, unless already accomplished.

To prevent the nose landing gear (NLG) from collapsing, which could result in loss of control of the airplane during landing operations, accomplish the following:

(a) For all airplane models, except for Models 690D and 695A, replace the NLG drag link bolt, part number (P/N) ED 10055, with a new bolt in accordance with the INSTRUCTIONS section of Twin Commander Service Bulletin (SB) 224, Revision C, dated July 25, 1996.

(b) For airplane Models 690D and 695A, replace the NLG drag link bolt (P/N ED 10055), with a new bolt (P/N 750076–1) in accordance with Twin Commander SB 224, Revision C, dated July 25, 1996.

(c) The new replacement bolt must be marked with the manufacturer's serial number, the date of manufacture, and the last three digits of the drawing number, 055, on the bolt head for all but Models 690D and 695A. Models 690D and 695A bolts must be marked with the manufacturer's serial number, the date of manufacture, and the last three digits of the drawing number, 76–1, on the bolt head.

Note 2: Although not required by this AD, FAA highly recommends that the removed bolt (P/N ED 10055) be returned to Twin Commander for Rockwell Hardness testing.

(d) For all affected models except for Models 690D and 695A, compliance with Twin Commander Service Bulletin (SB) 224, Revision A, dated April 24, 1996, or Revision C, dated July 25, 1996, fulfills the applicable requirements of this AD, and is considered ''unless already accomplished.''

(e) As of the effective date of this AD, no person shall install an NLG drag link bolt that does not have the manufacturer's serial number, manufacture date, and the last three digits of the drawing number as specified in paragraph (c) of this AD.

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

(g) An alternative method of compliance or adjustment of the compliance times that provides an equivalent level of safety may be approved by the Manager, Seattle Aircraft Certification Office, 1601 Lind Ave. SW, Renton, Washington, 98055–4056. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Seattle Aircraft Certification Office.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained at the Seattle Aircraft Certification Office.

(h) The inspection and replacement required by this AD shall be done in accordance with Twin Commander Service Bulletin No. 224, Revision C, dated July 25, 996. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Twin Commander Aircraft Corporation, 19010 59th Dr. NE, Arlington, Washington, 98223–7832. Copies may be inspected at the FAA, Central Region, Office of the Regional Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

(i) This amendment supersedes AD 96–12–08, mendment 39–9650.

(j) This amendment becomes effective on May 18, 1998.

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

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–10178 Filed 4–17–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–CE–88–AD; Amendment 39–10477; AD 98–08–28]

RIN 2120–AA64

Airworthiness Directives; Avions Pierre Robin Model R3000/160 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that applies to all Avions Pierre Robin (Avions) Model R3000/160 airplanes. This action requires replacing the top bolts in the front wheel fork assembly and the top bolts attaching the front landing gear to the engine mount. This AD is the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for France. The actions specified by this AD are intended to prevent collapse of the nose landing gear, which could result in loss of control of the airplane during taxi and landing operations.

DATES: Effective May 15, 1998.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of May 15, 1998.

Comments for inclusion in the Rules Docket must be received on or before May 15, 1998.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket 97–CE–88–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Service information that applies to this AD may be obtained from Avions Pierre Robin, 1 route de Troyes 21121 Darois, France; telephone: 03.80.44.20.50; facsimile: 03.80.35.60.80. This information may also be examined at the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket 97–CE–88–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Karl Schletzbaum, Aerospace Engineer, FAA, Small Airplane Directorate, Aircraft

Certification Service, 1201 Walnut, suite 900, Kansas City, Missouri; telephone: (816) 426–6934, facsimile: (816) 426–2169.

SUPPLEMENTARY INFORMATION:

Discussion

The Direction Generale De L'Aviation Civile (DGAC), which is the airworthiness authority for France, recently notified the FAA that an unsafe condition may exist on all Avions Model R3000/160 airplanes. The DGAC reports that the two top bolts connecting the front wheel fork to the sliding leg, and the two top bolts attaching the front landing gear to the engine mount, broke while being installed during a routine maintenance inspection. The bolts failed when torqued onto the landing gear assembly.

The DGAC investigation revealed that the materials used during manufacture of the bolts were not of high enough strength to accommodate the load conditions required for these airplanes.

This condition, if not corrected, could result in collapse of the nose landing gear during taxi or landing operations.

Relevant Service Information

Avions has issued Service Bulletin No. 151, dated July 8, 1996, which specifies procedures for replacing the two top bolts, part number (P/N) 27.36.36.001, with new bolts of improved design, P/N 42.36.00.050.

The DGAC classified this service bulletin as mandatory and issued French AD 96–285(A), dated December 4, 1996, in order to assure the continued airworthiness of these airplanes in France.

The FAA's Determination

This airplane model is manufactured in France and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.19) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept the FAA informed of the situation described above.

The FAA has examined the findings of the DGAC; reviewed all available information, including the service information and modification referenced above; and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of the Provisions of This AD

Since an unsafe condition has been identified that is likely to exist or develop on other Avions Model R3000/160 airplanes of the same type design registered in the United States, the FAA is issuing an AD. This AD requires replacing the two top bolts connecting the front wheel fork to the sliding leg, and the two top bolts attaching the front landing gear to the engine mount. Accomplishment of the replacement would be in accordance with Avions Pierre Robin Service Bulletin No. 151, dated July 8, 1996.

Cost Impact

None of the Avions Model R3000/160 airplanes affected by this action are on the U.S. Register. All airplanes included in the applicability of this rule currently are operated by non-U.S. operators under foreign registry; therefore, they are not directly affected by this AD action. However, the FAA considers this rule necessary to ensure that the unsafe condition is addressed in the event that any of these subject airplanes are imported and placed on the U.S. Register.

Should an affected airplane be imported and placed on the U.S. Register, accomplishment of the required replacement would take approximately 2 workhours at an average labor charge of $60 per workhour. Parts cost approximately $50 per airplane. Based on these figures, the total cost impact of this AD would be $170 per airplane that would become registered in the United States.

The Effective Date of This AD

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

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. 97–CE–88-AD.'' The postcard will be date stamped and returned to the commenter.

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

98–08–28 Avions Pierre Robin: Amendment 39–10477; Docket No. 97–CE–88–AD.

Applicability: Model R3000/160 airplanes, all serial numbers, certificated in any category.

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

Compliance: Required prior to further flight after the effective date of this AD, unless already accomplished.

To prevent collapse of the nose landing gear, which could result in loss of control of the airplane during taxi and landing operations, accomplish the following:

(a) Replace the top two bolts, part number (P/N) 27.36.36.001 or an FAA-approved equivalent part number, that connect the front wheel fork to the sliding legs with bolts of improved design, P/N 42.36.00.050 or an FAA-approved equivalent part number, in accordance with Avions Pierre Robin (Avions) Service Bulletin (SB) No. 151, dated July 8, 1996.

(b) Replace the top two bolts, part number (P/N) 27.36.36.001 or an FAA-approved equivalent part number, that attach the front landing gear to the engine mount with bolts of improved design, P/N 42.36.00.050 or an FAA-approved equivalent part number, in accordance with Avions SB No. 151, dated July 8, 1996.

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

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

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

(e) Questions or technical information related to Avions Pierre Robin Service Bulletin No. 151, dated July 8, 1996, should be directed to Avions Pierre Robin, 1 route de Troyes 21121 Darois, France; telephone 03.80.44.20.50; facsimile 03.80.35.60.80. This service information may be examined at the FAA, Central Region, Office of the Regional Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

(f) The replacement required by this AD shall be done in accordance with Avions Pierre Robin Service Bulletin No. 151, dated July 8, 1996. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Avions Pierre Robin, 1 route de Troyes 21121 Darois, France; telephone 03.80.44.20.50; facsimile 03.80.35.60.80. Copies may be inspected at the FAA, Central Region, Office of the Regional Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

Note 3: The subject of this AD is addressed in French AD No. 96–285(A), dated December 4, 1996.

(g) This amendment becomes effective on May 15, 1998.

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

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–10177 Filed 4–17–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–CE–46–AD; Amendment 39–10475; AD 98–08–26]

RIN 2120–AA64

Airworthiness Directives; Pilatus Aircraft Ltd. Models PC–12 and PC–12/45 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that applies to certain Pilatus Aircraft Ltd. (Pilatus) Models PC–12 and PC–12/45 airplanes. This AD requires installing aluminum bonding bushings over certain screws in certain fuel tank underwing access panels. Several reports from the field revealing fuel tank access panels insufficiently electrically bonded to the airframe prompted this action. The actions specified by this AD are intended to prevent electrical arcing in the fuel tanks and detonation of the fuel-air mixture, which can be created by poor electrical bonding of fuel tank underwing access panels, and could result in a fire on the airplane.

DATES: Effective May 29, 1998.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of May 29, 1998.

ADDRESSES: Service information that applies to this AD may be obtained from Pilatus Aircraft Ltd., CH–6370 Stans, Switzerland; telephone: +41–41–6196–233; facsimile: +41–41–6103–351. This information may also be examined at the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 97–CE–46–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Roman Gabrys, Project Officer, FAA, Small Airplane Directorate, Aircraft Certification Service, 1201 Walnut, suite 900, Kansas City, Missouri 64106; telephone: (816) 426–6934; facsimile: (816) 426–2169.

SUPPLEMENTARY INFORMATION:

Events Leading to the Issuance of This AD

A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to certain Pilatus Models PC–12 and PC–12/45 airplanes was published in the **Federal Register** as a notice of proposed rulemaking (NPRM) on December 19, 1997 (62 FR 66561). The NPRM proposed to require installing aluminum bonding bushings over certain screws in certain fuel tank underwing access panels. Accomplishment of the proposed action as specified in the NPRM would be in accordance with Pilatus Service Bulletin No. 57–001, dated February 28, 1997.

The NPRM was the result of several reports from the field revealing fuel tank access panels insufficiently electrically bonded to the airframe.

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

The FAA's Determination

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

Cost Impact

The FAA estimates that 40 airplanes in the U.S. registry will be affected by this AD, that it will take approximately 6 workhours per airplane to accomplish this action, and that the average labor rate is approximately $60 an hour. Parts will be provided at no cost by the manufacturer. Based on these figures, the total cost impact of this AD on U.S. operators is estimated to be $14,400 or $360 per airplane.

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

98–08–26 Pilatus Aircraft Ltd.: Amendment 39–10475; Docket No. 97–CE–46–AD.

Applicability: Model PC–12 and PC–12/45 airplanes, serial numbers MSN 001 through MSN 168, certificated in any category.

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

Compliance: Required within the next 100 hours time-in-service (TIS) after the effective date of this AD, unless already accomplished.

To prevent electrical arcing in the fuel tanks and detonation of the fuel-air mixture, which can be created by poor electrical bonding of fuel tank underwing access panels, and could result in a fire on the airplane, accomplish the following:

(a) Install aluminum bonding bushings onto the screws for certain fuel tank underwing access panels in accordance with Part A and Part B of the Accomplishment Instructions in Pilatus Service Bulletin No. 57–001, dated February 28, 1997.

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

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

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

(d) Questions or technical information related to Pilatus Service Bulletin No. 57–001, dated February 28, 1997, should be directed to Pilatus Aircraft Ltd., CH–6370 Stans, Switzerland. This service information may be examined at the FAA, Central Region, Office of the Regional Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri.

(e) The installations required by this AD shall be done in accordance with Pilatus Service Bulletin No. 57–001, dated February 28, 1997. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Pilatus Aircraft Ltd., CH–6370 Stans, Switzerland. Copies may be inspected at the FAA, Central Region, Office of the Regional Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

(f) This amendment becomes effective on May 29, 1998.

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

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–10176 Filed 4–17–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–NM–114–AD; Amendment 39–10480; AD 98–09–01]

RIN 2120–AA64

Airworthiness Directives; Gulfstream Model GV Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to certain Gulfstream Model GV series airplanes. This action requires inspections and functional tests of the elevator Hardover Prevention System (HOPS) to detect any miswiring of electrical connectors, correction of any discrepancy found, and eventual modification of the HOPS wiring. This amendment is prompted by reports of incorrect matching of electrical connectors to the hydraulic deactivation valves of the elevator HOPS. The actions specified in this AD are intended to prevent the incorrect operation of the elevator HOPS, which could result in loss of control of the airplane.

DATES: Effective May 5, 1998.

The incorporation by reference of certain publications listed in the

regulations is approved by the Director of the Federal Register as of May 5, 1998.

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

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 98–NM–114–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

The service information referenced in this AD may be obtained from Gulfstream Aerospace Corporation, P.O. Box 2206, M/S D–10, Savannah, Georgia 31402–9980. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Small Airplane Directorate, Atlanta Aircraft Certification Office, One Crown Center, 1895 Phoenix Boulevard, suite 450, Atlanta, Georgia; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Neil Berryman, Aerospace Engineer, Systems and Flight Test Branch, ACE–116A, FAA, Small Airplane Directorate, Atlanta Aircraft Certification Office, One Crown Center, 1895 Phoenix Boulevard, suite 450, Atlanta, Georgia 30337–2748; telephone (770) 703–6066; fax (770) 703–6097.

SUPPLEMENTARY INFORMATION: The FAA has received reports indicating that, during recent inspections and operational tests of the elevator Hardover Prevention System (HOPS) on certain Gulfstream Model GV series airplanes, a configuration discrepancy was identified in which certain electrical connectors were incorrectly connected to the hydraulic deactivation valves of the elevator HOPS. The flight control hydraulic servos on the Gulfstream Model GV series airplane incorporate two redundant actuator pistons. The HOPS is designed to detect a runaway (or hardover) condition in either of these actuator pistons, and to subsequently shut down the affected side of the hydraulic servo. If the elevator HOPS is wired incorrectly, the system will shut down the wrong side of the hydraulic servo although that actuator is still operating properly. This condition, if not corrected, would prevent the correct operation of the elevator HOPS, which could result in loss of control of the airplane.

Explanation of Relevant Service Information

The FAA has reviewed and approved Gulfstream Aerospace Alert Customer Bulletin No. 3, dated February 25, 1998, which describes procedures for performing a one-time inspection of the elevator HOPS to detect any incorrect wiring connections associated with the HOPS hydraulic deactivation valves, and corrective action, if necessary. The alert customer bulletin also describes procedures for a one-time functional test to ensure correct operation of the elevator HOPS.

In addition, the FAA has reviewed and approved Gulfstream Aerospace GV Customer Bulletin No. 4, dated March 31, 1998, which describes procedures for modifying the electrical harness of the hydraulic deactivation valves of the left elevator HOPS, and installing additional identification decals in order to prevent future miswiring. Accomplishment of the actions specified in this customer bulletin eliminates the need for the inspection and functional test specified in Gulfstream Alert Customer Bulletin No. 3.

Explanation of the Requirements of the Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design, this AD is being issued to prevent the incorrect operation of the elevator HOPS, which could result in loss of control of the airplane. This AD requires accomplishment of the actions specified in the customer bulletins described previously, except as discussed below.

Differences Between This Rule and Customer Bulletin

Operators should note that Gulfstream Aerospace Alert Customer Bulletin No. 3, dated February 25, 1998, describes a one-time inspection and functional test to verify proper electrical configuration and operation of the elevator HOPS. The FAA has determined that, because of the safety implications and consequences associated with energizing the incorrect hydraulic deactivation valve of the elevator HOPS, performance of the inspection and functional test is necessary following accomplishment of any maintenance action associated with the elevator HOPS, until the wiring modifications described in Gulfstream Aerospace GV Customer Bulletin No. 4, dated March 31, 1998, are accomplished.

Operators also should note that, although Gulfstream Aerospace Alert Customer Bulletin No. 3 specifies that the manufacturer may be contacted if technical assistance is required during accomplishment of the functional test, this AD requires that repair of any discrepancies be accomplished in accordance with a method approved by the FAA.

Determination of Rule's Effective Date

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 shall identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 98–NM–114–AD.'' The postcard will be date stamped and returned to the commenter.

Regulatory Impact

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

98–09–01 Gulfstream Aerospace Corporation: Amendment 39–10480. Docket 98–NM–114–AD.

Applicability: Model GV series airplanes, serial numbers 501 and 504 through 540 inclusive, certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent the incorrect operation of the elevator Hardover Prevention System (HOPS), which could result in loss of control of the airplane, accomplish the following:

(a) Within 25 flight hours after the effective date of this AD, accomplish the requirements of paragraphs (a)(1) and (a)(2) of this AD, in accordance with Gulfstream Aerospace Alert Customer Bulletin No. 3, dated February 25, 1998.

(1) Perform a visual inspection to verify correct wire connections to the forward and aft hydraulic deactivation valve, left- and right-hand sides, of the elevator HOPS. If any connector is connected improperly, prior to further flight, re-connect the wiring in accordance with the alert customer bulletin. And

(2) Perform a functional test to ensure correct operation of the elevator HOPS. If any discrepancy is found, prior to further flight, repair in accordance with a method approved by the Manager, Atlanta Aircraft Certification Office (ACO), FAA, Small Airplane Directorate.

(b) Thereafter, repeat the actions required by paragraph (a) of this AD immediately following accomplishment of any maintenance actions on the elevator HOPS, until the actions required by paragraph (c) of the AD have been accomplished.

(c) Within 150 flight hours after the effective date of this AD, modify the electrical harness of the hydraulic deactivation valves of the left elevator HOPS, and install additional identification decals, in accordance with Gulfstream Aerospace GV Customer Bulletin No. 4, dated March 31, 1998. Accomplishment of the requirements of this paragraph constitutes terminating action for this AD.

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

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

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

(f) The inspection and functional test shall be done in accordance with Gulfstream Aerospace Alert Customer Bulletin No. 3, dated February 25, 1998. The modification shall be done in accordance with Gulfstream Aerospace GV Customer Bulletin No. 4, dated March 31, 1998. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Gulfstream Aerospace Corporation, P.O. Box 2206, M/S D–10, Savannah, Georgia 31402–9980. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Small Airplane Directorate, Atlanta Aircraft Certification Office, One Crown Center, 1895 Phoenix Boulevard, suite 450, Atlanta, Georgia; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(g) This amendment becomes effective on May 5, 1998.

Issued in Renton, Washington, on April 13, 1998.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–10276 Filed 4–17–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98–AWP–2]

Modification of Class E Airspace; Porterville, CA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action modifies the Class E airspace area at Porterville, CA. The establishment of a Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP) to Runway (RWY) 12 and a GPS SIAP to RWY 30 at Porterville Municipal Airport has made this action necessary. Additional controlled airspace extending upward from 700 feet or more above the surface of the earth is needed to contain aircraft executing the GPS RWY 12 SIAP and GPS RWY 30 SIAP to Porterville Municipal Airport. The intended effect of this action is to provide adequate controlled airspace for Instrument Flight Rules (IFR) operations Porterville Municipal Airport, Porterville, CA.

EFFECTIVE DATE: 0901 UTC August 13, 1998.

FOR FURTHER INFORMATION CONTACT:

Larry Tonish, Airspace Specialist, Airspace Branch, AWP–520, Air Traffic Division, Western-Pacific Region, Federal Aviation Administration, 15000 Aviation Boulevard, Lawndale, California 90261, telephone (310) 725–6539.

SUPPLEMENTARY INFORMATION:

History

On February 18, 1998, the FAA proposed to amend 14 CFR part 71 by modifying the Class E airspace area at Porterville, CA (63 FR 8153). Additional controlled airspace extending upward from 700 feet above the surface is needed to contain aircraft executing the GPS RWY 12 SIAP and GPS RWY 30 SIAP at Porterville Municipal Airport. This action will provide adequate controlled airspace for IFR operations at Porterville Municipal Airport, Porterville, CA. Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments to the proposal were received. Class E airspace designations for airspace extending from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9E dated September 10, 1997, and effective September 16, 1997, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Rule

This amendment to 14 CFR part 71 modifies the Class E airspace area at Porterville, CA. The development of a GPS SIAP's has made this action necessary. The effect of this action will provide adequate airspace for aircraft executing the GPS RWY 12 SIAP and GPS RWY 30 SIAP at Porterville Municipal Airport, Porterville, CA.

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

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

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9E, Airspace Designations and Reporting Points, dated September 10, 1997, and effective September 16, 1997, is amended as follows:

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

* * * * *

AWP CA E5 Porterville, CA [Revised]

Porterville Municipal Airport, CA
(lat. 36°01′48″N, long. 119°03′46″W)

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of the Porterville Municipal Airport and within an area bounded by a line beginning at lat. 35°57′54″N, long. 118°47′20″W; to lat. 35°48′30″N, long. 118°51′00″W; to lat. 35°47′30″W, long. 119°01′00″W; to lat. 35°55′26″N, long. 119°01′59″W, thence clockwise along the 6.5-mile radius of the Porterville Municipal Airport, to the point of beginning.

* * * * *

Issued in Los Angeles, California, on April 2, 1998.

Sherry Avery,

Acting Assistant Manager, Air Traffic Division, Western-Pacific Region.

[FR Doc. 98–10303 Filed 4–17–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98–AWP–5]

Establishment of Class E Airspace; Delano, CA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes a Class E airspace area at Delano, CA. Additional controlled airspace extending upward from 700 feet or more above the surface of the earth is needed to contain aircraft executing instrument operations at Delano Municipal Airport. The intended effect of this action is to provide adequate controlled airspace for Instrument Flight Rules (IFR) operations at Delano Municipal Airport, Delano, CA.

EFFECTIVE DATE: 0901 UTC August 13, 1998.

FOR FURTHER INFORMATION CONTACT:

Larry Tonish, Airspace Specialist, Airspace Branch, AWP–520, Air Traffic Division, Western-Pacific Region, Federal Aviation Administration, 15000 Aviation Boulevard, Lawndale, California 90261, telephone (310) 725–6539.

SUPPLEMENTARY INFORMATION:

History

On February 18, 1998, the FAA proposed to amend 14 CFR part 71 by establishing a Class E airspace area at Delano, CA (63 FR 8151). Additional controlled airspace extending upward from 700 feet above the surface is needed to contain aircraft executing instrument operations at Delano Municipal Airport. This action will provide adequate controlled airspace for IFR operations at Delano Municipal Airport, Delano, CA.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments to the proposal were received. Class E airspace designations for airspace extending from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9E dated September 10, 1997, and effective September 16, 1997, which is incorporated by reference in 14 CFR 71.1 The Class E airspace designation listed in this document will be published subsequently in the Order.

The Rule

This amendment to 14 CFR part 71 establishes a Class E airspace area at Delano, CA. Additional controlled airspace was required for aircraft executing instrument operations at Delano Municipal Airport. The effect of this action will provide adequate airspace for aircraft executing IFR operations at Delano Municipal Airport, Delano, CA.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation—(1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a

Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

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

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9E, Airspace Designations and Reporting Points, dated September 10, 1997, and effective September 16, 1997, is amended as follows:

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

* * * * *

AWP CA E5 Delano, CA [New]

Delano Municipal Airport, CA
(lat. 35°44′44″N, long. 119°14′611″W)

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of the Delano Municipal Airport, excluding the Bakersfield, CA, Class E airspace area.

* * * * *

Issued in Los Angeles, California, on April 2, 1998.

Sherry Avery,

Acting Assistant Manager, Air Traffic Division, Western-Pacific Region.

[FR Doc. 98–10302 Filed 4–17–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 97–ACE–39]

Amendment to Class E Airspace; Valentine, NE

AGENCY: Federal Aviation Administration, DOT.

ACTION: Direct final rule; confirmation of effective date.

SUMMARY: This document confirms the effective date of a direct final rule published on February 19, 1998, which revises Class E airspace at Valentine, NE.

DATES: The direct final rule published at 63 FR 8345 is effective on 0901 UTC, June 18, 1998.

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

SUPPLEMENTARY INFORMATION: The FAA published this direct final rule with a request for comments in the **Federal Register** on February 19, 1998 (63 FR 8345). The FAA uses the direct final rulemaking procedure for a non-controversial rule where the FAA believes that there will be no adverse public comment. This direct final rule advised the public that no adverse comments were anticipated, and that unless a written adverse comment, or a written notice of intent to submit such an adverse comment, were received within the comment period, the regulation would become effective on June 18, 1998. No adverse comments were received, and thus this document confirms that this direct final rule will become effective on that date.

Issued in Kansas City, MO on March 25, 1998.

Herman J. Lyons, Jr.,

Manager, Air Traffic Division, Central Region.

[FR Doc. 98–10173 Filed 4–17–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 97–ACE–38]

Amendment to Class E Airspace; Chadron, NE

AGENCY: Federal Aviation Administration, DOT.

ACTION: Direct final rule; confirmation of effective date.

SUMMARY: This document confirms the effective date of a direct final rule published on February 19, 1998, which revises Class E airspace at Chadron, NE.

DATES: The direct final rule published at 63 FR 8343 is effective on 0901 UTC, June 18, 1998.

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

SUPPLEMENTARY INFORMATION: The FAA published this direct final rule with a request for comments in the **Federal Register** on February 19, 1998 (63 FR 8343). The FAA uses the direct final rulemaking procedure for a non-controversial rule where the FAA believes that there will be no adverse public comment. This direct final rule advised the public that no adverse comments were anticipated, and that unless a written adverse comment, or a written notice of intent to submit such an adverse comment, were received within the comment period, the regulation would become effective on June 18, 1998. No adverse comments were received, and thus this document confirms that this direct final rule will become effective on that date.

Issued in Kansas City, MO on March 25, 1998.

Herman J. Lyons, Jr.,

Manager, Air Traffic Division, Central Region.

[FR Doc. 98–10174 Filed 4–17–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98–ACE–1]

Amendment to Class E Airspace; Topeka, Forbes Field, KS; Correction

AGENCY: Federal Aviation Administration, DOT.

ACTION: Direct final rule; confirmation of effective date and correction.

SUMMARY: This document confirms the effective date of a direct final rule published on February 19, 1998, which revises Class E airspace at Topeka, Forbes Field, KS, and corrects two errors in the airspace designation as published in the direct final rule.

DATES: The direct final rule published at 63 FR 8342 is effective on 0901 UTC, June 18, 1998.

This correction is effective on June 18, 1998.

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

SUPPLEMENTARY INFORMATION: On February 19, 1998, the FAA published in the **Federal Register** a direct final rule; request for comments, which modified Class E airspace at Topeka, Forbes Field, KS (FR Document 98–3968, 63 FR 8342, Airspace Docket No. 98–ACE–1). Two errors were subsequently discovered in the Class E airspace designation. After careful review of all available information related to the subject presented above, the FAA has determined that air safety and the public interest require adoption of the rule. The FAA has determined that these corrections will not change the meaning of the action nor add any additional burden on the public beyond that already published. This action corrects those errors and confirms the effective date of the direct final rule.

The FAA uses the direct final rulemaking procedure for a non-controversial rule where the FAA believes that there will be no adverse public comment. This direct final rule advised the public that no adverse comments were anticipated, and that unless a written adverse comment, or a written notice of intent to submit such an adverse comment, were received within the comment period, the regulation would become effective on June 18, 1998. No adverse comments were received, and thus this document confirms that this direct final rule will become effective on that date.

Correction

In rule FR Doc. 98–3968 published in the **Federal Register** on February 19, 1998, 63 FR 8342, make the following correction to the Topeka, Forbes Field, KS, Class E airspace designation incorporated by reference, in 14 CFR 71.1:

§ 71.1 [Corrected]

1. On page 8343 in the third column, in the airspace designation, under ACE KS E5 Topeka, Forbes Field, KS [Revised], in the fourth line, the geographic coordinates for Topeka, Forbes Field, KS ''(Lat. 38°57′01″ N., long. 95°39′51″ W.)'' are corrected to read ''(Lat. 38°57′03″ N., long. 95°39′49″ W.) ''.

2. On page 8343, in the third column, in the airspace designation, under ACE KS E5 Topeka, Forbes Field, KS [Revised], after the sixth line, add ''Topeka, Forbes Field ILS (Lat. 38°58′04″ N., long. 95°40′50″ W.)''.

Issued in Kansas City, MO on March 25, 1998.

Herman J. Lyons, Jr.,

Manager, Air Traffic Division, Central Region.

[FR Doc. 98–10172 Filed 4–17–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 97–ASO–16]

RIN 2120–AA66

Modification of the Atlantic High Offshore Airspace Area

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action modifies the Atlantic High Offshore Airspace Area. Specifically, this action extends the southeast boundary of the Atlantic High Offshore Airspace Area to coincide with the San Juan Combined Center-Radar Approach Control (CERAP) oceanic area of control. The FAA is taking this action to facilitate the use of domestic air traffic control (ATC) procedures within the extended Atlantic High Offshore Airspace Area, thereby enhancing the management of air traffic operations and allowing for more efficient use of the airspace.

EFFECTIVE DATE: 0901 UTC, June 18, 1998.

FOR FURTHER INFORMATION CONTACT: Ellen E. Crum, Airspace and Rules Division, ATA–400, Office of Air Traffic Airspace Management, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION:

History

On November 18, 1997, the FAA proposed to amend 14 CFR part 71 (part 71) to modify the Atlantic High Offshore Airspace Area (62 FR 61458). Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal. In response to the notice, the FAA received one comment from the Air Line Pilots Association supporting this action.

Except for editorial changes this rule is the same as that proposed in the notice. Offshore airspace area designations are published in paragraph 2003 of FAA Order 7400.9E dated September 10, 1997, and effective September 16, 1997, which is incorporated by reference in 14 CFR 71.1. The Offshore airspace area listed in this document will be published subsequently in the Order.

The Rule

This amendment to part 71 modifies the Atlantic High Offshore Airspace Area by extending the southeast boundary of the Atlantic High Offshore Airspace Area to coincide with the San Juan CERAP oceanic area of control.

Currently, aircraft transitioning to/from the Bahamas and Caribbean areas encounter two different types of airspace and two different sets of ATC procedures. Aircraft departing the Miami Air Route Traffic Control Center (ARTCC) oceanic control area and transitioning southeast to the Bahamas and Caribbean areas encounter airspace which is governed by separation standards for International Civil Aviation Organization (ICAO) operations until reaching the boundary of the San Juan CERAP oceanic control area. The reverse situation applies for aircraft departing San Juan CERAP's area of control en route to the boundary for the Miami ARTCC area of control.

This modification allows the application of domestic ATC procedures, in the Atlantic High Offshore Airspace Area in lieu of ICAO oceanic ATC procedures, thereby enhancing the flow of air traffic and allowing for a more efficient use of the airspace area.

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

Because this amendment involves, in part, the modification of navigable airspace outside of the United States, the Administrator has consulted with the Secretary of State and the Secretary of Defense in accordance with the provisions of Executive Order 10854.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

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

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

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9E, Airspace Designations and Reporting Points, dated September 10, 1997, and effective September 16, 1997, is amended as follows:

Paragraph 2003—Offshore Airspace Areas

* * * * *

Atlantic High [Revised]

That airspace extending upward from 18,000 feet MSL to and including FL 600 within the area bounded on the east from north to south by the Moncton FIR, New York Oceanic CTA/FIR, and the San Juan Oceanic CTA/FIR; to the point where the San Juan Oceanic CTA/FIR boundary turns southwest at lat. 21°08′00″N., long. 67°45′00″ W., thence from that point southeast via a straight line to intersect a 100-mile radius of the Fernando Luis Ribas Dominicci Airport at lat. 19°43′08″ N., long. 67°01′17″ W., thence counterclockwise via a 100-mile radius of the Fernando Luis Ribas Dominicci Airport to lat. 18°54′10″ N., long. 67°39′43″ W., thence from that point northwest via a straight line to intersect the point where the Santo Domingo FIR turns northwest at lat. 19°40′00″ N., long. 69°09′00″ W., thence from that point the area is bounded on the south from east to west by the Santo Domingo FIR, Port-au-Prince CTA/FIR, and the Havana CTA/FIR; bounded on the west from south to north by the Houston Oceanic CTA/FIR, southern boundary of the Jacksonville Air Route Traffic Control Center and a line 12 miles offshore and parallel to the U.S. shoreline.

* * * * *

Issued in Washington, DC, on April 13, 1998.

Reginald C. Matthews,

Acting Program Director for Air Traffic Airspace Management.

[FR Doc. 98–10301 Filed 4–17–98; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

Airspace Docket No. 97–AWP–17

RIN 2120–AA66

Establishment of VOR Federal Airway; California

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; confirmation of effective date.

SUMMARY: On October 27, 1997, the FAA published a final rule in the **Federal Register** that established Federal Airway 607 (V–607) between Mendocino, CA, and Arcata, CA. On December 8, 1997, the implementation of this airway was delayed to permit the FAA to add an intersection on V–607 and to conduct additional flight inspections. This action confirms the implementation date for V–607 as June 18, 1998.

EFFECTIVE DATES: The final rule published in the **Federal Register** on October 27, 1997 (62 FR 55502), and delayed on December 8, 1997 (62 FR 64521), is effective 0901 UTC June 18, 1998.

FOR FURTHER INFORMATION CONTACT: Ken McElroy, Airspace and Rules Division, ATA–400, Office of Air Traffic Airspace Management, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION:

On June 20, 1997, the FAA published a Notice of Proposed Rulemaking in the **Federal Register**, inviting comments on a proposal to provide an airway between Mendocino, CA, and Arcata, CA (62 FR 33579). The proposed airway is necessary to efficiently manage air traffic operations during those periods when nonradar procedures are in use. No comments were received in response to the proposal.

On October 27, 1997, the FAA published a final rule amending 14 CFR part 71, establishing V–607 between Mendocino, CA, and Arcata, CA (62 FR 55502). However, on December 8, 1997, the FAA delayed the implementation date of the V–607 amendment to establish an intersection at the dogleg of the Arcata 153° radial and the Mendocino 346° radial and to conduct additional flight inspection (62 FR 64521). This final rule confirms an effective date of June 18, 1998, for the implementation of V–607 between Mendocino, CA, and Arcata, CA.

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Effective Date

The effective date of the final rule, Airspace Docket 97–AWP–17, as published in the **Federal Register** on October 27, 1997 (62 FR 55502), and delayed on December 8, 1997 (62 FR 64521), is 0901 UTC June 18, 1998.

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

Issued in Washington, DC, on April 14, 1998.

Reginald C. Matthews,

Acting Program Director for Air Traffic Airspace Management.

[FR Doc. 98–10389 Filed 4–17–98; 8:45 am]

BILLING CODE 4910–13–P

FEDERAL TRADE COMMISSION

16 CFR Part 305

Rule Concerning Disclosures Regarding Energy Consumption and Water Use of Certain Home Appliances and Other Products Required Under the Energy Policy and Conservation Act (''Appliance Labeling Rule'')

AGENCY: Federal Trade Commission.

ACTION: Final rule.

SUMMARY: The Federal Trade Commission amends its Appliance Labeling Rule by publishing new ranges of comparability to be used on required labels for clothes washers.

DATES: *Effective:* August 12, 1998.

Compliance: Manufacturers of clothes washers must begin using these revised ranges on labels on clothes washers manufactured on or after August 12,

1998. Manufacturers may begin using these revised ranges on labels on clothes washers manufactured on or after July 1, 1998, in order to comply with the July 1, 1998 mandatory effective date of recent amendments to the Department of Energy's (''DOE'') test procedure for clothes washers, 62 FR 45484 (August 27, 1997).

FOR FURTHER INFORMATION CONTACT:

James Mills, Attorney, Division of Enforcement, Federal Trade Commission, Washington, DC 20580 (202–326–3035).

SUPPLEMENTARY INFORMATION: The Appliance Labeling Rule (''Rule'') was issued by the Commission in 1979, 44 FR 66466 (Nov. 19, 1979), in response to a directive in the Energy Policy and Conservation Act of 1975.[1] The Rule covers eight categories of major household appliances. Clothes washers are among those categories. The Rule also covers pool heaters, 59 FR 49556 (Sept. 28, 1994), and contains requirements that pertain to fluorescent lamp ballasts, 54 FR 28031 (July 5, 1989), certain plumbing products, 58 FR 54955 (Oct. 25, 1993), and certain lighting products, 59 FR 25176 (May 13, 1994, eff. May 15, 1995).

The Rule requires manufacturers of all covered appliances and pool heaters to disclose specific energy consumption or efficiency information (derived from the DOE test procedures) at the point of sale in the form of an ''EnergyGuide'' label and in catalogs. It also requires manufacturers of furnaces, central air conditioners, and heat pumps either to provide fact sheets showing additional cost information, or to be listed in an industry directory showing the cost information for their products. The Rule requires that manufacturers include, on labels and fact sheets, an energy consumption or efficiency figure and a ''range of comparability.'' This range shows the highest and lowest energy consumption or efficiencies for all comparable appliance models so consumers can compare the energy consumption or efficiency of other models (perhaps competing brands) similar to the labeled model. The Rule requires that manufacturers also include, on labels for some products, a secondary energy usage disclosure in the form of an estimated annual operating cost based on a specified DOE national average cost for the fuel the appliance uses.

Section 305.8(b) of the Rule requires manufacturers, after filing an initial report, to report certain information annually to the Commission by specified dates for each product type.[2] These reports, which are to assist the Commission in preparing the ranges of comparability, contain the estimated annual energy consumption or energy efficiency ratings for the appliances derived from tests performed pursuant to the DOE test procedures. Because manufacturers regularly add new models to their lines, improve existing models, and drop others, the data base from which the ranges of comparability are calculated is constantly changing. To keep the required information consistent with these changes, under Section 305.10 of the Rule, the Commission will publish new ranges (but not more often than annually) if an analysis of the new information indicates that the upper or lower limits of the ranges have changed by more than 15%. Otherwise, the Commission will publish a statement that the prior ranges remain in effect for the next year.

On August 27, 1997, DOE revised its test procedure for the clothes washer category. 62 FR 45,484. Manufacturers of clothes washers have made the required annual submissions of data for this product category, and the data are based on the revised version of the test, which will become effective July 1, 1998. In analyzing the date, the Commission has found that a significant number of the upper and lower limits of the ranges have changed by more than 15%. Accordingly, the Commission is publishing new ranges of comparability for the clothes washer category. These ranges will supersede the current ranges for clothes washers, which were published originally on May 14, 1997 (62 FR 26,383), and later corrected on August 6, 1997 (62 FR 42,209), and which became effective August 12, 1997.

Section 326(c) of EPCA, 42 U.S.C. 6296, states that the Commission may not require labels to be changed to reflect revisions to the ranges of comparability more often than annually. Thus, the effective date of today's revision to the ranges of comparability for clothes washers is August 12, 1998, one day beyond a year from the effective date of the previous ranges. The Commission notes, however, that manufacturers of clothes washers may begin using these revised ranges on labels on clothes washers manufactured on or after July 1, 1998, in order to comply with the mandatory effective date of the amended DOE test procedure for those products.

In consideration of the foregoing, the Commission revises Appendix F of its Appliance Labeling Rule by publishing the following ranges of comparability for use in required disclosures (including labeling) for clothes washers manufactured on or after August 12, 1998. In addition, as of this effective date, manufacturers must base the disclosures of estimated annual operating cost required at the bottom of the EnergyGuide for clothes washers on the 1998 Representative Average Unit Costs of Energy for electricity (8.42 cents per kiloWatt-hour) and natural gas (61.9 cents per therm) that were published by DOE on December 8, 1997, 62 FR 64,574, and by the Commission on December 29, 1997, 62 FR 67,560. On July 1, 1998, manufacturers may voluntarily begin basing the disclosures of estimated annual operating cost required at the bottom of the EnergyGuide for clothes washers on the 1998 Representative Average Unit Costs of Energy for electricity and natural gas.

Regulatory Flexibility Act

The provisions of the Regulatory Flexibility Act relating to a Regulatory Flexibility Act analysis (5 U.S.C. 603–604) are not applicable to this proceeding because the amendments do not impose any new obligations on entities regulated by the Appliance Labeling Rule. Thus, the amendments will not have a ''significant economic impact on a substantial number of small entities'' (5 U.S.C. 605). The Commission has concluded, therefore, that a regulatory flexibility analysis is not necessary, and certifies, under Section 605 of the Regulatory Flexibility Act (5 U.S.C. 605(b)), that the amendments announced today will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

The Paperwork Reduction Act (''PRA''), 44 U.S.C. 3501 *et seq.*, requires government agencies, before promulgating rules or other regulations that require ''collections of information'' i.e., recordkeeping, reporting, or third-party disclosure requirements), to obtain approval from the Office of Management and Budget (''OMB''), 44 U.S.C. 3502. The Commission currently has OMB clearance for the Rule's information collection requirements (OMB No. 3084–0069). The amendment will not impose any new information collection requirements. Instead, it will provide manufacturers with revised ranges of comparability to use the EnergyGuide labels already required by the Rule.

[1] 42 U.S.C. 6294. The statute also requires DOE to develop test procedures that measure how much energy the appliances use, and to determine the representative average cost a consumer pays for the different types of energy available.

[2] Reports for clothes washers are due March 1.

List of Subjects in 16 CFR Part 305

Advertising, Energy conservation, Household appliances, Labeling, Reporting and recordkeeping requirements.

Accordingly, 16 CFR Part 305 is amended as follows:

PART 305—[AMENDED]

1. The authority citation for Part 305 continues to read as follows:

Authority: 42 U.S.C. 6294.

2. Appendix F to Part 305 is revised to read as follows:

Appendix F to Part 305—Clothes Washers

Range Information:

''Compact'' includes all household clothes washers with a tub capacity of less than 1.6 cu. ft. or 13 gallons of water.

''Standard'' includes all household clothes washers with a tub capacity of 1.6 cu. ft. or 13 gallons of water or more.

Capacity	Range of estimated annual energy consumption (kWh/yr.)	
	Low	High
Compact:		
Top Loading	592	607
Front Loading	(*)	(*)
Standard:		
Top Loading	294	1231
Front Loading	241	318

(*) No data submitted.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 98–10391 Filed 4–17–98; 8:45 am]

BILLING CODE 6750–01–M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 142

[T.D. 98–34]

Technical Correction Regarding Time Limit for Filing Documentation After Release

AGENCY: United States Customs Service, Department of the Treasury.

ACTION: Final rule.

SUMMARY: This document makes a technical correction to the regulation regarding time limit for filing documentation after release, in accordance with Customs policy of periodically reviewing its regulations to ensure that they are current and accurate.

EFFECTIVE DATE: April 20, 1998.

FOR FURTHER INFORMATION CONTACT: Harold Singer, Chief, Regulations Branch, (202) 927–2268.

SUPPLEMENTARY INFORMATION:

Background

In accordance with Customs policy of periodically reviewing its regulations to ensure that they are current and accurate, Customs has discovered that there is a typographical error in § 142.23, Customs Regulations (19 CFR 142.23). Section 142.23 was amended by Treasury Decision 80–26, which was published in the **Federal Register** (45 FR 3901) on January 21, 1980. When that amendment was codified in Title 19 in 1980, the word ''period'' was inadvertently omitted. The error has been carried forward in each volume of Title 19 since that publication. This document corrects the error.

Inapplicability of Public Notice and Comment and Delayed Effective Date Requirements, the Regulatory Flexibility Act, and Executive Order 12866

Inasmuch as this amendment merely corrects a typographical error, pursuant to 5 U.S.C. 553(b)(B), notice and public procedure thereon are unnecessary, and pursuant to 5 U.S.C. (d)(3), a delayed effective date is not required. Since this document is not subject to the notice and public procedure requirements of 5 U.S.C. 553, it is not subject to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This amendment does not meet the criteria for a ''significant regulatory action'' as defined in Executive Order 12866.

Drafting Information

The principal author of this document was Janet L. Johnson, Regulations Branch, U.S. Customs Service. However, personnel from other offices participated in its development.

List of Subjects in 19 CFR Part 142

Customs duties and inspection.

Amendment to the Regulations

Part 142, Customs Regulations (19 CFR part 142), is amended as set forth below.

PART 142—ENTRY PROCESS

1. The general authority citation for part 142 continues to read as follows:

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

§ 142.23 [Amended]

2. Section 142.23 is amended by removing the words ''for quota class merchandise within the quota'' and adding in their place ''for quota class merchandise within the quota period''.

Dated: April 15, 1998.

Harold M. Singer,

Chief, Regulations Branch.

[FR Doc. 98–10316 Filed 4–17–98; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 610

[Docket No. 97N–0449]

RIN 0910–ZA08

Revisions to the General Safety Requirements for Biological Products

AGENCY: Food and Drug Administration, HHS.

ACTION: Direct final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the biologics regulations by adding ''cellular therapy products'' to the list of products excepted from the general safety test (GST) and by adding an administrative procedure for obtaining exemptions from the GST requirements for other biological products. FDA is taking this

action because the GST may not be relevant or necessary for biological products, including cellular therapy products, currently in various stages of development. This direct final rule is part of FDA's continuing effort to achieve the objectives of the President's ''Reinventing Government'' initiative, and is intended to reduce the burden of unnecessary regulations on biological products without diminishing the protection of the public health. Elsewhere in this **Federal Register**, FDA is publishing a companion proposed rule under FDA's usual procedures for notice and comment to provide a procedural framework to finalize the rule in the event the agency receives any significant adverse comment and withdraws this direct final rule.

DATES: This regulation is effective September 2, 1998. Submit written comments on this direct final rule on or before July 6, 1998. Submit written comments on the information collection provisions by June 19, 1998.

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

FOR FURTHER INFORMATION CONTACT: Dano B. Murphy, Center for Biologics Evaluation and Research (HFM–630), Food and Drug Administration, 1401 Rockville Pike, suite 200N, Rockville, MD 20852–1448, 301–594–3074.

SUPPLEMENTARY INFORMATION:

I. Background

Under § 610.11 (21 CFR 610.11), a test for general safety shall be performed on biological products intended for administration to humans. A GST is one of several tests in part 610, General Biological Product Standards (21 CFR part 610), that are intended to help ensure the safety, purity, and potency of biological products administered to humans. The test is used to detect extraneous toxic contaminants that may be present in a particular biological product. As outlined in § 610.11, an amount of the final container product is injected into the peritoneum of guinea pigs and mice. The GST is satisfactory when: The criteria in § 610.11(d) are met, i.e., injected animals survive the test period, they do not exhibit an unexpected or nonspecific response that may indicate a difference in quality of the product, and they weigh no less at the end of the test period than they did at the time of injection. Section 610.11(g) identifies the biological products for which the GST is not required.

The requirement for a GST test was originally intended as a means by which harmful extraneous toxins could be detected (41 FR 10888, March 15, 1976). The source of such toxins may be bacterial toxins that persist even after the bacteria producing the toxins had been removed by filtration or killed by sterilization, or formulation errors that result in harmful levels of certain substances, e.g., preservatives. The test continues to serve as a safety net to detect harmful contaminants that may enter or be introduced into the final container through undetected failures in the manufacture of biological products.

In the last 15 years, technological advances have increased the ability of manufacturers to control and analyze the manufacture of many biotechnology derived biological products. After more than a decade of experience with these products, FDA found that it could evaluate many aspects of a biological product's safety, purity, or potency with tests other than those prescribed in part 610. In response to these developments, FDA published in the **Federal Register** on May 14, 1996 (61 FR 24227), a final rule exempting certain biotechnology and synthetic biological products from, among other things, specified regulations applicable to biological products, including the GST (§ 601.2 (21 CFR 601.2)).

Recent scientific advances have dramatically increased the diversity of biological products regulated under section 351 of the Public Health Service Act. In particular, cellular-based therapies intended for the diagnosis, cure, mitigation, treatment, or prevention of disease in man have been the subject of much biomedical research and are used with increasing frequency. Typically, cellular therapies use autologous or allogeneic cells, often lymphocyte subpopulations, but other cell types may be used, obtained from a donor and manipulated ex vivo to varying degrees before use in the recipient patient. The ex vivo manipulation may consist of, for example, growing a small number of cells to increase their number (cellular expansion), selective enrichment of a specific cell subpopulation, or the addition of specific cell factors or genetic sequences. A common characteristic of cellular therapies is the need for a relatively short turn-around time between first obtaining the cells and their final infusion as a cellular therapy product into the patient. In many cases, cells used in the final cellular therapeutic are obtained only hours before they must be used and turn-around times of several days or less are presently typical. A test, such as the GST, that requires 7 days to complete is not compatible with such products and such a requirement would make it impossible to use many of these products. Furthermore, because the procedures and materials used to produce cellular therapy products are stringently controlled and monitored, the likelihood of an extraneous toxic component contaminating a final product is greatly reduced.

In the **Federal Register** of June 3, 1994 (59 FR 28821 at 28822), FDA announced that the Center for Biologics Evaluation and Research (CBER) would review certain biologics regulations to identify regulations that are outdated, burdensome, inefficient, duplicative, or otherwise unsuitable or unnecessary. FDA included § 610.11 in the review. On January 26, 1995, FDA held a public meeting to discuss the retrospective review of regulations applicable to biological products and to provide a forum for the public to voice its comments regarding the retrospective review. At the meeting, only one comment addressed whether § 610.11 should be retained unchanged, modified, or deleted. The comment acknowledged the utility of the GST for products that have a high degree of intrinsic variability. However, despite its recognized value in some specific cases, the comment questioned the rationale for requiring the GST for all biological products intended for administration to humans. The comment noted that the amount of final container product administered to animals for the GST may not have any correlation with the human dose, that some biological products possess extensive documented histories of no GST failure, and that each run of the test requires the use of at least four animals. The comment suggested that FDA revise § 610.11 to grant exemptions from the GST when the test is unnecessary to evaluate the safety of a specific product.

FDA received several comments from the public regarding issues raised at the January 26, 1995, meeting. Two comments agreed with the suggestion made at the public meeting that § 610.11 be amended to include a provision that would allow certain products to be exempted from the GST upon approval of the Director, CBER. Another comment suggested that exemptions be permitted for appropriate biological products by the Director, CBER, after a suitable qualification period was met without any failure of the GST, such as 1 year of production or after 10 consecutive production lots pass the GST. The comment suggested that a demonstrated record of GST compliance also be supported by well-documented in-

process safety controls, long-term compliance with current good manufacturing practices regulations (21 CFR parts 210 and 211), and the use of sophisticated analytical techniques capable of adequately characterizing the final product and validating its safety.

On March 17, 1997, FDA held a public meeting to discuss the agency's proposed approach to the regulation of human cellular and tissue-based products. The meeting was attended by FDA, members of industry, representatives from accrediting organizations, and interested members of the public. During the meeting, two attendees addressed the use of the GST with cellular therapy products. The comments regarded the 7-day incubation time of the test as an unworkable requirement for many cellular therapy products and suggested that such products be exempted from the test, including allogeneic and autologous cell therapy products.

II. Highlights of the Direct Final Rule

FDA agrees with the comments received that cellular therapy products should be exempt from the GST requirement. FDA is issuing this direct final rule to expand the exceptions in § 610.11(g) to include ''cellular therapy products.'' In addition, FDA is adding an administrative procedure for manufacturers of other biological products to request and obtain exemptions from the GST. Many biological products are currently manufactured, or will be manufactured in the future, under highly controlled and rigorously monitored conditions. Therefore, under the amended rule, manufacturers of biological products that employ appropriate production controls and quality assurance safeguards would be permitted to apply for an exemption from the GST requirement. Such manufacturers will be required to provide supporting documentation to the Director, CBER, as to why a product should not be subject to the GST requirement. The request shall include an explanation of why the GST is unnecessary or cannot be performed due to the mode of administration, the method of preparation, or the special nature of the product and shall describe alternate procedures, if any, to be employed. The Director, CBER, may grant an exemption if she finds that the manufacturer's submission justifies an exemption.

The value of the GST as a final assay for the presence of extraneous toxins may be diminished for certain biological products, such as vaccines containing recombinant or purified protein antigens. Recombinant protein antigens are not produced from infectious bacteria or virus and antigens derived from infectious pathogens may undergo many production steps that kill or neutralize the pathogen or inactivate toxic materials. Therefore, for these kinds of products, the risk is extremely low that viable pathogenic or toxic materials will persist through production to the final filling. The effectiveness of such steps can be validated by specific in-process tests and controls which can be used to alert manufacturers to potential problems. To further reduce the possibility that an undetected extraneous toxin could contaminate the product just before or during the final fill stage, a manufacturer may use production facilities and final fill equipment that can detect or enable the detection of any loss in the integrity of the production and fill processes. In addition, a method of production and detailed product characterization able to meet requirements similar to those set out in § 601.2(c) could be used to demonstrate the safety, purity, and potency of a biological product without the use of the GST. Each manufacturer will be responsible for identifying the product or products that are produced in such a manner that makes the GST unnecessary to ensure the safety, purity, and potency of the biological product. Manufacturers wishing to obtain an exemption to the GST for a particular product would contact the appropriate product division of CBER for specific information regarding how to apply and what information should be included in the application or supplemental application.

III. Rulemaking Action

In the **Federal Register** of November 21, 1997 (62 FR 62466), FDA described its procedures on when and how FDA will employ direct final rulemaking. FDA believes that this rule is appropriate for direct final rulemaking because FDA views this rule as a noncontroversial amendment and anticipates no significant adverse comments. Consistent with FDA's procedures on direct final rulemaking, FDA is publishing elsewhere in this **Federal Register** issue, a companion proposed rule to amend the existing GST rule. The companion proposed rule provides a procedural framework within which the rule may be finalized in the event the direct final rule is withdrawn because of any significant adverse comment. The comment period for the direct final rule runs concurrently with the companion proposed rule. Any comments received under the companion proposed rule will be considered as comments regarding the direct final rule.

FDA has provided a comment period on the direct final rule of 75 days after April 20, 1998. If the agency receives any significant adverse comment, FDA intends to withdraw this direct final rule action by publication in the **Federal Register** within 30 days after the comment period ends. A significant adverse comment is defined as a comment that 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. Comments that are frivolous, insubstantial, or outside the scope of the rule will not be considered significant or adverse under this procedure. For example, a comment requesting inclusion of additional product classes in the exceptions paragraph of the GST (§ 610.11(g)) will not be considered a significant adverse comment because it is outside the scope of this rule. 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 additional change. In addition, if a significant adverse comment applies to part of a rule and that part can be severed form the remainder of the rule, FDA may adopt as final those parts of the rule that are not subject of a significant adverse comment.

If any significant adverse comment is received during the comment period, FDA will publish, within 30 days after the comment period ends, a document withdrawing the direct final rule. If FDA withdraws the direct final rule, all comments received will be applied to the proposed rule and will be considered in developing a final rule using the usual Administrative Procedure Act notice-and-comment procedures.

If FDA receives no significant adverse comments during the specified comment period, FDA intends to publish a confirmation document within 30 days after the comment period ends confirming that the direct final rule will go into effect on September 2, 1998.

IV. Analysis of Impacts

A. Review Under Executive Order 12866 and the Regulatory Flexibility Act

FDA has examined the impact of the direct final rule under Executive Order 12866, the Regulatory Flexibility Act (5 U.S.C. 601–612), and the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impact; and equity). The agency believes that this direct final rule is consistent with the regulatory philosophy and principles identified in the Executive Order. The direct final rule is a significant regulatory action as defined by the Executive Order and is subject to review under the Executive Order because it deals with a novel policy issue.

In accordance with the principles of Executive Order 12866, the result of the direct final rule will be a substantial reduction in burdens on applicants filing for approval of certain biological products

The Regulatory Flexibility Act requires agencies to analyze regulatory options that would minimize any significant impact of a rule on small business entities. Because, as stated previously, the overall result of the direct final rule will be a substantial reduction of the regulatory and reporting burdens, the agency certifies that the direct final rule will not have a significant negative economic impact on a substantial number of small entities. Therefore, under the Regulatory Flexibility Act, no further analysis is required. This rule also does not trigger the requirement for a written statement under section 202(a) of the Unfunded Mandates Reform Act because it does not impose a mandate that results in an expenditure of $100 million or more by State, local, and tribal governments in the aggregate, or by the private sector in any one year.

B. Environmental Impact

The agency has determined under 21 CFR 25.31(j) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

V. The Paperwork Reduction Act of 1995

This direct final rule contains information collection provisions that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The title, description, and respondent description of the information collection provisions are shown below with an estimate of the annual reporting burden. Included in the estimate is the time for reviewing the instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing each collection of information.

FDA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Title: Requests for Exemptions from the General Safety Testing Requirements for Biological Products.

Description: FDA is revising the requirements for general safety testing (GST) set forth in § 610.11. The test serves as a safety net to detect harmful contaminants that may enter or be introduced into the final container through undetected failures in the manufacture of biological products. The revision would add ''cellular therapy products'' to the list of products excepted from the GST, and add an administrative procedure for obtaining exemptions from the GST requirements for other biological products. FDA is proposing the new administrative procedure because the GST may not be feasible or appropriate for some biological products. FDA anticipates that manufacturers requesting exemptions would have a demonstrated record of GST compliance supported by long-term compliance with CGMP's, well-documented in-process safety controls, and use sophisticated analytical techniques to adequately characterize the final product and validate its safety. Manufacturers would submit their request and documentation to the Director, CBER, who may grant the exemption if it is determined that the manufacturer's submission justifies an exemption.

Description of Respondents: Manufacturers of biological products.

The direct final rule would require only those manufacturers requesting an exemption from the GST under § 610.11(g)(2) to submit additional information as part of a license application or supplement to an approved license application. Manufacturers of ''cellular therapy products'' would be excepted from the GST under § 610.11(g)(1) and thus, not have to submit an exemption request. In fact, manufacturers of cellular therapy products would be relieved of significant burdens because they would no longer be required to perform the GST and report the results to FDA. FDA estimates that annually it will receive approximately 10 requests for administrative exemption from the GST under § 610.11(g)(2). FDA estimates that 40 hours will be required for an applicant to complete and submit the appropriate information for the exemption request. Since that information is ordinarily compiled and organized by the manufacturer while performing the GST, FDA anticipates that the additional time needed to submit an exemption request will be minimal.

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

21 CFR Section	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
610.11(g)(2)	10	1	10	40	400
Total	10		10	40	400

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

As provided in 5 CFR 1320.5(c)(1), collections of information in a direct final rule are subject to the procedures set forth in 5 CFR 1320.10. Interested persons and organizations may submit comments on the information collection requirements of this direct final rule by June 19, 1998, to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857.

At the close of the 60-day comment period, FDA will review the comments received, revise the information collection provisions as necessary, and submit these provisions to OMB for review. FDA will publish a notice in the **Federal Register** when the information collection provisions are submitted to OMB, and an opportunity for public comment to OMB will be provided at that time. Prior to the effective date of the direct 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.

VI. Request for Comments

Interested persons may, on or before July 6, 1998, submit to the Docket Management Branch (address above) written comments regarding this proposal. This comment period runs concurrently with the comment period for the companion proposed rule. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday. All comments received will be considered comments regarding the proposed rule and this direct final rule. In the event the direct final rule is withdrawn, all comments received regarding the companion proposed rule and the direct final rule will be considered comments on the proposed rule.

List of Subjects in 21 CFR Part 610

Biologics, Labeling, Reporting and recordkeeping requirements.

Therefore under the Federal Food, Drug, and Cosmetic Act, and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 610 is amended as follows:

PART 610—GENERAL BIOLOGICAL PRODUCTS STANDARDS

1. The authority citation for 21 CFR part 610 continues to read as follows:

Authority: 21 U.S.C. 321, 351, 352, 353, 355, 360, 371; 42 U.S.C. 216, 262, 263, 263a, 264.

2. Section 610.11 is amended by revising paragraph (g) to read as follows:

§ 610.11 General safety.

* * * * *

(g) *Exceptions*—(1) The test prescribed in this section need not be performed for Whole Blood, Red Blood Cells, Cryoprecipitated AHF, Platelets, Plasma, or Cellular Therapy Products.

(2) For products other than those identified in paragraph (g)(1) of this section, a manufacturer may request from the Director, Center for Biologics Evaluation and Research, an exemption from the general safety test. The manufacturer shall submit information as part of a license application submission or supplement to an approved license application establishing that because of the mode of administration, the method of preparation, or the special nature of the product a test of general safety is unnecessary to assure the safety, purity, and potency of the product or cannot be performed. The request shall include any alternate procedures, if any, to be performed. The Director, Center for Biologics Evaluation and Research, upon finding that the manufacturer's request justifies an exemption, may exempt the product from the general safety test subject to any condition necessary to assure the safety, purity, and potency of the product.

Dated: April 10, 1998.

William B. Schultz,

Deputy Commissioner for Policy.

[FR Doc. 98–10314 Filed 4–17–98; 8:45 am]

BILLING CODE 4160–01–F

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: Final rule; approval of amendment.

SUMMARY: OSM is approving a proposed amendment to the Maryland regulatory program (hereinafter referred to as the ''Maryland program'') under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). Maryland proposed revisions 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 and SMCRA.

EFFECTIVE DATE: April 20, 1998.

FOR FURTHER INFORMATION CONTACT: George Rieger, Program Manager, OSM, Appalachian Regional Coordinating Center, 3 Parkway Center, Pittsburgh, PA 15220. Telephone: (412) 937–2153.

SUPPLEMENTARY INFORMATION:

I. Background on the Maryland Program
II. Submission of the Proposed Amendment
III. Director's Findings
IV. Summary and Disposition of Comments
V. Director's Decision
VI. Procedural Determinations

I. Background on the Maryland Program

On December 1, 1980, the Secretary of the Interior conditionally 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 December 1, 1980, **Federal Register** (45 FR 79449). Subsequent actions concerning conditions of approval and program amendments can be found at 30 CFR 920.12, 920.15, and 920.16.

II. Submission of the Proposed Amendment

Maryland provided an informal amendment to OSM regarding a reduced bond liability period for lands remined in a letter dated August 21, 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. OSM's review of the proposed amendment resulted in additional questions for Maryland, to which they responded in a fax dated February 26, 1998 (Administrative Record No. 579–04).

OSM announced receipt of the proposed amendment in the November 21, 1997 **Federal Register** (62 FR 62273), and in the same document opened the public comment period and provided an opportunity for a public hearing on the adequacy of the proposed amendment. The public comment period closed on December 22, 1997.

III. Director's Findings

Set forth below, pursuant to SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17, are the Director's findings concerning the proposed amendment. Revisions not specifically discussed below concern paragraph notations to reflect organizational changes resulting from this amendment.

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 Maryland.

There are no Federal counterparts to the term ''keyway'', nor is it used in the Maryland Code for anything related to the Maryland program. Therefore, the Director finds that the proposed deletion does not render the Maryland program less effective than the Federal regulations. Additionally, since subtitle 11 of the Maryland statute is the State's counterpart to Title IV of SMCRA (Abandoned Mine Lands), the Director finds that the proposed definition of ''lands eligible for remining'' is substantively identical to and therefore no less stringent than the Federal definition at section 701(34) of SMCRA.

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''. Paragraph B. currently specifies that the period of liability for a bond shall continue for a minimum period of not less than 5 years, beginning with the last year of augmented seeding, fertilizing, irrigation, or other work. The addition of the phrase ''except on lands eligible for remining'' indicates that lands eligible for remining would therefore be subject to a different period of time, which is covered in new paragraph C. below. Since the addition of this phrase to the opening sentence in paragraph B. simply adds a qualification to exempt lands eligible for remining from the 5-year period of liability, the Director finds the change no less effective than the corresponding federal regulations at 816/817.116(c) in view of the additional change explained below.

New paragraph C. is added as follows:

On lands eligible for remaining 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.

The federal rule at 30 CFR 816/817.116(c) requires that on lands eligible for remining, the operator must assume responsibility for successful revegetation for a period of 2 full years after the last year of augmented seeding, fertilizing, irrigation or other work to comply with applicable standards. Although Maryland's proposed rule includes the words ''beginning with the last year * * *'' and the Federal rule includes the words ''after the last year. * * *'' the rules do not conflict because of other regulatory sections in the Maryland program. The preamble to the Federal Rule at 48 FR 40155, dated September 2, 1983 regarding responsibility periods explained that the responsibility period could begin from the point at which the operator completes seeding and fertilizing. Maryland interprets the rule for unmined lands in this manner, and will interpret the proposed rule in the same manner. *See* February 26, 1998 fax (Administrative Record No. 579–04), Maryland's statute at § 15–513 and Maryland's regulations at COMAR 26.20.29.05 requires an operator to complete a backfilling and planting report when an affected area has been backfilled, regraded and planted in accordance with the statute and the approved reclamation plan. This report is reviewed by the on-site inspector, approved by his/her supervisor, and then approved by the Department. Only when approved by the Department does the responsibility period in Maryland begin. This is the actual practice in Maryland as monitored by OSM. Maryland's proposed regulation also requires the restart of the liability period when there is augmented seeding, fertilizing, irrigation or other work to correct a failure to maintain permanent vegetative cover. Therefore, the Director finds that the proposed revision at COMAR 26.20.14.05C is no less effective than the revegetation provisions of 816/817.116(c) that requires the period of extended responsibility for remined sites to last for two full years after the last augmented seeding.

Existing paragraph C. is re-lettered as D. and the 5-year reference is deleted. This paragraph currently specifies that if the bureau approves a long term intensive agricultural postmining land use, the applicable 5-year period of liability shall commence at the date of initial planting for such long-term intensive agricultural land use. The deletion of the 5-year reference from this paragraph allows it to pertain to all lands, i.e., lands not remined must still meet the 5-year criteria included in paragraph B., whereas lands remined would be subject to the two year criteria included in the changes outlined above in paragraph C. Since the deletion of the 5-year reference does not change the appropriate liability periods, the Director finds the change no less effective than the corresponding federal regulations at 816/817.116(c) in view of the additional changes explained above.

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

Paragraph D. discusses the schedule for release of performance bonds. 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 as 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.

The primary difference in paragraphs D.(2) and D.(3) added above from those deleted is a reference change from 03E. to 03D. of this regulation. Paragraph 03E of this regulation states that the minimum amount of the total bonds shall be $10,000 for the entire area under one permit, whereas 03D states the minimum amount of revegetation

bond shall be $600 per acre of affected land. These proposed paragraphs only change the reference from one of an overall minimum bond amount to a per acre minimum bond amount. Additionally, new paragraph D.(4) has been added to specifically address bond release on lands eligible for remining, which likewise requires that said release be performed subject to the same criteria, i.e. minimum bond amounts per acre in the same 03D reference. Since paragraph D.(4) requires the completion of Phase II and III work on lands eligible for remining before bond release, and the changes in proposed paragraphs D.(2) and (3) do not conflict with corresponding federal regulations, the Director finds that the proposed amendments are consistent with 30 CFR 800.40(c)(2) and (3).

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.'' Paragraph B.(8) currently specifies that the period of liability for a bond shall continue for a minimum period of not less than 5 years. The addition of the phrase indicates that lands eligible for remining would therefore be subject to a different period of time, which is covered in new paragraph B.(9) below. Since the addition of this phrase to the opening sentence in paragraph B.(8) simply adds a qualification to exempt lands eligible for remining from the 5-year period of liability, the Director finds the change no less effective than the corresponding federal regulations at 816/817.116(c) in view of the additional changes explained above.

Paragraph B. of COMAR 26.20.29.07 requires that the success standards for revegetation be applied in accordance with the approved post mining land use and now Maryland is adding the following condition for remined lands as set forth in new paragraph B.(9), which states:

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 and 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 in § B(9) of this regulation.

The Director finds that these revisions are substantively identical and no less effective than the corresponding Federal regulations at 30 CFR 816 and 817.116(c)(2)(ii).

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** (62 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, which are approved by the Director as stated. Since these revisions are no less effective than the federal rules, OSM finds that the non-promulgation of this section does not render the Maryland program less effective, and OSM is now deleting this section from the approved Maryland program.

IV. Summary and Disposition of Comments

Public Comments

The Director solicited public comments and provided an opportunity for a public hearing on the proposed amendment. No comments were received and because no one requested an opportunity to speak at a public hearing, no hearing was held.

Federal Agency Comments

Pursuant to 30 CFR 732.17(h)(11)(i), the Director solicited comments on the proposed amendment from various Federal agencies with an actual or potential interest in the Maryland program. MSHA responded in its letter dated November 19, 1997, (Administrative Record No. 579–02), that it anticipated no further action regarding the proposed amendment. No other comments were received.

Environmental Protection Agency (EPA)

Pursuant to 30 CFR 732.17(h)(11)(ii), OSM is required to obtain the written concurrence of the EPA with respect to those provisions of the proposed program amendment that relate to air or water quality standards promulgated under the authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or the Clean Air Act (42 U.S.C. 7401 *et seq.*). The Director has determined that this amendment contains no such provisions and that EPA concurrence is therefore unnecessary. Also, EPA did not respond to OSM's request for comments.

V. Director's Decision

The Federal regulations at 30 CFR Part 920, codifying decisions concerning the Maryland program, are being amended to implement this decision. This final rule is being made effective immediately to expedite the State program amendment process and to encourage States to bring their programs into conformity with the Federal standards without undue delay. Consistency of State and Federal standards is required by SMCRA.

VI. Procedural Determinations

Executive Order 12866

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

Executive Order 12998

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12998 (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 corresponding 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 in the analyses for the corresponding 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.

Allen D. Klein,

Regional Director, Appalachian Regional Coordinating Center.

For the reasons set out in the preamble, Title 30, Chapter VII, Subchapter T of the Code of Federal Regulations is amended as set forth below:

PART 920—MARYLAND

1. The authority citation for part 920 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

2. Section 920.15 is amended in the table by adding a new entry in chronological order by ''Date of Final Publication'' to read as follows:

§ 920.15 Approval of Maryland regulatory program amendments.

* * * * *

Original amendment submission date	Date of final publication	Citation/description
*	*	*
October 9, 1997	April 20, 1998	COMMAR 26.20.01.02B(49), 26.20.14.05 B, C & D, 26.20.14.08.D.(2) through (4), 26.20.29.07.B(8), B(9) and (C), deletion of 08.20.14.14.

[FR Doc. 98–10295 Filed 4–17–98; 8:45 am]

BILLING CODE 4310–05–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD 05–98–020]

Special Local Regulations for Marine Events; Approaches to Annapolis Harbor, Spa Creek, and Severn River, Annapolis, MD

AGENCY: Coast Guard, DOT.

ACTION: Notice of implementation.

SUMMARY: This notice implements the special local regulations for the Blue Angels Airshow, to be held May 19 and 22, 1998, over Spa Creek and the Severn River, near the U.S. Naval Academy, Annapolis, Maryland. These special local regulations are necessary to control vessel traffic in the vicinity of the U.S. Naval Academy due to the confined nature of the waterway and expected vessel congestion during the airshow. The effect will be to restrict general navigation in the regulated area for the safety of spectators and vessels transiting the event area.

DATES: The regulation implemented by this notice is effective from 11:30 a.m. to 4 p.m. on May 19, 1998 and from 11:30 a.m. to 4:30 p.m. on May 20, 1998.

FOR FURTHER INFORMATION CONTACT: Chief Warrant Officer R. L. Houck, Marine Events Coordinator, Commander, Coast Guard Activities Baltimore, 2401 Hawkins Point Road, Baltimore, MD 21226–1971, (410) 576–2674.

SUPPLEMENTARY INFORMATION: The U.S. Naval Academy will sponsor the Blue Angels Airshow over the Severn River near the U.S. Naval Academy, Annapolis, Maryland. The event will consist of 6 high performance jet aircraft flying at low altitudes in formation over the Severn River. Therefore, to ensure the safety of spectators and transiting vessels, 33 CFR 100.511 will be in effect for the duration of the event. Under provisions of 33 CFR 100.511, a vessel may not enter the regulated area unless it receives permission from the Coast Guard Patrol Commander. Spectator vessels may anchor outside the regulated area but may not block a navigable channel. Because these restrictions will be in effect for a limited period, they should not result in a significant disruption of maritime traffic.

Dated: March 25, 1998.

Roger T. Rufe, Jr.,

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

[FR Doc. 98–10306 Filed 4–17–98; 8:45 am]

BILLING CODE 4910–15–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD05–98–017]

RIN 2115–AE47

Drawbridge Operation Regulations; Anacostia River, Washington, DC

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is temporarily changing the regulations that govern the operation of the Frederick Douglass Memorial (South Capitol Street) bridge across Anacostia River at mile 1.2 in Washington, D.C. Beginning at 8 a.m. on March 11 through 11 p.m. on August 31, 1998, this regulation authorizes the bridge to remain closed to navigation. This action is necessary to facilitate extensive mechanical and electrical rehabilitation and maintain the bridge's operational integrity.

DATES: This regulation is effective from April 2, 1998 to 11 p.m. on August 31, 1998.

ADDRESSES: Douments as indicated in this preamble are available for inspection or copying at the office of the Commander (Aowb), Fifth Coast Guard District, Federal Building, 4th Floor, 431 Crawford Street, Portsmouth, Virginia 23704–5004, between 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays. The telephone number is (757) 398–6222.

FOR FURTHER INFORMATION CONTACT: Ann Deaton, Bridge Administrator, Fifth Coast Guard District, (757) 398–6222.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 553, a notice of proposed rulemaking was not published for this regulation and good cause exists for making it effective in less than 30 days from the date of publication. Publication of a notice of proposed rulemaking and delay of effective dated would be contrary to the public interest because immediate action is necessary to address the bridge's present inability to open safely.

Discussion of Regulation

The current regulation at 33 CFR 117.253(a) requires the draw to open on a signal if at least 24 hours notice is given. The draw is closed to the passage of vessels on each Presidential Inauguration Day and may occasionally be closed without advance notice to permit uninterrupted transit of dignitaries across the bridge.

Necessary repairs consist of the mechanical and electrical rehabilitation of the swing span and modification and renovation of the bridge. Two sets of span drive motors are required to rotate the bridge's swing span for the passage of marine traffic. The work will involve removing and rehabilitating one set of motors at a time, requiring the swing span to be locked in the closed position for a period of approximately five and one-half months.

The Coast Guard reviewed the bridge logs for 1997. According to the logs, the bridge opened 21 times: 16 times for public vessels of the United States (10 for the U.S. Navy; 4 for the Environmental Protection Agency (EPA); and 2 for the U.S. Coast Guard) and the remainder for tests. The U.S. Navy indicated that it will not require an opening until September 1998. The Coast Guard contacted EPA's Office of Water Programs and the local Coast Guard unit (USCG Station St. Inigoes) of the bridge's temporary inability to open for vessels, and they did not object. Vessels docked at a nearby marina can clear the bridge's closed-position vertical clearance, which is 42 feet at mean high water. Therefore, vessels are not expected to be negatively impacted by this regulation.

Regulatory Evaluation

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has been exempted from review by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. Due to the small number of requests for openings and the ability of nearby vessels to clear the bridge's closed-position vertical clearance, the impact on routine navigation is expected to be minimal.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), the Coast Guard must consider whether this temporary final rule will have a significant economic impact on a substantial number of small entities. ''Small entities'' include independently owned and operated small businesses that are not dominant in their field and that otherwise qualify as ''small business concerns'' under section 3 of the Small Business Act (15 U.S.C. 632).

Based on the limited requests for vessel openings and the ability of nearby vessels to clear the bridge's closed-position vertical clearance, the Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

Collection of Information

This rule contains no collection of information requirement under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

The Coast Guard has analyzed this rule under the principles and criteria contained in Executive Order 12612 and has determined that this rule does not have sufficient federalism implications to warrant preparation of a Federalism Assessment.

Environment

The Coast Guard considered the environmental impact of this rule and concluded that under section 2.B.2.b and item (32)(e) of Figure 2–1 of Commandant Instruction M16475.1C dated 14 November 1997 this rule is categorically excluded from further environmental documentation. A Categorical Exclusion Determination statement has been prepared and placed in the rulemaking docket.

List of Subjects in 33 CFR Part 117

Bridges.

Regulations

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR Part 117 as follows:

PART 117—[AMENDED]

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05–1(g); Section 117.255 also issued under the authority of Pub. L. 102–587, 106 Stat. 5039.

2. Effective April 2, 1998, through August 31, 1998, Section 117.253 is amended by suspending paragraph (a) and adding a new paragraph (c) to read as follows:

§ 117.253 Anacostia River.

* * * * *

(c) From April 2, 1998 until 11 p.m. on August 31, 1998, the draw of the Frederick Douglass Memorial (South Capitol Street) bridge need not be opened for the passage of vessels.

Dated: April 2, 1998.

Roger T. Rufe, Jr.,

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

[FR Doc. 98–10307 Filed 4–17–98; 8:45 am]

BILLING CODE 4910–15–M

POSTAL SERVICE

39 CFR Part 111

Experimental First-Class and Priority Mail Small Parcel Automation Rate Category

AGENCY: Postal Service.

ACTION: Final rule; notice of experiment expiration.

SUMMARY: On April 18, 1996, the Postal Service published a final rule in the **Federal Register** (61 FR 17206–17215) and adopted amendments to the Domestic Mail Manual implementing the Decision of the Governors of the United States Postal Service on the Recommended Decision of the Postal Rate Commission on the Experimental First-Class and Priority Mail Small Parcel Automation Rate Category, Docket No. MC96–1. One of the provisions of the Postal Rate Commission, which was approved by the Governors of the Postal Service, was that the experiment would be limited to 2 years ending on April 28, 1998. This is to serve notice that the Postal Service intends to allow the experiment to end on its originally scheduled expiration date without filing a request with the Postal Rate Commission to establish

permanent classifications and discounts.

DATES: Effective April 28, 1998.

FOR FURTHER INFORMATION CONTACT: Paul H. Lettmann, (202) 268–6261 or Susan Duchek, (202) 268–2990.

SUPPLEMENTARY INFORMATION: The Domestic Mail Classification Schedule (DMCS) provisions establishing the experimental classifications, recommended by the Postal Rate Commission and approved by the Governors of the Postal Service in March and April 1996, respectively, state that the Experimental First-Class and Priority Mail Small Parcel Automation Rate Category expires on April 28, 1998. The Postal Service has determined to publish this notice to ensure that all interested parties are afforded the opportunity of receiving advance notice of the experiment expiration, as well as to allow participating customers time during which they might make any necessary modifications in their mailing operations or practices before the experiment ends.

The experiment had three basic objectives: to determine the feasibility and practicality of offering an automation discount for First-Class Mail and Priority Mail parcels; to gauge mailer interest and acceptance; and to confirm that the integration of barcode scanners on parcel sorters provides significant productivity enhancements in the processing of small parcels with barcodes versus keying of the same or similar pieces. During the experiment, participants were granted a four-cent per-piece discount on properly prepared First-Class Mail and Priority Mail prebarcoded small parcels at three test sites equipped with barcode-reading small parcel and bundle sorters. The Postal Service decision not to proceed further is based on the fact that data collected during the experiment indicated that cost savings resulting from the prebarcoding of parcels were insufficient to support the four-cent per piece discount, thus placing the Postal Service in a position of being unable to offer a discount that might prove attractive to small parcel mailers in general. Moreover, the level of customer interest in the experiment was disappointing throughout. Even with the four-cent per piece discount, only four customers chose to join with the Postal Service in the experiment. Two of these decided to cease their mailings prior to the April 28, 1998, expiration date.

List of Subjects in 39 CFR Part 111

Postal Service.

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

PART 111—[AMENDED]

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

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

2. Revise G090 of the Domestic Mail Manual as set forth below:

G GENERAL INFORMATION

G090 Experimental Classifications and Rates

[Delete G091 in its entirety effective April 28, 1998.]

G091 Barcoded Small Parcels

* * * * *

An appropriate amendment to 39 CFR 11.3 will be published to reflect these changes.

Stanley F. Mires,

Chief Counsel, Legislative.

[FR Doc. 98–10289 Filed 4–15–98; 8:52 am]

BILLING CODE 7710–12–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–300637; FRL–5783–5]

RIN 2070–AB78

Propiconazole; Extension of Tolerance for Emergency Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule extends a time-limited tolerance for residues of the fungicide propiconazole and its metabolites in or on cranberry at 1.0 part per million (ppm) for an additional 1–year period, to July 31, 1999. This action is in response to EPA's granting of an emergency exemption under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act authorizing use of the pesticide on cranberry. Section 408(l)(6) of the Federal Food, Drug, and Cosmetic Act (FFDCA) requires EPA to establish a time-limited tolerance or exemption from the requirement for a tolerance for pesticide chemical residues in food that will result from the use of a pesticide under an emergency exemption granted by EPA under section 18 of FIFRA.

DATES: This regulation becomes effective April 20, 1998. Objections and requests for hearings must be received by EPA, on or before June 19, 1998.

ADDRESSES: Written objections and hearing requests, identified by the docket control number, OPP–300637, must be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. Fees accompanying objections and hearing requests shall be labeled ''Tolerance Petition Fees'' and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251. A copy of any objections and hearing requests filed with the Hearing Clerk identified by the docket control number, [OPP–300637], must also be submitted to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring a copy of objections and hearing requests to Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA.

A copy of objections and hearing requests filed with the Hearing Clerk may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Follow the instructions in Unit II. of this preamble. No Confidential Business Information (CBI) should be submitted through e-mail.

FOR FURTHER INFORMATION CONTACT: By mail: Daniel J. Rosenblatt, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: Rm. 280, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202, (703) 308–9375; e-mail: rosenblatt.dan@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: EPA issued a final rule, published in the **Federal Register** of April 11 1997, (62 FR 17710) (FRL–5600–5), which announced that on its own initiative and under section 408(e) of the FFDCA, 21 U.S.C. 346a(e) and (l)(6), it established a time-limited tolerance for the residues of propiconazole (1–[[2–(2,4-dichlorophenyl)-4-propyl-1, 3-dioxolan-2-yl]methyl]-1*H*–1,2,4-triazole) and its metabolites in or on cranberry at 41.0 parts per million (ppm), with an expiration date of July 31, 1998. The tolerance level was corrected to be 1.0

ppm in the **Federal Register** of May 2, 1997, (62 FR 24045) (FRL–5714–5). EPA established the tolerance because section 408(l)(6) of the FFDCA requires EPA to establish a time-limited tolerance or exemption from the requirement for a tolerance for pesticide chemical residues in food that will result from the use of a pesticide under an emergency exemption granted by EPA under section 18 of FIFRA. Such tolerances can be established without providing notice or period for public comment.

EPA received a request to extend the use of propiconazole on cranberry for this year's growing season due to the fact that there are no alternative growing practices or pesticides available to growers for the control a fungal problem on cranberries known as cotton ball disease. After having reviewed the submission, EPA concurs that emergency conditions exist. EPA has authorized under FIFRA section 18 the use of propiconazole on cranberry for control of cotton ball disease in Wisconsin during the growing season in 1998.

EPA assessed the potential risks presented by residues of propiconazole in or on cranberry. In doing so, EPA considered the new safety standard in FFDCA section 408(b)(2), and decided that the necessary tolerance under FFDCA section 408(l)(6) would be consistent with the new safety standard and with FIFRA section 18. The data and other relevant material have been evaluated and discussed in the final rule of April 11, 1997 (62 FR 17710). Based on that data and information considered, the Agency reaffirms that extension of the time-limited tolerance will continue to meet the requirements of section 408(l)(6). Therefore, the time-limited tolerance is extended for an additional 1–year period. Although this tolerance will expire and is revoked on July 31, 1999, under FFDCA section 408(l)(5), residues of the pesticide not in excess of the amounts specified in the tolerance remaining in or on cranberry after that date will not be unlawful, provided the pesticide is applied in a manner that was lawful under FIFRA and the application occurred prior to the revocation of the tolerance. EPA will take action to revoke this tolerance earlier if any experience with, scientific data on, or other relevant information on this pesticide indicate that the residues are not safe.

I. Objections and Hearing Requests

The new FFDCA section 408(g) provides essentially the same process for persons to ''object'' to a tolerance regulation issued by EPA under new section 408(e) and (l)(6) as was provided in the old section 408 and in section 409. However, the period for filing objections is 60 days, rather than 30 days. EPA currently has procedural regulations which govern the submission of objections and hearing requests. These regulations will require some modification to reflect the new law. However, until those modifications can be made, EPA will continue to use those procedural regulations with appropriate adjustments to reflect the new law.

Any person may, by June 19, 1998, file written objections to any aspect of this regulation and may also request a hearing on those objections. Objections and hearing requests must be filed with the Hearing Clerk, at the address given above (40 CFR 178.20). A copy of the objections and/or hearing requests filed with the Hearing Clerk should be submitted to the OPP docket for this rulemaking. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). If a hearing is requested, the objections must include a statement of the factual issues on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the requestor (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

II. Public Record and Electronic Submissions

The official record for this rulemaking, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer any copies of objections and hearing requests received electronically into printed, paper form as they are received and will place the paper copies in the official rulemaking record which will also include all comments submitted directly in writing. The official rulemaking record is the paper record maintained at the Virginia address in ''ADDRESSES'' at the beginning of this document.

Electronic comments may be sent directly to EPA at:

opp-docket@epamail.epa.gov.

Electronic objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Objections and hearing requests will also be accepted on disks in WordPerfect 5.1/6.1 or ASCII file format. All copies of objections and hearing requests in electronic form must be identified by the docket control number OPP–300637. No CBI should be submitted through e-mail. Electronic copies of objections and hearing requests on this rule may be filed online at many Federal Depository Libraries.

III. Regulatory Assessment Requirements

This final rule extends a time-limited tolerance that was previously extended by EPA under FFDCA section 408(d) in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled Regulatory Planning and Review (58 FR 51735, October 4, 1993). In addition, this final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4). Nor does it require any prior consultation as specified by Executive Order 12875, entitled Enhancing the Intergovernmental Partnership (58 FR 58093, October 28, 1993), or special considerations as required by Executive Order 12898, entitled Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations (59 FR 7629, February 16, 1994), or require OMB review in accordance with Executive Order 13045, entitled Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997).

Since this extension of an existing time-limited tolerance does not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. Nevertheless, the Agency has previously assessed whether establishing tolerances, exemptions from tolerances, raising tolerance levels or expanding exemptions might adversely impact small entities and concluded, as a generic matter, that there is no adverse economic impact. The factual basis for the Agency's generic certification for tolerance actions published on May 4, 1981 (46 FR 24950), and was provided to the Chief Counsel for Advocacy of the Small Business Administration.

IV. Submission to Congress and the Comptroller General

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

List of Subjects in 40 CFR Part 180

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

Dated: April 9, 1998.

Peter Caulkins,

Acting Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

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

Authority: 21 U.S.C. 346a and 371.

§180.434 [Amended]

2. In §180.434, by amending paragraph (b) for the commodity cranberries by changing the date ''7/31/98'' to read ''7/31/99''.

[FR Doc. 98–10394 Filed 4–17–98; 8:45 am]

BILLING CODE 6560–50–F

Rules and Regulations

Federal Register
Vol. 63, No. 75
Monday, April 20, 1998

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

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

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 905 and 944

[Docket No. FV98–905–2 FIR]

Oranges, Grapefruit, Tangerines, and Tangelos Grown in Florida and Imported Grapefruit; Relaxation of the Minimum Size Requirement for Red Seedless Grapefruit

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department of Agriculture (Department) is adopting as a final rule, without change, the provisions of an interim final rule changing the regulations under the Florida citrus marketing order and the grapefruit import regulations. This rule relaxes the minimum size requirement for Florida red seedless grapefruit and for red seedless grapefruit imported into the United States from size 48 (3$^{9}/_{16}$ inches diameter) to size 56 (3$^{5}/_{16}$ inches diameter). The Citrus Administrative Committee (Committee), the agency that locally administers the marketing order for oranges, grapefruit, tangerines, and tangelos grown in Florida, unanimously recommended this change. This change allows handlers and importers to ship size 56 red seedless grapefruit through November 8, 1998.

EFFECTIVE DATE: May 20, 1998.

FOR FURTHER INFORMATION CONTACT: William G. Pimental, Southeast Marketing Field Office, F&V, AMS, USDA, P.O. Box 2276, Winter Haven, Florida 33883; telephone: (941) 299–4770, Fax: (941) 299–5169; or Anne M. Dec, Marketing Order Administration Branch, F&V, AMS, USDA, room 2522–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 720–2491, Fax: (202) 205–6632. Small businesses may request information on compliance with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, F&V, AMS, USDA, room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 720–2491, Fax: (202) 205–6632.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement No. 84 and Marketing Order No. 905 (7 CFR Part 905), as amended, regulating the handling of oranges, grapefruit, tangerines, and tangelos grown in Florida, hereinafter referred to as the ''order.'' The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.''

This rule is also issued under section 8e of the Act, which provides that whenever specified commodities, including grapefruit, are regulated under a Federal marketing order, imports of these commodities into the United States are prohibited unless they meet the same or comparable grade, size, quality, or maturity requirements as those in effect for the domestically produced commodities.

The Department of Agriculture is issuing this rule in conformance with Executive Order 12866.

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

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

There are no administrative procedures which must be exhausted prior to any judicial challenge to the provisions of import regulations issued under section 8e of the Act.

The order for Florida citrus provides for the establishment of minimum grade and size requirements with the concurrence of the Secretary. The grade and size requirements are designated to provide fresh markets with fruit of acceptable quality and size, thereby maintaining consumer confidence for fresh Florida citrus. This helps create buyer confidence and contributes to stable marketing conditions. This is in the interest of growers, handlers, and consumers, and is designed to increase returns to Florida citrus growers. The current minimum grade standard for red seedless grapefruit is U.S. No. 1. The minimum size requirement for domestic shipments is size 56 (at least 3$^{5}/_{16}$ inches in diameter) through November 8, 1998, and size 48 (3$^{9}/_{16}$ inches in diameter) thereafter. The current minimum size for export shipments is size 56 throughout the year.

This rule continues in effect a change to the order's rules and regulations relaxing the minimum size requirement for domestic and import shipments of red seedless grapefruit. This action allows for the continued shipment of size 56 grapefruit. This rule relaxes the minimum size from size 48 (3$^{9}/_{16}$ inches diameter) to size 56 (3$^{5}/_{16}$ inches diameter) through November 8, 1998. Absent this change, the minimum size would be size 48 (3$^{9}/_{16}$ inches diameter). The Committee met on October 14 and December 16, 1997, and unanimously recommended this action.

Section 905.52 of the order, in part, authorizes the Committee to recommend minimum grade and size regulations to the Secretary. Section 905.306 (7 CFR 905.306) specifies minimum grade and size requirements for different varieties of fresh Florida grapefruit. Such requirements for domestic shipments are specified in § 905.306 in Table I of paragraph (a), and for export shipments in Table II of paragraph (b). This rule adjusts Table I to reflect the minimum size of 56 through November 8, 1998. Minimum grade and size requirements for grapefruit imported into the United States are currently in effect under § 944.106 (7 CFR 944.106). Export

requirements are not changed by this rule.

The Committee originally met to discuss this issue on October 14, 1997, and recommended releasing size 56 red grapefruit for a limited time period this season. They voted to allow handlers to ship size 56 red seedless grapefruit through January 11, 1998, to give the Committee time to determine the market effect of size 56.

The Committee met again on December 16, 1997, through an emergency telephone meeting. The meeting was called to determine whether the Committee wanted to release size 56 for the remainder of the season. The Committee voted unanimously to extend the release of size 56 through November 8, 1998.

While wanting to give handlers the opportunity to continue to market size 56, the Committee also wanted the opportunity to review the effect of size 56 on the domestic market after the percentage of size rule expired November 30, 1997 (62 FR 58633; October 30, 1997). The percentage of size rule controlled the volume of sizes 48 and 56 that was shipped in a given week, to both domestic and export markets. There is a limited market for small sizes. However, the largest part of this market is to export markets. The Committee is not sure to what extent there is domestic demand for size 56. This minimum size change pertains to the domestic market, and does not change the minimum size for export shipments which will continue at size 56 throughout the season.

To determine if there is a domestic market for size 56, and the effect of its presence on the market, the Committee recommended, on October 14, 1997, allowing shipments of size 56 red seedless grapefruit through January 11, 1998. The Committee agreed to revisit the issue to evaluate the impact of size 56 on the market after the expiration of volume regulation.

The Committee revisited the issue during the meeting December 16, 1997, and determined that size 56 should be released until November 8, 1998. In making its recommendation, the Committee considered estimated supplies and current shipments. The Committee examined the size distribution information available for the current season. On December 12, 1997, the Florida Agricultural Statistics Service (FASS) reduced the marketable crop estimate for red seedless grapefruit by two million boxes, or approximately seven percent for the 1997–98 season. FASS also reported that red seedless grapefruit size as measured in November, was 30.6 percent size 56 and smaller as compared to 35.5 percent as measured in November last year. This in turn compares to only 16.8 percent measuring size 56 or smaller in November of 1995. So, even though red seedless grapefruit are running larger than last season, there are a fair number of small grapefruit.

The Committee also reviewed shipment data available through November 23 of this season. Thus far, size 56 red seedless grapefruit represents only 3.7 percent of total domestic shipments. Comparatively, through the same time period, 11 percent of all red seedless grapefruit shipments from Florida, domestic and export was size 56. Of the size 56 red seedless grapefruit shipped, 18 percent went to the domestic market, while 82 percent was shipped to the export market.

In its discussion, the Committee recognized that fruit was continuing to size. One member commented that fruit that had measured size 56 in October, had sized up one size. This was helping to match supplies of size 56 with demand. The Committee did have several concerns. One topic that was raised was the currency and economic problems currently facing the Pacific Rim countries. These countries traditionally have been good markets for size 56 grapefruit. The Committee was concerned that current conditions could reduce demand, and alternative outlets would need to be available. The Committee agreed that it would be advantageous to have the ability to ship size 56 red seedless grapefruit to the domestic market should problems materialize in the export market.

One Committee member asked whether Texas was planning to market size 56 grapefruit this season. The Committee was informed that Texas would be selling size 56 for the entire season. The Committee believes that some domestic markets may have been developed for size 56 and that handlers should continue to supply those markets.

Based on the available information, the Committee unanimously recommended that the minimum size for shipping red seedless grapefruit to the domestic market should be size 56 through November 8, 1998.

This rule will have a beneficial impact on producers and handlers since it will permit Florida grapefruit handlers to make available those sizes of fruit needed to meet anticipated market demand for the 1997–98 season. This will provide for the maximization of shipments to fresh market channels during this period. Additionally, importers will be favorably affected by this change since the relaxation of the minimum size regulation will also apply to imported grapefruit.

Section 8e of the Act provides that when certain domestically produced commodities, including grapefruit, are regulated under a Federal marketing order, imports of that commodity must meet the same or comparable grade, size, quality, and maturity requirements. Since this rule relaxes the minimum size requirement under the domestic handling regulations, a corresponding change to the import regulations is necessary.

Minimum grade and size requirements for grapefruit imported into the United States are currently in effect under § 944.106 [7 CFR 944.106]. This rule relaxes the minimum size requirements for imported red seedless grapefruit to $3\frac{5}{16}$ inches in diameter (size 56) through November 8, 1998, to reflect the relaxation being made under the order for grapefruit grown in Florida.

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

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

There are approximately 80 Florida citrus handlers subject to regulation under the marketing order, about 11,000 citrus producers, and about 25 grapefruit importers. Small agricultural service firms, which include grapefruit handlers and importers, have been defined by the Small Business Administration (13 CFR 121.601) as those whose annual receipts are less than $5,000,000, and small agricultural producers are defined as those whose annual receipts are less than $500,000.

Based on the Florida Agricultural Statistics Service and Committee data for the 1995–96 season, the average annual f.o.b. price for fresh Florida red grapefruit during the 1995–96 season was $5.00 per $\frac{4}{5}$ bushel cartons for all grapefruit shipments, and the total shipments for the 1995-96 season were

23 million cartons of grapefruit. Approximately 20 percent of all handlers handled 60 percent of Florida grapefruit shipments. In addition, many of these handlers ship other citrus fruit and products which are not included in Committee data but would contribute further to handler receipts. Using the average f.o.b. price, about 80 percent of grapefruit handlers could be considered small businesses under the SBA definition and about 20 percent of the handlers could be considered large businesses. The majority of handlers, growers, and importers may be classified as small entities.

Florida shipped approximately 44,224,000 cartons of grapefruit to the fresh market during the 1996–97 season. Of these cartons, about 25,586,000 were exported. In the past three seasons, domestic shipments of Florida grapefruit averaged about 18,798,000 cartons. During the period 1991 through 1996, imports have averaged 734,800 cartons a season. Imports account for less than five percent of domestic shipments.

Section 905.52 of the order, in part, authorizes the Committee to recommend minimum grade and size regulations to the Secretary. Section 905.306 (7 CFR 905.306) specifies minimum grade and size requirements for different varieties of fresh Florida grapefruit. This rule relaxes the minimum size requirement for domestic shipments of red seedless grapefruit from size 48 (3$^{9}/_{16}$ inches diameter) to size 56 (3$^{5}/_{16}$ inches diameter) through November 8, 1998. No change is being made in the minimum size requirement for export shipments of size 56. Absent this rule, the minimum size requirement for domestic shipments would be size 48. The motion to allow shipments of size 56 red seedless grapefruit through November 8, 1998, was passed by the Committee unanimously.

The Committee originally met to discuss this issue on October 14, 1997, and recommended releasing size 56 red grapefruit for a limited time period this season. They voted to allow handlers to ship size 56 red seedless grapefruit through January 11, 1998, to give the Committee time to determine the market effect of size 56.

The Committee met again on December 16, 1997, through an emergency telephone meeting. The meeting was called to determine whether the Committee wanted to release size 56 for the remainder of the season. The Committee voted unanimously to extend the release of size 56 through November 8, 1998.

In its discussion, the Committee recognized that fruit was continuing to size. One member commented that fruit that had measured size 56 in October, had sized up one size. This was helping to match supplies of size 56 with demand. The Committee did have several concerns. One topic that was raised was the currency and economic problems currently facing the Pacific Rim countries. These countries traditionally have been good markets for size 56 grapefruit. The Committee was concerned that current conditions could reduce demand, and alternative outlets would need to be available. The Committee agreed that it would be advantageous to have the ability to ship size 56 red seedless grapefruit to the domestic market should problems materialize in the export market.

One Committee member asked whether Texas was planning to market size 56 grapefruit this season. The Committee was informed that Texas would be selling size 56 for the entire season. The Committee believes that some domestic markets may have been developed for size 56 and that handlers should continue to supply those markets.

During the discussion of this rule, the Committee considered the costs and benefits of this action. Several members stated that with the volume of grapefruit available, the stagnant demand, and concerns regarding the Asian export markets, it was important to take advantage of any market available. There was also discussion that Texas was planning to ship size 56 this season. Some members stated that if they eliminated size 56, they would be losing markets. Members agreed that maximizing fresh shipments helps grower returns. The Committee has released size 56 for the past seven seasons. There should be no production adjustment costs associated with this rule.

This rule is expected to have a positive impact on growers and handlers, as it will permit the shipment of smaller sized red seedless grapefruit to the domestic market, allowing the industry to meet anticipated demand through November 8, 1998. This will provide for the maximization of shipments to fresh market channels during this period.

This regulation lowers the minimum size to size 56. This minimum applies to all handlers of red seedless grapefruit. The costs or benefits of this rule are not expected to be disproportionately more or less for small handlers or growers than for larger entities.

In 1996, imports of grapefruit totaled 15,000 tons (approximately 705,880 cartons). The Bahamas were the principal source, accounting for 95 percent of the total. Remaining imports were supplied by the Dominican Republic and Israel. Imported grapefruit enters the United States from October through May. Imports account for less than five percent of domestic shipments.

Section 8e of the Act provides that when certain domestically produced commodities, including grapefruit, are regulated under a Federal marketing order, imports of that commodity must meet the same or comparable grade, size, quality and maturity requirements. Because this rule changes the minimum size for domestic red seedless grapefruit shipments, this change will also be applicable to imported grapefruit. This rule relaxes the minimum size to size 56. This regulation will benefit importers to the same extent that it benefits Florida grapefruit producers and handlers because it allows shipments of size 56 red seedless grapefruit into U.S. markets through November 8, 1998.

The Committee discussed alternatives to this action. One alternative discussed was the elimination of size 56 grapefruit all together. Several members expressed concern that a viable market has been developed for a portion of the size 56 grapefruit crop. Not allowing handlers to supply this market could result in throwing business and money away. Other members pointed out that it could be detrimental to supply this market for smaller sizes if that market is not profitable and the result is depressed prices for all sizes of grapefruit.

In addition, the Committee recognized that through November, regulation was in place to control the amount of size 56 red seedless grapefruit entering the market. Under the percentage of size rule, the quantity of sizes 48 and/or 56 red seedless grapefruit that may be shipped by a handler during a particular week is calculated using a recommended percentage. This percentage of size rule was in effect through November 30, 1997. The Committee agreed that, for the remainder of the 1997–1998 season, no further restriction on size 56 was necessary. A motion to eliminate size 56 was rejected.

This rule will not impose any additional reporting or recordkeeping requirements on either small or large red seedless grapefruit handlers or importers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information collection requirements and duplication by industry and public sectors.

In addition, as noted in the initial regulatory flexibility analysis, the

Department has not identified any relevant Federal rules that duplicate, overlap or conflict with this rule. However, red seedless grapefruit must meet the requirements as specified in the U.S. Standards for Grades of Florida Grapefruit (7 CFR 51.760 through 51.784) issued under the Agricultural Marketing Act of 1946 (7 U.S.C. 1621 through 1627).

Further, the Committee's October meeting was widely publicized throughout the citrus industry and all interested persons were invited to attend the meeting and participate in Committee deliberations. Like all Committee meetings, the October 14, 1997, meeting was a public meeting and all entities, both large and small, were able to express their views on this issue. Finally, interested persons were invited to submit information on the regulatory and informational impacts of this action on small businesses.

An interim final rule concerning this action was published in the **Federal Register** on January 22, 1998. Copies of the rule were mailed by the Committee staff to all Committee members and grapefruit handlers. In addition, the rule was made available through the Internet by the Office of the Federal Register. That rule provided for a 60-day comment period which ended March 23, 1998. No comments were received.

In accordance with section 8e of the Act, the United States Trade Representative has concurred with the issuance of this final rule.

After consideration of all relevant material presented, including the Committee's recommendation, and other information, it is found that finalizing the interim final rule, without change, as published in the **Federal Register** (63 FR 3247, January 22, 1998) will tend to effectuate the declared policy of the Act.

List of Subjects

7 CFR Part 905

Grapefruit, Marketing agreements, Oranges, Reporting and recordkeeping requirements, Tangelos, Tangerines.

7 CFR Part 944

Avocados, Food grades and standards, Grapefruit, Grapes, Imports, Kiwifruit, Limes, Olives, Oranges.

PART 905—ORANGES, GRAPEFRUIT, TANGERINES AND TANGELOS GROWN IN FLORIDA

PART 944—FRUITS; IMPORT REGULATIONS

Accordingly, the interim final rule amending 7 CFR parts 905 and 944 which was published at 63 FR 3247 on January 22, 1998, is adopted as a final rule without change.

Dated: April 14, 1998.

Sharon Bomer Lauritsen,

Acting Deputy Administrator, Fruit and Vegetable Programs.

[FR Doc. 98–10259 Filed 4–17–98; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Part 1

[INS Order No. 1868–97]

RIN 1115–AE87

Amendment of the Regulatory Definition of Arriving Alien

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Interim rule with request for comments.

SUMMARY: This rule amends the Immigration and Naturalization Service (Service) regulations by changing the regulatory definition of an arriving alien. Under section 235(b)(1)(A)(i) of the Immigration and Nationality Act (Act), which was effective on April 1, 1997, certain arriving aliens are subject to expedited removal procedures. The existing regulatory definition of arriving alien includes parolees whose parole is terminated, without regard to the date of parole or the circumstances under which parole was granted. As a matter of policy, the Service has decided that it is appropriate to exempt from the new expedited removal procedures aliens who were paroled into the United States before April 1, 1997, as well as aliens who, either before or after April 1, 1997, return to the United States pursuant to a grant of advance parole that they applied for and obtained while physically present in and prior to their departure from the United States. This rule clarifies that these two types of parolees will not be subjected to expedited removal.

DATES: *Effective Dates:* The interim rule is effective April 20, 1998.

Comment Date: Written comments must be received on or before June 19, 1998.

ADDRESSES: Please submit written comments in triplicate to the: Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, 425 I Street, NW., Room 5307, Washington, DC 20536. To ensure proper handling, please reference INS number 1868–97 on your correspondence. Comments are available for public inspection at the above address by calling (202) 514–3048 to arrange for an appointment.

FOR FURTHER INFORMATION CONTACT: Linda Loveless, Assistant Chief Inspector, Immigration and Naturalization Service, 425 I Street NW., Room 4064, Washington, DC 20536, telephone number (202) 616–7489.

SUPPLEMENTARY INFORMATION: The Illegal Immigration Reform and Immigrant Responsibility Act of 1996, Pub. L. 104–208, which was enacted on September 30, 1996, created new expedited removal procedures for aliens attempting to enter the United States through fraud or misrepresentation or without proper documents. This provision was effective on April 1, 1997, and is applicable to aliens who are ''arriving in the United States'' as contained in section 235(b)(1)(A)(i) of the Act.

The existing regulatory definition of arriving alien includes parolees, starting that ''[a]n arriving alien remains such even if paroled pursuant to section 212(d)(5) of the Act.'' Including certain parolees in the definition of arriving aliens is consistent with section 212(d)(5) of the Act, which states that ''* * * such parole of such alien shall not be regarded as an admission of the alien and when the purpose of such parole shall, in the opinion of the Attorney General, have been served the alien shall forthwith return or be returned to the custody from which he was paroled and thereafter his case shall continue to be dealt with in the same manner as that of any other applicant for admission to the United States.'' Existing regulations on the termination of parole are also consistent with the classification of certain paroled aliens as arriving aliens, stating that ''* * * he or she shall be restored to the status that he or she had at the time of parole.'' 8 CFR 212.5(d)(2)(i).

The definition as currently in effect, though consistent with the Act and prior regulations, encompasses certain groups not best regarded as arriving aliens for purposes of the applicability of expedited removal, such as aliens initially paroled before (often well before) the effective date of the expedited removal provisions, and aliens previously present in the United States (in some cases for long periods) who departed from and returned to the United States pursuant to advance parole. Because the Act does not contain a definition of ''arriving alien,'' it is left to the Attorney General to define the term in a manner that conforms with

congressional intent as embodied in the Act. This rule clarifies that aliens who were paroled before April 1, 1997, and aliens who return to the United States pursuant to advance parole that they applied for and obtained while physically present in and prior to their departure from the United States, will not be subject to expedited removal when their parole is terminated. This exception does not alter the legal status of these parolees; these paroled aliens remain applicants for admission as in the past.

This rule also amends the arriving alien definition by replacing the reference to an alien who ''seeks admission to or transit through the United States'' with a reference to an ''applicant for admission coming or attempting to come into the United States at a port-of-entry, or an alien seeking transit through the United States at a port-of-entry.'' The new language better conveys the intent of the definition, which is to delineate a particular segment of those aliens described in section 235(a)(1) of the Act, which defines aliens deemed to be applicants for admission. The term ''applicant for admission'' is a term of art under the Act as revised by IIRIRA. Section 235(a)(1) of the Act makes clear that an alien coming from abroad to a port in the United States may be considered an applicant for admission regardless of whether he or she subjectively desires admission. To the extent that the word ''seeks'' in the existing § 1.1(q) suggests that an alien must have a subjective intent to gain admission in order to be an arriving alien, it may be susceptible to interpretations that are not consistent with the statute. Replacing the term ''seeks'' in the arriving aliens definition with the term ''coming or attempting to come'' prevents the possibility of such confusion.

Finally, the rule removes the reference to 8 CFR part 235, which deals with inspection of persons applying for admission. This reference is not necessary and its removal will streamline the definition of arriving alien.

Good Cause Exception

This interim rule is effective on publication in the **Federal Register**, although the Service invites post-promulgation comments within a 60-day comment period and will address any such comments in a final rule. For the following reasons, the Service finds that good cause exists under 5 U.S.C. 553(b)(B) and (d)(3) for implementing this rule as an interim rule without the prior notice and comment period ordinarily required under that provision. First, in certain respects, this rule simply clarifies issues that may appear ambiguous in the existing regulation defining arriving aliens. Second, to the extent that this rule substantively changes Service regulations, it simply provides more advantageous treatment for the limited number of parolees involved by exempting them from expedited removal procedures. Early implementation will be advantageous to the intended beneficiaries of this rule. Therefore, it is unnecessary and contrary to the public interest to delay the implementation of this rule until after a notice and comment period.

Regulatory Flexibility Act

The Attorney General, in accordance with 5 U.S.C. 605(b) has reviewed this regulation and, by approving it, certifies that this rule will not have a significant impact on a substantial number of small entities because of the following factors: This rule makes two changes to the existing § 1.1(q). First, by changing the arriving alien definition to provide that the expedited removal provisions will not apply to aliens paroled into the United States prior to April 1 or pursuant to advance parole which the aliens applied for and obtained in the United States, this rule simply provides that, where appropriate, a finite number of aliens will be subject to removal proceedings under section 240 of the Act, rather than to expedited removal under section 235(b)(1)(A)(i) of the Act. This change will not affect small entities. Second, this rule also changes the arriving alien definition to use language that is clearer and more consistent with the Act. This change does not alter the meaning of the regulation and does not affect small entities.

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by section 804 of the Small Business Regulatory Enforcement Act of 1996. This rule will not result in an annual effect on the economy of $100 million or more, a major increase in costs or prices, or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

Executive Order 12866

This rule is not considered by the Department of Justice, Immigration and Naturalization Service, to be a ''significant regulatory action'' under Executive Order 12866, section 3(f), Regulatory Planning and Review and the Office of Management and Budget has waived its review process under section 6(a)(3)(A).

Executive Order 12612

The regulation 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 rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Executive Order 12988 Civil Justice Reform

This interim rule meets the applicable standards set forth in sections 3(a) and 3(b)(2) of E.O. 12988.

List of Subjects in 8 CFR Part 1

Administrative practice and procedures, Aliens, Immigration, Reporting and recordkeeping requirements.

Accordingly, part 1 of chapter I of title 8 of the Code of Federal Regulations is amended as follows:

PART 1—DEFINITIONS

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

Authority: 8 U.S.C. 1101, 8 CFR part 2.

2. Section 1.1 is amended by revising paragraph (q) to read as follows:

§ 1.1 Definitions.

* * * * *

(q) The term *arriving alien* means an applicant for admission coming or attempting to come into the United States at a port-of-entry, or an alien seeking transit through the United States at a port-of-entry, or an alien interdicted in international or United States waters and brought into the United States by any means, whether or not to a designated port-of-entry, and

regardless of the means of transport. An arriving alien remains such even if paroled pursuant to section 212(d)(5) of the Act, except that an alien who was paroled before April 1, 1997, or an alien who was granted advance parole which the alien applied for and obtained in the United States prior to the alien's departure from and return to the United States, shall not be considered an arriving alien for purposes of section 235(b)(1)(A)(i) of the Act.

* * * * *

Dated: February 13, 1998.

Doris Meissner,

Commissioner of the Immigration and Naturalization Service.

[FR Doc. 98–10354 Filed 4–17–98; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–CE–42–AD; Amendment 39–10476; AD 98–08–27]

RIN 2120–AA64

Airworthiness Directives; SOCATA—Groupe AEROSPATIALE Model TBM 700 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that applies to certain SOCATA—Groupe AEROSPATIALE (Socata) Model TBM 700 airplanes. This AD requires modifying the airplane's left-hand (LH) front side lower panel. This AD is the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for France. The actions specified by this AD are intended to prevent interference between the side trim of the LH front side lower panel and the roll control compass on the LH wheel assembly, which could result in loss of directional control of the airplane.

DATES: Effective May 31, 1998.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of May 31, 1998.

ADDRESSES: Service information that applies to this AD may be obtained from SOCATA—Groupe AEROSPATIALE, Support Client/Customer Support, Aerodrome Tarbes-Ossun-Lourdes, B P 930, F65009 Tarbes Cedex, France; telephone: (33) 62.41.73.00; facsimile: (33) 62.41.76.54, or the Product Support Manager, SOCATA-Groupe AEROSPATIALE, North Perry Airport, 7501 Pembroke Road, Pembroke Pines, Florida 33023; telephone: (954) 964–6877; facsimile: (954) 964–1668. This information may also be examined at the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 97–CE–42–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Karl Schletzbaum, Aerospace Engineer, FAA, Small Airplane Directorate, 1201 Walnut Street, suite 900, Kansas City, Missouri 64106; telephone: (816) 426–6934; facsimile: (816) 426–2169.

SUPPLEMENTARY INFORMATION:

Events Leading to the Issuance of This AD

A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to certain Socata Model TBM 700 airplanes was published in the **Federal Register** as a notice of proposed rulemaking (NPRM) on February 5, 1998 (63 FR 5898). The NPRM proposed to require modifying the airplane's left-hand (LH) front side lower panel. Accomplishment of the proposed action as specified in the NPRM would be in accordance with SOCATA Service Bulletin No. SB 70–061–25, dated June, 1995.

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

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

The FAA's Determination

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

Cost Impact

The FAA estimates that 40 airplanes in the U.S. registry will be affected by this AD, that it will take approximately 4 workhours per airplane to accomplish this action, and that the average labor rate is approximately $60 an hour. Parts cost approximately $15 per airplane. Based on these figures, the total cost impact of this AD on U.S. operators is estimated to be $10,200 or $255 per airplane.

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

98–08–27 Socata—Groupe Aerospatiale: Amendment 39–10476; Docket No. 97–CE–42–AD.

Applicability: Model TBM 700 airplanes, serial numbers 24, 26, 27, 29 through 32, 34,

36 through 106, and all serial numbers equipped with modification MOD 70–019–25 or Supplemental Type Certificate (STC) SA2786CE, certificated in any category.

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

Compliance: Required within the next 100 hours time-in-service (TIS) after the effective date of this AD, unless already accomplished.

To prevent interference between the side trim of the left-hand (LH) side lower panel and the roll control compass on the LH wheel assembly, which could result in loss of directional control of the airplane, accomplish the following:

(a) Modify the LH front side lower panel in accordance with part ''B. MODIFICATION'' of the ACCOMPLISHMENT INSTRUCTIONS section of SOCATA Service Bulletin No. SB 70–061–25, dated June, 1995.

(b) The instructions in this AD take precedence over part ''A. CHECK: DURING EACH PREFLIGHT INSPECTION'' of the ACCOMPLISHMENT INSTRUCTIONS section in SOCATA Service Bulletin No. SB 70–061–25, dated June, 1995.

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

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

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

(e) Questions or technical information related to SOCATA Service Bulletin No. SB 70–061–25, dated June, 1995, should be directed to SOCATA—Groupe AEROSPATIALE, Support Client/Customer Support, Aerodrome Tarbes-Ossun-Lourdes, B P 930, F65009 Tarbes Cedex, France; telephone: (33) 62.41.73.00; facsimile: (33) 62.41.76.54, or the Product Support Manager, SOCATA—Groupe AEROSPATIALE, North Perry Airport, 7501 Pembroke Road, Pembroke Pines, Florida 33023; telephone: (954) 964–6877; facsimile: (954) 964–1668. This service information may be examined at the FAA, Central Region, Office of the Regional Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri.

(f) The modification required by this AD shall be done in accordance with SOCATA Service Bulletin No. SB 70–061–25, dated June, 1995. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from SOCATA—Groupe AEROSPATIALE, Support Client/Customer Support, Aerodrome Tarbes-Ossun-Lourdes, B P 930, F65009 Tarbes Cedex, France, or the Product Support Manager, SOCATA—Groupe AEROSPATIALE, North Perry Airport, 7501 Pembroke Road, Pembroke Pines, Florida 33023. Copies may be inspected at the FAA, Central Region, Office of the Regional Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

(g) This amendment becomes effective on May 31, 1998.

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

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–10180 Filed 4–17–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–CE–108–AD; Amendment 39–10478; AD 98–08–29]

RIN 2120–AA64

Airworthiness Directives; Alexander Schleicher Segelflugzeugbau Model ASK 21 Sailplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that applies to certain Alexander Schleicher Segelflugzeugbau (Alexander Schleicher) Model ASK 21 sailplanes. This AD requires removing certain pages from the sailplane flight manual and replacing these pages with new pages having different information regarding spin and stall recovery. This action is the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for Germany. The actions specified by this AD are intended to prevent operators from using inaccurate stall and spin recovery information provided in the sailplane flight manual (SFM), which could result in the inability to recover from a spin or stall during flight.

DATES: Effective May 18, 1998.

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

ADDRESSES: Service information that applies to this AD may be obtained from Alexander Schleicher, Segelflugzeugbau, 6416 Poppenhausen, Wasserkuppe, Federal Republic of Germany; telephone: 49.6658.890 or 49.6658.8920; facsimile: 49.6658.8923 or 49.6658.8940. This information may also be examined at the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 97–CE–108–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

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

SUPPLEMENTARY INFORMATION:

Events Leading to the Issuance of This AD

A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to certain Alexander Schleicher Model ASK 21 sailplanes was published in the **Federal Register** as a notice of proposed rulemaking (NPRM) on February 5, 1998 (63 FR 5904). The NPRM proposed to require removing certain pages from the sailplane flight manual and replacing these pages with new pages having different information regarding spin and stall recovery. Accomplishment of the proposed action as specified in the NPRM would be in accordance with Alexander Schleicher ASK 21 Technical Note No. 23, dated January 29, 1991.

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

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

The FAA's Determination

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

Compliance Time of this AD

This action, the German AD, and Alexander Schleicher Technical Note No. 23, dated January 29, 1991, differ on the compliance time. The German AD and the technical note require that the replacement of the SFM pages be accomplished at the next annual inspection.

The FAA is requiring a calendar compliance time instead of the next annual inspection because the calendar compliance will ensure that all of the owners/operators of the affected sailplanes have changed the flight manual and be aware of the new information at approximately the same time.

Cost Impact

The FAA estimates that 30 sailplanes in the U.S. registry will be affected by this AD, that it will take approximately 1 workhour per sailplane to accomplish this action, and that the average labor rate is approximately $60 an hour. The SFM pages are provided by the manufacturer at no cost to the owner/operator. Inserting the pages into the SFM may be performed by the owner/operator holding at least a private pilot certificate as authorized by section 43.7 of the Federal Aviation Regulations (14 CFR 43.7), and must be entered into the aircraft records showing compliance with this AD in accordance with section 43.9 of the Federal Aviation Regulations (14 CFR 43.9). Based on these figures, there is no cost impact of this AD on U.S. owners/operators because this action can be accomplished by the owner/operator.

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

98–08–29 Alexander Schleicher Segelflugzeugbau: Amendment 39–10478; Docket No. 97–CE–108–AD.

Applicability: Model ASK 21 sailplanes, serial numbers 21001 through 21495, certificated in any category.

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

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

To prevent operators from using inaccurate stall and spin recovery information provided in the sailplane flight manual (SFM), which could result in the inability to recover from a spin or stall during flight, accomplish the following:

(a) Remove pages 2, 22, 24, 33, and 34 from the Alexander Schleicher Model ASK 21 SFM, and replace these pages with new pages of the same numbers that have footnote ''TN 23 dated Jan 1991'', in accordance with Alexander Schleicher ASK 21 Technical Note No. 23, dated January 29, 1991.

(b) Incorporating the SFM revisions, as required by this AD, may be performed by the owner/operator holding at least a private pilot certificate as authorized by section 43.7 of the Federal Aviation Regulations (14 CFR 43.7), and must be entered into the aircraft records showing compliance with this AD in accordance with section 43.9 of the Federal Aviation Regulations (14 CFR 43.9).

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

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

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

(e) Questions or technical information related to Alexander Schleicher ASK 21 Technical Note No. 23, dated January 29, 1991, should be directed to Alexander Schleicher, Segelflugzeugbau, 6416 Poppenhausen, Wasserkuppe, Federal Republic of Germany; telephone: 49.6658.890 or 49.6658.8920; facsimile: 49.6658.8923 or 49.6658.8940. This service information may be examined at the FAA, Central Region, Office of the Regional Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri.

(f) The replacements required by this AD shall be done in accordance with Alexander Schleicher ASK 21 Technical Note No. 23, dated January 29, 1991. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Alexander Schleicher, Segelflugzeugbau, 6416 Poppenhausen, Wasserkuppe, Federal Republic of Germany. Copies may be inspected at the FAA, Central Region, Office of the Regional Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

Note 3: The subject of this AD is addressed in German AD No. 91–112 Schleicher, dated June 19, 1991.

(g) This amendment becomes effective on May 18, 1998. Issued in Kansas City, Missouri, on April 9, 1998.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–10179 Filed 4–17–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 96–CE–54–AD; Amendment 39–10474; AD 98–08–25]

RIN 2120–AA64

Airworthiness Directives; Twin Commander Aircraft Corporation 500, 680, 690, and 695 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes Airworthiness Directive (AD) 96–12–08 on certain Twin Commander Aircraft Corporation (Twin Commander) 500, 680, 690, and 695 series airplanes, which currently requires replacing the nose landing gear (NLG) drag link bolt with one that has been manufactured with the proper heat-treatment. This action will retain the requirements of AD 96–12–08, add an additional model and additional serial numbers to the applicability section of the AD, and require replacing bolt part number (P/N) ED10055 with bolt P/N 750076–1 on certain Models 690D and 695A airplanes. This action is prompted by a defective manufacture of a certain lot of drag link bolts used in the NLG. The actions specified by this AD are intended to prevent the NLG from collapsing caused by a failed drag link bolt, which could result in loss of control of the airplane during landing operations.

DATES: Effective May 18, 1998.

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

ADDRESSES: Service information that applies to this AD may be obtained from Twin Commander Aircraft Corporation, 19010 59th Dr. NE, Arlington, Washington, 98223–7832; telephone (360) 435–9797; facsimile (360) 435–1112. This information may also be examined at the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket 96–E–54–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Jeffrey Morfitt, Aerospace Engineer, FAA, Seattle Aircraft Certification Office, 1601 Lind Ave. S.W., Renton, Washington, 98055-4056; telephone: (206) 227–2595; facsimile: (206) 227–1181.

SUPPLEMENTARY INFORMATION:

Events Leading to the Issuance of This AD

A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to certain Twin Commander 500, 680, 690, and 695 series airplanes that do not have a nose landing gear drag link bolt with the manufacturer's serial number, manufacture date, and the last three digits of the drawing number 055 on the bolt head, was published in the **Federal Register** on May 9, 1997 (62 FR 25563). The action proposed to require:

- replacing the NLG drag link bolt with an approved heat-treated bolt that has the manufacturer's serial number, manufacture date, and the last three digits of the drawing number (055) on the bolt head,
- including Model 680V in the applicability of the AD;
- including additional serial numbers of the already affected models; and
- changing the bolt part number (P/N) to be installed on Models 690D and 695A from P/N ED10055 to P/N 750076–1.

Accomplishment of the proposed action would be in accordance with Twin Commander Service Bulletin (SB) No. 224, Revision C, dated July 25, 1996.

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

The FAA's Determination

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

Cost Impact

The FAA estimates that 54 airplanes in the U.S. registry will be affected by this AD, that it will take approximately 1 workhour per airplane to accomplish this action, and that the average labor rate is approximately $60 an hour. The manufacturer is providing parts and one hour labor free of charge. With this in mind, this AD imposes no cost impact upon the U.S. operators of the affected airplanes.

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by removing Airworthiness Directive (AD) 96–12–08, Amendment No. 39–9650

and by adding a new AD to read as follows:

98–08–25 Twin Commander Aircraft Corporation: Amendment No. 39–10474; Docket No. 96–CE–54–AD; Supersedes AD 96–12–08, Amendment No. 39–9650.

Applicability: The following model and serial number airplanes, certificated in any category:

Models	Serial Nos.
500S ...	3185, 3228, 3230, 3262, and 3291
500U ...	1765
680F ...	1195
681	6027
680V ...	1677
690	11035, 11053, 11068, and 11074
690A ...	11111, 11134, 11146, 11153, 11173, 11177, 11205, 11215, 11237, 11249, 11271, 11273, and 11282
690B ...	11360, 11382, 11409, 11424, 11451, 11455, 11463, 11491, 11513, 11521, 11535, 11536, 11539, and 11566
690C ...	11638, 11643, 11676, 11689, and 11719
690D ...	15041
695	95010, 95033, 95044, and 95066
695A ...	69010, 69041, 69056, and 69061

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

Compliance: Required within the next 75 hours time-in-service (TIS) after the effective date of this AD, unless already accomplished.

To prevent the nose landing gear (NLG) from collapsing, which could result in loss of control of the airplane during landing operations, accomplish the following:

(a) For all airplane models, except for Models 690D and 695A, replace the NLG drag link bolt, part number (P/N) ED 10055, with a new bolt in accordance with the INSTRUCTIONS section of Twin Commander Service Bulletin (SB) 224, Revision C, dated July 25, 1996.

(b) For airplane Models 690D and 695A, replace the NLG drag link bolt (P/N ED 10055), with a new bolt (P/N 750076–1) in accordance with Twin Commander SB 224, Revision C, dated July 25, 1996.

(c) The new replacement bolt must be marked with the manufacturer's serial number, the date of manufacture, and the last three digits of the drawing number, 055, on the bolt head for all but Models 690D and 695A. Models 690D and 695A bolts must be marked with the manufacturer's serial number, the date of manufacture, and the last three digits of the drawing number, 76–1, on the bolt head.

Note 2: Although not required by this AD, FAA highly recommends that the removed bolt (P/N ED 10055) be returned to Twin Commander for Rockwell Hardness testing.

(d) For all affected models except for Models 690D and 695A, compliance with Twin Commander Service Bulletin (SB) 224, Revision A, dated April 24, 1996, or Revision C, dated July 25, 1996, fulfills the applicable requirements of this AD, and is considered ''unless already accomplished.''

(e) As of the effective date of this AD, no person shall install an NLG drag link bolt that does not have the manufacturer's serial number, manufacture date, and the last three digits of the drawing number as specified in paragraph (c) of this AD.

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

(g) An alternative method of compliance or adjustment of the compliance times that provides an equivalent level of safety may be approved by the Manager, Seattle Aircraft Certification Office, 1601 Lind Ave. SW, Renton, Washington, 98055–4056. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Seattle Aircraft Certification Office.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained at the Seattle Aircraft Certification Office.

(h) The inspection and replacement required by this AD shall be done in accordance with Twin Commander Service Bulletin No. 224, Revision C, dated July 25, 996. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Twin Commander Aircraft Corporation, 19010 59th Dr. NE, Arlington, Washington, 98223–7832. Copies may be inspected at the FAA, Central Region, Office of the Regional Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

(i) This amendment supersedes AD 96–12–08, mendment 39–9650.

(j) This amendment becomes effective on May 18, 1998.

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

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–10178 Filed 4–17–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–CE–88–AD; Amendment 39–10477; AD 98–08–28]

RIN 2120–AA64

Airworthiness Directives; Avions Pierre Robin Model R3000/160 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that applies to all Avions Pierre Robin (Avions) Model R3000/160 airplanes. This action requires replacing the top bolts in the front wheel fork assembly and the top bolts attaching the front landing gear to the engine mount. This AD is the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for France. The actions specified by this AD are intended to prevent collapse of the nose landing gear, which could result in loss of control of the airplane during taxi and landing operations.

DATES: Effective May 15, 1998.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of May 15, 1998.

Comments for inclusion in the Rules Docket must be received on or before May 15, 1998.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket 97–CE–88–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Service information that applies to this AD may be obtained from Avions Pierre Robin, 1 route de Troyes 21121 Darois, France; telephone: 03.80.44.20.50; facsimile: 03.80.35.60.80. This information may also be examined at the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket 97–CE–88–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Karl Schletzbaum, Aerospace Engineer, FAA, Small Airplane Directorate, Aircraft

Certification Service, 1201 Walnut, suite 900, Kansas City, Missouri; telephone: (816) 426–6934, facsimile: (816) 426–2169.

SUPPLEMENTARY INFORMATION:

Discussion

The Direction Generale De L'Aviation Civile (DGAC), which is the airworthiness authority for France, recently notified the FAA that an unsafe condition may exist on all Avions Model R3000/160 airplanes. The DGAC reports that the two top bolts connecting the front wheel fork to the sliding leg, and the two top bolts attaching the front landing gear to the engine mount, broke while being installed during a routine maintenance inspection. The bolts failed when torqued onto the landing gear assembly.

The DGAC investigation revealed that the materials used during manufacture of the bolts were not of high enough strength to accommodate the load conditions required for these airplanes.

This condition, if not corrected, could result in collapse of the nose landing gear during taxi or landing operations.

Relevant Service Information

Avions has issued Service Bulletin No. 151, dated July 8, 1996, which specifies procedures for replacing the two top bolts, part number (P/N) 27.36.36.001, with new bolts of improved design, P/N 42.36.00.050.

The DGAC classified this service bulletin as mandatory and issued French AD 96–285(A), dated December 4, 1996, in order to assure the continued airworthiness of these airplanes in France.

The FAA's Determination

This airplane model is manufactured in France and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.19) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept the FAA informed of the situation described above.

The FAA has examined the findings of the DGAC; reviewed all available information, including the service information and modification referenced above; and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of the Provisions of This AD

Since an unsafe condition has been identified that is likely to exist or develop on other Avions Model R3000/160 airplanes of the same type design registered in the United States, the FAA is issuing an AD. This AD requires replacing the two top bolts connecting the front wheel fork to the sliding leg, and the two top bolts attaching the front landing gear to the engine mount. Accomplishment of the replacement would be in accordance with Avions Pierre Robin Service Bulletin No. 151, dated July 8, 1996.

Cost Impact

None of the Avions Model R3000/160 airplanes affected by this action are on the U.S. Register. All airplanes included in the applicability of this rule currently are operated by non-U.S. operators under foreign registry; therefore, they are not directly affected by this AD action. However, the FAA considers this rule necessary to ensure that the unsafe condition is addressed in the event that any of these subject airplanes are imported and placed on the U.S. Register.

Should an affected airplane be imported and placed on the U.S. Register, accomplishment of the required replacement would take approximately 2 workhours at an average labor charge of $60 per workhour. Parts cost approximately $50 per airplane. Based on these figures, the total cost impact of this AD would be $170 per airplane that would become registered in the United States.

The Effective Date of This AD

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

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. 97–CE–88-AD.'' The postcard will be date stamped and returned to the commenter.

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

98–08–28 Avions Pierre Robin: Amendment 39–10477; Docket No. 97–CE–88–AD.

Applicability: Model R3000/160 airplanes, all serial numbers, certificated in any category.

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

Compliance: Required prior to further flight after the effective date of this AD, unless already accomplished.

To prevent collapse of the nose landing gear, which could result in loss of control of the airplane during taxi and landing operations, accomplish the following:

(a) Replace the top two bolts, part number (P/N) 27.36.36.001 or an FAA-approved equivalent part number, that connect the front wheel fork to the sliding legs with bolts of improved design, P/N 42.36.00.050 or an FAA-approved equivalent part number, in accordance with Avions Pierre Robin (Avions) Service Bulletin (SB) No. 151, dated July 8, 1996.

(b) Replace the top two bolts, part number (P/N) 27.36.36.001 or an FAA-approved equivalent part number, that attach the front landing gear to the engine mount with bolts of improved design, P/N 42.36.00.050 or an FAA-approved equivalent part number, in accordance with Avions SB No. 151, dated July 8, 1996.

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

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

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

(e) Questions or technical information related to Avions Pierre Robin Service Bulletin No. 151, dated July 8, 1996, should be directed to Avions Pierre Robin, 1 route de Troyes 21121 Darois, France; telephone 03.80.44.20.50; facsimile 03.80.35.60.80. This service information may be examined at the FAA, Central Region, Office of the Regional Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

(f) The replacement required by this AD shall be done in accordance with Avions Pierre Robin Service Bulletin No. 151, dated July 8, 1996. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Avions Pierre Robin, 1 route de Troyes 21121 Darois, France; telephone 03.80.44.20.50; facsimile 03.80.35.60.80. Copies may be inspected at the FAA, Central Region, Office of the Regional Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

Note 3: The subject of this AD is addressed in French AD No. 96–285(A), dated December 4, 1996.

(g) This amendment becomes effective on May 15, 1998.

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

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–10177 Filed 4–17–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–CE–46–AD; Amendment 39–10475; AD 98–08–26]

RIN 2120–AA64

Airworthiness Directives; Pilatus Aircraft Ltd. Models PC–12 and PC–12/45 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that applies to certain Pilatus Aircraft Ltd. (Pilatus) Models PC–12 and PC–12/45 airplanes. This AD requires installing aluminum bonding bushings over certain screws in certain fuel tank underwing access panels. Several reports from the field revealing fuel tank access panels insufficiently electrically bonded to the airframe prompted this action. The actions specified by this AD are intended to prevent electrical arcing in the fuel tanks and detonation of the fuel-air mixture, which can be created by poor electrical bonding of fuel tank underwing access panels, and could result in a fire on the airplane.

DATES: Effective May 29, 1998.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of May 29, 1998.

ADDRESSES: Service information that applies to this AD may be obtained from Pilatus Aircraft Ltd., CH–6370 Stans, Switzerland; telephone: +41–41–6196–233; facsimile: +41–41–6103–351. This information may also be examined at the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 97–CE–46–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Roman Gabrys, Project Officer, FAA, Small Airplane Directorate, Aircraft Certification Service, 1201 Walnut, suite 900, Kansas City, Missouri 64106; telephone: (816) 426–6934; facsimile: (816) 426–2169.

SUPPLEMENTARY INFORMATION:

Events Leading to the Issuance of This AD

A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to certain Pilatus Models PC–12 and PC–12/45 airplanes was published in the **Federal Register** as a notice of proposed rulemaking (NPRM) on December 19, 1997 (62 FR 66561). The NPRM proposed to require installing aluminum bonding bushings over certain screws in certain fuel tank underwing access panels. Accomplishment of the proposed action as specified in the NPRM would be in accordance with Pilatus Service Bulletin No. 57–001, dated February 28, 1997.

The NPRM was the result of several reports from the field revealing fuel tank access panels insufficiently electrically bonded to the airframe.

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

The FAA's Determination

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

Cost Impact

The FAA estimates that 40 airplanes in the U.S. registry will be affected by this AD, that it will take approximately 6 workhours per airplane to accomplish this action, and that the average labor rate is approximately $60 an hour. Parts will be provided at no cost by the manufacturer. Based on these figures, the total cost impact of this AD on U.S. operators is estimated to be $14,400 or $360 per airplane.

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

98–08–26 Pilatus Aircraft Ltd.: Amendment 39–10475; Docket No. 97–CE–46–AD.

Applicability: Model PC–12 and PC–12/45 airplanes, serial numbers MSN 001 through MSN 168, certificated in any category.

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

Compliance: Required within the next 100 hours time-in-service (TIS) after the effective date of this AD, unless already accomplished.

To prevent electrical arcing in the fuel tanks and detonation of the fuel-air mixture, which can be created by poor electrical bonding of fuel tank underwing access panels, and could result in a fire on the airplane, accomplish the following:

(a) Install aluminum bonding bushings onto the screws for certain fuel tank underwing access panels in accordance with Part A and Part B of the Accomplishment Instructions in Pilatus Service Bulletin No. 57–001, dated February 28, 1997.

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

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

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

(d) Questions or technical information related to Pilatus Service Bulletin No. 57–001, dated February 28, 1997, should be directed to Pilatus Aircraft Ltd., CH–6370 Stans, Switzerland. This service information may be examined at the FAA, Central Region, Office of the Regional Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri.

(e) The installations required by this AD shall be done in accordance with Pilatus Service Bulletin No. 57–001, dated February 28, 1997. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Pilatus Aircraft Ltd., CH–6370 Stans, Switzerland. Copies may be inspected at the FAA, Central Region, Office of the Regional Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

(f) This amendment becomes effective on May 29, 1998.

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

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–10176 Filed 4–17–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–NM–114–AD; Amendment 39–10480; AD 98–09–01]

RIN 2120–AA64

Airworthiness Directives; Gulfstream Model GV Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to certain Gulfstream Model GV series airplanes. This action requires inspections and functional tests of the elevator Hardover Prevention System (HOPS) to detect any miswiring of electrical connectors, correction of any discrepancy found, and eventual modification of the HOPS wiring. This amendment is prompted by reports of incorrect matching of electrical connectors to the hydraulic deactivation valves of the elevator HOPS. The actions specified in this AD are intended to prevent the incorrect operation of the elevator HOPS, which could result in loss of control of the airplane.

DATES: Effective May 5, 1998.

The incorporation by reference of certain publications listed in the

regulations is approved by the Director of the Federal Register as of May 5, 1998.

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

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 98–NM–114–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

The service information referenced in this AD may be obtained from Gulfstream Aerospace Corporation, P.O. Box 2206, M/S D–10, Savannah, Georgia 31402–9980. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Small Airplane Directorate, Atlanta Aircraft Certification Office, One Crown Center, 1895 Phoenix Boulevard, suite 450, Atlanta, Georgia; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Neil Berryman, Aerospace Engineer, Systems and Flight Test Branch, ACE–116A, FAA, Small Airplane Directorate, Atlanta Aircraft Certification Office, One Crown Center, 1895 Phoenix Boulevard, suite 450, Atlanta, Georgia 30337–2748; telephone (770) 703–6066; fax (770) 703–6097.

SUPPLEMENTARY INFORMATION: The FAA has received reports indicating that, during recent inspections and operational tests of the elevator Hardover Prevention System (HOPS) on certain Gulfstream Model GV series airplanes, a configuration discrepancy was identified in which certain electrical connectors were incorrectly connected to the hydraulic deactivation valves of the elevator HOPS. The flight control hydraulic servos on the Gulfstream Model GV series airplane incorporate two redundant actuator pistons. The HOPS is designed to detect a runaway (or hardover) condition in either of these actuator pistons, and to subsequently shut down the affected side of the hydraulic servo. If the elevator HOPS is wired incorrectly, the system will shut down the wrong side of the hydraulic servo although that actuator is still operating properly. This condition, if not corrected, would prevent the correct operation of the elevator HOPS, which could result in loss of control of the airplane.

Explanation of Relevant Service Information

The FAA has reviewed and approved Gulfstream Aerospace Alert Customer Bulletin No. 3, dated February 25, 1998, which describes procedures for performing a one-time inspection of the elevator HOPS to detect any incorrect wiring connections associated with the HOPS hydraulic deactivation valves, and corrective action, if necessary. The alert customer bulletin also describes procedures for a one-time functional test to ensure correct operation of the elevator HOPS.

In addition, the FAA has reviewed and approved Gulfstream Aerospace GV Customer Bulletin No. 4, dated March 31, 1998, which describes procedures for modifying the electrical harness of the hydraulic deactivation valves of the left elevator HOPS, and installing additional identification decals in order to prevent future miswiring. Accomplishment of the actions specified in this customer bulletin eliminates the need for the inspection and functional test specified in Gulfstream Alert Customer Bulletin No. 3.

Explanation of the Requirements of the Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design, this AD is being issued to prevent the incorrect operation of the elevator HOPS, which could result in loss of control of the airplane. This AD requires accomplishment of the actions specified in the customer bulletins described previously, except as discussed below.

Differences Between This Rule and Customer Bulletin

Operators should note that Gulfstream Aerospace Alert Customer Bulletin No. 3, dated February 25, 1998, describes a one-time inspection and functional test to verify proper electrical configuration and operation of the elevator HOPS. The FAA has determined that, because of the safety implications and consequences associated with energizing the incorrect hydraulic deactivation valve of the elevator HOPS, performance of the inspection and functional test is necessary following accomplishment of any maintenance action associated with the elevator HOPS, until the wiring modifications described in Gulfstream Aerospace GV Customer Bulletin No. 4, dated March 31, 1998, are accomplished.

Operators also should note that, although Gulfstream Aerospace Alert Customer Bulletin No. 3 specifies that the manufacturer may be contacted if technical assistance is required during accomplishment of the functional test, this AD requires that repair of any discrepancies be accomplished in accordance with a method approved by the FAA.

Determination of Rule's Effective Date

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 shall identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 98–NM–114–AD.'' The postcard will be date stamped and returned to the commenter.

Regulatory Impact

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

98–09–01 Gulfstream Aerospace Corporation: Amendment 39–10480. Docket 98–NM–114–AD.

Applicability: Model GV series airplanes, serial numbers 501 and 504 through 540 inclusive, certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent the incorrect operation of the elevator Hardover Prevention System (HOPS), which could result in loss of control of the airplane, accomplish the following:

(a) Within 25 flight hours after the effective date of this AD, accomplish the requirements of paragraphs (a)(1) and (a)(2) of this AD, in accordance with Gulfstream Aerospace Alert Customer Bulletin No. 3, dated February 25, 1998.

(1) Perform a visual inspection to verify correct wire connections to the forward and aft hydraulic deactivation valve, left- and right-hand sides, of the elevator HOPS. If any connector is connected improperly, prior to further flight, re-connect the wiring in accordance with the alert customer bulletin. And

(2) Perform a functional test to ensure correct operation of the elevator HOPS. If any discrepancy is found, prior to further flight, repair in accordance with a method approved by the Manager, Atlanta Aircraft Certification Office (ACO), FAA, Small Airplane Directorate.

(b) Thereafter, repeat the actions required by paragraph (a) of this AD immediately following accomplishment of any maintenance actions on the elevator HOPS, until the actions required by paragraph (c) of the AD have been accomplished.

(c) Within 150 flight hours after the effective date of this AD, modify the electrical harness of the hydraulic deactivation valves of the left elevator HOPS, and install additional identification decals, in accordance with Gulfstream Aerospace GV Customer Bulletin No. 4, dated March 31, 1998. Accomplishment of the requirements of this paragraph constitutes terminating action for this AD.

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

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

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

(f) The inspection and functional test shall be done in accordance with Gulfstream Aerospace Alert Customer Bulletin No. 3, dated February 25, 1998. The modification shall be done in accordance with Gulfstream Aerospace GV Customer Bulletin No. 4, dated March 31, 1998. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Gulfstream Aerospace Corporation, P.O. Box 2206, M/S D–10, Savannah, Georgia 31402–9980. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Small Airplane Directorate, Atlanta Aircraft Certification Office, One Crown Center, 1895 Phoenix Boulevard, suite 450, Atlanta, Georgia; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(g) This amendment becomes effective on May 5, 1998.

Issued in Renton, Washington, on April 13, 1998.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–10276 Filed 4–17–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98–AWP–2]

Modification of Class E Airspace; Porterville, CA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action modifies the Class E airspace area at Porterville, CA. The establishment of a Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP) to Runway (RWY) 12 and a GPS SIAP to RWY 30 at Porterville Municipal Airport has made this action necessary. Additional controlled airspace extending upward from 700 feet or more above the surface of the earth is needed to contain aircraft executing the GPS RWY 12 SIAP and GPS RWY 30 SIAP to Porterville Municipal Airport. The intended effect of this action is to provide adequate controlled airspace for Instrument Flight Rules (IFR) operations Porterville Municipal Airport, Porterville, CA.

EFFECTIVE DATE: 0901 UTC August 13, 1998.

FOR FURTHER INFORMATION CONTACT:

Larry Tonish, Airspace Specialist, Airspace Branch, AWP–520, Air Traffic Division, Western-Pacific Region, Federal Aviation Administration, 15000 Aviation Boulevard, Lawndale, California 90261, telephone (310) 725–6539.

SUPPLEMENTARY INFORMATION:

History

On February 18, 1998, the FAA proposed to amend 14 CFR part 71 by modifying the Class E airspace area at Porterville, CA (63 FR 8153). Additional controlled airspace extending upward from 700 feet above the surface is needed to contain aircraft executing the GPS RWY 12 SIAP and GPS RWY 30 SIAP at Porterville Municipal Airport. This action will provide adequate controlled airspace for IFR operations at Porterville Municipal Airport, Porterville, CA. Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments to the proposal were received. Class E airspace designations for airspace extending from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9E dated September 10, 1997, and effective September 16, 1997, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Rule

This amendment to 14 CFR part 71 modifies the Class E airspace area at Porterville, CA. The development of a GPS SIAP's has made this action necessary. The effect of this action will provide adequate airspace for aircraft executing the GPS RWY 12 SIAP and GPS RWY 30 SIAP at Porterville Municipal Airport, Porterville, CA.

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

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

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9E, Airspace Designations and Reporting Points, dated September 10, 1997, and effective September 16, 1997, is amended as follows:

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

* * * * *

AWP CA E5 Porterville, CA [Revised]

Porterville Municipal Airport, CA
(lat. 36°01′48″N, long. 119°03′46″W)

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of the Porterville Municipal Airport and within an area bounded by a line beginning at lat. 35°57′54″N, long. 118°47′20″W; to lat. 35°48′30″N, long. 118°51′00″W; to lat. 35°47′30″W, long. 119°01′00″W; to lat. 35°55′26″N, long. 119°01′59″W, thence clockwise along the 6.5-mile radius of the Porterville Municipal Airport, to the point of beginning.

* * * * *

Issued in Los Angeles, California, on April 2, 1998.

Sherry Avery,

Acting Assistant Manager, Air Traffic Division, Western-Pacific Region.

[FR Doc. 98–10303 Filed 4–17–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98–AWP–5]

Establishment of Class E Airspace; Delano, CA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes a Class E airspace area at Delano, CA. Additional controlled airspace extending upward from 700 feet or more above the surface of the earth is needed to contain aircraft executing instrument operations at Delano Municipal Airport. The intended effect of this action is to provide adequate controlled airspace for Instrument Flight Rules (IFR) operations at Delano Municipal Airport, Delano, CA.

EFFECTIVE DATE: 0901 UTC August 13, 1998.

FOR FURTHER INFORMATION CONTACT:

Larry Tonish, Airspace Specialist, Airspace Branch, AWP–520, Air Traffic Division, Western-Pacific Region, Federal Aviation Administration, 15000 Aviation Boulevard, Lawndale, California 90261, telephone (310) 725–6539.

SUPPLEMENTARY INFORMATION:

History

On February 18, 1998, the FAA proposed to amend 14 CFR part 71 by establishing a Class E airspace area at Delano, CA (63 FR 8151). Additional controlled airspace extending upward from 700 feet above the surface is needed to contain aircraft executing instrument operations at Delano Municipal Airport. This action will provide adequate controlled airspace for IFR operations at Delano Municipal Airport, Delano, CA.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments to the proposal were received. Class E airspace designations for airspace extending from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9E dated September 10, 1997, and effective September 16, 1997, which is incorporated by reference in 14 CFR 71.1 The Class E airspace designation listed in this document will be published subsequently in the Order.

The Rule

This amendment to 14 CFR part 71 establishes a Class E airspace area at Delano, CA. Additional controlled airspace was required for aircraft executing instrument operations at Delano Municipal Airport. The effect of this action will provide adequate airspace for aircraft executing IFR operations at Delano Municipal Airport, Delano, CA.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation—(1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a

Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

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

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9E, Airspace Designations and Reporting Points, dated September 10, 1997, and effective September 16, 1997, is amended as follows:

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

* * * * *

AWP CA E5 Delano, CA [New]

Delano Municipal Airport, CA
(lat. 35°44′44″N, long. 119°14′611″W)

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of the Delano Municipal Airport, excluding the Bakersfield, CA, Class E airspace area.

* * * * *

Issued in Los Angeles, California, on April 2, 1998.

Sherry Avery,

Acting Assistant Manager, Air Traffic Division, Western-Pacific Region.

[FR Doc. 98–10302 Filed 4–17–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 97–ACE–39]

Amendment to Class E Airspace; Valentine, NE

AGENCY: Federal Aviation Administration, DOT.

ACTION: Direct final rule; confirmation of effective date.

SUMMARY: This document confirms the effective date of a direct final rule published on February 19, 1998, which revises Class E airspace at Valentine, NE.

DATES: The direct final rule published at 63 FR 8345 is effective on 0901 UTC, June 18, 1998.

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

SUPPLEMENTARY INFORMATION: The FAA published this direct final rule with a request for comments in the **Federal Register** on February 19, 1998 (63 FR 8345). The FAA uses the direct final rulemaking procedure for a non-controversial rule where the FAA believes that there will be no adverse public comment. This direct final rule advised the public that no adverse comments were anticipated, and that unless a written adverse comment, or a written notice of intent to submit such an adverse comment, were received within the comment period, the regulation would become effective on June 18, 1998. No adverse comments were received, and thus this document confirms that this direct final rule will become effective on that date.

Issued in Kansas City, MO on March 25, 1998.

Herman J. Lyons, Jr.,

Manager, Air Traffic Division, Central Region.

[FR Doc. 98–10173 Filed 4–17–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 97–ACE–38]

Amendment to Class E Airspace; Chadron, NE

AGENCY: Federal Aviation Administration, DOT.

ACTION: Direct final rule; confirmation of effective date.

SUMMARY: This document confirms the effective date of a direct final rule published on February 19, 1998, which revises Class E airspace at Chadron, NE.

DATES: The direct final rule published at 63 FR 8343 is effective on 0901 UTC, June 18, 1998.

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

SUPPLEMENTARY INFORMATION: The FAA published this direct final rule with a request for comments in the **Federal Register** on February 19, 1998 (63 FR 8343). The FAA uses the direct final rulemaking procedure for a non-controversial rule where the FAA believes that there will be no adverse public comment. This direct final rule advised the public that no adverse comments were anticipated, and that unless a written adverse comment, or a written notice of intent to submit such an adverse comment, were received within the comment period, the regulation would become effective on June 18, 1998. No adverse comments were received, and thus this document confirms that this direct final rule will become effective on that date.

Issued in Kansas City, MO on March 25, 1998.

Herman J. Lyons, Jr.,

Manager, Air Traffic Division, Central Region.

[FR Doc. 98–10174 Filed 4–17–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98–ACE–1]

Amendment to Class E Airspace; Topeka, Forbes Field, KS; Correction

AGENCY: Federal Aviation Administration, DOT.

ACTION: Direct final rule; confirmation of effective date and correction.

SUMMARY: This document confirms the effective date of a direct final rule published on February 19, 1998, which revises Class E airspace at Topeka, Forbes Field, KS, and corrects two errors in the airspace designation as published in the direct final rule.

DATES: The direct final rule published at 63 FR 8342 is effective on 0901 UTC, June 18, 1998.

This correction is effective on June 18, 1998.

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

SUPPLEMENTARY INFORMATION: On February 19, 1998, the FAA published in the **Federal Register** a direct final rule; request for comments, which modified Class E airspace at Topeka, Forbes Field, KS (FR Document 98–3968, 63 FR 8342, Airspace Docket No. 98–ACE–1). Two errors were subsequently discovered in the Class E airspace designation. After careful review of all available information related to the subject presented above, the FAA has determined that air safety and the public interest require adoption of the rule. The FAA has determined that these corrections will not change the meaning of the action nor add any additional burden on the public beyond that already published. This action corrects those errors and confirms the effective date of the direct final rule.

The FAA uses the direct final rulemaking procedure for a non-controversial rule where the FAA believes that there will be no adverse public comment. This direct final rule advised the public that no adverse comments were anticipated, and that unless a written adverse comment, or a written notice of intent to submit such an adverse comment, were received within the comment period, the regulation would become effective on June 18, 1998. No adverse comments were received, and thus this document confirms that this direct final rule will become effective on that date.

Correction

In rule FR Doc. 98–3968 published in the **Federal Register** on February 19, 1998, 63 FR 8342, make the following correction to the Topeka, Forbes Field, KS, Class E airspace designation incorporated by reference, in 14 CFR 71.1:

§ 71.1 [Corrected]

1. On page 8343 in the third column, in the airspace designation, under ACE KS E5 Topeka, Forbes Field, KS [Revised], in the fourth line, the geographic coordinates for Topeka, Forbes Field, KS ''(Lat. 38°57′01″ N., long. 95°39′51″ W.)'' are corrected to read ''(Lat. 38°57′03″ N., long. 95°39′49″ W.) ''.

2. On page 8343, in the third column, in the airspace designation, under ACE KS E5 Topeka, Forbes Field, KS [Revised], after the sixth line, add ''Topeka, Forbes Field ILS (Lat. 38°58′04″ N., long. 95°40′50″ W.)''.

Issued in Kansas City, MO on March 25, 1998.

Herman J. Lyons, Jr.,

Manager, Air Traffic Division, Central Region.

[FR Doc. 98–10172 Filed 4–17–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 97–ASO–16]

RIN 2120–AA66

Modification of the Atlantic High Offshore Airspace Area

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action modifies the Atlantic High Offshore Airspace Area. Specifically, this action extends the southeast boundary of the Atlantic High Offshore Airspace Area to coincide with the San Juan Combined Center-Radar Approach Control (CERAP) oceanic area of control. The FAA is taking this action to facilitate the use of domestic air traffic control (ATC) procedures within the extended Atlantic High Offshore Airspace Area, thereby enhancing the management of air traffic operations and allowing for more efficient use of the airspace.

EFFECTIVE DATE: 0901 UTC, June 18, 1998.

FOR FURTHER INFORMATION CONTACT: Ellen E. Crum, Airspace and Rules Division, ATA–400, Office of Air Traffic Airspace Management, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION:

History

On November 18, 1997, the FAA proposed to amend 14 CFR part 71 (part 71) to modify the Atlantic High Offshore Airspace Area (62 FR 61458). Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal. In response to the notice, the FAA received one comment from the Air Line Pilots Association supporting this action.

Except for editorial changes this rule is the same as that proposed in the notice. Offshore airspace area designations are published in paragraph 2003 of FAA Order 7400.9E dated September 10, 1997, and effective September 16, 1997, which is incorporated by reference in 14 CFR 71.1. The Offshore airspace area listed in this document will be published subsequently in the Order.

The Rule

This amendment to part 71 modifies the Atlantic High Offshore Airspace Area by extending the southeast boundary of the Atlantic High Offshore Airspace Area to coincide with the San Juan CERAP oceanic area of control.

Currently, aircraft transitioning to/from the Bahamas and Caribbean areas encounter two different types of airspace and two different sets of ATC procedures. Aircraft departing the Miami Air Route Traffic Control Center (ARTCC) oceanic control area and transitioning southeast to the Bahamas and Caribbean areas encounter airspace which is governed by separation standards for International Civil Aviation Organization (ICAO) operations until reaching the boundary of the San Juan CERAP oceanic control area. The reverse situation applies for aircraft departing San Juan CERAP's area of control en route to the boundary for the Miami ARTCC area of control.

This modification allows the application of domestic ATC procedures, in the Atlantic High Offshore Airspace Area in lieu of ICAO oceanic ATC procedures, thereby enhancing the flow of air traffic and allowing for a more efficient use of the airspace area.

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

Because this amendment involves, in part, the modification of navigable airspace outside of the United States, the Administrator has consulted with the Secretary of State and the Secretary of Defense in accordance with the provisions of Executive Order 10854.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

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

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

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9E, Airspace Designations and Reporting Points, dated September 10, 1997, and effective September 16, 1997, is amended as follows:

Paragraph 2003—Offshore Airspace Areas

* * * * *

Atlantic High [Revised]

That airspace extending upward from 18,000 feet MSL to and including FL 600 within the area bounded on the east from north to south by the Moncton FIR, New York Oceanic CTA/FIR, and the San Juan Oceanic CTA/FIR; to the point where the San Juan Oceanic CTA/FIR boundary turns southwest at lat. 21°08′00″N., long. 67°45′00″ W., thence from that point southeast via a straight line to intersect a 100-mile radius of the Fernando Luis Ribas Dominicci Airport at lat. 19°43′08″ N., long. 67°01′17″ W., thence counterclockwise via a 100-mile radius of the Fernando Luis Ribas Dominicci Airport to lat. 18°54′10″ N., long. 67°39′43″ W., thence from that point northwest via a straight line to intersect the point where the Santo Domingo FIR turns northwest at lat. 19°40′00″ N., long. 69°09′00″ W., thence from that point the area is bounded on the south from east to west by the Santo Domingo FIR, Port-au-Prince CTA/FIR, and the Havana CTA/FIR; bounded on the west from south to north by the Houston Oceanic CTA/FIR, southern boundary of the Jacksonville Air Route Traffic Control Center and a line 12 miles offshore and parallel to the U.S. shoreline.

* * * * *

Issued in Washington, DC, on April 13, 1998.

Reginald C. Matthews,

Acting Program Director for Air Traffic Airspace Management.

[FR Doc. 98–10301 Filed 4–17–98; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

Airspace Docket No. 97–AWP–17

RIN 2120–AA66

Establishment of VOR Federal Airway; California

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; confirmation of effective date.

SUMMARY: On October 27, 1997, the FAA published a final rule in the **Federal Register** that established Federal Airway 607 (V–607) between Mendocino, CA, and Arcata, CA. On December 8, 1997, the implementation of this airway was delayed to permit the FAA to add an intersection on V–607 and to conduct additional flight inspections. This action confirms the implementation date for V–607 as June 18, 1998.

EFFECTIVE DATES: The final rule published in the **Federal Register** on October 27, 1997 (62 FR 55502), and delayed on December 8, 1997 (62 FR 64521), is effective 0901 UTC June 18, 1998.

FOR FURTHER INFORMATION CONTACT: Ken McElroy, Airspace and Rules Division, ATA–400, Office of Air Traffic Airspace Management, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION:

On June 20, 1997, the FAA published a Notice of Proposed Rulemaking in the **Federal Register**, inviting comments on a proposal to provide an airway between Mendocino, CA, and Arcata, CA (62 FR 33579). The proposed airway is necessary to efficiently manage air traffic operations during those periods when nonradar procedures are in use. No comments were received in response to the proposal.

On October 27, 1997, the FAA published a final rule amending 14 CFR part 71, establishing V–607 between Mendocino, CA, and Arcata, CA (62 FR 55502). However, on December 8, 1997, the FAA delayed the implementation date of the V–607 amendment to establish an intersection at the dogleg of the Arcata 153° radial and the Mendocino 346° radial and to conduct additional flight inspection (62 FR 64521). This final rule confirms an effective date of June 18, 1998, for the implementation of V–607 between Mendocino, CA, and Arcata, CA.

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Effective Date

The effective date of the final rule, Airspace Docket 97–AWP–17, as published in the **Federal Register** on October 27, 1997 (62 FR 55502), and delayed on December 8, 1997 (62 FR 64521), is 0901 UTC June 18, 1998.

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

Issued in Washington, DC, on April 14, 1998.

Reginald C. Matthews,

Acting Program Director for Air Traffic Airspace Management.

[FR Doc. 98–10389 Filed 4–17–98; 8:45 am]

BILLING CODE 4910–13–P

FEDERAL TRADE COMMISSION

16 CFR Part 305

Rule Concerning Disclosures Regarding Energy Consumption and Water Use of Certain Home Appliances and Other Products Required Under the Energy Policy and Conservation Act (''Appliance Labeling Rule'')

AGENCY: Federal Trade Commission.

ACTION: Final rule.

SUMMARY: The Federal Trade Commission amends its Appliance Labeling Rule by publishing new ranges of comparability to be used on required labels for clothes washers.

DATES: *Effective:* August 12, 1998.

Compliance: Manufacturers of clothes washers must begin using these revised ranges on labels on clothes washers manufactured on or after August 12,

1998. Manufacturers may begin using these revised ranges on labels on clothes washers manufactured on or after July 1, 1998, in order to comply with the July 1, 1998 mandatory effective date of recent amendments to the Department of Energy's (''DOE'') test procedure for clothes washers, 62 FR 45484 (August 27, 1997).

FOR FURTHER INFORMATION CONTACT:

James Mills, Attorney, Division of Enforcement, Federal Trade Commission, Washington, DC 20580 (202–326–3035).

SUPPLEMENTARY INFORMATION: The Appliance Labeling Rule (''Rule'') was issued by the Commission in 1979, 44 FR 66466 (Nov. 19, 1979), in response to a directive in the Energy Policy and Conservation Act of 1975.[1] The Rule covers eight categories of major household appliances. Clothes washers are among those categories. The Rule also covers pool heaters, 59 FR 49556 (Sept. 28, 1994), and contains requirements that pertain to fluorescent lamp ballasts, 54 FR 28031 (July 5, 1989), certain plumbing products, 58 FR 54955 (Oct. 25, 1993), and certain lighting products, 59 FR 25176 (May 13, 1994, eff. May 15, 1995).

The Rule requires manufacturers of all covered appliances and pool heaters to disclose specific energy consumption or efficiency information (derived from the DOE test procedures) at the point of sale in the form of an ''EnergyGuide'' label and in catalogs. It also requires manufacturers of furnaces, central air conditioners, and heat pumps either to provide fact sheets showing additional cost information, or to be listed in an industry directory showing the cost information for their products. The Rule requires that manufacturers include, on labels and fact sheets, an energy consumption or efficiency figure and a ''range of comparability.'' This range shows the highest and lowest energy consumption or efficiencies for all comparable appliance models so consumers can compare the energy consumption or efficiency of other models (perhaps competing brands) similar to the labeled model. The Rule requires that manufacturers also include, on labels for some products, a secondary energy usage disclosure in the form of an estimated annual operating cost based on a specified DOE national average cost for the fuel the appliance uses.

Section 305.8(b) of the Rule requires manufacturers, after filing an initial report, to report certain information annually to the Commission by specified dates for each product type.[2] These reports, which are to assist the Commission in preparing the ranges of comparability, contain the estimated annual energy consumption or energy efficiency ratings for the appliances derived from tests performed pursuant to the DOE test procedures. Because manufacturers regularly add new models to their lines, improve existing models, and drop others, the data base from which the ranges of comparability are calculated is constantly changing. To keep the required information consistent with these changes, under Section 305.10 of the Rule, the Commission will publish new ranges (but not more often than annually) if an analysis of the new information indicates that the upper or lower limits of the ranges have changed by more than 15%. Otherwise, the Commission will publish a statement that the prior ranges remain in effect for the next year.

On August 27, 1997, DOE revised its test procedure for the clothes washer category. 62 FR 45,484. Manufacturers of clothes washers have made the required annual submissions of data for this product category, and the data are based on the revised version of the test, which will become effective July 1, 1998. In analyzing the date, the Commission has found that a significant number of the upper and lower limits of the ranges have changed by more than 15%. Accordingly, the Commission is publishing new ranges of comparability for the clothes washer category. These ranges will supersede the current ranges for clothes washers, which were published originally on May 14, 1997 (62 FR 26,383), and later corrected on August 6, 1997 (62 FR 42,209), and which became effective August 12, 1997.

Section 326(c) of EPCA, 42 U.S.C. 6296, states that the Commission may not require labels to be changed to reflect revisions to the ranges of comparability more often than annually. Thus, the effective date of today's revision to the ranges of comparability for clothes washers is August 12, 1998, one day beyond a year from the effective date of the previous ranges. The Commission notes, however, that manufacturers of clothes washers may begin using these revised ranges on labels on clothes washers manufactured on or after July 1, 1998, in order to comply with the mandatory effective date of the amended DOE test procedure for those products.

In consideration of the foregoing, the Commission revises Appendix F of its Appliance Labeling Rule by publishing the following ranges of comparability for use in required disclosures (including labeling) for clothes washers manufactured on or after August 12, 1998. In addition, as of this effective date, manufacturers must base the disclosures of estimated annual operating cost required at the bottom of the EnergyGuide for clothes washers on the 1998 Representative Average Unit Costs of Energy for electricity (8.42 cents per kiloWatt-hour) and natural gas (61.9 cents per therm) that were published by DOE on December 8, 1997, 62 FR 64,574, and by the Commission on December 29, 1997, 62 FR 67,560. On July 1, 1998, manufacturers may voluntarily begin basing the disclosures of estimated annual operating cost required at the bottom of the EnergyGuide for clothes washers on the 1998 Representative Average Unit Costs of Energy for electricity and natural gas.

Regulatory Flexibility Act

The provisions of the Regulatory Flexibility Act relating to a Regulatory Flexibility Act analysis (5 U.S.C. 603–604) are not applicable to this proceeding because the amendments do not impose any new obligations on entities regulated by the Appliance Labeling Rule. Thus, the amendments will not have a ''significant economic impact on a substantial number of small entities'' (5 U.S.C. 605). The Commission has concluded, therefore, that a regulatory flexibility analysis is not necessary, and certifies, under Section 605 of the Regulatory Flexibility Act (5 U.S.C. 605(b)), that the amendments announced today will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

The Paperwork Reduction Act (''PRA''), 44 U.S.C. 3501 *et seq.*, requires government agencies, before promulgating rules or other regulations that require ''collections of information'' i.e., recordkeeping, reporting, or third-party disclosure requirements), to obtain approval from the Office of Management and Budget (''OMB''), 44 U.S.C. 3502. The Commission currently has OMB clearance for the Rule's information collection requirements (OMB No. 3084–0069). The amendment will not impose any new information collection requirements. Instead, it will provide manufacturers with revised ranges of comparability to use the EnergyGuide labels already required by the Rule.

[1] 42 U.S.C. 6294. The statute also requires DOE to develop test procedures that measure how much energy the appliances use, and to determine the representative average cost a consumer pays for the different types of energy available.

[2] Reports for clothes washers are due March 1.

List of Subjects in 16 CFR Part 305

Advertising, Energy conservation, Household appliances, Labeling, Reporting and recordkeeping requirements.

Accordingly, 16 CFR Part 305 is amended as follows:

PART 305—[AMENDED]

1. The authority citation for Part 305 continues to read as follows:

Authority: 42 U.S.C. 6294.

2. Appendix F to Part 305 is revised to read as follows:

Appendix F to Part 305—Clothes Washers

Range Information:

''Compact'' includes all household clothes washers with a tub capacity of less than 1.6 cu. ft. or 13 gallons of water.

''Standard'' includes all household clothes washers with a tub capacity of 1.6 cu. ft. or 13 gallons of water or more.

Capacity	Range of estimated annual energy consumption (kWh/yr.)	
	Low	High
Compact:		
Top Loading	592	607
Front Loading	(*)	(*)
Standard:		
Top Loading	294	1231
Front Loading	241	318

(*) No data submitted.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 98–10391 Filed 4–17–98; 8:45 am]

BILLING CODE 6750–01–M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 142

[T.D. 98–34]

Technical Correction Regarding Time Limit for Filing Documentation After Release

AGENCY: United States Customs Service, Department of the Treasury.

ACTION: Final rule.

SUMMARY: This document makes a technical correction to the regulation regarding time limit for filing documentation after release, in accordance with Customs policy of periodically reviewing its regulations to ensure that they are current and accurate.

EFFECTIVE DATE: April 20, 1998.

FOR FURTHER INFORMATION CONTACT: Harold Singer, Chief, Regulations Branch, (202) 927–2268.

SUPPLEMENTARY INFORMATION:

Background

In accordance with Customs policy of periodically reviewing its regulations to ensure that they are current and accurate, Customs has discovered that there is a typographical error in § 142.23, Customs Regulations (19 CFR 142.23). Section 142.23 was amended by Treasury Decision 80–26, which was published in the **Federal Register** (45 FR 3901) on January 21, 1980. When that amendment was codified in Title 19 in 1980, the word ''period'' was inadvertently omitted. The error has been carried forward in each volume of Title 19 since that publication. This document corrects the error.

Inapplicability of Public Notice and Comment and Delayed Effective Date Requirements, the Regulatory Flexibility Act, and Executive Order 12866

Inasmuch as this amendment merely corrects a typographical error, pursuant to 5 U.S.C. 553(b)(B), notice and public procedure thereon are unnecessary, and pursuant to 5 U.S.C. (d)(3), a delayed effective date is not required. Since this document is not subject to the notice and public procedure requirements of 5 U.S.C. 553, it is not subject to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This amendment does not meet the criteria for a ''significant regulatory action'' as defined in Executive Order 12866.

Drafting Information

The principal author of this document was Janet L. Johnson, Regulations Branch, U.S. Customs Service. However, personnel from other offices participated in its development.

List of Subjects in 19 CFR Part 142

Customs duties and inspection.

Amendment to the Regulations

Part 142, Customs Regulations (19 CFR part 142), is amended as set forth below.

PART 142—ENTRY PROCESS

1. The general authority citation for part 142 continues to read as follows:

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

§ 142.23 [Amended]

2. Section 142.23 is amended by removing the words ''for quota class merchandise within the quota'' and adding in their place ''for quota class merchandise within the quota period''.

Dated: April 15, 1998.

Harold M. Singer,

Chief, Regulations Branch.

[FR Doc. 98–10316 Filed 4–17–98; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 610

[Docket No. 97N–0449]

RIN 0910–ZA08

Revisions to the General Safety Requirements for Biological Products

AGENCY: Food and Drug Administration, HHS.

ACTION: Direct final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the biologics regulations by adding ''cellular therapy products'' to the list of products excepted from the general safety test (GST) and by adding an administrative procedure for obtaining exemptions from the GST requirements for other biological products. FDA is taking this

action because the GST may not be relevant or necessary for biological products, including cellular therapy products, currently in various stages of development. This direct final rule is part of FDA's continuing effort to achieve the objectives of the President's ''Reinventing Government'' initiative, and is intended to reduce the burden of unnecessary regulations on biological products without diminishing the protection of the public health. Elsewhere in this **Federal Register**, FDA is publishing a companion proposed rule under FDA's usual procedures for notice and comment to provide a procedural framework to finalize the rule in the event the agency receives any significant adverse comment and withdraws this direct final rule.

DATES: This regulation is effective September 2, 1998. Submit written comments on this direct final rule on or before July 6, 1998. Submit written comments on the information collection provisions by June 19, 1998.

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

FOR FURTHER INFORMATION CONTACT: Dano B. Murphy, Center for Biologics Evaluation and Research (HFM–630), Food and Drug Administration, 1401 Rockville Pike, suite 200N, Rockville, MD 20852–1448, 301–594–3074.

SUPPLEMENTARY INFORMATION:

I. Background

Under § 610.11 (21 CFR 610.11), a test for general safety shall be performed on biological products intended for administration to humans. A GST is one of several tests in part 610, General Biological Product Standards (21 CFR part 610), that are intended to help ensure the safety, purity, and potency of biological products administered to humans. The test is used to detect extraneous toxic contaminants that may be present in a particular biological product. As outlined in § 610.11, an amount of the final container product is injected into the peritoneum of guinea pigs and mice. The GST is satisfactory when: The criteria in § 610.11(d) are met, i.e., injected animals survive the test period, they do not exhibit an unexpected or nonspecific response that may indicate a difference in quality of the product, and they weigh no less at the end of the test period than they did at the time of injection. Section 610.11(g) identifies the biological products for which the GST is not required.

The requirement for a GST test was originally intended as a means by which harmful extraneous toxins could be detected (41 FR 10888, March 15, 1976). The source of such toxins may be bacterial toxins that persist even after the bacteria producing the toxins had been removed by filtration or killed by sterilization, or formulation errors that result in harmful levels of certain substances, e.g., preservatives. The test continues to serve as a safety net to detect harmful contaminants that may enter or be introduced into the final container through undetected failures in the manufacture of biological products.

In the last 15 years, technological advances have increased the ability of manufacturers to control and analyze the manufacture of many biotechnology derived biological products. After more than a decade of experience with these products, FDA found that it could evaluate many aspects of a biological product's safety, purity, or potency with tests other than those prescribed in part 610. In response to these developments, FDA published in the **Federal Register** on May 14, 1996 (61 FR 24227), a final rule exempting certain biotechnology and synthetic biological products from, among other things, specified regulations applicable to biological products, including the GST (§ 601.2 (21 CFR 601.2)).

Recent scientific advances have dramatically increased the diversity of biological products regulated under section 351 of the Public Health Service Act. In particular, cellular-based therapies intended for the diagnosis, cure, mitigation, treatment, or prevention of disease in man have been the subject of much biomedical research and are used with increasing frequency. Typically, cellular therapies use autologous or allogeneic cells, often lymphocyte subpopulations, but other cell types may be used, obtained from a donor and manipulated ex vivo to varying degrees before use in the recipient patient. The ex vivo manipulation may consist of, for example, growing a small number of cells to increase their number (cellular expansion), selective enrichment of a specific cell subpopulation, or the addition of specific cell factors or genetic sequences. A common characteristic of cellular therapies is the need for a relatively short turn-around time between first obtaining the cells and their final infusion as a cellular therapy product into the patient. In many cases, cells used in the final cellular therapeutic are obtained only hours before they must be used and turn-around times of several days or less are presently typical. A test, such as the GST, that requires 7 days to complete is not compatible with such products and such a requirement would make it impossible to use many of these products. Furthermore, because the procedures and materials used to produce cellular therapy products are stringently controlled and monitored, the likelihood of an extraneous toxic component contaminating a final product is greatly reduced.

In the **Federal Register** of June 3, 1994 (59 FR 28821 at 28822), FDA announced that the Center for Biologics Evaluation and Research (CBER) would review certain biologics regulations to identify regulations that are outdated, burdensome, inefficient, duplicative, or otherwise unsuitable or unnecessary. FDA included § 610.11 in the review. On January 26, 1995, FDA held a public meeting to discuss the retrospective review of regulations applicable to biological products and to provide a forum for the public to voice its comments regarding the retrospective review. At the meeting, only one comment addressed whether § 610.11 should be retained unchanged, modified, or deleted. The comment acknowledged the utility of the GST for products that have a high degree of intrinsic variability. However, despite its recognized value in some specific cases, the comment questioned the rationale for requiring the GST for all biological products intended for administration to humans. The comment noted that the amount of final container product administered to animals for the GST may not have any correlation with the human dose, that some biological products possess extensive documented histories of no GST failure, and that each run of the test requires the use of at least four animals. The comment suggested that FDA revise § 610.11 to grant exemptions from the GST when the test is unnecessary to evaluate the safety of a specific product.

FDA received several comments from the public regarding issues raised at the January 26, 1995, meeting. Two comments agreed with the suggestion made at the public meeting that § 610.11 be amended to include a provision that would allow certain products to be exempted from the GST upon approval of the Director, CBER. Another comment suggested that exemptions be permitted for appropriate biological products by the Director, CBER, after a suitable qualification period was met without any failure of the GST, such as 1 year of production or after 10 consecutive production lots pass the GST. The comment suggested that a demonstrated record of GST compliance also be supported by well-documented in-

process safety controls, long-term compliance with current good manufacturing practices regulations (21 CFR parts 210 and 211), and the use of sophisticated analytical techniques capable of adequately characterizing the final product and validating its safety.

On March 17, 1997, FDA held a public meeting to discuss the agency's proposed approach to the regulation of human cellular and tissue-based products. The meeting was attended by FDA, members of industry, representatives from accrediting organizations, and interested members of the public. During the meeting, two attendees addressed the use of the GST with cellular therapy products. The comments regarded the 7-day incubation time of the test as an unworkable requirement for many cellular therapy products and suggested that such products be exempted from the test, including allogeneic and autologous cell therapy products.

II. Highlights of the Direct Final Rule

FDA agrees with the comments received that cellular therapy products should be exempt from the GST requirement. FDA is issuing this direct final rule to expand the exceptions in § 610.11(g) to include ''cellular therapy products.'' In addition, FDA is adding an administrative procedure for manufacturers of other biological products to request and obtain exemptions from the GST. Many biological products are currently manufactured, or will be manufactured in the future, under highly controlled and rigorously monitored conditions. Therefore, under the amended rule, manufacturers of biological products that employ appropriate production controls and quality assurance safeguards would be permitted to apply for an exemption from the GST requirement. Such manufacturers will be required to provide supporting documentation to the Director, CBER, as to why a product should not be subject to the GST requirement. The request shall include an explanation of why the GST is unnecessary or cannot be performed due to the mode of administration, the method of preparation, or the special nature of the product and shall describe alternate procedures, if any, to be employed. The Director, CBER, may grant an exemption if she finds that the manufacturer's submission justifies an exemption.

The value of the GST as a final assay for the presence of extraneous toxins may be diminished for certain biological products, such as vaccines containing recombinant or purified protein antigens. Recombinant protein antigens are not produced from infectious bacteria or virus and antigens derived from infectious pathogens may undergo many production steps that kill or neutralize the pathogen or inactivate toxic materials. Therefore, for these kinds of products, the risk is extremely low that viable pathogenic or toxic materials will persist through production to the final filling. The effectiveness of such steps can be validated by specific in-process tests and controls which can be used to alert manufacturers to potential problems. To further reduce the possibility that an undetected extraneous toxin could contaminate the product just before or during the final fill stage, a manufacturer may use production facilities and final fill equipment that can detect or enable the detection of any loss in the integrity of the production and fill processes. In addition, a method of production and detailed product characterization able to meet requirements similar to those set out in § 601.2(c) could be used to demonstrate the safety, purity, and potency of a biological product without the use of the GST. Each manufacturer will be responsible for identifying the product or products that are produced in such a manner that makes the GST unnecessary to ensure the safety, purity, and potency of the biological product. Manufacturers wishing to obtain an exemption to the GST for a particular product would contact the appropriate product division of CBER for specific information regarding how to apply and what information should be included in the application or supplemental application.

III. Rulemaking Action

In the **Federal Register** of November 21, 1997 (62 FR 62466), FDA described its procedures on when and how FDA will employ direct final rulemaking. FDA believes that this rule is appropriate for direct final rulemaking because FDA views this rule as a noncontroversial amendment and anticipates no significant adverse comments. Consistent with FDA's procedures on direct final rulemaking, FDA is publishing elsewhere in this **Federal Register** issue, a companion proposed rule to amend the existing GST rule. The companion proposed rule provides a procedural framework within which the rule may be finalized in the event the direct final rule is withdrawn because of any significant adverse comment. The comment period for the direct final rule runs concurrently with the companion proposed rule. Any comments received under the companion proposed rule will be considered as comments regarding the direct final rule.

FDA has provided a comment period on the direct final rule of 75 days after April 20, 1998. If the agency receives any significant adverse comment, FDA intends to withdraw this direct final rule action by publication in the **Federal Register** within 30 days after the comment period ends. A significant adverse comment is defined as a comment that 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. Comments that are frivolous, insubstantial, or outside the scope of the rule will not be considered significant or adverse under this procedure. For example, a comment requesting inclusion of additional product classes in the exceptions paragraph of the GST (§ 610.11(g)) will not be considered a significant adverse comment because it is outside the scope of this rule. 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 additional change. In addition, if a significant adverse comment applies to part of a rule and that part can be severed form the remainder of the rule, FDA may adopt as final those parts of the rule that are not subject of a significant adverse comment.

If any significant adverse comment is received during the comment period, FDA will publish, within 30 days after the comment period ends, a document withdrawing the direct final rule. If FDA withdraws the direct final rule, all comments received will be applied to the proposed rule and will be considered in developing a final rule using the usual Administrative Procedure Act notice-and-comment procedures.

If FDA receives no significant adverse comments during the specified comment period, FDA intends to publish a confirmation document within 30 days after the comment period ends confirming that the direct final rule will go into effect on September 2, 1998.

IV. Analysis of Impacts

A. Review Under Executive Order 12866 and the Regulatory Flexibility Act

FDA has examined the impact of the direct final rule under Executive Order 12866, the Regulatory Flexibility Act (5 U.S.C. 601–612), and the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impact; and equity). The agency believes that this direct final rule is consistent with the regulatory philosophy and principles identified in the Executive Order. The direct final rule is a significant regulatory action as defined by the Executive Order and is subject to review under the Executive Order because it deals with a novel policy issue.

In accordance with the principles of Executive Order 12866, the result of the direct final rule will be a substantial reduction in burdens on applicants filing for approval of certain biological products

The Regulatory Flexibility Act requires agencies to analyze regulatory options that would minimize any significant impact of a rule on small business entities. Because, as stated previously, the overall result of the direct final rule will be a substantial reduction of the regulatory and reporting burdens, the agency certifies that the direct final rule will not have a significant negative economic impact on a substantial number of small entities. Therefore, under the Regulatory Flexibility Act, no further analysis is required. This rule also does not trigger the requirement for a written statement under section 202(a) of the Unfunded Mandates Reform Act because it does not impose a mandate that results in an expenditure of $100 million or more by State, local, and tribal governments in the aggregate, or by the private sector in any one year.

B. Environmental Impact

The agency has determined under 21 CFR 25.31(j) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

V. The Paperwork Reduction Act of 1995

This direct final rule contains information collection provisions that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The title, description, and respondent description of the information collection provisions are shown below with an estimate of the annual reporting burden. Included in the estimate is the time for reviewing the instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing each collection of information.

FDA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Title: Requests for Exemptions from the General Safety Testing Requirements for Biological Products.

Description: FDA is revising the requirements for general safety testing (GST) set forth in § 610.11. The test serves as a safety net to detect harmful contaminants that may enter or be introduced into the final container through undetected failures in the manufacture of biological products. The revision would add ''cellular therapy products'' to the list of products excepted from the GST, and add an administrative procedure for obtaining exemptions from the GST requirements for other biological products. FDA is proposing the new administrative procedure because the GST may not be feasible or appropriate for some biological products. FDA anticipates that manufacturers requesting exemptions would have a demonstrated record of GST compliance supported by long-term compliance with CGMP's, well-documented in-process safety controls, and use sophisticated analytical techniques to adequately characterize the final product and validate its safety. Manufacturers would submit their request and documentation to the Director, CBER, who may grant the exemption if it is determined that the manufacturer's submission justifies an exemption.

Description of Respondents: Manufacturers of biological products.

The direct final rule would require only those manufacturers requesting an exemption from the GST under § 610.11(g)(2) to submit additional information as part of a license application or supplement to an approved license application. Manufacturers of ''cellular therapy products'' would be excepted from the GST under § 610.11(g)(1) and thus, not have to submit an exemption request. In fact, manufacturers of cellular therapy products would be relieved of significant burdens because they would no longer be required to perform the GST and report the results to FDA. FDA estimates that annually it will receive approximately 10 requests for administrative exemption from the GST under § 610.11(g)(2). FDA estimates that 40 hours will be required for an applicant to complete and submit the appropriate information for the exemption request. Since that information is ordinarily compiled and organized by the manufacturer while performing the GST, FDA anticipates that the additional time needed to submit an exemption request will be minimal.

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

21 CFR Section	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
610.11(g)(2)	10	1	10	40	400
Total	10		10	40	400

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

As provided in 5 CFR 1320.5(c)(1), collections of information in a direct final rule are subject to the procedures set forth in 5 CFR 1320.10. Interested persons and organizations may submit comments on the information collection requirements of this direct final rule by June 19, 1998, to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857.

At the close of the 60-day comment period, FDA will review the comments received, revise the information collection provisions as necessary, and submit these provisions to OMB for review. FDA will publish a notice in the **Federal Register** when the information collection provisions are submitted to OMB, and an opportunity for public comment to OMB will be provided at that time. Prior to the effective date of the direct 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.

VI. Request for Comments

Interested persons may, on or before July 6, 1998, submit to the Docket Management Branch (address above) written comments regarding this proposal. This comment period runs concurrently with the comment period for the companion proposed rule. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday. All comments received will be considered comments regarding the proposed rule and this direct final rule. In the event the direct final rule is withdrawn, all comments received regarding the companion proposed rule and the direct final rule will be considered comments on the proposed rule.

List of Subjects in 21 CFR Part 610

Biologics, Labeling, Reporting and recordkeeping requirements.

Therefore under the Federal Food, Drug, and Cosmetic Act, and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 610 is amended as follows:

PART 610—GENERAL BIOLOGICAL PRODUCTS STANDARDS

1. The authority citation for 21 CFR part 610 continues to read as follows:

Authority: 21 U.S.C. 321, 351, 352, 353, 355, 360, 371; 42 U.S.C. 216, 262, 263, 263a, 264.

2. Section 610.11 is amended by revising paragraph (g) to read as follows:

§ 610.11 General safety.

* * * * *

(g) *Exceptions*—(1) The test prescribed in this section need not be performed for Whole Blood, Red Blood Cells, Cryoprecipitated AHF, Platelets, Plasma, or Cellular Therapy Products.

(2) For products other than those identified in paragraph (g)(1) of this section, a manufacturer may request from the Director, Center for Biologics Evaluation and Research, an exemption from the general safety test. The manufacturer shall submit information as part of a license application submission or supplement to an approved license application establishing that because of the mode of administration, the method of preparation, or the special nature of the product a test of general safety is unnecessary to assure the safety, purity, and potency of the product or cannot be performed. The request shall include any alternate procedures, if any, to be performed. The Director, Center for Biologics Evaluation and Research, upon finding that the manufacturer's request justifies an exemption, may exempt the product from the general safety test subject to any condition necessary to assure the safety, purity, and potency of the product.

Dated: April 10, 1998.

William B. Schultz,

Deputy Commissioner for Policy.

[FR Doc. 98–10314 Filed 4–17–98; 8:45 am]

BILLING CODE 4160–01–F

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: Final rule; approval of amendment.

SUMMARY: OSM is approving a proposed amendment to the Maryland regulatory program (hereinafter referred to as the ''Maryland program'') under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). Maryland proposed revisions 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 and SMCRA.

EFFECTIVE DATE: April 20, 1998.

FOR FURTHER INFORMATION CONTACT: George Rieger, Program Manager, OSM, Appalachian Regional Coordinating Center, 3 Parkway Center, Pittsburgh, PA 15220. Telephone: (412) 937–2153.

SUPPLEMENTARY INFORMATION:

I. Background on the Maryland Program
II. Submission of the Proposed Amendment
III. Director's Findings
IV. Summary and Disposition of Comments
V. Director's Decision
VI. Procedural Determinations

I. Background on the Maryland Program

On December 1, 1980, the Secretary of the Interior conditionally 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 December 1, 1980, **Federal Register** (45 FR 79449). Subsequent actions concerning conditions of approval and program amendments can be found at 30 CFR 920.12, 920.15, and 920.16.

II. Submission of the Proposed Amendment

Maryland provided an informal amendment to OSM regarding a reduced bond liability period for lands remined in a letter dated August 21, 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. OSM's review of the proposed amendment resulted in additional questions for Maryland, to which they responded in a fax dated February 26, 1998 (Administrative Record No. 579–04).

OSM announced receipt of the proposed amendment in the November 21, 1997 **Federal Register** (62 FR 62273), and in the same document opened the public comment period and provided an opportunity for a public hearing on the adequacy of the proposed amendment. The public comment period closed on December 22, 1997.

III. Director's Findings

Set forth below, pursuant to SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17, are the Director's findings concerning the proposed amendment. Revisions not specifically discussed below concern paragraph notations to reflect organizational changes resulting from this amendment.

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 Maryland.

There are no Federal counterparts to the term ''keyway'', nor is it used in the Maryland Code for anything related to the Maryland program. Therefore, the Director finds that the proposed deletion does not render the Maryland program less effective than the Federal regulations. Additionally, since subtitle 11 of the Maryland statute is the State's counterpart to Title IV of SMCRA (Abandoned Mine Lands), the Director finds that the proposed definition of ''lands eligible for remining'' is substantively identical to and therefore no less stringent than the Federal definition at section 701(34) of SMCRA.

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''. Paragraph B. currently specifies that the period of liability for a bond shall continue for a minimum period of not less than 5 years, beginning with the last year of augmented seeding, fertilizing, irrigation, or other work. The addition of the phrase ''except on lands eligible for remining'' indicates that lands eligible for remining would therefore be subject to a different period of time, which is covered in new paragraph C. below. Since the addition of this phrase to the opening sentence in paragraph B. simply adds a qualification to exempt lands eligible for remining from the 5-year period of liability, the Director finds the change no less effective than the corresponding federal regulations at 816/817.116(c) in view of the additional change explained below.

New paragraph C. is added as follows:

On lands eligible for remaining 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.

The federal rule at 30 CFR 816/817.116(c) requires that on lands eligible for remining, the operator must assume responsibility for successful revegetation for a period of 2 full years after the last year of augmented seeding, fertilizing, irrigation or other work to comply with applicable standards. Although Maryland's proposed rule includes the words ''beginning with the last year * * *'' and the Federal rule includes the words ''after the last year. * * *'' the rules do not conflict because of other regulatory sections in the Maryland program. The preamble to the Federal Rule at 48 FR 40155, dated September 2, 1983 regarding responsibility periods explained that the responsibility period could begin from the point at which the operator completes seeding and fertilizing. Maryland interprets the rule for unmined lands in this manner, and will interpret the proposed rule in the same manner. *See* February 26, 1998 fax (Administrative Record No. 579–04), Maryland's statute at § 15–513 and Maryland's regulations at COMAR 26.20.29.05 requires an operator to complete a backfilling and planting report when an affected area has been backfilled, regraded and planted in accordance with the statute and the approved reclamation plan. This report is reviewed by the on-site inspector, approved by his/her supervisor, and then approved by the Department. Only when approved by the Department does the responsibility period in Maryland begin. This is the actual practice in Maryland as monitored by OSM. Maryland's proposed regulation also requires the restart of the liability period when there is augmented seeding, fertilizing, irrigation or other work to correct a failure to maintain permanent vegetative cover. Therefore, the Director finds that the proposed revision at COMAR 26.20.14.05C is no less effective than the revegetation provisions of 816/817.116(c) that requires the period of extended responsibility for remined sites to last for two full years after the last augmented seeding.

Existing paragraph C. is re-lettered as D. and the 5-year reference is deleted. This paragraph currently specifies that if the bureau approves a long term intensive agricultural postmining land use, the applicable 5-year period of liability shall commence at the date of initial planting for such long-term intensive agricultural land use. The deletion of the 5-year reference from this paragraph allows it to pertain to all lands, i.e., lands not remined must still meet the 5-year criteria included in paragraph B., whereas lands remined would be subject to the two year criteria included in the changes outlined above in paragraph C. Since the deletion of the 5-year reference does not change the appropriate liability periods, the Director finds the change no less effective than the corresponding federal regulations at 816/817.116(c) in view of the additional changes explained above.

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

Paragraph D. discusses the schedule for release of performance bonds. 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 as 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.

The primary difference in paragraphs D.(2) and D.(3) added above from those deleted is a reference change from 03E. to 03D. of this regulation. Paragraph 03E of this regulation states that the minimum amount of the total bonds shall be $10,000 for the entire area under one permit, whereas 03D states the minimum amount of revegetation

bond shall be $600 per acre of affected land. These proposed paragraphs only change the reference from one of an overall minimum bond amount to a per acre minimum bond amount. Additionally, new paragraph D.(4) has been added to specifically address bond release on lands eligible for remining, which likewise requires that said release be performed subject to the same criteria, i.e. minimum bond amounts per acre in the same 03D reference. Since paragraph D.(4) requires the completion of Phase II and III work on lands eligible for remining before bond release, and the changes in proposed paragraphs D.(2) and (3) do not conflict with corresponding federal regulations, the Director finds that the proposed amendments are consistent with 30 CFR 800.40(c)(2) and (3).

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.'' Paragraph B.(8) currently specifies that the period of liability for a bond shall continue for a minimum period of not less than 5 years. The addition of the phrase indicates that lands eligible for remining would therefore be subject to a different period of time, which is covered in new paragraph B.(9) below. Since the addition of this phrase to the opening sentence in paragraph B.(8) simply adds a qualification to exempt lands eligible for remining from the 5-year period of liability, the Director finds the change no less effective than the corresponding federal regulations at 816/817.116(c) in view of the additional changes explained above.

Paragraph B. of COMAR 26.20.29.07 requires that the success standards for revegetation be applied in accordance with the approved post mining land use and now Maryland is adding the following condition for remined lands as set forth in new paragraph B.(9), which states:

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 and 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 in § B(9) of this regulation.

The Director finds that these revisions are substantively identical and no less effective than the corresponding Federal regulations at 30 CFR 816 and 817.116(c)(2)(ii).

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** (62 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, which are approved by the Director as stated. Since these revisions are no less effective than the federal rules, OSM finds that the non-promulgation of this section does not render the Maryland program less effective, and OSM is now deleting this section from the approved Maryland program.

IV. Summary and Disposition of Comments

Public Comments

The Director solicited public comments and provided an opportunity for a public hearing on the proposed amendment. No comments were received and because no one requested an opportunity to speak at a public hearing, no hearing was held.

Federal Agency Comments

Pursuant to 30 CFR 732.17(h)(11)(i), the Director solicited comments on the proposed amendment from various Federal agencies with an actual or potential interest in the Maryland program. MSHA responded in its letter dated November 19, 1997, (Administrative Record No. 579–02), that it anticipated no further action regarding the proposed amendment. No other comments were received.

Environmental Protection Agency (EPA)

Pursuant to 30 CFR 732.17(h)(11)(ii), OSM is required to obtain the written concurrence of the EPA with respect to those provisions of the proposed program amendment that relate to air or water quality standards promulgated under the authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or the Clean Air Act (42 U.S.C. 7401 *et seq.*). The Director has determined that this amendment contains no such provisions and that EPA concurrence is therefore unnecessary. Also, EPA did not respond to OSM's request for comments.

V. Director's Decision

The Federal regulations at 30 CFR Part 920, codifying decisions concerning the Maryland program, are being amended to implement this decision. This final rule is being made effective immediately to expedite the State program amendment process and to encourage States to bring their programs into conformity with the Federal standards without undue delay. Consistency of State and Federal standards is required by SMCRA.

VI. Procedural Determinations

Executive Order 12866

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

Executive Order 12998

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12998 (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 corresponding 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 in the analyses for the corresponding 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.

Allen D. Klein,

Regional Director, Appalachian Regional Coordinating Center.

For the reasons set out in the preamble, Title 30, Chapter VII, Subchapter T of the Code of Federal Regulations is amended as set forth below:

PART 920—MARYLAND

1. The authority citation for part 920 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

2. Section 920.15 is amended in the table by adding a new entry in chronological order by ''Date of Final Publication'' to read as follows:

§ 920.15 Approval of Maryland regulatory program amendments.

* * * * *

Original amendment submission date	Date of final publication	Citation/description
*	*	*
October 9, 1997	April 20, 1998	COMMAR 26.20.01.02B(49), 26.20.14.05 B, C & D, 26.20.14.08.D.(2) through (4), 26.20.29.07.B(8), B(9) and (C), deletion of 08.20.14.14.

[FR Doc. 98–10295 Filed 4–17–98; 8:45 am]

BILLING CODE 4310–05–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD 05–98–020]

Special Local Regulations for Marine Events; Approaches to Annapolis Harbor, Spa Creek, and Severn River, Annapolis, MD

AGENCY: Coast Guard, DOT.

ACTION: Notice of implementation.

SUMMARY: This notice implements the special local regulations for the Blue Angels Airshow, to be held May 19 and 22, 1998, over Spa Creek and the Severn River, near the U.S. Naval Academy, Annapolis, Maryland. These special local regulations are necessary to control vessel traffic in the vicinity of the U.S. Naval Academy due to the confined nature of the waterway and expected vessel congestion during the airshow. The effect will be to restrict general navigation in the regulated area for the safety of spectators and vessels transiting the event area.

DATES: The regulation implemented by this notice is effective from 11:30 a.m. to 4 p.m. on May 19, 1998 and from 11:30 a.m. to 4:30 p.m. on May 20, 1998.

FOR FURTHER INFORMATION CONTACT: Chief Warrant Officer R. L. Houck, Marine Events Coordinator, Commander, Coast Guard Activities Baltimore, 2401 Hawkins Point Road, Baltimore, MD 21226–1971, (410) 576–2674.

SUPPLEMENTARY INFORMATION: The U.S. Naval Academy will sponsor the Blue Angels Airshow over the Severn River near the U.S. Naval Academy, Annapolis, Maryland. The event will consist of 6 high performance jet aircraft flying at low altitudes in formation over the Severn River. Therefore, to ensure the safety of spectators and transiting vessels, 33 CFR 100.511 will be in effect for the duration of the event. Under provisions of 33 CFR 100.511, a vessel may not enter the regulated area unless it receives permission from the Coast Guard Patrol Commander. Spectator vessels may anchor outside the regulated area but may not block a navigable channel. Because these restrictions will be in effect for a limited period, they should not result in a significant disruption of maritime traffic.

Dated: March 25, 1998.

Roger T. Rufe, Jr.,

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

[FR Doc. 98–10306 Filed 4–17–98; 8:45 am]

BILLING CODE 4910–15–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD05–98–017]

RIN 2115–AE47

Drawbridge Operation Regulations; Anacostia River, Washington, DC

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is temporarily changing the regulations that govern the operation of the Frederick Douglass Memorial (South Capitol Street) bridge across Anacostia River at mile 1.2 in Washington, D.C. Beginning at 8 a.m. on March 11 through 11 p.m. on August 31, 1998, this regulation authorizes the bridge to remain closed to navigation. This action is necessary to facilitate extensive mechanical and electrical rehabilitation and maintain the bridge's operational integrity.

DATES: This regulation is effective from April 2, 1998 to 11 p.m. on August 31, 1998.

ADDRESSES: Douments as indicated in this preamble are available for inspection or copying at the office of the Commander (Aowb), Fifth Coast Guard District, Federal Building, 4th Floor, 431 Crawford Street, Portsmouth, Virginia 23704–5004, between 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays. The telephone number is (757) 398–6222.

FOR FURTHER INFORMATION CONTACT: Ann Deaton, Bridge Administrator, Fifth Coast Guard District, (757) 398–6222.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 553, a notice of proposed rulemaking was not published for this regulation and good cause exists for making it effective in less than 30 days from the date of publication. Publication of a notice of proposed rulemaking and delay of effective dated would be contrary to the public interest because immediate action is necessary to address the bridge's present inability to open safely.

Discussion of Regulation

The current regulation at 33 CFR 117.253(a) requires the draw to open on a signal if at least 24 hours notice is given. The draw is closed to the passage of vessels on each Presidential Inauguration Day and may occasionally be closed without advance notice to permit uninterrupted transit of dignitaries across the bridge.

Necessary repairs consist of the mechanical and electrical rehabilitation of the swing span and modification and renovation of the bridge. Two sets of span drive motors are required to rotate the bridge's swing span for the passage of marine traffic. The work will involve removing and rehabilitating one set of motors at a time, requiring the swing span to be locked in the closed position for a period of approximately five and one-half months.

The Coast Guard reviewed the bridge logs for 1997. According to the logs, the bridge opened 21 times: 16 times for public vessels of the United States (10 for the U.S. Navy; 4 for the Environmental Protection Agency (EPA); and 2 for the U.S. Coast Guard) and the remainder for tests. The U.S. Navy indicated that it will not require an opening until September 1998. The Coast Guard contacted EPA's Office of Water Programs and the local Coast Guard unit (USCG Station St. Inigoes) of the bridge's temporary inability to open for vessels, and they did not object. Vessels docked at a nearby marina can clear the bridge's closed-position vertical clearance, which is 42 feet at mean high water. Therefore, vessels are not expected to be negatively impacted by this regulation.

Regulatory Evaluation

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has been exempted from review by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. Due to the small number of requests for openings and the ability of nearby vessels to clear the bridge's closed-position vertical clearance, the impact on routine navigation is expected to be minimal.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), the Coast Guard must consider whether this temporary final rule will have a significant economic impact on a substantial number of small entities. ''Small entities'' include independently owned and operated small businesses that are not dominant in their field and that otherwise qualify as ''small business concerns'' under section 3 of the Small Business Act (15 U.S.C. 632).

Based on the limited requests for vessel openings and the ability of nearby vessels to clear the bridge's closed-position vertical clearance, the Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

Collection of Information

This rule contains no collection of information requirement under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

The Coast Guard has analyzed this rule under the principles and criteria contained in Executive Order 12612 and has determined that this rule does not have sufficient federalism implications to warrant preparation of a Federalism Assessment.

Environment

The Coast Guard considered the environmental impact of this rule and concluded that under section 2.B.2.b and item (32)(e) of Figure 2–1 of Commandant Instruction M16475.1C dated 14 November 1997 this rule is categorically excluded from further environmental documentation. A Categorical Exclusion Determination statement has been prepared and placed in the rulemaking docket.

List of Subjects in 33 CFR Part 117

Bridges.

Regulations

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR Part 117 as follows:

PART 117—[AMENDED]

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05–1(g); Section 117.255 also issued under the authority of Pub. L. 102–587, 106 Stat. 5039.

2. Effective April 2, 1998, through August 31, 1998, Section 117.253 is amended by suspending paragraph (a) and adding a new paragraph (c) to read as follows:

§ 117.253 Anacostia River.

* * * * *

(c) From April 2, 1998 until 11 p.m. on August 31, 1998, the draw of the Frederick Douglass Memorial (South Capitol Street) bridge need not be opened for the passage of vessels.

Dated: April 2, 1998.

Roger T. Rufe, Jr.,

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

[FR Doc. 98–10307 Filed 4–17–98; 8:45 am]

BILLING CODE 4910–15–M

POSTAL SERVICE

39 CFR Part 111

Experimental First-Class and Priority Mail Small Parcel Automation Rate Category

AGENCY: Postal Service.

ACTION: Final rule; notice of experiment expiration.

SUMMARY: On April 18, 1996, the Postal Service published a final rule in the **Federal Register** (61 FR 17206–17215) and adopted amendments to the Domestic Mail Manual implementing the Decision of the Governors of the United States Postal Service on the Recommended Decision of the Postal Rate Commission on the Experimental First-Class and Priority Mail Small Parcel Automation Rate Category, Docket No. MC96–1. One of the provisions of the Postal Rate Commission, which was approved by the Governors of the Postal Service, was that the experiment would be limited to 2 years ending on April 28, 1998. This is to serve notice that the Postal Service intends to allow the experiment to end on its originally scheduled expiration date without filing a request with the Postal Rate Commission to establish

permanent classifications and discounts.

DATES: Effective April 28, 1998.

FOR FURTHER INFORMATION CONTACT: Paul H. Lettmann, (202) 268–6261 or Susan Duchek, (202) 268–2990.

SUPPLEMENTARY INFORMATION: The Domestic Mail Classification Schedule (DMCS) provisions establishing the experimental classifications, recommended by the Postal Rate Commission and approved by the Governors of the Postal Service in March and April 1996, respectively, state that the Experimental First-Class and Priority Mail Small Parcel Automation Rate Category expires on April 28, 1998. The Postal Service has determined to publish this notice to ensure that all interested parties are afforded the opportunity of receiving advance notice of the experiment expiration, as well as to allow participating customers time during which they might make any necessary modifications in their mailing operations or practices before the experiment ends.

The experiment had three basic objectives: to determine the feasibility and practicality of offering an automation discount for First-Class Mail and Priority Mail parcels; to gauge mailer interest and acceptance; and to confirm that the integration of barcode scanners on parcel sorters provides significant productivity enhancements in the processing of small parcels with barcodes versus keying of the same or similar pieces. During the experiment, participants were granted a four-cent per-piece discount on properly prepared First-Class Mail and Priority Mail prebarcoded small parcels at three test sites equipped with barcode-reading small parcel and bundle sorters. The Postal Service decision not to proceed further is based on the fact that data collected during the experiment indicated that cost savings resulting from the prebarcoding of parcels were insufficient to support the four-cent per piece discount, thus placing the Postal Service in a position of being unable to offer a discount that might prove attractive to small parcel mailers in general. Moreover, the level of customer interest in the experiment was disappointing throughout. Even with the four-cent per piece discount, only four customers chose to join with the Postal Service in the experiment. Two of these decided to cease their mailings prior to the April 28, 1998, expiration date.

List of Subjects in 39 CFR Part 111

Postal Service.

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

PART 111—[AMENDED]

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

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

2. Revise G090 of the Domestic Mail Manual as set forth below:

G GENERAL INFORMATION

G090 Experimental Classifications and Rates

[Delete G091 in its entirety effective April 28, 1998.]

G091 Barcoded Small Parcels

* * * * *

An appropriate amendment to 39 CFR 11.3 will be published to reflect these changes.

Stanley F. Mires,

Chief Counsel, Legislative.

[FR Doc. 98–10289 Filed 4–15–98; 8:52 am]

BILLING CODE 7710–12–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–300637; FRL–5783–5]

RIN 2070–AB78

Propiconazole; Extension of Tolerance for Emergency Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule extends a time-limited tolerance for residues of the fungicide propiconazole and its metabolites in or on cranberry at 1.0 part per million (ppm) for an additional 1–year period, to July 31, 1999. This action is in response to EPA's granting of an emergency exemption under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act authorizing use of the pesticide on cranberry. Section 408(l)(6) of the Federal Food, Drug, and Cosmetic Act (FFDCA) requires EPA to establish a time-limited tolerance or exemption from the requirement for a tolerance for pesticide chemical residues in food that will result from the use of a pesticide under an emergency exemption granted by EPA under section 18 of FIFRA.

DATES: This regulation becomes effective April 20, 1998. Objections and requests for hearings must be received by EPA, on or before June 19, 1998.

ADDRESSES: Written objections and hearing requests, identified by the docket control number, OPP–300637, must be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. Fees accompanying objections and hearing requests shall be labeled ''Tolerance Petition Fees'' and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251. A copy of any objections and hearing requests filed with the Hearing Clerk identified by the docket control number, [OPP–300637], must also be submitted to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring a copy of objections and hearing requests to Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA.

A copy of objections and hearing requests filed with the Hearing Clerk may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Follow the instructions in Unit II. of this preamble. No Confidential Business Information (CBI) should be submitted through e-mail.

FOR FURTHER INFORMATION CONTACT: By mail: Daniel J. Rosenblatt, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: Rm. 280, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202, (703) 308–9375; e-mail: rosenblatt.dan@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: EPA issued a final rule, published in the **Federal Register** of April 11 1997, (62 FR 17710) (FRL–5600–5), which announced that on its own initiative and under section 408(e) of the FFDCA, 21 U.S.C. 346a(e) and (l)(6), it established a time-limited tolerance for the residues of propiconazole (1–[[2–(2,4-dichlorophenyl)-4-propyl-1, 3-dioxolan-2-yl]methyl]-1*H*–1,2,4-triazole) and its metabolites in or on cranberry at 41.0 parts per million (ppm), with an expiration date of July 31, 1998. The tolerance level was corrected to be 1.0

ppm in the **Federal Register** of May 2, 1997, (62 FR 24045) (FRL–5714–5). EPA established the tolerance because section 408(l)(6) of the FFDCA requires EPA to establish a time-limited tolerance or exemption from the requirement for a tolerance for pesticide chemical residues in food that will result from the use of a pesticide under an emergency exemption granted by EPA under section 18 of FIFRA. Such tolerances can be established without providing notice or period for public comment.

EPA received a request to extend the use of propiconazole on cranberry for this year's growing season due to the fact that there are no alternative growing practices or pesticides available to growers for the control a fungal problem on cranberries known as cotton ball disease. After having reviewed the submission, EPA concurs that emergency conditions exist. EPA has authorized under FIFRA section 18 the use of propiconazole on cranberry for control of cotton ball disease in Wisconsin during the growing season in 1998.

EPA assessed the potential risks presented by residues of propiconazole in or on cranberry. In doing so, EPA considered the new safety standard in FFDCA section 408(b)(2), and decided that the necessary tolerance under FFDCA section 408(l)(6) would be consistent with the new safety standard and with FIFRA section 18. The data and other relevant material have been evaluated and discussed in the final rule of April 11, 1997 (62 FR 17710). Based on that data and information considered, the Agency reaffirms that extension of the time-limited tolerance will continue to meet the requirements of section 408(l)(6). Therefore, the time-limited tolerance is extended for an additional 1–year period. Although this tolerance will expire and is revoked on July 31, 1999, under FFDCA section 408(l)(5), residues of the pesticide not in excess of the amounts specified in the tolerance remaining in or on cranberry after that date will not be unlawful, provided the pesticide is applied in a manner that was lawful under FIFRA and the application occurred prior to the revocation of the tolerance. EPA will take action to revoke this tolerance earlier if any experience with, scientific data on, or other relevant information on this pesticide indicate that the residues are not safe.

I. Objections and Hearing Requests

The new FFDCA section 408(g) provides essentially the same process for persons to ''object'' to a tolerance regulation issued by EPA under new section 408(e) and (l)(6) as was provided in the old section 408 and in section 409. However, the period for filing objections is 60 days, rather than 30 days. EPA currently has procedural regulations which govern the submission of objections and hearing requests. These regulations will require some modification to reflect the new law. However, until those modifications can be made, EPA will continue to use those procedural regulations with appropriate adjustments to reflect the new law.

Any person may, by June 19, 1998, file written objections to any aspect of this regulation and may also request a hearing on those objections. Objections and hearing requests must be filed with the Hearing Clerk, at the address given above (40 CFR 178.20). A copy of the objections and/or hearing requests filed with the Hearing Clerk should be submitted to the OPP docket for this rulemaking. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). If a hearing is requested, the objections must include a statement of the factual issues on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the requestor (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

II. Public Record and Electronic Submissions

The official record for this rulemaking, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer any copies of objections and hearing requests received electronically into printed, paper form as they are received and will place the paper copies in the official rulemaking record which will also include all comments submitted directly in writing. The official rulemaking record is the paper record maintained at the Virginia address in ''ADDRESSES'' at the beginning of this document.

Electronic comments may be sent directly to EPA at:

opp-docket@epamail.epa.gov.

Electronic objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Objections and hearing requests will also be accepted on disks in WordPerfect 5.1/6.1 or ASCII file format. All copies of objections and hearing requests in electronic form must be identified by the docket control number OPP–300637. No CBI should be submitted through e-mail. Electronic copies of objections and hearing requests on this rule may be filed online at many Federal Depository Libraries.

III. Regulatory Assessment Requirements

This final rule extends a time-limited tolerance that was previously extended by EPA under FFDCA section 408(d) in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled Regulatory Planning and Review (58 FR 51735, October 4, 1993). In addition, this final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4). Nor does it require any prior consultation as specified by Executive Order 12875, entitled Enhancing the Intergovernmental Partnership (58 FR 58093, October 28, 1993), or special considerations as required by Executive Order 12898, entitled Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations (59 FR 7629, February 16, 1994), or require OMB review in accordance with Executive Order 13045, entitled Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997).

Since this extension of an existing time-limited tolerance does not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. Nevertheless, the Agency has previously assessed whether establishing tolerances, exemptions from tolerances, raising tolerance levels or expanding exemptions might adversely impact small entities and concluded, as a generic matter, that there is no adverse economic impact. The factual basis for the Agency's generic certification for tolerance actions published on May 4, 1981 (46 FR 24950), and was provided to the Chief Counsel for Advocacy of the Small Business Administration.

IV. Submission to Congress and the Comptroller General

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

List of Subjects in 40 CFR Part 180

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

Dated: April 9, 1998.

Peter Caulkins,

Acting Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

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

Authority: 21 U.S.C. 346a and 371.

§180.434 [Amended]

2. In §180.434, by amending paragraph (b) for the commodity cranberries by changing the date ''7/31/98'' to read ''7/31/99''.

[FR Doc. 98–10394 Filed 4–17–98; 8:45 am]

BILLING CODE 6560–50–F

Proposed Rules

Federal Register
Vol. 63, No. 75
Monday, April 20, 1998

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Parts 430 and 534

RIN 3206–AH77

Performance Ratings

AGENCY: Office of Personnel Management.

ACTION: Proposed rule.

SUMMARY: The Office of Personnel Management (OPM) is issuing proposed regulations to codify longstanding policy regarding retroactive, assumed, and carry-over ratings of record. The proposed regulations amend the current performance management regulations to explicitly specify that ratings of record are final upon issuance unless challenged by the employee, and that retroactive, assumed, and carry-over ratings of record are prohibited.

DATES: Comments must be submitted on or before June 19, 1998.

ADDRESSES: Comments may be sent or delivered to: Henry Romero, Associate Director, Workforce Compensation and Performance Service, U.S. Office of Personnel Management, Room 7508, 1900 E Street NW., Washington, DC 20415.

FOR FURTHER INFORMATION CONTACT: Barbara Colchao, (202) 606–2720.

SUPPLEMENTARY INFORMATION: The purpose of these amendments is to clarify the Office of Personnel Management's (OPM) longstanding interpretation of the law regarding the finality of a rating of record given to reflect the actual work performed during one appraisal period, which has been the consistent response to agencies' inquiries for many years. OPM is experiencing an increasing number of inquiries, as agencies develop new performance management programs to encourage high performance organizations, and to conform to the requirements of the Government Performance and Results Act. OPM concurs with the opinion voiced by several agencies that these policies should be codified in regulation, in order to provide this information in a more uniform and consistent manner.

There are four issues addressed in the proposed regulations: (1) A prohibition against an agency unilaterally changing a rating that has been issued as a final rating of record to an employee; (2) a prohibition against an agency going back to provide a rating of record for a past appraisal period where none was given; (3) a prohibition against an agency issuing an employee an ''assumed'' rating of record that does not reflect an appraisal of actual performance; and (4) a prohibition against ''carrying over'' a previous rating of record to cover more than one appraisal period.

Retroactive Change to a Rating of Record

Agencies are most often confronted with the issue of whether management has the authority to retroactively change a rating of record in situations where information about an employee's performance has been discovered long after the rating was finalized. This situation generally comes about when an employee has deliberately kept information from management and, therefore, has exhibited conduct that would warrant adverse action under part 752, Adverse Actions. Otherwise, if the information was not deliberately withheld but went undiscovered at the time the rating of record was prepared, an agency should review its appraisal process and determine if it is designed to capture adequately all significant performance information. It is OPM's position that only in very rare circumstances would a rating official be unaware of significant performance issues that went undetected at the time of appraisal due to no fault on the part of the employee or the rating official.

While no explicit language in the law states that a rating of record should be considered final, the prohibition on retroactively changing a rating can be derived from the overall construction and intent of the performance appraisal statute and regulations, as well as OPM's regulations addressing reduction in force (RIF). The statute at 5 U.S.C. 4302(a)(3) and 5 CFR 430.102(b)(6) of the regulations require that the results of performance appraisal must be used as a basis for appropriate personnel actions. To allow the retroactive change of ratings of record would result in requiring the agency to correct all records and personnel actions that were affected by that rating. The most obvious of these subsequent actions would involve the review of any pay changes or monetary awards, which were based in whole or in part on the rating of record, to determine whether the new rating would have resulted in a different pay or award outcome.

In addition, an agency would be required to scrutinize any intervening personnel actions that had been affected by the original rating of record and that would need to be corrected due to the new rating of record. For example, the regulations that prescribe RIF procedures implicitly rely on a rating of record that can be assumed to be final. Furthermore, agencies generally strive to avoid the perception that RIF actions could be manipulated through the introduction of new ratings of record. If retroactive changes to final ratings of record were allowed, agencies would be compelled to correct any retention register that uses a changed rating of record and would once again run the risk that employees would perceive an unfairness in using this changed rating of record, unless the change could be shown to be a previous miscalculation or administrative error.

Additionally, the very structure of the performance appraisal regulations leads to the logical conclusion that the intent of the system is to reach a point of finality when management is held accountable for issuing a rating of record that represents an employee's performance for the defined time of the appraisal period. Sections 430.206, 430.207, and 430.208 of title 5 of the Code of Federal Regulations regulate and describe the cycle of planning, monitoring, and issuance of a rating. Section 430.208(g) states that when an agency extends the rating cycle, a rating of record must be prepared as soon as practicable after the conclusion of the extension. Section 430.209(e) establishes a requirement for agencies to report ratings of record to OPM through the Central Personnel Data File. Taken as a whole, the regulatory scheme for performance appraisal is constructed around an appraisal period that concludes with a final rating of record.

As an exception to the general prohibition regarding retroactively changing ratings of record, there is a

relatively limited set of circumstances where an agency might feel compelled to change a rating of record long after it has been presumed to be final. An administrative error, such as a rating official who inadvertently ''checks the wrong box'' and assigns a summary rating level that does not correspond to the element levels that have been assigned, would certainly be good cause for an agency's decision to retroactively change the overall rating of record. Information regarding the employee's performance during the appraisal period that provides indisputable proof that the original rating of record was erroneous, and which was previously unknown or unavailable to the agency, could form the basis for a decision to retroactively change the rating. This situation probably would arise most often in cases where the employee was evaluated against numerical standards with objective requirements, and where the rating official would have had no subjective input into the evaluation process.

While OPM believes it was not the intent of the law governing performance appraisal to allow for independent action by management to retroactively alter a final rating of record, it does recognize some circumstances where such a change would be required. These proposed regulations are designed to be sufficiently flexible to allow for changes to ratings of record that occur in the normal course of communication between supervisors and employees close to the original issuance of a rating of record, as well as changes resulting from administrative procedures that provide employees with an avenue to challenge their ratings of record.

Retroactively Issuing a Rating of Record Where None Existed

The second issue addressed in the proposed regulation is the prohibition against producing a retroactive rating of record for an appraisal period that has passed and for which no rating of record was issued. The statute requires the periodic appraisal of employees (5 U.S.C. 4302(a)(1)), and the regulations require that a rating of record be given to an employee as soon as practicable after the end of the appraisal period (5 CFR 430.208(a)). When an appraisal cannot be given at the end of the appraisal period, the regulations already provide for extending the appraisal period until the conditions to complete a rating of record are met (5 CFR 430.208(g)). A rating of record then is issued that covers the entire appraisal period, including the extension. If the appraisal period was not extended, or if a rating of record for a later appraisal period was issued, the agency cannot go back and ''fill in the blanks'' at some future point in time. To permit such a practice would undermine the basic concepts of performance appraisal and severely limit the accuracy of the ratings produced due to the very passage of time involved.

Assumed Ratings of Record

The third issue addressed in the proposed regulation is the prohibition against issuing to an employee a rating of record that does not reflect actual performance, but assumes a level of performance without evaluation. The intent of the law is clear; Congress intended Federal employees to be evaluated based upon the actual work they performed during the appraisal period. Some confusion has arisen over the years because of the process used to include the value of performance credit when agencies are establishing retention registers in preparation for a reduction in force. In situations where an employee did not receive a rating of record, an agency previously could, **for RIF purposes only,** assign the value of performance credit for that appraisal period at the Fully Successful level. Regulations, published in November 1997, changed the procedures for dealing with missing ratings of record and changed the reference point for assigning additional service credit for performance for employees who have **no** rating of record to the value assigned to the applicable modal rating level in the competitive area, or some larger agency population aggregation. These proposed regulations make no further change to the reduction in force process. Their sole purpose is to regulate that an agency may not **issue** a bona fide rating of record to an employee that assumes some level of performance since employees are entitled to a rating of record that reflects their actual level of performance. This does not impose a requirement that performance must be reflected only by means of a narrative justification. Agencies are free to design the process and procedures they will use to evaluate employee performance. These regulations are intended to ensure that an evaluation of actual employee performance is the basis of the rating of record.

Carrying Over a Rating of Record

Finally, these proposed regulations would codify the prohibition against carrying over a previous rating of record into another appraisal period as a bona fide rating of record. This is obviously tied closely to the above requirement that employees be given a rating of record that reflects their performance during a specific appraisal period. This prohibition does not negate the fact that an employee may perform at the same level for several years and, therefore, appropriately be assigned the same summary level in the rating of record for each of those separate appraisal periods. As noted in 5 U.S.C. 4302 (b) (1) and (2), agencies are required by law to provide performance standards to employees at the beginning of each appraisal period, and to evaluate the employee ''during the appraisal period.'' To allow agencies to carry over a previous year's rating of record without an actual evaluation of the employee's performance would defeat the intent of the law and render the performance appraisal program of the agency meaningless. This provision would not prohibit an agency from using previous ratings of record as the basis for personnel actions when a current rating of record is not available, provided the recency of the previous rating of record is reasonable. Such a feature was used by the Performance Management and Recognition System for pay administration purposes, and also is contained in some of the demonstration projects, where a past rating of record, usually not more than one year old, is used as the basis for a pay adjustment when a current rating is not available.

Technical Correction

The Office of Personnel Management is taking this opportunity to make minor corrections to citations that were overlooked when regulations revising the awards provisions were finalized in September 1995.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities because they apply only to Federal agencies and employees.

List of Subjects

5 CFR Part 430

Decorations, medals, awards, Government employees.

5 CFR Part 534

Government employees, Hospitals, Students, Wages.

Office of Personnel Management.

Janice R. Lachance,

Director.

Accordingly, OPM is proposing to amend parts 430 and 534 of title 5, Code of Federal Regulations, as follows:

PART 430—PERFORMANCE MANAGEMENT

1. The authority citation for part 430 continues to read as follows:

Authority: 5 U.S.C. chapter 43.

2. In § 430.208, paragraphs (a)(1), (a)(2), (a)(3) and (i) are added; paragraph (h) is redesignated as paragraph (j) and a new paragraph (h) is added to read as follows:

§ 430.208 Rating performance.

(a) * * *

(1) A rating of record shall be based only on the evaluation of actual job performance for the designated appraisal period.

(2) An agency shall not issue a rating of record that assumes a level of performance by an employee without an actual evaluation of that employee's performance.

(3) Except as provided in § 430.208(i), a rating of record is final when it is issued to an employee with all appropriate reviews and signatures.

* * * * *

(h) Each rating of record shall cover a specified appraisal period. Agencies shall not carry over a rating of record prepared for a previous appraisal period to a subsequent appraisal period(s).

(i) When either a regular appraisal period or an extended appraisal period ends and a performance plan has been established for a subsequent appraisal period with no rating of record issued for the earlier appraisal period, an agency shall not produce a rating of record to cover that period retroactively. Once issued, ratings of record shall not be changed retroactively except that a rating of record may be changed—

(1) Within 60 days of issuance based upon an informal request by the employee;

(2) As a result of a grievance, complaint, or other formal proceeding permitted by law that results in a final determination by appropriate authority that the rating of record must be changed; or

(3) Where the agency determines that a rating of record was incorrectly recorded or calculated.

PART 534—PAY UNDER OTHER SYSTEMS

3. The authority citation for part 534 continues to read as follows:

Authority: 5 U.S.C. 1104, 5307, 5351, 5352, 5353, 5376, 5383, 5384, 5385, 5541, and 5550a.

4. In § 534.505, paragraph (b) is revised to read as follows:

§ 534.505 Pay related matters.

* * * * *

(b) *Performance awards.* Performance awards may be paid under 5 U.S.C. chapter 45 and § 451.104(a)(3) of this chapter.

[FR Doc. 98–10266 Filed 4–17–98; 8:45 am]
BILLING CODE 6325–01–P

FEDERAL LABOR RELATIONS AUTHORITY

5 CFR Parts 2424 and 2429

Processing of Negotiability Petitions: Miscellaneous and General Requirements

AGENCY: Federal Labor Relations Authority.

ACTION: Notice of proposed rulemaking with request for comments.

SUMMARY: The Federal Labor Relations Authority intends to revise its regulations concerning the processing of negotiability appeals (part 2424). The Federal Labor Relations Authority established a Task Force to study and evaluate part 2424 of its regulations. The Task Force proposes to conduct focus groups to solicit and consider customers' views prior to undertaking these revisions.

DATES: Written comments must be received on or before May 29, 1998. A meeting will be held at 10:00 a.m. on May 12, 1998, in Washington, DC.

ADDRESSES: Mail or deliver written comments to the Office of Case Control, Federal Labor Relations Authority, 607 14th Street, NW, Washington, DC 20424–0001. The meeting will be held at the Federal Labor Relations Authority, 607 14th Street, NW, Second Floor Agenda Room, Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Peter Constantine, Director, Office of Case Control, at the address listed above or by telephone: (202) 482–6540.

SUPPLEMENTARY INFORMATION:

1. Background

The Chair and Members of the Federal Labor Relations Authority (the Authority) intend to review and, where appropriate, implement mechanisms to improve the manner in which negotiability appeals are processed, and to revise the regulations governing review of these appeals. The Authority has established an internal Task Force to study this matter.

Part 2424 of chapter XIV of Title 5 of the Code of Federal Regulations (1997) contains, among other things, the current regulations which govern all matters relating to the processing of negotiability appeals. Part 2429 contains general regulatory requirements which also govern these appeals. The regulations apply to petitions for review of negotiability issues that concern union proposals for bargaining as well as petitions for review of negotiability issues that arise from disapprovals of collective bargaining provisions that have been agreed on by parties.

In conjunction with its review of the procedures for processing negotiability appeals, the Task Force is requesting oral and/or written comments concerning issues to be addressed in the regulatory revisions it is developing. A focus group meeting has been scheduled for Tuesday, May 12, 1998, at 10:00 a.m. in Washington, DC to discuss matters relevant to the negotiability appeal process. Persons interested in attending this meeting on the proposed rulemaking should call or write the point of contact listed in the preceding section to confirm attendance. If appropriate, other discussions may be scheduled.

The Task Force will make written recommendations to the Chair and Members of the Authority, who will, as determined appropriate, issue proposed amendments to the existing negotiability and miscellaneous regulations. All agencies, unions, and interested persons will be afforded an opportunity to submit further comments on any proposed specific modifications to the existing regulations. The Task Force will conduct additional focus group meetings after the Authority proposes its revisions to the existing regulations.

2. The Federal Service Labor-Management Relations Statute (the Statute)

Section 7117 of Title 5, United States Code, empowers the Authority to consider negotiability appeals under the conditions prescribed by section 7117(b) and (c), directs the Authority to expedite these appeals to the extent practicable, and instructs the Authority to issue a written decision at the earliest practicable date.

The appeal process is set forth in Section 7117(c) of the Statute. Under this process, the exclusive representative may ''institute an appeal'' by ''filing a petition with the Authority.'' 5 U.S.C. 7117(c)(2). Once an exclusive representative institutes a negotiability appeal, section 7117(c)(3)(A) and section 7117(c)(4) provide that an agency involved in a negotiability dispute ''shall file with the Authority'' a statement of position responding to the petition for review,

and that an exclusive representative ''shall file with the Authority its response to the statement.'' Consistent with section 7117(c)(5), the Authority, in its discretion, may hold a hearing on the petition for review before making a determination.

3. Issues on Which Comments Are Requested

Following are several groups of subjects on which the Task Force is seeking comments. This is not intended to be an exclusive list; comment on any matter relevant to the processing of petitions for review in negotiability appeals is invited.

a. Alternative Dispute Resolution (ADR) in the Negotiability Appeal Process

Should the Authority require and/or offer ADR services to the parties as part of the negotiability appeal process? If the Authority requires the parties to participate in ADR in connection with the negotiability appeal process, are there any particular issues that the Authority should consider in the drafting of its amendments to the negotiability regulations?

b. Compliance With Procedural Requirements

What consequences, if any, should result from either an agency's failure to file a statement of position, as required by section 7117(c)(3)(A) of the Statute or an exclusive representative's failure to file a response to this statement, as required by section 7117(c)(4) of the Statute?

Under what circumstances, if any, should the Authority exercise its authority under section 7117(c)(5) of the Statute to hold hearings?

Are there any general requirements, in addition to those set forth in part 2429 of the Authority's regulations, that the Authority should consider in drafting its amendments to the negotiability regulations?

c. The Meaning of a Proposal or Provision

What burdens should the Authority place on the parties with respect to the meaning of proposals or provisions, the factual record, and the arguments? Where the Authority is unable to determine the meaning of a proposal or provision, what action should the Authority take?

d. The Relationship Between Issues Arising Under the Negotiability Appeal Process and the Unfair Labor Practice Process

Should the Authority modify its procedure for processing complaints alleging unfair labor practices and negotiability petitions? If so, how should the Authority process cases involving alleged unfair labor practices and negotiability petitions?

How should ''duty to bargain issues'' (such as whether a matter is ''covered by'' an existing agreement or whether a union has waived its right to bargain) as opposed to ''scope of bargaining'' issues (whether a proposal is consistent with law, rule, or regulation) be addressed when arising in connection with a negotiability appeal?

e. Authority Orders in Decisions on Review of Negotiability Appeals; Compliance With the Authority's Orders

Part 2424.10 of the Authority's regulations currently provides that, if in a decision the Authority finds that the duty to bargain extends to ''a matter proposed to be bargained,'' then the Authority shall include a bargaining order and, if the Authority finds that the duty to bargain does not extend to the matter, or that the duty extends to the matter ''only at the election of the agency,'' then the Authority shall dismiss the petition for review.

Should the regulations be modified to include other orders? If so, what other orders should be included and in what circumstances should they be used?

Should the Authority's regulations concerning compliance with negotiability orders be modified? If so, how should the Authority address a party's failure to comply with the Authority's negotiability order?

f. Proposals for Bargaining and Provisions Subject to Agency-Head Review

Should the Authority's negotiability regulations differ depending on whether the petition for review concerns a proposal for bargaining or a provision that has been agreed on and subsequently disapproved?

g. Other Issues

The foregoing questions are not intended to exclude any other subjects relevant to the negotiability appeal process. What other subjects relevant to the negotiability appeal process should the Authority consider in developing amendments to the existing negotiability regulations?

(Authority: 5 U.S.C. 7105(a)(2)(E) and (I)).

Dated: April 15, 1998.

Solly Thomas,

Executive Director, Federal Labor Relations Authority.

[FR Doc. 98–10390 Filed 4–17–98; 8:45 am]

BILLING CODE 6727–01–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 29

[Docket No. TB–97–17]

Tobacco Inspection—Growers Referendum

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice of referendum.

SUMMARY: This document announces that a referendum will be conducted by mail during the period of April 27–May 1, 1998, for producers of flue-cured tobacco who sell their tobacco at auction in Tabor City-Whiteville, North Carolina, and Loris, South Carolina, to determine producer approval of the designation of the Tabor City-Whiteville and Loris tobacco markets as one consolidated auction market.

DATES: The referendum will be held April 27–May 1, 1998.

FOR FURTHER INFORMATION CONTACT: William Coats, Associate Deputy Administrator, Tobacco Programs, Agricultural Marketing Service, United States Department of Agriculture, P.O. Box 96456, Washington, D.C. 20090–6456; telephone number (202) 205–0508.

SUPPLEMENTARY INFORMATION: Notice is hereby given of a mail referendum on the designation of a consolidated auction market at Tabor City-Whiteville, North Carolina, and Loris, South Carolina. Tabor City-Whiteville, North Carolina, was designated on June 5, 1997, (7 CFR 29.8001) as flue-cured tobacco auction market and Loris, South Carolina, was designated on August 16, 1941, under the Tobacco Inspection Act (7 U.S.C. 511 *et seq.*). Under this Act those markets have been receiving mandatory grading services from USDA.

On September 11, 1997, an application was made to the Secretary of Agriculture to consolidate the designated markets of Tabor City-Whiteville, North Carolina, and Loris, South Carolina. The application, filed by warehouse operators on those markets, was made pursuant to the regulations promulgated under the Tobacco Inspection Act (7 CFR Part 29.1–29.3). On November 5, 1997, a public hearing was held in Tabor City, North Carolina, pursuant to the regulations. A Review Committee, established pursuant to § 29.3(h) of the regulations 7 CFR 29.3(h), has reviewed and considered the application, the testimony presented at the hearing, the exhibits received in evidence, and other

available information. The Committee recommended to the Secretary that the application be granted and the Secretary approved the application on March 16, 1998.

Before a new market can be officially designated, a referendum must be held to determine that a two-thirds majority of producers favor the designation. It is hereby determined that the referendum will be held by mail during the period of April 27–May 1, 1998. The purpose of the referendum is to determine whether farmers who sold their tobacco on the designated markets at Tabor City-Whiteville and Loris are in favor of, or opposed to, the designation of the consolidated market for the 1998 and succeeding crop years. Accordingly, if a two-thirds majority of those tobacco producers voting in the referendum favor the consolidation, a new market will be designated as and will be called Tabor City-Whiteville-Loris.

To be eligible to vote in the referendum a tobacco producer must have sold flue-cured tobacco on either the Tabor City-Whiteville, North Carolina, or Loris, South Carolina, auction markets during the 1997 marketing season. Any farmer who believes he or she is eligible to vote in the referendum but has not received a mail ballot by April 27, 1998, should immediately contact William Coats at (202) 205–0508.

The referendum will be held in accordance with the provisions for referenda of the Tobacco Inspection Act, as amended (7 U.S.C. 511d) and the regulations for such referendum set forth in 7 CFR 29.74.

Dated: April 15, 1998.

Enrique E. Figueroa,

Administrator, Agricultural Marketing Service.

[FR Doc. 98–10458 Filed 4–17–98; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 29

[Docket No. TB–97–16]

Tobacco Inspection—Growers Referendum

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice of referendum.

SUMMARY: This document announces that a referendum will be conducted by mail during the period of April 27–May 1, 1998, for producers of flue-cured tobacco who sell their tobacco at auction in Clarksville and Chase City, Virginia, to determine producer approval of the designation of the Clarksville and Chase City tobacco markets as one consolidated auction market.

DATES: The referendum will be held April 27–May 1, 1998.

FOR FURTHER INFORMATION CONTACT: William Coats, Associate Deputy Administrator, Tobacco Programs, Agricultural Marketing Service, United States Department of Agriculture, P.O. Box 96456, Washington, D.C. 20090–6456; telephone number (202) 205–0508.

SUPPLEMENTARY INFORMATION: Notice is hereby given of a mail referendum on the designation of a consolidated auction market at Clarksville and Chase City, Virginia. Clarksville and Chase City were designated on June 26, 1942 (7 CFR 29.8001) as flue-cured tobacco auction markets under the Tobacco Inspection Act (7 U.S.C. 511 *et seq.*). Under this Act those markets have been receiving mandatory grading services from USDA.

On September 3, 1997, an application was made to the Secretary of Agriculture to consolidate the designated markets of Clarksville and Chase City, Virginia. The application, filed by warehouse operators on those markets, was made pursuant to the regulations promulgated under the Tobacco Inspection Act (7 CFR Part 29.1–29.3). On November 7, 1997, a public hearing was held in Clarksville, Virginia, pursuant to the regulations. A Review Committee, established pursuant to § 29.3(h) of the regulations 7 CFR 29.3(h)), has reviewed and considered the application, the testimony presented at the hearing, the exhibits received in evidence, and other available information. The Committee recommended to the Secretary that the application be granted and the Secretary approved the application on March 16, 1998.

Before a new market can be officially designated, a referendum must be held to determine that a two-thirds majority of producers favor the designation. It is hereby determined that the referendum will be held by mail during the period of April 27–May 1, 1998. The purpose of the referendum is to determine whether farmers who sold their tobacco on the designated markets at Clarksville and Chase City are in favor of, or opposed to, the designation of the consolidated market for the 1998 and succeeding crop years. Accordingly, if a two-thirds majority of those tobacco producers voting in the referendum favor this consolidation, a new market will be designated as and will be called Clarksville-Chase City.

To be eligible to vote in the referendum a tobacco producer must have sold flue-cured tobacco on either Clarksville or Chase City, Virginia, auction markets during the 1997 marketing season. Any farmer who believes he or she is eligible to vote in the referendum but has not received a mail ballot by April 27, 1998, should immediately contact William Coats at (202) 205–0508.

The referendum will be held in accordance with the provisions for referenda of the Tobacco Inspection Act, as amended (7 U.S.C. 511d) and the regulations for such referendum set forth in 7 CFR 29.74.

Dated: April 15, 1998.

Enrique E. Figueroa,

Administrator, Agricultural Marketing Service.

[FR Doc. 98–10457 Filed 4–17–98; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Part 246

RIN 0584–AC50

Special Supplemental Nutrition Program for Women, Infants and Children (WIC): WIC/Food Stamp Program (FSP) Vendor Disqualification

AGENCY: Food and Nutrition Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would amend regulations governing the Special Supplemental Nutrition Program for Women, Infants and Children (WIC) to implement a mandate of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, which requires the disqualification of WIC vendors who are disqualified from the Food Stamp Program (FSP). According to the law, the disqualification shall be for the same length of time as the FSP disqualification and may begin at a later date than the FSP disqualification. Furthermore, the law states that disqualification from WIC on the basis of an FSP disqualification is not subject to judicial or administrative review.

This proposed rule would also mandate uniform sanctions across States for the most serious WIC Program vendor violations, including seven specific WIC Program violations that result in FSP disqualification in addition to WIC Program

disqualification. The implementation of these mandatory sanctions is intended to promote WIC and FSP coordination in the disqualification of retailers and vendors who violate program rules.

DATES: To be assured of consideration, written comments must be postmarked by July 20, 1998.

ADDRESSES: Comments should be sent to Barbara Hallman, Acting Director, Supplemental Food Program Division, FNS, USDA, 3101 Park Center Drive, Room 540, Alexandria, Virginia 22302. Comments on this rule should be labeled ''WIC/Food Stamp Vendor Disqualification.'' All written comments will be available for public inspection during regular business hours (8:30 a.m. to 5:00 p.m., Monday through Friday) at the above noted address.

FOR FURTHER INFORMATION CONTACT: Barbara Hallman, at (703) 305–2730.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

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

Regulatory Flexibility Act

This proposed rule has been reviewed with regard to the requirements of the Regulatory Flexibility Act of 1980 (5 U.S.C. 601–612). Yvette Jackson, Administrator of the Food and Nutrition Service, has certified that this rule will not have a significant impact on a substantial number of small entities. This rule will only impact WIC vendors who have committed fraud and abuse against the WIC Program or who have been disqualified from the Food Stamp Program.

Paperwork Reduction Act

This proposed rule imposes no new reporting or recordkeeping requirements that are subject to OMB review in accordance with the Paperwork Reduction Act of 1995.

Executive Order 12372

The Special Supplemental Nutrition Program for Women, Infants and Children is listed in the Catalog of Federal Domestic Assistance Programs under 10.577. For reasons set forth in the final rule in 7 CFR Part 3015, Subpart V, and related notice (48 FR 29115) this program is included in the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

Executive Order 12988

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is intended to have preemptive effect with respect to any State or local laws, regulations or policies which conflict with its provisions or which would otherwise impede its full implementation. This rule is not intended to have retroactive effect unless so specified in the **EFFECTIVE DATE** paragraph of the final rule. Prior to any judicial challenge to the application of provisions of this rule, all applicable administrative procedures must be exhausted.

Public Law 104–4

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Pub. L. 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local and tribal governments and the private sector. Under section 202 of the UMRA, the Food and Nutrition Service 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 or tribal governments, in the aggregate, or the private sector, of $100 million or more in any one year. When such a statement is needed for a rule, section 205 of the UMRA generally requires the Food and Nutrition Service to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, more cost-effective or least burdensome alternative that achieves the objectives of the rule.

This rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local and tribal governments or the private sector of $100 million or more in any one year. Thus, this rule is not subject to the requirements of sections 202 and 205 of the UMRA.

Background

Section 729(j) of Pub. L. 104–193, the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA), amends section 17 of the Child Nutrition Act of 1996 (42 U.S.C. 1786) (CNA), by adding a new section(n) that requires the Secretary of Agriculture to issue regulations providing the criteria for the disqualification of WIC vendors who have been disqualified as retailers from the FSP. This provision also states that the WIC disqualification shall be for the same length of time as the FSP disqualification. It may begin at the same time or at a later date than the FSP disqualification, and shall not be subject to judicial or administrative review. This new provision is designed to strengthen WIC Program integrity by promptly removing vendors from the WIC Program who have been disqualified from the FSP due to FSP violations.

In addition, a September 1995 Office of Inspector General (OIG) audit, number 27601–0004–Ch, on Disqualification of Vendors from Food and Nutrition Service (FNS) Programs recommended that FNS develop uniform regulatory sanction provisions to be applied to WIC vendors for each of seven specific WIC Program vendor violations. These WIC violations are deemed to be so serious that, under current FSP regulations, they result in the loss of FSP authorization in response to the WIC Program disqualification. This proposed rule would establish mandatory uniform sanctions against violating WIC vendors and would also remove the current three-year limit on WIC vendor disqualification, thus permitting permanent WIC vendor disqualification under specified circumstances. State agencies can sanction vendors for violations other than those listed in proposed § 246.12(k)(1) as long as vendors are made aware of such violations and sanctions, and such sanctions do not result in disqualification from the WIC Program for more than six months.

Criteria for Disqualification of WIC Vendors Who Have Been Disqualified From the FSP

Section 729(j) of the PRWORA amends section 17 of the CNA by adding a new section(n) that requires the Secretary of Agriculture to issue regulations providing the criteria for the disqualification of WIC vendors who have been disqualified from participating as retailers in the FSP. In response to that mandate, the Department has determined that **any** FSP violation that is serious enough to warrant disqualification from the FSP should also warrant disqualification from the WIC Program. The Department believes that retailers that are disqualified from the FSP should not be eligible to participate in either the WIC Program or the FSP. This proposed rule would require the disqualification of such vendors from WIC, with the only exception being for participant hardship. That is, WIC State agencies would not be required to disqualify a WIC vendor that has been disqualified from the FSP when such WIC disqualification would cause undue hardship for WIC participant access.

The Department recognizes that WIC vendors play a vital role in ensuring that WIC Program goals are achieved. While the vast majority of vendors follow

program rules, abuse cannot and will not be tolerated. Current program rules (§§ 246.12(k) (iii) and (iv)) allow but do not require a State agency to disqualify a WIC vendor who is currently disqualified from any FNS program or who has been assessed a civil money penalty (CMP) by the FSP in lieu of disqualification. To strengthen program integrity, WIC State agencies would be required under this proposed rule to disqualify a vendor from WIC who has been disqualified from the FSP, unless such disqualification would create undue hardship for WIC participant access, in which case WIC State agencies will assess a CMP. In cases where a retailer has been assessed a CMP in lieu of disqualification by the FSP, WIC State agencies will continue to have the option of disqualifying the vendor under § 246.12(k)(iv). However, since the disqualification is not based upon a reciprocal FSP disqualification, the vendor must be offered an opportunity to appeal the WIC disqualification.

Length of Disqualification

Section 729(j) of the PRWORA also states that the WIC disqualification shall be for the same length of time as the FSP disqualification and may begin at the same time or at a later date than the FSP disqualification. Because FSP regulations provide for permanent disqualification, there will be instances in which a WIC vendor is disqualified for more than the current three-year maximum disqualification period reflected in § 246.12(k)(1)(ii) of the WIC Program regulations. Therefore, this proposed rule would remove the three-year limitation from the regulations. This permits reciprocal permanent disqualification, as required by the PRWORA.

Vendor Appeals

This proposed rule would amend § 246.18(a) to modify the current requirement to provide a hearing procedure whereby a WIC vendor adversely affected by State or local agency actions may appeal such action. Section 729(j) of the PRWORA specifically states that WIC vendors who are disqualified as a result of their disqualification as retailers from the FSP are not entitled to administrative or judicial review proceedings in the WIC Program. As such, § 246.18(a) would be amended to reflect this change. This change should reduce WIC State agency expenses and administrative burdens and eliminate a duplicative administrative process. The WIC Program disqualification will not be imposed until after all FSP administrative and judicial processes have been completed.

Section 729(j) of the PRWORA only eliminates the WIC appeal for vendors who are disqualified as a result of the FSP disqualification. The law does not eliminate appeal rights for vendors who are disqualified from WIC because they have been assessed a CMP in lieu of disqualification from the FSP. Therefore, WIC State agencies that utilize the option at § 246.12(k)(iv) which allows the State agency to disqualify a vendor who has been assessed a CMP in lieu of FSP disqualification must continue to offer such vendors an opportunity to appeal the WIC disqualification.

Vendor Agreements

To ensure that all WIC vendors are aware that disqualification from the FSP will result in disqualification from the WIC Program or, under certain circumstances, assessment of a CMP in lieu of disqualification, § 246.12(f) has been amended to require a statement to this effect in the vendor agreement.

Mandatory WIC Program Vendor Sanctions

In September 1995, the OIG released audit report number 27601–0004–Ch, Disqualification of Vendors from FNS Programs. The purpose of the audit was to evaluate FNS' controls to ensure that retailers/vendors who committed serious violations in one FNS program are considered for disqualification from participation in all FNS programs for which they were authorized.

The audit disclosed widely inconsistent sanction policies among the States for WIC vendors who commit similar or identical WIC Program violations. A previous nationwide OIG audit of WIC Program vendor operations, audit report 27661–2–Ch issued June 1988, also disclosed inconsistent sanction policies across States. For example, a vendor who overcharged a WIC State agency for WIC foods could receive a sanction that varied from additional mandatory training, to a voluntary withdrawal, to a warning letter, or a one to three year disqualification, depending upon the particular State. To ensure that appropriate and consistent sanctions are taken against vendors abusing the WIC Program, the audit recommended that FNS revise WIC Program regulations to mandate specific uniform sanctions for each of seven categories of WIC Program violations that, under current regulations, result in the loss of FSP authorization in addition to WIC disqualification. This would promote consistency of sanction treatment for violative WIC vendors. This proposed rule would implement the OIG's recommendation.

In 1987, the FSP issued codified regulations at 7 CFR § 278.1(o) that required FNS Field Offices to withdraw the FSP authorization of any firm that is disqualified from the WIC Program based in whole or in part on any act that constitutes a violation of that program's regulations, and which is shown to constitute a misdemeanor or felony violation of law, or for any of the following specific program violations:

(1) Claiming reimbursement for the sale of an amount of a specific food item which exceeds the store's documented inventory of that food item for a specific period of time;

(2) Exchanging WIC food instruments for cash or credit;

(3) Receiving, transacting and/or redeeming WIC food instruments outside of authorized channels;

(4) Accepting WIC food instruments from unauthorized persons;

(5) Exchanging non-food items for a WIC food instrument;

(6) Charging WIC customers more for food than non-WIC customers or charging WIC customers more than current shelf price; or

(7) Charging for food items not received by the WIC customer or for food provided in excess of those listed on the food instrument.

The Department proposes two modifications to the above-noted seven violations. First, the Department proposes to add trafficking to this list of violations. Trafficking is generally recognized as the most flagrant and egregious example of program fraud and abuse. As such, under this proposed rule, vendors found to be committing trafficking would be subject to permanent disqualification from the WIC Program upon their first offense, as in the FSP. The Department proposes to adopt the FSP's definition of trafficking, with some minor revisions to accommodate WIC terminology. Trafficking, in this proposal, is defined as the buying or selling of WIC food instruments for cash or consideration other than eligible food; or the exchange of firearms, ammunition, explosives, or controlled substances (i.e, drugs) as the term is defined in section 802 of title 21, United States Code, for food instruments. Consideration other than eligible food would include items such as furniture, appliances or other property, etc.

Second, the Department proposes to add the sale of alcohol, or alcoholic beverages or tobacco products in exchange for WIC food instruments to the list of violations that would result in

a mandatory sanction in recognition of their obvious inappropriate nature with respect to WIC food instrument exchanges. ''Alcoholic Beverage'' is defined by 27 U.S.C. § 214 as ''any beverage in liquid form which contains not less than one-half of one percent of alcohol by volume and is intended for human consumption.'' In recognition of the addition of this new violation, number (5) above would be modified to read ''exchanging non-food items, other than alcohol or alcoholic beverages or tobacco products, for WIC food instruments.'' The proposed penalty for the first disqualification for this violation is three years, consistent with the FSP sanction for this type of violation.

Third, the Department has removed the word ''cash'' from number (2) above, exchanging WIC Food Instruments for cash and credit, because exchanging food instruments for cash is included in the trafficking violation as explained earlier in this preamble.

The Department is proposing mandatory WIC Program disqualifications for the nine violations. The proposed WIC disqualifications set forth herein are similar to disqualifications imposed by the FSP for similar violations. This will conform WIC sanctions among the States, and establish WIC disqualifications that are similar to FSP disqualifications. The following chart illustrates the mandatory WIC disqualifications that would be imposed for the noted violation. Although the Department only proposes to address nine violations in this regulation, of course there are other violations that may occur. We have left to State agency discretion the authority to establish disqualifications for additional violations they deem appropriate. However, such State agency established disqualifications cannot exceed six months.

WIC violation	WIC sanction
Trafficking	Permanent Disqualification (DQ).
Sale of alcohol or alcoholic beverages or tobacco products in exchange for WIC food instruments	1st—3 year DQ; 2nd—6 year DQ; 3rd—Permanent DQ.
Accepting WIC food instruments from unauthorized persons	Same as above.
Claiming reimbursement for the sale of an amount of a specific food item which exceeds the store's documented inventory for food item for a specific period of time.	Same as above.
Receiving, transacting and/or redeeming WIC food instruments outside authorized channels	Same as above.
Charging WIC customers more for food than non-WIC customers or charging WIC customers more than current shelf price.	Same as above.
Charging for food items not received by the WIC customer or for food provided in excess of those listed on the food instrument.	Same as above.
Exchanging non-food items, except alcohol or alcoholic beverages or tobacco, for WIC food instruments.	1st—1 year DQ; 2nd—2 year DQ; 3rd—Permanent DQ.
Exchanging WIC food instruments for credit	Same as above.

To ensure that WIC vendors are aware that disqualification from the WIC Program will also result in the loss of FSP authorization, proposed amendments to § 246.18(b) would require that the State agency provide formal written notice of possible disqualification by FSP in the formal notice of WIC disqualification. Such written notice shall be made to such vendors prior to the time available for the WIC vendor to request appeal of the WIC action.

Voluntary Withdrawal and/or Non-renewal of Contract/Agreements in Lieu of Disqualification

The September 1995 OIG audit revealed that some WIC State agencies allowed vendors to voluntarily withdraw from the WIC Program or pay a CMP in lieu of disqualification. The Department does not support such a practice. It provides a means for a vendor to circumvent reciprocal disqualification from the FSP. The two programs must cooperate in every reasonable manner to facilitate the detection and removal of abusive vendors and retailers. The result of such cooperation is more effective and efficient vendor/retailer management in both programs. Therefore, under proposed § 246.12(k)(2), State agencies would not be able to accept voluntary withdrawal of the vendor from the program or an offer by the vendor to pay a CMP in lieu of disqualification where a disqualification is required under this proposed rule.

In addition, some State agencies fail to disqualify a noncompliant WIC vendor from the program, opting instead to not renew the vendor's contract or agreement at the next available renewal period. State agencies take this action because it is believed to be less costly and burdensome than disqualifying the vendor and going through the appeals process. However, unless the vendor is actually disqualified from the WIC Program, the mandatory reciprocal FSP disqualification cannot be imposed. In addition, without disqualification, the opportunity for abuse continues until expiration of the agreement. Therefore, the Department proposes at § 246.12(k)(2) to prohibit the practice of nonrenewal of the contract/agreement as an alternative to or in lieu of disqualification.

Timely Referral of WIC Disqualified Vendors

In order to effectively remove disqualified WIC vendors from participating as retailers in the FSP, WIC State agencies must provide the FNS field offices with timely information on disqualified WIC vendors. The September 1995 OIG report found that timely referrals were not occurring. The delays in notifying FNS field offices ranged from 9 to 349 days with the majority of cases over 100 days. These untimely referrals have delayed or prevented noncompliant WIC vendors who have been disqualified from WIC from being promptly disqualified from the FSP. Therefore, to assure that action to remove abusive retailers is taken in a timely manner, the Department is proposing at § 246.12(k)(3) that State agencies provide the FNS field office with written notification, including fax or e-mail, on vendors it has disqualified from WIC for any one of the nine violations noted above that result in a mandatory disqualification period. This information shall be provided within 15 days after the opportunity to file for a WIC administrative appeal has expired or all WIC administrative and judicial appeals have been exhausted.

Participant Access

Impact on participant access has always been a primary consideration when determining whether to disqualify an abusive vendor from the WIC Program. When disqualifying a vendor

from WIC, either because of WIC Program abuse, or based on an FSP disqualification, the State agency will continue to be required to document its determination that participants will have access to WIC supplemental foods notwithstanding the disqualification of the vendor in question.

In assessing participant access, the State agency would need to consider factors such as availability of other authorized vendors in the same area and geographic barriers to such vendors. The Department would like to point out that a FSP CMP, granted in lieu of disqualification due to a participant access concern, does not obligate the WIC State agency to concur with the FSP hardship determination. Nor does it require reciprocal disqualification from the WIC Program. Recognizing that FSP and WIC serve different populations, it is possible that there may be instances where a disqualification in one program would not negatively affect participant access for recipients in the other Program.

For example, a retailer found to be abusing the FSP may have a large FSP population that is predominantly elderly. This establishment may also serve a small population of younger more mobile WIC participants. The FSP may determine that it would jeopardize FSP participant access if the retailer were disqualified and instead issues a CMP in lieu of disqualification. The WIC State agency may determine that WIC participant access would not be unduly harmed and therefore choose to disqualify the abusive WIC vendor under § 246.12(k)(iv). Of course, full appeal rights would be available to the WIC vendor under these circumstances.

In the rare instance where the State agency determines that disqualification of a WIC vendor would jeopardize access for participants, the State agency shall assess a CMP against the vendor in lieu of disqualification. The WIC State agency should actively monitor the vendor to ensure that the vendor complies with program rules as a condition to remain an authorized vendor.

The State agency must include in the file of each WIC vendor who is disqualified from the Program or receives a CMP in lieu of disqualification, a written record of its participant access determination and any supporting justification. The State agency, with its knowledge of the locations of authorized WIC vendors and the geographical distribution of WIC participants, is uniquely qualified to determine whether any given vendor is needed to ensure participant access to WIC foods, and whether a disqualification will not adversely affect participant access to authorized foods. The WIC State agency determination regarding participant access is, therefore, not subject to appeal by the vendor.

Formula for Calculating Civil Money Penalties

To ensure that WIC State agencies are using a consistent method in determining the amount of a CMP issued in lieu of disqualification, the Department proposes to establish a formula for calculating the CMP. The proposed formula is currently used by several WIC State agencies and is identical to the CMP formula used by the FSP. The proposed formula is as follows: (1) Determine the vendor's average monthly WIC redemptions for the 12-month period ending with the month immediately preceding the month during which the store was charged with violations; (2) Multiply the average monthly redemptions figure by 10 percent (.10); (3) Multiply the product from Step 2 by the number of months for which the store would have been disqualified. This is the amount of the CMP. The amount of the CMP may not exceed $10,000 for each violation. Following is an example using this methodology:

Monthly WIC Redemptions

Jan.—$10,000
Feb.—$8,500
Mar.—$12,300
Apr.—$9,000
May.—$7,000
June—$5,000
July—$6,000
Aug.—$4,000
Sept.—$5,500
Oct.—$7,000
Nov.—$7,000
Dec.—$5,000

Average Monthly Redemptions	$7,192.00
Multiply by 10 Percent	×.10
	$719.00
Proposed disqualification period=1 year or 12 months:	×12
Civil Money Penalty	$8,630.00

Disposition of Civil Money Penalties

Money collected from imposition of civil money penalties or vendor fines shall be treated as program income. Authority granted the Department in 7 CFR 3016.25 permits the characterization of such fines as program income. As program income, their use will be governed by § 246.15 of the WIC regulations. This change will be reflected in § 246.15(b).

Definition of Food Instrument

In recognition of emerging technology in the retail food delivery area relative to electronic benefits transfer (EBT), the Department proposes to revise the definition of ''food instrument'' to include an EBT transfer card. ''Food instrument'' is now proposed to be defined as a voucher, check, electronic benefits transfer card (EBT), coupon or other document which is used by a participant to obtain supplemental foods.

List of Subjects in 7 CFR Part 246

Food assistance programs, Food donations, Grant programs—social programs, Indians, Infants and children, Maternal and child health, Nutrition, Nutrition education, Public assistance programs, WIC, Women.

For reasons set forth in the preamble, 7 CFR part 246 is proposed to be amended as follows:

PART 246—SPECIAL SUPPLEMENTAL NUTRITION PROGRAM FOR WOMEN, INFANTS AND CHILDREN

1. The authority citation for part 246 continues to read as follows:

Authority: 42 U.S.C. 1786.

2. In § 246.2, the definition of ''Food instrument'' is revised to read as follows:

§ 246.2 Definitions

* * * * *

Food instrument means a voucher, check, electronic benefits transfer card (EBT), coupon or other document which is used by a participant to obtain supplemental foods.

* * * * *

3. In § 246.12:

a. paragraphs (f)(2)(xix) and (f)(2)(xx) are redesignated as paragraphs (f)(2)(xx) and (f)(2)(xxi), respectively;

b. new paragraph (f)(2)(xix) is added;

c. paragraph (f)(3) is revised;

d. paragraph (k)(1) introductory text is revised;

e. paragraph (k)(1)(iii) is removed, paragraphs (k)(1)(i),(k)(1)(ii),(k)(1)(iv) and (k)(1)(v) are redesignated as (k)(1)(v), (k)(1)(vi),(k)(1)(vii) and (k)(1)(viii), respectively, and revised, and new paragraphs (k)(1)(i) through (k)(1)(iv) and (k)(1)(ix) are added;

f. paragraphs (k)(2) and (k)(3) are redesignated as (k)(4) and (k)(5), respectively; and new paragraphs (k)(2) and (k)(3) are added.

The revisions and additions read as follows:

§ 246.12 Food delivery systems.

* * * * *

(f) * * *

(2) * * *

(xix) The State agency shall disqualify a vendor who has been disqualified from the Food Stamp Program. However, if the State agency determines that such disqualification will create hardship for participant access to authorized foods, the State agency shall issue a civil money penalty in lieu of WIC disqualification.

* * * * *

(3) Other provisions shall be added to the contracts or agreements to implement the State agency option in paragraph (r)(5)(iv) of this section.

* * * * *

(k) * * *

(1) The following sanctions shall be used by each State agency. The State agency shall provide adequate procedures for vendors to appeal a disqualification from participation under the Program as specified in § 246.18. The State agency sanctions shall include:

(i) Permanent disqualification for:

(A) Buying or selling of WIC food instruments for cash or consideration other than eligible food (trafficking); or the exchange of firearms, ammunition, explosives, or controlled substances as defined in 21 U.S.C. 802, for food instruments; or

(B) When a vendor has twice before been sanctioned for any violation listed in paragraphs (k)(1)(ii) and (k)(1)(iii) of this section.

(ii) Disqualification for three years if it is the vendor's first sanction for:

(A) The sale of alcohol or alcoholic beverages or tobacco products in exchange for WIC food instruments; or

(B) Claiming reimbursement for the sale of an amount of a specific food item which exceeds the store's documented inventory of that food item for a specific period of time; or

(C) Charging WIC customers more for food than non WIC customers or charging WIC customers more than the current shelf or contract price; or

(D) Accepting WIC food instruments from unauthorized persons; or

(E) Receiving, transacting and/or redeeming WIC food instruments outside of authorized channels; or

(F) Charging for food items not received by the WIC customer or for food provided in excess of those listed on the food instrument.

(iii) Disqualification for one year if it is the vendor's first sanction for:

(A) Exchanging WIC food instruments for credit; or

(B) Exchanging non-food items, other than alcohol or alcoholic beverages or tobacco, for WIC food instruments.

(iv) The sanctions for violations in paragraphs (k)(1)(ii) and (k)(1)(iii) of this section shall be doubled if the vendor has once before been assigned a sanction. In addition, the State agency does not have to provide the vendor with prior notice that violations were occurring and the possible consequences of the violations prior to implementing any of the mandatory sanctions in this paragraph.

(v) Food vendors may be subject to sanctions in addition to, or in lieu of, disqualification, such as claims for improper or overcharged food instruments and the penalties outlined in § 246.23, in the case of deliberate fraud.

(vi) The State agency may impose sanctions for violations that are not specified in paragraphs (k)(1)(i) through (k)(1)(iii) of this section as long as the vendor is made aware of such violations and sanctions. The period of disqualification from Program participation for such State-established violations shall not be more than six months as determined by the State agency.

(vii) The State agency shall disqualify a vendor who has been disqualified from the Food Stamp Program. The disqualification shall be for the same length of time as the FSP disqualification; may begin at a later date than the FSP disqualification; shall not be subject to administrative or judicial review under the WIC Program. If the State agency determines that such disqualification will create hardship for participant access to authorized foods, the State agency shall issue a civil money penalty in lieu of WIC disqualification. The State agency may disqualify a vendor who has been assessed a civil money penalty in the Food Stamp Program, as provided under 7 CFR 278.6, only if the State agency:

(A) Documents that any such disqualification will not create undue hardship for participants; and

(B) Includes notification that it will take such disqualification action in its vendor agreement, in accordance with paragraph (f)(3) of this section.

(viii) Prior to disqualifying a food vendor, the State agency shall consider whether the disqualification would create undue hardship for participants. The State agency shall include documentation of its participant access determination and any supporting documentation in the file of each vendor who is disqualified or receives a civil money penalty in lieu of disqualification.

(ix) The State agency shall use the following formula to calculate a civil money penalty issued in lieu of disqualification:

(A) Determine the vendor's average monthly WIC redemptions for the 12-month period ending with the month immediately preceding the month during which the store was charged with violations;

(B) Multiply the average monthly redemptions figure by 10 percent (.10);

(C) Multiply the product from Step 2 by the number of months for which the store would have been disqualified. This is the amount of the civil money penalty. The amount of the civil money penalty may not exceed $10,000 for each violation.

(2) The State agency shall not accept voluntary withdrawal of the vendor from the Program as an alternative to disqualification, but shall enter the disqualification on the record. In addition, the State agency shall not use nonrenewal of the vendor agreement as an alternative to disqualification.

(3) The State agency shall provide the appropriate FNS office with written notification and information on vendors it has disqualified for any of the violations listed in (k)(1)(i) through (k)(1)(iv) of this section. This information shall include the name of the vendor, address, identification number, the type of violation, and the length of disqualification, and shall be provided within fifteen days after the opportunity to file for a WIC administrative appeal has expired or all WIC administrative appeals have been exhausted and all judicial appeal rights have expired or have been exhausted.

* * * * *

4. In § 246.15, a sentence is added to the end of paragraph (b) to read as follows:

§ 246.15 Program income other than grants.

* * * * *

(b) * * * Money received by the State agency as a result of civil money penalties or fines assessed against a WIC vendor shall be considered as program income.

5. In § 246.18, paragraphs (a)(1) and (b)(1) are revised to read as follows:

§ 246.18 Administrative appeal of State agency decisions.

(a) * * *

(1) The right of appeal shall be granted when a local agency's or a food vendor's application to participate is denied or, during the course of the contract or agreement, when a local agency or vendor is disqualified or any other adverse action which affects participation is taken. The following actions shall not be subject to judicial or administrative review:

(i) Expiration of a contract or agreement with a food vendor;

(ii) Disqualification of a food vendor as a result of disqualification from the Food Stamp Program; and

(iii) The State agency's determination that participant access would not be adversely affected by disqualification of the vendor.

* * * * *

(b) * * *

(1) Written notification of the administrative action, the procedures to file for an administrative review, the cause(s) for and the effective date of the action. Such notification shall be provided to participating food vendors not less than 15 days in advance of the effective date of the action. When a vendor is disqualified due in whole or in part to violations specified in § 246.12(k)(1), such notification shall include the following statement: ''This disqualification from WIC may result in disqualification as a retailer in the Food Stamp Program.''

In the case of disqualification of local agencies, the State agency shall provide not less than 60 days advance notice of pending action.

* * * * *

Dated: April 13, 1998.

Yvette S. Jackson,

Administrator, Food and Nutrition Service.

[FR Doc. 98–10255 Filed 4–17–98; 8:45 am]

BILLING CODE 3410–30–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–NM–250–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A320 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Airbus Model A320 series airplanes. This proposal would require repetitive rotating probe inspections of fastener holes and/or the adjacent tooling hole of a former junction of the aft fuselage, and corrective action, if necessary. This AD also provides for optional terminating action for the repetitive inspections. This proposal is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by the proposed AD are intended to prevent reduced structural integrity of the aft fuselage caused by fatigue cracking of the former junction at frame 68.

DATES: Comments must be received by May 20, 1998.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 97–NM–250–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

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

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 97–NM–250–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 97–NM–250–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, notified the FAA that an unsafe condition may exist on certain Airbus Model A320 series airplanes. The DGAC advises that it has received a report indicating that, during fatigue tests on a Model A320 test article, at 85,734 simulated flights, four cracks developed in the fastener holes of the former junction at frame 68. Such fatigue cracking, if not detected and corrected in a timely manner, could result in reduced structural integrity of the aft fuselage of the airplane.

Explanation of Relevant Service Information

Airbus has issued Service Bulletin A320–53–1089, dated November 22, 1995, which describes procedures for performing a rotating probe inspection of the fastener holes and/or the adjacent tooling hole of the former junction at frame 68, as applicable (depending upon the configuration of the airplane), and follow-on repetitive inspections, if necessary.

Airbus also has issued Service Bulletin A320–53–1090, dated November 22, 1995, which describes procedures for cold working the fastener holes and/or adjacent tooling hole (Modifications 21780 and 21781), which would eliminate the need for the repetitive inspections specified in Airbus Service Bulletin A320–53–1089.

The DGAC classified Airbus Service Bulletin A320–53–1089 as mandatory and issued French airworthiness directive 96–298–093(B)R1, dated January 29, 1997, in order to assure the continued airworthiness of these airplanes in France. (The DGAC approved Airbus Service Bulletin A320–53–1090.)

FAA's Conclusions

This airplane model is manufactured in France and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral

airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require accomplishment of the actions specified in Airbus Service Bulletin A320–53–1089, described previously; except that the repair of any crack would be required to be accomplished in accordance with a method approved by the FAA. This proposed AD also would provide for optional terminating action for the repetitive inspections required by this proposed AD.

Operators should note that, in consonance with the findings of the DGAC, the FAA has determined that the repetitive inspections proposed by this AD can be allowed to continue in lieu of accomplishment of a terminating action. In making this determination, the FAA considers that, in this case, long-term continued operational safety will be adequately assured by accomplishing the repetitive inspections to detect cracking before it represents a hazard to the airplane.

Cost Impact

The FAA estimates that 10 Airbus Model A320 series airplanes of U.S. registry would be affected by this proposed AD.

Should an operator be required to accomplish the proposed inspection of the fastener holes and the adjacent tooling hole, it would take approximately 8 work hours per airplane to accomplish this proposed inspection, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of this inspection proposed by this AD on U.S. operators is estimated to be $480 per airplane, per inspection cycle.

Should an operator be required to accomplish the proposed inspection of only the tooling hole, it would take approximately 3 work hours per airplane to accomplish this proposed inspection, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of this inspection proposed by this AD on U.S. operators is estimated to be $180 per airplane, per inspection cycle.

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

Should an operator elect to accomplish the optional terminating action specified in this proposed AD, it would take approximately 9 work hours to cold work the fastener holes and tooling hole, or 3 work hours to cold work (only) the tooling hole. The average labor rate is $60 per work hour. Based on these figures, the cost impact of the optional terminating action would be $540 per airplane for cold working the fastener hole and tooling holes, or $180 per airplane for cold working (only) the tooling hole.

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Airbus Industrie: Docket 97–NM–250–AD.

Applicability: Model A320 series airplanes, as listed in Airbus Service Bulletins A320–53–1089 and A320–53–1090, both dated November 22, 1995; on which Airbus Modifications 21780 and 21781 (reference Airbus Service Bulletin A320–53–1090) have not been installed; certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

To detect and correct fatigue cracking of the former junction at frame 68, which could result in reduced structural integrity of the aft fuselage, accomplish the following:

(a) Prior to the accumulation of 20,000 total flight cycles, or within 500 flight cycles after the effective date of this AD, whichever occurs later, perform a rotating probe inspection for fatigue cracking of the fastener holes and/or the adjacent tooling hole, as applicable, of the right- and left-hand former junctions at frame 68, in accordance with Airbus Service Bulletin A320–53–1089, dated November 22, 1995.

(1) If no crack is detected, accomplish either paragraph (a)(1)(i) or (a)(1)(ii) of this AD.

(i) Repeat the inspection thereafter at intervals not to exceed 20,000 flight cycles. Or

(ii) Prior to further flight following the accomplishment of the inspection required by paragraph (a) of this AD, cold work the fastener holes and/or the adjacent tooling hole of the right- and left-hand former junctions at frame 68, as applicable, in accordance with Airbus Service Bulletin A320–53–1090, dated November 22, 1995. Accomplishment of this cold working constitutes terminating action for the repetitive inspections required by this AD.

(2) If any crack is detected, prior to further flight, repair it in accordance with a method approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate.

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

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

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

Note 3: The subject of this AD is addressed in French airworthiness directive 96–298–093(B)R1, dated January 29, 1997.

Issued in Renton, Washington, on April 7, 1998.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–9757 Filed 4–17–98; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–NM–06–AD]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model DC–9–10, –20, –30, –40, and –50 Series Airplanes, and C–9 (Military) Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain McDonnell Douglas Model DC–9–10, –20, –30, –40, and –50 series airplanes, and C–9 (military) airplanes. This proposal would require a one-time visual inspection to determine if the doorstops and corners of the doorjamb of the forward passenger door have been modified, various follow-on repetitive inspections, and modification, if necessary. This proposal is prompted by reports of fatigue cracks found in the fuselage skin and doubler at the corners and doorstops of the doorjamb of the forward passenger door. The actions specified by the proposed AD are intended to detect and correct such fatigue cracking, which could result in rapid decompression of the fuselage and consequent reduced structural integrity of the airplane.

DATES: Comments must be received by June 4, 1998.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 98–NM–06–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from The Boeing Company, Douglas Products Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Technical Publications Business Administration, Dept. C1–L51 (2–60). This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California.

FOR FURTHER INFORMATION CONTACT: Wahib Mina, Aerospace Engineer, Airframe Branch, ANM–120L, FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5324; fax (562) 627–5210.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 98–NM–06–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 98–NM–06-AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The FAA has received reports of fatigue cracks in the fuselage skin and doubler at the corners and doorstops of the doorjamb of the forward passenger door on Model DC–9 series airplanes. These cracks were discovered during inspections conducted as part of the Supplemental Inspection Document (SID) program, required by AD 96–13–03, amendment 39–9671 (61 FR 31009, June 19, 1996). Investigation revealed that such cracking was caused by fatigue-related stress. Fatigue cracking in the fuselage skin or doublers at the corners and doorstops of the doorjamb of the forward passenger door, if not detected and corrected, could result in rapid decompression of the fuselage and consequent reduced structural integrity of the airplane.

Explanation of Relevant Service Information

The FAA has reviewed and approved McDonnell Douglas Service Bulletin DC9–53–280, dated December 1, 1997. The service bulletin describes the following procedures:

1. Performing a one-time visual inspection to determine if the doorstops and corners of the forward passenger door doorjamb have been modified;

2. For certain airplanes: Performing a low frequency eddy current (LFEC) or x-ray inspection to detect cracks at all corners and doorstops of the doorjamb of the forward passenger door;

3. For certain other airplanes: Performing a high frequency eddy current (HFEC) inspection to detect cracks on the skin adjacent to the modification;

4. Conducting repetitive inspections, or modifying the doorstops and corners of the doorjamb of the forward passenger door, and performing follow-on HFEC inspections, if no cracking is detected;

5. Performing repetitive HFEC inspections to detect cracks on the skin adjacent to any doorstop or corner that has been modified; and

6. Modifying any crack that is found to be 0.5 inches or less in length at all doorstops and corners that have not been modified, and performing follow-on repetitive HFEC inspections.

Accomplishment of the modification will minimize the possibility of fatigue cracks in the fuselage skin and doubler.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require a one-time visual inspection to determine if the doorstops and corners of the doorjamb of the forward passenger door have been modified, various follow-on repetitive inspections, and modification, if necessary. The one-time visual inspection, follow-on repetitive inspections, and modification would be required to be accomplished in accordance with the service bulletin described previously.

Difference Between the Service Bulletin and This Proposed AD

Operators should note that, although the service bulletin specifies that the manufacturer must be contacted for disposition of certain conditions, this proposal would require the repair of those conditions to be accomplished in accordance with a method approved by the FAA.

Cost Impact

There are approximately 1,001 airplanes of the affected design in the worldwide fleet. The FAA estimates that 656 airplanes of U.S. registry would be affected by this proposed AD, and that it would take approximately 1 work hour per airplane to accomplish the proposed visual inspection, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the visual inspection proposed by this AD on U.S. operators is estimated to be $39,360 or $60 per airplane.

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

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

Should an operator be required to accomplish the proposed modification, it would take approximately 30 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Required parts would cost approximately between $490 and $1,775 per airplane, depending on the service kit purchased. Based on these figures, the cost impact of the modification proposed by this AD on U.S. operators is estimated to be between $2,290 and $3,575 per airplane.

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

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

McDonnell Douglas: Docket 98–NM–06–AD.

Applicability: Model DC–9–10, –20, –30, –40, and –50 series airplanes, and C–9 (military) airplanes, as listed in McDonnell Douglas Service Bulletin DC9–53–280, dated December 1, 1997; certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

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

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

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

Note 4: This AD is related to AD 96–13–03, amendment 39–9671, (61 FR 31009, June 19, 1996), and will affect Principal Structural Element (PSE) 53.09.031 of the DC–9 Supplemental Inspection Document (SID).

(a) Prior to the accumulation of 48,000 total landings, or within 3,575 landings after the effective date of this AD, whichever occurs later, perform a one-time visual inspection to determine if the doorstops and corners of the forward passenger door doorjamb have been modified. Perform the inspection in accordance with McDonnell Douglas Service Bulletin DC9–53–280, dated December 1, 1997.

(b) For airplanes identified as Group 1 in McDonnell Douglas Service Bulletin DC9–53–280, dated December 1, 1997: If the visual inspection required by paragraph (a) of this AD reveals that the doorstops and corners of the forward passenger door doorjamb *have*

not been modified, prior to further flight, perform a low frequency eddy current (LFEC) or x-ray inspection to detect cracks at all corners and doorstops of the forward passenger door doorjamb, in accordance with McDonnell Douglas Service Bulletin DC9–53–280, dated December 1, 1997.

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

(i) *Option 1.* Repeat the LFEC inspection required by this paragraph thereafter at intervals not to exceed 3,575 landings, or the x-ray inspection required by this paragraph thereafter at intervals not to exceed 3,075 landings; or

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

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

(B) If any crack is detected on the skin adjacent to the modification during any HFEC inspection required by paragraph (b)(1)(ii) of this AD, prior to further flight, repair it in accordance with a method approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate.

(2) Group 1, Condition 2. If any crack is found during any LFEC or x-ray inspection required by paragraph (b) of this AD, and the crack is 0.50 inch or less in length: Prior to further flight, modify the doorstops and corners of the forward passenger door doorjamb in accordance with the service bulletin. Prior to the accumulation of 28,000 landings after accomplishment of the modification, perform a HFEC inspection to detect cracks on the skin adjacent to the modification, in accordance with the service bulletin.

(i) If no crack is detected on the skin adjacent to the modification during any HFEC inspection required by paragraph (b)(2) of this AD, repeat the HFEC inspection thereafter at intervals not to exceed 20,000 landings.

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

(3) Group 1, Condition 3. If any crack is found during any LFEC or x-ray inspection required by paragraph (b) of this AD, and the crack is greater than 0.5 inch in length: Prior to further flight, repair it in accordance with a method approved by the Manager, Los Angeles ACO.

(c) Group 2, Condition 1. For airplanes identified as Group 2 in McDonnell Douglas Service Bulletin DC–9–53–280, dated December 1, 1997: If the visual inspection required by paragraph (a) of this AD reveals that the doorstops and corners of the forward passenger door doorjamb have been modified previously in accordance with the McDonnell Douglas DC–9 Structural Repair Manual (SRM), using a steel doubler, accomplish either paragraph (c)(1) or (c)(2) of this AD in accordance with McDonnell Douglas Service Bulletin DC–9–53–280, dated December 1, 1997.

(1) *Option 1.* Prior to the accumulation of 28,000 landings after accomplishment of the modification, or within 3,000 landings after the effective date of this AD, whichever occurs later, perform a HFEC inspection to detect cracks on the skin adjacent to the modification, in accordance with the service bulletin.

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

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

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

(i) If no crack is detected on the skin adjacent to the modification during any HFEC inspection required by paragraph (c)(2) of this AD, repeat the HFEC inspection thereafter at intervals not to exceed 20,000 landings.

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

(d) Group 2, Condition 2. For airplanes identified as Group 2 in McDonnell Douglas Service Bulletin DC9–53–280, dated December 1, 1997: If the visual inspection required by paragraph (a) of this AD reveals that the doorstops and corners of the forward passenger door doorjamb *have been modified* previously in accordance with McDonnell Douglas DC–9 SRM or Service Rework Drawing, using an aluminum doubler, prior to the accumulation of 28,000 landings after the accomplishment of the modification, or within 3,000 landings after the effective date of this AD, whichever occurs later, perform a HFEC inspection to detect cracks on the skin adjacent to the modification, in accordance with McDonnell Douglas Service Bulletin DC9–53–280, dated December 1, 1997

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

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

(e) Group 2, Condition 3. For airplanes identified as Group 2 in McDonnell Douglas Service Bulletin DC9–53–280, dated December 1, 1997: If the visual inspection required by paragraph (a) of this AD reveals that the doorstops and corners of the forward passenger door doorjamb *have been modified previously*, but not in accordance with McDonnell Douglas DC9 SRM or the Service Rework Drawing, prior to further flight, repair it in accordance with a method approved by the Manager, Los Angeles ACO.

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

Note 5: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

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

Issued in Renton, Washington, on April 13, 1998.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–10277 Filed 4–17–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–NM–74–AD]

RIN 2120–AA64

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

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Airbus Model A300 series airplanes and all Model A310 and A300–600 series airplanes. This proposal would require repetitive

inspections for wear damage of the aft attachment fittings of the articulated seats and dummy tracks in the passenger compartment; and repair, if necessary. This proposal is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by the proposed AD are intended to detect and correct wear damage of the aft attachment fittings of the articulated seats and dummy tracks. This condition, if not detected and corrected, could cause the floor panels to sag and result in failure of flight control systems and consequent reduced controllability of the airplane.

DATES: Comments must be received by May 20, 1998.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 98–NM–74–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

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

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 98–NM–74–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 98-NM–74–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, notified the FAA that an unsafe condition may exist on certain Airbus Model A300 series airplanes, and all Model A310 and A300–600 series airplanes. The DGAC advises that it has received reports indicating that, on in-service airplanes, wear damage was found between frames 38.2 and 40 and between frames 54 and 54.2 on the aft attachment fittings of the articulated seats and dummy tracks in the passenger compartment. Investigation has revealed that, under certain load conditions, such as take-off and landing, the sliders of the articulated seats may cause excessive wear of the dummy track slot contact surface. This excessive wear restricts the sliding movement of the articulated seats and can lead to cracking and rupture of the attachment fitting. This condition, if not detected and corrected, could cause the floor panels to sag and result in failure of flight control systems and consequent reduced controllability of the airplane.

Explanation of Relevant Service Information

Airbus has issued Service Bulletins A300–53–0329, Revision 01 (for Model A300); A300–53–6105, Revision 01 (for Model A300–600); and A310–53–2101, Revision 01 (for Model A310); all dated October 17, 1997. These service bulletins describe procedures for repetitive detailed visual inspections for wear damage of the aft attachment fittings of the articulated seats and dummy tracks between frames 38.2 and 40 and between frames 54 and 54.2 in the passenger compartment; and repair, if necessary. Accomplishment of the actions specified in the service bulletins is intended to adequately address the identified unsafe condition. The DGAC classified these service bulletins as mandatory and issued French airworthiness directive 97–116–222(B), dated May 21, 1997, in order to assure the continued airworthiness of these airplanes in France.

FAA's Conclusions

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

Explanation of Requirements of Proposed Rule

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

Differences Between Proposed Rule and Service Bulletin

Operators should note that, unlike the procedures described in Airbus Service Bulletins A300–53–0329, Revision 01 (for Model A300); Airbus A300–53–6105, Revision 01 (for Model A300–600), and Airbus A310–53–2101, Revision 01 (for Model A310), all dated October 17, 1997, this proposed AD would not permit further flight if wear damage is detected on the aft attachment fittings on the articulated seats and dummy tracks in the passenger compartment. The FAA has determined that, because of the safety implications and consequences associated with such wear damage, any subject attachment fitting that is found to exhibit wear damage must be repaired prior to further flight.

In addition, operators should note that, although the referenced service bulletins specify that the manufacturer may be contacted for disposition of certain repair conditions, this proposal would require the repair of those conditions to be accomplished in

accordance with a method approved by the FAA.

Cost Impact

The FAA estimates that 126 airplanes of U.S. registry would be affected by this proposed AD. It would take approximately 48 work hours per airplane to accomplish the proposed inspection, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $362,880, or $2,880 per airplane, per inspection cycle.

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

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Airbus Industrie: Docket 98–NM–74–AD.

Applicability: Model A300 series airplanes on which Airbus Modification 3599 or 3135 (reference Airbus Service Bulletin A300–53–0188) has been accomplished, and all Model A310 and A300–600 series airplanes; certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

To detect and correct wear damage of the aft attachment fittings of the articulated seats and dummy tracks in the passenger compartment, which could cause the floor panels to sag and result in failure of flight control systems and consequent reduced controllability of the airplane, accomplish the following:

(a) Perform a detailed visual inspection for wear damage of the aft attachment fittings of the articulated seats and dummy tracks in the passenger compartment, in accordance with Airbus Service Bulletins A300–53–0329, Revision 01 (for Airbus Model A300 series airplanes); A300–53–6105, Revision 01 (for Airbus Model A300–600 series airplanes); or A310–53–2101, Revision 01 (for Airbus Model A310 series airplanes), all dated October 17, 1997; at the applicable time specified in paragraph (a)(1) or (a)(2) of this AD.

(1) For airplanes that have accumulated less than 12,000 total flight cycles as of the effective date of this AD: Inspect prior to the accumulation of 6,000 total flight cycles, or within 18 months after the effective date of this AD, whichever occurs later.

(2) For airplanes that have accumulated 12,000 or more total flight cycles as of the effective date of this AD: Inspect within 12 months after the effective date of this AD.

(b) If no wear damage is detected during the inspection required by paragraph (a) of this AD, repeat the detailed visual inspection thereafter at intervals not to exceed 6,000 flight cycles.

(c) If any wear damage measuring 2 mm (0.078 in.) or less is detected during the inspection required by paragraph (a) of this AD, prior to further flight, repair in accordance with Airbus Service Bulletins A300–53–0329, Revision 01 (for Airbus Model A300 series airplanes); A300–53–6105, Revision 01 (for Airbus Model A300–600 series airplanes); or A310–53–2101, Revision 01 (for Airbus Model A310 series airplanes); all dated October 17, 1997. Repeat the detailed visual inspection thereafter at intervals not to exceed 6,000 flight cycles.

(d) If any wear damage measuring more than 2 mm (0.078 in.) is detected during the inspection required by paragraph (a) of this AD, prior to further flight, repair in accordance with a method approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate. Repeat the detailed visual inspection thereafter at intervals not to exceed 6,000 flight cycles.

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

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

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

Note 3: The subject of this AD is addressed in French airworthiness directive 97–116–222(B), dated May 21, 1997.

Issued in Renton, Washington, on April 13, 1998.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–10279 Filed 4–17–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–NM–25–AD]

RIN 2120–AA64

Airworthiness Directives; Dassault Model Mystere-Falcon 200, Fan Jet Falcon, and Mystere-Falcon 20 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness

directive (AD) that is applicable to all Dassault Model Mystere-Falcon 200, Fan Jet Falcon, and Mystere-Falcon 20 series airplanes. This proposal would require repetitive inspections to detect cracks at the attaching holes of the wing-to-fuselage fairings and to ensure tightness of the attaching screws; and repair of any discrepancy. This proposal also would require installation of cupwashers under the vertical seams of the upper fairings. This proposal is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by the proposed AD are intended to prevent loss of the wing-to-fuselage upper fairings during flight, which could result in the fairings impacting the engines or tail sections, and consequent reduced controllability of the airplane.

DATES: Comments must be received by May 20, 1998.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 98–NM–25–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Dassault Falcon Jet, P.O. Box 2000, South Hackensack, New Jersey 07606. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

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

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 98–NM–25–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 98–NM–25–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, notified the FAA that an unsafe condition may exist on all Dassault Model Mystere-Falcon 200, Fan Jet Falcon, and Mystere-Falcon 20 series airplanes. The DGAC advises that it has received reports of loss of wing-to-fuselage upper fairings. The loss of these fairings could be due to cracks and/or incorrectly tightened fasteners. These conditions, if not corrected, could result in the fairings impacting the engines or tail sections, and consequent reduced controllability of the airplane.

Explanation of Relevant Service Information

Dassault Aviation has issued Fan Jet Falcon Dassault Aviation Maintenance Manual Phase 34, dated June 1997, including Chapter 53–50–0, dated May 1996 (for Model Fan Jet Falcon and Mystere-Falcon 20 series airplanes), and Mystere-Falcon 200 Dassault Aviation Maintenance Manual, Revision 12, dated April 30, 1996, including Chapter 53, Procedure 731–3 (for Model Mystere-Falcon 200 series airplanes), which describe procedures for repetitive inspections to detect cracks at the attaching holes of the wing-to-fuselage fairings and to ensure tightness of the attaching screws; and repair of certain discrepancies. These documents also describe procedures for installation of cupwashers under the vertical seams of the upper fairings. The DGAC classified these documents as mandatory and issued French airworthiness directives 96–092–021(B), dated April 24, 1996, and 96–246–022(B), dated November 6, 1996, in order to assure the continued airworthiness of these airplanes in France.

FAA's Conclusions

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

Explanation of Requirements of Proposed Rule

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

Differences Between Proposed Rule and Service Information

Operators should note that, although the service information described previously does not specify appropriate procedures for disposition of certain repair conditions, this proposal would require the repair of those conditions to be accomplished in accordance with a method approved by the FAA.

Cost Impact

The FAA estimates that 239 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 2 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $28,680, or $120 per airplane, per inspection cycle.

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

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Dassault Aviation: Docket 98–NM–25–AD.

Applicability: All Model Mystere-Falcon 200, Fan Jet Falcon, and Mystere-Falcon 20 series airplanes, certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent loss of the wing-to-fuselage upper fairings during flight, which could result in the fairings impacting the engines or tail sections, and consequent reduced controllability of the airplane, accomplish the following:

(a) Within 7 months or 330 flight hours after the effective date of this AD, whichever occurs first, accomplish the requirements of paragraphs (a)(1) and (a)(2) of this AD in accordance with Chapter 53–50–0, dated May 1996, of Fan Jet Falcon Dassault Aviation Maintenance Manual Phase 34, dated June 1997, (for Model Fan Jet Falcon and Mystere-Falcon 20 series airplanes), or Chapter 53, Procedure 731–3 of Mystere-Falcon 200 Dassault Aviation Maintenance Manual, Revision 12, dated April 30, 1996 (for Model Mystere-Falcon 200 series airplanes); as applicable.

(1) Perform an inspection to detect cracks at the attaching holes of the wing-to-fuselage fairings and to ensure tightness of the screws. If any discrepancy is found, prior to further flight, repair. If a repair is not specified in the applicable maintenance manual, prior to further flight, repair in accordance with a method approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate. Thereafter, repeat the inspection at intervals not to exceed 6 months or 300 flight hours, whichever occurs first.

(2) Install cupwashers under the vertical seams of the upper fairings.

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

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

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

Note 3: The subject of this AD is addressed in French airworthiness directives 96–092–021(B), dated April 24, 1996, and 96–246–022(B), dated November 6, 1996.

Issued in Renton, Washington, on April 13, 1998.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–10278 Filed 4–17–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98–AAL–7]

Proposed Revision of Class E Airspace; Barrow, AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This action revises Class E airspace at Barrow, AK. The establishment of Global Positioning System (GPS) instrument approaches to runway (RWY) 6 and RWY 24 at Wiley Post-Will Rogers Memorial Airport, Barrow, AK, has made this action necessary. Adoption of this proposal would result in the provision of adequate controlled airspace for Instrument Flight Rules (IFR) operations at Barrow, AK.

DATES: Comments must be received on or before June 4, 1998.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, Operations Branch, AAL–530, Docket No. 98–AAL–7, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587.

The official docket may be examined in the Office of the Regional Counsel for the Alaskan Region at the same address.

An informal docket may also be examined during normal business hours in the Office of the Manager, Operations Branch, Air Traffic Division, at the address shown above and on the Internet at Alaskan Region's homepage at http://www.alaska.faa.gov/at or at address http://162.58.28.41/at.

FOR FURTHER INFORMATION CONTACT: Robert van Haastert, Operations Branch, AAL–538, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587; telephone number (907) 271–5863; fax: (907) 271–2850; email: Robert.van.Haastert@faa.dot.gov. Internet address: http://www.alaska.faa.gov/at or at address http://162.58.28.41/at.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments

are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Airspace Docket No. 98–AAL–7.'' The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Operations Branch, Air Traffic Division, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Operations Branch, AAL–530, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A which describes the application procedure.

The Proposal

The FAA proposes to amend 14 CFR part 71 by revising the Class E airspace at Barrow, AK, due to the establishment of GPS instrument approaches to RWY 6 and RWY 24. The area would be depicted on aeronautical charts for pilot reference. The intended effect of this proposal is to provide adequate controlled airspace for IFR operations at Wiley Post-Will Rogers Memorial Airport, Barrow, AK.

The coordinates for this airspace docket are based on North American Datum 83. The Class E airspace areas designated as 700/1200 foot transition areas are published in paragraph 6005 of FAA Order 7400.9E, Airspace Designations and Reporting Points, dated September 10, 1997, and effective September 16, 1997, which is incorporated by reference in 14 CFR 71.1 (62 FR 52491; October 8, 1997). The Class E airspace designation listed in this document would be revised and published subsequently in the Order.

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

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

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

1. The authority citation for 14 CFR part 71 continues to read as follows:

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9E, *Airspace Designations and Reporting Points,* dated September 10, 1997, and effective September 16, 1997, is to be amended as follows:

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

* * * * *

AAL AK E5 Barrow, AK

Barrow/Wiley Post—Will Rogers Memorial Airport, AK
(lat. 71° 17′ 08″ N, long. 156° 45′ 58″ W)
Point Barrow LRRS Airport
(lat. 71° 20′ 20″ N, long. 156° 37′ 58″ W)
Barrow VORTAC
(lat. 71° 16′ 24″ N, long. 156° 47′ 18″ W)
Barrow Localizer
(lat. 71° 17′ 08″ N, long. 156° 44′ 07″ W)

That airspace extending upward from 700 feet above the surface within a 6.6-mile radius of Barrow/Wiley Post—Will Rogers Memorial Airport and within 4 miles each side of the Barrow Localizer back course extending from the 6.6-mile radius to 14.6 miles east of the airport and within a 6.5-mile radius of the Point Barrow LRRS Airport; and that airspace extending upward from 1,200 feet above the surface within a 77-mile radius of the airport extending clockwise from the Barrow VORTAC 101° radial to the 240° radial and within the area bounded by a line beginning at the Barrow VORTAC 240° radial 20 miles west to 71°13′ N 158° W to 71°23′ N 157° 48′ W to the intersection of the Barrow VORTAC 345° radial and the 6.5-mile radius of the Point Barrow LRRS Airport.

* * * * *

Issued in Anchorage, AK, on April 10, 1998.

Willis C. Nelson,

Manager, Air Traffic Division, Alaskan Region.

[FR Doc. 98–10308 Filed 4–17–98; 8:45 am]

BILLING CODE 4910–13–P

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 240

[Release No. 34–39859; File No. S7–8–98]

RIN 3235–AH42

Year 2000 Readiness Reports To Be Made by Transfer Agents

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rule; extension of the comment period.

SUMMARY: The Securities and Exchange Commission is extending from April 13, 1998, until April 27, 1998, the comment period for Securities Exchange Act Release No. 39726 (March 5, 1998), 63 FR 12062 (March 12, 1998). In the release the Commission proposed a rule that would require non-bank transfer agents to provide at least one report to the Commission regarding its preparations for Year 2000 problems.

DATES: Comments should be received on or before April 27, 1998.

ADDRESSES: Comments should be submitted in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission (''Commission''), 450 Fifth Street, N.W., Washington, D.C. 20549.

Comments also may be submitted electronically at the following E-mail address: rule-comments@sec.gov. Comment letters should refer to File No. S7–8–98; this file number should be included on the subject line if E-mail is used. All comments received will be available for public inspection and copying at the Commission's Public Reference Room, 450 Fifth Street, N.W., Washington, D.C. 20549. Electronically submitted comment letters will be posted on the Commission's Internet web site (http://www.sec.gov).

FOR FURTHER INFORMATION CONTACT: Jerry W. Carpenter, Assistant Director, 202/942–4187; Thomas C. Etter, Jr., Special Counsel, 202/942–0178; or Jeffrey S. Mooney, Special Counsel, 202/942–4174, Division of Market Regulation, Securities and Exchange Commission, 450 Fifth Street, N.W., Mail Stop 10–1, Washington, D.C. 20549.

SUPPLEMENTARY INFORMATION: On March 5, 1998, the Commission proposed temporary Rule 17Ad-18 under the Securities Exchange Act of 1934. Rule 17Ad-18 would require all non-bank registered transfer agents to file with the Commission at least one report regarding its Year 2000 readiness. The initial report would be due no later than 45 days after the Commission adopts this rule. The follow-up reports, which would be due on August 31, 1998, and on August 31, 1999, would include an attestation by an independent public accountant that would give the independent public accountant's opinion whether there is a reasonable basis for the transfer agent's assertions in the reports. Additionally, the release contains a Commission advisory notice on its transfer agent record retention and recordkeeping requirements relating to the Year 2000.

The Commission has recently received requests from interested persons to extend the comment period for this release. The Commission believes that extending the comment period is appropriate in order to give the public additional time to comment on the matters the release addresses. Therefore, the comment period is extended until April 27, 1998.

By the Commission.

Dated: April 14, 1998.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–10336 Filed 4–17–98; 8:45 am]

BILLING CODE 8010–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 610

[Docket No. 97N–0449]

RIN 0910–AB51

Revisions to the General Safety Requirements for Biological Products; Companion Document to Direct Final Rule

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is proposing to amend the biologics regulations by adding cellular therapy products to the list of products exempted from the general safety test (GST) and by adding an administrative procedure for obtaining exemptions from the GST requirements. This proposed rule is a companion document to the direct final rule published elsewhere in this issue of the **Federal Register**. FDA is taking this action because the GST may not be relevant or necessary for many types of biological products, including cellular therapy products, currently in various stages of development.

DATES: Comments must be received on July 6, 1998. Submit written comments on the information collection provisions by June 19, 1998.

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

FOR FURTHER INFORMATION CONTACT: Dano B. Murphy, Center for Biologics Evaluation and Research (HFM–630), Food and Drug Administration, 1401 Rockville Pike, suite 200N, Rockville, MD 20852–1448, 301–594–3074.

SUPPLEMENTARY INFORMATION:

I. Background

This proposed rule is a companion to the direct final rule published in the final rules section of this issue of the **Federal Register**. This companion proposed rule will provide the procedural framework to finalize the rule in the event the direct final rule receives any significant adverse comment and is withdrawn. The comment period for this companion proposed rule runs concurrently with the comment period for the direct final rule. Any comments received under this companion proposed rule will also be considered as comments regarding the direct final rule. FDA is publishing the direct final rule because the rule contains noncontroversial changes, and FDA anticipates that it will receive no significant adverse comment.

A significant adverse comment is defined as a comment that 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. Comments that are frivolous, insubstantial, or outside the scope of the rule will not be considered significant or adverse under this procedure. For example, a comment requesting inclusion of additional product classes in the exceptions paragraph of the GST (§ 610.11(g)) will not be considered a significant adverse comment because it is outside the scope of this rule. 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 additional change. In addition, if a significant adverse comment applies to part of a rule and that part can be severed form the remainder of the rule, FDA may adopt as final those parts of the rule that are not subject of a significant adverse comment.

A detailed rationale for the rule is set forth in the preamble to the direct final rule and in section I of this document. If no significant adverse comment is received in response to the direct final rule, no further action will be taken related to this proposed rule. Instead, FDA will publish a confirmation document within 30 days after the comment period ends confirming that the direct final rule will go into effect on September 2, 1998. Additional information about FDA's direct final rulemaking procedures is set forth in a guidance published in the **Federal Register** of November 21, 1997 (62 FR 62466).

If FDA receives any significant adverse comment regarding this rule, FDA will publish a document withdrawing the direct final rule within 30 days after the comment period ends. FDA then will proceed to respond to all of the comments received regarding this rule and, if appropriate, the rule will be finalized under this proposed rule using usual notice-and-comment procedures.

Requests to add other products to the named exceptions will be considered separately by FDA. If FDA agrees that other products should be excepted from the GST, it will propose those exceptions under other independent rulemaking actions. Any parties interested in commenting on this document should do so at this time. This action is part of FDA's continuing effort to achieve the objectives of the President's ''Reinventing Government'' initiative, and is intended to reduce the burden of unnecessary regulations on biological products without diminishing the protection of the public health.

Under § 610.11 (21 CFR 610.11), a test for general safety shall be performed on biological products intended for administration to humans. A GST is one of several tests in part 610, General Biological Product Standards (21 CFR part 610), that are intended to help ensure the safety, purity, and potency of biological products administered to humans. The test is used to detect extraneous toxic contaminants that may be present in a particular biological product. As outlined in § 610.11, an amount of the final container product is injected into the peritoneum of guinea pigs and mice. The GST is satisfactory when the criteria in § 610.11(d) are met, i.e., injected animals survive the test period, they do not exhibit an unexpected or non-specific response that may indicate a difference in quality of the product, and they weigh no less at the end of the test period than they did at the time of injection. Section 610.11(g) identifies the biological products for which the GST is not required.

The requirement for a GST was originally intended as a means by which harmful extraneous toxins could be detected that published in a document in the **Federal Register** of March 15, 1976 (41 FR 10888). The source of such toxins may be bacterial toxins that persist even after the bacteria producing the toxins had been removed by filtration or killed by sterilization, or formulation errors that result in harmful levels of certain substances, e.g., preservatives. The test continues to serve as a safety net to detect harmful contaminants that may enter or be introduced into the final container through undetected failures in the manufacture of biological products.

In the last 15 years, technological advances have increased the ability of manufacturers to control and analyze the manufacture of many biotechnology derived biological products. After more than a decade of experience with these products, FDA found that it could evaluate many aspects of a biological product's safety, purity, or potency with tests other than those prescribed in part 610. In response to these developments, FDA published in the **Federal Register** of May 14, 1996 (61 FR 24227), a final rule exempting certain biotechnology and synthetic biological products from, among other things, specified regulations applicable to biological products, including the GST (§ 601.2).

Recent scientific advances have dramatically increased the diversity of biological products regulated under section 351 of the Public Health Service Act (the PHS Act). In particular, cellular-based therapies intended for the diagnosis, cure, mitigation, treatment, or prevention of disease in man have been the subject of much biomedical research and are used with increasing frequency. Typically, cellular therapies use autologous or allogeneic cells, often lymphocyte subpopulations, but other cell types may be used, obtained from a donor and manipulated ex vivo to varying degrees before use in the recipient patient. The ex vivo manipulation may consist of, for example, growing a small number of cells to increase their number (cellular expansion), selective enrichment of a specific cell subpopulation, or the addition of specific cell factors or genetic sequences. A common characteristic of cellular therapies is the need for a relatively short turn-around time between first obtaining the cells and their final infusion as a cellular therapy product into the patient. In many cases, cells used in the final cellular therapeutic are obtained only hours before they must be used and turn-around times of several days or less are presently typical. A test, such as the GST, that requires 7 days to complete is not compatible with such products and such a requirement would make it impossible to use many of these products. Furthermore, because the procedures and materials used to produce cellular therapy products are stringently controlled and monitored, the likelihood of an extraneous toxic component contaminating a final product is greatly reduced.

In the **Federal Register** of June 3, 1994 (59 FR 28821 and 28822), FDA announced that the Center for Biologics Evaluation and Research (CBER) would review certain biologics regulations to identify regulations that are outdated, burdensome, inefficient, duplicative, or otherwise unsuitable or unnecessary. FDA included § 610.11 in the review. On January 26, 1995, FDA held a public meeting to discuss the retrospective review of regulations applicable to biological products and to provide a forum for the public to voice its comments regarding the retrospective review. At the meeting, only one comment addressed whether § 610.11 should be retained unchanged, modified, or deleted. The comment acknowledged the utility of the GST for products that have a high degree of intrinsic variability. However, despite its recognized value in some specific cases, the comment questioned the rationale for requiring the GST for all biological products intended for administration to humans. The comment noted that the amount of final container product administered to animals for the GST may not have any correlation with the human dose, that some biological products possess extensive documented histories of no GST failure, and that each run of the test requires the use of at least four animals. The comment suggested that FDA revise § 610.11 to grant exemptions from the GST when the test is unnecessary to evaluate the safety of a specific product.

FDA received several comments from the public regarding issues raised at the January 26, 1995, meeting. Two comments agreed with the suggestion made at the public meeting that § 610.11 be amended to include a provision that would allow certain products to be exempted from the GST upon approval of the Director, CBER. Another comment suggested that exemptions be permitted for appropriate biological products by the Director, CBER, after a suitable qualification period was met without any failure of the GST, such as 1 year of production or after 10 consecutive production lots pass the GST. The comment suggested that a demonstrated record of GST compliance also be supported by well-documented in-process safety controls, long-term compliance with current good manufacturing practices (CGMP) regulations (21 CFR parts 210 and 211), and the use of sophisticated analytical techniques capable of adequately characterizing the final product and validating its safety.

On March 17, 1997, FDA held a public meeting to discuss the agency's proposed approach to the regulation of human cellular and tissue-based products. The meeting was attended by FDA, members of industry, representatives from accrediting organizations, and interested members of the public. During the meeting, two attendees addressed the use of the GST with cellular therapy products. The comments regarded the 7-day incubation time of the test as an unworkable requirement for many cellular therapy products and suggested that such products be exempted from

the test, including allogeneic and autologous cell therapy products.

II. Highlights of the Proposed Rule

FDA agrees with the comments received that cellular therapy products should be exempt from the GST requirement. FDA is proposing this rule to expand the exceptions in § 610.11(g) to include ''cellular therapy products.'' In addition, FDA is adding an administrative procedure for manufacturers of other biological products to request and obtain exemptions from the GST. Many biological products are currently manufactured, or will be manufactured in the future, under highly controlled and rigorously monitored conditions. Therefore, under the amended rule, manufacturers of biological products that employ appropriate production controls and quality assurance safeguards would be permitted to apply for an exemption from the GST requirement. Such manufacturers will be required to provide supporting documentation to the Director, CBER, as to why a product should not be subject to the GST requirement. The request shall include an explanation of why the GST is unnecessary or cannot be performed due to the mode of administration, the method of preparation, or the special nature of the product and shall describe alternate procedures, if any, to be employed. The Director, CBER, may grant an exemption if she finds that the manufacturer's submission justifies an exemption.

The value of the GST as a final assay for the presence of extraneous toxins may be diminished for certain biological products, such as vaccines containing recombinant or purified protein antigens. Recombinant protein antigens are not produced from infectious bacteria or virus and antigens derived from infectious pathogens may undergo many production steps that kill or neutralize the pathogen or inactivate toxic materials. Therefore, for these kinds of products, the risk is extremely low that viable pathogenic or toxic materials will persist through production to the final filling. The effectiveness of such steps can be validated by specific in-process tests and controls which can be used to alert manufacturers to potential problems. To further reduce the possibility that an undetected extraneous toxin could contaminate the product just before or during the final fill stage, a manufacturer may use production facilities and final fill equipment that can detect or enable the detection of any loss in the integrity of the production and fill processes. In addition, a method of production and detailed product characterization able to meet requirements similar to those set out in § 601.2(c) could be used to demonstrate the safety, purity, and potency of a biological product without the use of the GST. Each manufacturer will be responsible for identifying the product or products that are produced in such a manner that makes the GST unnecessary to ensure the safety, purity, and potency of the biological product. Manufacturers wishing to obtain an exemption to the GST for a particular product would contact the appropriate product division of CBER for specific information regarding how to apply and what information should be included in the application or supplemental application.

III. Analysis of Impacts

A. Review Under Executive Order 12866 and the Regulatory Flexibility Act

FDA has examined the impact of the proposed rule under Executive Order 12866, the Regulatory Flexibility Act (5 U.S.C. 601–612), and the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impact; and equity). This proposed rule is consistent with the regulatory philosophy and principles identified in the Executive Order. The proposed rule is a significant regulatory action as defined by the Executive Order and is subject to review under the Executive Order because it deals with a novel policy issue.

In accordance with the principles of Executive Order 12866, the result of the proposed rule will be a substantial reduction in burdens on applicants filing for approval of certain biological products.

The Regulatory Flexibility Act requires agencies to analyze regulatory options that would minimize any significant impact of a rule on small business entities. Because, as stated previously, the overall result of the proposed rule will be a substantial reduction of the regulatory and reporting burdens, the agency certifies that the proposed rule will not have a significant negative economic impact on a substantial number of small entities. Therefore, under the Regulatory Flexibility Act, no further analysis is required. This proposed rule also does not trigger the requirement for a written statement under section 202(a) of the Unfunded Mandates Reform Act because it does not impose a mandate that results in an expenditure of $100 million or more by State, local, and tribal governments in the aggregate, or by the private sector, in any one year.

B. Environmental Impact

The agency has determined under 21 CFR 25.31(j) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

IV. The Paperwork Reduction Act of 1995

This proposed rule contains information collection provisions that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (the PRA) (44 U.S.C. 3501–3520). The title, description, and respondent description of the information collection provisions are shown below with an estimate of the annual reporting burden. Included in the estimate is the time for reviewing the instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing each collection of information.

FDA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Title: Requests for Exemptions from the General Safety Testing Requirements for Biological Products.

Description: FDA is proposing to revise the requirements for general safety testing (GST) set forth in § 610.11. The test serves as a safety net to detect harmful contaminants that may enter or be introduced into the final container through undetected failures in the manufacture of biological products. The revision would add ''cellular therapy products'' to the list of products excepted from the GST, and add an administrative procedure for obtaining

exemptions from the GST requirements for other biological products. FDA is proposing the new administrative procedure because the GST may not be feasible or appropriate for some biological products. FDA anticipates that manufacturers requesting exemptions would have a demonstrated record of GST compliance supported by long-term compliance with CGMP's, well-documented in-process safety controls, and use sophisticated analytical techniques to adequately characterize the final product and validate its safety. Manufacturers would submit their request and documentation to the Director, CBER, who may grant the exemption if it is determined that the manufacturer's submission justifies an exemption.

Description of Respondents: Manufacturers of biological products.

The proposed rule would require only those manufacturers requesting an exemption from the GST under § 610.11(g)(2) to submit additional information as part of a license application or supplement to an approved license application. Manufacturers of ''cellular therapy products'' would be excepted from the GST under § 610.11(g)(2) and thus, would not have to submit an exemption request. In fact, manufacturers of cellular therapy products would be relieved of significant burdens because they would no longer be required to perform the GST and report the results to FDA. FDA estimates that annually it will receive approximately 10 requests for administrative exemption from the GST under 21 CFR 610.11(g)(2). FDA estimates that 40 hours will be required for an applicant to complete and submit the appropriate information for the exemption request. Since that information is ordinarily compiled and organized by the manufacturer while performing the GST, FDA anticipates that the additional time needed to submit an exemption request will be minimal.

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

21 CFR Section	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
610.11(g)(2)	10	1	10	40	400
Total	10	1	10	40	400

[1]There are no capital costs or operating and maintenance costs associated with this collection of information.

For consistency with the direct final rule to which this proposed rule is a companion, FDA is following the PRA comment procedures for direct final rules in this proposed rule. As provided in 5 CFR 1320.5(c)(1), collection of information in a direct final is subject to the procedures set forth in 5 CFR 1320.10. Interested persons and organizations may submit comments on the information collection requirements of this direct final rule by June 19, 1998 to the Dockets Management Branch (address above).

At the close of the 60-day comment period, FDA will review the comments received, revise the information collection provisions as necessary, and submit these provisions to OMB for review. FDA will publish a notice in the **Federal Register** when the information collection provisions are submitted to OMB, and an opportunity for public comment to OMB will be provided at that time. Prior to the effective date of the direct 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.

V. Request for Comments

Interested persons may, on or before July 6, 1998, submit to the Docket Management Branch (address above) written comments regarding this proposal. This comment period runs concurrently with the comment period for the direct final rule. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday. All comments received will be considered as comments regarding this companion proposed rule and the direct final rule. In the event the direct final rule is withdrawn, all comments received regarding the direct final rule and this companion proposed rule, will be considered under this proposed rule.

List of Subjects in 21 CFR Part 610

Biologics, Labeling, Reporting and recordkeeping requirements.

Therefore under the Federal Food, Drug, and Cosmetic Act, the Public Health Service Act, and the authority delegated by the Commissioner of Food and Drugs, 21 CFR part 610 is amended as follows:

PART 610—GENERAL BIOLOGICAL PRODUCTS STANDARDS

1. The authority citation for 21 CFR part 610 continues to read as follows:

Authority: 21 U.S.C. 321, 351, 352, 353, 355, 360, 371; 42 U.S.C. 216, 262, 263, 263a, 264.

2. Section 610.11 is amended by revising paragraph (g) to read as follows:

§ 610.11 General safety.

* * * * *

(g) *Exceptions*—(1) The test prescribed in this section need not be performed for Whole Blood, Red Blood Cells, Cryoprecipitated AHF, Platelets, Plasma or Cellular Therapy Products.

(2) For products other than those identified in paragraph (g)(1) of this section, a manufacturer may request from the Director, CBER, an exemption from the general safety test. The manufacturer shall submit information as part of a license application submission or supplement to an approved license application establishing that because of the mode of administration, the method of preparation, or the special nature of the product a test of general safety is unnecessary to assure the safety, purity, and potency of the product or cannot be performed. The request shall include any alternate procedures, if any, to be performed. The Director, CBER, upon finding that the manufacturer's request justifies an exemption, may exempt the product from the general safety test subject to any condition necessary to assure the safety, purity, and potency of the product.

Dated: April 10, 1998.

William B. Schultz,

Deputy Commissioner for Policy.

[FR Doc. 98–10313 Filed 4–17–98; 8:45 am]

BILLING CODE 4160–01–F

OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION

29 CFR Part 2200

Rules of Procedure; Extension of Comment Period

AGENCY: Occupational Safety and Health Review Commission.

ACTION: Notice of proposed rulemaking; extension of time for comments.

SUMMARY: This document extends the time for filing comments to the Commission's proposed revision of its settlement rules to April 30, 1998. The proposed rule was published in the **Federal Register** on March 2, 1998.

DATES: Comments to the Commission's Notice of Proposed Rulemaking published at 63 FR 10166 should be received by April 30, 1998.

ADDRESSES: Comments to the Notice of Proposed Rulemaking should be sent to Earl R. Ohman, Jr., General Counsel, Occupational Safety and Health Review Commission, 1120 20th Street, NW, 9th Floor, Washington, DC 20036–3419.

FOR FURTHER INFORMATION CONTACT: Earl R. Ohman, Jr., General Counsel, Occupational Safety and Health Review Commission, 1120 20th Street, NW, 9th Floor, Washington, DC 20036–3419, telephone: 202–606–5410. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: On March 2, 1998, the Commission published in the **Federal Register**, 63 FR 10166, a notice of proposed rulemaking to amend the Commission's rule on settlements, 29 CFR 2200.109. In that notice, the Commission announced that all comments must be received by April 16, 1998. On April 9, the Commission received from the Office of the Solicitor of the Department of Labor, a request to extend the comment period an additional 14 days.

In his request, the Solicitor pointed out that the deadline for comments came during the Passover/Easter holiday season. It is the Commission's view that the public interest is best served by allowing all interested parties adequate time to prepare their comments to the proposal, particularly inasmuch as the Commission is unable to act on the proposal until it regains a quorum. Accordingly, the Commission extends the comment period for all interested parties until April 30, 1998.

Dated: April 13, 1998.

Earl R. Ohman, Jr.,

General Counsel.

[FR Doc. 98–10253 Filed 4–17–98; 8:45 am]

BILLING CODE 7600–01–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD01–97–131]

RIN 2115–AE47

Drawbridge Operation Regulations: Acushnet River, MA

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard is proposing to change the operating rules for the New Bedford Fairhaven (Rt–6) Bridge, mile 0.0, over the Acushnet River between New Bedford and Fairhaven, Massachusetts.

The bridge owner, Massachusetts Highway Department (MHD), has requested that the Coast Guard change the operating regulations as a result of comments received from the cities of New Bedford and Fairhaven regarding vehicular traffic delays from frequent bridge openings. Additionally, redundant language will be removed, and the times the draw opens will be combined for clarity and simplicity. An on call requirement for Christmas day is also being proposed as part of this action. It is expected that this proposed change to the regulations will help relieve the traffic during the peak traffic periods Monday through Friday, make the regulations clear and understandable as well as continue to provide for the needs of navigation.

DATES: Comments must reach the Coast Guard on or before June 19, 1998.

ADDRESSES: You may mail comments to Commander (obr), First Coast Guard District, 408 Atlantic Avenue, Boston, MA. 02110–3350, or deliver them to the same address between 7 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (617) 223–8364.

The District Commander maintains the public docket for this rulemaking. Comments and documents as indicated in this preamble will become part of this docket and will be available for inspection or copying at the above address, between 7 a.m. and 3 p.m. Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: John W. McDonald, Project Officer, First Coast Guard District, (617) 223–8364.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard encourages interested persons to participate in this matter by submitting written data, views, or arguments. Persons submitting comments should include their names and addresses, identify this rulemaking (CGD01–97–131) and specific section of this proposal to which their comments apply, and give reasons for each comment. Please submit two copies of all comments and attachments in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. Persons wanting acknowledgment of receipt of comments should enclose a stamped, self-addressed postcard or envelope.

The Coast Guard will consider all comments received during the comment period. It may change this proposal in response to comments received. The Coast Guard does not plan to hold a public hearing; however, persons may request a public hearing by writing to the Coast Guard at the address listed under **ADDRESSES**. The request should include the reasons why a hearing would be beneficial. If it is determined that the opportunity for oral presentations will aid this rulemaking, the Coast Guard will hold a public hearing at a time and place announced by a subsequent notice published in the **Federal Register.**

Background

The vertical clearance at the Route 6 Bridge at mean high water (MHW) is 6 feet and at mean low water (MLW) is 10 feet. The horizontal clearance is 95 feet in each channel of this swing bridge.

The Route 6 Bridge presently opens on the hour from 6 a.m. to 10 a.m., a quarter past the hour from 11:15 a.m. to 6:15 p.m., and at all other times on call. The draw also opens at any time for vessels with a draft exceeding 15 feet and for vessels owned or operated by the U.S. Government, state or local authorities. Each opening of the draw does not exceed 15 minutes except for vessels with drafts exceeding 15 feet or in extraordinary circumstances.

Discussion of Proposal

The bridge owner, MHD, has received comments from the cities of New Bedford and Fairhaven that the bridge is causing traffic delays and thus, effecting businesses along Route 6 on both sides of the waterway. The traffic counts submitted to the Coast Guard for review indicate that the heavy vehicular traffic periods are Monday through Friday during the morning and afternoon commuting hours. The comments received did however, indicate that the inbound commercial fishing vessels should be exempted from changes to the regulations that may restrict the openings of the bridge for marine traffic.

These changes to the regulations will require the bridge to open on signal on the hour from 6 a.m. to 7 p.m., except that from 7 a.m. to 9 a.m. and 4 p.m. to 7 p.m., Monday through Friday, the bridge need not open, except for inbound commercial fishing vessels on the hour. The bridge shall be opened at any time for vessels with a draft of 15 feet or greater, except during on call hours. An on call requirement for openings Christmas eve through Christmas day is being added as part of this proposal requiring that the draw will open as soon as possible but not longer than two hours after notice has been given by calling the number posted at the bridge.

The requirement in the regulations to open as soon as possible for U.S. Government and State of Massachusetts vessels is being removed since it is now listed under the general operating regulations in 33 CFR 117.31 for all bridges. The requirement to post the operating regulations is being removed since it is listed under 33 CFR 117.55 under the general operating regulations for all bridges.

The times when the bridge opens are being changed to on the hour eliminating the period 11:15 a.m. to 6:15 p.m. when the bridge opened at a quarter past the hour. The bridge opening times will all be on the hour for simplicity since there is no known reason to have different opening times. The requirement to not exceed 15 minutes is being eliminated from the regulations because the drawtenders open and close the bridge promptly or as soon as possible as a rule and should have the discretion to use their experience for safety and preservation of the mechanical components for the operating machinery of the bridge.

Regulatory Evaluation

This proposed rule is not a significant regulatory action under section 3(f) of Executive Order 12866, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. It has not been reviewed by the Office of Management and Budget under that Order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation, under paragraph 10e of the regulatory policies and procedures of DOT, is unnecessary. This conclusion is based on the fact that bridges must operate in accordance with the needs of navigation while providing for the reasonable needs of land transportation. This proposed rule adopts the operating hours which the Coast Guard believes to be appropriate based on the results of past experience and the bridge traffic counts reviewed by the Coast Guard. The Coast Guard believes this rule achieves the requirement of balancing the navigational rights of recreational boaters and the needs of land based transportation.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard considers whether this proposal will have a significant economic impact on a substantial number of small entities. ''Small entities'' include small businesses, not-for profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations less than 50,000. Therefore, for the reasons discussed in the Regulatory Evaluation section above, the Coast Guard certifies under section 605(b) that this proposed rule will not have a significant economic impact on a substantial number of small entities. If, however, you think that your business or organization qualifies as a small entity and that this proposed rule will have a significant economic impact on your business or organization, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and in what way and to what degree this rule will economically affect it.

Collection of Information

This proposed rule does not provide for a collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Federalism

The Coast Guard has analyzed this proposed rule in accordance with the principles and criteria contained in Executive Order 12612 and has determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard considered the environmental impact of this proposed rule and concluded that, under section 2.B.2.e.(34) of Commandant Instruction M16475.1B, as amended by 50 FR 38655, July 29, 1994, this proposed rule is categorically excluded from further environmental documentation because promulgation of changes to drawbridge regulations have been found not to have significant effect on the environment. A ''Categorical Exclusion Determination'' is available in the docket for inspection or copying where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 117

Bridges.

Proposed Regulation

For the reasons set out in the preamble, the Coast Guard proposes to amend 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05–1(g); section 117.255 also issued under the authority of Pub. L. 102–587, 106 Stat. 5039.

2. Section 117.585 is revised to read as follows:

§ 117.585 Acushnet River

(a) The New Bedford Fairhaven Route-6 Bridge, mile 0.0, shall open on signal on the hour from 6 a.m. to 7 p.m., except:

(1) From 7 a.m. to 9 a.m. and 4 p.m. to 7 p.m., Monday through Friday, the draw shall open on the hour for inbound commercial fishing vessels only.

(2) Except as noted in paragraph (c) of this section, the draw shall open on signal at any time for vessels with a draft exceeding 15 feet.

(b) From 7 p.m. through 6 a.m. the draw shall open on signal.

(c) From 6 p.m. on December 24th through midnight on December 25th, the draw shall open as soon as possible but not longer than two hours after notice has been given by calling the number posted at the bridge.

Dated: April 8, 1998.

R.M. Larrabee,

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

[FR Doc. 98–10272 Filed 4–17–98; 8:45 am]

BILLING CODE 4910–15–M

DEPARTMENT OF THE INTERIOR

National Park Service

36 CFR Part 7

RIN 1024–AC66

Kaloko-Honokohau National Historical Park, Hawaii Public Nudity

AGENCY: National Park Service, Interior.

ACTION: Proposed rule.

SUMMARY: The National Park Service (NPS) is proposing to prohibit public nudity within the boundaries of Kaloko-

Honokohau National Historical Park, Hawaii. The existing practice of recreational public nudity is in conflict with the enabling legislation of the park and the traditional values of native Hawaiian culture which the park was created to perpetuate and preserve.

DATES: Written comments will be accepted through June 19, 1998.

ADDRESSES: Comments should be addressed to: Superintendent, Kaloko-Honokohau National Historical Park, 734786 Kanalani St. # 14, Kailua-Kona, Hawaii 96745.

FOR FURTHER INFORMATION CONTACT: Bryan Harry, Superintendent, National Park Service, Pacific Island Support Office, 300 Ala Moana Blvd., Suite 6305, P.O. Box 50165, Honolulu, Hawaii 96850. Telephone 808–541–2693.

SUPPLEMENTARY INFORMATION:

Background

Kaloko-Honokohau National Historical Park was established under Public Law 95–625 (16 U.S.C. 396d) on November 10, 1978 to ''* * * provide a center for the preservation, interpretation and perpetuation of traditional native Hawaiian activities and culture, and to demonstrate historic land use patterns as well as to provide needed resources for the education, enjoyment and appreciation of such traditional native Hawaiian activities and culture by local residents and visitors * * *.'' Public nudity, an activity that can be construed as contemptuous and insulting in traditional native Hawaiian culture, is in conflict with the above stated purpose for which this park was established. Continued use of the park in this manner derogates resources that are used traditionally and creates a condition that is in conflict with related traditional practices by native Hawaiians.

In traditional Hawaiian culture, public nudity had strong social connotations as documented by the following excerpts pertaining to nudity and how it is viewed in the Hawaiian culture, stating specifically that such activity was very strictly regulated within a defined traditional social context.

Mourning: ''* * * displaying genitals were neither common nor approved, Mrs. Pukui explains. Such actions were excusable only because the mourner was considered *pupule (crazy)* from grief.'' (Kamakau 1919–20:2–45; Campbell 1967:101; Pukui, Haertig, and Lee, 1972 Vol. I: 124,133; 1972 Vol. II:183; Valeri 1985:261, 308).

Sorcery: '' As nudity is excused during mourning, nudity in the ceremony of *anewanewa,* was excused due to the fear of sorcery. These two circumstances were probably the only time Hawaiians of both sexes were ever nude in public. Exposure of the genitals was not approved.'' (Pukui, Haertig, and Lee, 1972:124)

Nudity, general: Hawaiian tradition, for those following the kapu ''exposing the buttocks (*ho'opohopoho*) was a gesture of complete contempt * * * and a grave insult to the beholder and for this reason even the ''slit-in-the-back'' hospital gown thus becomes a threat to ordinary courtesy'' (Pukui, Haertig, and Lee, 1972:91)

Today, the reaction of Hawaiian cultural experts to public nudity echos the past pre-missionary view towards nakedness (personal communication with Pat Bacon, who is Mary Kawena Pukui's daughter). Specifically, she was asked as to what circumstances in the Hawaiian Culture would nudity be acceptable. Ms. Bacon stated that traditionally, children were allowed to go naked until they were about 10 years old, and that adult, female or male, nudity was not acceptable, and that men were nude only for rituals.

Existing Conditions

Public nudity is currently taking place in a relatively confined area fronting one of the park's more important cultural features, ''Aimakapa'' fishpond. The beach front at this location is visible from the proposed park observation platform and the boardwalk trail, both primary destination points for park visitors. Many more of the significant culture features of the park are located along the beach trail through the area currently used by the nudists. All park users must pass along this narrow coastal strip and therefore must confront any person(s) involved in public nudity. Native Hawaiians, school groups and other visitors with a strong identity to traditional Hawaiian culture have informed park management that they have chosen to abandon their visit to the park rather than confront this conflicting and distracting activity. The NPS has on file numerous letters and documents from the Hawaii Congressional Delegation and the native Hawaiian constituency relating to their views of an existing conflict between public nudity and the purposes for which the park was established.

The park initially attempted to encourage voluntary compliance against public nudity. When this failed, the park enacted a temporary restriction of public nudity through the Superintendent's Compendium (36 CFR 1.5(a)(2)). This temporary prohibition is currently in place and will remain in place while the park solicits public comment through this rulemaking.

The creation of Kaloko-Honokohau National Historical Park was largely driven by the congressional delegations of the State of Hawaii. This congressional delegation, native Hawaiian community groups and leaders, and other special interest groups were influential in defining the nature and purpose of the park and maintain an active interest in the progress and direction of the park's development.

The enabling legislation defines the intended purpose and management direction for the park, and recreational nudity, or any other recreational activity, must be compatible with NPS management's ability to carry out that legislated purpose. Mitigation efforts to resolve the issue to date have failed.

The issue of public nudity was first addressed in public on December 12, 1990, when a Notice of Intent to prepare an environmental impact statement for a general management plan for Kaloko-Honokohau National Historical Park appeared in the **Federal Register** (55 FR 51165). Following the **Federal Register** notice, scoping for the preparation of the General Management Plan (GMP) was initiated. Letters were sent to officials, organizations and individuals who were known to have an interest in the development of Kaloko-Honokohau National Historical Park, inviting them to attend scheduled public meetings or provide written comments expressing their views and concerns related to the future use and development of Kaloko-Honokohau National Historical Park.

Public meetings were held on the islands of Hawaii (Kona and Waimea) and O'ahu (Honolulu) in January 1991 to receive comments from all interested parties in order to identify the full scope of issues relevant to the preparation of that GMP. During the public comment period, which ran to the end of February 1991, more than 900 responses to Kaloko-Honokohau's GMP initiative were received. These comments were carefully considered in drafting planning options to reflect all viewpoints. Planning issues evolving into the GMP included the following: future public use of Honokohau beach, protection of the fishpond's endangered biota, park development and accessibility, carrying capacities, and others.

With regard to future use of Honokohau beach, 19 individuals either spoke or wrote in opposition to allowing nude sunbathing there. Three of the letters were accompanied by petitions. These petitions contained a total of 442 signatures from individuals who opposed nude sunbathing in national parks. There were a total of 42 individuals who either spoke or wrote in favor of designating Honokohau beach as clothing optional. One of the

letters was accompanied by a petition with 189 signatures of individuals recommending the NPS designate Honokohau beach as clothing optional. This response persuaded the park to move forward with comment rulemaking.

Public Participation

It is the policy of the Department of the Interior, whenever practicable, to afford the public an opportunity to participate in the rulemaking process. Accordingly, interested persons may submit written comments regarding this proposed rule to the address noted at the beginning of this rulemaking. The NPS will review these comments, as well as the comments received from the previous public meetings concerning the future use of Honokohau beach, and consider making changes to the rule based upon an analysis of the comments.

Drafting Information

The principal authors of this proposed rulemaking are James Martin, Superintendent, Hawaii Volcanoes National Park; Bryan Harry, Superintendent, National Park Service, Pacific Island Support Office; Laura Carter-Schuster, Resource Manager, Kaloko-Honokohau National Historical Park; and Dennis Burnett, Washington Office of Ranger Activities, National Park Service.

Paperwork Reduction Act

This rulemaking does not contain collections of information requiring approval by the Office of Management and Budget under the Paperwork Reduction Act of 1995.

Compliance With Other Laws

This rule was not subject to Office of Management and Budget review under Executive Order 12866. The Department of the Interior determined that this document will not have a significant economic effect on a substantial number of small entities under Regulatory Flexibility Act (5 U.S.C. 601 *et seq*). The economic effects of this rulemaking are local in nature and negligible in scope.

The Service has determined and certifies pursuant to the Unfounded Mandates Reform Act, 2 U.S.C. 1502 *et seq.*, that this proposed rule will not impose a cost of $100 million or more in any given year on local, State, or tribal governments or private entities.

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

This rule is not a major rule under the Congressional review provisions of the Small Business Regulatory Enforcement Fairness Act (5 U.S.C. 804(2)).

The NPS has determined that this rulemaking will not have a significant effect on the quality of the human environment, health and safety because it is not expected to:

(a) Increase public use to the extent of compromising the nature and character of the area or causing physical damage to it;

(b) Introduce incompatible uses which compromise the nature and characteristics of the area or cause physical damage to it;

(c) Conflict with adjacent ownership or land uses; or

(d) Cause a nuisance to adjacent owners or occupants.

Based on this determination, this rulemaking is categorically excluded from the procedural requirements of the National Environmental Policy Act (NEPA) by Departmental guidelines in 516 DM 6 (49 FR 21438). As such, neither an Environmental Assessment nor an Environmental Impact Statement has been prepared specifically for this regulation. However, an EIS was issued in 1992 along with the General Management Plan for the management and development of Kaloko-Honokohau National Historical Park under the provisions of NEPA.

List of Subjects in 36 CFR Part 7

District of Columbia, National parks, Reporting and recordkeeping requirements.

In consideration of the foregoing, the NPS proposes to amend 36 CFR Chapter I as follows:

PART 7—SPECIAL REGULATIONS, AREAS OF THE NATIONAL PARK SYSTEM

1. The authority citation for Part 7 continues to read as follows:

Authority: 16 U.S.C. 1, 3, 9a, 460(q), 462(k); Sec. 7.96 also issued under D.C. Code 8–137(1981) and D.C. Code 40–721(1981).

2. New Section 7.87 is added to read as follows:

§ 7.87 Kaloko-Honokohau National Historical Park.

Public nudity, including public nude bathing, by any person on Federal land or water within the boundaries of Kaloko-Honokohau National Historical Park is prohibited. Public nudity is a person's failure to cover with a fully opaque covering that person's own genitals, pubic areas, rectal area or female breast below a point immediately above the top of the areola when in a public place. Public place is any area of Federal land or water within the Historical Park, except the enclosed portions of restrooms or other structures designed for privacy or similar purposes. This section shall not apply to a person under 10 years of age.

Dated: January 30, 1998.

Donald J. Barry,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 98–10322 Filed 4–17–98; 8:45 am]

BILLING CODE 4310–70–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 142

[FRL–5999–5]

RIN 2020–AA37

Revision of Existing Variance and Exemption Regulations to Comply With Requirements of the Safe Drinking Water Act

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Agency is proposing to revise the existing regulations regarding Safe Drinking Water Act variances and exemptions. These revisions are based on the 1996 Safe Drinking Water Act Amendments. A new subpart, Subpart K, created to implement a new section in the Amendments, describes procedures and conditions under which a primacy State/Tribe (please note that throughout this preamble and proposed rule, the term ''State'' has the same definition as currently exists in 40 CFR 141.2, i.e., ''State means the agency of the State or Tribal government which has jurisdiction over public water systems . . .'') or the Administrator may issue small system variances to public water systems serving less than 10,000 persons. This rule-making is intended to provide regulatory relief to all public water systems, particularly small systems.

DATES: Written comments must be received by midnight May 20, 1998.

ADDRESSES: Written comments should be submitted to: W–97–26 Comment Clerk, Water Docket (mailcode MC4101), Environmental Protection Agency, 401 M Street, S.W., Washington, D.C., 20460.

The record is available for inspection at the Water Docket, Washington, D.C., from 9 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. For access to docket materials, please call (202)–260–3027 to schedule an appointment.

FOR FURTHER INFORMATION CONTACT: Andrew J. Hudock, Office of

Enforcement and Compliance Assurance, Office of Regulatory Enforcement, Water Enforcement Division (Mailcode: 2243–A), Environmental Protection Agency, 401 M Street, S.W., Washington, D.C., 20460. Phone: (202)–564–6032.

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Regulated Persons

Potentially regulated persons are public water systems (PWSs).

Category	Example of regulated entities
Industry	May include privately-owned utilities, ancillary water systems, homeowner's associations, mobile home parks, Municipalities; County Governments; Water districts; Water and Sewer Authorities.
State/Local/Tribal governments	May include publicly-owned PWS's, municipalities, county governments, water districts, State drinking water programs.
Federal government	Federally-owned facilities.

This table is not intended to be exhaustive, but rather it provides a guide for readers regarding entities likely to be affected by this action. This table lists the types of entities that the Agency is now aware could potentially be affected by this action. Other types of entities not listed in this table could also be affected. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding section **FOR FURTHER INFORMATION CONTACT**.

I. Statutory Authority

Sections 115–117 of the Safe Drinking Water Act (SDWA) Amendments of 1996 (Pub. L. 104–182), enacted August 6, 1996, amended sections 1415 and 1416 of the Act (42 U.S.C. 300g–4, 300g–5) concerning variances and exemptions.

A. Overview

As provided under the Act, under certain conditions, variances are available to public water systems that cannot (due to source water quality, or, in the case of small systems, affordability) comply with the national primary drinking water standards. Variances generally allow a system to comply with less stringent, but still protective, standards based on a specified technology available to the system. The duration of the variance generally coincides with the life of the technology. An exemption, on the other hand, is intended to allow a system with compelling circumstances an extension of time before the system must comply with applicable Safe Drinking Water Act requirements. An exemption is limited to three years after the otherwise applicable compliance date (although extensions up to a total of six additional years may be available to small systems under certain conditions).

B. New Small System Variances

Section 1415(e) establishes new provisions by which a small public water system may obtain a variance from complying with National Primary Drinking Water Regulations (NPDWR) under certain specified conditions. Section 1415(e)(1) identifies, through service population, the size of systems which may seek such small system variances. Specifically, this section limits such small system variances to public water systems serving 3,300 or fewer persons, and, with the approval of the Administrator, to public water systems serving more than 3,300 persons but less than 10,000 persons.

Section 1415(e)(6) states that such small system variances are not available for (1) any maximum contaminant level (MCL) or treatment techniques for a contaminant for which a NPDWR was promulgated prior to January 1, 1986, or (2) a NPDWR for a microbial contaminant or an indicator or treatment technique for a microbial contaminant.

Sections 1415(e)(2) and (3) identify the conditions under which small systems may receive such a variance. Section 1415(e)(2)(A) states that one such condition is that a variance technology which has been identified by the Administrator under section 1412(b)(15) is applicable to the size and source water quality conditions of the public water system. In addition, under section 1415(e)(2)(B), the system is required to install, operate, and maintain such treatment technology, treatment technique, or other means, in accordance with guidance or regulations issued by the Administrator. Section 1415(e)(2)(C) indicates that the small system variance is also contingent upon whether a State/Tribe exercising primary enforcement responsibility (or the Agency, where a State/Tribe does not have primacy) determines that certain conditions are met, namely that (1) the system cannot afford, in accordance with State/Tribal (or EPA) affordability criteria, to comply through

treatment, alternative sources of water supplies, or restructuring and consolidation, and (2) the variance will ensure adequate protection of human health (section 1415(e)(3)).

Section 1415(e)(4) describes the maximum length of schedules to comply with the conditions of such variances (three years), and possible additional time (two additional years) to achieve compliance with the variance, under certain conditions.

Section 1415(e)(5) requires the Administrator or primacy State/Tribe to review each variance not less than every five years after the compliance date established in the variance to ensure that the system remains eligible for the variance and is conforming to each condition of the variance.

Section 1415(e)(7)(A) requires the Administrator to promulgate, within two years of enactment, regulations for variances to be granted under the newly established program. These regulations must specify, at a minimum, procedures to grant and deny variances, including public participation requirements, requirements for proper installation and maintenance of approved variance technology and sufficient financial and technical capability to operate such treatment, eligibility requirements for a variance for each NPDWR, and information requirements for variance applications. Section 1415(e)(7)(B) requires the Administrator to publish information by February 6, 1998, to assist primacy States/Tribes in developing affordability criteria and requires State/Tribal review of such criteria not less than every five years.

Section 1415(e)(8)(A) requires the Administrator to periodically review the primacy State's/Tribe's variance program to determine whether variances granted by the State/Tribe comply with the requirements of the Act. If the Administrator determines that the variances granted by the primacy State/Tribe are not in compliance with the State's/Tribe's affordability criteria and the requirements of the Act, section 1415(e)(8)(B) requires the Administrator to notify the State in writing of the deficiencies and to make public the determination.

Section 1415(e)(9) requires a primacy State/Tribe, which is proposing to grant a small system variance to a public water system serving more than 3,300 and fewer than 10,000 persons, to submit that variance to the Administrator for review and approval prior to issuance. The Administrator is required to approve or disapprove the variance within 90 days. If the Administrator disapproves of the variance, the Administrator is required to notify the State in writing of the reasons for such disapproval. The State may then revise and resubmit the modified variance for approval by the Administrator.

Section 1415(e)(10) addresses objections to small system variances. Section 1415(e)(10)(A) states that the Administrator may review and object to any variance proposed to be granted by the State/Tribe, if such objection is communicated to the State/Tribe not later than 90 days after the State/Tribe proposes to grant the variance. Such objections must be communicated in writing, identifying both the basis for the objection and proposed modifications. The State/Tribe shall then make the recommended modifications or respond in writing to each objection. If the State/Tribe proceeds to issue the variance without resolving the Administrator's concerns, the Administrator may overturn the State/Tribal decision to grant the variance if the State/Tribal decision does not comply with the Act or regulations.

Section 1415(e)(10)(B) addresses objections based on petitions to the Administrator by consumers. Under this section, not later than 30 days after a primacy State/Tribe proposes to grant a small system variance, any person served by the public water system may petition the Administrator to object to the granting of the variance. The Administrator is required to respond to the petition and determine whether to object to the variance not later than 60 days after the receipt of the petition.

Also regarding objections to small system variances, section 1415(e)(10)(C) states that no variance shall be granted by a State/Tribe until the later of the following: (1) 90 days after the State/Tribe proposes to grant a variance, or (2) following the Administrator's objection to a variance, the date on which the State/Tribe makes the recommended modifications or responds in writing to each objection.

C. General Variances

In the 1996 Amendments to the SDWA, Congress modified the language governing general variances (i.e., those variances available to systems of any size). Under the newly enacted section 1415(a)(1)(A), a variance may be granted on the condition that the system install the best technology, treatment techniques, or other means, which the Administrator finds are available. This new modification changes the previous requirement that mandated that the system install variance technologies before a variance could be issued. In the new Amendments, before a variance can be issued, Congress also requires primacy States/Tribes to conduct an evaluation that satisfies the State/Tribe that alternative sources of water are not reasonably available to a system.

D. Exemptions

In a major change in the exemption provisions of the SDWA, section 1416(b)(2)(A) deleted provisions which limited an exemption to 12 months, subject to a three-year extension. The new provisions require the schedule for an exemption to require compliance with each contaminant level and treatment technique for which the exemption was granted as soon as practicable but not later than three years after the otherwise applicable compliance date established in section 1412(b)(10).

The only exception to this exemption time period is in section 1416(b)(2)(C) for small systems serving less than 3,300 persons, under certain specified conditions, for which extensions may be renewed for one or more additional two-year periods, but not to exceed a total of six years.

The Amendments also modified section 1416 of the Act to specify a wider set of factors that need to be considered before an exemption is granted from the requirements of the NPDWR. Prior to the 1996 amendments, section 1416 authorized a State that has primary enforcement responsibility under the SDWA (or EPA where the State/Tribe does not have such primacy) to exempt a public water system from the NPDWR if (1) the system could not comply with the regulation and (2) no unreasonable risk to public health would result from the exemption. Section 1416(a) now requires the State/Tribe, in determining whether an exemption may be granted, to also consider whether the public water system is a ''disadvantaged community'' and whether management or restructuring changes can be made that will result in compliance or, if compliance cannot be achieved, would improve the quality of the drinking water. Section 1416(a)(4) also requires a State/Tribe to consider measures to develop an alternative source of water supply. Section 1416(b)(2)(D) states that a small system that has received a variance under section 1415(e) cannot receive an exemption under section 1416.

II. Consultation with Public Water Systems, State, Tribal and Local Governments, Environmental Groups, and Public Interest Groups

As required under section 1415 of the SDWA, as amended, the Agency has

consulted with State representatives, as well as a broad range of other interested parties, in the development of this proposed rule.

On September 16, 1997, early in the regulatory development process, EPA held its first stakeholders meeting in Washington, D.C., to discuss the amendments as they apply to Safe Drinking Water Act variances and exemptions. Participants in this day-long meeting included industry representatives, State representatives, and representatives of environmental groups. This meeting was designed specifically to solicit views and ideas from a number of interested stakeholders at a very early stage in the process, prior to development of internal drafts. A summary of this meeting was subsequently provided to attendees, as well as to interested persons who were unable to attend.

On September 17, 1997, as a follow-up to the previous day's meeting, the Agency met with a representative of the Association of State Drinking Water Administrators (ASDWA) and a State representative to discuss implementation of the 1996 variances and exemptions provisions. The stakeholders provided early comments on possible procedures to obtain a small system variance, including at what point in the process the public water system or the State should notify the public.

On September 30, 1997, in conjunction with the National Rural Water Association national conference in Indianapolis, Indiana, the Agency met with community water system operators and industry representatives to further discuss revisions to the variances and exemptions regulations. Discussion during this meeting focused primarily on (1) the extent to which public water systems should be expected to assemble information when applying for a variance, (2) public notification associated with the variance, and (3) required terms and conditions of small system variances.

On October 20, 1997, in conjunction with the ASDWA national meeting in Savannah, GA, the Agency presented a summary of the draft variance and exemption regulations. At that time, all States were given the opportunity to participate in a discussion regarding the content of the regulations.

On October 24, 1997, the Agency met with representatives of environmental and consumer groups to discuss their perspective on possible revisions to the variances and exemptions regulations. Discussion during this meeting focused primarily on public participation and notification concerns, variance eligibility, and criteria for reviewing and granting small system variances.

Although the Agency has not consulted directly with representatives of Tribal governments in the development of this proposal, the Agency will make efforts to do so, as appropriate, during the comment period. The rule being proposed today has been developed in consultation with, and takes into consideration suggestions from, public water systems, environmental groups, public interest groups, the States, and other interested parties.

III. Discussion of Proposed Rule

A. Purpose and Applicability

Through this proposed rulemaking, the Agency seeks to codify the 1996 SDWA amendments addressing general variances and exemptions provisions, as well as providing a new subpart which addresses the procedures for issuance of small system variances. This proposed rule will be applicable to all eligible public water systems and primacy agencies (States, Tribes, and the Agency).

B. Effective Date

The effective date of this rule will be one month after promulgation.

C. Primacy Requirements

Primacy States/Tribes, if they choose to issue variances and exemptions, are required under section 1413(a)(4) of the Safe Drinking Water Act to issue such variances and exemptions under conditions and in a manner which is not less stringent than the variance and exemption provisions of the Act. In addition, section 1415(e)(7)(A) of the Safe Drinking Water Act requires the Administrator to promulgate regulations that shall, among other things, specify procedures to be used by the Administrator or the State to grant or deny variances. This statutory language suggests that it was the intent of Congress that States adopt procedures no less stringent than those identified in this proposed rule for issuance of small system variances. Therefore, the Agency is proposing to change § 142.10(d) of the regulations accordingly. Thus, if a primacy State wishes to issue small system variances, it must first enact State regulations which are no less stringent than the requirements in section 1415(e) of the Act and as embodied in this proposed rule, and seek EPA approval of such regulations by submitting a program revision package.

D. Rationale for New Subpart

This proposed rule creates Subpart K, which addresses the issuance of small system variances. This separate subpart was created to reflect the rather substantial statutory language in section 1415(e) of the Act, which establishes new provisions by which a small public water system may obtain a variance from complying with National Primary Drinking Water Regulations (NPDWR) under certain specified conditions. The Agency's decision to establish this separate subpart in the regulations is intended to provide clear and concise descriptions of the new regulatory requirements for small public water systems in one location in the regulations. The alternative of interspersing small system variance requirements within the existing regulations for variances could easily become too confusing when trying to identify and follow small system requirements.

E. Rationale for Format of New Subpart

The Agency has attempted to draft Subpart K of these proposed regulations in a question-and-answer format in ''plain English'', in accordance with current Agency policy for regulation development. The intent of ''plain English'' is to produce rules which are clear, concise, straight-forward, understandable, and enforceable, without extensive ''legalese''. This effort to use ''plain English'' is not just a Federal initiative; over half of the States now have legislative drafting manuals recommending plain English principles.

F. General Provisions in Proposed Subpart K

Sections 142.301–142.305 of the proposed small system variance regulations essentially codify the statutory provisions governing who can apply for, and who can grant, these variances. One of these provisions (§ 142.304), however, requires some explanation.

For small system variances, section 1415(e)(6) of the Safe Drinking Water Act states that such variances are not available for (1) any maximum contaminant level (MCL) or treatment technique for a contaminant for which a NPDWR was promulgated prior to January 1, 1986, or (2) a NPDWR for a microbial contaminant or an indicator or treatment technique for microbial contaminant. As a result, the Agency will not be listing small system variance technologies for microbial contaminants, and the proposed rule (§ 142.304) prohibits the primacy agency

from granting a variance for a microbial contaminant.

Similarly, the Agency will not be listing any variance technology for an MCL or treatment technique for a contaminant for which a NPDWR was promulgated prior to January 1, 1986 or allowing any variances for such contaminants (see § 142.304). With respect to this latter category, however, the scope of the statutory prohibition is somewhat ambiguous. The Agency must consider whether Congress intended that the prohibition apply to a contaminant for which an MCL was established prior to 1986, even if subsequently revised, or whether the prohibition only attaches to the pre-1986 regulation itself (and thus would not apply to any future regulations for a contaminant), or whether the prohibition attaches to the pre-1986 level at which a contaminant was regulated (but not to more stringent levels in future regulations). The statutory language could be amenable to any of the three interpretations, and while the legislative history for this provision provides conflicting explanations (*cf.* Senate Report 104–169 at 55–56 with House Report 104–632 at 39), there is no explanation of the policy rationale for any particular interpretation.

The Agency surmises that the intent behind this provision is to prohibit a public water system from obtaining a variance for a contaminant for which compliance should have been achieved long ago. At the same time, the Agency does not believe that this rationale applies where the Agency revises a pre-1986 regulation to make it more stringent. As a result, the Agency interprets section 1415(e)(6)(A) prohibition to apply to the level at which any contaminant was regulated before 1986; therefore, variances are not available for systems above the pre-1986 level even if subsequently revised. (Note that several of the pre-1986 levels were interim levels and have already been revised.) However, if the Agency revises a pre-1986 level and makes it more stringent (i.e., makes the MCL lower), then a variance would be available for that contaminant, but only up to the pre-1986 MCL. The Agency requests comment on this approach and statutory analysis.

G. Small System Variance Requirements

Sections 142.306–142.310 of the proposed rule establish the conditions under which the primacy agency can grant small system variances. The Agency has attempted in the proposed rule to provide flexibility in the process of applying and reviewing requests for small system variances. For example, the Agency has not specified any particular form of a variance application or who (the system or the State) needs to provide the relevant information; rather, the Agency has only specified that the information must be sufficient for the primacy agency to make certain findings and that those findings are documented in writing. Additional rationale for several of the provisions is discussed below.

1. Section 142.306—Compliance Options Analysis

Sections 1415(e)(1)–(3) of the Act identify the conditions under which small systems may receive a small system variance. In the proposed rule, § 142.306(b) codifies these conditions and includes concepts related to the State Capacity Development Strategy.

The compliance options analysis is an integral element of sections 1415 and 1416 of the Act, as well as under the proposed rule at § 142.306(b)(2). Similar in concept to capacity development, a compliance options analysis can allow the State to consider the underlying reasons for noncompliance, and what options are available to the system to return to compliance for the long term. Under the Act, such options include some form of treatment, development of an alternative source, or management restructuring or consolidation with a nearby system. States may wish to include a compliance options analysis as part of their capacity development strategy to address the available options for noncompliant public water system to return to compliance.

Management changes which could be considered by the State in performing such a compliance options analysis include financial management changes, the appointment of a State-certified operator under the State's Operator Certification program, contractual agreements for a more efficient and capable public water system based on joint operation, etc.

The 1996 Amendments to the Safe Drinking Water Act place strong emphasis on technical, managerial, and financial capacity as integral components of the implementation strategies of the Act. There is strong statutory linkage between section 1420 of the Act (the capacity development provisions), and section 1415 (the variances and exemptions provisions), and the Agency has attempted to reflect this linkage in § 142.306(b) of the proposed rule.

Section 1415(e)(7)(A)(ii) of the Act states that today's proposed rule must include requirements concerning the technical and financial capability to operate and maintain a small system variance technology. Therefore, under proposed § 142.306(b)(4), a State or the Agency must find that a small system has the technical and financial capacity to operate a variance technology before granting a small system variance.

However, the Agency recognizes that there may be instances in which a small system is otherwise eligible for a variance, but lacks the technical and financial capability to operate the variance technology. Since enhancing technical and financial capacity of public water systems will likely be dominant goals in State capacity development strategies, a State may wish to focus elements of its capacity development strategy to help systems in such a situation develop the technical and financial ability to operate a small systems variance technology.

Furthermore, under section 1420 of the Act, the State could face the possibility of Drinking Water State Revolving Fund withholding unless, under the capacity development strategy in section 1420(c) of the Act, the State develops a strategy to help systems enter and remain in compliance with National Primary Drinking Water Regulations (NPDWRs) by enhancing their technical, financial, and managerial capacity to comply. Additional considerations and conditions related to the protection of public health are addressed in sections III.G.6 and V.F. of this preamble.

2. Section 142.306(b)—Documentation of State Considerations in Reviewing Small System Variances

The proposed regulations require that States document their findings regarding a small system's eligibility for a small system variance. Where the State does not have primary enforcement responsibility under section 1413 of the Safe Drinking Water Act, the Agency will document its findings for the record, if it grants a small system variance. Such documentation fulfills many goals.

Documentation of small system variance findings, as required in § 142.306 of the proposed rule, serves as a written record of decision which the public can review in preparation for the required public hearing or in preparation of a petition to the Administrator. In addition, a summary of the findings and the bases for such findings should be included in the required public notices associated with the proposal of such small system variances.

Sufficient documentation of the State's findings regarding a system's eligibility for a small system variance

will also be necessary for the Agency's periodic review of State-issued variances, the Agency's approval of variances issued to systems serving between 3,300 and 10,000 persons, and the Agency's review of a petition to object to a variance. Where adequate documentation of findings is not available, the Agency may have to summarily overturn, reject, or object to a variance.

Documentation required in the proposed rule must indicate not only that a certain factor listed in § 142.306 of the proposed regulations was considered, but must also include the rationale for decisions by the State regarding each of the required findings, as well as the underlying facts supporting that decision.

3. Section 142.306(b)(2)—Affordability Criteria

Section 142.306(b)(2) of the proposed rule codifies the statutory requirement that States undertake a compliance options analysis in accordance with the State's own affordability criteria.

Section 1415(e)(7)(B) of the 1996 Safe Drinking Water Act, as amended, requires the Agency to publish, within eighteen months of the Act's enactment, information to assist the States in formulating affordability criteria. According to the Act, this information is to be developed by the Agency in consultation with the States and the Rural Utilities Service (RUS) of the U.S. Department of Agriculture. States are to develop affordability criteria to make determinations relative to compliance options available to small drinking water systems, including eligibility for small system variances under section 1415 of the Act, as amended. The Agency published this document on February 6, 1998 and is available by contacting the Safe Drinking Water Hotline at 1–800–426–4791 (request document number 816–R–98–002). The Agency may use principles in this document to develop affordability criteria for granting small system variances in those areas in which the State does not have primary enforcement responsibility under section 1413 of the Safe Drinking Water Act.

4. Section 142.306(b)(3)—Availability of Approved Variance Technologies

Section 1412(b)(15)(D) of the Act requires that, not later than August 6, 1998, the Agency issue guidance regarding the available variance technologies for each national primary drinking water regulation for which a variance may be granted. This guidance is currently in development by the Agency's Office of Groundwater and Drinking Water and is anticipated to be released by the statutory deadline. The proposed variance regulations include, in various sections (including § 142.306), the requirement that, during review of an application for a small system variance, a primacy State or the Administrator make a finding whether, among other things, the Administrator has published a variance technology in accordance with section 1412(b)(15) for the applicable maximum contaminant level or treatment technique for which that variance is sought.

Pursuant to section 1412(b)(15)(A) of the Act, variance technologies may not suffice to achieve compliance with the relevant maximum contaminant level or treatment technique, but the variance technologies must achieve the maximum reduction or inactivation efficiency that is affordable considering the size of the system and the quality of the source water. In addition, section 1412(b)(15)(B) requires that any identified variance technology be determined by the Administrator to be protective of public health.

For further discussion of adequate protection of human health, please see section III.G.5 of this preamble. In addition, section V.F. provides a discussion of health matters related to protection of children and environmental justice concerns.

5. Section 142.306(b)(5)—Adequate Protection of Public Health

Section 142.306(b)(5)(i–ii) of the proposed rule codifies the statutory requirement that the primacy agency grant a small system variance only where the terms ensure adequate protection of public health, considering the source water quality and removal efficiencies and expected useful life of the small systems variance technology. Under section 1412(b)(15)(B) of the Act, the Administrator, in identifying variance technologies for small systems, must determine that the technology is protective of public health considering the quality of the source water to be treated and the expected useful life of the technology. The Agency believes that Congress intended the Administrator to make a determination that, on a national level, any variance technology identified is generally protective of public health when applied within general source water conditions and operating and maintenance procedures. However, recognizing that the level of public health protection afforded by a specific technology could be dependent on site-specific factors that may vary system by system, Congress provided for a corresponding requirement that the State also make a determination that the terms of the variance as applied to a particular system adequately protect public health.

In section 1412(b)(15)(C) of the Act, Congress further provided that the Administrator must include in the guidance identifying variance technologies any assumptions supporting her determination that a listed technology is protective of public health, where such assumptions concern the public water system to which the technology may be applied, or its source waters. The Agency believes that Congress intended this information to be used by States to determine if the assumptions used by the Administrator in determining that a technology is protective of public health are applicable to the specific small system applying for a variance, and define what terms or conditions will ensure adequate protection of public health. In making a finding of adequate protection of public health, States need to consider the elements in the source water that may interfere with the performance of the technology. Depending on the specific technology being implemented, these may include the current level of contamination, variation in levels of contamination, the rate of change in those variations, the frequency in which the variations occur, and the duration that contamination remains at elevated levels (days, weeks, months). States should then use these types of information, as appropriate, to set site-specific terms and conditions which will adequately protect public health.

As previously discussed, EPA believes that Congress intended the Administrator to make a determination that, on a national level, any variance technology identified is generally protective of public health under general source water conditions and operating and maintenance procedures. The variance technology guidance under section 1412(b)(15)(C) will identify assumptions used by the Administrator in determining that each technology is protective of public health. In doing so, the guidance will identify the typical removal efficiency achieved by each variance technology listed by the Administrator, considering the overall capabilities of the treatment process and the source waters on which the technology would typically be applied. The guidance will also discuss source water characteristics that can adversely affect the removal of the contaminant by the process. These general source water characteristics will include a description of other

contaminants that may interfere with treatment (such as sulfate or iron), pH, hardness, total dissolved solids, and turbidity, among others. General guidance on treatment modifications that can address the adverse impacts will also be included. As an example, the guidance may identify total dissolved solids in the source water as having potential to foul the membrane in the treatment process, and therefore may suggest that the membrane be more closely monitored and more frequently replaced. The State may use this information in the guidance to set specific terms and conditions on the operation of the technology that will ensure adequate protection of public health. In the previous example, such terms might include how often the membrane should be monitored and replaced, considering the exact levels of total dissolved solids in the source water and any other factors that may interfere with removal.

EPA is requesting comment on whether it would be useful and appropriate, at some time in the future, to provide additional, technology-specific guidance on site-specific factors that should be considered and appropriate terms and conditions that may be needed to ensure adequate protection of public health. Congress clearly left the responsibility to consider site-specific factors and define appropriate terms and conditions to the States, and EPA does not wish to diminish that responsibility. At the same time, the Agency believes it may be efficient for EPA, to identify, in the context of its determination that a technology is protective, those factors of which the Agency is aware that may be appropriate for the State to consider on a site-specific basis and to suggest appropriate responses to situations which pose additional risks. EPA is soliciting comment and recommendations on both the need for and appropriateness of such guidance and on its substantive content if provided.

In addition to the statutory requirements that the State consider the quality of the source water and removal efficiencies and useful life of the technology in its determination of adequate public health protection, EPA is also considering including a requirement that the States consider disproportionate impacts and risks to sensitive sub-populations, including infants and pregnant or nursing women. Although a leading risk to sensitive subpopulations from drinking water comes from infectious contaminants, which are specifically excluded by the Act from eligibility for small system variances, there may be other contaminants which pose special risks to sensitive subpopulations. In general, EPA would consider such risks in its national determination that a variance technology is protective of public health. There may be instances, however, where site-specific factors would specifically affect the risk to sensitive subpopulations and should thus be considered by the State in that light. EPA is requesting comment on the appropriateness of including in the final rule a requirement that the State specifically consider impacts on sensitive subpopulations in its determination of adequate public health protection. Commenters are encouraged to provide specific examples of contaminants for which site-specific conditions may result in special risks to sensitive subpopulations. One alternative to such a requirement would be for EPA to include in guidance specific factors that may result in special risks to sensitive subpopulations and suggestions on how to address such risks. EPA is also soliciting comment on this alternative.

6. Section 142.307—Terms and Conditions of Small System Variances

Section 142.307 outlines what terms and conditions must be included in a small system variance. A State or the Administrator must clearly specify enforceable terms and conditions of a small system variance. The terms and conditions of a small system variance issued under this subpart must include, at a minimum, proper installation of the applicable small system variance technology, proper operation and maintenance of the technology, and monitoring requirements for the contaminant for which a small system variance is sought as specified in 40 CFR Part 141. If a contaminant level is above the maximum contaminant level, the public water system is required to monitor, at least, quarterly. The State may require more frequent monitoring. In addition, the State must include any other terms or conditions that it determines that are necessary to ensure adequate protection of public health.

The small system variance must also include a schedule for the public water system to comply with the terms and conditions of the small system variance. At a minimum, the schedule should include increments of progress and quarterly reporting to the State or Administrator of the public water system's compliance with the terms and conditions of the small system variance. This quarterly reporting will enable the primacy agency to adequately track compliance of the schedule. In addition, States are required under 40 CFR Part 142.15(a)(1) to report on a quarterly basis to EPA any violations of the terms and conditions of a small system variance.

The schedule must also notify the public water system when the State or the Administrator will review the small system variance under § 142.307(d). The intent of this provision is to address the concerns of public water systems that they be provided adequate notice of when the State or Administrator will review the variance.

7. Section 142.307(c)(4)—Compliance Period for Small System Variances

Section 142.307(c)(4) of the proposed rule codifies the statutory language regarding the duration of variances. In accordance with section 1415(e)(4), § 142.307(c)(4) of the proposed rule states that the terms and conditions of a small system variance must require compliance with the conditions of the variance as soon as practicable but not later than three years after the date on which the variance is granted. It is the Agency's expectation that this three-year period will usually be sufficient.

However, section 1415(e)(4) of the Act also states that the Administrator or the State may allow up to two additional years under two situations: (1) Where the Administrator or the primacy State determines that additional time is necessary for capital improvements to comply with a variance technology, secure an alternative source of water, or restructure or consolidate, or (2) to allow for financial assistance provided pursuant to section 1452 of the Act or any other Federal or State program.

The Agency interprets section 1415(e)(4) to allow the primacy agency to grant the two additional years at the time of issuance, upon a determination by the primacy State or the Administrator that those two additional years are necessary to ensure compliance. Therefore, it is possible, under certain conditions, that small systems may receive a five-year compliance schedule to achieve compliance with the terms and conditions of the small system variance.

8. Sections 142.308–142.310—Public Participation Requirements for Issuance of a Small System Variance

a. Overview. The 1996 Amendments to the Safe Drinking Water Act provide for many opportunities for the public to be involved in decisions that affect the delivery and treatment of drinking water. Today's proposed rule provides opportunities for the public to become involved in the decision-making process of whether a variance or exemption

should be granted. The Agency's intent in the proposed regulations is to provide sufficient opportunity for meaningful public participation in the variance and exemption process, while, at the same time, keeping the public notification requirements for small systems and States manageable.

The Agency is required under section 1415(e)(7)(A)(i) of the Act to promulgate regulations specifying requirements for notifying the consumers of the public water system that a small system variance is proposed to be granted (including information regarding the contaminant and variance) and requirements for a public hearing on the small system variance before the variance is granted. Today's proposed rule addresses this statutory mandate through §§ 142.308–142.310 of the regulations. These requirements are also intended to ensure that persons served by the system who may wish to file a petition with the Administrator objecting to the variance, as provided for in Section 1415(e)(10)(B) of the Act, have adequate information and time to do so.

The overall structure of the process intended by today's proposed regulations for granting a small system variance is as follows:

(1) A small public water system which is in noncompliance with an eligible maximum contaminant level or treatment technique submits an application to the primacy agency for a small system variance;

(2) The primacy agency reviews the small system's application and performs a compliance options analysis to determine if a small system variance should be issued to the public water system.

(3) If a small system variance can be issued in accordance with the Act and the proposed regulations, and upon finding and documenting the required information under Section 142.307 of the proposed rule, the primacy agency establishes the terms and conditions of the proposed small system variance;

(4) The primacy agency prepares a draft of the small system variance including the terms and conditions of the same;

(5) The primacy agency provides notice to consumers of the system of its intent to propose the small system variance and of a public hearing on the proposed variance, including information on the contaminant and its potential health effects, the compliance options considered, and the terms and conditions of the proposed variance;

(6) The primacy agency also proposes the variance by publishing a notice in the State equivalent of the **Federal Register**, or, in the case of the Administrator, in the **Federal Register**;

(7) Either before, or within 15 days after publication of this notice, the primacy agency conducts a public hearing on the draft proposed small system variance;

(8) If a State proposes to issue a small system variance to a public water system serving a population of more than 3,300 and fewer than 10,000 persons, the State must submit the proposed small system variance and all supporting documentation, including any public comment received prior to this submission, to EPA for review and approval of the proposed variance;

(9) Within thirty days of the proposal date of any small system variance, persons served by the system may petition the Administrator to object to the proposed small system variance; and

(10) The Administrator must respond to all such petitions within 60 days of receiving them and may object to a proposed small system variance within ninety days of the proposal date.

EPA is proposing that the State may provide the notice for a public meeting on the small system variance at the same time that the State notifies the public that it intends to propose the small system variance. Under this approach, the State would not be required to issue an additional notification directly to consumers on the actual date of proposal. Such notice must be issued at least 15 days before the actual proposal date and at least 30 days before the public meeting. For purposes of the consumer petition process, the variance is proposed on the actual proposal date (generally the date of publication in the State or **Federal Register**) as opposed to the date that the State issues one or more public notices.

In summary, the proposed regulation requires a State to provide at least one public notice directly to the system's consumers (in addition to publishing the proposed variance in the State or **Federal Register**); to fulfill the requirement of notifying the public of the public hearing and proposal of the small system variance. This approach considers the burden on the State and system seeking the variance of providing more than one such notice. However, the Administrator encourages the State and small systems to engage the public in the development and issuance of the small system variance early in the process.

The Agency also requests comments on an alternative approach to the State notification requirements included in the proposed regulatory language. Under this approach, the Agency would require that the State provide two distinct public notices directly to water system consumers during the small system variance process, in addition to publishing the proposed variance in the State or **Federal Register**. This proposal would require that the State provide public notice (1) announcing the required public meeting at least 30 days before the meeting and (2) at the time a State proposes to issue a small system variance. In addition, the State would be required to hold the public meeting before the State proposes the small system variance. Before holding a public meeting, the State or the Administrator would need to make public a draft of the proposed small system variance to ensure that the public is adequately informed of the terms and conditions likely to be in the proposed small system variance.

The Agency requests comments on whether the Agency should require two separate notices by the State to water system consumers (in addition to publication of the proposed variance in the State or **Federal Register**), one announcing the public meeting and a second on proposal of the small system variance.

Although the alternative approach may increase the State burden by requiring two different notices, adopting this approach in the regulation may maximize public notification and participation in the issuance of a small system variance. In addition, by requiring that the public meeting be held before proposing the small system variance, a person served by the system would be guaranteed at least 30 days following the public meeting before expiration of the deadline for filing a petition. Under the proposed approach, a person served by the system could have as little as 15 days following the public meeting to file a petition, though they would still be guaranteed at least 45 days from the time they first received notice of the proposed variance (along will all of the required supporting information) to file such a petition. In selecting a final approach, the Agency will consider all comments and attempt to balance the burden to the State and water system with the need to provide adequate opportunity for public participation, including use of the petition process.

b. Notice by public water systems. The Agency is also requesting comment on adding an additional public notification requirement which is currently not a part of the proposed regulatory language. Under this approach, the Agency would require the public water system to provide notice to the persons served by the system that the system is applying for a small system variance.

The intent of this would be to address some stakeholders' concerns that public notification should be provided early in the small system variance process. This alternative would require the system applying for a small system variance to notify the public at the time it applies for a small system variance. The notice would be required to be in the same manner as required for the State in notifying persons served by the system that a variance will be proposed as prescribed, in §§ 142.308(a) through (d) of the proposed regulation (see III.G.8.d below). Consistent with the underlying theme of today's proposed regulations, States would be encouraged to provide assistance to small systems to ensure that the public notification requirements are satisfied.

The Agency requests public comment on whether this additional notification should be a part of this regulation. The Agency recognizes that this would place an additional burden on the small public water system. However, such notification may further the goal of affording early public participation in the development of the small system variance, before the State has conducted its initial compliance options analysis and considered appropriate terms and conditions to ensure adequate protection of public health. The information provided with such a notice would necessarily be less complete than that provided by the State after reviewing the application. The Agency also requests comments on what information should be required in such a notice and whether there is concern over the first notification to water system consumers being one that would necessarily lack complete information.

c. Public hearing requirement. Section 142.309 of the proposed regulations addresses the requirements for a public hearing on a draft proposed small system variance and notice of the public hearing. Consistent with section 1415(e)(7)(A)(i) of the Act, a State or the Administrator is required to provide for at least one (1) public hearing on the small system variance before it is granted. However, before holding a public meeting, the State or the Administrator must make public a draft of the proposed small system variance along with various supporting information as specified in § 142.308(c), to ensure that the public is adequately informed of the terms and conditions likely to be in the proposed small system variance. The State or the Administrator must notify the public of the public hearing (and provide the required supporting information) at least 30 days before the date of the meeting.

d. Manner of public notification. Section 142.308 of the proposed regulations codifies the Safe Drinking Water Act provision that any person served by the system may petition the Administrator to object to the granting of a variance. The notice requirements in the proposed regulations are intended to provide adequate notice for persons who may wish to petition the Administrator to ask the Agency to object to the variance.

Operators of small systems requested that the Agency address the issue of whether persons who are not billing customers of the system must be provided a notice by direct mail considering the burden associated with identifying and obtaining mailing addresses for non-billed consumers of a system's water. In light of all comments provided to the Agency during the stakeholder process, the Agency is proposing to require individual notice only to billing customers of the system. In addition, notice must be provided in a brief and concise manner to regular consumers who are not billing customers, by some other reasonable method, such as publication in a local newspaper, posting in public places, or delivery to community organizations. Although this might not reach persons outside the service area, it would reach factory workers and tenants of apartment houses and condominiums, even if those persons do not receive water bills. Today's proposed rule would therefore require that a State provide some form of notice to all persons served by the system on a regular basis.

e. Content of notices. Section 1415(e)(7)(A)(i) of the Safe Drinking Water Act requires that public notification include information regarding the contaminant and variance. Section 142.308(c) of the proposal implements this statutory requirement. In this provision, the Agency is requiring, along with other information, specific health effects language to be used by States in the notices. The Agency is proposing to require use of the health effects language developed for the recently proposed consumer confidence report rules, 63 **Federal Register** 7625, 7631–7632 (Feb. 13, 1998). The Agency believes that there are many benefits to the use of standard health effects language in the various public notice provisions of the amended Safe Drinking Water Act, particularly in reducing confusion for the systems and the public. If the language in the consumer confidence report rules is revised after public comment, the Agency intends to use the revised language for this rule.

The Agency is also implementing stakeholders' concerns that notices not contain highly technical information by requiring the notices to provide a brief non-technical summary of the variance process and compliance options considered by the system and the primacy agency. In addition, all proposed notices would be required to meet the multilingual requirement in § 142.308(c)(7) of the proposed regulations, if appropriate. This requirement specifies that in communities with a large portion of non-English-speaking residents, information in the appropriate language regarding the content and importance of the notice should be included. The multilingual requirement is consistent with the Agency's environmental justice policy.

f. Consumer petition process. Section 1415(e)(10)(B) of the Safe Drinking Water Act allows for persons served by the system to petition the Administrator to object to the granting of a small system variance; such petitions must be submitted not later than 30 days after a State proposes to issue a small system variance. This statutory provision is implemented in § 142.310 of the proposed regulations. Consumer petitions should be mailed to the EPA Regional Administrator. The proposed rule requires that the State or the Administrator include, in the public notice of the proposed small system variance, information to consumers regarding the petition process and the address of the EPA Regional Administrator for their State.

H. Sections 142.311 and 142.312.—Bases for Administrator's Objections to State-Proposed Small System Variances

Pursuant to section 1415(e)(9) of the Act, § 142.312(a) of the proposed rule requires a primacy State, which is proposing to grant a small system variance to a public water system serving more than 3,300 and fewer than 10,000 persons, to submit that variance to the Administrator for review and approval prior to issuance. Section 142.312(c) requires that, if the Administrator disapproves the variance, the Administrator notify the State in writing of the reasons for such disapproval. Such disapproval must be based upon a determination that the variance is not in compliance with the requirements of the Act and regulations, including the requirement that the system cannot afford to comply with the maximum contaminant level (MCL) or treatment technique for which the variance is being sought, in accordance with the State affordability criteria.

In addition, § 142.311(a) of the proposed rule requires a primacy State, which is proposing to grant a small system variance to a public water system serving 3,300 or fewer persons, to submit that variance to the Administrator for review prior to issuance.

Section 1415(e)(10) of the Act addresses objections to small system variances. Pursuant to section 1415(e)(10)(A) of the Act, § 142.311(b) of the proposed rule states that the Administrator may review and object to any variance proposed to be granted by the State, if such objection is communicated to the State not later than 90 days after the State proposes to grant the variance. Again, the Agency expects that such objections would be based upon a determination that the variance is not in compliance with the requirements of the Act and the rule, including a finding consistent with the State's affordability criteria that the system cannot afford to comply. In accordance with section 1415(e)(10)(A) of the Act, the notification to the State must include the basis for the objection and propose a modification to the variance to resolve the concerns of the Administrator. The State shall make the recommended modification or respond in writing to each objection. If the State issues the variance without resolving the concerns of the Administrator, the Administrator may overturn the State decision to grant the variance if the Administrator determines that the State decision does not comply with the Act and the rule.

I. Section 142.313.—Bases for Administrator's Review of State Small System Variance Program

Pursuant to section 1415(e)(8)(A) of the Safe Drinking Water Act, § 142.313 of the proposed rule requires the Administrator to periodically review the primacy State's variance program to determine whether variances granted by the State comply with the requirements of the Act. The Administrator may determine that the variances granted by the primacy State are not in compliance with the State's affordability criteria and the requirements of the Act. Pursuant to section 1415(e)(8)(B) of the Act, § 142.313(b) of the proposed rule requires the Administrator to notify the State in writing of the deficiencies and to make public the determination.

J. General Variances: Time Limitation

Section 1415(a)(1)(A)(ii) of the Safe Drinking Water Act states that a schedule prescribed under a general variance must require compliance by the public water system, with each maximum contaminant level or treatment technique requirement with respect to which the variance was granted, as expeditiously as practicable (as the State may reasonably determine) but sets no specific final date for compliance other than that in the compliance schedule.

The Agency is seeking comment on whether to add language to § 142.20 of the proposed regulations that would require any variance issued by a State pursuant to section 1415(a) of the Safe Drinking Water Act to prescribe a schedule that would require a public water system to install technology, which the Administrator finds available, within three years of the issuance of the variance. In addition, the regulations could be modified to allow the State or Administrator to grant an additional two years to complete necessary capital improvements to achieve compliance or to obtain financial assistance provided under section 1452 of the Safe Drinking Water Act or any other Federal or State program.

The Agency recognizes that under a general variance, the State must prescribe a schedule which requires compliance with the conditions of the variance as expeditiously as possible (as determined by the State) which may be less than three years for a given public water system. Under this proposal, a State would also have the flexibility to require compliance under a general variance within a possible five-year time period.

This proposal is based upon the rationale that because sections 1415(a) and 1415(e) of the Act require the installation of specific technology as specified by the Administrator, it is reasonable to require a system to install the technology specified through section 1415(a) within the same time periods as required for section 1415(e). On the other hand, Congress did not choose to impose a time limit on general variances, further differentiating them from small system variances. Therefore, the option of imposing such a time limit may not be appropriate for general variances. The Agency requests public comment on whether the final rule should specify compliance time periods for general variances issued under section 1415(a) of the Safe Drinking Water Act, with such time periods matching those specified for small system variances issued under section 1415(e).

K. Relationship of Exemptions and Small System Variances

Under section 1416(b)(2)(D) of the Safe Drinking Water Act, a public water system may not receive an exemption under section 1416 if the system was granted a small system variance under section 1415(e) of the Act. However, the Act is silent on whether a small system variance under section 1415(e) may be issued after the issuance of an exemption under section 1416.

The Agency firmly believes that, at the conclusion of the established compliance schedule, a public water system receiving an exemption for a given contaminant should come into full compliance with the applicable national drinking water regulation for which the exemption was granted, wherever possible. However, during the stakeholders process, the Agency received comments indicating that the regulations should implement the exemption provisions of the Act to allow, under certain conditions, a public water system which has received an exemption to subsequently receive a variance for that same contaminant if it turns out that there is no affordable compliance technology for the system.

Today, the Agency is considering three alternatives to address whether a small system variance may be issued after an exemption. The first approach would prohibit the issuance of a small system variance after an exemption. Under this approach, if a public water system cannot achieve full compliance with national primary drinking water regulations at the end of the exemption period, the public water system would be subject to an enforcement action by which failure to comply would be remedied. The second approach would allow a State or the Administrator to issue a small system variance after an exemption for the same contaminant, but only under specific conditions. For example, the rule might require that before a small system variance is issued to a system that has already received an exemption, the primacy agency must make a determination whether the system was taking all practicable steps to meet the requirements of the established compliance schedule under the exemption. Under the third approach, due to the variety of circumstances under which the issuance of a small system variance after an exemption could be appropriate, the final rule would allow such a variance but leave the decision to the implementing agency regarding which such circumstances merit the issuance of a small system variance after an exemption for the same contaminant. The Agency requests public comment on which regulatory approach is most appropriate.

L. State Revolving Fund Linkage to Exemptions

Strong statutory linkage exists between the exemptions provisions in section 1416 of the Safe Drinking Water Act and the State Revolving Fund provisions of section 1452 of the Act. Today's proposed rule attempts to reflect that linkage. Under section 1452 of the Act, the State may provide at its discretion additional subsidization to a recipient of State Revolving Fund assistance for a project serving a disadvantaged community according to the State's affordability criteria for drinking water. Under section 1416(a) of the Act, States are directed to consider whether a system serves such a disadvantaged community in determining whether compelling economic factors prevent the system from complying with an MCL or treatment technique, which is one of the eligibility requirements for receiving an exemption. To implement this provision and reflect the linkage existing in the Act, today's proposed regulation, in §§ 142.20 and 142.50, requires that the primacy agency consider whether the public water system serves a disadvantaged community, pursuant to section 1452(d) of the Act.

The State Revolving Loan Fund program plays a prominent role in the consideration of whether to issue exemptions. Today's proposed regulation requires the State to consider whether State Revolving Loan Fund assistance is available to the public water system to assist it in achieving compliance with the Act. That consideration should include an assessment of the public water system's technical, financial, and managerial capacity, and whether assistance can help bring the system into compliance with the Act. These two provisions, the State Revolving Fund provisions and the exemptions provisions, can be used together to complete two important tasks: (1) ensure that State Revolving Loan Fund assistance is targeted towards those public water systems most in need of such assistance, and (2) allow systems which receive such assistance to be able to use it in conjunction with an exemption in a way that will produce full compliance with the Act within the compliance schedule established by the State.

M. Exemption: Renewals for Small Systems

Under section 1416(b)(2)(A) of the Safe Drinking Water Act, an exemption issued to a public water system must prescribe a schedule requiring compliance by the system with each contaminant level and treatment technique requirement with respect to which the exemption was granted as expeditiously as practicable (as the State may reasonably determine) but not later than three years after the otherwise applicable compliance date established in section 1412(b)(10). Section 1416(b)(2)(C) states ''[i]n the case of a system which does not serve more than a population of 3,300 and which needs financial assistance for the necessary improvements, an exemption . . . may be renewed for one or more additional 2-year periods, but not to exceed a total of 6 years, if the system establishes that it is taking all practicable steps to meet the requirements of [the established compliance schedule].''

The intensive compliance options analysis required, under § 142.20(b)(1) and § 142.50(a), to be performed before an exemption is initially granted should indicate whether an exemption is appropriate. If an exemption is appropriate after the compliance options analysis, the primacy agency should facilitate and work with the system to ensure compliance as soon as practicable, but within three years of the otherwise applicable compliance date, including providing financial assistance under section 1452 of the Act. Under §§ 142.20(b)(2) and 142.56 of the proposed rule, two-year extensions of exemptions pursuant to section 1416(b)(2)(C) of the Act may only be granted to systems which serve 3,300 or fewer people and which need financial assistance, and upon State review of the small system's progress and the State's subsequent determination that the small system and is taking all practicable steps to meet the requirements of the Act.

The Agency interprets the use of the word ''renewal'' by Congress to indicate that additional two-year periods may not be granted ''up-front'' to the small system at the time of initial issuance of the exemption. Review by the primacy agency is necessary in this renewal process to ensure that the system is taking all practicable steps to meet the requirements of the Act. However, it is not anticipated that the review process to renew an exemption will be as complex as the initial determination process, including a compliance options analysis, performed by the primacy State or the Administrator prior to granting the exemption. Rather, the State should review the progress of the small system to determine if the system is taking all practicable steps to meet the compliance schedule. Even though not required by section 1416 of the Act, the primacy State may wish to consider the incorporation of public participation into the review process of an exemption. If the State determines that a renewal would not be appropriate under the Act or regulations, the public water system must comply with applicable national primary drinking water regulations at the end of the exemption period.

The Agency requests comment on the above approach and on the level of effort required by the primacy agency for review and issuance of renewals of exemptions. In addition, the Agency requests comment on whether the Agency should consider allowing the extensions to be incorporated in the initial compliance schedule.

IV. Cost of Rule

The purpose of this rule is to allow systems, especially those serving under 10,000 people, to adopt affordable technologies that improve the quality of their water and move them closer to compliance with national drinking water standards. By relieving these systems of the obligation to achieve full compliance with applicable standards when such compliance is not affordable, while maintaining public health protection, the rule has the potential to generate significant cost savings. However, since the vast majority of systems currently are already in compliance with existing standards, the Agency expects the new variance and exemption provisions to be used primarily by systems unable to achieve compliance (or which require additional time to achieve compliance) with future standards. Because the Agency does not yet know what these new standards will require or what variance technologies will be approved, it is not possible to quantify the potential cost savings of the rule with respect to future standards. Rather, at the time that new standards are promulgated, the Agency will factor the availability of variances and exemptions under appropriate conditions into the cost estimates for these standards.

The Agency is currently working on identifying variance technologies for existing standards. Once these technologies have been identified and preliminarily financially analyzed, it may be possible for the Agency to estimate the potential cost savings from variances for these existing standards. However, the analysis of these technologies is not far enough along for the Agency to provide an estimate of these cost savings with the current proposal. In addition to the savings associated with adopting affordable technologies, however, the Agency anticipates that systems (and States) will also realize savings associated with a reduction in enforcement actions (and

associated judicial proceedings) for systems that are not able to comply with existing standards but will now have greater access to variances and exemptions. The Agency has therefore performed an illustrative analysis of the costs to systems of applying for variances and exemptions and the cost to States of granting them, relative to the savings from reduced enforcement actions. This analysis focused on two sets of existing standards, those contained in the Lead and Copper Rule, and those contained in the Phase II/V Rule.

Based upon this economic impact analysis (EIA), public water systems would realize net economic benefits as a result of today's proposed rule. Results of the impact analysis show that, if all eligible public water systems in all 56 States and territories apply for and are granted variances under sections 1415(a) or 1415(e), or exemptions under today's proposed rule, for the rules considered in this analysis, then the regulation will show a net annualized economic benefit of $573,706 to the Agency, States, and public water systems, not including benefits due to increased public health protection or savings associated with the installation of affordable technologies. A summary of this EIA is available in the Office of Water Docket, #W–97–26.

The Agency performed an economic impact analysis of today's proposed rule to examine the economic costs and benefits of this rule on the Agency, State Drinking Water programs, and public water systems over a nine-year period. A nine-year period was chosen because systems serving fewer than 3,300 persons can operate for a maximum of nine years under an exemption, if they receive all available extensions. Small system variances, however, are available for the useful life of the variance technology, which can depend on various technical and financial factors. Thus, nine years was chosen as an appropriate time frame in which to examine the costs incurred by a variance and/or exemption program.

The Agency's economic analysis for the variance and exemption rule include variables such as administrative burden on States and the Agency, as well as costs on public water systems of applying and providing notice of application under the proposed rule. Costs to the Agency and States specifically include review of variance and exemption applications, setting terms and conditions of small system variances, and setting and enforcing milestones within the exemption period for a system. Some administrative costs, such as those associated with adopting new regulations or developing new criteria, were not included in the analysis. Estimated benefits include administrative costs associated with noncompliance avoided for States and the Agency, as well as litigation, judicial, and other process costs avoided by public water systems and regulatory agencies as a result of having variance and exemption programs in place. These costs avoided are not specific to any rule.

For the purposes of the economic impact analysis, the Agency selected two example regulations for which a system may apply for either a small systems variance or exemption. The Safe Drinking Water Act states in section 1416(b)(2)(A) that exemptions require compliance as soon as practicable but not later than 3 years after the otherwise applicable compliance date established for a given contaminant. Because no SDWA rules have been promulgated in the past three years, estimating the costs of implementing an exemption program was somewhat problematic, i.e., there are currently no national primary drinking water regulations for which exemptions can be currently granted.

As an alternative, the Agency used the Lead and Copper Rule (last promulgated in 1995) as an example so that the Agency could estimate the process costs of implementing an exemption on all affected entities. The Lead and Copper Rule was chosen because over 68,093 public water systems (approximately 38% of all public water systems) are subject to that rule, which provides a practical upper bound on the potential costs associated with processing and issuing exemptions for a rule. Further, the Agency has access to Lead and Copper Rule compliance data for those 68,093 public water systems.

The Agency also selected the Phase II/V regulation (inorganic contaminants) as an example of a pool of maximum contaminants levels for which variances under sections 1415(a) and 1415(e) may be granted. This regulation was selected because, for the purpose of issuing small system variances under section 1415(e), variance technologies are likely to be designated by the Agency for some of the maximum contaminant levels under this regulation. This assumption is based on preliminary analyses performed in preparing a small systems variance technology list under section 1412(b)(15) of the Safe Drinking Act. Also, Phase II/V addresses approximately 25 contaminants, some or all which may also be eligible for source water variances under section 1415(a) of the Act. Therefore, Phase II/V helps the Agency obtain a practical upper bound on the potential costs associated with processing and issuing variances for a NPDWR.

In using the Phase II/V Regulation and the Lead and Copper Rule as examples, the Agency does not make any indication as to whether these rules will be eligible for small system variances. The Administrator has not yet finally determined the contaminants for which small system variance technologies will be designated.

The table below provides, by system size as number of persons served, the number of public water systems (PWSs) subject to the Lead and Copper Rule and the Phase II/V Rule.

System size (in persons served)	All PWS subject to the lead and copper rule	All PWS subject to the phase II/V rule
25–500	51,191	48,100
501–3,300	16,902	14,126
Total < 3,301	68,093	62,226
3,301–10,000	4,323	3,410
Total < 10,000	72,416	65,636
> 10,000	3,529	2,774
Total	75,945	68,410

For both regulations, the Agency used compliance data to estimate the number of systems that may be eligible for a variance under sections 1415(a) or 1415(e) of the Act, or exemptions. The violation rates used in the economic impact analysis are identified in the table below. Violation data for the Lead and Copper Rule was taken from the Safe Drinking Water Information System database; violation rates for the Phase II/V Rule are from the Public Water Supply Supervision program information collection rule.

	Percentage of all PWS potentially eligible for variances/exemptions	
	Lead and copper (percent)	Phase II/V (percent)
Treatment Technique or Maximum Contaminant Level (annual violation rate)	0.50	0.50
Treatment Technique or Maximum Contaminant Level (nine-year violation rate)	4.50	2.00

The number of potentially eligible systems (i.e., systems in violation) was then used to estimate processing costs incurred by implementing a variance

and/or exemption program to all affected entities, summed for both rules. As stated previously, these costs include administrative burden to States and the Agency, as well as the public water systems' costs of applying for variances and exemptions. These costs were then compared to the economic benefits to public water systems, States, and the Agency of avoiding litigation and other administrative costs associated with noncompliance, summed for both rules. The net results are shown below, and costs are shown in parentheses.

	EPA	State drinking water programs	PWS	All entities
Costs	$241,821	$5,041,694	$348,716	.....
Benefits	0	2,863,321	3,342,616	.....
Net annualized economic costs and benefits	(241,821)	(2,178,373)	2,993,900	$573,706
Net present value of economic costs and benefits	.....	.....	.....	4,057,739

The Agency also examined the distribution of net economic benefits within differing size categories of public water systems serving 10,000 or fewer persons. As shown below, systems serving 25–500 persons will show the greatest net benefit from the issuance of variance and exemptions according to the model assumptions.

System size (persons served)	Net annualized economic benefits
25–500	$2,060,939
501–3,300	642,323
3,301–10,000	149,782

According to the economic impact analysis and the above tables, the variance and exemption rule is not considered to have a ''significant impact'' as defined under the Unfunded Mandates Reform Act, nor would it pose an adverse impact on a substantial number of small entities, as discussed in section V.D. of the preamble to today's proposed rule. Instead, public water systems would show a net economic benefit under today's proposed rule.

V. Other Administrative Requirements

A. Executive Order 12866

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency must determine whether the regulatory action is ''significant'' and therefore subject to review by the Office of Management and Budget and the requirements of the Executive Order. The Order defines ''significant regulatory action'' as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more, or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of the recipients thereof; or

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

It has been determined, that this rule is a ''significant regulatory action'' because it may raise novel legal or policy issues. The rule seeks to improve public health protection while providing regulatory relief to small systems by encouraging the adoption, by small systems unable to comply with drinking water standards, of affordable technologies that will improve the quality of their water even if they do not achieve full compliance with the MCL or treatment technique requirement for a particular contaminant. Therefore, EPA submitted this action to OMB for review. Substantive changes made in response to OMB suggestions or recommendations will be documented in the public record.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA), as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA), generally requires the Agency to consider explicitly the effect of proposed regulations on small entities. The Agency assesses the impact of the proposed rule on small entities and considers regulatory alternatives if a rule has a significant economic impact on a substantial number of small entities. However, under section 605(b) of the RFA, if the Agency certifies that the rule will not have a significant economic impact on a substantial number of small entities, the Agency is not required to prepare an RFA.

Pursuant to section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b), the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities. Regulations on variances and exemptions provide regulatory relief from the costs of complying with a maximum contaminant level or a treatment technique under a given national primary drinking water regulation. As directed in the Safe Drinking Water Act, this rule describes procedures and criteria by which those small public water systems which cannot afford the appropriate treatment to comply with a given national primary drinking water regulation can receive a variance or exemption. Thus, public water systems show a net economic benefit under today's proposed rule as a result of being granted a variance or exemption, rather than bear process costs associated with litigation and enforcement. Please see section IV, ''Cost of Rule'', in today's preamble for a more detailed discussion of the economic costs and benefits of today's proposed rule.

C. Paperwork Reduction Act

The information collection requirements in this proposed rule are currently being prepared and will be submitted for approval to the Office of Management and Budget (OMB) under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* An Information Collection Request (ICR No. 270.39) document will be prepared by the Agency to amend the current Public Water System Supervision Program ICR (OMB control number 2040–0090). A copy of the ICR is available from Sandy Farmer, Regulatory Information Division, Office of Policy, Planning, and Evaluation, U.S. Environmental Protection Agency (Mailcode: 2137), 401 M St., S.W., Washington, D.C., 20460, or by calling (202) 260–2740. Information requirements created by this regulation are not effective until OMB approves them.

Information required by this regulation allows the State or the Administrator to determine that the circumstances at a public water system

satisfy the statutory conditions for granting a small system variance or an exemption. Some of the required information allows the Administrator and the public to determine that the public had adequate opportunity to review and comment on a decision to grant a small system variance. The information collection requirements of this rule are mandatory for public water systems applying for either a variance or an exemption and for primacy States that review and either grant or deny these applications. Information collected by this rule will be provided to the public to facilitate public involvement in this process.

Based upon the analysis of the two rules discussed above, total public burden for this collection of information is estimated as 128,178 hours annually. The Agency notes however that the rule is estimated to provide a benefit of 117,414 annual hours of burden reduction by reducing enforcement actions against public water systems unable to comply fully with the maximum contaminant level or treatment technique requirements of the National Primary Drinking Water Regulations. Because this type of burden is not generally counted when developing burden estimates for these regulations, it is not netted out of the burden estimated for the current rule. 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.

Despite the increased burden hours, the rule is expected to provide a net economic benefit to systems choosing to apply for a variance or exemption, as discussed in section IV. This benefit includes avoided litigation and judicial costs, as well as the savings associated with the implementation of affordable technologies.

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.

Comments are requested on the Agency's need for the required information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques. Send comments on the ICR June 19, 1998 to: Director, OPPE Regulatory Information Division, U.S. Environmental Protection Agency (Mailcode: 2137), 401 M St., S.W., Washington, D.C., 20460 and to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th St., N.W., Washington, D.C., 20503, Attn: Desk Office for EPA Office of Water. The final rule will respond to any OMB or public comments on the information collection requirements contained in this proposal.

D. Unfunded Mandates Reform Act and Executive Order 12875

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, Tribal, and local governments and the private sector. Under section 202 of the UMRA, the Agency 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, Tribal, and local governments, in the aggregate, or to the private sector, of $100 million or more in any one year.

Before promulgating an Agency rule for which a written statement is needed, section 205 of the UMRA generally requires the Agency 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 of the UMRA do not apply when they are inconsistent with applicable law. Moreover, section 205 of the UMRA allows the Agency to adopt an alternative other than the least costly, most cost-effective, or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted.

Before the Agency establishes any regulatory requirements that may significantly or uniquely affect small governments, including Tribal governments, it must have developed a small government agency plan under section 203 of the UMRA. 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 Agency 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 (under the regulatory provisions of Title II of the UMRA) for State, local, or tribal governments or the private sector. This rule imposes no enforceable duty on any State, local or tribal governments or the private sector. This is because the rule will apply only to primacy States or Tribes. States or Tribes may choose whether to acquire or maintain primacy under the Safe Drinking Water Act. Further, States and Tribes with primacy may choose whether to issue variances and exemptions; they can decide to not issue any exemptions or variances at all. If they choose to issue variances or exemptions, they are only required to issue variances and exemptions in a manner not less stringent than the conditions under, and the manner in which, variances and exemptions may be granted under section 1415 and 1416 of the SDWA. Thus, today's rule is not subject to the requirements of section 202 and 205 of the UMRA.

Moreover, because this rule establishes procedures and criteria for public water systems to obtain variances and exemptions from Safe Drinking Water Act requirements, the Agency has determined that this rule contains no regulatory requirements that might significantly or uniquely adversely affect small governments and thus this rule is not subject to the requirement of section 203 of UMRA.

E. Enhancing Intergovernmental Partnerships

Executive Order 12875, ''Enhancing Intergovernmental Partnerships,'' October 26, 1995, requires the Agency to consult with State, tribal, and local entities in the development of rules that will affect them, and to document for OMB review the issues raised and how the issues were addressed. As described in section II of the Supplementary Information above, the Agency held several meetings with a wide variety of State and local representatives, who provided meaningful and timely input toward the development of the proposed rule. Summaries of these meetings have been included in the public docket for this rulemaking.

F. Protection of Children and Environmental Justice

Under the Executive Order entitled ''Protection of Children from Environmental Health Risks and Safety Risk,'' dated April 21, 1997, the Agency must ensure that its policies, programs, activities, and standards address environmental and safety risks to children. Every regulatory action submitted to OMB for review under Executive Order 12866 must include information that evaluates the environmental health and safety effects of the planned regulation on children and explains why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

In addition, under Executive Order 12898, entitled ''Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations'', dated February 11, 1994, the Agency must make achieving environmental justice part of its mission.

The Agency believes that this proposed rule has the potential to significantly reduce risks to children caused by inadequate drinking water and address environmental justice problems. After a small public water system applies for a small system variance, § 142.306(b) of the proposed rule requires the State to perform a compliance options analysis for the system. Small noncompliant public water systems are often financially distressed as a result of the service population's inability to pay for safe drinking water and other factors. The public water system may have unprotected source waters or is unable to afford the appropriate treatment technology or technique, certified operator, and/or adequate transmission and distribution systems. As required by § 142.306(b) of the proposed rule, an analysis of the applicant system's compliance options will provide insight into alternative means of compliance. This might include some form of restructuring or consolidation with another system, development of a cleaner, safer water source, or using some alternative treatment technique or technology.

If according to a State's affordability criteria, these compliance options are unaffordable for a drinking water system, the State may grant the system a variance. Prior to issuing a variance, § 142.306(b)(5) of the proposed rule requires that the State find that the terms and conditions of a small system variance ensure ''adequate protection of public health.'' Similarly, an exemption can only be granted if its conditions ensure that there is no unreasonable risk to health.'' Both findings are made at the State level on a case-specific basis.

The intent of the small system variance subpart of the rule is to move a system, which is not complying with Safe Drinking Water Act standards because the treatment required is unaffordable, toward or into compliance status by requiring the system to install, operate and maintain treatment which is affordable and protective of human health. Although the level of treatment provided may not meet the maximum contaminant level, it must be determined to be protective of human health—both by the Agency in identifying the approved variance technology and by the primacy State in making such a finding—if the variance is granted.

The Agency believes that a system operating under a small system variance as proposed today will provide better treatment than that provided by a system in noncompliance. Although the drinking water system may not be able to provide water that is consistently below the maximum contaminant level, a water system operating under a variance will be able to create a net gain in the quality of its finished water above what it could provide before installing a variance technology. In turn, this will lead to a net gain in public health protection for infants, children, and nursing or pregnant women as well as for persons in low-income areas, thus protecting children's health as well as alleviating environmental justice problems.

In addition to requirements that ensure public participation in granting variances and exemptions, § 142.308(c)(7) of the proposed rule requires that, in communities with a large portion of non-English speaking persons, notices provided to the public must include information in the appropriate language regarding the content and importance of the notice.

For these reasons, the Agency believes that this rule is consistent with, and implements, the Executive Order on protecting children as well as the Executive Order addressing environmental justice.

G. National Technology Transfer and Advancement Act

Under section 12(d) of the National Technology Transfer and Advancement Act, the Agency is required to use voluntary consensus standards in its regulatory and procurement activities, unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, business practices, etc.) that are developed or adopted by voluntary consensus standards bodies. Where available and potentially applicable voluntary consensus standards are not used by the Agency, the Act requires the Agency to provide Congress, through the Office of Management and Budget, an explanation of the reasons for not using such standards. Because this proposed rule is procedural and does not involve or require the use of any technical standards, the Agency does not believe that this Act is applicable to this rule. Moreover, the Agency is unaware of any voluntary consensus standards relevant to this rulemaking. Therefore, even if the Act were applicable to this kind of rulemaking, the Agency does not believe that there are any ''available or potentially applicable'' voluntary consensus standards. A commenter who disagrees with this conclusion should indicate how the rule is subject to the Act, and identify any potentially applicable voluntary consensus standards.

VI. Request for Public Comments

The Agency seeks public comment on this proposed rule. In particular, several sections of the preamble describe alternative approaches under consideration by the Agency or specifically request comment. The topic areas addressed in these particular sections include: which contaminants should be eligible for small system variances; the usefulness and appropriateness of additional guidance on site-specific determination of adequate public health protection; the appropriateness of requiring States to explicitly consider impacts on sensitive subpopulations, or alternatively of the Agency providing guidance on impacts to such subpopulations; the number and timing of public notices that must be provided prior to granting a small system variance; the content of required health effects language in such notices; whether the Agency should promulgate a specific time limit for compliance with the terms of general variances; whether small system variances should be permitted for systems that are unable to comply within the terms of an exemption; whether exemption renewals should be allowed in advance; and the reporting and recordkeeping requirements of the rule and associated burden. Comments are also welcome on any other aspect of the proposed rule and supporting documentation.

Please submit an original and three copies of your comments and enclosures (including references). To facilitate Agency review and response to comments, the Agency would prefer that commenters cite, where possible, the specific paragraph(s) or section(s) in the notice or supporting documents to which each comment refers. Commenters should use a separate paragraph for each issue discussed. Commenters who want the Agency to acknowledge receipt of their comments should enclose a self-addressed, stamped envelope. No facsimiles (faxes) will be accepted.

Written comments must be received by midnight May 20, 1998. All written comments should be submitted to: W–97–26 Comment Clerk, Water Docket (Mailcode MC4101), Environmental Protection Agency, 401 M Street, S.W., Washington, D.C., 20460.

Comments may also be submitted electronically to ow–docket@epa.mail.epa.gov. Electronic comments must be identified by the docket number W–97–26. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and form of encryption.

The record for this rulemaking has been established under docket number W–97–26, and includes supporting documentation as well as printed, paper versions of electronic comments.

List of Subjects in 40 CFR Part 142

Environmental protection, Administrative practice and procedures, Chemical, Indian-lands, Radiation protection, Reporting and recordkeeping requirements, Water supply.

Dated: April 14, 1998.

Carol M. Browner,

Administrator.

For the reasons set out in the preamble, 40 CFR part 142 is proposed to be amended as follows:

PART 142—[AMENDED]

1. The authority citation for part 142 continues to read as follows:

Authority: 42 U.S.C. 300g, 300g–1, 300g–2, 300g–3, 300g–4, 300g–5, 300g–6, 300j–4, and 300j–9.

2. Section 142.10 is amended by revising paragraph (d) to read as follows:

§ 142.10 Requirements for a determination of primary enforcement responsibility.

* * * * *

(d) *Variances and exemptions.* (1) If it permits small system variances pursuant to Section 1415(e) of the Act, it must provide procedures no less stringent than the Act and subpart K of this part.

(2) If it permits variances (other than small system variances) or exemptions, or both, from the requirements of the State primary drinking water regulations, it shall do so under conditions and in a manner no less stringent than the requirements of Sections 1415 and 1416 of the Act. In granting these variances, the State must adopt the Administrator's findings of best available technology, treatment techniques, or other means available as specified in subpart G of this part. (States with primary enforcement responsibility may adopt procedures different from those set forth in subparts E and F of this part, which apply to the issuance of variances (other than small system variances) and exemptions by the Administrator in States that do not have primary enforcement responsibility, provided that the State procedures meet the requirements of this paragraph); and

* * * * *

3. Section 142.20 is revised including the section heading to read as follows:

§ 142.20 State-issued variances and exemptions under Section 1415(a) and Section 1416 of the Act.

(a) States with primary enforcement responsibility may issue variances to public water systems (other than small system variances) from the requirements of primary drinking water regulations under conditions and in a manner which are not less stringent than the requirements under Section 1415(a) of the Act. A State must document all findings that are required under Section 1415(a) of the Act. In States that do not have primary enforcement responsibility, variances may be granted by the Administrator pursuant to subpart E of this part.

(b) States with primary enforcement responsibility may issue exemptions from the requirements of primary drinking water regulations under conditions and in a manner which are not less stringent than the requirements under Section 1416 of the Act. In States that do not have primary enforcement responsibility, exemptions may be granted by the Administrator pursuant to subpart F of this part.

(1) A State must document all findings that are required under Section 1416 of the Act, including the following:

(i) Before finding that management and restructuring changes cannot be made, a State must consider the following measures, and the availability of State Revolving Loan Fund assistance, or any other Federal or State program, that is reasonably likely to be available within the period of the exemption to implement these measures:

(A) Consideration of rate increases, accounting changes, the appointment of a State-certified operator under the State's Operator Certification program, contractual agreements for joint operation with one or more public water systems;

(B) Activities consistent with the State's Capacity Development Strategy to help the public water system acquire and maintain technical, financial, and managerial capacity to come into compliance with the Act; and

(C) Ownership changes, physical consolidation with another public water system, or other feasible and appropriate means of consolidation which would result in compliance with the Act;

(ii) The State must consider the availability of an alternative source of water, including the feasibility of partnerships with neighboring public water systems, as identified by the public water system or by the State consistent with the Capacity Development Strategy.

(2) In the case of a public water system serving a population of not more than 3,300 persons and which needs financial assistance for the necessary improvements under the initial compliance schedule, an exemption granted by the State under Section 1416(b)(2)(B)(i) or (ii) of the Act may be renewed for one or more additional 2-year periods, but not to exceed a total of 6 additional years, only if the public water system establishes that the public water system is taking all practicable steps to meet the requirements of Section 1416(b)(2)(B) of the Act and the established compliance schedule. A State must document its findings in granting an extension under this paragraph.

4. The heading for Subpart E is revised to read as follows:

Subpart E—Variances Issued by the Administrator Under Section 1415(a) of the Act

5. Section 142.42 is amended by revising paragraph (c) to read as follows:

§ 142.42 Consideration of a variance request.

* * * * *

(c) A variance may be issued to a public water system on the condition that the public water system install the best technology, treatment techniques, or other means, which the Administrator finds are available (taking costs into consideration) and based upon an evaluation satisfactory to the

Administrator that indicates that alternative sources of water are not reasonably available to the public water system.

* * * * *

Subpart F—[Amended]

6. Section 142.50 is revised to read as follows:

§ 142.50 Requirements for an exemption.

(a) The Administrator may exempt any public water system within a State that does not have primary enforcement responsibility from any requirement regarding a maximum contaminant level or any treatment technique requirement, or from both, of an applicable national primary drinking water regulation upon a finding that—(1) Due to compelling factors (which may include economic factors, including qualification of the public water system as a system serving a disadvantaged community pursuant to Section 1452(d) of the Act), the public water system is unable to comply with such contaminant level or treatment technique requirement or to implement measures to develop an alternative source of water supply;

(2) The public water system was in operation on the effective date of such contaminant level or treatment technique requirement, or for a public water system that was not in operation by that date, no reasonable alternative source of drinking water is available to such new public water system;

(3) The granting of the exemption will not result in an unreasonable risk to health; and

(4) Management or restructuring changes (or both), as provided in § 142.20(b)(1)(i)(A), cannot reasonably be made that will result in compliance with the applicable national primary drinking water regulation or, if compliance cannot be achieved, improve the quality of the drinking water.

(b) No exemption shall be granted unless the public water system establishes that the public water system is taking all practicable steps to meet the standard and;

(1) The public water system cannot meet the standard without capital improvements which cannot be completed prior to the date established pursuant to Section 1412(b)(10) of the Act;

(2) In the case of a public water system which needs financial assistance for the necessary improvements, the public water system has entered into an agreement to obtain such financial assistance or assistance pursuant to Section 1452 of the Act, or any other Federal or State program that is reasonably likely to be available within the period of the exemption; or

(3) The public water system has entered into an enforceable agreement to become a part of a regional public water system.

(c) A public water system may not receive an exemption under this subpart if the public water system was granted a variance under Section 1415(e) of the Act.

7. Section 142.53 is amended by revising paragraph (c)(1) to read as follows:

§ 142.53 Disposition of an exemption request.

* * * * *

(c) * * *

(1) Compliance (including increments of progress or measures to develop an alternative source of water supply) by the public water system with each contaminant level requirement or treatment technique requirement with respect to which the exemption was granted; and

* * * * *

8. Section 142.55 is amended by revising paragraph (b) and removing and reserving paragraph (c) to read as follows:

§ 142.55 Final schedule.

* * * * *

(b) Such schedule must require compliance with each contaminant level and treatment technique requirement with respect to which the exemption was granted as expeditiously as practicable but not later than 3 years after the otherwise applicable compliance date established in Section 1412(b)(10) of the Act.

(c) [Reserved].

9. Section 142.56 is revised to read as follows:

§ 142.56 Extension of date for compliance.

In the case of a public water system which serves a population of not more than 3,300 persons and which needs financial assistance for the necessary improvements, an exemption granted under § 142.50(b) (1) or (2) may be renewed for one or more additional 2-year periods, but not to exceed a total of 6 additional years, if the public water system establishes that the public water system is taking all practicable steps to meet the requirements of Section 1416(b)(2)(B) of the Act and the established compliance schedule.

10. Subpart K is added to read as follows:

Subpart K—Variances for Small System

Sec.

General Provisions

142.301 What is a small system variance?
142.302 Who can issue a small system variance?
142.303 Which size public water systems can receive a small system variance?
142.304 For which of the regulatory requirements is a small system variance available?
142.305 When can a small system variance be granted by a State?

Review of Small System Variance Application

142.306 What are the responsibilities of the public water system, State and the Administrator in ensuring that sufficient information is available and for evaluation of a small system variance application?
142.307 What terms and conditions must be included in a small system variance?

Public Participation

142.308 What Public Notice is Required Before a State or the Administrator Proposes to issue a Small System Variance?
142.309 What are the public meeting requirements associated with the proposal of a small system variance?
142.310 How can a person served by the public water system obtain EPA review of a State proposed small system variance?

EPA Review and Approval of Small System Variances

142.311 What procedures allow for the Administrator to object to a proposed small system variance or overturn a granted small system variance for a public water system serving 3,300 or fewer persons?
142.312 What EPA action is necessary when a State proposes to grant a small system variance to a public water system serving a population of more than 3,300 and fewer than 10,000 persons?
142.313 How will the Administrator review a State's program under this subpart?

Subpart K—Variances for Small System

General Provisions

§ 142.301 What is a small system variance?

Section 1415(e) of the Act authorizes the issuance of variances from the requirement to comply with a maximum contaminant level or treatment technique to systems serving fewer than 10,000 persons. The purpose of this subpart is to provide the procedures and criteria for obtaining these variances.

§ 142.302 Who can issue a small system variance?

A small system variance under this subpart may only be issued by either:

(a) A State that is exercising primary enforcement responsibility under

Subpart B for public water systems under the State's jurisdiction; or

(b) The Administrator, for any other public water systems.

§ 142.303 Which size public water systems can receive a small system variance?

(a) A State exercising primary enforcement responsibility for public water systems (or the Administrator for other systems) may grant a small system variance to public water systems serving 3,300 or fewer persons.

(b) With the approval of the Administrator pursuant to § 142.312, a State exercising primary enforcement responsibility for public water systems may grant a small system variance to public water systems serving more than 3,300 persons but fewer than 10,000 persons.

(c) In determining the number of persons served by the public water system, the State or Administrator must include persons served by consecutive systems. A small system variance granted to a public water system would also apply to any consecutive system served by it.

§ 142.304 For which of the regulatory requirements is a small system variance available?

(a) A small system variance is not available under this subpart for a national primary drinking water regulation for a microbial contaminant (including a bacterium, virus, or other organism) or an indicator or treatment technique for a microbial contaminant.

(b) A small system variance under this subpart is otherwise only available for compliance with a requirement specifying a maximum contaminant level or treatment technique for a contaminant with respect to which;

(1) A national primary drinking water regulation was promulgated on or after January 1, 1986; and

(2) The Administrator has published a small system variance technology pursuant to Section 1412(b)(15) of the Act.

§ 142.305 When can a small system variance be granted by a State?

No small system variance can be granted by a State until the later of the following:

(a) 90 days after the State proposes to grant the small system variance;

(b) If a State is proposing to grant a small system variance to a public water system serving 3,300 or fewer persons and the Administrator objects to the small system variance, the date on which the State makes the recommended modifications or responds in writing to each objection; or

(c) If a State is proposing to grant a small system variance to a public water system serving a population more than 3,300 and fewer than 10,000 persons, the date the Administrator approves the small system variance. The Administrator must approve or disapprove the variance within 90 days after it is submitted to the Administrator for review.

Review of Small System Variance Application

§ 142.306 What are the responsibilities of the public water system, State and the Administrator in ensuring that sufficient information is available and for evaluation of a small system variance application?

(a) A public water system requesting a small system variance must ensure that accurate and correct information is available for the State or the Administrator to issue a small system variance in accordance with this subpart. A State may assist a public water system in compiling information required for the State or the Administrator to issue a small system variance in accordance with this subpart.

(b) Based upon an application for a small system variance and other information, and before a small system variance may be proposed under this subpart, the State or the Administrator must find and document the following:

(1) The public water system is eligible for a small system variance pursuant to §§ 142.303 and 142.304;

(2) The public water system cannot afford to comply, in accordance with the affordability criteria established by the Administrator or the State, with the national primary drinking water regulation for which a small system variance is sought, including by:

(i) Treatment;

(ii) Alternative sources of water supply;

(iii) Restructuring or consolidation changes, including ownership change and/or physical consolidation with another public water system; or

(iv) Obtaining financial assistance pursuant to Section 1452 of the Act or any other Federal or State program;

(3) The public water system meets the source water quality requirements for installing the small system variance technology developed pursuant to guidance published under Section 1412(b)(15) of the Act;

(4) The public water system is financially and technically capable of installing, operating and maintaining the applicable small system variance technology; and

(5) The terms and conditions of the small system variance, as developed through compliance with § 142.307, ensure adequate protection of human health, considering the following:

(i) The quality of the source water for the public water system; and

(ii) Removal efficiencies and expected useful life of the small system variance technology.

§ 142.307 What terms and conditions must be included in a small system variance?

(a) A State or the Administrator must clearly specify enforceable terms and conditions of a small system variance.

(b) The terms and conditions of a small system variance issued under this subpart must include, at a minimum, the following requirements:

(1) Proper and effective installation, operation and maintenance of the applicable small system variance technology in accordance with guidance published by the Administrator pursuant to Section 1412(b)(15) of the Act, taking into consideration any relevant source water characteristics and any other site-specific conditions that may affect proper and effective operation and maintenance of the technology;

(2) Monitoring requirements, for the contaminant for which a small system variance is sought, as specified in 40 CFR Part 141; and

(3) Any other terms or conditions that are necessary to ensure adequate protection of public health, which may include:

(i) Public education requirements; and

(ii) Source water protection requirements.

(c) The State or the Administrator must establish a schedule for the public water system to comply with the terms and conditions of the small system variance which must include, at a minimum, the following requirements:

(1) Increments of progress, such as milestone dates for the public water system to apply for financial assistance and begin capital improvements;

(2) Quarterly reporting to the State or Administrator of the public water system's compliance with the terms and conditions of the small system variance;

(3) Schedule for the State or the Administrator to review the small system variance under paragraph (d) of this section; and

(4) Compliance with the terms and conditions of the small system variance as soon as practicable but not later than 3 years after the date on which the small system variance is granted. The Administrator or State may allow up to 2 additional years if the Administrator or State determines that additional time is necessary for the public water system to:

(i) Complete necessary capital improvements to comply with the small system variance technology, secure an alternative source of water, or restructure or consolidate; or

(ii) Obtain financial assistance provided pursuant to Section 1452 of the Act or any other Federal or State program.

(d) The State or the Administrator must review each small system variance granted not less often than every 5 years after the compliance date established in the small system variance to determine whether the public water system continues to meet the eligibility criteria and remains eligible for the small system variance and is complying with the terms and conditions of the small system variance. If the public water system would no longer be eligible for a small system variance, the State or Administrator must determine whether continued adherence to the small system variance conditions is in the public interest.

Public Participation

§ 142.308 What public notice is required before a State or the Administrator proposes to issue a small system variance?

(a) At least fifteen (15) days before the date of proposal, and at least thirty (30) days prior to a public meeting to discuss the proposed small system variance, the State or the Administrator must provide notice to all consumers of the public water system. This notice identified in paragraph (a)(1) of this section must include the information listed in paragraph (c) of this section. The notice identified in paragraph (a)(2) of this section shall include the information identified in paragraph (d) of this section. Notice must be provided to such consumers by:

(1) Direct mail to billed customers; and

(2) Any other method reasonably calculated to notify, in a brief and concise manner, other persons regularly served by the system. Such methods may include publication in a local newspaper, posting in public places or delivery to community organizations.

(b) At the time of proposal, the State must publish a notice in the State equivalent to the **Federal Register** or, in the case of the Administrator, in the **Federal Register**. This notice shall include the information listed in paragraph (c) of this section.

(c) The notice in paragraphs (a)(1) and (b) of this section must include, at a minimum, the following:

(1) Identification of the contaminant[s] for which a small system variance is sought;

(2) A brief statement of the health effects associated with the contaminant[s] for which a small system variance is sought using language in Appendix B of Part 141 Subpart O of this chapter;

(3) The address and telephone number at which interested persons may obtain further information concerning the contaminant and the small system variance;

(4) A brief summary, in easily understandable terms, of the compliance options considered by the public water system and of the terms and conditions of the small system variance;

(5) A description of the consumer petition process under § 142.310 and information on contacting the EPA Regional Office;

(6) A brief statement of the purpose of the meeting, information regarding the time and location for the meeting, and the address and telephone number at which interested persons may obtain further information concerning the meeting; and

(7) In communities with a large portion of non-English speaking residents, information in the appropriate language regarding the content and importance of the notice.

(d) The notice in paragraph (a)(2) of this section must provide sufficient information to alert readers to the proposed variance and direct them where to receive additional information.

(e) At its option, the State or the Administrator may choose to issue separate notices or additional notices related to the proposed small system variance, provided that the requirements in paragraphs (a) through (d) of this section are satisfied.

(f) Prior to promulgating the final variance, the State or the Administrator must respond in writing to all significant public comments received relating to the small system variance. Response to public comment and any other documentation supporting the issuance of a variance must be made available to the public after final promulgation.

§ 142.309 What are the public meeting requirements associated with the proposal of a small system variance?

(a) A State or the Administrator must provide for at least one (1) public meeting on the small system variance no later than 15 days after the small system variance is proposed.

(b) The State or Administrator must prepare and make publicly available, in addition to the information listed in § 142.308(c), either:

(1) The proposed small system variance, if the public meeting occurs after proposal of the small system variance or;

(2) A draft of the proposed small system variance, if the public meeting occurs prior to proposal of the proposed small system variance.

(c) Notice of the public meeting must be provided in the manner required under § 142.308 at least 30 days in advance of the public meeting.

§ 142.310 How can a person served by the public water system obtain EPA review of a State proposed small system variance?

(a) Any person served by the public water system may petition the Administrator to object to the granting of a small system variance within 30 days after a State proposes to grant a small system variance for a public water system.

(b) The Administrator must respond to a petition filed by any person served by the public water system and determine whether to object to the small system variance under § 142.311, no later than 60 days after the receipt of the petition.

EPA Review and Approval of Small System Variances

§ 142.311 What procedures allow the Administrator to object to a proposed small system variance or overturn a granted small system variance for a public water system serving 3,300 or fewer persons?

(a) At the time a State proposes to grant a small system variance under this subpart, the State must submit to the Administrator the proposed small system variance and all supporting information, including any written public comments received prior to proposal.

(b) The Administrator may review and object to any proposed small system variance within 90 days of receipt of the proposed small system variance. The Administrator must notify the State in writing of each basis for the objection and propose a modification to the small system variance to resolve the concerns of the Administrator. The State must make the recommended modification, respond in writing to each objection, or withdraw the proposal to grant the small system variance.

(c) If the State issues the small system variance without resolving the concerns of the Administrator, the Administrator may overturn the State decision to grant the variance if the Administrator determines that the State decision does not comply with the Act or this subpart.

§ 142.312 What EPA action is necessary when a State proposes to grant a small system variance to a public water system serving a population of more than 3,300 and fewer than 10,000 persons?

(a) At the time a State proposes to grant a small system variance to a public water system serving a population of more than 3,300 and fewer than 10,000 persons, the State must submit the proposed small system variance and all supporting information, including public comments received prior to proposal, to the Administrator.

(b) The Administrator must approve or disapprove the small system variance within 90 days of receipt of the proposed small system variance and supporting information. The Administrator must approve the small system variance if it meets each requirement within the Act and this subpart.

(c) If the Administrator disapproves the small system variance, the Administrator must notify the State in writing of the reasons for disapproval and the small system variance does not become effective. The State may resubmit the small system variance for review and approval with modifications to address the objections stated by the Administrator.

§ 142.313 How will the Administrator review a State's program under this subpart?

(a) The Administrator must periodically review each State program under this subpart to determine whether small system variances granted by the State comply with the requirements of the Act, this subpart and the affordability criteria developed by the State.

(b) If the Administrator determines that small system variances granted by a State are not in compliance with the requirements of the Act, this subpart or the affordability criteria developed by the State, the Administrator shall notify the State in writing of the deficiencies and make public the determinations.

(c) The Administrator's review will be based in part on quarterly reports prepared by the States pursuant to § 142.15(a)(1) relating to violations of increments of progress or other violated terms or conditions of small system variances.

[FR Doc. 98–10393 Filed 4–17–98; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

49 CFR Parts 390 and 395

[Docket No. FHWA–98–3706]

RIN 2125–AD52

Hours of Service of Drivers; Supporting Documents

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of proposed rulemaking (NPRM); request for comments.

SUMMARY: The FHWA proposes to amend the hours-of-service (HOS) recordkeeping requirements of its regulations. The Hazardous Materials Transportation Authorization Act of 1994 mandated that amendments be made to these regulations. The FHWA, with this NPRM, proposes a supporting document auditing system that all motor carriers would use to support the accuracy of the drivers' Records of Duty Status (RODS) and Hours of Service (HOS). Additionally, this NPRM would specify that failure to have such a system would require the motor carrier to maintain various types of business documents and all drivers employed by that motor carrier to collect and submit such documents in order to support the accuracy of the drivers' RODS. The proposed auditing systems and document retention proposal would enable the motor carriers, Federal, State, and local enforcement officials to compare business documents with drivers' records of duty status to monitor drivers' compliance with the HOS and RODS requirements. This proposed rule would require drivers and motor carriers to make use of documents generated or received in the normal course of business to verify the accuracy of a driver's record of duty status. The use of electronic recordkeeping methods is proposed as a preferred alternative to paper supporting document records.

DATES: Comments should be received by June 19, 1998.

ADDRESSES: Signed, written comments should refer to the docket number appearing at the top 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 a.m. and 5 p.m., e.t., Monday through Friday, except Federal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped envelope or postcard.

For Internet users, all comments received will be available for examination at the universal resource locator—*http://dms.dot.gov*—24 hours each day, 365 days each year. Please follow the instructions on-line for more information and help.

FOR FURTHER INFORMATION CONTACT: *For information regarding program issues:* Mr. David Miller, Office of Motor Carrier Research and Standards, (202) 366–4009, or *for information regarding legal issues:* Mr. Joseph Solomey, Office of the Chief Counsel, (202) 366–0834, Federal Highway Administration, Department of Transportation, 400 Seventh Street, SW., Washington, D.C. 20590.

SUPPLEMENTARY INFORMATION:

The Difference Between This RIN 2125–AD52 and RIN 2125–AD93

A regulation 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. This NPRM is the first document being published for RIN 2125–AD52. Use this RIN when cross referencing this action with the Unified Agenda.

This document is not an NPRM for RIN 2125–AD93, Hours of Service of Drivers. The FHWA published an ANPRM on November 5, 1996 for RIN 2125–AD93 (61 FR 57251). The FHWA is analyzing the comments for RIN 2125–AD93 and will publish an NPRM in the future based upon those comments and the accompanying scientific data.

The FHWA will likely incorporate this NPRM, or any final rule resulting from this NPRM, into the upcoming NPRM for RIN 2125–AD93. Please limit your analysis, though, and any comments you may have, to how this NPRM would affect the current 49 CFR part 395. Please do not comment on how these changes might affect RIN 2125–AD93 and the ICC Termination Act of 1995. You will be given an additional opportunity to comment at the time the FHWA publishes the NPRM for RIN 2125–AD93.

Electronic Availability

An electronic copy of this document may be downloaded using a computer, modem, and suitable communications software from the Government Printing Office (GPO) electronic bulletin board service (telephone: 202–512–1661). Internet users may reach the GPO's web page at: http://www.access.gpo.gov/su__docs/aces/aaces002.html

Background of Daily Logs (RODS) and the Verification of RODS

The HOS rules were first issued in the late 1930's (Ex Parte No. MC–2, 3 M.C.C. 665). Since that time, drivers have had the responsibility to prepare a RODS. The original pocket rulebook from 1939 states that carriers and drivers would be liable for the accuracy of entries made by drivers on the RODS. The Interstate Commerce Commission explained the original purposes of the RODS as follows:

> [to provide] a standardized type of record to be maintained of the daily driving time and the weekly hours on duty which would be in the possession of each driver and which would enable a highway patrolman or other enforcement officer to determine immediately upon the stopping of the vehicle whether the driver had been on duty or was driving in violation of our regulations. * * * [and] to provide a record from which our field representatives could readily determine whether or not the carriers are complying with the regulations. 24 M.C.C. 413

In order to determine whether carriers are complying with the HOS regulations, the FHWA is authorized, by statute, to inspect and copy any record, and to inspect any property, or equipment of a carrier, lessor, association, or other person subject to the provisions of 49 U.S.C. 31502, as long as these actions were made in furtherance of an investigation and regardless of whether or not the records were required to be maintained by the FHWA regulations or orders. See 49 U.S.C. 501(b).

A third purpose of the RODS is that they enable motor carriers, at the time of dispatch, to ensure their drivers have sufficient time to safely complete trips within the HOS regulations. The FHWA believes many motor carriers began to realize this purpose in the early years of the regulation.

Over the last 60 years, many motor carriers have regularly audited or inspected drivers' RODS for accuracy to ensure their drivers are complying with the HOS regulations. This enables the motor carriers to verify, through their own self-monitoring system, that drivers are accurately reporting their HOS. It also allows drivers to calculate their available hours prior to being dispatched. This provides the motor carrier with a valuable management tool to efficiently dispatch trips within the HOS limitations.

In general, motor carriers use many different types of business records to document various business transactions: Accident and incident reports are used, for instance, to support claims to insurers and defend against lawsuits; bills of lading are written transportation contracts between shippers and carriers that identify the freight, who is to receive it, the place of delivery, and the terms of the agreement; and border crossing reports are used to establish time and mileage in a foreign country. Carrier pros (waybills) are descriptions of the goods sent with a carrier freight shipment. Cash advance receipts are used to document cash advances to drivers. Credit and debit card receipts and statements are used to reconcile credit and debit account balances. Customs declarations are used to document the type and quantity of freight which crossed a border point. Delivery receipts are used to document the act of transferring possession of a shipment, usually between a carrier and a consignee, but also between a consignor and a carrier, and one carrier to another carrier who receives the freight. Dispatch and assignment records are used to schedule and control pickup and delivery of freight, especially in the scheduling and control of intercity traffic and intracity pickup and delivery. Driver reports (facsimile or call-in logs) are used to track a driver's progress. Expense vouchers are used to account for all expenses. Freight bills are used to describe the freight, its weight, amount of charges, taxes, and whether collect or prepaid charges. Fuel billing statements are used to reconcile the quantity of fuel consumed and the cost of the fuel for internal expense reports. Fuel receipts are used in conjunction with fuel billing statements to reconcile the quantity of fuel consumed and the cost of the fuel for internal expense reports. Gate receipts are used to control access to terminals and to determine when access and departure from the terminal were accomplished. Global positioning and cellular systems provide two-way communications technology between the driver and the carrier. The global positioning systems also provide a means by which motor carrier management may determine the CMVs operational efficiency. Such operating parameters including engine speed, engine oil pressure, and cargo space temperature may be provided by such systems. Data provided by the global and cellular systems help management estimate a driver's time of arrival at the next destination and the condition of the CMV and its contents much faster than land-based, wire telephone communications. Inspection reports are used to determine whether the motor carrier needs to improve monitoring of its vehicles or drivers. Invoices are used to notify payees of the charges to be paid for transportation services. Interchange reports are used to determine when and where freight was transferred from one transportation carrier to another carrier. International Registration Program (IRP) receipts are used to determine the registration for the specified vehicles. International Fuel Tax Agreement (IFTA) receipts are used to determine the payment of fuel tax charges. Lessor settlement sheets are used to determine the terms of a lease and when a lease has been settled. Lodging receipts are used to determine driver expenses. Lumper receipts are used to determine driver expenses for the temporary labor at a consignor or consignee. On-board computer reports are used to determine the proper operation of CMVs, including the efficiency of the engine, transmission, and accessories hooked up to the computer. Over/short and damage reports are used to make claims for cargo liability claims and to account to shippers for the freight that has been damaged or freight that was over counted or under counted. Overweight/oversize reports and citations are used to determine driver expenses for State size and weight violations. Port of entry receipts are used to determine when freight was delivered to or received from a port of entry. Telephone billing statements are used to determine driver expenses and to reconcile driver and global positioning system reports. Toll receipts are used to determine driver expenses. Traffic citations are used to determine driver expenses for motor carriers that reimburse drivers for such violations. Reports of CMVs with transponders participating in automated toll or clearance programs are used to reconcile proper payment and clearance. Trip permits are used to show that a CMV is properly authorized by a jurisdiction to operate in that jurisdiction under the conditions specified in the permit. Trip reports are used to track driver and CMV actions and weight/scale tickets are used to determine the net weight of shipments to accurately charge shippers for transportation services.

These records, among others, are generated by motor carriers for their own business purposes, or they are received from third parties, such as consignors, consignees, and vendors for other motor carrier purposes. Motor carriers have been using these records not only to document various business transactions, but also to verify the accuracy of their driver's RODS. Many motor carriers regularly maintain self-monitoring records for their own internal management purposes. This practice, over the years, has become a

standard motor carrier practice among well run, successful, and safe motor carriers.

The FHWA has learned from safe motor carriers that in order for the carriers to ensure that drivers are alert and not fatigued, motor carriers must maintain self-monitoring systems comparing RODS to supporting business documents. The FHWA decided to adopt this practice of maintaining ''RODS supporting documents'' as a part of its regulatory oversight to assist motor carriers in operating safely. The FHWA published a final rule on November 26, 1982 (47 FR 53383) which, in part, requires motor carriers operating in interstate commerce to retain supporting documents, along with drivers' records of duty status, for at least six months from the date of receipt (49 CFR 395.8(k)). The FHWA did not define the term ''supporting document'' in that final rule.

The FHWA intended that the term ''supporting document'' refer to those specific documents, and only those specific documents, that a motor carrier used in its internally-developed system or program to verify the accuracy of the driver's duty activities. It was not meant to encompass all records, but only those that were, indeed, used by the motor carrier, to verify the dates, times, and locations the driver recorded. The FHWA received requests in the 1980's and early 1990's for an interpretation of the term ''supporting document.''

The FHWA published regulatory guidance in the **Federal Register** on November 17, 1993 (58 FR 60734, 60761), which provided examples of the types of supporting documents that should be retained. The regulatory guidance stated that supporting documents are the records of the motor carrier maintained in the ordinary course of business that are used, or could be used, by the motor carrier to verify the information recorded on a driver's record of duty status. An extensive, but not a complete, list of the various types of records considered to be examples of supporting documents was provided in this guidance.

On August 26, 1994, the Hazardous Materials Transportation Authorization Act of 1994, Pub. L. 103–311, 108 Stat. 1673 (August 26, 1994) (hereinafter the Act) was enacted. Under section 113 of the Act, the Secretary of Transportation is required to prescribe regulations amending 49 CFR Part 395 to improve both (A) compliance by commercial motor vehicle (CMV) drivers and motor carriers with the HOS requirements, and (B) the effectiveness and efficiency of Federal and State enforcement officers reviewing such compliance.

The Act directed that the regulations include the following items:

(1) A description of identification items (which include either driver name or vehicle number) that shall be part of a written or electronic document to enable such written or electronic documents to be used by a motor carrier or by an enforcement officer as a supporting document to verify the accuracy of a driver's record of duty status;

(2) A provision specifying the number, type, and frequency of supporting documents that must be retained by a motor carrier so as to allow verification of the accuracy of the RODS at a reasonable cost, to the driver and the motor carrier, of record acquisition and retention;

(3) A provision specifying the period during which supporting documents shall be retained by the motor carrier. The period shall be at least six months from the date of a document's receipt;

(4) A provision to authorize, on a case-by-case basis, motor carrier self-compliance systems that ensure driver compliance with hours of service requirements and allow Federal and State enforcement officials the opportunity to conduct independent audits of such systems to validate compliance with section 395.8(k) of title 49, Code of Federal Regulations (or successor regulations thereto). Such authorization may also be provided by the Secretary to a group of motor carriers that meet specific conditions that may be established by regulation by the Secretary and that are subject to audit by Federal and State enforcement officials; and

(5) A provision to allow a waiver, on a case-by-case basis, of certain requirements of section 395.8(k) of title 49, Code of Federal Regulations (or successor regulations thereto), when sufficient supporting documentation is provided directly and at a satisfactory frequency to enforcement personnel by an intelligent vehicle-highway system (now referred to as an ''Intelligent Transportation System'' (ITS)), as defined by section 6059 of the Intelligent Vehicle-Highway Systems Act of 1991 (23 U.S.C. 307 note). Such waiver may also be allowed for a group of motor carriers that meet specific conditions that may be established by regulation.

For purposes of the Act, the term ''supporting document'' was defined to mean ''any document that is generated or received by a motor carrier or commercial motor vehicle driver in the normal course of business that could be used, as produced or with additional identifying information, to verify the accuracy of a driver's record of duty status.''

Proposal

To satisfy the legislative mandate, the FHWA is proposing to amend part 395 to include in § 395.2 a definition for the term ''supporting document'' and to add a section entitled *§ 395.10 Verification and Record Retention.*

Definition of Supporting Documents

The FHWA is proposing to use the statutory definition of supporting documents as provided by Congress in the Act, with the addition of clarifying language and a list of examples. The proposed list is only a sampling of the types of documents that the FHWA believes could support the HOS and the accuracy of RODS. The FHWA is particularly interested in receiving comments on this approach to implementation of the Act.

Motor Carrier Self-Compliance Systems

Under section 113 of the Act, the FHWA is required to authorize, on a case-by-case basis, motor carrier self-compliance systems that ensure driver compliance with FHWA HOS requirements and afford Federal and State enforcement officers the opportunity to conduct independent investigations of such systems to assess compliance with 49 CFR 395.3 and 395.8.

The FHWA has considered this requirement and believes that most motor carriers and drivers are meeting their responsibility to conduct safe operations by complying with the HOS regulations. The FHWA further believes that responsible motor carriers have already developed self-compliance or self-monitoring systems and have these systems in place. The FHWA does not believe it should impose additional stringent record-collection and maintenance requirements on motor carriers and drivers, when most motor carriers already have such systems and are successfully monitoring and enforcing the regulations.

The FHWA believes it should continue to allow each motor carrier to maintain such a system. The FHWA, though, believes each carrier should presently be able to describe and validate to the FHWA that they have an effective system in place using supporting documents to audit their drivers' HOS and RODS in an accurate and timely fashion.

In addition, the FHWA seeks comments on these additional issues:

Question (1) What types of self-monitoring systems should be

considered in addition to the type proposed in this document?

Question (2) Whether and what conditions should be imposed upon motor carriers (such as accident or out of service prevention performance history) before the FHWA would authorize a different self-monitoring system as an alternative to compliance with this proposed rule?

Question (3) Whether motor carriers seeking additional authorization should have some established safety record with the FHWA or other State or local enforcement agencies?

Question (4) What must happen before the FHWA should disallow the use of a self-monitoring system or an alternative system?

Ability to Transfer Paper Supporting Documents That Contain A Signature to Automated, Electronic, or Laser Technology Formats

The FHWA believes that an alternative self-monitoring system would have to provide the same capacity for verification that would be produced by the collection and retention of all supporting documents in their original form. The FHWA proposes to allow motor carriers to transfer supporting documents to electronic or laser technology systems. Section 390.31(d), 49 CFR, now allows all records to be maintained in computer technology format, except those documents containing signatures.

Under this proposal, all supporting documents, including those requiring a signature, would be eligible for retention in electronic, laser or other automated format, if the motor carrier can produce and verify, upon demand, hard copies of the required data. The FHWA is proposing a conforming amendment to § 390.31(d). Automated, electronic, or laser technology systems that report directly to the driver or the motor carrier would also be acceptable. However, the FHWA is also proposing a requirement that automatic, electronic, or laser technology systems must be capable of reproducing the information stored in such systems for inspection at the motor carrier's place of business within 48 hours of a demand.

Motor Carrier's Discretion To Use Technology in Lieu of Paper Supporting Documents

The FHWA is also proposing to allow motor carriers to use electronic, laser or automated technology, (e.g., global positioning systems (GPS), automatic vehicle identifier (AVI) transponders, electronic bills of lading used by customs officials in the U.S. and other countries, and State driver-vehicle inspection reports prepared by using pen-based computer systems) in lieu of paper supporting documents.

Other similar technologies that may now be available or developed in the future could also be acceptable in lieu of paper supporting documents.

Question (5) Are there any other advanced technology systems currently in use or under development that the motor carrier industry may use to validate HOS or support the RODS?

The FHWA would accept the data supplied by these technologies as alternatives to supporting documents, if the motor carrier can produce a printed copy of the required information at its principal place of business or other location within 48 hours after a request has been made. The FHWA would allow motor carriers to use any intelligent transportation system developed now or in the future in the manner and to the extent it is effective for HOS and RODS verification if that system complies with these general requirements.

Question (6) Should waivers be considered on a case-by-case basis for other systems that do not quite meet these requirements, but may have other compensating features that produce equivalent safety results?

Question (7) Under what circumstances should the use of such alternatives systems also operate as a substitute for the requirement to prepare and maintain RODS? Demonstration of the effective use of a system in whole or in part, for verification should obviate any necessity to further examine the information produced by the system by enforcement personnel.

Verification of Records of Duty Status Using A Self-Monitoring System

As a result of this rulemaking, motor carriers would be required to maintain a self-monitoring system capable of verifying drivers' HOS and the accuracy of the duty report categories (on duty, driving, sleeper berth, off duty, time reporting for duty each day, time released from duty each day, and the total number of hours on duty each day) recorded by drivers on their RODS for each trip. The FHWA believes that most trips produce, or could with relative ease produce, a document to verify the time and place of the driver and mileage of the vehicle at the beginning and completion of each work day. Various other supporting documents may be obtained during the trip. This rule would require the motor carrier to have a self-monitoring system to verify the accuracy of the beginning, intermediate, and ending times of each working day on each trip, as well as beginning, ending and intermediate mileage for each trip. Absent such a system, which must be in verifiable, demonstrable form and used by the motor carrier, possession and retention of all supporting documents that could have been obtained on any given trip would be presumed and required.

Nothing in this proposal would have any effect on current exceptions for automatic on-board recording devices in accordance with § 395.15.

Section 395.10 would be added to require motor carriers to have a system in place that enables the motor carrier to effectively audit its RODS with documents that the motor carrier chooses. The FHWA believes a motor carrier could fully comply with this requirement using documents generated wholly within the motor carrier's operation, such as accurate dispatch records, bills of lading, daily call-in records, and a variety of receipts.

The motor carrier's auditing system must have a reviewable written procedure that explains in sufficient detail what documents are used by the motor carrier's clerks and management and how they serve to verify the accuracy of driver's RODS. The procedure would further be required to explain access to each type of record used and where maintained, how drivers are notified of violations found by the motor carrier, and what corrective action the motor carrier takes for violations found by the employer during its audit.

The motor carrier has the discretion to develop and use whatever system it believes would effectively enable it to ensure that all drivers accurately record their HOS on the RODS. The system must, at a minimum, verify the driver's beginning and ending times, as well as such intermediate times, as would effectively detect HOS violations and preclude opportunities for false or inaccurate reporting. It must also include a system to cross-check mileage and locations. The FHWA believes that most motor carriers already have such a system and others should be able to establish their self-monitoring system by describing it in a manual or handbook. The FHWA believes the proposed manual may be written on one page or less in length.

Paragraph (b) of this proposed rule would specify that the manual be provided to personnel responsible for verification of HOS and RODS. The manual would also be required to be made available to the FHWA and other appropriate enforcement agencies upon a request. Accessibility to the written system description (manual or handbook) by FHWA and other appropriate enforcement agencies

would normally be required during compliance reviews at the motor carrier's terminals or principal places of business where records required by part 395 are maintained. The FHWA does not intend that enforcement officers conducting roadside inspections would have access to such a manual or handbook. These officers would continue to have full access to RODS and all supporting documents on the vehicle or in a driver's possession at the time of inspection.

The FHWA would allow motor carriers to specify in their system the supporting documents, including automated, electronic, or laser systems, that would provide the best opportunities to verify the accuracy of the records of duty status. If the motor carrier chooses to require its drivers, including leased owner-operators and contractors, to submit toll, bridge, and fuel receipts as a part of its system, those drivers must do so.

During a compliance review of the HOS requirements at the motor carrier's place of business, the FHWA or authorized State inspectors would be empowered to inspect the motor carrier's self-monitoring system's manual or handbook to determine its compliance with this rule, how the motor carrier is complying with its self-enforcing record-of-duty-status system, how audit-responsible personnel obtain, audit, and store inspected supporting documents, how many violations the motor carrier has found on its own, and corrective actions the carrier has taken with its drivers to improve their compliance with the HOS requirements. The reviewer may inspect other motor carrier records not identified in the motor carrier's system, to determine whether the system is effectively verifying the accuracy of the RODS. If the reviewer discovers that the supporting documents identified by the motor carrier's system are not effective for verifying the accuracy of the RODS, the reviewer would have several options ranging from recommending the motor carrier revise its system to better verify the RODS accuracy to taking some enforcement action based upon evidence of noncompliance or deception. Subsequent investigations would determine whether the revised system is effective, again using other records not necessarily identified in the system. If continued problems or a pattern of HOS violations, falsification, or inaccurate RODS is discovered, the FHWA reserves the right to inspect and copy any other records not identified in the motor carrier's system to gauge the ineffectiveness of the system.

If the reviewer determines that the motor carrier's system is deficient (as opposed to non-existent or unenforced) because HOS or RODS violations are going undetected or uncorrected, the carrier will be put on notice of those deficiencies and directed to collect and maintain specific supporting documents necessary to prevent violations. A motor carrier would not be cited for failing to maintain specific types or numbers of supporting documents on the first review of the system. Failure to maintain the documents after the first review as directed (or as agreed) will be the basis for future enforcement action. In addition, penalties may be imposed for violations of Part 395 discovered during the compliance review.

This rule would allow the motor carrier to specify the type and number of supporting documents used in its system. If the motor carrier's self-monitoring system is effective at controlling drivers HOS and accuracy of RODS, the motor carrier would not be required to maintain other documents that could be used to support the record of duty status, but which the motor carrier does not use in its system.

For example, a motor carrier's self-monitoring system specifies five types of documents (i.e., bills of lading, delivery receipts, toll receipts, carrier pros, cellular telephone statements) which are used effectively by the motor carrier's auditing clerks to verify the accuracy of the drivers HOS and RODS. If the motor carrier also used satellite technology to track CMVs, but did not use the system to verify the drivers' HOS and RODS, the reviewer would not necessarily require or expect that motor carrier to maintain any such electronic records for the time periods specified in the rule. Conversely, if the motor carrier used advanced technology systems to verify HOS and RODS, the motor carrier would not be required to maintain the more conventional supporting documents. After encountering a system which is effective on its face, enforcement personnel need not demand access to additional records that the motor carrier is not using in the system.

Requirements for Motor Carriers Who Fail To Have a Self-Monitoring System

If it is determined that a motor carrier does not have a self-monitoring system to verify the accuracy of the drivers' RODS, the FHWA would presume that the motor carrier collects and retains all supporting documents coming into its possession directly or through its drivers or agents for all trips. The FHWA would demand access to supporting documents for the beginning of a trip (or when the driver picks up passengers or property), and for the end of the trip (or the delivery of the same passengers or property). The FHWA would also demand access to all receipts, bills, and other documents supporting the times and locations of intermediate operations that the motor carrier knew or should have known had come into its actual or constructive possession during regulated transportation.

A motor carrier who fails to have a self-monitoring system must require the drivers to examine all documents they receive during the normal course of their duties, including, but not limited to, documents regarding the operation of CMVs for motor carriers. The drivers would have to ensure that the documents include the necessary items required by § 395.10(g). The motor carrier and drivers would both be liable for violations of this requirement. The motor carrier may also require, if it chooses, that its drivers forward all supporting documents they receive during their trips as allowed under § 395.10(d).

In § 395.10(f), motor carriers that do not have a self-monitoring system must require drivers to retain all supporting documents for the same time periods as they retain records of duty status. Records of duty status may be forwarded to the regular employing motor carrier immediately after the record of duty status is completed, or may be retained by the driver for up to 13 days after completion. Section 395.10(f) would require a driver to forward all supporting documents to the motor carrier at the same time the driver forwards the records of duty status. This requirement would ensure that drivers who work for motor carriers that do not have auditing systems would have all of the documents that support their records of duty status and would be able to make these documents available for inspection by Federal, State, or local enforcement officials on the highway. As a result, drivers would be better motivated toward HOS compliance and ensuring the accuracy of their records of duty status. This would in turn tend to improve the safety of both the driver's performance and the motor carrier's CMV operation. Therefore, this proposal, in the absence of a supporting document auditing system, should help to achieve the goal of improving the safety of CMV operations and the enforcement of the HOS regulations.

The FHWA currently does not directly require drivers, including those used for single trips or drivers used on an intermittent, casual, or occasional basis, to provide motor carriers with

supporting documents. The FHWA believes, however, that drivers have an obligation not only to comply with the HOS and RODS requirements, but also to cooperate with their motor carrier employers by collecting and submitting the supporting documents needed to verify compliance with the rules. Therefore, the FHWA is proposing to require drivers to submit supporting documents to the motor carrier at the time the corresponding record of duty status is submitted for those motor carriers that choose not to maintain a written, verifiable HOS auditing system.

With this rulemaking, the FHWA would also require motor carriers who fail to have a self-monitoring system to retain all ''supporting documents'' that all drivers, including owner-operators and independent contract drivers, receive during a trip, no matter how the carrier pays drivers for these trips. This requirement would be imposed on the motor carrier under whose authority the driver is performing transportation services. Documents passing through the hands of leased drivers would be, in effect, passing through the hands of the motor carrier because drivers are, in fact, the representatives of the motor carrier during the course of the transportation service provided. Thus, the FHWA does not believe that holding the motor carrier responsible for maintaining those documents would be an undue burden if the motor carrier does not otherwise provide a verification system demonstrating its safety management control.

The Senate report accompanying the Act discussed those situations where a motor carrier leases the service of drivers, such as independent contractors, owner-operators, and fleet-broker drivers employed by other motor carriers. S. Rep. No. 217, 103d Cong., 1st Sess. 1640 (1994). The report noted that documentation of a leased driver's duty status was frequently not obtained and retained by the motor carrier using the driver. This report also stated that it was the intent of the Act to ensure that supporting documents, generated by such business arrangements, be retained by the motor carriers that perform the transportation service. Additionally, it is clear that it was Congress' intent to facilitate Federal and State enforcement efforts to document violations of the HOS regulations.

The FHWA's motor carrier safety enforcement personnel have experienced difficulties in obtaining supporting documents for trip lease arrangements between motor carriers and owner-operators. Senator Exon, the legislation's sponsor, discussed the need for this provision during the floor debate preceding final passage of the Act. He explained that ''reports that auditors have been forced to retrieve documents from garbage dumpsters or play hide-and-seek with firms that have a history of habitual HOS violation give rise to the need for this provision.'' Further, Senator Exon stated that ''the object of this provision is to help make the roads safer by giving enforcement personnel the ability to catch flagrant abusers. It is not designed to create a trap for drivers who receive, for example, a pre-stamped toll receipt or to unfairly punish drivers for a de minimis deviation from the current rules.'' 140 Cong. Rec. S11323 (daily ed. August 11, 1994).

The legislation sets a record retention period of at least six months. The FHWA believes that this requirement was based upon Congress' intent to have supporting documents maintained for an identical period as the time required for duty status record retention, which is six months. The FHWA is considering reducing the record of duty status retention period to four months, as the FHWA believes it is better able to investigate and sufficiently document a current pattern of HOS violations with records of more recent vintage. If the FHWA reduces the retention period for RODS to four months, the FHWA believes it would be unnecessary to require motor carriers to keep the documents that support the RODS for an additional two months. The FHWA believes that keeping a supporting record for two months beyond that which is needed by the FHWA would be contrary to the intent of the Paperwork Reduction Act of 1995. The FHWA is proposing a six-month retention period for supporting documents in this NPRM, but the FHWA would like comments on whether the FHWA should reduce the period for retaining RODS to four months. The FHWA would also like comments whether it should seek legislative authority to (1) reduce the supporting document retention period to four months or (2) eliminate the supporting document retention period mandate and allow the FHWA to set the supporting document retention period to any future RODS retention period.

The FHWA has identified a retention period for ''Supporting Data for Reports and Statistics; Supporting data for periodical reports of * * * hours of service, * * *, etc.'' See 49 CFR 379, Appendix A, Item K.2. The FHWA has received a few telephone inquiries regarding this retention period. This retention period relates to an old FHWA monthly report acquired from the Interstate Commerce Commission (ICC) in 1966. The FHWA required the report until December 15, 1967. The FHWA had required every motor carrier, other than a private carrier of property, to report on a Form BMC 60:

> every instance during the calendar month covered thereby in which a driver employed or used by it has been required or permitted to be on duty, or to drive or operate a motor vehicle in excess of the hours * * *

Class I motor carriers of passengers and Classes I and II motor carriers of property also had to file the same Form BMC 60 report—

> for every calendar month in which no driver employed or used by it has been required or permitted to be on duty, or to drive or operate a motor vehicle in excess of the hours * * * See 32 FR 7128, May 11, 1967.

The FHWA had a retention period of three years. The FHWA removed the reporting requirement on December 15, 1967 (32 FR 17941). The ICC and the Surface Transportation Board never removed the retention period from its preservation of records list. Based upon the savings clause in the ICC Termination Act of 1995, the FHWA transferred the former ICC's preservation of records lists to the FHWA regulations on June 21, 1997 (62 FR 32040). This action provided the initial appearance of a conflict between parts 379 and 395 with respect to HOS supporting data and HOS supporting documents.

The proposal in this document in no way involves ''reporting'' data similar to the former report Form BMC–60. This proposal only relates to motor carrier recordkeeping requirements and a motor carrier's comparison of its own records to the driver's records of duty status. The OMB's regulations in 5 CFR 1320.3(m) identifying the definitions of a ''recordkeeping requirement'' explain a report is different than the retention of a record, notification of the existence of records, and disclosure of records. The FHWA believes a report is a document submitted to the FHWA, as was Form BMC 60 up until December 15, 1967. Item K.2.'s reference to hours of service data, therefore, does not have any actual effect upon this proposal.

The FHWA believes it should cite RODS violations primarily when an investigator finds drivers or carriers are concealing excess hours. The FHWA does not wish to expend scarce enforcement resources on mere recordkeeping violations that may result from sloppy bookkeeping. The FHWA believes motor carriers should provide drivers adequate opportunities for sleep, personal hygiene, and family matters, and limit the driver's hours on duty to prevent CMV crashes caused by loss of alertness from working too long or not

getting enough rest. Accurate recording of hours driven, on duty, and off duty, of course, is intended to assure that drivers are afforded the rest periods they need and plays an important role in monitoring and enforcing compliance with the driving limitations.

Question (8) What impact would a six-month or longer record retention requirement have on the Federal government, State governments, and motor carriers?

Question (9) Would we enhance enforcement and prosecution efforts with the longer retention requirement (e.g., the ability to adequately enforce the rules, collect evidence for a criminal case, prepare the case, and successfully prosecute drivers or motor carriers for deliberately or recklessly violating HOS restrictions)?

Under this proposal, motor carriers could retain their time records, RODS and supporting documents at a location of their choice. However, the location would have to be suitable for preserving the records so that they would not be damaged or lost. In addition, a motor carrier must be able to produce such records at its principal place of business within 48 hours of a request by an authorized enforcement official. This request for documents could be made by telephone, fax, mail, or by other means. Saturdays, Sundays and holidays would be excluded from the computation of the 48-hour period of time. This 48-hour period would provide a reasonable amount of time for documents to be sent via overnight mail. Furthermore, most business operations with electronic transfer capabilities could probably produce information in a shorter period.

The FHWA is proposing that, in the absence of a written and operational verification system, *ALL* supporting documents be retained for the entire retention period. In this proposal, the term ''all supporting documents'' means all documents that are used to support the driver's RODS and time record entries for any particular trip. These documents must be connected to the driver or the vehicle used on the trip. A variety of documents may be obtained by a driver, or provided directly to a motor carrier, which could meet the requirements of this proposed rule. Some trips may result in only two or three supporting documents while others may result in many more documents. In addition, supporting documents may be required to be kept for longer periods based upon other Federal, State, or local laws, rules, or orders (e.g., Internal Revenue Service rules). The FHWA is proposing that the supporting documents must be kept for six months after receipt by the motor carrier, unless a longer period of time is required by another authority.

The FHWA believes that all motor carriers obtain many records and documents in the normal course of business that link the records or documents to the driver or vehicle and that motor carriers have not always considered these other records or documents when asked to produce supporting documents in past compliance reviews. A motor carrier, however, would now have the duty to ensure that it has an independent means of verifying the driver's HOS and the accuracy of the driver's RODS for trips made on behalf of the motor carrier, including those trips made using leased drivers and/or vehicles.

Rulemaking Analyses and Notices

All comments received before the close of business on the comment closing date shown above will be considered and will be available for examination in the FHWA Docket at the above address. Comments received after the comment closing date will be filed in the FHWA Docket identified above and will be considered to the extent practicable, but the FHWA may issue a final rule anytime after the close of the comment period. In addition to late comments, the FHWA will also continue to file in the docket relevant information that becomes available after the comment closing date, and interested persons should continue to examine the docket for new material.

For Internet users, all comments received will be available for examination at the universal resource locator—*http:*\\dms.dot.gov—24 hours each day, 365 days each year.

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

The FHWA has determined that this document does not contain a significant regulatory action under Executive Order 12866. The FHWA has estimated that this rulemaking will have an annual economic impact on the motor carrier industry of less than $100 million. It is a significant regulation under the Department of Transportation's regulatory policies and procedures, because this regulation has substantial public interest. As discussed below, current FHWA regulations have required the retention of supporting documents since 1982, and responsible motor carriers have collected and retained such documents both in the ordinary course of business and for purposes of regulatory compliance. This rule would require motor carriers to establish systems to verify drivers' RODS or, alternatively, to describe HOS supporting documents in terms of their effectiveness to verify drivers' HOS. In addition, this rule explains how supporting documents are to be collected, where they must be kept, and for how long. This rulemaking action would not create a serious inconsistency with any other agency's action or materially alter the budgetary impact of any entitlements, grants, user fees, or loan programs. Evaluation of the costs of this proposed rule is fully described below in the Paperwork Reduction Act section.

Regulatory Flexibility Act

To meet the requirements of the Regulatory Flexibility Act (5 U.S.C. 601–612), the FHWA has evaluated the effects of this rule on small entities and has determined that this regulatory action would not have a significant economic impact on a substantial number of small entities.

The FHWA estimates there are about 422,000 motor carriers subject to this rule, 90 percent of which are small entities. For the purposes of this evaluation, the FHWA considered motor carriers with ten or fewer drivers to qualify as small entities.

Small entities, as well as large entities, have been prosecuted for making, or allowing drivers to make, false entries upon RODS since the late 1930's. Since 1982, small entities have been required to maintain supporting documents along with their drivers' RODS. As a good business practice, small entities are believed to be reviewing, inspecting, or auditing their drivers' RODS and comparing them with the motor carrier's supporting documents to determine the accuracy of the RODS. This rule would convert a previously established motor carrier business practice into an explicit requirement. Small entities would be required to document the system they have been using to verify the drivers RODS are accurate. It is believed that most small entities have not documented the system they are using to verify their drivers' RODS. This rule would require these systems to be reduced to writing.

After a small entity has documented its self-monitoring system in writing, the FHWA would not require the entity to retain subsequently generated or received documents which were not called for by that entity's self-monitoring system. This would relieve small entities from a potentially large burden of record collection. Many noncompliant small entities may perceive an increased burden; however, the FHWA believes that this increased

burden will actually result from the entities finally having to comply with the preexisting supporting document requirement the cost of which these entities have been avoiding by not complying with the rule until now.

Executive Order 12612 (Federalism Assessment)

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

The amendments proposed in this document would not preempt any State law or regulation. These changes, if adopted, would not limit the policy making discretion of the States. The only additional cost or burden potentially imposed on the States because of this action would be the requirement that the States incorporate these proposed changes into their safety regulations as a condition of the receipt of Federal grants for safety enforcement. This requirement would not infringe upon the State's ability to discharge traditional State governmental functions because interstate commerce, which is the subject of these regulations, has traditionally been governed in the first instance by Federal laws. In addition, the FHWA would not require as a condition of the Motor Carrier Safety Assistance Program (MCSAP) that the States adopt this proposal for intrastate safety regulations, but would expect phased in voluntary compatibility.

Public Law 104–4 (Unfunded Mandates Reform Act of 1995)

This action has also been analyzed by the principles and criteria contained in Public Law 104–4, and it has been determined that this proposal does not have an unfunded mandate within the meaning of the Unfunded Mandates Reform Act.

Executive Order 12372 (Intergovernmental Review)

Catalog of Federal Domestic Assistance Program Number 20.217, Motor Carrier Safety. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities do not apply to this program.

Paperwork Reduction Act

This proposal contains new collection of information requirements for purposes of the Paperwork Reduction Act of 1995, 44 U.S.C. 3501–3520. The new information collection requirements in this proposal are mandated by section 113 of the Hazardous Materials Transportation Authorization Act of 1994 (Pub. L. 103–311, 108 Stat. 1676). This section requires that each written or electronic document that is used as a supporting document have a description of identification items to include either the driver's name or vehicle number. This would require motor carriers to ensure that the driver's name or vehicle number is on each document used to verify time records. The statute also requires the supporting document must be kept for at least six months. The FHWA, since 1982, has required that all supporting documents must be collected and kept for six months. This collection of documents and retention period is not a new paperwork burden. This collection of documents and retention period has been calculated into past paperwork burden approvals of the Office of Management and Budget (OMB).

New Information Collection Proposal

Collection of Information: Driver's Records of Duty Status.

Under the new OMB regulations found at 5 CFR 1320 and entitled *Controlling Paperwork Burdens on the Public* (1995), the FHWA is required to estimate the burden its regulations impose to generate, maintain, retain, disclose, or provide information to or for the FHWA including (i) reviewing instructions; (ii) developing, acquiring, installing, and utilizing technology and systems for the purpose of collecting, validating, and verifying information; (iii) developing, acquiring, installing, and utilizing technology and systems for the purpose of processing and maintaining information; (iv) developing, acquiring, installing, and utilizing technology and systems for the purpose of disclosing and providing information; (v) adjusting the existing ways to comply with any previously applicable instructions and requirements; (vi) training personnel to be able to respond to a collection of information; (vii) searching data sources; (viii) completing and reviewing the collection of information; and (ix) transmitting, or otherwise disclosing the information.

This proposed rule would add additional requirements to the OMB-approved budget for 2125–0016. Each motor carrier would be required to develop and implement an effective self-monitoring system that audits supporting documents and compares the supporting documents to RODS. Motor carriers failing to develop and implement an effective self-monitoring system would be presumed to be taking the necessary actions to obtain and retain every supporting document that the carriers or their drivers generate or receive in the normal course of business that would accurately support the beginning, intermediate, and ending times of each driver's daily trips in interstate commerce.

If the carrier fails to have a self-monitoring system, the carriers would also have to ensure that each document has the driver's name or vehicle number on it. In addition, the motor carrier would have to ensure that reasonably reliable references to date, time, and location on the documents corroborate the date, times, and locations on the driver's record of duty status.

In the statute, as stated above, the term ''supporting document'' was defined to mean ''any document that is generated or received by a motor carrier or commercial motor vehicle driver in the normal course of business that could be used, as produced or with additional identifying information, to verify the accuracy of a driver's record of duty status.'' The FHWA believes that every document that is generated and received by a motor carrier or commercial motor vehicle driver in the normal course of business is used or retained by the motor carrier for usual and customary purposes and should not be considered to be a burden for purposes of 5 CFR 1320.3(b).

The FHWA's Motor Carrier Management Information System (MCMIS) indicated that in October 1997 there were about 2,216,000 drivers and 422,000 motor carriers operating in interstate commerce. Of the 2.216 million drivers, the FHWA estimates 20 percent (443,200 drivers) operate within 241 air-kilometer (100 air-mile) radius from their normal work reporting location, five percent (110,800) operate for motor carriers who equip CMVs with automatic on-board recording devices, and the remaining 75 percent use the paper log book system.

In the March 11, 1998 **Federal Register** (63 FR 11948), the FHWA opened a docket and requested comments regarding the current collection of information requirements without respect to this proposal. This proposal would add collection of information requirements to the March 11 estimate.

The FHWA estimates the public recordkeeping burden for this proposed collection of information to be 949,500 burden hours for the first year of implementation and 17,737 for the second and subsequent years. This would result from the necessary system changes the regulations would require a

motor carrier to do with respect to the following six things:

(1) A motor carrier must determine the types of supporting documents providing the most effective means to compare drivers RODS to supporting documents.

(2) A motor carrier must prepare a written document, in either an electronic or paper format, definitively specifying the auditing system's capabilities.

(3) The written document must identify the supporting documents, by common name, the motor carrier uses to verify the accuracy of the driver's hours of service or record of duty status.

(4) The written document must describe how the system is used.

(5) The written document must describe the procedure to be used to promptly notify a driver who has recorded information inaccurately on a record of duty status which is required by § 395.8.

(6) The written document must describe the corrective action the motor carrier would take to improve the driver's compliance with providing accurate information.

The FHWA assumes most motor carriers, especially the 90 percent of motor carriers who are small entities, would not incur any reproduction costs or distribution costs under this proposed rule. Most motor carriers would have one manual with system description for office use and would not need to reproduce the document. Motor carriers with ten or fewer drivers generally do not have multiple terminals and the FHWA would presume the carrier have only one or two people involved in the verification of RODS at their principal place of business. For the ten percent of motor carriers that are large entities, the FHWA estimates they would make an average of ten copies and distribute them accordingly.

The FHWA intends that this document would be a working document and would not be archived. It would be used by personnel on a daily basis as an important reference and management tool for the self-monitoring auditing procedure as many responsible motor carriers do now. The FHWA would also expect motor carriers to review and revise the system on a periodic, but infrequent, basis as the need arises. The FHWA has computed the paperwork burden based upon an annual review and revision schedule.

Since the FHWA has required motor carriers ensure the accuracy of the RODS and the regulations provide that they are liable to prosecution for the making of false reports in connection with such duty activities, the FHWA believes most motor carriers choose to fulfill their responsibilities for highway safety by auditing and comparing their RODS and supporting documents to determine whether drivers have made false reports of their duty activities. Thus, the FHWA believes the time necessary to audit and compare RODS and supporting documents does not need to be included in the burden estimate. The FHWA's time estimate for identifying supporting documents and preparing a written system description would be 3 additional hours per carrier per year.

The FHWA calculates motor carriers must develop a policy in the first year this proposed rule would be final. The FHWA calculates motor carriers would spend an average of 3 hours developing and writing out the policy. The FHWA calculates motor carriers would consume an estimated 949,500 burden hours developing its policies.

The FHWA calculates an estimated 17,737 burden hours for the second and third years. The FHWA estimates there are new carriers equaling one percent of the total number of motor carriers beginning business each year who must develop a policy and the other motor carriers must review their policies. The FHWA estimates 50 percent of the reviewed policies would have to be amended.

Organizations and individuals desiring to submit comments only on the information collection requirements must direct them to the Office of Information and Regulatory Affairs, OMB, Room 10235, New Executive Office Building, Washington, D.C. 20503; Attention: Desk Officer for Federal Highway Administration.

Please send a copy of any comments you send to the OMB to the FHWA, too.

The FHWA considers comments by the public on this proposed collection of information in the following four ways:

(1) Evaluating whether the proposed collection of information is necessary for the proper performance of the functions of the FHWA, including whether the information will have a practical use.

(2) Evaluating the accuracy of the FHWA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used.

(3) Enhancing the quality, usefulness, and clarity of the information to be collected.

(4) Minimizing the burden of 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.

OMB must make a decision concerning the collection of information contained in these proposed regulations between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment made directly to OMB will have its full effect of OMB receives it within 30 days of publication. This does not affect the deadline for the public to comment to the FHWA on the proposed regulations.

Invitation to Comment

Interested persons are invited to submit comments and recommendations regarding these proposed regulations to the FHWA docket found at the top of this document.

What If the FHWA Had Implemented the Statute As Written

The FHWA has calculated the burden hours for the statute. The FHWA has named 45 possible documents as examples in the definition of ''supporting documents'' proposed in this NPRM. The FHWA estimated one half of these 45 would generally be available each trip for most runs. Using 23 of the 45 documents and based upon the statute, the motor carrier would have had to audit each one as the carrier obtained or received the document for the following five minimum items.

1. Date.
2. Time.
3. Location.
4. Driver's name.
5. Vehicle's number.

The time to compare the documents to the RODS, filing, and storing the 23 records would be more than is currently expected and more than is proposed in this NPRM. The FHWA believes the increased burdens would be unusual and uncustomary and thus believe a burden would be imposed by the statute. Calculating these costs into the estimate, the FHWA believes the burden imposed by the statute would be at least 219,095,423 hours.

The FHWA has calculated the second year total operating and maintenance financial burden for maintaining the records for the current six-month retention period and also for a four-month and one-year retention period. The FHWA's estimate of the total costs before subtracting the costs of the wages paid to recordkeepers would be as follows for RODS and supporting documents.

SECOND YEAR TOTAL OPERATING AND MAINTENANCE COSTS

4 month retention period ..	$1,112,614,000
6 month retention period ..	1,114,201,000
One year retention period	1,122,611,000

National Environmental Policy Act

The agency has analyzed this action for the purposes of the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4347) and has determined that this action will not affect the quality of the environment.

Regulation Identification Number

A regulation 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 contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

List of Subjects

49 CFR Part 390

Highway safety, Highways and roads, Motor carriers, Motor vehicle identification and marking, Reporting and recordkeeping requirements.

49 CFR Part 395

Global positioning systems, Highway safety, Highways and roads, Intelligent Transportation Systems, Motor carriers, Motor vehicle safety, Reporting and recordkeeping requirements.

Issued: April 10, 1998.

Gloria J. Jeff,

Deputy Administrator, Federal Highway Administration.

In consideration of the foregoing, the FHWA is proposing to amend Title 49, CFR, chapter III, parts 390 and 395 as set forth below:

PART 390—FEDERAL MOTOR CARRIER SAFETY REGULATIONS; GENERAL

1. The authority citation for part 390 is revised to read as follows:

Authority: 49 U.S.C. 5901–5907, 31132, 31133, 31136, 31502, and 31504; and 49 CFR 1.48.

§ 390.31 [Amended]

2. Section 390.31(d) is revised to read as follows:

§ 390.31 Copies of records or documents.

* * * * *

(d) *Exception.* All records may be maintained through the use of automated, electronic, or laser technology systems provided the motor carrier can produce, within 48 hours of a demand, a printed copy of the required data; provided that alternate means for signature verification are available.

PART 395—HOURS OF SERVICE OF DRIVERS

3. The authority citation for part 395 is revised to read as follows:

Authority: 49 U.S.C. 504, 14122, 31133, 31136, and 31502; sec. 113, Pub. L. 103–311, 108 Stat. 1676; and 49 CFR 1.48.

4. Section 395.2 is amended by adding the following definition, alphabetically, to read as follows:

§ 395.2 Definitions.

* * * * *

Supporting document means any document that is generated or received by a motor carrier or commercial motor vehicle driver in the normal course of business that could be used, as produced or with additional identifying information, to verify the accuracy of a driver's record of duty status. For the purposes of this definition, any *document* means any record or document, either written or electronic, that is available individually or in combination with other records or documents, to verify the accuracy of a driver's record of duty status because of its potential to provide a reasonably accurate reference to dates, times and locations. Examples of supporting documents are: Accident/incident reports, bills of lading, border crossing reports, carrier pros (waybills), cash advance receipts, credit card receipts and statements, customs declarations, delivery receipts, dispatch/assignment records, driver reports (facsimile or call-in logs), expense vouchers, freight bills, fuel billing statements, fuel receipts, gate receipts, global positioning reports, inspection reports, invoices, interchange reports, International Registration Program receipts, International Fuel Tax Agreement receipts, lessor settlement sheets, lodging receipts, lumper receipts, on-board computer reports, over/short and damage reports, overweight/oversize reports and citations, port of entry receipts, telephone billing statements, toll receipts, traffic citations, transponder reports, trip permits, trip reports, waybills, and weight/scale tickets.

* * * * *

5. Section 395.8 is amended by revising paragraph (k) to read as follows:

§ 395.8 Driver's record of duty status.

* * * * *

(k) *Retention of driver's record of duty status.* (1) Driver's records of duty status for each calendar month may be retained at the driver's home terminal or other regular reporting location until the 20th day of the succeeding calendar month. Such records shall then be forwarded to the carrier's principal place of business, or such alternate location as the motor carrier designates for record retention purposes, where they shall be retained with all supporting documents for six months from the original date of receipt. Within 48 hours (*Saturdays, Sundays and official holidays excluded*) after a Federal, State, or local enforcement official has made an authorized request (for inspection and verification of the hours-of-service requirements and the accuracy of the driver's records of duty status), a motor carrier shall make available all records of duty status and supporting documents at the motor carrier's principal place of business.

(2) The driver shall retain a copy of each record of duty status for the previous 7 consecutive days that shall be in his or her possession and available for inspection while on duty.

6. Section 395.10 is added to read as follows:

§ 395.10 Verification and record retention.

(a) Every motor carrier must have a self-monitoring auditing system, adequately described in writing, that can be used effectively to verify the driver's hours of service and the accuracy of the information contained on the driver's record of duty status. The auditing system must be capable of reproduction and an explanation of the system must be available in written form for inspection by authorized Federal, State or local enforcement personnel. The explanation of the system must include:

(1) Identification of the supporting documents, by common name, the motor carrier uses to verify the accuracy of the driver's hours of service or record of duty status;

(2) A description of how the system is used; and

(3) The procedure used to promptly notify a driver who has recorded information inaccurately on a record of duty status which is required by § 395.8 of this part; and

(4) The corrective action the motor carrier takes or has taken to improve the driver's compliance with providing accurate information.

(b)(1) The supporting document auditing system's procedural manual must be available to all motor carrier personnel with responsibility to control or audit compliance with this part and must be made available to the FHWA and other appropriate enforcement agencies for inspection upon authorized request or demand. The FHWA and other appropriate enforcement agencies will only request inspection of the written manuals at motor carriers' principal places of business or other terminal locations where records required by this part are maintained. The manual is not required to be produced at roadside driver-vehicle inspection locations.

(2) If the audit system can be demonstrated to be effective to verify the actual hours of service performed and the accuracy of the driver's record of duty status, the motor carrier is not required to maintain any additional supporting documents, and, in the absence of reasonably reliable information supported by documentary evidence to contradict the system found to be effective, no demand will be made for additional supporting documents the motor carrier may maintain for other purposes.

(c)(1) Each motor carrier who fails to have a supporting document auditing system in accordance with paragraphs (a) and (b) of this section or fails to provide the FHWA or other enforcement officers with a written explanation of the supporting document auditing system (manual), will be responsible for requiring every driver to obtain all supporting documents from the beginning of every trip to the end of every trip, including intermediate points during the trip. All supporting documents must be made available for inspection at the motor carrier's location and the FHWA or other enforcement officers will use a reasonably sufficient number, in the appropriate enforcement agency's discretion, to verify the accuracy of records of duty status.

(2) Failure by a motor carrier to have either a supporting document auditing system, required by paragraphs (a) and (b) of this section, or, in the absence of the system, to require the driver to obtain and forward to the motor carrier every supporting document that is provided to the driver during a trip, as required by this section, may result in monetary penalties or a compliance order for failure to comply with the supporting document auditing system requirement. A failure by the motor carrier to adequately control the drivers' falsification of their records of duty status may also result in a compliance order. Failure to comply with such order may subject a motor carrier to civil or criminal penalties under 49 U.S.C. 521.

(d) In the absence of a verifiable and effective record of duty status auditing system, every motor carrier must require every driver who is required to prepare records of duty status to retain and every driver must retain all supporting documents containing reasonably reliable references to date, time, or location, which may come into the possession of the driver in the ordinary course of the driving operation. The driver must provide the supporting documents *and* the records of duty status:

(1) To any duly authorized enforcement official of Federal, State or local government upon request or demand; and

(2) To the motor carrier at the time the corresponding record of duty status is required to be submitted.

(e) The driver must identify the supporting document required under paragraph (d) of this section by adding his or her name, and the time, date, location and vehicle number, if those items do not already appear on the document. The driver's signature certifies that all entries required by this section made by the driver are true and correct.

(f) The driver must retain a copy of each supporting document with the record of duty status to which it relates for the previous seven consecutive days in his or her possession and available for inspection while on duty. *Exception.* The requirements of this paragraph do not apply if the driver has submitted the original record of duty status with the supporting documents annexed to the motor carrier following § 395.8(k)(1) of this part.

(g) The motor carrier must identify each supporting document received from the driver under paragraph (d) of this section, or from any other source including self-generated documents, by noting on the document the following information, if the information does not already appear on the document:

(1) The time, date or location of the event that produced the document;

(2) The driver's name; and

(3) The vehicle number (i.e., truck, tractor, or coach).

(h) *Retention of supporting documents.* Supporting documents for each calendar month may be retained at the driver's home terminal or other regular work reporting location until the 20th day of the succeeding calendar month. Such documents must then be forwarded to the carrier's principal place of business, or any location the motor carrier chooses, where they must be retained with all records of duty status for six months from the original date of receipt. Within 48 hours (*Saturdays, Sundays and official holidays excluded*) after a Federal, State, or local enforcement official has made a valid request or demand (for inspection and verification of the hours of service requirements and the accuracy of the driver's records of duty status), a motor carrier must make available all records of duty status, time records in cases of 100-air mile radius exception, and supporting documents at the motor carrier's principal place of business.

(i) The FHWA may use any evidence whether or not in the motor carrier's possession, to determine compliance with hours of service requirements and verify the accuracy of the drivers records of duty status and the motor carrier's supporting document auditing system. If the FHWA discovers that the motor carrier's system is ineffective, misrepresented, or abused, the FHWA may require the motor carrier to modify its system or may require the motor carrier to collect and maintain all supporting documents as required by paragraphs (d) through (h) of this section. Civil or criminal penalties may also apply if the motor carrier or driver are determined to have misrepresented or abused the system.

[Approved by the Office of Management and Budget under control number _____]

[FR Doc. 98–10252 Filed 4–17–98; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

Federal Motor Vehicle Safety Standards; Child Restraint Systems; Denial of Petition for Rulemaking

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Denial of petition for rulemaking.

SUMMARY: This document denies a petition for rulemaking from The Booster Seat Company Ltd., Hamilton, New Zealand, requesting that NHTSA amend the structural integrity requirement of its Federal motor vehicle safety standard on child restraint systems so as to allow its product, a belt-positioning booster seat made entirely of polystyrene, to be manufactured and sold in the United States. The petitioner believes

polystyrene has ''superior cushioning qualities'' compared to a blow molded plastic, yet acknowledges that the material may fracture or crack in a crash. This potential would make it likely that a polystyrene child seat would fail the structural integrity requirement in a compliance test. NHTSA is denying the petition because the loss of structural integrity of a restraint could negatively affect the performance of the system by allowing injurious forces to be imposed on the child occupant. Further, because damage to polystyrene may not be easily detected, there is a concern that consumers could mistakenly use damaged polystyrene seats, putting the child occupant at risk. Not enough is known about these potential concerns to warrant reducing the system integrity requirement as requested.

FOR FURTHER INFORMATION CONTACT:

For nonlegal issues: Dr. George Mouchahoir, Office of Vehicle Safety Standards (telephone 202–366–4919).

For legal issues: Deirdre Fujita, Office of the Chief Counsel (202–366–2992). Both can be reached at the National Highway Traffic Safety Administration, 400 Seventh St., S.W., Washington, D.C., 20590.

SUPPLEMENTARY INFORMATION: Section S5.1.1 of Federal Motor Vehicle Safety Standard No. 213, ''Child Restraint Systems'' (49 CFR § 571.213), sets forth requirements for child restraint system integrity. Section S5.1.1(a) states that when dynamically tested, each child restraint shall:

> Exhibit no complete separation of any load bearing structural element and no partial separation exposing either surfaces with a radius of less than 1/4 inch or surfaces with protrusions greater than 3/8 inch above the immediate adjacent surrounding contactable surface of any structural element of the system. * * *

On August 5, 1996, Mr. John Lord of The Booster Seat Company of Hamilton, New Zealand, petitioned NHTSA to amend S5.1.1(a) to permit fractures or cracks in belt-positioning booster seats that are made from polystyrene. The petitioner believes polystyrene has ''superior cushioning qualities'' compared to blow molded plastic, yet acknowledges that ''by nature of the material'' may fracture or crack in a manner prohibited by the system integrity requirement of S5.1.1(a). The petitioner did not believe the edges would harm by ''pinching, cutting or stabbing the child'' because with polystyrene, ''[b]y nature, all cracked edges are soft.'' The petitioner suggested that NHTSA should amend S5.1.1.(a) for belt-positioning seats, to allow for separation of the structural elements so long as a sharpness limit is met for the edges formed by the separation.

NHTSA is denying the petition because the structural integrity requirement addresses more than the sharpness of exposed edges formed by a separation of materials. The requirement ensures the structural soundness of a restraint in a crash. Structural soundness in a crash is important for maintaining the proper positioning of the child. A belt-positioning booster seat lifts the child so that the vehicle shoulder belt is positioned on the child's shoulder and away from the face and neck and the lap belt is across the child's hips and off of the abdomen. A loss of structural integrity of a booster seat during impact can result in the repositioning of the child in relation to the belts. If the belts were to be repositioned on the child's neck or abdomen, high forces could be imposed on those vulnerable regions, resulting in injury. Because neck and abdominal loading are not measured by the 3-year-old and 6-year-old dummies used in Standard 213's compliance tests to evaluate booster seats, a booster seat could meet the standard's performance criteria (aside from the integrity requirement) and still pose a safety risk for children.

It is also noted that revising S5.1.1(a) as the petitioner suggested may also affect the structural soundness of a restraint over the long term. A polystyrene child seat could easily be penetrated by sharp objects and cracked or fractured during use in a vehicle or during ordinary handling. Once a crack has formed in the material, it may quickly propagate due to the nature of the material, so that a child seat could be easily snapped apart along a crack line. This damage and degradation of the material could significantly reduce the performance of the restraint. Further, fractures in the polystyrene are not easily seen. The material itself appears pocketed and lined with tiny fissures, and crack lines due to material failure may not be obvious. Not enough is known at this time about these potential concerns to warrant reducing the system integrity requirements of the standard as requested.

In accordance with 49 CFR part 552, this completes the agency's review of the petition. The agency has concluded that there is no reasonable possibility that the amendment requested by the petitioner would be issued at the conclusion of the rulemaking proceeding. Accordingly, the petition is denied.

Authority: 49 U.S.C. 322, 30111, 30115, 30117 and 30166; delegation of authority at 49 CFR 1.50.

Issued on April 14, 1998.

L. Robert Shelton,

Associate Administrator for Safety Performance Standards.

[FR Doc. 98–10299 Filed 4–17–98; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 222 and 227

[I.D. 052493B]

Endangered and Threatened Species; Proposed Threatened Status for Johnson's Seagrass

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

ACTION: Proposed rule; notice of reopening of comment period

SUMMARY: The National Marine Fisheries Service (NMFS), pursuant to the Endangered Species Act of 1973, as amended (Act), provides notice of reopening of the comment period on the proposed listing of Johnson's seagrass, *Halophila johnsonii* as a threatened species. The comment period has been reopened to provide opportunity for public comment since the close of the original comment period on December 14, 1993.

DATES: The public comment period, which originally closed on December 14, 1993, now closes June 4, 1998.

ADDRESSES: Comments and requests for copies of the technical workshops proceedings and references should be sent to the Chief, Endangered Species Division (F/PR3), Office of Protected Resources, NMFS, 1315 East-West Highway, Silver Spring, Maryland 20910.

FOR FURTHER INFORMATION CONTACT: Donna Brewer, F/PR3, NMFS, (301) 713–1401, or Colleen Coogan, Southeast Region, NMFS, (813) 570–5312.

SUPPLEMENTARY INFORMATION:

Background

On September 15, 1993, NMFS published a proposed rule to list Johnson's seagrass as a threatened species (58 FR 48326). Designation of critical habitat was subsequently proposed on August 4, 1994 (59 FR 39716). A public hearing on both the proposed listing and critical habitat

designation was held in Vero Beach, Florida on September 20, 1994. This reopening of the comment period applies only to the proposed listing of Johnson's seagrass as a threatened species. The proposed designation of critical habitat will be addressed in a separate Federal Register notice and additional comments will be solicited at that time.

Since publication of the proposed rule, additional information has been made available to NMFS that supplements available data on the status and distribution of Johnson's seagrass. This information was reviewed in a technical workshop held in St. Petersburg, Florida, in November 1996, and has been summarized in a workshop proceedings (Kenworthy, 1997) submitted to NMFS on October 15, 1997.

In addition, genetic studies confirming and supporting information presented in the proposed rule regarding the species separation of Johnson's seagrass have been published (Jewitt-Smith et al., 1997); peer review comments on the proposed rule have been received, and a report summarizing several years of surveys for Johnson's seagrass within the Indian River Lagoon has been completed (Virnstein, et al., 1997). A brief summary of the workshop proceedings follows:

The workshop convened species experts and representatives of agencies with jurisdiction over seagrasses and their habitats to review existing information on the biology and ecology of Johnson's seagrass. Workshop attendees reviewed new genetic information supporting *H. johnsonii* as a separate species from *H. decipens* (recently published by Jewitt-Smith et al, 1977). New qualitative and quantitative benthic surveys and interviews with species experts also reviewed at the workshop, confirmed the extremely limited geographic distribution of Johnson's seagrass to patchy and vertically disjunct areas between Sebastian Inlet and northern Biscayne Bay on the east coast of Florida, finding no verifiable sightings outside of the range other than those already reported. Since additional surveys have not located any male flowers, nor has seedling recruitment been confirmed, the workshop attendees attributed the distribution and abundance of Johnson's seagrass to a reliance on vegetative means of reproduction and growth. High densities of apical meristems, rapid rates of horizontal growth, and a fast leaf turnover were suggested to explain the appearance and disappearance of Johnson's seagrass observed in disturbed areas and on survey transects.

Public Comments Solicited

Due to the availability of additional information, the passage of time since the close of the previous comment period, and the desire to review the best scientific information available during the decision-making process, the comment period for the proposed listing of Johnson's seagrass as a threatened species is being reopened. NMFS is requesting comments from the public on new or additional information on the distribution and status of Johnson's seagrass. All comments received by June 4, 1998 will be considered in NMFS final decision.

References

Kenworthy, J.W. 1997. An updated biological status review and Summary of the Proceedings of a Workshop to Review the Biological Status of the Seagrass, *Halophila johnsonii* Eiseman. Final Report submitted to Office of Protected Species, NMFS, NOAA, Silver Spring, MD - October 15, 1997.

Jewitt-Smith, J., C. McMillan, W.J. Kenworthy, and K. Bird. 1997. Flowering and genetic banding patterns of *Halophila johnsonii* and conspecifics. Aquatic Botany 59: 323–331.

Virnstein, R.W., L.J. Morris, J.D. Miller, and R. Miller-Meyers. 1997. Distribution and abundance of *Halophila johnsonii* in the Indian River Lagoon. St. John's River Water Management District, Techincal Memorandum # 24.

Authority

The Authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: April 10, 1998.

Rolland A. Schmitten,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 98–10368 Filed 4–17–98; 8:45 am]

BILLING CODE 3510–22–F

Proposed Rules

Federal Register
Vol. 63, No. 75
Monday, April 20, 1998

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Parts 430 and 534

RIN 3206–AH77

Performance Ratings

AGENCY: Office of Personnel Management.

ACTION: Proposed rule.

SUMMARY: The Office of Personnel Management (OPM) is issuing proposed regulations to codify longstanding policy regarding retroactive, assumed, and carry-over ratings of record. The proposed regulations amend the current performance management regulations to explicitly specify that ratings of record are final upon issuance unless challenged by the employee, and that retroactive, assumed, and carry-over ratings of record are prohibited.

DATES: Comments must be submitted on or before June 19, 1998.

ADDRESSES: Comments may be sent or delivered to: Henry Romero, Associate Director, Workforce Compensation and Performance Service, U.S. Office of Personnel Management, Room 7508, 1900 E Street NW., Washington, DC 20415.

FOR FURTHER INFORMATION CONTACT: Barbara Colchao, (202) 606–2720.

SUPPLEMENTARY INFORMATION: The purpose of these amendments is to clarify the Office of Personnel Management's (OPM) longstanding interpretation of the law regarding the finality of a rating of record given to reflect the actual work performed during one appraisal period, which has been the consistent response to agencies' inquiries for many years. OPM is experiencing an increasing number of inquiries, as agencies develop new performance management programs to encourage high performance organizations, and to conform to the requirements of the Government Performance and Results Act. OPM concurs with the opinion voiced by several agencies that these policies should be codified in regulation, in order to provide this information in a more uniform and consistent manner.

There are four issues addressed in the proposed regulations: (1) A prohibition against an agency unilaterally changing a rating that has been issued as a final rating of record to an employee; (2) a prohibition against an agency going back to provide a rating of record for a past appraisal period where none was given; (3) a prohibition against an agency issuing an employee an ''assumed'' rating of record that does not reflect an appraisal of actual performance; and (4) a prohibition against ''carrying over'' a previous rating of record to cover more than one appraisal period.

Retroactive Change to a Rating of Record

Agencies are most often confronted with the issue of whether management has the authority to retroactively change a rating of record in situations where information about an employee's performance has been discovered long after the rating was finalized. This situation generally comes about when an employee has deliberately kept information from management and, therefore, has exhibited conduct that would warrant adverse action under part 752, Adverse Actions. Otherwise, if the information was not deliberately withheld but went undiscovered at the time the rating of record was prepared, an agency should review its appraisal process and determine if it is designed to capture adequately all significant performance information. It is OPM's position that only in very rare circumstances would a rating official be unaware of significant performance issues that went undetected at the time of appraisal due to no fault on the part of the employee or the rating official.

While no explicit language in the law states that a rating of record should be considered final, the prohibition on retroactively changing a rating can be derived from the overall construction and intent of the performance appraisal statute and regulations, as well as OPM's regulations addressing reduction in force (RIF). The statute at 5 U.S.C. 4302(a)(3) and 5 CFR 430.102(b)(6) of the regulations require that the results of performance appraisal must be used as a basis for appropriate personnel actions. To allow the retroactive change of ratings of record would result in requiring the agency to correct all records and personnel actions that were affected by that rating. The most obvious of these subsequent actions would involve the review of any pay changes or monetary awards, which were based in whole or in part on the rating of record, to determine whether the new rating would have resulted in a different pay or award outcome.

In addition, an agency would be required to scrutinize any intervening personnel actions that had been affected by the original rating of record and that would need to be corrected due to the new rating of record. For example, the regulations that prescribe RIF procedures implicitly rely on a rating of record that can be assumed to be final. Furthermore, agencies generally strive to avoid the perception that RIF actions could be manipulated through the introduction of new ratings of record. If retroactive changes to final ratings of record were allowed, agencies would be compelled to correct any retention register that uses a changed rating of record and would once again run the risk that employees would perceive an unfairness in using this changed rating of record, unless the change could be shown to be a previous miscalculation or administrative error.

Additionally, the very structure of the performance appraisal regulations leads to the logical conclusion that the intent of the system is to reach a point of finality when management is held accountable for issuing a rating of record that represents an employee's performance for the defined time of the appraisal period. Sections 430.206, 430.207, and 430.208 of title 5 of the Code of Federal Regulations regulate and describe the cycle of planning, monitoring, and issuance of a rating. Section 430.208(g) states that when an agency extends the rating cycle, a rating of record must be prepared as soon as practicable after the conclusion of the extension. Section 430.209(e) establishes a requirement for agencies to report ratings of record to OPM through the Central Personnel Data File. Taken as a whole, the regulatory scheme for performance appraisal is constructed around an appraisal period that concludes with a final rating of record.

As an exception to the general prohibition regarding retroactively changing ratings of record, there is a

relatively limited set of circumstances where an agency might feel compelled to change a rating of record long after it has been presumed to be final. An administrative error, such as a rating official who inadvertently ''checks the wrong box'' and assigns a summary rating level that does not correspond to the element levels that have been assigned, would certainly be good cause for an agency's decision to retroactively change the overall rating of record. Information regarding the employee's performance during the appraisal period that provides indisputable proof that the original rating of record was erroneous, and which was previously unknown or unavailable to the agency, could form the basis for a decision to retroactively change the rating. This situation probably would arise most often in cases where the employee was evaluated against numerical standards with objective requirements, and where the rating official would have had no subjective input into the evaluation process.

While OPM believes it was not the intent of the law governing performance appraisal to allow for independent action by management to retroactively alter a final rating of record, it does recognize some circumstances where such a change would be required. These proposed regulations are designed to be sufficiently flexible to allow for changes to ratings of record that occur in the normal course of communication between supervisors and employees close to the original issuance of a rating of record, as well as changes resulting from administrative procedures that provide employees with an avenue to challenge their ratings of record.

Retroactively Issuing a Rating of Record Where None Existed

The second issue addressed in the proposed regulation is the prohibition against producing a retroactive rating of record for an appraisal period that has passed and for which no rating of record was issued. The statute requires the periodic appraisal of employees (5 U.S.C. 4302(a)(1)), and the regulations require that a rating of record be given to an employee as soon as practicable after the end of the appraisal period (5 CFR 430.208(a)). When an appraisal cannot be given at the end of the appraisal period, the regulations already provide for extending the appraisal period until the conditions to complete a rating of record are met (5 CFR 430.208(g)). A rating of record then is issued that covers the entire appraisal period, including the extension. If the appraisal period was not extended, or if a rating of record for a later appraisal period was issued, the agency cannot go back and ''fill in the blanks'' at some future point in time. To permit such a practice would undermine the basic concepts of performance appraisal and severely limit the accuracy of the ratings produced due to the very passage of time involved.

Assumed Ratings of Record

The third issue addressed in the proposed regulation is the prohibition against issuing to an employee a rating of record that does not reflect actual performance, but assumes a level of performance without evaluation. The intent of the law is clear; Congress intended Federal employees to be evaluated based upon the actual work they performed during the appraisal period. Some confusion has arisen over the years because of the process used to include the value of performance credit when agencies are establishing retention registers in preparation for a reduction in force. In situations where an employee did not receive a rating of record, an agency previously could, **for RIF purposes only,** assign the value of performance credit for that appraisal period at the Fully Successful level. Regulations, published in November 1997, changed the procedures for dealing with missing ratings of record and changed the reference point for assigning additional service credit for performance for employees who have **no** rating of record to the value assigned to the applicable modal rating level in the competitive area, or some larger agency population aggregation. These proposed regulations make no further change to the reduction in force process. Their sole purpose is to regulate that an agency may not **issue** a bona fide rating of record to an employee that assumes some level of performance since employees are entitled to a rating of record that reflects their actual level of performance. This does not impose a requirement that performance must be reflected only by means of a narrative justification. Agencies are free to design the process and procedures they will use to evaluate employee performance. These regulations are intended to ensure that an evaluation of actual employee performance is the basis of the rating of record.

Carrying Over a Rating of Record

Finally, these proposed regulations would codify the prohibition against carrying over a previous rating of record into another appraisal period as a bona fide rating of record. This is obviously tied closely to the above requirement that employees be given a rating of record that reflects their performance during a specific appraisal period. This prohibition does not negate the fact that an employee may perform at the same level for several years and, therefore, appropriately be assigned the same summary level in the rating of record for each of those separate appraisal periods. As noted in 5 U.S.C. 4302 (b) (1) and (2), agencies are required by law to provide performance standards to employees at the beginning of each appraisal period, and to evaluate the employee ''during the appraisal period.'' To allow agencies to carry over a previous year's rating of record without an actual evaluation of the employee's performance would defeat the intent of the law and render the performance appraisal program of the agency meaningless. This provision would not prohibit an agency from using previous ratings of record as the basis for personnel actions when a current rating of record is not available, provided the recency of the previous rating of record is reasonable. Such a feature was used by the Performance Management and Recognition System for pay administration purposes, and also is contained in some of the demonstration projects, where a past rating of record, usually not more than one year old, is used as the basis for a pay adjustment when a current rating is not available.

Technical Correction

The Office of Personnel Management is taking this opportunity to make minor corrections to citations that were overlooked when regulations revising the awards provisions were finalized in September 1995.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities because they apply only to Federal agencies and employees.

List of Subjects

5 CFR Part 430

Decorations, medals, awards, Government employees.

5 CFR Part 534

Government employees, Hospitals, Students, Wages.

Office of Personnel Management.

Janice R. Lachance,

Director.

Accordingly, OPM is proposing to amend parts 430 and 534 of title 5, Code of Federal Regulations, as follows:

PART 430—PERFORMANCE MANAGEMENT

1. The authority citation for part 430 continues to read as follows:

Authority: 5 U.S.C. chapter 43.

2. In § 430.208, paragraphs (a)(1), (a)(2), (a)(3) and (i) are added; paragraph (h) is redesignated as paragraph (j) and a new paragraph (h) is added to read as follows:

§ 430.208 Rating performance.

(a) * * *

(1) A rating of record shall be based only on the evaluation of actual job performance for the designated appraisal period.

(2) An agency shall not issue a rating of record that assumes a level of performance by an employee without an actual evaluation of that employee's performance.

(3) Except as provided in § 430.208(i), a rating of record is final when it is issued to an employee with all appropriate reviews and signatures.

* * * * *

(h) Each rating of record shall cover a specified appraisal period. Agencies shall not carry over a rating of record prepared for a previous appraisal period to a subsequent appraisal period(s).

(i) When either a regular appraisal period or an extended appraisal period ends and a performance plan has been established for a subsequent appraisal period with no rating of record issued for the earlier appraisal period, an agency shall not produce a rating of record to cover that period retroactively. Once issued, ratings of record shall not be changed retroactively except that a rating of record may be changed—

(1) Within 60 days of issuance based upon an informal request by the employee;

(2) As a result of a grievance, complaint, or other formal proceeding permitted by law that results in a final determination by appropriate authority that the rating of record must be changed; or

(3) Where the agency determines that a rating of record was incorrectly recorded or calculated.

PART 534—PAY UNDER OTHER SYSTEMS

3. The authority citation for part 534 continues to read as follows:

Authority: 5 U.S.C. 1104, 5307, 5351, 5352, 5353, 5376, 5383, 5384, 5385, 5541, and 5550a.

4. In § 534.505, paragraph (b) is revised to read as follows:

§ 534.505 Pay related matters.

* * * * *

(b) *Performance awards.* Performance awards may be paid under 5 U.S.C. chapter 45 and § 451.104(a)(3) of this chapter.

[FR Doc. 98–10266 Filed 4–17–98; 8:45 am]
BILLING CODE 6325–01–P

FEDERAL LABOR RELATIONS AUTHORITY

5 CFR Parts 2424 and 2429

Processing of Negotiability Petitions: Miscellaneous and General Requirements

AGENCY: Federal Labor Relations Authority.

ACTION: Notice of proposed rulemaking with request for comments.

SUMMARY: The Federal Labor Relations Authority intends to revise its regulations concerning the processing of negotiability appeals (part 2424). The Federal Labor Relations Authority established a Task Force to study and evaluate part 2424 of its regulations. The Task Force proposes to conduct focus groups to solicit and consider customers' views prior to undertaking these revisions.

DATES: Written comments must be received on or before May 29, 1998. A meeting will be held at 10:00 a.m. on May 12, 1998, in Washington, DC.

ADDRESSES: Mail or deliver written comments to the Office of Case Control, Federal Labor Relations Authority, 607 14th Street, NW, Washington, DC 20424–0001. The meeting will be held at the Federal Labor Relations Authority, 607 14th Street, NW, Second Floor Agenda Room, Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Peter Constantine, Director, Office of Case Control, at the address listed above or by telephone: (202) 482–6540.

SUPPLEMENTARY INFORMATION:

1. Background

The Chair and Members of the Federal Labor Relations Authority (the Authority) intend to review and, where appropriate, implement mechanisms to improve the manner in which negotiability appeals are processed, and to revise the regulations governing review of these appeals. The Authority has established an internal Task Force to study this matter.

Part 2424 of chapter XIV of Title 5 of the Code of Federal Regulations (1997) contains, among other things, the current regulations which govern all matters relating to the processing of negotiability appeals. Part 2429 contains general regulatory requirements which also govern these appeals. The regulations apply to petitions for review of negotiability issues that concern union proposals for bargaining as well as petitions for review of negotiability issues that arise from disapprovals of collective bargaining provisions that have been agreed on by parties.

In conjunction with its review of the procedures for processing negotiability appeals, the Task Force is requesting oral and/or written comments concerning issues to be addressed in the regulatory revisions it is developing. A focus group meeting has been scheduled for Tuesday, May 12, 1998, at 10:00 a.m. in Washington, DC to discuss matters relevant to the negotiability appeal process. Persons interested in attending this meeting on the proposed rulemaking should call or write the point of contact listed in the preceding section to confirm attendance. If appropriate, other discussions may be scheduled.

The Task Force will make written recommendations to the Chair and Members of the Authority, who will, as determined appropriate, issue proposed amendments to the existing negotiability and miscellaneous regulations. All agencies, unions, and interested persons will be afforded an opportunity to submit further comments on any proposed specific modifications to the existing regulations. The Task Force will conduct additional focus group meetings after the Authority proposes its revisions to the existing regulations.

2. The Federal Service Labor-Management Relations Statute (the Statute)

Section 7117 of Title 5, United States Code, empowers the Authority to consider negotiability appeals under the conditions prescribed by section 7117(b) and (c), directs the Authority to expedite these appeals to the extent practicable, and instructs the Authority to issue a written decision at the earliest practicable date.

The appeal process is set forth in Section 7117(c) of the Statute. Under this process, the exclusive representative may ''institute an appeal'' by ''filing a petition with the Authority.'' 5 U.S.C. 7117(c)(2). Once an exclusive representative institutes a negotiability appeal, section 7117(c)(3)(A) and section 7117(c)(4) provide that an agency involved in a negotiability dispute ''shall file with the Authority'' a statement of position responding to the petition for review,

and that an exclusive representative ''shall file with the Authority its response to the statement.'' Consistent with section 7117(c)(5), the Authority, in its discretion, may hold a hearing on the petition for review before making a determination.

3. Issues on Which Comments Are Requested

Following are several groups of subjects on which the Task Force is seeking comments. This is not intended to be an exclusive list; comment on any matter relevant to the processing of petitions for review in negotiability appeals is invited.

a. Alternative Dispute Resolution (ADR) in the Negotiability Appeal Process

Should the Authority require and/or offer ADR services to the parties as part of the negotiability appeal process? If the Authority requires the parties to participate in ADR in connection with the negotiability appeal process, are there any particular issues that the Authority should consider in the drafting of its amendments to the negotiability regulations?

b. Compliance With Procedural Requirements

What consequences, if any, should result from either an agency's failure to file a statement of position, as required by section 7117(c)(3)(A) of the Statute or an exclusive representative's failure to file a response to this statement, as required by section 7117(c)(4) of the Statute?

Under what circumstances, if any, should the Authority exercise its authority under section 7117(c)(5) of the Statute to hold hearings?

Are there any general requirements, in addition to those set forth in part 2429 of the Authority's regulations, that the Authority should consider in drafting its amendments to the negotiability regulations?

c. The Meaning of a Proposal or Provision

What burdens should the Authority place on the parties with respect to the meaning of proposals or provisions, the factual record, and the arguments? Where the Authority is unable to determine the meaning of a proposal or provision, what action should the Authority take?

d. The Relationship Between Issues Arising Under the Negotiability Appeal Process and the Unfair Labor Practice Process

Should the Authority modify its procedure for processing complaints alleging unfair labor practices and negotiability petitions? If so, how should the Authority process cases involving alleged unfair labor practices and negotiability petitions?

How should ''duty to bargain issues'' (such as whether a matter is ''covered by'' an existing agreement or whether a union has waived its right to bargain) as opposed to ''scope of bargaining'' issues (whether a proposal is consistent with law, rule, or regulation) be addressed when arising in connection with a negotiability appeal?

e. Authority Orders in Decisions on Review of Negotiability Appeals; Compliance With the Authority's Orders

Part 2424.10 of the Authority's regulations currently provides that, if in a decision the Authority finds that the duty to bargain extends to ''a matter proposed to be bargained,'' then the Authority shall include a bargaining order and, if the Authority finds that the duty to bargain does not extend to the matter, or that the duty extends to the matter ''only at the election of the agency,'' then the Authority shall dismiss the petition for review.

Should the regulations be modified to include other orders? If so, what other orders should be included and in what circumstances should they be used?

Should the Authority's regulations concerning compliance with negotiability orders be modified? If so, how should the Authority address a party's failure to comply with the Authority's negotiability order?

f. Proposals for Bargaining and Provisions Subject to Agency-Head Review

Should the Authority's negotiability regulations differ depending on whether the petition for review concerns a proposal for bargaining or a provision that has been agreed on and subsequently disapproved?

g. Other Issues

The foregoing questions are not intended to exclude any other subjects relevant to the negotiability appeal process. What other subjects relevant to the negotiability appeal process should the Authority consider in developing amendments to the existing negotiability regulations?

(Authority: 5 U.S.C. 7105(a)(2)(E) and (I)).

Dated: April 15, 1998.

Solly Thomas,

Executive Director, Federal Labor Relations Authority.

[FR Doc. 98–10390 Filed 4–17–98; 8:45 am]

BILLING CODE 6727–01–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 29

[Docket No. TB–97–17]

Tobacco Inspection—Growers Referendum

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice of referendum.

SUMMARY: This document announces that a referendum will be conducted by mail during the period of April 27–May 1, 1998, for producers of flue-cured tobacco who sell their tobacco at auction in Tabor City-Whiteville, North Carolina, and Loris, South Carolina, to determine producer approval of the designation of the Tabor City-Whiteville and Loris tobacco markets as one consolidated auction market.

DATES: The referendum will be held April 27–May 1, 1998.

FOR FURTHER INFORMATION CONTACT: William Coats, Associate Deputy Administrator, Tobacco Programs, Agricultural Marketing Service, United States Department of Agriculture, P.O. Box 96456, Washington, D.C. 20090–6456; telephone number (202) 205–0508.

SUPPLEMENTARY INFORMATION: Notice is hereby given of a mail referendum on the designation of a consolidated auction market at Tabor City-Whiteville, North Carolina, and Loris, South Carolina. Tabor City-Whiteville, North Carolina, was designated on June 5, 1997, (7 CFR 29.8001) as flue-cured tobacco auction market and Loris, South Carolina, was designated on August 16, 1941, under the Tobacco Inspection Act (7 U.S.C. 511 *et seq.*). Under this Act those markets have been receiving mandatory grading services from USDA.

On September 11, 1997, an application was made to the Secretary of Agriculture to consolidate the designated markets of Tabor City-Whiteville, North Carolina, and Loris, South Carolina. The application, filed by warehouse operators on those markets, was made pursuant to the regulations promulgated under the Tobacco Inspection Act (7 CFR Part 29.1–29.3). On November 5, 1997, a public hearing was held in Tabor City, North Carolina, pursuant to the regulations. A Review Committee, established pursuant to § 29.3(h) of the regulations 7 CFR 29.3(h), has reviewed and considered the application, the testimony presented at the hearing, the exhibits received in evidence, and other

available information. The Committee recommended to the Secretary that the application be granted and the Secretary approved the application on March 16, 1998.

Before a new market can be officially designated, a referendum must be held to determine that a two-thirds majority of producers favor the designation. It is hereby determined that the referendum will be held by mail during the period of April 27–May 1, 1998. The purpose of the referendum is to determine whether farmers who sold their tobacco on the designated markets at Tabor City-Whiteville and Loris are in favor of, or opposed to, the designation of the consolidated market for the 1998 and succeeding crop years. Accordingly, if a two-thirds majority of those tobacco producers voting in the referendum favor the consolidation, a new market will be designated as and will be called Tabor City-Whiteville-Loris.

To be eligible to vote in the referendum a tobacco producer must have sold flue-cured tobacco on either the Tabor City-Whiteville, North Carolina, or Loris, South Carolina, auction markets during the 1997 marketing season. Any farmer who believes he or she is eligible to vote in the referendum but has not received a mail ballot by April 27, 1998, should immediately contact William Coats at (202) 205–0508.

The referendum will be held in accordance with the provisions for referenda of the Tobacco Inspection Act, as amended (7 U.S.C. 511d) and the regulations for such referendum set forth in 7 CFR 29.74.

Dated: April 15, 1998.

Enrique E. Figueroa,

Administrator, Agricultural Marketing Service.

[FR Doc. 98–10458 Filed 4–17–98; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 29

[Docket No. TB–97–16]

Tobacco Inspection—Growers Referendum

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice of referendum.

SUMMARY: This document announces that a referendum will be conducted by mail during the period of April 27–May 1, 1998, for producers of flue-cured tobacco who sell their tobacco at auction in Clarksville and Chase City, Virginia, to determine producer approval of the designation of the Clarksville and Chase City tobacco markets as one consolidated auction market.

DATES: The referendum will be held April 27–May 1, 1998.

FOR FURTHER INFORMATION CONTACT: William Coats, Associate Deputy Administrator, Tobacco Programs, Agricultural Marketing Service, United States Department of Agriculture, P.O. Box 96456, Washington, D.C. 20090–6456; telephone number (202) 205–0508.

SUPPLEMENTARY INFORMATION: Notice is hereby given of a mail referendum on the designation of a consolidated auction market at Clarksville and Chase City, Virginia. Clarksville and Chase City were designated on June 26, 1942 (7 CFR 29.8001) as flue-cured tobacco auction markets under the Tobacco Inspection Act (7 U.S.C. 511 *et seq.*). Under this Act those markets have been receiving mandatory grading services from USDA.

On September 3, 1997, an application was made to the Secretary of Agriculture to consolidate the designated markets of Clarksville and Chase City, Virginia. The application, filed by warehouse operators on those markets, was made pursuant to the regulations promulgated under the Tobacco Inspection Act (7 CFR Part 29.1–29.3). On November 7, 1997, a public hearing was held in Clarksville, Virginia, pursuant to the regulations. A Review Committee, established pursuant to § 29.3(h) of the regulations 7 CFR 29.3(h)), has reviewed and considered the application, the testimony presented at the hearing, the exhibits received in evidence, and other available information. The Committee recommended to the Secretary that the application be granted and the Secretary approved the application on March 16, 1998.

Before a new market can be officially designated, a referendum must be held to determine that a two-thirds majority of producers favor the designation. It is hereby determined that the referendum will be held by mail during the period of April 27–May 1, 1998. The purpose of the referendum is to determine whether farmers who sold their tobacco on the designated markets at Clarksville and Chase City are in favor of, or opposed to, the designation of the consolidated market for the 1998 and succeeding crop years. Accordingly, if a two-thirds majority of those tobacco producers voting in the referendum favor this consolidation, a new market will be designated as and will be called Clarksville-Chase City.

To be eligible to vote in the referendum a tobacco producer must have sold flue-cured tobacco on either Clarksville or Chase City, Virginia, auction markets during the 1997 marketing season. Any farmer who believes he or she is eligible to vote in the referendum but has not received a mail ballot by April 27, 1998, should immediately contact William Coats at (202) 205–0508.

The referendum will be held in accordance with the provisions for referenda of the Tobacco Inspection Act, as amended (7 U.S.C. 511d) and the regulations for such referendum set forth in 7 CFR 29.74.

Dated: April 15, 1998.

Enrique E. Figueroa,

Administrator, Agricultural Marketing Service.

[FR Doc. 98–10457 Filed 4–17–98; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Part 246

RIN 0584–AC50

Special Supplemental Nutrition Program for Women, Infants and Children (WIC): WIC/Food Stamp Program (FSP) Vendor Disqualification

AGENCY: Food and Nutrition Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would amend regulations governing the Special Supplemental Nutrition Program for Women, Infants and Children (WIC) to implement a mandate of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, which requires the disqualification of WIC vendors who are disqualified from the Food Stamp Program (FSP). According to the law, the disqualification shall be for the same length of time as the FSP disqualification and may begin at a later date than the FSP disqualification. Furthermore, the law states that disqualification from WIC on the basis of an FSP disqualification is not subject to judicial or administrative review.

This proposed rule would also mandate uniform sanctions across States for the most serious WIC Program vendor violations, including seven specific WIC Program violations that result in FSP disqualification in addition to WIC Program

disqualification. The implementation of these mandatory sanctions is intended to promote WIC and FSP coordination in the disqualification of retailers and vendors who violate program rules.

DATES: To be assured of consideration, written comments must be postmarked by July 20, 1998.

ADDRESSES: Comments should be sent to Barbara Hallman, Acting Director, Supplemental Food Program Division, FNS, USDA, 3101 Park Center Drive, Room 540, Alexandria, Virginia 22302. Comments on this rule should be labeled ''WIC/Food Stamp Vendor Disqualification.'' All written comments will be available for public inspection during regular business hours (8:30 a.m. to 5:00 p.m., Monday through Friday) at the above noted address.

FOR FURTHER INFORMATION CONTACT: Barbara Hallman, at (703) 305–2730.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

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

Regulatory Flexibility Act

This proposed rule has been reviewed with regard to the requirements of the Regulatory Flexibility Act of 1980 (5 U.S.C. 601–612). Yvette Jackson, Administrator of the Food and Nutrition Service, has certified that this rule will not have a significant impact on a substantial number of small entities. This rule will only impact WIC vendors who have committed fraud and abuse against the WIC Program or who have been disqualified from the Food Stamp Program.

Paperwork Reduction Act

This proposed rule imposes no new reporting or recordkeeping requirements that are subject to OMB review in accordance with the Paperwork Reduction Act of 1995.

Executive Order 12372

The Special Supplemental Nutrition Program for Women, Infants and Children is listed in the Catalog of Federal Domestic Assistance Programs under 10.577. For reasons set forth in the final rule in 7 CFR Part 3015, Subpart V, and related notice (48 FR 29115) this program is included in the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

Executive Order 12988

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is intended to have preemptive effect with respect to any State or local laws, regulations or policies which conflict with its provisions or which would otherwise impede its full implementation. This rule is not intended to have retroactive effect unless so specified in the **EFFECTIVE DATE** paragraph of the final rule. Prior to any judicial challenge to the application of provisions of this rule, all applicable administrative procedures must be exhausted.

Public Law 104–4

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Pub. L. 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local and tribal governments and the private sector. Under section 202 of the UMRA, the Food and Nutrition Service 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 or tribal governments, in the aggregate, or the private sector, of $100 million or more in any one year. When such a statement is needed for a rule, section 205 of the UMRA generally requires the Food and Nutrition Service to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, more cost-effective or least burdensome alternative that achieves the objectives of the rule.

This rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local and tribal governments or the private sector of $100 million or more in any one year. Thus, this rule is not subject to the requirements of sections 202 and 205 of the UMRA.

Background

Section 729(j) of Pub. L. 104–193, the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA), amends section 17 of the Child Nutrition Act of 1996 (42 U.S.C. 1786) (CNA), by adding a new section(n) that requires the Secretary of Agriculture to issue regulations providing the criteria for the disqualification of WIC vendors who have been disqualified as retailers from the FSP. This provision also states that the WIC disqualification shall be for the same length of time as the FSP disqualification. It may begin at the same time or at a later date than the FSP disqualification, and shall not be subject to judicial or administrative review. This new provision is designed to strengthen WIC Program integrity by promptly removing vendors from the WIC Program who have been disqualified from the FSP due to FSP violations.

In addition, a September 1995 Office of Inspector General (OIG) audit, number 27601–0004–Ch, on Disqualification of Vendors from Food and Nutrition Service (FNS) Programs recommended that FNS develop uniform regulatory sanction provisions to be applied to WIC vendors for each of seven specific WIC Program vendor violations. These WIC violations are deemed to be so serious that, under current FSP regulations, they result in the loss of FSP authorization in response to the WIC Program disqualification. This proposed rule would establish mandatory uniform sanctions against violating WIC vendors and would also remove the current three-year limit on WIC vendor disqualification, thus permitting permanent WIC vendor disqualification under specified circumstances. State agencies can sanction vendors for violations other than those listed in proposed § 246.12(k)(1) as long as vendors are made aware of such violations and sanctions, and such sanctions do not result in disqualification from the WIC Program for more than six months.

Criteria for Disqualification of WIC Vendors Who Have Been Disqualified From the FSP

Section 729(j) of the PRWORA amends section 17 of the CNA by adding a new section(n) that requires the Secretary of Agriculture to issue regulations providing the criteria for the disqualification of WIC vendors who have been disqualified from participating as retailers in the FSP. In response to that mandate, the Department has determined that **any** FSP violation that is serious enough to warrant disqualification from the FSP should also warrant disqualification from the WIC Program. The Department believes that retailers that are disqualified from the FSP should not be eligible to participate in either the WIC Program or the FSP. This proposed rule would require the disqualification of such vendors from WIC, with the only exception being for participant hardship. That is, WIC State agencies would not be required to disqualify a WIC vendor that has been disqualified from the FSP when such WIC disqualification would cause undue hardship for WIC participant access.

The Department recognizes that WIC vendors play a vital role in ensuring that WIC Program goals are achieved. While the vast majority of vendors follow

program rules, abuse cannot and will not be tolerated. Current program rules (§§ 246.12(k) (iii) and (iv)) allow but do not require a State agency to disqualify a WIC vendor who is currently disqualified from any FNS program or who has been assessed a civil money penalty (CMP) by the FSP in lieu of disqualification. To strengthen program integrity, WIC State agencies would be required under this proposed rule to disqualify a vendor from WIC who has been disqualified from the FSP, unless such disqualification would create undue hardship for WIC participant access, in which case WIC State agencies will assess a CMP. In cases where a retailer has been assessed a CMP in lieu of disqualification by the FSP, WIC State agencies will continue to have the option of disqualifying the vendor under § 246.12(k)(iv). However, since the disqualification is not based upon a reciprocal FSP disqualification, the vendor must be offered an opportunity to appeal the WIC disqualification.

Length of Disqualification

Section 729(j) of the PRWORA also states that the WIC disqualification shall be for the same length of time as the FSP disqualification and may begin at the same time or at a later date than the FSP disqualification. Because FSP regulations provide for permanent disqualification, there will be instances in which a WIC vendor is disqualified for more than the current three-year maximum disqualification period reflected in § 246.12(k)(1)(ii) of the WIC Program regulations. Therefore, this proposed rule would remove the three-year limitation from the regulations. This permits reciprocal permanent disqualification, as required by the PRWORA.

Vendor Appeals

This proposed rule would amend § 246.18(a) to modify the current requirement to provide a hearing procedure whereby a WIC vendor adversely affected by State or local agency actions may appeal such action. Section 729(j) of the PRWORA specifically states that WIC vendors who are disqualified as a result of their disqualification as retailers from the FSP are not entitled to administrative or judicial review proceedings in the WIC Program. As such, § 246.18(a) would be amended to reflect this change. This change should reduce WIC State agency expenses and administrative burdens and eliminate a duplicative administrative process. The WIC Program disqualification will not be imposed until after all FSP administrative and judicial processes have been completed.

Section 729(j) of the PRWORA only eliminates the WIC appeal for vendors who are disqualified as a result of the FSP disqualification. The law does not eliminate appeal rights for vendors who are disqualified from WIC because they have been assessed a CMP in lieu of disqualification from the FSP. Therefore, WIC State agencies that utilize the option at § 246.12(k)(iv) which allows the State agency to disqualify a vendor who has been assessed a CMP in lieu of FSP disqualification must continue to offer such vendors an opportunity to appeal the WIC disqualification.

Vendor Agreements

To ensure that all WIC vendors are aware that disqualification from the FSP will result in disqualification from the WIC Program or, under certain circumstances, assessment of a CMP in lieu of disqualification, § 246.12(f) has been amended to require a statement to this effect in the vendor agreement.

Mandatory WIC Program Vendor Sanctions

In September 1995, the OIG released audit report number 27601–0004–Ch, Disqualification of Vendors from FNS Programs. The purpose of the audit was to evaluate FNS' controls to ensure that retailers/vendors who committed serious violations in one FNS program are considered for disqualification from participation in all FNS programs for which they were authorized.

The audit disclosed widely inconsistent sanction policies among the States for WIC vendors who commit similar or identical WIC Program violations. A previous nationwide OIG audit of WIC Program vendor operations, audit report 27661–2–Ch issued June 1988, also disclosed inconsistent sanction policies across States. For example, a vendor who overcharged a WIC State agency for WIC foods could receive a sanction that varied from additional mandatory training, to a voluntary withdrawal, to a warning letter, or a one to three year disqualification, depending upon the particular State. To ensure that appropriate and consistent sanctions are taken against vendors abusing the WIC Program, the audit recommended that FNS revise WIC Program regulations to mandate specific uniform sanctions for each of seven categories of WIC Program violations that, under current regulations, result in the loss of FSP authorization in addition to WIC disqualification. This would promote consistency of sanction treatment for violative WIC vendors. This proposed rule would implement the OIG's recommendation.

In 1987, the FSP issued codified regulations at 7 CFR § 278.1(o) that required FNS Field Offices to withdraw the FSP authorization of any firm that is disqualified from the WIC Program based in whole or in part on any act that constitutes a violation of that program's regulations, and which is shown to constitute a misdemeanor or felony violation of law, or for any of the following specific program violations:

(1) Claiming reimbursement for the sale of an amount of a specific food item which exceeds the store's documented inventory of that food item for a specific period of time;

(2) Exchanging WIC food instruments for cash or credit;

(3) Receiving, transacting and/or redeeming WIC food instruments outside of authorized channels;

(4) Accepting WIC food instruments from unauthorized persons;

(5) Exchanging non-food items for a WIC food instrument;

(6) Charging WIC customers more for food than non-WIC customers or charging WIC customers more than current shelf price; or

(7) Charging for food items not received by the WIC customer or for food provided in excess of those listed on the food instrument.

The Department proposes two modifications to the above-noted seven violations. First, the Department proposes to add trafficking to this list of violations. Trafficking is generally recognized as the most flagrant and egregious example of program fraud and abuse. As such, under this proposed rule, vendors found to be committing trafficking would be subject to permanent disqualification from the WIC Program upon their first offense, as in the FSP. The Department proposes to adopt the FSP's definition of trafficking, with some minor revisions to accommodate WIC terminology. Trafficking, in this proposal, is defined as the buying or selling of WIC food instruments for cash or consideration other than eligible food; or the exchange of firearms, ammunition, explosives, or controlled substances (i.e, drugs) as the term is defined in section 802 of title 21, United States Code, for food instruments. Consideration other than eligible food would include items such as furniture, appliances or other property, etc.

Second, the Department proposes to add the sale of alcohol, or alcoholic beverages or tobacco products in exchange for WIC food instruments to the list of violations that would result in

a mandatory sanction in recognition of their obvious inappropriate nature with respect to WIC food instrument exchanges. ''Alcoholic Beverage'' is defined by 27 U.S.C. § 214 as ''any beverage in liquid form which contains not less than one-half of one percent of alcohol by volume and is intended for human consumption.'' In recognition of the addition of this new violation, number (5) above would be modified to read ''exchanging non-food items, other than alcohol or alcoholic beverages or tobacco products, for WIC food instruments.'' The proposed penalty for the first disqualification for this violation is three years, consistent with the FSP sanction for this type of violation.

Third, the Department has removed the word ''cash'' from number (2) above, exchanging WIC Food Instruments for cash and credit, because exchanging food instruments for cash is included in the trafficking violation as explained earlier in this preamble.

The Department is proposing mandatory WIC Program disqualifications for the nine violations. The proposed WIC disqualifications set forth herein are similar to disqualifications imposed by the FSP for similar violations. This will conform WIC sanctions among the States, and establish WIC disqualifications that are similar to FSP disqualifications. The following chart illustrates the mandatory WIC disqualifications that would be imposed for the noted violation. Although the Department only proposes to address nine violations in this regulation, of course there are other violations that may occur. We have left to State agency discretion the authority to establish disqualifications for additional violations they deem appropriate. However, such State agency established disqualifications cannot exceed six months.

WIC violation	WIC sanction
Trafficking	Permanent Disqualification (DQ).
Sale of alcohol or alcoholic beverages or tobacco products in exchange for WIC food instruments	1st—3 year DQ; 2nd—6 year DQ; 3rd—Permanent DQ.
Accepting WIC food instruments from unauthorized persons	Same as above.
Claiming reimbursement for the sale of an amount of a specific food item which exceeds the store's documented inventory for food item for a specific period of time.	Same as above.
Receiving, transacting and/or redeeming WIC food instruments outside authorized channels	Same as above.
Charging WIC customers more for food than non-WIC customers or charging WIC customers more than current shelf price.	Same as above.
Charging for food items not received by the WIC customer or for food provided in excess of those listed on the food instrument.	Same as above.
Exchanging non-food items, except alcohol or alcoholic beverages or tobacco, for WIC food instruments.	1st—1 year DQ; 2nd—2 year DQ; 3rd—Permanent DQ.
Exchanging WIC food instruments for credit	Same as above.

To ensure that WIC vendors are aware that disqualification from the WIC Program will also result in the loss of FSP authorization, proposed amendments to § 246.18(b) would require that the State agency provide formal written notice of possible disqualification by FSP in the formal notice of WIC disqualification. Such written notice shall be made to such vendors prior to the time available for the WIC vendor to request appeal of the WIC action.

Voluntary Withdrawal and/or Non-renewal of Contract/Agreements in Lieu of Disqualification

The September 1995 OIG audit revealed that some WIC State agencies allowed vendors to voluntarily withdraw from the WIC Program or pay a CMP in lieu of disqualification. The Department does not support such a practice. It provides a means for a vendor to circumvent reciprocal disqualification from the FSP. The two programs must cooperate in every reasonable manner to facilitate the detection and removal of abusive vendors and retailers. The result of such cooperation is more effective and efficient vendor/retailer management in both programs. Therefore, under proposed § 246.12(k)(2), State agencies would not be able to accept voluntary withdrawal of the vendor from the program or an offer by the vendor to pay a CMP in lieu of disqualification where a disqualification is required under this proposed rule.

In addition, some State agencies fail to disqualify a noncompliant WIC vendor from the program, opting instead to not renew the vendor's contract or agreement at the next available renewal period. State agencies take this action because it is believed to be less costly and burdensome than disqualifying the vendor and going through the appeals process. However, unless the vendor is actually disqualified from the WIC Program, the mandatory reciprocal FSP disqualification cannot be imposed. In addition, without disqualification, the opportunity for abuse continues until expiration of the agreement. Therefore, the Department proposes at § 246.12(k)(2) to prohibit the practice of nonrenewal of the contract/agreement as an alternative to or in lieu of disqualification.

Timely Referral of WIC Disqualified Vendors

In order to effectively remove disqualified WIC vendors from participating as retailers in the FSP, WIC State agencies must provide the FNS field offices with timely information on disqualified WIC vendors. The September 1995 OIG report found that timely referrals were not occurring. The delays in notifying FNS field offices ranged from 9 to 349 days with the majority of cases over 100 days. These untimely referrals have delayed or prevented noncompliant WIC vendors who have been disqualified from WIC from being promptly disqualified from the FSP. Therefore, to assure that action to remove abusive retailers is taken in a timely manner, the Department is proposing at § 246.12(k)(3) that State agencies provide the FNS field office with written notification, including fax or e-mail, on vendors it has disqualified from WIC for any one of the nine violations noted above that result in a mandatory disqualification period. This information shall be provided within 15 days after the opportunity to file for a WIC administrative appeal has expired or all WIC administrative and judicial appeals have been exhausted.

Participant Access

Impact on participant access has always been a primary consideration when determining whether to disqualify an abusive vendor from the WIC Program. When disqualifying a vendor

from WIC, either because of WIC Program abuse, or based on an FSP disqualification, the State agency will continue to be required to document its determination that participants will have access to WIC supplemental foods notwithstanding the disqualification of the vendor in question.

In assessing participant access, the State agency would need to consider factors such as availability of other authorized vendors in the same area and geographic barriers to such vendors. The Department would like to point out that a FSP CMP, granted in lieu of disqualification due to a participant access concern, does not obligate the WIC State agency to concur with the FSP hardship determination. Nor does it require reciprocal disqualification from the WIC Program. Recognizing that FSP and WIC serve different populations, it is possible that there may be instances where a disqualification in one program would not negatively affect participant access for recipients in the other Program.

For example, a retailer found to be abusing the FSP may have a large FSP population that is predominantly elderly. This establishment may also serve a small population of younger more mobile WIC participants. The FSP may determine that it would jeopardize FSP participant access if the retailer were disqualified and instead issues a CMP in lieu of disqualification. The WIC State agency may determine that WIC participant access would not be unduly harmed and therefore choose to disqualify the abusive WIC vendor under § 246.12(k)(iv). Of course, full appeal rights would be available to the WIC vendor under these circumstances.

In the rare instance where the State agency determines that disqualification of a WIC vendor would jeopardize access for participants, the State agency shall assess a CMP against the vendor in lieu of disqualification. The WIC State agency should actively monitor the vendor to ensure that the vendor complies with program rules as a condition to remain an authorized vendor.

The State agency must include in the file of each WIC vendor who is disqualified from the Program or receives a CMP in lieu of disqualification, a written record of its participant access determination and any supporting justification. The State agency, with its knowledge of the locations of authorized WIC vendors and the geographical distribution of WIC participants, is uniquely qualified to determine whether any given vendor is needed to ensure participant access to WIC foods, and whether a disqualification will not adversely affect participant access to authorized foods. The WIC State agency determination regarding participant access is, therefore, not subject to appeal by the vendor.

Formula for Calculating Civil Money Penalties

To ensure that WIC State agencies are using a consistent method in determining the amount of a CMP issued in lieu of disqualification, the Department proposes to establish a formula for calculating the CMP. The proposed formula is currently used by several WIC State agencies and is identical to the CMP formula used by the FSP. The proposed formula is as follows: (1) Determine the vendor's average monthly WIC redemptions for the 12-month period ending with the month immediately preceding the month during which the store was charged with violations; (2) Multiply the average monthly redemptions figure by 10 percent (.10); (3) Multiply the product from Step 2 by the number of months for which the store would have been disqualified. This is the amount of the CMP. The amount of the CMP may not exceed $10,000 for each violation. Following is an example using this methodology:

Monthly WIC Redemptions

Jan.—$10,000
Feb.—$8,500
Mar.—$12,300
Apr.—$9,000
May.—$7,000
June—$5,000
July—$6,000
Aug.—$4,000
Sept.—$5,500
Oct.—$7,000
Nov.—$7,000
Dec.—$5,000

Average Monthly Redemptions	$7,192.00
Multiply by 10 Percent	×.10
	$719.00
Proposed disqualification period=1 year or 12 months:	×12
Civil Money Penalty	$8,630.00

Disposition of Civil Money Penalties

Money collected from imposition of civil money penalties or vendor fines shall be treated as program income. Authority granted the Department in 7 CFR 3016.25 permits the characterization of such fines as program income. As program income, their use will be governed by § 246.15 of the WIC regulations. This change will be reflected in § 246.15(b).

Definition of Food Instrument

In recognition of emerging technology in the retail food delivery area relative to electronic benefits transfer (EBT), the Department proposes to revise the definition of ''food instrument'' to include an EBT transfer card. ''Food instrument'' is now proposed to be defined as a voucher, check, electronic benefits transfer card (EBT), coupon or other document which is used by a participant to obtain supplemental foods.

List of Subjects in 7 CFR Part 246

Food assistance programs, Food donations, Grant programs—social programs, Indians, Infants and children, Maternal and child health, Nutrition, Nutrition education, Public assistance programs, WIC, Women.

For reasons set forth in the preamble, 7 CFR part 246 is proposed to be amended as follows:

PART 246—SPECIAL SUPPLEMENTAL NUTRITION PROGRAM FOR WOMEN, INFANTS AND CHILDREN

1. The authority citation for part 246 continues to read as follows:

Authority: 42 U.S.C. 1786.

2. In § 246.2, the definition of ''Food instrument'' is revised to read as follows:

§ 246.2 Definitions

* * * * *

Food instrument means a voucher, check, electronic benefits transfer card (EBT), coupon or other document which is used by a participant to obtain supplemental foods.

* * * * *

3. In § 246.12:

a. paragraphs (f)(2)(xix) and (f)(2)(xx) are redesignated as paragraphs (f)(2)(xx) and (f)(2)(xxi), respectively;

b. new paragraph (f)(2)(xix) is added;

c. paragraph (f)(3) is revised;

d. paragraph (k)(1) introductory text is revised;

e. paragraph (k)(1)(iii) is removed, paragraphs (k)(1)(i),(k)(1)(ii),(k)(1)(iv) and (k)(1)(v) are redesignated as (k)(1)(v), (k)(1)(vi),(k)(1)(vii) and (k)(1)(viii), respectively, and revised, and new paragraphs (k)(1)(i) through (k)(1)(iv) and (k)(1)(ix) are added;

f. paragraphs (k)(2) and (k)(3) are redesignated as (k)(4) and (k)(5), respectively; and new paragraphs (k)(2) and (k)(3) are added.

The revisions and additions read as follows:

§ 246.12 Food delivery systems.

* * * * *

(f) * * *

(2) * * *

(xix) The State agency shall disqualify a vendor who has been disqualified from the Food Stamp Program. However, if the State agency determines that such disqualification will create hardship for participant access to authorized foods, the State agency shall issue a civil money penalty in lieu of WIC disqualification.

* * * * *

(3) Other provisions shall be added to the contracts or agreements to implement the State agency option in paragraph (r)(5)(iv) of this section.

* * * * *

(k) * * *

(1) The following sanctions shall be used by each State agency. The State agency shall provide adequate procedures for vendors to appeal a disqualification from participation under the Program as specified in § 246.18. The State agency sanctions shall include:

(i) Permanent disqualification for:

(A) Buying or selling of WIC food instruments for cash or consideration other than eligible food (trafficking); or the exchange of firearms, ammunition, explosives, or controlled substances as defined in 21 U.S.C. 802, for food instruments; or

(B) When a vendor has twice before been sanctioned for any violation listed in paragraphs (k)(1)(ii) and (k)(1)(iii) of this section.

(ii) Disqualification for three years if it is the vendor's first sanction for:

(A) The sale of alcohol or alcoholic beverages or tobacco products in exchange for WIC food instruments; or

(B) Claiming reimbursement for the sale of an amount of a specific food item which exceeds the store's documented inventory of that food item for a specific period of time; or

(C) Charging WIC customers more for food than non WIC customers or charging WIC customers more than the current shelf or contract price; or

(D) Accepting WIC food instruments from unauthorized persons; or

(E) Receiving, transacting and/or redeeming WIC food instruments outside of authorized channels; or

(F) Charging for food items not received by the WIC customer or for food provided in excess of those listed on the food instrument.

(iii) Disqualification for one year if it is the vendor's first sanction for:

(A) Exchanging WIC food instruments for credit; or

(B) Exchanging non-food items, other than alcohol or alcoholic beverages or tobacco, for WIC food instruments.

(iv) The sanctions for violations in paragraphs (k)(1)(ii) and (k)(1)(iii) of this section shall be doubled if the vendor has once before been assigned a sanction. In addition, the State agency does not have to provide the vendor with prior notice that violations were occurring and the possible consequences of the violations prior to implementing any of the mandatory sanctions in this paragraph.

(v) Food vendors may be subject to sanctions in addition to, or in lieu of, disqualification, such as claims for improper or overcharged food instruments and the penalties outlined in § 246.23, in the case of deliberate fraud.

(vi) The State agency may impose sanctions for violations that are not specified in paragraphs (k)(1)(i) through (k)(1)(iii) of this section as long as the vendor is made aware of such violations and sanctions. The period of disqualification from Program participation for such State-established violations shall not be more than six months as determined by the State agency.

(vii) The State agency shall disqualify a vendor who has been disqualified from the Food Stamp Program. The disqualification shall be for the same length of time as the FSP disqualification; may begin at a later date than the FSP disqualification; shall not be subject to administrative or judicial review under the WIC Program. If the State agency determines that such disqualification will create hardship for participant access to authorized foods, the State agency shall issue a civil money penalty in lieu of WIC disqualification. The State agency may disqualify a vendor who has been assessed a civil money penalty in the Food Stamp Program, as provided under 7 CFR 278.6, only if the State agency:

(A) Documents that any such disqualification will not create undue hardship for participants; and

(B) Includes notification that it will take such disqualification action in its vendor agreement, in accordance with paragraph (f)(3) of this section.

(viii) Prior to disqualifying a food vendor, the State agency shall consider whether the disqualification would create undue hardship for participants. The State agency shall include documentation of its participant access determination and any supporting documentation in the file of each vendor who is disqualified or receives a civil money penalty in lieu of disqualification.

(ix) The State agency shall use the following formula to calculate a civil money penalty issued in lieu of disqualification:

(A) Determine the vendor's average monthly WIC redemptions for the 12-month period ending with the month immediately preceding the month during which the store was charged with violations;

(B) Multiply the average monthly redemptions figure by 10 percent (.10);

(C) Multiply the product from Step 2 by the number of months for which the store would have been disqualified. This is the amount of the civil money penalty. The amount of the civil money penalty may not exceed $10,000 for each violation.

(2) The State agency shall not accept voluntary withdrawal of the vendor from the Program as an alternative to disqualification, but shall enter the disqualification on the record. In addition, the State agency shall not use nonrenewal of the vendor agreement as an alternative to disqualification.

(3) The State agency shall provide the appropriate FNS office with written notification and information on vendors it has disqualified for any of the violations listed in (k)(1)(i) through (k)(1)(iv) of this section. This information shall include the name of the vendor, address, identification number, the type of violation, and the length of disqualification, and shall be provided within fifteen days after the opportunity to file for a WIC administrative appeal has expired or all WIC administrative appeals have been exhausted and all judicial appeal rights have expired or have been exhausted.

* * * * *

4. In § 246.15, a sentence is added to the end of paragraph (b) to read as follows:

§ 246.15 Program income other than grants.

* * * * *

(b) * * * Money received by the State agency as a result of civil money penalties or fines assessed against a WIC vendor shall be considered as program income.

5. In § 246.18, paragraphs (a)(1) and (b)(1) are revised to read as follows:

§ 246.18 Administrative appeal of State agency decisions.

(a) * * *

(1) The right of appeal shall be granted when a local agency's or a food vendor's application to participate is denied or, during the course of the contract or agreement, when a local agency or vendor is disqualified or any other adverse action which affects participation is taken. The following actions shall not be subject to judicial or administrative review:

(i) Expiration of a contract or agreement with a food vendor;

(ii) Disqualification of a food vendor as a result of disqualification from the Food Stamp Program; and

(iii) The State agency's determination that participant access would not be adversely affected by disqualification of the vendor.

* * * * *

(b) * * *

(1) Written notification of the administrative action, the procedures to file for an administrative review, the cause(s) for and the effective date of the action. Such notification shall be provided to participating food vendors not less than 15 days in advance of the effective date of the action. When a vendor is disqualified due in whole or in part to violations specified in § 246.12(k)(1), such notification shall include the following statement: ''This disqualification from WIC may result in disqualification as a retailer in the Food Stamp Program.''

In the case of disqualification of local agencies, the State agency shall provide not less than 60 days advance notice of pending action.

* * * * *

Dated: April 13, 1998.

Yvette S. Jackson,

Administrator, Food and Nutrition Service.

[FR Doc. 98–10255 Filed 4–17–98; 8:45 am]

BILLING CODE 3410–30–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–NM–250–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A320 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Airbus Model A320 series airplanes. This proposal would require repetitive rotating probe inspections of fastener holes and/or the adjacent tooling hole of a former junction of the aft fuselage, and corrective action, if necessary. This AD also provides for optional terminating action for the repetitive inspections. This proposal is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by the proposed AD are intended to prevent reduced structural integrity of the aft fuselage caused by fatigue cracking of the former junction at frame 68.

DATES: Comments must be received by May 20, 1998.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 97–NM–250–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

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

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 97–NM–250–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 97–NM–250–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, notified the FAA that an unsafe condition may exist on certain Airbus Model A320 series airplanes. The DGAC advises that it has received a report indicating that, during fatigue tests on a Model A320 test article, at 85,734 simulated flights, four cracks developed in the fastener holes of the former junction at frame 68. Such fatigue cracking, if not detected and corrected in a timely manner, could result in reduced structural integrity of the aft fuselage of the airplane.

Explanation of Relevant Service Information

Airbus has issued Service Bulletin A320–53–1089, dated November 22, 1995, which describes procedures for performing a rotating probe inspection of the fastener holes and/or the adjacent tooling hole of the former junction at frame 68, as applicable (depending upon the configuration of the airplane), and follow-on repetitive inspections, if necessary.

Airbus also has issued Service Bulletin A320–53–1090, dated November 22, 1995, which describes procedures for cold working the fastener holes and/or adjacent tooling hole (Modifications 21780 and 21781), which would eliminate the need for the repetitive inspections specified in Airbus Service Bulletin A320–53–1089.

The DGAC classified Airbus Service Bulletin A320–53–1089 as mandatory and issued French airworthiness directive 96–298–093(B)R1, dated January 29, 1997, in order to assure the continued airworthiness of these airplanes in France. (The DGAC approved Airbus Service Bulletin A320–53–1090.)

FAA's Conclusions

This airplane model is manufactured in France and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral

airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require accomplishment of the actions specified in Airbus Service Bulletin A320–53–1089, described previously; except that the repair of any crack would be required to be accomplished in accordance with a method approved by the FAA. This proposed AD also would provide for optional terminating action for the repetitive inspections required by this proposed AD.

Operators should note that, in consonance with the findings of the DGAC, the FAA has determined that the repetitive inspections proposed by this AD can be allowed to continue in lieu of accomplishment of a terminating action. In making this determination, the FAA considers that, in this case, long-term continued operational safety will be adequately assured by accomplishing the repetitive inspections to detect cracking before it represents a hazard to the airplane.

Cost Impact

The FAA estimates that 10 Airbus Model A320 series airplanes of U.S. registry would be affected by this proposed AD.

Should an operator be required to accomplish the proposed inspection of the fastener holes and the adjacent tooling hole, it would take approximately 8 work hours per airplane to accomplish this proposed inspection, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of this inspection proposed by this AD on U.S. operators is estimated to be $480 per airplane, per inspection cycle.

Should an operator be required to accomplish the proposed inspection of only the tooling hole, it would take approximately 3 work hours per airplane to accomplish this proposed inspection, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of this inspection proposed by this AD on U.S. operators is estimated to be $180 per airplane, per inspection cycle.

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

Should an operator elect to accomplish the optional terminating action specified in this proposed AD, it would take approximately 9 work hours to cold work the fastener holes and tooling hole, or 3 work hours to cold work (only) the tooling hole. The average labor rate is $60 per work hour. Based on these figures, the cost impact of the optional terminating action would be $540 per airplane for cold working the fastener hole and tooling holes, or $180 per airplane for cold working (only) the tooling hole.

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Airbus Industrie: Docket 97–NM–250–AD.

Applicability: Model A320 series airplanes, as listed in Airbus Service Bulletins A320–53–1089 and A320–53–1090, both dated November 22, 1995; on which Airbus Modifications 21780 and 21781 (reference Airbus Service Bulletin A320–53–1090) have not been installed; certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

To detect and correct fatigue cracking of the former junction at frame 68, which could result in reduced structural integrity of the aft fuselage, accomplish the following:

(a) Prior to the accumulation of 20,000 total flight cycles, or within 500 flight cycles after the effective date of this AD, whichever occurs later, perform a rotating probe inspection for fatigue cracking of the fastener holes and/or the adjacent tooling hole, as applicable, of the right- and left-hand former junctions at frame 68, in accordance with Airbus Service Bulletin A320–53–1089, dated November 22, 1995.

(1) If no crack is detected, accomplish either paragraph (a)(1)(i) or (a)(1)(ii) of this AD.

(i) Repeat the inspection thereafter at intervals not to exceed 20,000 flight cycles. Or

(ii) Prior to further flight following the accomplishment of the inspection required by paragraph (a) of this AD, cold work the fastener holes and/or the adjacent tooling hole of the right- and left-hand former junctions at frame 68, as applicable, in accordance with Airbus Service Bulletin A320–53–1090, dated November 22, 1995. Accomplishment of this cold working constitutes terminating action for the repetitive inspections required by this AD.

(2) If any crack is detected, prior to further flight, repair it in accordance with a method approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate.

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

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

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

Note 3: The subject of this AD is addressed in French airworthiness directive 96–298–093(B)R1, dated January 29, 1997.

Issued in Renton, Washington, on April 7, 1998.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–9757 Filed 4–17–98; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–NM–06–AD]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model DC–9–10, –20, –30, –40, and –50 Series Airplanes, and C–9 (Military) Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain McDonnell Douglas Model DC–9–10, –20, –30, –40, and –50 series airplanes, and C–9 (military) airplanes. This proposal would require a one-time visual inspection to determine if the doorstops and corners of the doorjamb of the forward passenger door have been modified, various follow-on repetitive inspections, and modification, if necessary. This proposal is prompted by reports of fatigue cracks found in the fuselage skin and doubler at the corners and doorstops of the doorjamb of the forward passenger door. The actions specified by the proposed AD are intended to detect and correct such fatigue cracking, which could result in rapid decompression of the fuselage and consequent reduced structural integrity of the airplane.

DATES: Comments must be received by June 4, 1998.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 98–NM–06–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from The Boeing Company, Douglas Products Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Technical Publications Business Administration, Dept. C1–L51 (2–60). This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California.

FOR FURTHER INFORMATION CONTACT: Wahib Mina, Aerospace Engineer, Airframe Branch, ANM–120L, FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5324; fax (562) 627–5210.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 98–NM–06–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 98–NM–06-AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The FAA has received reports of fatigue cracks in the fuselage skin and doubler at the corners and doorstops of the doorjamb of the forward passenger door on Model DC–9 series airplanes. These cracks were discovered during inspections conducted as part of the Supplemental Inspection Document (SID) program, required by AD 96–13–03, amendment 39–9671 (61 FR 31009, June 19, 1996). Investigation revealed that such cracking was caused by fatigue-related stress. Fatigue cracking in the fuselage skin or doublers at the corners and doorstops of the doorjamb of the forward passenger door, if not detected and corrected, could result in rapid decompression of the fuselage and consequent reduced structural integrity of the airplane.

Explanation of Relevant Service Information

The FAA has reviewed and approved McDonnell Douglas Service Bulletin DC9–53–280, dated December 1, 1997. The service bulletin describes the following procedures:

1. Performing a one-time visual inspection to determine if the doorstops and corners of the forward passenger door doorjamb have been modified;

2. For certain airplanes: Performing a low frequency eddy current (LFEC) or x-ray inspection to detect cracks at all corners and doorstops of the doorjamb of the forward passenger door;

3. For certain other airplanes: Performing a high frequency eddy current (HFEC) inspection to detect cracks on the skin adjacent to the modification;

4. Conducting repetitive inspections, or modifying the doorstops and corners of the doorjamb of the forward passenger door, and performing follow-on HFEC inspections, if no cracking is detected;

5. Performing repetitive HFEC inspections to detect cracks on the skin adjacent to any doorstop or corner that has been modified; and

6. Modifying any crack that is found to be 0.5 inches or less in length at all doorstops and corners that have not been modified, and performing follow-on repetitive HFEC inspections.

Accomplishment of the modification will minimize the possibility of fatigue cracks in the fuselage skin and doubler.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require a one-time visual inspection to determine if the doorstops and corners of the doorjamb of the forward passenger door have been modified, various follow-on repetitive inspections, and modification, if necessary. The one-time visual inspection, follow-on repetitive inspections, and modification would be required to be accomplished in accordance with the service bulletin described previously.

Difference Between the Service Bulletin and This Proposed AD

Operators should note that, although the service bulletin specifies that the manufacturer must be contacted for disposition of certain conditions, this proposal would require the repair of those conditions to be accomplished in accordance with a method approved by the FAA.

Cost Impact

There are approximately 1,001 airplanes of the affected design in the worldwide fleet. The FAA estimates that 656 airplanes of U.S. registry would be affected by this proposed AD, and that it would take approximately 1 work hour per airplane to accomplish the proposed visual inspection, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the visual inspection proposed by this AD on U.S. operators is estimated to be $39,360 or $60 per airplane.

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

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

Should an operator be required to accomplish the proposed modification, it would take approximately 30 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Required parts would cost approximately between $490 and $1,775 per airplane, depending on the service kit purchased. Based on these figures, the cost impact of the modification proposed by this AD on U.S. operators is estimated to be between $2,290 and $3,575 per airplane.

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

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

McDonnell Douglas: Docket 98–NM–06–AD.

Applicability: Model DC–9–10, –20, –30, –40, and –50 series airplanes, and C–9 (military) airplanes, as listed in McDonnell Douglas Service Bulletin DC9–53–280, dated December 1, 1997; certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

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

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

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

Note 4: This AD is related to AD 96–13–03, amendment 39–9671, (61 FR 31009, June 19, 1996), and will affect Principal Structural Element (PSE) 53.09.031 of the DC–9 Supplemental Inspection Document (SID).

(a) Prior to the accumulation of 48,000 total landings, or within 3,575 landings after the effective date of this AD, whichever occurs later, perform a one-time visual inspection to determine if the doorstops and corners of the forward passenger door doorjamb have been modified. Perform the inspection in accordance with McDonnell Douglas Service Bulletin DC9–53–280, dated December 1, 1997.

(b) For airplanes identified as Group 1 in McDonnell Douglas Service Bulletin DC9–53–280, dated December 1, 1997: If the visual inspection required by paragraph (a) of this AD reveals that the doorstops and corners of the forward passenger door doorjamb *have*

not been modified, prior to further flight, perform a low frequency eddy current (LFEC) or x-ray inspection to detect cracks at all corners and doorstops of the forward passenger door doorjamb, in accordance with McDonnell Douglas Service Bulletin DC9–53–280, dated December 1, 1997.

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

(i) *Option 1.* Repeat the LFEC inspection required by this paragraph thereafter at intervals not to exceed 3,575 landings, or the x-ray inspection required by this paragraph thereafter at intervals not to exceed 3,075 landings; or

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

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

(B) If any crack is detected on the skin adjacent to the modification during any HFEC inspection required by paragraph (b)(1)(ii) of this AD, prior to further flight, repair it in accordance with a method approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate.

(2) Group 1, Condition 2. If any crack is found during any LFEC or x-ray inspection required by paragraph (b) of this AD, and the crack is 0.50 inch or less in length: Prior to further flight, modify the doorstops and corners of the forward passenger door doorjamb in accordance with the service bulletin. Prior to the accumulation of 28,000 landings after accomplishment of the modification, perform a HFEC inspection to detect cracks on the skin adjacent to the modification, in accordance with the service bulletin.

(i) If no crack is detected on the skin adjacent to the modification during any HFEC inspection required by paragraph (b)(2) of this AD, repeat the HFEC inspection thereafter at intervals not to exceed 20,000 landings.

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

(3) Group 1, Condition 3. If any crack is found during any LFEC or x-ray inspection required by paragraph (b) of this AD, and the crack is greater than 0.5 inch in length: Prior to further flight, repair it in accordance with a method approved by the Manager, Los Angeles ACO.

(c) Group 2, Condition 1. For airplanes identified as Group 2 in McDonnell Douglas Service Bulletin DC–9–53–280, dated December 1, 1997: If the visual inspection required by paragraph (a) of this AD reveals that the doorstops and corners of the forward passenger door doorjamb have been modified previously in accordance with the McDonnell Douglas DC–9 Structural Repair Manual (SRM), using a steel doubler, accomplish either paragraph (c)(1) or (c)(2) of this AD in accordance with McDonnell Douglas Service Bulletin DC–9–53–280, dated December 1, 1997.

(1) *Option 1.* Prior to the accumulation of 28,000 landings after accomplishment of the modification, or within 3,000 landings after the effective date of this AD, whichever occurs later, perform a HFEC inspection to detect cracks on the skin adjacent to the modification, in accordance with the service bulletin.

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

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

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

(i) If no crack is detected on the skin adjacent to the modification during any HFEC inspection required by paragraph (c)(2) of this AD, repeat the HFEC inspection thereafter at intervals not to exceed 20,000 landings.

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

(d) Group 2, Condition 2. For airplanes identified as Group 2 in McDonnell Douglas Service Bulletin DC9–53–280, dated December 1, 1997: If the visual inspection required by paragraph (a) of this AD reveals that the doorstops and corners of the forward passenger door doorjamb *have been modified* previously in accordance with McDonnell Douglas DC–9 SRM or Service Rework Drawing, using an aluminum doubler, prior to the accumulation of 28,000 landings after the accomplishment of the modification, or within 3,000 landings after the effective date of this AD, whichever occurs later, perform a HFEC inspection to detect cracks on the skin adjacent to the modification, in accordance with McDonnell Douglas Service Bulletin DC9–53–280, dated December 1, 1997

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

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

(e) Group 2, Condition 3. For airplanes identified as Group 2 in McDonnell Douglas Service Bulletin DC9–53–280, dated December 1, 1997: If the visual inspection required by paragraph (a) of this AD reveals that the doorstops and corners of the forward passenger door doorjamb *have been modified previously*, but not in accordance with McDonnell Douglas DC9 SRM or the Service Rework Drawing, prior to further flight, repair it in accordance with a method approved by the Manager, Los Angeles ACO.

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

Note 5: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

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

Issued in Renton, Washington, on April 13, 1998.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–10277 Filed 4–17–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–NM–74–AD]

RIN 2120–AA64

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

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Airbus Model A300 series airplanes and all Model A310 and A300–600 series airplanes. This proposal would require repetitive

inspections for wear damage of the aft attachment fittings of the articulated seats and dummy tracks in the passenger compartment; and repair, if necessary. This proposal is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by the proposed AD are intended to detect and correct wear damage of the aft attachment fittings of the articulated seats and dummy tracks. This condition, if not detected and corrected, could cause the floor panels to sag and result in failure of flight control systems and consequent reduced controllability of the airplane.

DATES: Comments must be received by May 20, 1998.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 98–NM–74–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

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

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 98–NM–74–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 98-NM–74–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, notified the FAA that an unsafe condition may exist on certain Airbus Model A300 series airplanes, and all Model A310 and A300–600 series airplanes. The DGAC advises that it has received reports indicating that, on in-service airplanes, wear damage was found between frames 38.2 and 40 and between frames 54 and 54.2 on the aft attachment fittings of the articulated seats and dummy tracks in the passenger compartment. Investigation has revealed that, under certain load conditions, such as take-off and landing, the sliders of the articulated seats may cause excessive wear of the dummy track slot contact surface. This excessive wear restricts the sliding movement of the articulated seats and can lead to cracking and rupture of the attachment fitting. This condition, if not detected and corrected, could cause the floor panels to sag and result in failure of flight control systems and consequent reduced controllability of the airplane.

Explanation of Relevant Service Information

Airbus has issued Service Bulletins A300–53–0329, Revision 01 (for Model A300); A300–53–6105, Revision 01 (for Model A300–600); and A310–53–2101, Revision 01 (for Model A310); all dated October 17, 1997. These service bulletins describe procedures for repetitive detailed visual inspections for wear damage of the aft attachment fittings of the articulated seats and dummy tracks between frames 38.2 and 40 and between frames 54 and 54.2 in the passenger compartment; and repair, if necessary. Accomplishment of the actions specified in the service bulletins is intended to adequately address the identified unsafe condition. The DGAC classified these service bulletins as mandatory and issued French airworthiness directive 97–116–222(B), dated May 21, 1997, in order to assure the continued airworthiness of these airplanes in France.

FAA's Conclusions

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

Explanation of Requirements of Proposed Rule

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

Differences Between Proposed Rule and Service Bulletin

Operators should note that, unlike the procedures described in Airbus Service Bulletins A300–53–0329, Revision 01 (for Model A300); Airbus A300–53–6105, Revision 01 (for Model A300–600), and Airbus A310–53–2101, Revision 01 (for Model A310), all dated October 17, 1997, this proposed AD would not permit further flight if wear damage is detected on the aft attachment fittings on the articulated seats and dummy tracks in the passenger compartment. The FAA has determined that, because of the safety implications and consequences associated with such wear damage, any subject attachment fitting that is found to exhibit wear damage must be repaired prior to further flight.

In addition, operators should note that, although the referenced service bulletins specify that the manufacturer may be contacted for disposition of certain repair conditions, this proposal would require the repair of those conditions to be accomplished in

accordance with a method approved by the FAA.

Cost Impact

The FAA estimates that 126 airplanes of U.S. registry would be affected by this proposed AD. It would take approximately 48 work hours per airplane to accomplish the proposed inspection, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $362,880, or $2,880 per airplane, per inspection cycle.

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

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Airbus Industrie: Docket 98–NM–74–AD.

Applicability: Model A300 series airplanes on which Airbus Modification 3599 or 3135 (reference Airbus Service Bulletin A300–53–0188) has been accomplished, and all Model A310 and A300–600 series airplanes; certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

To detect and correct wear damage of the aft attachment fittings of the articulated seats and dummy tracks in the passenger compartment, which could cause the floor panels to sag and result in failure of flight control systems and consequent reduced controllability of the airplane, accomplish the following:

(a) Perform a detailed visual inspection for wear damage of the aft attachment fittings of the articulated seats and dummy tracks in the passenger compartment, in accordance with Airbus Service Bulletins A300–53–0329, Revision 01 (for Airbus Model A300 series airplanes); A300–53–6105, Revision 01 (for Airbus Model A300–600 series airplanes); or A310–53–2101, Revision 01 (for Airbus Model A310 series airplanes), all dated October 17, 1997; at the applicable time specified in paragraph (a)(1) or (a)(2) of this AD.

(1) For airplanes that have accumulated less than 12,000 total flight cycles as of the effective date of this AD: Inspect prior to the accumulation of 6,000 total flight cycles, or within 18 months after the effective date of this AD, whichever occurs later.

(2) For airplanes that have accumulated 12,000 or more total flight cycles as of the effective date of this AD: Inspect within 12 months after the effective date of this AD.

(b) If no wear damage is detected during the inspection required by paragraph (a) of this AD, repeat the detailed visual inspection thereafter at intervals not to exceed 6,000 flight cycles.

(c) If any wear damage measuring 2 mm (0.078 in.) or less is detected during the inspection required by paragraph (a) of this AD, prior to further flight, repair in accordance with Airbus Service Bulletins A300–53–0329, Revision 01 (for Airbus Model A300 series airplanes); A300–53–6105, Revision 01 (for Airbus Model A300–600 series airplanes); or A310–53–2101, Revision 01 (for Airbus Model A310 series airplanes); all dated October 17, 1997. Repeat the detailed visual inspection thereafter at intervals not to exceed 6,000 flight cycles.

(d) If any wear damage measuring more than 2 mm (0.078 in.) is detected during the inspection required by paragraph (a) of this AD, prior to further flight, repair in accordance with a method approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate. Repeat the detailed visual inspection thereafter at intervals not to exceed 6,000 flight cycles.

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

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

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

Note 3: The subject of this AD is addressed in French airworthiness directive 97–116–222(B), dated May 21, 1997.

Issued in Renton, Washington, on April 13, 1998.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–10279 Filed 4–17–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–NM–25–AD]

RIN 2120–AA64

Airworthiness Directives; Dassault Model Mystere-Falcon 200, Fan Jet Falcon, and Mystere-Falcon 20 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness

directive (AD) that is applicable to all Dassault Model Mystere-Falcon 200, Fan Jet Falcon, and Mystere-Falcon 20 series airplanes. This proposal would require repetitive inspections to detect cracks at the attaching holes of the wing-to-fuselage fairings and to ensure tightness of the attaching screws; and repair of any discrepancy. This proposal also would require installation of cupwashers under the vertical seams of the upper fairings. This proposal is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by the proposed AD are intended to prevent loss of the wing-to-fuselage upper fairings during flight, which could result in the fairings impacting the engines or tail sections, and consequent reduced controllability of the airplane.

DATES: Comments must be received by May 20, 1998.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 98–NM–25–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Dassault Falcon Jet, P.O. Box 2000, South Hackensack, New Jersey 07606. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

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

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 98–NM–25–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 98–NM–25–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, notified the FAA that an unsafe condition may exist on all Dassault Model Mystere-Falcon 200, Fan Jet Falcon, and Mystere-Falcon 20 series airplanes. The DGAC advises that it has received reports of loss of wing-to-fuselage upper fairings. The loss of these fairings could be due to cracks and/or incorrectly tightened fasteners. These conditions, if not corrected, could result in the fairings impacting the engines or tail sections, and consequent reduced controllability of the airplane.

Explanation of Relevant Service Information

Dassault Aviation has issued Fan Jet Falcon Dassault Aviation Maintenance Manual Phase 34, dated June 1997, including Chapter 53–50–0, dated May 1996 (for Model Fan Jet Falcon and Mystere-Falcon 20 series airplanes), and Mystere-Falcon 200 Dassault Aviation Maintenance Manual, Revision 12, dated April 30, 1996, including Chapter 53, Procedure 731–3 (for Model Mystere-Falcon 200 series airplanes), which describe procedures for repetitive inspections to detect cracks at the attaching holes of the wing-to-fuselage fairings and to ensure tightness of the attaching screws; and repair of certain discrepancies. These documents also describe procedures for installation of cupwashers under the vertical seams of the upper fairings. The DGAC classified these documents as mandatory and issued French airworthiness directives 96–092–021(B), dated April 24, 1996, and 96–246–022(B), dated November 6, 1996, in order to assure the continued airworthiness of these airplanes in France.

FAA's Conclusions

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

Explanation of Requirements of Proposed Rule

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

Differences Between Proposed Rule and Service Information

Operators should note that, although the service information described previously does not specify appropriate procedures for disposition of certain repair conditions, this proposal would require the repair of those conditions to be accomplished in accordance with a method approved by the FAA.

Cost Impact

The FAA estimates that 239 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 2 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $28,680, or $120 per airplane, per inspection cycle.

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

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Dassault Aviation: Docket 98–NM–25–AD.

Applicability: All Model Mystere-Falcon 200, Fan Jet Falcon, and Mystere-Falcon 20 series airplanes, certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent loss of the wing-to-fuselage upper fairings during flight, which could result in the fairings impacting the engines or tail sections, and consequent reduced controllability of the airplane, accomplish the following:

(a) Within 7 months or 330 flight hours after the effective date of this AD, whichever occurs first, accomplish the requirements of paragraphs (a)(1) and (a)(2) of this AD in accordance with Chapter 53–50–0, dated May 1996, of Fan Jet Falcon Dassault Aviation Maintenance Manual Phase 34, dated June 1997, (for Model Fan Jet Falcon and Mystere-Falcon 20 series airplanes), or Chapter 53, Procedure 731–3 of Mystere-Falcon 200 Dassault Aviation Maintenance Manual, Revision 12, dated April 30, 1996 (for Model Mystere-Falcon 200 series airplanes); as applicable.

(1) Perform an inspection to detect cracks at the attaching holes of the wing-to-fuselage fairings and to ensure tightness of the screws. If any discrepancy is found, prior to further flight, repair. If a repair is not specified in the applicable maintenance manual, prior to further flight, repair in accordance with a method approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate. Thereafter, repeat the inspection at intervals not to exceed 6 months or 300 flight hours, whichever occurs first.

(2) Install cupwashers under the vertical seams of the upper fairings.

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

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

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

Note 3: The subject of this AD is addressed in French airworthiness directives 96–092–021(B), dated April 24, 1996, and 96–246–022(B), dated November 6, 1996.

Issued in Renton, Washington, on April 13, 1998.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–10278 Filed 4–17–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98–AAL–7]

Proposed Revision of Class E Airspace; Barrow, AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This action revises Class E airspace at Barrow, AK. The establishment of Global Positioning System (GPS) instrument approaches to runway (RWY) 6 and RWY 24 at Wiley Post-Will Rogers Memorial Airport, Barrow, AK, has made this action necessary. Adoption of this proposal would result in the provision of adequate controlled airspace for Instrument Flight Rules (IFR) operations at Barrow, AK.

DATES: Comments must be received on or before June 4, 1998.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, Operations Branch, AAL–530, Docket No. 98–AAL–7, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587.

The official docket may be examined in the Office of the Regional Counsel for the Alaskan Region at the same address.

An informal docket may also be examined during normal business hours in the Office of the Manager, Operations Branch, Air Traffic Division, at the address shown above and on the Internet at Alaskan Region's homepage at http://www.alaska.faa.gov/at or at address http://162.58.28.41/at.

FOR FURTHER INFORMATION CONTACT: Robert van Haastert, Operations Branch, AAL–538, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587; telephone number (907) 271–5863; fax: (907) 271–2850; email: Robert.van.Haastert@faa.dot.gov. Internet address: http://www.alaska.faa.gov/at or at address http://162.58.28.41/at.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments

are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Airspace Docket No. 98–AAL–7.'' The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Operations Branch, Air Traffic Division, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Operations Branch, AAL–530, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A which describes the application procedure.

The Proposal

The FAA proposes to amend 14 CFR part 71 by revising the Class E airspace at Barrow, AK, due to the establishment of GPS instrument approaches to RWY 6 and RWY 24. The area would be depicted on aeronautical charts for pilot reference. The intended effect of this proposal is to provide adequate controlled airspace for IFR operations at Wiley Post-Will Rogers Memorial Airport, Barrow, AK.

The coordinates for this airspace docket are based on North American Datum 83. The Class E airspace areas designated as 700/1200 foot transition areas are published in paragraph 6005 of FAA Order 7400.9E, Airspace Designations and Reporting Points, dated September 10, 1997, and effective September 16, 1997, which is incorporated by reference in 14 CFR 71.1 (62 FR 52491; October 8, 1997). The Class E airspace designation listed in this document would be revised and published subsequently in the Order.

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

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

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

1. The authority citation for 14 CFR part 71 continues to read as follows:

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9E, *Airspace Designations and Reporting Points,* dated September 10, 1997, and effective September 16, 1997, is to be amended as follows:

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

* * * * *

AAL AK E5 Barrow, AK

Barrow/Wiley Post—Will Rogers Memorial Airport, AK
(lat. 71° 17′ 08″ N, long. 156° 45′ 58″ W)
Point Barrow LRRS Airport
(lat. 71° 20′ 20″ N, long. 156° 37′ 58″ W)
Barrow VORTAC
(lat. 71° 16′ 24″ N, long. 156° 47′ 18″ W)
Barrow Localizer
(lat. 71° 17′ 08″ N, long. 156° 44′ 07″ W)

That airspace extending upward from 700 feet above the surface within a 6.6-mile radius of Barrow/Wiley Post—Will Rogers Memorial Airport and within 4 miles each side of the Barrow Localizer back course extending from the 6.6-mile radius to 14.6 miles east of the airport and within a 6.5-mile radius of the Point Barrow LRRS Airport; and that airspace extending upward from 1,200 feet above the surface within a 77-mile radius of the airport extending clockwise from the Barrow VORTAC 101° radial to the 240° radial and within the area bounded by a line beginning at the Barrow VORTAC 240° radial 20 miles west to 71°13′ N 158° W to 71°23′ N 157° 48′ W to the intersection of the Barrow VORTAC 345° radial and the 6.5-mile radius of the Point Barrow LRRS Airport.

* * * * *

Issued in Anchorage, AK, on April 10, 1998.

Willis C. Nelson,

Manager, Air Traffic Division, Alaskan Region.

[FR Doc. 98–10308 Filed 4–17–98; 8:45 am]

BILLING CODE 4910–13–P

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 240

[Release No. 34–39859; File No. S7–8–98]

RIN 3235–AH42

Year 2000 Readiness Reports To Be Made by Transfer Agents

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rule; extension of the comment period.

SUMMARY: The Securities and Exchange Commission is extending from April 13, 1998, until April 27, 1998, the comment period for Securities Exchange Act Release No. 39726 (March 5, 1998), 63 FR 12062 (March 12, 1998). In the release the Commission proposed a rule that would require non-bank transfer agents to provide at least one report to the Commission regarding its preparations for Year 2000 problems.

DATES: Comments should be received on or before April 27, 1998.

ADDRESSES: Comments should be submitted in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission (''Commission''), 450 Fifth Street, N.W., Washington, D.C. 20549.

Comments also may be submitted electronically at the following E-mail address: rule-comments@sec.gov. Comment letters should refer to File No. S7–8–98; this file number should be included on the subject line if E-mail is used. All comments received will be available for public inspection and copying at the Commission's Public Reference Room, 450 Fifth Street, N.W., Washington, D.C. 20549. Electronically submitted comment letters will be posted on the Commission's Internet web site (http://www.sec.gov).

FOR FURTHER INFORMATION CONTACT: Jerry W. Carpenter, Assistant Director, 202/942–4187; Thomas C. Etter, Jr., Special Counsel, 202/942–0178; or Jeffrey S. Mooney, Special Counsel, 202/942–4174, Division of Market Regulation, Securities and Exchange Commission, 450 Fifth Street, N.W., Mail Stop 10–1, Washington, D.C. 20549.

SUPPLEMENTARY INFORMATION: On March 5, 1998, the Commission proposed temporary Rule 17Ad-18 under the Securities Exchange Act of 1934. Rule 17Ad-18 would require all non-bank registered transfer agents to file with the Commission at least one report regarding its Year 2000 readiness. The initial report would be due no later than 45 days after the Commission adopts this rule. The follow-up reports, which would be due on August 31, 1998, and on August 31, 1999, would include an attestation by an independent public accountant that would give the independent public accountant's opinion whether there is a reasonable basis for the transfer agent's assertions in the reports. Additionally, the release contains a Commission advisory notice on its transfer agent record retention and recordkeeping requirements relating to the Year 2000.

The Commission has recently received requests from interested persons to extend the comment period for this release. The Commission believes that extending the comment period is appropriate in order to give the public additional time to comment on the matters the release addresses. Therefore, the comment period is extended until April 27, 1998.

By the Commission.

Dated: April 14, 1998.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–10336 Filed 4–17–98; 8:45 am]

BILLING CODE 8010–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 610

[Docket No. 97N–0449]

RIN 0910–AB51

Revisions to the General Safety Requirements for Biological Products; Companion Document to Direct Final Rule

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is proposing to amend the biologics regulations by adding cellular therapy products to the list of products exempted from the general safety test (GST) and by adding an administrative procedure for obtaining exemptions from the GST requirements. This proposed rule is a companion document to the direct final rule published elsewhere in this issue of the **Federal Register**. FDA is taking this action because the GST may not be relevant or necessary for many types of biological products, including cellular therapy products, currently in various stages of development.

DATES: Comments must be received on July 6, 1998. Submit written comments on the information collection provisions by June 19, 1998.

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

FOR FURTHER INFORMATION CONTACT: Dano B. Murphy, Center for Biologics Evaluation and Research (HFM–630), Food and Drug Administration, 1401 Rockville Pike, suite 200N, Rockville, MD 20852–1448, 301–594–3074.

SUPPLEMENTARY INFORMATION:

I. Background

This proposed rule is a companion to the direct final rule published in the final rules section of this issue of the **Federal Register**. This companion proposed rule will provide the procedural framework to finalize the rule in the event the direct final rule receives any significant adverse comment and is withdrawn. The comment period for this companion proposed rule runs concurrently with the comment period for the direct final rule. Any comments received under this companion proposed rule will also be considered as comments regarding the direct final rule. FDA is publishing the direct final rule because the rule contains noncontroversial changes, and FDA anticipates that it will receive no significant adverse comment.

A significant adverse comment is defined as a comment that 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. Comments that are frivolous, insubstantial, or outside the scope of the rule will not be considered significant or adverse under this procedure. For example, a comment requesting inclusion of additional product classes in the exceptions paragraph of the GST (§ 610.11(g)) will not be considered a significant adverse comment because it is outside the scope of this rule. 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 additional change. In addition, if a significant adverse comment applies to part of a rule and that part can be severed form the remainder of the rule, FDA may adopt as final those parts of the rule that are not subject of a significant adverse comment.

A detailed rationale for the rule is set forth in the preamble to the direct final rule and in section I of this document. If no significant adverse comment is received in response to the direct final rule, no further action will be taken related to this proposed rule. Instead, FDA will publish a confirmation document within 30 days after the comment period ends confirming that the direct final rule will go into effect on September 2, 1998. Additional information about FDA's direct final rulemaking procedures is set forth in a guidance published in the **Federal Register** of November 21, 1997 (62 FR 62466).

If FDA receives any significant adverse comment regarding this rule, FDA will publish a document withdrawing the direct final rule within 30 days after the comment period ends. FDA then will proceed to respond to all of the comments received regarding this rule and, if appropriate, the rule will be finalized under this proposed rule using usual notice-and-comment procedures.

Requests to add other products to the named exceptions will be considered separately by FDA. If FDA agrees that other products should be excepted from the GST, it will propose those exceptions under other independent rulemaking actions. Any parties interested in commenting on this document should do so at this time. This action is part of FDA's continuing effort to achieve the objectives of the President's ''Reinventing Government'' initiative, and is intended to reduce the burden of unnecessary regulations on biological products without diminishing the protection of the public health.

Under § 610.11 (21 CFR 610.11), a test for general safety shall be performed on biological products intended for administration to humans. A GST is one of several tests in part 610, General Biological Product Standards (21 CFR part 610), that are intended to help ensure the safety, purity, and potency of biological products administered to humans. The test is used to detect extraneous toxic contaminants that may be present in a particular biological product. As outlined in § 610.11, an amount of the final container product is injected into the peritoneum of guinea pigs and mice. The GST is satisfactory when the criteria in § 610.11(d) are met, i.e., injected animals survive the test period, they do not exhibit an unexpected or non-specific response that may indicate a difference in quality of the product, and they weigh no less at the end of the test period than they did at the time of injection. Section 610.11(g) identifies the biological products for which the GST is not required.

The requirement for a GST was originally intended as a means by which harmful extraneous toxins could be detected that published in a document in the **Federal Register** of March 15, 1976 (41 FR 10888). The source of such toxins may be bacterial toxins that persist even after the bacteria producing the toxins had been removed by filtration or killed by sterilization, or formulation errors that result in harmful levels of certain substances, e.g., preservatives. The test continues to serve as a safety net to detect harmful contaminants that may enter or be introduced into the final container through undetected failures in the manufacture of biological products.

In the last 15 years, technological advances have increased the ability of manufacturers to control and analyze the manufacture of many biotechnology derived biological products. After more than a decade of experience with these products, FDA found that it could evaluate many aspects of a biological product's safety, purity, or potency with tests other than those prescribed in part 610. In response to these developments, FDA published in the **Federal Register** of May 14, 1996 (61 FR 24227), a final rule exempting certain biotechnology and synthetic biological products from, among other things, specified regulations applicable to biological products, including the GST (§ 601.2).

Recent scientific advances have dramatically increased the diversity of biological products regulated under section 351 of the Public Health Service Act (the PHS Act). In particular, cellular-based therapies intended for the diagnosis, cure, mitigation, treatment, or prevention of disease in man have been the subject of much biomedical research and are used with increasing frequency. Typically, cellular therapies use autologous or allogeneic cells, often lymphocyte subpopulations, but other cell types may be used, obtained from a donor and manipulated ex vivo to varying degrees before use in the recipient patient. The ex vivo manipulation may consist of, for example, growing a small number of cells to increase their number (cellular expansion), selective enrichment of a specific cell subpopulation, or the addition of specific cell factors or genetic sequences. A common characteristic of cellular therapies is the need for a relatively short turn-around time between first obtaining the cells and their final infusion as a cellular therapy product into the patient. In many cases, cells used in the final cellular therapeutic are obtained only hours before they must be used and turn-around times of several days or less are presently typical. A test, such as the GST, that requires 7 days to complete is not compatible with such products and such a requirement would make it impossible to use many of these products. Furthermore, because the procedures and materials used to produce cellular therapy products are stringently controlled and monitored, the likelihood of an extraneous toxic component contaminating a final product is greatly reduced.

In the **Federal Register** of June 3, 1994 (59 FR 28821 and 28822), FDA announced that the Center for Biologics Evaluation and Research (CBER) would review certain biologics regulations to identify regulations that are outdated, burdensome, inefficient, duplicative, or otherwise unsuitable or unnecessary. FDA included § 610.11 in the review. On January 26, 1995, FDA held a public meeting to discuss the retrospective review of regulations applicable to biological products and to provide a forum for the public to voice its comments regarding the retrospective review. At the meeting, only one comment addressed whether § 610.11 should be retained unchanged, modified, or deleted. The comment acknowledged the utility of the GST for products that have a high degree of intrinsic variability. However, despite its recognized value in some specific cases, the comment questioned the rationale for requiring the GST for all biological products intended for administration to humans. The comment noted that the amount of final container product administered to animals for the GST may not have any correlation with the human dose, that some biological products possess extensive documented histories of no GST failure, and that each run of the test requires the use of at least four animals. The comment suggested that FDA revise § 610.11 to grant exemptions from the GST when the test is unnecessary to evaluate the safety of a specific product.

FDA received several comments from the public regarding issues raised at the January 26, 1995, meeting. Two comments agreed with the suggestion made at the public meeting that § 610.11 be amended to include a provision that would allow certain products to be exempted from the GST upon approval of the Director, CBER. Another comment suggested that exemptions be permitted for appropriate biological products by the Director, CBER, after a suitable qualification period was met without any failure of the GST, such as 1 year of production or after 10 consecutive production lots pass the GST. The comment suggested that a demonstrated record of GST compliance also be supported by well-documented in-process safety controls, long-term compliance with current good manufacturing practices (CGMP) regulations (21 CFR parts 210 and 211), and the use of sophisticated analytical techniques capable of adequately characterizing the final product and validating its safety.

On March 17, 1997, FDA held a public meeting to discuss the agency's proposed approach to the regulation of human cellular and tissue-based products. The meeting was attended by FDA, members of industry, representatives from accrediting organizations, and interested members of the public. During the meeting, two attendees addressed the use of the GST with cellular therapy products. The comments regarded the 7-day incubation time of the test as an unworkable requirement for many cellular therapy products and suggested that such products be exempted from

the test, including allogeneic and autologous cell therapy products.

II. Highlights of the Proposed Rule

FDA agrees with the comments received that cellular therapy products should be exempt from the GST requirement. FDA is proposing this rule to expand the exceptions in § 610.11(g) to include ''cellular therapy products.'' In addition, FDA is adding an administrative procedure for manufacturers of other biological products to request and obtain exemptions from the GST. Many biological products are currently manufactured, or will be manufactured in the future, under highly controlled and rigorously monitored conditions. Therefore, under the amended rule, manufacturers of biological products that employ appropriate production controls and quality assurance safeguards would be permitted to apply for an exemption from the GST requirement. Such manufacturers will be required to provide supporting documentation to the Director, CBER, as to why a product should not be subject to the GST requirement. The request shall include an explanation of why the GST is unnecessary or cannot be performed due to the mode of administration, the method of preparation, or the special nature of the product and shall describe alternate procedures, if any, to be employed. The Director, CBER, may grant an exemption if she finds that the manufacturer's submission justifies an exemption.

The value of the GST as a final assay for the presence of extraneous toxins may be diminished for certain biological products, such as vaccines containing recombinant or purified protein antigens. Recombinant protein antigens are not produced from infectious bacteria or virus and antigens derived from infectious pathogens may undergo many production steps that kill or neutralize the pathogen or inactivate toxic materials. Therefore, for these kinds of products, the risk is extremely low that viable pathogenic or toxic materials will persist through production to the final filling. The effectiveness of such steps can be validated by specific in-process tests and controls which can be used to alert manufacturers to potential problems. To further reduce the possibility that an undetected extraneous toxin could contaminate the product just before or during the final fill stage, a manufacturer may use production facilities and final fill equipment that can detect or enable the detection of any loss in the integrity of the production and fill processes. In addition, a method of production and detailed product characterization able to meet requirements similar to those set out in § 601.2(c) could be used to demonstrate the safety, purity, and potency of a biological product without the use of the GST. Each manufacturer will be responsible for identifying the product or products that are produced in such a manner that makes the GST unnecessary to ensure the safety, purity, and potency of the biological product. Manufacturers wishing to obtain an exemption to the GST for a particular product would contact the appropriate product division of CBER for specific information regarding how to apply and what information should be included in the application or supplemental application.

III. Analysis of Impacts

A. Review Under Executive Order 12866 and the Regulatory Flexibility Act

FDA has examined the impact of the proposed rule under Executive Order 12866, the Regulatory Flexibility Act (5 U.S.C. 601–612), and the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impact; and equity). This proposed rule is consistent with the regulatory philosophy and principles identified in the Executive Order. The proposed rule is a significant regulatory action as defined by the Executive Order and is subject to review under the Executive Order because it deals with a novel policy issue.

In accordance with the principles of Executive Order 12866, the result of the proposed rule will be a substantial reduction in burdens on applicants filing for approval of certain biological products.

The Regulatory Flexibility Act requires agencies to analyze regulatory options that would minimize any significant impact of a rule on small business entities. Because, as stated previously, the overall result of the proposed rule will be a substantial reduction of the regulatory and reporting burdens, the agency certifies that the proposed rule will not have a significant negative economic impact on a substantial number of small entities. Therefore, under the Regulatory Flexibility Act, no further analysis is required. This proposed rule also does not trigger the requirement for a written statement under section 202(a) of the Unfunded Mandates Reform Act because it does not impose a mandate that results in an expenditure of $100 million or more by State, local, and tribal governments in the aggregate, or by the private sector, in any one year.

B. Environmental Impact

The agency has determined under 21 CFR 25.31(j) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

IV. The Paperwork Reduction Act of 1995

This proposed rule contains information collection provisions that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (the PRA) (44 U.S.C. 3501–3520). The title, description, and respondent description of the information collection provisions are shown below with an estimate of the annual reporting burden. Included in the estimate is the time for reviewing the instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing each collection of information.

FDA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Title: Requests for Exemptions from the General Safety Testing Requirements for Biological Products.

Description: FDA is proposing to revise the requirements for general safety testing (GST) set forth in § 610.11. The test serves as a safety net to detect harmful contaminants that may enter or be introduced into the final container through undetected failures in the manufacture of biological products. The revision would add ''cellular therapy products'' to the list of products excepted from the GST, and add an administrative procedure for obtaining

exemptions from the GST requirements for other biological products. FDA is proposing the new administrative procedure because the GST may not be feasible or appropriate for some biological products. FDA anticipates that manufacturers requesting exemptions would have a demonstrated record of GST compliance supported by long-term compliance with CGMP's, well-documented in-process safety controls, and use sophisticated analytical techniques to adequately characterize the final product and validate its safety. Manufacturers would submit their request and documentation to the Director, CBER, who may grant the exemption if it is determined that the manufacturer's submission justifies an exemption.

Description of Respondents: Manufacturers of biological products.

The proposed rule would require only those manufacturers requesting an exemption from the GST under § 610.11(g)(2) to submit additional information as part of a license application or supplement to an approved license application. Manufacturers of ''cellular therapy products'' would be excepted from the GST under § 610.11(g)(2) and thus, would not have to submit an exemption request. In fact, manufacturers of cellular therapy products would be relieved of significant burdens because they would no longer be required to perform the GST and report the results to FDA. FDA estimates that annually it will receive approximately 10 requests for administrative exemption from the GST under 21 CFR 610.11(g)(2). FDA estimates that 40 hours will be required for an applicant to complete and submit the appropriate information for the exemption request. Since that information is ordinarily compiled and organized by the manufacturer while performing the GST, FDA anticipates that the additional time needed to submit an exemption request will be minimal.

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

21 CFR Section	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
610.11(g)(2)	10	1	10	40	400
Total	10	1	10	40	400

[1]There are no capital costs or operating and maintenance costs associated with this collection of information.

For consistency with the direct final rule to which this proposed rule is a companion, FDA is following the PRA comment procedures for direct final rules in this proposed rule. As provided in 5 CFR 1320.5(c)(1), collection of information in a direct final is subject to the procedures set forth in 5 CFR 1320.10. Interested persons and organizations may submit comments on the information collection requirements of this direct final rule by June 19, 1998 to the Dockets Management Branch (address above).

At the close of the 60-day comment period, FDA will review the comments received, revise the information collection provisions as necessary, and submit these provisions to OMB for review. FDA will publish a notice in the **Federal Register** when the information collection provisions are submitted to OMB, and an opportunity for public comment to OMB will be provided at that time. Prior to the effective date of the direct 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.

V. Request for Comments

Interested persons may, on or before July 6, 1998, submit to the Docket Management Branch (address above) written comments regarding this proposal. This comment period runs concurrently with the comment period for the direct final rule. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday. All comments received will be considered as comments regarding this companion proposed rule and the direct final rule. In the event the direct final rule is withdrawn, all comments received regarding the direct final rule and this companion proposed rule, will be considered under this proposed rule.

List of Subjects in 21 CFR Part 610

Biologics, Labeling, Reporting and recordkeeping requirements.

Therefore under the Federal Food, Drug, and Cosmetic Act, the Public Health Service Act, and the authority delegated by the Commissioner of Food and Drugs, 21 CFR part 610 is amended as follows:

PART 610—GENERAL BIOLOGICAL PRODUCTS STANDARDS

1. The authority citation for 21 CFR part 610 continues to read as follows:

Authority: 21 U.S.C. 321, 351, 352, 353, 355, 360, 371; 42 U.S.C. 216, 262, 263, 263a, 264.

2. Section 610.11 is amended by revising paragraph (g) to read as follows:

§ 610.11 General safety.

* * * * *

(g) *Exceptions*—(1) The test prescribed in this section need not be performed for Whole Blood, Red Blood Cells, Cryoprecipitated AHF, Platelets, Plasma or Cellular Therapy Products.

(2) For products other than those identified in paragraph (g)(1) of this section, a manufacturer may request from the Director, CBER, an exemption from the general safety test. The manufacturer shall submit information as part of a license application submission or supplement to an approved license application establishing that because of the mode of administration, the method of preparation, or the special nature of the product a test of general safety is unnecessary to assure the safety, purity, and potency of the product or cannot be performed. The request shall include any alternate procedures, if any, to be performed. The Director, CBER, upon finding that the manufacturer's request justifies an exemption, may exempt the product from the general safety test subject to any condition necessary to assure the safety, purity, and potency of the product.

Dated: April 10, 1998.

William B. Schultz,

Deputy Commissioner for Policy.

[FR Doc. 98–10313 Filed 4–17–98; 8:45 am]

BILLING CODE 4160–01–F

OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION

29 CFR Part 2200

Rules of Procedure; Extension of Comment Period

AGENCY: Occupational Safety and Health Review Commission.

ACTION: Notice of proposed rulemaking; extension of time for comments.

SUMMARY: This document extends the time for filing comments to the Commission's proposed revision of its settlement rules to April 30, 1998. The proposed rule was published in the **Federal Register** on March 2, 1998.

DATES: Comments to the Commission's Notice of Proposed Rulemaking published at 63 FR 10166 should be received by April 30, 1998.

ADDRESSES: Comments to the Notice of Proposed Rulemaking should be sent to Earl R. Ohman, Jr., General Counsel, Occupational Safety and Health Review Commission, 1120 20th Street, NW, 9th Floor, Washington, DC 20036–3419.

FOR FURTHER INFORMATION CONTACT: Earl R. Ohman, Jr., General Counsel, Occupational Safety and Health Review Commission, 1120 20th Street, NW, 9th Floor, Washington, DC 20036–3419, telephone: 202–606–5410. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: On March 2, 1998, the Commission published in the **Federal Register**, 63 FR 10166, a notice of proposed rulemaking to amend the Commission's rule on settlements, 29 CFR 2200.109. In that notice, the Commission announced that all comments must be received by April 16, 1998. On April 9, the Commission received from the Office of the Solicitor of the Department of Labor, a request to extend the comment period an additional 14 days.

In his request, the Solicitor pointed out that the deadline for comments came during the Passover/Easter holiday season. It is the Commission's view that the public interest is best served by allowing all interested parties adequate time to prepare their comments to the proposal, particularly inasmuch as the Commission is unable to act on the proposal until it regains a quorum. Accordingly, the Commission extends the comment period for all interested parties until April 30, 1998.

Dated: April 13, 1998.

Earl R. Ohman, Jr.,

General Counsel.

[FR Doc. 98–10253 Filed 4–17–98; 8:45 am]

BILLING CODE 7600–01–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD01–97–131]

RIN 2115–AE47

Drawbridge Operation Regulations: Acushnet River, MA

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard is proposing to change the operating rules for the New Bedford Fairhaven (Rt–6) Bridge, mile 0.0, over the Acushnet River between New Bedford and Fairhaven, Massachusetts.

The bridge owner, Massachusetts Highway Department (MHD), has requested that the Coast Guard change the operating regulations as a result of comments received from the cities of New Bedford and Fairhaven regarding vehicular traffic delays from frequent bridge openings. Additionally, redundant language will be removed, and the times the draw opens will be combined for clarity and simplicity. An on call requirement for Christmas day is also being proposed as part of this action. It is expected that this proposed change to the regulations will help relieve the traffic during the peak traffic periods Monday through Friday, make the regulations clear and understandable as well as continue to provide for the needs of navigation.

DATES: Comments must reach the Coast Guard on or before June 19, 1998.

ADDRESSES: You may mail comments to Commander (obr), First Coast Guard District, 408 Atlantic Avenue, Boston, MA. 02110–3350, or deliver them to the same address between 7 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (617) 223–8364.

The District Commander maintains the public docket for this rulemaking. Comments and documents as indicated in this preamble will become part of this docket and will be available for inspection or copying at the above address, between 7 a.m. and 3 p.m. Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: John W. McDonald, Project Officer, First Coast Guard District, (617) 223–8364.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard encourages interested persons to participate in this matter by submitting written data, views, or arguments. Persons submitting comments should include their names and addresses, identify this rulemaking (CGD01–97–131) and specific section of this proposal to which their comments apply, and give reasons for each comment. Please submit two copies of all comments and attachments in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. Persons wanting acknowledgment of receipt of comments should enclose a stamped, self-addressed postcard or envelope.

The Coast Guard will consider all comments received during the comment period. It may change this proposal in response to comments received. The Coast Guard does not plan to hold a public hearing; however, persons may request a public hearing by writing to the Coast Guard at the address listed under **ADDRESSES**. The request should include the reasons why a hearing would be beneficial. If it is determined that the opportunity for oral presentations will aid this rulemaking, the Coast Guard will hold a public hearing at a time and place announced by a subsequent notice published in the **Federal Register.**

Background

The vertical clearance at the Route 6 Bridge at mean high water (MHW) is 6 feet and at mean low water (MLW) is 10 feet. The horizontal clearance is 95 feet in each channel of this swing bridge.

The Route 6 Bridge presently opens on the hour from 6 a.m. to 10 a.m., a quarter past the hour from 11:15 a.m. to 6:15 p.m., and at all other times on call. The draw also opens at any time for vessels with a draft exceeding 15 feet and for vessels owned or operated by the U.S. Government, state or local authorities. Each opening of the draw does not exceed 15 minutes except for vessels with drafts exceeding 15 feet or in extraordinary circumstances.

Discussion of Proposal

The bridge owner, MHD, has received comments from the cities of New Bedford and Fairhaven that the bridge is causing traffic delays and thus, effecting businesses along Route 6 on both sides of the waterway. The traffic counts submitted to the Coast Guard for review indicate that the heavy vehicular traffic periods are Monday through Friday during the morning and afternoon commuting hours. The comments received did however, indicate that the inbound commercial fishing vessels should be exempted from changes to the regulations that may restrict the openings of the bridge for marine traffic.

These changes to the regulations will require the bridge to open on signal on the hour from 6 a.m. to 7 p.m., except that from 7 a.m. to 9 a.m. and 4 p.m. to 7 p.m., Monday through Friday, the bridge need not open, except for inbound commercial fishing vessels on the hour. The bridge shall be opened at any time for vessels with a draft of 15 feet or greater, except during on call hours. An on call requirement for openings Christmas eve through Christmas day is being added as part of this proposal requiring that the draw will open as soon as possible but not longer than two hours after notice has been given by calling the number posted at the bridge.

The requirement in the regulations to open as soon as possible for U.S. Government and State of Massachusetts vessels is being removed since it is now listed under the general operating regulations in 33 CFR 117.31 for all bridges. The requirement to post the operating regulations is being removed since it is listed under 33 CFR 117.55 under the general operating regulations for all bridges.

The times when the bridge opens are being changed to on the hour eliminating the period 11:15 a.m. to 6:15 p.m. when the bridge opened at a quarter past the hour. The bridge opening times will all be on the hour for simplicity since there is no known reason to have different opening times. The requirement to not exceed 15 minutes is being eliminated from the regulations because the drawtenders open and close the bridge promptly or as soon as possible as a rule and should have the discretion to use their experience for safety and preservation of the mechanical components for the operating machinery of the bridge.

Regulatory Evaluation

This proposed rule is not a significant regulatory action under section 3(f) of Executive Order 12866, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. It has not been reviewed by the Office of Management and Budget under that Order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation, under paragraph 10e of the regulatory policies and procedures of DOT, is unnecessary. This conclusion is based on the fact that bridges must operate in accordance with the needs of navigation while providing for the reasonable needs of land transportation. This proposed rule adopts the operating hours which the Coast Guard believes to be appropriate based on the results of past experience and the bridge traffic counts reviewed by the Coast Guard. The Coast Guard believes this rule achieves the requirement of balancing the navigational rights of recreational boaters and the needs of land based transportation.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard considers whether this proposal will have a significant economic impact on a substantial number of small entities. ''Small entities'' include small businesses, not-for profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations less than 50,000. Therefore, for the reasons discussed in the Regulatory Evaluation section above, the Coast Guard certifies under section 605(b) that this proposed rule will not have a significant economic impact on a substantial number of small entities. If, however, you think that your business or organization qualifies as a small entity and that this proposed rule will have a significant economic impact on your business or organization, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and in what way and to what degree this rule will economically affect it.

Collection of Information

This proposed rule does not provide for a collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Federalism

The Coast Guard has analyzed this proposed rule in accordance with the principles and criteria contained in Executive Order 12612 and has determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard considered the environmental impact of this proposed rule and concluded that, under section 2.B.2.e.(34) of Commandant Instruction M16475.1B, as amended by 50 FR 38655, July 29, 1994, this proposed rule is categorically excluded from further environmental documentation because promulgation of changes to drawbridge regulations have been found not to have significant effect on the environment. A ''Categorical Exclusion Determination'' is available in the docket for inspection or copying where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 117

Bridges.

Proposed Regulation

For the reasons set out in the preamble, the Coast Guard proposes to amend 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05–1(g); section 117.255 also issued under the authority of Pub. L. 102–587, 106 Stat. 5039.

2. Section 117.585 is revised to read as follows:

§ 117.585 Acushnet River

(a) The New Bedford Fairhaven Route-6 Bridge, mile 0.0, shall open on signal on the hour from 6 a.m. to 7 p.m., except:

(1) From 7 a.m. to 9 a.m. and 4 p.m. to 7 p.m., Monday through Friday, the draw shall open on the hour for inbound commercial fishing vessels only.

(2) Except as noted in paragraph (c) of this section, the draw shall open on signal at any time for vessels with a draft exceeding 15 feet.

(b) From 7 p.m. through 6 a.m. the draw shall open on signal.

(c) From 6 p.m. on December 24th through midnight on December 25th, the draw shall open as soon as possible but not longer than two hours after notice has been given by calling the number posted at the bridge.

Dated: April 8, 1998.

R.M. Larrabee,

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

[FR Doc. 98–10272 Filed 4–17–98; 8:45 am]

BILLING CODE 4910–15–M

DEPARTMENT OF THE INTERIOR

National Park Service

36 CFR Part 7

RIN 1024–AC66

Kaloko-Honokohau National Historical Park, Hawaii Public Nudity

AGENCY: National Park Service, Interior.

ACTION: Proposed rule.

SUMMARY: The National Park Service (NPS) is proposing to prohibit public nudity within the boundaries of Kaloko-

Honokohau National Historical Park, Hawaii. The existing practice of recreational public nudity is in conflict with the enabling legislation of the park and the traditional values of native Hawaiian culture which the park was created to perpetuate and preserve.

DATES: Written comments will be accepted through June 19, 1998.

ADDRESSES: Comments should be addressed to: Superintendent, Kaloko-Honokohau National Historical Park, 734786 Kanalani St. # 14, Kailua-Kona, Hawaii 96745.

FOR FURTHER INFORMATION CONTACT: Bryan Harry, Superintendent, National Park Service, Pacific Island Support Office, 300 Ala Moana Blvd., Suite 6305, P.O. Box 50165, Honolulu, Hawaii 96850. Telephone 808–541–2693.

SUPPLEMENTARY INFORMATION:

Background

Kaloko-Honokohau National Historical Park was established under Public Law 95–625 (16 U.S.C. 396d) on November 10, 1978 to ''* * * provide a center for the preservation, interpretation and perpetuation of traditional native Hawaiian activities and culture, and to demonstrate historic land use patterns as well as to provide needed resources for the education, enjoyment and appreciation of such traditional native Hawaiian activities and culture by local residents and visitors * * *.'' Public nudity, an activity that can be construed as contemptuous and insulting in traditional native Hawaiian culture, is in conflict with the above stated purpose for which this park was established. Continued use of the park in this manner derogates resources that are used traditionally and creates a condition that is in conflict with related traditional practices by native Hawaiians.

In traditional Hawaiian culture, public nudity had strong social connotations as documented by the following excerpts pertaining to nudity and how it is viewed in the Hawaiian culture, stating specifically that such activity was very strictly regulated within a defined traditional social context.

Mourning: ''* * * displaying genitals were neither common nor approved, Mrs. Pukui explains. Such actions were excusable only because the mourner was considered *pupule (crazy)* from grief.'' (Kamakau 1919–20:2–45; Campbell 1967:101; Pukui, Haertig, and Lee, 1972 Vol. I: 124,133; 1972 Vol. II:183; Valeri 1985:261, 308).

Sorcery: '' As nudity is excused during mourning, nudity in the ceremony of *anewanewa,* was excused due to the fear of sorcery. These two circumstances were probably the only time Hawaiians of both sexes were ever nude in public. Exposure of the genitals was not approved.'' (Pukui, Haertig, and Lee, 1972:124)

Nudity, general: Hawaiian tradition, for those following the kapu ''exposing the buttocks (*ho'opohopoho*) was a gesture of complete contempt * * * and a grave insult to the beholder and for this reason even the ''slit-in-the-back'' hospital gown thus becomes a threat to ordinary courtesy'' (Pukui, Haertig, and Lee, 1972:91)

Today, the reaction of Hawaiian cultural experts to public nudity echos the past pre-missionary view towards nakedness (personal communication with Pat Bacon, who is Mary Kawena Pukui's daughter). Specifically, she was asked as to what circumstances in the Hawaiian Culture would nudity be acceptable. Ms. Bacon stated that traditionally, children were allowed to go naked until they were about 10 years old, and that adult, female or male, nudity was not acceptable, and that men were nude only for rituals.

Existing Conditions

Public nudity is currently taking place in a relatively confined area fronting one of the park's more important cultural features, ''Aimakapa'' fishpond. The beach front at this location is visible from the proposed park observation platform and the boardwalk trail, both primary destination points for park visitors. Many more of the significant culture features of the park are located along the beach trail through the area currently used by the nudists. All park users must pass along this narrow coastal strip and therefore must confront any person(s) involved in public nudity. Native Hawaiians, school groups and other visitors with a strong identity to traditional Hawaiian culture have informed park management that they have chosen to abandon their visit to the park rather than confront this conflicting and distracting activity. The NPS has on file numerous letters and documents from the Hawaii Congressional Delegation and the native Hawaiian constituency relating to their views of an existing conflict between public nudity and the purposes for which the park was established.

The park initially attempted to encourage voluntary compliance against public nudity. When this failed, the park enacted a temporary restriction of public nudity through the Superintendent's Compendium (36 CFR 1.5(a)(2)). This temporary prohibition is currently in place and will remain in place while the park solicits public comment through this rulemaking.

The creation of Kaloko-Honokohau National Historical Park was largely driven by the congressional delegations of the State of Hawaii. This congressional delegation, native Hawaiian community groups and leaders, and other special interest groups were influential in defining the nature and purpose of the park and maintain an active interest in the progress and direction of the park's development.

The enabling legislation defines the intended purpose and management direction for the park, and recreational nudity, or any other recreational activity, must be compatible with NPS management's ability to carry out that legislated purpose. Mitigation efforts to resolve the issue to date have failed.

The issue of public nudity was first addressed in public on December 12, 1990, when a Notice of Intent to prepare an environmental impact statement for a general management plan for Kaloko-Honokohau National Historical Park appeared in the **Federal Register** (55 FR 51165). Following the **Federal Register** notice, scoping for the preparation of the General Management Plan (GMP) was initiated. Letters were sent to officials, organizations and individuals who were known to have an interest in the development of Kaloko-Honokohau National Historical Park, inviting them to attend scheduled public meetings or provide written comments expressing their views and concerns related to the future use and development of Kaloko-Honokohau National Historical Park.

Public meetings were held on the islands of Hawaii (Kona and Waimea) and O'ahu (Honolulu) in January 1991 to receive comments from all interested parties in order to identify the full scope of issues relevant to the preparation of that GMP. During the public comment period, which ran to the end of February 1991, more than 900 responses to Kaloko-Honokohau's GMP initiative were received. These comments were carefully considered in drafting planning options to reflect all viewpoints. Planning issues evolving into the GMP included the following: future public use of Honokohau beach, protection of the fishpond's endangered biota, park development and accessibility, carrying capacities, and others.

With regard to future use of Honokohau beach, 19 individuals either spoke or wrote in opposition to allowing nude sunbathing there. Three of the letters were accompanied by petitions. These petitions contained a total of 442 signatures from individuals who opposed nude sunbathing in national parks. There were a total of 42 individuals who either spoke or wrote in favor of designating Honokohau beach as clothing optional. One of the

letters was accompanied by a petition with 189 signatures of individuals recommending the NPS designate Honokohau beach as clothing optional. This response persuaded the park to move forward with comment rulemaking.

Public Participation

It is the policy of the Department of the Interior, whenever practicable, to afford the public an opportunity to participate in the rulemaking process. Accordingly, interested persons may submit written comments regarding this proposed rule to the address noted at the beginning of this rulemaking. The NPS will review these comments, as well as the comments received from the previous public meetings concerning the future use of Honokohau beach, and consider making changes to the rule based upon an analysis of the comments.

Drafting Information

The principal authors of this proposed rulemaking are James Martin, Superintendent, Hawaii Volcanoes National Park; Bryan Harry, Superintendent, National Park Service, Pacific Island Support Office; Laura Carter-Schuster, Resource Manager, Kaloko-Honokohau National Historical Park; and Dennis Burnett, Washington Office of Ranger Activities, National Park Service.

Paperwork Reduction Act

This rulemaking does not contain collections of information requiring approval by the Office of Management and Budget under the Paperwork Reduction Act of 1995.

Compliance With Other Laws

This rule was not subject to Office of Management and Budget review under Executive Order 12866. The Department of the Interior determined that this document will not have a significant economic effect on a substantial number of small entities under Regulatory Flexibility Act (5 U.S.C. 601 *et seq*). The economic effects of this rulemaking are local in nature and negligible in scope.

The Service has determined and certifies pursuant to the Unfounded Mandates Reform Act, 2 U.S.C. 1502 *et seq.*, that this proposed rule will not impose a cost of $100 million or more in any given year on local, State, or tribal governments or private entities.

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

This rule is not a major rule under the Congressional review provisions of the Small Business Regulatory Enforcement Fairness Act (5 U.S.C. 804(2)).

The NPS has determined that this rulemaking will not have a significant effect on the quality of the human environment, health and safety because it is not expected to:

(a) Increase public use to the extent of compromising the nature and character of the area or causing physical damage to it;

(b) Introduce incompatible uses which compromise the nature and characteristics of the area or cause physical damage to it;

(c) Conflict with adjacent ownership or land uses; or

(d) Cause a nuisance to adjacent owners or occupants.

Based on this determination, this rulemaking is categorically excluded from the procedural requirements of the National Environmental Policy Act (NEPA) by Departmental guidelines in 516 DM 6 (49 FR 21438). As such, neither an Environmental Assessment nor an Environmental Impact Statement has been prepared specifically for this regulation. However, an EIS was issued in 1992 along with the General Management Plan for the management and development of Kaloko-Honokohau National Historical Park under the provisions of NEPA.

List of Subjects in 36 CFR Part 7

District of Columbia, National parks, Reporting and recordkeeping requirements.

In consideration of the foregoing, the NPS proposes to amend 36 CFR Chapter I as follows:

PART 7—SPECIAL REGULATIONS, AREAS OF THE NATIONAL PARK SYSTEM

1. The authority citation for Part 7 continues to read as follows:

Authority: 16 U.S.C. 1, 3, 9a, 460(q), 462(k); Sec. 7.96 also issued under D.C. Code 8–137(1981) and D.C. Code 40–721(1981).

2. New Section 7.87 is added to read as follows:

§ 7.87 Kaloko-Honokohau National Historical Park.

Public nudity, including public nude bathing, by any person on Federal land or water within the boundaries of Kaloko-Honokohau National Historical Park is prohibited. Public nudity is a person's failure to cover with a fully opaque covering that person's own genitals, pubic areas, rectal area or female breast below a point immediately above the top of the areola when in a public place. Public place is any area of Federal land or water within the Historical Park, except the enclosed portions of restrooms or other structures designed for privacy or similar purposes. This section shall not apply to a person under 10 years of age.

Dated: January 30, 1998.

Donald J. Barry,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 98–10322 Filed 4–17–98; 8:45 am]

BILLING CODE 4310–70–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 142

[FRL–5999–5]

RIN 2020–AA37

Revision of Existing Variance and Exemption Regulations to Comply With Requirements of the Safe Drinking Water Act

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Agency is proposing to revise the existing regulations regarding Safe Drinking Water Act variances and exemptions. These revisions are based on the 1996 Safe Drinking Water Act Amendments. A new subpart, Subpart K, created to implement a new section in the Amendments, describes procedures and conditions under which a primacy State/Tribe (please note that throughout this preamble and proposed rule, the term ''State'' has the same definition as currently exists in 40 CFR 141.2, i.e., ''State means the agency of the State or Tribal government which has jurisdiction over public water systems . . .'') or the Administrator may issue small system variances to public water systems serving less than 10,000 persons. This rule-making is intended to provide regulatory relief to all public water systems, particularly small systems.

DATES: Written comments must be received by midnight May 20, 1998.

ADDRESSES: Written comments should be submitted to: W–97–26 Comment Clerk, Water Docket (mailcode MC4101), Environmental Protection Agency, 401 M Street, S.W., Washington, D.C., 20460.

The record is available for inspection at the Water Docket, Washington, D.C., from 9 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. For access to docket materials, please call (202)–260–3027 to schedule an appointment.

FOR FURTHER INFORMATION CONTACT: Andrew J. Hudock, Office of

Enforcement and Compliance Assurance, Office of Regulatory Enforcement, Water Enforcement Division (Mailcode: 2243–A), Environmental Protection Agency, 401 M Street, S.W., Washington, D.C., 20460. Phone: (202)–564–6032.

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Regulated Persons

Potentially regulated persons are public water systems (PWSs).

Category	Example of regulated entities
Industry	May include privately-owned utilities, ancillary water systems, homeowner's associations, mobile home parks, Municipalities; County Governments; Water districts; Water and Sewer Authorities.
State/Local/Tribal governments	May include publicly-owned PWS's, municipalities, county governments, water districts, State drinking water programs.
Federal government	Federally-owned facilities.

This table is not intended to be exhaustive, but rather it provides a guide for readers regarding entities likely to be affected by this action. This table lists the types of entities that the Agency is now aware could potentially be affected by this action. Other types of entities not listed in this table could also be affected. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding section **FOR FURTHER INFORMATION CONTACT**.

I. Statutory Authority

Sections 115–117 of the Safe Drinking Water Act (SDWA) Amendments of 1996 (Pub. L. 104–182), enacted August 6, 1996, amended sections 1415 and 1416 of the Act (42 U.S.C. 300g–4, 300g–5) concerning variances and exemptions.

A. Overview

As provided under the Act, under certain conditions, variances are available to public water systems that cannot (due to source water quality, or, in the case of small systems, affordability) comply with the national primary drinking water standards. Variances generally allow a system to comply with less stringent, but still protective, standards based on a specified technology available to the system. The duration of the variance generally coincides with the life of the technology. An exemption, on the other hand, is intended to allow a system with compelling circumstances an extension of time before the system must comply with applicable Safe Drinking Water Act requirements. An exemption is limited to three years after the otherwise applicable compliance date (although extensions up to a total of six additional years may be available to small systems under certain conditions).

B. New Small System Variances

Section 1415(e) establishes new provisions by which a small public water system may obtain a variance from complying with National Primary Drinking Water Regulations (NPDWR) under certain specified conditions. Section 1415(e)(1) identifies, through service population, the size of systems which may seek such small system variances. Specifically, this section limits such small system variances to public water systems serving 3,300 or fewer persons, and, with the approval of the Administrator, to public water systems serving more than 3,300 persons but less than 10,000 persons.

Section 1415(e)(6) states that such small system variances are not available for (1) any maximum contaminant level (MCL) or treatment techniques for a contaminant for which a NPDWR was promulgated prior to January 1, 1986, or (2) a NPDWR for a microbial contaminant or an indicator or treatment technique for a microbial contaminant.

Sections 1415(e)(2) and (3) identify the conditions under which small systems may receive such a variance. Section 1415(e)(2)(A) states that one such condition is that a variance technology which has been identified by the Administrator under section 1412(b)(15) is applicable to the size and source water quality conditions of the public water system. In addition, under section 1415(e)(2)(B), the system is required to install, operate, and maintain such treatment technology, treatment technique, or other means, in accordance with guidance or regulations issued by the Administrator. Section 1415(e)(2)(C) indicates that the small system variance is also contingent upon whether a State/Tribe exercising primary enforcement responsibility (or the Agency, where a State/Tribe does not have primacy) determines that certain conditions are met, namely that (1) the system cannot afford, in accordance with State/Tribal (or EPA) affordability criteria, to comply through

treatment, alternative sources of water supplies, or restructuring and consolidation, and (2) the variance will ensure adequate protection of human health (section 1415(e)(3)).

Section 1415(e)(4) describes the maximum length of schedules to comply with the conditions of such variances (three years), and possible additional time (two additional years) to achieve compliance with the variance, under certain conditions.

Section 1415(e)(5) requires the Administrator or primacy State/Tribe to review each variance not less than every five years after the compliance date established in the variance to ensure that the system remains eligible for the variance and is conforming to each condition of the variance.

Section 1415(e)(7)(A) requires the Administrator to promulgate, within two years of enactment, regulations for variances to be granted under the newly established program. These regulations must specify, at a minimum, procedures to grant and deny variances, including public participation requirements, requirements for proper installation and maintenance of approved variance technology and sufficient financial and technical capability to operate such treatment, eligibility requirements for a variance for each NPDWR, and information requirements for variance applications. Section 1415(e)(7)(B) requires the Administrator to publish information by February 6, 1998, to assist primacy States/Tribes in developing affordability criteria and requires State/Tribal review of such criteria not less than every five years.

Section 1415(e)(8)(A) requires the Administrator to periodically review the primacy State's/Tribe's variance program to determine whether variances granted by the State/Tribe comply with the requirements of the Act. If the Administrator determines that the variances granted by the primacy State/Tribe are not in compliance with the State's/Tribe's affordability criteria and the requirements of the Act, section 1415(e)(8)(B) requires the Administrator to notify the State in writing of the deficiencies and to make public the determination.

Section 1415(e)(9) requires a primacy State/Tribe, which is proposing to grant a small system variance to a public water system serving more than 3,300 and fewer than 10,000 persons, to submit that variance to the Administrator for review and approval prior to issuance. The Administrator is required to approve or disapprove the variance within 90 days. If the Administrator disapproves of the variance, the Administrator is required to notify the State in writing of the reasons for such disapproval. The State may then revise and resubmit the modified variance for approval by the Administrator.

Section 1415(e)(10) addresses objections to small system variances. Section 1415(e)(10)(A) states that the Administrator may review and object to any variance proposed to be granted by the State/Tribe, if such objection is communicated to the State/Tribe not later than 90 days after the State/Tribe proposes to grant the variance. Such objections must be communicated in writing, identifying both the basis for the objection and proposed modifications. The State/Tribe shall then make the recommended modifications or respond in writing to each objection. If the State/Tribe proceeds to issue the variance without resolving the Administrator's concerns, the Administrator may overturn the State/Tribal decision to grant the variance if the State/Tribal decision does not comply with the Act or regulations.

Section 1415(e)(10)(B) addresses objections based on petitions to the Administrator by consumers. Under this section, not later than 30 days after a primacy State/Tribe proposes to grant a small system variance, any person served by the public water system may petition the Administrator to object to the granting of the variance. The Administrator is required to respond to the petition and determine whether to object to the variance not later than 60 days after the receipt of the petition.

Also regarding objections to small system variances, section 1415(e)(10)(C) states that no variance shall be granted by a State/Tribe until the later of the following: (1) 90 days after the State/Tribe proposes to grant a variance, or (2) following the Administrator's objection to a variance, the date on which the State/Tribe makes the recommended modifications or responds in writing to each objection.

C. General Variances

In the 1996 Amendments to the SDWA, Congress modified the language governing general variances (i.e., those variances available to systems of any size). Under the newly enacted section 1415(a)(1)(A), a variance may be granted on the condition that the system install the best technology, treatment techniques, or other means, which the Administrator finds are available. This new modification changes the previous requirement that mandated that the system install variance technologies before a variance could be issued. In the new Amendments, before a variance can be issued, Congress also requires primacy States/Tribes to conduct an evaluation that satisfies the State/Tribe that alternative sources of water are not reasonably available to a system.

D. Exemptions

In a major change in the exemption provisions of the SDWA, section 1416(b)(2)(A) deleted provisions which limited an exemption to 12 months, subject to a three-year extension. The new provisions require the schedule for an exemption to require compliance with each contaminant level and treatment technique for which the exemption was granted as soon as practicable but not later than three years after the otherwise applicable compliance date established in section 1412(b)(10).

The only exception to this exemption time period is in section 1416(b)(2)(C) for small systems serving less than 3,300 persons, under certain specified conditions, for which extensions may be renewed for one or more additional two-year periods, but not to exceed a total of six years.

The Amendments also modified section 1416 of the Act to specify a wider set of factors that need to be considered before an exemption is granted from the requirements of the NPDWR. Prior to the 1996 amendments, section 1416 authorized a State that has primary enforcement responsibility under the SDWA (or EPA where the State/Tribe does not have such primacy) to exempt a public water system from the NPDWR if (1) the system could not comply with the regulation and (2) no unreasonable risk to public health would result from the exemption. Section 1416(a) now requires the State/Tribe, in determining whether an exemption may be granted, to also consider whether the public water system is a ''disadvantaged community'' and whether management or restructuring changes can be made that will result in compliance or, if compliance cannot be achieved, would improve the quality of the drinking water. Section 1416(a)(4) also requires a State/Tribe to consider measures to develop an alternative source of water supply. Section 1416(b)(2)(D) states that a small system that has received a variance under section 1415(e) cannot receive an exemption under section 1416.

II. Consultation with Public Water Systems, State, Tribal and Local Governments, Environmental Groups, and Public Interest Groups

As required under section 1415 of the SDWA, as amended, the Agency has

consulted with State representatives, as well as a broad range of other interested parties, in the development of this proposed rule.

On September 16, 1997, early in the regulatory development process, EPA held its first stakeholders meeting in Washington, D.C., to discuss the amendments as they apply to Safe Drinking Water Act variances and exemptions. Participants in this day-long meeting included industry representatives, State representatives, and representatives of environmental groups. This meeting was designed specifically to solicit views and ideas from a number of interested stakeholders at a very early stage in the process, prior to development of internal drafts. A summary of this meeting was subsequently provided to attendees, as well as to interested persons who were unable to attend.

On September 17, 1997, as a follow-up to the previous day's meeting, the Agency met with a representative of the Association of State Drinking Water Administrators (ASDWA) and a State representative to discuss implementation of the 1996 variances and exemptions provisions. The stakeholders provided early comments on possible procedures to obtain a small system variance, including at what point in the process the public water system or the State should notify the public.

On September 30, 1997, in conjunction with the National Rural Water Association national conference in Indianapolis, Indiana, the Agency met with community water system operators and industry representatives to further discuss revisions to the variances and exemptions regulations. Discussion during this meeting focused primarily on (1) the extent to which public water systems should be expected to assemble information when applying for a variance, (2) public notification associated with the variance, and (3) required terms and conditions of small system variances.

On October 20, 1997, in conjunction with the ASDWA national meeting in Savannah, GA, the Agency presented a summary of the draft variance and exemption regulations. At that time, all States were given the opportunity to participate in a discussion regarding the content of the regulations.

On October 24, 1997, the Agency met with representatives of environmental and consumer groups to discuss their perspective on possible revisions to the variances and exemptions regulations. Discussion during this meeting focused primarily on public participation and notification concerns, variance eligibility, and criteria for reviewing and granting small system variances.

Although the Agency has not consulted directly with representatives of Tribal governments in the development of this proposal, the Agency will make efforts to do so, as appropriate, during the comment period. The rule being proposed today has been developed in consultation with, and takes into consideration suggestions from, public water systems, environmental groups, public interest groups, the States, and other interested parties.

III. Discussion of Proposed Rule

A. Purpose and Applicability

Through this proposed rulemaking, the Agency seeks to codify the 1996 SDWA amendments addressing general variances and exemptions provisions, as well as providing a new subpart which addresses the procedures for issuance of small system variances. This proposed rule will be applicable to all eligible public water systems and primacy agencies (States, Tribes, and the Agency).

B. Effective Date

The effective date of this rule will be one month after promulgation.

C. Primacy Requirements

Primacy States/Tribes, if they choose to issue variances and exemptions, are required under section 1413(a)(4) of the Safe Drinking Water Act to issue such variances and exemptions under conditions and in a manner which is not less stringent than the variance and exemption provisions of the Act. In addition, section 1415(e)(7)(A) of the Safe Drinking Water Act requires the Administrator to promulgate regulations that shall, among other things, specify procedures to be used by the Administrator or the State to grant or deny variances. This statutory language suggests that it was the intent of Congress that States adopt procedures no less stringent than those identified in this proposed rule for issuance of small system variances. Therefore, the Agency is proposing to change § 142.10(d) of the regulations accordingly. Thus, if a primacy State wishes to issue small system variances, it must first enact State regulations which are no less stringent than the requirements in section 1415(e) of the Act and as embodied in this proposed rule, and seek EPA approval of such regulations by submitting a program revision package.

D. Rationale for New Subpart

This proposed rule creates Subpart K, which addresses the issuance of small system variances. This separate subpart was created to reflect the rather substantial statutory language in section 1415(e) of the Act, which establishes new provisions by which a small public water system may obtain a variance from complying with National Primary Drinking Water Regulations (NPDWR) under certain specified conditions. The Agency's decision to establish this separate subpart in the regulations is intended to provide clear and concise descriptions of the new regulatory requirements for small public water systems in one location in the regulations. The alternative of interspersing small system variance requirements within the existing regulations for variances could easily become too confusing when trying to identify and follow small system requirements.

E. Rationale for Format of New Subpart

The Agency has attempted to draft Subpart K of these proposed regulations in a question-and-answer format in ''plain English'', in accordance with current Agency policy for regulation development. The intent of ''plain English'' is to produce rules which are clear, concise, straight-forward, understandable, and enforceable, without extensive ''legalese''. This effort to use ''plain English'' is not just a Federal initiative; over half of the States now have legislative drafting manuals recommending plain English principles.

F. General Provisions in Proposed Subpart K

Sections 142.301–142.305 of the proposed small system variance regulations essentially codify the statutory provisions governing who can apply for, and who can grant, these variances. One of these provisions (§ 142.304), however, requires some explanation.

For small system variances, section 1415(e)(6) of the Safe Drinking Water Act states that such variances are not available for (1) any maximum contaminant level (MCL) or treatment technique for a contaminant for which a NPDWR was promulgated prior to January 1, 1986, or (2) a NPDWR for a microbial contaminant or an indicator or treatment technique for microbial contaminant. As a result, the Agency will not be listing small system variance technologies for microbial contaminants, and the proposed rule (§ 142.304) prohibits the primacy agency

from granting a variance for a microbial contaminant.

Similarly, the Agency will not be listing any variance technology for an MCL or treatment technique for a contaminant for which a NPDWR was promulgated prior to January 1, 1986 or allowing any variances for such contaminants (see § 142.304). With respect to this latter category, however, the scope of the statutory prohibition is somewhat ambiguous. The Agency must consider whether Congress intended that the prohibition apply to a contaminant for which an MCL was established prior to 1986, even if subsequently revised, or whether the prohibition only attaches to the pre-1986 regulation itself (and thus would not apply to any future regulations for a contaminant), or whether the prohibition attaches to the pre-1986 level at which a contaminant was regulated (but not to more stringent levels in future regulations). The statutory language could be amenable to any of the three interpretations, and while the legislative history for this provision provides conflicting explanations (*cf.* Senate Report 104–169 at 55–56 with House Report 104–632 at 39), there is no explanation of the policy rationale for any particular interpretation.

The Agency surmises that the intent behind this provision is to prohibit a public water system from obtaining a variance for a contaminant for which compliance should have been achieved long ago. At the same time, the Agency does not believe that this rationale applies where the Agency revises a pre-1986 regulation to make it more stringent. As a result, the Agency interprets section 1415(e)(6)(A) prohibition to apply to the level at which any contaminant was regulated before 1986; therefore, variances are not available for systems above the pre-1986 level even if subsequently revised. (Note that several of the pre-1986 levels were interim levels and have already been revised.) However, if the Agency revises a pre-1986 level and makes it more stringent (i.e., makes the MCL lower), then a variance would be available for that contaminant, but only up to the pre-1986 MCL. The Agency requests comment on this approach and statutory analysis.

G. Small System Variance Requirements

Sections 142.306–142.310 of the proposed rule establish the conditions under which the primacy agency can grant small system variances. The Agency has attempted in the proposed rule to provide flexibility in the process of applying and reviewing requests for small system variances. For example, the Agency has not specified any particular form of a variance application or who (the system or the State) needs to provide the relevant information; rather, the Agency has only specified that the information must be sufficient for the primacy agency to make certain findings and that those findings are documented in writing. Additional rationale for several of the provisions is discussed below.

1. Section 142.306—Compliance Options Analysis

Sections 1415(e)(1)–(3) of the Act identify the conditions under which small systems may receive a small system variance. In the proposed rule, § 142.306(b) codifies these conditions and includes concepts related to the State Capacity Development Strategy.

The compliance options analysis is an integral element of sections 1415 and 1416 of the Act, as well as under the proposed rule at § 142.306(b)(2). Similar in concept to capacity development, a compliance options analysis can allow the State to consider the underlying reasons for noncompliance, and what options are available to the system to return to compliance for the long term. Under the Act, such options include some form of treatment, development of an alternative source, or management restructuring or consolidation with a nearby system. States may wish to include a compliance options analysis as part of their capacity development strategy to address the available options for noncompliant public water system to return to compliance.

Management changes which could be considered by the State in performing such a compliance options analysis include financial management changes, the appointment of a State-certified operator under the State's Operator Certification program, contractual agreements for a more efficient and capable public water system based on joint operation, etc.

The 1996 Amendments to the Safe Drinking Water Act place strong emphasis on technical, managerial, and financial capacity as integral components of the implementation strategies of the Act. There is strong statutory linkage between section 1420 of the Act (the capacity development provisions), and section 1415 (the variances and exemptions provisions), and the Agency has attempted to reflect this linkage in § 142.306(b) of the proposed rule.

Section 1415(e)(7)(A)(ii) of the Act states that today's proposed rule must include requirements concerning the technical and financial capability to operate and maintain a small system variance technology. Therefore, under proposed § 142.306(b)(4), a State or the Agency must find that a small system has the technical and financial capacity to operate a variance technology before granting a small system variance.

However, the Agency recognizes that there may be instances in which a small system is otherwise eligible for a variance, but lacks the technical and financial capability to operate the variance technology. Since enhancing technical and financial capacity of public water systems will likely be dominant goals in State capacity development strategies, a State may wish to focus elements of its capacity development strategy to help systems in such a situation develop the technical and financial ability to operate a small systems variance technology.

Furthermore, under section 1420 of the Act, the State could face the possibility of Drinking Water State Revolving Fund withholding unless, under the capacity development strategy in section 1420(c) of the Act, the State develops a strategy to help systems enter and remain in compliance with National Primary Drinking Water Regulations (NPDWRs) by enhancing their technical, financial, and managerial capacity to comply. Additional considerations and conditions related to the protection of public health are addressed in sections III.G.6 and V.F. of this preamble.

2. Section 142.306(b)—Documentation of State Considerations in Reviewing Small System Variances

The proposed regulations require that States document their findings regarding a small system's eligibility for a small system variance. Where the State does not have primary enforcement responsibility under section 1413 of the Safe Drinking Water Act, the Agency will document its findings for the record, if it grants a small system variance. Such documentation fulfills many goals.

Documentation of small system variance findings, as required in § 142.306 of the proposed rule, serves as a written record of decision which the public can review in preparation for the required public hearing or in preparation of a petition to the Administrator. In addition, a summary of the findings and the bases for such findings should be included in the required public notices associated with the proposal of such small system variances.

Sufficient documentation of the State's findings regarding a system's eligibility for a small system variance

will also be necessary for the Agency's periodic review of State-issued variances, the Agency's approval of variances issued to systems serving between 3,300 and 10,000 persons, and the Agency's review of a petition to object to a variance. Where adequate documentation of findings is not available, the Agency may have to summarily overturn, reject, or object to a variance.

Documentation required in the proposed rule must indicate not only that a certain factor listed in § 142.306 of the proposed regulations was considered, but must also include the rationale for decisions by the State regarding each of the required findings, as well as the underlying facts supporting that decision.

3. Section 142.306(b)(2)—Affordability Criteria

Section 142.306(b)(2) of the proposed rule codifies the statutory requirement that States undertake a compliance options analysis in accordance with the State's own affordability criteria.

Section 1415(e)(7)(B) of the 1996 Safe Drinking Water Act, as amended, requires the Agency to publish, within eighteen months of the Act's enactment, information to assist the States in formulating affordability criteria. According to the Act, this information is to be developed by the Agency in consultation with the States and the Rural Utilities Service (RUS) of the U.S. Department of Agriculture. States are to develop affordability criteria to make determinations relative to compliance options available to small drinking water systems, including eligibility for small system variances under section 1415 of the Act, as amended. The Agency published this document on February 6, 1998 and is available by contacting the Safe Drinking Water Hotline at 1–800–426–4791 (request document number 816–R–98–002). The Agency may use principles in this document to develop affordability criteria for granting small system variances in those areas in which the State does not have primary enforcement responsibility under section 1413 of the Safe Drinking Water Act.

4. Section 142.306(b)(3)—Availability of Approved Variance Technologies

Section 1412(b)(15)(D) of the Act requires that, not later than August 6, 1998, the Agency issue guidance regarding the available variance technologies for each national primary drinking water regulation for which a variance may be granted. This guidance is currently in development by the Agency's Office of Groundwater and Drinking Water and is anticipated to be released by the statutory deadline. The proposed variance regulations include, in various sections (including § 142.306), the requirement that, during review of an application for a small system variance, a primacy State or the Administrator make a finding whether, among other things, the Administrator has published a variance technology in accordance with section 1412(b)(15) for the applicable maximum contaminant level or treatment technique for which that variance is sought.

Pursuant to section 1412(b)(15)(A) of the Act, variance technologies may not suffice to achieve compliance with the relevant maximum contaminant level or treatment technique, but the variance technologies must achieve the maximum reduction or inactivation efficiency that is affordable considering the size of the system and the quality of the source water. In addition, section 1412(b)(15)(B) requires that any identified variance technology be determined by the Administrator to be protective of public health.

For further discussion of adequate protection of human health, please see section III.G.5 of this preamble. In addition, section V.F. provides a discussion of health matters related to protection of children and environmental justice concerns.

5. Section 142.306(b)(5)—Adequate Protection of Public Health

Section 142.306(b)(5)(i–ii) of the proposed rule codifies the statutory requirement that the primacy agency grant a small system variance only where the terms ensure adequate protection of public health, considering the source water quality and removal efficiencies and expected useful life of the small systems variance technology. Under section 1412(b)(15)(B) of the Act, the Administrator, in identifying variance technologies for small systems, must determine that the technology is protective of public health considering the quality of the source water to be treated and the expected useful life of the technology. The Agency believes that Congress intended the Administrator to make a determination that, on a national level, any variance technology identified is generally protective of public health when applied within general source water conditions and operating and maintenance procedures. However, recognizing that the level of public health protection afforded by a specific technology could be dependent on site-specific factors that may vary system by system, Congress provided for a corresponding requirement that the State also make a determination that the terms of the variance as applied to a particular system adequately protect public health.

In section 1412(b)(15)(C) of the Act, Congress further provided that the Administrator must include in the guidance identifying variance technologies any assumptions supporting her determination that a listed technology is protective of public health, where such assumptions concern the public water system to which the technology may be applied, or its source waters. The Agency believes that Congress intended this information to be used by States to determine if the assumptions used by the Administrator in determining that a technology is protective of public health are applicable to the specific small system applying for a variance, and define what terms or conditions will ensure adequate protection of public health. In making a finding of adequate protection of public health, States need to consider the elements in the source water that may interfere with the performance of the technology. Depending on the specific technology being implemented, these may include the current level of contamination, variation in levels of contamination, the rate of change in those variations, the frequency in which the variations occur, and the duration that contamination remains at elevated levels (days, weeks, months). States should then use these types of information, as appropriate, to set site-specific terms and conditions which will adequately protect public health.

As previously discussed, EPA believes that Congress intended the Administrator to make a determination that, on a national level, any variance technology identified is generally protective of public health under general source water conditions and operating and maintenance procedures. The variance technology guidance under section 1412(b)(15)(C) will identify assumptions used by the Administrator in determining that each technology is protective of public health. In doing so, the guidance will identify the typical removal efficiency achieved by each variance technology listed by the Administrator, considering the overall capabilities of the treatment process and the source waters on which the technology would typically be applied. The guidance will also discuss source water characteristics that can adversely affect the removal of the contaminant by the process. These general source water characteristics will include a description of other

contaminants that may interfere with treatment (such as sulfate or iron), pH, hardness, total dissolved solids, and turbidity, among others. General guidance on treatment modifications that can address the adverse impacts will also be included. As an example, the guidance may identify total dissolved solids in the source water as having potential to foul the membrane in the treatment process, and therefore may suggest that the membrane be more closely monitored and more frequently replaced. The State may use this information in the guidance to set specific terms and conditions on the operation of the technology that will ensure adequate protection of public health. In the previous example, such terms might include how often the membrane should be monitored and replaced, considering the exact levels of total dissolved solids in the source water and any other factors that may interfere with removal.

EPA is requesting comment on whether it would be useful and appropriate, at some time in the future, to provide additional, technology-specific guidance on site-specific factors that should be considered and appropriate terms and conditions that may be needed to ensure adequate protection of public health. Congress clearly left the responsibility to consider site-specific factors and define appropriate terms and conditions to the States, and EPA does not wish to diminish that responsibility. At the same time, the Agency believes it may be efficient for EPA, to identify, in the context of its determination that a technology is protective, those factors of which the Agency is aware that may be appropriate for the State to consider on a site-specific basis and to suggest appropriate responses to situations which pose additional risks. EPA is soliciting comment and recommendations on both the need for and appropriateness of such guidance and on its substantive content if provided.

In addition to the statutory requirements that the State consider the quality of the source water and removal efficiencies and useful life of the technology in its determination of adequate public health protection, EPA is also considering including a requirement that the States consider disproportionate impacts and risks to sensitive sub-populations, including infants and pregnant or nursing women. Although a leading risk to sensitive subpopulations from drinking water comes from infectious contaminants, which are specifically excluded by the Act from eligibility for small system variances, there may be other contaminants which pose special risks to sensitive subpopulations. In general, EPA would consider such risks in its national determination that a variance technology is protective of public health. There may be instances, however, where site-specific factors would specifically affect the risk to sensitive subpopulations and should thus be considered by the State in that light. EPA is requesting comment on the appropriateness of including in the final rule a requirement that the State specifically consider impacts on sensitive subpopulations in its determination of adequate public health protection. Commenters are encouraged to provide specific examples of contaminants for which site-specific conditions may result in special risks to sensitive subpopulations. One alternative to such a requirement would be for EPA to include in guidance specific factors that may result in special risks to sensitive subpopulations and suggestions on how to address such risks. EPA is also soliciting comment on this alternative.

6. Section 142.307—Terms and Conditions of Small System Variances

Section 142.307 outlines what terms and conditions must be included in a small system variance. A State or the Administrator must clearly specify enforceable terms and conditions of a small system variance. The terms and conditions of a small system variance issued under this subpart must include, at a minimum, proper installation of the applicable small system variance technology, proper operation and maintenance of the technology, and monitoring requirements for the contaminant for which a small system variance is sought as specified in 40 CFR Part 141. If a contaminant level is above the maximum contaminant level, the public water system is required to monitor, at least, quarterly. The State may require more frequent monitoring. In addition, the State must include any other terms or conditions that it determines that are necessary to ensure adequate protection of public health.

The small system variance must also include a schedule for the public water system to comply with the terms and conditions of the small system variance. At a minimum, the schedule should include increments of progress and quarterly reporting to the State or Administrator of the public water system's compliance with the terms and conditions of the small system variance. This quarterly reporting will enable the primacy agency to adequately track compliance of the schedule. In addition, States are required under 40 CFR Part 142.15(a)(1) to report on a quarterly basis to EPA any violations of the terms and conditions of a small system variance.

The schedule must also notify the public water system when the State or the Administrator will review the small system variance under § 142.307(d). The intent of this provision is to address the concerns of public water systems that they be provided adequate notice of when the State or Administrator will review the variance.

7. Section 142.307(c)(4)—Compliance Period for Small System Variances

Section 142.307(c)(4) of the proposed rule codifies the statutory language regarding the duration of variances. In accordance with section 1415(e)(4), § 142.307(c)(4) of the proposed rule states that the terms and conditions of a small system variance must require compliance with the conditions of the variance as soon as practicable but not later than three years after the date on which the variance is granted. It is the Agency's expectation that this three-year period will usually be sufficient.

However, section 1415(e)(4) of the Act also states that the Administrator or the State may allow up to two additional years under two situations: (1) Where the Administrator or the primacy State determines that additional time is necessary for capital improvements to comply with a variance technology, secure an alternative source of water, or restructure or consolidate, or (2) to allow for financial assistance provided pursuant to section 1452 of the Act or any other Federal or State program.

The Agency interprets section 1415(e)(4) to allow the primacy agency to grant the two additional years at the time of issuance, upon a determination by the primacy State or the Administrator that those two additional years are necessary to ensure compliance. Therefore, it is possible, under certain conditions, that small systems may receive a five-year compliance schedule to achieve compliance with the terms and conditions of the small system variance.

8. Sections 142.308–142.310—Public Participation Requirements for Issuance of a Small System Variance

a. Overview. The 1996 Amendments to the Safe Drinking Water Act provide for many opportunities for the public to be involved in decisions that affect the delivery and treatment of drinking water. Today's proposed rule provides opportunities for the public to become involved in the decision-making process of whether a variance or exemption

should be granted. The Agency's intent in the proposed regulations is to provide sufficient opportunity for meaningful public participation in the variance and exemption process, while, at the same time, keeping the public notification requirements for small systems and States manageable.

The Agency is required under section 1415(e)(7)(A)(i) of the Act to promulgate regulations specifying requirements for notifying the consumers of the public water system that a small system variance is proposed to be granted (including information regarding the contaminant and variance) and requirements for a public hearing on the small system variance before the variance is granted. Today's proposed rule addresses this statutory mandate through §§ 142.308–142.310 of the regulations. These requirements are also intended to ensure that persons served by the system who may wish to file a petition with the Administrator objecting to the variance, as provided for in Section 1415(e)(10)(B) of the Act, have adequate information and time to do so.

The overall structure of the process intended by today's proposed regulations for granting a small system variance is as follows:

(1) A small public water system which is in noncompliance with an eligible maximum contaminant level or treatment technique submits an application to the primacy agency for a small system variance;

(2) The primacy agency reviews the small system's application and performs a compliance options analysis to determine if a small system variance should be issued to the public water system.

(3) If a small system variance can be issued in accordance with the Act and the proposed regulations, and upon finding and documenting the required information under Section 142.307 of the proposed rule, the primacy agency establishes the terms and conditions of the proposed small system variance;

(4) The primacy agency prepares a draft of the small system variance including the terms and conditions of the same;

(5) The primacy agency provides notice to consumers of the system of its intent to propose the small system variance and of a public hearing on the proposed variance, including information on the contaminant and its potential health effects, the compliance options considered, and the terms and conditions of the proposed variance;

(6) The primacy agency also proposes the variance by publishing a notice in the State equivalent of the **Federal Register**, or, in the case of the Administrator, in the **Federal Register**;

(7) Either before, or within 15 days after publication of this notice, the primacy agency conducts a public hearing on the draft proposed small system variance;

(8) If a State proposes to issue a small system variance to a public water system serving a population of more than 3,300 and fewer than 10,000 persons, the State must submit the proposed small system variance and all supporting documentation, including any public comment received prior to this submission, to EPA for review and approval of the proposed variance;

(9) Within thirty days of the proposal date of any small system variance, persons served by the system may petition the Administrator to object to the proposed small system variance; and

(10) The Administrator must respond to all such petitions within 60 days of receiving them and may object to a proposed small system variance within ninety days of the proposal date.

EPA is proposing that the State may provide the notice for a public meeting on the small system variance at the same time that the State notifies the public that it intends to propose the small system variance. Under this approach, the State would not be required to issue an additional notification directly to consumers on the actual date of proposal. Such notice must be issued at least 15 days before the actual proposal date and at least 30 days before the public meeting. For purposes of the consumer petition process, the variance is proposed on the actual proposal date (generally the date of publication in the State or **Federal Register**) as opposed to the date that the State issues one or more public notices.

In summary, the proposed regulation requires a State to provide at least one public notice directly to the system's consumers (in addition to publishing the proposed variance in the State or **Federal Register**); to fulfill the requirement of notifying the public of the public hearing and proposal of the small system variance. This approach considers the burden on the State and system seeking the variance of providing more than one such notice. However, the Administrator encourages the State and small systems to engage the public in the development and issuance of the small system variance early in the process.

The Agency also requests comments on an alternative approach to the State notification requirements included in the proposed regulatory language. Under this approach, the Agency would require that the State provide two distinct public notices directly to water system consumers during the small system variance process, in addition to publishing the proposed variance in the State or **Federal Register**. This proposal would require that the State provide public notice (1) announcing the required public meeting at least 30 days before the meeting and (2) at the time a State proposes to issue a small system variance. In addition, the State would be required to hold the public meeting before the State proposes the small system variance. Before holding a public meeting, the State or the Administrator would need to make public a draft of the proposed small system variance to ensure that the public is adequately informed of the terms and conditions likely to be in the proposed small system variance.

The Agency requests comments on whether the Agency should require two separate notices by the State to water system consumers (in addition to publication of the proposed variance in the State or **Federal Register**), one announcing the public meeting and a second on proposal of the small system variance.

Although the alternative approach may increase the State burden by requiring two different notices, adopting this approach in the regulation may maximize public notification and participation in the issuance of a small system variance. In addition, by requiring that the public meeting be held before proposing the small system variance, a person served by the system would be guaranteed at least 30 days following the public meeting before expiration of the deadline for filing a petition. Under the proposed approach, a person served by the system could have as little as 15 days following the public meeting to file a petition, though they would still be guaranteed at least 45 days from the time they first received notice of the proposed variance (along will all of the required supporting information) to file such a petition. In selecting a final approach, the Agency will consider all comments and attempt to balance the burden to the State and water system with the need to provide adequate opportunity for public participation, including use of the petition process.

b. Notice by public water systems. The Agency is also requesting comment on adding an additional public notification requirement which is currently not a part of the proposed regulatory language. Under this approach, the Agency would require the public water system to provide notice to the persons served by the system that the system is applying for a small system variance.

The intent of this would be to address some stakeholders' concerns that public notification should be provided early in the small system variance process. This alternative would require the system applying for a small system variance to notify the public at the time it applies for a small system variance. The notice would be required to be in the same manner as required for the State in notifying persons served by the system that a variance will be proposed as prescribed, in §§ 142.308(a) through (d) of the proposed regulation (see III.G.8.d below). Consistent with the underlying theme of today's proposed regulations, States would be encouraged to provide assistance to small systems to ensure that the public notification requirements are satisfied.

The Agency requests public comment on whether this additional notification should be a part of this regulation. The Agency recognizes that this would place an additional burden on the small public water system. However, such notification may further the goal of affording early public participation in the development of the small system variance, before the State has conducted its initial compliance options analysis and considered appropriate terms and conditions to ensure adequate protection of public health. The information provided with such a notice would necessarily be less complete than that provided by the State after reviewing the application. The Agency also requests comments on what information should be required in such a notice and whether there is concern over the first notification to water system consumers being one that would necessarily lack complete information.

c. Public hearing requirement. Section 142.309 of the proposed regulations addresses the requirements for a public hearing on a draft proposed small system variance and notice of the public hearing. Consistent with section 1415(e)(7)(A)(i) of the Act, a State or the Administrator is required to provide for at least one (1) public hearing on the small system variance before it is granted. However, before holding a public meeting, the State or the Administrator must make public a draft of the proposed small system variance along with various supporting information as specified in § 142.308(c), to ensure that the public is adequately informed of the terms and conditions likely to be in the proposed small system variance. The State or the Administrator must notify the public of the public hearing (and provide the required supporting information) at least 30 days before the date of the meeting.

d. Manner of public notification. Section 142.308 of the proposed regulations codifies the Safe Drinking Water Act provision that any person served by the system may petition the Administrator to object to the granting of a variance. The notice requirements in the proposed regulations are intended to provide adequate notice for persons who may wish to petition the Administrator to ask the Agency to object to the variance.

Operators of small systems requested that the Agency address the issue of whether persons who are not billing customers of the system must be provided a notice by direct mail considering the burden associated with identifying and obtaining mailing addresses for non-billed consumers of a system's water. In light of all comments provided to the Agency during the stakeholder process, the Agency is proposing to require individual notice only to billing customers of the system. In addition, notice must be provided in a brief and concise manner to regular consumers who are not billing customers, by some other reasonable method, such as publication in a local newspaper, posting in public places, or delivery to community organizations. Although this might not reach persons outside the service area, it would reach factory workers and tenants of apartment houses and condominiums, even if those persons do not receive water bills. Today's proposed rule would therefore require that a State provide some form of notice to all persons served by the system on a regular basis.

e. Content of notices. Section 1415(e)(7)(A)(i) of the Safe Drinking Water Act requires that public notification include information regarding the contaminant and variance. Section 142.308(c) of the proposal implements this statutory requirement. In this provision, the Agency is requiring, along with other information, specific health effects language to be used by States in the notices. The Agency is proposing to require use of the health effects language developed for the recently proposed consumer confidence report rules, 63 **Federal Register** 7625, 7631–7632 (Feb. 13, 1998). The Agency believes that there are many benefits to the use of standard health effects language in the various public notice provisions of the amended Safe Drinking Water Act, particularly in reducing confusion for the systems and the public. If the language in the consumer confidence report rules is revised after public comment, the Agency intends to use the revised language for this rule.

The Agency is also implementing stakeholders' concerns that notices not contain highly technical information by requiring the notices to provide a brief non-technical summary of the variance process and compliance options considered by the system and the primacy agency. In addition, all proposed notices would be required to meet the multilingual requirement in § 142.308(c)(7) of the proposed regulations, if appropriate. This requirement specifies that in communities with a large portion of non-English-speaking residents, information in the appropriate language regarding the content and importance of the notice should be included. The multilingual requirement is consistent with the Agency's environmental justice policy.

f. Consumer petition process. Section 1415(e)(10)(B) of the Safe Drinking Water Act allows for persons served by the system to petition the Administrator to object to the granting of a small system variance; such petitions must be submitted not later than 30 days after a State proposes to issue a small system variance. This statutory provision is implemented in § 142.310 of the proposed regulations. Consumer petitions should be mailed to the EPA Regional Administrator. The proposed rule requires that the State or the Administrator include, in the public notice of the proposed small system variance, information to consumers regarding the petition process and the address of the EPA Regional Administrator for their State.

H. Sections 142.311 and 142.312.—Bases for Administrator's Objections to State-Proposed Small System Variances

Pursuant to section 1415(e)(9) of the Act, § 142.312(a) of the proposed rule requires a primacy State, which is proposing to grant a small system variance to a public water system serving more than 3,300 and fewer than 10,000 persons, to submit that variance to the Administrator for review and approval prior to issuance. Section 142.312(c) requires that, if the Administrator disapproves the variance, the Administrator notify the State in writing of the reasons for such disapproval. Such disapproval must be based upon a determination that the variance is not in compliance with the requirements of the Act and regulations, including the requirement that the system cannot afford to comply with the maximum contaminant level (MCL) or treatment technique for which the variance is being sought, in accordance with the State affordability criteria.

In addition, § 142.311(a) of the proposed rule requires a primacy State, which is proposing to grant a small system variance to a public water system serving 3,300 or fewer persons, to submit that variance to the Administrator for review prior to issuance.

Section 1415(e)(10) of the Act addresses objections to small system variances. Pursuant to section 1415(e)(10)(A) of the Act, § 142.311(b) of the proposed rule states that the Administrator may review and object to any variance proposed to be granted by the State, if such objection is communicated to the State not later than 90 days after the State proposes to grant the variance. Again, the Agency expects that such objections would be based upon a determination that the variance is not in compliance with the requirements of the Act and the rule, including a finding consistent with the State's affordability criteria that the system cannot afford to comply. In accordance with section 1415(e)(10)(A) of the Act, the notification to the State must include the basis for the objection and propose a modification to the variance to resolve the concerns of the Administrator. The State shall make the recommended modification or respond in writing to each objection. If the State issues the variance without resolving the concerns of the Administrator, the Administrator may overturn the State decision to grant the variance if the Administrator determines that the State decision does not comply with the Act and the rule.

I. Section 142.313.—Bases for Administrator's Review of State Small System Variance Program

Pursuant to section 1415(e)(8)(A) of the Safe Drinking Water Act, § 142.313 of the proposed rule requires the Administrator to periodically review the primacy State's variance program to determine whether variances granted by the State comply with the requirements of the Act. The Administrator may determine that the variances granted by the primacy State are not in compliance with the State's affordability criteria and the requirements of the Act. Pursuant to section 1415(e)(8)(B) of the Act, § 142.313(b) of the proposed rule requires the Administrator to notify the State in writing of the deficiencies and to make public the determination.

J. General Variances: Time Limitation

Section 1415(a)(1)(A)(ii) of the Safe Drinking Water Act states that a schedule prescribed under a general variance must require compliance by the public water system, with each maximum contaminant level or treatment technique requirement with respect to which the variance was granted, as expeditiously as practicable (as the State may reasonably determine) but sets no specific final date for compliance other than that in the compliance schedule.

The Agency is seeking comment on whether to add language to § 142.20 of the proposed regulations that would require any variance issued by a State pursuant to section 1415(a) of the Safe Drinking Water Act to prescribe a schedule that would require a public water system to install technology, which the Administrator finds available, within three years of the issuance of the variance. In addition, the regulations could be modified to allow the State or Administrator to grant an additional two years to complete necessary capital improvements to achieve compliance or to obtain financial assistance provided under section 1452 of the Safe Drinking Water Act or any other Federal or State program.

The Agency recognizes that under a general variance, the State must prescribe a schedule which requires compliance with the conditions of the variance as expeditiously as possible (as determined by the State) which may be less than three years for a given public water system. Under this proposal, a State would also have the flexibility to require compliance under a general variance within a possible five-year time period.

This proposal is based upon the rationale that because sections 1415(a) and 1415(e) of the Act require the installation of specific technology as specified by the Administrator, it is reasonable to require a system to install the technology specified through section 1415(a) within the same time periods as required for section 1415(e). On the other hand, Congress did not choose to impose a time limit on general variances, further differentiating them from small system variances. Therefore, the option of imposing such a time limit may not be appropriate for general variances. The Agency requests public comment on whether the final rule should specify compliance time periods for general variances issued under section 1415(a) of the Safe Drinking Water Act, with such time periods matching those specified for small system variances issued under section 1415(e).

K. Relationship of Exemptions and Small System Variances

Under section 1416(b)(2)(D) of the Safe Drinking Water Act, a public water system may not receive an exemption under section 1416 if the system was granted a small system variance under section 1415(e) of the Act. However, the Act is silent on whether a small system variance under section 1415(e) may be issued after the issuance of an exemption under section 1416.

The Agency firmly believes that, at the conclusion of the established compliance schedule, a public water system receiving an exemption for a given contaminant should come into full compliance with the applicable national drinking water regulation for which the exemption was granted, wherever possible. However, during the stakeholders process, the Agency received comments indicating that the regulations should implement the exemption provisions of the Act to allow, under certain conditions, a public water system which has received an exemption to subsequently receive a variance for that same contaminant if it turns out that there is no affordable compliance technology for the system.

Today, the Agency is considering three alternatives to address whether a small system variance may be issued after an exemption. The first approach would prohibit the issuance of a small system variance after an exemption. Under this approach, if a public water system cannot achieve full compliance with national primary drinking water regulations at the end of the exemption period, the public water system would be subject to an enforcement action by which failure to comply would be remedied. The second approach would allow a State or the Administrator to issue a small system variance after an exemption for the same contaminant, but only under specific conditions. For example, the rule might require that before a small system variance is issued to a system that has already received an exemption, the primacy agency must make a determination whether the system was taking all practicable steps to meet the requirements of the established compliance schedule under the exemption. Under the third approach, due to the variety of circumstances under which the issuance of a small system variance after an exemption could be appropriate, the final rule would allow such a variance but leave the decision to the implementing agency regarding which such circumstances merit the issuance of a small system variance after an exemption for the same contaminant. The Agency requests public comment on which regulatory approach is most appropriate.

L. State Revolving Fund Linkage to Exemptions

Strong statutory linkage exists between the exemptions provisions in section 1416 of the Safe Drinking Water Act and the State Revolving Fund provisions of section 1452 of the Act. Today's proposed rule attempts to reflect that linkage. Under section 1452 of the Act, the State may provide at its discretion additional subsidization to a recipient of State Revolving Fund assistance for a project serving a disadvantaged community according to the State's affordability criteria for drinking water. Under section 1416(a) of the Act, States are directed to consider whether a system serves such a disadvantaged community in determining whether compelling economic factors prevent the system from complying with an MCL or treatment technique, which is one of the eligibility requirements for receiving an exemption. To implement this provision and reflect the linkage existing in the Act, today's proposed regulation, in §§ 142.20 and 142.50, requires that the primacy agency consider whether the public water system serves a disadvantaged community, pursuant to section 1452(d) of the Act.

The State Revolving Loan Fund program plays a prominent role in the consideration of whether to issue exemptions. Today's proposed regulation requires the State to consider whether State Revolving Loan Fund assistance is available to the public water system to assist it in achieving compliance with the Act. That consideration should include an assessment of the public water system's technical, financial, and managerial capacity, and whether assistance can help bring the system into compliance with the Act. These two provisions, the State Revolving Fund provisions and the exemptions provisions, can be used together to complete two important tasks: (1) ensure that State Revolving Loan Fund assistance is targeted towards those public water systems most in need of such assistance, and (2) allow systems which receive such assistance to be able to use it in conjunction with an exemption in a way that will produce full compliance with the Act within the compliance schedule established by the State.

M. Exemption: Renewals for Small Systems

Under section 1416(b)(2)(A) of the Safe Drinking Water Act, an exemption issued to a public water system must prescribe a schedule requiring compliance by the system with each contaminant level and treatment technique requirement with respect to which the exemption was granted as expeditiously as practicable (as the State may reasonably determine) but not later than three years after the otherwise applicable compliance date established in section 1412(b)(10). Section 1416(b)(2)(C) states ''[i]n the case of a system which does not serve more than a population of 3,300 and which needs financial assistance for the necessary improvements, an exemption . . . may be renewed for one or more additional 2-year periods, but not to exceed a total of 6 years, if the system establishes that it is taking all practicable steps to meet the requirements of [the established compliance schedule].''

The intensive compliance options analysis required, under § 142.20(b)(1) and § 142.50(a), to be performed before an exemption is initially granted should indicate whether an exemption is appropriate. If an exemption is appropriate after the compliance options analysis, the primacy agency should facilitate and work with the system to ensure compliance as soon as practicable, but within three years of the otherwise applicable compliance date, including providing financial assistance under section 1452 of the Act. Under §§ 142.20(b)(2) and 142.56 of the proposed rule, two-year extensions of exemptions pursuant to section 1416(b)(2)(C) of the Act may only be granted to systems which serve 3,300 or fewer people and which need financial assistance, and upon State review of the small system's progress and the State's subsequent determination that the small system and is taking all practicable steps to meet the requirements of the Act.

The Agency interprets the use of the word ''renewal'' by Congress to indicate that additional two-year periods may not be granted ''up-front'' to the small system at the time of initial issuance of the exemption. Review by the primacy agency is necessary in this renewal process to ensure that the system is taking all practicable steps to meet the requirements of the Act. However, it is not anticipated that the review process to renew an exemption will be as complex as the initial determination process, including a compliance options analysis, performed by the primacy State or the Administrator prior to granting the exemption. Rather, the State should review the progress of the small system to determine if the system is taking all practicable steps to meet the compliance schedule. Even though not required by section 1416 of the Act, the primacy State may wish to consider the incorporation of public participation into the review process of an exemption. If the State determines that a renewal would not be appropriate under the Act or regulations, the public water system must comply with applicable national primary drinking water regulations at the end of the exemption period.

The Agency requests comment on the above approach and on the level of effort required by the primacy agency for review and issuance of renewals of exemptions. In addition, the Agency requests comment on whether the Agency should consider allowing the extensions to be incorporated in the initial compliance schedule.

IV. Cost of Rule

The purpose of this rule is to allow systems, especially those serving under 10,000 people, to adopt affordable technologies that improve the quality of their water and move them closer to compliance with national drinking water standards. By relieving these systems of the obligation to achieve full compliance with applicable standards when such compliance is not affordable, while maintaining public health protection, the rule has the potential to generate significant cost savings. However, since the vast majority of systems currently are already in compliance with existing standards, the Agency expects the new variance and exemption provisions to be used primarily by systems unable to achieve compliance (or which require additional time to achieve compliance) with future standards. Because the Agency does not yet know what these new standards will require or what variance technologies will be approved, it is not possible to quantify the potential cost savings of the rule with respect to future standards. Rather, at the time that new standards are promulgated, the Agency will factor the availability of variances and exemptions under appropriate conditions into the cost estimates for these standards.

The Agency is currently working on identifying variance technologies for existing standards. Once these technologies have been identified and preliminarily financially analyzed, it may be possible for the Agency to estimate the potential cost savings from variances for these existing standards. However, the analysis of these technologies is not far enough along for the Agency to provide an estimate of these cost savings with the current proposal. In addition to the savings associated with adopting affordable technologies, however, the Agency anticipates that systems (and States) will also realize savings associated with a reduction in enforcement actions (and

associated judicial proceedings) for systems that are not able to comply with existing standards but will now have greater access to variances and exemptions. The Agency has therefore performed an illustrative analysis of the costs to systems of applying for variances and exemptions and the cost to States of granting them, relative to the savings from reduced enforcement actions. This analysis focused on two sets of existing standards, those contained in the Lead and Copper Rule, and those contained in the Phase II/V Rule.

Based upon this economic impact analysis (EIA), public water systems would realize net economic benefits as a result of today's proposed rule. Results of the impact analysis show that, if all eligible public water systems in all 56 States and territories apply for and are granted variances under sections 1415(a) or 1415(e), or exemptions under today's proposed rule, for the rules considered in this analysis, then the regulation will show a net annualized economic benefit of $573,706 to the Agency, States, and public water systems, not including benefits due to increased public health protection or savings associated with the installation of affordable technologies. A summary of this EIA is available in the Office of Water Docket, #W–97–26.

The Agency performed an economic impact analysis of today's proposed rule to examine the economic costs and benefits of this rule on the Agency, State Drinking Water programs, and public water systems over a nine-year period. A nine-year period was chosen because systems serving fewer than 3,300 persons can operate for a maximum of nine years under an exemption, if they receive all available extensions. Small system variances, however, are available for the useful life of the variance technology, which can depend on various technical and financial factors. Thus, nine years was chosen as an appropriate time frame in which to examine the costs incurred by a variance and/or exemption program.

The Agency's economic analysis for the variance and exemption rule include variables such as administrative burden on States and the Agency, as well as costs on public water systems of applying and providing notice of application under the proposed rule. Costs to the Agency and States specifically include review of variance and exemption applications, setting terms and conditions of small system variances, and setting and enforcing milestones within the exemption period for a system. Some administrative costs, such as those associated with adopting new regulations or developing new criteria, were not included in the analysis. Estimated benefits include administrative costs associated with noncompliance avoided for States and the Agency, as well as litigation, judicial, and other process costs avoided by public water systems and regulatory agencies as a result of having variance and exemption programs in place. These costs avoided are not specific to any rule.

For the purposes of the economic impact analysis, the Agency selected two example regulations for which a system may apply for either a small systems variance or exemption. The Safe Drinking Water Act states in section 1416(b)(2)(A) that exemptions require compliance as soon as practicable but not later than 3 years after the otherwise applicable compliance date established for a given contaminant. Because no SDWA rules have been promulgated in the past three years, estimating the costs of implementing an exemption program was somewhat problematic, i.e., there are currently no national primary drinking water regulations for which exemptions can be currently granted.

As an alternative, the Agency used the Lead and Copper Rule (last promulgated in 1995) as an example so that the Agency could estimate the process costs of implementing an exemption on all affected entities. The Lead and Copper Rule was chosen because over 68,093 public water systems (approximately 38% of all public water systems) are subject to that rule, which provides a practical upper bound on the potential costs associated with processing and issuing exemptions for a rule. Further, the Agency has access to Lead and Copper Rule compliance data for those 68,093 public water systems.

The Agency also selected the Phase II/V regulation (inorganic contaminants) as an example of a pool of maximum contaminants levels for which variances under sections 1415(a) and 1415(e) may be granted. This regulation was selected because, for the purpose of issuing small system variances under section 1415(e), variance technologies are likely to be designated by the Agency for some of the maximum contaminant levels under this regulation. This assumption is based on preliminary analyses performed in preparing a small systems variance technology list under section 1412(b)(15) of the Safe Drinking Act. Also, Phase II/V addresses approximately 25 contaminants, some or all which may also be eligible for source water variances under section 1415(a) of the Act. Therefore, Phase II/V helps the Agency obtain a practical upper bound on the potential costs associated with processing and issuing variances for a NPDWR.

In using the Phase II/V Regulation and the Lead and Copper Rule as examples, the Agency does not make any indication as to whether these rules will be eligible for small system variances. The Administrator has not yet finally determined the contaminants for which small system variance technologies will be designated.

The table below provides, by system size as number of persons served, the number of public water systems (PWSs) subject to the Lead and Copper Rule and the Phase II/V Rule.

System size (in persons served)	All PWS subject to the lead and copper rule	All PWS subject to the phase II/V rule
25–500	51,191	48,100
501–3,300	16,902	14,126
Total < 3,301	68,093	62,226
3,301–10,000	4,323	3,410
Total < 10,000	72,416	65,636
> 10,000	3,529	2,774
Total	75,945	68,410

For both regulations, the Agency used compliance data to estimate the number of systems that may be eligible for a variance under sections 1415(a) or 1415(e) of the Act, or exemptions. The violation rates used in the economic impact analysis are identified in the table below. Violation data for the Lead and Copper Rule was taken from the Safe Drinking Water Information System database; violation rates for the Phase II/V Rule are from the Public Water Supply Supervision program information collection rule.

	Percentage of all PWS potentially eligible for variances/exemptions	
	Lead and copper (percent)	Phase II/V (percent)
Treatment Technique or Maximum Contaminant Level (annual violation rate)	0.50	0.50
Treatment Technique or Maximum Contaminant Level (nine-year violation rate)	4.50	2.00

The number of potentially eligible systems (i.e., systems in violation) was then used to estimate processing costs incurred by implementing a variance

and/or exemption program to all affected entities, summed for both rules. As stated previously, these costs include administrative burden to States and the Agency, as well as the public water systems' costs of applying for variances and exemptions. These costs were then compared to the economic benefits to public water systems, States, and the Agency of avoiding litigation and other administrative costs associated with noncompliance, summed for both rules. The net results are shown below, and costs are shown in parentheses.

	EPA	State drinking water programs	PWS	All entities
Costs	$241,821	$5,041,694	$348,716	.....
Benefits	0	2,863,321	3,342,616	.....
Net annualized economic costs and benefits	(241,821)	(2,178,373)	2,993,900	$573,706
Net present value of economic costs and benefits	.....	.....	.....	4,057,739

The Agency also examined the distribution of net economic benefits within differing size categories of public water systems serving 10,000 or fewer persons. As shown below, systems serving 25–500 persons will show the greatest net benefit from the issuance of variance and exemptions according to the model assumptions.

System size (persons served)	Net annualized economic benefits
25–500	$2,060,939
501–3,300	642,323
3,301–10,000	149,782

According to the economic impact analysis and the above tables, the variance and exemption rule is not considered to have a ''significant impact'' as defined under the Unfunded Mandates Reform Act, nor would it pose an adverse impact on a substantial number of small entities, as discussed in section V.D. of the preamble to today's proposed rule. Instead, public water systems would show a net economic benefit under today's proposed rule.

V. Other Administrative Requirements

A. Executive Order 12866

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency must determine whether the regulatory action is ''significant'' and therefore subject to review by the Office of Management and Budget and the requirements of the Executive Order. The Order defines ''significant regulatory action'' as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more, or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of the recipients thereof; or

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

It has been determined, that this rule is a ''significant regulatory action'' because it may raise novel legal or policy issues. The rule seeks to improve public health protection while providing regulatory relief to small systems by encouraging the adoption, by small systems unable to comply with drinking water standards, of affordable technologies that will improve the quality of their water even if they do not achieve full compliance with the MCL or treatment technique requirement for a particular contaminant. Therefore, EPA submitted this action to OMB for review. Substantive changes made in response to OMB suggestions or recommendations will be documented in the public record.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA), as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA), generally requires the Agency to consider explicitly the effect of proposed regulations on small entities. The Agency assesses the impact of the proposed rule on small entities and considers regulatory alternatives if a rule has a significant economic impact on a substantial number of small entities. However, under section 605(b) of the RFA, if the Agency certifies that the rule will not have a significant economic impact on a substantial number of small entities, the Agency is not required to prepare an RFA.

Pursuant to section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b), the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities. Regulations on variances and exemptions provide regulatory relief from the costs of complying with a maximum contaminant level or a treatment technique under a given national primary drinking water regulation. As directed in the Safe Drinking Water Act, this rule describes procedures and criteria by which those small public water systems which cannot afford the appropriate treatment to comply with a given national primary drinking water regulation can receive a variance or exemption. Thus, public water systems show a net economic benefit under today's proposed rule as a result of being granted a variance or exemption, rather than bear process costs associated with litigation and enforcement. Please see section IV, ''Cost of Rule'', in today's preamble for a more detailed discussion of the economic costs and benefits of today's proposed rule.

C. Paperwork Reduction Act

The information collection requirements in this proposed rule are currently being prepared and will be submitted for approval to the Office of Management and Budget (OMB) under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* An Information Collection Request (ICR No. 270.39) document will be prepared by the Agency to amend the current Public Water System Supervision Program ICR (OMB control number 2040–0090). A copy of the ICR is available from Sandy Farmer, Regulatory Information Division, Office of Policy, Planning, and Evaluation, U.S. Environmental Protection Agency (Mailcode: 2137), 401 M St., S.W., Washington, D.C., 20460, or by calling (202) 260–2740. Information requirements created by this regulation are not effective until OMB approves them.

Information required by this regulation allows the State or the Administrator to determine that the circumstances at a public water system

satisfy the statutory conditions for granting a small system variance or an exemption. Some of the required information allows the Administrator and the public to determine that the public had adequate opportunity to review and comment on a decision to grant a small system variance. The information collection requirements of this rule are mandatory for public water systems applying for either a variance or an exemption and for primacy States that review and either grant or deny these applications. Information collected by this rule will be provided to the public to facilitate public involvement in this process.

Based upon the analysis of the two rules discussed above, total public burden for this collection of information is estimated as 128,178 hours annually. The Agency notes however that the rule is estimated to provide a benefit of 117,414 annual hours of burden reduction by reducing enforcement actions against public water systems unable to comply fully with the maximum contaminant level or treatment technique requirements of the National Primary Drinking Water Regulations. Because this type of burden is not generally counted when developing burden estimates for these regulations, it is not netted out of the burden estimated for the current rule. 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.

Despite the increased burden hours, the rule is expected to provide a net economic benefit to systems choosing to apply for a variance or exemption, as discussed in section IV. This benefit includes avoided litigation and judicial costs, as well as the savings associated with the implementation of affordable technologies.

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.

Comments are requested on the Agency's need for the required information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques. Send comments on the ICR June 19, 1998 to: Director, OPPE Regulatory Information Division, U.S. Environmental Protection Agency (Mailcode: 2137), 401 M St., S.W., Washington, D.C., 20460 and to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th St., N.W., Washington, D.C., 20503, Attn: Desk Office for EPA Office of Water. The final rule will respond to any OMB or public comments on the information collection requirements contained in this proposal.

D. Unfunded Mandates Reform Act and Executive Order 12875

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, Tribal, and local governments and the private sector. Under section 202 of the UMRA, the Agency 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, Tribal, and local governments, in the aggregate, or to the private sector, of $100 million or more in any one year.

Before promulgating an Agency rule for which a written statement is needed, section 205 of the UMRA generally requires the Agency 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 of the UMRA do not apply when they are inconsistent with applicable law. Moreover, section 205 of the UMRA allows the Agency to adopt an alternative other than the least costly, most cost-effective, or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted.

Before the Agency establishes any regulatory requirements that may significantly or uniquely affect small governments, including Tribal governments, it must have developed a small government agency plan under section 203 of the UMRA. 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 Agency 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 (under the regulatory provisions of Title II of the UMRA) for State, local, or tribal governments or the private sector. This rule imposes no enforceable duty on any State, local or tribal governments or the private sector. This is because the rule will apply only to primacy States or Tribes. States or Tribes may choose whether to acquire or maintain primacy under the Safe Drinking Water Act. Further, States and Tribes with primacy may choose whether to issue variances and exemptions; they can decide to not issue any exemptions or variances at all. If they choose to issue variances or exemptions, they are only required to issue variances and exemptions in a manner not less stringent than the conditions under, and the manner in which, variances and exemptions may be granted under section 1415 and 1416 of the SDWA. Thus, today's rule is not subject to the requirements of section 202 and 205 of the UMRA.

Moreover, because this rule establishes procedures and criteria for public water systems to obtain variances and exemptions from Safe Drinking Water Act requirements, the Agency has determined that this rule contains no regulatory requirements that might significantly or uniquely adversely affect small governments and thus this rule is not subject to the requirement of section 203 of UMRA.

E. Enhancing Intergovernmental Partnerships

Executive Order 12875, ''Enhancing Intergovernmental Partnerships,'' October 26, 1995, requires the Agency to consult with State, tribal, and local entities in the development of rules that will affect them, and to document for OMB review the issues raised and how the issues were addressed. As described in section II of the Supplementary Information above, the Agency held several meetings with a wide variety of State and local representatives, who provided meaningful and timely input toward the development of the proposed rule. Summaries of these meetings have been included in the public docket for this rulemaking.

F. Protection of Children and Environmental Justice

Under the Executive Order entitled ''Protection of Children from Environmental Health Risks and Safety Risk,'' dated April 21, 1997, the Agency must ensure that its policies, programs, activities, and standards address environmental and safety risks to children. Every regulatory action submitted to OMB for review under Executive Order 12866 must include information that evaluates the environmental health and safety effects of the planned regulation on children and explains why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

In addition, under Executive Order 12898, entitled ''Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations'', dated February 11, 1994, the Agency must make achieving environmental justice part of its mission.

The Agency believes that this proposed rule has the potential to significantly reduce risks to children caused by inadequate drinking water and address environmental justice problems. After a small public water system applies for a small system variance, § 142.306(b) of the proposed rule requires the State to perform a compliance options analysis for the system. Small noncompliant public water systems are often financially distressed as a result of the service population's inability to pay for safe drinking water and other factors. The public water system may have unprotected source waters or is unable to afford the appropriate treatment technology or technique, certified operator, and/or adequate transmission and distribution systems. As required by § 142.306(b) of the proposed rule, an analysis of the applicant system's compliance options will provide insight into alternative means of compliance. This might include some form of restructuring or consolidation with another system, development of a cleaner, safer water source, or using some alternative treatment technique or technology.

If according to a State's affordability criteria, these compliance options are unaffordable for a drinking water system, the State may grant the system a variance. Prior to issuing a variance, § 142.306(b)(5) of the proposed rule requires that the State find that the terms and conditions of a small system variance ensure ''adequate protection of public health.'' Similarly, an exemption can only be granted if its conditions ensure that there is no unreasonable risk to health.'' Both findings are made at the State level on a case-specific basis.

The intent of the small system variance subpart of the rule is to move a system, which is not complying with Safe Drinking Water Act standards because the treatment required is unaffordable, toward or into compliance status by requiring the system to install, operate and maintain treatment which is affordable and protective of human health. Although the level of treatment provided may not meet the maximum contaminant level, it must be determined to be protective of human health—both by the Agency in identifying the approved variance technology and by the primacy State in making such a finding—if the variance is granted.

The Agency believes that a system operating under a small system variance as proposed today will provide better treatment than that provided by a system in noncompliance. Although the drinking water system may not be able to provide water that is consistently below the maximum contaminant level, a water system operating under a variance will be able to create a net gain in the quality of its finished water above what it could provide before installing a variance technology. In turn, this will lead to a net gain in public health protection for infants, children, and nursing or pregnant women as well as for persons in low-income areas, thus protecting children's health as well as alleviating environmental justice problems.

In addition to requirements that ensure public participation in granting variances and exemptions, § 142.308(c)(7) of the proposed rule requires that, in communities with a large portion of non-English speaking persons, notices provided to the public must include information in the appropriate language regarding the content and importance of the notice.

For these reasons, the Agency believes that this rule is consistent with, and implements, the Executive Order on protecting children as well as the Executive Order addressing environmental justice.

G. National Technology Transfer and Advancement Act

Under section 12(d) of the National Technology Transfer and Advancement Act, the Agency is required to use voluntary consensus standards in its regulatory and procurement activities, unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, business practices, etc.) that are developed or adopted by voluntary consensus standards bodies. Where available and potentially applicable voluntary consensus standards are not used by the Agency, the Act requires the Agency to provide Congress, through the Office of Management and Budget, an explanation of the reasons for not using such standards. Because this proposed rule is procedural and does not involve or require the use of any technical standards, the Agency does not believe that this Act is applicable to this rule. Moreover, the Agency is unaware of any voluntary consensus standards relevant to this rulemaking. Therefore, even if the Act were applicable to this kind of rulemaking, the Agency does not believe that there are any ''available or potentially applicable'' voluntary consensus standards. A commenter who disagrees with this conclusion should indicate how the rule is subject to the Act, and identify any potentially applicable voluntary consensus standards.

VI. Request for Public Comments

The Agency seeks public comment on this proposed rule. In particular, several sections of the preamble describe alternative approaches under consideration by the Agency or specifically request comment. The topic areas addressed in these particular sections include: which contaminants should be eligible for small system variances; the usefulness and appropriateness of additional guidance on site-specific determination of adequate public health protection; the appropriateness of requiring States to explicitly consider impacts on sensitive subpopulations, or alternatively of the Agency providing guidance on impacts to such subpopulations; the number and timing of public notices that must be provided prior to granting a small system variance; the content of required health effects language in such notices; whether the Agency should promulgate a specific time limit for compliance with the terms of general variances; whether small system variances should be permitted for systems that are unable to comply within the terms of an exemption; whether exemption renewals should be allowed in advance; and the reporting and recordkeeping requirements of the rule and associated burden. Comments are also welcome on any other aspect of the proposed rule and supporting documentation.

Please submit an original and three copies of your comments and enclosures (including references). To facilitate Agency review and response to comments, the Agency would prefer that commenters cite, where possible, the specific paragraph(s) or section(s) in the notice or supporting documents to which each comment refers. Commenters should use a separate paragraph for each issue discussed. Commenters who want the Agency to acknowledge receipt of their comments should enclose a self-addressed, stamped envelope. No facsimiles (faxes) will be accepted.

Written comments must be received by midnight May 20, 1998. All written comments should be submitted to: W–97–26 Comment Clerk, Water Docket (Mailcode MC4101), Environmental Protection Agency, 401 M Street, S.W., Washington, D.C., 20460.

Comments may also be submitted electronically to ow–docket@epa.mail.epa.gov. Electronic comments must be identified by the docket number W–97–26. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and form of encryption.

The record for this rulemaking has been established under docket number W–97–26, and includes supporting documentation as well as printed, paper versions of electronic comments.

List of Subjects in 40 CFR Part 142

Environmental protection, Administrative practice and procedures, Chemical, Indian-lands, Radiation protection, Reporting and recordkeeping requirements, Water supply.

Dated: April 14, 1998.

Carol M. Browner,

Administrator.

For the reasons set out in the preamble, 40 CFR part 142 is proposed to be amended as follows:

PART 142—[AMENDED]

1. The authority citation for part 142 continues to read as follows:

Authority: 42 U.S.C. 300g, 300g–1, 300g–2, 300g–3, 300g–4, 300g–5, 300g–6, 300j–4, and 300j–9.

2. Section 142.10 is amended by revising paragraph (d) to read as follows:

§ 142.10 Requirements for a determination of primary enforcement responsibility.

* * * * *

(d) *Variances and exemptions.* (1) If it permits small system variances pursuant to Section 1415(e) of the Act, it must provide procedures no less stringent than the Act and subpart K of this part.

(2) If it permits variances (other than small system variances) or exemptions, or both, from the requirements of the State primary drinking water regulations, it shall do so under conditions and in a manner no less stringent than the requirements of Sections 1415 and 1416 of the Act. In granting these variances, the State must adopt the Administrator's findings of best available technology, treatment techniques, or other means available as specified in subpart G of this part. (States with primary enforcement responsibility may adopt procedures different from those set forth in subparts E and F of this part, which apply to the issuance of variances (other than small system variances) and exemptions by the Administrator in States that do not have primary enforcement responsibility, provided that the State procedures meet the requirements of this paragraph); and

* * * * *

3. Section 142.20 is revised including the section heading to read as follows:

§ 142.20 State-issued variances and exemptions under Section 1415(a) and Section 1416 of the Act.

(a) States with primary enforcement responsibility may issue variances to public water systems (other than small system variances) from the requirements of primary drinking water regulations under conditions and in a manner which are not less stringent than the requirements under Section 1415(a) of the Act. A State must document all findings that are required under Section 1415(a) of the Act. In States that do not have primary enforcement responsibility, variances may be granted by the Administrator pursuant to subpart E of this part.

(b) States with primary enforcement responsibility may issue exemptions from the requirements of primary drinking water regulations under conditions and in a manner which are not less stringent than the requirements under Section 1416 of the Act. In States that do not have primary enforcement responsibility, exemptions may be granted by the Administrator pursuant to subpart F of this part.

(1) A State must document all findings that are required under Section 1416 of the Act, including the following:

(i) Before finding that management and restructuring changes cannot be made, a State must consider the following measures, and the availability of State Revolving Loan Fund assistance, or any other Federal or State program, that is reasonably likely to be available within the period of the exemption to implement these measures:

(A) Consideration of rate increases, accounting changes, the appointment of a State-certified operator under the State's Operator Certification program, contractual agreements for joint operation with one or more public water systems;

(B) Activities consistent with the State's Capacity Development Strategy to help the public water system acquire and maintain technical, financial, and managerial capacity to come into compliance with the Act; and

(C) Ownership changes, physical consolidation with another public water system, or other feasible and appropriate means of consolidation which would result in compliance with the Act;

(ii) The State must consider the availability of an alternative source of water, including the feasibility of partnerships with neighboring public water systems, as identified by the public water system or by the State consistent with the Capacity Development Strategy.

(2) In the case of a public water system serving a population of not more than 3,300 persons and which needs financial assistance for the necessary improvements under the initial compliance schedule, an exemption granted by the State under Section 1416(b)(2)(B)(i) or (ii) of the Act may be renewed for one or more additional 2-year periods, but not to exceed a total of 6 additional years, only if the public water system establishes that the public water system is taking all practicable steps to meet the requirements of Section 1416(b)(2)(B) of the Act and the established compliance schedule. A State must document its findings in granting an extension under this paragraph.

4. The heading for Subpart E is revised to read as follows:

Subpart E—Variances Issued by the Administrator Under Section 1415(a) of the Act

5. Section 142.42 is amended by revising paragraph (c) to read as follows:

§ 142.42 Consideration of a variance request.

* * * * *

(c) A variance may be issued to a public water system on the condition that the public water system install the best technology, treatment techniques, or other means, which the Administrator finds are available (taking costs into consideration) and based upon an evaluation satisfactory to the

Administrator that indicates that alternative sources of water are not reasonably available to the public water system.

* * * * *

Subpart F—[Amended]

6. Section 142.50 is revised to read as follows:

§ 142.50 Requirements for an exemption.

(a) The Administrator may exempt any public water system within a State that does not have primary enforcement responsibility from any requirement regarding a maximum contaminant level or any treatment technique requirement, or from both, of an applicable national primary drinking water regulation upon a finding that—(1) Due to compelling factors (which may include economic factors, including qualification of the public water system as a system serving a disadvantaged community pursuant to Section 1452(d) of the Act), the public water system is unable to comply with such contaminant level or treatment technique requirement or to implement measures to develop an alternative source of water supply;

(2) The public water system was in operation on the effective date of such contaminant level or treatment technique requirement, or for a public water system that was not in operation by that date, no reasonable alternative source of drinking water is available to such new public water system;

(3) The granting of the exemption will not result in an unreasonable risk to health; and

(4) Management or restructuring changes (or both), as provided in § 142.20(b)(1)(i)(A), cannot reasonably be made that will result in compliance with the applicable national primary drinking water regulation or, if compliance cannot be achieved, improve the quality of the drinking water.

(b) No exemption shall be granted unless the public water system establishes that the public water system is taking all practicable steps to meet the standard and;

(1) The public water system cannot meet the standard without capital improvements which cannot be completed prior to the date established pursuant to Section 1412(b)(10) of the Act;

(2) In the case of a public water system which needs financial assistance for the necessary improvements, the public water system has entered into an agreement to obtain such financial assistance or assistance pursuant to Section 1452 of the Act, or any other Federal or State program that is reasonably likely to be available within the period of the exemption; or

(3) The public water system has entered into an enforceable agreement to become a part of a regional public water system.

(c) A public water system may not receive an exemption under this subpart if the public water system was granted a variance under Section 1415(e) of the Act.

7. Section 142.53 is amended by revising paragraph (c)(1) to read as follows:

§ 142.53 Disposition of an exemption request.

* * * * *

(c) * * *

(1) Compliance (including increments of progress or measures to develop an alternative source of water supply) by the public water system with each contaminant level requirement or treatment technique requirement with respect to which the exemption was granted; and

* * * * *

8. Section 142.55 is amended by revising paragraph (b) and removing and reserving paragraph (c) to read as follows:

§ 142.55 Final schedule.

* * * * *

(b) Such schedule must require compliance with each contaminant level and treatment technique requirement with respect to which the exemption was granted as expeditiously as practicable but not later than 3 years after the otherwise applicable compliance date established in Section 1412(b)(10) of the Act.

(c) [Reserved].

9. Section 142.56 is revised to read as follows:

§ 142.56 Extension of date for compliance.

In the case of a public water system which serves a population of not more than 3,300 persons and which needs financial assistance for the necessary improvements, an exemption granted under § 142.50(b) (1) or (2) may be renewed for one or more additional 2-year periods, but not to exceed a total of 6 additional years, if the public water system establishes that the public water system is taking all practicable steps to meet the requirements of Section 1416(b)(2)(B) of the Act and the established compliance schedule.

10. Subpart K is added to read as follows:

Subpart K—Variances for Small System

Sec.

General Provisions

142.301 What is a small system variance?
142.302 Who can issue a small system variance?
142.303 Which size public water systems can receive a small system variance?
142.304 For which of the regulatory requirements is a small system variance available?
142.305 When can a small system variance be granted by a State?

Review of Small System Variance Application

142.306 What are the responsibilities of the public water system, State and the Administrator in ensuring that sufficient information is available and for evaluation of a small system variance application?
142.307 What terms and conditions must be included in a small system variance?

Public Participation

142.308 What Public Notice is Required Before a State or the Administrator Proposes to issue a Small System Variance?
142.309 What are the public meeting requirements associated with the proposal of a small system variance?
142.310 How can a person served by the public water system obtain EPA review of a State proposed small system variance?

EPA Review and Approval of Small System Variances

142.311 What procedures allow for the Administrator to object to a proposed small system variance or overturn a granted small system variance for a public water system serving 3,300 or fewer persons?
142.312 What EPA action is necessary when a State proposes to grant a small system variance to a public water system serving a population of more than 3,300 and fewer than 10,000 persons?
142.313 How will the Administrator review a State's program under this subpart?

Subpart K—Variances for Small System

General Provisions

§ 142.301 What is a small system variance?

Section 1415(e) of the Act authorizes the issuance of variances from the requirement to comply with a maximum contaminant level or treatment technique to systems serving fewer than 10,000 persons. The purpose of this subpart is to provide the procedures and criteria for obtaining these variances.

§ 142.302 Who can issue a small system variance?

A small system variance under this subpart may only be issued by either:

(a) A State that is exercising primary enforcement responsibility under

Subpart B for public water systems under the State's jurisdiction; or

(b) The Administrator, for any other public water systems.

§ 142.303 Which size public water systems can receive a small system variance?

(a) A State exercising primary enforcement responsibility for public water systems (or the Administrator for other systems) may grant a small system variance to public water systems serving 3,300 or fewer persons.

(b) With the approval of the Administrator pursuant to § 142.312, a State exercising primary enforcement responsibility for public water systems may grant a small system variance to public water systems serving more than 3,300 persons but fewer than 10,000 persons.

(c) In determining the number of persons served by the public water system, the State or Administrator must include persons served by consecutive systems. A small system variance granted to a public water system would also apply to any consecutive system served by it.

§ 142.304 For which of the regulatory requirements is a small system variance available?

(a) A small system variance is not available under this subpart for a national primary drinking water regulation for a microbial contaminant (including a bacterium, virus, or other organism) or an indicator or treatment technique for a microbial contaminant.

(b) A small system variance under this subpart is otherwise only available for compliance with a requirement specifying a maximum contaminant level or treatment technique for a contaminant with respect to which;

(1) A national primary drinking water regulation was promulgated on or after January 1, 1986; and

(2) The Administrator has published a small system variance technology pursuant to Section 1412(b)(15) of the Act.

§ 142.305 When can a small system variance be granted by a State?

No small system variance can be granted by a State until the later of the following:

(a) 90 days after the State proposes to grant the small system variance;

(b) If a State is proposing to grant a small system variance to a public water system serving 3,300 or fewer persons and the Administrator objects to the small system variance, the date on which the State makes the recommended modifications or responds in writing to each objection; or

(c) If a State is proposing to grant a small system variance to a public water system serving a population more than 3,300 and fewer than 10,000 persons, the date the Administrator approves the small system variance. The Administrator must approve or disapprove the variance within 90 days after it is submitted to the Administrator for review.

Review of Small System Variance Application

§ 142.306 What are the responsibilities of the public water system, State and the Administrator in ensuring that sufficient information is available and for evaluation of a small system variance application?

(a) A public water system requesting a small system variance must ensure that accurate and correct information is available for the State or the Administrator to issue a small system variance in accordance with this subpart. A State may assist a public water system in compiling information required for the State or the Administrator to issue a small system variance in accordance with this subpart.

(b) Based upon an application for a small system variance and other information, and before a small system variance may be proposed under this subpart, the State or the Administrator must find and document the following:

(1) The public water system is eligible for a small system variance pursuant to §§ 142.303 and 142.304;

(2) The public water system cannot afford to comply, in accordance with the affordability criteria established by the Administrator or the State, with the national primary drinking water regulation for which a small system variance is sought, including by:

(i) Treatment;

(ii) Alternative sources of water supply;

(iii) Restructuring or consolidation changes, including ownership change and/or physical consolidation with another public water system; or

(iv) Obtaining financial assistance pursuant to Section 1452 of the Act or any other Federal or State program;

(3) The public water system meets the source water quality requirements for installing the small system variance technology developed pursuant to guidance published under Section 1412(b)(15) of the Act;

(4) The public water system is financially and technically capable of installing, operating and maintaining the applicable small system variance technology; and

(5) The terms and conditions of the small system variance, as developed through compliance with § 142.307, ensure adequate protection of human health, considering the following:

(i) The quality of the source water for the public water system; and

(ii) Removal efficiencies and expected useful life of the small system variance technology.

§ 142.307 What terms and conditions must be included in a small system variance?

(a) A State or the Administrator must clearly specify enforceable terms and conditions of a small system variance.

(b) The terms and conditions of a small system variance issued under this subpart must include, at a minimum, the following requirements:

(1) Proper and effective installation, operation and maintenance of the applicable small system variance technology in accordance with guidance published by the Administrator pursuant to Section 1412(b)(15) of the Act, taking into consideration any relevant source water characteristics and any other site-specific conditions that may affect proper and effective operation and maintenance of the technology;

(2) Monitoring requirements, for the contaminant for which a small system variance is sought, as specified in 40 CFR Part 141; and

(3) Any other terms or conditions that are necessary to ensure adequate protection of public health, which may include:

(i) Public education requirements; and

(ii) Source water protection requirements.

(c) The State or the Administrator must establish a schedule for the public water system to comply with the terms and conditions of the small system variance which must include, at a minimum, the following requirements:

(1) Increments of progress, such as milestone dates for the public water system to apply for financial assistance and begin capital improvements;

(2) Quarterly reporting to the State or Administrator of the public water system's compliance with the terms and conditions of the small system variance;

(3) Schedule for the State or the Administrator to review the small system variance under paragraph (d) of this section; and

(4) Compliance with the terms and conditions of the small system variance as soon as practicable but not later than 3 years after the date on which the small system variance is granted. The Administrator or State may allow up to 2 additional years if the Administrator or State determines that additional time is necessary for the public water system to:

(i) Complete necessary capital improvements to comply with the small system variance technology, secure an alternative source of water, or restructure or consolidate; or

(ii) Obtain financial assistance provided pursuant to Section 1452 of the Act or any other Federal or State program.

(d) The State or the Administrator must review each small system variance granted not less often than every 5 years after the compliance date established in the small system variance to determine whether the public water system continues to meet the eligibility criteria and remains eligible for the small system variance and is complying with the terms and conditions of the small system variance. If the public water system would no longer be eligible for a small system variance, the State or Administrator must determine whether continued adherence to the small system variance conditions is in the public interest.

Public Participation

§ 142.308 What public notice is required before a State or the Administrator proposes to issue a small system variance?

(a) At least fifteen (15) days before the date of proposal, and at least thirty (30) days prior to a public meeting to discuss the proposed small system variance, the State or the Administrator must provide notice to all consumers of the public water system. This notice identified in paragraph (a)(1) of this section must include the information listed in paragraph (c) of this section. The notice identified in paragraph (a)(2) of this section shall include the information identified in paragraph (d) of this section. Notice must be provided to such consumers by:

(1) Direct mail to billed customers; and

(2) Any other method reasonably calculated to notify, in a brief and concise manner, other persons regularly served by the system. Such methods may include publication in a local newspaper, posting in public places or delivery to community organizations.

(b) At the time of proposal, the State must publish a notice in the State equivalent to the **Federal Register** or, in the case of the Administrator, in the **Federal Register**. This notice shall include the information listed in paragraph (c) of this section.

(c) The notice in paragraphs (a)(1) and (b) of this section must include, at a minimum, the following:

(1) Identification of the contaminant[s] for which a small system variance is sought;

(2) A brief statement of the health effects associated with the contaminant[s] for which a small system variance is sought using language in Appendix B of Part 141 Subpart O of this chapter;

(3) The address and telephone number at which interested persons may obtain further information concerning the contaminant and the small system variance;

(4) A brief summary, in easily understandable terms, of the compliance options considered by the public water system and of the terms and conditions of the small system variance;

(5) A description of the consumer petition process under § 142.310 and information on contacting the EPA Regional Office;

(6) A brief statement of the purpose of the meeting, information regarding the time and location for the meeting, and the address and telephone number at which interested persons may obtain further information concerning the meeting; and

(7) In communities with a large portion of non-English speaking residents, information in the appropriate language regarding the content and importance of the notice.

(d) The notice in paragraph (a)(2) of this section must provide sufficient information to alert readers to the proposed variance and direct them where to receive additional information.

(e) At its option, the State or the Administrator may choose to issue separate notices or additional notices related to the proposed small system variance, provided that the requirements in paragraphs (a) through (d) of this section are satisfied.

(f) Prior to promulgating the final variance, the State or the Administrator must respond in writing to all significant public comments received relating to the small system variance. Response to public comment and any other documentation supporting the issuance of a variance must be made available to the public after final promulgation.

§ 142.309 What are the public meeting requirements associated with the proposal of a small system variance?

(a) A State or the Administrator must provide for at least one (1) public meeting on the small system variance no later than 15 days after the small system variance is proposed.

(b) The State or Administrator must prepare and make publicly available, in addition to the information listed in § 142.308(c), either:

(1) The proposed small system variance, if the public meeting occurs after proposal of the small system variance or;

(2) A draft of the proposed small system variance, if the public meeting occurs prior to proposal of the proposed small system variance.

(c) Notice of the public meeting must be provided in the manner required under § 142.308 at least 30 days in advance of the public meeting.

§ 142.310 How can a person served by the public water system obtain EPA review of a State proposed small system variance?

(a) Any person served by the public water system may petition the Administrator to object to the granting of a small system variance within 30 days after a State proposes to grant a small system variance for a public water system.

(b) The Administrator must respond to a petition filed by any person served by the public water system and determine whether to object to the small system variance under § 142.311, no later than 60 days after the receipt of the petition.

EPA Review and Approval of Small System Variances

§ 142.311 What procedures allow the Administrator to object to a proposed small system variance or overturn a granted small system variance for a public water system serving 3,300 or fewer persons?

(a) At the time a State proposes to grant a small system variance under this subpart, the State must submit to the Administrator the proposed small system variance and all supporting information, including any written public comments received prior to proposal.

(b) The Administrator may review and object to any proposed small system variance within 90 days of receipt of the proposed small system variance. The Administrator must notify the State in writing of each basis for the objection and propose a modification to the small system variance to resolve the concerns of the Administrator. The State must make the recommended modification, respond in writing to each objection, or withdraw the proposal to grant the small system variance.

(c) If the State issues the small system variance without resolving the concerns of the Administrator, the Administrator may overturn the State decision to grant the variance if the Administrator determines that the State decision does not comply with the Act or this subpart.

§ 142.312 What EPA action is necessary when a State proposes to grant a small system variance to a public water system serving a population of more than 3,300 and fewer than 10,000 persons?

(a) At the time a State proposes to grant a small system variance to a public water system serving a population of more than 3,300 and fewer than 10,000 persons, the State must submit the proposed small system variance and all supporting information, including public comments received prior to proposal, to the Administrator.

(b) The Administrator must approve or disapprove the small system variance within 90 days of receipt of the proposed small system variance and supporting information. The Administrator must approve the small system variance if it meets each requirement within the Act and this subpart.

(c) If the Administrator disapproves the small system variance, the Administrator must notify the State in writing of the reasons for disapproval and the small system variance does not become effective. The State may resubmit the small system variance for review and approval with modifications to address the objections stated by the Administrator.

§ 142.313 How will the Administrator review a State's program under this subpart?

(a) The Administrator must periodically review each State program under this subpart to determine whether small system variances granted by the State comply with the requirements of the Act, this subpart and the affordability criteria developed by the State.

(b) If the Administrator determines that small system variances granted by a State are not in compliance with the requirements of the Act, this subpart or the affordability criteria developed by the State, the Administrator shall notify the State in writing of the deficiencies and make public the determinations.

(c) The Administrator's review will be based in part on quarterly reports prepared by the States pursuant to § 142.15(a)(1) relating to violations of increments of progress or other violated terms or conditions of small system variances.

[FR Doc. 98–10393 Filed 4–17–98; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

49 CFR Parts 390 and 395

[Docket No. FHWA–98–3706]

RIN 2125–AD52

Hours of Service of Drivers; Supporting Documents

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of proposed rulemaking (NPRM); request for comments.

SUMMARY: The FHWA proposes to amend the hours-of-service (HOS) recordkeeping requirements of its regulations. The Hazardous Materials Transportation Authorization Act of 1994 mandated that amendments be made to these regulations. The FHWA, with this NPRM, proposes a supporting document auditing system that all motor carriers would use to support the accuracy of the drivers' Records of Duty Status (RODS) and Hours of Service (HOS). Additionally, this NPRM would specify that failure to have such a system would require the motor carrier to maintain various types of business documents and all drivers employed by that motor carrier to collect and submit such documents in order to support the accuracy of the drivers' RODS. The proposed auditing systems and document retention proposal would enable the motor carriers, Federal, State, and local enforcement officials to compare business documents with drivers' records of duty status to monitor drivers' compliance with the HOS and RODS requirements. This proposed rule would require drivers and motor carriers to make use of documents generated or received in the normal course of business to verify the accuracy of a driver's record of duty status. The use of electronic recordkeeping methods is proposed as a preferred alternative to paper supporting document records.

DATES: Comments should be received by June 19, 1998.

ADDRESSES: Signed, written comments should refer to the docket number appearing at the top 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 a.m. and 5 p.m., e.t., Monday through Friday, except Federal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped envelope or postcard.

For Internet users, all comments received will be available for examination at the universal resource locator—*http://dms.dot.gov*—24 hours each day, 365 days each year. Please follow the instructions on-line for more information and help.

FOR FURTHER INFORMATION CONTACT: *For information regarding program issues:* Mr. David Miller, Office of Motor Carrier Research and Standards, (202) 366–4009, or *for information regarding legal issues:* Mr. Joseph Solomey, Office of the Chief Counsel, (202) 366–0834, Federal Highway Administration, Department of Transportation, 400 Seventh Street, SW., Washington, D.C. 20590.

SUPPLEMENTARY INFORMATION:

The Difference Between This RIN 2125–AD52 and RIN 2125–AD93

A regulation 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. This NPRM is the first document being published for RIN 2125–AD52. Use this RIN when cross referencing this action with the Unified Agenda.

This document is not an NPRM for RIN 2125–AD93, Hours of Service of Drivers. The FHWA published an ANPRM on November 5, 1996 for RIN 2125–AD93 (61 FR 57251). The FHWA is analyzing the comments for RIN 2125–AD93 and will publish an NPRM in the future based upon those comments and the accompanying scientific data.

The FHWA will likely incorporate this NPRM, or any final rule resulting from this NPRM, into the upcoming NPRM for RIN 2125–AD93. Please limit your analysis, though, and any comments you may have, to how this NPRM would affect the current 49 CFR part 395. Please do not comment on how these changes might affect RIN 2125–AD93 and the ICC Termination Act of 1995. You will be given an additional opportunity to comment at the time the FHWA publishes the NPRM for RIN 2125–AD93.

Electronic Availability

An electronic copy of this document may be downloaded using a computer, modem, and suitable communications software from the Government Printing Office (GPO) electronic bulletin board service (telephone: 202–512–1661). Internet users may reach the GPO's web page at: http://www.access.gpo.gov/su__docs/aces/aaces002.html

Background of Daily Logs (RODS) and the Verification of RODS

The HOS rules were first issued in the late 1930's (Ex Parte No. MC–2, 3 M.C.C. 665). Since that time, drivers have had the responsibility to prepare a RODS. The original pocket rulebook from 1939 states that carriers and drivers would be liable for the accuracy of entries made by drivers on the RODS. The Interstate Commerce Commission explained the original purposes of the RODS as follows:

> [to provide] a standardized type of record to be maintained of the daily driving time and the weekly hours on duty which would be in the possession of each driver and which would enable a highway patrolman or other enforcement officer to determine immediately upon the stopping of the vehicle whether the driver had been on duty or was driving in violation of our regulations. * * * [and] to provide a record from which our field representatives could readily determine whether or not the carriers are complying with the regulations. 24 M.C.C. 413

In order to determine whether carriers are complying with the HOS regulations, the FHWA is authorized, by statute, to inspect and copy any record, and to inspect any property, or equipment of a carrier, lessor, association, or other person subject to the provisions of 49 U.S.C. 31502, as long as these actions were made in furtherance of an investigation and regardless of whether or not the records were required to be maintained by the FHWA regulations or orders. See 49 U.S.C. 501(b).

A third purpose of the RODS is that they enable motor carriers, at the time of dispatch, to ensure their drivers have sufficient time to safely complete trips within the HOS regulations. The FHWA believes many motor carriers began to realize this purpose in the early years of the regulation.

Over the last 60 years, many motor carriers have regularly audited or inspected drivers' RODS for accuracy to ensure their drivers are complying with the HOS regulations. This enables the motor carriers to verify, through their own self-monitoring system, that drivers are accurately reporting their HOS. It also allows drivers to calculate their available hours prior to being dispatched. This provides the motor carrier with a valuable management tool to efficiently dispatch trips within the HOS limitations.

In general, motor carriers use many different types of business records to document various business transactions: Accident and incident reports are used, for instance, to support claims to insurers and defend against lawsuits; bills of lading are written transportation contracts between shippers and carriers that identify the freight, who is to receive it, the place of delivery, and the terms of the agreement; and border crossing reports are used to establish time and mileage in a foreign country. Carrier pros (waybills) are descriptions of the goods sent with a carrier freight shipment. Cash advance receipts are used to document cash advances to drivers. Credit and debit card receipts and statements are used to reconcile credit and debit account balances. Customs declarations are used to document the type and quantity of freight which crossed a border point. Delivery receipts are used to document the act of transferring possession of a shipment, usually between a carrier and a consignee, but also between a consignor and a carrier, and one carrier to another carrier who receives the freight. Dispatch and assignment records are used to schedule and control pickup and delivery of freight, especially in the scheduling and control of intercity traffic and intracity pickup and delivery. Driver reports (facsimile or call-in logs) are used to track a driver's progress. Expense vouchers are used to account for all expenses. Freight bills are used to describe the freight, its weight, amount of charges, taxes, and whether collect or prepaid charges. Fuel billing statements are used to reconcile the quantity of fuel consumed and the cost of the fuel for internal expense reports. Fuel receipts are used in conjunction with fuel billing statements to reconcile the quantity of fuel consumed and the cost of the fuel for internal expense reports. Gate receipts are used to control access to terminals and to determine when access and departure from the terminal were accomplished. Global positioning and cellular systems provide two-way communications technology between the driver and the carrier. The global positioning systems also provide a means by which motor carrier management may determine the CMVs operational efficiency. Such operating parameters including engine speed, engine oil pressure, and cargo space temperature may be provided by such systems. Data provided by the global and cellular systems help management estimate a driver's time of arrival at the next destination and the condition of the CMV and its contents much faster than land-based, wire telephone communications. Inspection reports are used to determine whether the motor carrier needs to improve monitoring of its vehicles or drivers. Invoices are used to notify payees of the charges to be paid for transportation services. Interchange reports are used to determine when and where freight was transferred from one transportation carrier to another carrier. International Registration Program (IRP) receipts are used to determine the registration for the specified vehicles. International Fuel Tax Agreement (IFTA) receipts are used to determine the payment of fuel tax charges. Lessor settlement sheets are used to determine the terms of a lease and when a lease has been settled. Lodging receipts are used to determine driver expenses. Lumper receipts are used to determine driver expenses for the temporary labor at a consignor or consignee. On-board computer reports are used to determine the proper operation of CMVs, including the efficiency of the engine, transmission, and accessories hooked up to the computer. Over/short and damage reports are used to make claims for cargo liability claims and to account to shippers for the freight that has been damaged or freight that was over counted or under counted. Overweight/oversize reports and citations are used to determine driver expenses for State size and weight violations. Port of entry receipts are used to determine when freight was delivered to or received from a port of entry. Telephone billing statements are used to determine driver expenses and to reconcile driver and global positioning system reports. Toll receipts are used to determine driver expenses. Traffic citations are used to determine driver expenses for motor carriers that reimburse drivers for such violations. Reports of CMVs with transponders participating in automated toll or clearance programs are used to reconcile proper payment and clearance. Trip permits are used to show that a CMV is properly authorized by a jurisdiction to operate in that jurisdiction under the conditions specified in the permit. Trip reports are used to track driver and CMV actions and weight/scale tickets are used to determine the net weight of shipments to accurately charge shippers for transportation services.

These records, among others, are generated by motor carriers for their own business purposes, or they are received from third parties, such as consignors, consignees, and vendors for other motor carrier purposes. Motor carriers have been using these records not only to document various business transactions, but also to verify the accuracy of their driver's RODS. Many motor carriers regularly maintain self-monitoring records for their own internal management purposes. This practice, over the years, has become a

standard motor carrier practice among well run, successful, and safe motor carriers.

The FHWA has learned from safe motor carriers that in order for the carriers to ensure that drivers are alert and not fatigued, motor carriers must maintain self-monitoring systems comparing RODS to supporting business documents. The FHWA decided to adopt this practice of maintaining ''RODS supporting documents'' as a part of its regulatory oversight to assist motor carriers in operating safely. The FHWA published a final rule on November 26, 1982 (47 FR 53383) which, in part, requires motor carriers operating in interstate commerce to retain supporting documents, along with drivers' records of duty status, for at least six months from the date of receipt (49 CFR 395.8(k)). The FHWA did not define the term ''supporting document'' in that final rule.

The FHWA intended that the term ''supporting document'' refer to those specific documents, and only those specific documents, that a motor carrier used in its internally-developed system or program to verify the accuracy of the driver's duty activities. It was not meant to encompass all records, but only those that were, indeed, used by the motor carrier, to verify the dates, times, and locations the driver recorded. The FHWA received requests in the 1980's and early 1990's for an interpretation of the term ''supporting document.''

The FHWA published regulatory guidance in the **Federal Register** on November 17, 1993 (58 FR 60734, 60761), which provided examples of the types of supporting documents that should be retained. The regulatory guidance stated that supporting documents are the records of the motor carrier maintained in the ordinary course of business that are used, or could be used, by the motor carrier to verify the information recorded on a driver's record of duty status. An extensive, but not a complete, list of the various types of records considered to be examples of supporting documents was provided in this guidance.

On August 26, 1994, the Hazardous Materials Transportation Authorization Act of 1994, Pub. L. 103–311, 108 Stat. 1673 (August 26, 1994) (hereinafter the Act) was enacted. Under section 113 of the Act, the Secretary of Transportation is required to prescribe regulations amending 49 CFR Part 395 to improve both (A) compliance by commercial motor vehicle (CMV) drivers and motor carriers with the HOS requirements, and (B) the effectiveness and efficiency of Federal and State enforcement officers reviewing such compliance.

The Act directed that the regulations include the following items:

(1) A description of identification items (which include either driver name or vehicle number) that shall be part of a written or electronic document to enable such written or electronic documents to be used by a motor carrier or by an enforcement officer as a supporting document to verify the accuracy of a driver's record of duty status;

(2) A provision specifying the number, type, and frequency of supporting documents that must be retained by a motor carrier so as to allow verification of the accuracy of the RODS at a reasonable cost, to the driver and the motor carrier, of record acquisition and retention;

(3) A provision specifying the period during which supporting documents shall be retained by the motor carrier. The period shall be at least six months from the date of a document's receipt;

(4) A provision to authorize, on a case-by-case basis, motor carrier self-compliance systems that ensure driver compliance with hours of service requirements and allow Federal and State enforcement officials the opportunity to conduct independent audits of such systems to validate compliance with section 395.8(k) of title 49, Code of Federal Regulations (or successor regulations thereto). Such authorization may also be provided by the Secretary to a group of motor carriers that meet specific conditions that may be established by regulation by the Secretary and that are subject to audit by Federal and State enforcement officials; and

(5) A provision to allow a waiver, on a case-by-case basis, of certain requirements of section 395.8(k) of title 49, Code of Federal Regulations (or successor regulations thereto), when sufficient supporting documentation is provided directly and at a satisfactory frequency to enforcement personnel by an intelligent vehicle-highway system (now referred to as an ''Intelligent Transportation System'' (ITS)), as defined by section 6059 of the Intelligent Vehicle-Highway Systems Act of 1991 (23 U.S.C. 307 note). Such waiver may also be allowed for a group of motor carriers that meet specific conditions that may be established by regulation.

For purposes of the Act, the term ''supporting document'' was defined to mean ''any document that is generated or received by a motor carrier or commercial motor vehicle driver in the normal course of business that could be used, as produced or with additional identifying information, to verify the accuracy of a driver's record of duty status.''

Proposal

To satisfy the legislative mandate, the FHWA is proposing to amend part 395 to include in § 395.2 a definition for the term ''supporting document'' and to add a section entitled *§ 395.10 Verification and Record Retention.*

Definition of Supporting Documents

The FHWA is proposing to use the statutory definition of supporting documents as provided by Congress in the Act, with the addition of clarifying language and a list of examples. The proposed list is only a sampling of the types of documents that the FHWA believes could support the HOS and the accuracy of RODS. The FHWA is particularly interested in receiving comments on this approach to implementation of the Act.

Motor Carrier Self-Compliance Systems

Under section 113 of the Act, the FHWA is required to authorize, on a case-by-case basis, motor carrier self-compliance systems that ensure driver compliance with FHWA HOS requirements and afford Federal and State enforcement officers the opportunity to conduct independent investigations of such systems to assess compliance with 49 CFR 395.3 and 395.8.

The FHWA has considered this requirement and believes that most motor carriers and drivers are meeting their responsibility to conduct safe operations by complying with the HOS regulations. The FHWA further believes that responsible motor carriers have already developed self-compliance or self-monitoring systems and have these systems in place. The FHWA does not believe it should impose additional stringent record-collection and maintenance requirements on motor carriers and drivers, when most motor carriers already have such systems and are successfully monitoring and enforcing the regulations.

The FHWA believes it should continue to allow each motor carrier to maintain such a system. The FHWA, though, believes each carrier should presently be able to describe and validate to the FHWA that they have an effective system in place using supporting documents to audit their drivers' HOS and RODS in an accurate and timely fashion.

In addition, the FHWA seeks comments on these additional issues:

Question (1) What types of self-monitoring systems should be

considered in addition to the type proposed in this document?

Question (2) Whether and what conditions should be imposed upon motor carriers (such as accident or out of service prevention performance history) before the FHWA would authorize a different self-monitoring system as an alternative to compliance with this proposed rule?

Question (3) Whether motor carriers seeking additional authorization should have some established safety record with the FHWA or other State or local enforcement agencies?

Question (4) What must happen before the FHWA should disallow the use of a self-monitoring system or an alternative system?

Ability to Transfer Paper Supporting Documents That Contain A Signature to Automated, Electronic, or Laser Technology Formats

The FHWA believes that an alternative self-monitoring system would have to provide the same capacity for verification that would be produced by the collection and retention of all supporting documents in their original form. The FHWA proposes to allow motor carriers to transfer supporting documents to electronic or laser technology systems. Section 390.31(d), 49 CFR, now allows all records to be maintained in computer technology format, except those documents containing signatures.

Under this proposal, all supporting documents, including those requiring a signature, would be eligible for retention in electronic, laser or other automated format, if the motor carrier can produce and verify, upon demand, hard copies of the required data. The FHWA is proposing a conforming amendment to § 390.31(d). Automated, electronic, or laser technology systems that report directly to the driver or the motor carrier would also be acceptable. However, the FHWA is also proposing a requirement that automatic, electronic, or laser technology systems must be capable of reproducing the information stored in such systems for inspection at the motor carrier's place of business within 48 hours of a demand.

Motor Carrier's Discretion To Use Technology in Lieu of Paper Supporting Documents

The FHWA is also proposing to allow motor carriers to use electronic, laser or automated technology, (e.g., global positioning systems (GPS), automatic vehicle identifier (AVI) transponders, electronic bills of lading used by customs officials in the U.S. and other countries, and State driver-vehicle inspection reports prepared by using pen-based computer systems) in lieu of paper supporting documents.

Other similar technologies that may now be available or developed in the future could also be acceptable in lieu of paper supporting documents.

Question (5) Are there any other advanced technology systems currently in use or under development that the motor carrier industry may use to validate HOS or support the RODS?

The FHWA would accept the data supplied by these technologies as alternatives to supporting documents, if the motor carrier can produce a printed copy of the required information at its principal place of business or other location within 48 hours after a request has been made. The FHWA would allow motor carriers to use any intelligent transportation system developed now or in the future in the manner and to the extent it is effective for HOS and RODS verification if that system complies with these general requirements.

Question (6) Should waivers be considered on a case-by-case basis for other systems that do not quite meet these requirements, but may have other compensating features that produce equivalent safety results?

Question (7) Under what circumstances should the use of such alternatives systems also operate as a substitute for the requirement to prepare and maintain RODS? Demonstration of the effective use of a system in whole or in part, for verification should obviate any necessity to further examine the information produced by the system by enforcement personnel.

Verification of Records of Duty Status Using A Self-Monitoring System

As a result of this rulemaking, motor carriers would be required to maintain a self-monitoring system capable of verifying drivers' HOS and the accuracy of the duty report categories (on duty, driving, sleeper berth, off duty, time reporting for duty each day, time released from duty each day, and the total number of hours on duty each day) recorded by drivers on their RODS for each trip. The FHWA believes that most trips produce, or could with relative ease produce, a document to verify the time and place of the driver and mileage of the vehicle at the beginning and completion of each work day. Various other supporting documents may be obtained during the trip. This rule would require the motor carrier to have a self-monitoring system to verify the accuracy of the beginning, intermediate, and ending times of each working day on each trip, as well as beginning, ending and intermediate mileage for each trip. Absent such a system, which must be in verifiable, demonstrable form and used by the motor carrier, possession and retention of all supporting documents that could have been obtained on any given trip would be presumed and required.

Nothing in this proposal would have any effect on current exceptions for automatic on-board recording devices in accordance with § 395.15.

Section 395.10 would be added to require motor carriers to have a system in place that enables the motor carrier to effectively audit its RODS with documents that the motor carrier chooses. The FHWA believes a motor carrier could fully comply with this requirement using documents generated wholly within the motor carrier's operation, such as accurate dispatch records, bills of lading, daily call-in records, and a variety of receipts.

The motor carrier's auditing system must have a reviewable written procedure that explains in sufficient detail what documents are used by the motor carrier's clerks and management and how they serve to verify the accuracy of driver's RODS. The procedure would further be required to explain access to each type of record used and where maintained, how drivers are notified of violations found by the motor carrier, and what corrective action the motor carrier takes for violations found by the employer during its audit.

The motor carrier has the discretion to develop and use whatever system it believes would effectively enable it to ensure that all drivers accurately record their HOS on the RODS. The system must, at a minimum, verify the driver's beginning and ending times, as well as such intermediate times, as would effectively detect HOS violations and preclude opportunities for false or inaccurate reporting. It must also include a system to cross-check mileage and locations. The FHWA believes that most motor carriers already have such a system and others should be able to establish their self-monitoring system by describing it in a manual or handbook. The FHWA believes the proposed manual may be written on one page or less in length.

Paragraph (b) of this proposed rule would specify that the manual be provided to personnel responsible for verification of HOS and RODS. The manual would also be required to be made available to the FHWA and other appropriate enforcement agencies upon a request. Accessibility to the written system description (manual or handbook) by FHWA and other appropriate enforcement agencies

would normally be required during compliance reviews at the motor carrier's terminals or principal places of business where records required by part 395 are maintained. The FHWA does not intend that enforcement officers conducting roadside inspections would have access to such a manual or handbook. These officers would continue to have full access to RODS and all supporting documents on the vehicle or in a driver's possession at the time of inspection.

The FHWA would allow motor carriers to specify in their system the supporting documents, including automated, electronic, or laser systems, that would provide the best opportunities to verify the accuracy of the records of duty status. If the motor carrier chooses to require its drivers, including leased owner-operators and contractors, to submit toll, bridge, and fuel receipts as a part of its system, those drivers must do so.

During a compliance review of the HOS requirements at the motor carrier's place of business, the FHWA or authorized State inspectors would be empowered to inspect the motor carrier's self-monitoring system's manual or handbook to determine its compliance with this rule, how the motor carrier is complying with its self-enforcing record-of-duty-status system, how audit-responsible personnel obtain, audit, and store inspected supporting documents, how many violations the motor carrier has found on its own, and corrective actions the carrier has taken with its drivers to improve their compliance with the HOS requirements. The reviewer may inspect other motor carrier records not identified in the motor carrier's system, to determine whether the system is effectively verifying the accuracy of the RODS. If the reviewer discovers that the supporting documents identified by the motor carrier's system are not effective for verifying the accuracy of the RODS, the reviewer would have several options ranging from recommending the motor carrier revise its system to better verify the RODS accuracy to taking some enforcement action based upon evidence of noncompliance or deception. Subsequent investigations would determine whether the revised system is effective, again using other records not necessarily identified in the system. If continued problems or a pattern of HOS violations, falsification, or inaccurate RODS is discovered, the FHWA reserves the right to inspect and copy any other records not identified in the motor carrier's system to gauge the ineffectiveness of the system.

If the reviewer determines that the motor carrier's system is deficient (as opposed to non-existent or unenforced) because HOS or RODS violations are going undetected or uncorrected, the carrier will be put on notice of those deficiencies and directed to collect and maintain specific supporting documents necessary to prevent violations. A motor carrier would not be cited for failing to maintain specific types or numbers of supporting documents on the first review of the system. Failure to maintain the documents after the first review as directed (or as agreed) will be the basis for future enforcement action. In addition, penalties may be imposed for violations of Part 395 discovered during the compliance review.

This rule would allow the motor carrier to specify the type and number of supporting documents used in its system. If the motor carrier's self-monitoring system is effective at controlling drivers HOS and accuracy of RODS, the motor carrier would not be required to maintain other documents that could be used to support the record of duty status, but which the motor carrier does not use in its system.

For example, a motor carrier's self-monitoring system specifies five types of documents (i.e., bills of lading, delivery receipts, toll receipts, carrier pros, cellular telephone statements) which are used effectively by the motor carrier's auditing clerks to verify the accuracy of the drivers HOS and RODS. If the motor carrier also used satellite technology to track CMVs, but did not use the system to verify the drivers' HOS and RODS, the reviewer would not necessarily require or expect that motor carrier to maintain any such electronic records for the time periods specified in the rule. Conversely, if the motor carrier used advanced technology systems to verify HOS and RODS, the motor carrier would not be required to maintain the more conventional supporting documents. After encountering a system which is effective on its face, enforcement personnel need not demand access to additional records that the motor carrier is not using in the system.

Requirements for Motor Carriers Who Fail To Have a Self-Monitoring System

If it is determined that a motor carrier does not have a self-monitoring system to verify the accuracy of the drivers' RODS, the FHWA would presume that the motor carrier collects and retains all supporting documents coming into its possession directly or through its drivers or agents for all trips. The FHWA would demand access to supporting documents for the beginning of a trip (or when the driver picks up passengers or property), and for the end of the trip (or the delivery of the same passengers or property). The FHWA would also demand access to all receipts, bills, and other documents supporting the times and locations of intermediate operations that the motor carrier knew or should have known had come into its actual or constructive possession during regulated transportation.

A motor carrier who fails to have a self-monitoring system must require the drivers to examine all documents they receive during the normal course of their duties, including, but not limited to, documents regarding the operation of CMVs for motor carriers. The drivers would have to ensure that the documents include the necessary items required by § 395.10(g). The motor carrier and drivers would both be liable for violations of this requirement. The motor carrier may also require, if it chooses, that its drivers forward all supporting documents they receive during their trips as allowed under § 395.10(d).

In § 395.10(f), motor carriers that do not have a self-monitoring system must require drivers to retain all supporting documents for the same time periods as they retain records of duty status. Records of duty status may be forwarded to the regular employing motor carrier immediately after the record of duty status is completed, or may be retained by the driver for up to 13 days after completion. Section 395.10(f) would require a driver to forward all supporting documents to the motor carrier at the same time the driver forwards the records of duty status. This requirement would ensure that drivers who work for motor carriers that do not have auditing systems would have all of the documents that support their records of duty status and would be able to make these documents available for inspection by Federal, State, or local enforcement officials on the highway. As a result, drivers would be better motivated toward HOS compliance and ensuring the accuracy of their records of duty status. This would in turn tend to improve the safety of both the driver's performance and the motor carrier's CMV operation. Therefore, this proposal, in the absence of a supporting document auditing system, should help to achieve the goal of improving the safety of CMV operations and the enforcement of the HOS regulations.

The FHWA currently does not directly require drivers, including those used for single trips or drivers used on an intermittent, casual, or occasional basis, to provide motor carriers with

supporting documents. The FHWA believes, however, that drivers have an obligation not only to comply with the HOS and RODS requirements, but also to cooperate with their motor carrier employers by collecting and submitting the supporting documents needed to verify compliance with the rules. Therefore, the FHWA is proposing to require drivers to submit supporting documents to the motor carrier at the time the corresponding record of duty status is submitted for those motor carriers that choose not to maintain a written, verifiable HOS auditing system.

With this rulemaking, the FHWA would also require motor carriers who fail to have a self-monitoring system to retain all ''supporting documents'' that all drivers, including owner-operators and independent contract drivers, receive during a trip, no matter how the carrier pays drivers for these trips. This requirement would be imposed on the motor carrier under whose authority the driver is performing transportation services. Documents passing through the hands of leased drivers would be, in effect, passing through the hands of the motor carrier because drivers are, in fact, the representatives of the motor carrier during the course of the transportation service provided. Thus, the FHWA does not believe that holding the motor carrier responsible for maintaining those documents would be an undue burden if the motor carrier does not otherwise provide a verification system demonstrating its safety management control.

The Senate report accompanying the Act discussed those situations where a motor carrier leases the service of drivers, such as independent contractors, owner-operators, and fleet-broker drivers employed by other motor carriers. S. Rep. No. 217, 103d Cong., 1st Sess. 1640 (1994). The report noted that documentation of a leased driver's duty status was frequently not obtained and retained by the motor carrier using the driver. This report also stated that it was the intent of the Act to ensure that supporting documents, generated by such business arrangements, be retained by the motor carriers that perform the transportation service. Additionally, it is clear that it was Congress' intent to facilitate Federal and State enforcement efforts to document violations of the HOS regulations.

The FHWA's motor carrier safety enforcement personnel have experienced difficulties in obtaining supporting documents for trip lease arrangements between motor carriers and owner-operators. Senator Exon, the legislation's sponsor, discussed the need for this provision during the floor debate preceding final passage of the Act. He explained that ''reports that auditors have been forced to retrieve documents from garbage dumpsters or play hide-and-seek with firms that have a history of habitual HOS violation give rise to the need for this provision.'' Further, Senator Exon stated that ''the object of this provision is to help make the roads safer by giving enforcement personnel the ability to catch flagrant abusers. It is not designed to create a trap for drivers who receive, for example, a pre-stamped toll receipt or to unfairly punish drivers for a de minimis deviation from the current rules.'' 140 Cong. Rec. S11323 (daily ed. August 11, 1994).

The legislation sets a record retention period of at least six months. The FHWA believes that this requirement was based upon Congress' intent to have supporting documents maintained for an identical period as the time required for duty status record retention, which is six months. The FHWA is considering reducing the record of duty status retention period to four months, as the FHWA believes it is better able to investigate and sufficiently document a current pattern of HOS violations with records of more recent vintage. If the FHWA reduces the retention period for RODS to four months, the FHWA believes it would be unnecessary to require motor carriers to keep the documents that support the RODS for an additional two months. The FHWA believes that keeping a supporting record for two months beyond that which is needed by the FHWA would be contrary to the intent of the Paperwork Reduction Act of 1995. The FHWA is proposing a six-month retention period for supporting documents in this NPRM, but the FHWA would like comments on whether the FHWA should reduce the period for retaining RODS to four months. The FHWA would also like comments whether it should seek legislative authority to (1) reduce the supporting document retention period to four months or (2) eliminate the supporting document retention period mandate and allow the FHWA to set the supporting document retention period to any future RODS retention period.

The FHWA has identified a retention period for ''Supporting Data for Reports and Statistics; Supporting data for periodical reports of * * * hours of service, * * *, etc.'' See 49 CFR 379, Appendix A, Item K.2. The FHWA has received a few telephone inquiries regarding this retention period. This retention period relates to an old FHWA monthly report acquired from the Interstate Commerce Commission (ICC) in 1966. The FHWA required the report until December 15, 1967. The FHWA had required every motor carrier, other than a private carrier of property, to report on a Form BMC 60:

> every instance during the calendar month covered thereby in which a driver employed or used by it has been required or permitted to be on duty, or to drive or operate a motor vehicle in excess of the hours * * *

Class I motor carriers of passengers and Classes I and II motor carriers of property also had to file the same Form BMC 60 report—

> for every calendar month in which no driver employed or used by it has been required or permitted to be on duty, or to drive or operate a motor vehicle in excess of the hours * * * See 32 FR 7128, May 11, 1967.

The FHWA had a retention period of three years. The FHWA removed the reporting requirement on December 15, 1967 (32 FR 17941). The ICC and the Surface Transportation Board never removed the retention period from its preservation of records list. Based upon the savings clause in the ICC Termination Act of 1995, the FHWA transferred the former ICC's preservation of records lists to the FHWA regulations on June 21, 1997 (62 FR 32040). This action provided the initial appearance of a conflict between parts 379 and 395 with respect to HOS supporting data and HOS supporting documents.

The proposal in this document in no way involves ''reporting'' data similar to the former report Form BMC–60. This proposal only relates to motor carrier recordkeeping requirements and a motor carrier's comparison of its own records to the driver's records of duty status. The OMB's regulations in 5 CFR 1320.3(m) identifying the definitions of a ''recordkeeping requirement'' explain a report is different than the retention of a record, notification of the existence of records, and disclosure of records. The FHWA believes a report is a document submitted to the FHWA, as was Form BMC 60 up until December 15, 1967. Item K.2.'s reference to hours of service data, therefore, does not have any actual effect upon this proposal.

The FHWA believes it should cite RODS violations primarily when an investigator finds drivers or carriers are concealing excess hours. The FHWA does not wish to expend scarce enforcement resources on mere recordkeeping violations that may result from sloppy bookkeeping. The FHWA believes motor carriers should provide drivers adequate opportunities for sleep, personal hygiene, and family matters, and limit the driver's hours on duty to prevent CMV crashes caused by loss of alertness from working too long or not

getting enough rest. Accurate recording of hours driven, on duty, and off duty, of course, is intended to assure that drivers are afforded the rest periods they need and plays an important role in monitoring and enforcing compliance with the driving limitations.

Question (8) What impact would a six-month or longer record retention requirement have on the Federal government, State governments, and motor carriers?

Question (9) Would we enhance enforcement and prosecution efforts with the longer retention requirement (e.g., the ability to adequately enforce the rules, collect evidence for a criminal case, prepare the case, and successfully prosecute drivers or motor carriers for deliberately or recklessly violating HOS restrictions)?

Under this proposal, motor carriers could retain their time records, RODS and supporting documents at a location of their choice. However, the location would have to be suitable for preserving the records so that they would not be damaged or lost. In addition, a motor carrier must be able to produce such records at its principal place of business within 48 hours of a request by an authorized enforcement official. This request for documents could be made by telephone, fax, mail, or by other means. Saturdays, Sundays and holidays would be excluded from the computation of the 48-hour period of time. This 48-hour period would provide a reasonable amount of time for documents to be sent via overnight mail. Furthermore, most business operations with electronic transfer capabilities could probably produce information in a shorter period.

The FHWA is proposing that, in the absence of a written and operational verification system, *ALL* supporting documents be retained for the entire retention period. In this proposal, the term ''all supporting documents'' means all documents that are used to support the driver's RODS and time record entries for any particular trip. These documents must be connected to the driver or the vehicle used on the trip. A variety of documents may be obtained by a driver, or provided directly to a motor carrier, which could meet the requirements of this proposed rule. Some trips may result in only two or three supporting documents while others may result in many more documents. In addition, supporting documents may be required to be kept for longer periods based upon other Federal, State, or local laws, rules, or orders (e.g., Internal Revenue Service rules). The FHWA is proposing that the supporting documents must be kept for six months after receipt by the motor carrier, unless a longer period of time is required by another authority.

The FHWA believes that all motor carriers obtain many records and documents in the normal course of business that link the records or documents to the driver or vehicle and that motor carriers have not always considered these other records or documents when asked to produce supporting documents in past compliance reviews. A motor carrier, however, would now have the duty to ensure that it has an independent means of verifying the driver's HOS and the accuracy of the driver's RODS for trips made on behalf of the motor carrier, including those trips made using leased drivers and/or vehicles.

Rulemaking Analyses and Notices

All comments received before the close of business on the comment closing date shown above will be considered and will be available for examination in the FHWA Docket at the above address. Comments received after the comment closing date will be filed in the FHWA Docket identified above and will be considered to the extent practicable, but the FHWA may issue a final rule anytime after the close of the comment period. In addition to late comments, the FHWA will also continue to file in the docket relevant information that becomes available after the comment closing date, and interested persons should continue to examine the docket for new material.

For Internet users, all comments received will be available for examination at the universal resource locator—*http:*\\dms.dot.gov—24 hours each day, 365 days each year.

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

The FHWA has determined that this document does not contain a significant regulatory action under Executive Order 12866. The FHWA has estimated that this rulemaking will have an annual economic impact on the motor carrier industry of less than $100 million. It is a significant regulation under the Department of Transportation's regulatory policies and procedures, because this regulation has substantial public interest. As discussed below, current FHWA regulations have required the retention of supporting documents since 1982, and responsible motor carriers have collected and retained such documents both in the ordinary course of business and for purposes of regulatory compliance. This rule would require motor carriers to establish systems to verify drivers' RODS or, alternatively, to describe HOS supporting documents in terms of their effectiveness to verify drivers' HOS. In addition, this rule explains how supporting documents are to be collected, where they must be kept, and for how long. This rulemaking action would not create a serious inconsistency with any other agency's action or materially alter the budgetary impact of any entitlements, grants, user fees, or loan programs. Evaluation of the costs of this proposed rule is fully described below in the Paperwork Reduction Act section.

Regulatory Flexibility Act

To meet the requirements of the Regulatory Flexibility Act (5 U.S.C. 601–612), the FHWA has evaluated the effects of this rule on small entities and has determined that this regulatory action would not have a significant economic impact on a substantial number of small entities.

The FHWA estimates there are about 422,000 motor carriers subject to this rule, 90 percent of which are small entities. For the purposes of this evaluation, the FHWA considered motor carriers with ten or fewer drivers to qualify as small entities.

Small entities, as well as large entities, have been prosecuted for making, or allowing drivers to make, false entries upon RODS since the late 1930's. Since 1982, small entities have been required to maintain supporting documents along with their drivers' RODS. As a good business practice, small entities are believed to be reviewing, inspecting, or auditing their drivers' RODS and comparing them with the motor carrier's supporting documents to determine the accuracy of the RODS. This rule would convert a previously established motor carrier business practice into an explicit requirement. Small entities would be required to document the system they have been using to verify the drivers RODS are accurate. It is believed that most small entities have not documented the system they are using to verify their drivers' RODS. This rule would require these systems to be reduced to writing.

After a small entity has documented its self-monitoring system in writing, the FHWA would not require the entity to retain subsequently generated or received documents which were not called for by that entity's self-monitoring system. This would relieve small entities from a potentially large burden of record collection. Many noncompliant small entities may perceive an increased burden; however, the FHWA believes that this increased

burden will actually result from the entities finally having to comply with the preexisting supporting document requirement the cost of which these entities have been avoiding by not complying with the rule until now.

Executive Order 12612 (Federalism Assessment)

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

The amendments proposed in this document would not preempt any State law or regulation. These changes, if adopted, would not limit the policy making discretion of the States. The only additional cost or burden potentially imposed on the States because of this action would be the requirement that the States incorporate these proposed changes into their safety regulations as a condition of the receipt of Federal grants for safety enforcement. This requirement would not infringe upon the State's ability to discharge traditional State governmental functions because interstate commerce, which is the subject of these regulations, has traditionally been governed in the first instance by Federal laws. In addition, the FHWA would not require as a condition of the Motor Carrier Safety Assistance Program (MCSAP) that the States adopt this proposal for intrastate safety regulations, but would expect phased in voluntary compatibility.

Public Law 104–4 (Unfunded Mandates Reform Act of 1995)

This action has also been analyzed by the principles and criteria contained in Public Law 104–4, and it has been determined that this proposal does not have an unfunded mandate within the meaning of the Unfunded Mandates Reform Act.

Executive Order 12372 (Intergovernmental Review)

Catalog of Federal Domestic Assistance Program Number 20.217, Motor Carrier Safety. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities do not apply to this program.

Paperwork Reduction Act

This proposal contains new collection of information requirements for purposes of the Paperwork Reduction Act of 1995, 44 U.S.C. 3501–3520. The new information collection requirements in this proposal are mandated by section 113 of the Hazardous Materials Transportation Authorization Act of 1994 (Pub. L. 103–311, 108 Stat. 1676). This section requires that each written or electronic document that is used as a supporting document have a description of identification items to include either the driver's name or vehicle number. This would require motor carriers to ensure that the driver's name or vehicle number is on each document used to verify time records. The statute also requires the supporting document must be kept for at least six months. The FHWA, since 1982, has required that all supporting documents must be collected and kept for six months. This collection of documents and retention period is not a new paperwork burden. This collection of documents and retention period has been calculated into past paperwork burden approvals of the Office of Management and Budget (OMB).

New Information Collection Proposal

Collection of Information: Driver's Records of Duty Status.

Under the new OMB regulations found at 5 CFR 1320 and entitled *Controlling Paperwork Burdens on the Public* (1995), the FHWA is required to estimate the burden its regulations impose to generate, maintain, retain, disclose, or provide information to or for the FHWA including (i) reviewing instructions; (ii) developing, acquiring, installing, and utilizing technology and systems for the purpose of collecting, validating, and verifying information; (iii) developing, acquiring, installing, and utilizing technology and systems for the purpose of processing and maintaining information; (iv) developing, acquiring, installing, and utilizing technology and systems for the purpose of disclosing and providing information; (v) adjusting the existing ways to comply with any previously applicable instructions and requirements; (vi) training personnel to be able to respond to a collection of information; (vii) searching data sources; (viii) completing and reviewing the collection of information; and (ix) transmitting, or otherwise disclosing the information.

This proposed rule would add additional requirements to the OMB-approved budget for 2125–0016. Each motor carrier would be required to develop and implement an effective self-monitoring system that audits supporting documents and compares the supporting documents to RODS. Motor carriers failing to develop and implement an effective self-monitoring system would be presumed to be taking the necessary actions to obtain and retain every supporting document that the carriers or their drivers generate or receive in the normal course of business that would accurately support the beginning, intermediate, and ending times of each driver's daily trips in interstate commerce.

If the carrier fails to have a self-monitoring system, the carriers would also have to ensure that each document has the driver's name or vehicle number on it. In addition, the motor carrier would have to ensure that reasonably reliable references to date, time, and location on the documents corroborate the date, times, and locations on the driver's record of duty status.

In the statute, as stated above, the term ''supporting document'' was defined to mean ''any document that is generated or received by a motor carrier or commercial motor vehicle driver in the normal course of business that could be used, as produced or with additional identifying information, to verify the accuracy of a driver's record of duty status.'' The FHWA believes that every document that is generated and received by a motor carrier or commercial motor vehicle driver in the normal course of business is used or retained by the motor carrier for usual and customary purposes and should not be considered to be a burden for purposes of 5 CFR 1320.3(b).

The FHWA's Motor Carrier Management Information System (MCMIS) indicated that in October 1997 there were about 2,216,000 drivers and 422,000 motor carriers operating in interstate commerce. Of the 2.216 million drivers, the FHWA estimates 20 percent (443,200 drivers) operate within 241 air-kilometer (100 air-mile) radius from their normal work reporting location, five percent (110,800) operate for motor carriers who equip CMVs with automatic on-board recording devices, and the remaining 75 percent use the paper log book system.

In the March 11, 1998 **Federal Register** (63 FR 11948), the FHWA opened a docket and requested comments regarding the current collection of information requirements without respect to this proposal. This proposal would add collection of information requirements to the March 11 estimate.

The FHWA estimates the public recordkeeping burden for this proposed collection of information to be 949,500 burden hours for the first year of implementation and 17,737 for the second and subsequent years. This would result from the necessary system changes the regulations would require a

motor carrier to do with respect to the following six things:

(1) A motor carrier must determine the types of supporting documents providing the most effective means to compare drivers RODS to supporting documents.

(2) A motor carrier must prepare a written document, in either an electronic or paper format, definitively specifying the auditing system's capabilities.

(3) The written document must identify the supporting documents, by common name, the motor carrier uses to verify the accuracy of the driver's hours of service or record of duty status.

(4) The written document must describe how the system is used.

(5) The written document must describe the procedure to be used to promptly notify a driver who has recorded information inaccurately on a record of duty status which is required by § 395.8.

(6) The written document must describe the corrective action the motor carrier would take to improve the driver's compliance with providing accurate information.

The FHWA assumes most motor carriers, especially the 90 percent of motor carriers who are small entities, would not incur any reproduction costs or distribution costs under this proposed rule. Most motor carriers would have one manual with system description for office use and would not need to reproduce the document. Motor carriers with ten or fewer drivers generally do not have multiple terminals and the FHWA would presume the carrier have only one or two people involved in the verification of RODS at their principal place of business. For the ten percent of motor carriers that are large entities, the FHWA estimates they would make an average of ten copies and distribute them accordingly.

The FHWA intends that this document would be a working document and would not be archived. It would be used by personnel on a daily basis as an important reference and management tool for the self-monitoring auditing procedure as many responsible motor carriers do now. The FHWA would also expect motor carriers to review and revise the system on a periodic, but infrequent, basis as the need arises. The FHWA has computed the paperwork burden based upon an annual review and revision schedule.

Since the FHWA has required motor carriers ensure the accuracy of the RODS and the regulations provide that they are liable to prosecution for the making of false reports in connection with such duty activities, the FHWA believes most motor carriers choose to fulfill their responsibilities for highway safety by auditing and comparing their RODS and supporting documents to determine whether drivers have made false reports of their duty activities. Thus, the FHWA believes the time necessary to audit and compare RODS and supporting documents does not need to be included in the burden estimate. The FHWA's time estimate for identifying supporting documents and preparing a written system description would be 3 additional hours per carrier per year.

The FHWA calculates motor carriers must develop a policy in the first year this proposed rule would be final. The FHWA calculates motor carriers would spend an average of 3 hours developing and writing out the policy. The FHWA calculates motor carriers would consume an estimated 949,500 burden hours developing its policies.

The FHWA calculates an estimated 17,737 burden hours for the second and third years. The FHWA estimates there are new carriers equaling one percent of the total number of motor carriers beginning business each year who must develop a policy and the other motor carriers must review their policies. The FHWA estimates 50 percent of the reviewed policies would have to be amended.

Organizations and individuals desiring to submit comments only on the information collection requirements must direct them to the Office of Information and Regulatory Affairs, OMB, Room 10235, New Executive Office Building, Washington, D.C. 20503; Attention: Desk Officer for Federal Highway Administration.

Please send a copy of any comments you send to the OMB to the FHWA, too.

The FHWA considers comments by the public on this proposed collection of information in the following four ways:

(1) Evaluating whether the proposed collection of information is necessary for the proper performance of the functions of the FHWA, including whether the information will have a practical use.

(2) Evaluating the accuracy of the FHWA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used.

(3) Enhancing the quality, usefulness, and clarity of the information to be collected.

(4) Minimizing the burden of 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.

OMB must make a decision concerning the collection of information contained in these proposed regulations between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment made directly to OMB will have its full effect of OMB receives it within 30 days of publication. This does not affect the deadline for the public to comment to the FHWA on the proposed regulations.

Invitation to Comment

Interested persons are invited to submit comments and recommendations regarding these proposed regulations to the FHWA docket found at the top of this document.

What If the FHWA Had Implemented the Statute As Written

The FHWA has calculated the burden hours for the statute. The FHWA has named 45 possible documents as examples in the definition of ''supporting documents'' proposed in this NPRM. The FHWA estimated one half of these 45 would generally be available each trip for most runs. Using 23 of the 45 documents and based upon the statute, the motor carrier would have had to audit each one as the carrier obtained or received the document for the following five minimum items.

1. Date.
2. Time.
3. Location.
4. Driver's name.
5. Vehicle's number.

The time to compare the documents to the RODS, filing, and storing the 23 records would be more than is currently expected and more than is proposed in this NPRM. The FHWA believes the increased burdens would be unusual and uncustomary and thus believe a burden would be imposed by the statute. Calculating these costs into the estimate, the FHWA believes the burden imposed by the statute would be at least 219,095,423 hours.

The FHWA has calculated the second year total operating and maintenance financial burden for maintaining the records for the current six-month retention period and also for a four-month and one-year retention period. The FHWA's estimate of the total costs before subtracting the costs of the wages paid to recordkeepers would be as follows for RODS and supporting documents.

SECOND YEAR TOTAL OPERATING AND MAINTENANCE COSTS

4 month retention period ..	$1,112,614,000
6 month retention period ..	1,114,201,000
One year retention period	1,122,611,000

National Environmental Policy Act

The agency has analyzed this action for the purposes of the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4347) and has determined that this action will not affect the quality of the environment.

Regulation Identification Number

A regulation 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 contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

List of Subjects

49 CFR Part 390

Highway safety, Highways and roads, Motor carriers, Motor vehicle identification and marking, Reporting and recordkeeping requirements.

49 CFR Part 395

Global positioning systems, Highway safety, Highways and roads, Intelligent Transportation Systems, Motor carriers, Motor vehicle safety, Reporting and recordkeeping requirements.

Issued: April 10, 1998.

Gloria J. Jeff,

Deputy Administrator, Federal Highway Administration.

In consideration of the foregoing, the FHWA is proposing to amend Title 49, CFR, chapter III, parts 390 and 395 as set forth below:

PART 390—FEDERAL MOTOR CARRIER SAFETY REGULATIONS; GENERAL

1. The authority citation for part 390 is revised to read as follows:

Authority: 49 U.S.C. 5901–5907, 31132, 31133, 31136, 31502, and 31504; and 49 CFR 1.48.

§ 390.31 [Amended]

2. Section 390.31(d) is revised to read as follows:

§ 390.31 Copies of records or documents.

* * * * *

(d) *Exception.* All records may be maintained through the use of automated, electronic, or laser technology systems provided the motor carrier can produce, within 48 hours of a demand, a printed copy of the required data; provided that alternate means for signature verification are available.

PART 395—HOURS OF SERVICE OF DRIVERS

3. The authority citation for part 395 is revised to read as follows:

Authority: 49 U.S.C. 504, 14122, 31133, 31136, and 31502; sec. 113, Pub. L. 103–311, 108 Stat. 1676; and 49 CFR 1.48.

4. Section 395.2 is amended by adding the following definition, alphabetically, to read as follows:

§ 395.2 Definitions.

* * * * *

Supporting document means any document that is generated or received by a motor carrier or commercial motor vehicle driver in the normal course of business that could be used, as produced or with additional identifying information, to verify the accuracy of a driver's record of duty status. For the purposes of this definition, any *document* means any record or document, either written or electronic, that is available individually or in combination with other records or documents, to verify the accuracy of a driver's record of duty status because of its potential to provide a reasonably accurate reference to dates, times and locations. Examples of supporting documents are: Accident/incident reports, bills of lading, border crossing reports, carrier pros (waybills), cash advance receipts, credit card receipts and statements, customs declarations, delivery receipts, dispatch/assignment records, driver reports (facsimile or call-in logs), expense vouchers, freight bills, fuel billing statements, fuel receipts, gate receipts, global positioning reports, inspection reports, invoices, interchange reports, International Registration Program receipts, International Fuel Tax Agreement receipts, lessor settlement sheets, lodging receipts, lumper receipts, on-board computer reports, over/short and damage reports, overweight/oversize reports and citations, port of entry receipts, telephone billing statements, toll receipts, traffic citations, transponder reports, trip permits, trip reports, waybills, and weight/scale tickets.

* * * * *

5. Section 395.8 is amended by revising paragraph (k) to read as follows:

§ 395.8 Driver's record of duty status.

* * * * *

(k) *Retention of driver's record of duty status.* (1) Driver's records of duty status for each calendar month may be retained at the driver's home terminal or other regular reporting location until the 20th day of the succeeding calendar month. Such records shall then be forwarded to the carrier's principal place of business, or such alternate location as the motor carrier designates for record retention purposes, where they shall be retained with all supporting documents for six months from the original date of receipt. Within 48 hours (*Saturdays, Sundays and official holidays excluded*) after a Federal, State, or local enforcement official has made an authorized request (for inspection and verification of the hours-of-service requirements and the accuracy of the driver's records of duty status), a motor carrier shall make available all records of duty status and supporting documents at the motor carrier's principal place of business.

(2) The driver shall retain a copy of each record of duty status for the previous 7 consecutive days that shall be in his or her possession and available for inspection while on duty.

6. Section 395.10 is added to read as follows:

§ 395.10 Verification and record retention.

(a) Every motor carrier must have a self-monitoring auditing system, adequately described in writing, that can be used effectively to verify the driver's hours of service and the accuracy of the information contained on the driver's record of duty status. The auditing system must be capable of reproduction and an explanation of the system must be available in written form for inspection by authorized Federal, State or local enforcement personnel. The explanation of the system must include:

(1) Identification of the supporting documents, by common name, the motor carrier uses to verify the accuracy of the driver's hours of service or record of duty status;

(2) A description of how the system is used; and

(3) The procedure used to promptly notify a driver who has recorded information inaccurately on a record of duty status which is required by § 395.8 of this part; and

(4) The corrective action the motor carrier takes or has taken to improve the driver's compliance with providing accurate information.

(b)(1) The supporting document auditing system's procedural manual must be available to all motor carrier personnel with responsibility to control or audit compliance with this part and must be made available to the FHWA and other appropriate enforcement agencies for inspection upon authorized request or demand. The FHWA and other appropriate enforcement agencies will only request inspection of the written manuals at motor carriers' principal places of business or other terminal locations where records required by this part are maintained. The manual is not required to be produced at roadside driver-vehicle inspection locations.

(2) If the audit system can be demonstrated to be effective to verify the actual hours of service performed and the accuracy of the driver's record of duty status, the motor carrier is not required to maintain any additional supporting documents, and, in the absence of reasonably reliable information supported by documentary evidence to contradict the system found to be effective, no demand will be made for additional supporting documents the motor carrier may maintain for other purposes.

(c)(1) Each motor carrier who fails to have a supporting document auditing system in accordance with paragraphs (a) and (b) of this section or fails to provide the FHWA or other enforcement officers with a written explanation of the supporting document auditing system (manual), will be responsible for requiring every driver to obtain all supporting documents from the beginning of every trip to the end of every trip, including intermediate points during the trip. All supporting documents must be made available for inspection at the motor carrier's location and the FHWA or other enforcement officers will use a reasonably sufficient number, in the appropriate enforcement agency's discretion, to verify the accuracy of records of duty status.

(2) Failure by a motor carrier to have either a supporting document auditing system, required by paragraphs (a) and (b) of this section, or, in the absence of the system, to require the driver to obtain and forward to the motor carrier every supporting document that is provided to the driver during a trip, as required by this section, may result in monetary penalties or a compliance order for failure to comply with the supporting document auditing system requirement. A failure by the motor carrier to adequately control the drivers' falsification of their records of duty status may also result in a compliance order. Failure to comply with such order may subject a motor carrier to civil or criminal penalties under 49 U.S.C. 521.

(d) In the absence of a verifiable and effective record of duty status auditing system, every motor carrier must require every driver who is required to prepare records of duty status to retain and every driver must retain all supporting documents containing reasonably reliable references to date, time, or location, which may come into the possession of the driver in the ordinary course of the driving operation. The driver must provide the supporting documents *and* the records of duty status:

(1) To any duly authorized enforcement official of Federal, State or local government upon request or demand; and

(2) To the motor carrier at the time the corresponding record of duty status is required to be submitted.

(e) The driver must identify the supporting document required under paragraph (d) of this section by adding his or her name, and the time, date, location and vehicle number, if those items do not already appear on the document. The driver's signature certifies that all entries required by this section made by the driver are true and correct.

(f) The driver must retain a copy of each supporting document with the record of duty status to which it relates for the previous seven consecutive days in his or her possession and available for inspection while on duty. *Exception.* The requirements of this paragraph do not apply if the driver has submitted the original record of duty status with the supporting documents annexed to the motor carrier following § 395.8(k)(1) of this part.

(g) The motor carrier must identify each supporting document received from the driver under paragraph (d) of this section, or from any other source including self-generated documents, by noting on the document the following information, if the information does not already appear on the document:

(1) The time, date or location of the event that produced the document;

(2) The driver's name; and

(3) The vehicle number (i.e., truck, tractor, or coach).

(h) *Retention of supporting documents.* Supporting documents for each calendar month may be retained at the driver's home terminal or other regular work reporting location until the 20th day of the succeeding calendar month. Such documents must then be forwarded to the carrier's principal place of business, or any location the motor carrier chooses, where they must be retained with all records of duty status for six months from the original date of receipt. Within 48 hours (*Saturdays, Sundays and official holidays excluded*) after a Federal, State, or local enforcement official has made a valid request or demand (for inspection and verification of the hours of service requirements and the accuracy of the driver's records of duty status), a motor carrier must make available all records of duty status, time records in cases of 100-air mile radius exception, and supporting documents at the motor carrier's principal place of business.

(i) The FHWA may use any evidence whether or not in the motor carrier's possession, to determine compliance with hours of service requirements and verify the accuracy of the drivers records of duty status and the motor carrier's supporting document auditing system. If the FHWA discovers that the motor carrier's system is ineffective, misrepresented, or abused, the FHWA may require the motor carrier to modify its system or may require the motor carrier to collect and maintain all supporting documents as required by paragraphs (d) through (h) of this section. Civil or criminal penalties may also apply if the motor carrier or driver are determined to have misrepresented or abused the system.

[Approved by the Office of Management and Budget under control number _____]

[FR Doc. 98–10252 Filed 4–17–98; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

Federal Motor Vehicle Safety Standards; Child Restraint Systems; Denial of Petition for Rulemaking

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Denial of petition for rulemaking.

SUMMARY: This document denies a petition for rulemaking from The Booster Seat Company Ltd., Hamilton, New Zealand, requesting that NHTSA amend the structural integrity requirement of its Federal motor vehicle safety standard on child restraint systems so as to allow its product, a belt-positioning booster seat made entirely of polystyrene, to be manufactured and sold in the United States. The petitioner believes

polystyrene has ''superior cushioning qualities'' compared to a blow molded plastic, yet acknowledges that the material may fracture or crack in a crash. This potential would make it likely that a polystyrene child seat would fail the structural integrity requirement in a compliance test. NHTSA is denying the petition because the loss of structural integrity of a restraint could negatively affect the performance of the system by allowing injurious forces to be imposed on the child occupant. Further, because damage to polystyrene may not be easily detected, there is a concern that consumers could mistakenly use damaged polystyrene seats, putting the child occupant at risk. Not enough is known about these potential concerns to warrant reducing the system integrity requirement as requested.

FOR FURTHER INFORMATION CONTACT:

For nonlegal issues: Dr. George Mouchahoir, Office of Vehicle Safety Standards (telephone 202–366–4919).

For legal issues: Deirdre Fujita, Office of the Chief Counsel (202–366–2992). Both can be reached at the National Highway Traffic Safety Administration, 400 Seventh St., S.W., Washington, D.C., 20590.

SUPPLEMENTARY INFORMATION: Section S5.1.1 of Federal Motor Vehicle Safety Standard No. 213, ''Child Restraint Systems'' (49 CFR § 571.213), sets forth requirements for child restraint system integrity. Section S5.1.1(a) states that when dynamically tested, each child restraint shall:

> Exhibit no complete separation of any load bearing structural element and no partial separation exposing either surfaces with a radius of less than 1/4 inch or surfaces with protrusions greater than 3/8 inch above the immediate adjacent surrounding contactable surface of any structural element of the system. * * *

On August 5, 1996, Mr. John Lord of The Booster Seat Company of Hamilton, New Zealand, petitioned NHTSA to amend S5.1.1(a) to permit fractures or cracks in belt-positioning booster seats that are made from polystyrene. The petitioner believes polystyrene has ''superior cushioning qualities'' compared to blow molded plastic, yet acknowledges that ''by nature of the material'' may fracture or crack in a manner prohibited by the system integrity requirement of S5.1.1(a). The petitioner did not believe the edges would harm by ''pinching, cutting or stabbing the child'' because with polystyrene, ''[b]y nature, all cracked edges are soft.'' The petitioner suggested that NHTSA should amend S5.1.1.(a) for belt-positioning seats, to allow for separation of the structural elements so long as a sharpness limit is met for the edges formed by the separation.

NHTSA is denying the petition because the structural integrity requirement addresses more than the sharpness of exposed edges formed by a separation of materials. The requirement ensures the structural soundness of a restraint in a crash. Structural soundness in a crash is important for maintaining the proper positioning of the child. A belt-positioning booster seat lifts the child so that the vehicle shoulder belt is positioned on the child's shoulder and away from the face and neck and the lap belt is across the child's hips and off of the abdomen. A loss of structural integrity of a booster seat during impact can result in the repositioning of the child in relation to the belts. If the belts were to be repositioned on the child's neck or abdomen, high forces could be imposed on those vulnerable regions, resulting in injury. Because neck and abdominal loading are not measured by the 3-year-old and 6-year-old dummies used in Standard 213's compliance tests to evaluate booster seats, a booster seat could meet the standard's performance criteria (aside from the integrity requirement) and still pose a safety risk for children.

It is also noted that revising S5.1.1(a) as the petitioner suggested may also affect the structural soundness of a restraint over the long term. A polystyrene child seat could easily be penetrated by sharp objects and cracked or fractured during use in a vehicle or during ordinary handling. Once a crack has formed in the material, it may quickly propagate due to the nature of the material, so that a child seat could be easily snapped apart along a crack line. This damage and degradation of the material could significantly reduce the performance of the restraint. Further, fractures in the polystyrene are not easily seen. The material itself appears pocketed and lined with tiny fissures, and crack lines due to material failure may not be obvious. Not enough is known at this time about these potential concerns to warrant reducing the system integrity requirements of the standard as requested.

In accordance with 49 CFR part 552, this completes the agency's review of the petition. The agency has concluded that there is no reasonable possibility that the amendment requested by the petitioner would be issued at the conclusion of the rulemaking proceeding. Accordingly, the petition is denied.

Authority: 49 U.S.C. 322, 30111, 30115, 30117 and 30166; delegation of authority at 49 CFR 1.50.

Issued on April 14, 1998.

L. Robert Shelton,

Associate Administrator for Safety Performance Standards.

[FR Doc. 98–10299 Filed 4–17–98; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 222 and 227

[I.D. 052493B]

Endangered and Threatened Species; Proposed Threatened Status for Johnson's Seagrass

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

ACTION: Proposed rule; notice of reopening of comment period

SUMMARY: The National Marine Fisheries Service (NMFS), pursuant to the Endangered Species Act of 1973, as amended (Act), provides notice of reopening of the comment period on the proposed listing of Johnson's seagrass, *Halophila johnsonii* as a threatened species. The comment period has been reopened to provide opportunity for public comment since the close of the original comment period on December 14, 1993.

DATES: The public comment period, which originally closed on December 14, 1993, now closes June 4, 1998.

ADDRESSES: Comments and requests for copies of the technical workshops proceedings and references should be sent to the Chief, Endangered Species Division (F/PR3), Office of Protected Resources, NMFS, 1315 East-West Highway, Silver Spring, Maryland 20910.

FOR FURTHER INFORMATION CONTACT: Donna Brewer, F/PR3, NMFS, (301) 713–1401, or Colleen Coogan, Southeast Region, NMFS, (813) 570–5312.

SUPPLEMENTARY INFORMATION:

Background

On September 15, 1993, NMFS published a proposed rule to list Johnson's seagrass as a threatened species (58 FR 48326). Designation of critical habitat was subsequently proposed on August 4, 1994 (59 FR 39716). A public hearing on both the proposed listing and critical habitat

designation was held in Vero Beach, Florida on September 20, 1994. This reopening of the comment period applies only to the proposed listing of Johnson's seagrass as a threatened species. The proposed designation of critical habitat will be addressed in a separate Federal Register notice and additional comments will be solicited at that time.

Since publication of the proposed rule, additional information has been made available to NMFS that supplements available data on the status and distribution of Johnson's seagrass. This information was reviewed in a technical workshop held in St. Petersburg, Florida, in November 1996, and has been summarized in a workshop proceedings (Kenworthy, 1997) submitted to NMFS on October 15, 1997.

In addition, genetic studies confirming and supporting information presented in the proposed rule regarding the species separation of Johnson's seagrass have been published (Jewitt-Smith et al., 1997); peer review comments on the proposed rule have been received, and a report summarizing several years of surveys for Johnson's seagrass within the Indian River Lagoon has been completed (Virnstein, et al., 1997). A brief summary of the workshop proceedings follows:

The workshop convened species experts and representatives of agencies with jurisdiction over seagrasses and their habitats to review existing information on the biology and ecology of Johnson's seagrass. Workshop attendees reviewed new genetic information supporting *H. johnsonii* as a separate species from *H. decipens* (recently published by Jewitt-Smith et al, 1977). New qualitative and quantitative benthic surveys and interviews with species experts also reviewed at the workshop, confirmed the extremely limited geographic distribution of Johnson's seagrass to patchy and vertically disjunct areas between Sebastian Inlet and northern Biscayne Bay on the east coast of Florida, finding no verifiable sightings outside of the range other than those already reported. Since additional surveys have not located any male flowers, nor has seedling recruitment been confirmed, the workshop attendees attributed the distribution and abundance of Johnson's seagrass to a reliance on vegetative means of reproduction and growth. High densities of apical meristems, rapid rates of horizontal growth, and a fast leaf turnover were suggested to explain the appearance and disappearance of Johnson's seagrass observed in disturbed areas and on survey transects.

Public Comments Solicited

Due to the availability of additional information, the passage of time since the close of the previous comment period, and the desire to review the best scientific information available during the decision-making process, the comment period for the proposed listing of Johnson's seagrass as a threatened species is being reopened. NMFS is requesting comments from the public on new or additional information on the distribution and status of Johnson's seagrass. All comments received by June 4, 1998 will be considered in NMFS final decision.

References

Kenworthy, J.W. 1997. An updated biological status review and Summary of the Proceedings of a Workshop to Review the Biological Status of the Seagrass, *Halophila johnsonii* Eiseman. Final Report submitted to Office of Protected Species, NMFS, NOAA, Silver Spring, MD - October 15, 1997.

Jewitt-Smith, J., C. McMillan, W.J. Kenworthy, and K. Bird. 1997. Flowering and genetic banding patterns of *Halophila johnsonii* and conspecifics. Aquatic Botany 59: 323–331.

Virnstein, R.W., L.J. Morris, J.D. Miller, and R. Miller-Meyers. 1997. Distribution and abundance of *Halophila johnsonii* in the Indian River Lagoon. St. John's River Water Management District, Techincal Memorandum # 24.

Authority

The Authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: April 10, 1998.

Rolland A. Schmitten,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 98–10368 Filed 4–17–98; 8:45 am]

BILLING CODE 3510–22–F

Notices

Federal Register
Vol. 63, No. 75
Monday, April 20, 1998

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 98–047–1]

Secretary's Advisory Committee on Foreign Animal and Poultry Diseases; Meeting

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice of meeting.

SUMMARY: We are giving notice of a meeting of the Secretary's Advisory Committee on Foreign Animal and Poultry Diseases.

PLACE, DATES, AND TIME OF MEETING: The meeting will be held in Training Rooms 3 and 4 of the USDA Center at Riverside, 4700 River Road, Riverdale, MD 20737. Sessions will be held from 8 a.m. to 5 p.m. on May 5–6, 1998, and from 8 a.m. to 12 p.m. on May 7, 1998.

FOR FURTHER INFORMATION CONTACT: Dr. Quita Bowman, Senior Staff Veterinarian, Emergency Programs Staff, VS, APHIS, 4700 River Road Unit 41, Riverdale, MD 20737–1231, (301) 734–8073; or e-mail: qbowman@aphis.usda.gov.

SUPPLEMENTARY INFORMATION: The Secretary's Advisory Committee on Foreign Animal and Poultry Diseases (the Committee) advises the Secretary of Agriculture on actions necessary to prevent the introduction of foreign diseases of livestock and poultry into the United States. In addition, the Committee advises the Secretary on contingency planning and on maintaining a state of preparedness to deal with these diseases, if introduced.

The meeting will focus on the U.S. animal health emergency management system and the foreign animal disease situation worldwide and its relevance to the United States. The meeting will be open to the public. However, due to the time constraints, the public will not be allowed to participate in the Committee's discussions. Written statements on meeting topics may be filed with the Committee before or after the meeting by sending them to Dr. Quita Bowman at the address listed under **FOR FURTHER INFORMATION CONTACT.** Written comments may also be filed at the time of the meeting. Please refer to Docket No. 98–047–1 when submitting your comments.

This notice of meeting is given pursuant to section 10 of the Federal Advisory Committee Act.

Done in Washington, DC, this 15th day of April 1998.

Charles P. Schwalbe,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 98–10464 Filed 4–17–98; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Forest Service

East Beaver Creek Timber Sale and Prescribed Burning Project, Targhee National Forest, Clark County, ID

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare environmental impact statement.

SUMMARY: The Forest Supervisor of the Targhee National Forest gives notice of the agency's intent to prepare an environmental impact statement for the East Beaver Creek Timber Sale and Prescribed Burning Project. The proposed action would harvest 4.0 million feet of timber from 1,231 acres and prescribe burn 2,220 acres with 518 acres of the burning in the timber sale harvest units. The remaining 1,702 acres of burning would be in nonforest types. Two miles of temporary roads would be built and 2.6 miles of existing roads reconstructed. East Beaver Creek is located approximately 15 miles northeast of Dubois, Idaho. Alternatives will include the proposed action, no action, and any alternatives that respond to significant issues generated during the scoping process. A more detailed description is available from the Dubois Ranger District; see **ADDRESSES** below.

DATES: Send written comments and suggestions on the issues concerning the proposed action by May 15, 1998.

ADDRESSES: Send written comments to Clarence M. Murdock, District Ranger, Dubois Ranger District, P.O. Box 46, Dubois, ID 83423.

FOR FURTHER INFORMATION CONTACT: John Councilman, Interdisciplinary Team Leader, phone (208) 558–7301.

SUPPLEMENTARY INFORMATION: The Targhee National Forest Revised Land Management Plan was approved in 1997. One of the decisions in the Revised Plan was to allow for the production and utilization of wood fiber from certain areas of the Forest. The geographic area where the proposed action would take place has primarily a prescription of timber management with emphasis on big game security (5.1.4b). Prescriptions for other lands in the area are described below.

Aquatic Influence Zones (2.8.3)—Management emphasis is directed at the application of ecological knowledge to restore and maintain the health of these areas in ways that also produce desired resource values, products, protection, restoration, enhancement, interpretation, and appreciation of these areas.

Visual Quality Maintenance (2.1.2)—This prescription emphasizes maintaining the existing visual quality within major travel corridors with quality natural vistas, while allowing livestock production, and other compatible commodity outputs. There is no scheduled timber harvesting. No scheduled harvests means timber removed from these areas does not contribute toward the Forests annual allowable sale quantity.

Initial public involvement will include mailing maps and a project description to interested parties to solicit comments on the proposal. Preliminary issues include: water quality, fisheries, elk habitat, and motorized access by the public.

Additional opportunity to comment on the project will occur on the draft Environmental Impact Statement (draft EIS). The draft EIS is expected to be filed with the Environmental Protection Agency and available for public review in August 1998.

The comment period on the draft EIS will be 45 days from the date the Environmental Protection Agency's notice of availability appears in the **Federal Register**. At the same time, copies of the draft EIS will be distributed to interested and affected

agencies, organizations, tribes, and members of the public for their review and comment. It is very important that those interested in the proposed action participate at that time.

The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewers' position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC,* 435 U.S. 519, 553 (1978). Also, environmental objections that could have been raised at the draft stage but that are not raised until after completion of the final environmental impact statement may be waived or dismissed by the courts. *City of Angoon* v. *Hodel,* (9th Circuit, 1986) and *Wisconsin heritages, Inc.* v. *Harris,* 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45 day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final environmental impact statement.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft environmental impact statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft environmental impact statement. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

The final EIS is scheduled to be completed in November 1998. In the final EIS, the Forest Service is required to respond to comments received during the comment period that pertain to the environmental consequences discussed in the draft EIS and applicable laws, regulations, and policies considered in making the decisions on this proposal.

Responsible Official

Jerry B. Reese, Forest Supervisor, is the responsible official. As responsible official, he will document the selected alternative for the East Beaver Creek Timber Sale and Prescribed Burning Project EIS and his rationale in a Record of Decision.

The decision for the East Beaver Creek Timber Sale and Prescribed Burning Project will be subject to Forest Service Appeal Regulations (36 CFR part 215).

Dated: April 9, 1998.

Jerry B. Reese,

Forest Supervisor.

[FR Doc. 98–10270 Filed 4–17–98; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Grain Inspection, Packers and Stockyards Administration

Notice of Request for Extension of a Currently Approved Information Collection

AGENCY: Grain Inspection, Packers and Stockyards Administration, USDA.

ACTION: Notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), Grain Inspection, Packers and Stockyards Administration (GIPSA) is announcing an opportunity for the public to comment on its intention to request an extension for a currently approved information collection, ''Guidelines for Preparation of Research Proposal.'' These guidelines provide instructions for submitting grant proposals requesting funds from GIPSA for research to develop procedures and equipment that may be used to measure grain quality.

DATES: Comments on this notice must be received by June 19, 1998 to be assured of consideration.

FOR FURTHER INFORMATION CONTACT: Steve Tanner, Director, Technical Services Division, USDA, GIPSA, FGIS Technical Service Center, 10383 N Executive Hills Boulevard, Kansas City, MO 64153–1394; telephone (816–891–0401).

SUPPLEMENTARY INFORMATION: Under Section 4a of the United States Grain Standards Act (USGSA; 7 U.S.C. 71 et seq.), GIPSA is responsible for establishing grain standards which accurately describe the quality of grain being traded and for applying these standards uniformly in a nationwide inspection system. Section 16e of the USGSA authorizes the agency to conduct a continuing research program for the purpose of developing methods to improve accuracy and uniformity in grading grain. To carry out this authority, GIPSA maintains an external research program under which research scientists are invited to submit research grant proposals that include the objectives of the proposed work; application of the proposed work to the grain inspection system; the procedures, equipment, personnel, etc., that will be used to reach the project objectives; the cost of the project; a schedule for completion; qualifications of the investigator and the grantee organization; and a listing of all other sources of financial support for the project. GIPSA utilizes the Guidelines for Preparation of Research Proposals to assist grant applicants with preparation of grant proposals.

Title: Guidelines for Preparation of Research Proposal.

OMB Number: 0580–0014.

Expiration Date of Approval: August 31, 1998.

Type of Request: Extension of a currently approved information collection.

Abstract: The Grain Inspection, Packers and Stockyards Administration is interested in supporting research to develop procedures and equipment that may be used to measure grain quality. The Guidelines for Preparation of Research Proposal provides instructions for submitting grant proposals requesting funds from GIPSA for this purpose.

Estimate of Burden: Public reporting for this collection of information is estimated to average 20 hours per response.

Respondents: Organizations who employ scientists and engineers who do research and development on procedures and equipment which may be used to provide measurement of grain quality.

Estimated Number of Respondents: 3.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 60.

Copies of this information collection can be obtained from Cathy McDuffie, the Agency Support Services Specialist, at (301) 734–5190.

Comments

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 will have practical utility; (b) 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; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information

on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or forms of information technology. Comments may be sent to: Sharon Vassiliades, ARTS, GIPSA, USDA, STOP 3649, Washington, D.C. 20250–3649; fax 202 720–4628; e-mail svassili@fgisdc.usda.gov.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

This notice is in the nature of a change relieving a restriction and, thus, may be made effective in less than 30 days after publication in the **Federal Register** without prior notice or other public procedure. This notice is given pursuant to section 302 of the Packers and Stockyards Act (7 U.S.C. 202) and is effective upon publication in the **Federal Register**.

Done at Washington, D.C., this 9th day of April 1998.

Daniel L. Van Ackeren,

Director, Livestock Marketing Division, Packers and Stockyards Programs.

[FR Doc. 98–10190 Filed 4–17–98; 8:45 am]

BILLING CODE 3210–KD–P

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

Information Collection Activity; Comment Request

AGENCY: Rural Utilities Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended), the Rural Utilities Service's (RUS) invites comments on this information collection for which RUS intends to request approval from the Office of Management and Budget (OMB).

DATES: Comments on this notice must be received by June 19, 1998.

FOR FURTHER INFORMATION CONTACT: Sue Arnold, Financial Analyst, Office of the Assistant Administrator, Electric Program, Rural Utilities Service, USDA, 1400 Independence Ave., SW., STOP 1560, Room 4024 South Building, Washington, D.C. 20250–1560. Telephone: (202) 690–1078. FAX: (202) 690–0717. E-mail: sarnold@rus.usda.gov.

SUPPLEMENTARY INFORMATION:

Title: Electric Loan Application and Related Reporting Burdens.

OMB Control Number: 0572–0032.

Type of Request: Extension of a previously approved information collection, with change.

Abstract: The Rural Electrification Act of 1936 (7 U.S.C. 901 *et seq.*), as amended (RE Act) authorizes and empowers the Administrator of RUS to make and guarantee loans to furnish and improve electric service in rural areas. These loans are amortized over a period of up to 35 years and secured by the borrower's electric assets. In the interest of protecting loan security, monitoring compliance with debt convenants, and ensuring that RUS loan funds are used for purposes authorized by law, RUS requires that borrowers prepare and submit for RUS evaluation, certain studies and reports. Some of these studies and reports are required only once for each loan application; others must be submitted periodically until the loan is completely repaid.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 6 hours per response.

Respondents: Small business or organizations.

Estimated Number of Respondents: 754.

Estimated Number of Responses per Respondent: 4.

Estimated Total Annual Burden on Respondents: 16,834.

Copies of this information collection, and related form and instructions, can be obtained from Dawn Wolfgang, Program Development and Regulatory Analysis, at (202) 720–0812.

Comments are invited on: (a) Whether this proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Comments may be sent to: F. Lamont Heppe, Jr., Director, Program Development and Regulatory Analysis, Rural Utilities Service, U.S. Department of Agriculture, Stop 1522, 1400 Independence Ave., SW., Washington, DC 20250–1522. FAX: (202) 720–4120.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Dated: April 13, 1998.

James R. Baker,

Administrator, Grain Inspection, Packers and Stockyards Administration.

[FR Doc. 98–10189 Filed 4–17–98; 8:45 am]

BILLING CODE 3410–EN–P

DEPARTMENT OF AGRICULTURE

Grain Inspection, Packers and Stockyards Administration

Deposting of Stockyards

Notice is hereby given, that the livestock markets named herein, originally posted on the dates specified below as being subject to the Packers and Stockyards Act, 1921, as amended (7 U.S.C. 181 *et seq.*), no longer comes within the definition of a stockyard under the Act and are therefore, no longer subject to the provisions of the Act.

Facility No., name, and location of stockyard	Date of posting
IA–153 North Iowa Livestock Exchange, Ltd., Garner, Iowa	January 8, 1957.
IA–175 LeMars Auction Barn, LeMars, Iowa	May 29, 1959.
IA–212 Northside Sales Company, Sibley, Iowa	May 19, 1959.
NB–104 Arnold Sale Barn, Arnold, Nebraska	January 10, 1957.
NB–173 Livestock Exchange of Sargent, Sargent, Nebraska	November 14, 1958.
NB–182 The Nebraska Sandhills Cattle Auction, Inc., Thedford, Nebraska	February 8, 1950.
NB–191 Wisner Sales Co., Inc., Wisner, Nebraska	June 29, 1983.

Dated: April 14, 1998.

Blaine D. Stockton, Jr.,

Acting Administrator, Rural Utilities Service.

[FR Doc. 98–10344 Filed 4–17–98; 8:45 am]

BILLING CODE 3410–15–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Additions

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

ACTION: Additions to the procurement list.

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

EFFECTIVE DATE: May 18, 1998.

ADDRESS: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Gateway 3, Suite 310, 1215 Jefferson Davis Highway, Arlington, Virginia 22202–4302.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman, (703) 603–7740.

SUPPLEMENTARY INFORMATION: On September 19, 1997, January 5, February 13 and 27, 1998, the Committee for Purchase From People Who Are Blind or Severely Disabled published notices (62 FR 49204, 63 FR 202, 7391 and 9999) of proposed additions to the Procurement List.

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

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

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

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

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

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

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

Commodities

Paper, Tabulating Machine
7530–00–249–4847
7530–00–057–9487
7530–00–731–5363

Office and Miscellaneous Supplies
(Requirements for the Westover Air Force Reserve Base, Chicopee, Massachusetts)

Office and Miscellaneous Supplies
(Requirements for the Naval Weapons Station, Charleston, South Carolina)

Services

Administrative Services

National Center for Toxicological Research, 3900 NCTR Road, Jefferson, Arkansas

Audio/Visual Duplication Service, Federal Emergency Management Agency, National Emergency Training Center, 16825 South Seton Avenue, Emmitsburg, Maryland

Janitorial/Custodial, Veterans Integrated Support Network 16, Ridgeland, Mississippi

Janitorial/Custodial, Tupelo Visitors Center and Headquarters, Natchez Trace Parkway, Tupelo, Mississippi

Janitorial/Custodial, Bureau of Land Management, Farmington District Office, 1235 La Plata Highway, Farmington, New Mexico

Janitorial/Custodial, Naval and Marine Corps Reserve Center, Rochester, New York

Janitorial/Custodial, Basewide (except Commissary, Hospital and Base Industrial Areas), Minot Air Force Base, North Dakota

Operation of Postal Service Center, Charleston Air Force Base, South Carolina

This action does not affect current contracts awarded prior to the effective date of this addition or options that may be exercised under those contracts.

Beverly L. Milkman,

Executive Director.

[FR Doc. 98–10262 Filed 4–17–98; 8:45 am]

BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Proposed Additions and Deletions

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

ACTION: Proposed additions to and deletions from Procurement List.

SUMMARY: The Committee has received proposal(s) to add to the Procurement List services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and to delete commodities and services previously furnished by such agencies.

COMMENTS MUST BE RECEIVED ON OR BEFORE: May 18, 1998.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Gateway 3, Suite 310, 1215 Jefferson Davis Highway, Arlington, Virginia 22202–4302.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603–7740.

SUPPLEMENTARY INFORMATION: 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.

Additions

If the Committee approves the proposed addition, all entities of the Federal Government (except as otherwise indicated) will be required to procure the services listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

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

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

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

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

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

for addition to the Procurement List. Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

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

Administrative Services

(For Chicago Cooperative Administrative Support Unit (CASU) Philadelphia Operations Center), Wanamaker Building, 100 Penn Square East, Philadelphia, Pennsylvania; NAP: Horizon House, Inc., Philadelphia, Pennsylvania

Base Supply Operations, Marine Corps Air Station, Cherry Point, North Carolina, NPA: CETC Employment Opportunities, Inc., New Bern, North Carolina

Central Facility Management, The Jimmy Carter Library, One Copenhill, Atlanta, Georgia, NPA: Goodwill Industries of Atlanta, Inc., Atlanta, Georgia

Grounds Maintenance, Department of the Navy, Engineering Field Activity, West, San Bruno, California, NPA: Toolworks, Inc., San Francisco, California

Recycling Service, Offutt Air Force Base, Nebraska, NPA: Goodwill, Industries, Inc., Omaha, Nebraska

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 does not appear to have a severe economic impact on future 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 deletion from the Procurement List.

The following commodities and services have been proposed for deletion:

Commodities

Ladder, Extension (Wood)
5440–00–223–6027
5440–00–223–6026
5440–00–242–0998

Ladder, Straight (Wood)
5440–00–242–0995
5440–00–816–2575
5440–00–223–6029
5440–00–223–6030

Apron, Construction Worker's
8415–00–257–4290

Services

Janitorial/Custodial

U.S. Army Reserve Center, 1001 and 1005 Lakecrest Drive, Grand Prairie, Texas

Grounds Maintenance

McClellan Air Force Base, California

Janitorial/Custodial

Building 243 ''A–G'' Bay, McClellan AFB, California

Painting Service

McClellan Air Force Base, California.

Beverly L. Milkman,

Executive Director.

[FR Doc. 98–10265 Filed 4–17–98; 8:45 am]

BILLING CODE 6353–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 041098B]

New England Fishery Management Council; Public Meetings

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

ACTION: Notice of public meetings.

SUMMARY: The New England Fishery Management Council(Council) is scheduling a number of public meetings of its oversight committees and advisory panels in May 1998 to consider actions affecting New England fisheries in the exclusive economic zone (EEZ). Recommendations from these groups will be brought to the full Council for formal consideration and action, if appropriate.

DATES: The meetings will be held between May 5, 1998, and May 11, 1998. See **SUPPLEMENTARY INFORMATION** for specific dates and times.

ADDRESSES: Meetings will be held in Peabody and Danvers, MA, and Warwick, RI. See **SUPPLEMENTARY INFORMATION** for specific locations.

FOR FURTHER INFORMATION CONTACT: Paul J. Howard, Executive Director, New England Fishery Management Council; telephone: (781) 231–0422.

SUPPLEMENTARY INFORMATION:

Meeting Dates and Agendas

Tuesday, May 5, 1998, 9:00 a.m.—Joint Council Herring Committee and Atlantic States Marine Fisheries Commission Herring Section Meeting

Location: Holiday Inn, One Newbury Street (Route 1) Peabody, MA 01960; telephone: (978) 535–4600.

Review and approval of proposed Atlantic Herring Fishery Management Plan (FMP) measures and Draft Supplemental Environmental Impact Statement, for public hearing purposes.

Wednesday, May 6, 1998, 9:30 a.m.—Joint Habitat Committee and Advisory Panel Meeting

Location: King's Grant Inn, Route 128 and Trask Lane. Danvers, MA 01923; telephone: (978) 774–6800.

Review of the progress and status of essential fish habitat (EFH) identification and description, and discussion of alternatives for EFH designation.

Monday, May 11, 1998 9 a.m.—Sea Scallop Committee Meeting

Location: Radisson Hotel, 2091 Post Road, Warwick, RI 02886; telephone: (401) 739–3000.

Development of closed area management, days-at-sea leasing, and vessel buyback measures for public hearing purposes.

Although other issues not contained in this agenda may come before these groups for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act, those issues may not be the subject of formal action during these meetings. Action will be restricted to those issues specifically listed in this notice.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Paul J. Howard (see **ADDRESSES**) at least 5 days prior to the meeting dates.

Dated: April 14, 1998.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 98–10369 Filed 4–17–98; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 040898A]

Western Pacific Fishery Management Council; Public Meeting

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

ACTION: Notice of a public meeting.

SUMMARY: The Western Pacific Fishery Management Council (Council) will hold a meeting of its Pelagics Plan Team.

DATES: The meeting will be held on May 6–7, 1998, from 8:30 a.m. to 5:00 p.m.

ADDRESSES: The meeting will be held at the Council office, 1164 Bishop St., Suite 1400, Honolulu, HI 96814.

FOR FURTHER INFORMATION CONTACT: Kitty Simonds, Executive Director; telephone: 808–522–8220.

SUPPLEMENTARY INFORMATION: The Plan Team will discuss and may make recommendations to the Council on the following agenda items:

Wednesday, May 6, 1998, 8.30 p.m.

1. Introductions and assignment of rapporteurs;

2. 1997 Pelagic fisheries annual report modules; and

3. Comprehensive Sustainable Fisheries Act amendment (Magnuson Stevens Act requirement), including bycatch, fishing sectors, fishing communities, overfishing and essential fish habitat.

Thursday, May 7, 1998, 8.30 p.m.

1. Protected species and seabird interactions;

2. Shark incidental catches in the Western Pacific;

3. Hawaii longline/charter boat interactions;

4. Pelagic Fishery Management Plan Amendment 8 - American Samoa pelagic fisheries area closure;

5. Palmyra fishery developments update;

6. Milestones;

7. Summary of Plan Team recommendations;

8. Other business as required.

Although other issues not contained in this agenda may come before this Plan Team for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically 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 Kitty M. Simonds, 808–522–8220 (voice) or 808–522–8226 (fax), at least 5 days prior to the meeting date.

Dated: April 14, 1998.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 98–10370 Filed 4–17–98; 8:45 am]

BILLING CODE 3510–22–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in India

April 14, 1998.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: April 20, 1998.

FOR FURTHER INFORMATION CONTACT: Janet Heinzen, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–5850. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The current limits for certain categories are being adjusted, variously, for carryforward applied to 1997 limits and additional allowance for 100 percent cotton garments made of handloomed fabrics.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 62 FR 66057, published on December 17, 1997). Also see 62 FR 67831, published on December 30, 1997.

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

April 14, 1998.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on December 22, 1997, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in India and exported during the twelve-month period which began on January 1, 1998 and extends through December 31, 1998.

Effective on April 20, 1998, you are directed to adjust the limits for the following categories, as provided for under the Uruguay Round Agreement on Textiles and Clothing:

Category	Adjusted twelve-month level [1]
218	13,528,087 square meters.
219	62,602,481 square meters.
313	36,196,154 square meters.
314	7,452,676 square meters.
315	12,923,785 square meters.
317	37,734,420 square meters.
334/634	147,961 dozen.
335/635	659,088 dozen.
336/636	923,826 dozen.
340/640	2,095,257 dozen.
341	4,228,602 dozen of which not more than 2,393,276 dozen shall be in Category 341–Y [2].
342/642	1,264,493 dozen.
347/348	646,153 dozen.
351/651	282,120 dozen.
363	42,275,991 numbers.
369–D [3]	1,242,592 kilograms.
369–S [4]	677,777 kilograms.
641	1,398,200 dozen.
Group II	
200, 201, 220–227, 237, 239pt. [5], 300, 301, 331–333, 350, 352, 359pt. [6], 360–362, 600–604, 606 [7], 607, 611–629, 631, 633, 638, 639, 643–646, 649, 650, 652, 659pt. [8], 666, 669pt. [9], 670, 831, 833–838, 840–858 and 859pt. [10], as a group.	105,715,435 square meters equivalent.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1997.

[3] Category 369–D: only HTS numbers 6302.60.0010, 6302.91.0005 and 6302.91.0045.

[4] Category 369–S: only HTS number 6307.10.2005.

[5] Category 239pt.: only HTS number 6209.20.5040 (diapers).

[6] Category 359pt.: all HTS numbers except 6406.99.1550.

[7] Category 606: all HTS numbers except 5403.31.0040 (for administrative purposes Category 606 is designated as 606(1)).

[8] Category 659pt.: all HTS numbers except 6406.99.1510 and 6406.99.1540.

[9] Category 669pt.: all HTS numbers except 5601.10.2000, 5601.22.0090, 5607.49.3000, 5607.50.4000 and 6406.10.9040.

[10] Category 859pt.: only HTS numbers 6115.19.8040, 6117.10.6020, 6212.10.5030, 6212.10.9040, 6212.20.0030, 6212.30.0030, 6212.90.0090, 6214.10.2000 and 6214.90.0090.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 98–10358 Filed 4–17–98; 8:45 am]

BILLING CODE 3510–DR–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Amendment of Visa Requirements for Certain Cotton, Wool and Man-Made Fiber Apparel Produced or Manufactured in the Republic of Maldives; Correction

April 14, 1998.

In the notice and letter to the Commissioner of Customs published in the **Federal Register** on March 25, 1998 (63 FR 14427), insert ''Categories 237, 239, 330-359, 431-459 and 630-659'' in the first sentences of the 3rd paragraph under the heading ''Supplementary Information'' on page 14427, 3rd column; and the 1st paragraph on page 14428, 1st column. The new sentences will read as follows:

''Effective on April 15, 1998, apparel in Categories 237, 239, 330-359, 431-459 and 630-659, produced or manufactured in Maldives and exported on or after April 15, 1998 must be accompanied by a visa with the quantity stated in whole units, decimals and fractions will no longer be accepted.''

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 98–10357 Filed 4–17–98; 8:45 am]

BILLING CODE 3510–DR–F

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0012]

Submission for OMB Review; Comment Request Entitled Termination Settlement Proposal Forms—FAR (Standard Forms 1435 through 1440)

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for an extension to an existing OMB clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning Termination Settlement Proposal Forms—FAR (Standard Forms 1435 through 1440). A request for public comments was published at 63 FR 6728, February 10, 1998. No comments were received.

DATES: Comments may be submitted on or before May 20, 1998.

FOR FURTHER INFORMATION CONTACT: Linda Klein, Federal Acquisition Policy Division, GSA (202) 501–3775.

ADDRESSES: Comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, should be submitted to: FAR Desk Officer, OMB, Room 10102, NEOB, Washington, DC 20503, and a copy to the General Services Administration, FAR Secretariat, 1800 F Street, NW, Room 4035, Washington, DC 20405. Please cite OMB Control No. 9000–0012, Termination Settlement Proposal—FAR (SF's 1435 through 1440), in all correspondence.

FOR FURTHER INFORMATION CONTACT: Linda Klein, Federal Acquisition Policy Division, GSA (202) 501–3775.

SUPPLEMENTARY INFORMATION:

A. Purpose

The termination settlement proposal forms (Standard Forms 1435 through 1440) provide a standardized format for listing essential cost and inventory information needed to support the terminated contractor's negotiation position. Submission of the information assures that a contractor will be fairly reimbursed upon settlement of the terminated contract.

B. Annual Reporting Burden

Public reporting burden for this collection of information is estimated to average 2.5 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

The annual reporting burden is estimated as follows: Respondents, *864;* responses per respondent, *2.4;* total annual responses, *2,074* preparation hours per response, *2.5;* and total response burden hours, *5,185.*

Obtaining Copies of Proposals

Requester may obtain a copy of the justification from the General Services Administration, FAR Secretariat (MVRS), 1800 F Street, NW, Room 4035, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 9000–0012, Termination Settlement Proposal Forms—FAR (SF's 1435 through 1440), in all correspondence.

Dated: April 14, 1998.

Sharon A. Kiser,

FAR Secretariat.

[FR Doc. 98–10281 Filed 4–17–98; 8:45 am]

BILLING CODE 6820–34–P

DEPARTMENT OF DEFENSE

Department of Army

Corps of Engineers

Release of Feasibility Study/Proposed Plan (FS/PP) for Cleanup of Radiological Contamination at the St. Louis Downtown Site (SLDS) for Public Review

AGENCY: U.S. Army Corps of Engineers, DOD.

ACTION: Notice.

SUMMARY: The St. Louis District, U.S. Army Corps of Engineers (USACE), in consultation with the U.S. Environmental Protection Agency (EPA), propose to cleanup contaminants resulting from past uranium processing operations at the St. Louis Downtown Site (SLDS). SLDS is one of several being addressed under the Superfund law (Comprehensive Environmental Response, Compensation, and Liability Act [CERCLA]. Alternatives, which identify the range of cleanup options, have been developed and evaluated in the SLDS Feasibility Study (FS). USACE has identified Alternative 4 as the preferred remediation alternative

described in this Proposed Plan based on the information available at this time. The final decision on the remedy to be implemented will be documented in a Record of Decision (ROD) only after consideration of all comments received and any new information presented.

FOR FURTHER INFORMATION CONTACT: Questions regarding the SLDS FS/PP may be directed to Mr. Chris Haskell, U.S. Army Corps of Engineers, St. Louis District, FUSRAP Project Office, 9170 Latty Avenue, Berkeley, Missouri 63134, by phone (314) 524–3334, or by e-mail at ''Chris.Haskell @MVS01.usace.army.mil''.

SUPPLEMENTARY INFORMATION:

1. Proposed Action

The U.S. Army Corps of Engineers, St. Louis District, issued the SLDS Feasibility Study/Proposed Plan (FS/PP) for public comment on April 8, 1998. The site became contaminated as a result of activities in support of the nation's early atomic energy program in the 1940s. The sites are being addressed under the Formerly Utilized Sites Remedial Action Program (FUSRAP). Cleanup of these sites is now managed by the U.S. Army Corps of Engineers. The alternatives evaluated in the Feasibility Study are summarized in the Proposed Plan. Inaccessible soils are not included as part of the operable unit.

2. Project Alternatives

a. Alternative 1—No Action. Mandated by the Comprehensive Environmental Response, Compensation, and Liabilities (CERCLA), periodic environmental monitoring would be conducted, but no remedial action would be conducted.

b. Alternative 2—Institutional Controls and Site Maintenance. Institutional controls and site maintenance would be implemented to prevent unacceptable exposures to site contamination.

c. Alternative 3—Containment. Alternative 3 incorporates containment, institutional controls, and environmental monitoring to reduce further spread of contaminants and reduce the potential for direct exposure. Under this alternative, accessible soils from SLDS and vicinity properties would be excavated and consolidated and capped at a downtown location such as the City Property or Plant 2 area.

d. Alternative 4—Partial Excavation and Disposal. This alternative includes excavation of accessible soils in the upper 2 feet to the composite criteria of 5 pCi/g in surface soil (top 6 inches) and 15 pCi/g in shallow subsurface soil (top 2 feet) (for Ra-226, Ra-228, Th-230, and Thj-232) and 50 pCi/g for U-238. Site-specific dose and risk-based target removal levels of 50 pCi/g Ra-226, 100 pCi/g Th–230 and 150 pCi/g U-238 would be used for excavation of soils below 2 feet for most site areas.

e. Alternative 5—Complete Excavation and Disposal. This alternative involves excavating soil contaminated above the composite criteria regardless of depth.

f. Alternative 6—Selective Excavation and Disposal. This alternative focuses on reducing the need for future studies, designs, and remedial actions, in addition to protection of human health and the environmental relative to Alternative 4. It is anticipated that excavation to the composite criteria would proceed to a depth of 6 feet of the St. Louis Terminal Railroad Association tracks and the former locations of Buildings 116, 117, 704–707. Excavation for the composite criteria would stop at 4 feet at all other areas at SLDS including the vicinity properties and under the roads.

The Corps of Engineers has identified alternative 4 as preferred.

3. Scoping Process

Federal, state and local agencies, and interested individuals are invited to participate in the scoping process to determine the range of issues and alternatives to be addressed. The U.S. Army Corps of Engineers will hold a public meeting to receive oral and written comments at the Henry Clay Elementary School Gymnasium, 3820 North 141th Street, St. Louis, Missouri 63107 on April 21, 1998 from 7:00 p.m. to 9:00 p.m. In addition, written comments will also be accepted until May 8, 1998 by Dr. R. L. Mullins at U.S. Army Corps of Engineers, St. Louis District, FUSRAP Project Office, 9170 Latty Avenue, Berkeley, Missouri 63134, (314) 524–4083.

4. Availability of FS/PP

Copies of the FS/PP are available for review from April 8, 1998 until May 8, 1998 during business hours at the following locations:

U.S. Army Corps of Engineers, St. Louis District, FUSRAP Project Office, 9170 Latty Avenue, Berkeley, Missouri 63134

St. Louis Public Library, Government Information Section, 1301 Olive Street, St. Louis, Missouri 63103

Henry Clay Elementary School, 3820 N. 14th Street, St. Louis, Missouri 63107

Prairie Commons Branch Library, 915 Utz Lane, Hazelwood, Missouri 63042

Washington University Library of Biological Sciences, One Brookings Drive, St. Louis, Missouri 63130

Julia Davis Branch Library, 4415 Natural Bridge, St. Louis Missouri 63115

St. Louis County Library, 1640 S. Lindbergh Blvd., St. Louis, Missouri 63131

The FS/PP is also available for review on the world wide web at http://144.3.144.51/engr/fusrap/index.htm.

Gregory D. Showalter,

Army Federal Register Liaison Officer.

[FR Doc. 98–10359 Filed 4–17–98; 8:45 am]

BILLING CODE 3710–55–M

DEPARTMENT OF EDUCATION

National Assessment Governing Board; Meeting

AGENCY: National Assessment Governing Board; Department of Education.

ACTION: Notice of partially closed meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the National Assessment Governing Board. This notice also describes the functions 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.

DATES: May 7–9, 1998.

TIME: *May 7*—Design and Methodology Committee, 9:00–11:30 a.m., (open); Joint Meeting Design and Methodology and Reporting and Dissemination Committees, 11:30 a.m.–2:00 p.m., (open); Subject Area Committee #2, 2:00–4:00 p.m., (open), Executive Committee, 4:00–6:00 p.m., (open) *May 8*—Full Board, 8:30 a.m.–10:00 a.m., (open); Subject Area Committee #1, 10:00–10:30 a.m. (closed), 10:30 a.m.–12:00 p.m., (open); Reporting and Dissemination Committee, 10:00 a.m.–12:00 p.m., (open); Achievement Levels Committee, 10:00–11:00 a.m., (open); Design and Methodology Committee, 11:00 a.m.–12:00 p.m., (open); Full Board, 12:00–1:30 p.m. (closed), 1:30–4:00 p.m., (open). *May 9*—Full Board, 8:00–11:30 a.m., (open), 11:30 a.m.–12:00 p.m. (closed); adjournment, 12:00 p.m.

LOCATION: Crystal Gateway Marriott, 1700 Jefferson Davis Highway, Arlington, Virginia.

FOR FURTHER INFORMATION CONTACT: Mary Ann Wilmer, Operations Officer, National Assessment Governing Board, Suite 825, 800 North Capitol Street, NW, Washington, D.C., 20002–4233, Telephone: (202) 357–6938.

SUPPLEMENTARY INFORMATION: The National Assessment Governing Board is established under section 412 of the National Education Statistics Act of 1994 (Title IV of the Improving America's Schools Act of 1994) (Pub. L. 103–382).

The Board is established to formulate policy guidelines for the National Assessment of Educational Progress. The Board is responsible for selecting subject areas to be assessed, developing assessment objectives, identifying appropriate achievement goals for each grade and subject tested, and establishing standards and procedures for interstate and national comparisons. Under P.L. 105–78, the National Assessment Governing Board is also granted exclusive authority over developing the Voluntary National Tests pursuant to contract number RJ97153001.

On May 7, the Design and Methodology Committee will meet in open session from 9:00–11:30 a.m. The Committee will be reviewing the plan for research studies on the Voluntary National Tests, and the pilot test design.

From 11:30 a.m.–2:00 p.m. the Design and Methodology and Reporting and Dissemination Committees will meet jointly in open session. The Committees will be reviewing the work plan for accommodations and adaptations on the Voluntary National Tests. There will be an open meeting of Subject Area Committee #2 from 2:00–4:00 p.m. The agenda for this meeting includes review of math issues and timeliness for the Voluntary National Tests, and an update on 1998 NAEP assessment in civics.

Also on May 7, the Executive Committee will meet in open session from 4:00–6:00 p.m. The Executive Committee will receive updates on Voluntary National Tests activities and decisions on the Voluntary National Tests contract. Also, the Committee will hear updates on reauthorization and NAEP redesign activities. The Committee will begin discussion on augmenting the schedule of NAEP assessments to include grade 4 reading in the year 2000.

On May 8, the full Board will convene in open session from 8:30–10:00 a.m. In addition to a report from the Executive Director of the National Assessment Governing Board, and an update on NAEP activities, the agenda for this session of the meeting includes the release of the NAEP—TIMSS Linking Report on 8th Grade Mathematics and Science.

Beginning at 10:00 a.m. there will be meetings of the standing committees. Subject Area Committee #1 will meet in partially closed session. From 10:00–10:30 a.m., the meeting will be closed to permit the Committee to review proposed items for the Voluntary National Test in reading. This portion of the meeting must be closed because references will be made to specific items from the assessment and premature disclosure of the information presented for review would be likely to significantly frustrate implementation of a proposed agency action. Such matters are protected by exemption (9) (B) of Section 552b(c) of Title 5 U.S.C.

In open session, 10:30 a.m.–12:00 p.m., the Committee will review Voluntary National Test reading issues and timelines. Also, the Committee will receive an update on the 1998 NAEP assessment in reading and writing.

The Reporting and Dissemination Committee will meet from 10:00 a.m.–12:00 p.m. The Committee will be considering the schedule and plans for the release of NAEP reports; reporting district-level results from existing state samples; and work plans for reporting and utilization of the results for the Voluntary National Tests.

There will be open meetings of the Achievement Levels Committee and the Design and Methodology Committee. The Achievement Levels Committee will meet from 10:00–11:00 a.m. to prepare recommendations to the Board on the preliminary achievement levels descriptions for NAEP. The Committee will receive a briefing on the status of the 1998 achievement levels setting activities. The Committee will discuss the achievement levels issues on the Voluntary National Tests, such as reliable classification of individual student performance.

The Design and Methodology Committee will meet from 11:00 a.m.–12:00 p.m. to review the plans for research studies on the Voluntary National Tests, and the pilot test design.

The Full Board will reconvene in partially closed session from 12:00–4:00 p.m. The meeting will be closed to the public from 12:00–1:30 p.m. for the Board to hear a presentation on the results of the NAEP Instructional Reports for Mathematics and Science. This portion of the meeting must be closed because references may be made to data, which may be misinterpreted, incorrect, or incomplete. Such matters are protected by exemption 9(B) of Section 552b(c) of Title 5 U.S.C. The agenda for the open portion of this session of the Full Board meeting includes an update on work plans for the Voluntary National Tests and comments about the NAEP and the Voluntary National Tests by representatives of the National Alliance of Business.

On May 9, the Full Board will meet in partially closed session. In open session, from 8:00–11:30 a.m., the Board will receive a briefing on the Mathematics Content Analysis Project; hear a presentation from ACHIEVE, Inc. on the work being conducted in Benchmarking, and be given reports from the NAGB standing committees. The Board will meet in closed session from 11:30 a.m.–12:00 p.m. to receive the report from the Nominations Committee regarding recommendations to submit to the Secretary of Education for Board appointments in the following categories: general public, secondary school principal, elementary school principal, eighth grade teacher, fourth grade teacher, chief state school officer, and state legislator (Democrat). This session must be closed because the Board will be considering qualifications of nominees for appointment to Board membership. The review and subsequent discussion of this information will touch upon matters that relate solely to the internal rules and practices of an agency and would disclose information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy if conducted in open session. Such matters are protected by exemptions (2) and (6) of Section 552b(c) of Title 5 U.S.C.

Summaries of the activities of the closed sessions and related matters, which are informative to the public and consistent with the policy of section 5 U.S.C. 552b(c), will be available to the public within 14 days of the meeting. Records are kept of all Board proceedings and are available for public inspection at the U.S. Department of Education, National Assessment Governing Board, Suite #825, 800 North Capitol Street, NW, Washington, DC, from 8:30 a.m. to 5:00 p.m.

Dated: April 15, 1998.

Roy Truby,

Executive Director, National Assessment Governing Board.

[FR Doc. 98–10298 Filed 4–17–98; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Notice of Intent To Conduct Policy Analysis; Request for Public Comment

AGENCY: Department of Energy.

ACTION: Notice of intent to conduct policy analysis; request for public comment.

Correction

In Notice document 98–7155, beginning on page 13396, in the issue of Thursday, March 19, 1998, make the following correction: on page 13397, in the first column, in the fourth line, ''1–800–635–4080'' should read ''1–888–635–4080.''

Dated: April 14, 1998.

James M. Owendoff,

Acting Assistant Secretary for Environmental Management.

[FR Doc. 98–10317 Filed 4–17–98; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Office of Energy Research

Energy Research Financial Assistance Program Notice 98–16; Genome Instrumentation Research Program

AGENCY: Department of Energy

ACTION: Notice inviting grant applications.

SUMMARY: The Office of Biological and Environmental Research (BER) of the Office of Energy Research (ER) of the U.S. Department of Energy (DOE), hereby announces its interest in receiving applications in Instrumentation Research supporting the Human Genome Program. Applications are sought from a broad range of scientists with backgrounds in biology, chemistry, physics, and engineering including those not presently involved in the Human Genome Program. Both substantive improvements to current systems and novel and creative new strategies are needed in preparation for the needs of biology in the next century. New instrumentation and technical approaches are sought for DNA sequencing, automation and integration of DNA sequencing systems, validation of DNA sequencing accuracy, and the determination of gene function of newly sequenced DNA. The goals are to reduce costs and increase the throughput while maintaining accuracy for production DNA sequencing and related analyses.

DATES: Potential applicants are strongly encouraged to submit a brief preapplication. All preapplications should be received by DOE by 4:30 p.m., e.d.t., June 8, 1998. Early submissions are encouraged. A response encouraging or discouraging a formal application will be communicated to the applicant within two weeks of receipt.

Formal applications, in response to this notice, must be received by 4:30 p.m., e.d.t., August 19, 1998, in order to be accepted for merit review and to permit timely consideration for award in Fiscal Year 1999.

ADDRESSES: Preapplications, referencing Program Notice 98–16, should be forwarded to: Dr. Charles G. Edmonds, Medical Applications and Biophysical Research Division, ER–73, U.S. Department of Energy, 19901 Germantown Road, Germantown, MD 20874–1290, Attn: Program Notice 98–16. Preapplications will also be accepted by Fax and E-mail: Fax number: (301) 903–0567 and E-mail: charles.edmonds@oer.doe.gov.

Formal applications, referencing Program Notice 98–16, should be forwarded to: U.S. Department of Energy, Office of Energy Research, Grants and Contracts Division, ER–64, 19901 Germantown Road, Germantown, MD 20874–1290, Attn: Program Notice 98–16. This address also must be used when submitting applications by U.S. Postal Service Express Mail, or any commercial mail delivery service, or when hand-carried by the applicant. An original and seven copies of the application must be submitted.

FOR FURTHER INFORMATION CONTACT: Dr. Charles G. Edmonds, Medical Applications and Biophysical Research Division, ER–73, 19901 Germantown Road, Germantown, MD 20874–1290; telephone: (301) 903–0042; E-mail: charles.edmonds@oer.doe.gov. The full text of Program Notice 98–16 is available via the Internet using the following web site address: http://www.er.doe.gov/production/grants/grants.html.

SUPPLEMENTARY INFORMATION: The Office of Biological and Environmental Research of the U. S. Department of Energy and the National Human Genome Research Institute of the National Institutes of Health are participating in a coordinated international program to ''determine the complete sequence of the human genome, discover all the human genes and render them accessible for further biological study.'' As this program continues, improvement of sequencing technology is essential to complete the sequence of the 3 billion subunits of the human genome by the target year of 2005. Functional analyses of the displayed genes and their encoded proteins will continue long thereafter.

In December of 1997 a DOE-sponsored review of the DOE Human Genome Program was published by the JASON Program Office of the MITRE Corporation. A summary and related discussion has been printed: Science, 279(5347), (1998) 36–37; Science, 279(5347), (1989) 23; and Science, 279(5354), (1989) 1115–1116. The full report can be accessed on the Internet using the following web address: http://www.ornl.gov/hgmis/publicat/miscpubs/jason/index.html. A more general discussion of the Human Genome Program may be found in Primer on Molecular Genetics available on the Internet using the following web address: http://www.ornl.gov/TechResources/Human__Genome/publicat/primer/intro.html.

These documents and companion references will be particularly useful to scientists and engineers less knowledgeable regarding current genomic technologies and projected needs.

Production scale sequencing has been initiated based largely on gel electrophoresis with data acquisition by laser induced fluorescence. Additionally, sequence comparison tasks are performed using ''sequencing by hybridization'' technologies. However, it may not be possible to achieve the desired goal within the available budget and project period without substantial improvements in speed and reliability of sequencing methods and other techniques currently in widespread use. Continuing developments of existing approaches to address the necessities of the production environment will be required.

Further, with an eye to the future, basic research is also needed that will substantially speed and enhance genomic analyses in the years following the projected completion of the human genome in the year 2005. After this date, the need for fast and cost-effective determination of DNA sequence for the comparison of sequences among human individuals and also for the determination of the genomes of numerous organisms of biomedical and commercial interest will be ongoing. Additionally, with the continuing acquisition of this remarkable base of biological data, high throughput experimental tools will be required to assist conversion into a practical and useful understanding of the function for the encoded gene products.

Both substantial evolutionary improvements in current systems and also revolutionary technologies for the post-2005 era are sought under this solicitation.

Research applications are invited:

- To develop approaches to more rapidly, accurately, and economically determine DNA sequence. Cost-effective approaches that increase current maximum read lengths of 800–1000 bases by at least a factor of 2.5, i.e., to at least 2000–2500 bases, are particularly desired.

• To develop instrumentation that integrates and more throughly automates the current steps of DNA sequence determination, e.g., sample preparation, sample loading, sample analysis, and data analysis. A priority will be placed on approaches that emphasize miniaturization and micro-fabrication.

• To develop approaches that (1) verify the accuracy of a previously determined DNA sequence without having to redetermine its entire sequence and (2) provide economical error checking and proofreading of newly determined DNA sequence.

• To develop tools that enable the efficient comparison of a known DNA sequence with a related but previously undetermined DNA sequence.

• To develop techniques for determining the functions of large numbers of genes in parallel. Techniques that match the speed and volume of DNA sequence determination are particularly desired.

The success of devices, methods or techniques for DNA sequencing is dependent on downstream data technologies. Where appropriate, applications should account for the necessary link to current information technology and existing data sets in their plans to address the technical challenges enumerated above.

Program Funding

It is anticipated that up to a total of $2,000,000 will be available for multiple awards to be made in Fiscal Year 1999 funding grants for the new Genome Instrumentation Research Program, contingent on the availability of appropriated funds. Award sizes are expected to be on the order of $100,000–600,000 per year for total project costs for a typical three-year grant with out-year support contingent on the availability of funds, progress of research and programmatic needs. Collaborative projects involving several research groups or more than one institution may receive larger awards if merited. A similar announcement is being simultaneously issued to the DOE National Laboratories.

Collaboration

Applicants are encouraged to collaborate with researchers in other institutions, such as universities, industry, non-profit organizations, federal laboratories and federally funded research and development centers (FFRDCs), including the DOE National Laboratories, where appropriate, and to incorporate cost sharing and/or consortia wherever feasible.

Collaborative research applications may be submitted in several ways:

(1) When multiple private sector or academic organizations intend to propose collaborative or joint research projects, the lead organization may submit a single application which includes another organization as a lower-tier participant (subaward) who will be responsible for a smaller portion of the overall project. If approved for funding, DOE may provide the total project funds to the lead organization who will provide funding to the other participant via a subcontract arrangement. The application should clearly describe the role to be played by each organization, specify the managerial arrangements and explain the advantages of the multi-organizational effort.

(2) Alternatively, multiple private sector or academic organizations who intend to propose collaborative or joint research projects may each prepare a portion of the application, then combine each portion into a single, integrated scientific application. A separate Face Page and Budget Pages must be included for each organization participating in the collaborative project. The joint application must be submitted to DOE as one package. If approved for funding, DOE will award a separate grant to each collaborating organization.

(3) Private sector or academic organizations who wish to form a collaborative project with a DOE FFRDC may not include the DOE FFRDC in their application as a lower-tier participant (subaward). Rather, each collaborator may prepare a portion of the proposal, then combine each portion into a single, integrated scientific proposal. The private sector or academic organization must include a Face Page and Budget Pages for its portion of the project. The FFRDC must include separate Budget Pages for its portion of the project. The joint proposal must be submitted to DOE as one package. If approved for funding, DOE will award a grant to the private sector or academic organization. The FFRDC will be funded, through existing DOE contracts, from funds specifically designated for new FFRDC projects. DOE FFRDCs will not compete for funding already designated for private sector or academic organizations. Other Federal laboratories who wish to form collaborative projects may also follow guidelines outlined in this section.

Preapplications

A brief preapplication may be submitted. The preapplication should identify, on the cover sheet, the institution, Principal Investigator name, address, telephone, fax and E-mail address, title of the project, and the field of scientific research. The preapplication should consist of a two to three page narrative describing the research project objectives and methods of accomplishment. These will be reviewed relative to the scope and research needs described in this Notice.

Preapplications are strongly encouraged but not required prior to submission of a full application. Please note that notification of a successful preapplication is not an indication that an award will be made in response to the formal application.

Applications will be subjected to a scientific merit review (peer review) and will be evaluated against the following evaluation criteria listed in descending order of importance as codified at 10 CFR 605.10(d):

1. Scientific and/or Technical Merit of the Project,

2. Appropriateness of the Proposed Method or Approach,

3. Competency of Applicant's Personnel and Adequacy of Proposed Resources,

4. Reasonableness and Appropriateness of the Proposed Budget.

The evaluation will include program policy factors such as the relevance of the proposed research to the terms of the announcement and an agency's programmatic needs. Note, external peer reviewers are selected with regard to both their scientific expertise and the absence of conflict-of-interest issues. Non-federal reviewers may be used, and submission of an application constitutes agreement that this is acceptable to the investigator(s) and the submitting institution.

Information about development and submission of applications, eligibility, limitations, evaluation, selection process, and other policies and procedures may be found in 10 CFR part 605 and in the Application Guide for the Office of Energy Research Financial Assistance Program. Electronic access to the Guide and required forms is made available via the World Wide Web at: http://www.er.doe.gov/production/grants/grants.html.

Energy Research, as part of its grant regulations, requires at 10 CFR 605.11(b) that a recipient receiving a grant to perform research involving recombinant DNA molecules and/or organisms and viruses containing recombinant DNA molecules shall comply with the National Institutes of Health ''Guidelines for Research Involving Recombinant DNA Molecules,'' which is available via the World Wide Web at:

http://www.niehs.nih.gov/odhsb/biosafe/nih/nih97–1.html, (59 FR 34496, July 5, 1994), or such later revision of those guidelines as may be published in the **Federal Register**.

The Catalog of Federal Domestic Assistance number for this program is 81.049, and the solicitation control number is ERFAP 10 CFR Part 605.

Issued in Washington, DC, on April 9, 1998.

John Rodney Clark,

Associate Director for Resource Management, Office of Energy Research.

[FR Doc. 98–10318 Filed 4–17–98; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98–304–000]

Arcadia Midcoast of New York, L.L.C. Complainant, vs. CNG Transmission Corporation Respondent; Notice of Complaint

April 14, 1998.

Take notice that on March 25, 1998, Arcadia Midcoast of New York, L.L.C. (Arcadia), 1100 Louisiana, Suite 2950, Houston, Texas 77002, filed with the Commission in Docket No. CP98–304–000 a complaint, pursuant to Rule 206 of the Commission's Rules of Practice and Procedure, against CNG Transmission Corporation (CNGT), alleging undue discrimination in violation of the Natural Gas Act, Commission rules, regulations, orders, and actions interfering with interstate commerce.

Arcadia requests that the Commission issue an order compelling CNGT to establish an interconnection so that Arcadia may provide direct natural gas service to Sabin Metal Corporation (Sabin) in Scottsville, New York. Arcadia states that CNGT currently transports natural gas for Arcadia's account to Rochester Gas and Electric (RG&E), a local distribution company. RG&E then delivers the gas to Sabin. Arcadia also states that Sabin estimates it can save $50,000 annually by obtaining gas directly from CNGT rather than via RG&E. Accordingly, Arcadia further states that Sabin asked Arcadia to arrange with CNGT to change an existing receipt tap on CNGT's system at Caledonia, New York, to a receipt/delivery tap so direct deliveries could be made to Sabin. Sabin would then construct and own, or have constructed, a 12,000-foot, 6-inch diameter pipeline from the CNGT interconnection to Sabin's Scottsville metal fabrication plant. Sabin uses approximately 1,500 Mcf of natural gas per day at the Scottsville plant.

Arcadia alleges that CNGT by letter dated January 16, 1998, denied Arcadia's request to construct the proposed interconnection because CNGT'' * * * has not offered and is not proposing to offer customers taps on CNGT pipeline that bypass its LDC customers like RG&E.'' Arcadia further alleges that CNGT alluded in subsequent telephone conversations that the proposed interconnection might cause CNGT some operational problems, but the nature of the alleged operational problems were not clearly identified.

Arcadia alleges that CNGT's refusal to provide the interconnection for Sabin, as requested: (a) is unduly discriminatory and therefore violates Section 5 of the NGA; (b) also violates the Commission's competition policies defined in Order Nos. 436 and 636; and, (c) is not justified by any operational, environmental, or legal grounds. For these reasons, Arcadia believes that CNGT should be compelled to construct the proposed interconnection.

Any person desiring to be heard or to make a protest with reference to Arcadia's complaint should file with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 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, should be filed on or before April 30, 1998. Any person desiring to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–10290 Filed 4–17–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98–338–000]

Florida Gas Transmission Company; Notice of Request Under Blanket Authorization

April 14, 1998.

Take notice that on April 7, 1998, Florida Gas Transmission Company (FGT), P.O. Box 1188, Houston, Texas 77251–1188, filed in Docket No. CP98–338–000 a request pursuant to Sections 157.205 and 157.212 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.212) for authorization to construct, own, and operate a new delivery point, located in Orange County, Florida, to accommodate deliveries of natural gas to TECO Peoples Gas Inc. (TECO) under FGT's blanket certificate issued in Docket No. CP82–553–000, pursuant to Section 7(c) of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

FGT proposes to construct, own, and operate two taps, electronic flow measurement (EFM) equipment, and approximately 100 feet of 4-inch connecting pipeline to serve TECO under existing transportation service agreements at a new PGS-Vineland Rd. Meter Station located in Orange County, Florida. FGT states TECO will construct, own, and operate this new meter station with FGT constructing the taps, EFM, and connecting line. FGT declares the proposed delivery capacity at this point is up to 12,000 MMBtu per day at line pressure.

FGT states the estimated cost for the proposed construction of the two taps, EFM, and connecting pipe is $147,000, which will be reimbursed to FGT by TECO. FGT asserts that the end-use will be residential, industrial, and commercial.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–10292 Filed 4–17–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98–325–000]

K N Interstate Gas Transmission Co; Notice of Request Under Blanket Authorization

April 14, 1998.

Take notice that on April 2, 1998, K N Interstate Gas Transmission Co. (KNI), P.O. Box 281304, Lakewood, Colorado 80228, filed in Docket No. CP98–325–000 a request pursuant to Sections 157.205 and 157.208 of the Commission's Regulations under the Natural Gas Act for authorization to acquire and operate certain compressor, pipeline, receipt and delivery point facilities, with appurtenances, located in the States of Texas and Oklahoma, under blanket certificate issued in Docket No. CP83–140–000, *et al.*,[1] all as more fully set forth in the request for authorization on file with the Commission and open for public inspection.

The facilities are to be acquired from Transwestern Pipeline Company (Transwestern) pursuant to the terms and conditions of an Asset Purchase Agreement dated December 30, 1997 between KNI and Transwestern. KNI states that the acquisition of these facilities will allow KNI to receive and deliver on a firm basis up to 65,000 Mcf of natural gas from producers and shippers in the Anadarko area. In addition, the facilities will allow KNI the opportunities for operational flexibility in acquiring volumes of gas that may become available in the future from other production sources in the area. KNI will integrate the subject facilities into its Buffalo Wallow interstate pipeline system and will provide open access transportation service to shippers requesting service on these facilities pursuant to the terms and conditions of its FERC Gas Tariff.

KNI further states that the authorization requested is dependent upon Transwestern receiving authorization at Docket No. CP98–233–000 to abandon, by sale, the subject facilities to KNI.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–10291 Filed 4–17–98; 8:45 am]

BILLING CODE 6717–01–M

[1] *See*, 22 FERC ¶ 62,330 (1983).

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–158–002]

NorAm Gas Transmission Company; Notice of Compliance Filing

April 14, 1998.

Take notice that on April 7, 1998, NorAm Gas Transmission Company (''NGT'') tendered for filing copies of the following revised tariff sheets to be effective May 8, 1998:

Fourth Revised Volume No. 1

Fifth Revised Sheet No. 169
Fourth Revised Sheet No. 169A
Original Sheet No. 169B

In compliance with the March 31, 1998 order issued by the Commission in Docket No. RP98–158–001, these tariff sheets add a description, in Section 1.1 of the Tariff's General Terms and Conditions, of the ten Pools that were established within NGT's existing Pooling Areas on April 1, 1998.

NGT states that a copy of this filing has been mailed to each of NGT's customers and to each interested state commission.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.214 and Section 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the 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 in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–10293 Filed 4–17–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC98–16–001, et al.]

Boston Edison Company, et al.; Electric Rate and Corporate Regulation Filings

April 13, 1998.

Take notice that the following filings have been made with the Commission:

1. Boston Edison Company

[Docket No. EC98–16–001]

Take notice that on April 10, 1998, Boston Edison Company (Boston Edison) and Sithe Energies, Inc. (Sithe), tendered for filing with the Federal Energy Regulatory Commission a request for expedited approvals or, in the alternative, a motion for clarification in the referenced docket. Boston Edison and Sithe state that the filing describes certain additional real property that will be transferred to Sithe in connection with Boston Edison's divestiture of its fossil generating units. The filing also identifies the subsidiaries of Sithe that will own the facilities being acquired from Boston Edison.

Comment date: May 8, 1998, in accordance with Standard Paragraph E at the end of this notice.

2. Ohio Edison Company and Pennsylvania Power Company

[Docket No. ER98–426–000]

Take notice that on April 8, 1998, Ohio Edison Company tendered for filing on behalf of itself and Pennsylvania Power Company, a response to the Staff's deficiency letter of March 9, 1998. This filing is made pursuant to Section 205 of the Federal Power Act.

Comment date: April 28, 1998, in accordance with Standard Paragraph E at the end of this notice.

3. Xenergy, Inc.

[Docket No. ER98–2430–000]

Take notice that on April 3, 1998, Xenergy, Inc., tendered for filing the Summary of Quarterly Activity for the calendar year quarter ending September 30, 1997, pursuant to Section 205 of the Federal Power Act, 16 U.S.C. § 824d (1985), and Part 35 of the Commission's

Rules of Practice and Procedure, 18 CFR 35, and in accordance with Ordering Paragraph J of the Federal Energy Regulatory Commission's June 9, 1997, order (the Order) in Docket No. ER97–2517–000.

Comment date: April 28, 1998, in accordance with Standard Paragraph E at the end of this notice.

4. Xenergy, Inc.

[Docket No. ER98–2431–000]

Take notice that on April 3, 1998, Xenergy, Inc. tendered for filing the Summary of Quarterly Activity for the calendar year quarter ending March 31, 1998, pursuant to Section 205 of the Federal Power Act, 16 U.S.C. § 824d (1985), and Part 35 of the Commission's Rules of Practice and Procedure, 18 CFR 35, and in accordance with Ordering Paragraph J of the Federal Energy Regulatory Commission's June 9, 1997, order (the Order) in Docket No. ER97–2517–000.

Comment date: April 28, 1998, in accordance with Standard Paragraph E at the end of this notice.

5. American Hunter Energy Inc.

[Docket No. ER98–2458–000]

Take notice that American Hunter Energy Inc., on April 1, 1998, tendered for filing cancellation of the Rate Schedule FERC No. 1 effective June 1, 1998. The rate schedule had been effective November 13, 1996.

Comment date: April 28, 1998, in accordance with Standard Paragraph E at the end of this notice.

6. Tenaska Washington Partners II, L.P.

[Docket No. ER98–2486–000]

Take notice that on April 8, 1998, Tenaska Washington Partners II, L.P., tendered for filing a notice of cancellation of Tenaska Washington Partners II, L.P.'s FERC Electric Rate Schedule No. 1.

Comment date: April 28, 1998, in accordance with Standard Paragraph E at the end of this notice.

7. Central Illinois Light Company

[Docket No. ER98–2487–000]

Take notice that on April 8, 1998, Central Illinois Light Company (CILCO), 300 Liberty Street, Peoria, Illinois 61602, tendered for filing with the Commission a substitute Index of Point-To-Point Transmission Service Customers under its Open Access Transmission Tariff and service agreements for two new customers, Merchant Energy Group of the Americas, Inc., and Columbia Power Marketing Corporation.

CILCO requested an effective date of March 30, 1998.

Copies of the filing were served on the affected customers and the Illinois Commerce Commission.

Comment date: April 28, 1998, in accordance with Standard Paragraph E at the end of this notice.

8. Orange and Rockland Utilities, Inc.

[Docket No. ER98–2488–000]

Take notice that on April 8, 1998 Orange and Rockland Utilities, Inc. (Orange and Rockland), filed a Service Agreement between Orange and Rockland and VTEC Energy, Inc., (Customer). This Service Agreement specifies that Customer has agreed to the rates, terms and conditions of Orange and Rockland Open Access Transmission Tariff filed on July 9, 1996 in Docket No. OA96–210–000.

Orange and Rockland requests waiver of the Commission's sixty-day notice requirements and an effective date of March 24, 1998, for the Service Agreement. Orange and Rockland has served copies of the filing on The New York State Public Service Commission and on the Customer.

Comment date: April 28, 1998, in accordance with Standard Paragraph E at the end of this notice.

9. Wisconsin Electric Power Company

[Docket No. ER98–2489–000]

Take notice that on April 8, 1998, Wisconsin Electric Power Company (Wisconsin Electric), tendered for filing an electric service agreement under its Market Rate Sales Tariff (FERC Electric Tariff, Original Volume No. 8) with Tennessee Valley Authority (TVA). Wisconsin Electric respectfully requests an effective date April 9, 1998.

Copies of the filing have been served on TVA, the Michigan Public Service Commission, and the Public Service Commission of Wisconsin.

Comment date: April 28, 1998, in accordance with Standard Paragraph E at the end of this notice.

10. New York State Electric & Gas Corporation

[Docket No. ER98–2490–000]

Take notice that April 8, 1998, New York State Electric & Gas Corporation (NYSEG), filed Service Agreements between NYSEG and Columbia Power Marketing Corporation, PP&L, Inc., and Merchant Energy Group of the Americas, Inc., (Customers). These Service Agreements specify that the Customers have agreed to the rates, terms and conditions of the NYSEG open access transmission tariff filed and effective on June 11, 1997, in Docket No. OA97–571–000.

NYSEG requests waiver of the Commission's sixty-day notice requirements and an effective date of March 25, 1998, for the Service Agreements. NYSEG has served copies of the filing on The New York State Public Service Commission and on the Customers.

Comment date: April 28, 1998, in accordance with Standard Paragraph E at the end of this notice.

11. Consolidated Edison Energy, Inc.

[Docket No. ER98–2491–000]

Take notice that on April 8, 1998, Consolidated Edison Energy, Inc. (ConEdisonEnergy), tendered for filing a tariff authorizing ConEdisonEnergy to make sales of electric energy and capacity at market-based rates and for blanket approval of certain issuances of securities and assumptions of liability and the waiver of certain of the Federal Energy Regulatory Commission's Regulations under the Federal Power Act.

Comment date: April 28, 1998, in accordance with Standard Paragraph E at the end of this notice.

12. Ohio Edison Company and Pennsylvania Power Company

[Docket No. ER98–2492–000]

Take notice that on April 8, 1998, Ohio Edison Company tendered for filing on behalf of itself and Pennsylvania Power Company, a Service Agreement with Amoco Energy Trading Corporation under Ohio Edison's Power Sales Tariff. This filing is made pursuant to Section 205 of the Federal Power Act.

Comment date: April 28, 1998, in accordance with Standard Paragraph E at the end of this notice.

13. Idaho Power Company

[Docket No. ER98–2493–000]

Take notice that on April 8, 1998, Idaho Power Company (IPC), tendered for filing with the Federal Energy Regulatory Commission a Service Agreement under Idaho Power Company FERC Electric Tariff No. 6, Market Rate Power Sales Tariff, between Idaho Power Company and ConAgra Energy Services, Inc.

Comment date: April 28, 1998, in accordance with Standard Paragraph E at the end of this notice.

14. ESI Vansycle Partners, L.P.

[Docket No. ER98–2494–000]

Take notice that on April 8, 1998, ESI Vansycle Partners, L.P. (ESI Vansycle), petitioned the Commission for acceptance for filing of the power purchase agreement between ESI Vansycle and Portland General Electric Company and to accept the rates

thereunder as just and reasonable under Section 205(a) of the Federal Power Act, 16 U.S.C. § 824d(a); for the granting of certain blanket approvals, including the authority to sell electricity at market-based rates; and for the waiver of certain Commission regulations. ESI Vansycle is a limited partnership that proposes to engage in the wholesale sale of electric power in the state of Oregon and is headquartered in Florida.

Comment date: April 28, 1998, in accordance with Standard Paragraph E at the end of this notice.

15. Nevada Power Company

[Docket No. OA97–2–001]

Take notice that Nevada Power Company submitted revised standards of conduct [1] under Order Nos. 889 *et seq.*[2] The revised standards were submitted in response to the Commission's January 15, 1998 order on standards of conduct. [3]

Comment date: April 28, 1998, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–10320 Filed 4–17–98; 8:45 am]

BILLING CODE 6717–01–P

[1] The revised standards were submitted on March 30, 1998.

[2] Open Access Same-Time Information System (Formerly Real-Time Information Network) and Standards of Conduct, 61 FR 21737 (May 10, 1996), FERC Stats. & Regs., Regulation Preambles January 1991–June 1996 ¶ 31,035 (April 24, 1996); Order No. 889–A, *order on rehearing,* 62 FR 12484 (March 14, 1997), III FERC Stats. & Regs. ¶ 31,049 (March 4, 1997); Order No. 889–B, *rehearing denied,* 62 FR 64715 (December 9, 1997), 81 FERC ¶ 61,253 (November 25, 1997).

[3] Atlantic City Electric Company, *et al.*, 82 FERC ¶ 61,028 (1998). The Commission granted Nevada Power an extension of time to file its revised standards by notice dated February 26, 1998.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. DR98–55–000, et al.]

Entergy Gulf States, Inc., et al.; Electric Rate and Corporate Regulation Filings

April 14, 1998.

Take notice that the following filings have been made with the Commission:

1. Entergy Gulf States, Inc.

[Docket No. DR98–55–000]

Take notice that on April 10, 1998, Entergy Services, Inc. (ESI), filed on behalf of its affiliate, Entergy Gulf States, Inc. (Company) an Application for approval of certain changes in Company's depreciation rates pursuant to Section 302 of the Federal Power Act and Rule 204 of the Commission's Rules of Practice and Procedure. The proposed changes of the Company's depreciation rates are required in order to implement an Order of the Louisiana Public Service Commission, issued on March 19, 1998, directing a change in the Company's depreciation rates effective February 19, 1998.

Comment date: May 13, 1998, in accordance with Standard Paragraph E at the end of this notice.

2. Illinois Power Company

[Docket No. ER98–2246–000]

Take notice that on April 9, 1998, Illinois Power Company (Illinois Power), filed to withdraw its March 19, 1998, filing to revise its Index of Customers for service agreements under Illinois Power's Open Access Transmission Tariff No. 8. Illinois Power will refile its revised Index of Customers using the redesignations issued in the Delegated Letter Order of September 5, 1997 for ER98–3678–000, *et al.*

The undersigned certifies that a copy of this filing is being mailed to each individual listed on the official service list in this proceeding.

Comment date: April 29, 1998, in accordance with Standard Paragraph E at the end of this notice.

3. ERI Enterprises, L.L.C.

[Docket No. ER98–2367–000]

Take notice that on April 9, 1998, ERI Enterprises, L.L.C., filed Rate Schedule No. 1, which was inadvertently omitted from the Application for authorization filed on March 31, 1998, in the above referenced proceeding.

Comment date: April 29, 1998, in accordance with Standard Paragraph E at the end of this notice.

4. Cobisa-Person Limited Partnership

[Docket No. ER98–2498–000]

Take notice that on April 9, 1998, Cobisa-Person Limited Partnership (Cobisa-Person), tendered for filing pursuant to Rule 205, 18 CFR 385.205, an application for an order accepting its rates of filing, determining rates to be just and reasonable, and granting certain waivers and pre-approvals.

Cobisa-Person has entered into a Power Purchase Agreement and an Interconnection Agreement with Public Service Company of New Mexico (PNM), to engage in wholesale capacity and energy sales to PNM from Cobisa-Person's approximately 140-megawatt generation facility to be constructed in Bernalillo County, New Mexico.

Comment date: April 29, 1998, in accordance with Standard Paragraph E at the end of this notice.

5. American Electric Power Service Corporation

[Docket No. ER98–2495–000]

Take notice that on April 9, 1998, the American Electric Power Service Corporation (AEPSC), tendered for filing executed service agreements under the Wholesale Market Tariff of the AEP Operating Companies (Power Sales Tariff). The Power Sales Tariff was accepted for filing effective October 10, 1997 and has been designated AEP Operating Companies' FERC Electric Tariff Original Volume No. 5. AEPSC respectfully requests waiver of notice to permit the service agreements to be made effective for service billed on and after March 16, 1998.

A copy of the filing was served upon the Parties and the State Utility Regulatory Commissions of Indiana, Kentucky, Michigan, Ohio, Tennessee, Virginia and West Virginia.

Comment date: April 29, 1998, in accordance with Standard Paragraph E at the end of this notice.

6. Puget Sound Energy, Inc.

[Docket No. ER98–2496–000]

Take notice that on April 9, 1998, Puget Sound Energy, Inc. (PSE), tendered for filing, changes in PSE's Supplement to Rate Schedule FERC No. 1, and a letter agreement, dated April 1, 1998, (the Agreement), between PSE and Duke Energy Marketing and Trading, L.L.C. (DETM).

PSE states that the Agreement relates to the purchase and sale of economy energy service and firm system capacity/energy sale or exchange service by PSE to DETM under the Western Systems Power Pool Agreement (WSPP Agreement). PSE has requested the Commission to find that the Agreement

is a service agreement under the WSPP Agreement and is therefore not required to be filed.

A copy of the filing was served upon DETM.

Comment date: April 29, 1998, in accordance with Standard Paragraph E at the end of this notice.

7. Allegheny Power Service Corp., on Behalf of Monongahela Power Co., The Potomac Edison Company, and West Penn Power Company (Allegheny Power)

[Docket No. ER98–2497–000]

Take notice that on April 9, 1998, Allegheny Power Service Corporation on behalf of Monongahela Power Company, The Potomac Edison Company and West Penn Power Company (Allegheny Power), filed Supplement No. RT–1 to add Central Electric Cooperative, Inc.'s pilot program Customers to Allegheny Power Open Access Transmission Tariff which includes a Retail Transmission Supplement. Allegheny Power requests a waiver of notice requirements and asks the Commission to honor the proposed effective date of April 1, 1998 as specified in the agreement negotiated by the parties.

Copies of the filing have been provided to the Public Utilities Commission of Ohio, the Pennsylvania Public Utility Commission, the Maryland Public Service Commission, the Virginia State Corporation Commission, the West Virginia Public Service Commission.

Comment date: April 29, 1998, in accordance with Standard Paragraph E at the end of this notice.

8. Central Power and Light Company, West Texas Utilities Company, Public Service Company of Oklahoma, Southwestern Electric Power Company

[Docket No. ER98–2500–000]

Take notice that on April 9, 1998, Central Power and Light Company, Public Service Company of Oklahoma, Southwestern Electric Power Company and West Texas Utilities Company (collectively, the CSW Operating Companies), tendered for filing a service agreement establishing Illinois Power Company (Illinois) as a customer under the CSW Operating Companies' market based rate power sales tariff. The CSW Operating Companies request an effective date of March 12, 1998, for the service agreement and, accordingly, seek waiver of the Commission's notice requirements.

The CSW Operating Companies state that a copy of the filing was served on Illinois.

Comment date: April 29, 1998, in accordance with Standard Paragraph E at the end of this notice.

9. West Texas Utilities Company

[Docket No. ER98–2501–000]

Take notice that on April 9, 1998, West Texas Utilities Company (WTU), submitted for filing a service agreement between WTU and Midwest Electric Cooperative, Inc., (Midwest). Pursuant to the service agreement, WTU will provide full-requirements service under its WPC Tariff to Midwest load at four additional points of delivery.

WTU seeks an effective date of May 1, 1998 and accordingly, seeks waiver of the Commission's notice requirements. WTU has served copies of the filing on Midwest and the Public Utility Commission of Texas.

Comment date: April 29, 1998, in accordance with Standard Paragraph E at the end of this notice.

10. Consolidated Edison Company of New York, Inc.

[Docket No. ER98–2503–000]

Take notice that on April 9, 1998, Consolidated Edison Company of New York, Inc. (Con Edison), tendered for filing a service agreement to provide non-firm transmission service pursuant to its Open Access Transmission Tariff to VTEC Energy, Inc., (VTEC).

Con Edison states that a copy of this filing has been served by mail upon VTEC.

Comment date: April 29, 1998, in accordance with Standard Paragraph E at the end of this notice.

11. Orange and Rockland Utilities, Inc.

[Docket No. ER98–2502–000]

Take notice that on April 8, 1998, Orange and Rockland Utilities, Inc. (O&R), tendered for filing pursuant to Part 35 of the Federal Energy Regulatory Commission's Rules of Practice and Procedure, 18 CFR 35, a service agreement under which O&R will provide capacity and/or energy to Consolidated Edison Company of New York, Inc. (Con Edison).

O&R requests waiver of the notice requirement so that the service agreement with Coastal becomes effective as of April 1, 1998.

O&R has served copies of the filing on The New York State Public Service Commission and Con Edison.

Comment date: April 28, 1998, in accordance with Standard Paragraph E at the end of this notice.

12. Consolidated Edison Company of New York, Inc.

[Docket No. ER98–2504–000]

Take notice that on April 9, 1998, Consolidated Edison Company of New York, Inc. (Con Edison), tendered for filing a service agreement to provide non-firm transmission service pursuant to its Open Access Transmission Tariff to The Eastern Group (Eastern).

Con Edison states that a copy of this filing has been served by mail upon Eastern.

Comment date: April 29, 1998, in accordance with Standard Paragraph E at the end of this notice.

13. Florida Power & Light Company

[Docket No. ER98–2505–000]

Take notice that on April 9, 1998, Florida Power & Light Company (FPL), filed Service Agreements with Southern Company Energy Marketing L.P., American Electric Power Service Corporation and Florida Municipal Power Agency for service pursuant to Tariff No. 1 for Sales of Power and Energy by Florida Power & Light. In addition, FPL filed Service Agreements with Southern Company Energy Marketing L.P., and American Electric Power Service Corporation for service pursuant to FPL's Market Based Rates Tariff. FPL requests that the Service Agreements be made effective on March 11, 1998.

Comment date: April 29, 1998, in accordance with Standard Paragraph E at the end of this notice.

14. Houston Lighting & Power Company

[Docket No. ER98–2506–000]

Take notice that on April 9, 1998, Houston Lighting & Power Company (HL&P), tendered for filing an executed transmission service agreement (TSA) with OGE Energy Resources, Inc. (OGE), for Non-Firm Transmission Service under HL&P's FERC Electric Tariff, Third Revised Volume No. 1, for Transmission Service To, From and Over Certain HVDC Interconnections. HL&P has requested an effective date of April 9, 1998.

Copies of the filing were served on OGE and the Public Utility Commission of Texas.

Comment date: April 29, 1998, in accordance with Standard Paragraph E at the end of this notice.

15. Northeast Utilities Service Company

[Docket No. ER98–2507–000]

Take notice that on April 9, 1998, Northeast Utilities Service Company (NUSCO), tendered for filing on behalf of its operating affiliates, The Connecticut Light and Power Company

(CL&P), Western Massachusetts Electric Company (WMECO) and Holyoke Water Power Company (including Holyoke Power and Electric Company) (HWP), pursuant to Section 35.15 ad Section 131.53 of the Commission's Regulations a Notice of Termination of Assignment of the following rate schedule supplements:

Supplement No. 4 to Rate Schedule FERC No. CL&P 534
Supplement No. 4 to Rate Schedule FERC No. WMECO 428
Supplement No. 4 to Rate Schedule FERC No. HWP 65

NUSCO requests that such terminations be made effective as of May 1, 1998.

NUSCO states that copies of its submission have been mailed or delivered to the City of Chicopee Municipal Lighting Plant, the Connecticut Municipal Electric Energy Cooperative and the Massachusetts Department of Telecommunications and Energy.

Comment date: April 29, 1998, in accordance with Standard Paragraph E at the end of this notice.

16. Duquesne Light Company

[Docket No. ER98–2509–000]

Take notice that April 6, 1998, Duquesne Light Company (DLC), filed a Service Agreement dated April 6, 1998 with PG&E Energy Trading-Power L.P. under DLC's Open Access Transmission Tariff (Tariff). The Service Agreement adds PG&E Energy Trading-Power L.P., as a customer under the Tariff. DLC requests an effective date of April 6, 1998, for the Service Agreement.

Comment date: April 29, 1998, in accordance with Standard Paragraph E at the end of this notice.

17. Rochester Gas and Electric Corporation

[Docket No. ER98–2510–000]

Take notice that on April 9, 1998, Rochester Gas and Electric Corporation (RG&E), filed a Service Agreement between RG&E and the Energetix (Customer). This Service Agreement specifies that the Customer has agreed to the rates, terms and conditions of the RG&E open access transmission tariff filed on July 9, 1996 in Docket No. OA96–141–000.

RG&E requests waiver of the Commission's sixty (60) day notice requirements and an effective date of March 2, 1998, for the Energetix Service Agreement. RG&E has served copies of the filing on the New York State Public Service Commission and on the Customer.

Comment date: April 29, 1998, in accordance with Standard Paragraph E at the end of this notice.

18. Interstate Power Company

[Docket No. ER98–2511–000]

Take notice that on April 9, 1998, Interstate Power Company (IPW), tendered for filing a Network Transmission Service between IPW and Wisconsin Power and Light (WPL). Under the Service Agreement, IPW will provide Network Integration Transmission Service to WPL for the City of Guttenberg.

Comment date: April 29, 1998, in accordance with Standard Paragraph E at the end of this notice.

19. Interstate Power Company

[Docket No. ER98–2512–000]

Take notice that on April 9, 1998, Interstate Power Company (IPW), tendered for filing a Network Transmission Service between IPW and McGregor Municipal Utilities (McGregor). Under the Service Agreement, IPW will provide Network Integration Transmission Service to McGregor.

Comment date: April 29, 1998, in accordance with Standard Paragraph E at the end of this notice.

20. Duquesne Light Company

[Docket No. ER98–2513–000]

Take notice that on April 9, 1998, Duquesne Light Company (DLC), filed a Service Agreement dated April 6, 1998 with Amoco Energy Trading Corp., under DLC's FERC Coordination Sales Tariff (Tariff). The Service Agreement adds Amoco Energy Trading Corp., as a customer under the Tariff. DLC requests an effective date of April 6, 1998, for the Service Agreement.

Comment date: April 29, 1998, in accordance with Standard Paragraph E at the end of this notice.

21. Duquesne Light Company

[Docket No. ER98–2514–000]

Take notice that April 9, 1998, Duquesne Light Company (DLC), filed a Service Agreement dated April 6, 1998, with Amoco Energy Trading Corp., under DLC's Open Access Transmission Tariff (Tariff). The Service Agreement adds Amoco Energy Trading Corp., as a customer under the Tariff. DLC requests an effective date of April 6, 1998, for the Service Agreement.

Comment date: April 29, 1998, in accordance with Standard Paragraph E at the end of this notice.

22. PacifiCorp Power Marketing, Inc.

[Docket No. ER98–2515–000]

Take notice that on April 6, 1998, PacifiCorp Power Marketing, Inc. (PPM), tendered for filing a letter on behalf of the Executive Committee on the Western Systems Power Pool (WSPP) indicating that PPM had completed all the steps for pool membership. PPM requests that the Commission amend the WSPP Agreement to include it as a member.

PPM requests an effective date of April 17, 1998, for the proposed amendment. Accordingly, PPM requests waiver of the Commission's notice requirements for good cause shown.

Copies of the filing were served upon the WSPP Executive Committee and WSPP's General Counsel.

Comment date: April 29, 1998, in accordance with Standard Paragraph E at the end of this notice.

23. EnergyEXPRESS, Inc.

[Docket No. ER98–2516–000]

Take notice that on April 9, 1998, EnergyEXPRESS, Inc., tendered for filing a Notice of Cancellation of Electric Rate Schedule FERC No. 1, to become effective June 8, 1998.

Comment date: April 29, 1998, in accordance with Standard Paragraph E at the end of this notice.

24. PacifiCorp

[Docket No. ES98–24–000]

Take notice that on March 17, 1998, PacifiCorp filed its application with the Federal Energy Regulatory Commission, pursuant to Section 204 of the Federal Power Act, seeking an order either authorizing PacifiCorp (1) to issue and sell its short-term commercial paper in the U.S. or overseas from time to time through April 30, 2000, in aggregate principal amounts outstanding not to exceed $1.5 billion at any one time and (2) to issue its short-term promissory notes to and borrow from commercial banks under revolving credit agreements, from time to time through April 30, 2000, in an aggregate principal amount not to exceed $1.5 billion outstanding at any one time; provided that the aggregate principal amount of commercial paper and borrowings under the credit agreements not exceed $1.5 billion outstanding at any one time.

Comment date: May 13, 1998, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission,

888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–10319 Filed 4–17–98; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 11561 Alaska]

Alaska Village Electric Cooperative; Notice of Intent To Conduct Environmental Scoping Meetings and a Site Visit

April 14, 1998.

The Energy Policy Act of 1992 allows applicants to prepare their own Environmental Assessment (EA) for hydropower projects and file it with the Federal Energy Regulatory Commission (Commission) along with their license application as part of the applicant-prepared EA (APEA) process. The Alaska Village Electric Cooperative (AVEC) intends to prepare an EA to file with the Commission for the proposed Old Harbor Hydroelectric Project, No. 11561. AVEC will hold two scoping meetings, pursuant to the National Environmental Policy Act (NEPA) of 1969, to identify the scope of environmental issues that should be analyzed in the EA.

Scoping Meetings

The times and locations of the two scoping meetings are:

Public meeting	Agency meeting
Date: Tuesday, May 12, 1998. Place: City Hall, Old Harbor, Alaska.	Time: 7:00 p.m. Thursday, May 14, 1998, Division of Seniors Conference Room, 3601 C Street, Suite 310A, (Frontier Building), Anchorage, Alaska, 9:00 a.m.

At the scoping meetings, AVEC will: (1) summarize the environmental issues tentatively identified for analysis in the EA; (2) outline any resources they believe would not require a detailed analysis; (3) identify reasonable alternatives to be addressed in the EA; (4) solicit from the meeting participants all available information, especially quantitative data, on the resources at issues; and (5) encourage statements from experts and the public on issues that should be analyzed in the EA.

All interested individuals, organizations, and agencies are invited and encouraged to attend either or both meetings to assist in identifying and clarifying the scope of environmental issues that should be analyzed in the EA.

To help focus discussions at the meetings, AVEC prepared and distributed an Initial State Consultation Document (ISCD) on November 13, 1997, and a Scoping Document on April 10, 1998. Copies of the ISCD and the Scoping Document can be obtained by calling Daniel Hertrich of Polarconsult Alaska, Inc., AVEC's agent, at (907) 258–2420. Copies of both documents will also be available at both scoping meetings.

Site Visit

For those who intend to participate in scoping, AVEC will also conduct a site visit to the proposed Old Harbor Project on Tuesday, May 12, 1998. Those attending must meet at the Sitkalidak Lodge in Old Harbor, Alaska at 10:00 A.M. We will promptly leave for the project site, via helicopter. Those being shuttled by helicopter to the project site may need to sign a waiver of liability regarding helicopter use. Because of the remoteness and difficulty of ground access at the project site, those attending the site visit should be physically fit and must wear appropriate clothing and footgear. The site visit should be completed by 4:30 P.M. Participants must provide their own sack lunches.

To plan on helicopter use in advance of the visit, AVEC must identify the number of individuals interested in the site visit. Therefore, if you intend on visiting the proposed project site, you must register with Daniel Hertrich at (907) 258–2420, no later than April 24, 1998. If inclement weather prevents a site visit on May 12, the alternate date will be May 13 at the same time and location.

Meeting Procedures

The meetings will be conducted according to the procedures used at Commission scoping meetings. Because this meeting will be a NEPA scoping meeting under the APEA process, the Commission will not conduct a NEPA scoping meeting after the application and draft EA are filed with the Commission.

Both scoping meetings will be recorded by a stenographer or tape recorder, and will become part of the formal record of the proceedings for this project.

Those who choose not to speak during the scoping meetings may instead submit written comments on the project. Written comments must be submitted by June 15, 1998, and should be mailed to: Mr. Daniel Hertrich, Polarconsult Alaska, Inc., 1503 West 33rd Avenue, Suite 310, Anchorage, Alaska 99503. All correspondence should show the following caption on the first page:

Scoping Comments, Old Harbor Hydroelectric Project, No. 11561, Alaska

For further information please contact Daniel Hertrich at (907) 258–2420, or E-mail at Dan Hertrich <polarak@Alaska.NET>, or Nan Allen of the Commission at (202) 219–2938, or E-mail at nan.allen@ferc.fed.us.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–10294 Filed 4–17–98; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5999–4]

Agency Information Collection Activities: Submission for OMB Review; Comment Request; Reporting and Recordkeeping Requirements Under EPA's AgSTAR Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces

that the following Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval: ''Reporting and Recordkeeping Requirements under EPA's AgSTAR Program,'' OMB Control Number 2060–0329 and expiration date 6/30/98. The ICR describes the nature of the information collection and its expected burden and cost; where appropriate, it includes the actual data collection instrument.

DATES: Comments must be submitted on or before May 20, 1998.

FOR FURTHER INFORMATION CONTACT: Contact Sandy Farmer at EPA by phone at (202) 260–2740, by email at farmer.sandy@epamail.epa.gov, or download off the Internet at http://www.epa.gov/icr and refer to EPA ICR No. 1735.02.

SUPPLEMENTARY INFORMATION:

Title: ''Recordkeeping and Reporting Requirements under EPA's AgSTAR Program.'' (OMB Control No. 2090–0329; EPA ICR No. 1735.02) expiring 6/30/98. This is a request for extension of a currently approved collection.

Abstract: AgSTAR is an EPA-sponsored, voluntary program that encourages livestock producers to implement methane recovery technologies to increase livestock production profit margins and reduce emissions from manure methane, a greenhouse gas. AgSTAR further encourages utilities, regulatory agencies and universities to support and promote the use of methane recovery technologies. The program organization consists of two types of AgSTAR participants: ''Partners'' and ''Allies.'' AgSTAR Partners, who are primarily livestock producers, agree to survey and install methane recovery technologies, if profitable. AgSTAR Allies, which are primarily utilities and marketers of methane recovery systems or members of related associations, work with EPA to increase awareness of methane reduction technologies and provide information on products and services.

For AgSTAR Partners, participation in the AgSTAR program begins with completion and submittal to EPA of a Memorandum of Understanding (MOU), which provides information on the AgSTAR Partner and its operations and outlines the responsibilities of the AgSTAR Partner and EPA. The MOU commits an AgSTAR Partner to survey all of its facilities and consider the full set of technical, operational, and procedural options that maximize on-farm profits and minimize methane emissions. The Partner further agrees to consider installing methane recovery technologies within three years of signing the MOU, if such technologies are expected to be profitable. As a program participant, the Partner submits an Annual Report describing improvements made to demonstrate the benefits of methane recovery systems. In addition, the AgSTAR Partner agrees to make appropriate use of EPA-developed materials and inform EPA of any changes or problems with the program.

As mentioned above, agricultural and energy industries, energy regulatory offices, universities, and electric utilities may choose to become Allies of the AgSTAR program. Ally participation also begins with completion and submittal of an MOU. The MOU commits the Ally to providing information for the development of AgSTAR methane recovery systems. In addition, Allies work with EPA to increase awareness of methane emissions recovery systems and to promote and provide technical support to Partners. Specifically, Allies agree to provide case studies of successful methane emissions reduction systems. Allies also agree to consider developing promotional and educational documents for Partners. Allies must also obtain EPA approval for the use of EPA-developed materials or reproduction of materials bearing the AgSTAR logo.

EPA needs to collect information to establish program participation and to obtain general information on AgSTAR participants. EPA also uses the information collection to evaluate a Partner's progress and performance, and assess overall program results. Participation in the AgSTAR program is voluntary. AgSTAR Partners may designate information submitted under this ICR as confidential business information. EPA will treat all such information as confidential business information and will not make the company or agency-specific information collected under this ICR available to the general public. 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 **Federal Register** Notice required under 5 CFR 1320.8(d), soliciting comments on this collection of information was published on 12/20/97; No comments were received.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 2.3 hours per AgSTAR Partner and 2.2 hours per AgSTAR Ally. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Livestock Producers (Partners) and Utilities/Marketers of Methane Recovery Systems or related association members (Allies).

Estimated Number of Respondents: 75 Partners and 86 Allies.

Frequency of Response: varies.

Estimated Total Annual Hour Burden: 181 for Partners and 194 for Allies.

Estimated Total Annualized Cost Burden: $500 for Partners and Allies combined.

Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques to the following addresses. Please refer to EPA ICR No. 1735.02 and OMB Control No. 2060–0329 in any correspondence.

Ms. Sandy Farmer, U.S. Environmental Protection Agency, OPPE Regulatory Information Division (2137), 401 M Street, SW, Washington, DC 20460;

and

Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for EPA, 725 17th Street, NW, Washington, DC 20503.

Dated: April 14, 1998.

Joseph Retzer,

Director, Regulatory Information Division.

[FR Doc. 98–10396 Filed 4–17–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5998–6]

Notice of Intent To Prepare an Environmental Assessment for the Clear Lake Basin 2000 Project, Lake County, CA

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of intent to prepare a draft environmental assessment and hold a scoping meeting to examine the proposed construction and operation of wetlands supplied by wastewater effluent from Lake County's Northwest Regional Wastewater Treatment Plant at Lakeport, California.

SUMMARY: In accordance with the National Environmental Policy Act, EPA has identified a need to prepare a draft environmental assessment and therefore issues this document.

Background

The Lake County Sanitation District (LACOSAN) has initiated a series of actions to improve the wastewater collection, treatment, and disposal facilities that it operates in the Clear Lake Basin of Lake County. These sets of actions are known collectively as Clear Lake Basin 2000, and include: water conservation/demand measures; improvements to existing wastewater collection and treatment systems; and improvements and modifications to effluent disposal methods. The overall objective is elimination of wastewater stresses to the Clear Lake watershed, and where possible, use of recycled wastewater for purposes of watershed restoration. The proposed action covered by this notice of intent includes two sub-projects of the Clear Lake Basin 2000 program initiative. The two projects are: (1) Lyons Creek wetlands and flow control facility; and (2) Nice-Burns Valley wetlands and pipeline. Each of these is more specifically described as follows:

1. Lyons Creek Wetlands & Flow Control Facility

This proposed component includes six wetland sites totaling 90 acres, and a flow control facility (FCF) required for supplying wastewater effluent to the wetlands. The activity is located in the Lyons Creek sub-watershed of the Clear Lake watershed. The wetlands will be constructed by creating levees in existing dry channels, and grading and shaping to create inter-mixed areas of deep water and shallow marsh habitat. A mix of open water/emergent marsh will be established to provide preferred habitat for a broad variety of wetland-dependent birds and mammals. Treated effluent will be stored and conveyed to the wetlands via the FCF and distribution pipelines, respectively, and introduced to the wetland cells through buried pipes into deep water and inlet zones. During effluent application periods (primarily the summer months) these wetlands will be hydraulically loaded at rates that are balanced by the on-site losses of water through evaporation and transpiration by wetland vegetation. There will be no surface releases of treated effluent, consistent with the requirements of the State of California Regional Water Quality Control Board. During wet periods, effluent application will cease and stormwater flows will be allowed to accumulate in the wetland cells, providing flood detention and water quality improvement prior to release to downstream waters. The FCF is required to store effluent during the winter periods when high effluent flows are experienced, and effluent use by the wetlands is not possible. The FCF will have a capacity of approximately 2,300 acre-feet. Current storage at LACOSAN's Northwest Treatment Plant is insufficient to store effluent during extreme wet winters. The FCF will also provide a means to provide continuous summer flows to the wetlands, when water use demands are highest and effluent flows may be insufficient to sustain plant and aquatic life.

2. Nice-Burns Valley Wetlands & Pipeline

This proposed component includes 10 wetland sites totaling 176 acres, and a pipeline required for supplying wastewater effluent to the wetlands. The activity is located in a corridor that roughly parallels the northern shore of Clear Lake. The wetland sites are located along the corridor, beginning on the west near the community of Nice, and ending on the east in the Burns Valley sub-watershed. The pipeline will begin at LACOSAN's Northwest Treatment Plant, where effluent will be available, and will terminate at LACOSAN's Southeast Treatment Plant, which is located in the Burns Valley sub-watershed. As with the Lyons Creek component, the wetlands will be constructed by creating levees in existing dry channels, and grading and shaping to create inter-mixed areas of deep water and shallow marsh habitat. A mix of open water/emergent marsh will be established to provide preferred habitat for a broad variety of wetland-dependent birds and mammals. Treated effluent will be conveyed to the wetlands in the pipeline, and introduced to the wetland cells through buried pipes into deep water and inlet zones. During effluent application periods (primarily the summer months) the wetlands will be hydraulically loaded at rates that are balanced by the on-site losses of water through evaporation and transpiration by wetland vegetation. Any water not utilized by the wetlands will be returned to the effluent pipeline for reuse at another site. In this way there will be no surface releases of treated effluent, consistent with the requirements of the State of California Regional Water Quality Control Board. During wet periods, effluent application will cease and stormwater flows will be allowed to accumulate in the wetland cells, providing flood detention and water quality improvement prior to release to downstream waters. The effluent pipeline, and two pump stations, are required to convey the stored effluent from LACOSAN's Northwest Treatment Plant to the wetland sites, and to receive operational transfers from the wetlands for reuse at another wetland site. The pipeline will be 16 inches in diameter, and will begin at a pump station located at the Northwest Treatment Plant. From the Northwest Treatment Plant, the pipeline will extend approximately 19 miles along the north shore of Clear Lake to an intermediate booster pump station located near the Clearlake Oaks effluent disposal ponds. From the booster pump station, the pipeline will extend south and east approximately two miles through public and private rights-of-way, and terminate at LACOSAN's Southeast Treatment Plant. Allowable pipe materials will include both ductile iron and PVC. It will be installed at depths appropriate for the adjacent buried utilities and traffic conditions (typically 3 to 4 feet of cover). The pump stations will consist of multiple vertical turbine or horizontal split-case pumps with automatic controls to stop the flow in the event of an emergency. Pump controls and electrical equipment will be located in a building to protect them from the elements and reduce noise impacts. Depending upon final design, surge tanks or other surge facilities will be located adjacent to the pump stations. Pump operating conditions and control data will be transmitted to LACOSAN's computer system for monitoring and automatic/operator control of the pumps.

All of the proposed actions covered by this notice of intent, except the wetlands proposed for the Nice-Burns Valley corridor, have been evaluated in an environmental impact report (EIR)

prepared and certified by LACOSAN in 1997 pursuant to the California Environmental Quality Act (CEQA). A portion of the effluent pipeline alignment between Clearlake Oaks and LACOSAN's Southeast Regional Wastewater Treatment Plant has also been evaluated in a previous CEQA document prepared by the Clearlake Oaks County Water District in 1997. The environmental assessment covered by this notice will incorporate information and findings from both previous environmental documents where relevant and appropriate.

ALTERNATIVES

The alternatives to be evaluated in the environmental assessment include:

1. The proposed action as described above. The proposed action is based on two previous alternatives analyses: (a) Alternative effluent disposal methods examined in LACOSAN's previous EIR for improvements to the Northwest Regional Wastewater Treatment Plant; and (b) an evaluation of alternative wetland sites in the Lyons Creek and Nice-Burns Valley project areas prepared by LACOSAN in 1998 during project planning.

2. Construction and operation of the FCF and effluent pipeline without the establishment of associated wetlands.

3. No action.

Scoping Process

The scope consists of a range of proposed actions and their potential impact on the surrounding community to be considered in the environmental assessment. It is the intent that there shall be an early and open process for determining the scope of issues to be addressed and for identifying the significant environmental issues related to the proposed action. Although scoping meetings are not required for environmental assessments, EPA and LACOSAN will hold a public scoping meeting on Friday, May 29, 1998, at 1:00 PM in the Lake County Board of Supervisors Chambers, Lake County Courthouse, 255 N. Forbes Street, Lakeport, CA. At this meeting the public will be invited to present issues and concerns they would like to see addressed in the environmental assessment.

Proposed Date of release

The draft environmental assessment is scheduled for release in October 1998.

Responsible Official

Felicia Marcus, Regional Administrator, U.S. Environmental Protection Agency, Region 9.

FOR FURTHER INFORMATION CONTACT: Mark Dellinger, Resources Manager/ Project Manager, Lake County Sanitation District, 230A Main Street, Lakeport, CA 95453, telephone 707/ 263–2273, e-mail mark—d@co.lake.ca.us; or Kristin Gullatt, U.S. EPA, Region 9, 75 Hawthorne Street, Mail Code WTR–10, San Francisco, CA 94105, telephone 415/744–1937, e-mail Gullatt.Kristin@epamail.epa.gov.

Mike Schulz,

Acting Director, Region 9, Water Division.

[FR Doc. 98–10223 Filed 4–17–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5998–7]

Notice of Proposed Revisions to the Approved Program To Administer the National Pollutant Discharge Elimination System Permitting Program in New York Resulting in Part From Adoption of the Water Quality Guidance for the Great Lakes System

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Notice is hereby given that the Environmental Protection Agency (EPA) has received for review and approval revisions to the National Pollutant Discharge Elimination System (NPDES) program in New York. Most of the proposed revisions were adopted to comply with section 118(c) of the Clean Water Act and 40 CFR 132.4, although in some cases, the State has also proposed revisions that are not related to those required by section 118(c) of the CWA and 40 CFR 132.4. EPA invites public comment on whether EPA should approve these revisions pursuant to 40 CFR 123.62 and 132.5.

DATES: Comments on whether EPA should approve the revisions to New York's NPDES program must be received in writing by May 20, 1998.

ADDRESSES: Written comments on these documents may be submitted to Kathleen C. Callahan, Director, Division of Environmental Planning and Protection, Attn: GLI Implementation Procedures, U.S. Environmental Protection Agency, 290 Broadway, New York, New York 10007. In the alternative, EPA will accept comments electronically. Comments should be sent to the following Internet E-mail address: jackson.wayne@epamail.epa.gov. Electronic comments must be submitted in an ASCII file avoiding the use of special characters and any form of encryption. EPA will print electronic comments in hard-copy paper form for the official administrative record. EPA will attempt to clarify electronic comments if there is an apparent error in transmission. Comments provided electronically will be considered timely if they are submitted electronically by 11:59 p.m. (Eastern time) May 20, 1998.

Interested persons may request a public hearing regarding whether EPA should approve, pursuant to 40 CFR 123.62, and 132.5(g), those portions of the States' submissions that revise the States' approved National Pollutant Discharge Elimination System (NPDES) permitting program. EPA will determine based on requests received if there is significant interest to warrant a public hearing.

FOR FURTHER INFORMATION CONTACT: Wayne Jackson, Community and Ecosystems Protection Branch, Division of Environmental Planning and Protection, U.S. Environmental Protection Agency, 290 Broadway, New York, New York, 10007, or telephone him at (212) 637–3807.

Copies of the rules adopted by New York, and other related materials submitted by the State in support of these revisions, are available for review at: EPA, Region 2, 290 Broadway, 24th Floor, New York, New York; and, NYSDEC, 50 Wolf Road, Room 310 C, Albany, New York. To access the docket material in New York, call Wayne Jackson at (212) 637–3807 between 8 a.m. and 4:30 p.m. (Eastern time) (Monday-Friday); in Albany, New York, call Teresa Deihsner at 518–457–7937 between 8 a.m. and 4:30 p.m. (Eastern time) (Monday-Friday).

SUPPLEMENTARY INFORMATION: On March 23, 1995, EPA published the Final Water Quality Guidance for the Great Lakes System (Guidance) pursuant to section 118(c)(2) of the Clean Water Act, 33 U.S.C. 1268(c)(2). (March 23, 1995, 60 FR 15366). The Guidance, which was codified at 40 CFR Part 132, requires the Great Lakes States to adopt and submit to EPA for approval water quality criteria, methodologies, policies and procedures that are consistent with the Guidance. 40 CFR 132.4. & 132.5. EPA is required to approve the State's submission within 90 days or notify the State that EPA has determined that all or part of the submission is inconsistent with the Clean Water Act or the Guidance and identify any necessary changes to obtain EPA approval. If the State fails to make the necessary changes within 90 days, EPA must publish a notice in the **Federal Register** identifying the approved and disapproved elements of the submission

and a final rule identifying the provisions of Part 132 that shall apply for discharges within the State.

The U.S. EPA received a submission from New York on February 27, 1998. The bulk of this submission consists of new, revised or existing water quality standards which EPA is reviewing for consistency with the Guidance in accordance with 40 CFR 131 and 132.5. EPA is not soliciting comments on the following portions of this submission: water quality criteria and methodologies, use designations, antidegradation, and 40 CFR Part 132, Appendix F: Implementation Procedures 1 (''Site Specific Modifications''); and 3 (''Addivity'') because those requirements constitute parts of the State's water quality standards, not its NPDES program. EPA also is not soliciting comment on the Guidance itself.

Instead, EPA is only requesting comment on whether it should approve, pursuant to 40 CFR 123.62, and 132.5(g), those portions of this submission that revise the State's approved National Pollutant Discharge Elimination System (NPDES) permitting program. These revisions generally relate to the following provisions of 40 CFR Part 132, Appendix F: Procedure 2 (''Variances''); Procedure 3 (''Total Maximum Daily Loads, Wasteload Allocations for Point Sources, Load Allocations for Nonpoint Sources, Wasteload Allocations in the Absence of a TMDL, and Preliminary Wasteload Allocations for Purposes of Determining the Need for Water Quality Based Effluent Limits''); Procedure 5 (''Reasonable Potential''); Procedure 6 (''Whole Effluent Toxicity''); Procedure 7 (''Loading Limits''); Procedure 8: (''Water Quality-based Effluent Limitations Below the Quantification Level''); and Procedure 9 (''Compliance Schedules'').

The revisions are found in the following: Technical Operational Guidance Series (TOGS) 1.2.1: Industrial Permit Drafting; TOGS 1.3.1: Procedures for developing TMDLs and Water Quality-based Effluent Limits; and TOGS 1.3.2: Toxicity Testing in the SPDES Program, a supplemental analysis to support the State's toxicity testing program as being as protective as the Guidance, 6 NYCRR § 702.17, and the Amended NPDES Memorandum of Agreement between NYSDEC and EPA Relating to the Implementation of the Requirements of the Great Lakes Water Quality Guidance in the Great Lakes Basin.

Under 40 CFR 123.62(b)(2) and 132.5(e), whenever EPA determines that a proposed revision to a State NPDES program is substantial, EPA must provide notice and allow public comment on the proposed revisions. The extent to which the States have modified their NPDES programs to be consistent with the Guidance varies significantly, depending on the extent to which their existing programs already were ''as protective as'' the implementation procedures in the Guidance. EPA has not conducted a State-by-State review of the submissions to ascertain for each state individually whether their changes constitute substantial program modifications. However, in light of the fact that the states have modified these programs in response to the explicit statutory mandate contained in section 118(c) of the Clean Water Act, EPA believes that it is appropriate to consider the NPDES component of the States' submission to be substantial program modifications, and therefore has decided to solicit public comment regarding those provisions.

Based on General Counsel Opinion 78–7 (April 18, 1978), EPA has long considered a determination to approve or deny a State NPDES program submission to constitute an adjudication because an ''approval'', within the meaning of the APA, constitutes a ''license'', which, in turn, is the product of an ''adjudication''. For this reason, the statutes and Executive Orders that apply to rulemaking action are not applicable here. Among these are provisions of the Regulatory Flexibility Act (RFA), 5 U.S.C. 601 *et seq.* Under the RFA, whenever a federal agency proposes or promulgates a rule under section 553 [of the Administrative Procedures Act (APA)], after being required by that section or any other law to publish a general notice of proposed rulemaking, the agency must prepare a regulatory flexibility analysis for the rule, unless the Agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. If the Agency does not certify the rule, the regulatory flexibility analysis must describe and assess the impact of a rule on small entities affected by the rule.

Even if the NPDES program modification were a rule subject to the RFA, the Agency would certify that approval of the State's modified program would not have a significant economic impact on a substantial number of small entities. EPA's action to approve an NPDES program modification merely recognizes revisions to the program which have already been enacted as a matter of State law; it would, therefore, impose no additional obligations upon those subject to the State's program. Accordingly, the Regional Administrator would certify that this program modification, even if a rule, would not have a significant economic impact on a substantial number of small entities.

William Muszynski,

Acting Regional Administrator, Region II.

[FR Doc. 98–10401 Filed 4–17–98; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1195–DR]

Florida; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Florida, (FEMA–1195–DR), dated January 6, 1998, and related determinations.

EFFECTIVE DATE: April 9, 1998.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3260.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of Florida, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of January 6, 1998:

Bay County for Public Assistance.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

Lacy E. Suiter,

Deputy Associate Director, Response and Recovery Directorate.

[FR Doc. 98–10337 Filed 4–17–98; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1209–DR]

Georgia; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Georgia, (FEMA–1209–DR), dated March 11, 1998, and related determinations.

EFFECTIVE DATE: April 9, 1998.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3260.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of Georgia, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of March 11, 1998:

Dekalb, Gwinnett, and Long Counties for Individual Assistance and Public Assistance.

Cobb, Effingham, Fulton, and Liberty Counties for Public Assistance (already designated for Individual Assistance).

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

Lacy E. Suiter,

Executive Associate Director, Response and Recovery Directorate.

[FR Doc. 98–10360 Filed 4–17–98; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1209–DR]

Georgia; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Georgia (FEMA–1209–DR), dated March 11, 1998, and related determinations.

EFFECTIVE DATE: April 8, 1998.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3260.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of Georgia is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of March 11, 1998:

Baldwin, Clayton, Cobb, Effingham, Forsyth, Fulton, Jones, Liberty, Lowndes, Newton and Twiggs Counties for Individual Assistance.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program)

Lacy E. Suiter,

Executive Associate Director, Response and Recovery Directorate.

[FR Doc. 98–10361 Filed 4–17–98; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1209–DR]

Georgia; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Georgia, (FEMA–1209–DR), dated March 11, 1998, and related determinations.

EFFECTIVE DATE: April 7, 1998.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3260.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of Georgia, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of March 11, 1998:

Henry and Spalding Counties for Individual Assistance.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

Lacy E. Suiter,

Executive Associate Director, Response and Recovery Directorate.

[FR Doc. 98–10362 Filed 4–17–98; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1207–DR]

Kentucky; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the Commonwealth of Kentucky, (FEMA–1207–DR), dated March 3, 1998, and related determinations.

EFFECTIVE DATE: April 7, 1998.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3260.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the Commonwealth of Kentucky, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of March 3, 1998:

The counties of Adair, Breathitt, Casey, Lincoln, Mercer, Nicholas, and Robertson for Public Assistance.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing

Program; 83.548, Hazard Mitigation Grant Program.)

Lacy E. Suiter,

Executive Associate Director, Response and Recovery Directorate.

[FR Doc. 98–10338 Filed 4–17–98; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1213–DR]

Federated States of Micronesia; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the Federated States of Micronesia (FEMA–1213–DR), dated April 3, 1998 and related determinations.

EFFECTIVE DATE: April 3, 1998.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3260.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated April 3, 1998, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*), as follows:

I have determined that the damage in certain areas of the Federated States of Micronesia, resulting from a severe drought beginning on January 25, 1998, and continuing is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, Pub. L. 93–288, as amended (''the Stafford Act''). I, therefore, declare that such a major disaster exists in the Federated States of Micronesia.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide emergency protective measures (Category B) under the Public Assistance program and Hazard Mitigation in the designated areas, and any other forms of assistance under the Stafford Act you may deem appropriate. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance or Hazard Mitigation will be limited to 75 percent of the total eligible costs.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint William L. Carwile, III of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the Federated States of Micronesia to have been affected adversely by this declared major disaster:

Emergency protective measures (Category B) for the following areas:

In the State of Yap: Eauripik, Elato, Fais, Faraulap, Ifalik, Lamotrek, Ngulu, Satawal, Ulithi, Wolei, and Yap Proper. In the State of Chuuk: Eot, Ettal, Fanapanges, Fefen, Fonanu, Fono, Houk, Kuttu, Lekinioch, Losap, Makur, Moch, Murillo, Nama, Namoluk, Nomwin, Oneop, Onou, Onoun, Paata, Parem, Piherach, Piis-Emwar, Polle, Polowat, Romanum, Ruo, Satowan, Siis, Ta, Tol, Tomatam, Tonoas, Udot, Uman, Unanu, and Wonei. In the State of Pohnpei, the areas of Kipingamarangi, Mwoakilloa, Nukuoro, Pingelap, and Sapwuahfik.

All islands and atolls in the Federated States of Micronesia are eligible to apply for assistance under the Hazard Mitigation Grant Program.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program)

James L. Witt,

Director.

[FR Doc. 98–10364 Filed 4–17–98; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1212–DR]

Minnesota; Amendment No. 4 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Minnesota (FEMA–1212–DR), dated April 1, 1998, and related determinations.

EFFECTIVE DATE: April 8, 1998.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3260.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of Minnesota is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of April 1, 1998:

The counties of Blue Earth and Nobles for Individual Assistance.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

Lacy E. Suiter,

Executive Associate Director, Response and Recovery Directorate.

[FR Doc. 98–10363 Filed 4–17–98; 8:45 am]

BILLING CODE 6718–02–P

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 May 15, 1998.

A. Federal Reserve Bank of Boston (Richard Walker, Community Affairs Officer) 600 Atlantic Avenue, Boston, Massachusetts 02106-2204:

1. New England Community Bancorp, Inc., Windsor, Connecticut; to become a bank holding company by acquiring 100 percent of the voting shares of Olde Port Bank & Trust Company, Portsmouth, New Hampshire.

B. Federal Reserve Bank of Philadelphia (Michael E. Collins, Senior Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105-1521:

1. Dauphin Bancorp, Harrisburg, Pennsylvania; to acquire 39.16 percent of the voting shares of First National Bank of Liverpool, Liverpool, Pennsylvania.

C. Federal Reserve Bank of Richmond (A. Linwood Gill III, Assistant Vice President) 701 East Byrd Street, Richmond, Virginia 23261-4528:

1. ECB Bancorp, Inc., Engelhard, North Carolina; to become a bank holding company by acquiring 100 percent of the voting shares of The East Carolina Bank, Engelhard, North Carolina.

D. Federal Reserve Bank of Atlanta (Lois Berthaume, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303-2713:

1. United Community Bancshares, Inc., Gonzales, Louisiana; to become a bank holding company by acquiring 100 percent of the voting shares of United Community Bank, Gonzales, Louisiana (in organization).

E. Federal Reserve Bank of San Francisco (Maria Villanueva, Manager of Analytical Support, Consumer Regulation Group) 101 Market Street, San Francisco, California 94105-1579:

1. InterWest Bancorp, Inc., Oak Harbor, Washington; to acquire 100 percent of the voting shares of Pacific Northwest Bank, Seattle, Washington.

2. InterWest Bancorp, Inc., Oak Harbor, Washington; to merge with Pioneer Bancorp, Inc., Yakima, Washington, and thereby indirectly acquire Pioneer National Bank, Yakima, Washington.

Board of Governors of the Federal Reserve System, April 15, 1998.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 98–10365 Filed 4–17–98; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Notice of Proposal to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities; Correction

This notice corrects a notice (FR Doc. 98-9668) published on page 18022 of the issue for Monday, April 13, 1998.

Under the Federal Reserve Bank of Kansas City heading, the entry for Southeast Capital Corp., Idabel, Oklahoma, is revised to read as follows:

A. Federal Reserve Bank of Kansas City (D. Michael Manies, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198-0001:

1. Southeast Capital Corp., and Southeast Capital Corp. ESOP, both of Idabel, Oklahoma; to engage *de novo* in community development activities through the leasing of real property to the State of Oklahoma, pursuant to § 225.28(b)(12)(i) of the Board's Regulation Y.

Comments on this application must be received by April 28, 1998.

Board of Governors of the Federal Reserve System, April 15, 1998.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 98–10366 Filed 4–17–98; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y, (12 CFR Part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than May 5, 1998.

A. Federal Reserve Bank of Richmond (A. Linwood Gill III, Assistant Vice President) 701 East Byrd Street, Richmond, Virginia 23261-4528:

1. Wachovia Corporation, Winston-Salem, North Carolina (''Company''); to engage *de novo* through its subsidiary, Wachovia Capital Markets, Inc., Winston-Salem, North Carolina, in certain nonbanking activities, including the following: underwriting and dealing in securities such as: municipal revenue bonds and asset-backed and mortgage-related securities, defined as obligations secured by or representing an interest in 1-4 family residential real estate. *See Citicorp*, 73 Fed. Res. Bull. 473 (1987), as modified; *J.P. Morgan & Co.*, 75 Fed. Res. Bull. (1989) as modified.

In addition, the Company intends to engage in the following securities and other financial activities: making, acquiring and servicing loans or other extensions of credit, pursuant to § 225.28(b)(1) of Regulation Y; and in activities related to extending credit, pursuant to § 225.28(b)(2) of Regulation Y; leasing personal or real property or acting as agent, broker or adviser in leasing such property if the lease is on a nonoperating basis, pursuant to § 225.28(b)(3) of Regulation Y; performing functions and activities that may be performed by a trust company (including activities of a fiduciary, agency, or custodial nature), pursuant to § 225.28(b)(5) of Regulation Y; acting as an investment or financial advisor, pursuant to § 225.28(b)(6) of Regulation Y; providing securities brokerage services (including securities clearing and/or securities execution services on an exchange), whether alone or in combination with investment advisory services, and incidental activities (including related securities credit activities and custodial services), pursuant to § 225.28(b)(7)(i) of Regulation Y; buying and selling in the secondary market all types of securities on the order of customers as ''riskless principal,'' pursuant to § 225.28(b)(7)(ii) of Regulation Y; acting as agent for the private placement of various types of securities, pursuant to § 225.28(b)(7)(iii) of Regulation Y; and in investment transactions as principal including underwriting and dealing in bank-eligible securities, pursuant to § 225.28(b)(8) of Regulation Y; and providing management consulting

advice, pursuant to § 225.28(b)(9) of Regulation Y.

Board of Governors of the Federal Reserve System, April 15, 1998.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 98–10367 Filed 4–17–98; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL TRADE COMMISSION

Granting of Request for Early Termination of the Waiting Period under the Premerger Notification Rules

Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by Title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Federal Trade Commission and the Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the **Federal Register**.

The following transactions were granted early termination of the waiting period provided by law and the premerger notification rules. The grants were made by the Federal Trade Commission and the Assistant Attorney General for the Antitrust Division of the Department of Justice. Neither agency intends to take any action with respect to these proposed acquisitions during the applicable waiting period.

TRANSACTION GRANTED EARLY TERMINATION

ET date	Trans. No.	ET req status	Party name
30–MAR–98	19981991	G	Mr. Francois Pinault.
		G	Brylane Inc.
		G	Brylane Inc.
	19982054	G	Metropolitan Life Insurance Company.
		G	Jay L. Lewis.
		G	N. L. Holding Corp.
	19982084	G	Stichting Administratiekantoor.
		G	Edward R. Chirgwin and Gale K. Chirgwin.
		G	Ray's Food Service, Inc.
	19982086	G	Jeffrey H. Smulyan.
		G	Dudley Communications Corporation.
		G	Dudley Communications.
	19982102	G	John A. Mansour.
		G	Intermedia Communications Inc.
		G	Intermedia Communications Inc.
	19982137	G	Union Bank of Switzerland.
		G	Swiss Bank Corporation.
		G	Swiss Bank Corporation.
	19982148	G	UniCapital Corporation.
		G	Edgar W. Lee.
		G	K.L.C., Inc.
	19982149	G	UniCapital Corporation.
		G	Alan H. Kaufman.
		G	K.L.C., Inc.
	19982171	G	UniCapital Corporation.
		G	Matrix Funding Corporation.
		G	Matrix Funding Corporation.
	19982193	G	J.F. Lehman Equity Investors I, L.P.
		G	First Chicago NBD Corporation.
		G	Mercer Products Company, Inc.
	19982196	G	UniCapital Corporation.
		G	John Alfano.
		G	Jacom Computer Services.
	19982198	G	UniCapital Corporation.
		G	Michael B. Pandolfelli.
		G	American Capital Resources, Inc.
	19982199	G	Gibraltar Steel Corporation.
		G	Judson E. Flower.
		G	Appleton Supply Co., Inc.
	19982200	G	Sara Lee Corporation.
		G	Aristotle Corporation (The).
		G	The Strouse, Adler Company, Inc.
	19982201	G	KKR 1996 Fund, L.P.
		G	Richard A. Simon.
		G	Bristol West Insurance Services, Inc.
		G	Apex Adjustment Bureau, Inc.
		G	Security National Insurance Company.
		G	Bayview Adjustment Bureau, Inc.
	19982202	G	UniCapital Corporation.
		G	Robert VanHellemont.
		G	Varilease Corporation.
	19982203	G	Arctic Slope Regional Corporation.
		G	J. Weldon Granger.

TRANSACTION GRANTED EARLY TERMINATION—Continued

ET date	Trans. No.	ET req status	Party name
		G	Omega Service Industries, Inc.
	19982204	G	Michael B. Pandolfelli.
		G	UniCapital Corporation.
		G	UniCapital Corporation.
	19982205	G	John Alfano.
		G	UniCapital Corporation.
		G	UniCapital Corporation.
	19982206	G	Robert VanHellemont.
		G	UniCapital Corporation.
		G	UniCapital Corporation.
	19982207	G	Champion Enterpises, Inc.
		G	Eugene Whitworth.
		G	Whitworth Management Inc.
	19982210	G	Albertson's, Inc.
		G	David A. and Lesley K. Trottier.
		G	Smitty's Super Markets, Inc.
	19982214	G	UniCapital Corporation.
		G	CLA Holdings, Inc.
		G	CLA Holdings, Inc.
	19982216	G	ProMedCo Management Company.
		G	Berkshire Physicians & Surgeons, P.C.
		G	Berkshire Physicians & Surgeons, P.C.
	19982221	G	El Paso Natural Gas Company.
		G	DeepTech International Inc.
		G	DeepTech International Inc.
	19982237	G	Jupiter Partners LP.
		G	K-Holding Company.
		G	K-Holding Company.
	19982239	G	Huhtamaki Oy.
		G	Sealright Co., Inc.
		G	Sealright Co., Inc.
	19982243	G	Berkshire Fund IV, Limited Partnership.
		G	Staveley Industries plc.
		G	Salter Housewares Ltd., Staveley Weighing & System Canada I.
	19982244	G	United Auto Group, Inc.
		G	Roger L. Sather.
		G	Relentless Pursuit Enterprises.
	19982252	G	Harrowston, Inc.
		G	Trelleborg AB (a Swedish Corporation).
		G	IT Holding, Inc.
	19982253	G	Outdoor Systems, Inc.
		G	Leslie Kaplan and Barbara Kaplan (Husband and Wife).
		G	Barbara Shop, Inc. d/b/a/ Philadelphia Outdoor.
	19982258	G	Stonington Capital Appreciation 1994 Fund, L.P.
		G	HK Systems, Inc.
		G	HK Systems, Inc.
31–MAR–98	19982043	G	Jefferson Health System.
		G	Albert Einstein Healthcare Network.
		G	Albert Einstein Healthcare Network.
	19982103	G	Avon Rubber, p.l.c.
		G	Leigh R. Larson.
		G	Hi-Life Inc., Hi-Life Rubber, LLC, Milk-Rite USA, Inc.
	19982126	G	Valspar Corporation (The).
		G	Patrick W. McKenna.
		G	Plasti-Kote Co., Inc.
	19982190	G	Province Healthcare Company.
		G	Samaritan Health System.
		G	Havasu Samaritan Regional Hospital.
	19982209	G	Freedom Securities Corporation.
		G	Clearly Gull Reiland & McDevitt Inc.
		G	Clearly Gull Reiland & McDevitt Inc.
	19982215	G	Paxton Media Group, Inc.
		G	Nixon Enterprises, Inc.
		G	Nixon Enterprises, Inc.
	19982230	G	Access Health, Inc.
		G	Charles M. Jacobs.
		G	InterQual, Inc.
	19982232	G	Physicians Insurance Company of Wisconsin, Inc.
		G	Steven M. Scott.
		G	Century American Insurance Company.
	19982235	G	Franchise Mortgage Acceptance Company.
		G	Paul A. Neff.

TRANSACTION GRANTED EARLY TERMINATION—Continued

ET date	Trans. No.	ET req status	Party name
		G	Banker's Mutual Mortgage, Inc.
	19982238	G	Industrial Services Group, Inc.
		G	Jack Wirt.
		G	Michigan Ash Sales Company, Flo Fil Co., Inc., U.S. Stabiliz.
	19982260	G	General Electric Company, p.l.c.
		G	Cofide-Compagnia Finaziaria De Benedetti.
		G	SASIB Railway S.p.A.
		G	Algemene Sein Industrie B.V.
		G	SASIB Hellas S.A.
		G	General Railway Signal Corporation.
	19982261	G	Alcatel Alsthom Compagnie Generale d'Electricite S.
		G	Confide-Compagnie Finaziaria De Benedetti.
		G	General Railway Signal Corporation.
		G	Algemene Sein Industrie B.V.
		G	SASIB Hellas S.A.
		G	SASIB Railway S.p.A.
	19982275	G	Tomkins PLC.
		G	KSCH Management, L.P.
		G	Schrader Inc.
01–APR–98	19980381	G	Daniel L. Simon.
		G	Clear Channel Communications, Inc.
		G	Clear Channel Communications, Inc.
	19981985	G	Brentwood Associates Buyout Fund II, LP.
		G	StarTime Cinema, Inc.
		G	StarTime Cinema, Inc.
		G	StarTime Properties, Inc.
	19982138	G	Swiss Bank Corporation.
		G	Union Bank of Switzerland.
		G	Union Bank of Switzerland.
	19982142	Y	Swiss Bank Corporation.
		Y	J.W. Childs Equity Partners, L.P.
		Y	DESA Holdings Corporation.
	19982143	G	Swiss Bank Corporation.
		G	Metrocall, Inc.
		G	Metrocall, Inc.
	19982144	G	Swiss Bank Corporation.
		G	CBP Resources, Inc.
		G	CBP Resources, Inc.
	19982228	G	Dean V. White.
		G	Clear Channel Communications, Inc.
		G	Clear Channel Communications, Inc.
	19982229	G	Clear Channel Communications, Inc.
		G	Dean V. White.
		G	Whiteco Industries, Inc., Metro Management Associate.
02–APR–98	19981754	G	United States Filter Corporation.
		G	Culligan Water Technologies, Inc.
		G	Culligan Water Technologies, Inc.
	19981986	G	The Titan Corporation.
		G	Horizons Technology, Inc.
		G	Horizons Technology, Inc.
	19982034	G	Worchester City Campus Corporation.
		G	Central New England Health Alliance, Inc.
		G	Central New England Health Alliance, Inc.
	19982124	G	Primus Telecommunications Group, Incorporated.
		G	Warburg, Pincus Investors, L.P.
		G	TresCom International, Inc.
	19982125	G	Warburg, Pincus Investors, L.P.
		G	Primus Telecommunications Group, Incorporated.
		G	Primus Telecommunications Group, Incorporated.
	19982131	G	Marshall W. Pagon.
		G	Columbia DBS Investors, L.P.
		G	Digital Television Services, Inc.
	19982194	G	Metal Management, Inc.
		G	Jonathan L. Kimerling.
		G	M. Kimerling & Sons, Inc.
	19982195	G	Metal Management, Inc.
		G	David B. Kimerling.
		G	M. Kimerling & Sons, Inc.
	19982262	G	Xerox Corporation.
		G	Intelligent Electronics, Inc.
		G	Intelligent Electronics, Inc.
	19982274	G	Compagnie de Saint-Gobain.

TRANSACTION GRANTED EARLY TERMINATION—Continued

ET date	Trans. No.	ET req status	Party name
		G	Lawrence H. Beasley.
		G	Apache Plastics, Inc.
03–APR–98	19982233	G	KLA-Tencor Corporation.
		G	Trustees of AMRAY, Inc., Voting Trust.
		G	AMRAY, Inc.
	19982266	G	Omnicare, Inc.
		G	CompScript, Inc.
		G	CompScript, Inc.
	19982271	G	The Pittston Company.
		G	USA Jet Airlines, Inc.
		G	Air Transport International LLC.
	19982273	G	George S. Hofmeister.
		G	Louisiana-Pacific Corporation.
		G	Weather-Seal, Weather-Seal Division.
	19982288	G	Cascades Inc.
		G	Sonoco Products Company.
		G	Sonoco Products Company.
	19982289	G	Personnel Group of America, Inc.
		G	Ferdinando Ladurini.
		G	Trilogy Consulting Corporation.
	19982290	G	Personnel Group of America, Inc.
		G	William J. Phillips.
		G	Trilogy Consulting Corporation.
	19982291	G	Northern States Power Company.
		G	Black Mountain Gas Company.
		G	Black Mountain Gas Company.
	19982293	G	BARCO N.V.
		G	Gerber Scientific, Inc.
		G	Gerber Systems Corporation.
	19982294	G	Adaptec, Inc.
		G	Analog Devices Inc.
		G	Analog Devices Inc.
	19982307	G	Kenneth R. Thomson, a Canadian Resident.
		G	Knight-Ridder, Inc.
		G	Technimetrics, Inc.
	19982310	G	Travelers Group Inc.
		G	Fidelity Non-Profit Management Foundation.
		G	CP Acquisition LLC, a Delaware limited liability company.
	19982316	G	Case Corporation.
		G	Ivan Bowen, II.
		G	Tyler Industries, Inc.
	19982317	G	The Walter E. Hussman, Jr. Family Trust.
		G	Chattanooga News-Free Press Company.
		G	Chattanooga News-Free Press Company.
	19982318	G	Claire's Stores, Inc.
		G	Crestwood Partners LLC.
		G	Lux Corporation.
	19982323	G	MIM Corporation.
		G	Continental Managed Pharmacy Services, Inc.
		G	Continental Managed Pharmacy Services, Inc.
	19982328	G	Thyssen Aktiengesellschaft.
		G	Clearr Industries, Inc.
		G	Clearr Industries, Inc.
	19982340	G	Larry T. Shaffer.
		G	Fleetwood Enterprises, Inc.
		G	Fleetwood Enterprises, Inc.
	19982341	G	Fleetwood Enterprises, Inc.
		G	HomeUSA, Inc.
		G	HomeUSA, Inc.
06–APR-98	19982133	G	API Group plc.
		G	Markem Corporation.
		G	Astor Universal Corporation.
	19982218	G	Glaxo Wellcome plc.
		G	Affymetrix Inc.
		G	Affymetrix Inc.
	19982248	G	PNC Bank Corp.
		G	The Bank of Tokyo-Mitsubishi, Ltd.
		G	BTM Capital Corporation.
	19982254	G	Dover Corporation.
		G	Sharon List.
		G	Sonic Industries Inc.
	19982301	G	Ronald O. Perelman.

TRANSACTION GRANTED EARLY TERMINATION—Continued

ET date	Trans. No.	ET req status	Party name
		G	Aames Financial Corporation.
		G	Aames Financial Corporation.
	19982319	G	Montedison S.p.A.
		G	Tate & Lyle PLC.
		G	Webel Feeds, Inc.
		G	Vigortone Ag Products, Inc.
	19982321	G	Dayton Hudson Corporation.
		G	Minnesota Communications Group.
		G	Greenspring Company.
		G	Minnesota Communications Group/Greenspring Company.
	19982330	G	Boston Chicken, Inc.
		G	BC Equity Funding, L.L.C.
		G	BC Equity Funding, L.L.C.
	19982331	G	Boston Chicken, Inc.
		G	Market Partners, L.L.C.
		G	Market Partners, L.L.C.
	19982332	G	Chase Manhattan Corporation (The).
		G	TeleCorp PCS, Inc.
		G	TeleCorp PCS, Inc.
	19982333	G	Hoak Communications Partners, L.P.
		G	TeleCorp PCS, Inc.
		G	TeleCorp PCS, Inc.
	19982334	G	Entergy Corporation.
		G	Telecorp PCS, Inc.
		G	Telecorp PCS, Inc.
07–APR–98	19982268	G	Citherm Holding N.V.
		G	Global Stone Corporation.
		G	Global Stone Corporation.
	19982326	G	Sumitomo Metal Industries, Ltd.
		G	Sumitomo Sitix Corporation.
		G	Sumitomo Sitix Corporation.
	19982353	G	Vanguard Health Systems, Inc.
		G	Allegheny Health, Education and Research Foundation.
		G	Allegheny Health, Education and Research Foundation.
08–APR–98	19982269	G	Koor Industries Ltd.
		G	California Microwave, Inc.
		G	California Microwave, Inc.
	19982279	G	Kinross Gold Corporation.
		G	Cyprus Amax Minerals Company.
		G	Amax Gold Inc.
	19982280	G	Cyprus Amax Minerals Company.
		G	Kinross Gold Corporation.
		G	Kinross Gold Corporation.
	19982309	G	Code, Hennessy & Simmons III, L.P.
		G	Corcom Inc.
		G	Corcom Inc.
	19982312	G	Hellman & Friedman Capital Partners III, L.P.
		G	Men's Apparel Guild in California, Inc.
		G	Men's Apparel Guild in California, Inc.
	19982335	G	Glaxo Wellcome plc.
		G	PowderJect Pharmaceuticals plc.
		G	PowderJect Technologies Limited (''PTL'').
		G	PowderJect Vaccines, Inc. (''PJV'').
	19982338	G	Delta Airlines Inc.
		G	Empresa de Transporte Aereo del Peru, S.A. Aerope.
		G	Empresa de Transporte Aereo del Peru, S.A. Aerope.
	19982342	G	Bush Industries, Inc.
		G	Gefinor S.A.
		G	Fournier Furniture, Inc.
09–APR–98	19982091	G	International Paper Company.
		G	Weston Paper and Manufacturing Co.
		G	Weston Paper and Manufacturing Co.
	19982219	G	Tenneco Inc.
		G	Alfred H. Richter and Beverlee L. Richter.
		G	Richter Manufacturing Corporation.
	19982251	G	Washington Post Company (The).
		G	TCA Cable TV, Inc.
		G	TCA Cable Partners, a Delaware general partnership.
	19982263	G	Rural Cellular Corporation.
		G	Atlantic Cellular Company, L.P.
		G	Atlantic Cellular Company, L.P.
	19982284	G	United Auto Group, Inc.

TRANSACTION GRANTED EARLY TERMINATION—Continued

ET date	Trans. No.	ET req status	Party name
		G G	E.W. Richardson. Pioneer Ford Sales Inc.

FOR FURTHER INFORMATION CONTACT: Sandra M. Peay or Parcellena P. Fielding, Contact Representatives, Federal Trade Commission, Premerger Notification Office, Bureau of Competition, Room 303, Washington, D.C. 20580, (202) 326–3100.

By Direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 98–10392 Filed 4–17–98; 8:45 am]

BILLING CODE 6750–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Notice of a Meeting of the National Bioethics Advisory Commission (NBAC)

SUMMARY: Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is given of a meeting of the National Bioethics Advisory Commission. The Commission will continue addressing (1) the protection of the rights and welfare of human subjects in research including research involving persons with disorders affecting decisionmaking capacity, and (2) issues in the research use of human biological materials. The meeting is open to the public and opportunities for statements by the public will be provided on May 19, 1998 from 11:30 am to 12 Noon.

Dates/times	Location
May 19, 1998, 8:30 am–5 pm and May 20, 1998, 8 am—3 pm.	Excelsior Ballroom-Thwing Student Center, Case Western Reserve University, 11111 Euclid Avenue, Cleveland, Ohio.

SUPPLEMENTARY INFORMATION: The President established the National Bioethics Advisory Commission (NBAC) on October 3, 1995 by Executive Order 12975 as amended. The mission of the NBAC is to advise and make recommendations to the National Science and Technology Council, its Chair, the President and other entities on bioethical issues arising from the research on human biology and behavior, and from the applications of that research and makes its recommendations available to the public.

Public Participation

The meeting is open to the public with attendance limited by the availability of space on a first come, first serve basis. Members of the public who wish to present oral statements should contact Ms. Patricia Norris by telephone, fax machine, or mail as shown below at least 4 days before the meeting and as soon as possible. The Chair will reserve time for presentations by persons requesting to speak. The order of persons wanting to make a statement will be assigned on a first come, first serve basis. Individuals unable to make oral presentations can mail or fax their comments to the NBAC staff office at least five business days prior to the meeting for distribution to the Commission and inclusion in the public record. The Commission also accepts general comments at its website at bioethics.gov. Persons needing special assistance, such as sign language interpretation or other special accommodations, should contact NBAC staff at the address or telephone number listed below as soon as possible.

FOR FURTHER INFORMATION CONTACT: Ms. Patricia Norris, National Bioethics Advisory Commission, 6100 Executive Boulevard, Suite 5B01, Rockville, Maryland 20892–7508, telephone 301–402–4242, fax number 301–480–6900.

Henrietta D. Hyatt-Knorr,

Deputy Executive Director, National Bioethics Advisory Commission.

[FR Doc. 98–10386 Filed 4–17–98; 8:45 am]

BILLING CODE 4160–17–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Board of Scientific Counselors, National Institute for Occupational Safety and Health Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following committee meeting:

Name: Board of Scientific Counselors, National Institute for Occupational Safety and Health (BSC, NIOSH).

Time and Date: 9 a.m.–4 p.m., May 20, 1998.

Place: The Washington Court, Montpelier Room, 525 New Jersey Avenue, NW, Washington, DC 20001–1527.

Status: Open to the public, limited only by the space available. The meeting room accommodates approximately 50 people.

Purpose: The BSC, NIOSH is charged with providing advice to the Director, NIOSH on NIOSH research programs.

Specifically, the Board shall provide guidance on the Institute's research activities related to developing and evaluating hypotheses, systematically documenting findings, and disseminating results.

Matters to be Discussed: Agenda items include a report from the Director of NIOSH; Update on Latex Allergy Activities; Hearing Loss Prevention Program; Hearing Loss Communications Campaign; Update on NIOSH Agriculture Program; State Surveillance Planning Update; Evaluating NIOSH Small Business Interventions; and future activities of the Board.

Agenda items are subject to change as priorities dictate.

Contact Person for More Information: Dr. Bryan D. Hardin, Executive Secretary, BSC, NIOSH, 1600 Clifton Road, NE, m/s D–35, Atlanta, Georgia 30333. Telephone 404/639–3773, fax 404/639–2170, e-mail bdh1@cdc.gov.

Dated: April 13, 1998.

Nancy C. Hirsch,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 98–10296 Filed 4–17–98; 8:45 am]

BILLING CODE 4163–19–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Comment Request

Title: Summary Date Component (SDC) of the National Child Abuse and Neglect Data System (NCANDS).

OMB No.: 0980–0229.

Description: This information collection implements the provision of the Child Abuse Prevention and Treatment Act (42 U.S.C. 5101 *et seq.*), as amended by Pub. L. 104–235, requiring that State agencies receiving the State child abuse and neglect grant

annually provide, ''to the maximum extent practical,'' an annual data report. Data elements include the number of children reported for child abuse and neglect; the number of children for whom maltreatment was substantiated, unsubstantiated or determined to be false; the number of deaths resulting from child abuse or neglect; the number of children who received services; agency response times; and the number of workers responsible for child protective service (CPS) functions. The new annual State data report is being combined with the previously existing voluntary Summary Data Component of the National Child Abuse and Neglect Data System. The information collected will be used to understand better the experiences of children and families served by CPS agencies, and to help guide policy and program development at the National, State and local levels.

Respondents: State, Local or Tribal Govt.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
SDC	56	1	60	3,360

Estimated Total Annual Burden Hours: 3,360.

Additional Information: Copies of the proposed collection may be obtained by writing to The Administration for Children and Families, Office of Information Services, 370 L'Enfant Promenade, S.W., Washington, D.C. 20447, Attn: ACF Reports Clearance Officer.

OMB Comment: OMB is required to make a decision concerning the collection of information between 30 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 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, 725 17th Street, N.W., Washington, D.C. 20503, Attn: Ms. Laura Oliven.

Dated: April 13, 1998.

Bob Sargis,

Acting Reports Clearance Officer.

[FR Doc. 98–10256 Filed 4–17–98; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Antiviral 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). At least one portion of the meeting will be closed to the public.

Name of Committee: Antiviral 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 May 4, 1998, 8:30 a.m to 5 p.m.; on May 5, 1998, 8 a.m. to 5 p.m.; and on May 6, 1998, 7:30 a.m. to 5 p.m.

Location: Gaithersburg Hilton, Ballroom, 620 Perry Pkwy., Gaithersburg, 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 May 4, 1998, the committee will discuss new drug application (NDA) 20–903, Intron®A/ Rebetol, (interferon alfa-2b, recombinant/ribavirin, Schering Corp.) for the treatment of chronic hepatitis C. On May 5, 1998, the committee will discuss NDA 50–752, Priftin® (rifapentine, Hoechst Marion Roussel, Inc.) for the treatment of pulmonary tuberculosis. On May 6, 1998, the committee will discuss NDA 20–871, NTZ™ (nitazoxanide, UNIMED Pharmaceuticals, Inc.) for the treatment of diarrhea associated with cryptosporidiosis in acquired immune deficiency syndrome (AIDS) patients.

Procedure: On May 4, 1998, from 8:30 a.m. to 5 p.m.; on May 5, 1998, from 8 a.m. to 10:30 a.m. and from 12 m. to 5 p.m.; and on May 6, 1998, from 9 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 April 27, 1998. Oral presentations from the public will be scheduled between approximately 11 a.m. and 12 m. on May 4 and May 6, 1998. On May 5, 1998, oral presentations from the public will be scheduled between approximately 1 p.m. and 2 p.m. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before April 27, 1998, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

Closed Committee Deliberations: On May 5, 1998, from 10:30 a.m. to 12 m., the meeting will be closed for a presentation of confidential material (5 U.S.C. 552(b)(2) and (b)(5)). On May 6, 1998, from 7:30 a.m. to 9 a.m., the meeting will be closed to permit discussion and review of trade secret and/or confidential information (5 U.S.C. 552(b)(4)). The selected NDA's will be discussed.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: April 14, 1998.

Michael A. Friedman,

Deputy Commissioner for Operations.

[FR Doc. 98–10311 Filed 4–17–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[HCFA–P–11]

Agency Information Collection Activities: Proposed Collection; Comment Request

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding the burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Collection Request: Extension of a currently approved collection; *Title of Information Collection:* Medicare Home Health Quality Assurance Demonstration and Supporting Regulations 42 CFR 484.48; *Form No.:* HCFA—P–11, OMB # 0938–0519; *Use:* Do to the accelerated growth in the home health Care industry, the Health Care Financing Administration (HCFA) has indentified a need to measure the effectivness of home health services by analyzing patient outcomes. The Medicare Home Health Quality Assurance Demonstration will test the feasability of collecting patient outcome data in Medicare-certified Home Health Agencies (HHAs) nationally. *Frequency:* On occasion; *Affected Public:* Not-for-profit institutions, business or other for-profit, and individuals or households; *Number of Respondents:* 35,905; *Total Annual Responses:* 99,825; *Total Annual Hours:* 7,697.

To obtain copies of the supporting statement for the proposed paperwork collections referenced above, E-mail your request, including your address and phone number, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 60 days of this notice directly to the HCFA Paperwork Clearance Officer designated at the following address: HCFA, Office of Information Services, Information Technology Investment Management Group, Division of HCFA Enterprise Standards, Attention: John Rudolph, Room C2–26–17, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Dated: April 9, 1998.

John P. Burke III,

HCFA Reports Clearance Officer, Division of HCFA Enterprise Standards, Health Care Financing Administration.

[FR Doc. 98–10346 Filed 4–17–98; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[HCFA–416, HCFA–855, and HCFA–R–227]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Health Care Financing Administration, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

1. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Annual Early and Periodic Screening, Diagnostic, and Treatment Services (EPSDT) Participation Report and Supporting Regulations in 42 CFR 441.60; *Form No.:* HCFA–416 (OMB# 0938–0354); *Use:* States are required to submit an annual report on the provision of EPSDT services to HCFA pursuant to section 1902(a)(43) of the Social Security Act. These reports provide HCFA with data necessary to assess the effectiveness of State EPSDT programs. It is also helpful in developing trend patterns, national projections, responding to inquiries, and determining a State's results in achieving its participation goal; *Frequency:* Annually; *Affected Public:* State, Local or Tribal Government; *Number of Respondents:* 56; *Total Annual Responses:* 56; *Total Annual Hours:* 1,568.

2. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Medicare and Other Federal Health Care Programs Provider/Supplier Enrollment Application; *Form No.:* HCFA–855 (OMB# 0938–0685); *Use:* This information is needed to enroll providers and suppliers into the Medicare program by identifying them, pricing and paying their claims, and verifying their qualifications and eligibility to participate in Medicare; *Frequency:* Initial Enrollment/Recertification; *Affected Public:* Business or other for-profit, Individuals or Households, Not-for-profit institutions, and Federal Government; *Number of Respondents:* 225,000; *Total Annual Responses:* 225,000; *Total Annual Hours:* 435,000.

3. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Research and Analytic Support for Implementing Peformance Measurement in Medicare Fee for Service; *Form No.:* HCFA–R–227 (OMB# 0938–0718); *Use:* As required by the Balanced Budget Act (BBA), Section 1851(d), the Health Care Financing Administration (HCFA) needs to develop comparable performance measures for Fee For Service (FFS) Medicare. This project will enable HCFA to evaluate the effectiveness and outcomes of FFS services purchased. HCFA may potentially disseminate this information to Medicare beneficiaries so that they may make informed health care choices; *Frequency:* Biennially; *Affected Public:* Individuals or Households, Business or other for-profit, Not-for-profit institutions, Farms, Federal Government, and State, Local or Tribal Government; *Number of Respondents:* 6,670; *Total Annual Responses:* 6,670; *Total Annual Hours:* 3,335.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access HCFA's Web Site address at http://www.hcfa.gov/regs/prdact95.htm, or E-mail your

request, including your address, phone number, OMB number, and HCFA document identifier, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 60 days of this notice directly to the HCFA Paperwork Clearance Officer designated at the following address: HCFA, Office of Information Services, Information Technology Investment Management Group, Division of HCFA Enterprise Standards, Attention: Louis Blank, Room C2–26–17, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Dated: April 10, 1998.

John P. Burke III,

HCFA Reports Clearance Officer, HCFA Office of Information Services, Information Technology Investment Management Group, Division of HCFA Enterprise Standards.

[FR Doc. 98–10385 Filed 4–17–98; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[HCFA–R–221]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, has submitted to the Office of Management and Budget (OMB) the following proposal for the collection of information. Interested persons are invited to send comments regarding the burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Collection Request: New Collection; *Title of Information Collection:* Evaluation of the Oregon Medicaid Reform Demonstration: Phase II Adult Interview, Phase II Child Interview, Survey of Agency Providers; *Form No.:* HCFA–R–221; *Use:* These survey instruments will be used to evaluate the Oregon Medicaid Reform Demonstration. The Phase II Adult and Phase II Child interviews are designed to collect information on health status, access to care and past health insurance status for adults and children participating in Phase II of the Oregon Health Plan (OHP). The survey of Agency providers is designed to collect information on the experience under OHP of agencies that traditionally treat disabled and elderly Medicaid beneficiaries. *Frequency:* One Time ; *Affected Public:* Individuals or households, business or other for-profit, not-for-profit institutions, and State, Local or Tribal Governments; *Number of Respondents:* 4,150; *Total Annual Responses:* 4,150; *Total Annual Hours:* 1,730.

To obtain copies of the supporting statement for the proposed paperwork collections referenced above, E-mail your request, including your address and phone number, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 30 days of this notice directly to the OMB Desk Officer designated at the following address: OMB Human Resources and Housing Branch, Attention: Allison Eydt, New Executive Office Building, Room 10235, Washington, D.C. 20503.

Dated: April 9, 1998.

John P. Burke III,

HCFA Reports Clearance Officer, HCFA, Office of Information Services, Information Technology Investment Management Group, Division of HCFA Enterprise Standards.

[FR Doc. 98–10347 Filed 4–17–98; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[HCFA–316]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, has submitted to the Office of Management and Budget (OMB) the following proposal for the collection of information. Interested persons are invited to send comments regarding the burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Collection Request: Reinstatement, with change, of a previously approved collection for which approval has expired; *Title of Information Collection:* Medicaid, Integrated Quality Control Review Manual instructions and Supporting Regulations 42 CFR 431.800, 42 CFR 431.865; *Form No.:* HCFA–316 OMB #0938–0094; *Use:* The Integrated Quality Control Review requirements are designed to collect quality control (QC) data captured during the course of all QC reviews in Food Stamps (FS) and Medicaid programs, and formerly included data from the Aid to Families With Dependent Children (AFDC). Though States are not required to adopt integrated sampling, States are required to perform QC reviews for each Federal assistance program: FS and Medicaid, the optional integrated worksheet used for record keeping purposes is designed to be flexible for use in fully integrated, partially integrated, or separate QC program reviews. The primary objective of the Quality Control program is to measure, identify, and reduce the level of misspent Medicaid funds as a result of erroneous eligibility determinations. *Frequency:* Monthly; *Affected Public:* State, Local or Tribal Government; *Number of Respondents:* 21; *Total Annual Responses:* 21; *Total Annual Hours:* 1.

To obtain copies of the supporting statement for the proposed paperwork collections referenced above, or to obtain the supporting statement and any related forms, E-mail your request, including your address and phone number, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 30 days of this notice directly to the OMB Desk Officer designated at the following address: OMB Human Resources and Housing Branch, Attention: Allison Eydt, New Executive Office Building, Room 10235, Washington, D.C. 20503.

Dated: April 3, 1998.

John P. Burke III,

HCFA Reports Clearance Officer, HCFA, Office of Information Services, Information Technology Investment Management Group, Division of HCFA Enterprise Standards.

[FR Doc. 98–10348 Filed 4–17–98; 8:45 am]

BILLING CODE 4120–03–U

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[HCFA–R–118]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, has submitted to the Office of Management and Budget (OMB) the following proposal for the collection of information. Interested persons are invited to send comments regarding the burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Collection Request: Reinstatement Without change, of a previously approved collection for which approval has expired; *Title of Information Collection:* Peer Review Organization Contracts; Solicitation Statements of Interest from In-State Organizations, General Notice and Supporting Regulations 42 CFR 462.102, .103, .104; *Form No.:* HCFA–R–118, OMB #0938–0526; *Use:* This notice is a solicitation of sources sought for the procurement of medical review services. This information is required for potential contractors to demonstrate that they meet the statutory requirements as a Peer Review Organization.; *Frequency:* On occasion; *Affected Public:* Business or other for-profit; *Number of Respondents:* 53; *Total Annual Responses:* 53; *Total Annual Hours:* 1.

To obtain copies of the supporting statement for the proposed paperwork collections referenced above, or E-mail your request, including your address and phone number, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 30 days of this notice directly to the OMB Desk Officer designated at the following address: OMB Human Resources and Housing Branch, Attention: Allison Eydt, New Executive Office Building, Room 10235, Washington, D.C. 20503.

Dated: April 9, 1998.

John P. Burke III,

HCFA Reports Clearance Officer, HCFA, Office of Information Services, Information Technology Investment Management Group, Division of HCFA Enterprise Standards.

[FR Doc. 98–10349 Filed 4–17–98; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Fiscal Year (FY) 1998 Funding Opportunities

AGENCY: Substance Abuse and Mental Health Services Administration, HHS.

ACTION: Notice of funding availability.

SUMMARY: The Substance Abuse and Mental Health Services Administration (SAMHSA) Center for Substance Abuse Treatment (CSAT) announces the availability of FY 1998 funds for grants for the following activity. This activity is discussed in more detail under Section 4 of this notice. This notice is not a complete description of the activity; potential applicants *must* obtain a copy of the Guidance for Applicants (GFA) before preparing an application.

Activity	Application deadline	Estimated funds available	Estimated No. of awards	Project period
Targeted Capacity Expansion	6/19/98	$18M	40–50	3 yrs.

Note: SAMHSA also published notices of available funding opportunities for FY 1998 in the **Federal Register** on January 6, 1998, January 20, 1998, February 26, 1998, March 20, 1998, April 8, 1998, and on April 16, 1998.

The actual amount available for awards and their allocation may vary, depending on unanticipated program requirements and the volume and quality of applications. Awards are usually made for grant periods from one to three years in duration. FY 1998 funds for activities discussed in this announcement were appropriated by the Congress under Pub. L. No. 105–78. SAMHSA's policies and procedures for peer review and Advisory Council review of grant and cooperative agreement applications were published in the **Federal Register** (Vol. 58, No. 126) on July 2, 1993.

The Public Health Service (PHS) is committed to achieving the health promotion and disease prevention objectives of Healthy People 2000, a PHS-led national activity for setting priority areas. The SAMHSA Centers' substance abuse and mental health services activities address issues related to Healthy People 2000 objectives of Mental Health and Mental Disorders; Alcohol and Other Drugs; Clinical Preventive Services; HIV Infection; and Surveillance and Data Systems. Potential applicants may obtain a copy of Healthy People 2000 (Full Report: Stock No. 017–001–00474–0) or Summary Report: Stock No. 017–001–00473–1) through the Superintendent of Documents, Government Printing Office, Washington, DC 20402–9325 (Telephone: 202–512–1800).

General Instructions

Applicants must use application form PHS 5161–1 (Rev. 5/96; OMB No. 0937–0189). The application kit contains the GFA (complete programmatic guidance and instructions for preparing and submitting applications), the PHS 5161–1 which includes Standard Form 424 (Face Page), and other documentation and forms. Application kits may be obtained from the organization specified for each activity covered by this notice (see Section 4).

When requesting an application kit, the applicant must specify the particular activity for which detailed information is desired. This is to ensure receipt of all necessary forms and information, including any specific program review and award criteria.

The PHS 5161–1 application form and the full text of each of the activities (i.e., the GFA) described in Section 4 are available electronically via SAMHSA's World Wide Web Home Page (address: http://www.samhsa.gov).

Application Submission

Unless otherwise stated in the GFA, applications must be submitted to: SAMHSA Programs, Center for Scientific Review, National Institutes of Health, Suite 1040, 6701 Rockledge Drive MSC–7710, Bethesda, Maryland 20892–7710*.

(* Applicants who wish to use express mail or courier service should change the zip code to 20817.)

APPLICATION DEADLINES: The deadlines for receipt of applications are listed in the table above. Please note that the deadlines may differ for the individual activities.

Competing applications must be received by the indicated receipt dates to be accepted for review. An application received after the deadline may be acceptable if it carries a legible proof-of-mailing date assigned by the carrier and that date is not later than one week prior to the deadline date. Private metered postmarks are not acceptable as proof of timely mailing.

Applications received after the deadline date and those sent to an address other than the address specified above will be returned to the applicant without review.

FOR FURTHER INFORMATION CONTACT: Requests for activity-specific technical information should be directed to the program contact person identified for each activity covered by this notice (see Section 4).

Requests for information concerning business management issues should be directed to the grants management contact person identified for each activity covered by this notice (see Section 4).

SUPPLEMENTARY INFORMATION: To facilitate the use of this Notice of Funding Availability, information has been organized as outlined in the Table of Contents below. For each activity, the following information is provided:

- Application Deadline
- Purpose
- Priorities
- Eligible Applicants
- Grants/Cooperative Agreements/ Amounts
- Catalog of Federal Domestic Assistance Number
- Contacts
- Application Kits

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1. Program Background and Objectives

SAMHSA's mission within the Nation's health system is to improve the quality and availability of prevention, early intervention, treatment, and rehabilitation services for substance abuse and mental illnesses, including co-occurring disorders, in order to improve health and reduce illness, death, disability, and cost to society.

Reinventing government, with its emphases on redefining the role of Federal agencies and on improving customer service, has provided SAMHSA with a welcome opportunity to examine carefully its programs and activities. As a result of that process, SAMHSA moved assertively to create a renewed and strategic emphasis on using its resources to generate knowledge about ways to improve the prevention and treatment of substance abuse and mental illness and to work with State and local governments as well as providers, families, and consumers to effectively use that knowledge in everyday practice.

SAMHSA's FY 1998 Knowledge Development and Application (KD&A) agenda is the outcome of a process whereby providers, services researchers, consumers, National Advisory Council members and other interested persons participated in special meetings or responded to calls for suggestions and reactions. From this input, each SAMHSA Center developed a ''menu'' of suggested topics. The topics were discussed jointly and an agency agenda of critical topics was agreed to. The selection of topics depended heavily on policy importance and on the existence of adequate research and practitioner experience on which to base studies. While SAMHSA's FY 1998 KD&A programs will sometimes involve the evaluation of some delivery of services, they are services studies and application activities, not merely evaluation, since they are aimed at answering policy-relevant questions and putting that knowledge to use.

SAMHSA differs from other agencies in focusing on needed information at the services delivery level, and in its question-focus. Dissemination and application are integral, major features of the programs. SAMHSA believes that it is important to get the information into the hands of the public, providers, and systems administrators as effectively as possible. Technical assistance, training, preparation of special materials will be used, in addition to normal communications means.

SAMHSA also continues to fund legislatively-mandated services programs for which funds are appropriated.

2. Special Concerns

SAMHSA's legislatively-mandated services programs do provide funds for mental health and/or substance abuse treatment and prevention services. However, SAMHSA's KD&A activities do not provide funds for mental health and/or substance abuse treatment and prevention services except sometimes for costs required by the particular activity's study design. Applicants are required to propose true knowledge application or knowledge development and application projects. Applications seeking funding for services projects under a KD&A activity will be considered nonresponsive.

Applications that are incomplete or nonresponsive to the GFA will be returned to the applicant without further consideration.

3. Criteria for Review and Funding

Consistent with the statutory mandate for SAMHSA to support activities that will improve the provision of treatment, prevention and related services, including the development of national mental health and substance abuse goals and model programs, competing applications requesting funding under the specific project activities in Section 4 will be reviewed for technical merit in accordance with established PHS/ SAMHSA peer review procedures.

3.1 General Review Criteria

As published in the **Federal Register** on July 2, 1993 (Vol. 58, No. 126), SAMHSA's ''Peer Review and Advisory Council Review of Grant and Cooperative Agreement Applications and Contract Proposals,'' peer review groups will take into account, among other factors as may be specified in the application guidance materials, the following general criteria:

- Potential significance of the proposed project;
- Appropriateness of the applicant's proposed objectives to the goals of the specific program;

- Adequacy and appropriateness of the proposed approach and activities;
- Adequacy of available resources, such as facilities and equipment;
- Qualifications and experience of the applicant organization, the project director, and other key personnel; and
- Reasonableness of the proposed budget.

3.2 Funding Criteria for Scored Applications

Applications will be considered for funding on the basis of their overall technical merit as determined through the peer review group and the appropriate National Advisory Council (if applicable) review process.

Other funding criteria will include:

- Availability of funds.

Additional funding criteria specific to the programmatic activity may be included in the application guidance materials.

4. Special FY 1998 SAMHSA Activities

4.1 Grants

4.1.1 Grants to Expand Substance Abuse Treatment Capacity in Targeted Areas of Need (Short Title: Targeted Capacity Expansion, GFA No. TI 98–006)

- Application Deadline: June 19, 1998.
- Purpose: The Substance Abuse and Mental Health Services Administration (SAMHSA), Center for Substance Abuse Treatment (CSAT), announces the availability of funds for grants to address gaps in treatment capacity by supporting rapid and strategic responses to demand for substance abuse (including alcohol and drugs) treatment services. The response to treatment capacity problems may include communities with serious, emerging drug problems as well as communities with innovative solutions to unmet need. The goal of this program is to create or expand a community's or cluster of communities' ability to provide an integrated creative and community-based response to a targeted, well documented substance abuse treatment capacity problem. SAMHSA/CSAT believe that the accomplishment of this goal requires that applications be submitted by the political entities that are responsible for the funding or provision of services in the targeted area. Applicants may either apply to expand an existing treatment program or create a new program. The proposed treatment services should be based on sound, scientifically-based theory or empirical evidence of effectiveness. Further, the services should be designed to significantly impact the identified treatment gap issue within the three year grant period and a plan for continuation of the effort beyond the life of the grant should be presented if such continuation is expected to be necessary. Finally, the proposed services should be consistent with and fit within the overall response to substance abuse problems in the target area.

SAMHSA/CSAT encourages applications from a wide variety of sources including: Local governmental entities such as cities, towns, counties, and; regional governmental entities; and States, Territories, and Indian Tribal Governments. SAMHSA is also interested in applications in which several jurisdictions propose to work together to address an emerging or previously emerged need that cuts across their geographical boundaries. Finally, SAMHSA is interested in applications in which the proposed services are embedded within an integrated, creative and community-based response to substance abuse problems.

- Priorities: None.
- Eligible Applicants: Applications may be submitted by units of State, local (including cities, towns, or counties), or Indian Tribal Governments. Eligibility is being limited to units of government in recognition of the primacy of their responsibility for, and interest in, providing for the needs of their citizens and because the success of the program will depend upon the authority and ability available to units of government to broadly coordinate the variety of other resources necessary to full program success.

Applications covering more than one unit of government at the same or different levels must be submitted by one agency which would be the grantee on behalf of all participating units and be accompanied by letters of endorsement from the heads of the other participating units.

- Grants/Amounts: Approximately $18 million will be available to support awards under this GFA in FY 1998. Awards are expected to range in amount from $100,000 to $750,000 in total (direct plus indirect) costs. It is planned that these funds will be reserved in three pools based on the size of the population in the geographical area to be served (as opposed to the population in need of services). For example, if the State applied on behalf of a rural community, it would be the population of that community, not the State population or the estimated number of persons needing services, that would determine the appropriate funding pool. Indian Tribal Governments will be included in one of the pools without regard to the size of population to be served. Only after applicants with acceptable technical merit scores in the first two pools have been funded will any amount in excess from those two pools be distributed to the third pool. The three pools are:

$3 million is reserved for rural projects serving areas with populations of 30,000 or fewer people and projects proposed by Indian Tribal Governments;

$3 million is reserved for projects serving areas with populations of 30,000 or fewer people whether urban or rural; and

$12 million is reserved for projects serving areas with populations of more than 30,000 (of this amount a minimum of $2 million is reserved for cities with a population of more than 30,000).

- Catalog of Domestic Federal Assistance: 93.230
- Program Contact: For programmatic or technical assistance (not for application kits) contact: Jane Taylor, Ph.D., Director, Division of Practice and Systems Development Center for Substance Abuse Treatment, SAMHSA, Rockwall II, 8th Floor, 5600 Fishers Lane, Rockville, MD 20857, (301) 443–3820.
- For grants management assistance, contact: Ms. Andrea Brandon, Division of Grants Management, OPS, SAMHSA, Rockwall II, Suite 360, 5600 Fishers Lane, Rockville, MD 20857, (301) 443–9667.
- Application Kits are available from: National Clearinghouse for Alcohol and Drug Information, P.O. Box 2345, Rockville, Maryland 20847–2345, 1–800–729–6686.

5. Public Health System Reporting Requirements

The Public Health System Impact Statement (PHSIS) is intended to keep State and local health officials apprised of proposed health services grant and cooperative agreement applications submitted by community-based nongovernmental organizations within their jurisdictions.

Community-based nongovernmental service providers who are not transmitting their applications through the State must submit a PHSIS to the head(s) of the appropriate State and local health agencies in the area(s) to be affected not later than the pertinent receipt date for applications. This PHSIS consists of the following information:

a. A copy of the face page of the application (Standard form 424).

b. A summary of the project (PHSIS), not to exceed one page, which provides:

(1) A description of the population to be served.

(2) A summary of the services to be provided.

(3) A description of the coordination planned with the appropriate State or local health agencies.

State and local governments and Indian Tribal Authority applicants are not subject to the Public Health System Reporting Requirements.

Application guidance materials will specify if a particular FY 1998 activity described above is/is not subject to the Public Health System Reporting Requirements.

6. PHS Non-use of Tobacco Policy Statement

The PHS strongly encourages all grant and contract recipients to provide a smoke-free workplace and promote the non-use of all tobacco products. In addition, Pub. L. 103–227, the Pro-Children Act of 1994, prohibits smoking in certain facilities (or in some cases, any portion of a facility) in which regular or routine education, library, day care, health care, or early childhood development services are provided to children. This is consistent with the PHS mission to protect and advance the physical and mental health of the American people.

7. Executive Order 12372

Applications submitted in response to all FY 1998 activities listed above are subject to the intergovernmental review requirements of Executive Order 12372, as implemented through DHHS regulations at 45 CFR part 100. E.O. 12372 sets up a system for State and local government review of applications for Federal financial assistance. Applicants (other than Federally recognized Indian tribal governments) should contact the State's Single Point of Contact (SPOC) as early as possible to alert them to the prospective application(s) and to receive any necessary instructions on the State's review process. For proposed projects serving more than one State, the applicant is advised to contact the SPOC of each affected State. A current listing of SPOCs is included in the application guidance materials. The SPOC should send any State review process recommendations directly to: Office of Extramural Activities Review, Substance Abuse and Mental Health Services Administration, Parklawn Building, Room 17–89, 5600 Fishers Lane, Rockville, Maryland 20857.

The due date for State review process recommendations is no later than 60 days after the specified deadline date for the receipt of applications. SAMHSA does not guarantee to accommodate or explain SPOC comments that are received after the 60-day cut-off.

Dated: April 14, 1998.

Patricia S. Bransford,

Acting Executive Officer, Substance Abuse and Mental Health Administration.

[FR Doc. 98–10315 Filed 4–17–98; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Endangered and Threatened Wildlife and Plants: Extension of Comment Period for Availability of an Environmental Assessment/Habitat Conservation Plan and Receipt of Application for Incidental Take Permit for the City of Austin for the Operation and Maintenance of Barton Springs Pool and Adjacent Springs

AGENCY: Fish and Wildlife Service, Interior

ACTION: Notice: extension of comment period.

SUMMARY: The U.S. Fish and Wildlife Service (Service) provides notice that the public comment period is extended for a Section 10(a)(1)(B) permit. The City of Austin has applied to the Service for an incidental take permit pursuant to Section 10(a)(1)(B) of the Endangered Species Act (Act). The applicant has been assigned permit number PRT–839031. The requested permit, which is for a period of 15 years, would authorize incidental take of the endangered Barton Springs salamander (*Eurycea sosorum*). The proposed take would occur as a result of the operation and maintenance of Barton Springs Pool and adjacent springs in Austin, Travis County, Texas.

The City of Austin has prepared the Environmental Assessment/Habitat Conservation Plan (EA/HCP) for the incidental take application. Neither a determination of whether jeopardy to the species is likely to occur, nor a Finding of No Significant Impact (FONSI) will be made before April 30, 1998. This notice is provided pursuant to Section 10(c) of the Act and National Environmental Policy Act regulations (40 CFR 1506.6).

DATES: Written comments on the application should be received on or before April 30, 1998.

ADDRESSES: Persons wishing to review the application may obtain a copy by writing to the Regional Director, U.S. Fish and Wildlife Service, P.O. Box 1306, Albuquerque, New Mexico 87103. Persons wishing to review the EA/HCP may obtain a copy by contacting Matthew Lechner, Austin Ecological Services Field Office, 10711 Burnet Road, Suite 200, Austin, Texas 78758 (512–490–0057). Documents will be available for public inspection by written request, by appointment only, during normal business hours (7:30 to 4:30) at the U.S. Fish and Wildlife Service, Austin Ecological Services Office, 10711 Burnet Road, Suite 200, Austin, Texas 78758 (512–490–0057). Written data or comments concerning the application and EA/HCP should be submitted to the Field Supervisor, Ecological Services Field Office, Austin, Texas (see address above). Please refer to permit number PRT–839031 when submitting comments.

FOR FURTHER INFORMATION CONTACT: Matthew Lechner at the above Austin Field Office.

SUPPLEMENTARY INFORMATION: Section 9 of the Act prohibits the ''taking'' of threatened and endangered species such as the Barton Springs salamander. However, the Service, under limited circumstances, may issue permits to take threatened or endangered wildlife species when such taking is incidental to, and not the purpose of, otherwise lawful activities. Regulations governing permits for endangered species are at 50 CFR 17.22.

Applicant: The City of Austin plans to operate Barton Springs pool and the adjacent springs in Austin, Travis County, Texas. This action may cause the incidental take of less than 20 salamanders per year for the 15-year term of the permit. The applicant proposed to minimize and mitigate for the incidental take of the Barton Springs salamander by placing 10 percent of the total revenues generated at Barton Springs Pool into a conservation fund. The fund would be used for enhancing habitat and for ecological and biological research on the included habitat conservation plan. In addition, mitigation measures are included in the Habitat Conservation Plan.

Nancy M. Kaufman,

Regional Director, Fish and Wildlife Service.

[FR Doc. 98–10065 Filed 4–17–98; 8:45 am]

BILLING CODE 4310–01–P

DEPARTMENT OF THE INTERIOR

Geological Survey

Technology Transfer Act of 1986

AGENCY: U.S. Geological Survey, Interior.

ACTION: Notice of proposed Cooperative Research and Development Agreement (CRADA) negotiations.

SUMMARY: The United States Geological Survey (USGS) is planning to enter into a Cooperative Research and Development Agreement (CRADA) with Laser-Scan, Inc., Sterling, Virginia. The purpose of the CRADA is to jointly research and develop geospatial data transport and update capabilities in a distributed database environment. The primary result of this joint research will be the development and demonstration of technology that enables cooperating organizations to build, share, and maintain geospatial framework feature data in a distributed update environment. Any other organization interested in pursuing the possibility of a CRADA for similar kinds of activities should contact the USGS.

ADDRESSES: Inquiries may be addressed to the Acting Chief of Research, U.S. Geological Survey, National Mapping Division, 500 National Center, 12201 Sunrise Valley Drive, Reston, Virginia 20192; Telephone (703) 648–4643, facsimile (703) 648–4706; Internet ''ebrunson@usgs.gov''.

FOR FURTHER INFORMATION CONTACT: Ernest B. Brunson, address above.

SUPPLEMENTARY INFORMATION: This notice is to meet the USGS requirement stipulated in the Survey Manual.

Dated: March 31, 1998.

Kathryn R. Clement,

Associate Chief, National Mapping Division.

[FR Doc. 98–10345 Filed 4–17–98; 8:45 am]

BILLING CODE 4310–Y7–M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Indian Gaming

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of Approved Amendment to Tribal-State Compact.

SUMMARY: Pursuant to Section 11 of the Indian Gaming Regulatory Act of 1988, Pub. L. 100–497, 25 U.S.C. 2710, the Secretary of the Interior shall publish, in the **Federal Register**, notice of approved amendments to Tribal-State Compacts for the purpose of engaging in Class III (casino) gaming on Indian reservations. The Assistant Secretary—Indian Affairs, Department of the Interior, through his delegated authority, has approved the Amendments to the Lac Courte Oreilles Band of Lake Superior Chippewa Indians and the State of Wisconsin Gaming Compact of 1991, which was executed on February 13, 1998.

DATES: This action is effective April 20, 1998.

FOR FURTHER INFORMATION CONTACT: Nancy J. Pierskalla, Acting Director, Indian Gaming Management Staff, Bureau of Indian Affairs, Washington, D.C. 20240, (202) 219–4068.

Dated: April 9, 1998.

Kevin Gover,

Assistant Secretary—Indian Affairs.

[FR Doc. 98–10261 Filed 4–17–98; 8:45 am]

BILLING CODE 4310–02–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Indian Gaming

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of Approved Amendment to Tribal-State Compact.

SUMMARY: Pursuant to Section 11 of the Indian Gaming Regulatory Act of 1988, Pub. L. 100–497, 25 U.S.C. 2710, the Secretary of the Interior shall publish, in the **Federal Register**, notice of approved amendments to Tribal-State Compacts for the purpose of engaging in Class III (casino) gaming on Indian reservations. The Assistant Secretary—Indian Affairs, Department of the Interior, through his delegated authority, has approved the Amendments to the Sokaogon Chippewa Community and the State of Wisconsin Gaming Compact of 1991, which was executed on February 20,1998.

DATES: This action is effective April 20, 1998.

FOR FURTHER INFORMATION CONTACT: Nancy J. Pierskalla, Acting Director, Indian Gaming Management Staff, Bureau of Indian Affairs, Washington, D.C. 20240, (202) 219–4068.

Dated: April 9, 1998.

Kevin Gover,

Assistant Secretary—Indian Affairs.

[FR Doc. 98–10260 Filed 4–17–98; 8:45 am]

BILLING CODE 4310–02–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA–018–1220–00]

Recreation Management Restrictions, etc.: California, South Yuba River, Hoyt's Crossing; Supplementary Rules

AGENCY: Bureau of Land Management, Interior.

ACTION: Proposed supplementary rules.

SUMMARY: The Bureau of Land Management (BLM) proposes to adopt supplementary rules for the management of recreational uses on public lands adjacent to the South Yuba River around Hoyt's Crossing. This action is necessary to limit adverse impacts to public lands while long-term planning for the South Yuba River is underway. These supplementary rules will protect the resources and the recreational experience until planning is completed.

DATES: Send your comments to reach BLM on or before June 4, 1998. BLM will not necessarily consider any comments received after the above date during its decision on the proposed supplementary rule.

ADDRESSES: You may mail comments to Deane Swickard, Field Manager, Folsom Resource Area, Bureau of Land Management, 63 Natoma Street, Folsom, CA 95630. For information about filing comments electronically, see ''Electronic access and filing address'' under the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: Don Sasseville, (916) 985–4474. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Station at 1–800–877–8339 between 8 a.m. and 4 p.m. Eastern time, Monday through Friday, excluding Federal holidays.

SUPPLEMENTARY INFORMATION:

I. Public Comment Procedures

Electronic Access and Filing Address

You may submit comments via the Internet to: dswickar@ca.blm.gov. Please also include your name and return address in your Internet message.

Written Comments

Written comments on the proposed supplementary rules should be specific, should be confined to issues pertinent to the proposed rule, and should explain the reason for any recommended change. Where possible, comments should reference the specific section or paragraph of the proposal which the commeter is addressing. BLM may not necessarily consider or include in the Administrative Record for the final rule comments which BLM receives after the close of the comment period (See **DATES**) or comments delivered to an address other than those listed above (See **ADDRESSES**).

Comments, including names, street addresses, and other contact information of respondents, will be

available for public review at this address during regular business hours (7:30 AM to 4 PM), Monday through Friday, except Federal holidays. Individual respondents may request confidentiality. If you wish to request BLM consider withholding your name, street address, and other contact information (such as: Internet address, FAX or phone number) from public review or from disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your comment. BLM will honor requests for confidentiality on a case-by-case basis to the extent allowed by law. BLM will make available for public inspection in their entirety all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses.

II. Proposed Supplementary Rules

The South Yuba River receives a high number of visitors and users, especially in the summer period. The area available for camping and picnicking is limited to the terrain. The concentration of visitors to a small area of public land is causing unacceptable impacts to the resources and degrading the recreation experience. The Bureau of Land Management and the California State Parks are currently working on long-term planning for the South Yuba River. These supplementary rules are necessary to protect the resource and the recreational experience until the planning is finalized. After completing the planning efforts, these supplementary rules may be continued, discontinued, or amended. BLM's authority for issuing supplementary rules is contained in 43 CFR 8365.1–6. BLM proposes to adopt the following supplementary rules which would be applicable to all public lands within sections 28 and 34, Township 17 North, Range 8 East of the Mt. Diablo Meridian:

1. No person shall camp overnight. The term *camp overnight* is defined as the use, construction, or taking possession of public lands using tents, shacks, lean-tos, tarps, vehicles, huts, blankets, or sleeping bags.

2. No person shall build, attend, maintain, or use a campfire. The term ''campfire'' is defined as a controlled fire occurring out of doors, used for cooking, branding, personal warmth, lighting, ceremonial, or esthetic purposes.

3. No person shall possess or consume alcoholic beverages. The term ''alcoholic beverages'' is defined as beer, wine, distilled spirits, or any other beverage defined as such by California law.

4. No person shall possess any bottle or container made of glass.

5. Any person who fails to comply with these supplementary rules may be subject to a fine of up to $100,000 and/or imprisoned not to exceed 12 months. These penalties are specified by 43 U.S.C. 303 and 18 U.S.C. 3623. Federal, State, and local law enforcement officers and emergency service personnel, while performing official duties, are exempt from these supplementary rules.

Dated: April 9, 1998.

Deane Swickard,

Field Manager.

[FR Doc. 98–10267 Filed 4–17–98; 8:45 am]

BILLING CODE 4310–40–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ES–960–1420–00; ES–49620, Group 100, Michigan]

Notice of Filing of Plat of Survey; Michigan

The plat of the dependent resurvey, survey of accretions, and the survey of lots 6, 7, and 8, in section 32, Township 51 North, Range 5 West, Michigan Meridian, Michigan, will be officially filed in Eastern States, Springfield, Virginia at 7:30 a.m., on May 26, 1998.

The survey was requested by the U.S. Fish and Wildlife Service.

All inquiries or protests concerning the technical aspects of the survey must be sent to the Chief Cadastral Surveyor, Eastern States, Bureau of Land Management, 7450 Boston Boulevard, Springfield, Virginia 22153, prior to 7:30 a.m., May 26, 1998.

Copies will be furnished upon request and prepayment of the appropriate fee.

Dated: April 9, 1998.

Stephen G. Kopach,

Chief Cadastral Surveyor.

[FR Doc. 98–10350 Filed 4–17–98; 8:45 am]

BILLING CODE 4310–GJ–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ES–960–1420–00; ES–045002, Group 28, Missouri]

Notice of Filing of Plat of Dependent Resurvey and Subdivision of Sections 7 and 18, Stay Lifted

On Thursday, April 2, 1992, there was published in the **Federal Register**, Volume 57, Number 64, on page 11334, a notice entitled, ''Filing of Plat of Dependent Resurvey and Subdivision of Sections 7 and 18, Stayed.'' Said notice referenced the stay of the plat of the dependent resurvey of a portion of the subdivisional lines, and the survey of the subdivision of sections 7 and 18; certain metes-and-bounds surveys, and the survey of road easements necessary to delineate the Wappapello Lake Acquisition Boundary in Township 28 North, Range 6 East, Fifth Principal Meridian, Missouri, accepted on February 3, 1992.

The State of Missouri's protest of the dependent resurvey, Group 28, Missouri was dismissed by the Interior Board of Land Appeals in a decision dated January 22, 1998. The plat of survey accepted February 3, 1992, was officially filed in Eastern States, Springfield, Virginia, at 7:30 a.m., on April 9, 1998.

Copies of the plat will be made available upon request and prepayment of the reproduction fee of $2.75 per copy.

Dated: April 9, 1998.

Stephen G. Kopach,

Chief Cadastral Surveyor.

[FR Doc. 98–10351 Filed 4–17–98; 8:45 am]

BILLING CODE 4310–GJ–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–942–08–1420–00]

Filing of Plats of Survey; Nevada

AGENCY: Bureau of Land Management.

ACTION: Notice.

SUMMARY: The purpose of this notice is to inform the public and interested State and local government officials of the filing of Plats of Survey in Nevada.

EFFECTIVE DATES: Filing is effective at 10:00 a.m. on the dates indicated below.

FOR FURTHER INFORMATION CONTACT: Robert H. Thompson, Acting Chief, Cadastral Survey, Bureau of Land Management (BLM), Nevada State Office, 1340 Financial Blvd., Reno, P.O. Box 12000, Reno, Nevada 89520–0006; 702–861–6541.

SUPPLEMENTARY INFORMATION:

1. The Plat of Survey of the following described lands was officially filed at the Nevada State Office, Reno, Nevada on January 23, 1998:

The plat, representing the dependent resurvey of a portion of the Fifth Standard Parallel South on the south boundary and a portion of the subdivisional lines, and the subdivision of section 33, and a metes-and-bounds

survey in section 33, Township 20 South, Range 54 East, of the Mount Diablo Meridian, in the State of Nevada, under Group No. 771, was accepted January 21, 1998.

This survey was executed to meet certain administrative needs of the Bureau of Land Management.

2. The Plat of Survey of the following described lands was officially filed at the Nevada State Office, Reno, Nevada on January 30, 1998:

The plat, representing the dependent resurvey of a portion of the west boundary and a portion of the subdivisional lines, and the subdivision of section 20, and a metes-and-bounds survey in sections 19 and 20, Township 23 South, Range 62 East, of the Mount Diablo Meridian, in the State of Nevada, under Group No. 770, was accepted January 28, 1998.

This survey was executed to meet certain administrative needs of the Bureau of Land Management.

3. The Plat of Survey of the following described lands was officially filed at the Nevada State Office, Reno, Nevada on March 5, 1998:

The plat, in four (4) sheets, representing the dependent resurvey of a portion of the west boundary (Reese River Guide Meridian) of Township 12 North, Range 43 East; and the dependent resurvey of portions of the south and north boundaries and subdivisional lines, and the independent resurvey of portions of the north boundary and subdivisional lines, and the metes-and-bounds survey of Tracts 37 and 38, and the subdivision of certain sections, Township 12 North, Range 42 East, of the Mount Diablo Meridian, in the State of Nevada, under Group No. 764, was accepted March 3, 1998.

This survey was executed to meet certain administrative needs of the Bureau of Land Management, U.S. Forest Service and the Bureau of Indian Affairs.

4. The above-listed surveys are now the basic records for describing the lands for all authorized purposes. These surveys have been placed in the open files in the BLM Nevada State Office and are available to the public as a matter of information. Copies of the surveys and related field notes may be furnished to the public upon payment of the appropriate fees.

Dated: March 31, 1998.

Robert H. Thompson,

Acting Chief Cadastral Surveyor, Nevada.

[FR Doc. 98–10269 Filed 4–17–98; 8:45 am]

BILLING CODE 4310–HC–P

DEPARTMENT OF THE INTERIOR

National Park Service

National Capital Area Parks East

Mary McLeod Bethune Council House National Historic Site Advisory Commission; Public Meeting

Notice is hereby given in accordance with the Federal Advisory Committee Act, that a meeting of the Federal Advisory Commission for the Mary McLeod Bethune Council House National Historic Site will be held on April 30, 1998, from 5 p.m. to 7 p.m., at the Newberry Library, located at 6 West Walton Street, Chicago, IL 60610.

The Commission was authorized on December 11, 1991, by Pub. L. 102–211, for the purpose of advising the Secretary of the Interior in the development of a General Management Plan for the Mary McLeod Bethune Council House National Historic Site.

The members of the Commission are as follows: Dr. Dorothy I. Height; Ms. Barbara Van Blake; Ms. Brenda Girton-Mitchell; Dr. Savanna C. Jones; Dr. Bettye J. Gardner; Dr. Bettye Collier-Thomas; Mr. Eugene Morris; Dr. Rosalyn Terborg-Penn; Mrs. Bertha S. Waters; Dr. Frederick Stielow; Dr. Sheila Flemming; Dr. Ramona Edelin; Mrs. Romaine B. Thomas; Ms. Brandi L. Creighton; and Dr. Janette Hoston Harris.

The purpose of this meeting will be to continue planning and developing a general management plan for the Mary McLeod Bethune Council House National Historic Site. This meeting will be open to the public. Any person may file with the Commission a written statement concerning the matters to be discussed. Persons who wish further information concerning this meeting or wish to file a written statement or testify at the meeting may contact the Federal Liaison Officer for the Commission, at (202) 673–2402. Minutes of this meeting will be available for public inspection 4 weeks after the meeting at the Mary McLeod Bethune Council House National Historic Site, located at 1318 Vermont Avenue, N.W., Washington, D.C. 20005.

Dated: April 13, 1998.

John Hale,

Acting Superintendent, National Capital Parks East.

[FR Doc. 98–10073 Filed 4–17–98; 8:45 am]

BILLING CODE 4310–70–M

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion for Native American Human Remains and Associated Funerary Objects from Minnesota in the Control of the St. Paul District, U.S. Army Corps of Engineers, St. Paul, MN

AGENCY: National Park Service

ACTION: Notice

Notice is hereby given in accordance with provisions of the Native American Graves Protection and Repatriation Act (NAGPRA), 43 CFR 10.9, of the completion of an inventory of human remains and associated funerary objects in the control of the St. Paul District, U.S. Army Corps of Engineers, St. Paul, MN.

A detailed assessment of the human remains was made by U.S. Army Corps of Engineers and Hamline University Osteology Laboratory professional staff in consultation with representatives of the Sisseton-Wahpeton Sioux Tribe of the Lake Traverse Reservation, the Upper Sioux Indian Community of the Upper Sioux Reservation, the Crow Creek Sioux Tribe of the Crow Creek Reservation, Lower Sioux Mdewakanton Community, Shakopee Mdewakanton Sioux community, Prairie Island Community, Flandreau Santee Sioux Tribe, and Santee Sioux Tribe of the Santee Reservation of Nebraska.

In 1969, human remains representing a minimum of 35 individuals were recovered from the Gull Lake dam site (12 CA37) near Brainerd, MN during legally authorized archeological excavations by the University of Minnesota and the Minnesota Historical Society prior to improvements at the Gull Lake dam. No known individuals were identified. The 1,060 associated funerary objects include ceramic vessels, ceramic sherds, pieces of lithic debris, stone tools and tool fragments, two wood charcoal samples, and fragments of canine, beaver, bear, avian, and moose bone.

Based on continuities of material culture in ceramic styles and construction, archeological evidence indicates long-term occupation of this area by the same cultural group, from the archeologically-defined Brainerd to Kathio-Clam River-Blackduck to Psinomani. The Psinomani, present during the Late Woodland and early Contact periods, are generally regarded as the ancestors of the Dakota. Historic documents indicate that Eastern Dakota bands (Mdewakanton, Wahpekute, Sisseton, and Wahpeton), and related

groups (Teton, Yankton, and Yanktonai), occupied the headwaters area of the Mississippi into the contact period. Archeological evidence, Dakota oral tradition, and the continuities of material culture, together with the well-established and historically documented presence of these Eastern Dakota bands, particularly the Mdewakanton and Wahpeton, in the Gull Lake area during the early contact period indicates the Eastern Dakota are affiliated with the burials in this particular mound group.

Based on the above mentioned information, officials of the U.S. Army Corps of Engineers, St. Paul District have determined that, pursuant to 43 CFR 10.2 (d)(1), the human remains listed above represent the physical remains of a minimum of 35 individuals of Native American ancestry. Officials of the U.S. Army Corps of Engineers, St. Paul District have also determined that, pursuant to 43 CFR 10.2 (d)(2), the 1,060 objects listed above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony. Lastly, officials of the U.S. Army Corps of Engineers, St. Paul District have determined that, pursuant to 43 CFR 10.2 (e), there is a relationship of shared group identity which can be reasonably traced between these Native American human remains and associated funerary objects and the Sisseton-Wahpeton Sioux Tribe of the Lake Traverse Reservation, the Upper Sioux Indian Community of the Upper Sioux Reservation, the Crow Creek Sioux Tribe of the Crow Creek Reservation, Lower Sioux Mdewakanton Community, Shakopee Mdewakanton Sioux community, Prairie Island Community, Flandreau Santee Sioux Tribe, and Santee Sioux Tribe of the Santee Reservation of Nebraska.

This notice has been sent to officials of the Sisseton-Wahpeton Sioux Tribe of the Lake Traverse Reservation, the Upper Sioux Indian Community of the Upper Sioux Reservation, the Crow Creek Sioux Tribe of the Crow Creek Reservation, Lower Sioux Mdewakanton Community, Shakopee Mdewakanton Sioux community, Prairie Island Community, Flandreau Santee Sioux Tribe, and Santee Sioux Tribe of the Santee Reservation of Nebraska. Representatives of any other Indian tribe that believes itself to be culturally affiliated with these human remains and associated funerary objects should contact Ms. Sissel Johannessen, Environmental Resources Section, St. Paul District, Corps of Engineers, 190-5th Street East, St. Paul, MN 55101; telephone: (612) 290–5263 before May 20, 1998. Repatriation of the human remains and associated funerary objects to the Sisseton-Wahpeton Sioux Tribe of the Lake Traverse Reservation, the Upper Sioux Indian Community of the Upper Sioux Reservation, the Crow Creek Sioux Tribe of the Crow Creek Reservation, Lower Sioux Mdewakanton Community, Shakopee Mdewakanton Sioux community, Prairie Island Community, Flandreau Santee Sioux Tribe, and Santee Sioux Tribe of the Santee Reservation of Nebraska may begin after that date if no additional claimants come forward.

Dated: April 14, 1998.

Francis P. McManamon,

Departmental Consulting Archeologist, Manager, Archeology and Ethnography Program.

[FR Doc. 98–10355 Filed 4–17–98; 8:45 am]

BILLING CODE 4310–70–F

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion for Native American Human Remains and Associated Funerary Objects in the Possession of the Minnesota Indian Affairs Council, Bemidji, MN

AGENCY: National Park Service

ACTION: Notice

Notice is hereby given in accordance with provisions of the Native American Graves Protection and Repatriation Act (NAGPRA), 43 CFR 10.9, of the completion of an inventory of human remains and associated funerary objects in the possession of the Minnesota Indain Affairs Council, Bemidji, MN.

A detailed assessment of the human remains was made by Hamline University professional staff in consultation with representatives of the Flandreau Santee Sioux Tribe of South Dakota, Santee Sioux Tribe of Nebraska, Sisseton-Wahpeton Sioux Tribe of South Dakota, Lower Sioux Indian Community of Minnesota, Spirit Lake Sioux Tribe of North Dakota, Prairie Island Mdewakanton Sioux Community of Minnesota, Yankton Sioux Tribe of South Dakota, Shakopee Dakota Community of Minnesota, and the Upper Sioux Indian Community of the Upper Sioux Reservation.

In 1938, human remains representing one individual were removed from a Spirit Lake Sioux cemetery overlooking the river near Tokio, ND by unknown person(s) and ''dropped off'' at the University of Minnesota. No known individual was identified. The one associated funerary object is a celluloid pin.

Based on the cemetary location and use, these human remains have been identified as Native American. Based on the associated funerary object, these human remains are also estimated to date from the late nineteenth century. This cemetery is known to have been exclusively used by the Spirit Lake Sioux Tribe during this time.

In 1946, human remains representing four individuals were recovered from the Saienga Mound, Chippewa County, MN during excavations conducted by L.A. Wilford of the University of Minnesota. No known individuals were identified. The eight associated funerary objects include a catlinite elbow pipe, iron nails, gunflints, a striking steel, a coiled spring, a ring, a broken knife, and a ''washer'' ornament.

Based on the associated funerary objects, these individuals have been identified as Native American. These burial are from the post contact period, and represent intrusive burials into a precontact mound. Based on the trade goods present and manner of interment, these individuals have been identified as Sisseton-Wahpeton.

In 1963, human remains representing one individual were recovered from the Kemnitz site, Renville County, MN during excavations conducted by Anderson and Norquist of the University of Minnesota. No known individual was identified. The ten associated funerary objects include metal earrings, a coffin nail, a bone comb, glass beads, human hair, a feather, iron scissors, fabric, fabric with feathers, and coffin wood fragments.

Based on the associated funerary objects, these individuals have been identified as Native American. The location, age of the associated funerary objects, and manner of interment of these individuals indicate affiliation with the Sisseton-Wahpeton Sioux Tribe.

In 1940, human remains representing six individuals were recovered from the Huber Mound site, Scott County, MN during excavations conducted by L.A. Wilford of the University of Minnesota. No known individuals were identified. The one associated funerary object is a scraper.

Based on material culture, the Huber Mound site has been identified at a Late Woodland—Kathio phase (900-1300 A.D.) occupation. Based on continuities of material culture in ceramic styles and construction, archeological evidence indicates long-term occupation of this area by the same cultural group, from the archeologically-defined Brainerd to Kathio-Clam River-Blackduck to Psinomani. The Psinomani, present during the Late Woodland and early

Contact periods, are generally regarded as the ancestors of the Dakota. Manner of interment of these individuals are consistent with known ancestral Dakota practice.

In 1950, human remains representing 28 individuals were recovered from the Brown's Mounds (also known as Eck Mounds), Hennepin County, MN during excavations conducted by L.A. Wilford of the University of Minnesota. No known individuals were identified. The seven associated funerary objects include a potsherd, three canine teeth, a biface/knife face, a broken end scraper, and a snail shell bead.

Based on material culture, the Brown's Mounds site has been identified at a Late Woodland-Kathio phase (900-1300 A.D.) occupation. Based on continuities of material culture in ceramic styles and construction, archeological evidence indicates long-term occupation of this area by the same cultural group, from the archeologically-defined Brainerd to Kathio-Clam River-Blackduck to Psinomani. The Psinomani, present during the Late Woodland and early Contact periods, are generally regarded as the ancestors of the Dakota. Manner of interment of these individuals are consistent with known ancestral Dakota practice.

In 1938, human remains representing 19 individuals were recovered from the Fingerson Mound site, Pope County, MN during excavations conducted by L.A. Wilford of the University of Minnesota. No known individuals were identified. The one associated funerary object is a headless buffalo calf skeleton.

Based on material culture, the Fingerson Mound site has been identified at a Late Woodland-Kathio phase (900-1300 A.D.) occupation. Based on continuities of material culture in ceramic styles and construction, archeological evidence indicates long-term occupation of this area by the same cultural group, from the archeologically-defined Brainerd to Kathio-Clam River-Blackduck to Psinomani. The Psinomani, present during the Late Woodland and early Contact periods, are generally regarded as the ancestors of the Dakota. Manner of interment of these individuals are consistent with known ancestral Dakota practice.

In 1964, human remains representing 54 individuals were recovered formt he Steele Mounds (Shakopee Mounds), Scott County, MN during excavations conducted by Elden Johnson of the University of Minnesota. No known individuals were identified. The 54 associated funerary objects include bison teeth, shell, a horse bit, a ring with stone, tin strip and tinklers, coffin nails, a bell, two pipestone heads, a knife,earrings, a crucifix, brooches, cloth, hair, a shroud, glass beads, shell bead, hawk bells with fabric fragments, spoons, a lock, bracelets, a disk, a pewter medallion, deer tooth, porcelin fragments, , metal point, projectile points, piece of pipe tube, Germain silver breast plate, mound birchbark, brass and copper disk fragments, crockery, nails, iron rings, brass stud, turtle shell, worked bones, metal armband fragments, buckle, metal fragments, gunflints, potsherd, end scrapers, utilized flake, rounded stone, hammerstone, side scraper, 17 bags of charcoal wood, and bark, burned birchbark with sewing holes, burned needle/awl, charred wood and burned bone fragments, woven fabric, shroud fabric, board fragments.

Based on the types of associated funerary objects and manner of interments, these human remains have been determined to be Native American. The apparent age of the associated funerary objects place the date of burial to the late 18th and early 19th century. The apparent age of the burials, associated funerary objects, manner of interment, and location of the burial indicate affiliation with the Mdewakanton Dakota.

In 1938, human remains representing ten individuals were recovered from the Bartke Mound Group, Pope County, MN during excavations conducted by L.A. Wilford of the University of Minnesota. No known individuals were identified. No associated funerary objects are present.

Based on material culture, the Bartke Mound Group has been identified at a Late Woodland-Kathio phase (900-1300 A.D.) occupation. Based on continuities of material culture in ceramic styles and construction, archeological evidence indicates long-term occupation of this area by the same cultural group, from the archeologically-defined Brainerd to Kathio-Clam River-Blackduck to Psinomani. The Psinomani, present during the Late Woodland and early Contact periods, are generally regarded as the ancestors of the Dakota. Manner of interment of these individuals are consistent with known ancestral Dakota practice.

In 1951, human remains representing 23 individuals were recovered from the McKee site, Washington County, MN during excavations conducted by L.A. Wilford of the University of Minnesota. No known individuals were identified. No associated funerary objects are present.

Based on material culture, the McKee site has been identified at a Woodland-Mille Lacs focus (900-1300 A.D.) occupation. Based on continuities of material culture in ceramic styles and construction, archeological evidence indicates long-term occupation of this area by the same cultural group, from the archeologically-defined Brainerd to Kathio-Clam River-Blackduck to Psinomani. The Psinomani, present during the Late Woodland and early Contact periods, are generally regarded as the ancestors of the Dakota. Manner of interment of these individuals are consistent with known ancestral Dakota practice.

In 1960, human remains representing 37 individuals were recovered from the Crookston site, Polk County, MN during excavations conducted by Elden Johnson of the University of Minnesota. No known individuals were identified. The three associated funerary objects include aunal remains, a stone flake, a worked shell, and burial soil matrix samples.

Based on material culture, the Crookston site has been identified at a Late Woodland-Kathio phase (900-1300 A.D.) occupation. Based on continuities of material culture in ceramic styles and construction, archeological evidence indicates long-term occupation of this area by the same cultural group, from the archeologically-defined Brainerd to Kathio-Clam River-Blackduck to Psinomani. The Psinomani, present during the Late Woodland and early Contact periods, are generally regarded as the ancestors of the Dakota. Manner of interment of these individuals are consistent with known ancestral Dakota practice.

In 1950, human remains representing one individual were recovered from an unknown location in Crow Wing County, MN by three fishermen (unnamed) and donated to the University of Minnesota. No known individual was identified. The two associated funerary objects include an Ogechie vessel and a bone flesher.

Based on the associated funerary objects, this individual has been determined to be Native American dating to approximately 1000-1750 A.D. Based on continuties of Ogechie ceramic style with ceramics at documented Mdewankanton sites in the Mille Lacs area, this individual has been determined to be affiliated with the Mdewankanton Dakota.

In 1969, human remains representing one individual were recovered from the Cooper site, Mille Lacs County, MN during excavations conducted by Jan Streiff of the University of Minnesota. No known individual was identified. The two associated funerary objects are two mortuary ceramic vessels.

In 1967, human remains representing ten individuals were recovered from the Cooper site by Gordon Lothson and donated to the University of Minnesota. No known individuals were identified. The 102 associated funerary objects include mortuary vessels, projectile points, a harpoon point, iron fragments, an arrowshaft wrench, knives, glass beads, copper jingles, a bird bone whistle, arrowshaft abraders, knife sharpener, bone beads, birch bark, lithic core, hammerstone, knife handle fragments, two beaver incisors, metal fragments, bone tubes, fire-cracked rock, a brass ring, gypsum piece, scrapers, brass jingles, sherds, flake, wood fragments, shell spoons, flotation materials from burial matrix, a green stone pendent, a small catlinite elbow pipe, orchre, bone needles, burial matrix, brass/copper bracelet, fishbone, bone flakes, and shells.

In 1965, human remains representing 11 individuals were recovered from the Cooper site by L.R. Cooper and donated to the University of Minnesota. No known individuals were identified. The two associated funerary objects are mortuary vessels.

At an unknown date, human remains representing four individuals were recovered from the Cooper site under unknown circumstances and accessioned into the University of Minnesota's collections with the accession number UM0636. No known individuals were identified. The two associated funerary objects are a catlinite disc pipe and a mortuary vessel.

At an unknown date, human remains representing six individuals were recovered from the Cooper site under unknown circumstances and accessioned in to the University of Minnesota's collections with the accession number UM0664. No known individuals were identified. The four associated funerary objects are morturary vessels.

Based on the associated funerary objects and manner of interment, these individuals have been identified as Native American. Based on material culture, manner of interment, and village subsistence practices, the Cooper site has been identified as a Mdewankanton Dakota occupation dating after 1670 A.D.

In 1934, human remains representing three individuals were recovered from the Davis and Findlay Mounds, Hennepin County, MN during excavations conducted by G.F. Ekhom of the University of Minnesota. No known individuals were identified. The five associated funerary objects include a metal scraper, a metal bracelet, coffin wood, a clam shell, and iron nails.

Based on material culture, the Davis and Findlay Mounds, described as being located ''on the south end of Third Avenue, Minneapolis'', have been identified as Mulicomponent Woodland with intrusive historic period burials. Based on the associated funerary objects and manner of interment, these individuals have been identified as Native American from the historic period. During the historic period, the area of the Davis and Findlay mounds were heavily used by the Mdewankanton Dakota.

Prior to 1905, human remains representing one individual were recovered from a mound on Phelp's Island by Alfred J. Hill, who donated his collections to the University of Minnesota in 1905. No known indivdiual was identified. No associated funerary objects are present.

Based on material culture, the Phelp's Island site has been identified at a Late Woodland-Kathio phase (900-1300 A.D.) occupation. Based on continuities of material culture in ceramic styles and construction, archeological evidence indicates long-term occupation of this area by the same cultural group, from the archeologically-defined Brainerd to Kathio-Clam River-Blackduck to Psinomani. The Psinomani, present during the Late Woodland and early Contact periods, are generally regarded as the ancestors of the Dakota. Manner of interment of these individuals are consistent with known ancestral Dakota practice.

In 1934, human remains representing 18 individuals were recovered from the Round Mound, Traverse County, MN during excavations conducted by A.E. Jenks of the University of Minnesota. No known individuals were identified. The nine associated funerary objects include bone armbands, a bone awl, a platform pipe, a quartzite knife, an atlatl weight, a soil matrix cor, and ochre.

Based on material culture, the Round Mound site has been identified at a Late Woodland-Kathio phase (900-1300 A.D.) occupation. Based on continuities of material culture in ceramic styles and construction, archeological evidence indicates long-term occupation of this area by the same cultural group, from the archeologically-defined Brainerd to Kathio-Clam River-Blackduck to Psinomani. The Psinomani, present during the Late Woodland and early Contact periods, are generally regarded as the ancestors of the Dakota. Manner of interment of these individuals are consistent with known ancestral Dakota practice.

Based on the above mentioned information, officials of the Minnesota Indian Affairs Council have determined that, pursuant to 43 CFR 10.2 (d)(1), the human remains listed above represent the physical remains of 238 individuals of Native American ancestry. Officials of the Minnesota Indian Affairs Council have also determined that, pursuant to 43 CFR 10.2 (d)(2), the 213 objects listed above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony. Lastly, officials of the Minnesota Indian Affairs Council have determined that, pursuant to 43 CFR 10.2 (e), there is a relationship of shared group identity which can be reasonably traced between these Native American human remains and associated funerary objects and the Flandreau Santee Sioux Tribe of South Dakota, Santee Sioux Tribe of Nebraska, Sisseton-Wahpeton Sioux Tribe of South Dakota, Lower Sioux Indian Community of Minnesota, Spirit Lake Sioux Tribe of North Dakota, Prairie Island Mdewakanton Sioux Community of Minnesota, Yankton Sioux Tribe of South Dakota, Shakopee Dakota Community of Minnesota, and the Upper Sioux Indian Community of the Upper Sioux Reservation.

This notice has been sent to officials of the Flandreau Santee Sioux Tribe of South Dakota, Santee Sioux Tribe of Nebraska, Sisseton-Wahpeton Sioux Tribe of South Dakota, Lower Sioux Indian Community of Minnesota, Spirit Lake Sioux Tribe of North Dakota, Prairie Island Mdewakanton Sioux Community of Minnesota, Yankton Sioux Tribe of South Dakota, Shakopee Dakota Community of Minnesota, and the Upper Sioux Indian Community of the Upper Sioux Reservation. Representatives of any other Indian tribe that believes itself to be culturally affiliated with these human remains and associated funerary objects should contact James L. (Jim) Jones, Cultural Resource Specialist, Minnesota Indian Affairs Council, 1819 bemidji Ave. Bemidji, MN 56601; telephone: (218) 755-3825, before May 20, 1998. Repatriation of the human remains and associated funerary objects to the Flandreau Santee Sioux Tribe of South Dakota, Santee Sioux Tribe of Nebraska, Sisseton-Wahpeton Sioux Tribe of South Dakota, Lower Sioux Indian Community of Minnesota, Spirit Lake Sioux Tribe of North Dakota, Prairie Island Mdewakanton Sioux Community of Minnesota, Yankton Sioux Tribe of South Dakota, Shakopee Dakota Community of Minnesota, and the Upper Sioux Indian Community of the

Upper Sioux Reservation may begin after that date if no additional claimants come forward.

Dated: April 14, 1998.

Francis P. McManamon,

Departmental Consulting Archeologist, Manager, Archeology and Ethnography Program.

[FR Doc. 98–10326 Filed 4–17–98; 8:45 am]

BILLING CODE 4310–70–F

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion for Native American Human Remains from Chugachik Island and Togiak, AK in the Possession of the Pratt Museum, Homer, AK

AGENCY: National Park Service

ACTION: Notice

Notice is hereby given in accordance with provisions of the Native American Graves Protection and Repatriation Act (NAGPRA), 43 CFR 10.9, of the completion of an inventory of human remains in the possession of the Pratt Museum, Homer, AK.

A detailed assessment of the human remains was made by Pratt Museum, University of Alaska-Anchorage, and Alaska State Office of History and Archaeology professional staff in consultation with representatives of the Chugach Alaska Corporation, Nanwalek Village Council, Port Graham Village Council, Seldovia Village Tribe, Cook Inlet Region, Inc., Ninilchik Village Traditional Council, Kenaitze Indian Tribe, Salamatof Tribal Council, Bristol Bay Native Corporation, and the Traditional Council of Togiak.

Between 1966-1976, human remains representing three individuals were recovered from non-federal lands on Chugachik Island in Kachemak Bay, AK by N. Holt, A.C. Holt, and/or Sam Pratt and donated to the Pratt Museum by Sam Pratt. No known individuals were identified. No associated funerary objects are present.

Based on the apparent age of the remains (c. 300 BC to 300 AD), these individuals have been determined to be Alutiiq. Based on material culture and manner of interment, the site from which these remains were recovered has been identified as Kachemak Tradition. Based on continuities of material culture and technologies, the Kachemak Tradition has been identified as an antecedent of the modern Alutiiq peoples, including Chugach Alaska Corporation, Nanwalek Village Council, Port Graham Village Council, Seldovia Village Tribe, Native Village of Tatitlek, Native Village of Chenega, and Eyak Native Village.

In 1981, human remains representing one individual were recovered from non-federal lands at Togiak, AK by Patrick and Dianne Audette who donated them to the Pratt Museum. No known individuals were identified. No associated funerary objects are present.

Based on statitistical tests of cranial measurements, this individual has been determined to be Yup'ik. The location where the remains were reportedly recovered has been identified as an area of Yup'ik occupation dating back 2,500 years based on continuties of material culture.

Based on the above mentioned information, officials of the Pratt Museum have determined that, pursuant to 43 CFR 10.2 (d)(1), the human remains listed above represent the physical remains of four individuals of Native American ancestry. Officials of the Pratt Museum have also determined that, pursuant to 43 CFR 10.2 (e), there is a relationship of shared group identity which can be reasonably traced between these Native American human remains and the Chugach Alaska Corporation, Nanwalek Village Council, Port Graham Village Council, Seldovia Village Tribe, Native Village of Tatitlek, Native Village of Chenega, Eyak Native Village, Bristol Bay Native Corporation, and Traditional Council of Togiak.

This notice has been sent to officials of the Chugach Alaska Corporation, Nanwalek Village Council, Port Graham Village Council, Seldovia Village Tribe, Cook Inlet Region, Inc., Ninilchik Village Traditional Council, Kenaitze Indian Tribe, Salamatof Tribal Council, Bristol Bay Native Corporation, and the Traditional Council of Togiak. Representatives of any other Indian tribe that believes itself to be culturally affiliated with these human remains should contact Betsy Webb, Curator of Collecctions, Pratt Museum, 3779 Bartlett Street, Homer, AK 99603; telephone: (907) 235-8635, fax: (907) 235-2764; or email: pratt@alaska.net, before May 20, 1998. Repatriation of the human remains to the Chugach Alaska Corporation, Nanwalek Village Council, Port Graham Village Council, Seldovia Village Tribe, Native Village of Tatitlek, Native Village of Chenega, Eyak Native Village, Bristol Bay Native Corporation, and the Traditional Council of Togiak may begin after that date if no additional claimants come forward.

Dated: April 13, 1998.

Francis P. McManamon,

Departmental Consulting Archeologist, Manager, Archeology and Ethnography.

[FR Doc. 98–10356 Filed 4–17–98; 8:45 am]

BILLING CODE 4310–70–F

DEPARTMENT OF JUSTICE

Office of Special Counsel for Immigration Related Unfair Employment Practices

Immigration Related Employment Discrimination Public Education Grants

AGENCY: Office of Special Counsel for Immigration Related Unfair Employment Practices, Civil Rights Division, U.S. Department of Justice.

ACTION: Notice of availability of funds and solicitation for grant applications.

SUMMARY: The Office of Special Counsel for Immigration Related Unfair Employment Practices (OSC) announces the availability of funds for grants to conduct public education programs about the rights afforded potential victims of employment discrimination and the responsibilities of employers under the antidiscrimination provisions of the Immigration and Nationality Act (INA), 8 U.S.C. 1324b.

It is anticipated that a number of grants will be competitively awarded to applicants who can demonstrate a capacity to design and successfully implement public education campaigns to combat immigration-related employment discrimination. Grants will range in size from $50,000 to $150,000.

OSC will accept proposals from applicants who have access to potential victims of discrimination or whose experience qualifies them to educate employers about the antidiscrimination provisions of INA. OSC welcomes proposals from diverse nonprofit organizations such as local, regional or national ethnic and immigrants' rights advocacy organizations, trade associations, industry groups, professional organizations, or other nonprofit entities providing information services to potential victims of discrimination and/or employers, including state and local government agencies.

APPLICATION DUE DATE: 6. p.m., edt, June 4, 1998.

FOR FURTHER INFORMATION CONTACT: Patita McEvoy, Public Affairs Specialist, Office of Special Counsel for

Immigration Related Unfair Employment Practices, 1425 New York Ave., NW., Suite 9000, PO. Box 27728, Washington, DC 20038–7728. Tel. (202) 616–5594, or (202) 616–5525 (TDD for the hearing impaired).

SUPPLEMENTARY INFORMATION: The Office of Special Counsel for Immigration Related Unfair Employment Practices of the Civil Rights Division of the Department of Justice announces the availability of funds to conduct cost-effective public education programs concerning the antidiscrimination provisions of INA. Funds will be awarded to selected applicants who propose cost-effective ways of educating employers and/or members of the protected class, or to those who can fill a particular need not currently being met.

Background

The Immigration Reform and Control Act of 1986 (IRCA), Public Law 99–603, 8 U.S.C. 1324b, *et seq.* and the Immigration Act (IMMACT 90) make hiring non-U.S. citizens without work authorization unlawful, and require employers to verify the identity and work authorization of all new employees. Employers who violate this law are subject to sanctions, including fines and possible criminal prosecution.

During the debate on IRCA, Congress foresaw the possibility that employers, fearful of sanctions, would refuse employment to individuals simply because they looked or sounded foreign. Consequently, Congress enacted Section 102 of IRCA, an antidiscrimination provision. Section 102 prohibits employers of four or more employees from discriminating on the basis of citizenship status or national origin in hiring, firing, recruitment or referral for a fee, and prohibits employers from engaging in document abuse in the employment eligibility verification process.

Citizens and certain classes of work authorized individuals are protected from citizenship status discrimination. Protected non-citizens include permanent residents who apply for naturalization within six months of being eligible to do so, temporary residents under the 1986 amnesty, the Special Agricultural Workers (SAWs) or the Replenishment Agricultural Workers (RAWs) programs, and refugees and asylees. Citizens and *all* work authorized individuals are protected from discrimination on the basis of national origin. However, this prohibition applies only to employers with four to fourteen employees. National origin discrimination complaints against employers with fifteen or more employees remain under the jurisdiction of the Equal Employment Opportunity Commission pursuant to Title VII of the Civil Rights Act of 1964, 42 U.S.C. 2000e, *et seq.*

In addition, under the document abuse provision of the law, employers must accept all forms of work authorization and proof of identity allowed by the Immigration and Naturalization Service (INS) for completion of the Employment Eligibility Verification (I–9) Form. Employers may not prefer or require one form of documentation over another for hiring purposes. Requiring more or specific documents to prove identity and work authorization may constitute document abuse.

On October 1, 1996, Congress passed the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA). IIRIRA will expand the existing electronic employment eligibility pilot programs being carried out by the INS, and will reduce the number of documents that employers can accept to verify an individual's work eligibility. These changes are expected to take place by October 1, 1998.

OSC is responsible for receiving and investigating discrimination charges and, when appropriate, filing complaints with specially designated administrative law judges. OSC also initiates independent investigations of possible Section 102 violations.

While OSC has been established a record of vigorous enforcement, studies by the U.S. General Accounting Office and other sources have shown that there is an extensive lack of knowledge on the part of protected individuals and employers about the antidiscrimination provisions. Enforcement cannot be effective if potential victims of discrimination are not aware of their rights. Moreover, discrimination can never be eradicated so long as employers are not aware of their responsibilities.

Purpose

OSC seeks to educate both workers and employers about their rights and responsibilities under the antidiscrimination provisions of INA. Because previous grantees have developed a wealth of materials (e.g., brochures, posters, booklets, information packets, and videos) to educate these groups, OSC has determined that the focus of the program should be on the actual delivery of these materials to educate further both potential victims and employers. More specifically, in keeping with the purpose of the grant program, OSC seeks proposals that will use existing materials effectively to educate large numbers of workers or employers about exercising their rights or fulfilling their obligations under the antidiscrimination provisions.

Program Description

The program is designed to develop and implement cost-effective approaches to educate potential victims of employment discrimination about their rights and to educate employers about their responsibilities under INA's antidiscrimination provisions. Applications may propose to educate potential victims only, employers only, or both in a single campaign. Program budgets must include the travel, lodging and other expenses necessary for at least one, but not more than two, program staff members to attend the mandatory OSC grantee training (2 days) held in Washington, DC at the beginning of the grant period (late Autumn). Proposals should outline the following key elements of the program:

Part I: Targeted Population

The educational efforts under the grant should be directed to (1) work-authorized non-citizens who are protected individuals, since this group is especially vulnerable to employment discrimination; (2) those citizens who are most likely to become victims of employment discrimination; and/or to (3) employers. The proposals should define the characteristics of the work authorized population or the employer group(s) targeted for the educational campaign, and the applicant's qualifications to reach credibly and effectively large segments of the campaign targets.

The proposals should also detail the reasons for targeting each group of protected individuals or employers by describing particular needs or other factors to support the selection. In defining the campaign targets and supporting the reasons for the selection, applicants may use studies, surveys, or any other sources of information of generally accepted reliability.

Part II: Campaign Strategy

We encourage applicants to devise effective and creative means of public education and information dissemination that are specifically designed to reach the widest possible targeted audience. Those applicants proposing educational campaigns addressing potential victims of discrimination should keep in mind that some of the traditional methods of public communication may be less than optimal for educating members of

national or linguistic groups that have limited community-based support and communication networks.

Some grantees who are conducting citizenship campaigns, have, in the past, combined those efforts and resources with the INA antidiscrimination education campaigns in order to maximize the scope and breadth of the project and to reach a larger number of individuals in the targeted population. If an applicant proposes to combine these efforts, please discuss how the programs will interact and how the budgets will be administered.

Proposals should discuss the components of the campaign strategy, detail the reasons supporting the choice of each component, and explain how each component will effectively contribute to the overall objective of cost-effective dissemination of useful and accurate information to a wide audience of protected individuals or employers. Discussions of the campaign strategies and supporting rationale should be clear, concise, and based on sound evidence and reasoning.

Since there presently exists a wealth of materials for use in educating the public, proposals should include in their budgets the costs for distribution of materials received from OSC or from current/past OSC grantees.

To the extent that applicants believe the development of original materials particularly suited to their campaign is necessary, their proposal should articulate in detail the circumstances requiring the development of such materials. All such materials must be approved by OSC to ensure legal accuracy and proper emphasis prior to production. It should be noted that proposed revisions/translations of OSC-approved materials must also be submitted for clearance. All information distributed should also include mention of the OSC as a source of assistance, information and action, and the correct address and telephone numbers of the OSC (including the toll-free and TDD toll-free numbers for the hearing impaired).

Part III: Evaluation of the Strategy

One of the central goals of this program is determining what public education strategies are most effective and thus, should be included in future public education efforts. Therefore, it is crucial that the methods of evaluating the campaign strategy and public education materials and their results be carefully detailed. A full evaluation of a project's effectiveness is due within 60 days of the conclusion of a campaign. Interim evaluation/activity reports are due quarterly throughout the grant year.

Selection Criteria

The final selection of grantees for award will be made by the Special Counsel for Immigration Related Unfair Employment Practices.

A panel made up of OSC staff will review and rate the applications and make recommendations to the Special Counsel regarding funding. The panel's results are advisory in nature and not binding on the Special Counsel. Letters of support, endorsement, or recommendation are not part of the grant application process and will not be considered.

In determining which applications to fund, OSC will consider the following (based on a one-hundred point scale):

1. Program Design (50 Points)

Sound program design and cost-effective strategies for educating the targeted population are imperative. Consequently, areas that will be closely examined include the following:

a. Evidence of in-depth knowledge of the goals and objectives of the project. (15 points)

b. Selection and definition of the target group(s) for the campaign, and the factors that support the selection, including special needs, and the applicant's qualifications to reach effectively the target. (10 points)

c. A cost-effective campaign strategy for educating targeted employers and/or members of the protected class, with a justification for the choice of strategy, including the degree to which the campaign has prevented immigration related unfair employment practices and has reached individuals with such claims. (15 points)

d. The evaluation methods proposed by the applicant to measure the effectiveness of the campaign and their precision in indicating to what degree the campaign is successful. (10 points)

2. Administrative Capability (20 Points)

Proposals will be rated in terms of the capability of the applicant to implement the targeting, public education and evaluation components of the campaign:

a. Evidence of proven ability to provide high quality results. (10 points)

b. Evidence that the applicant can implement the campaign, and complete the evaluation component within the time lines provided.

Note: OSC's experience during previous grant cycles has shown that a number of applicants choose to apply as a consortium of individual entities; or, if applying individually, propose the use of sub-contractors to undertake certain limited functions. It is essential that these applicants demonstrate the proven management capability and experience to ensure that, as lead agency, they will be directly accountable for the successful implementation, completion, and evaluation of the project. (10 points)

3. Staff Capability (10 Points)

Applications will be evaluated in terms of the degree to which:

a. The duties outlined for grant-funded positions appear appropriate to the work that will be conducted under the award. (5 points)

b. The qualifications of the grant-funded positions appear to match the requirements of these positions. (5 points)

Note: If the grant project manager or other member of the professional staff is to be hired later as part of the grant, or should there be any change in professional staff during the grant period, hiring is subject to review and approval by OSC at that time.

4. Previous Experience (20 Points)

The proposals will be evaluated on the degree to which the applicant demonstrates that it has successfully carried out programs or work of a similar nature in the past.

Eligible Applicants

This grant competition is open to nonprofit organizations and state and local government agencies.

Grant Period and Award Amount

It is anticipated that several grants will be awarded and will range in size from $50,000 to $150,000.

Publication of this announcement does not require OSC to award any specific number of grants, or to obligate all or any part of available funds. The period of performance will be twelve months from the date of the grant award, in most cases beginning October 1, 1998.

Application Deadline

All applications must be received by 6 pm, edt, June 4, 1998, at the Office of Special Counsel for Immigration Related Unfair Employment Practices, U.S. Department of Justice, 1425 New York Ave., NW., Suite 9000, P.O. Box 27728, Washington, D.C. 20038–7728. If sent by regular first-class mail, please use the P.O. Box; if using Federal Express or priority mail, use the street address. Applications may not be submitted via facsimile machine.

Application Requirements

Applicants should submit an original and two (2) copies of their completed proposal by the deadline established above. All submissions must contain the following items in the order listed below:

1. A completed and signed Application for Federal Assistance (Standard Form 424) and Budget Information (Standard Form 424A).

2. OJP Form 4061/6 (Certification Regarding Lobbying; Debarment,

Suspension and Other Responsibility Matters; and Drug-Free Workplace Requirements).

3. A Standard Form LLL Disclosure Form to Report Lobbying).

4. An abstract of the full proposal, not to exceed one page.

5. A program narrative of not more than fifteen (15) double-spaced typed pages which includes the following:

a. A clear statement describing the approach and strategy to be utilized to complete the tasks identified in the program description;

b. A clear statement of the proposed goals and objectives, including a listing of the major events, activities, products and timetables for completion;

c. The proposed staffing plan (**Note:** If the grant project manager or other professional staff member is to be hired later as part of the grant, or should there be a change in professional staff during the grant period, hiring is subject to review and approval by OSC at that time); and

d. Description of how the project will be evaluated.

6. A proposed budget outlining all direct and indirect costs for personnel, fringe benefits, travel, equipment, supplies, subcontracts, and a short narrative justification of each budgeted line item cost. It an indirect cost rate is used in the budget, then a copy of a current fully executed agreement between the applicant and the cognizant Federal agency must accompany the budget.

Note: Program budgets must include the travel, lodging and other expenses necessary for not more than two program staff members to attend the mandatory OSC grantee training (2 days) held in Washington, D.C. at the beginning of the grant period (late Autumn).

7. OJP Form 7120/1 (Accounting System and Financial Capability Questionnaire).

8. Copies of resumes of the professional staff proposed in the budget.

9. Detailed technical materials that support or supplement the description of the proposed effort should be included in the appendix.

In order to facilitate handling, please do not use covers, binders or tabs.

Application forms may be obtained by writing or telephoning: Office of Special Counsel for Immigration Related Unfair Employment Practices, P.O. Box 27728, Washington, D.C. 20038–7728. Tel. (202) 616–5594, or (202) 616–5525 (TDD for the hearing impaired). This announcement will also appear on the World Wide Web at www.usdoj.gov/crt/osc/

Dated: April 15, 1998.

John D. Trasviña,

Special Counsel, Office of Special Counsel for Immigration, Related Unfair Employment Practices.

[FR Doc. 98–10353 Filed 4–17–98; 8:45 am]

BILLING CODE 4410–01–M

DEPARTMENT OF LABOR

Employment and Training Administration

Federal-State Unemployment Compensation Program: Unemployment Insurance Program Letters Interpreting Federal Unemployment Insurance Law

The Employment and Training Administration interprets Federal law requirements pertaining to unemployment compensation (UC) as part of its role in the administration of the Federal-State UC program. These interpretations are issued in Unemployment Insurance Program Letters (UIPLs) to the State Employment Security Agencies (SESAs). The UIPL described below is published in the **Federal Register** in order to inform the public.

UIPL 07–98

Section 1137(d), Social Security Act, directs that States require each applicant for UC as a condition of eligibility, to declare under penalty of perjury whether he/she is a citizen or national of the United States and, if not, whether he/she is in a satisfactory immigration status. This means an alien must be legally authorized to work at the time UC is claimed to meet available for work requirements. If a claimant is not a citizen or national, he/she must present alien registration documentation that the SESA can use to verify satisfactory immigration status through the Immigration and Naturalization Service (INS).

A detailed explanation and interpretation of eligibility of aliens for UC was presented in UIPL 1–86. Attachment III to UIPL 12–87 discussed provisions for determining and verifying alien status for entitlement to UC. UIPL 07–98 elaborates on the proper procedures where the INS's primary verification process does not establish satisfactory immigration status for aliens.

Dated: April 13, 1998.

Raymond J. Uhalde,

Acting Assistant Secretary of Labor.

U.S. Department of Labor

Employment and Training Administration, Washington, D.C. 20210

Directive: Unemployment Insurance Program Letter No. 7–98

To: All State Employment Security Agencies

From: Grace A. Kilbane, Director, Unemployment Insurance Service

Subject: Procedures for Verification of Alien Status

1. *Purpose*. To advise State Employment Security Agencies (SESAs) of a Departmental interpretation of Federal statutes relating to aliens' eligibility for unemployment compensation when satisfactory immigration status is not established through the primary verification process with the Immigration and Naturalization Service (INS).

2. *References*. UIPL 1–86; UIPL 12–87; Section 1137(d) of the Social Security Act (SSA).

3. *Background*. Section 1137(d), SSA, directs that States require each applicant for unemployment benefits, as a condition of eligibility, to declare under penalty of perjury whether he/she is a citizen or national of the United States and, if not, whether he/she is in a satisfactory immigration status. For UI purposes, this means an alien must be legally authorized to work at the time benefits are claimed to meet available for work requirements. A claimant who is not a citizen or national must present alien registration documentation that the SESA can use to verify satisfactory immigration status through the INS.

A detailed explanation and interpretation of eligibility of aliens for unemployment benefits was presented in UIPL 1–86. Attachment III to UIPL 12–87 discussed provisions for determining and verifying alien status for entitlement to unemployment benefits. This directive elaborates on the proper procedures where the INS's primary verification process does not establish satisfactory immigration status for aliens.

The INS does not make determinations of aliens' eligibility for benefits. SESAs make these determinations based upon information provided by the INS. The INS has established verification procedures through a process known as Systematic Alien Verification for Entitlements (SAVE). The SAVE system has both primary (automated) and secondary (manual) procedures for verification, as referenced in the SSA, Sections 1137(d)(3) and (4). The SESA initiates the primary procedure by accessing the INS's data base and entering the alien registration number (A-Number). This provides an immediate, automated response about the alien of record. If the data base can substantiate that the alien is authorized to work, the response will provide an employment eligibility statement and identify the alien's immigration classification. If legal status cannot be determined, the response from INS will instruct the SESA to ''institute secondary verification'' to obtain sufficient information to make a determination. Thus, the primary response will never indicate that the alien is

not authorized to work; this can only be accomplished through the secondary process.

The secondary procedure consists of a more extensive validation process, including manual paper searches, when questions arise during the primary procedure or when computerized records are not found in the SAVE data base. The secondary response from the INS indicates whether the alien's documentation ''appears valid'' or ''is not valid'' and what the alien's immigration status and work eligibility status are.

The SSA requires procedural safeguards to ensure that payments to eligible aliens are not delayed because of the verification process. Under Section 1137(d)(4)(A), SSA, aliens whose status has not been verified through primary verification must be provided a ''reasonable opportunity'' to submit evidence of satisfactory immigration status. The SESA ''may not delay, deny, reduce, or terminate an individual's eligibility for benefits'' because of immigration status until this reasonable opportunity has been provided. The SSA does not specify time limits for this reasonable opportunity. However, UIPL 12–87, Attachment III, I.E.2.a., provided that ''[t]ime periods under State law for providing information needed to determine eligibility for benefits will meet the requirement for 'reasonable opportunity' ''.

If, as a result of this reasonable opportunity, an alien whose status was not verified through primary verification submits what the SESA ''determines constitutes reasonable evidence'', then secondary verification must be initiated. (Section 1137(d)(4)(B), SSA.) During secondary verification, the SESA ''may not delay, deny, reduce, or terminate an individual's eligibility for benefits'' because of immigration status.

4. *Office of Inspector General (OIG) Study*. In 1996, the Department's OIG began studies in four States of UI benefits paid to claimants who had used unissued Social Security Numbers to establish claims. Preliminary findings revealed that SESAs had made many payments to illegal aliens, despite the INS's responses via the SAVE primary verification process that indicated mismatches between the claimants and the legal aliens registered with INS. The OIG discovered numerous cases where both the names and dates-of-birth were entirely disparate. In all such cases investigated by the OIG, the claims were found to be fraudulent.

5. *Procedures*. The findings from the OIG study indicate a need to clarify the procedural protections for verification of aliens' immigration status. A distinction needs to be recognized between material and non-material discrepancies with regard to the information provided by INS's response and that provided by the claimant. A material discrepancy exists when the claimant identity is not verified by the biographical data in the SAVE system.

A SAVE response via the primary procedure may suggest non-material discrepancies, e.g., transposition of numbers, incomplete surnames when the name includes multiple words, transposed versions of names, name change due to recent marriage, etc. At the discretion of the SESA, secondary verification may be initiated because of the questions that have arisen from the primary response. However, pending such verification, payments may not be delayed on the basis of immigration status.

Also, some SAVE primary requests will be returned without verification, i.e., neither biographical data nor status information will be provided, and the SESA will be instructed to ''institute secondary verification''. In such a situation, the SSA requires that a claimant be given a reasonable opportunity to submit evidence indicating satisfactory immigration status that the SESA can use to initiate the secondary SAVE verification process. If the SESA receives reasonable evidence of satisfactory immigration status, secondary verification must be initiated. Pending such verification, SESAs are prohibited from delaying payments.

However, when a SAVE response via the primary process indicates that the claimant is not the same person as the alien registered with INS, e.g., different name and date-of-birth, material discrepancies exist, and one of the following actions should be taken:

a. If the claimant acknowledges the accuracy of the SAVE response (i.e., the filing of a fraudulent claim), issue an immediate denial under the appropriate State provisions, e.g., monetary denial of base period wages, nonmonetary denial under the availability provision, and/or misrepresentation.

b. If the claimant disputes the accuracy of the SAVE response and submits ''reasonable evidence'' indicating satisfactory immigration status, initiate the secondary SAVE request, and do not delay payment of benefits.

c. If the claimant disputes the accuracy of the SAVE response but does not submit ''reasonable evidence'' indicating satisfactory immigration status, the SSA, Section 1137(d)(4)(A) requires that the claimant be provided ''reasonable opportunity'' to submit such evidence. The claimant must be instructed to provide the evidence within time limits established for claims filing under State law. The SESA may not delay or deny benefits until this reasonable opportunity has been provided; however, for practical purposes, this provision should have no effect on processing the claim because ''reasonable opportunity'' should, in most cases, transpire before the claimant certifies for the first week. One of the following actions should then be taken as appropriate:

- If reasonable evidence is provided, initiate the secondary SAVE request, and do not delay payment of benefits, or
- If reasonable evidence is not provided, issue a denial under the SESA provisions as in (a) above. (Reference the SSA, Section 1137(d)(5).)

On occasion, an alien applying for UI may present immigration documentation that appears to be counterfeit or altered. In such instances, the SESA should initiate the secondary verification process immediately, in lieu of the primary process, because the alien has not submitted the documentation described in the SSA, Section 1137(d)(2). Although the SESA must provide the claimant the opportunity to present satisfactory documentation as required by the SSA, Section 1137(d)(4)(A), the SESA should, if appropriate, issue an immediate denial under the State law provision for misrepresentation. This action does not fall within the protections of the SSA since the denial is for reasons related to fraud, not immigration status.

6. *Action Required*. SESA Administrators are requested to provide copies of this UIPL to appropriate staff and ensure that effective procedures are implemented to establish eligibility for benefits.

7. *Inquiries*. Questions should be directed to the appropriate Regional Office.

[FR Doc. 98–10288 Filed 4–17–98; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. ICR–98–19]

Agency Information Collection Activities; Proposed Collection; Comment Request; Commercial Diving Operations (29 CFR Part 1910, Subpart T)

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 (PRA–95) (44 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 impact of collection requirements on respondents can be properly assessed. Currently, the Occupational Safety and Health Administration (OSHA) is soliciting comments concerning the proposed extension of the information collection requirements contained in the standard on Commercial Diving Operations (29 CFR part 1910, subpart T). The Agency 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 on or before June 19, 1998.

ADDRESSES: Comments are to be submitted to the Docket Office, Docket No. ICR–98–19, Occupational Safety and Health Administration, U.S. Department of Labor, Room N–2625, 200 Constitution Avenue, NW., Washington, DC 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: Theda Kenney, Directorate of Safety Standards Programs, Occupational Safety and Health Administration, U.S. Department of Labor, Room N–3605, 200 Constitution Avenue, NW., Washington, DC 20210, telephone: (202) 219–8061. A copy of the referenced information collection request is available for inspection and copying in the Docket Office and will be mailed to persons who request copies by telephoning Theda Kenney at (202) 219–8061, extension 100, or Barbara Bielaski at (202) 219–8076, extension 142. For electronic copies of the Information Collection Request on Commercial Diving Operations, contact OSHA's WebPage on the Internet at http://www.osha.gov.

SUPPLEMENTARY INFORMATION:

I. Background

The Occupational Safety and Health Act of 1970 (the Act) authorizes the promulgation of such health and safety standards as are necessary or appropriate to provide safe or healthful employment and places of employment. The statute specifically authorizes information collection by employers as necessary or appropriate for the enforcement of the Act or for developing information regarding the causes and prevention of occupational injuries, illnesses, and accidents.

In 29 CFR part 1910, Commercial Diving Operations, the information to be collected is designed to minimize the possibility of a commercial diver being injured or killed (e.g., by gas embolism, decompression sickness) due to poor planning. Without the records required in the standard, necessary safeguards that have proven extremely effective in protecting commercial divers against inherent and obvious hazards underwater would be removed and, as a result, the fatality and injury/illness rate for this industry could rise. Consequences of accidents in diving can be severe due to the environment in which divers work.

II. Current Actions

This notice requests Office of Management and Budget (OMB) approval of the information collection requirements contained in the Commercial Diving Operations standard.

Type of Review: Extension of a Currently Approved Collection.

Agency: U.S. Department of Labor, Occupational Safety and Health Administration.

Title: Commercial Diving Operations (29 CFR part 1910, Subpart T).

OMB Number: 1218–0069.

Agency Number: Docket Number ICR–98–19.

Affected Public: State or local governments; Business or other for-profit.

Number of Respondents: 3,000.

Frequency: On Occasion.

Average Time per Response: 1 hour.

Estimated Total Burden Hours: 91,152.

Total Annualized Capital/Startup Costs: $0.

Signed at Washington, DC, this 10th day of April 1998.

Charles N. Jeffress,

Assistant Secretary, Occupational Safety and Health Administration.

[FR Doc. 98–10285 Filed 4–17–98; 8:45 am]

BILLING CODE 4510–26–M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. ICR–98–21]

Agency Information Collection Activities; Proposed Collection; Comment Request; Welding, Cutting and Brazing (29 CFR Part 1910)

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 (PRA–95) (44 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 impact of collection requirements on respondents can be properly assessed. Currently, the Occupational Safety and Health Administration (OSHA) is soliciting comments concerning the proposed extension of the information collection requirement contained in the standard on Welding, Cutting and Brazing (29 CFR part 1910). The Agency 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 on or before June 19, 1998.

ADDRESSES: Comments are to be submitted to the Docket Office, Docket No. ICR–98–21, Occupational Safety and Health Administration, U.S. Department of Labor, Room N–2625, 200 Constitution Avenue, NW, Washington, DC 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: Theda Kenney, Directorate of Safety Standards Programs, Occupational Safety and Health Administration, U.S. Department of Labor, Room N–3605, 200 Constitution Avenue, NW, Washington, DC 20210, telephone: (202) 219–8061. A copy of the referenced information collection request is available for inspection and copying in the Docket Office and will be mailed to

persons who request copies by telephoning Theda Kenney at (202) 219–8061, extension 100, or Barbara Bielaski at (202) 219–8076, extension 142. For electronic copies of the Information Collection Request on Welding, Cutting and Brazing, contact OSHA's WebPage on the Internet at http://www.osha.gov.

SUPPLEMENTARY INFORMATION:

I. Background

The Occupational Safety and Health Act of 1970 (the Act) authorizes the promulgation of such health and safety standards as are necessary or appropriate to provide safe or healthful employment and places of employment. The statute specifically authorizes information collection by employers as necessary or appropriate for the enforcement of the Act or for developing information regarding the causes and prevention of occupational injuries, illnesses, and accidents.

In 29 CFR part 1910, Welding, Cutting and Brazing, the information to be collected is used by employers and employees whenever resistance welding is performed. The purpose of the information is to ensure that employers evaluate hazards associated with resistance welding and ensure that adequate measures are taken to make the process safe.

II. Current Actions

This notice requests Office of Management and Budget (OMB) approval of the information collection requirement contained in the Welding, Cutting and Brazing standard.

Type of Review: Extension of a Currently Approved Collection.

Agency: U.S. Department of Labor, Occupational Safety and Health Administration.

Title: Welding, Cutting and Brazing (29 CFR part 1910).

OMB Number: 1218–0207.

Agency Number: Docket Number ICR–98–21.

Affected Public: State or local governments; Business or other for-profit.

Number of Respondents: 35,307.

Frequency: Annually.

Average Time per Response: 10 minutes (0.17 hr.).

Estimated Total Burden Hours: 6,002.

Total Annualized Capital/Startup Costs: 0.

Signed at Washington, DC, this 10th day of April 1998.

Charles N. Jeffress,

Assistant Secretary, Occupational Safety and Health Administration.

[FR Doc. 98–10286 Filed 4–17–98; 8:45 am]

BILLING CODE 4510–26–M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. ICR–98–20]

Agency Information Collection Activities; Proposed Collection; Comment Request; Personal Protective Equipment (29 CFR 1910.132)

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 (PRA–95) (44 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 impact of collection requirements on respondents can be properly assessed. Currently, the Occupational Safety and Health Administration (OSHA) is soliciting comments concerning the proposed extension of the information collection requirements contained in the standard on Personal Protective Equipment (PPE) (29 CFR 1910.132). The Agency 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 on or before June 19, 1998.

ADDRESSES: Comments are to be submitted to the Docket Office, Docket No. ICR–98–20, Occupational Safety and Health Administration, U.S. Department of Labor, Room N–2625, 200 Constitution Avenue, 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: Theda Kenney, Directorate of Safety Standards Programs, Occupational Safety and Health Administration, U.S. Department of Labor, Room N–3605, 200 Constitution Avenue, NW, Washington, D.C. 20210, telephone: (202) 219–8061. A copy of the referenced information collection request is available for inspection and copying in the Docket Office and will be mailed to persons who request copies by telephoning Theda Kenney at (202) 219–8061, extension 100, or Barbara Bielaski at (202) 219–8076, extension 142. For electronic copies of the Information Collection Request on Personal Protective Equipment (29 CFR 1910.132), contact OSHA's WebPage on the Internet at http://www.osha.gov.

SUPPLEMENTARY INFORMATION:

I. Background

The Occupational Safety and Health Act of 1970 (the Act) authorizes the promulgation of such health and safety standards as are necessary or appropriate to provide safe or healthful employment and places of employment. The statute specifically authorizes information collection by employers as necessary or appropriate for the enforcement of the Act or for developing information regarding the causes and prevention of occupational injuries, illnesses, and accidents.

In 29 CFR 1910.132, Personal Protective Equipment, employers are required to perform a hazard assessment of the workplace and to certify that it has been performed. They are also required to certify that their employees have received, and understood, PPE training.

OSHA inspectors will require employers to provide them with access to information during Agency inspections. The documents, which can be written or computer generated, are needed to verify that employers are in compliance with the standard. Additionally, the documents may be used as a ''grandfather'' mechanism. That is, an employer can verify that an existing hazard assessment and/or training program already meets the standard. This will eliminate the need for an employer to reassess the workplace or retrain employees.

II. Current Actions

This notice requests Office of Management and Budget (OMB) approval of the information collection requirements contained in the PPE standard.

Type of Review: Extension of a Currently Approved Collection.

Agency: U.S. Department of Labor, Occupational Safety and Health Administration.

Title: Personal Protective Equipment (29 CFR 1910.132).

OMB Number: 1218–0205.

Agency Number: Docket Number ICR–98–20.

Affected Public: State or local governments; business or other for-profit.

Number of Respondents: 29,000,000.

Frequency: On occasion.

Average Time per Response: 1.5 hours.

Estimated Total Burden Hours: 21,140.

Total Annualized Capital/Startup Costs: $0.

Signed at Washington, DC, this 10th day of April 1998.

Charles N. Jeffress,

Assistant Secretary, Occupational Safety and Health Administration.

[FR Doc. 98–10287 Filed 4–17–98; 8:45 am]

BILLING CODE 4510–26–M

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

Working Group Studying Pre-Retirement Distributions From ERISA Employer-Sponsored Pension Plans Advisory Council on Employee Welfare and Pension Benefits Plans; Notice of Meeting

Pursuant to the authority contained in Section 512 of the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. 1142, a public meeting will be held on Tuesday, May 5, 1998 of the new Working Group of the Advisory Council on Employee Welfare and Pension Benefit Plans, which will study pre-retirement distributions, including in-service distributions and participant loans from ERISA employer-sponsored pension plans, known in the pension benefits community as ''leakage.''

The purpose of the open meeting, which will run from 9:30 a.m. to approximately noon on Room N–4437 C&D, U.S. Department of Labor Building, Second and Constitution Avenue NW, Washington, DC 20210, is for Working Group members to establish the agenda and course of study for the upcoming Council year on the topic. The Working Group Chair Barbara A. Uberti, vice president of the Wilmington Trust Company in Wilmington, Del., and Vice Chair Michael R. Fanning, chief executive officer of the Central Pension Fund International Union of Operating Engineers and Participating Employers, Washington, DC, hope to begin hearing testimony on the topic at the first session.

Members of the public are encouraged to file a written statement pertaining to the topic by submitting 20 copies on or before May 1, 1998, to Sharon Morrissey, Executive Secretary, ERISA Advisory Council, U.S. Department of Labor, Room N–5677, 200 Constitution Avenue, NW, Washington, DC 20210. Individuals or representatives of organizations wishing to address the Working Group should forward their request to the Executive Secretary or telephone (202) 219–8753. Oral presentations will be limited to 10 minutes, but an extended statement may be submitted for the record. Individuals with disabilities, who need special accommodations, should contact Sharon Morrissey by May 1, 1998, at the address indicated in this notice.

Organizations or individuals also may submit statements for the record without testifying. Twenty (20) copies of such statements should be sent to the Executive Secretary of the Advisory Council at the above address. Papers will be accepted and included in the record of the meeting if received on or before May 1.

Signed at Washington, D.C. this 13th day of April, 1998.

Olena Berg,

Assistant Secretary, Pension and Welfare Benefits Administration.

[FR Doc. 98–10282 Filed 4–17–98; 8:45 am]

BILLING CODE 4510–29–M

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

Working Group Studying Small Business: How To Enhance and Encourage the Establishment of Pension Plans, Advisory Council on Employee Welfare and Pension Benefits Plans; Notice of Meeting

Pursuant to the authority contained in Section 512 of the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. 1142, a public meeting will be held Monday, May 4, 1998, of the Advisory Council on Employee Welfare and Pension Benefits Plans' new Working Group being formed to study the obstacles to why small businesses are not establishing retirement vehicles for their employees when so many different savings arrangements have been developed and how to encourage these same businesses to establish such pension plans.

The session will take place in Room N–4437 C&D, U.S. Department of Labor Building, Second and Constitution Avenue, NW, Washington, DC 20210. The purpose of the open meeting, which will run from 1 p.m. to approximately 3:30 p.m., is for Working Group members to begin organizing its study for the year and, it is hoped, to begin taking testimony on the topic. Named to head the Working Group are Council members, Dr. Thomas J. Mackell Jr., executive vice president of Simms Capital Management, Inc., of Greenwich, Conn. as chair and Eddie C. Brown, president, Brown Capital Management in Baltimore, Md. as vice chair.

Members of the public are encouraged to file a written statement pertaining to the topic by submitting 20 copies on or before May 1, 1998, to Sharon Morrissey, Executive Secretary, ERISA Advisory Council, U.S. Department of Labor, Room N–5677, 200 Constitution Avenue, NW, Washington, DC 20210. Individuals or representatives of organizations wishing to address the Working Group should forward their request to the Executive Secretary or telephone (202) 219–8753. Oral presentations will be limited to 10 minutes, but an extended statement may be submitted for the record. Individuals with disabilities, who need special accommodations, should contact Sharon Morrissey by May 1, at the address indicated in this notice.

Organizations or individuals may also submit statements for the record without testifying. Twenty (20) copies of such statements should be sent to the Executive Secretary of the Advisory Council at the above address. Papers will be accepted and included in the record of the meeting if received on or before May 1.

Signed at Washington, D.C. this 13th day of April, 1998.

Olena Berg,

Assistant Secretary, Pension and Welfare Benefits Administration.

[FR Doc. 98–10283 Filed 4–17–98; 8:45 am]

BILLING CODE 4510–29–M

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

Working Group on the Disclosure of the Quality of Care in Health Plans Advisory Council on Employee Welfare and Pension Benefits Plans; Notice of Meeting

Pursuant to the authority contained in Section 512 of the Employee Retirement Income Security Act of 1974 (ERISA) 29 U.S.C. 1142, the Advisory Council on Employee Welfare and Pension Benefit Plans has established a new Working Group to study what kind of information on the quality of care in health plans should be transmitted to fiduciaries and participants and how the information should be transmitted. The Working Group will hold an open public meeting on Monday, May 4, 1998 in Room N–4437 C&D, U.S. Department of Labor Building, Second and Constitution Avenue, NW, Washington, DC 20210.

The purpose of the open meeting, which will run from 9:30 a.m. to approximately noon, is for Working Group members to begin organizing the course of study for the year and, it is hoped, even to begin taking testimony on the topic. Recently named as chair nad vice chair, respectively, of the Working Group were Judith Mazo, senior vice president/director of research for the Segal Company, and Neil Grossman, William M. Mercer Co., both of the Washington, DC area.

Members of the public are encouraged to file a written statement pertaining to the topic by submitting 20 copies on or before May 1, 1998, to Sharon Morrissey, Executive Secretary, ERISA Advisory Council, U.S. Department of Labor, Room N–5677, 200 Constitution Avenue, NW, Washington, DC 20210. Individuals or representatives of organizations wishing to address the Working Group should forward their request to the Executive Secretary or telephone (202) 219–8753. Oral presentations will be limited to 10 minutes, but an extended statement may be submitted for the record. Individuals with disabilities, who need special accommodations, should contact Sharon Morrissey by May 1, at the address indicated in this notice.

Organizations or individual may also submit statements for the record without testifying. Twenty (20) copies of such statements should be sent to the Executive Secretary of the Advisory Council at the above address. Papers will be accepted and included in the record of the meeting if received on or before May 1.

Signed at Washington, D.C. this 13th day of April, 1998.

Olena Berg,

Assistant Secretary, Pension and Welfare Benefits Administration.

[FR Doc. 98–10284 Filed 4–17–98; 8:45 am]

BILLING CODE 4510–29–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Materials Research; Notice of Meetings

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following five meetings:

Name: Special Emphasis Panel in Materials Research (1203).

Dates and Times: May 5–7; May 12–14; May 19–21; May 26–28; and June 2–3, 1998, 1998 8:30 a.m.–5 p.m. each day.

Place: Rooms: 330, 375, 380 and 390, National Science Foundation, 4201 Wilson Blvd., Arlington, VA.

Type of Meetings: Closed.

Contact Person: Dr. Ulrich Strom, Program Director, Division of Materials Research, Room 1065.37, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230. Telephone: (703) 306–1832.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support. The format is in the form of reverse site visits.

Agenda: To review and evaluate proposals submitted for consideration for support of Materials Research Science and Engineering Centers.

Research of Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552(b), (4) and (6) of the Government in the Sunshine Act.

Dated: April 14, 1998.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 98–10280 Filed 4–17–98; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL TRANSPORTATION SAFETY BOARD

Sunshine Act Meeting

''FEDERAL REGISTER'' CITATION OF PREVIOUS ANNOUNCEMENT: Vol. 63, No. 72/Wednesday, April 15, 1998.

PREVIOUSLY ANNOUNCED TIME AND DATE: 9:30 a.m., Tuesday, April 21, 1998.

CHANGE IN MEETING: A majority of the Board Members determined by recorded vote that the business of the Board required changing the time of the meeting to 1:00 p.m., Tuesday, April 21, 1998.

FOR MORE INFORMATION CONTACT: Rhonda Underwood, (202) 314–6065.

Dated: April 16, 1998.

Rhonda Underwood,

Federal Register Liaison Officer.

[FR Doc. 98–10581 Filed 4–16–98; 3:48 pm]

BILLING CODE 7533–01–M

NUCLEAR REGULATORY COMMISSION

[IA 98–019]

In the Matter of John Boschuk, Jr., Canonsburg, Pennsylvania; Order Prohibiting Involvement in NRC-Licensed Activities

I

J&L Testing Company, Inc., (Licensee or JLT) is the holder of Byproduct Nuclear Material License No. 37–28442–02 issued by the Nuclear Regulatory Commission (NRC or Commission) pursuant to 10 CFR Part 30. The license authorizes possession and use of Troxler portable nuclear gauges containing cesium-137 and americium-241 in sealed sources. The license, originally issued on February 7, 1995, was amended on August 22, 1995, and is due to expire on February 29, 2000. The License was suspended by Order, dated September 27, 1995. Lourdes T. Boschuk is the President and owner of JLT. John Boschuk, Jr. has acted as an agent for and consultant to JLT in the conduct of its licensed activities. Mr. Boschuk, the husband of Lourdes Boschuk, is also the President and owner of J&L Engineering Company (JLE) located on the same premises. JLE held NRC Materials License No. 37–28442–01, which authorized use and possession of the same sealed sources, until the license was revoked by the NRC on July 30, 1993, for non-payment of fees. Concurrently with this Order, the NRC is issuing an Order Revoking License to JLT (EA 96–110).

II

Based on an NRC inspection and an investigation by the NRC's Office of Investigations, the NRC has determined that John Boschuk, Jr., while serving as President and owner of JLE and as an agent for and consultant to JLT, engaged in a pattern and practice of willfully violating NRC requirements. Among such violations are the following:

A. Unauthorized Transfer of Byproduct Material

The August 30, 1993, Order Revoking License required JLE, among other things, to cease use of byproduct material, dispose of the byproduct material, and to notify the NRC of the disposition within 30 days. Nonetheless, JLE continued to possess the material. Consequently, the NRC staff again transmitted a copy of the Order Revoking License to JLE on August 9, 1994, and a letter to Mr. Boschuk on August 18, 1994. The August 18, 1994, letter reminded Mr. Boschuk that continued possession of the material without a valid license is a violation of 10 CFR 30.3, and that he must immediately place the material in secure storage until a valid license is acquired and that any other use is not authorized. During a telephone call on August 12, 1994, Mr. Boschuk had informed the NRC staff that he intended to promptly file an application for a new license.

Nonetheless, as President of and owner JLE, and as an agent for JLT, Mr. Boschuk transferred a Troxler gauge on or about September 2, 1994, to SE Technologies, Inc., of Bridgeville, Pennsylvania, in violation of the Order Revoking License dated July 30, 1993, and 10 CFR 30.3. As stated by the Chief Engineer of SE Technologies, Inc., Mr. Boschuk had arranged for the rental, and as stated by a Project Engineer of SE Technologies, Inc., Mr. Boschuk had personally transferred the gauge to SE Technologies, Inc. Accordingly, Mr. Boschuk deliberately violated the Order Revoking License and 10 CFR 30.3, in violation of 10 CFR 30.10(a).

B. Materially Inaccurate Statements Made to NRC

(1) A letter to the NRC dated October 11, 1994, signed by Mr. Boschuk as President of JLE, stated that the three Troxler gauges had not been used for over two years and had not left the storage area of JLE's office. In fact, Mr. Boschuk had deliberately transferred one of the gauges in violation of the Order Revoking License and 10 CFR 30.3 on September 2, 1994, as explained above. This statement was deliberately inaccurate in violation of 10 CFR 30.9(a) and 30.10(a)(2).

In addition, JLT admittedly used the Troxler density gauges on four occasions after revocation of the JLE license and before the NRC issued a license to JLT on February 7, 1995. Specifically, JLT used the gauge(s) for the following customers: DelSir Supply in December 1993, Johnson Construction in May 1994, Johnson Construction in June 1994, and PA Soil & Rock Company in July 1994. Lourdes Boschuk also stated at a December 18, 1997, predecisional enforcement conference that she did not get the keys from JLE for the gauges until February 1995. The statement by Mr. Boschuk in his October 11, 1994, letter to the NRC, that the gauges had not been used for over two years and had not left storage, was materially inaccurate in violation of 10 CFR 30.9(a) and was made by Mr. Boschuk with at least careless disregard for the facts with respect to such usage.

(2) Figure 1 of the November 21, 1994, JLT application, revised January 6, 1995, depicted a locked steel cabinet on the JLT premises as the storage site for the three Troxler gauges. However, the cabinet did not have a lock. Mr. Boschuk prepared Figure 1. This materially inaccurate statement was in violation of 10 CFR 30.9(a) and was made with at least careless disregard for the facts by Mr. Boschuk.

(3) A letter to the NRC dated September 11, 1995, signed by Lourdes Boschuk and reviewed and edited by Mr. Boschuk, stated that the Troxler gauge which was missing at the time of the NRC inspection on August 1, 1995 was in Watertown, New York; was returned the next day to JLT. In fact, according to the Chief Engineer of SE Technologies, Inc., Mr. Boschuk personally transferred the gauge to SE Technologies, Inc. in July 1995, and requested return of the gauge on August 14 or 15, 1995. In fact the gauge was not returned to JLT until August 17, 1995. This was a deliberately inaccurate statement by Mr. Boschuk in violation of 10 CFR 30.9(a) and 30.10(a).

In addition, the letter represented that since the August 1995 NRC inspection, all three Troxler gauges had been kept in a locked storage cabinet at JLT's premises and would remain there until the apparent violations identified in the NRC inspection report were resolved. This inaccurate statement in violation of 10 CFR 30.9(a) was made by Mr. Boschuk with careless disregard for the facts. In fact, one of the gauges was transferred on September 6, 1995, to Cashin Associates, P.C., and was not returned to JLT until September 19 or 20, 1995.

(4) A letter dated September 18, 1995, signed by Lourdes Boschuk for JLT and prepared by Mr. Boschuk as an agent for and consultant to JLT, and sent to the NRC in response to the NRC's September 15, 1995, letter confirming JLT's commitment at the September 15, 1995, enforcement conference to refrain from using the Troxler density gauges pending resolution of the apparent violations, made several materially inaccurate statements. The letter stated that all JLT's gauges had been in locked storage since the August 1995 NRC inspection. This was a deliberately inaccurate statement by Mr. Boschuk in violation of 10 CFR 30.9(a) and 30.10(a)(2). In fact, Mr. Boschuk learned from Lourdes Boschuk no later than the weekend ending September 17, 1995, that a gauge had been recently transferred to Cashin Associates, P.C. As explained above, Mr. Boschuk also knew that the gauge had been transferred to SE Technologies, Inc., between July 18 and August 17, 1995, although the NRC inspection ended on August 3, 1995.

In addition, the letter stated that all three JLT Troxler gauges are currently locked in the designated storage cabinet on JLT's premises. This inaccurate statement was in violation of 10 CFR 30.9(a) and made with at least careless disregard as to its truth or falsity by Mr. Boschuk. Mr. Boschuk stated at a December 18, 1997, predecisional enforcement conference that although he checked the storage cabinet before preparing the letter, and saw three yellow cases which he assumed contained the gauges, he did not look inside the cases to verify the gauges were there. In fact, the gauge which had been transferred to Cashin Associates, P.C. was not returned to JLT until September 19 or 20, 1995.

C. Destruction of Records Relating to Gauge Usage

According to a witness, John Boschuk, Jr. and others destroyed, altered, sanitized, or otherwise disposed of business and transactional records shortly after the August 1995 NRC inspection of JLT, in order to conceal from the NRC the unauthorized use and/or transfer of Troxler gauges by JLT. Among the records destroyed or disposed of were invoices and a log documenting use of the Troxler density gauges. According to a handwritten note, created by a JLT employee immediately after the September 15, 1995 enforcement conference, although utilization records were made available to the NRC inspector, those records could not be subsequently located. The note further reflected a question whether the utilization records were ''thrown away during sanitization of records?'' Shortly after the August 1995 inspection, the NRC inspector requested JLT to provide a copy of a utilization record found during the inspection and which documented the rental of a gauge to SE Technologies in September 1994, when neither JLE nor JLT had a valid NRC license. JLT did not provide the invoice and claimed it could no longer

find the document. Condition 19 of JLT's License requires that JLT conduct its licensed activities in accordance with its Application dated January 6, 1995. The Application mandates that JLT comply with conditions requiring the creation of a utilization log for the gauges and the maintenance of the log for audit purposes. The destruction of the utilization log was in violation of the 10 CFR 30.3 and 30.9(a). The participation of Mr. Boschuk in the deliberate destruction of the utilization log was in violation of 10 CFR 30.10(a).

III

Based on the above, the NRC concludes that John Boschuk, Jr., President and owner of JLE and an agent of and a consultant to JLT, deliberately violated NRC regulations and otherwise committed willful violations of NRC requirements. These violations raise a serious doubt as to whether Mr. Boschuk can be relied upon to comply with NRC requirements and to provide complete and accurate information to the NRC. The NRC must rely upon the integrity of persons involved in licensed activities, especially owners and officials of NRC licensees. Deliberate misconduct of the type demonstrated by Mr. Boschuk cannot be tolerated. Notwithstanding the revocation of the JLE and JLT licenses, given Mr. Boschuk's repeated failures to adhere to regulatory requirements, the NRC no longer has the necessary assurance that Mr. Boschuk's activities, if performed under an NRC license, would be performed safely and in accordance with requirements.

Consequently, I lack the requisite reasonable assurance that licensed activities can be conducted in compliance with the Commission's requirements and that the health and safety of the public will be protected if Mr. Boschuk were permitted at this time to be involved in NRC-licensed activities. Therefore, the public health, safety and interest require that Mr. Boschuk be prohibited from any involvement in NRC-licensed activities for a period of five years from the date of this Order, and if he is currently involved with another licensee in NRC-licensed activities, he must immediately cease such activities, and inform the NRC of the name, address and telephone number of the licensee, and provide a copy of this Order to the licensee. Additionally, Mr. Boschuk is required to notify the NRC of his first employment or involvement in NRC-licensed activities following the prohibition period.

Accordingly, pursuant to sections 81, 161b, 161i, 161o, 182 and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202, 10 CFR 30.10, and 10 CFR 150.20, *it is hereby ordered that*:

1. For a period of five years from the date of this Order, Mr. Boschuk is prohibited from engaging in NRC-licensed activities. NRC-licensed activities are those activities that are conducted pursuant to a specific or general license issued by the NRC, including, but not limited to, those activities of Agreement State licensees conducted in areas of NRC jurisdiction pursuant to the authority granted by 10 CFR 150.20.

2. For a period of five years from the date of this Order, Mr. Boschuk shall provide a copy of this Order to any prospective employer or business partner who engages in NRC-licensed activities (as described in Section IV.1 above) prior to his acceptance of any employment (whether involved in licensed activities or not) by, or acquisition of partnership or ownership interest in, a licensee (as described in Section IV.1 above). The purpose of this requirement is to ensure that the licensee is aware of Mr. Boschuk's prohibition from engaging in NRC-licensed activities.

3. The first time Mr. Boschuk is employed in NRC-licensed activities, or acquires an interest in a licensee (as described in Section IV.1 above), following the five year prohibition, he shall notify the Regional Administrator, NRC Region I, 475 Allendale Road, King of Prussia, Pennsylvania 19406, prior to acquiring such an interest or engaging in NRC-licensed activities, including activities under an Agreement State license when activities under that license are conducted in areas of NRC jurisdiction pursuant to 10 CFR 150.20. The notice shall include the name, address, and telephone number of the NRC or Agreement State licensee and the location where licensed activities will be performed.

The Director, Office of Enforcement, may, in writing, relax or rescind any of the above conditions upon demonstration by the Licensee of good cause.

V

In accordance with 10 CFR 2.202, Mr. Boschuk must, and any other person adversely affected by this Order may, submit an answer to this Order and may request a hearing on this Order, within 20 days of the date of this Order. Where good cause is shown, consideration will be given to extending the time to request a hearing. A request for extension of time must be made in writing to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and include a statement of good cause for the extension. The answer may consent to this Order. Unless the answer consents to this Order, the answer shall, in writing and under oath or affirmation, specifically admit or deny each allegation or charge made in this Order and shall set forth the matters of fact and law on which Mr. Boschuk or any other person adversely affected relies and the reasons as to why the Order should not have been issued. Any answer or request for a hearing shall be submitted to the Secretary, U.S. Nuclear Regulatory Commission, ATTN: Chief, Rulemaking and Adjudications Staff, Washington, DC 20555. Copies also shall be sent to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, to the Deputy Assistant General Counsel for Enforcement at the same address, to the Regional Administrator, NRC Region I, 475 Allendale Road, King of Prussia, Pennsylvania 19406, and to Mr. Boschuk, if the answer or hearing request is by a person other than Mr. Boschuk. If a person other than Mr. Boschuk requests a hearing, that person shall set forth with particularity the manner in which his or her interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.714(d).

If a hearing is requested by Mr. Boschuk or a person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Order should be sustained.

In the absence of any request for hearing, or written approval of an extension of time in which to request a hearing, the provisions specified in Section IV above shall be final 20 days from the date of this Order without further order or proceedings. If an extension of time for requesting a hearing has been approved, the provisions specified in Section IV shall be final when the extension expires if a hearing request has not been received.

Dated at Rockville, Maryland this 10th day of April 1998.

For the Nuclear Regulatory Commission.

James Lieberman,

Director, Office of Enforcement.

[FR Doc. 98–10331 Filed 4–17–98; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[IA 98–020]

Lourdes T. Boschuk, Canonsburg, Pennsylvania; Order Prohibiting Involvement in NRC-Licensed Activities

I

J&L Testing Company, Inc., (Licensee or JLT) is the holder of Byproduct Nuclear Material License No. 37–28442–02 issued by the Nuclear Regulatory Commission (NRC or Commission) pursuant to 10 CFR part 30. The license authorizes possession and use of Troxler portable nuclear gauges containing cesium-137 and americium-241 in sealed sources. The license, originally issued on February 7, 1995, was amended on August 22, 1995, and is due to expire on February 29, 2000. The License was suspended by Order, dated September 27, 1995. Lourdes T. Boschuk is the President and owner of JLT. Concurrently with this Order, the NRC is issuing an Order Revoking License to JLT (EA 96–110).

II

Based on an NRC inspection and an investigation by the NRC's Office of Investigations, the NRC has determined that Ms. Boschuk, while President and owner of JLT,[1] engaged in a pattern and practice of willfully violating NRC requirements and otherwise violated NRC requirements. Among such violations are the following:

A. Materially Inaccurate Statements Made to NRC

(1) A letter accompanying JLT's Application for Material License for Troxler Nuclear Density Gauges, dated November 21, 1994, and signed by Lourdes Boschuk as President of JLT, represented to the NRC that since the revocation of J&L Engineering's License to operate the same Troxler gauges on August 30, 1993, the gauges had not been removed from storage or used in any way. In fact, JLT admittedly used a gauge on at least four occasions and invoiced customers for that use after revocation of the JLE license and before the NRC issued a license to JLT. JLT used the gauge for the following customers: DelSir Supply in December 1993, Johnson Construction in May 1994, Johnson Construction in June 1994, and PA Soil & Rock Company in July 1994. The materially inaccurate statement in the JLT application was in violation of 10 CFR 30.9(a) and made with careless disregard for the facts by Ms. Boschuk.

(2) A letter to the NRC dated September 11, 1995, signed by Lourdes Boschuk as President of JLT, stated that the Troxler gauge that was missing at the time of the NRC inspection on August 1, 1995, was in Watertown, New York; and was returned the next day. In fact, the gauge was transferred to SE Technologies, Inc., located in Bridgeville, Pennsylvania, in July 1995 and was not returned to JLT until August 17, 1995. This statement was in violation of 10 CFR 30.9(a) and was made with careless disregard for the facts by Ms. Boschuk. In addition, the letter represented that since the NRC inspection on August 1, 1995, all three Troxler gauges were located in a locked storage cabinet at JLT's premises and would remain there until the apparent violations identified in the NRC's Inspection Report were resolved. In fact, one of the gauges had been transferred on September 6, 1995, to Cashin Associates, P.C. in New York State, and was not returned to JLT until September 19 or 20, 1995. This was an inaccurate statement in violation of 10 CFR 30.9(a) and was made by Ms. Boschuk with careless disregard for the facts.

(3) During an enforcement conference with the NRC on September 15, 1995, Lourdes Boschuk, as President of JLT, stated that JLT's operable Troxler gauge was in storage and had not been used. In fact, one of the gauges was transferred by JLT on September 6, 1995, to Cashin Associates, P.C. for use at the Brookhaven Landfill in New York State, and was not returned to JLT until September 19 or 20, 1995. This inaccurate statement was in violation of 10 CFR 30.9(a) and was made by Ms. Boschuk with careless disregard for the facts.

(4) A letter to the NRC dated September 18, 1995, signed by Lourdes Boschuk as President of JLT, and sent to the NRC in response to the September 15, 1995, NRC letter confirming JLT's commitment at the September 15, 1995, enforcement conference to refrain from using the Troxler density gauges pending resolution of the apparent violations, made several materially inaccurate statements. The letter stated that all JLT's gauges have been in the storage cabinet on the JLT premises since the visit of the NRC inspector. This was a deliberately inaccurate statement by Ms. Boschuk in violation of 10 CFR 30.9(a) and 30.10(a)(2). In fact, Ms. Boschuk knew no later than September 15, 1995, during a telephone call with the Director of JLT, immediately after the September 15, 1995 enforcement conference, that one of JLT's Troxler gauges had been transferred on September 6, 1995 to Cashin Associates, P.C. in New York State.

In addition, the letter stated that all three JLT Troxler gauges are currently locked in the designated storage cabinet on the JLT premises. This inaccurate statement was in violation of 10 CFR 30.9(a) and was made with at least careless disregard as to its truth or falsity by Ms. Boschuk. In fact, Lourdes Boschuk sent the JLT RSO to retrieve the gauge which had been transferred to Cashin Associates, P.C., but the RSO did not return to JLT with the gauge until late in the evening of September 19 or early in the morning of September 20, 1995.

B. Destruction of Records Relating to Gauge Usage

According to a witness, Lourdes Boschuk and others destroyed, altered, sanitized, or otherwise disposed of business and transactional records shortly after the August 1995 NRC inspection of JLT, in order to conceal from the NRC the unauthorized use and/or transfer of Troxler gauges by JLT. Among the records destroyed or disposed of were invoices and a log documenting use of the Troxler density gauges. According to a handwritten note, created by a JLT employee immediately after the September 15, 1995 enforcement conference, although utilization records were made available to the NRC inspector, those records could not be subsequently located. The note further reflected a question whether the utilization records were ''thrown away during sanitization of records?'' Shortly after the August 1995 inspection, the NRC inspector requested JLT to provide a copy of a utilization record found during the inspection and which documented the rental of a gauge to SE Technologies in September 1994, when neither JLE nor JLT had a valid NRC license. JLT did not provide the invoice and claimed it could no longer find the document. Condition 19 of JLT's License requires that JLT conduct its licensed activities in accordance with its Application dated January 6, 1995. The Application mandates that JLT comply with conditions requiring the creation of a utilization log for the gauges and the maintenance of the log for audit purposes. The destruction of the utilization log was in violation of the 10 CFR 30.3 and 30.9(a). The participation of Lourdes Boschuk in the deliberate destruction of the utilization log was in violation of 10 CFR 30.10(a).

[1] Lourdes Boschuk is the wife of John Boschuk, Jr., President and Owner of J&L Engineering, Inc. (JLE). JLT and JLE are located at the same address and share the same telephone and facsimile numbers.

III

Based on the above, the NRC concludes that Lourdes Boschuk, President and owner of JLT, deliberately violated NRC requirements, and otherwise committed willful violations of NRC requirements. These violations raise a serious doubt as to whether Ms. Boschuk can be relied upon to comply with NRC requirements and to provide complete and accurate information to the NRC. The NRC must rely upon the integrity of persons involved in licensed activities, especially owners and officials of NRC licensees. Deliberate misconduct of the type demonstrated by Ms. Boschuk cannot be tolerated. Notwithstanding the revocation of the JLT license, given Ms. Boschuk's repeated failures to adhere to regulatory requirements, the NRC no longer has the necessary assurance that Ms. Boschuk's participation in licensed activities would be performed safely and in accordance with requirements.

Consequently, I lack the requisite reasonable assurance that licensed activities can be conducted in compliance with the Commission's requirements and that the health and safety of the public will be protected if Ms. Boschuk were permitted at this time to be involved in NRC-licensed activities. Therefore, the public health, safety and interest require that Ms. Boschuk be prohibited from any involvement in NRC-licensed activities for a period of five years from the date of this Order, and if she is currently involved with another licensee in NRC-licensed activities, she must immediately cease such activities, and inform the NRC of the name, address and telephone number of the licensee, and provide a copy of this Order to the licensee. Additionally, Ms. Boschuk is required to notify the NRC of her first employment or involvement in NRC-licensed activities following the prohibition period.

IV

Accordingly, pursuant to sections 81, 161b, 161i, 161o, 182 and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202, 10 CFR 30.10, and 10 CFR 150.20, it is hereby ordered that:

1. For a period of five years from the date of this Order, Ms. Boschuk is prohibited from engaging in NRC-licensed activities. NRC-licensed activities are those activities that are conducted pursuant to a specific or general license issued by the NRC, including, but not limited to, those activities of Agreement State licensees conducted in areas of NRC jurisdiction pursuant to the authority granted by 10 CFR 150.20.

2. For a period of five years from the date of this Order, Ms. Boschuk shall provide a copy of this Order to any prospective employer or business partner who engages in NRC-licensed activities (as described in Section IV.1 above) prior to her acceptance of any employment (whether involved in licensed activities or not) by, or partnership or ownership interest in, a licensee (as described in Section IV.1 above). The purpose of this requirement is to ensure that the licensee is aware of Ms. Boschuk's prohibition from engaging in NRC-licensed activities.

3. The first time Ms. Boschuk is employed in NRC-licensed activities, or acquires a partnership or ownership interest in a licensee (as described in Section IV.1 above), following the five year prohibition in Section IV.1, above, she shall notify the Regional Administrator, NRC Region I, 475 Allendale Road, King of Prussia, Pennsylvania 19406, prior to acquiring such an interest or prior to engaging in NRC-licensed activities, including activities under an Agreement State license when activities under that license are conducted in areas of NRC jurisdiction pursuant to 10 CFR 150.20. The notice shall include the name, address, and telephone number of the NRC or Agreement State licensee and the location where licensed activities will be performed.

The Director, Office of Enforcement, may, in writing, relax or rescind any of the above conditions upon demonstration by the Licensee of good cause.

V

In accordance with 10 CFR 2.202, Ms. Boschuk must, and any other person adversely affected by this Order may, submit an answer to this Order and may request a hearing on this Order, within 20 days of the date of this Order. Where good cause is shown, consideration will be given to extending the time to request a hearing. A request for extension of time must be made in writing to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and include a statement of good cause for the extension. The answer may consent to this Order. Unless the answer consents to this Order, the answer shall, in writing and under oath or affirmation, specifically admit or deny each allegation or charge made in this Order and shall set forth the matters of fact and law on which Ms. Boschuk or other person adversely affected relies and the reasons as to why the Order should not have been issued. Any answer or request for a hearing shall be submitted to the Secretary, U.S. Nuclear Regulatory Commission, Attn: Chief, Rulemaking and Adjudications Staff, Washington, DC 20555. Copies also shall be sent to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, to the Deputy Assistant General Counsel for Enforcement at the same address, to the Regional Administrator, NRC Region I, 475 Allendale Road, King of Prussia, Pennsylvania 19406, to Ms. Boschuk if the answer or hearing request is by a person other than Ms. Boschuk. If a person other than Ms. Boschuk requests a hearing, that person shall set forth with particularity the manner in which his or her interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.714(d).

If a hearing is requested by Ms. Boschuk or a person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Order should be sustained.

In the absence of any request for hearing, or written approval of an extension of time in which to request a hearing, the provisions specified in Section IV above shall be final 20 days from the date of this Order without further order or proceedings. If an extension of time for requesting a hearing has been approved, the provisions specified in Section IV shall be final when the extension expires if a hearing request has not been received.

Dated at Rockville, Maryland, this 10th day of April 1998.

For the Nuclear Regulatory Commission.

James Lieberman,

Director, Office of Enforcement.

[FR Doc. 98–10330 Filed 4–17–98; 8:45 am]

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NUCLEAR REGULATORY COMMISSION

[Docket No. 50–440; License No. NPF–58; EA 97–430]

Centerior Service Company, Perry Nuclear Power Plant, Unit 1; Order Imposing Civil Monetary Penalty

I

Centerior Service Company (Licensee) is the holder of Operating License No. NPF–58, issued by the Nuclear Regulatory Commission (NRC or Commission) on November 13, 1986. The license authorizes the Licensee to operate the Perry Nuclear Power Plant,

Unit 1, in accordance with the conditions specified therein.

II

Three inspections of the Licensee's activities were conducted from December 28, 1996, to August 27, 1997. The results of the inspections indicated that the Licensee had not conducted its activities in full compliance with NRC requirements. A written Notice of Violation and Proposed Imposition of Civil Penalties (Notice) was served upon the Licensee by letter dated November 18, 1997. The Notice states the nature of the violations, the provisions of the NRC's requirements that the Licensee had violated, and the amount of the civil penalties proposed for the violations.

First Energy on behalf of Cleveland Electric Illuminating Company responded to the Notice on December 18, 1997. The NRC notes that Centerior Service Company (Centerior) holds NRC License No. NPF–58 which authorizes the operation of the Perry Nuclear Power Plant, Unit 1. Therefore, this action is directed to Centerior (Licensee). In its December 18, 1997 response, the Licensee admitted Violation A (EA 97–047) discussed in the Notice and paid the $50,000 civil penalty. Violation B (EA 96–542) did not require a response. In that same letter, the Licensee denied Violation C, EA 97–430, and requested remission of the proposed $50,000 civil penalty for that violation.

III

After consideration of the Licensee's response and the statements of fact, explanation, and argument for remission contained therein, the NRC staff has determined, as set forth in the Appendix to this Order, that the violation occurred as modified below and that the penalty proposed for Violation C designated in the Notice should be imposed. The NRC accepts the licensee's explanation that the change of the description of the ECCS surge tanks did not involve a potential increase of the consequence of a design basis dose to the public. The violation was accordingly modified by removing the sentence concerning potential increase of the consequences of a design basis dose to the public. However, the modification of the violation does not affect the validity of the violation or the amount of the civil penalty.

IV

In view of the foregoing and pursuant to Section 234 of the Atomic Energy Act of 1954, as amended (Act), 42 U.S.C. 2282, and 10 CFR 2.205, it is hereby ordered that: The Licensee pay a civil penalty in the amount of $50,000 within 30 days of the date of this Order, by check, draft, money order, or electronic transfer, payable to the Treasurer of the United States and mailed to Mr. James Lieberman, Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852.

V

The Licensee may request a hearing within 30 days of the date of this Order. Where good cause is shown, consideration will be given to extending the time to request a hearing. A request for extension of time must be made in writing to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, and include a statement of good cause for the extension. A request for a hearing should be clearly marked as a ''Request for an Enforcement Hearing,'' and shall be addressed to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, with a copy to the Commission's Document Control Desk, Washington, D.C. 20555. Copies also shall be sent to the Assistant General Counsel for Hearings and Enforcement at the same address and to the Regional Administrator, NRC Region III, 801 Warrenville Road, Suite 255, Lisle, IL 60532–4351.

If a hearing is requested, the Commission will issue an Order designating the time and place of the hearing. If the Licensee fails to request a hearing within 30 days of the date of this Order, or if written approval of an extension of time in which to request a hearing has not been granted, the provisions of this Order shall be effective without further proceedings. If payment has not been made by that time, the matter may be referred to the Attorney General for collection.

In the event the Licensee requests a hearing as provided above, the issues to be considered at such hearing shall be:

(a) Whether the Licensee was in violation of the Commission's requirements as set forth in the Notice referenced in Section II above, as amended in the Appendix to this Order, and

(b) Whether, on the basis of such violation, this Order should be sustained.

Dated at Rockville, Maryland this 9th day of April 1998.

For the Nuclear Regulatory Commission.

James Lieberman,

Director, Office of Enforcement.

Appendix—Evaluation and Conclusion

On November 18, 1997, a Notice of Violation and Proposed Imposition of Civil Penalties (Notice) was issued for violations identified during several NRC inspections at the Perry Nuclear Power Plant, Unit 1. First Energy on behalf of Cleveland Electric Illuminating Company responded to the Notice on December 18, 1997. The NRC notes that Centerior Services Company (Centerior) holds NRC License No. NPF–58 which authorizes the operation of the Perry Nuclear Power Plant, Unit 1. Therefore, this action is directed to Centerior (licensee). In the December 18, 1997 response, the licensee admitted Violation A (EA 97–047) discussed in the Notice and paid the $50,000 civil penalty. Violation B (EA 96–542) did not require a response. In that same letter, the licensee denied Violation C, EA 97–430, and requested remission of the proposed $50,000 civil penalty for that violation.

Restatement of Violation C (EA 97–430)

10 CFR 50.59 permits the licensee, in part, to make changes to the facility and procedures as described in the safety analysis report without prior Commission approval provided the changes do not involve an unreviewed safety question. Records of these changes must include a written safety evaluation which provides the bases for the determination that the changes do not involve an unreviewed safety question.

10 CFR 50.59 (a)(2)(I) states, in part, that a proposed change shall be deemed to involve an unreviewed safety question if the probability of occurrence or the consequences of an accident or malfunction of equipment important to safety previously evaluated in the safety analysis report may be increased.

Updated Safety Analysis Report (USAR) Section 9.2.2.3, ''Emergency Closed Cooling System—Safety Evaluation'' states that the emergency closed system cooling surge tanks are designed to maintain a seven day supply of water with normal system leakage without the need to provide makeup water.

Contrary to the above, Safety Evaluation No. 96–128 prepared by the licensee on October 10, 1996, and approved on October 21, 1996, evaluated a change in the design basis for the emergency closed cooling system surge tanks. The licensee changed the sizing basis of the surge tanks from a seven day supply as stated in USAR Section 9.2.2.3 to a 30-minute supply, and the licensee's analysis failed to identify that the change was an unreviewed safety question. Specifically, the safety evaluation did not adequately assess the increased probability of a malfunction of equipment important to safety associated with an increased potential for operator error as operators replenished the surge tanks on a 30-minute post accident basis instead of the previously evaluated period of seven days. The safety evaluation also failed to recognize the increased consequences of a design basis loss of coolant accident associated with an increased projected dose to the operators as they

refilled the surge tanks on an increased frequency.

This is a Severity Level III violation (Supplement I).

Civil Penalty—$50,000.

Summary of Licensee's Response to Violation C (EA 97–430)

The licensee denied this violation as written. The licensee provided three reasons to support the denial of the violation:

Summary of Licensee's Reason 1

The design of the plant, and the corresponding design bases for the emergency closed cooling (ECC) system, were not changed by the safety evaluation. The plant condition was identified as a non-conforming condition, and activities were planned to restore the system condition to the original licensing basis.

A determination of operability for the ECC system with increased leakage concluded that it was acceptable to allow system leakage of 3.0 gallons per minute (gpm) for ECC Loop A and 3.5 gpm for Loop B. In this degraded condition, the increased leakage would reduce the seven day supply of water to a 30 minute supply and introduce the need for local operator action to ensure sustained adequate net positive suction head (NPSH) to the ECC pumps. The licensee indicated that it may have been inappropriate to include the operability evaluation in the Updated Final Safety Analysis (USAR); however, it was done to preclude the need for preparing additional degraded condition operability determinations in the future.

The licensee concluded that the revision to the USAR preserved the original design considerations of a 7 day supply, and distinctly identifies leakage in excess of 0.5 gallons per hour (gph) as a degraded condition. The licensee indicated that its intention was to correct the deficiency during ''refueling outage six'' which began on September 12, 1997.

NRC Evaluation of Licensee's Reason 1

As originally stated in the USAR, the system was designed to maintain a seven day supply with normal system leakage. This fact was considered and reiterated in the NRC safety evaluation report. The USAR change removed the ''design aspect'' of the seven day supply and simply provided the mathematics for the 0.5 gph leak rate. This was a change in the design criteria. Additionally, the USAR now stated that under condition of degraded system leakage, it would be acceptable to have leakage such that there would only be a 30 minute inventory available. This also represents a change to the design basis of the facility.

Although the intention of the licensee was to repair the system, the USAR change represented a continued acceptance of a degraded condition.

Summary of Licensee's Reason 2

The change to the description of the ECC system surge tanks in the USAR did not involve an unreviewed safety question (USQ) under 10 CFR 50.59 criteria because it did not involve a potential increase in the probability of occurrence of a malfunction of equipment important to safety.

The licensee indicated that an increase in the probability of occurrence of a malfunction of equipment important to safety was not concluded on the basis that manual actions employed were such that failure of an action would be equivalent to that of a single active failure. When compared to the original evaluated design, the failure of the operator action would result in the loss of one train of the ECC system; a loss of no greater consequence than was previously evaluated in the USAR.

The licensee also indicated that significant efforts put forth to compensate for the additional actions and reduce the potential for error formed the basis to conclude that no increase in probability of equipment malfunction was introduced. The licensee referenced Part 9900 of the NRC inspection manual guidance for 10 CFR 50.59, which states in part that the NRC has found compensating effects, such as administrative controls, acceptable in offsetting uncertainties and increases in probability of occurrence or consequences of an accident previously evaluated or reductions in margin of safety, provided the negative impact is negligible, and is clearly outweighed by the compensatory actions. The licensee stated ''if these compensating factors can not be considered in determining that there is no increase in probability, no additional operator actions, for any normal or off-normal operating condition, could be permitted without also concluding an increase in the probability of a malfunction.''

NRC Evaluation of Licensee's Reason 2

Under the circumstances required to manually accomplish the ECC surge tank refill, the NRC does not agree that the consequences of operator error would be limited to a single active failure. The licensee did take actions to mitigate potential operator errors; however, in this case the NRC does not consider any mitigating actions to clearly outweigh the increased probability of losing NPSH to the ECC pumps. The increases in probabilities are described below:

- The reliance on an operator to refill the emergency closed cooling surge tanks beginning at 30 minutes (with completion occurring within the next 20 minutes) into a design basis accident (DBA) introduced a common-mode failure mechanism at a critical time in the accident sequence. While the USAR did rely on operators to refill the tanks seven days after a DBA, the seven days provided a period of time during which no operator action was required. After seven days, the plant would be stabilized and a failure on the part of an operator to properly refill the ECC surge tanks would still allow some margin for recovery. At 30 minutes into a DBA, the plant is significantly less stable and an interruption in operation or loss of this system increases the potential for core damage. When operator response time to perform a task is significantly decreased, the probability of an error is also increased.
- Due to the limited time into the accident sequence when operator actions would be required to refill the ECC surge tanks, there was also concern that personnel would not be available to perform the activity. Although the actual number of operators on site during routine activities might support the refill activity, during an accident, these operators would be diverted into addressing the more immediate action of responding to the accident and might not be available to compensate for a system that was designed to operate without operator action until the plant was stabilized. Therefore, the potential lack of available personnel early in the accident sequence to perform the ECC surge tank refill increased the probability of not filling the ECC surge tanks within the limited time frame.
- Based on the licensee's dose estimates for single entries into the ECC surge tank area of 4.4 rem, no single operator would be able to accomplish the repetitive refill activity sufficient to reduce the potential for error. It would appear that a minimum of three operators would be required within the first 2.5 hours (due to the dose) which increased the potential for errors.
- The actual and potential physical conditions of the area adjacent to the ECC system surge tanks (e.g., no emergency lighting, overfilling the surge tanks could cause slippery floor conditions) could result in the operator being unable to refill the tanks within the reduced response time.

In this case, the substitution of manual actions to replace the design intention of the tanks, including significantly reducing operator response time constitutes an unreviewed safety question (USQ). This change should have been submitted to and approved by the NRC before implementation.

Summary of Licensee's Reason 3

The change to the description of the ECC system surge tanks in the USAR did not involve a USQ under 10 CFR 50.59 criteria because it did not involve a potential increase of the consequences of a design basis accident associated with increased projected dose to the public due to operator refilling the surge tanks on an increased frequency.

The licensee performed time and motion studies of the activities needed to refill the ECC surge tanks and determined that for a single entry, the maximum dose was estimated to be 4.4 rem. This dose was bounded by the NUREG–0737 defined limit of 5 rem. The expected dose projection was within the guidelines of USAR section 12.6.1.a, for post accident dose rates in areas designated as ''infrequent occupancy,'' and the activity could be performed at any time throughout the accident without exceeding the 5 rem whole body exposure limit.

An increase in the consequences of an accident previously evaluated in the USAR was not concluded since doses to the public were not increased above the current licensing limit and doses to onsite personnel were not in excess of the limits as specified in NUREG–0737 or the USAR.

The consequences as referenced in 10 CFR 50.59 pertain to the health and safety of the public. Therefore, the proposed operator action from the perspective of receiving the estimated dose, does not cause a change in the consequences.

NRC Evaluation of Licensee's Reason 3

The NRC determined that an increase in dose consequences, as used in 10 CFR 50.59,

refers to the consequences of a design basis accident, and not to increased radiation dose to plant staff from in-plant recovery actions. NRC agrees that the change in operator actions did not involve a potential increase in consequences of a design basis accident. The violation is revised as follows:

10 CFR 50.59 permits the licensee, in part, to make changes to the facility and procedures as described in the safety analysis report without prior Commission approval provided the changes do not involve an unreviewed safety question. Records of these changes must include a written safety evaluation which provides the bases for the determination that the changes do not involve an unreviewed safety question.

10 CFR 50.59 (a)(2)(I) states, in part, that a proposed change shall be deemed to involve an unreviewed safety question if the probability of occurrence or the consequences of an accident or malfunction of equipment important to safety previously evaluated in the safety analysis report may be increased.

Updated Safety Analysis Report (USAR) Section 9.2.2.3 ''Emergency Closed Cooling System—Safety evaluation'' states that the emergency closed cooling system surge tanks are designed to maintain a seven day supply of water with normal system leakage without the need to provide makeup water.

Contrary to the above, Safety Evaluation No. 96–128 prepared by the licensee on October 10, 1996, and approved on October 21, 1996, evaluated a change in the design basis for the emergency closed cooling system surge tanks. The licensee changed the sizing basis of the surge tanks from a seven day supply as stated in USAR Section 9.2.2.3 to a 30-minute supply, and the licensee's analysis failed to identify that the change was an unreviewed safety question. Specifically, the safety evaluation did not adequately assess the increased probability of a malfunction of equipment important to safety associated with an increased potential for operator error as operators replenished the surge tanks on a 30-minute post accident basis instead of the previously evaluated period of seven days.

Summary of Licensee's Request for Remission of the Civil Penalty

The licensee requested full remission of the $50,000 civil penalty.

NRC Evaluation of Licensee's Request for Remission of the Civil Penalty

The licensee did not provide a separate justification (i.e., a discussion of the civil penalty adjustment factors) to justify remission of the civil penalty. Rather, the licensee's reasons for denying the violation apparently are the licensee's justification for requesting remission of the civil penalty.

NRC Conclusion

The licensee interpreted the NRC position concerning the violation to be that the increases in both the consequences and probability of an accident were the direct result of the increased presence in the plant of operators who are fully trained and qualified for the activities under consideration.

The NRC did not intend to suggest that the increased presence of personnel in the plant would cause an increase in the consequences and probability of an accident. Rather, the NRC was concerned with the increased potential of failing to refill the ECC surge tanks within an extremely limited time constraint, which was much shorter than originally described to and accepted by the NRC. In summary, the NRC's concern was that during the performance of the additional operator actions to refill the ECC surge tanks, the potential for errors was increased and could lead to the loss of the safety related ECC system. Loss of the ECC system could result in losing other safety related systems relied upon to mitigate the consequences of an accident. Therefore, the manual operator action proposed to compensate for the reduced ECC surge tank water supply constituted a USQ.

The NRC has concluded that this violation occurred as modified above, and that an adequate basis for withdrawing the violation, reducing the severity level of the violation, or remitting the civil penalty was not provided by the licensee. Consequently, the proposed civil penalty in the amount of $50,000 should be imposed.

[FR Doc. 98–10329 Filed 4–17–98; 8:45 am]

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NUCLEAR REGULATORY COMMISSION

[Docket No. 30–33725; License No. 37–28442–02; EAs 96–110]

J&L Testing Company, Inc., Canonsburg, Pennsylvania; Order Revoking License

I

J&L Testing Company, Inc., (Licensee or JLT) is the holder of Byproduct Nuclear Material License No. 37–28442–02 (License) issued by the Nuclear Regulatory Commission (NRC or Commission) pursuant to 10 CFR Part 30. The License authorizes possession and use of Troxler portable nuclear density gauges containing cesium-137 and americium-241 in sealed sources. The License, originally issued on February 7, 1995, was amended on August 22, 1995, and is due to expire on February 29, 2000. The License was suspended by Order, dated September 27, 1995.

II

J & L Engineering, Inc. (JLE), a corporation located at the same address and using the same telephone and facsimile numbers as the Licensee, held License No. 37–28442–01 for the same portable nuclear gauges for which the Licensee is now licensed. John Boschuk, Jr., President and owner of JLE, has acted as an agent of and consultant to JLT. JLE's license was revoked on August 30, 1993, for non-payment of fees. JLE was ordered, among other things, to cease use of byproduct material, dispose of the byproduct material, and notify the NRC of the disposition within 30 days of that Order. Notwithstanding that Order, JLE continued to possess the byproduct material and on October 5, 1994, a Notice of Violation (Notice) was issued to JLE for possession of licensed material without a valid NRC license. By letter dated October 11, 1994, Mr. Boschuk responded to the Notice, stating, among other things, that the ''* * * equipment [3-Troxler Nuclear Density gauges] has not been used for over 2 years and has not left the storage area in our office.''

On November 21, 1994, JLT submitted an application for a license. The November 21, 1994, cover letter for the application, signed by Lourdes Boschuk, President and owner of JLT and wife of John Boschuk, Jr., stated the following:

> * * * Submitted herein is our application to restore our expired license to store and operate three (3) Troxler Nuclear Density Gages (sic). We understand our license was revoked on August 30, 1993. Since that date, these units were not removed from storage nor used in anyway (sic).

Relying on the application and the statement that the gauges had not been removed from storage since the JLE license was revoked, the NRC issued the new License No. 37–28442–02 to JLT on February 7, 1995.

On August 1 and 3, 1995, the NRC conducted a routine, announced safety inspection of activities authorized by the License at JLT's facility in Canonsburg, Pennsylvania. During the inspection, an NRC inspector determined, based on a review of Licensee's documents, that one of the gauges, which JLE and the Licensee separately had stated in writing to the NRC were in storage and had not been used since revocation of the JLE license, had been transferred on September 2, 1994, to SE Technologies, Inc., in Bridgeville, Pennsylvania (which used the gauge at a temporary jobsite at the S. Hill Village Sears project), when neither JLE nor JLT possessed a valid NRC license. As stated by the Chief Engineer of SE Technologies, Inc., Mr. Boschuk had arranged for the rental, and as stated by a Project Engineer of SE Technologies, Inc., Mr. Boschuk had personally transferred the gauge to SE Technologies, Inc. JLT stated at a December 18, 1997, enforcement conference that uses of the gauge(s) prior to February 7, 1995, and after revocation of the JLE license were invoiced by JLT. The transfer of the gauge to SE Technologies, Inc. was a

deliberate violation of 10 CFR 30.3, which prohibits, among other things, transfer of byproduct material without a valid license from the NRC and a deliberate violation of the order revoking JLE's license in violation of 10 CFR 30.10(a). As a consequence, the statement by Ms. Boschuk in her November 21, 1994, letter to the NRC, that the gauges had not been used and had not left storage at JLT since August 30, 1993, was inaccurate in violation of 10 CFR 30.9(a), and the statement by Mr. Boschuk in his October 11, 1994, letter to the NRC, that the gauges had not been used for over two years and had not left storage, was deliberately inaccurate in violation of 10 CFR 30.9(a) and 30.10(a).

During the NRC's August 1995 inspection, three additional violations of NRC requirements were identified. These violations involved the failure to perform leak tests of the gauges at the required 6-month intervals, as required by Condition 12 of the license; the failure to have an approved Radiation Safety Officer (RSO) (the RSO listed by the license terminated employment on May 26, 1995), as required by License Condition 11A; and the failure to perform physical inventories of the gauges at the required 6-month intervals, as required by Condition 14 of the license. By letter dated September 11, 1995, JLT admitted that the cited violations had occurred.

A predecisional enforcement conference was held with the Licensee on September 15, 1995, to discuss the five violations identified during the August 1995 inspection. At the conference, JLT's President admitted all five violations, but offered no explanation for why the material had been used notwithstanding the revocation of the JLE license and JLT's lack of a license.

Based upon the above, the NRC concluded that JLT's submission of materially inaccurate information in its license application, and JLE's submission of materially inaccurate information in response to a Notice of Violation, were, if not deliberate, in careless disregard of Commission requirements. These violations, combined with the additional violations identified during the inspection, caused the NRC to conclude that the Licensee was unwilling or unable to comply with NRC requirements and that the requisite reasonable assurance that the Licensee's operations could be conducted under License No. 37–28442–02 in compliance with the Commission's requirements was lacking, such that the health and safety of the public, including the Licensee's employees, would not be protected if the Licensee were permitted to conduct licensed activities at that time. Therefore, in the interest of public health and safety, the License was suspended, effective immediately, on September 27, 1995, pending completion of an investigation by the NRC Office of Investigations.

III

Subsequently, the NRC Office of Investigations completed its investigation of JLT. The NRC staff has determined that, in addition to the violations cited above, JLT committed a number of other violations of NRC regulatory requirements, as set forth below.

A. Materially Inaccurate Statements Made to NRC

(1) A letter to the NRC dated September 11, 1995, signed by Lourdes Boschuk and reviewed and edited by John Boschuk, Jr., stated that the Troxler gauge that was missing at the time of the August 1995 NRC inspection was in Watertown, New York, and was returned to JLT the next day. This was a deliberately inaccurate statement in violation of 10 CFR 30.9(a) and 30.10(a). In fact, according to the Chief Engineer of SE Technologies, Inc., Mr. Boschuk personally transferred the gauge to SE Technologies, Inc. in July 1995, and requested return of the gauge on August 14 or 15, 1995. In fact, the gauge was not returned to JLT until August 17, 1995. In addition, the September 11, 1995, letter represented that since the August 1995 NRC inspection, all three Troxler gauges had been in a locked storage cabinet at JLT's premises and would remain there until the apparent violations identified in the NRC's Inspection Report were resolved. This inaccurate statement in violation of 10 CFR 30.9(a) was made with careless disregard for the facts. In fact, one of the gauges had been transferred to Cashin Associates, P.C., Hauppauge, New York, on September 6, 1995, and was not returned to JLT until September 19 or 20, 1995.

(2) During an enforcement conference with the NRC on September 15, 1995, Lourdes Boschuk, President of JLT, stated that JLT's operable Troxler gauge was in storage and was not used ''at all''. In fact, that gauge was transferred by JLT on September 6, 1995, to Cashin Associates, P.C. for use at the Brookhaven Landfill in New York State, and was not returned to JLT until September 19 or 20, 1995. This inaccurate statement was in violation of 10 CFR 30.9(a) and was made with careless disregard for the facts.

(3) In a letter to the NRC dated September 18, 1995, prepared by John Boschuk, Jr. and signed by Lourdes Boschuk, and sent to the NRC in response to the NRC's September 15, 1995, letter confirming JLT's commitment at the September 15, 1995, enforcement conference to refrain from using the Troxler density gauges pending resolution of the apparent violations, JLT made several inaccurate statements. The letter stated that all of JLT's gauges have been in the storage cabinet on the JLT premises since the visit of the NRC inspector. This was a deliberate, materially inaccurate statement in violation of 10 CFR 30.9(a) and 30.10(a)(2). In fact, Ms. Boschuk knew no later than September 15, 1995, during a telephone call to the Director of JLT immediately after the September 15, 1995, enforcement conference, that one of JLT's Troxler gauges had been transferred on September 6, 1995, to Cashin Associates, P.C. in New York State. In fact, Mr. Boschuk learned from Ms. Boschuk no later than the weekend ending September 17, 1995, that the gauge had been transferred to Cashin Associates, P.C. As explained above, he also knew that the gauge had been transferred to SE Technologies, Inc. between July 18, and August 17, 1995, although the NRC inspection ended on August 3, 1995.

In addition, the letter stated that all three JLT Troxler gauges were currently locked in the designated storage cabinet on the JLT premises. This inaccurate statement was in violation of 10 CFR 30.9(a) and was made with at least careless disregard as to its truth or falsity by both Mr. and Ms. Boschuk. In fact, Lourdes Boschuk sent JLT's Radiation Safety Officer (RSO) to retrieve the gauge which had been transferred to Cashin Associates, P.C., but the RSO did not return to JLT with the gauge until late in the evening of September 19 or early in the morning of September 20, 1995. Mr. Boschuk stated at the December 18, 1997, predecisional enforcement conference that although he checked the storage cabinet before preparing the letter, and saw three yellow cases which he assumed contained the gauges, he did not look inside the cases to verify the gauges were there.

(4) Figure 1 of the November 21, 1994, JLT application, revised January 6, 1995, depicted a locked steel cabinet on the JLT premises as the storage site for the three Troxler gauges. However, the cabinet did not have a lock. John Boschuk, Jr. prepared Figure 1. This materially inaccurate statement was in violation of 10 CFR 30.9(a) and was

made with at least careless disregard for the facts by Mr. Boschuk.

B. Unauthorized Use of Byproduct Material and Related Materially Inaccurate Statements

JLT admittedly used the Troxler density gauge(s) on four occasions after revocation of the JLE license and before the NRC issued a license to JLT on February 7, 1995. JLT stated at the December 18, 1997, enforcement conference that JLT employees used the gauges on those occasions and that JLT invoiced its customers for the usage. Specifically, JLT admitted to using the gauge(s) for the following customers: DelSir Supply in December 1993, Johnson Construction in May 1994, Johnson Construction in June 1994, and PA Soil & Rock Company in July 1994. These violations of 10 CFR 30.3 were committed with at least careless disregard by JLT.

As a consequence, the statement by Ms. Boschuk in her November 21, 1994, letter to the NRC, that the gauges had not been used and had not left storage at JLT since August 30, 1993, and the statement by Mr. Boschuk in his October 11, 1994, letter to the NRC, that the gauges had not been used for over two years and had not left storage, were materially inaccurate in violation of 10 CFR 30.9(a) and made with at least careless disregard.

C. Violation of License Condition

Condition 19 of the JLT License requires that, when not in use, the Troxler gauges be kept in a locked cabinet on JLT's premises, as depicted by Figure 1 of the January 6, 1995, amended application. Figure 1, prepared by Mr. Boschuk, pictures a storage closet with a lock. In violation of that requirement, JLT failed to maintain its gauges in a locked storage cabinet between February 7, 1995 and sometime before the August 1995 inspection. The failure to maintain the gauges in a locked cabinet was in violation of Condition 19 of JLT's License and of 10 CFR 30.3.

D. Destruction of Records Relating to Gauge Usage

According to a witness, Lourdes Boschuk, John Boschuk, Jr. and others destroyed, altered, sanitized, or otherwise disposed of business and transactional records shortly after the August 1995 NRC inspection of JLT, in order to conceal from the NRC the unauthorized use and/or transfer of Troxler gauges by JLT. Among the records destroyed or disposed of were invoices and a log documenting use of the Troxler density gauges. According to a handwritten note, created by a JLT employee immediately after the September 15, 1995, enforcement conference, although utilization records were made available to the NRC inspector, those records could not be subsequently located. The note further reflected a question whether the utilization records were ''thrown away during sanitization of records?'' Shortly after the August 1995 inspection, the NRC inspector requested JLT to provide a copy of a utilization record found during the inspection and which documented the rental of a gauge to SE Technologies in September 1994, when neither JLE nor JLT had a valid NRC license. JLT did not provide the invoice and claimed it could no longer find the document. Condition 19 of JLT's License requires that JLT conduct its licensed activities in accordance with its Application dated January 6, 1995. The Application mandates that JLT comply with conditions requiring the creation of a utilization log for the gauges and the maintenance of the log for audit purposes. The destruction of the utilization log was in violation of 10 CFR 30.3 and 30.9(a). The participation of John Boschuk, Jr. and Lourdes Boschuk in the deliberate destruction of the utilization log was in violation of 10 CFR 30.10(a).

IV

Based on the above, the NRC concludes that the Licensee willfully violated NRC requirements, both deliberately and with careless disregard, and committed violations of NRC safety requirements. Among the Licensee's willful violations were repeated, materially inaccurate statements to the NRC regarding unauthorized use of byproduct material, unauthorized use of licensed material, violation of license conditions regarding the use and storage of the gauges, and the destruction or disposal of records related to unauthorized use of licensed material. As stated above, among the Licensee's violations of safety requirements were the failure to perform required leak tests, to have an approved Radiation Safety Officer, and the failure to perform required inventories of licensed material. The NRC must be able to rely on its Licensee's integrity and their compliance with NRC requirements. The Licensee's numerous willful violations and other violations demonstrate that the Licensee is either unwilling or unable to comply with NRC requirements.

Consequently, I lack the requisite reasonable assurance that the Licensee is willing and able to conduct operations under License No. 37–28442–02 in compliance with the Commission's requirements, or that the health and safety of the public will be protected if J&L Testing Company, Inc. continues to engage in licensed activity. Therefore, the public health, safety and interest require that License No. 37–28442–02 be revoked.

V

Accordingly, pursuant to sections 81, 161b, 161i, 161o, 182 and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202 and 10 CFR 30.10, IT IS HEREBY ORDERED THAT LICENSE NO. 37–28442–02 IS REVOKED, AND ALL LICENSED MATERIAL CURRENTLY IN THE LICENSEE'S POSSESSION SHALL BE TRANSFERRED TO AN AUTHORIZED RECIPIENT WITHIN 7 DAYS OF THE EFFECTIVE DATE OF THIS ORDER. FURTHER, THE LICENSEE SHALL NOTIFY THE NRC WITHIN TWO BUSINESS DAYS AFTER SUCH TRANSFER HAS TAKEN PLACE AS TO WHOM THE TRANSFER WAS MADE. THE LICENSEE MAY TELEPHONICALLY CONTACT NRC'S REGIONAL OFFICE AT 610–337–5000 TO COMPLY WITH THE NOTIFICATION REQUIREMENT.

VI

In accordance with 10 CFR 2.202, the Licensee must, and any other person adversely affected by this Order may, submit an answer to this Order, and may request a hearing on this Order, within 20 days of the date of this Order. Where good cause is shown, consideration will be given to extending the time to request a hearing. A request for extension of time must be made in writing to the Director, Office of Enforcement, US Nuclear Regulatory Commission, Washington, DC 20555, and include a statement of good cause for the extension. The answer may consent to this Order. Unless the answer consents to this Order, the answer shall, in writing and under oath or affirmation, specifically admit or deny each allegation or charge made in this Order and shall set forth the matters of fact and law on which the Licensee or other person adversely affected relies and the reasons why the Order should not have been issued. Any answer or request for hearing shall be submitted to the Secretary, U.S. Nuclear Regulatory Commission, ATTN: Chief, Rulemaking and Adjudications Staff, Washington, DC 20555. Copies also shall be sent to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, to the Deputy Assistant General Counsel for

Enforcement at the same address, to the Regional Administrator, NRC Region I, 475 Allendale Road, King of Prussia, Pennsylvania 19406–1415, and to the Licensee, if the answer or hearing request is by a person other than the Licensee. If a person other than the Licensee requests a hearing, that person shall set forth with particularity the manner in which his or her interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.714(d).

If a hearing is requested by the Licensee or a person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Order should be sustained.

In the absence of any request for hearing, or written approval of an extension of time in which to request a hearing, the provisions specified in Section IV above shall be final 20 days from the date of this Order without further order or proceedings. If an extension of time for requesting a hearing has been approved, the provisions specified in Part IV of this Order shall be final when the extension expires if a hearing request has not been received.

Dated at Rockville, Maryland this 10th day of April 1998.

For the Nuclear Regulatory Commission.

James Lieberman,

Director, Office of Enforcement.

[FR Doc. 98–10328 Filed 4–17–98; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–423]

Northeast Nuclear Energy Company; Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed no Significant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF–49 issued to Northeast Nuclear Energy Company (the licensee) for operation of Millstone Nuclear Power Station, Unit 3, located in New London County, Connecticut. The proposed change to Technical Specification (TS) 3/4.4.4, Relief Valves, would ensure that the Power-Operated Relief Valves (PORVs) will be capable of automatic cycling as well as manual cycling when in the TS 3/4.4.4 action statements that allow indefinite continued operation. The proposed amendment also makes an editorial change, adds PORV surveillance requirements, and modifies the associated Bases section. The proposed changes provide added assurance that the pressurizer safety relief valves will not be damaged due to water relief during an inadvertent safety injection event.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

NNECO has reviewed the proposed revision in accordance with 10CFR50.92 and has concluded that the revision does not involve a significant hazards consideration (SHC). The basis for this conclusion is that the three criteria of 10CFR50.92(c) are not satisfied. The proposed revision does not involve [an] SHC because the revision would not:

1. Involve a significant increase in the probability or consequence of an accident previously evaluated.

Currently, timely operator action is required to prevent the pressurizer from filling and potentially challenging the pressurizer safety valves under water relief. The proposed TS changes provide added assurance that the safety valves will not be challenged by requiring the PORVs to be available for automatic pressure control. The changes to the Surveillance Requirements add the appropriate requirements to provide assurance that the automatic capability of the PORVs is OPERABLE. The quarterly analog channel operational test for the PORV high pressurizer pressure channels will not include valve operation. However, it does involve changing the opening logic from 2/4 to 1/3 and, thus, performing the surveillance increases the probability of the PORVs opening inadvertently. If the automatic capability of one PORV is INOPERABLE for more than 72 hours, shutdown is required. If the automatic capability of both PORVs is INOPERABLE for more than one hour, shutdown is required. If the block valves have been closed but the automatic capability of the PORVs is OPERABLE, an EOP [emergency operating procedure] change has been made to assure that the PORV block valve would be opened within ten minutes of an Inadvertent ECCS [emergency core cooling system] actuation at power. The new analysis shows that this is sufficient to assure that the PORVs would control RCS [reactor coolant system] pressure if water relief is experienced and the safety valves would not be challenged. Thus, it is concluded that the change provides added assurance that the safety valves would not fail due to water discharge.

Evaluations and analysis have been performed to demonstrate that the PORVs and the associated piping are qualified for water relief from an Inadvertent ECCS Actuation at Power Operation for one hour from event initiation. This provides significant margin for operator action to terminate the event.

The PORV control logic has been upgraded to be safety grade and single failure proof. A 2/4 logic is used for opening and 3/4 logic is used for subsequent closure. With the upgrade of the PORV control logic, there is added assurance that the PORV will be capable of providing automatic pressure control and preventing challenges to the safety valves, particularly under water solid conditions. However, there is a small impact on the probability of inadvertent opening of both PORVs resulting from multiple channel failures. With the new safety grade PORV control logic, two failed high pressurizer pressure channels will result in inadvertent opening of both PORVs. With the current logic, a single failed high pressurizer pressure channel would result in opening a PORV. However, the 2/4 closure logic will re-close the PORV when pressurizer pressure drops below 2200 psia. With the current logic three failed high pressurizer pressure channels are required for the PORVs to inadvertently open and remain open. Thus it is concluded that there is an increase in the probability that the PORVs will inadvertently open and remain open.

However, multiple channels failing high are required for the PORVs to inadvertently open and remain open. For failure modes such as loss of power for the transmitter or a failure of the instrument tubing, the channel will fail low. Failure modes that can result in the channel failing high are highly unlikely. Further, the new logic will require energization in order to open the PORVs, further minimizing the potential for inadvertent opening. These failures, which result in the PORVs automatically opening and remaining open, do not disable the ability of the operators to close the PORVs by taking their control switch to the close position. Thus, it is concluded that the increase in risk is negligible. The consequences of inadvertent opening of both PORVs is bounded by the analysis provided in Chapter 15.6.1 Inadvertent Opening of Pressurizer Safety or Relief Valve.

In the event of an inoperable pressurizer pressure channel, the channel will be placed in the tripped condition. This will change the opening logic from 2/4 to 1/3 and the subsequent closure logic from 3/4 to 3/3.

This means that, when a pressurizer pressure channel is inoperable, a single failure of a pressurizer pressure channel high will cause both PORVs to open and remain open. Thus it is concluded that the Technical Requirements Manual (TRM) change which addresses specific surveillance controls, also results in an increase in the probability that the PORVs will inadvertently open and remain open. However, procedural controls will be implemented and controlled in the TRM that will require a plant shutdown if the channel is inoperable for more than thirty days.

The setpoint for the PORV opening logic has been selected to assure that the PORVs will open prior to the safety valves, taking into account instrument uncertainties. The setpoint will be specified and controlled in the Technical Requirements Manual. This minimizes the potential challenges to the pressurizer safety valves under steam as well as water solid conditions. The PORV closure logic will be 3/4 that actuates when pressurizer pressure drops 20 psi below the opening setpoint. Since the stroke time for the PORV is very short, the closing pressure is adequate to assure that the valve will cycle as designed.

An EOP [Emergency Operating Procedure] change will direct the operator to open the PORV block valve if it has been closed due to excessive seat leakage. The EOP change will not result in the opening of the PORV block valve when the power has been removed when required to prevent a small break LOCA [loss-of-coolant accident]. This includes leakage from the PORV such that there is no assurance that the PORV would re-close as required to control RCS pressure. Thus, the PORV block valve would be opened only when there is assurance that the PORV will open and re-close as required. Thus, the EOP change does not impact the probability of a failed open PORV.

Credit is now being taken for the PORVs to prevent challenges to pressurizer safety valves under water relief. If the PORVs were to fail to control RCS pressure, it is possible for water relief through the safety valves to occur. This also can result if both of the PORV block valves cannot be opened. Since the safety valves and the associated piping are not qualified for water relief, the valves may be damaged and may not reseat, resulting in an unisolable RCS leak. However, this would require multiple failures since the PORVs are redundant. The accident analysis has shown that DNB [departure from nucleate boiling] is not a concern and thus, there would be no failed fuel associated with this event. In addition, any RCS leakage would be inside containment. The analysis provided in FSAR [Final Safety Analysis Report] Section 15.6.1 for an Inadvertent Opening of a Pressurizer Safety or Relief Valve bounds the opening of both PORVs since the capacity of two PORVs is equivalent to one pressurizer safety valve.

Thus it is concluded that the proposed changes do not involve a significant increase in the probability or consequence of an accident previously evaluated.

2. Create the possibility of a new or different kind of accident from any accident previously evaluated.

The changes provide added assurance that an Inadvertent ECCS Actuation at Power Operation will be mitigated and meet the requirement that a moderate frequency event will not lead to a more serious event without additional failures. The PORVs and associated piping have been qualified for water relief. In addition the PORVs are QA [Quality Assurance] equipment and are single failure proof. The TS changes provide assurance that the PORV automatic function will be OPERABLE or the plant will be shutdown. By crediting the PORVs, there is added assurance that the operators will terminate the event and prevent water relief from the safety valves for which they are not qualified. Since all criteria are met for this event, this does not represent the possibility of an accident of a different type.

Because of the change in the PORV automatic actuation circuitry and the changes in the channel operability and surveillance requirements, the change does increase the probability of an Inadvertent Opening of both PORVs but the consequences are bounded by the analysis provided in FSAR Section 15.6.1 for Inadvertent Opening of a Safety or Relief Valve. Thus, this does not represent an accident of a different type.

Credit is being taken for the operator to open a PORV block valve if it has been closed due to excessive PORV seat leakage. The PORV block valve will be opened following a Safety Injection actuation only after it has been determined that RCS pressure is above the HPSI [high pressure safety injection] shut off head. This means that charging is sufficient to maintain RCS pressure well above the RCS pressure predicted for the limiting LOCA analysis. Further, the PORV block valve would not be opened when power has been removed because of the potential for operation of the PORV to result in a small break LOCA. Further, the potential for opening the PORV block valve when the PORV is needed for accident mitigation is already addressed in the TS and is part of the licensing basis. Thus, this does not create the possibility of an accident of a different type.

3. Involve a significant reduction in a margin of safety.

With the proposed changes, all criteria for the Inadvertent ECCS actuation at Power Operation are met. The changes provide added assurance that a moderate frequency event would not result in a more serious event without additional failures. The TS changes and EOP change provide added assurance that the PORVs would be available to mitigate this event. Opening the block valve when the PORV can be used to mitigate an accident without the potential for a small break LOCA is already addressed in the TS and is part of the licensing basis. Inadvertent Opening of both PORVs is bounded by the Chapter 15 accident analysis. Thus, it is concluded that the changes have no impact on the margin of safety.

In conclusion, based on the information provided, it is determined that the proposed revision does not involve an SHC.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D59, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

By May 20, 1998, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's ''Rules of Practice for Domestic Licensing Proceedings'' in 10 CFR Part 2. Interested persons should

consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Learning Resources Center, Three Rivers Community-Technical College, 574 New London Turnpike, Norwich, Connecticut, and at the Waterford Library, ATTN: Vince Juliano, 49 Rope Ferry Road, Waterford, Connecticut. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) the nature of the petitioner's right under the Act to be made party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and to Lillian M. Cuoco, Esq., Senior Nuclear Counsel, Northeast Utilities Service Company, P.O. Box 270, Hartford, Connecticut, 06141–0270, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(I)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated April 14, 1998, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Learning Resources Center, Three Rivers Community-Technical College, 574 New London Turnpike, Norwich, Connecticut, and at the Waterford Library, ATTN: Vince Juliano, 49 Rope Ferry Road, Waterford, Connecticut.

Dated at Rockville, Maryland, this 15th day of April 1998.

For the Nuclear Regulatory Commission.

Stephen Dembek,

Project Manager, Special Projects Office—Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 98–10332 Filed 4–17–98; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–445 and 50–446]

Texas Utilities Electric; Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed no Significant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License Nos. NPF–87 and NPF–89, issued to Texas Utilities Electric Company, (TU Electric, the licensee), for operation of the Comanche Peak Steam Electric Station, Units 1 and 2, located in Somervell County, Texas.

The proposed amendment would allow on a one-time basis, the verification of the proper operation of the Unit 2 load shed seal-in contacts and the diesel generator trip bypass contacts at power and crediting performance of Surveillance Requirements (SR) 4.8.1.1.2f.4)a) and 4.8.1.1.2f.6)a), at power as opposed to ''during shutdown'' as currently required by those SR. The proposed amendment would also allow on a one-time basis the verification of the proper operation of the Unit 2 lockout relays and contacts to be deferred until the startup from 2RFO4 or earlier outage to

at least MODE 3. The licensee promptly reported to the NRC at the time of discovery the failure to perform the testing required by the SR and promptly initiated corrective actions.

The licensee requested a Notice of Enforcement Discretion (NOED) by letter dated April 7, 1998. The NRC orally issued the NOED at 10:45 a.m. EDT on April 8, 1998. Pursuant to the NRC's policy regarding exercise of discretion for an operating facility, set out in Section VII.c, of the ''General Statement of Policy and Procedures for NRC Enforcement Actions'' (Enforcement Policy), NUREG–1600, the letter documenting the issuance of the NOED was dated April 10, 1998. The NOED was to be effective for the period of time it takes the NRC staff to process the proposed change to the TSs. Therefore, this amendment is being processed on an exigent basis.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

Pursuant to 10 CFR 50.91(a)(6) for amendments to be granted under exigent circumstances, the NRC staff must determine that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Do the proposed changes involve a significant increase in the probability or consequences of an accident previously evaluated?

The proposed change is to delay the performance of certain portions of the surveillance testing of specific devices and for the crediting of the at power testing of certain portions of shutdown surveillance requirements as previously described and listed in Table 1, 2 and 3. Delaying performance of these tests until such time as appropriate or crediting of at power testing of shutdown surveillance requirements does not increase the probability of an accident; therefore the probability of an accident previously evaluated is not increased.

No plant equipment is adversely affected by not performing these surveillance tests. The consequences of an accident, as analyzed in the FSAR, does not increase from not having performed the testing. Based on the statements above and the expectation that the deferred testing and the at power testing will confirm OPERABILITY, this change poses no increase in the consequences of a previously evaluated accident.

2. Do the proposed changes create the possibility of a new or different kind of accident from any accident previously evaluated?

Delaying the performance of tests and the crediting of at power testing of shutdown surveillance requirements are administrative actions and do not have the potential to create a new or different kind of accident from any previously evaluated. The systems will continue to respond in the same manner as they currently do.

3. Do the proposed changes involve a significant reduction in a margin of safety?

Delaying the performance of, or crediting the at power testing of shutdown surveillance requirements for those portions of the surveillance testing necessary to demonstrate the lockouts and seal-in circuitry, does not significantly reduce a margin of safety. The circuitry is expected to perform its design functions.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 14 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 14-day notice period. However, should circumstances change during the notice period, such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 14-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D59, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

By May 20, 1998, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's ''Rules of Practice for Domestic Licensing Proceedings'' in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the University of Texas at Arlington Library, Government Publications/Maps, 702 College, P.O. Box 19497, Arlington, TX 76019. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the

subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If the amendment is issued before the expiration of the 30-day hearing period, the Commission will make a final determination on the issue of no significant hazards consideration. If a hearing is requested, the final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and to George L. Edgar, Esq., Morgan, Lewis and Bockius, 1800 M Street, N.W., Washington, DC 20036, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(I)-(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated April 9, 1998, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room, located at the University of Texas at Arlington Library, Government Publications/Maps, 702 College, P.O. Box 19497, Arlington, TX 76019.

Dated at Rockville, Maryland, this 14th day of April 1998.

For the Nuclear Regulatory Commission.

Timothy J. Polich,

Project Manager, Project Directorate IV–1, Division of Reactor Projects III/IV, Office of Nuclear Reactor Regulation.

[FR Doc. 98–10334 Filed 4–17–98; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Notice of Amendment to Certificate of Compliance GDP–2 for the U.S. Enrichment Corporation, Portsmouth Gaseous Diffusion Plant, Portsmouth, Ohio; Docket 70–7002

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 Nuclear Regulatory Commission (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: February 27, 1998.

Brief description of amendment: The United States Enrichment Corporation (USEC) submitted a certificate amendment request for PORTS to add four facilities including the conversion shop and cleaning building (X–700), the maintenance and stores building (X–720), the chemical and engineering building (X–760) and the storage warehouse (XT–847) to Technical Safety Requirement (TSR) Section 2.8 entitled ''Specific TSRs for X–710 Laboratory,'' and to delete the associated operational mode descriptions in TSR Section 2.8.1.

An NRC Inspector Followup Item, 70–7002/97–206–10B, which was identified in an NRC nuclear criticality safety inspection report for PORTS dated September 29, 1997, noted that no specific Criticality Accident Alarm System (CAAS) TSR existed for the X–700, X–720, X–760 and XT–847 facilities even though fissile material operations (FMOs) involving greater than 700 grams of U235 at an enrichment equal to or greater than 1.0% U235 could be conducted in those facilities, and CAAS coverage was being provided. As such, USEC has proposed to apply the existing NRC-approved CAAS TSRs for X–710 in TSR Section 2.8, to X–700, X–720, X–760 and XT–847. In addition, USEC has proposed to delete the three operational modes described in TSR Section 2.8.1, namely (1) ''General Analytical—analyses of production, ES&H, waste management, technical support, maintenance/fabrication activities,'' (2) ''Uranium Sampling—subsampling uranium hexafluoride,'' and (3) ''Polybottle Operations—movement of polybottles to and from labs and storage areas,'' since there are no specific operational modes associated with the TSRs for X–700, X–710, X–720, X–760 and XT–847.

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 (1) adds the X–700, X–720, X–760 and XT–847 facilities to TSR Section 2.8 entitled ''Specific TSRs for X–710 Laboratory,'' since similar FMOs are conducted in these facilities and (2) deletes the associated operational modes listed in TSR 2.8.1. This amendment would enhance safety by adding more rigor to CAAS operability in terms of maintenance, calibration, testing, etc., in the four additional facilities. In addition, deleting the current operational modes in TSR 2.8.1, which do not apply to TSR 2.8.3.1 (CAAS TSR) since the CAAS is required to be operable at all times when more than 700 grams of U235 at an enrichment equal to or greater than 1.0% U235 is present in the facility, will have no significant safety impact. As such, this amendment 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.

For the reasons provided in the assessment of criterion 1, the proposed amendment 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.

For the reasons provided in the assessment of criterion 1, the proposed amendment will not result in a significant increase in 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.

For the reasons provided in the assessment of criterion 1, the proposed amendment 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.

For the reasons provided in the assessment of criterion 1, the proposed amendment will not result in a significant reduction in any 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.

For the reasons provided in the assessment of criterion 1, the proposed amendment will not result in an overall decrease in the effectiveness of the plant's safety 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 sixty (60) days after issuance by NRC.

Certificate of Compliance No. GDP–2: Amendment will revise PORTS TSR Section 2.8.

Local Public Document Room location: Portsmouth Public Library, 1220 Gallia Street, Portsmouth, Ohio 45662.

Dated at Rockville, Maryland, this 9th day of April 1998.

For the Nuclear Regulatory Commission.

Carl J. Paperiello,

Director, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 98–10327 Filed 4–17–98; 8:45 am]

BILLING CODE 7590–01–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 Commission made a determination that the following amendment request is significant in accordance with 10 CFR 76.45. Notice of Receipt of Amendment Request appeared in the **Federal Register** on January 5, 1998, allowing a 30-day public comment period on the application. No public comments were received.

The Nuclear Regulatory Commission (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. The staff has prepared a Compliance Evaluation Report which provides details of the staff's evaluation.

The Commission 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.

United States Enrichment Corporation (USEC) or any person whose interest may be affected, and who submitted written comments in response to the Notice on the amendment application, under § 76.37, 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 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: February 25, 1997.

Brief description of amendment: On February 25, 1997, USEC submitted a request to provide for an additional identified criticality accident case for the X–333 cascade building related to the previously approved increase in assay limit to 3 percent. The operation at increased assay creates conditions where the location of an inadvertent nuclear criticality event might be closer to the X–333 Area Control Room (ACR–1), thus producing higher potential doses to personnel at that location. It should be noted that this hypothetical accident case was identified by USEC after the NRC approved USEC's initial certificate application in November 1996. It should also be noted that the increase in the X–333 assay limit was approved by the NRC as part of the initial certification of PORTS. For this hypothetical accident case, an estimate is made that personnel in ACR–1 could, under the conservative assumption that they remained in ACR–1 for 50 minutes despite the likely criticality alarm, receive a dose of 49 rem and not 0.005 rem as is currently indicated in the Accident Analysis section of the PORTS Safety Analysis Report (SAR). Based on an initial review of the amendment request, the NRC staff feels that sufficiently adequate safety controls are currently in place at PORTS to prevent and mitigate this accident. Therefore, other than the proposed modification to the PORTS SAR, this amendment would likely not require any other changes to plant operations.

Effective date: The amendment to Certificate of Compliance GDP–2 will become effective 60 days after issuance.

Certificate of Compliance No. GDP–2: Amendment will revise the consequences of a criticality accident in the X–333 cascade building in the Safety Analysis Report.

Local Public Document Room location: Portsmouth Public Library, 1220 Gallia Street, Portsmouth, Ohio 45662.

Dated at Rockville, Maryland, this 9 day of April 1998.

For the Nuclear Regulatory Commission.

Carl J. Paperiello,

Director, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 98–10333 Filed 4–17–98; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC–23110; 812–10940]

Lehman Brothers Inc.; Notice of Application

April 13, 1998.

AGENCY: Securities and Exchange Commission (''SEC'').

ACTION: Notice of application for an order under section 12(d)(1)(J) of the Investment Company Act of 1940 (the ''Act'') for an exemption from section 12(d)(1) of the Act, under section 6(c) of the Act for an exemption from section 14(a) of the Act, and under section 17(b) of the Act for an exemption from section 17(a) of the Act.

SUMMARY OF APPLICATION: Lehman Brothers Inc. (''Lehman'') requests an order with respect to PIES Trust I and future trusts that are substantially similar and for which Lehman will serve as a principal underwriter (collectively, the ''Trusts'') that would (i) permit other registered investment companies, and companies excepted from the definition of investment company under sections 3 (c)(1) and (c)(7) of the Act, to own a greater percentage of the total outstanding voting stock (the ''Securities'') of any Trust than that permitted by section 12(d)(1), (ii) exempt the Trusts from the initial net worth requirements of section 14(a), and (iii) permit the Trusts to purchase U.S. Government securities from Lehman at the time of a Trust's initial issuance of Securities.

FILING DATES: The application was filed on December 31, 1998. Applicant has agreed to file an amendment, the substance of which is incorporated in this notice, during the notice period.

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 Lehman with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on May 7, 1998, and should be accompanied by proof of service on Lehman, 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 SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, N.W., Washington, D.C. 20549. Lehman, 3 World Financial Center, New York, New York 10285.

FOR FURTHER INFORMATION CONTACT: Brian T. Hourihan, Senior Counsel, at (202) 942–0526, or Mary Kay Frech, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch, 450 Fifth Street, N.W., Washington, D.C. 20549 (tel. (202) 942–8090).

Applicant's Representations

1. Each Trust will be a limited-life, grantor trust registered under the Act as a non-diversified, closed-end management investment company. Lehman will serve as a principal underwriter (as defined in section 2(a)(29) of the Act) of the Securities issued to the public by each Trust.

2. Each Trust will, at the time of its issuance of Securities, (i) enter into one or more forward purchase contracts (the ''Contracts'') with a counterparty to purchase a formulaically-determined number of a specified equity security or securities (the ''Shares'') of one specified issuer,[1] and (ii) in some cases, purchase certain U.S. Treasury securities (''Treasuries''), which may include interest-only or principal-only securities maturing at or prior to the Trust's termination. The Trusts will purchase the Contracts from counterparties that are not affiliated with either the relevant Trust or Lehman. The investment objective of each Trust will be to provide to each holder of Securities (''Holder'') (i) current cash distributions from the proceeds of any Treasuries, and (ii) participation in, or limited exposure to, changes in the market value of the underlying Shares.

3. In all cases, the Shares will trade in the secondary market and the issuer of the Shares will be a reporting company under the Securities Exchange Act of 1934. The number of Shares, or the value of the Shares, that will be delivered to a Trust pursuant to the Contracts may be fixed (*e.g.*, one Share per Security issued) or may be determined pursuant to a formula, the product of which will vary with the price of the Shares. A formula generally will result in each Holder of Securities receiving fewer Shares as the market value of the Shares increases, and more Shares as their market value decreases.[2] At the termination of each Trust, each Holder will receive the number of Shares per Security, or the value of the Shares, as determined by the terms of the Contracts, that is equal to the Holder's *pro rata* interest in the Shares or amount received by the Trust under the Contracts.[3]

4. Securities issued by the Trusts will be listed on a national securities exchange or traded on the Nasdaq Stock Market's National Markets. Thus, the Securities will be ''national market system'' securities subject to public price quotation and trade reporting requirements. After the Securities are issued, the trading price of the Securities is expected to vary from time to time based primarily upon the price of the underlying Shares, interest rates, and other factors affecting conditions and prices in the debt and equity markets. Lehman currently intends, but will not be obligated, to make a market in the Securities of each Trust.

5. Each Trust will be internally managed by three trustees and will not have any separate investment adviser. The trustees will have no power to vary the investments held by each Trust. A bank qualified to serve as a trustee under the Trust Indenture Act of 1939, as amended, will act as custodian for each Trust's assets and as paying agent, registrar, transfer agent, and collateral agent with respect to the Securities of each Trust. The bank will have no other affiliation with, and will not be engaged in any other transaction with, any Trust. The day-to-day administration of each Trust will be carried out by Lehman or the bank.

6. The Trusts will be structured so that the trustees are not authorized to sell the Contracts or Treasuries unless a default occurs under a Contract and the Contract is accelerated. The Trusts will hold the Contracts until maturity, at which time they will be settled according to their terms. However, in the event of the bankruptcy or insolvency of any counterparty to a Contract with a Trust, or the occurrence of any other default provided for in the Contract, the obligations of the counterparty under the Contract will be accelerated and the available proceeds of the Contract will be distributed to the Security Holders.

7. The trustees of each Trust will be selected initially by Lehman, together with any other initial Holders, or by the grantors of the Trust. The Holders of each Trust will have the right, upon the declaration in writing or vote of more than two-thirds of the outstanding Securities of the Trust, to remove a trustee. Holders will be entitled to a full vote for each Security held on all matters to be voted on by Holders and will not be able to cumulate their votes in the election of trustees. The investment objectives and fundamental policies of each Trust may be changed only with the approval of a ''majority of the Trust's outstanding Securities'' [4] or any greater number required by the Trust's constituent documents. Unless Holders so request, and except as required by the Act, charter documents of the Trust or a rule of a national securities exchange, or a quotation system it is not expected that the Trusts will hold any meetings of Holders, or that Holders will ever vote.

8. The Trusts will not be entitled to any rights with respect to the Shares until any Contracts requiring delivery of the Shares to the Trust are settled, at which time the Shares will be promptly

[1] No Trust will hold Contracts relating to the Shares of more than one issuer.

[2] A formula is likely to limit the Holder's participation in any appreciation of the underlying Shares, and it may, in some cases, limit the Holder's exposure to any depreciation in the underlying Shares. It is anticipated that the Holders will receive a yield greater than the ordinary dividend yield on the Shares at the time of the issuance of the Securities, which is intended to compensate Holders for the limit of the Holders' participation in any appreciation of the underlying Shares. In some cases, there may be an upper limit on the value of the Shares that a Holder will ultimately receive.

[3] The contracts may provide for an option on the part of a counterparty to deliver Shares, cash, or a combination of Shares and cash to the Trust at the termination of each Trust.

[4] A ''majority of the Trust's outstanding Securities'' means the lesser of (i) 67% of the Securities represented at a meeting at which more than 50% of the outstanding Securities are represented, and (ii) more than 50% of the outstanding Securities.

distributed to Holders. The Holders, therefore, will not be entitled to any rights with respect to the Shares (including voting rights or the right to receive any dividends or other distributions) until receipt by them of the Shares at the time the Trust is liquidated.

9. Each Trust will be structured so that its organizational and ongoing expenses will not be borne by the Holders, but rather, directly or indirectly, by Lehman, the counterparties, or another third party, as will be described in the prospectus for the relevant Trust. At the time of the original issuance of the Securities of any Trust, there will be paid to each of the administrator, the custodian, and the paying agent, and to each trustee, a one-time amount in respect of such agent's fee over its term. Any expenses of the Trust in excess of this anticipated amount will be paid as incurred by a party other than the Trust itself (which party may be Lehman). Moreover, the bank's fee for acting as trustee, custodian, paying agent, registrar and transfer agent, and fees and expenses for acting as collateral agent will be paid by Lehman, who in turn will be reimbursed by the counterparties.

Applicant's Legal Analysis

A. Section 12(d)(1)

1. Section 12(d)(1)(A)(i) of the Act prohibits any registered investment company from owning more than 3% of the total outstanding voting stock of any other investment company, and any investment company and any company or companies controlled by the investment company from owning in the aggregate more than 3% of the total outstanding voting stock of any registered investment company. A company that is excepted from the definition of an investment company under section 3 (c)(1) or (c)(7) of the Act is deemed to be an investment company for purposes of section 12(d)(1)(A)(i) of the Act under sections 3 (c)(1) and (c)(7)(D) of the Act. Section 12(d)(1)(C) of the Act similarly prohibits any investment company, other investment companies having the same investment adviser, and companies controlled by such investment companies from owning more than 10% of the total outstanding voting stock of any closed-end investment company.

2. Section 12(d)(1)(J) of the Act provides that the SEC may exempt persons or transactions from any provision of section 12(d)(1), if, and to the extent that, the exemption is consistent with the public interest and protection of investors.

3. Lehman believes, in order for the Trusts to be marketed most successfully, and to be traded at a price that most accurately reflects their value, that it is necessary for the Securities of each Trust to be offered to large investment companies and investment company complexes. Lehman states that these investors seek to spread the fixed costs of analyzing specific investment opportunities by making sizable investments in those opportunities. Conversely, Lehman asserts that it may not be economically rational for the investors, or their advisers, to take the time to review an investment opportunity if the amount that the investors would ultimately be permitted to purchase is immaterial in light of the total assets of the investment company or investment company complex. Therefore, Lehman argues that these investors should be able to acquire Securities in each Trust in excess of the limitations imposed by sections 12(d)(1)(A)(i) and 12(d)(1)(C). Lehman requests that the SEC issue an order under section 12(d)(1)(J) exempting the Trusts from the limitations.

4. Lehman states that section 12(d)(1) was designed to prevent one investment company from buying control of other investment companies and creating complicated pyramidal structures. Lehman also states that section 12(d)(1) was intended to address the layering of costs to investors.

5. Lehman believes that the concerns about pyramiding and undue influence generally do not arise in the case of the Trusts because neither the trustees nor the Holders, except upon the occurrence of an event of default provided for in a Contract, will have the power to vary the investments held by each Trust or to acquire or dispose of the assets of the Trusts. To the extent that Holders can change the composition of the board of trustees or the fundamental policies of each Trust by vote, Lehman argues that any concerns regarding undue influence will be eliminated by a provision in the charter documents for the Trusts that will require any investment companies owning voting stock of any Trust in excess of the limits imposed by sections 12(d)(1)(A)(i) and 12(d)(1)(C) to vote their Securities in proportion to the votes of all other Holders. Lehman also believes that the concern about undue influence through a threat to redeem does not arise in the case of the Trusts because the Securities will not be redeemable.

6. Section 12(d)(1) also was designed to address the excessive costs and fees that may result from multiple layers of investment companies. Lehman believes that these concerns do not arise in the case of the Trusts because of the limited ongoing fees and expenses incurred by the Trusts and because generally these fees and expenses will be borne, directly or indirectly, by Lehman or another third party, not by the Holders. In addition, the Holders will not, as a practical matter, bear the organizational expenses (including underwriting expenses) of the Trusts. Lehman asserts that the organizational expenses effectively will be borne by the counterparties in the form of a discount in the price paid to them for the Contracts, or will be borne directly by Lehman, the counterparties, or other third parties. Similarly, Lehman asserts that the fees of the bank for acting as trustee, paying agent, registrar, transfer agent, and collateral agent will borne directly by Lehman. Thus, a Holder will not pay duplicative charges to purchase securities in any Trust. Finally, there will be no duplication of advisory fees because the Trusts will be internally managed by their trustees.

8. Lehman believes that the investment product offered by the Trusts serves a valid business purpose. The Trusts, unlike most registered investment companies, are not marketed to provide investors with either professional investment asset management or the benefits of investment in a diversified pool of assets. Rather, Lehman asserts that the Securities are intended to provide Holders with an investment having unique payment and risk characteristics, including an anticipated higher yield than the ordinary dividend yield on the Shares at the time of the issuance of the Securities.

9. Lehman believes that the purposes and policies of section 12(d)(1) are not implicated by the Trusts and that the requested exemption from section 12(d)(1) is consistent with the public interest and the protection of investors.

B. Section 14(a)

1. Section 14(a) of the Act requires, in pertinent part, that an investment company have a net worth of at least $100,000 before making any public offering of its shares. The purpose of section 14(a) is to ensure that investment companies are adequately capitalized prior to or simultaneously with the sale of their securities to the public. Rule 14a–3 exempts from section 14(a) unit investment trusts that meet certain conditions in recognition of the fact that, once the units are sold, a unit investment trust requires much less commitment on the part of the sponsor than does a management investment company. Rule 14a–3 provides that a unit investment trust

investing in eligible trust securities will be exempt from the net worth requirement, provided that the trust holds at least $100,000 of eligible trust securities at the commencement of a public offering.

2. Lehman argues that, while the Trusts are classified as management companies, they have the characteristics of unit investment trusts. Investors in the Trusts, like investors in a unit investment trust, will not be purchasing interests in a managed pool of securities, but rather in a fixed and disclosed portfolio that is held until maturity. Lehman believes that the make-up of each Trust's assets, therefore, will be ''locked-in'' for the life of the portfolio, and there is no need for an ongoing commitment on the part of the underwriter.

3. Lehman states that, in order to ensure that each Trust will become a going concern, the Securities of each Trust will be publicly offered in a firm commitment underwriting, registered under the Securities Act of 1933, and resulting in net proceeds to each Trust of at least $10,000,000. Prior to the issuance and delivery of the Securities of each Trust to the underwriters, the underwriters will enter into an underwriting agreement pursuant to which they will agree to purchase the Securities subject to customary conditions to closing. The underwriters will not be entitled to purchase less than all of the Securities of each Trust. Accordingly, Lehman states that either the offering will not be completed at all or each Trust will have a net worth substantially in excess of $100,000 on the date of the issuance of the Securities. Lehman also does not anticipate that the net worth of the Trusts will fall below $100,000 before they are terminated.

4. Section 6(c) of the Act provides that the SEC may exempt persons or transactions if, and to the extent that, the 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. Lehman requests that the SEC issue an order under section 6(c) exempting the Trusts from the requirements of section 14(a). Lehman believes that the exemption is appropriate in the public interest and consistent with the protection of investors and the policies and provisions of the Act.

C. Section 17(a)

1. Sections 17(a)(1) and (2) of the Act generally prohibit the principal underwriter, or any affiliated person of the principal underwriter, of a registered investment company from selling or purchasing any securities to or from that investment company. The result of these provisions is to preclude the Trusts from purchasing Treasuries from Lehman.

2. Section 17(b) of the Act provides that the SEC shall exempt a proposed transaction from section 17(a) if evidence establishes that the terms of the proposed transaction are reasonable and fair and do not involve overreaching, and the proposed transaction is consistent with the policies of the registered investment company involved and the purposes of the Act. Lehman requests an exemption from sections 17(a) (1) and (2) to permit the Trusts to purchase Treasuries from Lehman.

3. Lehman states that the policy rationale underlying section 17(a) is the concern that an affiliated person of an investment company, by virtue of this relationship, could cause the investment company to purchase securities of poor quality from the affiliated person or to overpay for securities. Lehman argues that it is unlikely that it would be able to exercise any adverse influence over the Trusts with respect to purchases of Treasuries because Treasuries do not vary in quality and are traded in one of the most liquid markets in the world. Treasuries are available through both primary and secondary dealers, making the Treasury market very competitive. In addition, market prices on Treasuries can be confirmed on a number of commercially available information screens. Lehman argues that because it is one of a limited number of primary dealers in Treasuries, it will be able to offer the Trusts prompt execution of their Treasury purchases at very competitive prices.

4. Lehman states that it is only seeking relief from section 17(a) with respect to the initial purchase of the Treasuries and not with respect to an ongoing course of business. Consequently, investors will know before they purchase a Trust's Securities the Treasuries that will be owned by the Trust and the amount of the cash payments that will be provided periodically by the Treasuries to the Trust and distributed to Holders. Lehman also asserts that whatever risk there is of overpricing the Treasuries will be borne by the counterparties and not by the Holders because the cost of the Treasuries will be calculated into the amount paid on the Contracts. Lehman argues that, for this reason, the counterparties will have a strong incentive to monitor the price paid for the Treasuries, because any overpayment could result in a reduction in the amount that they would be paid on the Contracts.

5. Lehman believes that the terms of the proposed transaction are reasonable and fair and do not involve overreaching on the part of any person, that the proposed transaction is consistent with the policy of each of the Trusts, and that the requested exemption is appropriate in the public interest and consistent with the protection of investors and purposes fairly intended by the policies and provisions of the Act.

Applicant's Conditions

Lehman agrees that the order granting the requested relief will be subject to the following conditions:

1. Any investment company owning voting stock of any Trust in excess of the limits imposed by section 12(d)(1) of the Act will be required by Trust's charter documents to vote its Trust shares in proportion to the vote of all other Holders.

2. The trustees of each Trust, including a majority of the trustees who are not interested persons of the Trust, (i) will adopt procedures that are reasonably designed to provide that the conditions set forth below have been complied with; (ii) will make and approve such changes as deemed necessary; and (iii) will determine that the transactions made pursuant to the order were effected in compliance with such procedures.

3. The Trusts (i) will maintain and preserve in an easily accessible place a written copy of the procedures (and any modifications to such procedures), and (ii) will maintain and preserve for the longer of (a) the life of the Trusts and (b) six years following the purchase of any Treasuries, the first two years in an easily accessible place, a written record of all Treasuries purchased, whether or not from Lehman, setting forth a description of the Treasuries purchased, the identity of the seller, the terms of the purchase, and the information of materials upon which the determinations described below were made.

4. The Treasuries to be purchased by each Trust will be sufficient to provide payments to Holders of Securities that are consistent with the investment objectives and policies of the Trust as recited in the Trust's registration statement and will be consistent with the interests of the Trust and the Holders of its Securities.

5. The terms of the transactions will be reasonable and fair to the Holders of the Securities issued by each Trust and will not involve overreaching of the

Trust or the Holders of Securities of the Trust on the part of any person concerned.

6. The fee, spread, or other remuneration to be received by Lehman will be reasonable and fair compared to the fee, spread, or other remuneration received by dealers in connection with comparable transactions at such time, and will comply with section 17(e)(2)(C) of the Act.

7. Before any Treasuries are purchased by the Trust, the Trust must obtain such available market information as it deems necessary to determine that the price to be paid for, and the terms of, the transaction is at least as favorable as that available from other sources. This will include the Trust obtaining and documenting the competitive indications with respect to the specific proposed transaction from two other independent government securities dealers. Competitive quotation information must include price and settlement terms. These dealers must be those who, in the experience of the Trust's trustees, have demonstrated the consistent ability to provide professional execution of Treasury transactions at competitive market prices. They also must be those who are in a position to quote favorable prices.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–10275 Filed 4–17–98; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94–409, that the Securities and Exchange Commission will hold the following meeting during the week of April 20, 1998.

A closed meeting will be held on Thursday, April 23, 1998, at 10:00 a.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(4), (8), (9)(A) and (10) and 17 CFR 200.402(a)(4), (8), (9)(i) and (10), permit consideration of the scheduled matters at the closed meeting.

Commissioner Unger, as duty officer, voted to consider the items listed for the closed meeting in a closed session.

The subject matter of the closed meeting scheduled for Thursday, April 23, 1998, at 10:00 a.m., will be:

Institution and settlement of injunctive actions.

Institution and settlement of administrative proceedings of an enforcement nature.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact:

The Office of the Secretary at (202) 942–7070.

Dated: April 15, 1998.

Jonathan G. Katz,

Secretary.

[FR Doc. 98–10504 Filed 4–16–98; 12:34 pm]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39854; File No. SR–Amex–98–14]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the American Stock Exchange, Inc. Relating to Options on the Computer Hardware Index

April 13, 1998.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on March 30, 1998, the American Stock Exchange, Inc. (''Amex'' or ''Exchange'') filed with the Securities and Exchange 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 Amex proposes to trade options on the Computer Hardware Index, a new index developed by the Amex based on the stocks of companies engaged in the design and production of commercial and consumer personal computers and systems. In addition, the Amex proposes to amend its Rule 901C, Commentary .01 to reflect that 90% of the Index's numerical index value will be accounted for by stocks that meet the current criteria and guidelines set forth in Amex Rule 915. The text of the proposed rule change is set forth in Exhibit A to the filing.

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 Amex has prepared summaries, set forth in sections, A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

(1) Purpose

The Amex proposes to trade options on its newly developed Computer Hardware Index (the ''Index''), an index based entirely on shares of widely held companies engaged in the design and production of commercial and consumer personal computers and systems. With rapidly changing technology, vendors constantly introducing more powerful products, and the growing demand for systems priced less than $1,000, stocks of companies in this sector of the high-tech industry are expected to remain extremely volatile, particularly in the near term. Options on the Index are designed to provide investors with an investment vehicle to participate in or hedge against this volatility, and decrease the risk involved in selecting individual stocks. A list of the current component securities is set forth in Exhibit B to the filing.

The Amex is filing this proposal pursuant to Amex Rule 901C, Commentary .02, which provides for the commencement of the trading of options on the Index thirty days after the date of this filing. The proposal meets all the criteria set forth in Commentary .02 and the Commission's order approving that rule as outlined below.[2]

[1] 15 U.S.C. 78s(b)(1).

[2] *See* Securities Exchange Act Release No. 34157 (June 3, 1994), 59 FR 30062 (June 10, 1994).

Eligibility Criteria for Index Components

Pursuant to Commentary .02 to Rule 901C, (1) each of the component securities has a minimum market capitalization of at least $75 million and has a trading volume in each of the last six months of not less than 1,000,000 shares; (2) at least 90% of the Index's numerical index value and at least 80% of the total number of component securities meet the current criteria for standardized option trading set forth in Exchange Rule 915 (in fact, all of the component securities in the Index currently underlie standardized options); (3) the Index contains no American Depository Receipts (''ADRs''); (4) all component stocks are listed on the Amex, the New York Stock Exchange, or traded through the facilities of the National Association of Securities Dealers Automated Quotation System and are reported National Market System securities (''Nasdaq/NMS''); and (5) no component security represents more than 25% of the weight of the Index, and the five highest weighted component securities in the Index do not in the aggregate account for more than 60% of the weight of the Index.

Index Calculation

The Index will be calculated using an ''equal-dollar weighting'' methodology designed to ensure that each of the component securities in represented in an approximately ''equal'' dollar amount in the Index. The following is a description of the methodology. As of the market close on February 20, 1998, a portfolio of stocks was established representing an investment of approximately $200,000 in the stock (rounded to the nearest whole share) of each of the companies in the Index. The value of the Index equals the current market value (*i.e.*, based on US primary market prices) of the sum of the assigned number of shares of each of the stocks in the Index portfolio divided by the Index divisor. The Index divisor was initially determined to yield a benchmark value of 250.00[3] at the close of trading on February 20, 1998.

Maintenance of the Index

The Exchange will maintain the Index in accordance with Amex Rule 901C, Commentary .02 so that (1) the Index is comprised of not less than 9 underlying stocks, and not more than 13 underlying stocks; (2) component stocks constituting the top 90% of the Index, by weight, will have a minimum market capitalization of $75 million, and the component stocks constituting the bottom 10% of the Index, by weight, may have a minimum market capitalization of $50 million; (3) 90% of the Index's numerical index value and at least 80% of the total number of components will meet the then current criteria for standardized options trading set forth in Amex Rule 915; (4) foreign country securities or ADRs thereon that are not subject to comprehensive surveillance agreements will not in the aggregate represent more than 20% of the weight of the Index; (5) all component stocks will either be listed on the Amex, the NYSE, or Nasdaq/NMS; (6) no component security will represent more than 25% of the weight of the Index, and the five highest weighted components will not in aggregate account for more than 60% of the Index; and (7) trading volume of each component security shall be at least 500,000 shares for each of the last six months, or for each of the lowest weighted components that in aggregate account for no more than 10% of the weight of the Index, the monthly trading volume may be at least 400,000 shares for each of the last six months.

The Exchange shall not open for trading any additional option series should the Index fail to satisfy any of the maintenance criteria set forth above unless such failure is determined by the Exchange not to be significant and the Commission concurs in that determination.

Rebalancing

Following the close of trading on the third Friday of February, May, August and November the Index portfolio will be adjusted by changing the number of whole shares of each component stock so that each company is again represented in ''equal'' dollar amounts. If necessary, a divisor adjustment will be made at the rebalancing to ensure continuity of the Index's value. The newly adjusted portfolio will then become the basis for the Index's value on the first trading day following the adjustment.

The number of shares of each component stock in the Index portfolio will remain fixed between quarterly rebalances except in the event of certain types of corporate actions such as the payment of a dividend other than an ordinary cash dividend, stock distribution, stock split, reverse stock split, rights offering, distribution, reorganization, recapitalization, or similar event with respect to the component stocks. In the case of a merger or the consolidation of an issuer of a component stock, if the stock remains in the Index, the number of shares of that security in the portfolio may be adjusted to the nearest whole share to maintain the component's relative weight in the Index at the level immediately prior to the corporate action. In the event of a stock addition or replacement, the average dollar value of the remaining portfolio components will be calculated and that amount invested in the stock of the new component, to the nearest whole share. In all cases, the divisor will be adjusted, if necessary, to ensure Index continuity.

All stock replacements and the handling of non-routine corporate actions will be announced at least ten business days in advance of such effective change, whenever possible. The Exchange will make this information available to the public through dissemination of an information circular.

Dissemination of Index

Similar to other stock index values which underlie exchange-traded products, the value of the index will be calculated continuously and disseminated every 15 seconds over the Consolidated Tape Association's Network B.

Expiration and Settlement

The proposed options on the Index will be European style (*i.e.*, exercises are permitted at expiration only), and cash settled. Standard option trading hours (9:30 a.m. to 4:02 p.m. New York time) will apply. The options on the Index will expire on the Saturday following the third Friday of the expiration month. The last trading day in expiring option series will normally be second to the last business day preceding the Saturday following the third Friday of the expiration month (normally a Thursday). Trading in expiring options will cease at the close of trading on the last trading day.

The Exchange plans to list options series with expiration in the three near-term calendar months and in two additional calendar months in the February cycle. Further, flexible exchange options, in addition to longer term option series having up to thirty-six months to expiration, may be traded. In lieu of such long-term options on full value Index level, the Exchange may instead list long-term, reduced value put and call options based on one-tenth (1/10) the Index's full value. In either event, the interval between expiration months for either a full value or reduced value long term option will not be less than six months. The trading of any long term options would be subject to the same rules which govern the trading of

[3] The index's value at the close of trading on March 18, 1988 was 234.86.

all the Exchange's index options, including sales practice rules, margin requirements and floor trading procedures. Position limits on reduced value long term Index options will be equivalent to the position limits for regular (full value) Index options and would be aggregated with such options (for example, if the position limit for the full value options is 15,000 contracts on the same side of the market, then the position limit for the reduced value options will be 150,000 contracts on the same side of the market).

The exercise settlement value for all of the Index's expiring options will be calculated based upon the primary exchange regular way opening sale prices for the component stocks. In the case of Nasdaq/NMS listed securities, the first reported regular way sale price will be used. If any component stock does not open for trading on its primary market on the last trading day before expiration, then the prior day's last sale price will be used in the calculation.

Exchange Rules Applicable to Stock Index Options

Amex Rules 900C through 980C will apply to the trading of option contracts based on the Index. These rules cover issues such as surveillance, exercise prices, and position limits. Surveillance procedures currently used to monitor trading in each of the Exchange's other index options will also be used to monitor trading in options on the Computer Hardware Index. The Index is deemed to be a Stock Index Option under Rule 901C(a) and a Stock Index Industry Group under Rule 900C(b)(1). With respect to Rule 903C(b), the Exchange proposes to list near-the-money (*i.e.,* within ten points above or below the current index value) option series on the Index at 2½ point strike (exercise) price intervals when the value of the Index is below 200 points. In addition, the Exchange expects that the review required by Rule 904C(c) will result in a position limit of 15,000 contracts with respect to options on this Index.

(2) Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act [4] in general and furthers the objectives of Section 6(b)(5) [5] in particular in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act.[6] The Amex may not list options for trading on the Index prior to 30 days after the date the proposed rule change was filed with the Commission. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in the furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the submission is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room in Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the Amex. All submissions should refer to the file No. SR–Amex 98–14 and should be submitted by May 11, 1998.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[7]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–10335 Filed 4–17–98; 8:45 am]

BILLING CODE 8010–01–M

[4] 15 U.S.C. 78f(b).

[5] 15 U.S.C. 78f(b)(5).

[6] 15 U.S.C. 78s(b)(3)(A).

[7] 17 CFR 200.30(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39850; File No. SR–DCC–98–02]

Self-Regulatory Organizations; Delta Clearing Corp.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to the Authorization of Tullet & Tokyo Securities, Inc. To Participate as a Broker for Over-the-Counter U.S. Treasury Options Trades

April 10, 1998.

Pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 (''Act''), notice is hereby given that on March 6, 1998, Delta Clearing Corp. (''DCC'') 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 primarily by DCC. The Commission is publishing this notice to solicit comments from interested persons on the proposed rule change.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change notifies the Commission that Tullet & Tokyo Securities, Inc. (''Tullet'') has been authorized by DDC to participate as a broker in the over-the-counter system (''system'') operated for options on U.S. treasury securities.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, DCC 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. DCC has prepared summaries, set forth in sections (A), (B),

[1] 15 U.S.C. 78s(b)(1).

and (C) below, of the most significant aspect of such statements.[2]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

Pursuant to the Procedures for Clearing of Securities and Financial Instrument Transactions (''Combined Procedures''),[3] multiple brokers may participate in the system operated by DCC and new brokers may be authorized by DCC to participate in the system. DCC has authorized Tullet, which is currently an authorized broker in the system for repurchase agreement (''repo'') and reverse repo trades, to participate as a broker in the system operated for options on U.S. treasury securities.

DCC believes that the proposed rule change is consistent with the requirements of Section 17A of the Act[4] and the rules and regulations thereunder because it facilitates the prompt and accurate clearance and settlement of securities transactions.

(B) Self-Regulatory Organization's Statement on Burden on Competition

DCC does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purpose of the Act.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(iii)[5] of the Act and pursuant to Rule 19b–4(e)(4)[6] promulgated thereunder because the proposal effects a change in an existing service of a registered clearing agency that does not adversely affect the safeguarding of securities or funds in the custody or control of the clearing agency or for which it is responsible and does not significantly affect the respective rights or obligations of the filing of the clearing agency or persons using the service. At any time within sixty days of the filing of such rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 350 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing also will be available for inspection and copying at the principal office of DCC. All submissions should refer to File No. SR–DCC–98–02 and should be submitted by May 11, 1998.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[7]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–10342 Filed 4–17–98; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39852; File No. SR–DTC–97–12]

Self-Regulatory Organizations; The Depository Trust Company; Order Approving a Proposed Rule Change To Establish a Voluntary Redemption and Sales Service for Depository Eligible Units of Unit Investment Trust

April 10, 1998.

On June 27, 1997, The Depository Trust Company (''DTC'') filed with the Securities and Exchange Commission (''Commission'') and on January 22, 1998, amended as proposed rule change (File No. SR–DTC–97–12) pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'').[1] Notice of the proposal was published in the **Federal Register** on February 19, 1998.[2] No comment letters were received. For the reasons discussed below, the Commission is approving the proposed rule change.

I. Description

Under the rule change, DTC will establish the investor's voluntary redemptions and sales service (''IVORS''), a redemption and sales service for depository eligible units of unit investment trusts (''UITs''). IVORS will offer two basic UIT services: (1) redemption of units with the UIT transfer agent for cash payment and (2) sales of units to the UIT sponsor for cash payment. IVORS initially will be available to eligible DTC participants by way of DTC's participant terminal system (''PTS'').

IVORS will be available only if: (1) the UIT units are DTC-eligible and are held in DTC's fast automated securities transfer (''FAST'') system;[3] (2) the FAST transfer agent currently is or agrees to become a full service DTC participant; and (3) the UIT's lead sponsor or its clearing agent agrees to participant in IVORS as a DTC participant.

When a UIT becomes eligible for IVORS, its FAST transfer agent will submit initial standing instructions for the UIT to an IVORS database on PTS regarding participants' ability to redeem or to sell units through IVORS. The UIT sponsor will be able to make daily changes to those standing instructions by way of PTS. When a participant holding UIT units in its DTC account submits a request through IVORS to surrender the units for their value, IVORS will determine which of the two basic services (*i.e.*, redemption or sale) is available for the units based on the standing instructions for the UIT in the IVORS database. The participant submitting the UIT units will have the choice of accepting the determination of which of the two services is available or canceling its request to surrender its units.

On the date of the participant's request to surrender the units (''T''), IVORS will move the surrendered units from the participant's free position to its ''IVORS pending surrender segregation

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[2] The Commission has modified the text of the summaries prepared by DCC.

[3] Securities Exchange Act Release No. 39236 (October 14, 1997) 62 FR 54661 [File No. SR–DCC–97–04] (order approving the Combined Procedures).

[4] 15 U.S.C. 78q–1.

[5] 15 U.S.C. 78s(b)(3)(A)(iii).

[6] 17 CFR 240.19b–4(e)(5).

[7] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] Securities Exchange Act Release No. 39647 (February 11, 1998), 63 FR 8508.

[3] DTC has informed the Commission that DTC-eligible UIT units usually are held in the FAST system.

account.'' Before the end of the day on T+2, either the FAST transfer agent or the UIT sponsor will enter into IVORS the redemption price (if the units are to be redeemed) or the purchase price (if the units are to be sold) plus the accrued dividend per unit. Both redemptions and sales of units through IVORS will be settled on T+3.

IVORS automatically will calculate the settlement value of the redemption or sale and will generate a deliver order (''DO'') to move the units versus payment of the settlement value from the redeeming participant's IVORS pending surrender segregation account either to the FAST transfer agent's DTC participant account (in the case of a redemption) or to the UIT sponsor's DTC participant account (in the case of a sale). If the units are being redeemed, IVORS automatically will generate a second DO to remove the units from the FAST transfer agent's DTC participant account. If the units are being sold, the units will remain in the UIT sponsor's DTC account until the UIT sponsor later delivers them to a secondary-market purchaser or redeems them by way of IVORS.

II. Discussion

Section 17A(b)(3)(F) of the Act [4] requires that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions. The Commission believes that the proposed rule change is consistent with DTC's obligations under Section 17A(b)(3)(F) because it should improve efficiency in the processing of UIT transactions by eliminating the certificate processing responsibilities of participants electing to use IVORS and by reducing the movement of physical securities certificates. This in turn should reduce the instances of erroneous processing and loss that sometimes occur with the movement of physical securities certificates.

III. Conclusion

On the basis of the foregoing, the Commission finds that the proposal is consistent with the requirements of the Act and in particular with the requirements of Section 17A of the Act and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (File No. SR–DTC–97–12) be and hereby is approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[5]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–10274 Filed 4–17–98; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39849; File No. SR–MBSCC–97–09]

Self-Regulatory Organizations; MBS Clearing Corporation; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Fees and Charges

April 10, 1998.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on November 5, 1997, MBS Clearing Corporation (''MBSCC'') filed with the Securities and Exchange Commission (''Commission'') and on November 13, 1997, and February 27, 1998, amended the proposed rule change as described in Items I, II, and III below, which items have been prepared primarily by MBSCC. The Commission is publishing this notice to solicit comments from interested persons on the proposed rule change.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change revises MBSCC's fee schedule to add fees for the late payment of participant's payment obligations.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, MBSCC 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. MBSCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.[2]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

MBSCC's rules and procedures require participants to satisfy all payment obligations by 12:00 p.m. Eastern Standard Time (''EST'') on the day that they are due.[3] This noon deadline provides MBSCC with sufficient time to use such funds to pay participants in a credit position or to liquidate a participant's collateral to cover a default so that funds are available to pay such participant's obligations.

Currently, participants that fail to satisfy a payment obligation by the noon deadline are subject to a $50.00 charge. Although the majority of payment obligations due to MBSCC are paid on the day on which they are due, many are paid after the noon deadline. Failure by a participant to timely satisfy its payment obligations could jeopardize MBSCC's ability to fulfill its obligations to participants with a credit position.

The purpose of the proposed rule change is to revise fees for late payment of obligations by adding a late payment fee schedule. The purpose of these new fees is to both motivate participants to pay their obligations prior to the noon deadline and to compensate MBSCC for the costs associated with monitoring such late payments. The late payment fee schedule is based both on the size of the cash obligation payment that is not timely made and the frequency of such participant's late payments over a rolling ninety day period. MBSCC's late payment fine schedule is set forth below.

Payable cash obligation	First occurrence	Second occurrence	Third occurrence	Fourth occurrence
$50.00.00–100,000.00	$50.00	$100.00	$250.00	$500.00
100,000.01–1,000,000.00	100.00	200.00	500.00	1,000.00
1,000,000.01–1,500,000.00	200.00	400.00	1,000.00	2,000.00
1,500.000.01–3,000,000.00	500.00	1,000.00	2,500.00	5,000.00
3,000,000.01–5,000,000.00	1,000.00	2,000.00	5,000.00	10,000.00

[4] 15 U.S.C. 78q–1(b)(3)(F).

[5] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] The Commission has modified the text of the summaries prepared by MBSCC.

[3] These payment obligations result from settlement balance order market differential obligations, cash adjustment obligations, broker commissions, miscellaneous cash obligations, and MBSCC clearing and electronic pool notification bills.

Calculation of charges for late payment obligations in excess of $5,000,000 will be based on the ratio of the actual late obligation (rounded to the next highest million) to $5,000,000, multiplied by the late fee for obligations of $5,000,000.

Participants failing to timely satisfy payment obligations on more than four occasions within a rolling ninety day period will be subject to additional late fees for each occurrence. This amount will be determined at MBSCC's discretion depending on the magnitude and history of the participant's late payments, but any additional late fees can be no more than twice the fourth occurrence fee. MBSCC also reserves the discretion to waive or reduce late fees when a particular occurrence is not deemed to be the participant's fault or the participant has provided MBSCC with evidence that it is taking appropriate corrective action to prevent recurrence.

Late fees will accrue on the date on which a late payment is made, and participants will receive a letter notifying them of the late fee. The late fee will be reflected on the participant's bill for the month during which such fee was incurred and is payable at such time.

MBSCC believes that the proposed rule change is consistent with the requirements of Section 17A of the Act [4] and the rules and regulations thereunder because it provides for the equitable allocation of dues, fees, and other charges among MBSCC's participants.

(B) Self-Regulatory Organization's Statement on Burden on Competition

MBSCC does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No comments on the proposed rule change were solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) [5] of the Act and pursuant to Rule 19b–4(e)(2) [6] promulgated thereunder because the proposal establishes or changes a due, fee, or other charge imposed by MBSCC. At any time within sixty days of the filing of such rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing also will be available for inspection and copying at the principal office of MBSCC. All submissions should refer to File No. SR–MBSCC–97–09 and should be submitted by May 11, 1998.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[7]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–10341 Filed 4–17–98; 8:45 am]

BILLING CODE 8010–01–M

[4] 15 U.S.C. 78q–1.

[5] 15 U.S.C. 78s(b)(3)(A)(ii).

[6] 17 CFR 240.19b–4(e)(2).

[7] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39857; File No. SR–NASD–97–20]

Self-Regulatory Organizations; Order Approving Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval to Amendment No. 1 to the Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to the Elimination of the Prohibitions Against NASD Members Accepting Stop Orders and Stop Limit Orders in Exchange-Listed Securities

April 14, 1998.

I. Introduction

On March 10, 1997, the National Association of Securities Dealers, Inc. (''NASD'' or ''Association'') 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 proposal to amend paragraph (i) of NASD Rule 6440, ''Trading Practices,'' to (1) allow members to accept stop orders [3] in eligible securities; [4] and (2) eliminate the requirement that the stop price equal the limit price in order for a member to accept a stop limit order [5] in an eligible security.

Notice of the proposed rule change was published for comment and appeared in the **Federal Register** on March 28, 1997.[6] No comment letters were received on the proposal. On April 1, 1997, the NASD filed Amendment No. 1 to the proposed rule change.[7] In

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] A buy stop order is an order to buy which becomes a market order when a transaction takes place at or above the stop price. Conversely, a sell stop order is an order to sell which becomes a market order when a transaction takes place at or below the stop price. *See* NASD Rule 6440(i)(1).

[4] Under NASD Rule 6410(d), ''eligible securities'' means all common stocks, preferred stocks, long-term warrants, and rights entitling the holder to acquire an eligible security, listed or admitted to unlisted trading privileges on the American Stock Exchange (''Amex'') or the New York Stock Exchange (''NYSE''), and securities listed on the regional stock exchanges which substantially meet the original listing requirements of the Amex or the NYSE.

[5] A buy stop limit order is an order to buy that becomes a limit order at the limit price when a transaction occurs at the stop price. Conversely, a sell stop limit order is an order to sell that becomes a limit order at the limit price when a transaction occurs at the stop price.

[6] *See* Securities Exchange Act Release No. 38429 (March 21, 1997) 62 FR 14953.

[7] *See* Letter from Robert E. Aber, Vice President and General Counsel, NASD, to Katherine England, Assistant Director, National Market System and

Continued

addition, the NASD submitted a letter describing the surveillance procedures it will use to monitor the handling of stop orders and stop limit orders.[8] This order approves the NASD's proposal, as amended.

II. Description of the Proposal

The NASD proposes to amend NASD Rule 6440 to eliminate current restrictions on the ability of NASD members to accept stop orders and certain stop limit orders in eligible securities. Currently, NASD Rule 6440(i)(1) prohibits NASD members from accepting stop orders in eligible securities, and NASD Rule 6440(i)(2) allows members to accept stop limit orders in eligible securities where the stop price and the limit price are the same. The NASD proposes to amend NASD Rule 6440(i) to: (1) allow members to accept stop orders in eligible securities; and (2) eliminate the requirement that the stop price must equal the limit price in order for a member to accept a stop limit order in an eligible security. In addition, the proposal clarifies that NASD members are not obligated to accept stop orders or stop limit orders.

The NASD believes there is no economic or regulatory reason to preclude or restrict investors from placing stop orders or stop limit orders in eligible securities. In this regard, the NASD notes that there are no comparable restrictions on the placement of stop orders or stop limit orders in securities listed on The Nasdaq Stock Market (''Nasdaq''). The NASD believes that investors in the third market[9] also should be able to receive the benefits and protections that result from placing stop orders and stop limit orders. In particular, the NASD believes that the placement of stop orders and stop limit orders will help investors to implement their investment strategies and manage their portfolios.

III. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the NASD and, in particular, the requirements of Section 15A(b)(6) in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market, and, in general, to protect investors and the public interest.[10] Specifically, the Commission believes that it is reasonable for the NASD to amend its rules to allow members to: (1) accept stop orders in eligible securities; and (2) accept stop limit orders in eligible securities where the limit price differs from the stop price. The Commission also believes that it is reasonable for the NASD to clarify its rules to indicate that members are not obligated to accept stop orders or stop limit orders.

The Commission believes that amending NASD Rule 6440(i)(1) to permit members to accept stop orders in eligible securities will extend the benefits and protections associated with stop orders to transactions in the third market. In general, an investor enters a stop sell order in a stock whose price has increased substantially in order to protect his or her profit if the stock's price declines; similarly, an investor with a short position may enter a stop buy order to limit his or her losses if the stock's price increases.[11] The Commission believes that allowing NASD members to accept stop orders in eligible securities will extend these benefits to investors trading eligible securities in the third market and provide them with additional flexibility in implementing their trading strategies. The Commission notes that NASD members currently may accept stop orders in securities that are not eligible securities (generally, securities listed on Nasdaq), as well as stop limit orders in eligible securities.[12] The NASD represents that it has not experienced any problems in connection with the use of stop orders for non-eligible securities or with the use of stop limit orders for eligible securities.[13]

The Commission believes that the NASD has developed procedures that will allow it to monitor the handling of stop orders and stop limit orders in eligible securities.[14] In addition to protections afforded by market surveillance, the Commission believes that the NASD's surveillance procedures will help to detect and deter efforts by market makers to use stop orders to manipulate the price of stock. Several characteristics of the trading in the third market minimize the likelihood that NASD market makers would be able to manipulate the price of an eligible security through their handling of stop orders. In this regard, the Commission notes, first, that a limited amount of the trading of eligible securities occurs in the third market.[15] Second, the exchanges, rather than the third market, are the primary price discovery markets for eligible securities; third market makers usually base their quotations on the primary market quote.[16] Third, there are multiple third market makers (as opposed to a single exchange specialists) for each eligible security. The Commission believes that these factors, taken together, would make it difficult for a third market maker to manipulate the price of an eligible security through the use of stop orders.

The Commission also believes that it is reasonable for the NASD to amend NASD Rule 6440(i)(2) to allow members to accept stop limit orders in eligible securities where the stop price differs from the limit price in order to provide investors with additional flexibility in using stop limit orders. A stop limit order, which must be executed at the limit price or better, is designed to

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Over-the-Counter Regulation, Division of Market Regulation (''Division''), Commission, dated April 1, 1997 (''Amendment No. 1''). In Amendment No. 1, the NASD corrected a typographical error in NASD Rule 6440(i)(2). Specifically, NASD Rule 6440(i)(2) stated that when a transaction occurs at the stop price, a stop limit order to buy or sell becomes a limit order at the stop price. Amendment No. 1 revises NASD Rule 6440(i)(2) to state that when a transaction occurs at the stop price, a stop limit order to buy or sell becomes a limit order at the limit price.

[8] *See* Letter from Thomas R. Gira, Vice President, NASD Regulation, Inc., to Katherine England, Assistant Director, National Market System and Over-the-Counter Regulation, Division, Commission, dated February 27, 1998.

[9] The third market is the over-the-counter market for exchange-listed securities.

[10] In approving this rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[11] *See* Securities Exchange Act Release No. 29063 (April 10, 1991) 56 FR 15652 (April 17, 1991) (order approving File No. SR–Amex–90–31) (''Amex Approval Order'').

[12] *See* NASD Rule 6440(i)(2).

[13] Telephone conversation between Thomas R. Gira, Vice President, NASD Regulation, and Yvonne Fraticelli, Attorney, Office of Market Supervision, Division, Commission, on April 2, 1998.

[14] The Commission has had a continuing interest in potential manipulation and trading abuses in connection with elections of stop orders by exchange specialists. *See e.g.*, Division of Trading and Exchanges, SEC, Stop Orders (1963) (detailing various problems associated with the execution of stop orders); Securities Exchange Act Release No. 24021 (January 21, 1987) 52 FR 3370 (February 3, 1987) (order approving File No. SR–Amex–84–32); and Amex Approval Order, *supra* note 10. These abuses typically involved exchange specialists electing stop orders through principal transactions at price levels either well above the market price in the case of stop buy orders or well below the market price in the case of sell stop orders. *See* Amex Approval Order, *supra* note 10. As discussed more fully *infra*, the Commission believes that the NASD has adequately addressed the potential problems that may arise in connection with the handling of stop orders.

[15] In 1993, the third market garnered 7.4% of reported NYSE volume and 9.3% of the reported trades. *See* Division, Commission, *Market 2000: An Examination of Current Equity Market Developments* (January 1994) (''Market 2000 Study'') at II–11.

[16] *See* Market 2000 Study, *supra* note 16, at II–8.

guarantee that an order receives an execution at no worse than the limit price. However, if the market drops below the limit price of a sell stop order before the order can be executed, it is possible that the order will be executed. For example, if an investor enters a sell stop limit order where the stop price and the limit price are 34, then the investor's order may be executed only at 34 or better and may not be executed at all if the market moves below 34 before the order can be executed. However, if the investor is able to enter a sell order with a stop price of 34 and a limit price of 32, then the investor's order may be executed at 32 or better. Accordingly, by permitting investors to place orders where the limit price differs from the stop price, the NASD's proposal will increase the opportunities for execution of investors' orders and will allow investors to tailor their orders to reflect their objectives and strategies.

The Commission also believes that it is reasonable for the NASD to amend NASD Rule 6440(i) to clarify that members are not obligated to accept stop orders or stop limit orders. Currently, NASD Rule 6440(i)(2) states that members may accept stop limit orders in eligible securities. The NASD proposes to add language to NASD Rule 6440(i)(2) indicating that members are not obligated to accept stop limit orders.[17] Because this is a clarification of the NASD's existing policy, it does not raise new regulatory issues.

The Commission finds good cause for approving Amendment No. 1 to the proposed rule change prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register**. Amendment No. 1 corrects a typographical error in NASD Rule 6440(I)(2). Specifically, NASD Rule 6440(i)(2) stated that when a transaction occurs at the stop price, a stop limit order to buy or sell becomes a limit order at the stop price. Amendment No. 1 revises NASD Rule 6440(i)(2) to state that when a transaction occurs at the stop price, a stop limit order to buy or sell becomes a limit order at the limit price. Because Amendment No. 1 corrects the text of the NASD's rule, the Commission finds that it is consistent with Sections 6(b) and 19(b)(2) of the Act to approve 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, including whether Amendment No. 1 is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to File No. SR–NASD–97–20 and should be submitted by May 11, 1998.

V. Conclusion

It Is Therefore Ordered, pursuant to Section 19(b)(2) of the Act,[18] that the proposed rule change (SR–NASD–97–20) is approved, and that Amendment No. 1 is approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[19]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–10339 Filed 4–17–98; 8:45 am]

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[17] Similarly, NASD Rule 6440(i)(1), as amended, will state that a member may, but is not obligated to, accept a stop order in an eligible security.

[18] 15 U.S.C. 78s(b)(2).

[19] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39855; File No. SR–PCX–97–07]

Self-Regulatory Organizations; Order Approving Proposed Rule Change and Amendment No. 1 Thereto, by the Pacific Exchange, Inc., Relating to Position and Exercise Limits

April 13, 1998.

I. Introduction

On March 5, 1997, the Pacific Exchange, Inc. (''PCX'' or ''Exchange'') submitted to the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to modify its rules on option position and exercise limits by (a) expanding the scope of the firm facilitation exemption, (b) increasing the position and exercise limits for narrow-based index options, (c) expanding the broad-based index hedge exemption to include broker-dealers, and (d) clarifying the general rule on exercise limits. On March 27, 1997, the PCX submitted an amendment to the Commission regarding its proposal.[3]

The proposed rule change appeared in the **Federal Register** on May 20, 1997.[4] No comments were received on the proposed rule change. This order approves the PCX's proposal, as amended.

II. Description

The Exchange has proposed to modify several of its rules on position and exercise limits for equity and index options as follows:

A. Firm Facilitation Exemption

The PCX's firm facilitation exemption currently applies only to a member firm that facilitates and executes an order for its own customer.[5] The PCX proposes to amend the firm facilitation exemption in two ways. First, a member firm will qualify for the exemption if it facilitates its own customer whose account it carries, whether the firm executes the order itself or gives the order to an independent broker for execution. Second, the exemption will be expanded to include member firms who facilitate another member's customer order. Such a customer order must be for execution only against the member firm's proprietary account. Further, unlike a member firm that facilitates its own customer, the resulting position will not be carried by the facilitating member firm.[6]

Specifically, PCX Rule 6.8, Commentary .08 currently provides that for the purpose of facilitating (in accordance with the provisions of PCX Rule 6.47(b)) orders of its own customer (one that will enter, clear and have the resulting position carried with the firm) in non-multiply-listed Exchange options, the proprietary account of a

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Letter from Michael D. Pierson; Senior Attorney, Regulatory Policy, PCX, to Matthew S. Morris, Office of Market Supervision, Division of Market Regulation, Commission, dated March 26, 1997 (''Amendment No. 1'').

[4] *See* Securities Exchange Act Release No. 38612 (May 12, 1997) 62 FR 27643 (May 20, 1997).

[5] The PCX defines a customer order as one that is entered, cleared, and in which the resulting position is carried with the firm.

[6] The Commission notes that any solicitation of a member by another member or customer to facilitate a customer order must comply with the relevant Exchange rules concerning solicited transactions.

member organization may receive and maintain an exemption (''facilitation exemption'') from the applicable standard position limit to the extent that certain procedures and criteria are satisfied. The Exchange proposes to replace this provision with another stating that to the extent that certain procedures and criteria are satisfied, a member organization may receive and maintain for its propriety account an exemption (''facilitation exemption'') from the applicable standard position limit in non-multiply-listed Exchange options for the purpose of facilitating, pursuant to the provisions of PCX Rule 6.47(b), (a) orders for its own customer (one that will have the resulting position carried with the firm) or (b) orders received from or on behalf of a customer for execution only against the member firm's proprietary account.[7]

B. Narrow-Based Index Options

Pursuant to PCX Rule 7.6, the position and exercise limits for narrow-based (industry) index options traded on the Exchange are currently set at 6,000, 9,000, and 12,000 contracts.[8] Specifically, Exchange Rule 7.6(a) provides that position and exercise limits for narrow-based index options be set at one of three levels depending upon the weightings of the component securities in such narrow-based index. Currently, a narrow-based index option will have a 6,000 contract limit if a single component security accounts for more than 30% of the index value; a 9,000 contract limit if a single component security accounts for more than 20% (but less than 30%) of the index value or any five component securities together account for more than 50% of the index value; and a 12,000 contract limit for those narrow-based indexes that do not fall within any one of the other categories. The Exchange proposes to increase these position and exercise limits to 9,000, 12,000, and 15,000 contracts. The Exchange notes that the Commission has approved such increases to the position and exercise limits of other options exchanges.[9]

C. Broad-Based Index Hedge Exemption

PCX Rule 7.6, Commentary .02, currently provides that positions in broad-based index option issues traded on the Exchange, held in the aggregate by a customer (who is neither a member nor a broker-dealer) are exempt from this position limit rule to the extent that certain procedures and criteria are met to qualify for a hedge exemption. The Exchange proposes to modify this provision and the subject procedures in several respects.[10]

First, the Exchange proposes to extend the broad-based index hedge exemption to broker-dealers. Accordingly, the Exchange is replacing various references to ''customer'' in the text of Commentary .02 with references to ''accounts,'' which refer to the accounts in which the exempt options positions are held (*i.e.*, the ''hedge exemption account'').

Second, the Exchange proposes that it be allowed to grant approval of a broad-based index hedge exemption on the basis of verbal representations, provided that the hedge exemption account furnishes to the Exchange, within two business days (or such other time period designated by the Exchange) appropriate documentation substantiating the basis for the exemption.

Third, the Exchange proposes to add a provision (at new subsection (c)) stating that a hedge exemption account that is not carried by a PCX member organization must be carried by a member of a self-regulatory organization participating in the Intermarket Surveillance Group (''ISG'').

Fourth, the Exchange is eliminating current subsections (c) and (d) and replacing them with new subsection (d), which provides that the hedge exemption account must maintain a qualified portfolio, or will effect transactions necessary to obtain a qualified portfolio concurrent with or at or about the same time[11] as the execution of the exempt option positions of: (1) a net long or short position in common stocks in at least four industry groups and contains at least twenty stocks, none of which account for more than fifteen percent of the value of the portfolio or in securities readily convertible, and additionally in the case of convertible bonds, economically convertible, into common stocks which would comprise a portfolio, and/or (2) a net long or short position in index futures contracts or in options on index futures contracts, or long or short positions in index options or index warrants, for which the underlying index is included in the same margin or cross-margin product group cleared at the Options Clearing Corporation (''OCC'') as the index option class to which the hedge exemption applies. To remain qualified, a portfolio must at all times meet these standards notwithstanding trading activity.

Fifth, the Exchange proposes to clarify the method of determining the unhedged value of a ''qualified portfolio.'' Accordingly, subsection (e) of Commentary .02 will provide that the unhedged value will be determined as follows: (1) the values of the net long or short positions of all qualifying products in the portfolio are totaled; (2) for positions in excess of the standard limit, the underlying market value (A) of any economically equivalent opposite side of the market calls and puts in broad-based index options, and (B) of any opposite side of the market positions in stock index futures, options on stock index futures, and any economically equivalent opposite side of the market positions, assuming no other hedges for these contracts exist, is subtracted from the qualified portfolio; and (3) the market value of the resulting unhedged portfolio is equated to the appropriate number of exempt contracts as follows: the unhedged portfolio is divided by the correspondent closing index value and the quotient is then divided by the index multiplier or 100.

Sixth, the proposal specifies that only the following qualified hedging transactions and positions are eligible for purposes of hedging a qualified portfolio (*i.e.*, stocks, futures, options, and warrants): (1) Long put(s) used to hedge the holding of a qualified portfolio; (2) Long call(s) used to hedge a short position in a qualified portfolio; (3) Short call(s) used to hedge the holding of a qualified portfolio; and (4) Short put(s) used to hedge a short position in a qualified portfolio. In addition, the proposal states that the following strategies may be effected only in conjunction with a qualified

[7] According to the PCX, the text of the proposed rule is substantially the same as the text of the first paragraph of Interpretation and Policy .06 to CBOE Rule 4.11 as well as the first paragraph of Commentary .10 to Amex Rule 904 and Commentary .02 to Amex Rule 904C. *See* Securities Exchange Act Release Nos. 37808 (October 10, 1996) 61 FR 54691 (October 21, 1996) (File No. CBOE–96–35), and 37945 (November 13, 1996) 61 FR 59122 (November 20, 1996) (File No. Amex–96–32).

[8] *See* Securities Exchange Act Release No. 36537 (November 30, 1995), 60 FR 62916 (December 7, 1995) (order approving increases to narrow-based index option position and exercise limits from 5,500, 7,500, and 10,500 contracts to 6,000, 9,000, and 12,000 contracts) (File No. PSE–95–30).

[9] *See, e.g.*, Securities Exchange Act Release Nos. 37863 (October 24, 1996) 61 FR 56599 (November 1, 1996) (FIle No. SR–Phlx–96–33), 38202 (January 23, 1997) 62 FR 4555 (January 30, 1997) (FIle No. SR–Amex–96–41), and 38613 (May 12, 1997) 62 FR 27638 (May 20, 1997) (File No. SR–CBOE–97–09).

[10] The Exchange notes that the Commission has approved similar changes to the rules of the CBOE. *See* Securities Exchange Act Release No. 37504 (July 31, 1996) 61 FR 40868 (August 6, 1996) (File No. CBOE–96–01).

[11] The Exchange expects that the hedge will be established concurrently with or immediately following the execution of the option transaction absent good cause. In this regard, the Exchange notes that extreme market conditions, the implementation of circuit breakers, or the lack of liquidity may affect a market participant's ability to establish a hedge within the noted time-frame.

stock portfolio: (5) For non-P.M. settled, European-style index options only—a short call position accompanied by long put(s), where the short call(s) expire with the long put(s), and the strike price of the short call(s) equals or exceeds the strike price of the long put(s) (a ''collar'') (provided that neither side of the collar transaction can be in-the-money at the time the position is established);[12] (6) For non-P.M. settled, European-style index options only—a long put position coupled with a short put position overlying the same broad-based index and having an equivalent underlying aggregate index value, where the short put(s) expire with the long put(s), and the strike price of the long put(s) exceed the strike price of the short put(s) (a ''debit put spread position''); and (7) For non-P.M. settled, European-style index options only—a short call position accompanied by a debit put spread position, where the short call(s) expire with the puts and the strike price of the short call(s) equals or exceeds the strike price of the long put(s) (provided that neither side of the short call, long put transaction can be in-the-money at the time the position is established).[13]

Finally, the Exchange proposes to add a new provision stating that positions included in a qualified portfolio that serve to secure an index hedge exemption may not also be used to secure any other position limit exemption granted by the Exchange or any other self-regulatory organization or futures contract market.

D. Exercise Limits

PCX Rule 6.9 currently provides that Exchange member organizations are prohibited from exercising certain long positions in options dealt in on the Exchange as well as options dealt in on other options exchanges.[14] The Exchange proposes to remove the phrase ''of a class of options dealt in on the Exchange'' in PCX Rule 6.9, Commentary .01, in order to make that Commentary consistent with current PCX Rule 6.9(a).

III. Findings and Conclusions

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b).[15] Specifically, the Commission finds that the proposal is designed to perfect the mechanisms of a free and open market and to protect investors and the public interest.

A. Firm Facilitation Exemption

The Commission believes that by allowing member firms an exemption from position limits to facilitate large customer orders, whether they are firms who accept customer orders for execution only against the member firm's proprietary account, or they are firms who carry their own customers' accounts and positions, the depth and liquidity of the market will be enhanced in a manner consistent with the protection of investors and the public interest. Further, permitting a member firm who facilitates its own customer order to qualify for the exemption whether it executes the order itself or gives it to an independent broker for execution should provide firms with flexibility in handling such orders while still requiring compliance with the rule's requirements.

Specifically, the Commission believes that the PCX's proposal to amend its firm facilitation exemption will accommodate the needs of investors as well as market participants without substantially increasing concerns regarding the potential for manipulation and other trading abuses. The Commission also believes that the proposed rule change will further enhance the potential depth and liquidity of the options market as well as the underlying markets by providing Exchange members greater flexibility in executing large customer orders. Moreover, the Commission is relying on the absence of discernible manipulation problems under the PCX's current firm facilitation exemption as an indicator that the proposal is appropriate. In addition, the PCX's existing safeguards that apply to the current facilitation exemption will continue to serve to minimize any potential disruption or manipulation concerns.

In summary, the Commission continues to believe that the safeguards built into the facilitation exemptive process will serve to minimize the potential for disruption and manipulation concerns, while at the same time benefiting market participants by allowing member firms greater flexibility to facilitate large customer orders. The Commission also notes that the facilitation exemption will be monitored in the same manner, whether the facilitation is done by the member firm for its own customer and executed by the firm itself or given to an independent broker for execution, or whether the facilitation is done by another member firm willing to facilitate the order of another member firm's customer. Further, as noted above, any firm solicitation to facilitate a customer order must comply with the PCX's solicitation rules as well as with the PCX's facilitation and crossing rules. Lastly, the Commission believes that the PCX has adequate surveillance procedures to surveil for compliance with the rule's requirements. Based on these reasons, the Commission believes that it is appropriate for the PCX to amend its firm facilitation exemption.

B. Narrow-Based Index Options

Since the inception of standardized options trading, the options exchanges have had rules imposing limits on the aggregate number of option contracts that a member or customer can hold or exercise. These rules are intended to prevent the establishment of large options positions that can be used or might create incentives to manipulate or disrupt the underlying market so as to benefit the options position. At the same time, the Commission has recognized that option position and exercise limits must not be established at levels that are so low as to discourage participation in the options market by institutions and other investors with substantial hedging needs or to prevent specialists and market makers from adequately meeting their obligations to maintain a fair and orderly market.

In this regard, the PCX has stated that the current position limits discourage market participation by certain large investors and the institutions that compete to facilitate their trading. In addition, the PCX notes that index option trading volume has increased significantly since 1995, when the current industry index option position limits were established. In light of the increased volume of narrow-based index option trading and the needs of investors and market makers, the Commission believes that the PCX's proposal is a reasonable effort to accommodate the needs of market participatants.

In addition, the Commission notes that the proposal, while increasing the positions limits for narrow-based index options, continues to reflect the unique characteristics of each index option and to maintain the structure of the current three-tiered system. Specifically, the lowest proposed limit, 9,000 contracts,

[12] For purposes of determining compliance with PCX Rules 6.8 and 7.6, a collar position will be treated as one contract.

[13] For purposes of determining compliance with PCX Rules 6.8 and 7.6, the short call and long put positions will be treated as one contract.

[14] *See* Securities Exchange Act Release No. 36350 (October 6, 1995) 60 FR 53654 (October 16, 1995) (approval order relating to members' compliance with position and exercise limits for non-PCX listed options) (File No. PSE–95–17).

[15] 15 U.S.C. 78f(b).

will apply to narrow-based index options in which a single underlying stock accounts, on average, for 30% or more of the index value during the 30-day period immediately preceding the Exchange's semi-annual review of industry index option positions limits. A position limit of 12,000 contracts will apply if any single underlying stock accounts, on average, for 20% or more of the index value or any five underlying stocks account, on average, for more than 50% of the index value, but no single stock in the group accounts, on average, for 30% or more of the index value during the 30-day period immediately preceding the Exchange's semi-annual review of industry index option position limits. The 15,000 contract limit will apply only if the Exchange determines that the conditions requiring either the 9,000 contract limit or the 12,000 contract limit have not occurred.

The Commission believes that the proposed increases for the three tiers of 25%, 33%, and 50%, for highest to lowest, respectively, appear to be appropriate and consistent with the Commission's evolutionary approach to position and exercise limits. As noted above, the Commission also has approved previously these increased position and exercise limits for several other exchanges.[16] To date, there have been no discernible manipulation problems that have arisen at the higher three-tier position and exercise limits for narrow-based index options on these exchanges. The Commission notes that the Exchange has had considerable experience monitoring the current three-tiered framework in narrow-based index options. The Commission has not found that differing position and exercise limit requirements based on the particular options product to have created programming or monitoring problems for securities firms, or to have led to significant customer confusion. Based on the current experience in handling position and exercise limits, the commission believes that the proposed increase in position and exercise limits for narrow-based index options will not cause significant problems.

Finally, the Commission believes that the Exchange's surveillance programs are adequate to detect and deter violations of position and exercise limits as well as to detect and deter attempted manipulative activity and other trading abuses through the use of such illegal positions by market participants. Accordingly, the Commission concludes that the increase in the position and exercise limits for narrow-based index options proposed by the Exchange are warranted and should be approved.[17]

C. Broad-Based Index Hedge Exemption

1. Expansion of Definition of Qualified Portfolio and Extension of Broad-Based Index Hedge Exemption to Broker-Dealers

Currently, the PCX's broad-based index hedge exemption may be granted for positions in broad-based index options that are hedged with Exchange-approved qualified portfolios. The PCX proposes to expand the current definition of a qualified portfolio to take into account the broader range of hedging strategies currently used by market participants. Specifically, the PCX has proposed to include within the definition of a qualified portfolio products that overlay various broad-based indexes, including index futures, options on index futures, index options, and index warrants, where the indexes are represented in margin or cross-margin product groups at the OCC. Under the new index hedge exemption's requirements, a qualified portfolio may consist of: (i) net long or short positions in common stocks, or securities readily convertible into common stocks, in at least four industry groups, where the portfolio contains at least twenty stocks, none of which accounts for more than fifteen percent of the value of the portfolio; and/or (ii) net long or short positions in index futures contracts or in options on index futures contracts, or long or short positions in index options or index warrants, for which the underlying index is included in the same margin or cross-margin product group cleared at the OCC as the index option class to which the hedge exemption applies. To remain qualified, a portfolio must at all times meet these standards, notwithstanding trading activity. In addition, the index hedge exemption applies to positions in broad-based index options and is applicable to the unhedged value of the qualified portfolio.[18] The Exchange also proposes to grant approval of a broad-based index hedge exemption on the basis of verbal representations, provided that the hedge exemption account furnishes to the Exchange, within two business days, or such other time period designated by the Exchange, appropriate documentation substantiating the basis for the exemption. The Exchange further proposes to extend the broad-based index hedge exemption to broker-dealers.

The Commission believes, as it did when originally approving the PCX's index hedge exemption, that providing for increased position and exercise limits for broad-based index options in circumstances where those excess positions are effectively hedged with offsetting positions will provide greater depth and liquidity to the market and will allow investors to hedge their portfolios more effectively, without significantly increasing concerns regarding intermarket manipulations or disruptions of either the options market or the underlying stock market. The Commission believes that through the expanded definition of a qualified portfolio, an increased number of public customers with long or short portfolios will be able to utilize the broad-based index hedge exemption, thereby making an alternative hedging technique more available.

Although the Exchange may, under the terms of the proposal, grant approval on the basis of verbal representations, the Commission believes that trading abuses are unlikely because the hedge exemption account is required to furnish to the Exchange, within two business days or such other time period designated by the Exchange, appropriate documentation substantiating the basis for the exemption. The Exchange recently adopted surveillance procedures appropriate to the new broad-based index hedge exemption authority. The Commission also notes that the authority to grant approval for index hedge exemptions on the basis of verbal representations has been previously approved by the Commission for another exchange.[19]

In addition, the Commission believes that it is reasonable for the PCX to allow

[16] *See supra* note 9.

[17] The Commission continues to believe that proposals to increase position limits and exercise limits must be justified and evaluated separately. After reviewing the proposed exercise limits, along with the eligibility criteria for each tier, the Commission has concluded that the proposed exercise limit increases for the three-tiered framework do not raise manipulation problems or increase concerns over market disruption in the underlying securities.

[18] *See* new Commentary .02(c) to Rule 7.6. Under this provision, the unhedged value is determined as follows: (1) the values of the net long or short positions of all qualifying products in the portfolio are totaled; (2) for positions in excess of the standard limit, the underlying market value (A) of any economically equivalent opposite side of the market calls and puts in broad-based index options, and (B) of any opposite side of the market positions in stock index futures, options on stock index futures, and any economically equivalent opposite side of the market positions, assuming no other hedges for these contracts exist, is subtracted from the qualified portfolio; and (3) the market value of the resulting unhedged portfolio is equated to the appropriate number of exempt contracts as follows: the unhedged qualified portfolio is divided by the correspondent closing index value and the quotient is then divided by the index multiplier or 100.

[19] *See* Interpretation .01(a) to CBOE's Rule 24.4.

broker-dealers as well as public customers to utilize the broad-based index hedge exemption. The Commission believes that extending the exemption to broker-dealers may help to increase the depth and liquidity of the market for broad-based index options and may help to ensure that public customers receive the full benefit of the exemption. Moreover, the Commission is relying on the absence of discernible manipulation problems under the corresponding equity hedge exemption, which is available to both public customers and broker-dealers, as an indicator that the proposed extension of the broad-based index hedge exemption is appropriate. The Commission notes that the broad-based index hedge exemption will continue to include safeguards designed to lessen the possibility that the exempted positions could be used to disrupt or manipulate the market.

2. Prospective Broad-Based Index Hedge Exemption for Broker-Dealers

The PCX proposes to amend the broad-based index hedge exemption so that the Exchange may grant prospective broad-based index hedge exemptions to broker-dealers who may not yet have established qualified portfolios under Commentary .02(d) to Exchange Rule 7.6.

The Commission does not believe that trading abuses are likely to result from the prospective hedge exemption for the following reasons. First, the exemption is limited to registered broker-dealers, and second these broker-dealers must effect the transaction(s) necessary to obtain a qualified portfolio ''concurrent with or at or about the same time as the execution of the exempt options positions.'' [20] The Commission expects that the hedge will be established immediately following the execution of the options transaction. Moreover, broker-dealers must provide to the Exchange appropriate documentation related to the portfolio within two business days. The Commission believes that the PCX's surveillance procedures are sufficient to detect and deter trading abuses arising from the prospective hedge exemption and, in the event a broker-dealer is found to have violated the exemption, the PCX is authorized to take all necessary and appropriate disciplinary actions. Accordingly, the Commission believes that it is appropriate for the Exchange to adopt a limited prospective broad-based index hedge exemption for broker-dealers.

3. Treatment of Collar and Debit Put Spread Transaction as One Contract for Hedging and Position Limit Purposes and Neither Side of Collar Transaction Can Be In-the-Money When Established for Broad-Based Index Hedge Exemption Purposes

The PCX proposes to treat a collar position as one contract rather than as two contracts in Commentary .02(g)(5) to Exchange Rule 7.6. Under the PCX's rules, a collar is defined as a short call position accompanied by long put(s), where the short call(s) expires with the long put(s), and the strike price of the short call(s) equals or exceeds the strike price of the long put(s). Within a limited range, the collar has less opportunity to benefit from upward and downward price changes than either of the collar's components. If the market climbs, the collar is equivalent to a covered write position. If the market declines, the collar is equivalent to a long put position. Because the strategy requires both the purchase of puts and the sale of calls, the PCX believes that the position is more appropriately treated as one contract for hedging purposes rather than two separate put and call components. In adopting this interpretation of a collar, the PCX is also proposing that new language in Commentary .02(g)(5) and .02(g)(7) to Exchange Rule 7.6 will be added to require that neither side of the collar transaction (or the short call, long put transaction) can be in-the-money at the time the position is established. Similarly, because a strategy involving a covered write accompanied by a debit put spread requires a collar component, the PCX also believes that the short call and long put should be treated as one contract in Commentary .02(g)(7) to Exchange Rule 7.6.[21]

The Commission believes that the increased number of options positions available by virtue of the Exchange's proposal will not result in disruptions to either the options or underlying stock market due to the conditions and limitations that must be met to be eligible for the exemption.[22] For example, the broad-based index hedge exemption collar strategy can only be effected in conjunction with a qualified stock portfolio; the exemption is available only for non-p.m. settled, European-style index options; the short call(s) must expire with the long put(s); the strike price of the short call(s) must equal or exceed the strike price of the long put(s); and neither side of the collar transaction can be in-the-money at the time the position is established.

4. Miscellaneous Changes

The PCX is also proposing several other changes to its rules, including a requirement in Commentary .02(c) to Exchange Rule 7.6 that a hedge exemption account can be carried by a member of a SRO participating in the ISG. The Commission believes that through the Exchange's ISG information sharing arrangements, the hedge exemption account will continue to be adequately monitored. Other changes to the Exchange's rules include: (1) clarifying language to reflect the change in the Exchange corporate name; (2) removing superfluous language from Commentary .02 to Rule 7.6; (3) changing a cross-reference from ''Rule 6.74(b)'' to ''Rule 6.47(b)'' in Commentary .08 to Rule 6.8; and (4) changing the first character of the words ''member,'' ''firm,'' and ''organization'' to upper case. Because these changes are non-substantive or technical in nature or raise no additional regulatory issues, the Commission believes that they are consistent with Section 6(b)(5) of the Act.[23]

D. Exercise Limits

The Exchange proposes to remove the phrase ''of a class of options dealt in on the Exchange'' in PCX Rule 6.9, Commentary .01, in order to make that Commentary consistent with current PCX Rule 6.9(a). The Commission believes that the Exchange's rule change clarifies and strengthens the PCX's proposal, as originally intended, and raises no new regulatory issues.[24]

IV. Conclusion

For the foregoing reasons, the Commission finds that the PCX's proposal relating to position and exercise limits is consistent with the requirements of the Act and the rules and regulations thereunder.

It is Therefore Ordered, pursuant to section 19(b)(2) of the Act,[26] that the proposed rule change (SR–PCX–97–07), as amended, is approved.

[20] *See also* 11, *supra*, on when the hedge is expected to be established.

[21] The PCX defines a debit put spread position as a long put position coupled with a short put position overlying the same broad-based index and having an equivalent underlying aggregate index value, where the short put(s) expires with the long put(s), and the strike price of the long put(s) exceeds the strike price of the short put(s).

[22] The Commission notes that it has previously approved identical changes to the rules of CBOE. *See supra* note 10.

[23] 15 U.S.C. 78f(b)(5).

[24] *See* discussion in order approving changes to PCX Rule 6.8 and 6.9 in Securities Exchange Act Release No. 36350 (October 6, 1995) 60 FR 53654 (October 16, 1995).

[26] 15 U.S.C. 78s(b)(2).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[27]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–10273 Filed 4–17–98; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39856; File No. SR–Phlx–97–63]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto by the Philadelphia Stock Exchange, Inc. to Amend its Method of Calculating Initial and Maintenance Margin Requirements for Foreign Currency Options

April 13, 1998.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on December 22, 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 Phlx. On February 20, 1998, the Phlx filed a Letter Amendment to the proposed rule change.[3] The Phlx filed Amendment No. 1 to the proposed rule change on April 6, 1998.[4] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Phlx proposes to amend Phlx Rule 722 to codify its method of calculating initial and maintenance customer margin requirements for foreign currency options. Under proposed new Commentary .16 to Rule 722, the Exchange would calculate the margin requirements for each foreign currency separately, rather than determining one margin level for all foreign currencies based upon the historical pricing information for all foreign currencies together.

The complete text of the proposed rule change is available at the Office of the Secretary, Phlx and at the Commission.

II. Self-Regulatory Organization's Statements Regarding the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Phlx 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 Phlx 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 calculates the margin requirement for customers that assume short foreign currency option positions by adding 4% of the current market value of the underlying foreign currency contract to the option premium price less an adjustment for the out-of-the-money amount of the option contract.[5] The 4% add-on percentage was adopted in 1986 and provided for initial margin which would cover the aggregate underlying foreign currencies' historical volatility over a seven day period with a 95% confidence level over the latest nine month period.[6] This add-on percentage is now reviewed by the Exchange every quarter to assure that it provides for a 97.5% confidence level over a five day period. Recently, the Exchange has listed new foreign currency options such as the Spanish peseta and the Italian lira[7] and has received approval to trade options on the Mexican peso.[8] In determining the appropriate margin levels for these new currencies, the Commission has indicated that it believes that the Exchange should set margin levels for each foreign currency option independently and that it should state its specific procedure for setting these levels in its rules. The purpose of this proposal is to address this issue by adopting new foreign currency options margin procedures as proposed in Commentary .16 to Rule 722.

The Exchange is proposing to determine the applicable add-on percentage by reviewing, on a quarterly calendar basis,[9] five-day price changes over the preceding three-year period for each underlying currency and set the add-on percentage at a level which would have covered those price changes at least 97.5% of the time (''confidence level''). If the results of subsequent reviews show that the current margin level provides a confidence level below 97%, the Exchange will increase the margin requirement for that individual currency up to a 98% confidence level. If the confidence level is between 97% and 97.5%, the margin level will remain the same but will be subject to monthly follow-up reviews until the confidence level exceeds 97.5% for two consecutive months.[10] If during the course of the monthly follow-up reviews, the confidence level drops below 97%, the margin level will be increased to a 98% level and if it exceeds 97.5% for two consecutive months, the currency will be taken off monthly reviews and will

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[27] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Letter from Michele R. Weisbaum, Vice President and Associate General Counsel, Phlx, to Sharon Lawson, Senior Special Counsel, Division of Market Regulation (''Division''), Commission, dated February 19, 1998 (''Letter Amendment''). In the Letter Amendment, the Phlx proposes to amend its proposed rule change to: (1) conduct margin reviews quarterly rather than semi-annually; (2) monitor currencies monthly when the confidence level falls to between 97% and 97.5% until the confidence level exceeds 97.5% for two consecutive months, rather than just one month; and (3) revise Rule 722 to exclude the actual margin level for each currency and to note that instead, the Phlx will distribute membership circulars announcing the margin levels that are derived pursuant to Commentary .16 of Rule 722.

[4] *See* Letter from Nandita Yagnik, Counsel, Phlx, to Sharon Lawson, Senior Special Counsel, Division, Commission, dated April 3, 1998 (''Amendment No. 1''). Amendment No. 1 incorporates the original proposed rule change and Letter Amendment into a Rule 19b–4 notice.

[5] This 4% ''add-on'' percentage is applicable to the following foreign currencies: Australian dollar, British pound, Canadian dollar, German mark, European Currency Unit, French franc, Japanese yen and Swiss franc. The Spanish peseta and the Italian lira currently have a 7% add-on percentage and the Mexican peso has an add-on percentage of 17%.

[6] *See* Securities Exchange Act Release No. 22469 (September 26, 1985) 50 FR 40663 (October 4, 1985) (order approving File Nos. SR–Amex–84–29, SR–CBOE–84–27, SR–NASD–85–15, SR–PSE–84–20, SR–Phlx–84–32 and SR–Phlx–85–18 and establishing a uniform margin system for options products).

[7] *See* Securities Exchange Act Release No. 36255 (September 20, 1995) 60 FR 50229 (September 28, 1995) (order approving File Nos. SR–Phlx–95–20 and SR–Phlx–95–21).

[8] *See* Securities Exchange Act Release No. 39460 (December 17, 1997) 62 FR 67425 (December 24, 1997) (order approving File No. SR–Phlx–97–22).

[9] Although the Phlx initially proposed semi-annual margin reviews, in Amendment No. 1, the Phlx proposes to amend Commentary .16(b) of Rule 722 to require margin reviews to be conducted quarterly, on the 15th of January, April, July and October of each year. *See* Amendment No. 1, *supra* note 4.

[10] As initially proposed, it was unclear whether monthly margin reviews would be required once the confidence level equaled 97.5%. Amendment No. 1 makes clear that the confidence level must exceed 97.5% for two consecutive months before the currency will no longer be reviewed monthly. *See* Amendment No. 1, *supra* note 4.

be put back on the quarterly review cycle. If the currency exceeds 98.5%, the margin level will be reduced to a 98% confidence level. Finally, in order to account for large price movements outside the margin level, if the review shows that the currency had a price movement, either positive or negative, greater than two times the margin level, the margin requirement would be set at a level to meet a 99% confidence level (''extreme outlier test'').

The quarterly reviews will be conducted promptly following the 15th of January, April, July and October of each year. In addition to the routine reviews described above, the Exchange continues to have authority to impose a higher margin level at any time in between reviews if market conditions so warrant.[11] At this time, the margin levels for Tier I, II, and III customized cross rate options will remain the same.

Finally, the Phlx proposes to revise Rule 722 so that while the calculation methodology will be outlined in Commentary .16, the actual margin level for each currency will not be stated. Instead, the Exchange will distribute circulars to the membership announcing the margin levels that are derived pursuant to the methodology in Commentary .16 to Rule 722. In addition, any time that a particular margin level changes based on a review or otherwise pursuant to Rule 722, the new margin requirement will be announced via circular to the membership.[12]

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6 of the Act [13] in general, and in particular, with Section 6(b)(5),[14] in that it is designed to promote just and equitable principles of trade, prevent fraudulent and manipulative acts and practices, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, as well as to protect investors and the public interest by establishing margin levels for foreign currency options which reflect the specific risks associated with each individual currency.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Phlx does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the 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 or such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Phlx consents, the Commission will:

(A) By order approve such proposed rule change, or,

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549. 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 Phlx. All submissions should refer to File No. SR–Phlx–97–63 and should be submitted by May 11, 1998.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[15]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–10340 Filed 4–17–98; 8:45 am]

BILLING CODE 8010–01–M

[11] *See* Phlx Rule 772(i)(8).

[12] As initially proposed, all changes to the add-on percentages for individual currencies set forth in Phlx Rule 722 would have required a proposed rule change to be filed with the Commission pursuant to Section 19(b)(3)(A) of the Act. As changes to the margin levels for individual currencies will not require changes to Phlx Rule 722 and instead, will be announced to the Phlx membership via circular, such changes will not trigger a requirement to subject a 19(b)(3)(A) filing to the Commission. Telephone conversation between Nandita Yagnik, Counsel, Phlx, and Deborah Flynn, Division, Commission, on April 13, 1998.

[13] 15 U.S.C. 78f.

[14] 15 U.S.C. 78f(b)(5).

[15] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF STATE

[Public Notice #2789]

Advisory Committee on International Communications and Information Policy; Meeting Notice

The Department of State is holding the next meeting of its Advisory Committee on International Communications and Information Policy. The Committee provides a formal channel for regular consultation and coordination on major economic, social and legal issues and problems in international communications and information policy, especially as these issues and problems involve users of information and communication services, providers of such services, technology research and development, foreign industrial and regulatory policy, the activities of international organizations with regard to communications and information, and developing country interests.

The meeting will be devoted to discussion of issues of interest to members, particularly as to the work of the State Department on telecommunications policy involving both bilateral and multilateral fora.

In addition, the purpose of this meeting will be to hear reports from the working groups on various issues that chart the future direction and work plan of the committee. The members will look at the substantive issues on which the committee should focus, as well as specific countries and regions of interest to the committee.

This meeting will be held on Thursday, April 30, 1998, from 9:30 a.m.—12:30 p.m. in Room 1107 of the Main Building of the U.S. Department of State, located at 2201 ''C'' Street, NW., Washington, DC 20520. Members of the public may attend these meetings up to the seating capacity of the room. While the meeting is open to the public, admittance to the State Department Building is only by means of a pre-arranged clearance list. In order to be placed on the pre-clearance list, please provide your name, title, company,

social security number, date of birth, and citizenship to Shirlett Brewer at (202) 647–8345 or by fax at (202) 647–0158. All attendees must use the ''C'' Street entrance. One of the following valid ID's will be required for admittance: any U.S. driver's license with photo, a passport, or a U.S. Government agency ID.

For further information, contact Timothy C. Finton, Executive Secretary of the Committee, at (202) 647–5385.

Dated: March 30, 1998.

Timothy C. Finton,

Executive Secretary.

[FR Doc. 98–10382 Filed 4–17–98; 8:45 am]

BILLING CODE 4710–45–M

DEPARTMENT OF STATE

[Public Notice No. 2783]

Advisory Committee on Private International Law (ACPIL) Study Group on Electronic Commerce; Meeting Notice

The Study Group on Electronic Commerce of the Advisory Committee on Private International Law (ACPIL) will hold its next meeting from 9:30 to 4:00 on Thursday, April 16 in Washington, DC. The purpose of the meeting will be to review international proposals for rules on electronic signature systems.

The meeting will consider authentication, message integrity, sender and user rights and obligations, and the evolving roles of third party system designers and service providers, as well as differing standards that may be appropriate for commercial and governmental applications. Both international and domestic developments will be reviewed, given the close connection between them in an era of globalization of commerce, information, and borderless connections through data networks. The status of ongoing projects at various international bodies, both intergovernmental and private sector, including UNCITRAL, OECD, the ICC and others will be reviewed. The meeting will focus on revised draft rules on electronic signatures prepared by the Secretariat of the United Nations Commission on International Trade Law (UNCITRAL), which will be discussed at an upcoming UNCITRAL Working Group meeting at the U.N. in June 1998. Included in that discussion will be a U.S. proposal for a multilateral treaty (convention) that could include provisions of the 1996 UNCITRAL Model Law on Electronic Commerce, and possibly other provisions.

Also on the agenda will be a review, as appropriate, of the latest developments in state legislatures within the U.S.; draft uniform state laws under preparation, including the proposed new Uniform Commercial Code Article 2B and Electronic Transactions Act; developments in other national legal systems; and electronic commerce initiatives of the Department of Commerce and others.

Proposals on electronic commerce infrastructure, including access to markets, message integrity, and privacy issues that are expected to be discussed at the OECD in October will also be reviewed as appropriate. Suggestions on possible legal standards for determining applicable law and jurisdiction in a cross-border setting may be considered.

The meeting of the Advisory Committee Study Group is open to the public up to the capacity of the meeting room. Members of the public who cannot attend are welcome to comment, including any recommendations for possible U.S. positions on these matters. The meeting will take place at the International Law Institute (ILI), 1615 New Hampshire Avenue, NW, Washington, DC. Persons who expect to attend should advise either the Office of the Legal Adviser (L/PIL) at Suite 357, South Building, 2430 E Street, NW, Washington, DC 20037–2800, fax (202) 776–8482, or Stuart Kerr at ILI, (202) 483–3036, fax 483–3029. The Office of the Legal Adviser will provide copies of, or e-mail and other sources for, UN, NCCUSL and related documents for the meeting. For further information, please contact Harold Burman, Advisory Committee Executive Director, at (202) 776–8421.

The meeting will take place immediately prior to meeting in Washington, DC on April 17–19 of the National Conference of Commissioners Drafting Group on Uniform State Laws (NCCUSL) on the proposed Uniform Electronic Transactions Act (UETA). Attendees at the Study Group meeting or others who may be interested in the UETA meeting should contact Patricia Fry at the Stetson University College of Law, (813) 562–7893, fax 813–347–3738, or D. Benjamin Beard at the University of Idaho Law School, 208–885–6423, fax 885–7609.

Harold S. Burman,

Advisory Committee, Executive Director.

[FR Doc. 98–10324 Filed 4–17–98; 8:45 am]

BILLING CODE 4710–08–M

DEPARTMENT OF STATE

[Public Notice #2781]

Shipping Coordinating Committee Subcommittee on Ship Design and Equipment; Meeting Notice

The Shipping Coordinating Committee will conduct an open meeting at 1:00 pm on Tuesday, May 5, 1998, 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 of the forty-first session of the Subcommittee on Ship Design and Equipment of the International Maritime Organization (IMO) held during March 9–13, 1998, at IMO Headquarters in London, United Kingdom. This public meeting will commence following the public meeting scheduled for the morning which is preparing for the upcoming session of the IMO Maritime Safety Committee.

Among other things, items of particular interest are: role of the human element in maritime casualties—guidelines for computer applications; revision of the High Speed Craft Code; matters relating to lifesaving; safety of passenger submersible craft; safe ocean towing guidelines; emergency towing arrangements for tankers; and development of a code on polar navigation.

IMO works to develop international agreements, guidelines, and standards for the marine industry. In most cases, these form the basis for class society rules and national standards/regulations. Such an open meeting supports the U.S. Representative to the IMO Subcommittee in developing the U.S. position on those issues raised at the IMO Subcommittee meetings. This open meeting serves as an excellent forum for the U.S. maritime industry to express their ideas and participate in the international rulemaking process. All members of the maritime industry are encouraged to send representatives to participate in the development of U.S. positions on those issues affecting your maritime industry and remain abreast of all activities ongoing within the IMO.

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: March 26, 1998.

Stephen M. Miller,

Executive Secretary, Shipping Coordinating Committee.

[FR Doc. 98–10323 Filed 4–17–98; 8:45 am]

BILLING CODE 4710–07–M

DEPARTMENT OF STATE

[Public Notice # 2791]

Shipping Coordinating Committee, Subcommittee on Safety of Life at Sea, Working Group on Dangerous Goods, Solid Cargoes and Containers; Meeting Notice

The Working Group on Dangerous Goods, Solid Cargoes and Containers (DSC) of the Subcommittee on Safety of Life at Sea (SOLAS) will conduct an open meeting at 9:30 a.m. on Tuesday, May 12, 1998, in Room 8236, at the Nassif Building, 400 Seventh Street, SW., Washington, DC 20590. The purpose of the meeting is to discuss the outcome of the Third Session of the DSC Subcommittee of the International Maritime Organization (IMO) which was held on February 9–13, 1998, at the IMO Headquarters in London. In addition, initial plans and preparations for the upcoming meeting of the DSC Subcommittee's Editorial and Technical Group and other topics of interest will be addressed.

The agenda items of particular interest are:

a. The consolidated text of Amendment 29 to the International Maritime Dangerous Goods (IMDG) Code, its Annexes and Supplements including harmonization of the IMDG Code with the United Nations Recommendations on the Transport of Dangerous Goods.

b. Implementation of Annex III of the Marine Pollution Convention (MARPOL 73/78), as amended.

c. Revision of the format of the IMDG Code, including presentational issues of the dangerous goods list and organic peroxide tables.

d. Amendments to SOLAS chapters VI and VII to make the IMDG Code mandatory.

e. Amendments to SOLAS chapter VII to make the Irradiated Nuclear Fuel (INF) Code mandatory.

f. Implementation of IMO instruments and training requirements for cargo-related matters, including revision of resolution A.537(13) and development of multimodal training requirements.

g. Revision of the Emergency Schedules (EmS).

h. Revision of MSC/Circ. 613 to include offshore tank containers.

i. Amendments to the Bulk Solids Code, including evaluation of properties of solid bulk cargoes.

j. Proposed amendments to the limited quantity provisions of the IMDG Code to be included in Amendment 30.

Members of the public may attend this meeting up to the seating capacity of the room. Interested persons may seek information by writing: Mr. E.P. Pfersich, U.S. Coast Guard (G–MSO–3), 2100 Second Street, SW., Washington, DC 20593–0001 or by calling (202) 267–1577.

Dated: March 30, 1998.

Stephen M. Miller,

Executive Secretary, Shipping Coordinating Committee.

[FR Doc. 98–10383 Filed 4–17–98; 8:45 am]

BILLING CODE 4710–07–M

DEPARTMENT OF STATE

[Public Notice 2787]

Ofice of International Energy Policy; Notice of Receipt of Application for a Permit for Pipeline Facilities to be Constructed and Maintained on the Borders of the United States

AGENCY: Department of State.

The Department of State has received an application from Lakehead Pipe Line Company, Limited for Presidential Permit, pursuant to Executive Order 11423 of August 16, 1968, as amended by Executive Order 12847 of May 17, 1993, to construct, connect, operate and maintain a pipeline at the site of its existing facilities on the U.S.-Canada International border near Neche, North Dakota. The pipeline will be utilized to transport crude oil and natural gas liquids. Lakehead is a Delaware limited partnership, having its principal office in Deluth, Minnesota.

The permit application and related documents are available for review at the address provided below.

DATES: Interested parties are invited to submit, in duplicate, comments relative to this proposal on or before May 20, 1998.

FOR FURTHER INFORMATION CONTACT: Daniel L. Martinez, Office of International Energy Policy, Department of State, Washington, D.C. 20520. Tel: (202) 647–4557.

Dated: March 27, 1998.

William A. Weingarten,

Director, Office of International Energy Policy.

[FR Doc. 98–10268 Filed 4–17–98; 8:45 am]

BILLING CODE 4710–07–M

DEPARTMENT OF TRANSPORTATION

Aviation Proceedings, Agreements Filed During the Week Ending April 10, 1998

The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C. Sections 412 and 414. Answers may be filed within 21 days of date of filing.

Docket Number: OST–98–3718.
Date Filed: April 6, 1998.
Parties: Members of the International Air Transport Association.
Subject: PTC3 Telex Mail Vote 929 (Reso 070tt), Pakistan-South Asian Subcontinent fares, Intended effective data: April 20, 1998.

Docket Number: OST–98–3735.
Date Filed: April 10, 1998.
Parties: Members of the International Air Transport Association.
Subject: Telex Cargo Reso 033f—Malaysia, Worldwide Currency Adjustment, Intended effective date: May 1, 1998.

Paulette V. Twine,

Federal Register Liaison.

[FR Doc. 98–10257 Filed 4–17–98; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q during the Week Ending April 10, 1998

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under Subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 et. seq.). The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: OST–98–3727.
Date Filed: April 9, 1998.
Due Date for Answers, Conforming Applications, or Motions to Modify Scope: May 7, 1998.
Description: Application of Ethiopian Airlines Enterprise, pursuant to 49 U.S.C. Section 41302 and Subpart Q of the Regulations, applies for an initial foreign air carrier permit to provide

foreign air transportation of persons, property and mail between Addis Ababa, Ethiopia and Washington, D.C.

Docket Number: OST–98–3733.

Date Filed: April 10, 1998.

Due Date for Answers, Conforming Applications, or Motions to Modify Scope: May 8, 1998.

Description: Application of Royal Aviation, Inc., pursuant to 49 U.S.C. Section 41301, and Subpart Q of the Regulations, applies for a foreign air carrier permit to engage in scheduled international air transportation of persons, property and mail between any point or points in Canada and any point or points in the United States.

Paulette V. Twine,

Federal Register Liaison.

[FR Doc. 98–10258 Filed 4–17–98; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Fitness Determination of Express Air, Inc.

AGENCY: Office of the Secretary, Department of Transportation.

ACTION: Notice of Commuter Air Carrier Fitness Determination Order to Show Cause (Order 98–4–16).

SUMMARY: The Department of Transportation is proposing to find Express Air, Inc., fit, willing, and able, to provide commuter air carrier operations under 49 U.S.C. 41738.

DATES: Persons wishing to file objections should do so no later than April 29, 1998.

ADDRESSES: All interested persons wishing to respond to the Department of Transportation's tentative fitness determination should file their responses with the Air Carrier Fitness Division, X–56, Department of Transportation, 400 Seventh Street, SW., Room 6401, Washington, D.C. 20590, and serve them on all persons listed in Attachment A to the order.

FOR FURTHER INFORMATION CONTACT: Delores King, Air Carrier Fitness Division (X–56, Room 6401), U.S. Department of Transportation, 400 Seventh Street, SW., Washington, D.C. 20590, (202) 366–2343.

Dated: April 15, 1998.

Charles A. Hunnicutt,

Assistant Secretary for Aviation and International Affairs.

[FR Doc. 98–10352 Filed 4–17–98; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

[USCG–1998–3743]

Chemical Transportation Advisory Committee, Subcommittee on Proper Cargo Names

AGENCY: Coast Guard, DOT.

ACTION: Notice of meetings.

SUMMARY: The Chemical Transportation Advisory Committee's (CTAC) Subcommittee on Proper Cargo Names (PCN) will meet to discuss various issues relating to the marine transportation of hazardous materials in bulk. The meeting will be open to the public.

DATES: The PCN Subcommittee will meet on Tuesday, May 5, 1998, from 9 a.m. to 4 p.m.; however, the meeting may be concluded early if its business is finished. Anyone planning to attend the meeting and intending to express his or her views is encouraged to arrive early and make that intention known. Written material and requests to make oral presentations should reach the U.S. Coast Guard on or before May 1, 1998. Requests to have a copy of your material distributed to each member of the CTAC Subcommittee should reach the U.S. Coast Guard on or before May 1, 1998.

ADDRESSES: The Subcommittee will meet at the American Bureau of Shipping (ABS), ABS Plaza, 16855 Northchase Drive, Houston, TX 77060–6008. Point of contact: Mr. Philip G. Rynn; tel.: 281–877–6415; fax.: 281–877–6795. Send written material and requests to make oral presentations to Mr. Curtis Payne, Commandant (G–MSO–3), U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593–0001. This notice is available on the Internet at http://dms.dot.gov.

FOR FURTHER INFORMATION CONTACT: Mr. Cutis Payne, telephone 202–267–1577, fax. 202–267–4570. For questions on this docket, contact Carol Kelly, Coast Guard Dockets Team Leader, or Paulette Twine, Chief, Documentary Services Division, U.S. Department of Transportation, 202–366–9329.

SUPPLEMENTARY INFORMATION: Notice of this meeting is given under the Federal Advisory Committee Act, 5 U.S.C. App. 2.

Meeting Agenda

Subcommittee on Proper Cargo Names (PCN). The agenda includes the following:

(1) Presentation of the task statement and formation of the Subcommittee on Proper Cargo Names.

(2) Presentation on requirements for chemical shipping names.

(3) Discussion of the industry's cargo naming/identification processes.

(4) Discussion of fact-finding mission.

Procedural

The meeting is open to the public. At the Chair's discretion, members of the public may make oral presentations during the meeting. If you would like to make an oral presentation at the meeting, please notify Mr. Payne no later than May 1, 1998. Written material for distribution at the meeting should reach the U.S. Coast Guard no later than May 1, 1998. If you would like a copy of your material distributed to each member of the Subcommittee in advance of the meeting, please submit 25 copies to Mr. Payne no later than May 1, 1998.

Information on Services for Individuals With Disabilities

For information on facilities or services for individuals with disabilities or to request special assistance at the meeting, contact Mr. Payne as soon as possible.

Dated: April 15, 1998.

Joseph J. Angelo,

Director of Standards, Marine Safety and Environmental Protection.

[FR Doc. 98–10551 Filed 4–17–98; 8:45 am]

BILLING CODE 4910–15–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Advisory Circular 21.25–1, Issuance of Type Certificate: Restricted Category Agricultural Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of issuance of advisory circular.

SUMMARY: This notice announces the issuance of Advisory Circular (AC) 21.25–1, Issuance of Type Certificate: Restricted Category Agricultural Airplanes. This AC provides information and guidance for obtaining a type certificate in the restricted category under Title 14 of the Code of Federal Regulations (14 CFR) part 21, § 21.25, for small single-engine piston and turbo-propeller driven airplanes, which will be used for agricultural special purpose operations. This AC provides an acceptable means, but not the only means, of meeting the requirements of 14 CFR part 21 for the issuance of a type certificate in the restricted category. This procedure

incorporates the appropriate normal category airworthiness standards of 14 CFR part 23, Airworthiness Standards: Normal, Utility, Acrobatic, and Commuter Category Airplanes. This material is neither mandatory nor regulatory in nature and does not constitute a regulation.

DATE: Advisory Circular 21.25–1 was issued by the Manager, Small Airplane Directorate, Aircraft Certification Service, ACE–100, on December 1, 1997.

HOW TO OBTAIN COPIES: A copy may be obtained by writing to the U.S. Department of Transportation, Subsequent Distribution Office, DOT Warehouse SVC–121.23, Ardmore East Business Center, 3341 Q 75th Avenue, Landover, MD 20785, or by faxing your request to that office at 301–386–5394.

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

Michael Gallagher,

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Index of Administrator's Decisions and Orders in Civil Penalty Actions; Publication

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of publication.

SUMMARY: This notice constitutes the required quarterly publication of an index of the Administrator's decisions and orders in civil penalty cases. This publication represents the quarter ending on December 31, 1997. This publication ensures that the agency is in compliance with statutory indexing requirements.

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SUPPLEMENTARY INFORMATION: The Administrative Procedure Act requires Federal agencies to maintain and make available for public inspection and copying current indexes containing identifying information regarding materials required to be made available or published 5 U.S.C. 552(a)(2). In a notice issued on July 11, 1990, and published in the **Federal Register** (55 FR 29148; July 17, 1990), the FAA announced the public availability of several indexes and summaries that provide identifying information about the decisions and orders issued by the Administrator under the FAA's civil penalty assessment authority and the rules of practice governing hearings and appeals of civil penalty actions. 14 CFR Part 13, Subpart G.

The FAA maintains an index of the Administrator's decisions and orders in civil penalty actions organized by order number and containing identifying information about each decision or order. The FAA also maintains a cumulative subject-matter index and digests organized by order number.

The indexes are published on a quarterly basis (i.e., January, April, July, and October.) This publication represents the quarter ending on December 31, 1997.

The FAA first published these indexes and digests for all decisions and orders issued by the Administrator through September 30, 1990. 55 FR 45984; October 31, 1990. The FAA announced in that notice that only the subject-matter index would be published cumulatively and that the order number index would be non-cumulative. The FAA announced in a later notice that the order number indexes published in January would reflect all of the civil penalty decisions for the previous year. 58 FR 5044; 1/19/93.

The previous quarterly publications of these indexes have appeared in these **Federal Register** as follows:

Dates of quarter	Federal Register publication
11/1/89–9/30/90 ..	55 FR 45984; 10/31/90.
10/1/90–12/31/90	56 FR 44886; 2/6/91.
1/1/91–3/31/91	56 FR 20250; 5/2/91.
4/1/91–6/30/91	56 FR 31984; 7/12/91.
7/1/91–9/30/91	56 FR 51735; 10/15/91.
10/1/91–12/31/91	57 FR 2299; 1/21/92.
1/1/92–3/31/92	57 FR 12359; 4/9/92.
4/1/92–6/30/92	57 FR 32825; 7/23/92.
7/1/92–9/30/92	57 FR 48255; 10/22/92.
10/1/92–12/31/92	58 FR 5044; 1/19/93.
1/1/93–3/31/93	58 FR 21199; 4/19/93.
4/1/93–6/30/93	58 FR 42120; 8/6/93.
7/1/93–9/30/93	58 FR 58218; 10/29/93.
10/1/93–12/31/93	59 FR 5466; 2/4/94.
1/1/94–3/31/94	59 FR 22196; 4/29/94.
4/1/94–6/30/94	59 FR 39618; 8/3/94.
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4/1/95–6/30/95	60 FR 36854; 7/18/95.
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4/1/97–6/30/97	62 FR 38339; 7/17/97.
7/1/97–9/30/97	62 FR 53856; 10/16/97.
10/1/97–12/31/97	63 FR 3373; 1/22/98.

The civil penalty decisions and orders, and the indexes and digests are available in FAA offices. In addition, the Administrator's civil penalty decisions have been published by commercial publishers (Hawkins Publishing Company and Clark Boardman Callahan) and are available on computer on-line services (Westlaw, LEXIS, Compuserve and FedWorld). (A list of the addresses of the FAA offices where the civil penalty decisions may be reviewed and information regarding these commercial publications and computer databases are provided at the end of this notice.)

Information regarding the accessibility of materials filed in recently initiated civil penalty cases in FAA civil penalty cases at the DOT Docket and over the Internet is also set forth at the end of this notice.

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135.185	94–40 Polynesian Airways.
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172.200	92–77 TCI; 94–28 Toyota; 95–16 Mulhall; 96–26 Midtown; 98–2 Carr.
172.202	92–77 TCI; 94–28 Toyota; 94–31 Smalling; 95–16 Mulhall; 98–2 Carr.
172.203	94–28 Toyota.
172.204	92–77 TCI; 94–28 Toyota; 94–31 Smalling; 95–16 Mulhall; 98–2 Carr.
172.300	94–31 Smalling; 95–16 Mulhall; 96–26 Midtown; 98–2 Carr.
172.301	94–31 Smalling; 95–16 Mulhall; 98–2 Carr.
172.304	92–77 TCI; 94–31 Smalling; 95–16 Mulhall; 98–2 Carr.
172.400	92–77 TCI; 94–28 Toyota; 94–31 Smalling; 95–16 Mulhall; 98–2 Carr.
172.402	94–28 Toyota.
172.406	92–77 TCI.
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Civil Penalty Actions—Orders Issued by the Administrator Digests

(Current as of March 31, 1998)

The digests of the Administrator's final decisions and orders are arranged by order number, and briefly summarize key points of the decision. The following compilation of digests includes all final decisions and orders issued by the Administrator from January 1, 1998, to March 31, 1998. The FAA will publish non-cumulative supplements to this compilation on a quarterly basis (*e.g.*, April, July, October, and January of each year).

These digests do not constitute legal authority, and should not be cited or relied upon as such. The digests are not intended to serve as a substitute for proper legal research. Parties, attorneys, and other interested persons should always consult the full text of the Administrator's decisions before citing them in any context.

In the Matter of Virginia Taylor

[Order No. 98–1 (2/18/98)]

Appeal Dismissed. Taylor's notice of appeal was filed almost 8 months late. Taylor's counsel claimed that the notice of appeal had been filed previously but he failed to submit any evidence that the notice of appeal had been filed on time. The party filing a document has the burden of proving the date on which it filed the document. Taylor failed to prove that she filed the notice of appeal on time or that she had good cause for the failure to file the notice on time. Appeal dismissed.

In the Matter of Paul A. Carr

[Order No. 98–2 (3/12/98)]

Hazardous materials. Carr offered two boxes containing fireworks and some non-hazardous materials to Horizon Air for shipment. Carr did not indicate by marking, labeling, or by declaring on the shipping papers that he was shipping hazardous materials. Also, incorrect packaging was used by Carr to ship the fireworks. The boxes were opened subsequently, when they were transferred to another carrier, and the hazardous materials were discovered.

Civil penalty reduced. It is held that in this non-egregious case involving an individual not in the business of shipping hazardous materials, it is inappropriate to count each regulatory violation alleged and found—general and specific—as separate violations for sanction purposes. Due to the statutory minimum civil penalty provision, the consideration of duplicative regulatory violations as separate violations for sanction purposes in non-egregious cases against individuals not in the business of shipping hazardous material may undermine the credibility of the enforcement program and result in excessive penalties under the statutory factors. (See 49 U.S.C. 5123.) Hence, in this case, there is no reason to count 49 CFR 171.2(a), 172.200(a), and 173.1(b), as separate violations for sanction purposes. Also, it is held that the separate violations of 49 CFR 172.202(a) and 172.202(c) are almost identical in this case and therefore, to count both separately for sanction purposes is unnecessary ''piling on.'' Likewise, the violation of 49 CFR 172.304 should not count separately for sanction purposes because this regulation requires that the markings be durable, in English, and printed on or affixed to the package—but a separate violation has already been found because there were no markings at all. The civil penalty is reduced to $2,000.

In the Matter of Thomas Fedele

[Order No. 98–3 (3/12/98)]

Parachuting Too Close to Clouds. A preponderance of the reliable, probative, and substantial evidence in the record indicates that none of the skydivers could have jumped at the time and place in question without coming too close to clouds. Law judge's decision finding otherwise is reversed, and a $500 civil penalty is assessed.

In the Matter of Larry's Flying Service, Inc.

[Order No. 98–4 (3/12/98)]

No Good Cause for Failure to File Timely Answer. Larry's argues that confusion of its counsel was the reason for its lateness in filing its answer. Counsel allegedly thought that the copy of the complaint he received was only a courtesy copy because it did not contain the case number or the law judge's name. No good cause has been shown. Any confusion on counsel's part was unwarranted.

$20,000 Penalty Assessed. Although $20,000 may seem severe, Larry's was no stranger to the answer requirement, having narrowly escaped a default judgment in two previous cases. In addition, Larry's has a history of prior violation, an aggravating factor.

Financial Hardship. Larry's waived the affirmative defense of financial hardship when it failed to file a timely answer without good cause and again when it failed to raise the issue in its appeal brief.

In the Matter of James K. Squire

[Order No. 98–5 (3/19/98)]

Additional Time to File Appeal Brief Granted. After rendering his oral initial decision, the law judge informed Squire of his option to file a notice of appeal within 10 days, but neglected to mention the requirement to perfect a notice of appeal within 50 days of the issuance of the initial decision by filing an appeal brief. It is held that this omission constitutes good cause for granting additional time to file an appeal brief.

Commercial Reporting Services of the Administrator's Civil Penalty Decisions and Orders

1. *Commercial Publications:* The Administrator's decisions and orders in civil penalty cases are available in the following commercial publications:

Civil Penalty Cases Digest Service, published by Hawkins Publishing Company, Inc., P.O. Box 480, Mayo, MD, 21106, (410) 798–1677;

Federal Aviation Decisions, Clark Boardman Callaghan, a subsidiary of West Information Publishing Company, 50 Broad Street East, Rochester, NY 14694, 1–800–221–9428.

2. *CD–ROM.* The Administrator's orders and decisions are available on CD–ROM through Aeroflight Publications, P.O. Box 854, 433 Main Street, Gruver, TX 79040, (806) 733–2483.

3. *On-Line Services.* The Administrator's decisions and orders in civil penalty cases are available through the following on-line services:

- Westlaw (the Database ID is FTRAN–FAA).
- LEXIS [Transportation (TRANS) Library, FAA file.]
- Compuserve.
- FedWorld.

Docket

The FAA Civil Penalty Docket is located at FAA Headquarters, 800 Independence Avenue, SW, Room 926A, Washington, DC, 20591 (tel. no. 202–267–3641.) The clerk of the FAA Civil Penalty Docket is Ms. Stephanie McClain. Materials contained in the dockets of any case not containing sensitive security information (protected by 14 CFR Part 191) may be viewed at the FAA Civil Penalty Docket. All documents required to be filed in civil penalty proceedings must be filed with the FAA Hearing Docket Clerk at the FAA Hearing docket. (See 14 CFR 13.210.)

In addition, materials filed in the FAA Civil Penalty Docket in non-security cases in which the complaints were filed on or after December 1, 1997, will also be available for viewing at the Department of Transportation Docket, located at 400 7th Street, SW, Room PL–401, Washington, DC, 20509, (tel. no.

202–366–9329.) While the originals will be retained in the FAA Civil Penalty Docket, the DOT Docket will scan copies of documents in non-security cases in which the complaint was filed after December 1, 1997, into their computer database. Individuals who have access to the Internet can view the materials in these dockets using the following Internet address: http://dms.dot.gov.

FAA Offices

The Administrator's decisions and orders, indexes, and digests are available for public inspection and copying at the following location in FAA headquarters:

FAA Hearing Docket, Federal Aviation Administration, 800 Independence Avenue, SW., Room 924A, Washington, DC, 20591; (202) 267–3641.

These materials are also available at all FAA regional and center legal offices at the following locations:

Office of the Assistant Chief for the Aeronautical Center (AMC–7), Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd., Oklahoma City, OK 73125; (405) 954–3296.

Office of the Assistant Chief Counsel for the Alaskan Region (AAL–7), Alaskan Region Headquarters, 222 West 7th Avenue, Anchorage, AL 99513; (907) 271–5269.

Office of the Assistant Chief Counsel for the Central Region (ACE–7), Central Region Headquarters, 601 East 12th Street, Federal Building, Kansas City, MO 64106; (816) 426–5446.

Office of the Assistant Chief Counsel for the Eastern Region (AEA–7), Eastern Region Headquarters, JFK International Airport, Federal Building, Jamaica, NY 11430; (718) 553–3285.

Office of the Assistant Chief Counsel for the Great Lakes Region (AGL–7), 2300 East Devon Avenue, Suite 419, Des Plaines, IL 60018; (708) 294–7108.

Office of the Assistant Chief Counsel for the New England Region (ANE–7), New England Region Headquarters, 12 New England Executive Park, Room 401, Burlington, MA 01803–5299; (617) 238–7050.

Office of the Assistant Chief Counsel for the Northwest Mountain Region (ANM–7), Northwest Mountain Region Headquarters, 1601 Lind Avenue, SW, Renton, WA 98055–4056; (206) 207–2007.

Office of the Assistant Chief Counsel for the Southern Region (ASO–7), Southern Region Headquarters, 1701 Columbia Avenue, College Park, GA 30337; (404) 305–5200.

Office of the Assistant Chief Counsel for the Southwest Region (ASW–7), Southwest Region Headquarters, 2601 Meacham Blvd., Fort Worth, TX 76137–4298; (817) 222–5087.

Office of the Assistant Chief Counsel for the Technical Center (ACT–7), Federal Aviation Administration Technical Center, Atlantic City International Airport, Atlantic City, NJ 08405; (609) 485–7087.

Office of the Assistant Chief Counsel for the Western-Pacific Region (AWP–7), Western-Pacific Region Headquarters, 15000 Aviation Boulevard, Lawndale, CA 90261; (301) 725–7100.

Issued in Washington, DC on April 9th, 1998.

James S. Dillman,

Assistant Chief Counsel for Litigation.

[FR Doc. 98–10300 Filed 4–17–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent to Rule on Application (98–03–C–00–BGM) to Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Binghamton Regional Airport, Binghamton, NY

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Binghamton Regional Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

DATES: Comments must be received on or before May 20, 1998.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Mr. Philip Brito, Manager, New York Airports District Office, 600 Old County Road, Suite 446, Garden City, New York 11530.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Carl G. Olson Commissioner of Aviation for the Broome County Department of Aviation at the following address: Broome County Department of Aviation, Binghamton Regional Airport/Edwin A. Link Field, Box 16, Johnson City, New York 13790.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the Broome County Department of Aviation under section 158.23 of Part 158.

FOR FURTHER INFORMATION CONTACT: Mr. Philip Brito, Manager, New York Airports District Office, 600 Old County Road, Suite 446, Garden City, New York 11530 (Telephone 516–227–3800). The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Binghamton Regional Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

On March 18, 1998, the FAA determined that the application to impose and use the revenue from a PFC submitted by the Broome County Department of Aviation was substantially complete within the requirements of section 158.25 of Part 158. The FAA will approve or disapprove the application, in whole or in part, no later than June 26, 1998.

The following is a brief overview of the application:

Application number: 98–03–C–00–BGM

Level of the proposed PFC: $3.00

Proposed charge effective date: July 1, 1998

Proposed charge expiration date: December 31, 2001

Total estimated PFC revenue: $1,289,201

Brief description of proposed projects:

Impose & Use Projects

—Rehabilitate and Overlay Runway 10/28

—Purchase Snow Removal Equipment

—Passenger Terminal Refurbishment—Design Phase

Impose Only Projects

—Passenger Terminal Refurbishment—Construction Phase

—Rehabilitate Taxiway

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: Air Taxi/Commercial Operators (ATCO) filing FAA Form 1800–31.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT** and at the FAA regional Airports office located at: Fitzgerald Federal Building, John F. Kennedy International Airport, Jamaica, New York, 11430.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the offices of the Broome County Department of Aviation.

Issued in Jamaica, New York on April 9, 1998.

Thomas Felix,

Manager, Planning & Programming Branch, Eastern Region.

[FR Doc. 98–10304 Filed 4–17–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Cincinnati/Northern Kentucky International Airport, Covington, KY

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Cincinnati/Northern Kentucky International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

DATES: Comments must be received on or before May 20, 1998.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Memphis Airports District Office, 3385 Airways Blvd., Suite #302, Memphis, TN 38116–3841.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Robert F. Holscher, Director of Aviation of the Cincinnati/Northern Kentucky International Airport at the following address: Kenton County Airport Board, Second Floor, Terminal 1, Cincinnati/Northern Kentucky International Airport, 2939 Terminal Drive, Hebron, Kentucky 41048.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the Kenton County Airport Board under section 158.23 of Part 158.

FOR FURTHER INFORMATION CONTACT: Tommy L. Dupree, Memphis Airports District Office, 3385 Airways Blvd., Suite #302, Memphis, TN 38116–3841. (901) 544–3495. The application may be reviewed in person at this location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to: impose and use the revenue from a PFC at Cincinnati/Northern Kentucky International Airport under provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

On April 13, 1998, the FAA determined that the application to impose and use the revenue from a PFC submitted by Kenton County Airport Board was substantially complete within the requirements of section 158.25 of Part 158. The FAA will approve or disapprove the application, in whole or in part, no later than July 29, 1998.

The following is a brief overview of the application.

PFC application number: 98–04–C–00–CVG.

Level of the proposed PFC: $3.00.

Proposed charge effective date: September 1, 1998.

Proposed charge expiration date: June 1, 2000.

Total estimated PFC revenue: $32,911,000.

Brief description of proposed project(s): Impose and Use Construction of Southwest Detention Facility (includes land purchases) for airfield storm water discharge; Construction of Runway 36R Hold Apron and Deicing Recovery System; Construction of Security Perimeter Road on the west side of the airfield; Construction of a new Fixed Base Operator (FBO) Apron, inclusive of a connector taxiway.

Class or classes of air carriers which the public agency has requested not be required to collect PFCs:

1. FAR Part 121 supplemental operators which operate at the Airport without an operating agreement with the Board and enplane less than 1,500 passengers per year.

2. FAR Part 135 on-demand air taxis, both fixed wing and rotary.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT**.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Cincinnati/Northern Kentucky International Airport.

Issued in Memphis, Tennessee, on April 13, 1998.

LaVerne F. Reid,

Manager, Memphis Airports District Office.

[FR Doc. 98–10388 Filed 4–17–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application (98–05–I–00–JAC) To Impose a Passenger Facility Charge (PFC) at the Jackson Hole Airport, Submitted by the Jackson Hole Airport Board, Jackson, WY

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose a PFC at the Jackson Hole Airport under the provisions of 49 U.S.C. 40117 and Part 158 of the Federal Aviation Regulations (14 CFR 158).

DATES: Comments must be received on or before May 20, 1998.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Alan Wiechmann, Manager; Denver Airports District Office, DEN–ADO; Federal Aviation Administration; 26805 E. 68th Avenue, Suite 224; Denver, CO 80249–6361.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. George Larson, Airport Director, at the following address: Jackson Hole Airport Board, P.O. Box 159, Jackson, Wyoming 83001.

Air Carriers and foreign air carriers may submit copies of written comments previously provided to Jackson Hole Airport, under section 158.23 of Part 158.

FOR FURTHER INFORMATION CONTACT: Mr. Christopher Schaffer, (303) 342–1258; Denver Airports District Office, DEN–ADO; Federal Aviation Administration; 26805 E. 68th Avenue, Suite 224; Denver, CO 80249–6361. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application (98–05–I–00–JAC) to impose a PFC at the Jackson Hole Airport, under the provisions of 49 U.S.C. 40117 and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

On April 9, 1998, the FAA determined that the application to impose a PFC submitted by the Jackson Hole Airport Board, Jackson Hole Airport, Jackson, Wyoming, was substantially complete within the requirements of section 158.25 of Part 158. The FAA will approve or

disapprove the application, in whole or in part, no later than July 24, 1998.

The following is a brief overview of the application.

Level of the proposed PFC: $3.00.

Proposed charge effective date: August 1, 1998.

Proposed charge expiration date: January 1, 2003.

Total requested for impose approval: $1,850,000.00.

Brief description of proposed project: Overlay Runway 18/36 and portions of the runway safety areas.

Class or classes of air carriers which the public agency has requested not be required to collect PFC's: None.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT** and at the FAA Regional Airports Office located at: Federal Aviation Administration, Northwest Mountain Region, Airports Division, ANM–600, 1601 Lind Avenue S.W., Suite 540, Renton, WA 98055–4056.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Jackson Hole Airport.

Issued in Renton, Washington on April 9, 1998.

David A. Field,

Manager, Planning, Programming and Capacity Branch, Northwest Mountain Region.

[FR Doc. 98–10305 Filed 4–17–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket No. RSAC–96–1, Notice No. 10]

Railroad Safety Advisory Committee; Notice of Meeting

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Notice of Railroad Safety Advisory Committee (''RSAC'') meeting.

SUMMARY: FRA announces the next meeting of the RSAC, a Federal Advisory Committee that develops railroad safety regulations through a consensus process. The meeting will address a wide range of topics, including possible adoption of specific recommendations for regulatory action.

DATES: The meeting of the RSAC is scheduled to commence at 9:30 a.m. and conclude at 4:00 p.m. on Thursday, May 14, 1998.

ADDRESSES: The meeting of the RSAC will be held at the Washington Dulles Airport Hilton, 13869 Park Center Road, Herndon, Virginia. The meeting is open to the public on a first-come, first-served basis and is accessible to individuals with disabilities. Sign language interpreters will be available for individuals with hearing impediments.

FOR FURTHER INFORMATION CONTACT: Vicky McCully, RSAC Coordinator, FRA, 400 7th Street, SW., Washington, DC 20590, (202) 632–3330, Grady Cothen, Deputy Associate Administrator for Safety Standards and Program Development, FRA, 400 7th Street, SW., Washington, DC 20590, (202) 632–3309, or Lisa Levine, Office of Chief Counsel, FRA, 400 7th Street, SW., Washington, DC 20590, (202) 632–3189.

SUPPLEMENTARY INFORMATION. Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), FRA is giving notice of a meeting of the Railroad Safety Advisory Committee (''RSAC''). The meeting is scheduled to begin at 9:30 a.m. and conclude at 4:00 p.m. on Thursday, May 14, 1998. The meeting will be held at the Washington Dulles Airport Hilton, 13869 Park Center Road, Herndon, Virginia. All times noted are Eastern Standard Time.

RSAC was established to provide advice and recommendations to the FRA on railroad safety matters. The Committee consists of 48 individual representatives, drawn from among 27 organizations representing various rail industry perspectives, and advisory representatives from the agencies with railroad safety regulatory responsibility in Canada and Mexico. Staff of the National Transportation Safety Board and Federal Transit Administration also participate in an advisory capacity.

During this meeting, the RSAC will receive status reports from the Locomotive Crashworthiness Working Group, the Locomotive Cab Working Conditions Working Group, the Event Recorder Working Group, and the Positive Train Control (PTC) Working Group. It is anticipated that the RSAC will be asked to vote on recommending issuance of the Locomotive Engineer Certification Working Group's proposed NPRM revising the Qualification and Certification of Locomotive Engineer Regulations.

Please refer to the notice published in the **Federal Register** on March 11, 1996 (61 FR 9740) for more information about the RSAC.

Issued in Washington, DC, on April 15, 1998.

Grady C. Cothen, Jr.,

Deputy Associate Administrator for Safety Standards and Program Development.

[FR Doc. 98–10343 Filed 4–17–98; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

[Notice No. 98–4]

Hazardous Materials Transportation; Registration and Fee Assessment Program

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Notice of filing requirements.

SUMMARY: The Hazardous Materials Registration Program will enter registration year 1998–99 on July 1, 1998. Persons who transport or offer for transportation certain hazardous materials are required to annually file a registration statement and pay a fee to the Department of Transportation. Persons who registered for the 1997–98 registration year will be mailed a registration statement form and informational brochure in May.

FOR FURTHER INFORMATION CONTACT: David W. Donaldson, Office of Hazardous Materials Planning and Analysis, DHM–60 (202–366–4109), Hazardous Materials Safety, 400 Seventh Street S.W., Washington, DC 20590–0001, or by E-mail to REGISTER@rspa.dot.gov.

SUPPLEMENTARY INFORMATION: This notice is intended to notify persons who transport or offer for transportation certain hazardous materials of an annual requirement to register with the Department of Transportation. Each person, as defined by the Federal hazardous materials transportation law (49 U.S.C. 5101 *et seq.*), who engages in any of the specified activities relating to the transportation of hazardous materials is required to register annually with the Department of Transportation and pay a fee. The regulations implementing this program are in Title 49, Code of Federal Regulations, Sections 107.601–107.620.

Proceeds from the fee are used to fund grants to State, local, and Native American tribal governments for emergency response training and planning. Grants were awarded to 49 states, the District of Columbia, five territories, and 17 Native American tribes during FY 1997. By law, 75 percent of the Federal grant monies

awarded to the States is further distributed to local emergency response and planning agencies. The FY 1996 funds helped to provide: (1) Training for 120,000 emergency response personnel; (2) approximately 520 commodity flow studies and hazard analyses; (3) 5,650 emergency response plans updated or written for the first time; (4) assistance to 1,850 local emergency planning committees; and (5) 800 emergency exercises.

The persons affected by these regulations are those who offer or transport in commerce any of the following materials:

A. Any highway route-controlled quantity of a Class 7 (radioactive) material;

B. More than 25 kilograms (55 pounds) of a Division 1.1, 1.2, or 1.3 (explosive) material in a motor vehicle, rail car, or freight container;

C. More than one liter (1.06 quarts) per package of a material extremely toxic by inhalation (that is, a ''material poisonous by inhalation'' that meets the criteria for ''hazard zone A'');

D. A hazardous material in a bulk packaging having a capacity equal to or greater than 13,248 liters (3,500 gallons) for liquids or gases or more than 13.24 cubic meters (468 cubic feet) for solids; or

E. A shipment, in other than a bulk packaging, of 2,268 kilograms (5,000 pounds) gross weight or more of a class of hazardous materials for which placarding of a vehicle, rail car, or freight container is required for that class.

The following persons are excepted from the registration requirement:

A. Agencies of the Federal Government;

B. Agencies of States;

C. Agencies of political subdivisions of States;

D. Employees of those agencies listed in A, B, or C with respect to their official duties;

E. Hazmat employees, including the owner-operator of a motor vehicle which transports in commerce hazardous materials if that vehicle, at the time of those activities, is leased to a registered motor carrier under a 30-day or longer lease as prescribed in 49 CFR Part 1057 or an equivalent contractual relationship; and

F. Persons domiciled outside the United States who offer, solely from locations outside the United States, hazardous materials for transportation in commerce, if the country in which they are domiciled does not impose registration or a fee upon U.S. companies for offering hazardous materials into that country. However, persons domiciled outside the United States who carry the types and quantities of hazardous materials that require registration within the United States are subject to the registration requirement.

The 1997–98 registration year ends on June 30, 1998. The 1998–99 registration year will begin on July 1, 1998, and end on June 30, 1999. Any person who engages in any of the specified activities during the 1998–99 registration year must file a registration statement and pay the associated fee of $300.00 before July 1, 1998, or before engaging in any of the activities, whichever is later. All persons who registered for the 1997–98 registration year will be mailed a registration statement form and an informational brochure in May 1998. Other persons wishing to obtain the form and any other information relating to this program should contact RSPA at the address given above. The brochure and form can also be downloaded from the RSPA registration Internet home page at http://hazmat.dot.gov/register.htm.

The registration statement has not been revised for the 1998–99 registration year. Registrants should file a registration statement and pay the associated fee at least four weeks before July 1, 1998, in order to ensure that a 1998–99 certificate of registration has been obtained by that date to comply with the recordkeeping requirements. These include the requirement that the registration number be made available on board each truck and truck tractor (not including trailers and semi-trailers) and each vessel used to transport hazardous materials subject to the registration requirements. A certificate of registration is generally mailed within ten days of RSPA's receipt of a properly completed registration statement.

Persons who engage in any of the specified activities during a registration year are required to register for that year. Persons who engaged in these activities during registration year 1992–93 (September 16, 1992, through June 30, 1993), 1993–94 (July 1, 1993, through June 30, 1994), 1994–95 (July 1, 1994, through June 30, 1995), 1995–96 (July 1, 1995, through June 30, 1996), 1996–97 (July 1, 1996, through June 30, 1997), or 1997–98 (July 1, 1997, through June 30, 1998) and have not filed a registration statement and paid the associated fee of $300.00 for each year for which registration is required should contact RSPA to obtain the required form (DOT F 5800.2). A copy of the form that will be distributed for the 1998–99 registration year may be used to register for previous years. Persons who fail to register for any registration year in which they engaged in such activities are subject to civil penalties for each day a covered activity is performed. The legal obligation to register for a year in which any specified activity was conducted does not end with the registration year.

Issued in Washington, DC, on April 14, 1998.

Alan I. Roberts,

Associate Administrator for Hazardous Materials Safety.

[FR Doc. 98–10384 Filed 4–17–98; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

Office of Hazardous Materials Safety; Notice of Delays in Processing of Exemption Applications

AGENCY: Research and Special Programs Administration, DOT.

ACTION: List of Applications Delayed more than 180 days.

SUMMARY: In accordance with the requirements of 49 U.S.C. 5117(c), RSPA is publishing the following list of exemption applications that have been in process for 180 days or more. The reason(s) for delay and the expected completion date for action on each application is provided in association with each identified application.

FOR FURTHER INFORMATION CONTACT: J. Suzanne Hedgepeth, Director, Office of Hazardous Materials, Exemptions and Approvals, Research and Special Programs Administration, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590–0001, (202) 366–4535.

Key to ''Reasons for Delay''

1. Awaiting additional information from applicant
2. Extensive public comment under review
3. Application is technically very complex and is of significant impact or precedent-setting and requires extensive analysis
4. Staff review delayed by other priority issues or volume of exemption applications

Meaning of Application Number Suffixes

N—New application
M—Modification request
PM—Party to application with modification request

Issued in Washington, DC, on April 23, 1998.

J. Suzanne Hedgepeth,

Director, Office of Hazardous Materials Exemptions and Approvals.

NEW EXEMPTION APPLICATIONS

Application No.	Applicant	Reason for delay	Estimated date of completion
11581–N	Luxfer UK Limited, Nottingham, England	4	05/29/1998
11232–N	State of Alaska Department of Transportation, Juneau, AK	4	05/29/1998
11511–N	Brenner Tank Inc., Fond du Lac, WI	4	05/29/1998
11523–N	Bio-Lab, Inc., Conyers, GA	4	05/29/1998
11537–N	Babson Bros. Co., Romeoville, IL	4	05/29/1998
11540–N	Convenience Products, Fenton, MO	1	05/29/1998
11591–N	Clearwater Distributors, Inc., Woodridge, NY	4	05/29/1998
11646–N	Barton Solvents Inc., Des Moines, IO	4	05/29/1998
11682–N	Cryolor, Argancy, 57365 Ennery—France	4	05/29/1998
11687–N	Tri Tank Corp., Syracuse, NY	4	05/29/1998
11699–N	GEO Specialty Chemicals, Bastrop, LA	4	05/29/1998
11722–N	Citergaz S.A., 86400 Civray, FR	1	05/29/1998
11735–N	R.D. Offutt Co., Park Rapids, MN	4	05/29/1998
11751–N	Delta Resigns & Refractories, Detroit, MI	4	05/29/1998
11759–N	E.I. DuPont de Nemours & Co., Inc., Wilmington, DE	4	05/29/1998
11761–N	Vulcan Chemicals, Birmingham, AL	4	05/29/1998
11762–N	Owens Fabricators, Inc., Baton Rouge, LA	4	05/29/1998
11765–N	Laidlaw Environmental Services Inc., Columbia, SC	4	05/29/1998
11767–N	Ausimont USA, Inc., Thorofare, NJ	4	06/30/1998
11772–N	Kleespie Tank & Petroleum Equipment, Morris, MN	4	06/30/1998
11774–N	Safety Disposal System, Inc., Opa Locka, FL	1	06/30/1998
11782–N	Aeronex, Inc., San Diego, CA	4	06/30/1998
11783–N	Peoples Natural Gas, Rosemount, MN	4	06/30/1998
11798–N	Air Products & Chemicals, Inc., Allentown, PA	4	06/30/1998
11809–N	Laidlaw Environmental Services, Inc., Columbia, SC	4	06/30/1998
11815–N	Union Pacific Railroad Co., et al., Omaha, NE	4	06/30/1998
11817–N	FIBA Technologies, Inc., Westboro, MA	4	06/30/1998
11821–N	Wyoming Department of Transportation, Cheyenne, WY	4	06/30/1998
11841–N	Stepan Co., Northfield, IL	4	06/30/1998
11862–N	The BOC Group, Murray Hill, NJ	4	06/30/1998
11863–N	Carrier Corp./d/b/a United Technologies Carrier, Syracuse, NY	4	06/30/1998
11882–N	FMC Corporation, Philadelphia, PA	4	06/30/1998
11883–N	Brownie Tank Mfg. Co., Minneapolis, MN	4	06/30/1998
11884–N	Degussa Corp., Ridgefield Park, NJ	4	06/30/1998
11894–N	Quicksilver Fiberglass Manufacturing Ltd., Strome, Alberta, CN	4	06/30/1998
11899–N	Carleton Technologies Inc., Orchard Park, NY	4	07/31/1998
11911–N	Transfer Flow, Inc., Chico, CA	4	07/31/1998
11915–N	Lockheed Martin Aeronautical Systems, Marietta, GA	4	07/31/1998
11916–N	CP Industries, Inc., McKeesport, PA	4	04/15/1998
11918–N	E.I. DuPont de Nemours & Co., Inc., Wilmington, DE	4	07/31/1998
11923–N	Hoover Materials Handling Group	4	07/31/1998
11927–N	Alaska Marine Lines, Seattle, WA	4	07/31/1998
11934–N	UtiliCorp United, Inc., Omaha, NE	4	07/31/1998
11938–N	Steel Shipping Container Institute, Washington, DC	4	07/31/1998
11941–N	Oxychem, Deer Park, TX	4	08/31/1998
11944–N	Core Laboratories, Inc., Carrollton, TX	4	08/31/1998
11947–N	Patts Fabrication & Services, Odessa, TX	4	08/31/1998
11954–N	Republic Environmental Systems (PA), Inc., Hatfield, PA	4	08/31/1998
11965–N	J.R. Simplot Company, Edison, CA	4	08/31/1998
11966–N	FMC Corporation, Philadelphia, PA	4	08/31/1998
11967–N	Savage Industries Inc., Norristown, PA	4	08/31/1998
11968–N	Air Liquide America Corp., Houston, TX	4	08/31/1998
11970–N	Exxon Chemical, Inc., Baytown, TX	4	08/31/1998
11971–N	Regional Airline Assoc., Washington, DC	4, 4	08/31/1998
4354–M	PPG Industries, Inc., Pittsburgh, PA	1	05/29/1998
4661–M	Cyprus Foote Mineral Co., Kings Mountain, NC	4	05/29/1998
6610–M	ARCO Chemical Co., Newtown Square, PA	4	05/29/1998
7026–M	Walter Kidde Aerospace, Wilson, NC	4	05/29/1998
7879–M	Halliburton Energy Services, Duncan, OK	4	05/29/1998
8556–M	Air Products & Chemicals, Inc., Allentown, PA	4	05/29/1998
9064–M	Propack, Inc., Essington, PA	4	05/29/1998
9266–M	ERMEWA, Inc., Houston, TX	4	05/29/1998
9706–M	Taylor-Wharton, Harrisburg, PA	4	06/30/1998
9819–M	Halliburton Energy Services, Duncan, OK	4	06/30/1998
10138–M	BetzDearborn Inc., Trevose, PA	4	06/30/1998
10365–M	U.S. Enrichment Corporation, Bethesda, MD	4	06/30/1998
10429–M	Baker Performance Chemicals, Inc., Houston, TX	4	06/30/1998
10677–M	Primus AB, S–71 26 Solna, SW	4	06/30/1998
11005–M	Carleton Technologies Inc., Glen Burnie, MD	4	06/30/1998
11058–M	Spex Certiprep Inc., Metuchen, NJ	4	06/30/1998

NEW EXEMPTION APPLICATIONS—Continued

Application No.	Applicant	Reason for delay	Estimated date of completion
11167–M	Eco-Pak Specialty Packaging, Elizabethton, TN	4	06/30/1998
11254–M	Schlumberger Oilfield Services, Sugar Land, TX	4	07/31/1998
11344–M	E.I. DuPont, Wilmington, DE	4	07/31/1998
11378–M	Astrotech Space Operations, Inc., Titusville, FL	4	07/30/1998
11506–M	OEA, Inc., Denver, CO	4	07/30/1998
11516–M	Falcon Safety Products, Sommerville, NJ	4	07/30/1998
11952–M	Department of Defense, Falls Church, VA	4	07/30/1998

[FR Doc. 98–10271 Filed 4–17–98; 8:45 am]
BILLING CODE 4910–60–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection: Comment Request for Regulation Project; Regulations Under Tax Conventions—Ireland

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing regulation, Regulations Under Tax Conventions—Ireland (26 CFR Part 513).

DATES: Written comments should be received on or before June 19, 1998 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the income tax treaty should be directed to Carol Savage, (202) 622–3945, Internal Revenue Service, room 5569, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Regulations Under Tax Conventions—Ireland.

OMB Number: 1545–0834.

Abstract: The information required by these regulations is needed to allow taxpayers to receive benefits under the tax treaty, and to allow withholding agents to permit those benefits to be immediately realized by the taxpayers. The information is used by the Internal Revenue Service to determine if the treaty benefits are being used properly, to aid in determining whether income is being reported accurately, and to prevent evasion of income taxes.

Current Actions: These regulations were amended by TD 8734, 62 FR 53497 and 53498. The amendments result in a burden reduction because the letters of notification formerly required by §§ 513.3(b)(5), 513.4(c), and 513.5(c) are no longer required under the amendments. However, letters of notification are still required by § 513.6(b).

Type of Review: Revision of a currently approved collection.

Affected Public: Individuals or households, and business or other for-profit organizations.

Estimated Number of Respondents: 20.

Estimated Time Per Respondent: 15 minutes.

Estimated Total Annual Burden Hours: 5.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: April 14, 1998.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 98–10376 Filed 4–17–98; 8:45 am]
BILLING CODE 4830–01–U

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[Regulation Section 31.6001]

Proposed Collection; Comment Request For Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

Currently, the IRS is soliciting comments concerning existing regulations 26 CFR 31.6001–1, Records in general; 26 CFR 31.6001–2, Additional Records under FICA; 26 CFR 31.6001–3, Additional records under Railroad Retirement Tax Act; 26 CFR 31.6001–5, Additional records in

connection with collection of income tax at source on wages; 26 CFR 31.6001–6, Notice by District Director requiring returns, statements, or the keeping of records.

DATES: Written comments should be received on or before June 19, 1998 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection should be directed to Carol Savage, (202) 622–3945, Internal Revenue Service, room 5569, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: 26 CFR 31.6001–1, Records in general; 26 CFR 31.6001–2, Additional Records under FICA; 26 CFR 31.6001–3, Additional records under Railroad Retirement Tax Act; 26 CFR 31.6001–5, Additional records in connection with collection of income tax at source on wages; 26 CFR 31.6001–6, Notice by District Director requiring returns, statements, or the keeping of records.

OMB Number: 1545–0798.

Abstract: Internal Revenue Code section 6001 requires, in part, that every person liable for tax, or for the collection of that tax must keep such records and comply with such rules and regulations as the Secretary may from time to time prescribe. The recordkeeping requirements under 26 CFR 31.6001 have special application to employment taxes (and to employers) and are needed to ensure proper compliance with the Code. Upon examination, the records are needed by the taxpayer to establish the employment tax liability claimed on any tax return.

Current Actions: There is no change to these existing regulations.

Type of Review: Extension of OMB approval.

Affected Public: Individuals or households, business or other for-profit organizations, not-for-profit institutions, farms, and Federal, state, local or tribal governments.

Estimated Number of Recordkeepers: 5,676,263.

Estimated Time Per Recordkeeper: 5 hours, 20 minutes.

Estimated Total Annual Recordkeeping Hours: 30,273,950.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record.

Comments are invited on: (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: April 14, 1998

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 98–10377 Filed 4–17–98; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 8279

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 8279, Election To Be Treated as a FSC or as a Small FSC.

DATES: Written comments should be received on or before June 19, 1998, to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Martha R. Brinson, (202) 622–3869, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Election To Be Treated as a FSC or as a Small FSC.

OMB Number: 1545–0884

Form Number: 8279

Abstract: A foreign corporation and its shareholders must elect to be a Foreign Sales Corporation (FSC) or small FSC. Form 8279 is used to make the election. Form 8279 provides the IRS with the necessary information to determine that the foreign corporation qualifies to be a FSC, the number and types of shareholders, and the tax year of the FSC and its principal shareholder.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 5,000.

Estimated Time Per Respondent: 7 hr., 52 min.

Estimated Total Annual Burden Hours: 39,350.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

REQUEST FOR COMMENTS: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: April 10, 1998.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 98–10378 Filed 4–17–98; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 8809

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 8809, Request for Extension of Time To File Information Returns.

DATES: Written comments should be received on or before June 19, 1998, to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Martha R. Brinson, (202) 622–3869, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Request for Extension of Time To File Information Returns.

OMB Number: 1545–1081

Form Number: 8809

Abstract: Form 8809 is used to request an extension of time to file Forms W–2, W–2G, 1042–S, 1098, 1099, 5498, or 8027. The IRS reviews the information contained on the form to determine whether an extension should be granted.

Current Actions:

Two checkboxes are being added to Line 8 of Form 8809 to accommodate the new Forms 1098–E and 1098–T. Forms 1098–E and 1098–T were developed to implement sections 202 and 201, respectively, of the Taxpayer Relief Act of 1997.

Type of Review: Revision of a currently approved collection.

Affected Public: Business or other for-profit organizations, individuals, not-for-profit institutions, farms, and federal, state, local or tribal governments.

Estimated Number of Respondents: 50,000

Estimated Time Per Respondent: 2 hr., 40 min.

Estimated Total Annual Burden Hours: 133,000

The following paragraph applies to all of the collections of information covered by this notice:

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

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

REQUEST FOR COMMENTS: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: April 9, 1998.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 98–10379 Filed 4–17–98; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 8819

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

Currently, the IRS is soliciting comments concerning Form 8819, Dollar Election Under Section 985.

DATES: Written comments should be received on or before June 19, 1998, to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Martha R. Brinson, (202) 622–3869, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Dollar Election Under Section 985.

OMB Number: 1545–1189.

Form Number: 8819.

Abstract: Form 8819 is filed by U.S. and foreign businesses to elect the U.S. dollar as their functional currency or as the functional currency of their controlled entities. The IRS uses Form 8819 to determine if the election is properly made.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 1,500.

Estimated Time Per Respondent: 5 hr., 33 min.

Estimated Total Annual Burden Hours: 8,325.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

REQUEST FOR COMMENTS: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: April 10, 1998.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 98–10380 Filed 4–17–98; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Request for Information on Impact to Discontinue Use of Bisynchronous Communications for E-filing

AGENCY: Internal Revenue Service (IRS), Treasury.

SUMMARY: This announcement is requesting that current transmitters of electronically filed returns send to the Internal Revenue Service their comments on the impact of switching from bisynchronous communications to asynchronous or other file transfer protocols by the year 2000. Please submit your comments in writing to Carolyn E. N. Davis by May 15, 1998.

ADDRESSES: Questions or concerns should be directed to Carolyn E. N. Davis at IRS, Electronic Tax Administration, T:ETA:E:P, 5000 Ellin Road C4–187, Lanham, MD 20706 or via email at carolyn.e.davis@ccmail.irs.gov.

Approved:

Steve Holden,

National Director, Electronic Program Enhancement Office, Electronic Tax Administration.

[FR Doc. 98–10375 Filed 4–17–98; 8:45 am]

BILLING CODE 4830–01–U

Corrections

Federal Register
Vol. 63, No. 75
Monday, April 20, 1998

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Parts 10 and 12

[USCG–97–2799]

RIN 2115–AF49

User Fees for Licenses, Certificates of Registry, and Merchant Mariner Documents

Correction

In proposed rule document 98–8409, beginning on page 16024, in the issue of Wednesday, April 1, 1998, make the following correction:

On page 16029, in Table 10.109—FEES, in the fourth column, in the first entry, ''$5'' should read ''$45''.

BILLING CODE 1505-01-D

Notices

Federal Register
Vol. 63, No. 75
Monday, April 20, 1998

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 98–047–1]

Secretary's Advisory Committee on Foreign Animal and Poultry Diseases; Meeting

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice of meeting.

SUMMARY: We are giving notice of a meeting of the Secretary's Advisory Committee on Foreign Animal and Poultry Diseases.

PLACE, DATES, AND TIME OF MEETING: The meeting will be held in Training Rooms 3 and 4 of the USDA Center at Riverside, 4700 River Road, Riverdale, MD 20737. Sessions will be held from 8 a.m. to 5 p.m. on May 5–6, 1998, and from 8 a.m. to 12 p.m. on May 7, 1998.

FOR FURTHER INFORMATION CONTACT: Dr. Quita Bowman, Senior Staff Veterinarian, Emergency Programs Staff, VS, APHIS, 4700 River Road Unit 41, Riverdale, MD 20737–1231, (301) 734–8073; or e-mail: qbowman@aphis.usda.gov.

SUPPLEMENTARY INFORMATION: The Secretary's Advisory Committee on Foreign Animal and Poultry Diseases (the Committee) advises the Secretary of Agriculture on actions necessary to prevent the introduction of foreign diseases of livestock and poultry into the United States. In addition, the Committee advises the Secretary on contingency planning and on maintaining a state of preparedness to deal with these diseases, if introduced.

The meeting will focus on the U.S. animal health emergency management system and the foreign animal disease situation worldwide and its relevance to the United States. The meeting will be open to the public. However, due to the time constraints, the public will not be allowed to participate in the Committee's discussions. Written statements on meeting topics may be filed with the Committee before or after the meeting by sending them to Dr. Quita Bowman at the address listed under **FOR FURTHER INFORMATION CONTACT.** Written comments may also be filed at the time of the meeting. Please refer to Docket No. 98–047–1 when submitting your comments.

This notice of meeting is given pursuant to section 10 of the Federal Advisory Committee Act.

Done in Washington, DC, this 15th day of April 1998.

Charles P. Schwalbe,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 98–10464 Filed 4–17–98; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Forest Service

East Beaver Creek Timber Sale and Prescribed Burning Project, Targhee National Forest, Clark County, ID

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare environmental impact statement.

SUMMARY: The Forest Supervisor of the Targhee National Forest gives notice of the agency's intent to prepare an environmental impact statement for the East Beaver Creek Timber Sale and Prescribed Burning Project. The proposed action would harvest 4.0 million feet of timber from 1,231 acres and prescribe burn 2,220 acres with 518 acres of the burning in the timber sale harvest units. The remaining 1,702 acres of burning would be in nonforest types. Two miles of temporary roads would be built and 2.6 miles of existing roads reconstructed. East Beaver Creek is located approximately 15 miles northeast of Dubois, Idaho. Alternatives will include the proposed action, no action, and any alternatives that respond to significant issues generated during the scoping process. A more detailed description is available from the Dubois Ranger District; see **ADDRESSES** below.

DATES: Send written comments and suggestions on the issues concerning the proposed action by May 15, 1998.

ADDRESSES: Send written comments to Clarence M. Murdock, District Ranger, Dubois Ranger District, P.O. Box 46, Dubois, ID 83423.

FOR FURTHER INFORMATION CONTACT: John Councilman, Interdisciplinary Team Leader, phone (208) 558–7301.

SUPPLEMENTARY INFORMATION: The Targhee National Forest Revised Land Management Plan was approved in 1997. One of the decisions in the Revised Plan was to allow for the production and utilization of wood fiber from certain areas of the Forest. The geographic area where the proposed action would take place has primarily a prescription of timber management with emphasis on big game security (5.1.4b). Prescriptions for other lands in the area are described below.

Aquatic Influence Zones (2.8.3)—Management emphasis is directed at the application of ecological knowledge to restore and maintain the health of these areas in ways that also produce desired resource values, products, protection, restoration, enhancement, interpretation, and appreciation of these areas.

Visual Quality Maintenance (2.1.2)—This prescription emphasizes maintaining the existing visual quality within major travel corridors with quality natural vistas, while allowing livestock production, and other compatible commodity outputs. There is no scheduled timber harvesting. No scheduled harvests means timber removed from these areas does not contribute toward the Forests annual allowable sale quantity.

Initial public involvement will include mailing maps and a project description to interested parties to solicit comments on the proposal. Preliminary issues include: water quality, fisheries, elk habitat, and motorized access by the public.

Additional opportunity to comment on the project will occur on the draft Environmental Impact Statement (draft EIS). The draft EIS is expected to be filed with the Environmental Protection Agency and available for public review in August 1998.

The comment period on the draft EIS will be 45 days from the date the Environmental Protection Agency's notice of availability appears in the **Federal Register**. At the same time, copies of the draft EIS will be distributed to interested and affected

agencies, organizations, tribes, and members of the public for their review and comment. It is very important that those interested in the proposed action participate at that time.

The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewers' position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC,* 435 U.S. 519, 553 (1978). Also, environmental objections that could have been raised at the draft stage but that are not raised until after completion of the final environmental impact statement may be waived or dismissed by the courts. *City of Angoon* v. *Hodel,* (9th Circuit, 1986) and *Wisconsin heritages, Inc.* v. *Harris,* 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45 day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final environmental impact statement.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft environmental impact statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft environmental impact statement. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

The final EIS is scheduled to be completed in November 1998. In the final EIS, the Forest Service is required to respond to comments received during the comment period that pertain to the environmental consequences discussed in the draft EIS and applicable laws, regulations, and policies considered in making the decisions on this proposal.

Responsible Official

Jerry B. Reese, Forest Supervisor, is the responsible official. As responsible official, he will document the selected alternative for the East Beaver Creek Timber Sale and Prescribed Burning Project EIS and his rationale in a Record of Decision.

The decision for the East Beaver Creek Timber Sale and Prescribed Burning Project will be subject to Forest Service Appeal Regulations (36 CFR part 215).

Dated: April 9, 1998.

Jerry B. Reese,

Forest Supervisor.

[FR Doc. 98–10270 Filed 4–17–98; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Grain Inspection, Packers and Stockyards Administration

Notice of Request for Extension of a Currently Approved Information Collection

AGENCY: Grain Inspection, Packers and Stockyards Administration, USDA.

ACTION: Notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), Grain Inspection, Packers and Stockyards Administration (GIPSA) is announcing an opportunity for the public to comment on its intention to request an extension for a currently approved information collection, ''Guidelines for Preparation of Research Proposal.'' These guidelines provide instructions for submitting grant proposals requesting funds from GIPSA for research to develop procedures and equipment that may be used to measure grain quality.

DATES: Comments on this notice must be received by June 19, 1998 to be assured of consideration.

FOR FURTHER INFORMATION CONTACT: Steve Tanner, Director, Technical Services Division, USDA, GIPSA, FGIS Technical Service Center, 10383 N Executive Hills Boulevard, Kansas City, MO 64153–1394; telephone (816–891–0401).

SUPPLEMENTARY INFORMATION: Under Section 4a of the United States Grain Standards Act (USGSA; 7 U.S.C. 71 et seq.), GIPSA is responsible for establishing grain standards which accurately describe the quality of grain being traded and for applying these standards uniformly in a nationwide inspection system. Section 16e of the USGSA authorizes the agency to conduct a continuing research program for the purpose of developing methods to improve accuracy and uniformity in grading grain. To carry out this authority, GIPSA maintains an external research program under which research scientists are invited to submit research grant proposals that include the objectives of the proposed work; application of the proposed work to the grain inspection system; the procedures, equipment, personnel, etc., that will be used to reach the project objectives; the cost of the project; a schedule for completion; qualifications of the investigator and the grantee organization; and a listing of all other sources of financial support for the project. GIPSA utilizes the Guidelines for Preparation of Research Proposals to assist grant applicants with preparation of grant proposals.

Title: Guidelines for Preparation of Research Proposal.

OMB Number: 0580–0014.

Expiration Date of Approval: August 31, 1998.

Type of Request: Extension of a currently approved information collection.

Abstract: The Grain Inspection, Packers and Stockyards Administration is interested in supporting research to develop procedures and equipment that may be used to measure grain quality. The Guidelines for Preparation of Research Proposal provides instructions for submitting grant proposals requesting funds from GIPSA for this purpose.

Estimate of Burden: Public reporting for this collection of information is estimated to average 20 hours per response.

Respondents: Organizations who employ scientists and engineers who do research and development on procedures and equipment which may be used to provide measurement of grain quality.

Estimated Number of Respondents: 3.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 60.

Copies of this information collection can be obtained from Cathy McDuffie, the Agency Support Services Specialist, at (301) 734–5190.

Comments

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 will have practical utility; (b) 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; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information

on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or forms of information technology. Comments may be sent to: Sharon Vassiliades, ARTS, GIPSA, USDA, STOP 3649, Washington, D.C. 20250–3649; fax 202 720–4628; e-mail svassili@fgisdc.usda.gov.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

This notice is in the nature of a change relieving a restriction and, thus, may be made effective in less than 30 days after publication in the **Federal Register** without prior notice or other public procedure. This notice is given pursuant to section 302 of the Packers and Stockyards Act (7 U.S.C. 202) and is effective upon publication in the **Federal Register**.

Done at Washington, D.C., this 9th day of April 1998.

Daniel L. Van Ackeren,

Director, Livestock Marketing Division, Packers and Stockyards Programs.

[FR Doc. 98–10190 Filed 4–17–98; 8:45 am]

BILLING CODE 3210–KD–P

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

Information Collection Activity; Comment Request

AGENCY: Rural Utilities Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended), the Rural Utilities Service's (RUS) invites comments on this information collection for which RUS intends to request approval from the Office of Management and Budget (OMB).

DATES: Comments on this notice must be received by June 19, 1998.

FOR FURTHER INFORMATION CONTACT: Sue Arnold, Financial Analyst, Office of the Assistant Administrator, Electric Program, Rural Utilities Service, USDA, 1400 Independence Ave., SW., STOP 1560, Room 4024 South Building, Washington, D.C. 20250–1560. Telephone: (202) 690–1078. FAX: (202) 690–0717. E-mail: sarnold@rus.usda.gov.

SUPPLEMENTARY INFORMATION:

Title: Electric Loan Application and Related Reporting Burdens.

OMB Control Number: 0572–0032.

Type of Request: Extension of a previously approved information collection, with change.

Abstract: The Rural Electrification Act of 1936 (7 U.S.C. 901 *et seq.*), as amended (RE Act) authorizes and empowers the Administrator of RUS to make and guarantee loans to furnish and improve electric service in rural areas. These loans are amortized over a period of up to 35 years and secured by the borrower's electric assets. In the interest of protecting loan security, monitoring compliance with debt convenants, and ensuring that RUS loan funds are used for purposes authorized by law, RUS requires that borrowers prepare and submit for RUS evaluation, certain studies and reports. Some of these studies and reports are required only once for each loan application; others must be submitted periodically until the loan is completely repaid.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 6 hours per response.

Respondents: Small business or organizations.

Estimated Number of Respondents: 754.

Estimated Number of Responses per Respondent: 4.

Estimated Total Annual Burden on Respondents: 16,834.

Copies of this information collection, and related form and instructions, can be obtained from Dawn Wolfgang, Program Development and Regulatory Analysis, at (202) 720–0812.

Comments are invited on: (a) Whether this proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Comments may be sent to: F. Lamont Heppe, Jr., Director, Program Development and Regulatory Analysis, Rural Utilities Service, U.S. Department of Agriculture, Stop 1522, 1400 Independence Ave., SW., Washington, DC 20250–1522. FAX: (202) 720–4120.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Dated: April 13, 1998.

James R. Baker,

Administrator, Grain Inspection, Packers and Stockyards Administration.

[FR Doc. 98–10189 Filed 4–17–98; 8:45 am]

BILLING CODE 3410–EN–P

DEPARTMENT OF AGRICULTURE

Grain Inspection, Packers and Stockyards Administration

Deposting of Stockyards

Notice is hereby given, that the livestock markets named herein, originally posted on the dates specified below as being subject to the Packers and Stockyards Act, 1921, as amended (7 U.S.C. 181 *et seq.*), no longer comes within the definition of a stockyard under the Act and are therefore, no longer subject to the provisions of the Act.

Facility No., name, and location of stockyard	Date of posting
IA–153 North Iowa Livestock Exchange, Ltd., Garner, Iowa	January 8, 1957.
IA–175 LeMars Auction Barn, LeMars, Iowa	May 29, 1959.
IA–212 Northside Sales Company, Sibley, Iowa	May 19, 1959.
NB–104 Arnold Sale Barn, Arnold, Nebraska	January 10, 1957.
NB–173 Livestock Exchange of Sargent, Sargent, Nebraska	November 14, 1958.
NB–182 The Nebraska Sandhills Cattle Auction, Inc., Thedford, Nebraska	February 8, 1950.
NB–191 Wisner Sales Co., Inc., Wisner, Nebraska	June 29, 1983.

Dated: April 14, 1998.

Blaine D. Stockton, Jr.,

Acting Administrator, Rural Utilities Service.

[FR Doc. 98–10344 Filed 4–17–98; 8:45 am]

BILLING CODE 3410–15–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Additions

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

ACTION: Additions to the procurement list.

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

EFFECTIVE DATE: May 18, 1998.

ADDRESS: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Gateway 3, Suite 310, 1215 Jefferson Davis Highway, Arlington, Virginia 22202–4302.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman, (703) 603–7740.

SUPPLEMENTARY INFORMATION: On September 19, 1997, January 5, February 13 and 27, 1998, the Committee for Purchase From People Who Are Blind or Severely Disabled published notices (62 FR 49204, 63 FR 202, 7391 and 9999) of proposed additions to the Procurement List.

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

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

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

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

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

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

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

Commodities

Paper, Tabulating Machine
7530–00–249–4847
7530–00–057–9487
7530–00–731–5363

Office and Miscellaneous Supplies
(Requirements for the Westover Air Force Reserve Base, Chicopee, Massachusetts)

Office and Miscellaneous Supplies
(Requirements for the Naval Weapons Station, Charleston, South Carolina)

Services

Administrative Services

National Center for Toxicological Research, 3900 NCTR Road, Jefferson, Arkansas

Audio/Visual Duplication Service, Federal Emergency Management Agency, National Emergency Training Center, 16825 South Seton Avenue, Emmitsburg, Maryland

Janitorial/Custodial, Veterans Integrated Support Network 16, Ridgeland, Mississippi

Janitorial/Custodial, Tupelo Visitors Center and Headquarters, Natchez Trace Parkway, Tupelo, Mississippi

Janitorial/Custodial, Bureau of Land Management, Farmington District Office, 1235 La Plata Highway, Farmington, New Mexico

Janitorial/Custodial, Naval and Marine Corps Reserve Center, Rochester, New York

Janitorial/Custodial, Basewide (except Commissary, Hospital and Base Industrial Areas), Minot Air Force Base, North Dakota

Operation of Postal Service Center, Charleston Air Force Base, South Carolina

This action does not affect current contracts awarded prior to the effective date of this addition or options that may be exercised under those contracts.

Beverly L. Milkman,

Executive Director.

[FR Doc. 98–10262 Filed 4–17–98; 8:45 am]

BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Proposed Additions and Deletions

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

ACTION: Proposed additions to and deletions from Procurement List.

SUMMARY: The Committee has received proposal(s) to add to the Procurement List services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and to delete commodities and services previously furnished by such agencies.

COMMENTS MUST BE RECEIVED ON OR BEFORE: May 18, 1998.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Gateway 3, Suite 310, 1215 Jefferson Davis Highway, Arlington, Virginia 22202–4302.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603–7740.

SUPPLEMENTARY INFORMATION: 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.

Additions

If the Committee approves the proposed addition, all entities of the Federal Government (except as otherwise indicated) will be required to procure the services listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

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

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

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

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

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

for addition to the Procurement List. Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

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

Administrative Services

(For Chicago Cooperative Administrative Support Unit (CASU) Philadelphia Operations Center), Wanamaker Building, 100 Penn Square East, Philadelphia, Pennsylvania; NAP: Horizon House, Inc., Philadelphia, Pennsylvania

Base Supply Operations, Marine Corps Air Station, Cherry Point, North Carolina, NPA: CETC Employment Opportunities, Inc., New Bern, North Carolina

Central Facility Management, The Jimmy Carter Library, One Copenhill, Atlanta, Georgia, NPA: Goodwill Industries of Atlanta, Inc., Atlanta, Georgia

Grounds Maintenance, Department of the Navy, Engineering Field Activity, West, San Bruno, California, NPA: Toolworks, Inc., San Francisco, California

Recycling Service, Offutt Air Force Base, Nebraska, NPA: Goodwill, Industries, Inc., Omaha, Nebraska

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 does not appear to have a severe economic impact on future 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 deletion from the Procurement List.

The following commodities and services have been proposed for deletion:

Commodities

Ladder, Extension (Wood)
5440–00–223–6027
5440–00–223–6026
5440–00–242–0998

Ladder, Straight (Wood)
5440–00–242–0995
5440–00–816–2575
5440–00–223–6029
5440–00–223–6030

Apron, Construction Worker's
8415–00–257–4290

Services

Janitorial/Custodial

U.S. Army Reserve Center, 1001 and 1005 Lakecrest Drive, Grand Prairie, Texas

Grounds Maintenance

McClellan Air Force Base, California

Janitorial/Custodial

Building 243 ''A–G'' Bay, McClellan AFB, California

Painting Service

McClellan Air Force Base, California.

Beverly L. Milkman,

Executive Director.

[FR Doc. 98–10265 Filed 4–17–98; 8:45 am]

BILLING CODE 6353–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 041098B]

New England Fishery Management Council; Public Meetings

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

ACTION: Notice of public meetings.

SUMMARY: The New England Fishery Management Council(Council) is scheduling a number of public meetings of its oversight committees and advisory panels in May 1998 to consider actions affecting New England fisheries in the exclusive economic zone (EEZ). Recommendations from these groups will be brought to the full Council for formal consideration and action, if appropriate.

DATES: The meetings will be held between May 5, 1998, and May 11, 1998. See **SUPPLEMENTARY INFORMATION** for specific dates and times.

ADDRESSES: Meetings will be held in Peabody and Danvers, MA, and Warwick, RI. See **SUPPLEMENTARY INFORMATION** for specific locations.

FOR FURTHER INFORMATION CONTACT: Paul J. Howard, Executive Director, New England Fishery Management Council; telephone: (781) 231–0422.

SUPPLEMENTARY INFORMATION:

Meeting Dates and Agendas

Tuesday, May 5, 1998, 9:00 a.m.—Joint Council Herring Committee and Atlantic States Marine Fisheries Commission Herring Section Meeting

Location: Holiday Inn, One Newbury Street (Route 1) Peabody, MA 01960; telephone: (978) 535–4600.

Review and approval of proposed Atlantic Herring Fishery Management Plan (FMP) measures and Draft Supplemental Environmental Impact Statement, for public hearing purposes.

Wednesday, May 6, 1998, 9:30 a.m.—Joint Habitat Committee and Advisory Panel Meeting

Location: King's Grant Inn, Route 128 and Trask Lane. Danvers, MA 01923; telephone: (978) 774–6800.

Review of the progress and status of essential fish habitat (EFH) identification and description, and discussion of alternatives for EFH designation.

Monday, May 11, 1998 9 a.m.—Sea Scallop Committee Meeting

Location: Radisson Hotel, 2091 Post Road, Warwick, RI 02886; telephone: (401) 739–3000.

Development of closed area management, days-at-sea leasing, and vessel buyback measures for public hearing purposes.

Although other issues not contained in this agenda may come before these groups for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act, those issues may not be the subject of formal action during these meetings. Action will be restricted to those issues specifically listed in this notice.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Paul J. Howard (see **ADDRESSES**) at least 5 days prior to the meeting dates.

Dated: April 14, 1998.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 98–10369 Filed 4–17–98; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 040898A]

Western Pacific Fishery Management Council; Public Meeting

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

ACTION: Notice of a public meeting.

SUMMARY: The Western Pacific Fishery Management Council (Council) will hold a meeting of its Pelagics Plan Team.

DATES: The meeting will be held on May 6–7, 1998, from 8:30 a.m. to 5:00 p.m.

ADDRESSES: The meeting will be held at the Council office, 1164 Bishop St., Suite 1400, Honolulu, HI 96814.

FOR FURTHER INFORMATION CONTACT: Kitty Simonds, Executive Director; telephone: 808–522–8220.

SUPPLEMENTARY INFORMATION: The Plan Team will discuss and may make recommendations to the Council on the following agenda items:

Wednesday, May 6, 1998, 8.30 p.m.

1. Introductions and assignment of rapporteurs;

2. 1997 Pelagic fisheries annual report modules; and

3. Comprehensive Sustainable Fisheries Act amendment (Magnuson Stevens Act requirement), including bycatch, fishing sectors, fishing communities, overfishing and essential fish habitat.

Thursday, May 7, 1998, 8.30 p.m.

1. Protected species and seabird interactions;

2. Shark incidental catches in the Western Pacific;

3. Hawaii longline/charter boat interactions;

4. Pelagic Fishery Management Plan Amendment 8 - American Samoa pelagic fisheries area closure;

5. Palmyra fishery developments update;

6. Milestones;

7. Summary of Plan Team recommendations;

8. Other business as required.

Although other issues not contained in this agenda may come before this Plan Team for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically 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 Kitty M. Simonds, 808–522–8220 (voice) or 808–522–8226 (fax), at least 5 days prior to the meeting date.

Dated: April 14, 1998.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 98–10370 Filed 4–17–98; 8:45 am]

BILLING CODE 3510–22–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in India

April 14, 1998.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: April 20, 1998.

FOR FURTHER INFORMATION CONTACT: Janet Heinzen, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–5850. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The current limits for certain categories are being adjusted, variously, for carryforward applied to 1997 limits and additional allowance for 100 percent cotton garments made of handloomed fabrics.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 62 FR 66057, published on December 17, 1997). Also see 62 FR 67831, published on December 30, 1997.

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

April 14, 1998.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on December 22, 1997, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in India and exported during the twelve-month period which began on January 1, 1998 and extends through December 31, 1998.

Effective on April 20, 1998, you are directed to adjust the limits for the following categories, as provided for under the Uruguay Round Agreement on Textiles and Clothing:

Category	Adjusted twelve-month level [1]
218	13,528,087 square meters.
219	62,602,481 square meters.
313	36,196,154 square meters.
314	7,452,676 square meters.
315	12,923,785 square meters.
317	37,734,420 square meters.
334/634	147,961 dozen.
335/635	659,088 dozen.
336/636	923,826 dozen.
340/640	2,095,257 dozen.
341	4,228,602 dozen of which not more than 2,393,276 dozen shall be in Category 341–Y [2].
342/642	1,264,493 dozen.
347/348	646,153 dozen.
351/651	282,120 dozen.
363	42,275,991 numbers.
369–D [3]	1,242,592 kilograms.
369–S [4]	677,777 kilograms.
641	1,398,200 dozen.
Group II	
200, 201, 220–227, 237, 239pt. [5], 300, 301, 331–333, 350, 352, 359pt. [6], 360–362, 600–604, 606 [7], 607, 611–629, 631, 633, 638, 639, 643–646, 649, 650, 652, 659pt. [8], 666, 669pt. [9], 670, 831, 833–838, 840–858 and 859pt. [10], as a group.	105,715,435 square meters equivalent.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1997.

[3] Category 369–D: only HTS numbers 6302.60.0010, 6302.91.0005 and 6302.91.0045.

[4] Category 369–S: only HTS number 6307.10.2005.

[5] Category 239pt.: only HTS number 6209.20.5040 (diapers).

[6] Category 359pt.: all HTS numbers except 6406.99.1550.

[7] Category 606: all HTS numbers except 5403.31.0040 (for administrative purposes Category 606 is designated as 606(1)).

[8] Category 659pt.: all HTS numbers except 6406.99.1510 and 6406.99.1540.

[9] Category 669pt.: all HTS numbers except 5601.10.2000, 5601.22.0090, 5607.49.3000, 5607.50.4000 and 6406.10.9040.

[10] Category 859pt.: only HTS numbers 6115.19.8040, 6117.10.6020, 6212.10.5030, 6212.10.9040, 6212.20.0030, 6212.30.0030, 6212.90.0090, 6214.10.2000 and 6214.90.0090.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 98–10358 Filed 4–17–98; 8:45 am]

BILLING CODE 3510–DR–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Amendment of Visa Requirements for Certain Cotton, Wool and Man-Made Fiber Apparel Produced or Manufactured in the Republic of Maldives; Correction

April 14, 1998.

In the notice and letter to the Commissioner of Customs published in the **Federal Register** on March 25, 1998 (63 FR 14427), insert ''Categories 237, 239, 330-359, 431-459 and 630-659'' in the first sentences of the 3rd paragraph under the heading ''Supplementary Information'' on page 14427, 3rd column; and the 1st paragraph on page 14428, 1st column. The new sentences will read as follows:

''Effective on April 15, 1998, apparel in Categories 237, 239, 330-359, 431-459 and 630-659, produced or manufactured in Maldives and exported on or after April 15, 1998 must be accompanied by a visa with the quantity stated in whole units, decimals and fractions will no longer be accepted.''

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 98–10357 Filed 4–17–98; 8:45 am]

BILLING CODE 3510–DR–F

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0012]

Submission for OMB Review; Comment Request Entitled Termination Settlement Proposal Forms—FAR (Standard Forms 1435 through 1440)

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for an extension to an existing OMB clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning Termination Settlement Proposal Forms—FAR (Standard Forms 1435 through 1440). A request for public comments was published at 63 FR 6728, February 10, 1998. No comments were received.

DATES: Comments may be submitted on or before May 20, 1998.

FOR FURTHER INFORMATION CONTACT: Linda Klein, Federal Acquisition Policy Division, GSA (202) 501–3775.

ADDRESSES: Comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, should be submitted to: FAR Desk Officer, OMB, Room 10102, NEOB, Washington, DC 20503, and a copy to the General Services Administration, FAR Secretariat, 1800 F Street, NW, Room 4035, Washington, DC 20405. Please cite OMB Control No. 9000–0012, Termination Settlement Proposal—FAR (SF's 1435 through 1440), in all correspondence.

FOR FURTHER INFORMATION CONTACT: Linda Klein, Federal Acquisition Policy Division, GSA (202) 501–3775.

SUPPLEMENTARY INFORMATION:

A. Purpose

The termination settlement proposal forms (Standard Forms 1435 through 1440) provide a standardized format for listing essential cost and inventory information needed to support the terminated contractor's negotiation position. Submission of the information assures that a contractor will be fairly reimbursed upon settlement of the terminated contract.

B. Annual Reporting Burden

Public reporting burden for this collection of information is estimated to average 2.5 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

The annual reporting burden is estimated as follows: Respondents, *864;* responses per respondent, *2.4;* total annual responses, *2,074* preparation hours per response, *2.5;* and total response burden hours, *5,185.*

Obtaining Copies of Proposals

Requester may obtain a copy of the justification from the General Services Administration, FAR Secretariat (MVRS), 1800 F Street, NW, Room 4035, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 9000–0012, Termination Settlement Proposal Forms—FAR (SF's 1435 through 1440), in all correspondence.

Dated: April 14, 1998.

Sharon A. Kiser,

FAR Secretariat.

[FR Doc. 98–10281 Filed 4–17–98; 8:45 am]

BILLING CODE 6820–34–P

DEPARTMENT OF DEFENSE

Department of Army

Corps of Engineers

Release of Feasibility Study/Proposed Plan (FS/PP) for Cleanup of Radiological Contamination at the St. Louis Downtown Site (SLDS) for Public Review

AGENCY: U.S. Army Corps of Engineers, DOD.

ACTION: Notice.

SUMMARY: The St. Louis District, U.S. Army Corps of Engineers (USACE), in consultation with the U.S. Environmental Protection Agency (EPA), propose to cleanup contaminants resulting from past uranium processing operations at the St. Louis Downtown Site (SLDS). SLDS is one of several being addressed under the Superfund law (Comprehensive Environmental Response, Compensation, and Liability Act [CERCLA]. Alternatives, which identify the range of cleanup options, have been developed and evaluated in the SLDS Feasibility Study (FS). USACE has identified Alternative 4 as the preferred remediation alternative

described in this Proposed Plan based on the information available at this time. The final decision on the remedy to be implemented will be documented in a Record of Decision (ROD) only after consideration of all comments received and any new information presented.

FOR FURTHER INFORMATION CONTACT: Questions regarding the SLDS FS/PP may be directed to Mr. Chris Haskell, U.S. Army Corps of Engineers, St. Louis District, FUSRAP Project Office, 9170 Latty Avenue, Berkeley, Missouri 63134, by phone (314) 524–3334, or by e-mail at ''Chris.Haskell @MVS01.usace.army.mil''.

SUPPLEMENTARY INFORMATION:

1. Proposed Action

The U.S. Army Corps of Engineers, St. Louis District, issued the SLDS Feasibility Study/Proposed Plan (FS/PP) for public comment on April 8, 1998. The site became contaminated as a result of activities in support of the nation's early atomic energy program in the 1940s. The sites are being addressed under the Formerly Utilized Sites Remedial Action Program (FUSRAP). Cleanup of these sites is now managed by the U.S. Army Corps of Engineers. The alternatives evaluated in the Feasibility Study are summarized in the Proposed Plan. Inaccessible soils are not included as part of the operable unit.

2. Project Alternatives

a. Alternative 1—No Action. Mandated by the Comprehensive Environmental Response, Compensation, and Liabilities (CERCLA), periodic environmental monitoring would be conducted, but no remedial action would be conducted.

b. Alternative 2—Institutional Controls and Site Maintenance. Institutional controls and site maintenance would be implemented to prevent unacceptable exposures to site contamination.

c. Alternative 3—Containment. Alternative 3 incorporates containment, institutional controls, and environmental monitoring to reduce further spread of contaminants and reduce the potential for direct exposure. Under this alternative, accessible soils from SLDS and vicinity properties would be excavated and consolidated and capped at a downtown location such as the City Property or Plant 2 area.

d. Alternative 4—Partial Excavation and Disposal. This alternative includes excavation of accessible soils in the upper 2 feet to the composite criteria of 5 pCi/g in surface soil (top 6 inches) and 15 pCi/g in shallow subsurface soil (top 2 feet) (for Ra-226, Ra-228, Th-230, and Thj-232) and 50 pCi/g for U-238. Site-specific dose and risk-based target removal levels of 50 pCi/g Ra-226, 100 pCi/g Th–230 and 150 pCi/g U-238 would be used for excavation of soils below 2 feet for most site areas.

e. Alternative 5—Complete Excavation and Disposal. This alternative involves excavating soil contaminated above the composite criteria regardless of depth.

f. Alternative 6—Selective Excavation and Disposal. This alternative focuses on reducing the need for future studies, designs, and remedial actions, in addition to protection of human health and the environmental relative to Alternative 4. It is anticipated that excavation to the composite criteria would proceed to a depth of 6 feet of the St. Louis Terminal Railroad Association tracks and the former locations of Buildings 116, 117, 704–707. Excavation for the composite criteria would stop at 4 feet at all other areas at SLDS including the vicinity properties and under the roads.

The Corps of Engineers has identified alternative 4 as preferred.

3. Scoping Process

Federal, state and local agencies, and interested individuals are invited to participate in the scoping process to determine the range of issues and alternatives to be addressed. The U.S. Army Corps of Engineers will hold a public meeting to receive oral and written comments at the Henry Clay Elementary School Gymnasium, 3820 North 141th Street, St. Louis, Missouri 63107 on April 21, 1998 from 7:00 p.m. to 9:00 p.m. In addition, written comments will also be accepted until May 8, 1998 by Dr. R. L. Mullins at U.S. Army Corps of Engineers, St. Louis District, FUSRAP Project Office, 9170 Latty Avenue, Berkeley, Missouri 63134, (314) 524–4083.

4. Availability of FS/PP

Copies of the FS/PP are available for review from April 8, 1998 until May 8, 1998 during business hours at the following locations:

U.S. Army Corps of Engineers, St. Louis District, FUSRAP Project Office, 9170 Latty Avenue, Berkeley, Missouri 63134

St. Louis Public Library, Government Information Section, 1301 Olive Street, St. Louis, Missouri 63103

Henry Clay Elementary School, 3820 N. 14th Street, St. Louis, Missouri 63107

Prairie Commons Branch Library, 915 Utz Lane, Hazelwood, Missouri 63042

Washington University Library of Biological Sciences, One Brookings Drive, St. Louis, Missouri 63130

Julia Davis Branch Library, 4415 Natural Bridge, St. Louis Missouri 63115

St. Louis County Library, 1640 S. Lindbergh Blvd., St. Louis, Missouri 63131

The FS/PP is also available for review on the world wide web at http://144.3.144.51/engr/fusrap/index.htm.

Gregory D. Showalter,

Army Federal Register Liaison Officer.

[FR Doc. 98–10359 Filed 4–17–98; 8:45 am]

BILLING CODE 3710–55–M

DEPARTMENT OF EDUCATION

National Assessment Governing Board; Meeting

AGENCY: National Assessment Governing Board; Department of Education.

ACTION: Notice of partially closed meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the National Assessment Governing Board. This notice also describes the functions 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.

DATES: May 7–9, 1998.

TIME: *May 7*—Design and Methodology Committee, 9:00–11:30 a.m., (open); Joint Meeting Design and Methodology and Reporting and Dissemination Committees, 11:30 a.m.–2:00 p.m., (open); Subject Area Committee #2, 2:00–4:00 p.m., (open), Executive Committee, 4:00–6:00 p.m., (open) *May 8*—Full Board, 8:30 a.m.–10:00 a.m., (open); Subject Area Committee #1, 10:00–10:30 a.m. (closed), 10:30 a.m.–12:00 p.m., (open); Reporting and Dissemination Committee, 10:00 a.m.–12:00 p.m., (open); Achievement Levels Committee, 10:00–11:00 a.m., (open); Design and Methodology Committee, 11:00 a.m.–12:00 p.m., (open); Full Board, 12:00–1:30 p.m. (closed), 1:30–4:00 p.m., (open). *May 9*—Full Board, 8:00–11:30 a.m., (open), 11:30 a.m.–12:00 p.m. (closed); adjournment, 12:00 p.m.

LOCATION: Crystal Gateway Marriott, 1700 Jefferson Davis Highway, Arlington, Virginia.

FOR FURTHER INFORMATION CONTACT: Mary Ann Wilmer, Operations Officer, National Assessment Governing Board, Suite 825, 800 North Capitol Street, NW, Washington, D.C., 20002–4233, Telephone: (202) 357–6938.

SUPPLEMENTARY INFORMATION: The National Assessment Governing Board is established under section 412 of the National Education Statistics Act of 1994 (Title IV of the Improving America's Schools Act of 1994) (Pub. L. 103–382).

The Board is established to formulate policy guidelines for the National Assessment of Educational Progress. The Board is responsible for selecting subject areas to be assessed, developing assessment objectives, identifying appropriate achievement goals for each grade and subject tested, and establishing standards and procedures for interstate and national comparisons. Under P.L. 105–78, the National Assessment Governing Board is also granted exclusive authority over developing the Voluntary National Tests pursuant to contract number RJ97153001.

On May 7, the Design and Methodology Committee will meet in open session from 9:00–11:30 a.m. The Committee will be reviewing the plan for research studies on the Voluntary National Tests, and the pilot test design.

From 11:30 a.m.–2:00 p.m. the Design and Methodology and Reporting and Dissemination Committees will meet jointly in open session. The Committees will be reviewing the work plan for accommodations and adaptations on the Voluntary National Tests. There will be an open meeting of Subject Area Committee #2 from 2:00–4:00 p.m. The agenda for this meeting includes review of math issues and timeliness for the Voluntary National Tests, and an update on 1998 NAEP assessment in civics.

Also on May 7, the Executive Committee will meet in open session from 4:00–6:00 p.m. The Executive Committee will receive updates on Voluntary National Tests activities and decisions on the Voluntary National Tests contract. Also, the Committee will hear updates on reauthorization and NAEP redesign activities. The Committee will begin discussion on augmenting the schedule of NAEP assessments to include grade 4 reading in the year 2000.

On May 8, the full Board will convene in open session from 8:30–10:00 a.m. In addition to a report from the Executive Director of the National Assessment Governing Board, and an update on NAEP activities, the agenda for this session of the meeting includes the release of the NAEP—TIMSS Linking Report on 8th Grade Mathematics and Science.

Beginning at 10:00 a.m. there will be meetings of the standing committees. Subject Area Committee #1 will meet in partially closed session. From 10:00–10:30 a.m., the meeting will be closed to permit the Committee to review proposed items for the Voluntary National Test in reading. This portion of the meeting must be closed because references will be made to specific items from the assessment and premature disclosure of the information presented for review would be likely to significantly frustrate implementation of a proposed agency action. Such matters are protected by exemption (9) (B) of Section 552b(c) of Title 5 U.S.C.

In open session, 10:30 a.m.–12:00 p.m., the Committee will review Voluntary National Test reading issues and timelines. Also, the Committee will receive an update on the 1998 NAEP assessment in reading and writing.

The Reporting and Dissemination Committee will meet from 10:00 a.m.–12:00 p.m. The Committee will be considering the schedule and plans for the release of NAEP reports; reporting district-level results from existing state samples; and work plans for reporting and utilization of the results for the Voluntary National Tests.

There will be open meetings of the Achievement Levels Committee and the Design and Methodology Committee. The Achievement Levels Committee will meet from 10:00–11:00 a.m. to prepare recommendations to the Board on the preliminary achievement levels descriptions for NAEP. The Committee will receive a briefing on the status of the 1998 achievement levels setting activities. The Committee will discuss the achievement levels issues on the Voluntary National Tests, such as reliable classification of individual student performance.

The Design and Methodology Committee will meet from 11:00 a.m.–12:00 p.m. to review the plans for research studies on the Voluntary National Tests, and the pilot test design.

The Full Board will reconvene in partially closed session from 12:00–4:00 p.m. The meeting will be closed to the public from 12:00–1:30 p.m. for the Board to hear a presentation on the results of the NAEP Instructional Reports for Mathematics and Science. This portion of the meeting must be closed because references may be made to data, which may be misinterpreted, incorrect, or incomplete. Such matters are protected by exemption 9(B) of Section 552b(c) of Title 5 U.S.C. The agenda for the open portion of this session of the Full Board meeting includes an update on work plans for the Voluntary National Tests and comments about the NAEP and the Voluntary National Tests by representatives of the National Alliance of Business.

On May 9, the Full Board will meet in partially closed session. In open session, from 8:00–11:30 a.m., the Board will receive a briefing on the Mathematics Content Analysis Project; hear a presentation from ACHIEVE, Inc. on the work being conducted in Benchmarking, and be given reports from the NAGB standing committees. The Board will meet in closed session from 11:30 a.m.–12:00 p.m. to receive the report from the Nominations Committee regarding recommendations to submit to the Secretary of Education for Board appointments in the following categories: general public, secondary school principal, elementary school principal, eighth grade teacher, fourth grade teacher, chief state school officer, and state legislator (Democrat). This session must be closed because the Board will be considering qualifications of nominees for appointment to Board membership. The review and subsequent discussion of this information will touch upon matters that relate solely to the internal rules and practices of an agency and would disclose information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy if conducted in open session. Such matters are protected by exemptions (2) and (6) of Section 552b(c) of Title 5 U.S.C.

Summaries of the activities of the closed sessions and related matters, which are informative to the public and consistent with the policy of section 5 U.S.C. 552b(c), will be available to the public within 14 days of the meeting. Records are kept of all Board proceedings and are available for public inspection at the U.S. Department of Education, National Assessment Governing Board, Suite #825, 800 North Capitol Street, NW, Washington, DC, from 8:30 a.m. to 5:00 p.m.

Dated: April 15, 1998.

Roy Truby,

Executive Director, National Assessment Governing Board.

[FR Doc. 98–10298 Filed 4–17–98; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Notice of Intent To Conduct Policy Analysis; Request for Public Comment

AGENCY: Department of Energy.

ACTION: Notice of intent to conduct policy analysis; request for public comment.

Correction

In Notice document 98–7155, beginning on page 13396, in the issue of Thursday, March 19, 1998, make the following correction: on page 13397, in the first column, in the fourth line, ''1–800–635–4080'' should read ''1–888–635–4080.''

Dated: April 14, 1998.

James M. Owendoff,

Acting Assistant Secretary for Environmental Management.

[FR Doc. 98–10317 Filed 4–17–98; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Office of Energy Research

Energy Research Financial Assistance Program Notice 98–16; Genome Instrumentation Research Program

AGENCY: Department of Energy

ACTION: Notice inviting grant applications.

SUMMARY: The Office of Biological and Environmental Research (BER) of the Office of Energy Research (ER) of the U.S. Department of Energy (DOE), hereby announces its interest in receiving applications in Instrumentation Research supporting the Human Genome Program. Applications are sought from a broad range of scientists with backgrounds in biology, chemistry, physics, and engineering including those not presently involved in the Human Genome Program. Both substantive improvements to current systems and novel and creative new strategies are needed in preparation for the needs of biology in the next century. New instrumentation and technical approaches are sought for DNA sequencing, automation and integration of DNA sequencing systems, validation of DNA sequencing accuracy, and the determination of gene function of newly sequenced DNA. The goals are to reduce costs and increase the throughput while maintaining accuracy for production DNA sequencing and related analyses.

DATES: Potential applicants are strongly encouraged to submit a brief preapplication. All preapplications should be received by DOE by 4:30 p.m., e.d.t., June 8, 1998. Early submissions are encouraged. A response encouraging or discouraging a formal application will be communicated to the applicant within two weeks of receipt.

Formal applications, in response to this notice, must be received by 4:30 p.m., e.d.t., August 19, 1998, in order to be accepted for merit review and to permit timely consideration for award in Fiscal Year 1999.

ADDRESSES: Preapplications, referencing Program Notice 98–16, should be forwarded to: Dr. Charles G. Edmonds, Medical Applications and Biophysical Research Division, ER–73, U.S. Department of Energy, 19901 Germantown Road, Germantown, MD 20874–1290, Attn: Program Notice 98–16. Preapplications will also be accepted by Fax and E-mail: Fax number: (301) 903–0567 and E-mail: charles.edmonds@oer.doe.gov.

Formal applications, referencing Program Notice 98–16, should be forwarded to: U.S. Department of Energy, Office of Energy Research, Grants and Contracts Division, ER–64, 19901 Germantown Road, Germantown, MD 20874–1290, Attn: Program Notice 98–16. This address also must be used when submitting applications by U.S. Postal Service Express Mail, or any commercial mail delivery service, or when hand-carried by the applicant. An original and seven copies of the application must be submitted.

FOR FURTHER INFORMATION CONTACT: Dr. Charles G. Edmonds, Medical Applications and Biophysical Research Division, ER–73, 19901 Germantown Road, Germantown, MD 20874–1290; telephone: (301) 903–0042; E-mail: charles.edmonds@oer.doe.gov. The full text of Program Notice 98–16 is available via the Internet using the following web site address: http://www.er.doe.gov/production/grants/grants.html.

SUPPLEMENTARY INFORMATION: The Office of Biological and Environmental Research of the U. S. Department of Energy and the National Human Genome Research Institute of the National Institutes of Health are participating in a coordinated international program to ''determine the complete sequence of the human genome, discover all the human genes and render them accessible for further biological study.'' As this program continues, improvement of sequencing technology is essential to complete the sequence of the 3 billion subunits of the human genome by the target year of 2005. Functional analyses of the displayed genes and their encoded proteins will continue long thereafter.

In December of 1997 a DOE-sponsored review of the DOE Human Genome Program was published by the JASON Program Office of the MITRE Corporation. A summary and related discussion has been printed: Science, 279(5347), (1998) 36–37; Science, 279(5347), (1989) 23; and Science, 279(5354), (1989) 1115–1116. The full report can be accessed on the Internet using the following web address: http://www.ornl.gov/hgmis/publicat/miscpubs/jason/index.html. A more general discussion of the Human Genome Program may be found in Primer on Molecular Genetics available on the Internet using the following web address: http://www.ornl.gov/TechResources/Human__Genome/publicat/primer/intro.html.

These documents and companion references will be particularly useful to scientists and engineers less knowledgeable regarding current genomic technologies and projected needs.

Production scale sequencing has been initiated based largely on gel electrophoresis with data acquisition by laser induced fluorescence. Additionally, sequence comparison tasks are performed using ''sequencing by hybridization'' technologies. However, it may not be possible to achieve the desired goal within the available budget and project period without substantial improvements in speed and reliability of sequencing methods and other techniques currently in widespread use. Continuing developments of existing approaches to address the necessities of the production environment will be required.

Further, with an eye to the future, basic research is also needed that will substantially speed and enhance genomic analyses in the years following the projected completion of the human genome in the year 2005. After this date, the need for fast and cost-effective determination of DNA sequence for the comparison of sequences among human individuals and also for the determination of the genomes of numerous organisms of biomedical and commercial interest will be ongoing. Additionally, with the continuing acquisition of this remarkable base of biological data, high throughput experimental tools will be required to assist conversion into a practical and useful understanding of the function for the encoded gene products.

Both substantial evolutionary improvements in current systems and also revolutionary technologies for the post-2005 era are sought under this solicitation.

Research applications are invited:

- To develop approaches to more rapidly, accurately, and economically determine DNA sequence. Cost-effective approaches that increase current maximum read lengths of 800–1000 bases by at least a factor of 2.5, i.e., to at least 2000–2500 bases, are particularly desired.

• To develop instrumentation that integrates and more throughly automates the current steps of DNA sequence determination, e.g., sample preparation, sample loading, sample analysis, and data analysis. A priority will be placed on approaches that emphasize miniaturization and micro-fabrication.

• To develop approaches that (1) verify the accuracy of a previously determined DNA sequence without having to redetermine its entire sequence and (2) provide economical error checking and proofreading of newly determined DNA sequence.

• To develop tools that enable the efficient comparison of a known DNA sequence with a related but previously undetermined DNA sequence.

• To develop techniques for determining the functions of large numbers of genes in parallel. Techniques that match the speed and volume of DNA sequence determination are particularly desired.

The success of devices, methods or techniques for DNA sequencing is dependent on downstream data technologies. Where appropriate, applications should account for the necessary link to current information technology and existing data sets in their plans to address the technical challenges enumerated above.

Program Funding

It is anticipated that up to a total of $2,000,000 will be available for multiple awards to be made in Fiscal Year 1999 funding grants for the new Genome Instrumentation Research Program, contingent on the availability of appropriated funds. Award sizes are expected to be on the order of $100,000–600,000 per year for total project costs for a typical three-year grant with out-year support contingent on the availability of funds, progress of research and programmatic needs. Collaborative projects involving several research groups or more than one institution may receive larger awards if merited. A similar announcement is being simultaneously issued to the DOE National Laboratories.

Collaboration

Applicants are encouraged to collaborate with researchers in other institutions, such as universities, industry, non-profit organizations, federal laboratories and federally funded research and development centers (FFRDCs), including the DOE National Laboratories, where appropriate, and to incorporate cost sharing and/or consortia wherever feasible.

Collaborative research applications may be submitted in several ways:

(1) When multiple private sector or academic organizations intend to propose collaborative or joint research projects, the lead organization may submit a single application which includes another organization as a lower-tier participant (subaward) who will be responsible for a smaller portion of the overall project. If approved for funding, DOE may provide the total project funds to the lead organization who will provide funding to the other participant via a subcontract arrangement. The application should clearly describe the role to be played by each organization, specify the managerial arrangements and explain the advantages of the multi-organizational effort.

(2) Alternatively, multiple private sector or academic organizations who intend to propose collaborative or joint research projects may each prepare a portion of the application, then combine each portion into a single, integrated scientific application. A separate Face Page and Budget Pages must be included for each organization participating in the collaborative project. The joint application must be submitted to DOE as one package. If approved for funding, DOE will award a separate grant to each collaborating organization.

(3) Private sector or academic organizations who wish to form a collaborative project with a DOE FFRDC may not include the DOE FFRDC in their application as a lower-tier participant (subaward). Rather, each collaborator may prepare a portion of the proposal, then combine each portion into a single, integrated scientific proposal. The private sector or academic organization must include a Face Page and Budget Pages for its portion of the project. The FFRDC must include separate Budget Pages for its portion of the project. The joint proposal must be submitted to DOE as one package. If approved for funding, DOE will award a grant to the private sector or academic organization. The FFRDC will be funded, through existing DOE contracts, from funds specifically designated for new FFRDC projects. DOE FFRDCs will not compete for funding already designated for private sector or academic organizations. Other Federal laboratories who wish to form collaborative projects may also follow guidelines outlined in this section.

Preapplications

A brief preapplication may be submitted. The preapplication should identify, on the cover sheet, the institution, Principal Investigator name, address, telephone, fax and E-mail address, title of the project, and the field of scientific research. The preapplication should consist of a two to three page narrative describing the research project objectives and methods of accomplishment. These will be reviewed relative to the scope and research needs described in this Notice.

Preapplications are strongly encouraged but not required prior to submission of a full application. Please note that notification of a successful preapplication is not an indication that an award will be made in response to the formal application.

Applications will be subjected to a scientific merit review (peer review) and will be evaluated against the following evaluation criteria listed in descending order of importance as codified at 10 CFR 605.10(d):

1. Scientific and/or Technical Merit of the Project,

2. Appropriateness of the Proposed Method or Approach,

3. Competency of Applicant's Personnel and Adequacy of Proposed Resources,

4. Reasonableness and Appropriateness of the Proposed Budget.

The evaluation will include program policy factors such as the relevance of the proposed research to the terms of the announcement and an agency's programmatic needs. Note, external peer reviewers are selected with regard to both their scientific expertise and the absence of conflict-of-interest issues. Non-federal reviewers may be used, and submission of an application constitutes agreement that this is acceptable to the investigator(s) and the submitting institution.

Information about development and submission of applications, eligibility, limitations, evaluation, selection process, and other policies and procedures may be found in 10 CFR part 605 and in the Application Guide for the Office of Energy Research Financial Assistance Program. Electronic access to the Guide and required forms is made available via the World Wide Web at: http://www.er.doe.gov/production/grants/grants.html.

Energy Research, as part of its grant regulations, requires at 10 CFR 605.11(b) that a recipient receiving a grant to perform research involving recombinant DNA molecules and/or organisms and viruses containing recombinant DNA molecules shall comply with the National Institutes of Health ''Guidelines for Research Involving Recombinant DNA Molecules,'' which is available via the World Wide Web at:

http://www.niehs.nih.gov/odhsb/biosafe/nih/nih97–1.html, (59 FR 34496, July 5, 1994), or such later revision of those guidelines as may be published in the **Federal Register**.

The Catalog of Federal Domestic Assistance number for this program is 81.049, and the solicitation control number is ERFAP 10 CFR Part 605.

Issued in Washington, DC, on April 9, 1998.

John Rodney Clark,

Associate Director for Resource Management, Office of Energy Research.

[FR Doc. 98–10318 Filed 4–17–98; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98–304–000]

Arcadia Midcoast of New York, L.L.C. Complainant, vs. CNG Transmission Corporation Respondent; Notice of Complaint

April 14, 1998.

Take notice that on March 25, 1998, Arcadia Midcoast of New York, L.L.C. (Arcadia), 1100 Louisiana, Suite 2950, Houston, Texas 77002, filed with the Commission in Docket No. CP98–304–000 a complaint, pursuant to Rule 206 of the Commission's Rules of Practice and Procedure, against CNG Transmission Corporation (CNGT), alleging undue discrimination in violation of the Natural Gas Act, Commission rules, regulations, orders, and actions interfering with interstate commerce.

Arcadia requests that the Commission issue an order compelling CNGT to establish an interconnection so that Arcadia may provide direct natural gas service to Sabin Metal Corporation (Sabin) in Scottsville, New York. Arcadia states that CNGT currently transports natural gas for Arcadia's account to Rochester Gas and Electric (RG&E), a local distribution company. RG&E then delivers the gas to Sabin. Arcadia also states that Sabin estimates it can save $50,000 annually by obtaining gas directly from CNGT rather than via RG&E. Accordingly, Arcadia further states that Sabin asked Arcadia to arrange with CNGT to change an existing receipt tap on CNGT's system at Caledonia, New York, to a receipt/delivery tap so direct deliveries could be made to Sabin. Sabin would then construct and own, or have constructed, a 12,000-foot, 6-inch diameter pipeline from the CNGT interconnection to Sabin's Scottsville metal fabrication plant. Sabin uses approximately 1,500 Mcf of natural gas per day at the Scottsville plant.

Arcadia alleges that CNGT by letter dated January 16, 1998, denied Arcadia's request to construct the proposed interconnection because CNGT'' * * * has not offered and is not proposing to offer customers taps on CNGT pipeline that bypass its LDC customers like RG&E.'' Arcadia further alleges that CNGT alluded in subsequent telephone conversations that the proposed interconnection might cause CNGT some operational problems, but the nature of the alleged operational problems were not clearly identified.

Arcadia alleges that CNGT's refusal to provide the interconnection for Sabin, as requested: (a) is unduly discriminatory and therefore violates Section 5 of the NGA; (b) also violates the Commission's competition policies defined in Order Nos. 436 and 636; and, (c) is not justified by any operational, environmental, or legal grounds. For these reasons, Arcadia believes that CNGT should be compelled to construct the proposed interconnection.

Any person desiring to be heard or to make a protest with reference to Arcadia's complaint should file with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 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, should be filed on or before April 30, 1998. Any person desiring to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–10290 Filed 4–17–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98–338–000]

Florida Gas Transmission Company; Notice of Request Under Blanket Authorization

April 14, 1998.

Take notice that on April 7, 1998, Florida Gas Transmission Company (FGT), P.O. Box 1188, Houston, Texas 77251–1188, filed in Docket No. CP98–338–000 a request pursuant to Sections 157.205 and 157.212 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.212) for authorization to construct, own, and operate a new delivery point, located in Orange County, Florida, to accommodate deliveries of natural gas to TECO Peoples Gas Inc. (TECO) under FGT's blanket certificate issued in Docket No. CP82–553–000, pursuant to Section 7(c) of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

FGT proposes to construct, own, and operate two taps, electronic flow measurement (EFM) equipment, and approximately 100 feet of 4-inch connecting pipeline to serve TECO under existing transportation service agreements at a new PGS-Vineland Rd. Meter Station located in Orange County, Florida. FGT states TECO will construct, own, and operate this new meter station with FGT constructing the taps, EFM, and connecting line. FGT declares the proposed delivery capacity at this point is up to 12,000 MMBtu per day at line pressure.

FGT states the estimated cost for the proposed construction of the two taps, EFM, and connecting pipe is $147,000, which will be reimbursed to FGT by TECO. FGT asserts that the end-use will be residential, industrial, and commercial.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–10292 Filed 4–17–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98–325–000]

K N Interstate Gas Transmission Co; Notice of Request Under Blanket Authorization

April 14, 1998.

Take notice that on April 2, 1998, K N Interstate Gas Transmission Co. (KNI), P.O. Box 281304, Lakewood, Colorado 80228, filed in Docket No. CP98–325–000 a request pursuant to Sections 157.205 and 157.208 of the Commission's Regulations under the Natural Gas Act for authorization to acquire and operate certain compressor, pipeline, receipt and delivery point facilities, with appurtenances, located in the States of Texas and Oklahoma, under blanket certificate issued in Docket No. CP83–140–000, *et al.*,[1] all as more fully set forth in the request for authorization on file with the Commission and open for public inspection.

The facilities are to be acquired from Transwestern Pipeline Company (Transwestern) pursuant to the terms and conditions of an Asset Purchase Agreement dated December 30, 1997 between KNI and Transwestern. KNI states that the acquisition of these facilities will allow KNI to receive and deliver on a firm basis up to 65,000 Mcf of natural gas from producers and shippers in the Anadarko area. In addition, the facilities will allow KNI the opportunities for operational flexibility in acquiring volumes of gas that may become available in the future from other production sources in the area. KNI will integrate the subject facilities into its Buffalo Wallow interstate pipeline system and will provide open access transportation service to shippers requesting service on these facilities pursuant to the terms and conditions of its FERC Gas Tariff.

KNI further states that the authorization requested is dependent upon Transwestern receiving authorization at Docket No. CP98–233–000 to abandon, by sale, the subject facilities to KNI.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–10291 Filed 4–17–98; 8:45 am]

BILLING CODE 6717–01–M

[1] *See*, 22 FERC ¶ 62,330 (1983).

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–158–002]

NorAm Gas Transmission Company; Notice of Compliance Filing

April 14, 1998.

Take notice that on April 7, 1998, NorAm Gas Transmission Company (''NGT'') tendered for filing copies of the following revised tariff sheets to be effective May 8, 1998:

Fourth Revised Volume No. 1

Fifth Revised Sheet No. 169
Fourth Revised Sheet No. 169A
Original Sheet No. 169B

In compliance with the March 31, 1998 order issued by the Commission in Docket No. RP98–158–001, these tariff sheets add a description, in Section 1.1 of the Tariff's General Terms and Conditions, of the ten Pools that were established within NGT's existing Pooling Areas on April 1, 1998.

NGT states that a copy of this filing has been mailed to each of NGT's customers and to each interested state commission.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.214 and Section 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the 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 in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–10293 Filed 4–17–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC98–16–001, et al.]

Boston Edison Company, et al.; Electric Rate and Corporate Regulation Filings

April 13, 1998.

Take notice that the following filings have been made with the Commission:

1. Boston Edison Company

[Docket No. EC98–16–001]

Take notice that on April 10, 1998, Boston Edison Company (Boston Edison) and Sithe Energies, Inc. (Sithe), tendered for filing with the Federal Energy Regulatory Commission a request for expedited approvals or, in the alternative, a motion for clarification in the referenced docket. Boston Edison and Sithe state that the filing describes certain additional real property that will be transferred to Sithe in connection with Boston Edison's divestiture of its fossil generating units. The filing also identifies the subsidiaries of Sithe that will own the facilities being acquired from Boston Edison.

Comment date: May 8, 1998, in accordance with Standard Paragraph E at the end of this notice.

2. Ohio Edison Company and Pennsylvania Power Company

[Docket No. ER98–426–000]

Take notice that on April 8, 1998, Ohio Edison Company tendered for filing on behalf of itself and Pennsylvania Power Company, a response to the Staff's deficiency letter of March 9, 1998. This filing is made pursuant to Section 205 of the Federal Power Act.

Comment date: April 28, 1998, in accordance with Standard Paragraph E at the end of this notice.

3. Xenergy, Inc.

[Docket No. ER98–2430–000]

Take notice that on April 3, 1998, Xenergy, Inc., tendered for filing the Summary of Quarterly Activity for the calendar year quarter ending September 30, 1997, pursuant to Section 205 of the Federal Power Act, 16 U.S.C. § 824d (1985), and Part 35 of the Commission's

Rules of Practice and Procedure, 18 CFR 35, and in accordance with Ordering Paragraph J of the Federal Energy Regulatory Commission's June 9, 1997, order (the Order) in Docket No. ER97–2517–000.

Comment date: April 28, 1998, in accordance with Standard Paragraph E at the end of this notice.

4. Xenergy, Inc.

[Docket No. ER98–2431–000]

Take notice that on April 3, 1998, Xenergy, Inc. tendered for filing the Summary of Quarterly Activity for the calendar year quarter ending March 31, 1998, pursuant to Section 205 of the Federal Power Act, 16 U.S.C. § 824d (1985), and Part 35 of the Commission's Rules of Practice and Procedure, 18 CFR 35, and in accordance with Ordering Paragraph J of the Federal Energy Regulatory Commission's June 9, 1997, order (the Order) in Docket No. ER97–2517–000.

Comment date: April 28, 1998, in accordance with Standard Paragraph E at the end of this notice.

5. American Hunter Energy Inc.

[Docket No. ER98–2458–000]

Take notice that American Hunter Energy Inc., on April 1, 1998, tendered for filing cancellation of the Rate Schedule FERC No. 1 effective June 1, 1998. The rate schedule had been effective November 13, 1996.

Comment date: April 28, 1998, in accordance with Standard Paragraph E at the end of this notice.

6. Tenaska Washington Partners II, L.P.

[Docket No. ER98–2486–000]

Take notice that on April 8, 1998, Tenaska Washington Partners II, L.P., tendered for filing a notice of cancellation of Tenaska Washington Partners II, L.P.'s FERC Electric Rate Schedule No. 1.

Comment date: April 28, 1998, in accordance with Standard Paragraph E at the end of this notice.

7. Central Illinois Light Company

[Docket No. ER98–2487–000]

Take notice that on April 8, 1998, Central Illinois Light Company (CILCO), 300 Liberty Street, Peoria, Illinois 61602, tendered for filing with the Commission a substitute Index of Point-To-Point Transmission Service Customers under its Open Access Transmission Tariff and service agreements for two new customers, Merchant Energy Group of the Americas, Inc., and Columbia Power Marketing Corporation.

CILCO requested an effective date of March 30, 1998.

Copies of the filing were served on the affected customers and the Illinois Commerce Commission.

Comment date: April 28, 1998, in accordance with Standard Paragraph E at the end of this notice.

8. Orange and Rockland Utilities, Inc.

[Docket No. ER98–2488–000]

Take notice that on April 8, 1998 Orange and Rockland Utilities, Inc. (Orange and Rockland), filed a Service Agreement between Orange and Rockland and VTEC Energy, Inc., (Customer). This Service Agreement specifies that Customer has agreed to the rates, terms and conditions of Orange and Rockland Open Access Transmission Tariff filed on July 9, 1996 in Docket No. OA96–210–000.

Orange and Rockland requests waiver of the Commission's sixty-day notice requirements and an effective date of March 24, 1998, for the Service Agreement. Orange and Rockland has served copies of the filing on The New York State Public Service Commission and on the Customer.

Comment date: April 28, 1998, in accordance with Standard Paragraph E at the end of this notice.

9. Wisconsin Electric Power Company

[Docket No. ER98–2489–000]

Take notice that on April 8, 1998, Wisconsin Electric Power Company (Wisconsin Electric), tendered for filing an electric service agreement under its Market Rate Sales Tariff (FERC Electric Tariff, Original Volume No. 8) with Tennessee Valley Authority (TVA). Wisconsin Electric respectfully requests an effective date April 9, 1998.

Copies of the filing have been served on TVA, the Michigan Public Service Commission, and the Public Service Commission of Wisconsin.

Comment date: April 28, 1998, in accordance with Standard Paragraph E at the end of this notice.

10. New York State Electric & Gas Corporation

[Docket No. ER98–2490–000]

Take notice that April 8, 1998, New York State Electric & Gas Corporation (NYSEG), filed Service Agreements between NYSEG and Columbia Power Marketing Corporation, PP&L, Inc., and Merchant Energy Group of the Americas, Inc., (Customers). These Service Agreements specify that the Customers have agreed to the rates, terms and conditions of the NYSEG open access transmission tariff filed and effective on June 11, 1997, in Docket No. OA97–571–000.

NYSEG requests waiver of the Commission's sixty-day notice requirements and an effective date of March 25, 1998, for the Service Agreements. NYSEG has served copies of the filing on The New York State Public Service Commission and on the Customers.

Comment date: April 28, 1998, in accordance with Standard Paragraph E at the end of this notice.

11. Consolidated Edison Energy, Inc.

[Docket No. ER98–2491–000]

Take notice that on April 8, 1998, Consolidated Edison Energy, Inc. (ConEdisonEnergy), tendered for filing a tariff authorizing ConEdisonEnergy to make sales of electric energy and capacity at market-based rates and for blanket approval of certain issuances of securities and assumptions of liability and the waiver of certain of the Federal Energy Regulatory Commission's Regulations under the Federal Power Act.

Comment date: April 28, 1998, in accordance with Standard Paragraph E at the end of this notice.

12. Ohio Edison Company and Pennsylvania Power Company

[Docket No. ER98–2492–000]

Take notice that on April 8, 1998, Ohio Edison Company tendered for filing on behalf of itself and Pennsylvania Power Company, a Service Agreement with Amoco Energy Trading Corporation under Ohio Edison's Power Sales Tariff. This filing is made pursuant to Section 205 of the Federal Power Act.

Comment date: April 28, 1998, in accordance with Standard Paragraph E at the end of this notice.

13. Idaho Power Company

[Docket No. ER98–2493–000]

Take notice that on April 8, 1998, Idaho Power Company (IPC), tendered for filing with the Federal Energy Regulatory Commission a Service Agreement under Idaho Power Company FERC Electric Tariff No. 6, Market Rate Power Sales Tariff, between Idaho Power Company and ConAgra Energy Services, Inc.

Comment date: April 28, 1998, in accordance with Standard Paragraph E at the end of this notice.

14. ESI Vansycle Partners, L.P.

[Docket No. ER98–2494–000]

Take notice that on April 8, 1998, ESI Vansycle Partners, L.P. (ESI Vansycle), petitioned the Commission for acceptance for filing of the power purchase agreement between ESI Vansycle and Portland General Electric Company and to accept the rates

thereunder as just and reasonable under Section 205(a) of the Federal Power Act, 16 U.S.C. § 824d(a); for the granting of certain blanket approvals, including the authority to sell electricity at market-based rates; and for the waiver of certain Commission regulations. ESI Vansycle is a limited partnership that proposes to engage in the wholesale sale of electric power in the state of Oregon and is headquartered in Florida.

Comment date: April 28, 1998, in accordance with Standard Paragraph E at the end of this notice.

15. Nevada Power Company

[Docket No. OA97–2–001]

Take notice that Nevada Power Company submitted revised standards of conduct [1] under Order Nos. 889 *et seq.*[2] The revised standards were submitted in response to the Commission's January 15, 1998 order on standards of conduct. [3]

Comment date: April 28, 1998, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–10320 Filed 4–17–98; 8:45 am]

BILLING CODE 6717–01–P

[1] The revised standards were submitted on March 30, 1998.

[2] Open Access Same-Time Information System (Formerly Real-Time Information Network) and Standards of Conduct, 61 FR 21737 (May 10, 1996), FERC Stats. & Regs., Regulation Preambles January 1991–June 1996 ¶ 31,035 (April 24, 1996); Order No. 889–A, *order on rehearing,* 62 FR 12484 (March 14, 1997), III FERC Stats. & Regs. ¶ 31,049 (March 4, 1997); Order No. 889–B, *rehearing denied,* 62 FR 64715 (December 9, 1997), 81 FERC ¶ 61,253 (November 25, 1997).

[3] Atlantic City Electric Company, *et al.*, 82 FERC ¶ 61,028 (1998). The Commission granted Nevada Power an extension of time to file its revised standards by notice dated February 26, 1998.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. DR98–55–000, et al.]

Entergy Gulf States, Inc., et al.; Electric Rate and Corporate Regulation Filings

April 14, 1998.

Take notice that the following filings have been made with the Commission:

1. Entergy Gulf States, Inc.

[Docket No. DR98–55–000]

Take notice that on April 10, 1998, Entergy Services, Inc. (ESI), filed on behalf of its affiliate, Entergy Gulf States, Inc. (Company) an Application for approval of certain changes in Company's depreciation rates pursuant to Section 302 of the Federal Power Act and Rule 204 of the Commission's Rules of Practice and Procedure. The proposed changes of the Company's depreciation rates are required in order to implement an Order of the Louisiana Public Service Commission, issued on March 19, 1998, directing a change in the Company's depreciation rates effective February 19, 1998.

Comment date: May 13, 1998, in accordance with Standard Paragraph E at the end of this notice.

2. Illinois Power Company

[Docket No. ER98–2246–000]

Take notice that on April 9, 1998, Illinois Power Company (Illinois Power), filed to withdraw its March 19, 1998, filing to revise its Index of Customers for service agreements under Illinois Power's Open Access Transmission Tariff No. 8. Illinois Power will refile its revised Index of Customers using the redesignations issued in the Delegated Letter Order of September 5, 1997 for ER98–3678–000, *et al.*

The undersigned certifies that a copy of this filing is being mailed to each individual listed on the official service list in this proceeding.

Comment date: April 29, 1998, in accordance with Standard Paragraph E at the end of this notice.

3. ERI Enterprises, L.L.C.

[Docket No. ER98–2367–000]

Take notice that on April 9, 1998, ERI Enterprises, L.L.C., filed Rate Schedule No. 1, which was inadvertently omitted from the Application for authorization filed on March 31, 1998, in the above referenced proceeding.

Comment date: April 29, 1998, in accordance with Standard Paragraph E at the end of this notice.

4. Cobisa-Person Limited Partnership

[Docket No. ER98–2498–000]

Take notice that on April 9, 1998, Cobisa-Person Limited Partnership (Cobisa-Person), tendered for filing pursuant to Rule 205, 18 CFR 385.205, an application for an order accepting its rates of filing, determining rates to be just and reasonable, and granting certain waivers and pre-approvals.

Cobisa-Person has entered into a Power Purchase Agreement and an Interconnection Agreement with Public Service Company of New Mexico (PNM), to engage in wholesale capacity and energy sales to PNM from Cobisa-Person's approximately 140-megawatt generation facility to be constructed in Bernalillo County, New Mexico.

Comment date: April 29, 1998, in accordance with Standard Paragraph E at the end of this notice.

5. American Electric Power Service Corporation

[Docket No. ER98–2495–000]

Take notice that on April 9, 1998, the American Electric Power Service Corporation (AEPSC), tendered for filing executed service agreements under the Wholesale Market Tariff of the AEP Operating Companies (Power Sales Tariff). The Power Sales Tariff was accepted for filing effective October 10, 1997 and has been designated AEP Operating Companies' FERC Electric Tariff Original Volume No. 5. AEPSC respectfully requests waiver of notice to permit the service agreements to be made effective for service billed on and after March 16, 1998.

A copy of the filing was served upon the Parties and the State Utility Regulatory Commissions of Indiana, Kentucky, Michigan, Ohio, Tennessee, Virginia and West Virginia.

Comment date: April 29, 1998, in accordance with Standard Paragraph E at the end of this notice.

6. Puget Sound Energy, Inc.

[Docket No. ER98–2496–000]

Take notice that on April 9, 1998, Puget Sound Energy, Inc. (PSE), tendered for filing, changes in PSE's Supplement to Rate Schedule FERC No. 1, and a letter agreement, dated April 1, 1998, (the Agreement), between PSE and Duke Energy Marketing and Trading, L.L.C. (DETM).

PSE states that the Agreement relates to the purchase and sale of economy energy service and firm system capacity/energy sale or exchange service by PSE to DETM under the Western Systems Power Pool Agreement (WSPP Agreement). PSE has requested the Commission to find that the Agreement

is a service agreement under the WSPP Agreement and is therefore not required to be filed.

A copy of the filing was served upon DETM.

Comment date: April 29, 1998, in accordance with Standard Paragraph E at the end of this notice.

7. Allegheny Power Service Corp., on Behalf of Monongahela Power Co., The Potomac Edison Company, and West Penn Power Company (Allegheny Power)

[Docket No. ER98–2497–000]

Take notice that on April 9, 1998, Allegheny Power Service Corporation on behalf of Monongahela Power Company, The Potomac Edison Company and West Penn Power Company (Allegheny Power), filed Supplement No. RT–1 to add Central Electric Cooperative, Inc.'s pilot program Customers to Allegheny Power Open Access Transmission Tariff which includes a Retail Transmission Supplement. Allegheny Power requests a waiver of notice requirements and asks the Commission to honor the proposed effective date of April 1, 1998 as specified in the agreement negotiated by the parties.

Copies of the filing have been provided to the Public Utilities Commission of Ohio, the Pennsylvania Public Utility Commission, the Maryland Public Service Commission, the Virginia State Corporation Commission, the West Virginia Public Service Commission.

Comment date: April 29, 1998, in accordance with Standard Paragraph E at the end of this notice.

8. Central Power and Light Company, West Texas Utilities Company, Public Service Company of Oklahoma, Southwestern Electric Power Company

[Docket No. ER98–2500–000]

Take notice that on April 9, 1998, Central Power and Light Company, Public Service Company of Oklahoma, Southwestern Electric Power Company and West Texas Utilities Company (collectively, the CSW Operating Companies), tendered for filing a service agreement establishing Illinois Power Company (Illinois) as a customer under the CSW Operating Companies' market based rate power sales tariff. The CSW Operating Companies request an effective date of March 12, 1998, for the service agreement and, accordingly, seek waiver of the Commission's notice requirements.

The CSW Operating Companies state that a copy of the filing was served on Illinois.

Comment date: April 29, 1998, in accordance with Standard Paragraph E at the end of this notice.

9. West Texas Utilities Company

[Docket No. ER98–2501–000]

Take notice that on April 9, 1998, West Texas Utilities Company (WTU), submitted for filing a service agreement between WTU and Midwest Electric Cooperative, Inc., (Midwest). Pursuant to the service agreement, WTU will provide full-requirements service under its WPC Tariff to Midwest load at four additional points of delivery.

WTU seeks an effective date of May 1, 1998 and accordingly, seeks waiver of the Commission's notice requirements. WTU has served copies of the filing on Midwest and the Public Utility Commission of Texas.

Comment date: April 29, 1998, in accordance with Standard Paragraph E at the end of this notice.

10. Consolidated Edison Company of New York, Inc.

[Docket No. ER98–2503–000]

Take notice that on April 9, 1998, Consolidated Edison Company of New York, Inc. (Con Edison), tendered for filing a service agreement to provide non-firm transmission service pursuant to its Open Access Transmission Tariff to VTEC Energy, Inc., (VTEC).

Con Edison states that a copy of this filing has been served by mail upon VTEC.

Comment date: April 29, 1998, in accordance with Standard Paragraph E at the end of this notice.

11. Orange and Rockland Utilities, Inc.

[Docket No. ER98–2502–000]

Take notice that on April 8, 1998, Orange and Rockland Utilities, Inc. (O&R), tendered for filing pursuant to Part 35 of the Federal Energy Regulatory Commission's Rules of Practice and Procedure, 18 CFR 35, a service agreement under which O&R will provide capacity and/or energy to Consolidated Edison Company of New York, Inc. (Con Edison).

O&R requests waiver of the notice requirement so that the service agreement with Coastal becomes effective as of April 1, 1998.

O&R has served copies of the filing on The New York State Public Service Commission and Con Edison.

Comment date: April 28, 1998, in accordance with Standard Paragraph E at the end of this notice.

12. Consolidated Edison Company of New York, Inc.

[Docket No. ER98–2504–000]

Take notice that on April 9, 1998, Consolidated Edison Company of New York, Inc. (Con Edison), tendered for filing a service agreement to provide non-firm transmission service pursuant to its Open Access Transmission Tariff to The Eastern Group (Eastern).

Con Edison states that a copy of this filing has been served by mail upon Eastern.

Comment date: April 29, 1998, in accordance with Standard Paragraph E at the end of this notice.

13. Florida Power & Light Company

[Docket No. ER98–2505–000]

Take notice that on April 9, 1998, Florida Power & Light Company (FPL), filed Service Agreements with Southern Company Energy Marketing L.P., American Electric Power Service Corporation and Florida Municipal Power Agency for service pursuant to Tariff No. 1 for Sales of Power and Energy by Florida Power & Light. In addition, FPL filed Service Agreements with Southern Company Energy Marketing L.P., and American Electric Power Service Corporation for service pursuant to FPL's Market Based Rates Tariff. FPL requests that the Service Agreements be made effective on March 11, 1998.

Comment date: April 29, 1998, in accordance with Standard Paragraph E at the end of this notice.

14. Houston Lighting & Power Company

[Docket No. ER98–2506–000]

Take notice that on April 9, 1998, Houston Lighting & Power Company (HL&P), tendered for filing an executed transmission service agreement (TSA) with OGE Energy Resources, Inc. (OGE), for Non-Firm Transmission Service under HL&P's FERC Electric Tariff, Third Revised Volume No. 1, for Transmission Service To, From and Over Certain HVDC Interconnections. HL&P has requested an effective date of April 9, 1998.

Copies of the filing were served on OGE and the Public Utility Commission of Texas.

Comment date: April 29, 1998, in accordance with Standard Paragraph E at the end of this notice.

15. Northeast Utilities Service Company

[Docket No. ER98–2507–000]

Take notice that on April 9, 1998, Northeast Utilities Service Company (NUSCO), tendered for filing on behalf of its operating affiliates, The Connecticut Light and Power Company

(CL&P), Western Massachusetts Electric Company (WMECO) and Holyoke Water Power Company (including Holyoke Power and Electric Company) (HWP), pursuant to Section 35.15 ad Section 131.53 of the Commission's Regulations a Notice of Termination of Assignment of the following rate schedule supplements:

Supplement No. 4 to Rate Schedule FERC No. CL&P 534
Supplement No. 4 to Rate Schedule FERC No. WMECO 428
Supplement No. 4 to Rate Schedule FERC No. HWP 65

NUSCO requests that such terminations be made effective as of May 1, 1998.

NUSCO states that copies of its submission have been mailed or delivered to the City of Chicopee Municipal Lighting Plant, the Connecticut Municipal Electric Energy Cooperative and the Massachusetts Department of Telecommunications and Energy.

Comment date: April 29, 1998, in accordance with Standard Paragraph E at the end of this notice.

16. Duquesne Light Company

[Docket No. ER98–2509–000]

Take notice that April 6, 1998, Duquesne Light Company (DLC), filed a Service Agreement dated April 6, 1998 with PG&E Energy Trading-Power L.P. under DLC's Open Access Transmission Tariff (Tariff). The Service Agreement adds PG&E Energy Trading-Power L.P., as a customer under the Tariff. DLC requests an effective date of April 6, 1998, for the Service Agreement.

Comment date: April 29, 1998, in accordance with Standard Paragraph E at the end of this notice.

17. Rochester Gas and Electric Corporation

[Docket No. ER98–2510–000]

Take notice that on April 9, 1998, Rochester Gas and Electric Corporation (RG&E), filed a Service Agreement between RG&E and the Energetix (Customer). This Service Agreement specifies that the Customer has agreed to the rates, terms and conditions of the RG&E open access transmission tariff filed on July 9, 1996 in Docket No. OA96–141–000.

RG&E requests waiver of the Commission's sixty (60) day notice requirements and an effective date of March 2, 1998, for the Energetix Service Agreement. RG&E has served copies of the filing on the New York State Public Service Commission and on the Customer.

Comment date: April 29, 1998, in accordance with Standard Paragraph E at the end of this notice.

18. Interstate Power Company

[Docket No. ER98–2511–000]

Take notice that on April 9, 1998, Interstate Power Company (IPW), tendered for filing a Network Transmission Service between IPW and Wisconsin Power and Light (WPL). Under the Service Agreement, IPW will provide Network Integration Transmission Service to WPL for the City of Guttenberg.

Comment date: April 29, 1998, in accordance with Standard Paragraph E at the end of this notice.

19. Interstate Power Company

[Docket No. ER98–2512–000]

Take notice that on April 9, 1998, Interstate Power Company (IPW), tendered for filing a Network Transmission Service between IPW and McGregor Municipal Utilities (McGregor). Under the Service Agreement, IPW will provide Network Integration Transmission Service to McGregor.

Comment date: April 29, 1998, in accordance with Standard Paragraph E at the end of this notice.

20. Duquesne Light Company

[Docket No. ER98–2513–000]

Take notice that on April 9, 1998, Duquesne Light Company (DLC), filed a Service Agreement dated April 6, 1998 with Amoco Energy Trading Corp., under DLC's FERC Coordination Sales Tariff (Tariff). The Service Agreement adds Amoco Energy Trading Corp., as a customer under the Tariff. DLC requests an effective date of April 6, 1998, for the Service Agreement.

Comment date: April 29, 1998, in accordance with Standard Paragraph E at the end of this notice.

21. Duquesne Light Company

[Docket No. ER98–2514–000]

Take notice that April 9, 1998, Duquesne Light Company (DLC), filed a Service Agreement dated April 6, 1998, with Amoco Energy Trading Corp., under DLC's Open Access Transmission Tariff (Tariff). The Service Agreement adds Amoco Energy Trading Corp., as a customer under the Tariff. DLC requests an effective date of April 6, 1998, for the Service Agreement.

Comment date: April 29, 1998, in accordance with Standard Paragraph E at the end of this notice.

22. PacifiCorp Power Marketing, Inc.

[Docket No. ER98–2515–000]

Take notice that on April 6, 1998, PacifiCorp Power Marketing, Inc. (PPM), tendered for filing a letter on behalf of the Executive Committee on the Western Systems Power Pool (WSPP) indicating that PPM had completed all the steps for pool membership. PPM requests that the Commission amend the WSPP Agreement to include it as a member.

PPM requests an effective date of April 17, 1998, for the proposed amendment. Accordingly, PPM requests waiver of the Commission's notice requirements for good cause shown.

Copies of the filing were served upon the WSPP Executive Committee and WSPP's General Counsel.

Comment date: April 29, 1998, in accordance with Standard Paragraph E at the end of this notice.

23. EnergyEXPRESS, Inc.

[Docket No. ER98–2516–000]

Take notice that on April 9, 1998, EnergyEXPRESS, Inc., tendered for filing a Notice of Cancellation of Electric Rate Schedule FERC No. 1, to become effective June 8, 1998.

Comment date: April 29, 1998, in accordance with Standard Paragraph E at the end of this notice.

24. PacifiCorp

[Docket No. ES98–24–000]

Take notice that on March 17, 1998, PacifiCorp filed its application with the Federal Energy Regulatory Commission, pursuant to Section 204 of the Federal Power Act, seeking an order either authorizing PacifiCorp (1) to issue and sell its short-term commercial paper in the U.S. or overseas from time to time through April 30, 2000, in aggregate principal amounts outstanding not to exceed $1.5 billion at any one time and (2) to issue its short-term promissory notes to and borrow from commercial banks under revolving credit agreements, from time to time through April 30, 2000, in an aggregate principal amount not to exceed $1.5 billion outstanding at any one time; provided that the aggregate principal amount of commercial paper and borrowings under the credit agreements not exceed $1.5 billion outstanding at any one time.

Comment date: May 13, 1998, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission,

888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–10319 Filed 4–17–98; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 11561 Alaska]

Alaska Village Electric Cooperative; Notice of Intent To Conduct Environmental Scoping Meetings and a Site Visit

April 14, 1998.

The Energy Policy Act of 1992 allows applicants to prepare their own Environmental Assessment (EA) for hydropower projects and file it with the Federal Energy Regulatory Commission (Commission) along with their license application as part of the applicant-prepared EA (APEA) process. The Alaska Village Electric Cooperative (AVEC) intends to prepare an EA to file with the Commission for the proposed Old Harbor Hydroelectric Project, No. 11561. AVEC will hold two scoping meetings, pursuant to the National Environmental Policy Act (NEPA) of 1969, to identify the scope of environmental issues that should be analyzed in the EA.

Scoping Meetings

The times and locations of the two scoping meetings are:

Public meeting	Agency meeting
Date: Tuesday, May 12, 1998. Place: City Hall, Old Harbor, Alaska.	Time: 7:00 p.m. Thursday, May 14, 1998, Division of Seniors Conference Room, 3601 C Street, Suite 310A, (Frontier Building), Anchorage, Alaska, 9:00 a.m.

At the scoping meetings, AVEC will: (1) summarize the environmental issues tentatively identified for analysis in the EA; (2) outline any resources they believe would not require a detailed analysis; (3) identify reasonable alternatives to be addressed in the EA; (4) solicit from the meeting participants all available information, especially quantitative data, on the resources at issues; and (5) encourage statements from experts and the public on issues that should be analyzed in the EA.

All interested individuals, organizations, and agencies are invited and encouraged to attend either or both meetings to assist in identifying and clarifying the scope of environmental issues that should be analyzed in the EA.

To help focus discussions at the meetings, AVEC prepared and distributed an Initial State Consultation Document (ISCD) on November 13, 1997, and a Scoping Document on April 10, 1998. Copies of the ISCD and the Scoping Document can be obtained by calling Daniel Hertrich of Polarconsult Alaska, Inc., AVEC's agent, at (907) 258–2420. Copies of both documents will also be available at both scoping meetings.

Site Visit

For those who intend to participate in scoping, AVEC will also conduct a site visit to the proposed Old Harbor Project on Tuesday, May 12, 1998. Those attending must meet at the Sitkalidak Lodge in Old Harbor, Alaska at 10:00 A.M. We will promptly leave for the project site, via helicopter. Those being shuttled by helicopter to the project site may need to sign a waiver of liability regarding helicopter use. Because of the remoteness and difficulty of ground access at the project site, those attending the site visit should be physically fit and must wear appropriate clothing and footgear. The site visit should be completed by 4:30 P.M. Participants must provide their own sack lunches.

To plan on helicopter use in advance of the visit, AVEC must identify the number of individuals interested in the site visit. Therefore, if you intend on visiting the proposed project site, you must register with Daniel Hertrich at (907) 258–2420, no later than April 24, 1998. If inclement weather prevents a site visit on May 12, the alternate date will be May 13 at the same time and location.

Meeting Procedures

The meetings will be conducted according to the procedures used at Commission scoping meetings. Because this meeting will be a NEPA scoping meeting under the APEA process, the Commission will not conduct a NEPA scoping meeting after the application and draft EA are filed with the Commission.

Both scoping meetings will be recorded by a stenographer or tape recorder, and will become part of the formal record of the proceedings for this project.

Those who choose not to speak during the scoping meetings may instead submit written comments on the project. Written comments must be submitted by June 15, 1998, and should be mailed to: Mr. Daniel Hertrich, Polarconsult Alaska, Inc., 1503 West 33rd Avenue, Suite 310, Anchorage, Alaska 99503. All correspondence should show the following caption on the first page:

Scoping Comments, Old Harbor Hydroelectric Project, No. 11561, Alaska

For further information please contact Daniel Hertrich at (907) 258–2420, or E-mail at Dan Hertrich <polarak@Alaska.NET>, or Nan Allen of the Commission at (202) 219–2938, or E-mail at nan.allen@ferc.fed.us.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–10294 Filed 4–17–98; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5999–4]

Agency Information Collection Activities: Submission for OMB Review; Comment Request; Reporting and Recordkeeping Requirements Under EPA's AgSTAR Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces

that the following Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval: ''Reporting and Recordkeeping Requirements under EPA's AgSTAR Program,'' OMB Control Number 2060–0329 and expiration date 6/30/98. The ICR describes the nature of the information collection and its expected burden and cost; where appropriate, it includes the actual data collection instrument.

DATES: Comments must be submitted on or before May 20, 1998.

FOR FURTHER INFORMATION CONTACT: Contact Sandy Farmer at EPA by phone at (202) 260–2740, by email at farmer.sandy@epamail.epa.gov, or download off the Internet at http://www.epa.gov/icr and refer to EPA ICR No. 1735.02.

SUPPLEMENTARY INFORMATION:

Title: ''Recordkeeping and Reporting Requirements under EPA's AgSTAR Program.'' (OMB Control No. 2090–0329; EPA ICR No. 1735.02) expiring 6/30/98. This is a request for extension of a currently approved collection.

Abstract: AgSTAR is an EPA-sponsored, voluntary program that encourages livestock producers to implement methane recovery technologies to increase livestock production profit margins and reduce emissions from manure methane, a greenhouse gas. AgSTAR further encourages utilities, regulatory agencies and universities to support and promote the use of methane recovery technologies. The program organization consists of two types of AgSTAR participants: ''Partners'' and ''Allies.'' AgSTAR Partners, who are primarily livestock producers, agree to survey and install methane recovery technologies, if profitable. AgSTAR Allies, which are primarily utilities and marketers of methane recovery systems or members of related associations, work with EPA to increase awareness of methane reduction technologies and provide information on products and services.

For AgSTAR Partners, participation in the AgSTAR program begins with completion and submittal to EPA of a Memorandum of Understanding (MOU), which provides information on the AgSTAR Partner and its operations and outlines the responsibilities of the AgSTAR Partner and EPA. The MOU commits an AgSTAR Partner to survey all of its facilities and consider the full set of technical, operational, and procedural options that maximize on-farm profits and minimize methane emissions. The Partner further agrees to consider installing methane recovery technologies within three years of signing the MOU, if such technologies are expected to be profitable. As a program participant, the Partner submits an Annual Report describing improvements made to demonstrate the benefits of methane recovery systems. In addition, the AgSTAR Partner agrees to make appropriate use of EPA-developed materials and inform EPA of any changes or problems with the program.

As mentioned above, agricultural and energy industries, energy regulatory offices, universities, and electric utilities may choose to become Allies of the AgSTAR program. Ally participation also begins with completion and submittal of an MOU. The MOU commits the Ally to providing information for the development of AgSTAR methane recovery systems. In addition, Allies work with EPA to increase awareness of methane emissions recovery systems and to promote and provide technical support to Partners. Specifically, Allies agree to provide case studies of successful methane emissions reduction systems. Allies also agree to consider developing promotional and educational documents for Partners. Allies must also obtain EPA approval for the use of EPA-developed materials or reproduction of materials bearing the AgSTAR logo.

EPA needs to collect information to establish program participation and to obtain general information on AgSTAR participants. EPA also uses the information collection to evaluate a Partner's progress and performance, and assess overall program results. Participation in the AgSTAR program is voluntary. AgSTAR Partners may designate information submitted under this ICR as confidential business information. EPA will treat all such information as confidential business information and will not make the company or agency-specific information collected under this ICR available to the general public. 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 **Federal Register** Notice required under 5 CFR 1320.8(d), soliciting comments on this collection of information was published on 12/20/97; No comments were received.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 2.3 hours per AgSTAR Partner and 2.2 hours per AgSTAR Ally. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Livestock Producers (Partners) and Utilities/Marketers of Methane Recovery Systems or related association members (Allies).

Estimated Number of Respondents: 75 Partners and 86 Allies.

Frequency of Response: varies.

Estimated Total Annual Hour Burden: 181 for Partners and 194 for Allies.

Estimated Total Annualized Cost Burden: $500 for Partners and Allies combined.

Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques to the following addresses. Please refer to EPA ICR No. 1735.02 and OMB Control No. 2060–0329 in any correspondence.

Ms. Sandy Farmer, U.S. Environmental Protection Agency, OPPE Regulatory Information Division (2137), 401 M Street, SW, Washington, DC 20460;

and

Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for EPA, 725 17th Street, NW, Washington, DC 20503.

Dated: April 14, 1998.

Joseph Retzer,

Director, Regulatory Information Division.

[FR Doc. 98–10396 Filed 4–17–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5998–6]

Notice of Intent To Prepare an Environmental Assessment for the Clear Lake Basin 2000 Project, Lake County, CA

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of intent to prepare a draft environmental assessment and hold a scoping meeting to examine the proposed construction and operation of wetlands supplied by wastewater effluent from Lake County's Northwest Regional Wastewater Treatment Plant at Lakeport, California.

SUMMARY: In accordance with the National Environmental Policy Act, EPA has identified a need to prepare a draft environmental assessment and therefore issues this document.

Background

The Lake County Sanitation District (LACOSAN) has initiated a series of actions to improve the wastewater collection, treatment, and disposal facilities that it operates in the Clear Lake Basin of Lake County. These sets of actions are known collectively as Clear Lake Basin 2000, and include: water conservation/demand measures; improvements to existing wastewater collection and treatment systems; and improvements and modifications to effluent disposal methods. The overall objective is elimination of wastewater stresses to the Clear Lake watershed, and where possible, use of recycled wastewater for purposes of watershed restoration. The proposed action covered by this notice of intent includes two sub-projects of the Clear Lake Basin 2000 program initiative. The two projects are: (1) Lyons Creek wetlands and flow control facility; and (2) Nice-Burns Valley wetlands and pipeline. Each of these is more specifically described as follows:

1. Lyons Creek Wetlands & Flow Control Facility

This proposed component includes six wetland sites totaling 90 acres, and a flow control facility (FCF) required for supplying wastewater effluent to the wetlands. The activity is located in the Lyons Creek sub-watershed of the Clear Lake watershed. The wetlands will be constructed by creating levees in existing dry channels, and grading and shaping to create inter-mixed areas of deep water and shallow marsh habitat. A mix of open water/emergent marsh will be established to provide preferred habitat for a broad variety of wetland-dependent birds and mammals. Treated effluent will be stored and conveyed to the wetlands via the FCF and distribution pipelines, respectively, and introduced to the wetland cells through buried pipes into deep water and inlet zones. During effluent application periods (primarily the summer months) these wetlands will be hydraulically loaded at rates that are balanced by the on-site losses of water through evaporation and transpiration by wetland vegetation. There will be no surface releases of treated effluent, consistent with the requirements of the State of California Regional Water Quality Control Board. During wet periods, effluent application will cease and stormwater flows will be allowed to accumulate in the wetland cells, providing flood detention and water quality improvement prior to release to downstream waters. The FCF is required to store effluent during the winter periods when high effluent flows are experienced, and effluent use by the wetlands is not possible. The FCF will have a capacity of approximately 2,300 acre-feet. Current storage at LACOSAN's Northwest Treatment Plant is insufficient to store effluent during extreme wet winters. The FCF will also provide a means to provide continuous summer flows to the wetlands, when water use demands are highest and effluent flows may be insufficient to sustain plant and aquatic life.

2. Nice-Burns Valley Wetlands & Pipeline

This proposed component includes 10 wetland sites totaling 176 acres, and a pipeline required for supplying wastewater effluent to the wetlands. The activity is located in a corridor that roughly parallels the northern shore of Clear Lake. The wetland sites are located along the corridor, beginning on the west near the community of Nice, and ending on the east in the Burns Valley sub-watershed. The pipeline will begin at LACOSAN's Northwest Treatment Plant, where effluent will be available, and will terminate at LACOSAN's Southeast Treatment Plant, which is located in the Burns Valley sub-watershed. As with the Lyons Creek component, the wetlands will be constructed by creating levees in existing dry channels, and grading and shaping to create inter-mixed areas of deep water and shallow marsh habitat. A mix of open water/emergent marsh will be established to provide preferred habitat for a broad variety of wetland-dependent birds and mammals. Treated effluent will be conveyed to the wetlands in the pipeline, and introduced to the wetland cells through buried pipes into deep water and inlet zones. During effluent application periods (primarily the summer months) the wetlands will be hydraulically loaded at rates that are balanced by the on-site losses of water through evaporation and transpiration by wetland vegetation. Any water not utilized by the wetlands will be returned to the effluent pipeline for reuse at another site. In this way there will be no surface releases of treated effluent, consistent with the requirements of the State of California Regional Water Quality Control Board. During wet periods, effluent application will cease and stormwater flows will be allowed to accumulate in the wetland cells, providing flood detention and water quality improvement prior to release to downstream waters. The effluent pipeline, and two pump stations, are required to convey the stored effluent from LACOSAN's Northwest Treatment Plant to the wetland sites, and to receive operational transfers from the wetlands for reuse at another wetland site. The pipeline will be 16 inches in diameter, and will begin at a pump station located at the Northwest Treatment Plant. From the Northwest Treatment Plant, the pipeline will extend approximately 19 miles along the north shore of Clear Lake to an intermediate booster pump station located near the Clearlake Oaks effluent disposal ponds. From the booster pump station, the pipeline will extend south and east approximately two miles through public and private rights-of-way, and terminate at LACOSAN's Southeast Treatment Plant. Allowable pipe materials will include both ductile iron and PVC. It will be installed at depths appropriate for the adjacent buried utilities and traffic conditions (typically 3 to 4 feet of cover). The pump stations will consist of multiple vertical turbine or horizontal split-case pumps with automatic controls to stop the flow in the event of an emergency. Pump controls and electrical equipment will be located in a building to protect them from the elements and reduce noise impacts. Depending upon final design, surge tanks or other surge facilities will be located adjacent to the pump stations. Pump operating conditions and control data will be transmitted to LACOSAN's computer system for monitoring and automatic/operator control of the pumps.

All of the proposed actions covered by this notice of intent, except the wetlands proposed for the Nice-Burns Valley corridor, have been evaluated in an environmental impact report (EIR)

prepared and certified by LACOSAN in 1997 pursuant to the California Environmental Quality Act (CEQA). A portion of the effluent pipeline alignment between Clearlake Oaks and LACOSAN's Southeast Regional Wastewater Treatment Plant has also been evaluated in a previous CEQA document prepared by the Clearlake Oaks County Water District in 1997. The environmental assessment covered by this notice will incorporate information and findings from both previous environmental documents where relevant and appropriate.

ALTERNATIVES

The alternatives to be evaluated in the environmental assessment include:

1. The proposed action as described above. The proposed action is based on two previous alternatives analyses: (a) Alternative effluent disposal methods examined in LACOSAN's previous EIR for improvements to the Northwest Regional Wastewater Treatment Plant; and (b) an evaluation of alternative wetland sites in the Lyons Creek and Nice-Burns Valley project areas prepared by LACOSAN in 1998 during project planning.

2. Construction and operation of the FCF and effluent pipeline without the establishment of associated wetlands.

3. No action.

Scoping Process

The scope consists of a range of proposed actions and their potential impact on the surrounding community to be considered in the environmental assessment. It is the intent that there shall be an early and open process for determining the scope of issues to be addressed and for identifying the significant environmental issues related to the proposed action. Although scoping meetings are not required for environmental assessments, EPA and LACOSAN will hold a public scoping meeting on Friday, May 29, 1998, at 1:00 PM in the Lake County Board of Supervisors Chambers, Lake County Courthouse, 255 N. Forbes Street, Lakeport, CA. At this meeting the public will be invited to present issues and concerns they would like to see addressed in the environmental assessment.

Proposed Date of release

The draft environmental assessment is scheduled for release in October 1998.

Responsible Official

Felicia Marcus, Regional Administrator, U.S. Environmental Protection Agency, Region 9.

FOR FURTHER INFORMATION CONTACT: Mark Dellinger, Resources Manager/ Project Manager, Lake County Sanitation District, 230A Main Street, Lakeport, CA 95453, telephone 707/ 263–2273, e-mail mark—d@co.lake.ca.us; or Kristin Gullatt, U.S. EPA, Region 9, 75 Hawthorne Street, Mail Code WTR–10, San Francisco, CA 94105, telephone 415/744–1937, e-mail Gullatt.Kristin@epamail.epa.gov.

Mike Schulz,

Acting Director, Region 9, Water Division.

[FR Doc. 98–10223 Filed 4–17–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5998–7]

Notice of Proposed Revisions to the Approved Program To Administer the National Pollutant Discharge Elimination System Permitting Program in New York Resulting in Part From Adoption of the Water Quality Guidance for the Great Lakes System

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Notice is hereby given that the Environmental Protection Agency (EPA) has received for review and approval revisions to the National Pollutant Discharge Elimination System (NPDES) program in New York. Most of the proposed revisions were adopted to comply with section 118(c) of the Clean Water Act and 40 CFR 132.4, although in some cases, the State has also proposed revisions that are not related to those required by section 118(c) of the CWA and 40 CFR 132.4. EPA invites public comment on whether EPA should approve these revisions pursuant to 40 CFR 123.62 and 132.5.

DATES: Comments on whether EPA should approve the revisions to New York's NPDES program must be received in writing by May 20, 1998.

ADDRESSES: Written comments on these documents may be submitted to Kathleen C. Callahan, Director, Division of Environmental Planning and Protection, Attn: GLI Implementation Procedures, U.S. Environmental Protection Agency, 290 Broadway, New York, New York 10007. In the alternative, EPA will accept comments electronically. Comments should be sent to the following Internet E-mail address: jackson.wayne@epamail.epa.gov. Electronic comments must be submitted in an ASCII file avoiding the use of special characters and any form of encryption. EPA will print electronic comments in hard-copy paper form for the official administrative record. EPA will attempt to clarify electronic comments if there is an apparent error in transmission. Comments provided electronically will be considered timely if they are submitted electronically by 11:59 p.m. (Eastern time) May 20, 1998.

Interested persons may request a public hearing regarding whether EPA should approve, pursuant to 40 CFR 123.62, and 132.5(g), those portions of the States' submissions that revise the States' approved National Pollutant Discharge Elimination System (NPDES) permitting program. EPA will determine based on requests received if there is significant interest to warrant a public hearing.

FOR FURTHER INFORMATION CONTACT: Wayne Jackson, Community and Ecosystems Protection Branch, Division of Environmental Planning and Protection, U.S. Environmental Protection Agency, 290 Broadway, New York, New York, 10007, or telephone him at (212) 637–3807.

Copies of the rules adopted by New York, and other related materials submitted by the State in support of these revisions, are available for review at: EPA, Region 2, 290 Broadway, 24th Floor, New York, New York; and, NYSDEC, 50 Wolf Road, Room 310 C, Albany, New York. To access the docket material in New York, call Wayne Jackson at (212) 637–3807 between 8 a.m. and 4:30 p.m. (Eastern time) (Monday-Friday); in Albany, New York, call Teresa Deihsner at 518–457–7937 between 8 a.m. and 4:30 p.m. (Eastern time) (Monday-Friday).

SUPPLEMENTARY INFORMATION: On March 23, 1995, EPA published the Final Water Quality Guidance for the Great Lakes System (Guidance) pursuant to section 118(c)(2) of the Clean Water Act, 33 U.S.C. 1268(c)(2). (March 23, 1995, 60 FR 15366). The Guidance, which was codified at 40 CFR Part 132, requires the Great Lakes States to adopt and submit to EPA for approval water quality criteria, methodologies, policies and procedures that are consistent with the Guidance. 40 CFR 132.4. & 132.5. EPA is required to approve the State's submission within 90 days or notify the State that EPA has determined that all or part of the submission is inconsistent with the Clean Water Act or the Guidance and identify any necessary changes to obtain EPA approval. If the State fails to make the necessary changes within 90 days, EPA must publish a notice in the **Federal Register** identifying the approved and disapproved elements of the submission

and a final rule identifying the provisions of Part 132 that shall apply for discharges within the State.

The U.S. EPA received a submission from New York on February 27, 1998. The bulk of this submission consists of new, revised or existing water quality standards which EPA is reviewing for consistency with the Guidance in accordance with 40 CFR 131 and 132.5. EPA is not soliciting comments on the following portions of this submission: water quality criteria and methodologies, use designations, antidegradation, and 40 CFR Part 132, Appendix F: Implementation Procedures 1 (''Site Specific Modifications''); and 3 (''Addivity'') because those requirements constitute parts of the State's water quality standards, not its NPDES program. EPA also is not soliciting comment on the Guidance itself.

Instead, EPA is only requesting comment on whether it should approve, pursuant to 40 CFR 123.62, and 132.5(g), those portions of this submission that revise the State's approved National Pollutant Discharge Elimination System (NPDES) permitting program. These revisions generally relate to the following provisions of 40 CFR Part 132, Appendix F: Procedure 2 (''Variances''); Procedure 3 (''Total Maximum Daily Loads, Wasteload Allocations for Point Sources, Load Allocations for Nonpoint Sources, Wasteload Allocations in the Absence of a TMDL, and Preliminary Wasteload Allocations for Purposes of Determining the Need for Water Quality Based Effluent Limits''); Procedure 5 (''Reasonable Potential''); Procedure 6 (''Whole Effluent Toxicity''); Procedure 7 (''Loading Limits''); Procedure 8: (''Water Quality-based Effluent Limitations Below the Quantification Level''); and Procedure 9 (''Compliance Schedules'').

The revisions are found in the following: Technical Operational Guidance Series (TOGS) 1.2.1: Industrial Permit Drafting; TOGS 1.3.1: Procedures for developing TMDLs and Water Quality-based Effluent Limits; and TOGS 1.3.2: Toxicity Testing in the SPDES Program, a supplemental analysis to support the State's toxicity testing program as being as protective as the Guidance, 6 NYCRR § 702.17, and the Amended NPDES Memorandum of Agreement between NYSDEC and EPA Relating to the Implementation of the Requirements of the Great Lakes Water Quality Guidance in the Great Lakes Basin.

Under 40 CFR 123.62(b)(2) and 132.5(e), whenever EPA determines that a proposed revision to a State NPDES program is substantial, EPA must provide notice and allow public comment on the proposed revisions. The extent to which the States have modified their NPDES programs to be consistent with the Guidance varies significantly, depending on the extent to which their existing programs already were ''as protective as'' the implementation procedures in the Guidance. EPA has not conducted a State-by-State review of the submissions to ascertain for each state individually whether their changes constitute substantial program modifications. However, in light of the fact that the states have modified these programs in response to the explicit statutory mandate contained in section 118(c) of the Clean Water Act, EPA believes that it is appropriate to consider the NPDES component of the States' submission to be substantial program modifications, and therefore has decided to solicit public comment regarding those provisions.

Based on General Counsel Opinion 78–7 (April 18, 1978), EPA has long considered a determination to approve or deny a State NPDES program submission to constitute an adjudication because an ''approval'', within the meaning of the APA, constitutes a ''license'', which, in turn, is the product of an ''adjudication''. For this reason, the statutes and Executive Orders that apply to rulemaking action are not applicable here. Among these are provisions of the Regulatory Flexibility Act (RFA), 5 U.S.C. 601 *et seq.* Under the RFA, whenever a federal agency proposes or promulgates a rule under section 553 [of the Administrative Procedures Act (APA)], after being required by that section or any other law to publish a general notice of proposed rulemaking, the agency must prepare a regulatory flexibility analysis for the rule, unless the Agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. If the Agency does not certify the rule, the regulatory flexibility analysis must describe and assess the impact of a rule on small entities affected by the rule.

Even if the NPDES program modification were a rule subject to the RFA, the Agency would certify that approval of the State's modified program would not have a significant economic impact on a substantial number of small entities. EPA's action to approve an NPDES program modification merely recognizes revisions to the program which have already been enacted as a matter of State law; it would, therefore, impose no additional obligations upon those subject to the State's program. Accordingly, the Regional Administrator would certify that this program modification, even if a rule, would not have a significant economic impact on a substantial number of small entities.

William Muszynski,

Acting Regional Administrator, Region II.

[FR Doc. 98–10401 Filed 4–17–98; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1195–DR]

Florida; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Florida, (FEMA–1195–DR), dated January 6, 1998, and related determinations.

EFFECTIVE DATE: April 9, 1998.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3260.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of Florida, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of January 6, 1998:

Bay County for Public Assistance.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

Lacy E. Suiter,

Deputy Associate Director, Response and Recovery Directorate.

[FR Doc. 98–10337 Filed 4–17–98; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1209–DR]

Georgia; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Georgia, (FEMA–1209–DR), dated March 11, 1998, and related determinations.

EFFECTIVE DATE: April 9, 1998.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3260.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of Georgia, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of March 11, 1998:

Dekalb, Gwinnett, and Long Counties for Individual Assistance and Public Assistance.

Cobb, Effingham, Fulton, and Liberty Counties for Public Assistance (already designated for Individual Assistance).

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

Lacy E. Suiter,

Executive Associate Director, Response and Recovery Directorate.

[FR Doc. 98–10360 Filed 4–17–98; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1209–DR]

Georgia; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Georgia (FEMA–1209–DR), dated March 11, 1998, and related determinations.

EFFECTIVE DATE: April 8, 1998.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3260.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of Georgia is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of March 11, 1998:

Baldwin, Clayton, Cobb, Effingham, Forsyth, Fulton, Jones, Liberty, Lowndes, Newton and Twiggs Counties for Individual Assistance.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program)

Lacy E. Suiter,

Executive Associate Director, Response and Recovery Directorate.

[FR Doc. 98–10361 Filed 4–17–98; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1209–DR]

Georgia; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Georgia, (FEMA–1209–DR), dated March 11, 1998, and related determinations.

EFFECTIVE DATE: April 7, 1998.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3260.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of Georgia, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of March 11, 1998:

Henry and Spalding Counties for Individual Assistance.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

Lacy E. Suiter,

Executive Associate Director, Response and Recovery Directorate.

[FR Doc. 98–10362 Filed 4–17–98; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1207–DR]

Kentucky; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the Commonwealth of Kentucky, (FEMA–1207–DR), dated March 3, 1998, and related determinations.

EFFECTIVE DATE: April 7, 1998.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3260.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the Commonwealth of Kentucky, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of March 3, 1998:

The counties of Adair, Breathitt, Casey, Lincoln, Mercer, Nicholas, and Robertson for Public Assistance.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing

Program; 83.548, Hazard Mitigation Grant Program.)

Lacy E. Suiter,

Executive Associate Director, Response and Recovery Directorate.

[FR Doc. 98–10338 Filed 4–17–98; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1213–DR]

Federated States of Micronesia; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the Federated States of Micronesia (FEMA–1213–DR), dated April 3, 1998 and related determinations.

EFFECTIVE DATE: April 3, 1998.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3260.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated April 3, 1998, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*), as follows:

I have determined that the damage in certain areas of the Federated States of Micronesia, resulting from a severe drought beginning on January 25, 1998, and continuing is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, Pub. L. 93–288, as amended (''the Stafford Act''). I, therefore, declare that such a major disaster exists in the Federated States of Micronesia.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide emergency protective measures (Category B) under the Public Assistance program and Hazard Mitigation in the designated areas, and any other forms of assistance under the Stafford Act you may deem appropriate. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance or Hazard Mitigation will be limited to 75 percent of the total eligible costs.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint William L. Carwile, III of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the Federated States of Micronesia to have been affected adversely by this declared major disaster:

Emergency protective measures (Category B) for the following areas:

In the State of Yap: Eauripik, Elato, Fais, Faraulap, Ifalik, Lamotrek, Ngulu, Satawal, Ulithi, Wolei, and Yap Proper. In the State of Chuuk: Eot, Ettal, Fanapanges, Fefen, Fonanu, Fono, Houk, Kuttu, Lekinioch, Losap, Makur, Moch, Murillo, Nama, Namoluk, Nomwin, Oneop, Onou, Onoun, Paata, Parem, Piherach, Piis-Emwar, Polle, Polowat, Romanum, Ruo, Satowan, Siis, Ta, Tol, Tomatam, Tonoas, Udot, Uman, Unanu, and Wonei. In the State of Pohnpei, the areas of Kipingamarangi, Mwoakilloa, Nukuoro, Pingelap, and Sapwuahfik.

All islands and atolls in the Federated States of Micronesia are eligible to apply for assistance under the Hazard Mitigation Grant Program.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program)

James L. Witt,

Director.

[FR Doc. 98–10364 Filed 4–17–98; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1212–DR]

Minnesota; Amendment No. 4 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Minnesota (FEMA–1212–DR), dated April 1, 1998, and related determinations.

EFFECTIVE DATE: April 8, 1998.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3260.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of Minnesota is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of April 1, 1998:

The counties of Blue Earth and Nobles for Individual Assistance.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

Lacy E. Suiter,

Executive Associate Director, Response and Recovery Directorate.

[FR Doc. 98–10363 Filed 4–17–98; 8:45 am]

BILLING CODE 6718–02–P

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 May 15, 1998.

A. Federal Reserve Bank of Boston (Richard Walker, Community Affairs Officer) 600 Atlantic Avenue, Boston, Massachusetts 02106-2204:

1. New England Community Bancorp, Inc., Windsor, Connecticut; to become a bank holding company by acquiring 100 percent of the voting shares of Olde Port Bank & Trust Company, Portsmouth, New Hampshire.

B. Federal Reserve Bank of Philadelphia (Michael E. Collins, Senior Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105-1521:

1. Dauphin Bancorp, Harrisburg, Pennsylvania; to acquire 39.16 percent of the voting shares of First National Bank of Liverpool, Liverpool, Pennsylvania.

C. Federal Reserve Bank of Richmond (A. Linwood Gill III, Assistant Vice President) 701 East Byrd Street, Richmond, Virginia 23261-4528:

1. ECB Bancorp, Inc., Engelhard, North Carolina; to become a bank holding company by acquiring 100 percent of the voting shares of The East Carolina Bank, Engelhard, North Carolina.

D. Federal Reserve Bank of Atlanta (Lois Berthaume, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303-2713:

1. United Community Bancshares, Inc., Gonzales, Louisiana; to become a bank holding company by acquiring 100 percent of the voting shares of United Community Bank, Gonzales, Louisiana (in organization).

E. Federal Reserve Bank of San Francisco (Maria Villanueva, Manager of Analytical Support, Consumer Regulation Group) 101 Market Street, San Francisco, California 94105-1579:

1. InterWest Bancorp, Inc., Oak Harbor, Washington; to acquire 100 percent of the voting shares of Pacific Northwest Bank, Seattle, Washington.

2. InterWest Bancorp, Inc., Oak Harbor, Washington; to merge with Pioneer Bancorp, Inc., Yakima, Washington, and thereby indirectly acquire Pioneer National Bank, Yakima, Washington.

Board of Governors of the Federal Reserve System, April 15, 1998.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 98–10365 Filed 4–17–98; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Notice of Proposal to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities; Correction

This notice corrects a notice (FR Doc. 98-9668) published on page 18022 of the issue for Monday, April 13, 1998.

Under the Federal Reserve Bank of Kansas City heading, the entry for Southeast Capital Corp., Idabel, Oklahoma, is revised to read as follows:

A. Federal Reserve Bank of Kansas City (D. Michael Manies, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198-0001:

1. Southeast Capital Corp., and Southeast Capital Corp. ESOP, both of Idabel, Oklahoma; to engage *de novo* in community development activities through the leasing of real property to the State of Oklahoma, pursuant to § 225.28(b)(12)(i) of the Board's Regulation Y.

Comments on this application must be received by April 28, 1998.

Board of Governors of the Federal Reserve System, April 15, 1998.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 98–10366 Filed 4–17–98; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y, (12 CFR Part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than May 5, 1998.

A. Federal Reserve Bank of Richmond (A. Linwood Gill III, Assistant Vice President) 701 East Byrd Street, Richmond, Virginia 23261-4528:

1. Wachovia Corporation, Winston-Salem, North Carolina (''Company''); to engage *de novo* through its subsidiary, Wachovia Capital Markets, Inc., Winston-Salem, North Carolina, in certain nonbanking activities, including the following: underwriting and dealing in securities such as: municipal revenue bonds and asset-backed and mortgage-related securities, defined as obligations secured by or representing an interest in 1-4 family residential real estate. *See Citicorp*, 73 Fed. Res. Bull. 473 (1987), as modified; *J.P. Morgan & Co.*, 75 Fed. Res. Bull. (1989) as modified.

In addition, the Company intends to engage in the following securities and other financial activities: making, acquiring and servicing loans or other extensions of credit, pursuant to § 225.28(b)(1) of Regulation Y; and in activities related to extending credit, pursuant to § 225.28(b)(2) of Regulation Y; leasing personal or real property or acting as agent, broker or adviser in leasing such property if the lease is on a nonoperating basis, pursuant to § 225.28(b)(3) of Regulation Y; performing functions and activities that may be performed by a trust company (including activities of a fiduciary, agency, or custodial nature), pursuant to § 225.28(b)(5) of Regulation Y; acting as an investment or financial advisor, pursuant to § 225.28(b)(6) of Regulation Y; providing securities brokerage services (including securities clearing and/or securities execution services on an exchange), whether alone or in combination with investment advisory services, and incidental activities (including related securities credit activities and custodial services), pursuant to § 225.28(b)(7)(i) of Regulation Y; buying and selling in the secondary market all types of securities on the order of customers as ''riskless principal,'' pursuant to § 225.28(b)(7)(ii) of Regulation Y; acting as agent for the private placement of various types of securities, pursuant to § 225.28(b)(7)(iii) of Regulation Y; and in investment transactions as principal including underwriting and dealing in bank-eligible securities, pursuant to § 225.28(b)(8) of Regulation Y; and providing management consulting

advice, pursuant to § 225.28(b)(9) of Regulation Y.

Board of Governors of the Federal Reserve System, April 15, 1998.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 98–10367 Filed 4–17–98; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL TRADE COMMISSION

Granting of Request for Early Termination of the Waiting Period under the Premerger Notification Rules

Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by Title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Federal Trade Commission and the Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the **Federal Register**.

The following transactions were granted early termination of the waiting period provided by law and the premerger notification rules. The grants were made by the Federal Trade Commission and the Assistant Attorney General for the Antitrust Division of the Department of Justice. Neither agency intends to take any action with respect to these proposed acquisitions during the applicable waiting period.

TRANSACTION GRANTED EARLY TERMINATION

ET date	Trans. No.	ET req status	Party name
30–MAR–98	19981991	G	Mr. Francois Pinault.
		G	Brylane Inc.
		G	Brylane Inc.
	19982054	G	Metropolitan Life Insurance Company.
		G	Jay L. Lewis.
		G	N. L. Holding Corp.
	19982084	G	Stichting Administratiekantoor.
		G	Edward R. Chirgwin and Gale K. Chirgwin.
		G	Ray's Food Service, Inc.
	19982086	G	Jeffrey H. Smulyan.
		G	Dudley Communications Corporation.
		G	Dudley Communications.
	19982102	G	John A. Mansour.
		G	Intermedia Communications Inc.
		G	Intermedia Communications Inc.
	19982137	G	Union Bank of Switzerland.
		G	Swiss Bank Corporation.
		G	Swiss Bank Corporation.
	19982148	G	UniCapital Corporation.
		G	Edgar W. Lee.
		G	K.L.C., Inc.
	19982149	G	UniCapital Corporation.
		G	Alan H. Kaufman.
		G	K.L.C., Inc.
	19982171	G	UniCapital Corporation.
		G	Matrix Funding Corporation.
		G	Matrix Funding Corporation.
	19982193	G	J.F. Lehman Equity Investors I, L.P.
		G	First Chicago NBD Corporation.
		G	Mercer Products Company, Inc.
	19982196	G	UniCapital Corporation.
		G	John Alfano.
		G	Jacom Computer Services.
	19982198	G	UniCapital Corporation.
		G	Michael B. Pandolfelli.
		G	American Capital Resources, Inc.
	19982199	G	Gibraltar Steel Corporation.
		G	Judson E. Flower.
		G	Appleton Supply Co., Inc.
	19982200	G	Sara Lee Corporation.
		G	Aristotle Corporation (The).
		G	The Strouse, Adler Company, Inc.
	19982201	G	KKR 1996 Fund, L.P.
		G	Richard A. Simon.
		G	Bristol West Insurance Services, Inc.
		G	Apex Adjustment Bureau, Inc.
		G	Security National Insurance Company.
		G	Bayview Adjustment Bureau, Inc.
	19982202	G	UniCapital Corporation.
		G	Robert VanHellemont.
		G	Varilease Corporation.
	19982203	G	Arctic Slope Regional Corporation.
		G	J. Weldon Granger.

TRANSACTION GRANTED EARLY TERMINATION—Continued

ET date	Trans. No.	ET req status	Party name
		G	Omega Service Industries, Inc.
	19982204	G	Michael B. Pandolfelli.
		G	UniCapital Corporation.
		G	UniCapital Corporation.
	19982205	G	John Alfano.
		G	UniCapital Corporation.
		G	UniCapital Corporation.
	19982206	G	Robert VanHellemont.
		G	UniCapital Corporation.
		G	UniCapital Corporation.
	19982207	G	Champion Enterpises, Inc.
		G	Eugene Whitworth.
		G	Whitworth Management Inc.
	19982210	G	Albertson's, Inc.
		G	David A. and Lesley K. Trottier.
		G	Smitty's Super Markets, Inc.
	19982214	G	UniCapital Corporation.
		G	CLA Holdings, Inc.
		G	CLA Holdings, Inc.
	19982216	G	ProMedCo Management Company.
		G	Berkshire Physicians & Surgeons, P.C.
		G	Berkshire Physicians & Surgeons, P.C.
	19982221	G	El Paso Natural Gas Company.
		G	DeepTech International Inc.
		G	DeepTech International Inc.
	19982237	G	Jupiter Partners LP.
		G	K-Holding Company.
		G	K-Holding Company.
	19982239	G	Huhtamaki Oy.
		G	Sealright Co., Inc.
		G	Sealright Co., Inc.
	19982243	G	Berkshire Fund IV, Limited Partnership.
		G	Staveley Industries plc.
		G	Salter Housewares Ltd., Staveley Weighing & System Canada I.
	19982244	G	United Auto Group, Inc.
		G	Roger L. Sather.
		G	Relentless Pursuit Enterprises.
	19982252	G	Harrowston, Inc.
		G	Trelleborg AB (a Swedish Corporation).
		G	IT Holding, Inc.
	19982253	G	Outdoor Systems, Inc.
		G	Leslie Kaplan and Barbara Kaplan (Husband and Wife).
		G	Barbara Shop, Inc. d/b/a/ Philadelphia Outdoor.
	19982258	G	Stonington Capital Appreciation 1994 Fund, L.P.
		G	HK Systems, Inc.
		G	HK Systems, Inc.
31–MAR–98	19982043	G	Jefferson Health System.
		G	Albert Einstein Healthcare Network.
		G	Albert Einstein Healthcare Network.
	19982103	G	Avon Rubber, p.l.c.
		G	Leigh R. Larson.
		G	Hi-Life Inc., Hi-Life Rubber, LLC, Milk-Rite USA, Inc.
	19982126	G	Valspar Corporation (The).
		G	Patrick W. McKenna.
		G	Plasti-Kote Co., Inc.
	19982190	G	Province Healthcare Company.
		G	Samaritan Health System.
		G	Havasu Samaritan Regional Hospital.
	19982209	G	Freedom Securities Corporation.
		G	Clearly Gull Reiland & McDevitt Inc.
		G	Clearly Gull Reiland & McDevitt Inc.
	19982215	G	Paxton Media Group, Inc.
		G	Nixon Enterprises, Inc.
		G	Nixon Enterprises, Inc.
	19982230	G	Access Health, Inc.
		G	Charles M. Jacobs.
		G	InterQual, Inc.
	19982232	G	Physicians Insurance Company of Wisconsin, Inc.
		G	Steven M. Scott.
		G	Century American Insurance Company.
	19982235	G	Franchise Mortgage Acceptance Company.
		G	Paul A. Neff.

TRANSACTION GRANTED EARLY TERMINATION—Continued

ET date	Trans. No.	ET req status	Party name
		G	Banker's Mutual Mortgage, Inc.
	19982238	G	Industrial Services Group, Inc.
		G	Jack Wirt.
		G	Michigan Ash Sales Company, Flo Fil Co., Inc., U.S. Stabiliz.
	19982260	G	General Electric Company, p.l.c.
		G	Cofide-Compagnia Finaziaria De Benedetti.
		G	SASIB Railway S.p.A.
		G	Algemene Sein Industrie B.V.
		G	SASIB Hellas S.A.
		G	General Railway Signal Corporation.
	19982261	G	Alcatel Alsthom Compagnie Generale d'Electricite S.
		G	Confide-Compagnie Finaziaria De Benedetti.
		G	General Railway Signal Corporation.
		G	Algemene Sein Industrie B.V.
		G	SASIB Hellas S.A.
		G	SASIB Railway S.p.A.
	19982275	G	Tomkins PLC.
		G	KSCH Management, L.P.
		G	Schrader Inc.
01–APR–98	19980381	G	Daniel L. Simon.
		G	Clear Channel Communications, Inc.
		G	Clear Channel Communications, Inc.
	19981985	G	Brentwood Associates Buyout Fund II, LP.
		G	StarTime Cinema, Inc.
		G	StarTime Cinema, Inc.
		G	StarTime Properties, Inc.
	19982138	G	Swiss Bank Corporation.
		G	Union Bank of Switzerland.
		G	Union Bank of Switzerland.
	19982142	Y	Swiss Bank Corporation.
		Y	J.W. Childs Equity Partners, L.P.
		Y	DESA Holdings Corporation.
	19982143	G	Swiss Bank Corporation.
		G	Metrocall, Inc.
		G	Metrocall, Inc.
	19982144	G	Swiss Bank Corporation.
		G	CBP Resources, Inc.
		G	CBP Resources, Inc.
	19982228	G	Dean V. White.
		G	Clear Channel Communications, Inc.
		G	Clear Channel Communications, Inc.
	19982229	G	Clear Channel Communications, Inc.
		G	Dean V. White.
		G	Whiteco Industries, Inc., Metro Management Associate.
02–APR–98	19981754	G	United States Filter Corporation.
		G	Culligan Water Technologies, Inc.
		G	Culligan Water Technologies, Inc.
	19981986	G	The Titan Corporation.
		G	Horizons Technology, Inc.
		G	Horizons Technology, Inc.
	19982034	G	Worchester City Campus Corporation.
		G	Central New England Health Alliance, Inc.
		G	Central New England Health Alliance, Inc.
	19982124	G	Primus Telecommunications Group, Incorporated.
		G	Warburg, Pincus Investors, L.P.
		G	TresCom International, Inc.
	19982125	G	Warburg, Pincus Investors, L.P.
		G	Primus Telecommunications Group, Incorporated.
		G	Primus Telecommunications Group, Incorporated.
	19982131	G	Marshall W. Pagon.
		G	Columbia DBS Investors, L.P.
		G	Digital Television Services, Inc.
	19982194	G	Metal Management, Inc.
		G	Jonathan L. Kimerling.
		G	M. Kimerling & Sons, Inc.
	19982195	G	Metal Management, Inc.
		G	David B. Kimerling.
		G	M. Kimerling & Sons, Inc.
	19982262	G	Xerox Corporation.
		G	Intelligent Electronics, Inc.
		G	Intelligent Electronics, Inc.
	19982274	G	Compagnie de Saint-Gobain.

TRANSACTION GRANTED EARLY TERMINATION—Continued

ET date	Trans. No.	ET req status	Party name
		G	Lawrence H. Beasley.
		G	Apache Plastics, Inc.
03–APR–98	19982233	G	KLA-Tencor Corporation.
		G	Trustees of AMRAY, Inc., Voting Trust.
		G	AMRAY, Inc.
	19982266	G	Omnicare, Inc.
		G	CompScript, Inc.
		G	CompScript, Inc.
	19982271	G	The Pittston Company.
		G	USA Jet Airlines, Inc.
		G	Air Transport International LLC.
	19982273	G	George S. Hofmeister.
		G	Louisiana-Pacific Corporation.
		G	Weather-Seal, Weather-Seal Division.
	19982288	G	Cascades Inc.
		G	Sonoco Products Company.
		G	Sonoco Products Company.
	19982289	G	Personnel Group of America, Inc.
		G	Ferdinando Ladurini.
		G	Trilogy Consulting Corporation.
	19982290	G	Personnel Group of America, Inc.
		G	William J. Phillips.
		G	Trilogy Consulting Corporation.
	19982291	G	Northern States Power Company.
		G	Black Mountain Gas Company.
		G	Black Mountain Gas Company.
	19982293	G	BARCO N.V.
		G	Gerber Scientific, Inc.
		G	Gerber Systems Corporation.
	19982294	G	Adaptec, Inc.
		G	Analog Devices Inc.
		G	Analog Devices Inc.
	19982307	G	Kenneth R. Thomson, a Canadian Resident.
		G	Knight-Ridder, Inc.
		G	Technimetrics, Inc.
	19982310	G	Travelers Group Inc.
		G	Fidelity Non-Profit Management Foundation.
		G	CP Acquisition LLC, a Delaware limited liability company.
	19982316	G	Case Corporation.
		G	Ivan Bowen, II.
		G	Tyler Industries, Inc.
	19982317	G	The Walter E. Hussman, Jr. Family Trust.
		G	Chattanooga News-Free Press Company.
		G	Chattanooga News-Free Press Company.
	19982318	G	Claire's Stores, Inc.
		G	Crestwood Partners LLC.
		G	Lux Corporation.
	19982323	G	MIM Corporation.
		G	Continental Managed Pharmacy Services, Inc.
		G	Continental Managed Pharmacy Services, Inc.
	19982328	G	Thyssen Aktiengesellschaft.
		G	Clearr Industries, Inc.
		G	Clearr Industries, Inc.
	19982340	G	Larry T. Shaffer.
		G	Fleetwood Enterprises, Inc.
		G	Fleetwood Enterprises, Inc.
	19982341	G	Fleetwood Enterprises, Inc.
		G	HomeUSA, Inc.
		G	HomeUSA, Inc.
06–APR-98	19982133	G	API Group plc.
		G	Markem Corporation.
		G	Astor Universal Corporation.
	19982218	G	Glaxo Wellcome plc.
		G	Affymetrix Inc.
		G	Affymetrix Inc.
	19982248	G	PNC Bank Corp.
		G	The Bank of Tokyo-Mitsubishi, Ltd.
		G	BTM Capital Corporation.
	19982254	G	Dover Corporation.
		G	Sharon List.
		G	Sonic Industries Inc.
	19982301	G	Ronald O. Perelman.

TRANSACTION GRANTED EARLY TERMINATION—Continued

ET date	Trans. No.	ET req status	Party name
		G	Aames Financial Corporation.
		G	Aames Financial Corporation.
	19982319	G	Montedison S.p.A.
		G	Tate & Lyle PLC.
		G	Webel Feeds, Inc.
		G	Vigortone Ag Products, Inc.
	19982321	G	Dayton Hudson Corporation.
		G	Minnesota Communications Group.
		G	Greenspring Company.
		G	Minnesota Communications Group/Greenspring Company.
	19982330	G	Boston Chicken, Inc.
		G	BC Equity Funding, L.L.C.
		G	BC Equity Funding, L.L.C.
	19982331	G	Boston Chicken, Inc.
		G	Market Partners, L.L.C.
		G	Market Partners, L.L.C.
	19982332	G	Chase Manhattan Corporation (The).
		G	TeleCorp PCS, Inc.
		G	TeleCorp PCS, Inc.
	19982333	G	Hoak Communications Partners, L.P.
		G	TeleCorp PCS, Inc.
		G	TeleCorp PCS, Inc.
	19982334	G	Entergy Corporation.
		G	Telecorp PCS, Inc.
		G	Telecorp PCS, Inc.
07–APR–98	19982268	G	Citherm Holding N.V.
		G	Global Stone Corporation.
		G	Global Stone Corporation.
	19982326	G	Sumitomo Metal Industries, Ltd.
		G	Sumitomo Sitix Corporation.
		G	Sumitomo Sitix Corporation.
	19982353	G	Vanguard Health Systems, Inc.
		G	Allegheny Health, Education and Research Foundation.
		G	Allegheny Health, Education and Research Foundation.
08–APR–98	19982269	G	Koor Industries Ltd.
		G	California Microwave, Inc.
		G	California Microwave, Inc.
	19982279	G	Kinross Gold Corporation.
		G	Cyprus Amax Minerals Company.
		G	Amax Gold Inc.
	19982280	G	Cyprus Amax Minerals Company.
		G	Kinross Gold Corporation.
		G	Kinross Gold Corporation.
	19982309	G	Code, Hennessy & Simmons III, L.P.
		G	Corcom Inc.
		G	Corcom Inc.
	19982312	G	Hellman & Friedman Capital Partners III, L.P.
		G	Men's Apparel Guild in California, Inc.
		G	Men's Apparel Guild in California, Inc.
	19982335	G	Glaxo Wellcome plc.
		G	PowderJect Pharmaceuticals plc.
		G	PowderJect Technologies Limited (''PTL'').
		G	PowderJect Vaccines, Inc. (''PJV'').
	19982338	G	Delta Airlines Inc.
		G	Empresa de Transporte Aereo del Peru, S.A. Aerope.
		G	Empresa de Transporte Aereo del Peru, S.A. Aerope.
	19982342	G	Bush Industries, Inc.
		G	Gefinor S.A.
		G	Fournier Furniture, Inc.
09–APR–98	19982091	G	International Paper Company.
		G	Weston Paper and Manufacturing Co.
		G	Weston Paper and Manufacturing Co.
	19982219	G	Tenneco Inc.
		G	Alfred H. Richter and Beverlee L. Richter.
		G	Richter Manufacturing Corporation.
	19982251	G	Washington Post Company (The).
		G	TCA Cable TV, Inc.
		G	TCA Cable Partners, a Delaware general partnership.
	19982263	G	Rural Cellular Corporation.
		G	Atlantic Cellular Company, L.P.
		G	Atlantic Cellular Company, L.P.
	19982284	G	United Auto Group, Inc.

TRANSACTION GRANTED EARLY TERMINATION—Continued

ET date	Trans. No.	ET req status	Party name
		G G	E.W. Richardson. Pioneer Ford Sales Inc.

FOR FURTHER INFORMATION CONTACT: Sandra M. Peay or Parcellena P. Fielding, Contact Representatives, Federal Trade Commission, Premerger Notification Office, Bureau of Competition, Room 303, Washington, D.C. 20580, (202) 326–3100.

By Direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 98–10392 Filed 4–17–98; 8:45 am]

BILLING CODE 6750–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Notice of a Meeting of the National Bioethics Advisory Commission (NBAC)

SUMMARY: Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is given of a meeting of the National Bioethics Advisory Commission. The Commission will continue addressing (1) the protection of the rights and welfare of human subjects in research including research involving persons with disorders affecting decisionmaking capacity, and (2) issues in the research use of human biological materials. The meeting is open to the public and opportunities for statements by the public will be provided on May 19, 1998 from 11:30 am to 12 Noon.

Dates/times	Location
May 19, 1998, 8:30 am–5 pm and May 20, 1998, 8 am—3 pm.	Excelsior Ballroom-Thwing Student Center, Case Western Reserve University, 11111 Euclid Avenue, Cleveland, Ohio.

SUPPLEMENTARY INFORMATION: The President established the National Bioethics Advisory Commission (NBAC) on October 3, 1995 by Executive Order 12975 as amended. The mission of the NBAC is to advise and make recommendations to the National Science and Technology Council, its Chair, the President and other entities on bioethical issues arising from the research on human biology and behavior, and from the applications of that research and makes its recommendations available to the public.

Public Participation

The meeting is open to the public with attendance limited by the availability of space on a first come, first serve basis. Members of the public who wish to present oral statements should contact Ms. Patricia Norris by telephone, fax machine, or mail as shown below at least 4 days before the meeting and as soon as possible. The Chair will reserve time for presentations by persons requesting to speak. The order of persons wanting to make a statement will be assigned on a first come, first serve basis. Individuals unable to make oral presentations can mail or fax their comments to the NBAC staff office at least five business days prior to the meeting for distribution to the Commission and inclusion in the public record. The Commission also accepts general comments at its website at bioethics.gov. Persons needing special assistance, such as sign language interpretation or other special accommodations, should contact NBAC staff at the address or telephone number listed below as soon as possible.

FOR FURTHER INFORMATION CONTACT: Ms. Patricia Norris, National Bioethics Advisory Commission, 6100 Executive Boulevard, Suite 5B01, Rockville, Maryland 20892–7508, telephone 301–402–4242, fax number 301–480–6900.

Henrietta D. Hyatt-Knorr,

Deputy Executive Director, National Bioethics Advisory Commission.

[FR Doc. 98–10386 Filed 4–17–98; 8:45 am]

BILLING CODE 4160–17–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Board of Scientific Counselors, National Institute for Occupational Safety and Health Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following committee meeting:

Name: Board of Scientific Counselors, National Institute for Occupational Safety and Health (BSC, NIOSH).

Time and Date: 9 a.m.–4 p.m., May 20, 1998.

Place: The Washington Court, Montpelier Room, 525 New Jersey Avenue, NW, Washington, DC 20001–1527.

Status: Open to the public, limited only by the space available. The meeting room accommodates approximately 50 people.

Purpose: The BSC, NIOSH is charged with providing advice to the Director, NIOSH on NIOSH research programs.

Specifically, the Board shall provide guidance on the Institute's research activities related to developing and evaluating hypotheses, systematically documenting findings, and disseminating results.

Matters to be Discussed: Agenda items include a report from the Director of NIOSH; Update on Latex Allergy Activities; Hearing Loss Prevention Program; Hearing Loss Communications Campaign; Update on NIOSH Agriculture Program; State Surveillance Planning Update; Evaluating NIOSH Small Business Interventions; and future activities of the Board.

Agenda items are subject to change as priorities dictate.

Contact Person for More Information: Dr. Bryan D. Hardin, Executive Secretary, BSC, NIOSH, 1600 Clifton Road, NE, m/s D–35, Atlanta, Georgia 30333. Telephone 404/639–3773, fax 404/639–2170, e-mail bdh1@cdc.gov.

Dated: April 13, 1998.

Nancy C. Hirsch,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 98–10296 Filed 4–17–98; 8:45 am]

BILLING CODE 4163–19–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Comment Request

Title: Summary Date Component (SDC) of the National Child Abuse and Neglect Data System (NCANDS).

OMB No.: 0980–0229.

Description: This information collection implements the provision of the Child Abuse Prevention and Treatment Act (42 U.S.C. 5101 *et seq.*), as amended by Pub. L. 104–235, requiring that State agencies receiving the State child abuse and neglect grant

annually provide, ''to the maximum extent practical,'' an annual data report. Data elements include the number of children reported for child abuse and neglect; the number of children for whom maltreatment was substantiated, unsubstantiated or determined to be false; the number of deaths resulting from child abuse or neglect; the number of children who received services; agency response times; and the number of workers responsible for child protective service (CPS) functions. The new annual State data report is being combined with the previously existing voluntary Summary Data Component of the National Child Abuse and Neglect Data System. The information collected will be used to understand better the experiences of children and families served by CPS agencies, and to help guide policy and program development at the National, State and local levels.

Respondents: State, Local or Tribal Govt.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
SDC	56	1	60	3,360

Estimated Total Annual Burden Hours: 3,360.

Additional Information: Copies of the proposed collection may be obtained by writing to The Administration for Children and Families, Office of Information Services, 370 L'Enfant Promenade, S.W., Washington, D.C. 20447, Attn: ACF Reports Clearance Officer.

OMB Comment: OMB is required to make a decision concerning the collection of information between 30 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 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, 725 17th Street, N.W., Washington, D.C. 20503, Attn: Ms. Laura Oliven.

Dated: April 13, 1998.

Bob Sargis,

Acting Reports Clearance Officer.

[FR Doc. 98–10256 Filed 4–17–98; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Antiviral 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). At least one portion of the meeting will be closed to the public.

Name of Committee: Antiviral 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 May 4, 1998, 8:30 a.m to 5 p.m.; on May 5, 1998, 8 a.m. to 5 p.m.; and on May 6, 1998, 7:30 a.m. to 5 p.m.

Location: Gaithersburg Hilton, Ballroom, 620 Perry Pkwy., Gaithersburg, 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 May 4, 1998, the committee will discuss new drug application (NDA) 20–903, Intron®A/ Rebetol, (interferon alfa-2b, recombinant/ribavirin, Schering Corp.) for the treatment of chronic hepatitis C. On May 5, 1998, the committee will discuss NDA 50–752, Priftin® (rifapentine, Hoechst Marion Roussel, Inc.) for the treatment of pulmonary tuberculosis. On May 6, 1998, the committee will discuss NDA 20–871, NTZ™ (nitazoxanide, UNIMED Pharmaceuticals, Inc.) for the treatment of diarrhea associated with cryptosporidiosis in acquired immune deficiency syndrome (AIDS) patients.

Procedure: On May 4, 1998, from 8:30 a.m. to 5 p.m.; on May 5, 1998, from 8 a.m. to 10:30 a.m. and from 12 m. to 5 p.m.; and on May 6, 1998, from 9 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 April 27, 1998. Oral presentations from the public will be scheduled between approximately 11 a.m. and 12 m. on May 4 and May 6, 1998. On May 5, 1998, oral presentations from the public will be scheduled between approximately 1 p.m. and 2 p.m. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before April 27, 1998, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

Closed Committee Deliberations: On May 5, 1998, from 10:30 a.m. to 12 m., the meeting will be closed for a presentation of confidential material (5 U.S.C. 552(b)(2) and (b)(5)). On May 6, 1998, from 7:30 a.m. to 9 a.m., the meeting will be closed to permit discussion and review of trade secret and/or confidential information (5 U.S.C. 552(b)(4)). The selected NDA's will be discussed.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: April 14, 1998.

Michael A. Friedman,

Deputy Commissioner for Operations.

[FR Doc. 98–10311 Filed 4–17–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[HCFA–P–11]

Agency Information Collection Activities: Proposed Collection; Comment Request

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding the burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Collection Request: Extension of a currently approved collection; *Title of Information Collection:* Medicare Home Health Quality Assurance Demonstration and Supporting Regulations 42 CFR 484.48; *Form No.:* HCFA—P–11, OMB # 0938–0519; *Use:* Do to the accelerated growth in the home health Care industry, the Health Care Financing Administration (HCFA) has indentified a need to measure the effectivness of home health services by analyzing patient outcomes. The Medicare Home Health Quality Assurance Demonstration will test the feasability of collecting patient outcome data in Medicare-certified Home Health Agencies (HHAs) nationally. *Frequency:* On occasion; *Affected Public:* Not-for-profit institutions, business or other for-profit, and individuals or households; *Number of Respondents:* 35,905; *Total Annual Responses:* 99,825; *Total Annual Hours:* 7,697.

To obtain copies of the supporting statement for the proposed paperwork collections referenced above, E-mail your request, including your address and phone number, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 60 days of this notice directly to the HCFA Paperwork Clearance Officer designated at the following address: HCFA, Office of Information Services, Information Technology Investment Management Group, Division of HCFA Enterprise Standards, Attention: John Rudolph, Room C2–26–17, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Dated: April 9, 1998.

John P. Burke III,

HCFA Reports Clearance Officer, Division of HCFA Enterprise Standards, Health Care Financing Administration.

[FR Doc. 98–10346 Filed 4–17–98; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[HCFA–416, HCFA–855, and HCFA–R–227]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Health Care Financing Administration, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

1. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Annual Early and Periodic Screening, Diagnostic, and Treatment Services (EPSDT) Participation Report and Supporting Regulations in 42 CFR 441.60; *Form No.:* HCFA–416 (OMB# 0938–0354); *Use:* States are required to submit an annual report on the provision of EPSDT services to HCFA pursuant to section 1902(a)(43) of the Social Security Act. These reports provide HCFA with data necessary to assess the effectiveness of State EPSDT programs. It is also helpful in developing trend patterns, national projections, responding to inquiries, and determining a State's results in achieving its participation goal; *Frequency:* Annually; *Affected Public:* State, Local or Tribal Government; *Number of Respondents:* 56; *Total Annual Responses:* 56; *Total Annual Hours:* 1,568.

2. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Medicare and Other Federal Health Care Programs Provider/Supplier Enrollment Application; *Form No.:* HCFA–855 (OMB# 0938–0685); *Use:* This information is needed to enroll providers and suppliers into the Medicare program by identifying them, pricing and paying their claims, and verifying their qualifications and eligibility to participate in Medicare; *Frequency:* Initial Enrollment/Recertification; *Affected Public:* Business or other for-profit, Individuals or Households, Not-for-profit institutions, and Federal Government; *Number of Respondents:* 225,000; *Total Annual Responses:* 225,000; *Total Annual Hours:* 435,000.

3. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Research and Analytic Support for Implementing Peformance Measurement in Medicare Fee for Service; *Form No.:* HCFA–R–227 (OMB# 0938–0718); *Use:* As required by the Balanced Budget Act (BBA), Section 1851(d), the Health Care Financing Administration (HCFA) needs to develop comparable performance measures for Fee For Service (FFS) Medicare. This project will enable HCFA to evaluate the effectiveness and outcomes of FFS services purchased. HCFA may potentially disseminate this information to Medicare beneficiaries so that they may make informed health care choices; *Frequency:* Biennially; *Affected Public:* Individuals or Households, Business or other for-profit, Not-for-profit institutions, Farms, Federal Government, and State, Local or Tribal Government; *Number of Respondents:* 6,670; *Total Annual Responses:* 6,670; *Total Annual Hours:* 3,335.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access HCFA's Web Site address at http://www.hcfa.gov/regs/prdact95.htm, or E-mail your

request, including your address, phone number, OMB number, and HCFA document identifier, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 60 days of this notice directly to the HCFA Paperwork Clearance Officer designated at the following address: HCFA, Office of Information Services, Information Technology Investment Management Group, Division of HCFA Enterprise Standards, Attention: Louis Blank, Room C2–26–17, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Dated: April 10, 1998.

John P. Burke III,

HCFA Reports Clearance Officer, HCFA Office of Information Services, Information Technology Investment Management Group, Division of HCFA Enterprise Standards.

[FR Doc. 98–10385 Filed 4–17–98; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[HCFA–R–221]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, has submitted to the Office of Management and Budget (OMB) the following proposal for the collection of information. Interested persons are invited to send comments regarding the burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Collection Request: New Collection; *Title of Information Collection:* Evaluation of the Oregon Medicaid Reform Demonstration: Phase II Adult Interview, Phase II Child Interview, Survey of Agency Providers; *Form No.:* HCFA–R–221; *Use:* These survey instruments will be used to evaluate the Oregon Medicaid Reform Demonstration. The Phase II Adult and Phase II Child interviews are designed to collect information on health status, access to care and past health insurance status for adults and children participating in Phase II of the Oregon Health Plan (OHP). The survey of Agency providers is designed to collect information on the experience under OHP of agencies that traditionally treat disabled and elderly Medicaid beneficiaries. *Frequency:* One Time ; *Affected Public:* Individuals or households, business or other for-profit, not-for-profit institutions, and State, Local or Tribal Governments; *Number of Respondents:* 4,150; *Total Annual Responses:* 4,150; *Total Annual Hours:* 1,730.

To obtain copies of the supporting statement for the proposed paperwork collections referenced above, E-mail your request, including your address and phone number, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 30 days of this notice directly to the OMB Desk Officer designated at the following address: OMB Human Resources and Housing Branch, Attention: Allison Eydt, New Executive Office Building, Room 10235, Washington, D.C. 20503.

Dated: April 9, 1998.

John P. Burke III,

HCFA Reports Clearance Officer, HCFA, Office of Information Services, Information Technology Investment Management Group, Division of HCFA Enterprise Standards.

[FR Doc. 98–10347 Filed 4–17–98; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[HCFA–316]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, has submitted to the Office of Management and Budget (OMB) the following proposal for the collection of information. Interested persons are invited to send comments regarding the burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Collection Request: Reinstatement, with change, of a previously approved collection for which approval has expired; *Title of Information Collection:* Medicaid, Integrated Quality Control Review Manual instructions and Supporting Regulations 42 CFR 431.800, 42 CFR 431.865; *Form No.:* HCFA–316 OMB #0938–0094; *Use:* The Integrated Quality Control Review requirements are designed to collect quality control (QC) data captured during the course of all QC reviews in Food Stamps (FS) and Medicaid programs, and formerly included data from the Aid to Families With Dependent Children (AFDC). Though States are not required to adopt integrated sampling, States are required to perform QC reviews for each Federal assistance program: FS and Medicaid, the optional integrated worksheet used for record keeping purposes is designed to be flexible for use in fully integrated, partially integrated, or separate QC program reviews. The primary objective of the Quality Control program is to measure, identify, and reduce the level of misspent Medicaid funds as a result of erroneous eligibility determinations. *Frequency:* Monthly; *Affected Public:* State, Local or Tribal Government; *Number of Respondents:* 21; *Total Annual Responses:* 21; *Total Annual Hours:* 1.

To obtain copies of the supporting statement for the proposed paperwork collections referenced above, or to obtain the supporting statement and any related forms, E-mail your request, including your address and phone number, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 30 days of this notice directly to the OMB Desk Officer designated at the following address: OMB Human Resources and Housing Branch, Attention: Allison Eydt, New Executive Office Building, Room 10235, Washington, D.C. 20503.

Dated: April 3, 1998.

John P. Burke III,

HCFA Reports Clearance Officer, HCFA, Office of Information Services, Information Technology Investment Management Group, Division of HCFA Enterprise Standards.

[FR Doc. 98–10348 Filed 4–17–98; 8:45 am]

BILLING CODE 4120–03–U

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[HCFA–R–118]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, has submitted to the Office of Management and Budget (OMB) the following proposal for the collection of information. Interested persons are invited to send comments regarding the burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Collection Request: Reinstatement Without change, of a previously approved collection for which approval has expired; *Title of Information Collection:* Peer Review Organization Contracts; Solicitation Statements of Interest from In-State Organizations, General Notice and Supporting Regulations 42 CFR 462.102, .103, .104; *Form No.:* HCFA–R–118, OMB #0938–0526; *Use:* This notice is a solicitation of sources sought for the procurement of medical review services. This information is required for potential contractors to demonstrate that they meet the statutory requirements as a Peer Review Organization.; *Frequency:* On occasion; *Affected Public:* Business or other for-profit; *Number of Respondents:* 53; *Total Annual Responses:* 53; *Total Annual Hours:* 1.

To obtain copies of the supporting statement for the proposed paperwork collections referenced above, or E-mail your request, including your address and phone number, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 30 days of this notice directly to the OMB Desk Officer designated at the following address: OMB Human Resources and Housing Branch, Attention: Allison Eydt, New Executive Office Building, Room 10235, Washington, D.C. 20503.

Dated: April 9, 1998.

John P. Burke III,

HCFA Reports Clearance Officer, HCFA, Office of Information Services, Information Technology Investment Management Group, Division of HCFA Enterprise Standards.

[FR Doc. 98–10349 Filed 4–17–98; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Fiscal Year (FY) 1998 Funding Opportunities

AGENCY: Substance Abuse and Mental Health Services Administration, HHS.

ACTION: Notice of funding availability.

SUMMARY: The Substance Abuse and Mental Health Services Administration (SAMHSA) Center for Substance Abuse Treatment (CSAT) announces the availability of FY 1998 funds for grants for the following activity. This activity is discussed in more detail under Section 4 of this notice. This notice is not a complete description of the activity; potential applicants *must* obtain a copy of the Guidance for Applicants (GFA) before preparing an application.

Activity	Application deadline	Estimated funds available	Estimated No. of awards	Project period
Targeted Capacity Expansion	6/19/98	$18M	40–50	3 yrs.

Note: SAMHSA also published notices of available funding opportunities for FY 1998 in the **Federal Register** on January 6, 1998, January 20, 1998, February 26, 1998, March 20, 1998, April 8, 1998, and on April 16, 1998.

The actual amount available for awards and their allocation may vary, depending on unanticipated program requirements and the volume and quality of applications. Awards are usually made for grant periods from one to three years in duration. FY 1998 funds for activities discussed in this announcement were appropriated by the Congress under Pub. L. No. 105–78. SAMHSA's policies and procedures for peer review and Advisory Council review of grant and cooperative agreement applications were published in the **Federal Register** (Vol. 58, No. 126) on July 2, 1993.

The Public Health Service (PHS) is committed to achieving the health promotion and disease prevention objectives of Healthy People 2000, a PHS-led national activity for setting priority areas. The SAMHSA Centers' substance abuse and mental health services activities address issues related to Healthy People 2000 objectives of Mental Health and Mental Disorders; Alcohol and Other Drugs; Clinical Preventive Services; HIV Infection; and Surveillance and Data Systems. Potential applicants may obtain a copy of Healthy People 2000 (Full Report: Stock No. 017–001–00474–0) or Summary Report: Stock No. 017–001–00473–1) through the Superintendent of Documents, Government Printing Office, Washington, DC 20402–9325 (Telephone: 202–512–1800).

General Instructions

Applicants must use application form PHS 5161–1 (Rev. 5/96; OMB No. 0937–0189). The application kit contains the GFA (complete programmatic guidance and instructions for preparing and submitting applications), the PHS 5161–1 which includes Standard Form 424 (Face Page), and other documentation and forms. Application kits may be obtained from the organization specified for each activity covered by this notice (see Section 4).

When requesting an application kit, the applicant must specify the particular activity for which detailed information is desired. This is to ensure receipt of all necessary forms and information, including any specific program review and award criteria.

The PHS 5161–1 application form and the full text of each of the activities (i.e., the GFA) described in Section 4 are available electronically via SAMHSA's World Wide Web Home Page (address: http://www.samhsa.gov).

Application Submission

Unless otherwise stated in the GFA, applications must be submitted to: SAMHSA Programs, Center for Scientific Review, National Institutes of Health, Suite 1040, 6701 Rockledge Drive MSC–7710, Bethesda, Maryland 20892–7710*.

(* Applicants who wish to use express mail or courier service should change the zip code to 20817.)

APPLICATION DEADLINES: The deadlines for receipt of applications are listed in the table above. Please note that the deadlines may differ for the individual activities.

Competing applications must be received by the indicated receipt dates to be accepted for review. An application received after the deadline may be acceptable if it carries a legible proof-of-mailing date assigned by the carrier and that date is not later than one week prior to the deadline date. Private metered postmarks are not acceptable as proof of timely mailing.

Applications received after the deadline date and those sent to an address other than the address specified above will be returned to the applicant without review.

FOR FURTHER INFORMATION CONTACT: Requests for activity-specific technical information should be directed to the program contact person identified for each activity covered by this notice (see Section 4).

Requests for information concerning business management issues should be directed to the grants management contact person identified for each activity covered by this notice (see Section 4).

SUPPLEMENTARY INFORMATION: To facilitate the use of this Notice of Funding Availability, information has been organized as outlined in the Table of Contents below. For each activity, the following information is provided:

- Application Deadline
- Purpose
- Priorities
- Eligible Applicants
- Grants/Cooperative Agreements/ Amounts
- Catalog of Federal Domestic Assistance Number
- Contacts
- Application Kits

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1. Program Background and Objectives

SAMHSA's mission within the Nation's health system is to improve the quality and availability of prevention, early intervention, treatment, and rehabilitation services for substance abuse and mental illnesses, including co-occurring disorders, in order to improve health and reduce illness, death, disability, and cost to society.

Reinventing government, with its emphases on redefining the role of Federal agencies and on improving customer service, has provided SAMHSA with a welcome opportunity to examine carefully its programs and activities. As a result of that process, SAMHSA moved assertively to create a renewed and strategic emphasis on using its resources to generate knowledge about ways to improve the prevention and treatment of substance abuse and mental illness and to work with State and local governments as well as providers, families, and consumers to effectively use that knowledge in everyday practice.

SAMHSA's FY 1998 Knowledge Development and Application (KD&A) agenda is the outcome of a process whereby providers, services researchers, consumers, National Advisory Council members and other interested persons participated in special meetings or responded to calls for suggestions and reactions. From this input, each SAMHSA Center developed a ''menu'' of suggested topics. The topics were discussed jointly and an agency agenda of critical topics was agreed to. The selection of topics depended heavily on policy importance and on the existence of adequate research and practitioner experience on which to base studies. While SAMHSA's FY 1998 KD&A programs will sometimes involve the evaluation of some delivery of services, they are services studies and application activities, not merely evaluation, since they are aimed at answering policy-relevant questions and putting that knowledge to use.

SAMHSA differs from other agencies in focusing on needed information at the services delivery level, and in its question-focus. Dissemination and application are integral, major features of the programs. SAMHSA believes that it is important to get the information into the hands of the public, providers, and systems administrators as effectively as possible. Technical assistance, training, preparation of special materials will be used, in addition to normal communications means.

SAMHSA also continues to fund legislatively-mandated services programs for which funds are appropriated.

2. Special Concerns

SAMHSA's legislatively-mandated services programs do provide funds for mental health and/or substance abuse treatment and prevention services. However, SAMHSA's KD&A activities do not provide funds for mental health and/or substance abuse treatment and prevention services except sometimes for costs required by the particular activity's study design. Applicants are required to propose true knowledge application or knowledge development and application projects. Applications seeking funding for services projects under a KD&A activity will be considered nonresponsive.

Applications that are incomplete or nonresponsive to the GFA will be returned to the applicant without further consideration.

3. Criteria for Review and Funding

Consistent with the statutory mandate for SAMHSA to support activities that will improve the provision of treatment, prevention and related services, including the development of national mental health and substance abuse goals and model programs, competing applications requesting funding under the specific project activities in Section 4 will be reviewed for technical merit in accordance with established PHS/ SAMHSA peer review procedures.

3.1 General Review Criteria

As published in the **Federal Register** on July 2, 1993 (Vol. 58, No. 126), SAMHSA's ''Peer Review and Advisory Council Review of Grant and Cooperative Agreement Applications and Contract Proposals,'' peer review groups will take into account, among other factors as may be specified in the application guidance materials, the following general criteria:

- Potential significance of the proposed project;
- Appropriateness of the applicant's proposed objectives to the goals of the specific program;

- Adequacy and appropriateness of the proposed approach and activities;
- Adequacy of available resources, such as facilities and equipment;
- Qualifications and experience of the applicant organization, the project director, and other key personnel; and
- Reasonableness of the proposed budget.

3.2 Funding Criteria for Scored Applications

Applications will be considered for funding on the basis of their overall technical merit as determined through the peer review group and the appropriate National Advisory Council (if applicable) review process.

Other funding criteria will include:

- Availability of funds.

Additional funding criteria specific to the programmatic activity may be included in the application guidance materials.

4. Special FY 1998 SAMHSA Activities

4.1 Grants

4.1.1 Grants to Expand Substance Abuse Treatment Capacity in Targeted Areas of Need (Short Title: Targeted Capacity Expansion, GFA No. TI 98–006)

- Application Deadline: June 19, 1998.
- Purpose: The Substance Abuse and Mental Health Services Administration (SAMHSA), Center for Substance Abuse Treatment (CSAT), announces the availability of funds for grants to address gaps in treatment capacity by supporting rapid and strategic responses to demand for substance abuse (including alcohol and drugs) treatment services. The response to treatment capacity problems may include communities with serious, emerging drug problems as well as communities with innovative solutions to unmet need. The goal of this program is to create or expand a community's or cluster of communities' ability to provide an integrated creative and community-based response to a targeted, well documented substance abuse treatment capacity problem. SAMHSA/CSAT believe that the accomplishment of this goal requires that applications be submitted by the political entities that are responsible for the funding or provision of services in the targeted area. Applicants may either apply to expand an existing treatment program or create a new program. The proposed treatment services should be based on sound, scientifically-based theory or empirical evidence of effectiveness. Further, the services should be designed to significantly impact the identified treatment gap issue within the three year grant period and a plan for continuation of the effort beyond the life of the grant should be presented if such continuation is expected to be necessary. Finally, the proposed services should be consistent with and fit within the overall response to substance abuse problems in the target area.

SAMHSA/CSAT encourages applications from a wide variety of sources including: Local governmental entities such as cities, towns, counties, and; regional governmental entities; and States, Territories, and Indian Tribal Governments. SAMHSA is also interested in applications in which several jurisdictions propose to work together to address an emerging or previously emerged need that cuts across their geographical boundaries. Finally, SAMHSA is interested in applications in which the proposed services are embedded within an integrated, creative and community-based response to substance abuse problems.

- Priorities: None.
- Eligible Applicants: Applications may be submitted by units of State, local (including cities, towns, or counties), or Indian Tribal Governments. Eligibility is being limited to units of government in recognition of the primacy of their responsibility for, and interest in, providing for the needs of their citizens and because the success of the program will depend upon the authority and ability available to units of government to broadly coordinate the variety of other resources necessary to full program success.

Applications covering more than one unit of government at the same or different levels must be submitted by one agency which would be the grantee on behalf of all participating units and be accompanied by letters of endorsement from the heads of the other participating units.

- Grants/Amounts: Approximately $18 million will be available to support awards under this GFA in FY 1998. Awards are expected to range in amount from $100,000 to $750,000 in total (direct plus indirect) costs. It is planned that these funds will be reserved in three pools based on the size of the population in the geographical area to be served (as opposed to the population in need of services). For example, if the State applied on behalf of a rural community, it would be the population of that community, not the State population or the estimated number of persons needing services, that would determine the appropriate funding pool. Indian Tribal Governments will be included in one of the pools without regard to the size of population to be served. Only after applicants with acceptable technical merit scores in the first two pools have been funded will any amount in excess from those two pools be distributed to the third pool. The three pools are:

$3 million is reserved for rural projects serving areas with populations of 30,000 or fewer people and projects proposed by Indian Tribal Governments;

$3 million is reserved for projects serving areas with populations of 30,000 or fewer people whether urban or rural; and

$12 million is reserved for projects serving areas with populations of more than 30,000 (of this amount a minimum of $2 million is reserved for cities with a population of more than 30,000).

- Catalog of Domestic Federal Assistance: 93.230
- Program Contact: For programmatic or technical assistance (not for application kits) contact: Jane Taylor, Ph.D., Director, Division of Practice and Systems Development Center for Substance Abuse Treatment, SAMHSA, Rockwall II, 8th Floor, 5600 Fishers Lane, Rockville, MD 20857, (301) 443–3820.
- For grants management assistance, contact: Ms. Andrea Brandon, Division of Grants Management, OPS, SAMHSA, Rockwall II, Suite 360, 5600 Fishers Lane, Rockville, MD 20857, (301) 443–9667.
- Application Kits are available from: National Clearinghouse for Alcohol and Drug Information, P.O. Box 2345, Rockville, Maryland 20847–2345, 1–800–729–6686.

5. Public Health System Reporting Requirements

The Public Health System Impact Statement (PHSIS) is intended to keep State and local health officials apprised of proposed health services grant and cooperative agreement applications submitted by community-based nongovernmental organizations within their jurisdictions.

Community-based nongovernmental service providers who are not transmitting their applications through the State must submit a PHSIS to the head(s) of the appropriate State and local health agencies in the area(s) to be affected not later than the pertinent receipt date for applications. This PHSIS consists of the following information:

a. A copy of the face page of the application (Standard form 424).

b. A summary of the project (PHSIS), not to exceed one page, which provides:

(1) A description of the population to be served.

(2) A summary of the services to be provided.

(3) A description of the coordination planned with the appropriate State or local health agencies.

State and local governments and Indian Tribal Authority applicants are not subject to the Public Health System Reporting Requirements.

Application guidance materials will specify if a particular FY 1998 activity described above is/is not subject to the Public Health System Reporting Requirements.

6. PHS Non-use of Tobacco Policy Statement

The PHS strongly encourages all grant and contract recipients to provide a smoke-free workplace and promote the non-use of all tobacco products. In addition, Pub. L. 103–227, the Pro-Children Act of 1994, prohibits smoking in certain facilities (or in some cases, any portion of a facility) in which regular or routine education, library, day care, health care, or early childhood development services are provided to children. This is consistent with the PHS mission to protect and advance the physical and mental health of the American people.

7. Executive Order 12372

Applications submitted in response to all FY 1998 activities listed above are subject to the intergovernmental review requirements of Executive Order 12372, as implemented through DHHS regulations at 45 CFR part 100. E.O. 12372 sets up a system for State and local government review of applications for Federal financial assistance. Applicants (other than Federally recognized Indian tribal governments) should contact the State's Single Point of Contact (SPOC) as early as possible to alert them to the prospective application(s) and to receive any necessary instructions on the State's review process. For proposed projects serving more than one State, the applicant is advised to contact the SPOC of each affected State. A current listing of SPOCs is included in the application guidance materials. The SPOC should send any State review process recommendations directly to: Office of Extramural Activities Review, Substance Abuse and Mental Health Services Administration, Parklawn Building, Room 17–89, 5600 Fishers Lane, Rockville, Maryland 20857.

The due date for State review process recommendations is no later than 60 days after the specified deadline date for the receipt of applications. SAMHSA does not guarantee to accommodate or explain SPOC comments that are received after the 60-day cut-off.

Dated: April 14, 1998.

Patricia S. Bransford,

Acting Executive Officer, Substance Abuse and Mental Health Administration.

[FR Doc. 98–10315 Filed 4–17–98; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Endangered and Threatened Wildlife and Plants: Extension of Comment Period for Availability of an Environmental Assessment/Habitat Conservation Plan and Receipt of Application for Incidental Take Permit for the City of Austin for the Operation and Maintenance of Barton Springs Pool and Adjacent Springs

AGENCY: Fish and Wildlife Service, Interior

ACTION: Notice: extension of comment period.

SUMMARY: The U.S. Fish and Wildlife Service (Service) provides notice that the public comment period is extended for a Section 10(a)(1)(B) permit. The City of Austin has applied to the Service for an incidental take permit pursuant to Section 10(a)(1)(B) of the Endangered Species Act (Act). The applicant has been assigned permit number PRT–839031. The requested permit, which is for a period of 15 years, would authorize incidental take of the endangered Barton Springs salamander (*Eurycea sosorum*). The proposed take would occur as a result of the operation and maintenance of Barton Springs Pool and adjacent springs in Austin, Travis County, Texas.

The City of Austin has prepared the Environmental Assessment/Habitat Conservation Plan (EA/HCP) for the incidental take application. Neither a determination of whether jeopardy to the species is likely to occur, nor a Finding of No Significant Impact (FONSI) will be made before April 30, 1998. This notice is provided pursuant to Section 10(c) of the Act and National Environmental Policy Act regulations (40 CFR 1506.6).

DATES: Written comments on the application should be received on or before April 30, 1998.

ADDRESSES: Persons wishing to review the application may obtain a copy by writing to the Regional Director, U.S. Fish and Wildlife Service, P.O. Box 1306, Albuquerque, New Mexico 87103. Persons wishing to review the EA/HCP may obtain a copy by contacting Matthew Lechner, Austin Ecological Services Field Office, 10711 Burnet Road, Suite 200, Austin, Texas 78758 (512–490–0057). Documents will be available for public inspection by written request, by appointment only, during normal business hours (7:30 to 4:30) at the U.S. Fish and Wildlife Service, Austin Ecological Services Office, 10711 Burnet Road, Suite 200, Austin, Texas 78758 (512–490–0057). Written data or comments concerning the application and EA/HCP should be submitted to the Field Supervisor, Ecological Services Field Office, Austin, Texas (see address above). Please refer to permit number PRT–839031 when submitting comments.

FOR FURTHER INFORMATION CONTACT: Matthew Lechner at the above Austin Field Office.

SUPPLEMENTARY INFORMATION: Section 9 of the Act prohibits the ''taking'' of threatened and endangered species such as the Barton Springs salamander. However, the Service, under limited circumstances, may issue permits to take threatened or endangered wildlife species when such taking is incidental to, and not the purpose of, otherwise lawful activities. Regulations governing permits for endangered species are at 50 CFR 17.22.

Applicant: The City of Austin plans to operate Barton Springs pool and the adjacent springs in Austin, Travis County, Texas. This action may cause the incidental take of less than 20 salamanders per year for the 15-year term of the permit. The applicant proposed to minimize and mitigate for the incidental take of the Barton Springs salamander by placing 10 percent of the total revenues generated at Barton Springs Pool into a conservation fund. The fund would be used for enhancing habitat and for ecological and biological research on the included habitat conservation plan. In addition, mitigation measures are included in the Habitat Conservation Plan.

Nancy M. Kaufman,

Regional Director, Fish and Wildlife Service.

[FR Doc. 98–10065 Filed 4–17–98; 8:45 am]

BILLING CODE 4310–01–P

DEPARTMENT OF THE INTERIOR

Geological Survey

Technology Transfer Act of 1986

AGENCY: U.S. Geological Survey, Interior.

ACTION: Notice of proposed Cooperative Research and Development Agreement (CRADA) negotiations.

SUMMARY: The United States Geological Survey (USGS) is planning to enter into a Cooperative Research and Development Agreement (CRADA) with Laser-Scan, Inc., Sterling, Virginia. The purpose of the CRADA is to jointly research and develop geospatial data transport and update capabilities in a distributed database environment. The primary result of this joint research will be the development and demonstration of technology that enables cooperating organizations to build, share, and maintain geospatial framework feature data in a distributed update environment. Any other organization interested in pursuing the possibility of a CRADA for similar kinds of activities should contact the USGS.

ADDRESSES: Inquiries may be addressed to the Acting Chief of Research, U.S. Geological Survey, National Mapping Division, 500 National Center, 12201 Sunrise Valley Drive, Reston, Virginia 20192; Telephone (703) 648–4643, facsimile (703) 648–4706; Internet ''ebrunson@usgs.gov''.

FOR FURTHER INFORMATION CONTACT: Ernest B. Brunson, address above.

SUPPLEMENTARY INFORMATION: This notice is to meet the USGS requirement stipulated in the Survey Manual.

Dated: March 31, 1998.

Kathryn R. Clement,

Associate Chief, National Mapping Division.

[FR Doc. 98–10345 Filed 4–17–98; 8:45 am]

BILLING CODE 4310–Y7–M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Indian Gaming

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of Approved Amendment to Tribal-State Compact.

SUMMARY: Pursuant to Section 11 of the Indian Gaming Regulatory Act of 1988, Pub. L. 100–497, 25 U.S.C. 2710, the Secretary of the Interior shall publish, in the **Federal Register**, notice of approved amendments to Tribal-State Compacts for the purpose of engaging in Class III (casino) gaming on Indian reservations. The Assistant Secretary—Indian Affairs, Department of the Interior, through his delegated authority, has approved the Amendments to the Lac Courte Oreilles Band of Lake Superior Chippewa Indians and the State of Wisconsin Gaming Compact of 1991, which was executed on February 13, 1998.

DATES: This action is effective April 20, 1998.

FOR FURTHER INFORMATION CONTACT: Nancy J. Pierskalla, Acting Director, Indian Gaming Management Staff, Bureau of Indian Affairs, Washington, D.C. 20240, (202) 219–4068.

Dated: April 9, 1998.

Kevin Gover,

Assistant Secretary—Indian Affairs.

[FR Doc. 98–10261 Filed 4–17–98; 8:45 am]

BILLING CODE 4310–02–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Indian Gaming

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of Approved Amendment to Tribal-State Compact.

SUMMARY: Pursuant to Section 11 of the Indian Gaming Regulatory Act of 1988, Pub. L. 100–497, 25 U.S.C. 2710, the Secretary of the Interior shall publish, in the **Federal Register**, notice of approved amendments to Tribal-State Compacts for the purpose of engaging in Class III (casino) gaming on Indian reservations. The Assistant Secretary—Indian Affairs, Department of the Interior, through his delegated authority, has approved the Amendments to the Sokaogon Chippewa Community and the State of Wisconsin Gaming Compact of 1991, which was executed on February 20,1998.

DATES: This action is effective April 20, 1998.

FOR FURTHER INFORMATION CONTACT: Nancy J. Pierskalla, Acting Director, Indian Gaming Management Staff, Bureau of Indian Affairs, Washington, D.C. 20240, (202) 219–4068.

Dated: April 9, 1998.

Kevin Gover,

Assistant Secretary—Indian Affairs.

[FR Doc. 98–10260 Filed 4–17–98; 8:45 am]

BILLING CODE 4310–02–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA–018–1220–00]

Recreation Management Restrictions, etc.: California, South Yuba River, Hoyt's Crossing; Supplementary Rules

AGENCY: Bureau of Land Management, Interior.

ACTION: Proposed supplementary rules.

SUMMARY: The Bureau of Land Management (BLM) proposes to adopt supplementary rules for the management of recreational uses on public lands adjacent to the South Yuba River around Hoyt's Crossing. This action is necessary to limit adverse impacts to public lands while long-term planning for the South Yuba River is underway. These supplementary rules will protect the resources and the recreational experience until planning is completed.

DATES: Send your comments to reach BLM on or before June 4, 1998. BLM will not necessarily consider any comments received after the above date during its decision on the proposed supplementary rule.

ADDRESSES: You may mail comments to Deane Swickard, Field Manager, Folsom Resource Area, Bureau of Land Management, 63 Natoma Street, Folsom, CA 95630. For information about filing comments electronically, see ''Electronic access and filing address'' under the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: Don Sasseville, (916) 985–4474. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Station at 1–800–877–8339 between 8 a.m. and 4 p.m. Eastern time, Monday through Friday, excluding Federal holidays.

SUPPLEMENTARY INFORMATION:

I. Public Comment Procedures

Electronic Access and Filing Address

You may submit comments via the Internet to: dswickar@ca.blm.gov. Please also include your name and return address in your Internet message.

Written Comments

Written comments on the proposed supplementary rules should be specific, should be confined to issues pertinent to the proposed rule, and should explain the reason for any recommended change. Where possible, comments should reference the specific section or paragraph of the proposal which the commeter is addressing. BLM may not necessarily consider or include in the Administrative Record for the final rule comments which BLM receives after the close of the comment period (See **DATES**) or comments delivered to an address other than those listed above (See **ADDRESSES**).

Comments, including names, street addresses, and other contact information of respondents, will be

available for public review at this address during regular business hours (7:30 AM to 4 PM), Monday through Friday, except Federal holidays. Individual respondents may request confidentiality. If you wish to request BLM consider withholding your name, street address, and other contact information (such as: Internet address, FAX or phone number) from public review or from disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your comment. BLM will honor requests for confidentiality on a case-by-case basis to the extent allowed by law. BLM will make available for public inspection in their entirety all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses.

II. Proposed Supplementary Rules

The South Yuba River receives a high number of visitors and users, especially in the summer period. The area available for camping and picnicking is limited to the terrain. The concentration of visitors to a small area of public land is causing unacceptable impacts to the resources and degrading the recreation experience. The Bureau of Land Management and the California State Parks are currently working on long-term planning for the South Yuba River. These supplementary rules are necessary to protect the resource and the recreational experience until the planning is finalized. After completing the planning efforts, these supplementary rules may be continued, discontinued, or amended. BLM's authority for issuing supplementary rules is contained in 43 CFR 8365.1–6. BLM proposes to adopt the following supplementary rules which would be applicable to all public lands within sections 28 and 34, Township 17 North, Range 8 East of the Mt. Diablo Meridian:

1. No person shall camp overnight. The term *camp overnight* is defined as the use, construction, or taking possession of public lands using tents, shacks, lean-tos, tarps, vehicles, huts, blankets, or sleeping bags.

2. No person shall build, attend, maintain, or use a campfire. The term ''campfire'' is defined as a controlled fire occurring out of doors, used for cooking, branding, personal warmth, lighting, ceremonial, or esthetic purposes.

3. No person shall possess or consume alcoholic beverages. The term ''alcoholic beverages'' is defined as beer, wine, distilled spirits, or any other beverage defined as such by California law.

4. No person shall possess any bottle or container made of glass.

5. Any person who fails to comply with these supplementary rules may be subject to a fine of up to $100,000 and/or imprisoned not to exceed 12 months. These penalties are specified by 43 U.S.C. 303 and 18 U.S.C. 3623. Federal, State, and local law enforcement officers and emergency service personnel, while performing official duties, are exempt from these supplementary rules.

Dated: April 9, 1998.

Deane Swickard,

Field Manager.

[FR Doc. 98–10267 Filed 4–17–98; 8:45 am]

BILLING CODE 4310–40–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ES–960–1420–00; ES–49620, Group 100, Michigan]

Notice of Filing of Plat of Survey; Michigan

The plat of the dependent resurvey, survey of accretions, and the survey of lots 6, 7, and 8, in section 32, Township 51 North, Range 5 West, Michigan Meridian, Michigan, will be officially filed in Eastern States, Springfield, Virginia at 7:30 a.m., on May 26, 1998.

The survey was requested by the U.S. Fish and Wildlife Service.

All inquiries or protests concerning the technical aspects of the survey must be sent to the Chief Cadastral Surveyor, Eastern States, Bureau of Land Management, 7450 Boston Boulevard, Springfield, Virginia 22153, prior to 7:30 a.m., May 26, 1998.

Copies will be furnished upon request and prepayment of the appropriate fee.

Dated: April 9, 1998.

Stephen G. Kopach,

Chief Cadastral Surveyor.

[FR Doc. 98–10350 Filed 4–17–98; 8:45 am]

BILLING CODE 4310–GJ–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ES–960–1420–00; ES–045002, Group 28, Missouri]

Notice of Filing of Plat of Dependent Resurvey and Subdivision of Sections 7 and 18, Stay Lifted

On Thursday, April 2, 1992, there was published in the **Federal Register**, Volume 57, Number 64, on page 11334, a notice entitled, ''Filing of Plat of Dependent Resurvey and Subdivision of Sections 7 and 18, Stayed.'' Said notice referenced the stay of the plat of the dependent resurvey of a portion of the subdivisional lines, and the survey of the subdivision of sections 7 and 18; certain metes-and-bounds surveys, and the survey of road easements necessary to delineate the Wappapello Lake Acquisition Boundary in Township 28 North, Range 6 East, Fifth Principal Meridian, Missouri, accepted on February 3, 1992.

The State of Missouri's protest of the dependent resurvey, Group 28, Missouri was dismissed by the Interior Board of Land Appeals in a decision dated January 22, 1998. The plat of survey accepted February 3, 1992, was officially filed in Eastern States, Springfield, Virginia, at 7:30 a.m., on April 9, 1998.

Copies of the plat will be made available upon request and prepayment of the reproduction fee of $2.75 per copy.

Dated: April 9, 1998.

Stephen G. Kopach,

Chief Cadastral Surveyor.

[FR Doc. 98–10351 Filed 4–17–98; 8:45 am]

BILLING CODE 4310–GJ–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–942–08–1420–00]

Filing of Plats of Survey; Nevada

AGENCY: Bureau of Land Management.

ACTION: Notice.

SUMMARY: The purpose of this notice is to inform the public and interested State and local government officials of the filing of Plats of Survey in Nevada.

EFFECTIVE DATES: Filing is effective at 10:00 a.m. on the dates indicated below.

FOR FURTHER INFORMATION CONTACT: Robert H. Thompson, Acting Chief, Cadastral Survey, Bureau of Land Management (BLM), Nevada State Office, 1340 Financial Blvd., Reno, P.O. Box 12000, Reno, Nevada 89520–0006; 702–861–6541.

SUPPLEMENTARY INFORMATION:

1. The Plat of Survey of the following described lands was officially filed at the Nevada State Office, Reno, Nevada on January 23, 1998:

The plat, representing the dependent resurvey of a portion of the Fifth Standard Parallel South on the south boundary and a portion of the subdivisional lines, and the subdivision of section 33, and a metes-and-bounds

survey in section 33, Township 20 South, Range 54 East, of the Mount Diablo Meridian, in the State of Nevada, under Group No. 771, was accepted January 21, 1998.

This survey was executed to meet certain administrative needs of the Bureau of Land Management.

2. The Plat of Survey of the following described lands was officially filed at the Nevada State Office, Reno, Nevada on January 30, 1998:

The plat, representing the dependent resurvey of a portion of the west boundary and a portion of the subdivisional lines, and the subdivision of section 20, and a metes-and-bounds survey in sections 19 and 20, Township 23 South, Range 62 East, of the Mount Diablo Meridian, in the State of Nevada, under Group No. 770, was accepted January 28, 1998.

This survey was executed to meet certain administrative needs of the Bureau of Land Management.

3. The Plat of Survey of the following described lands was officially filed at the Nevada State Office, Reno, Nevada on March 5, 1998:

The plat, in four (4) sheets, representing the dependent resurvey of a portion of the west boundary (Reese River Guide Meridian) of Township 12 North, Range 43 East; and the dependent resurvey of portions of the south and north boundaries and subdivisional lines, and the independent resurvey of portions of the north boundary and subdivisional lines, and the metes-and-bounds survey of Tracts 37 and 38, and the subdivision of certain sections, Township 12 North, Range 42 East, of the Mount Diablo Meridian, in the State of Nevada, under Group No. 764, was accepted March 3, 1998.

This survey was executed to meet certain administrative needs of the Bureau of Land Management, U.S. Forest Service and the Bureau of Indian Affairs.

4. The above-listed surveys are now the basic records for describing the lands for all authorized purposes. These surveys have been placed in the open files in the BLM Nevada State Office and are available to the public as a matter of information. Copies of the surveys and related field notes may be furnished to the public upon payment of the appropriate fees.

Dated: March 31, 1998.

Robert H. Thompson,

Acting Chief Cadastral Surveyor, Nevada.

[FR Doc. 98–10269 Filed 4–17–98; 8:45 am]

BILLING CODE 4310–HC–P

DEPARTMENT OF THE INTERIOR

National Park Service

National Capital Area Parks East

Mary McLeod Bethune Council House National Historic Site Advisory Commission; Public Meeting

Notice is hereby given in accordance with the Federal Advisory Committee Act, that a meeting of the Federal Advisory Commission for the Mary McLeod Bethune Council House National Historic Site will be held on April 30, 1998, from 5 p.m. to 7 p.m., at the Newberry Library, located at 6 West Walton Street, Chicago, IL 60610.

The Commission was authorized on December 11, 1991, by Pub. L. 102–211, for the purpose of advising the Secretary of the Interior in the development of a General Management Plan for the Mary McLeod Bethune Council House National Historic Site.

The members of the Commission are as follows: Dr. Dorothy I. Height; Ms. Barbara Van Blake; Ms. Brenda Girton-Mitchell; Dr. Savanna C. Jones; Dr. Bettye J. Gardner; Dr. Bettye Collier-Thomas; Mr. Eugene Morris; Dr. Rosalyn Terborg-Penn; Mrs. Bertha S. Waters; Dr. Frederick Stielow; Dr. Sheila Flemming; Dr. Ramona Edelin; Mrs. Romaine B. Thomas; Ms. Brandi L. Creighton; and Dr. Janette Hoston Harris.

The purpose of this meeting will be to continue planning and developing a general management plan for the Mary McLeod Bethune Council House National Historic Site. This meeting will be open to the public. Any person may file with the Commission a written statement concerning the matters to be discussed. Persons who wish further information concerning this meeting or wish to file a written statement or testify at the meeting may contact the Federal Liaison Officer for the Commission, at (202) 673–2402. Minutes of this meeting will be available for public inspection 4 weeks after the meeting at the Mary McLeod Bethune Council House National Historic Site, located at 1318 Vermont Avenue, N.W., Washington, D.C. 20005.

Dated: April 13, 1998.

John Hale,

Acting Superintendent, National Capital Parks East.

[FR Doc. 98–10073 Filed 4–17–98; 8:45 am]

BILLING CODE 4310–70–M

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion for Native American Human Remains and Associated Funerary Objects from Minnesota in the Control of the St. Paul District, U.S. Army Corps of Engineers, St. Paul, MN

AGENCY: National Park Service

ACTION: Notice

Notice is hereby given in accordance with provisions of the Native American Graves Protection and Repatriation Act (NAGPRA), 43 CFR 10.9, of the completion of an inventory of human remains and associated funerary objects in the control of the St. Paul District, U.S. Army Corps of Engineers, St. Paul, MN.

A detailed assessment of the human remains was made by U.S. Army Corps of Engineers and Hamline University Osteology Laboratory professional staff in consultation with representatives of the Sisseton-Wahpeton Sioux Tribe of the Lake Traverse Reservation, the Upper Sioux Indian Community of the Upper Sioux Reservation, the Crow Creek Sioux Tribe of the Crow Creek Reservation, Lower Sioux Mdewakanton Community, Shakopee Mdewakanton Sioux community, Prairie Island Community, Flandreau Santee Sioux Tribe, and Santee Sioux Tribe of the Santee Reservation of Nebraska.

In 1969, human remains representing a minimum of 35 individuals were recovered from the Gull Lake dam site (12 CA37) near Brainerd, MN during legally authorized archeological excavations by the University of Minnesota and the Minnesota Historical Society prior to improvements at the Gull Lake dam. No known individuals were identified. The 1,060 associated funerary objects include ceramic vessels, ceramic sherds, pieces of lithic debris, stone tools and tool fragments, two wood charcoal samples, and fragments of canine, beaver, bear, avian, and moose bone.

Based on continuities of material culture in ceramic styles and construction, archeological evidence indicates long-term occupation of this area by the same cultural group, from the archeologically-defined Brainerd to Kathio-Clam River-Blackduck to Psinomani. The Psinomani, present during the Late Woodland and early Contact periods, are generally regarded as the ancestors of the Dakota. Historic documents indicate that Eastern Dakota bands (Mdewakanton, Wahpekute, Sisseton, and Wahpeton), and related

groups (Teton, Yankton, and Yanktonai), occupied the headwaters area of the Mississippi into the contact period. Archeological evidence, Dakota oral tradition, and the continuities of material culture, together with the well-established and historically documented presence of these Eastern Dakota bands, particularly the Mdewakanton and Wahpeton, in the Gull Lake area during the early contact period indicates the Eastern Dakota are affiliated with the burials in this particular mound group.

Based on the above mentioned information, officials of the U.S. Army Corps of Engineers, St. Paul District have determined that, pursuant to 43 CFR 10.2 (d)(1), the human remains listed above represent the physical remains of a minimum of 35 individuals of Native American ancestry. Officials of the U.S. Army Corps of Engineers, St. Paul District have also determined that, pursuant to 43 CFR 10.2 (d)(2), the 1,060 objects listed above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony. Lastly, officials of the U.S. Army Corps of Engineers, St. Paul District have determined that, pursuant to 43 CFR 10.2 (e), there is a relationship of shared group identity which can be reasonably traced between these Native American human remains and associated funerary objects and the Sisseton-Wahpeton Sioux Tribe of the Lake Traverse Reservation, the Upper Sioux Indian Community of the Upper Sioux Reservation, the Crow Creek Sioux Tribe of the Crow Creek Reservation, Lower Sioux Mdewakanton Community, Shakopee Mdewakanton Sioux community, Prairie Island Community, Flandreau Santee Sioux Tribe, and Santee Sioux Tribe of the Santee Reservation of Nebraska.

This notice has been sent to officials of the Sisseton-Wahpeton Sioux Tribe of the Lake Traverse Reservation, the Upper Sioux Indian Community of the Upper Sioux Reservation, the Crow Creek Sioux Tribe of the Crow Creek Reservation, Lower Sioux Mdewakanton Community, Shakopee Mdewakanton Sioux community, Prairie Island Community, Flandreau Santee Sioux Tribe, and Santee Sioux Tribe of the Santee Reservation of Nebraska. Representatives of any other Indian tribe that believes itself to be culturally affiliated with these human remains and associated funerary objects should contact Ms. Sissel Johannessen, Environmental Resources Section, St. Paul District, Corps of Engineers, 190-5th Street East, St. Paul, MN 55101; telephone: (612) 290–5263 before May 20, 1998. Repatriation of the human remains and associated funerary objects to the Sisseton-Wahpeton Sioux Tribe of the Lake Traverse Reservation, the Upper Sioux Indian Community of the Upper Sioux Reservation, the Crow Creek Sioux Tribe of the Crow Creek Reservation, Lower Sioux Mdewakanton Community, Shakopee Mdewakanton Sioux community, Prairie Island Community, Flandreau Santee Sioux Tribe, and Santee Sioux Tribe of the Santee Reservation of Nebraska may begin after that date if no additional claimants come forward.

Dated: April 14, 1998.

Francis P. McManamon,

Departmental Consulting Archeologist, Manager, Archeology and Ethnography Program.

[FR Doc. 98–10355 Filed 4–17–98; 8:45 am]

BILLING CODE 4310–70–F

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion for Native American Human Remains and Associated Funerary Objects in the Possession of the Minnesota Indian Affairs Council, Bemidji, MN

AGENCY: National Park Service

ACTION: Notice

Notice is hereby given in accordance with provisions of the Native American Graves Protection and Repatriation Act (NAGPRA), 43 CFR 10.9, of the completion of an inventory of human remains and associated funerary objects in the possession of the Minnesota Indain Affairs Council, Bemidji, MN.

A detailed assessment of the human remains was made by Hamline University professional staff in consultation with representatives of the Flandreau Santee Sioux Tribe of South Dakota, Santee Sioux Tribe of Nebraska, Sisseton-Wahpeton Sioux Tribe of South Dakota, Lower Sioux Indian Community of Minnesota, Spirit Lake Sioux Tribe of North Dakota, Prairie Island Mdewakanton Sioux Community of Minnesota, Yankton Sioux Tribe of South Dakota, Shakopee Dakota Community of Minnesota, and the Upper Sioux Indian Community of the Upper Sioux Reservation.

In 1938, human remains representing one individual were removed from a Spirit Lake Sioux cemetery overlooking the river near Tokio, ND by unknown person(s) and ''dropped off'' at the University of Minnesota. No known individual was identified. The one associated funerary object is a celluloid pin.

Based on the cemetary location and use, these human remains have been identified as Native American. Based on the associated funerary object, these human remains are also estimated to date from the late nineteenth century. This cemetery is known to have been exclusively used by the Spirit Lake Sioux Tribe during this time.

In 1946, human remains representing four individuals were recovered from the Saienga Mound, Chippewa County, MN during excavations conducted by L.A. Wilford of the University of Minnesota. No known individuals were identified. The eight associated funerary objects include a catlinite elbow pipe, iron nails, gunflints, a striking steel, a coiled spring, a ring, a broken knife, and a ''washer'' ornament.

Based on the associated funerary objects, these individuals have been identified as Native American. These burial are from the post contact period, and represent intrusive burials into a precontact mound. Based on the trade goods present and manner of interment, these individuals have been identified as Sisseton-Wahpeton.

In 1963, human remains representing one individual were recovered from the Kemnitz site, Renville County, MN during excavations conducted by Anderson and Norquist of the University of Minnesota. No known individual was identified. The ten associated funerary objects include metal earrings, a coffin nail, a bone comb, glass beads, human hair, a feather, iron scissors, fabric, fabric with feathers, and coffin wood fragments.

Based on the associated funerary objects, these individuals have been identified as Native American. The location, age of the associated funerary objects, and manner of interment of these individuals indicate affiliation with the Sisseton-Wahpeton Sioux Tribe.

In 1940, human remains representing six individuals were recovered from the Huber Mound site, Scott County, MN during excavations conducted by L.A. Wilford of the University of Minnesota. No known individuals were identified. The one associated funerary object is a scraper.

Based on material culture, the Huber Mound site has been identified at a Late Woodland—Kathio phase (900-1300 A.D.) occupation. Based on continuities of material culture in ceramic styles and construction, archeological evidence indicates long-term occupation of this area by the same cultural group, from the archeologically-defined Brainerd to Kathio-Clam River-Blackduck to Psinomani. The Psinomani, present during the Late Woodland and early

Contact periods, are generally regarded as the ancestors of the Dakota. Manner of interment of these individuals are consistent with known ancestral Dakota practice.

In 1950, human remains representing 28 individuals were recovered from the Brown's Mounds (also known as Eck Mounds), Hennepin County, MN during excavations conducted by L.A. Wilford of the University of Minnesota. No known individuals were identified. The seven associated funerary objects include a potsherd, three canine teeth, a biface/knife face, a broken end scraper, and a snail shell bead.

Based on material culture, the Brown's Mounds site has been identified at a Late Woodland-Kathio phase (900-1300 A.D.) occupation. Based on continuities of material culture in ceramic styles and construction, archeological evidence indicates long-term occupation of this area by the same cultural group, from the archeologically-defined Brainerd to Kathio-Clam River-Blackduck to Psinomani. The Psinomani, present during the Late Woodland and early Contact periods, are generally regarded as the ancestors of the Dakota. Manner of interment of these individuals are consistent with known ancestral Dakota practice.

In 1938, human remains representing 19 individuals were recovered from the Fingerson Mound site, Pope County, MN during excavations conducted by L.A. Wilford of the University of Minnesota. No known individuals were identified. The one associated funerary object is a headless buffalo calf skeleton.

Based on material culture, the Fingerson Mound site has been identified at a Late Woodland-Kathio phase (900-1300 A.D.) occupation. Based on continuities of material culture in ceramic styles and construction, archeological evidence indicates long-term occupation of this area by the same cultural group, from the archeologically-defined Brainerd to Kathio-Clam River-Blackduck to Psinomani. The Psinomani, present during the Late Woodland and early Contact periods, are generally regarded as the ancestors of the Dakota. Manner of interment of these individuals are consistent with known ancestral Dakota practice.

In 1964, human remains representing 54 individuals were recovered formt he Steele Mounds (Shakopee Mounds), Scott County, MN during excavations conducted by Elden Johnson of the University of Minnesota. No known individuals were identified. The 54 associated funerary objects include bison teeth, shell, a horse bit, a ring with stone, tin strip and tinklers, coffin nails, a bell, two pipestone heads, a knife,earrings, a crucifix, brooches, cloth, hair, a shroud, glass beads, shell bead, hawk bells with fabric fragments, spoons, a lock, bracelets, a disk, a pewter medallion, deer tooth, porcelin fragments, , metal point, projectile points, piece of pipe tube, Germain silver breast plate, mound birchbark, brass and copper disk fragments, crockery, nails, iron rings, brass stud, turtle shell, worked bones, metal armband fragments, buckle, metal fragments, gunflints, potsherd, end scrapers, utilized flake, rounded stone, hammerstone, side scraper, 17 bags of charcoal wood, and bark, burned birchbark with sewing holes, burned needle/awl, charred wood and burned bone fragments, woven fabric, shroud fabric, board fragments.

Based on the types of associated funerary objects and manner of interments, these human remains have been determined to be Native American. The apparent age of the associated funerary objects place the date of burial to the late 18th and early 19th century. The apparent age of the burials, associated funerary objects, manner of interment, and location of the burial indicate affiliation with the Mdewakanton Dakota.

In 1938, human remains representing ten individuals were recovered from the Bartke Mound Group, Pope County, MN during excavations conducted by L.A. Wilford of the University of Minnesota. No known individuals were identified. No associated funerary objects are present.

Based on material culture, the Bartke Mound Group has been identified at a Late Woodland-Kathio phase (900-1300 A.D.) occupation. Based on continuities of material culture in ceramic styles and construction, archeological evidence indicates long-term occupation of this area by the same cultural group, from the archeologically-defined Brainerd to Kathio-Clam River-Blackduck to Psinomani. The Psinomani, present during the Late Woodland and early Contact periods, are generally regarded as the ancestors of the Dakota. Manner of interment of these individuals are consistent with known ancestral Dakota practice.

In 1951, human remains representing 23 individuals were recovered from the McKee site, Washington County, MN during excavations conducted by L.A. Wilford of the University of Minnesota. No known individuals were identified. No associated funerary objects are present.

Based on material culture, the McKee site has been identified at a Woodland-Mille Lacs focus (900-1300 A.D.) occupation. Based on continuities of material culture in ceramic styles and construction, archeological evidence indicates long-term occupation of this area by the same cultural group, from the archeologically-defined Brainerd to Kathio-Clam River-Blackduck to Psinomani. The Psinomani, present during the Late Woodland and early Contact periods, are generally regarded as the ancestors of the Dakota. Manner of interment of these individuals are consistent with known ancestral Dakota practice.

In 1960, human remains representing 37 individuals were recovered from the Crookston site, Polk County, MN during excavations conducted by Elden Johnson of the University of Minnesota. No known individuals were identified. The three associated funerary objects include aunal remains, a stone flake, a worked shell, and burial soil matrix samples.

Based on material culture, the Crookston site has been identified at a Late Woodland-Kathio phase (900-1300 A.D.) occupation. Based on continuities of material culture in ceramic styles and construction, archeological evidence indicates long-term occupation of this area by the same cultural group, from the archeologically-defined Brainerd to Kathio-Clam River-Blackduck to Psinomani. The Psinomani, present during the Late Woodland and early Contact periods, are generally regarded as the ancestors of the Dakota. Manner of interment of these individuals are consistent with known ancestral Dakota practice.

In 1950, human remains representing one individual were recovered from an unknown location in Crow Wing County, MN by three fishermen (unnamed) and donated to the University of Minnesota. No known individual was identified. The two associated funerary objects include an Ogechie vessel and a bone flesher.

Based on the associated funerary objects, this individual has been determined to be Native American dating to approximately 1000-1750 A.D. Based on continuties of Ogechie ceramic style with ceramics at documented Mdewankanton sites in the Mille Lacs area, this individual has been determined to be affiliated with the Mdewankanton Dakota.

In 1969, human remains representing one individual were recovered from the Cooper site, Mille Lacs County, MN during excavations conducted by Jan Streiff of the University of Minnesota. No known individual was identified. The two associated funerary objects are two mortuary ceramic vessels.

In 1967, human remains representing ten individuals were recovered from the Cooper site by Gordon Lothson and donated to the University of Minnesota. No known individuals were identified. The 102 associated funerary objects include mortuary vessels, projectile points, a harpoon point, iron fragments, an arrowshaft wrench, knives, glass beads, copper jingles, a bird bone whistle, arrowshaft abraders, knife sharpener, bone beads, birch bark, lithic core, hammerstone, knife handle fragments, two beaver incisors, metal fragments, bone tubes, fire-cracked rock, a brass ring, gypsum piece, scrapers, brass jingles, sherds, flake, wood fragments, shell spoons, flotation materials from burial matrix, a green stone pendent, a small catlinite elbow pipe, orchre, bone needles, burial matrix, brass/copper bracelet, fishbone, bone flakes, and shells.

In 1965, human remains representing 11 individuals were recovered from the Cooper site by L.R. Cooper and donated to the University of Minnesota. No known individuals were identified. The two associated funerary objects are mortuary vessels.

At an unknown date, human remains representing four individuals were recovered from the Cooper site under unknown circumstances and accessioned into the University of Minnesota's collections with the accession number UM0636. No known individuals were identified. The two associated funerary objects are a catlinite disc pipe and a mortuary vessel.

At an unknown date, human remains representing six individuals were recovered from the Cooper site under unknown circumstances and accessioned in to the University of Minnesota's collections with the accession number UM0664. No known individuals were identified. The four associated funerary objects are morturary vessels.

Based on the associated funerary objects and manner of interment, these individuals have been identified as Native American. Based on material culture, manner of interment, and village subsistence practices, the Cooper site has been identified as a Mdewankanton Dakota occupation dating after 1670 A.D.

In 1934, human remains representing three individuals were recovered from the Davis and Findlay Mounds, Hennepin County, MN during excavations conducted by G.F. Ekhom of the University of Minnesota. No known individuals were identified. The five associated funerary objects include a metal scraper, a metal bracelet, coffin wood, a clam shell, and iron nails.

Based on material culture, the Davis and Findlay Mounds, described as being located ''on the south end of Third Avenue, Minneapolis'', have been identified as Mulicomponent Woodland with intrusive historic period burials. Based on the associated funerary objects and manner of interment, these individuals have been identified as Native American from the historic period. During the historic period, the area of the Davis and Findlay mounds were heavily used by the Mdewankanton Dakota.

Prior to 1905, human remains representing one individual were recovered from a mound on Phelp's Island by Alfred J. Hill, who donated his collections to the University of Minnesota in 1905. No known indivdiual was identified. No associated funerary objects are present.

Based on material culture, the Phelp's Island site has been identified at a Late Woodland-Kathio phase (900-1300 A.D.) occupation. Based on continuities of material culture in ceramic styles and construction, archeological evidence indicates long-term occupation of this area by the same cultural group, from the archeologically-defined Brainerd to Kathio-Clam River-Blackduck to Psinomani. The Psinomani, present during the Late Woodland and early Contact periods, are generally regarded as the ancestors of the Dakota. Manner of interment of these individuals are consistent with known ancestral Dakota practice.

In 1934, human remains representing 18 individuals were recovered from the Round Mound, Traverse County, MN during excavations conducted by A.E. Jenks of the University of Minnesota. No known individuals were identified. The nine associated funerary objects include bone armbands, a bone awl, a platform pipe, a quartzite knife, an atlatl weight, a soil matrix cor, and ochre.

Based on material culture, the Round Mound site has been identified at a Late Woodland-Kathio phase (900-1300 A.D.) occupation. Based on continuities of material culture in ceramic styles and construction, archeological evidence indicates long-term occupation of this area by the same cultural group, from the archeologically-defined Brainerd to Kathio-Clam River-Blackduck to Psinomani. The Psinomani, present during the Late Woodland and early Contact periods, are generally regarded as the ancestors of the Dakota. Manner of interment of these individuals are consistent with known ancestral Dakota practice.

Based on the above mentioned information, officials of the Minnesota Indian Affairs Council have determined that, pursuant to 43 CFR 10.2 (d)(1), the human remains listed above represent the physical remains of 238 individuals of Native American ancestry. Officials of the Minnesota Indian Affairs Council have also determined that, pursuant to 43 CFR 10.2 (d)(2), the 213 objects listed above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony. Lastly, officials of the Minnesota Indian Affairs Council have determined that, pursuant to 43 CFR 10.2 (e), there is a relationship of shared group identity which can be reasonably traced between these Native American human remains and associated funerary objects and the Flandreau Santee Sioux Tribe of South Dakota, Santee Sioux Tribe of Nebraska, Sisseton-Wahpeton Sioux Tribe of South Dakota, Lower Sioux Indian Community of Minnesota, Spirit Lake Sioux Tribe of North Dakota, Prairie Island Mdewakanton Sioux Community of Minnesota, Yankton Sioux Tribe of South Dakota, Shakopee Dakota Community of Minnesota, and the Upper Sioux Indian Community of the Upper Sioux Reservation.

This notice has been sent to officials of the Flandreau Santee Sioux Tribe of South Dakota, Santee Sioux Tribe of Nebraska, Sisseton-Wahpeton Sioux Tribe of South Dakota, Lower Sioux Indian Community of Minnesota, Spirit Lake Sioux Tribe of North Dakota, Prairie Island Mdewakanton Sioux Community of Minnesota, Yankton Sioux Tribe of South Dakota, Shakopee Dakota Community of Minnesota, and the Upper Sioux Indian Community of the Upper Sioux Reservation. Representatives of any other Indian tribe that believes itself to be culturally affiliated with these human remains and associated funerary objects should contact James L. (Jim) Jones, Cultural Resource Specialist, Minnesota Indian Affairs Council, 1819 bemidji Ave. Bemidji, MN 56601; telephone: (218) 755-3825, before May 20, 1998. Repatriation of the human remains and associated funerary objects to the Flandreau Santee Sioux Tribe of South Dakota, Santee Sioux Tribe of Nebraska, Sisseton-Wahpeton Sioux Tribe of South Dakota, Lower Sioux Indian Community of Minnesota, Spirit Lake Sioux Tribe of North Dakota, Prairie Island Mdewakanton Sioux Community of Minnesota, Yankton Sioux Tribe of South Dakota, Shakopee Dakota Community of Minnesota, and the Upper Sioux Indian Community of the

Upper Sioux Reservation may begin after that date if no additional claimants come forward.

Dated: April 14, 1998.

Francis P. McManamon,

Departmental Consulting Archeologist, Manager, Archeology and Ethnography Program.

[FR Doc. 98–10326 Filed 4–17–98; 8:45 am]

BILLING CODE 4310–70–F

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion for Native American Human Remains from Chugachik Island and Togiak, AK in the Possession of the Pratt Museum, Homer, AK

AGENCY: National Park Service

ACTION: Notice

Notice is hereby given in accordance with provisions of the Native American Graves Protection and Repatriation Act (NAGPRA), 43 CFR 10.9, of the completion of an inventory of human remains in the possession of the Pratt Museum, Homer, AK.

A detailed assessment of the human remains was made by Pratt Museum, University of Alaska-Anchorage, and Alaska State Office of History and Archaeology professional staff in consultation with representatives of the Chugach Alaska Corporation, Nanwalek Village Council, Port Graham Village Council, Seldovia Village Tribe, Cook Inlet Region, Inc., Ninilchik Village Traditional Council, Kenaitze Indian Tribe, Salamatof Tribal Council, Bristol Bay Native Corporation, and the Traditional Council of Togiak.

Between 1966-1976, human remains representing three individuals were recovered from non-federal lands on Chugachik Island in Kachemak Bay, AK by N. Holt, A.C. Holt, and/or Sam Pratt and donated to the Pratt Museum by Sam Pratt. No known individuals were identified. No associated funerary objects are present.

Based on the apparent age of the remains (c. 300 BC to 300 AD), these individuals have been determined to be Alutiiq. Based on material culture and manner of interment, the site from which these remains were recovered has been identified as Kachemak Tradition. Based on continuities of material culture and technologies, the Kachemak Tradition has been identified as an antecedent of the modern Alutiiq peoples, including Chugach Alaska Corporation, Nanwalek Village Council, Port Graham Village Council, Seldovia Village Tribe, Native Village of Tatitlek, Native Village of Chenega, and Eyak Native Village.

In 1981, human remains representing one individual were recovered from non-federal lands at Togiak, AK by Patrick and Dianne Audette who donated them to the Pratt Museum. No known individuals were identified. No associated funerary objects are present.

Based on statitistical tests of cranial measurements, this individual has been determined to be Yup'ik. The location where the remains were reportedly recovered has been identified as an area of Yup'ik occupation dating back 2,500 years based on continuties of material culture.

Based on the above mentioned information, officials of the Pratt Museum have determined that, pursuant to 43 CFR 10.2 (d)(1), the human remains listed above represent the physical remains of four individuals of Native American ancestry. Officials of the Pratt Museum have also determined that, pursuant to 43 CFR 10.2 (e), there is a relationship of shared group identity which can be reasonably traced between these Native American human remains and the Chugach Alaska Corporation, Nanwalek Village Council, Port Graham Village Council, Seldovia Village Tribe, Native Village of Tatitlek, Native Village of Chenega, Eyak Native Village, Bristol Bay Native Corporation, and Traditional Council of Togiak.

This notice has been sent to officials of the Chugach Alaska Corporation, Nanwalek Village Council, Port Graham Village Council, Seldovia Village Tribe, Cook Inlet Region, Inc., Ninilchik Village Traditional Council, Kenaitze Indian Tribe, Salamatof Tribal Council, Bristol Bay Native Corporation, and the Traditional Council of Togiak. Representatives of any other Indian tribe that believes itself to be culturally affiliated with these human remains should contact Betsy Webb, Curator of Collecctions, Pratt Museum, 3779 Bartlett Street, Homer, AK 99603; telephone: (907) 235-8635, fax: (907) 235-2764; or email: pratt@alaska.net, before May 20, 1998. Repatriation of the human remains to the Chugach Alaska Corporation, Nanwalek Village Council, Port Graham Village Council, Seldovia Village Tribe, Native Village of Tatitlek, Native Village of Chenega, Eyak Native Village, Bristol Bay Native Corporation, and the Traditional Council of Togiak may begin after that date if no additional claimants come forward.

Dated: April 13, 1998.

Francis P. McManamon,

Departmental Consulting Archeologist, Manager, Archeology and Ethnography.

[FR Doc. 98–10356 Filed 4–17–98; 8:45 am]

BILLING CODE 4310–70–F

DEPARTMENT OF JUSTICE

Office of Special Counsel for Immigration Related Unfair Employment Practices

Immigration Related Employment Discrimination Public Education Grants

AGENCY: Office of Special Counsel for Immigration Related Unfair Employment Practices, Civil Rights Division, U.S. Department of Justice.

ACTION: Notice of availability of funds and solicitation for grant applications.

SUMMARY: The Office of Special Counsel for Immigration Related Unfair Employment Practices (OSC) announces the availability of funds for grants to conduct public education programs about the rights afforded potential victims of employment discrimination and the responsibilities of employers under the antidiscrimination provisions of the Immigration and Nationality Act (INA), 8 U.S.C. 1324b.

It is anticipated that a number of grants will be competitively awarded to applicants who can demonstrate a capacity to design and successfully implement public education campaigns to combat immigration-related employment discrimination. Grants will range in size from $50,000 to $150,000.

OSC will accept proposals from applicants who have access to potential victims of discrimination or whose experience qualifies them to educate employers about the antidiscrimination provisions of INA. OSC welcomes proposals from diverse nonprofit organizations such as local, regional or national ethnic and immigrants' rights advocacy organizations, trade associations, industry groups, professional organizations, or other nonprofit entities providing information services to potential victims of discrimination and/or employers, including state and local government agencies.

APPLICATION DUE DATE: 6. p.m., edt, June 4, 1998.

FOR FURTHER INFORMATION CONTACT: Patita McEvoy, Public Affairs Specialist, Office of Special Counsel for

Immigration Related Unfair Employment Practices, 1425 New York Ave., NW., Suite 9000, PO. Box 27728, Washington, DC 20038–7728. Tel. (202) 616–5594, or (202) 616–5525 (TDD for the hearing impaired).

SUPPLEMENTARY INFORMATION: The Office of Special Counsel for Immigration Related Unfair Employment Practices of the Civil Rights Division of the Department of Justice announces the availability of funds to conduct cost-effective public education programs concerning the antidiscrimination provisions of INA. Funds will be awarded to selected applicants who propose cost-effective ways of educating employers and/or members of the protected class, or to those who can fill a particular need not currently being met.

Background

The Immigration Reform and Control Act of 1986 (IRCA), Public Law 99–603, 8 U.S.C. 1324b, *et seq.* and the Immigration Act (IMMACT 90) make hiring non-U.S. citizens without work authorization unlawful, and require employers to verify the identity and work authorization of all new employees. Employers who violate this law are subject to sanctions, including fines and possible criminal prosecution.

During the debate on IRCA, Congress foresaw the possibility that employers, fearful of sanctions, would refuse employment to individuals simply because they looked or sounded foreign. Consequently, Congress enacted Section 102 of IRCA, an antidiscrimination provision. Section 102 prohibits employers of four or more employees from discriminating on the basis of citizenship status or national origin in hiring, firing, recruitment or referral for a fee, and prohibits employers from engaging in document abuse in the employment eligibility verification process.

Citizens and certain classes of work authorized individuals are protected from citizenship status discrimination. Protected non-citizens include permanent residents who apply for naturalization within six months of being eligible to do so, temporary residents under the 1986 amnesty, the Special Agricultural Workers (SAWs) or the Replenishment Agricultural Workers (RAWs) programs, and refugees and asylees. Citizens and *all* work authorized individuals are protected from discrimination on the basis of national origin. However, this prohibition applies only to employers with four to fourteen employees. National origin discrimination complaints against employers with fifteen or more employees remain under the jurisdiction of the Equal Employment Opportunity Commission pursuant to Title VII of the Civil Rights Act of 1964, 42 U.S.C. 2000e, *et seq.*

In addition, under the document abuse provision of the law, employers must accept all forms of work authorization and proof of identity allowed by the Immigration and Naturalization Service (INS) for completion of the Employment Eligibility Verification (I–9) Form. Employers may not prefer or require one form of documentation over another for hiring purposes. Requiring more or specific documents to prove identity and work authorization may constitute document abuse.

On October 1, 1996, Congress passed the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA). IIRIRA will expand the existing electronic employment eligibility pilot programs being carried out by the INS, and will reduce the number of documents that employers can accept to verify an individual's work eligibility. These changes are expected to take place by October 1, 1998.

OSC is responsible for receiving and investigating discrimination charges and, when appropriate, filing complaints with specially designated administrative law judges. OSC also initiates independent investigations of possible Section 102 violations.

While OSC has been established a record of vigorous enforcement, studies by the U.S. General Accounting Office and other sources have shown that there is an extensive lack of knowledge on the part of protected individuals and employers about the antidiscrimination provisions. Enforcement cannot be effective if potential victims of discrimination are not aware of their rights. Moreover, discrimination can never be eradicated so long as employers are not aware of their responsibilities.

Purpose

OSC seeks to educate both workers and employers about their rights and responsibilities under the antidiscrimination provisions of INA. Because previous grantees have developed a wealth of materials (e.g., brochures, posters, booklets, information packets, and videos) to educate these groups, OSC has determined that the focus of the program should be on the actual delivery of these materials to educate further both potential victims and employers. More specifically, in keeping with the purpose of the grant program, OSC seeks proposals that will use existing materials effectively to educate large numbers of workers or employers about exercising their rights or fulfilling their obligations under the antidiscrimination provisions.

Program Description

The program is designed to develop and implement cost-effective approaches to educate potential victims of employment discrimination about their rights and to educate employers about their responsibilities under INA's antidiscrimination provisions. Applications may propose to educate potential victims only, employers only, or both in a single campaign. Program budgets must include the travel, lodging and other expenses necessary for at least one, but not more than two, program staff members to attend the mandatory OSC grantee training (2 days) held in Washington, DC at the beginning of the grant period (late Autumn). Proposals should outline the following key elements of the program:

Part I: Targeted Population

The educational efforts under the grant should be directed to (1) work-authorized non-citizens who are protected individuals, since this group is especially vulnerable to employment discrimination; (2) those citizens who are most likely to become victims of employment discrimination; and/or to (3) employers. The proposals should define the characteristics of the work authorized population or the employer group(s) targeted for the educational campaign, and the applicant's qualifications to reach credibly and effectively large segments of the campaign targets.

The proposals should also detail the reasons for targeting each group of protected individuals or employers by describing particular needs or other factors to support the selection. In defining the campaign targets and supporting the reasons for the selection, applicants may use studies, surveys, or any other sources of information of generally accepted reliability.

Part II: Campaign Strategy

We encourage applicants to devise effective and creative means of public education and information dissemination that are specifically designed to reach the widest possible targeted audience. Those applicants proposing educational campaigns addressing potential victims of discrimination should keep in mind that some of the traditional methods of public communication may be less than optimal for educating members of

national or linguistic groups that have limited community-based support and communication networks.

Some grantees who are conducting citizenship campaigns, have, in the past, combined those efforts and resources with the INA antidiscrimination education campaigns in order to maximize the scope and breadth of the project and to reach a larger number of individuals in the targeted population. If an applicant proposes to combine these efforts, please discuss how the programs will interact and how the budgets will be administered.

Proposals should discuss the components of the campaign strategy, detail the reasons supporting the choice of each component, and explain how each component will effectively contribute to the overall objective of cost-effective dissemination of useful and accurate information to a wide audience of protected individuals or employers. Discussions of the campaign strategies and supporting rationale should be clear, concise, and based on sound evidence and reasoning.

Since there presently exists a wealth of materials for use in educating the public, proposals should include in their budgets the costs for distribution of materials received from OSC or from current/past OSC grantees.

To the extent that applicants believe the development of original materials particularly suited to their campaign is necessary, their proposal should articulate in detail the circumstances requiring the development of such materials. All such materials must be approved by OSC to ensure legal accuracy and proper emphasis prior to production. It should be noted that proposed revisions/translations of OSC-approved materials must also be submitted for clearance. All information distributed should also include mention of the OSC as a source of assistance, information and action, and the correct address and telephone numbers of the OSC (including the toll-free and TDD toll-free numbers for the hearing impaired).

Part III: Evaluation of the Strategy

One of the central goals of this program is determining what public education strategies are most effective and thus, should be included in future public education efforts. Therefore, it is crucial that the methods of evaluating the campaign strategy and public education materials and their results be carefully detailed. A full evaluation of a project's effectiveness is due within 60 days of the conclusion of a campaign. Interim evaluation/activity reports are due quarterly throughout the grant year.

Selection Criteria

The final selection of grantees for award will be made by the Special Counsel for Immigration Related Unfair Employment Practices.

A panel made up of OSC staff will review and rate the applications and make recommendations to the Special Counsel regarding funding. The panel's results are advisory in nature and not binding on the Special Counsel. Letters of support, endorsement, or recommendation are not part of the grant application process and will not be considered.

In determining which applications to fund, OSC will consider the following (based on a one-hundred point scale):

1. Program Design (50 Points)

Sound program design and cost-effective strategies for educating the targeted population are imperative. Consequently, areas that will be closely examined include the following:

a. Evidence of in-depth knowledge of the goals and objectives of the project. (15 points)

b. Selection and definition of the target group(s) for the campaign, and the factors that support the selection, including special needs, and the applicant's qualifications to reach effectively the target. (10 points)

c. A cost-effective campaign strategy for educating targeted employers and/or members of the protected class, with a justification for the choice of strategy, including the degree to which the campaign has prevented immigration related unfair employment practices and has reached individuals with such claims. (15 points)

d. The evaluation methods proposed by the applicant to measure the effectiveness of the campaign and their precision in indicating to what degree the campaign is successful. (10 points)

2. Administrative Capability (20 Points)

Proposals will be rated in terms of the capability of the applicant to implement the targeting, public education and evaluation components of the campaign:

a. Evidence of proven ability to provide high quality results. (10 points)

b. Evidence that the applicant can implement the campaign, and complete the evaluation component within the time lines provided.

Note: OSC's experience during previous grant cycles has shown that a number of applicants choose to apply as a consortium of individual entities; or, if applying individually, propose the use of sub-contractors to undertake certain limited functions. It is essential that these applicants demonstrate the proven management capability and experience to ensure that, as lead agency, they will be directly accountable for the successful implementation, completion, and evaluation of the project. (10 points)

3. Staff Capability (10 Points)

Applications will be evaluated in terms of the degree to which:

a. The duties outlined for grant-funded positions appear appropriate to the work that will be conducted under the award. (5 points)

b. The qualifications of the grant-funded positions appear to match the requirements of these positions. (5 points)

Note: If the grant project manager or other member of the professional staff is to be hired later as part of the grant, or should there be any change in professional staff during the grant period, hiring is subject to review and approval by OSC at that time.

4. Previous Experience (20 Points)

The proposals will be evaluated on the degree to which the applicant demonstrates that it has successfully carried out programs or work of a similar nature in the past.

Eligible Applicants

This grant competition is open to nonprofit organizations and state and local government agencies.

Grant Period and Award Amount

It is anticipated that several grants will be awarded and will range in size from $50,000 to $150,000.

Publication of this announcement does not require OSC to award any specific number of grants, or to obligate all or any part of available funds. The period of performance will be twelve months from the date of the grant award, in most cases beginning October 1, 1998.

Application Deadline

All applications must be received by 6 pm, edt, June 4, 1998, at the Office of Special Counsel for Immigration Related Unfair Employment Practices, U.S. Department of Justice, 1425 New York Ave., NW., Suite 9000, P.O. Box 27728, Washington, D.C. 20038–7728. If sent by regular first-class mail, please use the P.O. Box; if using Federal Express or priority mail, use the street address. Applications may not be submitted via facsimile machine.

Application Requirements

Applicants should submit an original and two (2) copies of their completed proposal by the deadline established above. All submissions must contain the following items in the order listed below:

1. A completed and signed Application for Federal Assistance (Standard Form 424) and Budget Information (Standard Form 424A).

2. OJP Form 4061/6 (Certification Regarding Lobbying; Debarment,

Suspension and Other Responsibility Matters; and Drug-Free Workplace Requirements).

3. A Standard Form LLL Disclosure Form to Report Lobbying).

4. An abstract of the full proposal, not to exceed one page.

5. A program narrative of not more than fifteen (15) double-spaced typed pages which includes the following:

a. A clear statement describing the approach and strategy to be utilized to complete the tasks identified in the program description;

b. A clear statement of the proposed goals and objectives, including a listing of the major events, activities, products and timetables for completion;

c. The proposed staffing plan (**Note:** If the grant project manager or other professional staff member is to be hired later as part of the grant, or should there be a change in professional staff during the grant period, hiring is subject to review and approval by OSC at that time); and

d. Description of how the project will be evaluated.

6. A proposed budget outlining all direct and indirect costs for personnel, fringe benefits, travel, equipment, supplies, subcontracts, and a short narrative justification of each budgeted line item cost. It an indirect cost rate is used in the budget, then a copy of a current fully executed agreement between the applicant and the cognizant Federal agency must accompany the budget.

Note: Program budgets must include the travel, lodging and other expenses necessary for not more than two program staff members to attend the mandatory OSC grantee training (2 days) held in Washington, D.C. at the beginning of the grant period (late Autumn).

7. OJP Form 7120/1 (Accounting System and Financial Capability Questionnaire).

8. Copies of resumes of the professional staff proposed in the budget.

9. Detailed technical materials that support or supplement the description of the proposed effort should be included in the appendix.

In order to facilitate handling, please do not use covers, binders or tabs.

Application forms may be obtained by writing or telephoning: Office of Special Counsel for Immigration Related Unfair Employment Practices, P.O. Box 27728, Washington, D.C. 20038–7728. Tel. (202) 616–5594, or (202) 616–5525 (TDD for the hearing impaired). This announcement will also appear on the World Wide Web at www.usdoj.gov/crt/osc/

Dated: April 15, 1998.

John D. Trasviña,

Special Counsel, Office of Special Counsel for Immigration, Related Unfair Employment Practices.

[FR Doc. 98–10353 Filed 4–17–98; 8:45 am]

BILLING CODE 4410–01–M

DEPARTMENT OF LABOR

Employment and Training Administration

Federal-State Unemployment Compensation Program: Unemployment Insurance Program Letters Interpreting Federal Unemployment Insurance Law

The Employment and Training Administration interprets Federal law requirements pertaining to unemployment compensation (UC) as part of its role in the administration of the Federal-State UC program. These interpretations are issued in Unemployment Insurance Program Letters (UIPLs) to the State Employment Security Agencies (SESAs). The UIPL described below is published in the **Federal Register** in order to inform the public.

UIPL 07–98

Section 1137(d), Social Security Act, directs that States require each applicant for UC as a condition of eligibility, to declare under penalty of perjury whether he/she is a citizen or national of the United States and, if not, whether he/she is in a satisfactory immigration status. This means an alien must be legally authorized to work at the time UC is claimed to meet available for work requirements. If a claimant is not a citizen or national, he/she must present alien registration documentation that the SESA can use to verify satisfactory immigration status through the Immigration and Naturalization Service (INS).

A detailed explanation and interpretation of eligibility of aliens for UC was presented in UIPL 1–86. Attachment III to UIPL 12–87 discussed provisions for determining and verifying alien status for entitlement to UC. UIPL 07–98 elaborates on the proper procedures where the INS's primary verification process does not establish satisfactory immigration status for aliens.

Dated: April 13, 1998.

Raymond J. Uhalde,

Acting Assistant Secretary of Labor.

U.S. Department of Labor

Employment and Training Administration, Washington, D.C. 20210

Directive: Unemployment Insurance Program Letter No. 7–98

To: All State Employment Security Agencies

From: Grace A. Kilbane, Director, Unemployment Insurance Service

Subject: Procedures for Verification of Alien Status

1. *Purpose*. To advise State Employment Security Agencies (SESAs) of a Departmental interpretation of Federal statutes relating to aliens' eligibility for unemployment compensation when satisfactory immigration status is not established through the primary verification process with the Immigration and Naturalization Service (INS).

2. *References*. UIPL 1–86; UIPL 12–87; Section 1137(d) of the Social Security Act (SSA).

3. *Background*. Section 1137(d), SSA, directs that States require each applicant for unemployment benefits, as a condition of eligibility, to declare under penalty of perjury whether he/she is a citizen or national of the United States and, if not, whether he/she is in a satisfactory immigration status. For UI purposes, this means an alien must be legally authorized to work at the time benefits are claimed to meet available for work requirements. A claimant who is not a citizen or national must present alien registration documentation that the SESA can use to verify satisfactory immigration status through the INS.

A detailed explanation and interpretation of eligibility of aliens for unemployment benefits was presented in UIPL 1–86. Attachment III to UIPL 12–87 discussed provisions for determining and verifying alien status for entitlement to unemployment benefits. This directive elaborates on the proper procedures where the INS's primary verification process does not establish satisfactory immigration status for aliens.

The INS does not make determinations of aliens' eligibility for benefits. SESAs make these determinations based upon information provided by the INS. The INS has established verification procedures through a process known as Systematic Alien Verification for Entitlements (SAVE). The SAVE system has both primary (automated) and secondary (manual) procedures for verification, as referenced in the SSA, Sections 1137(d)(3) and (4). The SESA initiates the primary procedure by accessing the INS's data base and entering the alien registration number (A-Number). This provides an immediate, automated response about the alien of record. If the data base can substantiate that the alien is authorized to work, the response will provide an employment eligibility statement and identify the alien's immigration classification. If legal status cannot be determined, the response from INS will instruct the SESA to ''institute secondary verification'' to obtain sufficient information to make a determination. Thus, the primary response will never indicate that the alien is

not authorized to work; this can only be accomplished through the secondary process.

The secondary procedure consists of a more extensive validation process, including manual paper searches, when questions arise during the primary procedure or when computerized records are not found in the SAVE data base. The secondary response from the INS indicates whether the alien's documentation ''appears valid'' or ''is not valid'' and what the alien's immigration status and work eligibility status are.

The SSA requires procedural safeguards to ensure that payments to eligible aliens are not delayed because of the verification process. Under Section 1137(d)(4)(A), SSA, aliens whose status has not been verified through primary verification must be provided a ''reasonable opportunity'' to submit evidence of satisfactory immigration status. The SESA ''may not delay, deny, reduce, or terminate an individual's eligibility for benefits'' because of immigration status until this reasonable opportunity has been provided. The SSA does not specify time limits for this reasonable opportunity. However, UIPL 12–87, Attachment III, I.E.2.a., provided that ''[t]ime periods under State law for providing information needed to determine eligibility for benefits will meet the requirement for 'reasonable opportunity' ''.

If, as a result of this reasonable opportunity, an alien whose status was not verified through primary verification submits what the SESA ''determines constitutes reasonable evidence'', then secondary verification must be initiated. (Section 1137(d)(4)(B), SSA.) During secondary verification, the SESA ''may not delay, deny, reduce, or terminate an individual's eligibility for benefits'' because of immigration status.

4. *Office of Inspector General (OIG) Study*. In 1996, the Department's OIG began studies in four States of UI benefits paid to claimants who had used unissued Social Security Numbers to establish claims. Preliminary findings revealed that SESAs had made many payments to illegal aliens, despite the INS's responses via the SAVE primary verification process that indicated mismatches between the claimants and the legal aliens registered with INS. The OIG discovered numerous cases where both the names and dates-of-birth were entirely disparate. In all such cases investigated by the OIG, the claims were found to be fraudulent.

5. *Procedures*. The findings from the OIG study indicate a need to clarify the procedural protections for verification of aliens' immigration status. A distinction needs to be recognized between material and non-material discrepancies with regard to the information provided by INS's response and that provided by the claimant. A material discrepancy exists when the claimant identity is not verified by the biographical data in the SAVE system.

A SAVE response via the primary procedure may suggest non-material discrepancies, e.g., transposition of numbers, incomplete surnames when the name includes multiple words, transposed versions of names, name change due to recent marriage, etc. At the discretion of the SESA, secondary verification may be initiated because of the questions that have arisen from the primary response. However, pending such verification, payments may not be delayed on the basis of immigration status.

Also, some SAVE primary requests will be returned without verification, i.e., neither biographical data nor status information will be provided, and the SESA will be instructed to ''institute secondary verification''. In such a situation, the SSA requires that a claimant be given a reasonable opportunity to submit evidence indicating satisfactory immigration status that the SESA can use to initiate the secondary SAVE verification process. If the SESA receives reasonable evidence of satisfactory immigration status, secondary verification must be initiated. Pending such verification, SESAs are prohibited from delaying payments.

However, when a SAVE response via the primary process indicates that the claimant is not the same person as the alien registered with INS, e.g., different name and date-of-birth, material discrepancies exist, and one of the following actions should be taken:

a. If the claimant acknowledges the accuracy of the SAVE response (i.e., the filing of a fraudulent claim), issue an immediate denial under the appropriate State provisions, e.g., monetary denial of base period wages, nonmonetary denial under the availability provision, and/or misrepresentation.

b. If the claimant disputes the accuracy of the SAVE response and submits ''reasonable evidence'' indicating satisfactory immigration status, initiate the secondary SAVE request, and do not delay payment of benefits.

c. If the claimant disputes the accuracy of the SAVE response but does not submit ''reasonable evidence'' indicating satisfactory immigration status, the SSA, Section 1137(d)(4)(A) requires that the claimant be provided ''reasonable opportunity'' to submit such evidence. The claimant must be instructed to provide the evidence within time limits established for claims filing under State law. The SESA may not delay or deny benefits until this reasonable opportunity has been provided; however, for practical purposes, this provision should have no effect on processing the claim because ''reasonable opportunity'' should, in most cases, transpire before the claimant certifies for the first week. One of the following actions should then be taken as appropriate:

- If reasonable evidence is provided, initiate the secondary SAVE request, and do not delay payment of benefits, or
- If reasonable evidence is not provided, issue a denial under the SESA provisions as in (a) above. (Reference the SSA, Section 1137(d)(5).)

On occasion, an alien applying for UI may present immigration documentation that appears to be counterfeit or altered. In such instances, the SESA should initiate the secondary verification process immediately, in lieu of the primary process, because the alien has not submitted the documentation described in the SSA, Section 1137(d)(2). Although the SESA must provide the claimant the opportunity to present satisfactory documentation as required by the SSA, Section 1137(d)(4)(A), the SESA should, if appropriate, issue an immediate denial under the State law provision for misrepresentation. This action does not fall within the protections of the SSA since the denial is for reasons related to fraud, not immigration status.

6. *Action Required*. SESA Administrators are requested to provide copies of this UIPL to appropriate staff and ensure that effective procedures are implemented to establish eligibility for benefits.

7. *Inquiries*. Questions should be directed to the appropriate Regional Office.

[FR Doc. 98–10288 Filed 4–17–98; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. ICR–98–19]

Agency Information Collection Activities; Proposed Collection; Comment Request; Commercial Diving Operations (29 CFR Part 1910, Subpart T)

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 (PRA–95) (44 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 impact of collection requirements on respondents can be properly assessed. Currently, the Occupational Safety and Health Administration (OSHA) is soliciting comments concerning the proposed extension of the information collection requirements contained in the standard on Commercial Diving Operations (29 CFR part 1910, subpart T). The Agency 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 on or before June 19, 1998.

ADDRESSES: Comments are to be submitted to the Docket Office, Docket No. ICR–98–19, Occupational Safety and Health Administration, U.S. Department of Labor, Room N–2625, 200 Constitution Avenue, NW., Washington, DC 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: Theda Kenney, Directorate of Safety Standards Programs, Occupational Safety and Health Administration, U.S. Department of Labor, Room N–3605, 200 Constitution Avenue, NW., Washington, DC 20210, telephone: (202) 219–8061. A copy of the referenced information collection request is available for inspection and copying in the Docket Office and will be mailed to persons who request copies by telephoning Theda Kenney at (202) 219–8061, extension 100, or Barbara Bielaski at (202) 219–8076, extension 142. For electronic copies of the Information Collection Request on Commercial Diving Operations, contact OSHA's WebPage on the Internet at http://www.osha.gov.

SUPPLEMENTARY INFORMATION:

I. Background

The Occupational Safety and Health Act of 1970 (the Act) authorizes the promulgation of such health and safety standards as are necessary or appropriate to provide safe or healthful employment and places of employment. The statute specifically authorizes information collection by employers as necessary or appropriate for the enforcement of the Act or for developing information regarding the causes and prevention of occupational injuries, illnesses, and accidents.

In 29 CFR part 1910, Commercial Diving Operations, the information to be collected is designed to minimize the possibility of a commercial diver being injured or killed (e.g., by gas embolism, decompression sickness) due to poor planning. Without the records required in the standard, necessary safeguards that have proven extremely effective in protecting commercial divers against inherent and obvious hazards underwater would be removed and, as a result, the fatality and injury/illness rate for this industry could rise. Consequences of accidents in diving can be severe due to the environment in which divers work.

II. Current Actions

This notice requests Office of Management and Budget (OMB) approval of the information collection requirements contained in the Commercial Diving Operations standard.

Type of Review: Extension of a Currently Approved Collection.

Agency: U.S. Department of Labor, Occupational Safety and Health Administration.

Title: Commercial Diving Operations (29 CFR part 1910, Subpart T).

OMB Number: 1218–0069.

Agency Number: Docket Number ICR–98–19.

Affected Public: State or local governments; Business or other for-profit.

Number of Respondents: 3,000.

Frequency: On Occasion.

Average Time per Response: 1 hour.

Estimated Total Burden Hours: 91,152.

Total Annualized Capital/Startup Costs: $0.

Signed at Washington, DC, this 10th day of April 1998.

Charles N. Jeffress,

Assistant Secretary, Occupational Safety and Health Administration.

[FR Doc. 98–10285 Filed 4–17–98; 8:45 am]

BILLING CODE 4510–26–M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. ICR–98–21]

Agency Information Collection Activities; Proposed Collection; Comment Request; Welding, Cutting and Brazing (29 CFR Part 1910)

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 (PRA–95) (44 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 impact of collection requirements on respondents can be properly assessed. Currently, the Occupational Safety and Health Administration (OSHA) is soliciting comments concerning the proposed extension of the information collection requirement contained in the standard on Welding, Cutting and Brazing (29 CFR part 1910). The Agency 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 on or before June 19, 1998.

ADDRESSES: Comments are to be submitted to the Docket Office, Docket No. ICR–98–21, Occupational Safety and Health Administration, U.S. Department of Labor, Room N–2625, 200 Constitution Avenue, NW, Washington, DC 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: Theda Kenney, Directorate of Safety Standards Programs, Occupational Safety and Health Administration, U.S. Department of Labor, Room N–3605, 200 Constitution Avenue, NW, Washington, DC 20210, telephone: (202) 219–8061. A copy of the referenced information collection request is available for inspection and copying in the Docket Office and will be mailed to

persons who request copies by telephoning Theda Kenney at (202) 219–8061, extension 100, or Barbara Bielaski at (202) 219–8076, extension 142. For electronic copies of the Information Collection Request on Welding, Cutting and Brazing, contact OSHA's WebPage on the Internet at http://www.osha.gov.

SUPPLEMENTARY INFORMATION:

I. Background

The Occupational Safety and Health Act of 1970 (the Act) authorizes the promulgation of such health and safety standards as are necessary or appropriate to provide safe or healthful employment and places of employment. The statute specifically authorizes information collection by employers as necessary or appropriate for the enforcement of the Act or for developing information regarding the causes and prevention of occupational injuries, illnesses, and accidents.

In 29 CFR part 1910, Welding, Cutting and Brazing, the information to be collected is used by employers and employees whenever resistance welding is performed. The purpose of the information is to ensure that employers evaluate hazards associated with resistance welding and ensure that adequate measures are taken to make the process safe.

II. Current Actions

This notice requests Office of Management and Budget (OMB) approval of the information collection requirement contained in the Welding, Cutting and Brazing standard.

Type of Review: Extension of a Currently Approved Collection.

Agency: U.S. Department of Labor, Occupational Safety and Health Administration.

Title: Welding, Cutting and Brazing (29 CFR part 1910).

OMB Number: 1218–0207.

Agency Number: Docket Number ICR–98–21.

Affected Public: State or local governments; Business or other for-profit.

Number of Respondents: 35,307.

Frequency: Annually.

Average Time per Response: 10 minutes (0.17 hr.).

Estimated Total Burden Hours: 6,002.

Total Annualized Capital/Startup Costs: 0.

Signed at Washington, DC, this 10th day of April 1998.

Charles N. Jeffress,

Assistant Secretary, Occupational Safety and Health Administration.

[FR Doc. 98–10286 Filed 4–17–98; 8:45 am]

BILLING CODE 4510–26–M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. ICR–98–20]

Agency Information Collection Activities; Proposed Collection; Comment Request; Personal Protective Equipment (29 CFR 1910.132)

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 (PRA–95) (44 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 impact of collection requirements on respondents can be properly assessed. Currently, the Occupational Safety and Health Administration (OSHA) is soliciting comments concerning the proposed extension of the information collection requirements contained in the standard on Personal Protective Equipment (PPE) (29 CFR 1910.132). The Agency 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 on or before June 19, 1998.

ADDRESSES: Comments are to be submitted to the Docket Office, Docket No. ICR–98–20, Occupational Safety and Health Administration, U.S. Department of Labor, Room N–2625, 200 Constitution Avenue, 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: Theda Kenney, Directorate of Safety Standards Programs, Occupational Safety and Health Administration, U.S. Department of Labor, Room N–3605, 200 Constitution Avenue, NW, Washington, D.C. 20210, telephone: (202) 219–8061. A copy of the referenced information collection request is available for inspection and copying in the Docket Office and will be mailed to persons who request copies by telephoning Theda Kenney at (202) 219–8061, extension 100, or Barbara Bielaski at (202) 219–8076, extension 142. For electronic copies of the Information Collection Request on Personal Protective Equipment (29 CFR 1910.132), contact OSHA's WebPage on the Internet at http://www.osha.gov.

SUPPLEMENTARY INFORMATION:

I. Background

The Occupational Safety and Health Act of 1970 (the Act) authorizes the promulgation of such health and safety standards as are necessary or appropriate to provide safe or healthful employment and places of employment. The statute specifically authorizes information collection by employers as necessary or appropriate for the enforcement of the Act or for developing information regarding the causes and prevention of occupational injuries, illnesses, and accidents.

In 29 CFR 1910.132, Personal Protective Equipment, employers are required to perform a hazard assessment of the workplace and to certify that it has been performed. They are also required to certify that their employees have received, and understood, PPE training.

OSHA inspectors will require employers to provide them with access to information during Agency inspections. The documents, which can be written or computer generated, are needed to verify that employers are in compliance with the standard. Additionally, the documents may be used as a ''grandfather'' mechanism. That is, an employer can verify that an existing hazard assessment and/or training program already meets the standard. This will eliminate the need for an employer to reassess the workplace or retrain employees.

II. Current Actions

This notice requests Office of Management and Budget (OMB) approval of the information collection requirements contained in the PPE standard.

Type of Review: Extension of a Currently Approved Collection.

Agency: U.S. Department of Labor, Occupational Safety and Health Administration.

Title: Personal Protective Equipment (29 CFR 1910.132).

OMB Number: 1218–0205.

Agency Number: Docket Number ICR–98–20.

Affected Public: State or local governments; business or other for-profit.

Number of Respondents: 29,000,000.

Frequency: On occasion.

Average Time per Response: 1.5 hours.

Estimated Total Burden Hours: 21,140.

Total Annualized Capital/Startup Costs: $0.

Signed at Washington, DC, this 10th day of April 1998.

Charles N. Jeffress,

Assistant Secretary, Occupational Safety and Health Administration.

[FR Doc. 98–10287 Filed 4–17–98; 8:45 am]

BILLING CODE 4510–26–M

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

Working Group Studying Pre-Retirement Distributions From ERISA Employer-Sponsored Pension Plans Advisory Council on Employee Welfare and Pension Benefits Plans; Notice of Meeting

Pursuant to the authority contained in Section 512 of the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. 1142, a public meeting will be held on Tuesday, May 5, 1998 of the new Working Group of the Advisory Council on Employee Welfare and Pension Benefit Plans, which will study pre-retirement distributions, including in-service distributions and participant loans from ERISA employer-sponsored pension plans, known in the pension benefits community as ''leakage.''

The purpose of the open meeting, which will run from 9:30 a.m. to approximately noon on Room N–4437 C&D, U.S. Department of Labor Building, Second and Constitution Avenue NW, Washington, DC 20210, is for Working Group members to establish the agenda and course of study for the upcoming Council year on the topic. The Working Group Chair Barbara A. Uberti, vice president of the Wilmington Trust Company in Wilmington, Del., and Vice Chair Michael R. Fanning, chief executive officer of the Central Pension Fund International Union of Operating Engineers and Participating Employers, Washington, DC, hope to begin hearing testimony on the topic at the first session.

Members of the public are encouraged to file a written statement pertaining to the topic by submitting 20 copies on or before May 1, 1998, to Sharon Morrissey, Executive Secretary, ERISA Advisory Council, U.S. Department of Labor, Room N–5677, 200 Constitution Avenue, NW, Washington, DC 20210. Individuals or representatives of organizations wishing to address the Working Group should forward their request to the Executive Secretary or telephone (202) 219–8753. Oral presentations will be limited to 10 minutes, but an extended statement may be submitted for the record. Individuals with disabilities, who need special accommodations, should contact Sharon Morrissey by May 1, 1998, at the address indicated in this notice.

Organizations or individuals also may submit statements for the record without testifying. Twenty (20) copies of such statements should be sent to the Executive Secretary of the Advisory Council at the above address. Papers will be accepted and included in the record of the meeting if received on or before May 1.

Signed at Washington, D.C. this 13th day of April, 1998.

Olena Berg,

Assistant Secretary, Pension and Welfare Benefits Administration.

[FR Doc. 98–10282 Filed 4–17–98; 8:45 am]

BILLING CODE 4510–29–M

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

Working Group Studying Small Business: How To Enhance and Encourage the Establishment of Pension Plans, Advisory Council on Employee Welfare and Pension Benefits Plans; Notice of Meeting

Pursuant to the authority contained in Section 512 of the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. 1142, a public meeting will be held Monday, May 4, 1998, of the Advisory Council on Employee Welfare and Pension Benefits Plans' new Working Group being formed to study the obstacles to why small businesses are not establishing retirement vehicles for their employees when so many different savings arrangements have been developed and how to encourage these same businesses to establish such pension plans.

The session will take place in Room N–4437 C&D, U.S. Department of Labor Building, Second and Constitution Avenue, NW, Washington, DC 20210. The purpose of the open meeting, which will run from 1 p.m. to approximately 3:30 p.m., is for Working Group members to begin organizing its study for the year and, it is hoped, to begin taking testimony on the topic. Named to head the Working Group are Council members, Dr. Thomas J. Mackell Jr., executive vice president of Simms Capital Management, Inc., of Greenwich, Conn. as chair and Eddie C. Brown, president, Brown Capital Management in Baltimore, Md. as vice chair.

Members of the public are encouraged to file a written statement pertaining to the topic by submitting 20 copies on or before May 1, 1998, to Sharon Morrissey, Executive Secretary, ERISA Advisory Council, U.S. Department of Labor, Room N–5677, 200 Constitution Avenue, NW, Washington, DC 20210. Individuals or representatives of organizations wishing to address the Working Group should forward their request to the Executive Secretary or telephone (202) 219–8753. Oral presentations will be limited to 10 minutes, but an extended statement may be submitted for the record. Individuals with disabilities, who need special accommodations, should contact Sharon Morrissey by May 1, at the address indicated in this notice.

Organizations or individuals may also submit statements for the record without testifying. Twenty (20) copies of such statements should be sent to the Executive Secretary of the Advisory Council at the above address. Papers will be accepted and included in the record of the meeting if received on or before May 1.

Signed at Washington, D.C. this 13th day of April, 1998.

Olena Berg,

Assistant Secretary, Pension and Welfare Benefits Administration.

[FR Doc. 98–10283 Filed 4–17–98; 8:45 am]

BILLING CODE 4510–29–M

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

Working Group on the Disclosure of the Quality of Care in Health Plans Advisory Council on Employee Welfare and Pension Benefits Plans; Notice of Meeting

Pursuant to the authority contained in Section 512 of the Employee Retirement Income Security Act of 1974 (ERISA) 29 U.S.C. 1142, the Advisory Council on Employee Welfare and Pension Benefit Plans has established a new Working Group to study what kind of information on the quality of care in health plans should be transmitted to fiduciaries and participants and how the information should be transmitted. The Working Group will hold an open public meeting on Monday, May 4, 1998 in Room N–4437 C&D, U.S. Department of Labor Building, Second and Constitution Avenue, NW, Washington, DC 20210.

The purpose of the open meeting, which will run from 9:30 a.m. to approximately noon, is for Working Group members to begin organizing the course of study for the year and, it is hoped, even to begin taking testimony on the topic. Recently named as chair nad vice chair, respectively, of the Working Group were Judith Mazo, senior vice president/director of research for the Segal Company, and Neil Grossman, William M. Mercer Co., both of the Washington, DC area.

Members of the public are encouraged to file a written statement pertaining to the topic by submitting 20 copies on or before May 1, 1998, to Sharon Morrissey, Executive Secretary, ERISA Advisory Council, U.S. Department of Labor, Room N–5677, 200 Constitution Avenue, NW, Washington, DC 20210. Individuals or representatives of organizations wishing to address the Working Group should forward their request to the Executive Secretary or telephone (202) 219–8753. Oral presentations will be limited to 10 minutes, but an extended statement may be submitted for the record. Individuals with disabilities, who need special accommodations, should contact Sharon Morrissey by May 1, at the address indicated in this notice.

Organizations or individual may also submit statements for the record without testifying. Twenty (20) copies of such statements should be sent to the Executive Secretary of the Advisory Council at the above address. Papers will be accepted and included in the record of the meeting if received on or before May 1.

Signed at Washington, D.C. this 13th day of April, 1998.

Olena Berg,

Assistant Secretary, Pension and Welfare Benefits Administration.

[FR Doc. 98–10284 Filed 4–17–98; 8:45 am]

BILLING CODE 4510–29–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Materials Research; Notice of Meetings

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following five meetings:

Name: Special Emphasis Panel in Materials Research (1203).

Dates and Times: May 5–7; May 12–14; May 19–21; May 26–28; and June 2–3, 1998, 1998 8:30 a.m.–5 p.m. each day.

Place: Rooms: 330, 375, 380 and 390, National Science Foundation, 4201 Wilson Blvd., Arlington, VA.

Type of Meetings: Closed.

Contact Person: Dr. Ulrich Strom, Program Director, Division of Materials Research, Room 1065.37, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230. Telephone: (703) 306–1832.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support. The format is in the form of reverse site visits.

Agenda: To review and evaluate proposals submitted for consideration for support of Materials Research Science and Engineering Centers.

Research of Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552(b), (4) and (6) of the Government in the Sunshine Act.

Dated: April 14, 1998.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 98–10280 Filed 4–17–98; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL TRANSPORTATION SAFETY BOARD

Sunshine Act Meeting

''FEDERAL REGISTER'' CITATION OF PREVIOUS ANNOUNCEMENT: Vol. 63, No. 72/Wednesday, April 15, 1998.

PREVIOUSLY ANNOUNCED TIME AND DATE: 9:30 a.m., Tuesday, April 21, 1998.

CHANGE IN MEETING: A majority of the Board Members determined by recorded vote that the business of the Board required changing the time of the meeting to 1:00 p.m., Tuesday, April 21, 1998.

FOR MORE INFORMATION CONTACT: Rhonda Underwood, (202) 314–6065.

Dated: April 16, 1998.

Rhonda Underwood,

Federal Register Liaison Officer.

[FR Doc. 98–10581 Filed 4–16–98; 3:48 pm]

BILLING CODE 7533–01–M

NUCLEAR REGULATORY COMMISSION

[IA 98–019]

In the Matter of John Boschuk, Jr., Canonsburg, Pennsylvania; Order Prohibiting Involvement in NRC-Licensed Activities

I

J&L Testing Company, Inc., (Licensee or JLT) is the holder of Byproduct Nuclear Material License No. 37–28442–02 issued by the Nuclear Regulatory Commission (NRC or Commission) pursuant to 10 CFR Part 30. The license authorizes possession and use of Troxler portable nuclear gauges containing cesium-137 and americium-241 in sealed sources. The license, originally issued on February 7, 1995, was amended on August 22, 1995, and is due to expire on February 29, 2000. The License was suspended by Order, dated September 27, 1995. Lourdes T. Boschuk is the President and owner of JLT. John Boschuk, Jr. has acted as an agent for and consultant to JLT in the conduct of its licensed activities. Mr. Boschuk, the husband of Lourdes Boschuk, is also the President and owner of J&L Engineering Company (JLE) located on the same premises. JLE held NRC Materials License No. 37–28442–01, which authorized use and possession of the same sealed sources, until the license was revoked by the NRC on July 30, 1993, for non-payment of fees. Concurrently with this Order, the NRC is issuing an Order Revoking License to JLT (EA 96–110).

II

Based on an NRC inspection and an investigation by the NRC's Office of Investigations, the NRC has determined that John Boschuk, Jr., while serving as President and owner of JLE and as an agent for and consultant to JLT, engaged in a pattern and practice of willfully violating NRC requirements. Among such violations are the following:

A. Unauthorized Transfer of Byproduct Material

The August 30, 1993, Order Revoking License required JLE, among other things, to cease use of byproduct material, dispose of the byproduct material, and to notify the NRC of the disposition within 30 days. Nonetheless, JLE continued to possess the material. Consequently, the NRC staff again transmitted a copy of the Order Revoking License to JLE on August 9, 1994, and a letter to Mr. Boschuk on August 18, 1994. The August 18, 1994, letter reminded Mr. Boschuk that continued possession of the material without a valid license is a violation of 10 CFR 30.3, and that he must immediately place the material in secure storage until a valid license is acquired and that any other use is not authorized. During a telephone call on August 12, 1994, Mr. Boschuk had informed the NRC staff that he intended to promptly file an application for a new license.

Nonetheless, as President of and owner JLE, and as an agent for JLT, Mr. Boschuk transferred a Troxler gauge on or about September 2, 1994, to SE Technologies, Inc., of Bridgeville, Pennsylvania, in violation of the Order Revoking License dated July 30, 1993, and 10 CFR 30.3. As stated by the Chief Engineer of SE Technologies, Inc., Mr. Boschuk had arranged for the rental, and as stated by a Project Engineer of SE Technologies, Inc., Mr. Boschuk had personally transferred the gauge to SE Technologies, Inc. Accordingly, Mr. Boschuk deliberately violated the Order Revoking License and 10 CFR 30.3, in violation of 10 CFR 30.10(a).

B. Materially Inaccurate Statements Made to NRC

(1) A letter to the NRC dated October 11, 1994, signed by Mr. Boschuk as President of JLE, stated that the three Troxler gauges had not been used for over two years and had not left the storage area of JLE's office. In fact, Mr. Boschuk had deliberately transferred one of the gauges in violation of the Order Revoking License and 10 CFR 30.3 on September 2, 1994, as explained above. This statement was deliberately inaccurate in violation of 10 CFR 30.9(a) and 30.10(a)(2).

In addition, JLT admittedly used the Troxler density gauges on four occasions after revocation of the JLE license and before the NRC issued a license to JLT on February 7, 1995. Specifically, JLT used the gauge(s) for the following customers: DelSir Supply in December 1993, Johnson Construction in May 1994, Johnson Construction in June 1994, and PA Soil & Rock Company in July 1994. Lourdes Boschuk also stated at a December 18, 1997, predecisional enforcement conference that she did not get the keys from JLE for the gauges until February 1995. The statement by Mr. Boschuk in his October 11, 1994, letter to the NRC, that the gauges had not been used for over two years and had not left storage, was materially inaccurate in violation of 10 CFR 30.9(a) and was made by Mr. Boschuk with at least careless disregard for the facts with respect to such usage.

(2) Figure 1 of the November 21, 1994, JLT application, revised January 6, 1995, depicted a locked steel cabinet on the JLT premises as the storage site for the three Troxler gauges. However, the cabinet did not have a lock. Mr. Boschuk prepared Figure 1. This materially inaccurate statement was in violation of 10 CFR 30.9(a) and was made with at least careless disregard for the facts by Mr. Boschuk.

(3) A letter to the NRC dated September 11, 1995, signed by Lourdes Boschuk and reviewed and edited by Mr. Boschuk, stated that the Troxler gauge which was missing at the time of the NRC inspection on August 1, 1995 was in Watertown, New York; was returned the next day to JLT. In fact, according to the Chief Engineer of SE Technologies, Inc., Mr. Boschuk personally transferred the gauge to SE Technologies, Inc. in July 1995, and requested return of the gauge on August 14 or 15, 1995. In fact the gauge was not returned to JLT until August 17, 1995. This was a deliberately inaccurate statement by Mr. Boschuk in violation of 10 CFR 30.9(a) and 30.10(a).

In addition, the letter represented that since the August 1995 NRC inspection, all three Troxler gauges had been kept in a locked storage cabinet at JLT's premises and would remain there until the apparent violations identified in the NRC inspection report were resolved. This inaccurate statement in violation of 10 CFR 30.9(a) was made by Mr. Boschuk with careless disregard for the facts. In fact, one of the gauges was transferred on September 6, 1995, to Cashin Associates, P.C., and was not returned to JLT until September 19 or 20, 1995.

(4) A letter dated September 18, 1995, signed by Lourdes Boschuk for JLT and prepared by Mr. Boschuk as an agent for and consultant to JLT, and sent to the NRC in response to the NRC's September 15, 1995, letter confirming JLT's commitment at the September 15, 1995, enforcement conference to refrain from using the Troxler density gauges pending resolution of the apparent violations, made several materially inaccurate statements. The letter stated that all JLT's gauges had been in locked storage since the August 1995 NRC inspection. This was a deliberately inaccurate statement by Mr. Boschuk in violation of 10 CFR 30.9(a) and 30.10(a)(2). In fact, Mr. Boschuk learned from Lourdes Boschuk no later than the weekend ending September 17, 1995, that a gauge had been recently transferred to Cashin Associates, P.C. As explained above, Mr. Boschuk also knew that the gauge had been transferred to SE Technologies, Inc., between July 18 and August 17, 1995, although the NRC inspection ended on August 3, 1995.

In addition, the letter stated that all three JLT Troxler gauges are currently locked in the designated storage cabinet on JLT's premises. This inaccurate statement was in violation of 10 CFR 30.9(a) and made with at least careless disregard as to its truth or falsity by Mr. Boschuk. Mr. Boschuk stated at a December 18, 1997, predecisional enforcement conference that although he checked the storage cabinet before preparing the letter, and saw three yellow cases which he assumed contained the gauges, he did not look inside the cases to verify the gauges were there. In fact, the gauge which had been transferred to Cashin Associates, P.C. was not returned to JLT until September 19 or 20, 1995.

C. Destruction of Records Relating to Gauge Usage

According to a witness, John Boschuk, Jr. and others destroyed, altered, sanitized, or otherwise disposed of business and transactional records shortly after the August 1995 NRC inspection of JLT, in order to conceal from the NRC the unauthorized use and/or transfer of Troxler gauges by JLT. Among the records destroyed or disposed of were invoices and a log documenting use of the Troxler density gauges. According to a handwritten note, created by a JLT employee immediately after the September 15, 1995 enforcement conference, although utilization records were made available to the NRC inspector, those records could not be subsequently located. The note further reflected a question whether the utilization records were ''thrown away during sanitization of records?'' Shortly after the August 1995 inspection, the NRC inspector requested JLT to provide a copy of a utilization record found during the inspection and which documented the rental of a gauge to SE Technologies in September 1994, when neither JLE nor JLT had a valid NRC license. JLT did not provide the invoice and claimed it could no longer

find the document. Condition 19 of JLT's License requires that JLT conduct its licensed activities in accordance with its Application dated January 6, 1995. The Application mandates that JLT comply with conditions requiring the creation of a utilization log for the gauges and the maintenance of the log for audit purposes. The destruction of the utilization log was in violation of the 10 CFR 30.3 and 30.9(a). The participation of Mr. Boschuk in the deliberate destruction of the utilization log was in violation of 10 CFR 30.10(a).

III

Based on the above, the NRC concludes that John Boschuk, Jr., President and owner of JLE and an agent of and a consultant to JLT, deliberately violated NRC regulations and otherwise committed willful violations of NRC requirements. These violations raise a serious doubt as to whether Mr. Boschuk can be relied upon to comply with NRC requirements and to provide complete and accurate information to the NRC. The NRC must rely upon the integrity of persons involved in licensed activities, especially owners and officials of NRC licensees. Deliberate misconduct of the type demonstrated by Mr. Boschuk cannot be tolerated. Notwithstanding the revocation of the JLE and JLT licenses, given Mr. Boschuk's repeated failures to adhere to regulatory requirements, the NRC no longer has the necessary assurance that Mr. Boschuk's activities, if performed under an NRC license, would be performed safely and in accordance with requirements.

Consequently, I lack the requisite reasonable assurance that licensed activities can be conducted in compliance with the Commission's requirements and that the health and safety of the public will be protected if Mr. Boschuk were permitted at this time to be involved in NRC-licensed activities. Therefore, the public health, safety and interest require that Mr. Boschuk be prohibited from any involvement in NRC-licensed activities for a period of five years from the date of this Order, and if he is currently involved with another licensee in NRC-licensed activities, he must immediately cease such activities, and inform the NRC of the name, address and telephone number of the licensee, and provide a copy of this Order to the licensee. Additionally, Mr. Boschuk is required to notify the NRC of his first employment or involvement in NRC-licensed activities following the prohibition period.

Accordingly, pursuant to sections 81, 161b, 161i, 161o, 182 and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202, 10 CFR 30.10, and 10 CFR 150.20, *it is hereby ordered that*:

1. For a period of five years from the date of this Order, Mr. Boschuk is prohibited from engaging in NRC-licensed activities. NRC-licensed activities are those activities that are conducted pursuant to a specific or general license issued by the NRC, including, but not limited to, those activities of Agreement State licensees conducted in areas of NRC jurisdiction pursuant to the authority granted by 10 CFR 150.20.

2. For a period of five years from the date of this Order, Mr. Boschuk shall provide a copy of this Order to any prospective employer or business partner who engages in NRC-licensed activities (as described in Section IV.1 above) prior to his acceptance of any employment (whether involved in licensed activities or not) by, or acquisition of partnership or ownership interest in, a licensee (as described in Section IV.1 above). The purpose of this requirement is to ensure that the licensee is aware of Mr. Boschuk's prohibition from engaging in NRC-licensed activities.

3. The first time Mr. Boschuk is employed in NRC-licensed activities, or acquires an interest in a licensee (as described in Section IV.1 above), following the five year prohibition, he shall notify the Regional Administrator, NRC Region I, 475 Allendale Road, King of Prussia, Pennsylvania 19406, prior to acquiring such an interest or engaging in NRC-licensed activities, including activities under an Agreement State license when activities under that license are conducted in areas of NRC jurisdiction pursuant to 10 CFR 150.20. The notice shall include the name, address, and telephone number of the NRC or Agreement State licensee and the location where licensed activities will be performed.

The Director, Office of Enforcement, may, in writing, relax or rescind any of the above conditions upon demonstration by the Licensee of good cause.

V

In accordance with 10 CFR 2.202, Mr. Boschuk must, and any other person adversely affected by this Order may, submit an answer to this Order and may request a hearing on this Order, within 20 days of the date of this Order. Where good cause is shown, consideration will be given to extending the time to request a hearing. A request for extension of time must be made in writing to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and include a statement of good cause for the extension. The answer may consent to this Order. Unless the answer consents to this Order, the answer shall, in writing and under oath or affirmation, specifically admit or deny each allegation or charge made in this Order and shall set forth the matters of fact and law on which Mr. Boschuk or any other person adversely affected relies and the reasons as to why the Order should not have been issued. Any answer or request for a hearing shall be submitted to the Secretary, U.S. Nuclear Regulatory Commission, ATTN: Chief, Rulemaking and Adjudications Staff, Washington, DC 20555. Copies also shall be sent to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, to the Deputy Assistant General Counsel for Enforcement at the same address, to the Regional Administrator, NRC Region I, 475 Allendale Road, King of Prussia, Pennsylvania 19406, and to Mr. Boschuk, if the answer or hearing request is by a person other than Mr. Boschuk. If a person other than Mr. Boschuk requests a hearing, that person shall set forth with particularity the manner in which his or her interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.714(d).

If a hearing is requested by Mr. Boschuk or a person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Order should be sustained.

In the absence of any request for hearing, or written approval of an extension of time in which to request a hearing, the provisions specified in Section IV above shall be final 20 days from the date of this Order without further order or proceedings. If an extension of time for requesting a hearing has been approved, the provisions specified in Section IV shall be final when the extension expires if a hearing request has not been received.

Dated at Rockville, Maryland this 10th day of April 1998.

For the Nuclear Regulatory Commission.

James Lieberman,

Director, Office of Enforcement.

[FR Doc. 98–10331 Filed 4–17–98; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[IA 98–020]

Lourdes T. Boschuk, Canonsburg, Pennsylvania; Order Prohibiting Involvement in NRC-Licensed Activities

I

J&L Testing Company, Inc., (Licensee or JLT) is the holder of Byproduct Nuclear Material License No. 37–28442–02 issued by the Nuclear Regulatory Commission (NRC or Commission) pursuant to 10 CFR part 30. The license authorizes possession and use of Troxler portable nuclear gauges containing cesium-137 and americium-241 in sealed sources. The license, originally issued on February 7, 1995, was amended on August 22, 1995, and is due to expire on February 29, 2000. The License was suspended by Order, dated September 27, 1995. Lourdes T. Boschuk is the President and owner of JLT. Concurrently with this Order, the NRC is issuing an Order Revoking License to JLT (EA 96–110).

II

Based on an NRC inspection and an investigation by the NRC's Office of Investigations, the NRC has determined that Ms. Boschuk, while President and owner of JLT,[1] engaged in a pattern and practice of willfully violating NRC requirements and otherwise violated NRC requirements. Among such violations are the following:

A. Materially Inaccurate Statements Made to NRC

(1) A letter accompanying JLT's Application for Material License for Troxler Nuclear Density Gauges, dated November 21, 1994, and signed by Lourdes Boschuk as President of JLT, represented to the NRC that since the revocation of J&L Engineering's License to operate the same Troxler gauges on August 30, 1993, the gauges had not been removed from storage or used in any way. In fact, JLT admittedly used a gauge on at least four occasions and invoiced customers for that use after revocation of the JLE license and before the NRC issued a license to JLT. JLT used the gauge for the following customers: DelSir Supply in December 1993, Johnson Construction in May 1994, Johnson Construction in June 1994, and PA Soil & Rock Company in July 1994. The materially inaccurate statement in the JLT application was in violation of 10 CFR 30.9(a) and made with careless disregard for the facts by Ms. Boschuk.

(2) A letter to the NRC dated September 11, 1995, signed by Lourdes Boschuk as President of JLT, stated that the Troxler gauge that was missing at the time of the NRC inspection on August 1, 1995, was in Watertown, New York; and was returned the next day. In fact, the gauge was transferred to SE Technologies, Inc., located in Bridgeville, Pennsylvania, in July 1995 and was not returned to JLT until August 17, 1995. This statement was in violation of 10 CFR 30.9(a) and was made with careless disregard for the facts by Ms. Boschuk. In addition, the letter represented that since the NRC inspection on August 1, 1995, all three Troxler gauges were located in a locked storage cabinet at JLT's premises and would remain there until the apparent violations identified in the NRC's Inspection Report were resolved. In fact, one of the gauges had been transferred on September 6, 1995, to Cashin Associates, P.C. in New York State, and was not returned to JLT until September 19 or 20, 1995. This was an inaccurate statement in violation of 10 CFR 30.9(a) and was made by Ms. Boschuk with careless disregard for the facts.

(3) During an enforcement conference with the NRC on September 15, 1995, Lourdes Boschuk, as President of JLT, stated that JLT's operable Troxler gauge was in storage and had not been used. In fact, one of the gauges was transferred by JLT on September 6, 1995, to Cashin Associates, P.C. for use at the Brookhaven Landfill in New York State, and was not returned to JLT until September 19 or 20, 1995. This inaccurate statement was in violation of 10 CFR 30.9(a) and was made by Ms. Boschuk with careless disregard for the facts.

(4) A letter to the NRC dated September 18, 1995, signed by Lourdes Boschuk as President of JLT, and sent to the NRC in response to the September 15, 1995, NRC letter confirming JLT's commitment at the September 15, 1995, enforcement conference to refrain from using the Troxler density gauges pending resolution of the apparent violations, made several materially inaccurate statements. The letter stated that all JLT's gauges have been in the storage cabinet on the JLT premises since the visit of the NRC inspector. This was a deliberately inaccurate statement by Ms. Boschuk in violation of 10 CFR 30.9(a) and 30.10(a)(2). In fact, Ms. Boschuk knew no later than September 15, 1995, during a telephone call with the Director of JLT, immediately after the September 15, 1995 enforcement conference, that one of JLT's Troxler gauges had been transferred on September 6, 1995 to Cashin Associates, P.C. in New York State.

In addition, the letter stated that all three JLT Troxler gauges are currently locked in the designated storage cabinet on the JLT premises. This inaccurate statement was in violation of 10 CFR 30.9(a) and was made with at least careless disregard as to its truth or falsity by Ms. Boschuk. In fact, Lourdes Boschuk sent the JLT RSO to retrieve the gauge which had been transferred to Cashin Associates, P.C., but the RSO did not return to JLT with the gauge until late in the evening of September 19 or early in the morning of September 20, 1995.

B. Destruction of Records Relating to Gauge Usage

According to a witness, Lourdes Boschuk and others destroyed, altered, sanitized, or otherwise disposed of business and transactional records shortly after the August 1995 NRC inspection of JLT, in order to conceal from the NRC the unauthorized use and/or transfer of Troxler gauges by JLT. Among the records destroyed or disposed of were invoices and a log documenting use of the Troxler density gauges. According to a handwritten note, created by a JLT employee immediately after the September 15, 1995 enforcement conference, although utilization records were made available to the NRC inspector, those records could not be subsequently located. The note further reflected a question whether the utilization records were ''thrown away during sanitization of records?'' Shortly after the August 1995 inspection, the NRC inspector requested JLT to provide a copy of a utilization record found during the inspection and which documented the rental of a gauge to SE Technologies in September 1994, when neither JLE nor JLT had a valid NRC license. JLT did not provide the invoice and claimed it could no longer find the document. Condition 19 of JLT's License requires that JLT conduct its licensed activities in accordance with its Application dated January 6, 1995. The Application mandates that JLT comply with conditions requiring the creation of a utilization log for the gauges and the maintenance of the log for audit purposes. The destruction of the utilization log was in violation of the 10 CFR 30.3 and 30.9(a). The participation of Lourdes Boschuk in the deliberate destruction of the utilization log was in violation of 10 CFR 30.10(a).

[1] Lourdes Boschuk is the wife of John Boschuk, Jr., President and Owner of J&L Engineering, Inc. (JLE). JLT and JLE are located at the same address and share the same telephone and facsimile numbers.

III

Based on the above, the NRC concludes that Lourdes Boschuk, President and owner of JLT, deliberately violated NRC requirements, and otherwise committed willful violations of NRC requirements. These violations raise a serious doubt as to whether Ms. Boschuk can be relied upon to comply with NRC requirements and to provide complete and accurate information to the NRC. The NRC must rely upon the integrity of persons involved in licensed activities, especially owners and officials of NRC licensees. Deliberate misconduct of the type demonstrated by Ms. Boschuk cannot be tolerated. Notwithstanding the revocation of the JLT license, given Ms. Boschuk's repeated failures to adhere to regulatory requirements, the NRC no longer has the necessary assurance that Ms. Boschuk's participation in licensed activities would be performed safely and in accordance with requirements.

Consequently, I lack the requisite reasonable assurance that licensed activities can be conducted in compliance with the Commission's requirements and that the health and safety of the public will be protected if Ms. Boschuk were permitted at this time to be involved in NRC-licensed activities. Therefore, the public health, safety and interest require that Ms. Boschuk be prohibited from any involvement in NRC-licensed activities for a period of five years from the date of this Order, and if she is currently involved with another licensee in NRC-licensed activities, she must immediately cease such activities, and inform the NRC of the name, address and telephone number of the licensee, and provide a copy of this Order to the licensee. Additionally, Ms. Boschuk is required to notify the NRC of her first employment or involvement in NRC-licensed activities following the prohibition period.

IV

Accordingly, pursuant to sections 81, 161b, 161i, 161o, 182 and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202, 10 CFR 30.10, and 10 CFR 150.20, it is hereby ordered that:

1. For a period of five years from the date of this Order, Ms. Boschuk is prohibited from engaging in NRC-licensed activities. NRC-licensed activities are those activities that are conducted pursuant to a specific or general license issued by the NRC, including, but not limited to, those activities of Agreement State licensees conducted in areas of NRC jurisdiction pursuant to the authority granted by 10 CFR 150.20.

2. For a period of five years from the date of this Order, Ms. Boschuk shall provide a copy of this Order to any prospective employer or business partner who engages in NRC-licensed activities (as described in Section IV.1 above) prior to her acceptance of any employment (whether involved in licensed activities or not) by, or partnership or ownership interest in, a licensee (as described in Section IV.1 above). The purpose of this requirement is to ensure that the licensee is aware of Ms. Boschuk's prohibition from engaging in NRC-licensed activities.

3. The first time Ms. Boschuk is employed in NRC-licensed activities, or acquires a partnership or ownership interest in a licensee (as described in Section IV.1 above), following the five year prohibition in Section IV.1, above, she shall notify the Regional Administrator, NRC Region I, 475 Allendale Road, King of Prussia, Pennsylvania 19406, prior to acquiring such an interest or prior to engaging in NRC-licensed activities, including activities under an Agreement State license when activities under that license are conducted in areas of NRC jurisdiction pursuant to 10 CFR 150.20. The notice shall include the name, address, and telephone number of the NRC or Agreement State licensee and the location where licensed activities will be performed.

The Director, Office of Enforcement, may, in writing, relax or rescind any of the above conditions upon demonstration by the Licensee of good cause.

V

In accordance with 10 CFR 2.202, Ms. Boschuk must, and any other person adversely affected by this Order may, submit an answer to this Order and may request a hearing on this Order, within 20 days of the date of this Order. Where good cause is shown, consideration will be given to extending the time to request a hearing. A request for extension of time must be made in writing to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and include a statement of good cause for the extension. The answer may consent to this Order. Unless the answer consents to this Order, the answer shall, in writing and under oath or affirmation, specifically admit or deny each allegation or charge made in this Order and shall set forth the matters of fact and law on which Ms. Boschuk or other person adversely affected relies and the reasons as to why the Order should not have been issued. Any answer or request for a hearing shall be submitted to the Secretary, U.S. Nuclear Regulatory Commission, Attn: Chief, Rulemaking and Adjudications Staff, Washington, DC 20555. Copies also shall be sent to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, to the Deputy Assistant General Counsel for Enforcement at the same address, to the Regional Administrator, NRC Region I, 475 Allendale Road, King of Prussia, Pennsylvania 19406, to Ms. Boschuk if the answer or hearing request is by a person other than Ms. Boschuk. If a person other than Ms. Boschuk requests a hearing, that person shall set forth with particularity the manner in which his or her interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.714(d).

If a hearing is requested by Ms. Boschuk or a person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Order should be sustained.

In the absence of any request for hearing, or written approval of an extension of time in which to request a hearing, the provisions specified in Section IV above shall be final 20 days from the date of this Order without further order or proceedings. If an extension of time for requesting a hearing has been approved, the provisions specified in Section IV shall be final when the extension expires if a hearing request has not been received.

Dated at Rockville, Maryland, this 10th day of April 1998.

For the Nuclear Regulatory Commission.

James Lieberman,

Director, Office of Enforcement.

[FR Doc. 98–10330 Filed 4–17–98; 8:45 am]

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NUCLEAR REGULATORY COMMISSION

[Docket No. 50–440; License No. NPF–58; EA 97–430]

Centerior Service Company, Perry Nuclear Power Plant, Unit 1; Order Imposing Civil Monetary Penalty

I

Centerior Service Company (Licensee) is the holder of Operating License No. NPF–58, issued by the Nuclear Regulatory Commission (NRC or Commission) on November 13, 1986. The license authorizes the Licensee to operate the Perry Nuclear Power Plant,

Unit 1, in accordance with the conditions specified therein.

II

Three inspections of the Licensee's activities were conducted from December 28, 1996, to August 27, 1997. The results of the inspections indicated that the Licensee had not conducted its activities in full compliance with NRC requirements. A written Notice of Violation and Proposed Imposition of Civil Penalties (Notice) was served upon the Licensee by letter dated November 18, 1997. The Notice states the nature of the violations, the provisions of the NRC's requirements that the Licensee had violated, and the amount of the civil penalties proposed for the violations.

First Energy on behalf of Cleveland Electric Illuminating Company responded to the Notice on December 18, 1997. The NRC notes that Centerior Service Company (Centerior) holds NRC License No. NPF–58 which authorizes the operation of the Perry Nuclear Power Plant, Unit 1. Therefore, this action is directed to Centerior (Licensee). In its December 18, 1997 response, the Licensee admitted Violation A (EA 97–047) discussed in the Notice and paid the $50,000 civil penalty. Violation B (EA 96–542) did not require a response. In that same letter, the Licensee denied Violation C, EA 97–430, and requested remission of the proposed $50,000 civil penalty for that violation.

III

After consideration of the Licensee's response and the statements of fact, explanation, and argument for remission contained therein, the NRC staff has determined, as set forth in the Appendix to this Order, that the violation occurred as modified below and that the penalty proposed for Violation C designated in the Notice should be imposed. The NRC accepts the licensee's explanation that the change of the description of the ECCS surge tanks did not involve a potential increase of the consequence of a design basis dose to the public. The violation was accordingly modified by removing the sentence concerning potential increase of the consequences of a design basis dose to the public. However, the modification of the violation does not affect the validity of the violation or the amount of the civil penalty.

IV

In view of the foregoing and pursuant to Section 234 of the Atomic Energy Act of 1954, as amended (Act), 42 U.S.C. 2282, and 10 CFR 2.205, it is hereby ordered that: The Licensee pay a civil penalty in the amount of $50,000 within 30 days of the date of this Order, by check, draft, money order, or electronic transfer, payable to the Treasurer of the United States and mailed to Mr. James Lieberman, Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852.

V

The Licensee may request a hearing within 30 days of the date of this Order. Where good cause is shown, consideration will be given to extending the time to request a hearing. A request for extension of time must be made in writing to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, and include a statement of good cause for the extension. A request for a hearing should be clearly marked as a ''Request for an Enforcement Hearing,'' and shall be addressed to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, with a copy to the Commission's Document Control Desk, Washington, D.C. 20555. Copies also shall be sent to the Assistant General Counsel for Hearings and Enforcement at the same address and to the Regional Administrator, NRC Region III, 801 Warrenville Road, Suite 255, Lisle, IL 60532–4351.

If a hearing is requested, the Commission will issue an Order designating the time and place of the hearing. If the Licensee fails to request a hearing within 30 days of the date of this Order, or if written approval of an extension of time in which to request a hearing has not been granted, the provisions of this Order shall be effective without further proceedings. If payment has not been made by that time, the matter may be referred to the Attorney General for collection.

In the event the Licensee requests a hearing as provided above, the issues to be considered at such hearing shall be:

(a) Whether the Licensee was in violation of the Commission's requirements as set forth in the Notice referenced in Section II above, as amended in the Appendix to this Order, and

(b) Whether, on the basis of such violation, this Order should be sustained.

Dated at Rockville, Maryland this 9th day of April 1998.

For the Nuclear Regulatory Commission.

James Lieberman,

Director, Office of Enforcement.

Appendix—Evaluation and Conclusion

On November 18, 1997, a Notice of Violation and Proposed Imposition of Civil Penalties (Notice) was issued for violations identified during several NRC inspections at the Perry Nuclear Power Plant, Unit 1. First Energy on behalf of Cleveland Electric Illuminating Company responded to the Notice on December 18, 1997. The NRC notes that Centerior Services Company (Centerior) holds NRC License No. NPF–58 which authorizes the operation of the Perry Nuclear Power Plant, Unit 1. Therefore, this action is directed to Centerior (licensee). In the December 18, 1997 response, the licensee admitted Violation A (EA 97–047) discussed in the Notice and paid the $50,000 civil penalty. Violation B (EA 96–542) did not require a response. In that same letter, the licensee denied Violation C, EA 97–430, and requested remission of the proposed $50,000 civil penalty for that violation.

Restatement of Violation C (EA 97–430)

10 CFR 50.59 permits the licensee, in part, to make changes to the facility and procedures as described in the safety analysis report without prior Commission approval provided the changes do not involve an unreviewed safety question. Records of these changes must include a written safety evaluation which provides the bases for the determination that the changes do not involve an unreviewed safety question.

10 CFR 50.59 (a)(2)(I) states, in part, that a proposed change shall be deemed to involve an unreviewed safety question if the probability of occurrence or the consequences of an accident or malfunction of equipment important to safety previously evaluated in the safety analysis report may be increased.

Updated Safety Analysis Report (USAR) Section 9.2.2.3, ''Emergency Closed Cooling System—Safety Evaluation'' states that the emergency closed system cooling surge tanks are designed to maintain a seven day supply of water with normal system leakage without the need to provide makeup water.

Contrary to the above, Safety Evaluation No. 96–128 prepared by the licensee on October 10, 1996, and approved on October 21, 1996, evaluated a change in the design basis for the emergency closed cooling system surge tanks. The licensee changed the sizing basis of the surge tanks from a seven day supply as stated in USAR Section 9.2.2.3 to a 30-minute supply, and the licensee's analysis failed to identify that the change was an unreviewed safety question. Specifically, the safety evaluation did not adequately assess the increased probability of a malfunction of equipment important to safety associated with an increased potential for operator error as operators replenished the surge tanks on a 30-minute post accident basis instead of the previously evaluated period of seven days. The safety evaluation also failed to recognize the increased consequences of a design basis loss of coolant accident associated with an increased projected dose to the operators as they

refilled the surge tanks on an increased frequency.

This is a Severity Level III violation (Supplement I).

Civil Penalty—$50,000.

Summary of Licensee's Response to Violation C (EA 97–430)

The licensee denied this violation as written. The licensee provided three reasons to support the denial of the violation:

Summary of Licensee's Reason 1

The design of the plant, and the corresponding design bases for the emergency closed cooling (ECC) system, were not changed by the safety evaluation. The plant condition was identified as a non-conforming condition, and activities were planned to restore the system condition to the original licensing basis.

A determination of operability for the ECC system with increased leakage concluded that it was acceptable to allow system leakage of 3.0 gallons per minute (gpm) for ECC Loop A and 3.5 gpm for Loop B. In this degraded condition, the increased leakage would reduce the seven day supply of water to a 30 minute supply and introduce the need for local operator action to ensure sustained adequate net positive suction head (NPSH) to the ECC pumps. The licensee indicated that it may have been inappropriate to include the operability evaluation in the Updated Final Safety Analysis (USAR); however, it was done to preclude the need for preparing additional degraded condition operability determinations in the future.

The licensee concluded that the revision to the USAR preserved the original design considerations of a 7 day supply, and distinctly identifies leakage in excess of 0.5 gallons per hour (gph) as a degraded condition. The licensee indicated that its intention was to correct the deficiency during ''refueling outage six'' which began on September 12, 1997.

NRC Evaluation of Licensee's Reason 1

As originally stated in the USAR, the system was designed to maintain a seven day supply with normal system leakage. This fact was considered and reiterated in the NRC safety evaluation report. The USAR change removed the ''design aspect'' of the seven day supply and simply provided the mathematics for the 0.5 gph leak rate. This was a change in the design criteria. Additionally, the USAR now stated that under condition of degraded system leakage, it would be acceptable to have leakage such that there would only be a 30 minute inventory available. This also represents a change to the design basis of the facility.

Although the intention of the licensee was to repair the system, the USAR change represented a continued acceptance of a degraded condition.

Summary of Licensee's Reason 2

The change to the description of the ECC system surge tanks in the USAR did not involve an unreviewed safety question (USQ) under 10 CFR 50.59 criteria because it did not involve a potential increase in the probability of occurrence of a malfunction of equipment important to safety.

The licensee indicated that an increase in the probability of occurrence of a malfunction of equipment important to safety was not concluded on the basis that manual actions employed were such that failure of an action would be equivalent to that of a single active failure. When compared to the original evaluated design, the failure of the operator action would result in the loss of one train of the ECC system; a loss of no greater consequence than was previously evaluated in the USAR.

The licensee also indicated that significant efforts put forth to compensate for the additional actions and reduce the potential for error formed the basis to conclude that no increase in probability of equipment malfunction was introduced. The licensee referenced Part 9900 of the NRC inspection manual guidance for 10 CFR 50.59, which states in part that the NRC has found compensating effects, such as administrative controls, acceptable in offsetting uncertainties and increases in probability of occurrence or consequences of an accident previously evaluated or reductions in margin of safety, provided the negative impact is negligible, and is clearly outweighed by the compensatory actions. The licensee stated ''if these compensating factors can not be considered in determining that there is no increase in probability, no additional operator actions, for any normal or off-normal operating condition, could be permitted without also concluding an increase in the probability of a malfunction.''

NRC Evaluation of Licensee's Reason 2

Under the circumstances required to manually accomplish the ECC surge tank refill, the NRC does not agree that the consequences of operator error would be limited to a single active failure. The licensee did take actions to mitigate potential operator errors; however, in this case the NRC does not consider any mitigating actions to clearly outweigh the increased probability of losing NPSH to the ECC pumps. The increases in probabilities are described below:

- The reliance on an operator to refill the emergency closed cooling surge tanks beginning at 30 minutes (with completion occurring within the next 20 minutes) into a design basis accident (DBA) introduced a common-mode failure mechanism at a critical time in the accident sequence. While the USAR did rely on operators to refill the tanks seven days after a DBA, the seven days provided a period of time during which no operator action was required. After seven days, the plant would be stabilized and a failure on the part of an operator to properly refill the ECC surge tanks would still allow some margin for recovery. At 30 minutes into a DBA, the plant is significantly less stable and an interruption in operation or loss of this system increases the potential for core damage. When operator response time to perform a task is significantly decreased, the probability of an error is also increased.
- Due to the limited time into the accident sequence when operator actions would be required to refill the ECC surge tanks, there was also concern that personnel would not be available to perform the activity. Although the actual number of operators on site during routine activities might support the refill activity, during an accident, these operators would be diverted into addressing the more immediate action of responding to the accident and might not be available to compensate for a system that was designed to operate without operator action until the plant was stabilized. Therefore, the potential lack of available personnel early in the accident sequence to perform the ECC surge tank refill increased the probability of not filling the ECC surge tanks within the limited time frame.
- Based on the licensee's dose estimates for single entries into the ECC surge tank area of 4.4 rem, no single operator would be able to accomplish the repetitive refill activity sufficient to reduce the potential for error. It would appear that a minimum of three operators would be required within the first 2.5 hours (due to the dose) which increased the potential for errors.
- The actual and potential physical conditions of the area adjacent to the ECC system surge tanks (e.g., no emergency lighting, overfilling the surge tanks could cause slippery floor conditions) could result in the operator being unable to refill the tanks within the reduced response time.

In this case, the substitution of manual actions to replace the design intention of the tanks, including significantly reducing operator response time constitutes an unreviewed safety question (USQ). This change should have been submitted to and approved by the NRC before implementation.

Summary of Licensee's Reason 3

The change to the description of the ECC system surge tanks in the USAR did not involve a USQ under 10 CFR 50.59 criteria because it did not involve a potential increase of the consequences of a design basis accident associated with increased projected dose to the public due to operator refilling the surge tanks on an increased frequency.

The licensee performed time and motion studies of the activities needed to refill the ECC surge tanks and determined that for a single entry, the maximum dose was estimated to be 4.4 rem. This dose was bounded by the NUREG–0737 defined limit of 5 rem. The expected dose projection was within the guidelines of USAR section 12.6.1.a, for post accident dose rates in areas designated as ''infrequent occupancy,'' and the activity could be performed at any time throughout the accident without exceeding the 5 rem whole body exposure limit.

An increase in the consequences of an accident previously evaluated in the USAR was not concluded since doses to the public were not increased above the current licensing limit and doses to onsite personnel were not in excess of the limits as specified in NUREG–0737 or the USAR.

The consequences as referenced in 10 CFR 50.59 pertain to the health and safety of the public. Therefore, the proposed operator action from the perspective of receiving the estimated dose, does not cause a change in the consequences.

NRC Evaluation of Licensee's Reason 3

The NRC determined that an increase in dose consequences, as used in 10 CFR 50.59,

refers to the consequences of a design basis accident, and not to increased radiation dose to plant staff from in-plant recovery actions. NRC agrees that the change in operator actions did not involve a potential increase in consequences of a design basis accident. The violation is revised as follows:

10 CFR 50.59 permits the licensee, in part, to make changes to the facility and procedures as described in the safety analysis report without prior Commission approval provided the changes do not involve an unreviewed safety question. Records of these changes must include a written safety evaluation which provides the bases for the determination that the changes do not involve an unreviewed safety question.

10 CFR 50.59 (a)(2)(I) states, in part, that a proposed change shall be deemed to involve an unreviewed safety question if the probability of occurrence or the consequences of an accident or malfunction of equipment important to safety previously evaluated in the safety analysis report may be increased.

Updated Safety Analysis Report (USAR) Section 9.2.2.3 ''Emergency Closed Cooling System—Safety evaluation'' states that the emergency closed cooling system surge tanks are designed to maintain a seven day supply of water with normal system leakage without the need to provide makeup water.

Contrary to the above, Safety Evaluation No. 96–128 prepared by the licensee on October 10, 1996, and approved on October 21, 1996, evaluated a change in the design basis for the emergency closed cooling system surge tanks. The licensee changed the sizing basis of the surge tanks from a seven day supply as stated in USAR Section 9.2.2.3 to a 30-minute supply, and the licensee's analysis failed to identify that the change was an unreviewed safety question. Specifically, the safety evaluation did not adequately assess the increased probability of a malfunction of equipment important to safety associated with an increased potential for operator error as operators replenished the surge tanks on a 30-minute post accident basis instead of the previously evaluated period of seven days.

Summary of Licensee's Request for Remission of the Civil Penalty

The licensee requested full remission of the $50,000 civil penalty.

NRC Evaluation of Licensee's Request for Remission of the Civil Penalty

The licensee did not provide a separate justification (i.e., a discussion of the civil penalty adjustment factors) to justify remission of the civil penalty. Rather, the licensee's reasons for denying the violation apparently are the licensee's justification for requesting remission of the civil penalty.

NRC Conclusion

The licensee interpreted the NRC position concerning the violation to be that the increases in both the consequences and probability of an accident were the direct result of the increased presence in the plant of operators who are fully trained and qualified for the activities under consideration.

The NRC did not intend to suggest that the increased presence of personnel in the plant would cause an increase in the consequences and probability of an accident. Rather, the NRC was concerned with the increased potential of failing to refill the ECC surge tanks within an extremely limited time constraint, which was much shorter than originally described to and accepted by the NRC. In summary, the NRC's concern was that during the performance of the additional operator actions to refill the ECC surge tanks, the potential for errors was increased and could lead to the loss of the safety related ECC system. Loss of the ECC system could result in losing other safety related systems relied upon to mitigate the consequences of an accident. Therefore, the manual operator action proposed to compensate for the reduced ECC surge tank water supply constituted a USQ.

The NRC has concluded that this violation occurred as modified above, and that an adequate basis for withdrawing the violation, reducing the severity level of the violation, or remitting the civil penalty was not provided by the licensee. Consequently, the proposed civil penalty in the amount of $50,000 should be imposed.

[FR Doc. 98–10329 Filed 4–17–98; 8:45 am]

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NUCLEAR REGULATORY COMMISSION

[Docket No. 30–33725; License No. 37–28442–02; EAs 96–110]

J&L Testing Company, Inc., Canonsburg, Pennsylvania; Order Revoking License

I

J&L Testing Company, Inc., (Licensee or JLT) is the holder of Byproduct Nuclear Material License No. 37–28442–02 (License) issued by the Nuclear Regulatory Commission (NRC or Commission) pursuant to 10 CFR Part 30. The License authorizes possession and use of Troxler portable nuclear density gauges containing cesium-137 and americium-241 in sealed sources. The License, originally issued on February 7, 1995, was amended on August 22, 1995, and is due to expire on February 29, 2000. The License was suspended by Order, dated September 27, 1995.

II

J & L Engineering, Inc. (JLE), a corporation located at the same address and using the same telephone and facsimile numbers as the Licensee, held License No. 37–28442–01 for the same portable nuclear gauges for which the Licensee is now licensed. John Boschuk, Jr., President and owner of JLE, has acted as an agent of and consultant to JLT. JLE's license was revoked on August 30, 1993, for non-payment of fees. JLE was ordered, among other things, to cease use of byproduct material, dispose of the byproduct material, and notify the NRC of the disposition within 30 days of that Order. Notwithstanding that Order, JLE continued to possess the byproduct material and on October 5, 1994, a Notice of Violation (Notice) was issued to JLE for possession of licensed material without a valid NRC license. By letter dated October 11, 1994, Mr. Boschuk responded to the Notice, stating, among other things, that the ''* * * equipment [3-Troxler Nuclear Density gauges] has not been used for over 2 years and has not left the storage area in our office.''

On November 21, 1994, JLT submitted an application for a license. The November 21, 1994, cover letter for the application, signed by Lourdes Boschuk, President and owner of JLT and wife of John Boschuk, Jr., stated the following:

> * * * Submitted herein is our application to restore our expired license to store and operate three (3) Troxler Nuclear Density Gages (sic). We understand our license was revoked on August 30, 1993. Since that date, these units were not removed from storage nor used in anyway (sic).

Relying on the application and the statement that the gauges had not been removed from storage since the JLE license was revoked, the NRC issued the new License No. 37–28442–02 to JLT on February 7, 1995.

On August 1 and 3, 1995, the NRC conducted a routine, announced safety inspection of activities authorized by the License at JLT's facility in Canonsburg, Pennsylvania. During the inspection, an NRC inspector determined, based on a review of Licensee's documents, that one of the gauges, which JLE and the Licensee separately had stated in writing to the NRC were in storage and had not been used since revocation of the JLE license, had been transferred on September 2, 1994, to SE Technologies, Inc., in Bridgeville, Pennsylvania (which used the gauge at a temporary jobsite at the S. Hill Village Sears project), when neither JLE nor JLT possessed a valid NRC license. As stated by the Chief Engineer of SE Technologies, Inc., Mr. Boschuk had arranged for the rental, and as stated by a Project Engineer of SE Technologies, Inc., Mr. Boschuk had personally transferred the gauge to SE Technologies, Inc. JLT stated at a December 18, 1997, enforcement conference that uses of the gauge(s) prior to February 7, 1995, and after revocation of the JLE license were invoiced by JLT. The transfer of the gauge to SE Technologies, Inc. was a

deliberate violation of 10 CFR 30.3, which prohibits, among other things, transfer of byproduct material without a valid license from the NRC and a deliberate violation of the order revoking JLE's license in violation of 10 CFR 30.10(a). As a consequence, the statement by Ms. Boschuk in her November 21, 1994, letter to the NRC, that the gauges had not been used and had not left storage at JLT since August 30, 1993, was inaccurate in violation of 10 CFR 30.9(a), and the statement by Mr. Boschuk in his October 11, 1994, letter to the NRC, that the gauges had not been used for over two years and had not left storage, was deliberately inaccurate in violation of 10 CFR 30.9(a) and 30.10(a).

During the NRC's August 1995 inspection, three additional violations of NRC requirements were identified. These violations involved the failure to perform leak tests of the gauges at the required 6-month intervals, as required by Condition 12 of the license; the failure to have an approved Radiation Safety Officer (RSO) (the RSO listed by the license terminated employment on May 26, 1995), as required by License Condition 11A; and the failure to perform physical inventories of the gauges at the required 6-month intervals, as required by Condition 14 of the license. By letter dated September 11, 1995, JLT admitted that the cited violations had occurred.

A predecisional enforcement conference was held with the Licensee on September 15, 1995, to discuss the five violations identified during the August 1995 inspection. At the conference, JLT's President admitted all five violations, but offered no explanation for why the material had been used notwithstanding the revocation of the JLE license and JLT's lack of a license.

Based upon the above, the NRC concluded that JLT's submission of materially inaccurate information in its license application, and JLE's submission of materially inaccurate information in response to a Notice of Violation, were, if not deliberate, in careless disregard of Commission requirements. These violations, combined with the additional violations identified during the inspection, caused the NRC to conclude that the Licensee was unwilling or unable to comply with NRC requirements and that the requisite reasonable assurance that the Licensee's operations could be conducted under License No. 37–28442–02 in compliance with the Commission's requirements was lacking, such that the health and safety of the public, including the Licensee's employees, would not be protected if the Licensee were permitted to conduct licensed activities at that time. Therefore, in the interest of public health and safety, the License was suspended, effective immediately, on September 27, 1995, pending completion of an investigation by the NRC Office of Investigations.

III

Subsequently, the NRC Office of Investigations completed its investigation of JLT. The NRC staff has determined that, in addition to the violations cited above, JLT committed a number of other violations of NRC regulatory requirements, as set forth below.

A. Materially Inaccurate Statements Made to NRC

(1) A letter to the NRC dated September 11, 1995, signed by Lourdes Boschuk and reviewed and edited by John Boschuk, Jr., stated that the Troxler gauge that was missing at the time of the August 1995 NRC inspection was in Watertown, New York, and was returned to JLT the next day. This was a deliberately inaccurate statement in violation of 10 CFR 30.9(a) and 30.10(a). In fact, according to the Chief Engineer of SE Technologies, Inc., Mr. Boschuk personally transferred the gauge to SE Technologies, Inc. in July 1995, and requested return of the gauge on August 14 or 15, 1995. In fact, the gauge was not returned to JLT until August 17, 1995. In addition, the September 11, 1995, letter represented that since the August 1995 NRC inspection, all three Troxler gauges had been in a locked storage cabinet at JLT's premises and would remain there until the apparent violations identified in the NRC's Inspection Report were resolved. This inaccurate statement in violation of 10 CFR 30.9(a) was made with careless disregard for the facts. In fact, one of the gauges had been transferred to Cashin Associates, P.C., Hauppauge, New York, on September 6, 1995, and was not returned to JLT until September 19 or 20, 1995.

(2) During an enforcement conference with the NRC on September 15, 1995, Lourdes Boschuk, President of JLT, stated that JLT's operable Troxler gauge was in storage and was not used ''at all''. In fact, that gauge was transferred by JLT on September 6, 1995, to Cashin Associates, P.C. for use at the Brookhaven Landfill in New York State, and was not returned to JLT until September 19 or 20, 1995. This inaccurate statement was in violation of 10 CFR 30.9(a) and was made with careless disregard for the facts.

(3) In a letter to the NRC dated September 18, 1995, prepared by John Boschuk, Jr. and signed by Lourdes Boschuk, and sent to the NRC in response to the NRC's September 15, 1995, letter confirming JLT's commitment at the September 15, 1995, enforcement conference to refrain from using the Troxler density gauges pending resolution of the apparent violations, JLT made several inaccurate statements. The letter stated that all of JLT's gauges have been in the storage cabinet on the JLT premises since the visit of the NRC inspector. This was a deliberate, materially inaccurate statement in violation of 10 CFR 30.9(a) and 30.10(a)(2). In fact, Ms. Boschuk knew no later than September 15, 1995, during a telephone call to the Director of JLT immediately after the September 15, 1995, enforcement conference, that one of JLT's Troxler gauges had been transferred on September 6, 1995, to Cashin Associates, P.C. in New York State. In fact, Mr. Boschuk learned from Ms. Boschuk no later than the weekend ending September 17, 1995, that the gauge had been transferred to Cashin Associates, P.C. As explained above, he also knew that the gauge had been transferred to SE Technologies, Inc. between July 18, and August 17, 1995, although the NRC inspection ended on August 3, 1995.

In addition, the letter stated that all three JLT Troxler gauges were currently locked in the designated storage cabinet on the JLT premises. This inaccurate statement was in violation of 10 CFR 30.9(a) and was made with at least careless disregard as to its truth or falsity by both Mr. and Ms. Boschuk. In fact, Lourdes Boschuk sent JLT's Radiation Safety Officer (RSO) to retrieve the gauge which had been transferred to Cashin Associates, P.C., but the RSO did not return to JLT with the gauge until late in the evening of September 19 or early in the morning of September 20, 1995. Mr. Boschuk stated at the December 18, 1997, predecisional enforcement conference that although he checked the storage cabinet before preparing the letter, and saw three yellow cases which he assumed contained the gauges, he did not look inside the cases to verify the gauges were there.

(4) Figure 1 of the November 21, 1994, JLT application, revised January 6, 1995, depicted a locked steel cabinet on the JLT premises as the storage site for the three Troxler gauges. However, the cabinet did not have a lock. John Boschuk, Jr. prepared Figure 1. This materially inaccurate statement was in violation of 10 CFR 30.9(a) and was

made with at least careless disregard for the facts by Mr. Boschuk.

B. Unauthorized Use of Byproduct Material and Related Materially Inaccurate Statements

JLT admittedly used the Troxler density gauge(s) on four occasions after revocation of the JLE license and before the NRC issued a license to JLT on February 7, 1995. JLT stated at the December 18, 1997, enforcement conference that JLT employees used the gauges on those occasions and that JLT invoiced its customers for the usage. Specifically, JLT admitted to using the gauge(s) for the following customers: DelSir Supply in December 1993, Johnson Construction in May 1994, Johnson Construction in June 1994, and PA Soil & Rock Company in July 1994. These violations of 10 CFR 30.3 were committed with at least careless disregard by JLT.

As a consequence, the statement by Ms. Boschuk in her November 21, 1994, letter to the NRC, that the gauges had not been used and had not left storage at JLT since August 30, 1993, and the statement by Mr. Boschuk in his October 11, 1994, letter to the NRC, that the gauges had not been used for over two years and had not left storage, were materially inaccurate in violation of 10 CFR 30.9(a) and made with at least careless disregard.

C. Violation of License Condition

Condition 19 of the JLT License requires that, when not in use, the Troxler gauges be kept in a locked cabinet on JLT's premises, as depicted by Figure 1 of the January 6, 1995, amended application. Figure 1, prepared by Mr. Boschuk, pictures a storage closet with a lock. In violation of that requirement, JLT failed to maintain its gauges in a locked storage cabinet between February 7, 1995 and sometime before the August 1995 inspection. The failure to maintain the gauges in a locked cabinet was in violation of Condition 19 of JLT's License and of 10 CFR 30.3.

D. Destruction of Records Relating to Gauge Usage

According to a witness, Lourdes Boschuk, John Boschuk, Jr. and others destroyed, altered, sanitized, or otherwise disposed of business and transactional records shortly after the August 1995 NRC inspection of JLT, in order to conceal from the NRC the unauthorized use and/or transfer of Troxler gauges by JLT. Among the records destroyed or disposed of were invoices and a log documenting use of the Troxler density gauges. According to a handwritten note, created by a JLT employee immediately after the September 15, 1995, enforcement conference, although utilization records were made available to the NRC inspector, those records could not be subsequently located. The note further reflected a question whether the utilization records were ''thrown away during sanitization of records?'' Shortly after the August 1995 inspection, the NRC inspector requested JLT to provide a copy of a utilization record found during the inspection and which documented the rental of a gauge to SE Technologies in September 1994, when neither JLE nor JLT had a valid NRC license. JLT did not provide the invoice and claimed it could no longer find the document. Condition 19 of JLT's License requires that JLT conduct its licensed activities in accordance with its Application dated January 6, 1995. The Application mandates that JLT comply with conditions requiring the creation of a utilization log for the gauges and the maintenance of the log for audit purposes. The destruction of the utilization log was in violation of 10 CFR 30.3 and 30.9(a). The participation of John Boschuk, Jr. and Lourdes Boschuk in the deliberate destruction of the utilization log was in violation of 10 CFR 30.10(a).

IV

Based on the above, the NRC concludes that the Licensee willfully violated NRC requirements, both deliberately and with careless disregard, and committed violations of NRC safety requirements. Among the Licensee's willful violations were repeated, materially inaccurate statements to the NRC regarding unauthorized use of byproduct material, unauthorized use of licensed material, violation of license conditions regarding the use and storage of the gauges, and the destruction or disposal of records related to unauthorized use of licensed material. As stated above, among the Licensee's violations of safety requirements were the failure to perform required leak tests, to have an approved Radiation Safety Officer, and the failure to perform required inventories of licensed material. The NRC must be able to rely on its Licensee's integrity and their compliance with NRC requirements. The Licensee's numerous willful violations and other violations demonstrate that the Licensee is either unwilling or unable to comply with NRC requirements.

Consequently, I lack the requisite reasonable assurance that the Licensee is willing and able to conduct operations under License No. 37–28442–02 in compliance with the Commission's requirements, or that the health and safety of the public will be protected if J&L Testing Company, Inc. continues to engage in licensed activity. Therefore, the public health, safety and interest require that License No. 37–28442–02 be revoked.

V

Accordingly, pursuant to sections 81, 161b, 161i, 161o, 182 and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202 and 10 CFR 30.10, IT IS HEREBY ORDERED THAT LICENSE NO. 37–28442–02 IS REVOKED, AND ALL LICENSED MATERIAL CURRENTLY IN THE LICENSEE'S POSSESSION SHALL BE TRANSFERRED TO AN AUTHORIZED RECIPIENT WITHIN 7 DAYS OF THE EFFECTIVE DATE OF THIS ORDER. FURTHER, THE LICENSEE SHALL NOTIFY THE NRC WITHIN TWO BUSINESS DAYS AFTER SUCH TRANSFER HAS TAKEN PLACE AS TO WHOM THE TRANSFER WAS MADE. THE LICENSEE MAY TELEPHONICALLY CONTACT NRC'S REGIONAL OFFICE AT 610–337–5000 TO COMPLY WITH THE NOTIFICATION REQUIREMENT.

VI

In accordance with 10 CFR 2.202, the Licensee must, and any other person adversely affected by this Order may, submit an answer to this Order, and may request a hearing on this Order, within 20 days of the date of this Order. Where good cause is shown, consideration will be given to extending the time to request a hearing. A request for extension of time must be made in writing to the Director, Office of Enforcement, US Nuclear Regulatory Commission, Washington, DC 20555, and include a statement of good cause for the extension. The answer may consent to this Order. Unless the answer consents to this Order, the answer shall, in writing and under oath or affirmation, specifically admit or deny each allegation or charge made in this Order and shall set forth the matters of fact and law on which the Licensee or other person adversely affected relies and the reasons why the Order should not have been issued. Any answer or request for hearing shall be submitted to the Secretary, U.S. Nuclear Regulatory Commission, ATTN: Chief, Rulemaking and Adjudications Staff, Washington, DC 20555. Copies also shall be sent to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, to the Deputy Assistant General Counsel for

Enforcement at the same address, to the Regional Administrator, NRC Region I, 475 Allendale Road, King of Prussia, Pennsylvania 19406–1415, and to the Licensee, if the answer or hearing request is by a person other than the Licensee. If a person other than the Licensee requests a hearing, that person shall set forth with particularity the manner in which his or her interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.714(d).

If a hearing is requested by the Licensee or a person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Order should be sustained.

In the absence of any request for hearing, or written approval of an extension of time in which to request a hearing, the provisions specified in Section IV above shall be final 20 days from the date of this Order without further order or proceedings. If an extension of time for requesting a hearing has been approved, the provisions specified in Part IV of this Order shall be final when the extension expires if a hearing request has not been received.

Dated at Rockville, Maryland this 10th day of April 1998.

For the Nuclear Regulatory Commission.

James Lieberman,

Director, Office of Enforcement.

[FR Doc. 98–10328 Filed 4–17–98; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–423]

Northeast Nuclear Energy Company; Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed no Significant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF–49 issued to Northeast Nuclear Energy Company (the licensee) for operation of Millstone Nuclear Power Station, Unit 3, located in New London County, Connecticut. The proposed change to Technical Specification (TS) 3/4.4.4, Relief Valves, would ensure that the Power-Operated Relief Valves (PORVs) will be capable of automatic cycling as well as manual cycling when in the TS 3/4.4.4 action statements that allow indefinite continued operation. The proposed amendment also makes an editorial change, adds PORV surveillance requirements, and modifies the associated Bases section. The proposed changes provide added assurance that the pressurizer safety relief valves will not be damaged due to water relief during an inadvertent safety injection event.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

NNECO has reviewed the proposed revision in accordance with 10CFR50.92 and has concluded that the revision does not involve a significant hazards consideration (SHC). The basis for this conclusion is that the three criteria of 10CFR50.92(c) are not satisfied. The proposed revision does not involve [an] SHC because the revision would not:

1. Involve a significant increase in the probability or consequence of an accident previously evaluated.

Currently, timely operator action is required to prevent the pressurizer from filling and potentially challenging the pressurizer safety valves under water relief. The proposed TS changes provide added assurance that the safety valves will not be challenged by requiring the PORVs to be available for automatic pressure control. The changes to the Surveillance Requirements add the appropriate requirements to provide assurance that the automatic capability of the PORVs is OPERABLE. The quarterly analog channel operational test for the PORV high pressurizer pressure channels will not include valve operation. However, it does involve changing the opening logic from 2/4 to 1/3 and, thus, performing the surveillance increases the probability of the PORVs opening inadvertently. If the automatic capability of one PORV is INOPERABLE for more than 72 hours, shutdown is required. If the automatic capability of both PORVs is INOPERABLE for more than one hour, shutdown is required. If the block valves have been closed but the automatic capability of the PORVs is OPERABLE, an EOP [emergency operating procedure] change has been made to assure that the PORV block valve would be opened within ten minutes of an Inadvertent ECCS [emergency core cooling system] actuation at power. The new analysis shows that this is sufficient to assure that the PORVs would control RCS [reactor coolant system] pressure if water relief is experienced and the safety valves would not be challenged. Thus, it is concluded that the change provides added assurance that the safety valves would not fail due to water discharge.

Evaluations and analysis have been performed to demonstrate that the PORVs and the associated piping are qualified for water relief from an Inadvertent ECCS Actuation at Power Operation for one hour from event initiation. This provides significant margin for operator action to terminate the event.

The PORV control logic has been upgraded to be safety grade and single failure proof. A 2/4 logic is used for opening and 3/4 logic is used for subsequent closure. With the upgrade of the PORV control logic, there is added assurance that the PORV will be capable of providing automatic pressure control and preventing challenges to the safety valves, particularly under water solid conditions. However, there is a small impact on the probability of inadvertent opening of both PORVs resulting from multiple channel failures. With the new safety grade PORV control logic, two failed high pressurizer pressure channels will result in inadvertent opening of both PORVs. With the current logic, a single failed high pressurizer pressure channel would result in opening a PORV. However, the 2/4 closure logic will re-close the PORV when pressurizer pressure drops below 2200 psia. With the current logic three failed high pressurizer pressure channels are required for the PORVs to inadvertently open and remain open. Thus it is concluded that there is an increase in the probability that the PORVs will inadvertently open and remain open.

However, multiple channels failing high are required for the PORVs to inadvertently open and remain open. For failure modes such as loss of power for the transmitter or a failure of the instrument tubing, the channel will fail low. Failure modes that can result in the channel failing high are highly unlikely. Further, the new logic will require energization in order to open the PORVs, further minimizing the potential for inadvertent opening. These failures, which result in the PORVs automatically opening and remaining open, do not disable the ability of the operators to close the PORVs by taking their control switch to the close position. Thus, it is concluded that the increase in risk is negligible. The consequences of inadvertent opening of both PORVs is bounded by the analysis provided in Chapter 15.6.1 Inadvertent Opening of Pressurizer Safety or Relief Valve.

In the event of an inoperable pressurizer pressure channel, the channel will be placed in the tripped condition. This will change the opening logic from 2/4 to 1/3 and the subsequent closure logic from 3/4 to 3/3.

This means that, when a pressurizer pressure channel is inoperable, a single failure of a pressurizer pressure channel high will cause both PORVs to open and remain open. Thus it is concluded that the Technical Requirements Manual (TRM) change which addresses specific surveillance controls, also results in an increase in the probability that the PORVs will inadvertently open and remain open. However, procedural controls will be implemented and controlled in the TRM that will require a plant shutdown if the channel is inoperable for more than thirty days.

The setpoint for the PORV opening logic has been selected to assure that the PORVs will open prior to the safety valves, taking into account instrument uncertainties. The setpoint will be specified and controlled in the Technical Requirements Manual. This minimizes the potential challenges to the pressurizer safety valves under steam as well as water solid conditions. The PORV closure logic will be 3/4 that actuates when pressurizer pressure drops 20 psi below the opening setpoint. Since the stroke time for the PORV is very short, the closing pressure is adequate to assure that the valve will cycle as designed.

An EOP [Emergency Operating Procedure] change will direct the operator to open the PORV block valve if it has been closed due to excessive seat leakage. The EOP change will not result in the opening of the PORV block valve when the power has been removed when required to prevent a small break LOCA [loss-of-coolant accident]. This includes leakage from the PORV such that there is no assurance that the PORV would re-close as required to control RCS pressure. Thus, the PORV block valve would be opened only when there is assurance that the PORV will open and re-close as required. Thus, the EOP change does not impact the probability of a failed open PORV.

Credit is now being taken for the PORVs to prevent challenges to pressurizer safety valves under water relief. If the PORVs were to fail to control RCS pressure, it is possible for water relief through the safety valves to occur. This also can result if both of the PORV block valves cannot be opened. Since the safety valves and the associated piping are not qualified for water relief, the valves may be damaged and may not reseat, resulting in an unisolable RCS leak. However, this would require multiple failures since the PORVs are redundant. The accident analysis has shown that DNB [departure from nucleate boiling] is not a concern and thus, there would be no failed fuel associated with this event. In addition, any RCS leakage would be inside containment. The analysis provided in FSAR [Final Safety Analysis Report] Section 15.6.1 for an Inadvertent Opening of a Pressurizer Safety or Relief Valve bounds the opening of both PORVs since the capacity of two PORVs is equivalent to one pressurizer safety valve.

Thus it is concluded that the proposed changes do not involve a significant increase in the probability or consequence of an accident previously evaluated.

2. Create the possibility of a new or different kind of accident from any accident previously evaluated.

The changes provide added assurance that an Inadvertent ECCS Actuation at Power Operation will be mitigated and meet the requirement that a moderate frequency event will not lead to a more serious event without additional failures. The PORVs and associated piping have been qualified for water relief. In addition the PORVs are QA [Quality Assurance] equipment and are single failure proof. The TS changes provide assurance that the PORV automatic function will be OPERABLE or the plant will be shutdown. By crediting the PORVs, there is added assurance that the operators will terminate the event and prevent water relief from the safety valves for which they are not qualified. Since all criteria are met for this event, this does not represent the possibility of an accident of a different type.

Because of the change in the PORV automatic actuation circuitry and the changes in the channel operability and surveillance requirements, the change does increase the probability of an Inadvertent Opening of both PORVs but the consequences are bounded by the analysis provided in FSAR Section 15.6.1 for Inadvertent Opening of a Safety or Relief Valve. Thus, this does not represent an accident of a different type.

Credit is being taken for the operator to open a PORV block valve if it has been closed due to excessive PORV seat leakage. The PORV block valve will be opened following a Safety Injection actuation only after it has been determined that RCS pressure is above the HPSI [high pressure safety injection] shut off head. This means that charging is sufficient to maintain RCS pressure well above the RCS pressure predicted for the limiting LOCA analysis. Further, the PORV block valve would not be opened when power has been removed because of the potential for operation of the PORV to result in a small break LOCA. Further, the potential for opening the PORV block valve when the PORV is needed for accident mitigation is already addressed in the TS and is part of the licensing basis. Thus, this does not create the possibility of an accident of a different type.

3. Involve a significant reduction in a margin of safety.

With the proposed changes, all criteria for the Inadvertent ECCS actuation at Power Operation are met. The changes provide added assurance that a moderate frequency event would not result in a more serious event without additional failures. The TS changes and EOP change provide added assurance that the PORVs would be available to mitigate this event. Opening the block valve when the PORV can be used to mitigate an accident without the potential for a small break LOCA is already addressed in the TS and is part of the licensing basis. Inadvertent Opening of both PORVs is bounded by the Chapter 15 accident analysis. Thus, it is concluded that the changes have no impact on the margin of safety.

In conclusion, based on the information provided, it is determined that the proposed revision does not involve an SHC.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D59, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

By May 20, 1998, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's ''Rules of Practice for Domestic Licensing Proceedings'' in 10 CFR Part 2. Interested persons should

consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Learning Resources Center, Three Rivers Community-Technical College, 574 New London Turnpike, Norwich, Connecticut, and at the Waterford Library, ATTN: Vince Juliano, 49 Rope Ferry Road, Waterford, Connecticut. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) the nature of the petitioner's right under the Act to be made party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and to Lillian M. Cuoco, Esq., Senior Nuclear Counsel, Northeast Utilities Service Company, P.O. Box 270, Hartford, Connecticut, 06141–0270, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(I)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated April 14, 1998, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Learning Resources Center, Three Rivers Community-Technical College, 574 New London Turnpike, Norwich, Connecticut, and at the Waterford Library, ATTN: Vince Juliano, 49 Rope Ferry Road, Waterford, Connecticut.

Dated at Rockville, Maryland, this 15th day of April 1998.

For the Nuclear Regulatory Commission.

Stephen Dembek,

Project Manager, Special Projects Office—Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 98–10332 Filed 4–17–98; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–445 and 50–446]

Texas Utilities Electric; Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed no Significant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License Nos. NPF–87 and NPF–89, issued to Texas Utilities Electric Company, (TU Electric, the licensee), for operation of the Comanche Peak Steam Electric Station, Units 1 and 2, located in Somervell County, Texas.

The proposed amendment would allow on a one-time basis, the verification of the proper operation of the Unit 2 load shed seal-in contacts and the diesel generator trip bypass contacts at power and crediting performance of Surveillance Requirements (SR) 4.8.1.1.2f.4)a) and 4.8.1.1.2f.6)a), at power as opposed to ''during shutdown'' as currently required by those SR. The proposed amendment would also allow on a one-time basis the verification of the proper operation of the Unit 2 lockout relays and contacts to be deferred until the startup from 2RFO4 or earlier outage to

at least MODE 3. The licensee promptly reported to the NRC at the time of discovery the failure to perform the testing required by the SR and promptly initiated corrective actions.

The licensee requested a Notice of Enforcement Discretion (NOED) by letter dated April 7, 1998. The NRC orally issued the NOED at 10:45 a.m. EDT on April 8, 1998. Pursuant to the NRC's policy regarding exercise of discretion for an operating facility, set out in Section VII.c, of the ''General Statement of Policy and Procedures for NRC Enforcement Actions'' (Enforcement Policy), NUREG–1600, the letter documenting the issuance of the NOED was dated April 10, 1998. The NOED was to be effective for the period of time it takes the NRC staff to process the proposed change to the TSs. Therefore, this amendment is being processed on an exigent basis.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

Pursuant to 10 CFR 50.91(a)(6) for amendments to be granted under exigent circumstances, the NRC staff must determine that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Do the proposed changes involve a significant increase in the probability or consequences of an accident previously evaluated?

The proposed change is to delay the performance of certain portions of the surveillance testing of specific devices and for the crediting of the at power testing of certain portions of shutdown surveillance requirements as previously described and listed in Table 1, 2 and 3. Delaying performance of these tests until such time as appropriate or crediting of at power testing of shutdown surveillance requirements does not increase the probability of an accident; therefore the probability of an accident previously evaluated is not increased.

No plant equipment is adversely affected by not performing these surveillance tests. The consequences of an accident, as analyzed in the FSAR, does not increase from not having performed the testing. Based on the statements above and the expectation that the deferred testing and the at power testing will confirm OPERABILITY, this change poses no increase in the consequences of a previously evaluated accident.

2. Do the proposed changes create the possibility of a new or different kind of accident from any accident previously evaluated?

Delaying the performance of tests and the crediting of at power testing of shutdown surveillance requirements are administrative actions and do not have the potential to create a new or different kind of accident from any previously evaluated. The systems will continue to respond in the same manner as they currently do.

3. Do the proposed changes involve a significant reduction in a margin of safety?

Delaying the performance of, or crediting the at power testing of shutdown surveillance requirements for those portions of the surveillance testing necessary to demonstrate the lockouts and seal-in circuitry, does not significantly reduce a margin of safety. The circuitry is expected to perform its design functions.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 14 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 14-day notice period. However, should circumstances change during the notice period, such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 14-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D59, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

By May 20, 1998, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's ''Rules of Practice for Domestic Licensing Proceedings'' in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the University of Texas at Arlington Library, Government Publications/Maps, 702 College, P.O. Box 19497, Arlington, TX 76019. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the

subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If the amendment is issued before the expiration of the 30-day hearing period, the Commission will make a final determination on the issue of no significant hazards consideration. If a hearing is requested, the final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and to George L. Edgar, Esq., Morgan, Lewis and Bockius, 1800 M Street, N.W., Washington, DC 20036, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(I)-(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated April 9, 1998, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room, located at the University of Texas at Arlington Library, Government Publications/Maps, 702 College, P.O. Box 19497, Arlington, TX 76019.

Dated at Rockville, Maryland, this 14th day of April 1998.

For the Nuclear Regulatory Commission.

Timothy J. Polich,

Project Manager, Project Directorate IV–1, Division of Reactor Projects III/IV, Office of Nuclear Reactor Regulation.

[FR Doc. 98–10334 Filed 4–17–98; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Notice of Amendment to Certificate of Compliance GDP–2 for the U.S. Enrichment Corporation, Portsmouth Gaseous Diffusion Plant, Portsmouth, Ohio; Docket 70–7002

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 Nuclear Regulatory Commission (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: February 27, 1998.

Brief description of amendment: The United States Enrichment Corporation (USEC) submitted a certificate amendment request for PORTS to add four facilities including the conversion shop and cleaning building (X–700), the maintenance and stores building (X–720), the chemical and engineering building (X–760) and the storage warehouse (XT–847) to Technical Safety Requirement (TSR) Section 2.8 entitled ''Specific TSRs for X–710 Laboratory,'' and to delete the associated operational mode descriptions in TSR Section 2.8.1.

An NRC Inspector Followup Item, 70–7002/97–206–10B, which was identified in an NRC nuclear criticality safety inspection report for PORTS dated September 29, 1997, noted that no specific Criticality Accident Alarm System (CAAS) TSR existed for the X–700, X–720, X–760 and XT–847 facilities even though fissile material operations (FMOs) involving greater than 700 grams of U235 at an enrichment equal to or greater than 1.0% U235 could be conducted in those facilities, and CAAS coverage was being provided. As such, USEC has proposed to apply the existing NRC-approved CAAS TSRs for X–710 in TSR Section 2.8, to X–700, X–720, X–760 and XT–847. In addition, USEC has proposed to delete the three operational modes described in TSR Section 2.8.1, namely (1) ''General Analytical—analyses of production, ES&H, waste management, technical support, maintenance/fabrication activities,'' (2) ''Uranium Sampling—subsampling uranium hexafluoride,'' and (3) ''Polybottle Operations—movement of polybottles to and from labs and storage areas,'' since there are no specific operational modes associated with the TSRs for X–700, X–710, X–720, X–760 and XT–847.

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 (1) adds the X–700, X–720, X–760 and XT–847 facilities to TSR Section 2.8 entitled ''Specific TSRs for X–710 Laboratory,'' since similar FMOs are conducted in these facilities and (2) deletes the associated operational modes listed in TSR 2.8.1. This amendment would enhance safety by adding more rigor to CAAS operability in terms of maintenance, calibration, testing, etc., in the four additional facilities. In addition, deleting the current operational modes in TSR 2.8.1, which do not apply to TSR 2.8.3.1 (CAAS TSR) since the CAAS is required to be operable at all times when more than 700 grams of U235 at an enrichment equal to or greater than 1.0% U235 is present in the facility, will have no significant safety impact. As such, this amendment 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.

For the reasons provided in the assessment of criterion 1, the proposed amendment 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.

For the reasons provided in the assessment of criterion 1, the proposed amendment will not result in a significant increase in 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.

For the reasons provided in the assessment of criterion 1, the proposed amendment 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.

For the reasons provided in the assessment of criterion 1, the proposed amendment will not result in a significant reduction in any 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.

For the reasons provided in the assessment of criterion 1, the proposed amendment will not result in an overall decrease in the effectiveness of the plant's safety 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 sixty (60) days after issuance by NRC.

Certificate of Compliance No. GDP–2: Amendment will revise PORTS TSR Section 2.8.

Local Public Document Room location: Portsmouth Public Library, 1220 Gallia Street, Portsmouth, Ohio 45662.

Dated at Rockville, Maryland, this 9th day of April 1998.

For the Nuclear Regulatory Commission.

Carl J. Paperiello,

Director, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 98–10327 Filed 4–17–98; 8:45 am]

BILLING CODE 7590–01–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 Commission made a determination that the following amendment request is significant in accordance with 10 CFR 76.45. Notice of Receipt of Amendment Request appeared in the **Federal Register** on January 5, 1998, allowing a 30-day public comment period on the application. No public comments were received.

The Nuclear Regulatory Commission (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. The staff has prepared a Compliance Evaluation Report which provides details of the staff's evaluation.

The Commission 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.

United States Enrichment Corporation (USEC) or any person whose interest may be affected, and who submitted written comments in response to the Notice on the amendment application, under § 76.37, 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 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: February 25, 1997.

Brief description of amendment: On February 25, 1997, USEC submitted a request to provide for an additional identified criticality accident case for the X–333 cascade building related to the previously approved increase in assay limit to 3 percent. The operation at increased assay creates conditions where the location of an inadvertent nuclear criticality event might be closer to the X–333 Area Control Room (ACR–1), thus producing higher potential doses to personnel at that location. It should be noted that this hypothetical accident case was identified by USEC after the NRC approved USEC's initial certificate application in November 1996. It should also be noted that the increase in the X–333 assay limit was approved by the NRC as part of the initial certification of PORTS. For this hypothetical accident case, an estimate is made that personnel in ACR–1 could, under the conservative assumption that they remained in ACR–1 for 50 minutes despite the likely criticality alarm, receive a dose of 49 rem and not 0.005 rem as is currently indicated in the Accident Analysis section of the PORTS Safety Analysis Report (SAR). Based on an initial review of the amendment request, the NRC staff feels that sufficiently adequate safety controls are currently in place at PORTS to prevent and mitigate this accident. Therefore, other than the proposed modification to the PORTS SAR, this amendment would likely not require any other changes to plant operations.

Effective date: The amendment to Certificate of Compliance GDP–2 will become effective 60 days after issuance.

Certificate of Compliance No. GDP–2: Amendment will revise the consequences of a criticality accident in the X–333 cascade building in the Safety Analysis Report.

Local Public Document Room location: Portsmouth Public Library, 1220 Gallia Street, Portsmouth, Ohio 45662.

Dated at Rockville, Maryland, this 9 day of April 1998.

For the Nuclear Regulatory Commission.

Carl J. Paperiello,

Director, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 98–10333 Filed 4–17–98; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC–23110; 812–10940]

Lehman Brothers Inc.; Notice of Application

April 13, 1998.

AGENCY: Securities and Exchange Commission (''SEC'').

ACTION: Notice of application for an order under section 12(d)(1)(J) of the Investment Company Act of 1940 (the ''Act'') for an exemption from section 12(d)(1) of the Act, under section 6(c) of the Act for an exemption from section 14(a) of the Act, and under section 17(b) of the Act for an exemption from section 17(a) of the Act.

SUMMARY OF APPLICATION: Lehman Brothers Inc. (''Lehman'') requests an order with respect to PIES Trust I and future trusts that are substantially similar and for which Lehman will serve as a principal underwriter (collectively, the ''Trusts'') that would (i) permit other registered investment companies, and companies excepted from the definition of investment company under sections 3 (c)(1) and (c)(7) of the Act, to own a greater percentage of the total outstanding voting stock (the ''Securities'') of any Trust than that permitted by section 12(d)(1), (ii) exempt the Trusts from the initial net worth requirements of section 14(a), and (iii) permit the Trusts to purchase U.S. Government securities from Lehman at the time of a Trust's initial issuance of Securities.

FILING DATES: The application was filed on December 31, 1998. Applicant has agreed to file an amendment, the substance of which is incorporated in this notice, during the notice period.

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 Lehman with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on May 7, 1998, and should be accompanied by proof of service on Lehman, 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 SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, N.W., Washington, D.C. 20549. Lehman, 3 World Financial Center, New York, New York 10285.

FOR FURTHER INFORMATION CONTACT: Brian T. Hourihan, Senior Counsel, at (202) 942–0526, or Mary Kay Frech, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch, 450 Fifth Street, N.W., Washington, D.C. 20549 (tel. (202) 942–8090).

Applicant's Representations

1. Each Trust will be a limited-life, grantor trust registered under the Act as a non-diversified, closed-end management investment company. Lehman will serve as a principal underwriter (as defined in section 2(a)(29) of the Act) of the Securities issued to the public by each Trust.

2. Each Trust will, at the time of its issuance of Securities, (i) enter into one or more forward purchase contracts (the ''Contracts'') with a counterparty to purchase a formulaically-determined number of a specified equity security or securities (the ''Shares'') of one specified issuer,[1] and (ii) in some cases, purchase certain U.S. Treasury securities (''Treasuries''), which may include interest-only or principal-only securities maturing at or prior to the Trust's termination. The Trusts will purchase the Contracts from counterparties that are not affiliated with either the relevant Trust or Lehman. The investment objective of each Trust will be to provide to each holder of Securities (''Holder'') (i) current cash distributions from the proceeds of any Treasuries, and (ii) participation in, or limited exposure to, changes in the market value of the underlying Shares.

3. In all cases, the Shares will trade in the secondary market and the issuer of the Shares will be a reporting company under the Securities Exchange Act of 1934. The number of Shares, or the value of the Shares, that will be delivered to a Trust pursuant to the Contracts may be fixed (*e.g.*, one Share per Security issued) or may be determined pursuant to a formula, the product of which will vary with the price of the Shares. A formula generally will result in each Holder of Securities receiving fewer Shares as the market value of the Shares increases, and more Shares as their market value decreases.[2] At the termination of each Trust, each Holder will receive the number of Shares per Security, or the value of the Shares, as determined by the terms of the Contracts, that is equal to the Holder's *pro rata* interest in the Shares or amount received by the Trust under the Contracts.[3]

4. Securities issued by the Trusts will be listed on a national securities exchange or traded on the Nasdaq Stock Market's National Markets. Thus, the Securities will be ''national market system'' securities subject to public price quotation and trade reporting requirements. After the Securities are issued, the trading price of the Securities is expected to vary from time to time based primarily upon the price of the underlying Shares, interest rates, and other factors affecting conditions and prices in the debt and equity markets. Lehman currently intends, but will not be obligated, to make a market in the Securities of each Trust.

5. Each Trust will be internally managed by three trustees and will not have any separate investment adviser. The trustees will have no power to vary the investments held by each Trust. A bank qualified to serve as a trustee under the Trust Indenture Act of 1939, as amended, will act as custodian for each Trust's assets and as paying agent, registrar, transfer agent, and collateral agent with respect to the Securities of each Trust. The bank will have no other affiliation with, and will not be engaged in any other transaction with, any Trust. The day-to-day administration of each Trust will be carried out by Lehman or the bank.

6. The Trusts will be structured so that the trustees are not authorized to sell the Contracts or Treasuries unless a default occurs under a Contract and the Contract is accelerated. The Trusts will hold the Contracts until maturity, at which time they will be settled according to their terms. However, in the event of the bankruptcy or insolvency of any counterparty to a Contract with a Trust, or the occurrence of any other default provided for in the Contract, the obligations of the counterparty under the Contract will be accelerated and the available proceeds of the Contract will be distributed to the Security Holders.

7. The trustees of each Trust will be selected initially by Lehman, together with any other initial Holders, or by the grantors of the Trust. The Holders of each Trust will have the right, upon the declaration in writing or vote of more than two-thirds of the outstanding Securities of the Trust, to remove a trustee. Holders will be entitled to a full vote for each Security held on all matters to be voted on by Holders and will not be able to cumulate their votes in the election of trustees. The investment objectives and fundamental policies of each Trust may be changed only with the approval of a ''majority of the Trust's outstanding Securities'' [4] or any greater number required by the Trust's constituent documents. Unless Holders so request, and except as required by the Act, charter documents of the Trust or a rule of a national securities exchange, or a quotation system it is not expected that the Trusts will hold any meetings of Holders, or that Holders will ever vote.

8. The Trusts will not be entitled to any rights with respect to the Shares until any Contracts requiring delivery of the Shares to the Trust are settled, at which time the Shares will be promptly

[1] No Trust will hold Contracts relating to the Shares of more than one issuer.

[2] A formula is likely to limit the Holder's participation in any appreciation of the underlying Shares, and it may, in some cases, limit the Holder's exposure to any depreciation in the underlying Shares. It is anticipated that the Holders will receive a yield greater than the ordinary dividend yield on the Shares at the time of the issuance of the Securities, which is intended to compensate Holders for the limit of the Holders' participation in any appreciation of the underlying Shares. In some cases, there may be an upper limit on the value of the Shares that a Holder will ultimately receive.

[3] The contracts may provide for an option on the part of a counterparty to deliver Shares, cash, or a combination of Shares and cash to the Trust at the termination of each Trust.

[4] A ''majority of the Trust's outstanding Securities'' means the lesser of (i) 67% of the Securities represented at a meeting at which more than 50% of the outstanding Securities are represented, and (ii) more than 50% of the outstanding Securities.

distributed to Holders. The Holders, therefore, will not be entitled to any rights with respect to the Shares (including voting rights or the right to receive any dividends or other distributions) until receipt by them of the Shares at the time the Trust is liquidated.

9. Each Trust will be structured so that its organizational and ongoing expenses will not be borne by the Holders, but rather, directly or indirectly, by Lehman, the counterparties, or another third party, as will be described in the prospectus for the relevant Trust. At the time of the original issuance of the Securities of any Trust, there will be paid to each of the administrator, the custodian, and the paying agent, and to each trustee, a one-time amount in respect of such agent's fee over its term. Any expenses of the Trust in excess of this anticipated amount will be paid as incurred by a party other than the Trust itself (which party may be Lehman). Moreover, the bank's fee for acting as trustee, custodian, paying agent, registrar and transfer agent, and fees and expenses for acting as collateral agent will be paid by Lehman, who in turn will be reimbursed by the counterparties.

Applicant's Legal Analysis

A. Section 12(d)(1)

1. Section 12(d)(1)(A)(i) of the Act prohibits any registered investment company from owning more than 3% of the total outstanding voting stock of any other investment company, and any investment company and any company or companies controlled by the investment company from owning in the aggregate more than 3% of the total outstanding voting stock of any registered investment company. A company that is excepted from the definition of an investment company under section 3 (c)(1) or (c)(7) of the Act is deemed to be an investment company for purposes of section 12(d)(1)(A)(i) of the Act under sections 3 (c)(1) and (c)(7)(D) of the Act. Section 12(d)(1)(C) of the Act similarly prohibits any investment company, other investment companies having the same investment adviser, and companies controlled by such investment companies from owning more than 10% of the total outstanding voting stock of any closed-end investment company.

2. Section 12(d)(1)(J) of the Act provides that the SEC may exempt persons or transactions from any provision of section 12(d)(1), if, and to the extent that, the exemption is consistent with the public interest and protection of investors.

3. Lehman believes, in order for the Trusts to be marketed most successfully, and to be traded at a price that most accurately reflects their value, that it is necessary for the Securities of each Trust to be offered to large investment companies and investment company complexes. Lehman states that these investors seek to spread the fixed costs of analyzing specific investment opportunities by making sizable investments in those opportunities. Conversely, Lehman asserts that it may not be economically rational for the investors, or their advisers, to take the time to review an investment opportunity if the amount that the investors would ultimately be permitted to purchase is immaterial in light of the total assets of the investment company or investment company complex. Therefore, Lehman argues that these investors should be able to acquire Securities in each Trust in excess of the limitations imposed by sections 12(d)(1)(A)(i) and 12(d)(1)(C). Lehman requests that the SEC issue an order under section 12(d)(1)(J) exempting the Trusts from the limitations.

4. Lehman states that section 12(d)(1) was designed to prevent one investment company from buying control of other investment companies and creating complicated pyramidal structures. Lehman also states that section 12(d)(1) was intended to address the layering of costs to investors.

5. Lehman believes that the concerns about pyramiding and undue influence generally do not arise in the case of the Trusts because neither the trustees nor the Holders, except upon the occurrence of an event of default provided for in a Contract, will have the power to vary the investments held by each Trust or to acquire or dispose of the assets of the Trusts. To the extent that Holders can change the composition of the board of trustees or the fundamental policies of each Trust by vote, Lehman argues that any concerns regarding undue influence will be eliminated by a provision in the charter documents for the Trusts that will require any investment companies owning voting stock of any Trust in excess of the limits imposed by sections 12(d)(1)(A)(i) and 12(d)(1)(C) to vote their Securities in proportion to the votes of all other Holders. Lehman also believes that the concern about undue influence through a threat to redeem does not arise in the case of the Trusts because the Securities will not be redeemable.

6. Section 12(d)(1) also was designed to address the excessive costs and fees that may result from multiple layers of investment companies. Lehman believes that these concerns do not arise in the case of the Trusts because of the limited ongoing fees and expenses incurred by the Trusts and because generally these fees and expenses will be borne, directly or indirectly, by Lehman or another third party, not by the Holders. In addition, the Holders will not, as a practical matter, bear the organizational expenses (including underwriting expenses) of the Trusts. Lehman asserts that the organizational expenses effectively will be borne by the counterparties in the form of a discount in the price paid to them for the Contracts, or will be borne directly by Lehman, the counterparties, or other third parties. Similarly, Lehman asserts that the fees of the bank for acting as trustee, paying agent, registrar, transfer agent, and collateral agent will borne directly by Lehman. Thus, a Holder will not pay duplicative charges to purchase securities in any Trust. Finally, there will be no duplication of advisory fees because the Trusts will be internally managed by their trustees.

8. Lehman believes that the investment product offered by the Trusts serves a valid business purpose. The Trusts, unlike most registered investment companies, are not marketed to provide investors with either professional investment asset management or the benefits of investment in a diversified pool of assets. Rather, Lehman asserts that the Securities are intended to provide Holders with an investment having unique payment and risk characteristics, including an anticipated higher yield than the ordinary dividend yield on the Shares at the time of the issuance of the Securities.

9. Lehman believes that the purposes and policies of section 12(d)(1) are not implicated by the Trusts and that the requested exemption from section 12(d)(1) is consistent with the public interest and the protection of investors.

B. Section 14(a)

1. Section 14(a) of the Act requires, in pertinent part, that an investment company have a net worth of at least $100,000 before making any public offering of its shares. The purpose of section 14(a) is to ensure that investment companies are adequately capitalized prior to or simultaneously with the sale of their securities to the public. Rule 14a–3 exempts from section 14(a) unit investment trusts that meet certain conditions in recognition of the fact that, once the units are sold, a unit investment trust requires much less commitment on the part of the sponsor than does a management investment company. Rule 14a–3 provides that a unit investment trust

investing in eligible trust securities will be exempt from the net worth requirement, provided that the trust holds at least $100,000 of eligible trust securities at the commencement of a public offering.

2. Lehman argues that, while the Trusts are classified as management companies, they have the characteristics of unit investment trusts. Investors in the Trusts, like investors in a unit investment trust, will not be purchasing interests in a managed pool of securities, but rather in a fixed and disclosed portfolio that is held until maturity. Lehman believes that the make-up of each Trust's assets, therefore, will be ''locked-in'' for the life of the portfolio, and there is no need for an ongoing commitment on the part of the underwriter.

3. Lehman states that, in order to ensure that each Trust will become a going concern, the Securities of each Trust will be publicly offered in a firm commitment underwriting, registered under the Securities Act of 1933, and resulting in net proceeds to each Trust of at least $10,000,000. Prior to the issuance and delivery of the Securities of each Trust to the underwriters, the underwriters will enter into an underwriting agreement pursuant to which they will agree to purchase the Securities subject to customary conditions to closing. The underwriters will not be entitled to purchase less than all of the Securities of each Trust. Accordingly, Lehman states that either the offering will not be completed at all or each Trust will have a net worth substantially in excess of $100,000 on the date of the issuance of the Securities. Lehman also does not anticipate that the net worth of the Trusts will fall below $100,000 before they are terminated.

4. Section 6(c) of the Act provides that the SEC may exempt persons or transactions if, and to the extent that, the 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. Lehman requests that the SEC issue an order under section 6(c) exempting the Trusts from the requirements of section 14(a). Lehman believes that the exemption is appropriate in the public interest and consistent with the protection of investors and the policies and provisions of the Act.

C. Section 17(a)

1. Sections 17(a)(1) and (2) of the Act generally prohibit the principal underwriter, or any affiliated person of the principal underwriter, of a registered investment company from selling or purchasing any securities to or from that investment company. The result of these provisions is to preclude the Trusts from purchasing Treasuries from Lehman.

2. Section 17(b) of the Act provides that the SEC shall exempt a proposed transaction from section 17(a) if evidence establishes that the terms of the proposed transaction are reasonable and fair and do not involve overreaching, and the proposed transaction is consistent with the policies of the registered investment company involved and the purposes of the Act. Lehman requests an exemption from sections 17(a) (1) and (2) to permit the Trusts to purchase Treasuries from Lehman.

3. Lehman states that the policy rationale underlying section 17(a) is the concern that an affiliated person of an investment company, by virtue of this relationship, could cause the investment company to purchase securities of poor quality from the affiliated person or to overpay for securities. Lehman argues that it is unlikely that it would be able to exercise any adverse influence over the Trusts with respect to purchases of Treasuries because Treasuries do not vary in quality and are traded in one of the most liquid markets in the world. Treasuries are available through both primary and secondary dealers, making the Treasury market very competitive. In addition, market prices on Treasuries can be confirmed on a number of commercially available information screens. Lehman argues that because it is one of a limited number of primary dealers in Treasuries, it will be able to offer the Trusts prompt execution of their Treasury purchases at very competitive prices.

4. Lehman states that it is only seeking relief from section 17(a) with respect to the initial purchase of the Treasuries and not with respect to an ongoing course of business. Consequently, investors will know before they purchase a Trust's Securities the Treasuries that will be owned by the Trust and the amount of the cash payments that will be provided periodically by the Treasuries to the Trust and distributed to Holders. Lehman also asserts that whatever risk there is of overpricing the Treasuries will be borne by the counterparties and not by the Holders because the cost of the Treasuries will be calculated into the amount paid on the Contracts. Lehman argues that, for this reason, the counterparties will have a strong incentive to monitor the price paid for the Treasuries, because any overpayment could result in a reduction in the amount that they would be paid on the Contracts.

5. Lehman believes that the terms of the proposed transaction are reasonable and fair and do not involve overreaching on the part of any person, that the proposed transaction is consistent with the policy of each of the Trusts, and that the requested exemption is appropriate in the public interest and consistent with the protection of investors and purposes fairly intended by the policies and provisions of the Act.

Applicant's Conditions

Lehman agrees that the order granting the requested relief will be subject to the following conditions:

1. Any investment company owning voting stock of any Trust in excess of the limits imposed by section 12(d)(1) of the Act will be required by Trust's charter documents to vote its Trust shares in proportion to the vote of all other Holders.

2. The trustees of each Trust, including a majority of the trustees who are not interested persons of the Trust, (i) will adopt procedures that are reasonably designed to provide that the conditions set forth below have been complied with; (ii) will make and approve such changes as deemed necessary; and (iii) will determine that the transactions made pursuant to the order were effected in compliance with such procedures.

3. The Trusts (i) will maintain and preserve in an easily accessible place a written copy of the procedures (and any modifications to such procedures), and (ii) will maintain and preserve for the longer of (a) the life of the Trusts and (b) six years following the purchase of any Treasuries, the first two years in an easily accessible place, a written record of all Treasuries purchased, whether or not from Lehman, setting forth a description of the Treasuries purchased, the identity of the seller, the terms of the purchase, and the information of materials upon which the determinations described below were made.

4. The Treasuries to be purchased by each Trust will be sufficient to provide payments to Holders of Securities that are consistent with the investment objectives and policies of the Trust as recited in the Trust's registration statement and will be consistent with the interests of the Trust and the Holders of its Securities.

5. The terms of the transactions will be reasonable and fair to the Holders of the Securities issued by each Trust and will not involve overreaching of the

Trust or the Holders of Securities of the Trust on the part of any person concerned.

6. The fee, spread, or other remuneration to be received by Lehman will be reasonable and fair compared to the fee, spread, or other remuneration received by dealers in connection with comparable transactions at such time, and will comply with section 17(e)(2)(C) of the Act.

7. Before any Treasuries are purchased by the Trust, the Trust must obtain such available market information as it deems necessary to determine that the price to be paid for, and the terms of, the transaction is at least as favorable as that available from other sources. This will include the Trust obtaining and documenting the competitive indications with respect to the specific proposed transaction from two other independent government securities dealers. Competitive quotation information must include price and settlement terms. These dealers must be those who, in the experience of the Trust's trustees, have demonstrated the consistent ability to provide professional execution of Treasury transactions at competitive market prices. They also must be those who are in a position to quote favorable prices.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–10275 Filed 4–17–98; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94–409, that the Securities and Exchange Commission will hold the following meeting during the week of April 20, 1998.

A closed meeting will be held on Thursday, April 23, 1998, at 10:00 a.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(4), (8), (9)(A) and (10) and 17 CFR 200.402(a)(4), (8), (9)(i) and (10), permit consideration of the scheduled matters at the closed meeting.

Commissioner Unger, as duty officer, voted to consider the items listed for the closed meeting in a closed session.

The subject matter of the closed meeting scheduled for Thursday, April 23, 1998, at 10:00 a.m., will be:

Institution and settlement of injunctive actions.

Institution and settlement of administrative proceedings of an enforcement nature.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact:

The Office of the Secretary at (202) 942–7070.

Dated: April 15, 1998.

Jonathan G. Katz,

Secretary.

[FR Doc. 98–10504 Filed 4–16–98; 12:34 pm]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39854; File No. SR–Amex–98–14]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the American Stock Exchange, Inc. Relating to Options on the Computer Hardware Index

April 13, 1998.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on March 30, 1998, the American Stock Exchange, Inc. (''Amex'' or ''Exchange'') filed with the Securities and Exchange 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 Amex proposes to trade options on the Computer Hardware Index, a new index developed by the Amex based on the stocks of companies engaged in the design and production of commercial and consumer personal computers and systems. In addition, the Amex proposes to amend its Rule 901C, Commentary .01 to reflect that 90% of the Index's numerical index value will be accounted for by stocks that meet the current criteria and guidelines set forth in Amex Rule 915. The text of the proposed rule change is set forth in Exhibit A to the filing.

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 Amex has prepared summaries, set forth in sections, A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

(1) Purpose

The Amex proposes to trade options on its newly developed Computer Hardware Index (the ''Index''), an index based entirely on shares of widely held companies engaged in the design and production of commercial and consumer personal computers and systems. With rapidly changing technology, vendors constantly introducing more powerful products, and the growing demand for systems priced less than $1,000, stocks of companies in this sector of the high-tech industry are expected to remain extremely volatile, particularly in the near term. Options on the Index are designed to provide investors with an investment vehicle to participate in or hedge against this volatility, and decrease the risk involved in selecting individual stocks. A list of the current component securities is set forth in Exhibit B to the filing.

The Amex is filing this proposal pursuant to Amex Rule 901C, Commentary .02, which provides for the commencement of the trading of options on the Index thirty days after the date of this filing. The proposal meets all the criteria set forth in Commentary .02 and the Commission's order approving that rule as outlined below.[2]

[1] 15 U.S.C. 78s(b)(1).

[2] *See* Securities Exchange Act Release No. 34157 (June 3, 1994), 59 FR 30062 (June 10, 1994).

Eligibility Criteria for Index Components

Pursuant to Commentary .02 to Rule 901C, (1) each of the component securities has a minimum market capitalization of at least $75 million and has a trading volume in each of the last six months of not less than 1,000,000 shares; (2) at least 90% of the Index's numerical index value and at least 80% of the total number of component securities meet the current criteria for standardized option trading set forth in Exchange Rule 915 (in fact, all of the component securities in the Index currently underlie standardized options); (3) the Index contains no American Depository Receipts (''ADRs''); (4) all component stocks are listed on the Amex, the New York Stock Exchange, or traded through the facilities of the National Association of Securities Dealers Automated Quotation System and are reported National Market System securities (''Nasdaq/NMS''); and (5) no component security represents more than 25% of the weight of the Index, and the five highest weighted component securities in the Index do not in the aggregate account for more than 60% of the weight of the Index.

Index Calculation

The Index will be calculated using an ''equal-dollar weighting'' methodology designed to ensure that each of the component securities in represented in an approximately ''equal'' dollar amount in the Index. The following is a description of the methodology. As of the market close on February 20, 1998, a portfolio of stocks was established representing an investment of approximately $200,000 in the stock (rounded to the nearest whole share) of each of the companies in the Index. The value of the Index equals the current market value (*i.e.*, based on US primary market prices) of the sum of the assigned number of shares of each of the stocks in the Index portfolio divided by the Index divisor. The Index divisor was initially determined to yield a benchmark value of 250.00[3] at the close of trading on February 20, 1998.

Maintenance of the Index

The Exchange will maintain the Index in accordance with Amex Rule 901C, Commentary .02 so that (1) the Index is comprised of not less than 9 underlying stocks, and not more than 13 underlying stocks; (2) component stocks constituting the top 90% of the Index, by weight, will have a minimum market capitalization of $75 million, and the component stocks constituting the bottom 10% of the Index, by weight, may have a minimum market capitalization of $50 million; (3) 90% of the Index's numerical index value and at least 80% of the total number of components will meet the then current criteria for standardized options trading set forth in Amex Rule 915; (4) foreign country securities or ADRs thereon that are not subject to comprehensive surveillance agreements will not in the aggregate represent more than 20% of the weight of the Index; (5) all component stocks will either be listed on the Amex, the NYSE, or Nasdaq/NMS; (6) no component security will represent more than 25% of the weight of the Index, and the five highest weighted components will not in aggregate account for more than 60% of the Index; and (7) trading volume of each component security shall be at least 500,000 shares for each of the last six months, or for each of the lowest weighted components that in aggregate account for no more than 10% of the weight of the Index, the monthly trading volume may be at least 400,000 shares for each of the last six months.

The Exchange shall not open for trading any additional option series should the Index fail to satisfy any of the maintenance criteria set forth above unless such failure is determined by the Exchange not to be significant and the Commission concurs in that determination.

Rebalancing

Following the close of trading on the third Friday of February, May, August and November the Index portfolio will be adjusted by changing the number of whole shares of each component stock so that each company is again represented in ''equal'' dollar amounts. If necessary, a divisor adjustment will be made at the rebalancing to ensure continuity of the Index's value. The newly adjusted portfolio will then become the basis for the Index's value on the first trading day following the adjustment.

The number of shares of each component stock in the Index portfolio will remain fixed between quarterly rebalances except in the event of certain types of corporate actions such as the payment of a dividend other than an ordinary cash dividend, stock distribution, stock split, reverse stock split, rights offering, distribution, reorganization, recapitalization, or similar event with respect to the component stocks. In the case of a merger or the consolidation of an issuer of a component stock, if the stock remains in the Index, the number of shares of that security in the portfolio may be adjusted to the nearest whole share to maintain the component's relative weight in the Index at the level immediately prior to the corporate action. In the event of a stock addition or replacement, the average dollar value of the remaining portfolio components will be calculated and that amount invested in the stock of the new component, to the nearest whole share. In all cases, the divisor will be adjusted, if necessary, to ensure Index continuity.

All stock replacements and the handling of non-routine corporate actions will be announced at least ten business days in advance of such effective change, whenever possible. The Exchange will make this information available to the public through dissemination of an information circular.

Dissemination of Index

Similar to other stock index values which underlie exchange-traded products, the value of the index will be calculated continuously and disseminated every 15 seconds over the Consolidated Tape Association's Network B.

Expiration and Settlement

The proposed options on the Index will be European style (*i.e.*, exercises are permitted at expiration only), and cash settled. Standard option trading hours (9:30 a.m. to 4:02 p.m. New York time) will apply. The options on the Index will expire on the Saturday following the third Friday of the expiration month. The last trading day in expiring option series will normally be second to the last business day preceding the Saturday following the third Friday of the expiration month (normally a Thursday). Trading in expiring options will cease at the close of trading on the last trading day.

The Exchange plans to list options series with expiration in the three near-term calendar months and in two additional calendar months in the February cycle. Further, flexible exchange options, in addition to longer term option series having up to thirty-six months to expiration, may be traded. In lieu of such long-term options on full value Index level, the Exchange may instead list long-term, reduced value put and call options based on one-tenth (1/10) the Index's full value. In either event, the interval between expiration months for either a full value or reduced value long term option will not be less than six months. The trading of any long term options would be subject to the same rules which govern the trading of

[3] The index's value at the close of trading on March 18, 1988 was 234.86.

all the Exchange's index options, including sales practice rules, margin requirements and floor trading procedures. Position limits on reduced value long term Index options will be equivalent to the position limits for regular (full value) Index options and would be aggregated with such options (for example, if the position limit for the full value options is 15,000 contracts on the same side of the market, then the position limit for the reduced value options will be 150,000 contracts on the same side of the market).

The exercise settlement value for all of the Index's expiring options will be calculated based upon the primary exchange regular way opening sale prices for the component stocks. In the case of Nasdaq/NMS listed securities, the first reported regular way sale price will be used. If any component stock does not open for trading on its primary market on the last trading day before expiration, then the prior day's last sale price will be used in the calculation.

Exchange Rules Applicable to Stock Index Options

Amex Rules 900C through 980C will apply to the trading of option contracts based on the Index. These rules cover issues such as surveillance, exercise prices, and position limits. Surveillance procedures currently used to monitor trading in each of the Exchange's other index options will also be used to monitor trading in options on the Computer Hardware Index. The Index is deemed to be a Stock Index Option under Rule 901C(a) and a Stock Index Industry Group under Rule 900C(b)(1). With respect to Rule 903C(b), the Exchange proposes to list near-the-money (*i.e.,* within ten points above or below the current index value) option series on the Index at 2½ point strike (exercise) price intervals when the value of the Index is below 200 points. In addition, the Exchange expects that the review required by Rule 904C(c) will result in a position limit of 15,000 contracts with respect to options on this Index.

(2) Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act [4] in general and furthers the objectives of Section 6(b)(5) [5] in particular in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act.[6] The Amex may not list options for trading on the Index prior to 30 days after the date the proposed rule change was filed with the Commission. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in the furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the submission is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room in Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the Amex. All submissions should refer to the file No. SR–Amex 98–14 and should be submitted by May 11, 1998.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[7]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–10335 Filed 4–17–98; 8:45 am]

BILLING CODE 8010–01–M

[4] 15 U.S.C. 78f(b).

[5] 15 U.S.C. 78f(b)(5).

[6] 15 U.S.C. 78s(b)(3)(A).

[7] 17 CFR 200.30(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39850; File No. SR–DCC–98–02]

Self-Regulatory Organizations; Delta Clearing Corp.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to the Authorization of Tullet & Tokyo Securities, Inc. To Participate as a Broker for Over-the-Counter U.S. Treasury Options Trades

April 10, 1998.

Pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 (''Act''), notice is hereby given that on March 6, 1998, Delta Clearing Corp. (''DCC'') 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 primarily by DCC. The Commission is publishing this notice to solicit comments from interested persons on the proposed rule change.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change notifies the Commission that Tullet & Tokyo Securities, Inc. (''Tullet'') has been authorized by DDC to participate as a broker in the over-the-counter system (''system'') operated for options on U.S. treasury securities.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, DCC 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. DCC has prepared summaries, set forth in sections (A), (B),

[1] 15 U.S.C. 78s(b)(1).

and (C) below, of the most significant aspect of such statements.[2]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

Pursuant to the Procedures for Clearing of Securities and Financial Instrument Transactions (''Combined Procedures''),[3] multiple brokers may participate in the system operated by DCC and new brokers may be authorized by DCC to participate in the system. DCC has authorized Tullet, which is currently an authorized broker in the system for repurchase agreement (''repo'') and reverse repo trades, to participate as a broker in the system operated for options on U.S. treasury securities.

DCC believes that the proposed rule change is consistent with the requirements of Section 17A of the Act[4] and the rules and regulations thereunder because it facilitates the prompt and accurate clearance and settlement of securities transactions.

(B) Self-Regulatory Organization's Statement on Burden on Competition

DCC does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purpose of the Act.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(iii)[5] of the Act and pursuant to Rule 19b–4(e)(4)[6] promulgated thereunder because the proposal effects a change in an existing service of a registered clearing agency that does not adversely affect the safeguarding of securities or funds in the custody or control of the clearing agency or for which it is responsible and does not significantly affect the respective rights or obligations of the filing of the clearing agency or persons using the service. At any time within sixty days of the filing of such rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 350 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing also will be available for inspection and copying at the principal office of DCC. All submissions should refer to File No. SR–DCC–98–02 and should be submitted by May 11, 1998.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[7]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–10342 Filed 4–17–98; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39852; File No. SR–DTC–97–12]

Self-Regulatory Organizations; The Depository Trust Company; Order Approving a Proposed Rule Change To Establish a Voluntary Redemption and Sales Service for Depository Eligible Units of Unit Investment Trust

April 10, 1998.

On June 27, 1997, The Depository Trust Company (''DTC'') filed with the Securities and Exchange Commission (''Commission'') and on January 22, 1998, amended as proposed rule change (File No. SR–DTC–97–12) pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'').[1] Notice of the proposal was published in the **Federal Register** on February 19, 1998.[2] No comment letters were received. For the reasons discussed below, the Commission is approving the proposed rule change.

I. Description

Under the rule change, DTC will establish the investor's voluntary redemptions and sales service (''IVORS''), a redemption and sales service for depository eligible units of unit investment trusts (''UITs''). IVORS will offer two basic UIT services: (1) redemption of units with the UIT transfer agent for cash payment and (2) sales of units to the UIT sponsor for cash payment. IVORS initially will be available to eligible DTC participants by way of DTC's participant terminal system (''PTS'').

IVORS will be available only if: (1) the UIT units are DTC-eligible and are held in DTC's fast automated securities transfer (''FAST'') system;[3] (2) the FAST transfer agent currently is or agrees to become a full service DTC participant; and (3) the UIT's lead sponsor or its clearing agent agrees to participant in IVORS as a DTC participant.

When a UIT becomes eligible for IVORS, its FAST transfer agent will submit initial standing instructions for the UIT to an IVORS database on PTS regarding participants' ability to redeem or to sell units through IVORS. The UIT sponsor will be able to make daily changes to those standing instructions by way of PTS. When a participant holding UIT units in its DTC account submits a request through IVORS to surrender the units for their value, IVORS will determine which of the two basic services (*i.e.*, redemption or sale) is available for the units based on the standing instructions for the UIT in the IVORS database. The participant submitting the UIT units will have the choice of accepting the determination of which of the two services is available or canceling its request to surrender its units.

On the date of the participant's request to surrender the units (''T''), IVORS will move the surrendered units from the participant's free position to its ''IVORS pending surrender segregation

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[2] The Commission has modified the text of the summaries prepared by DCC.

[3] Securities Exchange Act Release No. 39236 (October 14, 1997) 62 FR 54661 [File No. SR–DCC–97–04] (order approving the Combined Procedures).

[4] 15 U.S.C. 78q–1.

[5] 15 U.S.C. 78s(b)(3)(A)(iii).

[6] 17 CFR 240.19b–4(e)(5).

[7] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] Securities Exchange Act Release No. 39647 (February 11, 1998), 63 FR 8508.

[3] DTC has informed the Commission that DTC-eligible UIT units usually are held in the FAST system.

account.'' Before the end of the day on T+2, either the FAST transfer agent or the UIT sponsor will enter into IVORS the redemption price (if the units are to be redeemed) or the purchase price (if the units are to be sold) plus the accrued dividend per unit. Both redemptions and sales of units through IVORS will be settled on T+3.

IVORS automatically will calculate the settlement value of the redemption or sale and will generate a deliver order (''DO'') to move the units versus payment of the settlement value from the redeeming participant's IVORS pending surrender segregation account either to the FAST transfer agent's DTC participant account (in the case of a redemption) or to the UIT sponsor's DTC participant account (in the case of a sale). If the units are being redeemed, IVORS automatically will generate a second DO to remove the units from the FAST transfer agent's DTC participant account. If the units are being sold, the units will remain in the UIT sponsor's DTC account until the UIT sponsor later delivers them to a secondary-market purchaser or redeems them by way of IVORS.

II. Discussion

Section 17A(b)(3)(F) of the Act [4] requires that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions. The Commission believes that the proposed rule change is consistent with DTC's obligations under Section 17A(b)(3)(F) because it should improve efficiency in the processing of UIT transactions by eliminating the certificate processing responsibilities of participants electing to use IVORS and by reducing the movement of physical securities certificates. This in turn should reduce the instances of erroneous processing and loss that sometimes occur with the movement of physical securities certificates.

III. Conclusion

On the basis of the foregoing, the Commission finds that the proposal is consistent with the requirements of the Act and in particular with the requirements of Section 17A of the Act and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (File No. SR–DTC–97–12) be and hereby is approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[5]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–10274 Filed 4–17–98; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39849; File No. SR–MBSCC–97–09]

Self-Regulatory Organizations; MBS Clearing Corporation; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Fees and Charges

April 10, 1998.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on November 5, 1997, MBS Clearing Corporation (''MBSCC'') filed with the Securities and Exchange Commission (''Commission'') and on November 13, 1997, and February 27, 1998, amended the proposed rule change as described in Items I, II, and III below, which items have been prepared primarily by MBSCC. The Commission is publishing this notice to solicit comments from interested persons on the proposed rule change.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change revises MBSCC's fee schedule to add fees for the late payment of participant's payment obligations.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, MBSCC 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. MBSCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.[2]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

MBSCC's rules and procedures require participants to satisfy all payment obligations by 12:00 p.m. Eastern Standard Time (''EST'') on the day that they are due.[3] This noon deadline provides MBSCC with sufficient time to use such funds to pay participants in a credit position or to liquidate a participant's collateral to cover a default so that funds are available to pay such participant's obligations.

Currently, participants that fail to satisfy a payment obligation by the noon deadline are subject to a $50.00 charge. Although the majority of payment obligations due to MBSCC are paid on the day on which they are due, many are paid after the noon deadline. Failure by a participant to timely satisfy its payment obligations could jeopardize MBSCC's ability to fulfill its obligations to participants with a credit position.

The purpose of the proposed rule change is to revise fees for late payment of obligations by adding a late payment fee schedule. The purpose of these new fees is to both motivate participants to pay their obligations prior to the noon deadline and to compensate MBSCC for the costs associated with monitoring such late payments. The late payment fee schedule is based both on the size of the cash obligation payment that is not timely made and the frequency of such participant's late payments over a rolling ninety day period. MBSCC's late payment fine schedule is set forth below.

Payable cash obligation	First occurrence	Second occurrence	Third occurrence	Fourth occurrence
$50.00.00–100,000.00	$50.00	$100.00	$250.00	$500.00
100,000.01–1,000,000.00	100.00	200.00	500.00	1,000.00
1,000,000.01–1,500,000.00	200.00	400.00	1,000.00	2,000.00
1,500.000.01–3,000,000.00	500.00	1,000.00	2,500.00	5,000.00
3,000,000.01–5,000,000.00	1,000.00	2,000.00	5,000.00	10,000.00

[4] 15 U.S.C. 78q–1(b)(3)(F).

[5] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] The Commission has modified the text of the summaries prepared by MBSCC.

[3] These payment obligations result from settlement balance order market differential obligations, cash adjustment obligations, broker commissions, miscellaneous cash obligations, and MBSCC clearing and electronic pool notification bills.

Calculation of charges for late payment obligations in excess of $5,000,000 will be based on the ratio of the actual late obligation (rounded to the next highest million) to $5,000,000, multiplied by the late fee for obligations of $5,000,000.

Participants failing to timely satisfy payment obligations on more than four occasions within a rolling ninety day period will be subject to additional late fees for each occurrence. This amount will be determined at MBSCC's discretion depending on the magnitude and history of the participant's late payments, but any additional late fees can be no more than twice the fourth occurrence fee. MBSCC also reserves the discretion to waive or reduce late fees when a particular occurrence is not deemed to be the participant's fault or the participant has provided MBSCC with evidence that it is taking appropriate corrective action to prevent recurrence.

Late fees will accrue on the date on which a late payment is made, and participants will receive a letter notifying them of the late fee. The late fee will be reflected on the participant's bill for the month during which such fee was incurred and is payable at such time.

MBSCC believes that the proposed rule change is consistent with the requirements of Section 17A of the Act [4] and the rules and regulations thereunder because it provides for the equitable allocation of dues, fees, and other charges among MBSCC's participants.

(B) Self-Regulatory Organization's Statement on Burden on Competition

MBSCC does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No comments on the proposed rule change were solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) [5] of the Act and pursuant to Rule 19b–4(e)(2) [6] promulgated thereunder because the proposal establishes or changes a due, fee, or other charge imposed by MBSCC. At any time within sixty days of the filing of such rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing also will be available for inspection and copying at the principal office of MBSCC. All submissions should refer to File No. SR–MBSCC–97–09 and should be submitted by May 11, 1998.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[7]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–10341 Filed 4–17–98; 8:45 am]

BILLING CODE 8010–01–M

[4] 15 U.S.C. 78q–1.

[5] 15 U.S.C. 78s(b)(3)(A)(ii).

[6] 17 CFR 240.19b–4(e)(2).

[7] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39857; File No. SR–NASD–97–20]

Self-Regulatory Organizations; Order Approving Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval to Amendment No. 1 to the Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to the Elimination of the Prohibitions Against NASD Members Accepting Stop Orders and Stop Limit Orders in Exchange-Listed Securities

April 14, 1998.

I. Introduction

On March 10, 1997, the National Association of Securities Dealers, Inc. (''NASD'' or ''Association'') 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 proposal to amend paragraph (i) of NASD Rule 6440, ''Trading Practices,'' to (1) allow members to accept stop orders [3] in eligible securities; [4] and (2) eliminate the requirement that the stop price equal the limit price in order for a member to accept a stop limit order [5] in an eligible security.

Notice of the proposed rule change was published for comment and appeared in the **Federal Register** on March 28, 1997.[6] No comment letters were received on the proposal. On April 1, 1997, the NASD filed Amendment No. 1 to the proposed rule change.[7] In

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] A buy stop order is an order to buy which becomes a market order when a transaction takes place at or above the stop price. Conversely, a sell stop order is an order to sell which becomes a market order when a transaction takes place at or below the stop price. *See* NASD Rule 6440(i)(1).

[4] Under NASD Rule 6410(d), ''eligible securities'' means all common stocks, preferred stocks, long-term warrants, and rights entitling the holder to acquire an eligible security, listed or admitted to unlisted trading privileges on the American Stock Exchange (''Amex'') or the New York Stock Exchange (''NYSE''), and securities listed on the regional stock exchanges which substantially meet the original listing requirements of the Amex or the NYSE.

[5] A buy stop limit order is an order to buy that becomes a limit order at the limit price when a transaction occurs at the stop price. Conversely, a sell stop limit order is an order to sell that becomes a limit order at the limit price when a transaction occurs at the stop price.

[6] *See* Securities Exchange Act Release No. 38429 (March 21, 1997) 62 FR 14953.

[7] *See* Letter from Robert E. Aber, Vice President and General Counsel, NASD, to Katherine England, Assistant Director, National Market System and

Continued

addition, the NASD submitted a letter describing the surveillance procedures it will use to monitor the handling of stop orders and stop limit orders.[8] This order approves the NASD's proposal, as amended.

II. Description of the Proposal

The NASD proposes to amend NASD Rule 6440 to eliminate current restrictions on the ability of NASD members to accept stop orders and certain stop limit orders in eligible securities. Currently, NASD Rule 6440(i)(1) prohibits NASD members from accepting stop orders in eligible securities, and NASD Rule 6440(i)(2) allows members to accept stop limit orders in eligible securities where the stop price and the limit price are the same. The NASD proposes to amend NASD Rule 6440(i) to: (1) allow members to accept stop orders in eligible securities; and (2) eliminate the requirement that the stop price must equal the limit price in order for a member to accept a stop limit order in an eligible security. In addition, the proposal clarifies that NASD members are not obligated to accept stop orders or stop limit orders.

The NASD believes there is no economic or regulatory reason to preclude or restrict investors from placing stop orders or stop limit orders in eligible securities. In this regard, the NASD notes that there are no comparable restrictions on the placement of stop orders or stop limit orders in securities listed on The Nasdaq Stock Market (''Nasdaq''). The NASD believes that investors in the third market[9] also should be able to receive the benefits and protections that result from placing stop orders and stop limit orders. In particular, the NASD believes that the placement of stop orders and stop limit orders will help investors to implement their investment strategies and manage their portfolios.

III. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the NASD and, in particular, the requirements of Section 15A(b)(6) in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market, and, in general, to protect investors and the public interest.[10] Specifically, the Commission believes that it is reasonable for the NASD to amend its rules to allow members to: (1) accept stop orders in eligible securities; and (2) accept stop limit orders in eligible securities where the limit price differs from the stop price. The Commission also believes that it is reasonable for the NASD to clarify its rules to indicate that members are not obligated to accept stop orders or stop limit orders.

The Commission believes that amending NASD Rule 6440(i)(1) to permit members to accept stop orders in eligible securities will extend the benefits and protections associated with stop orders to transactions in the third market. In general, an investor enters a stop sell order in a stock whose price has increased substantially in order to protect his or her profit if the stock's price declines; similarly, an investor with a short position may enter a stop buy order to limit his or her losses if the stock's price increases.[11] The Commission believes that allowing NASD members to accept stop orders in eligible securities will extend these benefits to investors trading eligible securities in the third market and provide them with additional flexibility in implementing their trading strategies. The Commission notes that NASD members currently may accept stop orders in securities that are not eligible securities (generally, securities listed on Nasdaq), as well as stop limit orders in eligible securities.[12] The NASD represents that it has not experienced any problems in connection with the use of stop orders for non-eligible securities or with the use of stop limit orders for eligible securities.[13]

The Commission believes that the NASD has developed procedures that will allow it to monitor the handling of stop orders and stop limit orders in eligible securities.[14] In addition to protections afforded by market surveillance, the Commission believes that the NASD's surveillance procedures will help to detect and deter efforts by market makers to use stop orders to manipulate the price of stock. Several characteristics of the trading in the third market minimize the likelihood that NASD market makers would be able to manipulate the price of an eligible security through their handling of stop orders. In this regard, the Commission notes, first, that a limited amount of the trading of eligible securities occurs in the third market.[15] Second, the exchanges, rather than the third market, are the primary price discovery markets for eligible securities; third market makers usually base their quotations on the primary market quote.[16] Third, there are multiple third market makers (as opposed to a single exchange specialists) for each eligible security. The Commission believes that these factors, taken together, would make it difficult for a third market maker to manipulate the price of an eligible security through the use of stop orders.

The Commission also believes that it is reasonable for the NASD to amend NASD Rule 6440(i)(2) to allow members to accept stop limit orders in eligible securities where the stop price differs from the limit price in order to provide investors with additional flexibility in using stop limit orders. A stop limit order, which must be executed at the limit price or better, is designed to

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Over-the-Counter Regulation, Division of Market Regulation (''Division''), Commission, dated April 1, 1997 (''Amendment No. 1''). In Amendment No. 1, the NASD corrected a typographical error in NASD Rule 6440(i)(2). Specifically, NASD Rule 6440(i)(2) stated that when a transaction occurs at the stop price, a stop limit order to buy or sell becomes a limit order at the stop price. Amendment No. 1 revises NASD Rule 6440(i)(2) to state that when a transaction occurs at the stop price, a stop limit order to buy or sell becomes a limit order at the limit price.

[8] *See* Letter from Thomas R. Gira, Vice President, NASD Regulation, Inc., to Katherine England, Assistant Director, National Market System and Over-the-Counter Regulation, Division, Commission, dated February 27, 1998.

[9] The third market is the over-the-counter market for exchange-listed securities.

[10] In approving this rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[11] *See* Securities Exchange Act Release No. 29063 (April 10, 1991) 56 FR 15652 (April 17, 1991) (order approving File No. SR–Amex–90–31) (''Amex Approval Order'').

[12] *See* NASD Rule 6440(i)(2).

[13] Telephone conversation between Thomas R. Gira, Vice President, NASD Regulation, and Yvonne Fraticelli, Attorney, Office of Market Supervision, Division, Commission, on April 2, 1998.

[14] The Commission has had a continuing interest in potential manipulation and trading abuses in connection with elections of stop orders by exchange specialists. *See e.g.*, Division of Trading and Exchanges, SEC, Stop Orders (1963) (detailing various problems associated with the execution of stop orders); Securities Exchange Act Release No. 24021 (January 21, 1987) 52 FR 3370 (February 3, 1987) (order approving File No. SR–Amex–84–32); and Amex Approval Order, *supra* note 10. These abuses typically involved exchange specialists electing stop orders through principal transactions at price levels either well above the market price in the case of stop buy orders or well below the market price in the case of sell stop orders. *See* Amex Approval Order, *supra* note 10. As discussed more fully *infra*, the Commission believes that the NASD has adequately addressed the potential problems that may arise in connection with the handling of stop orders.

[15] In 1993, the third market garnered 7.4% of reported NYSE volume and 9.3% of the reported trades. *See* Division, Commission, *Market 2000: An Examination of Current Equity Market Developments* (January 1994) (''Market 2000 Study'') at II–11.

[16] *See* Market 2000 Study, *supra* note 16, at II–8.

guarantee that an order receives an execution at no worse than the limit price. However, if the market drops below the limit price of a sell stop order before the order can be executed, it is possible that the order will be executed. For example, if an investor enters a sell stop limit order where the stop price and the limit price are 34, then the investor's order may be executed only at 34 or better and may not be executed at all if the market moves below 34 before the order can be executed. However, if the investor is able to enter a sell order with a stop price of 34 and a limit price of 32, then the investor's order may be executed at 32 or better. Accordingly, by permitting investors to place orders where the limit price differs from the stop price, the NASD's proposal will increase the opportunities for execution of investors' orders and will allow investors to tailor their orders to reflect their objectives and strategies.

The Commission also believes that it is reasonable for the NASD to amend NASD Rule 6440(i) to clarify that members are not obligated to accept stop orders or stop limit orders. Currently, NASD Rule 6440(i)(2) states that members may accept stop limit orders in eligible securities. The NASD proposes to add language to NASD Rule 6440(i)(2) indicating that members are not obligated to accept stop limit orders.[17] Because this is a clarification of the NASD's existing policy, it does not raise new regulatory issues.

The Commission finds good cause for approving Amendment No. 1 to the proposed rule change prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register**. Amendment No. 1 corrects a typographical error in NASD Rule 6440(I)(2). Specifically, NASD Rule 6440(i)(2) stated that when a transaction occurs at the stop price, a stop limit order to buy or sell becomes a limit order at the stop price. Amendment No. 1 revises NASD Rule 6440(i)(2) to state that when a transaction occurs at the stop price, a stop limit order to buy or sell becomes a limit order at the limit price. Because Amendment No. 1 corrects the text of the NASD's rule, the Commission finds that it is consistent with Sections 6(b) and 19(b)(2) of the Act to approve 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, including whether Amendment No. 1 is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to File No. SR–NASD–97–20 and should be submitted by May 11, 1998.

V. Conclusion

It Is Therefore Ordered, pursuant to Section 19(b)(2) of the Act,[18] that the proposed rule change (SR–NASD–97–20) is approved, and that Amendment No. 1 is approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[19]

Margaret H. McFarland,

Deputy Secretary.

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[17] Similarly, NASD Rule 6440(i)(1), as amended, will state that a member may, but is not obligated to, accept a stop order in an eligible security.

[18] 15 U.S.C. 78s(b)(2).

[19] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39855; File No. SR–PCX–97–07]

Self-Regulatory Organizations; Order Approving Proposed Rule Change and Amendment No. 1 Thereto, by the Pacific Exchange, Inc., Relating to Position and Exercise Limits

April 13, 1998.

I. Introduction

On March 5, 1997, the Pacific Exchange, Inc. (''PCX'' or ''Exchange'') submitted to the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to modify its rules on option position and exercise limits by (a) expanding the scope of the firm facilitation exemption, (b) increasing the position and exercise limits for narrow-based index options, (c) expanding the broad-based index hedge exemption to include broker-dealers, and (d) clarifying the general rule on exercise limits. On March 27, 1997, the PCX submitted an amendment to the Commission regarding its proposal.[3]

The proposed rule change appeared in the **Federal Register** on May 20, 1997.[4] No comments were received on the proposed rule change. This order approves the PCX's proposal, as amended.

II. Description

The Exchange has proposed to modify several of its rules on position and exercise limits for equity and index options as follows:

A. Firm Facilitation Exemption

The PCX's firm facilitation exemption currently applies only to a member firm that facilitates and executes an order for its own customer.[5] The PCX proposes to amend the firm facilitation exemption in two ways. First, a member firm will qualify for the exemption if it facilitates its own customer whose account it carries, whether the firm executes the order itself or gives the order to an independent broker for execution. Second, the exemption will be expanded to include member firms who facilitate another member's customer order. Such a customer order must be for execution only against the member firm's proprietary account. Further, unlike a member firm that facilitates its own customer, the resulting position will not be carried by the facilitating member firm.[6]

Specifically, PCX Rule 6.8, Commentary .08 currently provides that for the purpose of facilitating (in accordance with the provisions of PCX Rule 6.47(b)) orders of its own customer (one that will enter, clear and have the resulting position carried with the firm) in non-multiply-listed Exchange options, the proprietary account of a

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Letter from Michael D. Pierson; Senior Attorney, Regulatory Policy, PCX, to Matthew S. Morris, Office of Market Supervision, Division of Market Regulation, Commission, dated March 26, 1997 (''Amendment No. 1'').

[4] *See* Securities Exchange Act Release No. 38612 (May 12, 1997) 62 FR 27643 (May 20, 1997).

[5] The PCX defines a customer order as one that is entered, cleared, and in which the resulting position is carried with the firm.

[6] The Commission notes that any solicitation of a member by another member or customer to facilitate a customer order must comply with the relevant Exchange rules concerning solicited transactions.

member organization may receive and maintain an exemption (''facilitation exemption'') from the applicable standard position limit to the extent that certain procedures and criteria are satisfied. The Exchange proposes to replace this provision with another stating that to the extent that certain procedures and criteria are satisfied, a member organization may receive and maintain for its propriety account an exemption (''facilitation exemption'') from the applicable standard position limit in non-multiply-listed Exchange options for the purpose of facilitating, pursuant to the provisions of PCX Rule 6.47(b), (a) orders for its own customer (one that will have the resulting position carried with the firm) or (b) orders received from or on behalf of a customer for execution only against the member firm's proprietary account.[7]

B. Narrow-Based Index Options

Pursuant to PCX Rule 7.6, the position and exercise limits for narrow-based (industry) index options traded on the Exchange are currently set at 6,000, 9,000, and 12,000 contracts.[8] Specifically, Exchange Rule 7.6(a) provides that position and exercise limits for narrow-based index options be set at one of three levels depending upon the weightings of the component securities in such narrow-based index. Currently, a narrow-based index option will have a 6,000 contract limit if a single component security accounts for more than 30% of the index value; a 9,000 contract limit if a single component security accounts for more than 20% (but less than 30%) of the index value or any five component securities together account for more than 50% of the index value; and a 12,000 contract limit for those narrow-based indexes that do not fall within any one of the other categories. The Exchange proposes to increase these position and exercise limits to 9,000, 12,000, and 15,000 contracts. The Exchange notes that the Commission has approved such increases to the position and exercise limits of other options exchanges.[9]

C. Broad-Based Index Hedge Exemption

PCX Rule 7.6, Commentary .02, currently provides that positions in broad-based index option issues traded on the Exchange, held in the aggregate by a customer (who is neither a member nor a broker-dealer) are exempt from this position limit rule to the extent that certain procedures and criteria are met to qualify for a hedge exemption. The Exchange proposes to modify this provision and the subject procedures in several respects.[10]

First, the Exchange proposes to extend the broad-based index hedge exemption to broker-dealers. Accordingly, the Exchange is replacing various references to ''customer'' in the text of Commentary .02 with references to ''accounts,'' which refer to the accounts in which the exempt options positions are held (*i.e.*, the ''hedge exemption account'').

Second, the Exchange proposes that it be allowed to grant approval of a broad-based index hedge exemption on the basis of verbal representations, provided that the hedge exemption account furnishes to the Exchange, within two business days (or such other time period designated by the Exchange) appropriate documentation substantiating the basis for the exemption.

Third, the Exchange proposes to add a provision (at new subsection (c)) stating that a hedge exemption account that is not carried by a PCX member organization must be carried by a member of a self-regulatory organization participating in the Intermarket Surveillance Group (''ISG'').

Fourth, the Exchange is eliminating current subsections (c) and (d) and replacing them with new subsection (d), which provides that the hedge exemption account must maintain a qualified portfolio, or will effect transactions necessary to obtain a qualified portfolio concurrent with or at or about the same time[11] as the execution of the exempt option positions of: (1) a net long or short position in common stocks in at least four industry groups and contains at least twenty stocks, none of which account for more than fifteen percent of the value of the portfolio or in securities readily convertible, and additionally in the case of convertible bonds, economically convertible, into common stocks which would comprise a portfolio, and/or (2) a net long or short position in index futures contracts or in options on index futures contracts, or long or short positions in index options or index warrants, for which the underlying index is included in the same margin or cross-margin product group cleared at the Options Clearing Corporation (''OCC'') as the index option class to which the hedge exemption applies. To remain qualified, a portfolio must at all times meet these standards notwithstanding trading activity.

Fifth, the Exchange proposes to clarify the method of determining the unhedged value of a ''qualified portfolio.'' Accordingly, subsection (e) of Commentary .02 will provide that the unhedged value will be determined as follows: (1) the values of the net long or short positions of all qualifying products in the portfolio are totaled; (2) for positions in excess of the standard limit, the underlying market value (A) of any economically equivalent opposite side of the market calls and puts in broad-based index options, and (B) of any opposite side of the market positions in stock index futures, options on stock index futures, and any economically equivalent opposite side of the market positions, assuming no other hedges for these contracts exist, is subtracted from the qualified portfolio; and (3) the market value of the resulting unhedged portfolio is equated to the appropriate number of exempt contracts as follows: the unhedged portfolio is divided by the correspondent closing index value and the quotient is then divided by the index multiplier or 100.

Sixth, the proposal specifies that only the following qualified hedging transactions and positions are eligible for purposes of hedging a qualified portfolio (*i.e.*, stocks, futures, options, and warrants): (1) Long put(s) used to hedge the holding of a qualified portfolio; (2) Long call(s) used to hedge a short position in a qualified portfolio; (3) Short call(s) used to hedge the holding of a qualified portfolio; and (4) Short put(s) used to hedge a short position in a qualified portfolio. In addition, the proposal states that the following strategies may be effected only in conjunction with a qualified

[7] According to the PCX, the text of the proposed rule is substantially the same as the text of the first paragraph of Interpretation and Policy .06 to CBOE Rule 4.11 as well as the first paragraph of Commentary .10 to Amex Rule 904 and Commentary .02 to Amex Rule 904C. *See* Securities Exchange Act Release Nos. 37808 (October 10, 1996) 61 FR 54691 (October 21, 1996) (File No. CBOE–96–35), and 37945 (November 13, 1996) 61 FR 59122 (November 20, 1996) (File No. Amex–96–32).

[8] *See* Securities Exchange Act Release No. 36537 (November 30, 1995), 60 FR 62916 (December 7, 1995) (order approving increases to narrow-based index option position and exercise limits from 5,500, 7,500, and 10,500 contracts to 6,000, 9,000, and 12,000 contracts) (File No. PSE–95–30).

[9] *See, e.g.*, Securities Exchange Act Release Nos. 37863 (October 24, 1996) 61 FR 56599 (November 1, 1996) (FIle No. SR–Phlx–96–33), 38202 (January 23, 1997) 62 FR 4555 (January 30, 1997) (FIle No. SR–Amex–96–41), and 38613 (May 12, 1997) 62 FR 27638 (May 20, 1997) (File No. SR–CBOE–97–09).

[10] The Exchange notes that the Commission has approved similar changes to the rules of the CBOE. *See* Securities Exchange Act Release No. 37504 (July 31, 1996) 61 FR 40868 (August 6, 1996) (File No. CBOE–96–01).

[11] The Exchange expects that the hedge will be established concurrently with or immediately following the execution of the option transaction absent good cause. In this regard, the Exchange notes that extreme market conditions, the implementation of circuit breakers, or the lack of liquidity may affect a market participant's ability to establish a hedge within the noted time-frame.

stock portfolio: (5) For non-P.M. settled, European-style index options only—a short call position accompanied by long put(s), where the short call(s) expire with the long put(s), and the strike price of the short call(s) equals or exceeds the strike price of the long put(s) (a ''collar'') (provided that neither side of the collar transaction can be in-the-money at the time the position is established);[12] (6) For non-P.M. settled, European-style index options only—a long put position coupled with a short put position overlying the same broad-based index and having an equivalent underlying aggregate index value, where the short put(s) expire with the long put(s), and the strike price of the long put(s) exceed the strike price of the short put(s) (a ''debit put spread position''); and (7) For non-P.M. settled, European-style index options only—a short call position accompanied by a debit put spread position, where the short call(s) expire with the puts and the strike price of the short call(s) equals or exceeds the strike price of the long put(s) (provided that neither side of the short call, long put transaction can be in-the-money at the time the position is established).[13]

Finally, the Exchange proposes to add a new provision stating that positions included in a qualified portfolio that serve to secure an index hedge exemption may not also be used to secure any other position limit exemption granted by the Exchange or any other self-regulatory organization or futures contract market.

D. Exercise Limits

PCX Rule 6.9 currently provides that Exchange member organizations are prohibited from exercising certain long positions in options dealt in on the Exchange as well as options dealt in on other options exchanges.[14] The Exchange proposes to remove the phrase ''of a class of options dealt in on the Exchange'' in PCX Rule 6.9, Commentary .01, in order to make that Commentary consistent with current PCX Rule 6.9(a).

III. Findings and Conclusions

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b).[15] Specifically, the Commission finds that the proposal is designed to perfect the mechanisms of a free and open market and to protect investors and the public interest.

A. Firm Facilitation Exemption

The Commission believes that by allowing member firms an exemption from position limits to facilitate large customer orders, whether they are firms who accept customer orders for execution only against the member firm's proprietary account, or they are firms who carry their own customers' accounts and positions, the depth and liquidity of the market will be enhanced in a manner consistent with the protection of investors and the public interest. Further, permitting a member firm who facilitates its own customer order to qualify for the exemption whether it executes the order itself or gives it to an independent broker for execution should provide firms with flexibility in handling such orders while still requiring compliance with the rule's requirements.

Specifically, the Commission believes that the PCX's proposal to amend its firm facilitation exemption will accommodate the needs of investors as well as market participants without substantially increasing concerns regarding the potential for manipulation and other trading abuses. The Commission also believes that the proposed rule change will further enhance the potential depth and liquidity of the options market as well as the underlying markets by providing Exchange members greater flexibility in executing large customer orders. Moreover, the Commission is relying on the absence of discernible manipulation problems under the PCX's current firm facilitation exemption as an indicator that the proposal is appropriate. In addition, the PCX's existing safeguards that apply to the current facilitation exemption will continue to serve to minimize any potential disruption or manipulation concerns.

In summary, the Commission continues to believe that the safeguards built into the facilitation exemptive process will serve to minimize the potential for disruption and manipulation concerns, while at the same time benefiting market participants by allowing member firms greater flexibility to facilitate large customer orders. The Commission also notes that the facilitation exemption will be monitored in the same manner, whether the facilitation is done by the member firm for its own customer and executed by the firm itself or given to an independent broker for execution, or whether the facilitation is done by another member firm willing to facilitate the order of another member firm's customer. Further, as noted above, any firm solicitation to facilitate a customer order must comply with the PCX's solicitation rules as well as with the PCX's facilitation and crossing rules. Lastly, the Commission believes that the PCX has adequate surveillance procedures to surveil for compliance with the rule's requirements. Based on these reasons, the Commission believes that it is appropriate for the PCX to amend its firm facilitation exemption.

B. Narrow-Based Index Options

Since the inception of standardized options trading, the options exchanges have had rules imposing limits on the aggregate number of option contracts that a member or customer can hold or exercise. These rules are intended to prevent the establishment of large options positions that can be used or might create incentives to manipulate or disrupt the underlying market so as to benefit the options position. At the same time, the Commission has recognized that option position and exercise limits must not be established at levels that are so low as to discourage participation in the options market by institutions and other investors with substantial hedging needs or to prevent specialists and market makers from adequately meeting their obligations to maintain a fair and orderly market.

In this regard, the PCX has stated that the current position limits discourage market participation by certain large investors and the institutions that compete to facilitate their trading. In addition, the PCX notes that index option trading volume has increased significantly since 1995, when the current industry index option position limits were established. In light of the increased volume of narrow-based index option trading and the needs of investors and market makers, the Commission believes that the PCX's proposal is a reasonable effort to accommodate the needs of market participatants.

In addition, the Commission notes that the proposal, while increasing the positions limits for narrow-based index options, continues to reflect the unique characteristics of each index option and to maintain the structure of the current three-tiered system. Specifically, the lowest proposed limit, 9,000 contracts,

[12] For purposes of determining compliance with PCX Rules 6.8 and 7.6, a collar position will be treated as one contract.

[13] For purposes of determining compliance with PCX Rules 6.8 and 7.6, the short call and long put positions will be treated as one contract.

[14] *See* Securities Exchange Act Release No. 36350 (October 6, 1995) 60 FR 53654 (October 16, 1995) (approval order relating to members' compliance with position and exercise limits for non-PCX listed options) (File No. PSE–95–17).

[15] 15 U.S.C. 78f(b).

will apply to narrow-based index options in which a single underlying stock accounts, on average, for 30% or more of the index value during the 30-day period immediately preceding the Exchange's semi-annual review of industry index option positions limits. A position limit of 12,000 contracts will apply if any single underlying stock accounts, on average, for 20% or more of the index value or any five underlying stocks account, on average, for more than 50% of the index value, but no single stock in the group accounts, on average, for 30% or more of the index value during the 30-day period immediately preceding the Exchange's semi-annual review of industry index option position limits. The 15,000 contract limit will apply only if the Exchange determines that the conditions requiring either the 9,000 contract limit or the 12,000 contract limit have not occurred.

The Commission believes that the proposed increases for the three tiers of 25%, 33%, and 50%, for highest to lowest, respectively, appear to be appropriate and consistent with the Commission's evolutionary approach to position and exercise limits. As noted above, the Commission also has approved previously these increased position and exercise limits for several other exchanges.[16] To date, there have been no discernible manipulation problems that have arisen at the higher three-tier position and exercise limits for narrow-based index options on these exchanges. The Commission notes that the Exchange has had considerable experience monitoring the current three-tiered framework in narrow-based index options. The Commission has not found that differing position and exercise limit requirements based on the particular options product to have created programming or monitoring problems for securities firms, or to have led to significant customer confusion. Based on the current experience in handling position and exercise limits, the commission believes that the proposed increase in position and exercise limits for narrow-based index options will not cause significant problems.

Finally, the Commission believes that the Exchange's surveillance programs are adequate to detect and deter violations of position and exercise limits as well as to detect and deter attempted manipulative activity and other trading abuses through the use of such illegal positions by market participants. Accordingly, the Commission concludes that the increase in the position and exercise limits for narrow-based index options proposed by the Exchange are warranted and should be approved.[17]

C. Broad-Based Index Hedge Exemption

1. Expansion of Definition of Qualified Portfolio and Extension of Broad-Based Index Hedge Exemption to Broker-Dealers

Currently, the PCX's broad-based index hedge exemption may be granted for positions in broad-based index options that are hedged with Exchange-approved qualified portfolios. The PCX proposes to expand the current definition of a qualified portfolio to take into account the broader range of hedging strategies currently used by market participants. Specifically, the PCX has proposed to include within the definition of a qualified portfolio products that overlay various broad-based indexes, including index futures, options on index futures, index options, and index warrants, where the indexes are represented in margin or cross-margin product groups at the OCC. Under the new index hedge exemption's requirements, a qualified portfolio may consist of: (i) net long or short positions in common stocks, or securities readily convertible into common stocks, in at least four industry groups, where the portfolio contains at least twenty stocks, none of which accounts for more than fifteen percent of the value of the portfolio; and/or (ii) net long or short positions in index futures contracts or in options on index futures contracts, or long or short positions in index options or index warrants, for which the underlying index is included in the same margin or cross-margin product group cleared at the OCC as the index option class to which the hedge exemption applies. To remain qualified, a portfolio must at all times meet these standards, notwithstanding trading activity. In addition, the index hedge exemption applies to positions in broad-based index options and is applicable to the unhedged value of the qualified portfolio.[18] The Exchange also proposes to grant approval of a broad-based index hedge exemption on the basis of verbal representations, provided that the hedge exemption account furnishes to the Exchange, within two business days, or such other time period designated by the Exchange, appropriate documentation substantiating the basis for the exemption. The Exchange further proposes to extend the broad-based index hedge exemption to broker-dealers.

The Commission believes, as it did when originally approving the PCX's index hedge exemption, that providing for increased position and exercise limits for broad-based index options in circumstances where those excess positions are effectively hedged with offsetting positions will provide greater depth and liquidity to the market and will allow investors to hedge their portfolios more effectively, without significantly increasing concerns regarding intermarket manipulations or disruptions of either the options market or the underlying stock market. The Commission believes that through the expanded definition of a qualified portfolio, an increased number of public customers with long or short portfolios will be able to utilize the broad-based index hedge exemption, thereby making an alternative hedging technique more available.

Although the Exchange may, under the terms of the proposal, grant approval on the basis of verbal representations, the Commission believes that trading abuses are unlikely because the hedge exemption account is required to furnish to the Exchange, within two business days or such other time period designated by the Exchange, appropriate documentation substantiating the basis for the exemption. The Exchange recently adopted surveillance procedures appropriate to the new broad-based index hedge exemption authority. The Commission also notes that the authority to grant approval for index hedge exemptions on the basis of verbal representations has been previously approved by the Commission for another exchange.[19]

In addition, the Commission believes that it is reasonable for the PCX to allow

[16] *See supra* note 9.

[17] The Commission continues to believe that proposals to increase position limits and exercise limits must be justified and evaluated separately. After reviewing the proposed exercise limits, along with the eligibility criteria for each tier, the Commission has concluded that the proposed exercise limit increases for the three-tiered framework do not raise manipulation problems or increase concerns over market disruption in the underlying securities.

[18] *See* new Commentary .02(c) to Rule 7.6. Under this provision, the unhedged value is determined as follows: (1) the values of the net long or short positions of all qualifying products in the portfolio are totaled; (2) for positions in excess of the standard limit, the underlying market value (A) of any economically equivalent opposite side of the market calls and puts in broad-based index options, and (B) of any opposite side of the market positions in stock index futures, options on stock index futures, and any economically equivalent opposite side of the market positions, assuming no other hedges for these contracts exist, is subtracted from the qualified portfolio; and (3) the market value of the resulting unhedged portfolio is equated to the appropriate number of exempt contracts as follows: the unhedged qualified portfolio is divided by the correspondent closing index value and the quotient is then divided by the index multiplier or 100.

[19] *See* Interpretation .01(a) to CBOE's Rule 24.4.

broker-dealers as well as public customers to utilize the broad-based index hedge exemption. The Commission believes that extending the exemption to broker-dealers may help to increase the depth and liquidity of the market for broad-based index options and may help to ensure that public customers receive the full benefit of the exemption. Moreover, the Commission is relying on the absence of discernible manipulation problems under the corresponding equity hedge exemption, which is available to both public customers and broker-dealers, as an indicator that the proposed extension of the broad-based index hedge exemption is appropriate. The Commission notes that the broad-based index hedge exemption will continue to include safeguards designed to lessen the possibility that the exempted positions could be used to disrupt or manipulate the market.

2. Prospective Broad-Based Index Hedge Exemption for Broker-Dealers

The PCX proposes to amend the broad-based index hedge exemption so that the Exchange may grant prospective broad-based index hedge exemptions to broker-dealers who may not yet have established qualified portfolios under Commentary .02(d) to Exchange Rule 7.6.

The Commission does not believe that trading abuses are likely to result from the prospective hedge exemption for the following reasons. First, the exemption is limited to registered broker-dealers, and second these broker-dealers must effect the transaction(s) necessary to obtain a qualified portfolio ''concurrent with or at or about the same time as the execution of the exempt options positions.'' [20] The Commission expects that the hedge will be established immediately following the execution of the options transaction. Moreover, broker-dealers must provide to the Exchange appropriate documentation related to the portfolio within two business days. The Commission believes that the PCX's surveillance procedures are sufficient to detect and deter trading abuses arising from the prospective hedge exemption and, in the event a broker-dealer is found to have violated the exemption, the PCX is authorized to take all necessary and appropriate disciplinary actions. Accordingly, the Commission believes that it is appropriate for the Exchange to adopt a limited prospective broad-based index hedge exemption for broker-dealers.

3. Treatment of Collar and Debit Put Spread Transaction as One Contract for Hedging and Position Limit Purposes and Neither Side of Collar Transaction Can Be In-the-Money When Established for Broad-Based Index Hedge Exemption Purposes

The PCX proposes to treat a collar position as one contract rather than as two contracts in Commentary .02(g)(5) to Exchange Rule 7.6. Under the PCX's rules, a collar is defined as a short call position accompanied by long put(s), where the short call(s) expires with the long put(s), and the strike price of the short call(s) equals or exceeds the strike price of the long put(s). Within a limited range, the collar has less opportunity to benefit from upward and downward price changes than either of the collar's components. If the market climbs, the collar is equivalent to a covered write position. If the market declines, the collar is equivalent to a long put position. Because the strategy requires both the purchase of puts and the sale of calls, the PCX believes that the position is more appropriately treated as one contract for hedging purposes rather than two separate put and call components. In adopting this interpretation of a collar, the PCX is also proposing that new language in Commentary .02(g)(5) and .02(g)(7) to Exchange Rule 7.6 will be added to require that neither side of the collar transaction (or the short call, long put transaction) can be in-the-money at the time the position is established. Similarly, because a strategy involving a covered write accompanied by a debit put spread requires a collar component, the PCX also believes that the short call and long put should be treated as one contract in Commentary .02(g)(7) to Exchange Rule 7.6.[21]

The Commission believes that the increased number of options positions available by virtue of the Exchange's proposal will not result in disruptions to either the options or underlying stock market due to the conditions and limitations that must be met to be eligible for the exemption.[22] For example, the broad-based index hedge exemption collar strategy can only be effected in conjunction with a qualified stock portfolio; the exemption is available only for non-p.m. settled, European-style index options; the short call(s) must expire with the long put(s); the strike price of the short call(s) must equal or exceed the strike price of the long put(s); and neither side of the collar transaction can be in-the-money at the time the position is established.

4. Miscellaneous Changes

The PCX is also proposing several other changes to its rules, including a requirement in Commentary .02(c) to Exchange Rule 7.6 that a hedge exemption account can be carried by a member of a SRO participating in the ISG. The Commission believes that through the Exchange's ISG information sharing arrangements, the hedge exemption account will continue to be adequately monitored. Other changes to the Exchange's rules include: (1) clarifying language to reflect the change in the Exchange corporate name; (2) removing superfluous language from Commentary .02 to Rule 7.6; (3) changing a cross-reference from ''Rule 6.74(b)'' to ''Rule 6.47(b)'' in Commentary .08 to Rule 6.8; and (4) changing the first character of the words ''member,'' ''firm,'' and ''organization'' to upper case. Because these changes are non-substantive or technical in nature or raise no additional regulatory issues, the Commission believes that they are consistent with Section 6(b)(5) of the Act.[23]

D. Exercise Limits

The Exchange proposes to remove the phrase ''of a class of options dealt in on the Exchange'' in PCX Rule 6.9, Commentary .01, in order to make that Commentary consistent with current PCX Rule 6.9(a). The Commission believes that the Exchange's rule change clarifies and strengthens the PCX's proposal, as originally intended, and raises no new regulatory issues.[24]

IV. Conclusion

For the foregoing reasons, the Commission finds that the PCX's proposal relating to position and exercise limits is consistent with the requirements of the Act and the rules and regulations thereunder.

It is Therefore Ordered, pursuant to section 19(b)(2) of the Act,[26] that the proposed rule change (SR–PCX–97–07), as amended, is approved.

[20] *See also* 11, *supra*, on when the hedge is expected to be established.

[21] The PCX defines a debit put spread position as a long put position coupled with a short put position overlying the same broad-based index and having an equivalent underlying aggregate index value, where the short put(s) expires with the long put(s), and the strike price of the long put(s) exceeds the strike price of the short put(s).

[22] The Commission notes that it has previously approved identical changes to the rules of CBOE. *See supra* note 10.

[23] 15 U.S.C. 78f(b)(5).

[24] *See* discussion in order approving changes to PCX Rule 6.8 and 6.9 in Securities Exchange Act Release No. 36350 (October 6, 1995) 60 FR 53654 (October 16, 1995).

[26] 15 U.S.C. 78s(b)(2).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[27]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–10273 Filed 4–17–98; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39856; File No. SR–Phlx–97–63]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto by the Philadelphia Stock Exchange, Inc. to Amend its Method of Calculating Initial and Maintenance Margin Requirements for Foreign Currency Options

April 13, 1998.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on December 22, 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 Phlx. On February 20, 1998, the Phlx filed a Letter Amendment to the proposed rule change.[3] The Phlx filed Amendment No. 1 to the proposed rule change on April 6, 1998.[4] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Phlx proposes to amend Phlx Rule 722 to codify its method of calculating initial and maintenance customer margin requirements for foreign currency options. Under proposed new Commentary .16 to Rule 722, the Exchange would calculate the margin requirements for each foreign currency separately, rather than determining one margin level for all foreign currencies based upon the historical pricing information for all foreign currencies together.

The complete text of the proposed rule change is available at the Office of the Secretary, Phlx and at the Commission.

II. Self-Regulatory Organization's Statements Regarding the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Phlx 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 Phlx 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 calculates the margin requirement for customers that assume short foreign currency option positions by adding 4% of the current market value of the underlying foreign currency contract to the option premium price less an adjustment for the out-of-the-money amount of the option contract.[5] The 4% add-on percentage was adopted in 1986 and provided for initial margin which would cover the aggregate underlying foreign currencies' historical volatility over a seven day period with a 95% confidence level over the latest nine month period.[6] This add-on percentage is now reviewed by the Exchange every quarter to assure that it provides for a 97.5% confidence level over a five day period. Recently, the Exchange has listed new foreign currency options such as the Spanish peseta and the Italian lira[7] and has received approval to trade options on the Mexican peso.[8] In determining the appropriate margin levels for these new currencies, the Commission has indicated that it believes that the Exchange should set margin levels for each foreign currency option independently and that it should state its specific procedure for setting these levels in its rules. The purpose of this proposal is to address this issue by adopting new foreign currency options margin procedures as proposed in Commentary .16 to Rule 722.

The Exchange is proposing to determine the applicable add-on percentage by reviewing, on a quarterly calendar basis,[9] five-day price changes over the preceding three-year period for each underlying currency and set the add-on percentage at a level which would have covered those price changes at least 97.5% of the time (''confidence level''). If the results of subsequent reviews show that the current margin level provides a confidence level below 97%, the Exchange will increase the margin requirement for that individual currency up to a 98% confidence level. If the confidence level is between 97% and 97.5%, the margin level will remain the same but will be subject to monthly follow-up reviews until the confidence level exceeds 97.5% for two consecutive months.[10] If during the course of the monthly follow-up reviews, the confidence level drops below 97%, the margin level will be increased to a 98% level and if it exceeds 97.5% for two consecutive months, the currency will be taken off monthly reviews and will

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[27] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Letter from Michele R. Weisbaum, Vice President and Associate General Counsel, Phlx, to Sharon Lawson, Senior Special Counsel, Division of Market Regulation (''Division''), Commission, dated February 19, 1998 (''Letter Amendment''). In the Letter Amendment, the Phlx proposes to amend its proposed rule change to: (1) conduct margin reviews quarterly rather than semi-annually; (2) monitor currencies monthly when the confidence level falls to between 97% and 97.5% until the confidence level exceeds 97.5% for two consecutive months, rather than just one month; and (3) revise Rule 722 to exclude the actual margin level for each currency and to note that instead, the Phlx will distribute membership circulars announcing the margin levels that are derived pursuant to Commentary .16 of Rule 722.

[4] *See* Letter from Nandita Yagnik, Counsel, Phlx, to Sharon Lawson, Senior Special Counsel, Division, Commission, dated April 3, 1998 (''Amendment No. 1''). Amendment No. 1 incorporates the original proposed rule change and Letter Amendment into a Rule 19b–4 notice.

[5] This 4% ''add-on'' percentage is applicable to the following foreign currencies: Australian dollar, British pound, Canadian dollar, German mark, European Currency Unit, French franc, Japanese yen and Swiss franc. The Spanish peseta and the Italian lira currently have a 7% add-on percentage and the Mexican peso has an add-on percentage of 17%.

[6] *See* Securities Exchange Act Release No. 22469 (September 26, 1985) 50 FR 40663 (October 4, 1985) (order approving File Nos. SR–Amex–84–29, SR–CBOE–84–27, SR–NASD–85–15, SR–PSE–84–20, SR–Phlx–84–32 and SR–Phlx–85–18 and establishing a uniform margin system for options products).

[7] *See* Securities Exchange Act Release No. 36255 (September 20, 1995) 60 FR 50229 (September 28, 1995) (order approving File Nos. SR–Phlx–95–20 and SR–Phlx–95–21).

[8] *See* Securities Exchange Act Release No. 39460 (December 17, 1997) 62 FR 67425 (December 24, 1997) (order approving File No. SR–Phlx–97–22).

[9] Although the Phlx initially proposed semi-annual margin reviews, in Amendment No. 1, the Phlx proposes to amend Commentary .16(b) of Rule 722 to require margin reviews to be conducted quarterly, on the 15th of January, April, July and October of each year. *See* Amendment No. 1, *supra* note 4.

[10] As initially proposed, it was unclear whether monthly margin reviews would be required once the confidence level equaled 97.5%. Amendment No. 1 makes clear that the confidence level must exceed 97.5% for two consecutive months before the currency will no longer be reviewed monthly. *See* Amendment No. 1, *supra* note 4.

be put back on the quarterly review cycle. If the currency exceeds 98.5%, the margin level will be reduced to a 98% confidence level. Finally, in order to account for large price movements outside the margin level, if the review shows that the currency had a price movement, either positive or negative, greater than two times the margin level, the margin requirement would be set at a level to meet a 99% confidence level (''extreme outlier test'').

The quarterly reviews will be conducted promptly following the 15th of January, April, July and October of each year. In addition to the routine reviews described above, the Exchange continues to have authority to impose a higher margin level at any time in between reviews if market conditions so warrant.[11] At this time, the margin levels for Tier I, II, and III customized cross rate options will remain the same.

Finally, the Phlx proposes to revise Rule 722 so that while the calculation methodology will be outlined in Commentary .16, the actual margin level for each currency will not be stated. Instead, the Exchange will distribute circulars to the membership announcing the margin levels that are derived pursuant to the methodology in Commentary .16 to Rule 722. In addition, any time that a particular margin level changes based on a review or otherwise pursuant to Rule 722, the new margin requirement will be announced via circular to the membership.[12]

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6 of the Act [13] in general, and in particular, with Section 6(b)(5),[14] in that it is designed to promote just and equitable principles of trade, prevent fraudulent and manipulative acts and practices, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, as well as to protect investors and the public interest by establishing margin levels for foreign currency options which reflect the specific risks associated with each individual currency.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Phlx does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the 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 or such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Phlx consents, the Commission will:

(A) By order approve such proposed rule change, or,

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549. 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 Phlx. All submissions should refer to File No. SR–Phlx–97–63 and should be submitted by May 11, 1998.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[15]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–10340 Filed 4–17–98; 8:45 am]

BILLING CODE 8010–01–M

[11] *See* Phlx Rule 772(i)(8).

[12] As initially proposed, all changes to the add-on percentages for individual currencies set forth in Phlx Rule 722 would have required a proposed rule change to be filed with the Commission pursuant to Section 19(b)(3)(A) of the Act. As changes to the margin levels for individual currencies will not require changes to Phlx Rule 722 and instead, will be announced to the Phlx membership via circular, such changes will not trigger a requirement to subject a 19(b)(3)(A) filing to the Commission. Telephone conversation between Nandita Yagnik, Counsel, Phlx, and Deborah Flynn, Division, Commission, on April 13, 1998.

[13] 15 U.S.C. 78f.

[14] 15 U.S.C. 78f(b)(5).

[15] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF STATE

[Public Notice #2789]

Advisory Committee on International Communications and Information Policy; Meeting Notice

The Department of State is holding the next meeting of its Advisory Committee on International Communications and Information Policy. The Committee provides a formal channel for regular consultation and coordination on major economic, social and legal issues and problems in international communications and information policy, especially as these issues and problems involve users of information and communication services, providers of such services, technology research and development, foreign industrial and regulatory policy, the activities of international organizations with regard to communications and information, and developing country interests.

The meeting will be devoted to discussion of issues of interest to members, particularly as to the work of the State Department on telecommunications policy involving both bilateral and multilateral fora.

In addition, the purpose of this meeting will be to hear reports from the working groups on various issues that chart the future direction and work plan of the committee. The members will look at the substantive issues on which the committee should focus, as well as specific countries and regions of interest to the committee.

This meeting will be held on Thursday, April 30, 1998, from 9:30 a.m.—12:30 p.m. in Room 1107 of the Main Building of the U.S. Department of State, located at 2201 ''C'' Street, NW., Washington, DC 20520. Members of the public may attend these meetings up to the seating capacity of the room. While the meeting is open to the public, admittance to the State Department Building is only by means of a pre-arranged clearance list. In order to be placed on the pre-clearance list, please provide your name, title, company,

social security number, date of birth, and citizenship to Shirlett Brewer at (202) 647–8345 or by fax at (202) 647–0158. All attendees must use the ''C'' Street entrance. One of the following valid ID's will be required for admittance: any U.S. driver's license with photo, a passport, or a U.S. Government agency ID.

For further information, contact Timothy C. Finton, Executive Secretary of the Committee, at (202) 647–5385.

Dated: March 30, 1998.

Timothy C. Finton,

Executive Secretary.

[FR Doc. 98–10382 Filed 4–17–98; 8:45 am]

BILLING CODE 4710–45–M

DEPARTMENT OF STATE

[Public Notice No. 2783]

Advisory Committee on Private International Law (ACPIL) Study Group on Electronic Commerce; Meeting Notice

The Study Group on Electronic Commerce of the Advisory Committee on Private International Law (ACPIL) will hold its next meeting from 9:30 to 4:00 on Thursday, April 16 in Washington, DC. The purpose of the meeting will be to review international proposals for rules on electronic signature systems.

The meeting will consider authentication, message integrity, sender and user rights and obligations, and the evolving roles of third party system designers and service providers, as well as differing standards that may be appropriate for commercial and governmental applications. Both international and domestic developments will be reviewed, given the close connection between them in an era of globalization of commerce, information, and borderless connections through data networks. The status of ongoing projects at various international bodies, both intergovernmental and private sector, including UNCITRAL, OECD, the ICC and others will be reviewed. The meeting will focus on revised draft rules on electronic signatures prepared by the Secretariat of the United Nations Commission on International Trade Law (UNCITRAL), which will be discussed at an upcoming UNCITRAL Working Group meeting at the U.N. in June 1998. Included in that discussion will be a U.S. proposal for a multilateral treaty (convention) that could include provisions of the 1996 UNCITRAL Model Law on Electronic Commerce, and possibly other provisions.

Also on the agenda will be a review, as appropriate, of the latest developments in state legislatures within the U.S.; draft uniform state laws under preparation, including the proposed new Uniform Commercial Code Article 2B and Electronic Transactions Act; developments in other national legal systems; and electronic commerce initiatives of the Department of Commerce and others.

Proposals on electronic commerce infrastructure, including access to markets, message integrity, and privacy issues that are expected to be discussed at the OECD in October will also be reviewed as appropriate. Suggestions on possible legal standards for determining applicable law and jurisdiction in a cross-border setting may be considered.

The meeting of the Advisory Committee Study Group is open to the public up to the capacity of the meeting room. Members of the public who cannot attend are welcome to comment, including any recommendations for possible U.S. positions on these matters. The meeting will take place at the International Law Institute (ILI), 1615 New Hampshire Avenue, NW, Washington, DC. Persons who expect to attend should advise either the Office of the Legal Adviser (L/PIL) at Suite 357, South Building, 2430 E Street, NW, Washington, DC 20037–2800, fax (202) 776–8482, or Stuart Kerr at ILI, (202) 483–3036, fax 483–3029. The Office of the Legal Adviser will provide copies of, or e-mail and other sources for, UN, NCCUSL and related documents for the meeting. For further information, please contact Harold Burman, Advisory Committee Executive Director, at (202) 776–8421.

The meeting will take place immediately prior to meeting in Washington, DC on April 17–19 of the National Conference of Commissioners Drafting Group on Uniform State Laws (NCCUSL) on the proposed Uniform Electronic Transactions Act (UETA). Attendees at the Study Group meeting or others who may be interested in the UETA meeting should contact Patricia Fry at the Stetson University College of Law, (813) 562–7893, fax 813–347–3738, or D. Benjamin Beard at the University of Idaho Law School, 208–885–6423, fax 885–7609.

Harold S. Burman,

Advisory Committee, Executive Director.

[FR Doc. 98–10324 Filed 4–17–98; 8:45 am]

BILLING CODE 4710–08–M

DEPARTMENT OF STATE

[Public Notice #2781]

Shipping Coordinating Committee Subcommittee on Ship Design and Equipment; Meeting Notice

The Shipping Coordinating Committee will conduct an open meeting at 1:00 pm on Tuesday, May 5, 1998, 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 of the forty-first session of the Subcommittee on Ship Design and Equipment of the International Maritime Organization (IMO) held during March 9–13, 1998, at IMO Headquarters in London, United Kingdom. This public meeting will commence following the public meeting scheduled for the morning which is preparing for the upcoming session of the IMO Maritime Safety Committee.

Among other things, items of particular interest are: role of the human element in maritime casualties—guidelines for computer applications; revision of the High Speed Craft Code; matters relating to lifesaving; safety of passenger submersible craft; safe ocean towing guidelines; emergency towing arrangements for tankers; and development of a code on polar navigation.

IMO works to develop international agreements, guidelines, and standards for the marine industry. In most cases, these form the basis for class society rules and national standards/regulations. Such an open meeting supports the U.S. Representative to the IMO Subcommittee in developing the U.S. position on those issues raised at the IMO Subcommittee meetings. This open meeting serves as an excellent forum for the U.S. maritime industry to express their ideas and participate in the international rulemaking process. All members of the maritime industry are encouraged to send representatives to participate in the development of U.S. positions on those issues affecting your maritime industry and remain abreast of all activities ongoing within the IMO.

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: March 26, 1998.

Stephen M. Miller,

Executive Secretary, Shipping Coordinating Committee.

[FR Doc. 98–10323 Filed 4–17–98; 8:45 am]

BILLING CODE 4710–07–M

DEPARTMENT OF STATE

[Public Notice # 2791]

Shipping Coordinating Committee, Subcommittee on Safety of Life at Sea, Working Group on Dangerous Goods, Solid Cargoes and Containers; Meeting Notice

The Working Group on Dangerous Goods, Solid Cargoes and Containers (DSC) of the Subcommittee on Safety of Life at Sea (SOLAS) will conduct an open meeting at 9:30 a.m. on Tuesday, May 12, 1998, in Room 8236, at the Nassif Building, 400 Seventh Street, SW., Washington, DC 20590. The purpose of the meeting is to discuss the outcome of the Third Session of the DSC Subcommittee of the International Maritime Organization (IMO) which was held on February 9–13, 1998, at the IMO Headquarters in London. In addition, initial plans and preparations for the upcoming meeting of the DSC Subcommittee's Editorial and Technical Group and other topics of interest will be addressed.

The agenda items of particular interest are:

a. The consolidated text of Amendment 29 to the International Maritime Dangerous Goods (IMDG) Code, its Annexes and Supplements including harmonization of the IMDG Code with the United Nations Recommendations on the Transport of Dangerous Goods.

b. Implementation of Annex III of the Marine Pollution Convention (MARPOL 73/78), as amended.

c. Revision of the format of the IMDG Code, including presentational issues of the dangerous goods list and organic peroxide tables.

d. Amendments to SOLAS chapters VI and VII to make the IMDG Code mandatory.

e. Amendments to SOLAS chapter VII to make the Irradiated Nuclear Fuel (INF) Code mandatory.

f. Implementation of IMO instruments and training requirements for cargo-related matters, including revision of resolution A.537(13) and development of multimodal training requirements.

g. Revision of the Emergency Schedules (EmS).

h. Revision of MSC/Circ. 613 to include offshore tank containers.

i. Amendments to the Bulk Solids Code, including evaluation of properties of solid bulk cargoes.

j. Proposed amendments to the limited quantity provisions of the IMDG Code to be included in Amendment 30.

Members of the public may attend this meeting up to the seating capacity of the room. Interested persons may seek information by writing: Mr. E.P. Pfersich, U.S. Coast Guard (G–MSO–3), 2100 Second Street, SW., Washington, DC 20593–0001 or by calling (202) 267–1577.

Dated: March 30, 1998.

Stephen M. Miller,

Executive Secretary, Shipping Coordinating Committee.

[FR Doc. 98–10383 Filed 4–17–98; 8:45 am]

BILLING CODE 4710–07–M

DEPARTMENT OF STATE

[Public Notice 2787]

Ofice of International Energy Policy; Notice of Receipt of Application for a Permit for Pipeline Facilities to be Constructed and Maintained on the Borders of the United States

AGENCY: Department of State.

The Department of State has received an application from Lakehead Pipe Line Company, Limited for Presidential Permit, pursuant to Executive Order 11423 of August 16, 1968, as amended by Executive Order 12847 of May 17, 1993, to construct, connect, operate and maintain a pipeline at the site of its existing facilities on the U.S.-Canada International border near Neche, North Dakota. The pipeline will be utilized to transport crude oil and natural gas liquids. Lakehead is a Delaware limited partnership, having its principal office in Deluth, Minnesota.

The permit application and related documents are available for review at the address provided below.

DATES: Interested parties are invited to submit, in duplicate, comments relative to this proposal on or before May 20, 1998.

FOR FURTHER INFORMATION CONTACT: Daniel L. Martinez, Office of International Energy Policy, Department of State, Washington, D.C. 20520. Tel: (202) 647–4557.

Dated: March 27, 1998.

William A. Weingarten,

Director, Office of International Energy Policy.

[FR Doc. 98–10268 Filed 4–17–98; 8:45 am]

BILLING CODE 4710–07–M

DEPARTMENT OF TRANSPORTATION

Aviation Proceedings, Agreements Filed During the Week Ending April 10, 1998

The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C. Sections 412 and 414. Answers may be filed within 21 days of date of filing.

Docket Number: OST–98–3718.
Date Filed: April 6, 1998.
Parties: Members of the International Air Transport Association.
Subject: PTC3 Telex Mail Vote 929 (Reso 070tt), Pakistan-South Asian Subcontinent fares, Intended effective data: April 20, 1998.

Docket Number: OST–98–3735.
Date Filed: April 10, 1998.
Parties: Members of the International Air Transport Association.
Subject: Telex Cargo Reso 033f—Malaysia, Worldwide Currency Adjustment, Intended effective date: May 1, 1998.

Paulette V. Twine,

Federal Register Liaison.

[FR Doc. 98–10257 Filed 4–17–98; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q during the Week Ending April 10, 1998

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under Subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 et. seq.). The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: OST–98–3727.
Date Filed: April 9, 1998.
Due Date for Answers, Conforming Applications, or Motions to Modify Scope: May 7, 1998.
Description: Application of Ethiopian Airlines Enterprise, pursuant to 49 U.S.C. Section 41302 and Subpart Q of the Regulations, applies for an initial foreign air carrier permit to provide

foreign air transportation of persons, property and mail between Addis Ababa, Ethiopia and Washington, D.C.

Docket Number: OST–98–3733.

Date Filed: April 10, 1998.

Due Date for Answers, Conforming Applications, or Motions to Modify Scope: May 8, 1998.

Description: Application of Royal Aviation, Inc., pursuant to 49 U.S.C. Section 41301, and Subpart Q of the Regulations, applies for a foreign air carrier permit to engage in scheduled international air transportation of persons, property and mail between any point or points in Canada and any point or points in the United States.

Paulette V. Twine,

Federal Register Liaison.

[FR Doc. 98–10258 Filed 4–17–98; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Fitness Determination of Express Air, Inc.

AGENCY: Office of the Secretary, Department of Transportation.

ACTION: Notice of Commuter Air Carrier Fitness Determination Order to Show Cause (Order 98–4–16).

SUMMARY: The Department of Transportation is proposing to find Express Air, Inc., fit, willing, and able, to provide commuter air carrier operations under 49 U.S.C. 41738.

DATES: Persons wishing to file objections should do so no later than April 29, 1998.

ADDRESSES: All interested persons wishing to respond to the Department of Transportation's tentative fitness determination should file their responses with the Air Carrier Fitness Division, X–56, Department of Transportation, 400 Seventh Street, SW., Room 6401, Washington, D.C. 20590, and serve them on all persons listed in Attachment A to the order.

FOR FURTHER INFORMATION CONTACT: Delores King, Air Carrier Fitness Division (X–56, Room 6401), U.S. Department of Transportation, 400 Seventh Street, SW., Washington, D.C. 20590, (202) 366–2343.

Dated: April 15, 1998.

Charles A. Hunnicutt,

Assistant Secretary for Aviation and International Affairs.

[FR Doc. 98–10352 Filed 4–17–98; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

[USCG–1998–3743]

Chemical Transportation Advisory Committee, Subcommittee on Proper Cargo Names

AGENCY: Coast Guard, DOT.

ACTION: Notice of meetings.

SUMMARY: The Chemical Transportation Advisory Committee's (CTAC) Subcommittee on Proper Cargo Names (PCN) will meet to discuss various issues relating to the marine transportation of hazardous materials in bulk. The meeting will be open to the public.

DATES: The PCN Subcommittee will meet on Tuesday, May 5, 1998, from 9 a.m. to 4 p.m.; however, the meeting may be concluded early if its business is finished. Anyone planning to attend the meeting and intending to express his or her views is encouraged to arrive early and make that intention known. Written material and requests to make oral presentations should reach the U.S. Coast Guard on or before May 1, 1998. Requests to have a copy of your material distributed to each member of the CTAC Subcommittee should reach the U.S. Coast Guard on or before May 1, 1998.

ADDRESSES: The Subcommittee will meet at the American Bureau of Shipping (ABS), ABS Plaza, 16855 Northchase Drive, Houston, TX 77060–6008. Point of contact: Mr. Philip G. Rynn; tel.: 281–877–6415; fax.: 281–877–6795. Send written material and requests to make oral presentations to Mr. Curtis Payne, Commandant (G–MSO–3), U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593–0001. This notice is available on the Internet at http://dms.dot.gov.

FOR FURTHER INFORMATION CONTACT: Mr. Cutis Payne, telephone 202–267–1577, fax. 202–267–4570. For questions on this docket, contact Carol Kelly, Coast Guard Dockets Team Leader, or Paulette Twine, Chief, Documentary Services Division, U.S. Department of Transportation, 202–366–9329.

SUPPLEMENTARY INFORMATION: Notice of this meeting is given under the Federal Advisory Committee Act, 5 U.S.C. App. 2.

Meeting Agenda

Subcommittee on Proper Cargo Names (PCN). The agenda includes the following:

(1) Presentation of the task statement and formation of the Subcommittee on Proper Cargo Names.

(2) Presentation on requirements for chemical shipping names.

(3) Discussion of the industry's cargo naming/identification processes.

(4) Discussion of fact-finding mission.

Procedural

The meeting is open to the public. At the Chair's discretion, members of the public may make oral presentations during the meeting. If you would like to make an oral presentation at the meeting, please notify Mr. Payne no later than May 1, 1998. Written material for distribution at the meeting should reach the U.S. Coast Guard no later than May 1, 1998. If you would like a copy of your material distributed to each member of the Subcommittee in advance of the meeting, please submit 25 copies to Mr. Payne no later than May 1, 1998.

Information on Services for Individuals With Disabilities

For information on facilities or services for individuals with disabilities or to request special assistance at the meeting, contact Mr. Payne as soon as possible.

Dated: April 15, 1998.

Joseph J. Angelo,

Director of Standards, Marine Safety and Environmental Protection.

[FR Doc. 98–10551 Filed 4–17–98; 8:45 am]

BILLING CODE 4910–15–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Advisory Circular 21.25–1, Issuance of Type Certificate: Restricted Category Agricultural Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of issuance of advisory circular.

SUMMARY: This notice announces the issuance of Advisory Circular (AC) 21.25–1, Issuance of Type Certificate: Restricted Category Agricultural Airplanes. This AC provides information and guidance for obtaining a type certificate in the restricted category under Title 14 of the Code of Federal Regulations (14 CFR) part 21, § 21.25, for small single-engine piston and turbo-propeller driven airplanes, which will be used for agricultural special purpose operations. This AC provides an acceptable means, but not the only means, of meeting the requirements of 14 CFR part 21 for the issuance of a type certificate in the restricted category. This procedure

incorporates the appropriate normal category airworthiness standards of 14 CFR part 23, Airworthiness Standards: Normal, Utility, Acrobatic, and Commuter Category Airplanes. This material is neither mandatory nor regulatory in nature and does not constitute a regulation.

DATE: Advisory Circular 21.25–1 was issued by the Manager, Small Airplane Directorate, Aircraft Certification Service, ACE–100, on December 1, 1997.

HOW TO OBTAIN COPIES: A copy may be obtained by writing to the U.S. Department of Transportation, Subsequent Distribution Office, DOT Warehouse SVC–121.23, Ardmore East Business Center, 3341 Q 75th Avenue, Landover, MD 20785, or by faxing your request to that office at 301–386–5394.

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

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–10387 Filed 4–17–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Index of Administrator's Decisions and Orders in Civil Penalty Actions; Publication

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of publication.

SUMMARY: This notice constitutes the required quarterly publication of an index of the Administrator's decisions and orders in civil penalty cases. This publication represents the quarter ending on December 31, 1997. This publication ensures that the agency is in compliance with statutory indexing requirements.

FOR FURTHER INFORMATION CONTACT: James S. Dillman, Assistant Chief Counsel for Litigation (AGC–400), Federal Aviation Administration, 400 7th Street, SW., Suite PL 200–A, Washington, DC 20590: telephone (202) 366–4118.

SUPPLEMENTARY INFORMATION: The Administrative Procedure Act requires Federal agencies to maintain and make available for public inspection and copying current indexes containing identifying information regarding materials required to be made available or published 5 U.S.C. 552(a)(2). In a notice issued on July 11, 1990, and published in the **Federal Register** (55 FR 29148; July 17, 1990), the FAA announced the public availability of several indexes and summaries that provide identifying information about the decisions and orders issued by the Administrator under the FAA's civil penalty assessment authority and the rules of practice governing hearings and appeals of civil penalty actions. 14 CFR Part 13, Subpart G.

The FAA maintains an index of the Administrator's decisions and orders in civil penalty actions organized by order number and containing identifying information about each decision or order. The FAA also maintains a cumulative subject-matter index and digests organized by order number.

The indexes are published on a quarterly basis (i.e., January, April, July, and October.) This publication represents the quarter ending on December 31, 1997.

The FAA first published these indexes and digests for all decisions and orders issued by the Administrator through September 30, 1990. 55 FR 45984; October 31, 1990. The FAA announced in that notice that only the subject-matter index would be published cumulatively and that the order number index would be non-cumulative. The FAA announced in a later notice that the order number indexes published in January would reflect all of the civil penalty decisions for the previous year. 58 FR 5044; 1/19/93.

The previous quarterly publications of these indexes have appeared in these **Federal Register** as follows:

Dates of quarter	Federal Register publication
11/1/89–9/30/90 ..	55 FR 45984; 10/31/90.
10/1/90–12/31/90	56 FR 44886; 2/6/91.
1/1/91–3/31/91	56 FR 20250; 5/2/91.
4/1/91–6/30/91	56 FR 31984; 7/12/91.
7/1/91–9/30/91	56 FR 51735; 10/15/91.
10/1/91–12/31/91	57 FR 2299; 1/21/92.
1/1/92–3/31/92	57 FR 12359; 4/9/92.
4/1/92–6/30/92	57 FR 32825; 7/23/92.
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10/1/92–12/31/92	58 FR 5044; 1/19/93.
1/1/93–3/31/93	58 FR 21199; 4/19/93.
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7/1/93–9/30/93	58 FR 58218; 10/29/93.
10/1/93–12/31/93	59 FR 5466; 2/4/94.
1/1/94–3/31/94	59 FR 22196; 4/29/94.
4/1/94–6/30/94	59 FR 39618; 8/3/94.
7/1/94–12/31/94 ..	60 FR 4454; 1/23/95.
1/1/95–3/31/95	60 FR 19318; 4/17/95.
4/1/95–6/30/95	60 FR 36854; 7/18/95.
7/1/95–9/30/95	60 FR 53228; 10/12/95.
10/1/95–12/31/95	61 FR 1972; 1/24/96.
1/1/96–3/31/96	61 FR 16955; 4/18/96.
4/1/96–6/30/96	61 FR 37526; 7/18/96.
7/1/96–9/30/96	61 FR 54833; 10/22/96.
10/1/96–12/31/96	62 FR 2434; 1/16/97.
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7/1/97–9/30/97	62 FR 53856; 10/16/97.
10/1/97–12/31/97	63 FR 3373; 1/22/98.

The civil penalty decisions and orders, and the indexes and digests are available in FAA offices. In addition, the Administrator's civil penalty decisions have been published by commercial publishers (Hawkins Publishing Company and Clark Boardman Callahan) and are available on computer on-line services (Westlaw, LEXIS, Compuserve and FedWorld). (A list of the addresses of the FAA offices where the civil penalty decisions may be reviewed and information regarding these commercial publications and computer databases are provided at the end of this notice.)

Information regarding the accessibility of materials filed in recently initiated civil penalty cases in FAA civil penalty cases at the DOT Docket and over the Internet is also set forth at the end of this notice.

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(This index includes all decisions and orders issued by the Administrator from January 1, 1998, to March 31, 1998.)

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43.9	91–8 Watts Agricultural Aviation; 97–31 Sanford Air; 98–4 Larry's Flying Service.
43.13	90–11 Thunderbird Accessories; 94–3 Valley Air; 94–38 Bohan; 96–3 America West Airlines; 96–25 USAir; 97–9 Alphin; 97–10 Alphin; 97–30 Emery Worldwide Airlines; 97–31 Sanford Air; 97–32 Florida Propeller.
43.15	90–25 & 90–27 Gabbert; 91–8 Watts Agricultural Aviation; 94–2 Woodhouse; 96–18 Kilrain.
65.15	92–73 Wyatt.
65.92	92–73 Wyatt.
91.7	97–8 Pacific Av. d/b/a Inter-Island Helicopters; 97–16 Mauna Kea.
91.8 (91.11 as of 8/18/90)	92–3 Park.
91.9 (91.13 as of 8/18/90)	90–15 Playter; 91–12 & 91–31 Terry & Menne; 92–8 Watkins; 92–40 Wendt; 92–48 USAir; 92–49 Richardson & Shimp; 92–47 Cornwall; 92–70 USAir; 93–9 Wendt; 93–17 Metcalf; 93–18 Westair Commuter; 93–29 Sweeney; 94–29 Sutton; 95–26 Hereth; 96–17 Fenner.

91.11	96–6 Ignatov; 97–12 Mayer.
91.29 (91.7 as of 8/18/90)	91–8 Watts Agricultural Aviation; 92–10 Flight Unlimited; 94–4 Northwest Aircraft Rental.
91.65 (91.111 as of 8/18/90)	91–29 Sweeney; 94–21 Sweeney.
91.67 (91.113 as of 8/18/90)	91–29 Sweeney.
91.71	97–11 Hampton.
91.75 (91.123 as of 8/18/90)	91–12 & 91–31 Terry & Menne; 92–8 Watkins; 92–40 Wendt; 92–49 Richardson & Shimp; 93–9 Wendt.
91.79 (91.119 as of 8/18/90)	90–15 Playter; 92–47 Cornwall; 93–17 Metcalf.
91.87 (91.129 as of 8/18/90)	91–12 & 91–31 Terry & Menne; 92–8 Watkins.
91.103	95–26 Hereth.
91.111	96–17 Fenner.
91.113	96–17 Fenner.
91.151	95–26 Hereth.
91.173 (91.417 as of 8/18/90)	91–8 Watts Agricultural Aviation
91.213	97–11 Hampton.
91.403	97–8 Pacific Av. d/b/a Inter-Island Helicopters; 97–31 Sanford Air.
91.405	97–16 Mauna Kea; 98–4 Larry's Flying Service.
91.407	98–4 Larry's Flying Service.
91.703	94–29 Sutton.
105.29	98–3 Fedele.
107.1	90–19 Continental Airlines; 90–20 Degenhardt; 91–4 [Airport Operator]; 91–58 [Airport Operator].
107.13	90–12 & 90–19 Continental Airlines; 91–4 [Airport Operator]; 91–18 [Airport Operator]; 91–40 [Airport Operator]; 91–41 [Airport Operator]; 91–58 [Airport Operator]; 96–1 [Airport Operator]; 97–23 Detroit Metropolitan.
107.20	90–24 Bayer; 92–58 Hoedl; 97–20 Werle.
107.21	89–5 Schultz; 90–10 Webb; 90–22 Degenhardt; 90–23 Broyles; 90–26 & 90–43 Waddell; 90–33 Cato; 90–39 Hart; 91–3 Lewis; 91–10 Graham; 91–30 Trujillo; 91–38 Esau; 91–53 Koller; 92–32 Barnhill; 92–38 Cronberg; 92–46 Sutton-Sautter; 92–51 Koblick; 92–59 Petek-Jackson; 94–5 Grant; 94–31 Smalling; 97–7 Stalling.
107.25	94–30 Columna.
108.5	90–12, 90–18, 90–19, 91–2 & 91–9 Continental Airlines; 91–33 Delta Air Lines; 91–54 Alaska Airlines; 91–55 Continental Airlines; 92–13 & 94–1 Delta Air Lines; 94–44 American Airlines; 96–16 WestAir; 96–19 [Air Carrier].
108.7	90–18 & 90–19 Continental Airlines.
108.10	96–16 WestAir.
108.11	90–23 Broyles; 90–26 Waddell; 91–3 Lewis; 92–46 Sutton-Sautter; 94–44 American Airlines.
108.13	90–12 & 90–19 Continental Airlines; 90–37 Northwest Airlines.
121.133	90–18 Continental Airlines.
121.153	92–48 & 92–70 USAir; 95–11 Horizon; 96–3 America West Airlines; 96–24 Horizon; 96–25 USAir; 97–21 Delta; 97–30 Emery Worldwide Airlines.
121.221	97–30 Emery Worldwide Airlines.
121.317	92–37 Giuffrida; 94–18 Luxemburg.
121.318	92–37 Giuffrida.
121.367	90–12 Continental Airlines; 96–25 USAir.
121.571	92–37 Giuffrida.
121.589	97–12 Mayer.
121.628	95–11 Horizon; 97–21 Delta; 97–30 Emery Worldwide Airlines.
135.1	95–8 Charter Airlines; 95–25 Conquest.
135.5	94–3 Valley Air; 94–20 Conquest Helicopters; 95–25 Conquest; 95–27 Valley Air; 96–15 Valley Air.
135.25	92–10 Flight Unlimited; 94–3 Valley Air; 95–27 Valley Air; 96–15 Valley Air.
135.63	94–40 Polynesian Airways; 95–17 Larry's Flying Service; 95–28 Atlantic; 96–4 South Aero.
135.87	90–21 Carroll.
135.95	95–17 Larry's Flying Service.
135.179	97–11 Hampton.
135.185	94–40 Polynesian Airways.
135.263	95–9 Charter Airlines; 96–4 South Aero.
135.267	95–8 Charter Airlines; 95–17 Larry's Flying Service; 96–4 South Aero.
135.293	95–17 Larry's Flying Service; 96–4 South Aero.
135.343	95–17 Larry's Flying Service.
135.411	97–11 Hampton.
135.413	94–3 Valley Air, 96–15 Valley Air; 97–8 Pacific Av. d/b/a Inter-Island Helicopters; 97–16 Mauna Kea.
135.421	93–36 Valley Aor; 94–3 Valley Air; 96–15 Valley Air.
135.437	94–3 Valley Air; 96–15 Valley Air.
145.1	97–10 Alphin.
145.3	97–10 Alphin.
145.25	97–10 Alphin.
145.45	97–10 Alphin.
145.47	97–10 Alphin.
145.49	97–10 Alphin.
145.53	90–11 Thunderbird Accessories.
145.57	94–2 Woodhouse; 97–9 Alphin; 97–32 Florida Propeller.
145.61	90–11 Thunderbird Accessories.
191	90–12 & 90–19 Continental Airlines; 90–37 Northwest Airlines.
298.1	92–10 Flight Unlimited.
302.8	90–22 USAir.

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171.2	92–77 TCI; 94–28 Toyota; 94–31 Smalling; 95–16 Mulhall; 96–26 Midtown; 98–2 Carr.
171.8	92–77 TCI.
172.101	92–77 TCI; 94–28 Toyota; 94–31 Smalling; 96–26 Midtown.
172.200	92–77 TCI; 94–28 Toyota; 95–16 Mulhall; 96–26 Midtown; 98–2 Carr.
172.202	92–77 TCI; 94–28 Toyota; 94–31 Smalling; 95–16 Mulhall; 98–2 Carr.
172.203	94–28 Toyota.
172.204	92–77 TCI; 94–28 Toyota; 94–31 Smalling; 95–16 Mulhall; 98–2 Carr.
172.300	94–31 Smalling; 95–16 Mulhall; 96–26 Midtown; 98–2 Carr.
172.301	94–31 Smalling; 95–16 Mulhall; 98–2 Carr.
172.304	92–77 TCI; 94–31 Smalling; 95–16 Mulhall; 98–2 Carr.
172.400	92–77 TCI; 94–28 Toyota; 94–31 Smalling; 95–16 Mulhall; 98–2 Carr.
172.402	94–28 Toyota.
172.406	92–77 TCI.
173.1	92–77 TCI; 94–28 Toyota; 94–31 Smalling; 95–16 Mulhall; 98–2 Carr.
173.3	94–28 Toyota; 94–31 Smalling; 98–2 Carr.
173.6	94–28 Toyota.
173.22(a)	94-28 Toyota; 94–31 Smalling; 98–2 Carr.
173.24	94–28 Toyota; 95–16 Mulhall.
173,25	94–28 Toyota.
173.27	92–77 TCI.
173.62	98–2 Carr.
173.115	92–77 TCI.
173.240	92–77 TCI.
173.243	94–28 Toyota.
173.260	94–28 Toyota.
173.266	94–28 Toyota; 94–31 Smalling.
175.25	94–31 Smalling.
191.5	97–13 Westair Commuter.
191.7	97–13 Westair Commuter.
821.30	92–73 Wyatt.
821.33	90–21 Carroll.

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554	90–18 Continental Airlines; 90–21 Carroll; 95–12 Toyota.
556	90–21 Carroll; 91–54 Alaska Airlines.
557	90–20 Degenhardt; 90–21 Carroll; 90–37 Northwest Airlines; 94–28 Toyota.
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2412	93–10 Costello; 96–22 Woodhouse.
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40102	96–17 Fenner.
44701	96–6 Ignatov; 96–17 Fenner.
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46301	97–1 Midtown Neon Sign; 97–16 Mauna Kea; 97–20 Werle.
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1301(31) (operate)	93–18 Westair Commuter.
(32) (person)	93–18 Westair Commuter.
1356	90–18 & 90–19, 91–2 Continental Airlines.
1357	90–18, 90–19 & 91–2 Continental Airlines; 91–41 [Airport Operator]; 91–58 [Airport Operator].
1421	92–10 Flight Unlimited; 92–48 USAir; 92–70 USAir; 93–9 Wendt.
1429	92–73 Wyatt.
1471	89–5 Schultz; 90–10 Webb; 90–20 Degenhardt; 90–12, 90–18 & 90–19 Continental Airlines; 90–23 Broyles; 90–26 & 90–43 Waddell; 90–33 Cato; 90–37 Northwest Airlines; 90–39 Hart; 91–2 Continental Airlines; 91–3 Lewis; 91–18 [Airport Operator]; 91–53 Koller; 92–5 Delta Air Lines; 92–10 Flight Unlimited; 92–46 Sutton-Sautter; 92–51 Koblick; 92–74 Wendt; 92–76 Safety Equipment; 94–20 Conquest Helicopters; 94–40 Polynesian Airways; 96–6 Ignatov; 97–7 Stalling.
1472	96–6 Ignatov.
1475	90–20 Degenhardt; 90–12 Continental Airlines; 90–18, 90–19 & 91–1 Continental Airlines; 91–3 Lewis; 91–18 [Airport Operator]; 94–40 Polynesian Airways.
1486	90–21 Carroll; 96–22 Woodhouse.
1809	92–77 TCI; 94–19 Pony Express; 94–28 Toyota; 94–31 Smalling; 95–12 Toyota.

Civil Penalty Actions—Orders Issued by the Administrator Digests

(Current as of March 31, 1998)

The digests of the Administrator's final decisions and orders are arranged by order number, and briefly summarize key points of the decision. The following compilation of digests includes all final decisions and orders issued by the Administrator from January 1, 1998, to March 31, 1998. The FAA will publish non-cumulative supplements to this compilation on a quarterly basis (*e.g.*, April, July, October, and January of each year).

These digests do not constitute legal authority, and should not be cited or relied upon as such. The digests are not intended to serve as a substitute for proper legal research. Parties, attorneys, and other interested persons should always consult the full text of the Administrator's decisions before citing them in any context.

In the Matter of Virginia Taylor

[Order No. 98–1 (2/18/98)]

Appeal Dismissed. Taylor's notice of appeal was filed almost 8 months late. Taylor's counsel claimed that the notice of appeal had been filed previously but he failed to submit any evidence that the notice of appeal had been filed on time. The party filing a document has the burden of proving the date on which it filed the document. Taylor failed to prove that she filed the notice of appeal on time or that she had good cause for the failure to file the notice on time. Appeal dismissed.

In the Matter of Paul A. Carr

[Order No. 98–2 (3/12/98)]

Hazardous materials. Carr offered two boxes containing fireworks and some non-hazardous materials to Horizon Air for shipment. Carr did not indicate by marking, labeling, or by declaring on the shipping papers that he was shipping hazardous materials. Also, incorrect packaging was used by Carr to ship the fireworks. The boxes were opened subsequently, when they were transferred to another carrier, and the hazardous materials were discovered.

Civil penalty reduced. It is held that in this non-egregious case involving an individual not in the business of shipping hazardous materials, it is inappropriate to count each regulatory violation alleged and found—general and specific—as separate violations for sanction purposes. Due to the statutory minimum civil penalty provision, the consideration of duplicative regulatory violations as separate violations for sanction purposes in non-egregious cases against individuals not in the business of shipping hazardous material may undermine the credibility of the enforcement program and result in excessive penalties under the statutory factors. (See 49 U.S.C. 5123.) Hence, in this case, there is no reason to count 49 CFR 171.2(a), 172.200(a), and 173.1(b), as separate violations for sanction purposes. Also, it is held that the separate violations of 49 CFR 172.202(a) and 172.202(c) are almost identical in this case and therefore, to count both separately for sanction purposes is unnecessary ''piling on.'' Likewise, the violation of 49 CFR 172.304 should not count separately for sanction purposes because this regulation requires that the markings be durable, in English, and printed on or affixed to the package—but a separate violation has already been found because there were no markings at all. The civil penalty is reduced to $2,000.

In the Matter of Thomas Fedele

[Order No. 98–3 (3/12/98)]

Parachuting Too Close to Clouds. A preponderance of the reliable, probative, and substantial evidence in the record indicates that none of the skydivers could have jumped at the time and place in question without coming too close to clouds. Law judge's decision finding otherwise is reversed, and a $500 civil penalty is assessed.

In the Matter of Larry's Flying Service, Inc.

[Order No. 98–4 (3/12/98)]

No Good Cause for Failure to File Timely Answer. Larry's argues that confusion of its counsel was the reason for its lateness in filing its answer. Counsel allegedly thought that the copy of the complaint he received was only a courtesy copy because it did not contain the case number or the law judge's name. No good cause has been shown. Any confusion on counsel's part was unwarranted.

$20,000 Penalty Assessed. Although $20,000 may seem severe, Larry's was no stranger to the answer requirement, having narrowly escaped a default judgment in two previous cases. In addition, Larry's has a history of prior violation, an aggravating factor.

Financial Hardship. Larry's waived the affirmative defense of financial hardship when it failed to file a timely answer without good cause and again when it failed to raise the issue in its appeal brief.

In the Matter of James K. Squire

[Order No. 98–5 (3/19/98)]

Additional Time to File Appeal Brief Granted. After rendering his oral initial decision, the law judge informed Squire of his option to file a notice of appeal within 10 days, but neglected to mention the requirement to perfect a notice of appeal within 50 days of the issuance of the initial decision by filing an appeal brief. It is held that this omission constitutes good cause for granting additional time to file an appeal brief.

Commercial Reporting Services of the Administrator's Civil Penalty Decisions and Orders

1. *Commercial Publications:* The Administrator's decisions and orders in civil penalty cases are available in the following commercial publications:

Civil Penalty Cases Digest Service, published by Hawkins Publishing Company, Inc., P.O. Box 480, Mayo, MD, 21106, (410) 798–1677;

Federal Aviation Decisions, Clark Boardman Callaghan, a subsidiary of West Information Publishing Company, 50 Broad Street East, Rochester, NY 14694, 1–800–221–9428.

2. *CD–ROM.* The Administrator's orders and decisions are available on CD–ROM through Aeroflight Publications, P.O. Box 854, 433 Main Street, Gruver, TX 79040, (806) 733–2483.

3. *On-Line Services.* The Administrator's decisions and orders in civil penalty cases are available through the following on-line services:

- Westlaw (the Database ID is FTRAN–FAA).
- LEXIS [Transportation (TRANS) Library, FAA file.]
- Compuserve.
- FedWorld.

Docket

The FAA Civil Penalty Docket is located at FAA Headquarters, 800 Independence Avenue, SW, Room 926A, Washington, DC, 20591 (tel. no. 202–267–3641.) The clerk of the FAA Civil Penalty Docket is Ms. Stephanie McClain. Materials contained in the dockets of any case not containing sensitive security information (protected by 14 CFR Part 191) may be viewed at the FAA Civil Penalty Docket. All documents required to be filed in civil penalty proceedings must be filed with the FAA Hearing Docket Clerk at the FAA Hearing docket. (See 14 CFR 13.210.)

In addition, materials filed in the FAA Civil Penalty Docket in non-security cases in which the complaints were filed on or after December 1, 1997, will also be available for viewing at the Department of Transportation Docket, located at 400 7th Street, SW, Room PL–401, Washington, DC, 20509, (tel. no.

202–366–9329.) While the originals will be retained in the FAA Civil Penalty Docket, the DOT Docket will scan copies of documents in non-security cases in which the complaint was filed after December 1, 1997, into their computer database. Individuals who have access to the Internet can view the materials in these dockets using the following Internet address: http://dms.dot.gov.

FAA Offices

The Administrator's decisions and orders, indexes, and digests are available for public inspection and copying at the following location in FAA headquarters:

FAA Hearing Docket, Federal Aviation Administration, 800 Independence Avenue, SW., Room 924A, Washington, DC, 20591; (202) 267–3641.

These materials are also available at all FAA regional and center legal offices at the following locations:

Office of the Assistant Chief for the Aeronautical Center (AMC–7), Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd., Oklahoma City, OK 73125; (405) 954–3296.

Office of the Assistant Chief Counsel for the Alaskan Region (AAL–7), Alaskan Region Headquarters, 222 West 7th Avenue, Anchorage, AL 99513; (907) 271–5269.

Office of the Assistant Chief Counsel for the Central Region (ACE–7), Central Region Headquarters, 601 East 12th Street, Federal Building, Kansas City, MO 64106; (816) 426–5446.

Office of the Assistant Chief Counsel for the Eastern Region (AEA–7), Eastern Region Headquarters, JFK International Airport, Federal Building, Jamaica, NY 11430; (718) 553–3285.

Office of the Assistant Chief Counsel for the Great Lakes Region (AGL–7), 2300 East Devon Avenue, Suite 419, Des Plaines, IL 60018; (708) 294–7108.

Office of the Assistant Chief Counsel for the New England Region (ANE–7), New England Region Headquarters, 12 New England Executive Park, Room 401, Burlington, MA 01803–5299; (617) 238–7050.

Office of the Assistant Chief Counsel for the Northwest Mountain Region (ANM–7), Northwest Mountain Region Headquarters, 1601 Lind Avenue, SW, Renton, WA 98055–4056; (206) 207–2007.

Office of the Assistant Chief Counsel for the Southern Region (ASO–7), Southern Region Headquarters, 1701 Columbia Avenue, College Park, GA 30337; (404) 305–5200.

Office of the Assistant Chief Counsel for the Southwest Region (ASW–7), Southwest Region Headquarters, 2601 Meacham Blvd., Fort Worth, TX 76137–4298; (817) 222–5087.

Office of the Assistant Chief Counsel for the Technical Center (ACT–7), Federal Aviation Administration Technical Center, Atlantic City International Airport, Atlantic City, NJ 08405; (609) 485–7087.

Office of the Assistant Chief Counsel for the Western-Pacific Region (AWP–7), Western-Pacific Region Headquarters, 15000 Aviation Boulevard, Lawndale, CA 90261; (301) 725–7100.

Issued in Washington, DC on April 9th, 1998.

James S. Dillman,

Assistant Chief Counsel for Litigation.

[FR Doc. 98–10300 Filed 4–17–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent to Rule on Application (98–03–C–00–BGM) to Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Binghamton Regional Airport, Binghamton, NY

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Binghamton Regional Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

DATES: Comments must be received on or before May 20, 1998.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Mr. Philip Brito, Manager, New York Airports District Office, 600 Old County Road, Suite 446, Garden City, New York 11530.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Carl G. Olson Commissioner of Aviation for the Broome County Department of Aviation at the following address: Broome County Department of Aviation, Binghamton Regional Airport/Edwin A. Link Field, Box 16, Johnson City, New York 13790.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the Broome County Department of Aviation under section 158.23 of Part 158.

FOR FURTHER INFORMATION CONTACT: Mr. Philip Brito, Manager, New York Airports District Office, 600 Old County Road, Suite 446, Garden City, New York 11530 (Telephone 516–227–3800). The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Binghamton Regional Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

On March 18, 1998, the FAA determined that the application to impose and use the revenue from a PFC submitted by the Broome County Department of Aviation was substantially complete within the requirements of section 158.25 of Part 158. The FAA will approve or disapprove the application, in whole or in part, no later than June 26, 1998.

The following is a brief overview of the application:

Application number: 98–03–C–00–BGM

Level of the proposed PFC: $3.00

Proposed charge effective date: July 1, 1998

Proposed charge expiration date: December 31, 2001

Total estimated PFC revenue: $1,289,201

Brief description of proposed projects:

Impose & Use Projects

—Rehabilitate and Overlay Runway 10/28

—Purchase Snow Removal Equipment

—Passenger Terminal Refurbishment—Design Phase

Impose Only Projects

—Passenger Terminal Refurbishment—Construction Phase

—Rehabilitate Taxiway

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: Air Taxi/Commercial Operators (ATCO) filing FAA Form 1800–31.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT** and at the FAA regional Airports office located at: Fitzgerald Federal Building, John F. Kennedy International Airport, Jamaica, New York, 11430.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the offices of the Broome County Department of Aviation.

Issued in Jamaica, New York on April 9, 1998.

Thomas Felix,

Manager, Planning & Programming Branch, Eastern Region.

[FR Doc. 98–10304 Filed 4–17–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Cincinnati/Northern Kentucky International Airport, Covington, KY

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Cincinnati/Northern Kentucky International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

DATES: Comments must be received on or before May 20, 1998.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Memphis Airports District Office, 3385 Airways Blvd., Suite #302, Memphis, TN 38116–3841.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Robert F. Holscher, Director of Aviation of the Cincinnati/Northern Kentucky International Airport at the following address: Kenton County Airport Board, Second Floor, Terminal 1, Cincinnati/Northern Kentucky International Airport, 2939 Terminal Drive, Hebron, Kentucky 41048.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the Kenton County Airport Board under section 158.23 of Part 158.

FOR FURTHER INFORMATION CONTACT: Tommy L. Dupree, Memphis Airports District Office, 3385 Airways Blvd., Suite #302, Memphis, TN 38116–3841. (901) 544–3495. The application may be reviewed in person at this location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to: impose and use the revenue from a PFC at Cincinnati/Northern Kentucky International Airport under provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

On April 13, 1998, the FAA determined that the application to impose and use the revenue from a PFC submitted by Kenton County Airport Board was substantially complete within the requirements of section 158.25 of Part 158. The FAA will approve or disapprove the application, in whole or in part, no later than July 29, 1998.

The following is a brief overview of the application.

PFC application number: 98–04–C–00–CVG.

Level of the proposed PFC: $3.00.

Proposed charge effective date: September 1, 1998.

Proposed charge expiration date: June 1, 2000.

Total estimated PFC revenue: $32,911,000.

Brief description of proposed project(s): Impose and Use Construction of Southwest Detention Facility (includes land purchases) for airfield storm water discharge; Construction of Runway 36R Hold Apron and Deicing Recovery System; Construction of Security Perimeter Road on the west side of the airfield; Construction of a new Fixed Base Operator (FBO) Apron, inclusive of a connector taxiway.

Class or classes of air carriers which the public agency has requested not be required to collect PFCs:

1. FAR Part 121 supplemental operators which operate at the Airport without an operating agreement with the Board and enplane less than 1,500 passengers per year.

2. FAR Part 135 on-demand air taxis, both fixed wing and rotary.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT**.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Cincinnati/Northern Kentucky International Airport.

Issued in Memphis, Tennessee, on April 13, 1998.

LaVerne F. Reid,

Manager, Memphis Airports District Office.

[FR Doc. 98–10388 Filed 4–17–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application (98–05–I–00–JAC) To Impose a Passenger Facility Charge (PFC) at the Jackson Hole Airport, Submitted by the Jackson Hole Airport Board, Jackson, WY

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose a PFC at the Jackson Hole Airport under the provisions of 49 U.S.C. 40117 and Part 158 of the Federal Aviation Regulations (14 CFR 158).

DATES: Comments must be received on or before May 20, 1998.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Alan Wiechmann, Manager; Denver Airports District Office, DEN–ADO; Federal Aviation Administration; 26805 E. 68th Avenue, Suite 224; Denver, CO 80249–6361.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. George Larson, Airport Director, at the following address: Jackson Hole Airport Board, P.O. Box 159, Jackson, Wyoming 83001.

Air Carriers and foreign air carriers may submit copies of written comments previously provided to Jackson Hole Airport, under section 158.23 of Part 158.

FOR FURTHER INFORMATION CONTACT: Mr. Christopher Schaffer, (303) 342–1258; Denver Airports District Office, DEN–ADO; Federal Aviation Administration; 26805 E. 68th Avenue, Suite 224; Denver, CO 80249–6361. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application (98–05–I–00–JAC) to impose a PFC at the Jackson Hole Airport, under the provisions of 49 U.S.C. 40117 and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

On April 9, 1998, the FAA determined that the application to impose a PFC submitted by the Jackson Hole Airport Board, Jackson Hole Airport, Jackson, Wyoming, was substantially complete within the requirements of section 158.25 of Part 158. The FAA will approve or

disapprove the application, in whole or in part, no later than July 24, 1998.

The following is a brief overview of the application.

Level of the proposed PFC: $3.00.

Proposed charge effective date: August 1, 1998.

Proposed charge expiration date: January 1, 2003.

Total requested for impose approval: $1,850,000.00.

Brief description of proposed project: Overlay Runway 18/36 and portions of the runway safety areas.

Class or classes of air carriers which the public agency has requested not be required to collect PFC's: None.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT** and at the FAA Regional Airports Office located at: Federal Aviation Administration, Northwest Mountain Region, Airports Division, ANM–600, 1601 Lind Avenue S.W., Suite 540, Renton, WA 98055–4056.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Jackson Hole Airport.

Issued in Renton, Washington on April 9, 1998.

David A. Field,

Manager, Planning, Programming and Capacity Branch, Northwest Mountain Region.

[FR Doc. 98–10305 Filed 4–17–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket No. RSAC–96–1, Notice No. 10]

Railroad Safety Advisory Committee; Notice of Meeting

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Notice of Railroad Safety Advisory Committee (''RSAC'') meeting.

SUMMARY: FRA announces the next meeting of the RSAC, a Federal Advisory Committee that develops railroad safety regulations through a consensus process. The meeting will address a wide range of topics, including possible adoption of specific recommendations for regulatory action.

DATES: The meeting of the RSAC is scheduled to commence at 9:30 a.m. and conclude at 4:00 p.m. on Thursday, May 14, 1998.

ADDRESSES: The meeting of the RSAC will be held at the Washington Dulles Airport Hilton, 13869 Park Center Road, Herndon, Virginia. The meeting is open to the public on a first-come, first-served basis and is accessible to individuals with disabilities. Sign language interpreters will be available for individuals with hearing impediments.

FOR FURTHER INFORMATION CONTACT: Vicky McCully, RSAC Coordinator, FRA, 400 7th Street, SW., Washington, DC 20590, (202) 632–3330, Grady Cothen, Deputy Associate Administrator for Safety Standards and Program Development, FRA, 400 7th Street, SW., Washington, DC 20590, (202) 632–3309, or Lisa Levine, Office of Chief Counsel, FRA, 400 7th Street, SW., Washington, DC 20590, (202) 632–3189.

SUPPLEMENTARY INFORMATION. Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), FRA is giving notice of a meeting of the Railroad Safety Advisory Committee (''RSAC''). The meeting is scheduled to begin at 9:30 a.m. and conclude at 4:00 p.m. on Thursday, May 14, 1998. The meeting will be held at the Washington Dulles Airport Hilton, 13869 Park Center Road, Herndon, Virginia. All times noted are Eastern Standard Time.

RSAC was established to provide advice and recommendations to the FRA on railroad safety matters. The Committee consists of 48 individual representatives, drawn from among 27 organizations representing various rail industry perspectives, and advisory representatives from the agencies with railroad safety regulatory responsibility in Canada and Mexico. Staff of the National Transportation Safety Board and Federal Transit Administration also participate in an advisory capacity.

During this meeting, the RSAC will receive status reports from the Locomotive Crashworthiness Working Group, the Locomotive Cab Working Conditions Working Group, the Event Recorder Working Group, and the Positive Train Control (PTC) Working Group. It is anticipated that the RSAC will be asked to vote on recommending issuance of the Locomotive Engineer Certification Working Group's proposed NPRM revising the Qualification and Certification of Locomotive Engineer Regulations.

Please refer to the notice published in the **Federal Register** on March 11, 1996 (61 FR 9740) for more information about the RSAC.

Issued in Washington, DC, on April 15, 1998.

Grady C. Cothen, Jr.,

Deputy Associate Administrator for Safety Standards and Program Development.

[FR Doc. 98–10343 Filed 4–17–98; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

[Notice No. 98–4]

Hazardous Materials Transportation; Registration and Fee Assessment Program

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Notice of filing requirements.

SUMMARY: The Hazardous Materials Registration Program will enter registration year 1998–99 on July 1, 1998. Persons who transport or offer for transportation certain hazardous materials are required to annually file a registration statement and pay a fee to the Department of Transportation. Persons who registered for the 1997–98 registration year will be mailed a registration statement form and informational brochure in May.

FOR FURTHER INFORMATION CONTACT: David W. Donaldson, Office of Hazardous Materials Planning and Analysis, DHM–60 (202–366–4109), Hazardous Materials Safety, 400 Seventh Street S.W., Washington, DC 20590–0001, or by E-mail to REGISTER@rspa.dot.gov.

SUPPLEMENTARY INFORMATION: This notice is intended to notify persons who transport or offer for transportation certain hazardous materials of an annual requirement to register with the Department of Transportation. Each person, as defined by the Federal hazardous materials transportation law (49 U.S.C. 5101 *et seq.*), who engages in any of the specified activities relating to the transportation of hazardous materials is required to register annually with the Department of Transportation and pay a fee. The regulations implementing this program are in Title 49, Code of Federal Regulations, Sections 107.601–107.620.

Proceeds from the fee are used to fund grants to State, local, and Native American tribal governments for emergency response training and planning. Grants were awarded to 49 states, the District of Columbia, five territories, and 17 Native American tribes during FY 1997. By law, 75 percent of the Federal grant monies

awarded to the States is further distributed to local emergency response and planning agencies. The FY 1996 funds helped to provide: (1) Training for 120,000 emergency response personnel; (2) approximately 520 commodity flow studies and hazard analyses; (3) 5,650 emergency response plans updated or written for the first time; (4) assistance to 1,850 local emergency planning committees; and (5) 800 emergency exercises.

The persons affected by these regulations are those who offer or transport in commerce any of the following materials:

A. Any highway route-controlled quantity of a Class 7 (radioactive) material;

B. More than 25 kilograms (55 pounds) of a Division 1.1, 1.2, or 1.3 (explosive) material in a motor vehicle, rail car, or freight container;

C. More than one liter (1.06 quarts) per package of a material extremely toxic by inhalation (that is, a ''material poisonous by inhalation'' that meets the criteria for ''hazard zone A'');

D. A hazardous material in a bulk packaging having a capacity equal to or greater than 13,248 liters (3,500 gallons) for liquids or gases or more than 13.24 cubic meters (468 cubic feet) for solids; or

E. A shipment, in other than a bulk packaging, of 2,268 kilograms (5,000 pounds) gross weight or more of a class of hazardous materials for which placarding of a vehicle, rail car, or freight container is required for that class.

The following persons are excepted from the registration requirement:

A. Agencies of the Federal Government;

B. Agencies of States;

C. Agencies of political subdivisions of States;

D. Employees of those agencies listed in A, B, or C with respect to their official duties;

E. Hazmat employees, including the owner-operator of a motor vehicle which transports in commerce hazardous materials if that vehicle, at the time of those activities, is leased to a registered motor carrier under a 30-day or longer lease as prescribed in 49 CFR Part 1057 or an equivalent contractual relationship; and

F. Persons domiciled outside the United States who offer, solely from locations outside the United States, hazardous materials for transportation in commerce, if the country in which they are domiciled does not impose registration or a fee upon U.S. companies for offering hazardous materials into that country. However, persons domiciled outside the United States who carry the types and quantities of hazardous materials that require registration within the United States are subject to the registration requirement.

The 1997–98 registration year ends on June 30, 1998. The 1998–99 registration year will begin on July 1, 1998, and end on June 30, 1999. Any person who engages in any of the specified activities during the 1998–99 registration year must file a registration statement and pay the associated fee of $300.00 before July 1, 1998, or before engaging in any of the activities, whichever is later. All persons who registered for the 1997–98 registration year will be mailed a registration statement form and an informational brochure in May 1998. Other persons wishing to obtain the form and any other information relating to this program should contact RSPA at the address given above. The brochure and form can also be downloaded from the RSPA registration Internet home page at http://hazmat.dot.gov/register.htm.

The registration statement has not been revised for the 1998–99 registration year. Registrants should file a registration statement and pay the associated fee at least four weeks before July 1, 1998, in order to ensure that a 1998–99 certificate of registration has been obtained by that date to comply with the recordkeeping requirements. These include the requirement that the registration number be made available on board each truck and truck tractor (not including trailers and semi-trailers) and each vessel used to transport hazardous materials subject to the registration requirements. A certificate of registration is generally mailed within ten days of RSPA's receipt of a properly completed registration statement.

Persons who engage in any of the specified activities during a registration year are required to register for that year. Persons who engaged in these activities during registration year 1992–93 (September 16, 1992, through June 30, 1993), 1993–94 (July 1, 1993, through June 30, 1994), 1994–95 (July 1, 1994, through June 30, 1995), 1995–96 (July 1, 1995, through June 30, 1996), 1996–97 (July 1, 1996, through June 30, 1997), or 1997–98 (July 1, 1997, through June 30, 1998) and have not filed a registration statement and paid the associated fee of $300.00 for each year for which registration is required should contact RSPA to obtain the required form (DOT F 5800.2). A copy of the form that will be distributed for the 1998–99 registration year may be used to register for previous years. Persons who fail to register for any registration year in which they engaged in such activities are subject to civil penalties for each day a covered activity is performed. The legal obligation to register for a year in which any specified activity was conducted does not end with the registration year.

Issued in Washington, DC, on April 14, 1998.

Alan I. Roberts,

Associate Administrator for Hazardous Materials Safety.

[FR Doc. 98–10384 Filed 4–17–98; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

Office of Hazardous Materials Safety; Notice of Delays in Processing of Exemption Applications

AGENCY: Research and Special Programs Administration, DOT.

ACTION: List of Applications Delayed more than 180 days.

SUMMARY: In accordance with the requirements of 49 U.S.C. 5117(c), RSPA is publishing the following list of exemption applications that have been in process for 180 days or more. The reason(s) for delay and the expected completion date for action on each application is provided in association with each identified application.

FOR FURTHER INFORMATION CONTACT: J. Suzanne Hedgepeth, Director, Office of Hazardous Materials, Exemptions and Approvals, Research and Special Programs Administration, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590–0001, (202) 366–4535.

Key to ''Reasons for Delay''

1. Awaiting additional information from applicant
2. Extensive public comment under review
3. Application is technically very complex and is of significant impact or precedent-setting and requires extensive analysis
4. Staff review delayed by other priority issues or volume of exemption applications

Meaning of Application Number Suffixes

N—New application
M—Modification request
PM—Party to application with modification request

Issued in Washington, DC, on April 23, 1998.

J. Suzanne Hedgepeth,

Director, Office of Hazardous Materials Exemptions and Approvals.

NEW EXEMPTION APPLICATIONS

Application No.	Applicant	Reason for delay	Estimated date of completion
11581–N	Luxfer UK Limited, Nottingham, England	4	05/29/1998
11232–N	State of Alaska Department of Transportation, Juneau, AK	4	05/29/1998
11511–N	Brenner Tank Inc., Fond du Lac, WI	4	05/29/1998
11523–N	Bio-Lab, Inc., Conyers, GA	4	05/29/1998
11537–N	Babson Bros. Co., Romeoville, IL	4	05/29/1998
11540–N	Convenience Products, Fenton, MO	1	05/29/1998
11591–N	Clearwater Distributors, Inc., Woodridge, NY	4	05/29/1998
11646–N	Barton Solvents Inc., Des Moines, IO	4	05/29/1998
11682–N	Cryolor, Argancy, 57365 Ennery—France	4	05/29/1998
11687–N	Tri Tank Corp., Syracuse, NY	4	05/29/1998
11699–N	GEO Specialty Chemicals, Bastrop, LA	4	05/29/1998
11722–N	Citergaz S.A., 86400 Civray, FR	1	05/29/1998
11735–N	R.D. Offutt Co., Park Rapids, MN	4	05/29/1998
11751–N	Delta Resigns & Refractories, Detroit, MI	4	05/29/1998
11759–N	E.I. DuPont de Nemours & Co., Inc., Wilmington, DE	4	05/29/1998
11761–N	Vulcan Chemicals, Birmingham, AL	4	05/29/1998
11762–N	Owens Fabricators, Inc., Baton Rouge, LA	4	05/29/1998
11765–N	Laidlaw Environmental Services Inc., Columbia, SC	4	05/29/1998
11767–N	Ausimont USA, Inc., Thorofare, NJ	4	06/30/1998
11772–N	Kleespie Tank & Petroleum Equipment, Morris, MN	4	06/30/1998
11774–N	Safety Disposal System, Inc., Opa Locka, FL	1	06/30/1998
11782–N	Aeronex, Inc., San Diego, CA	4	06/30/1998
11783–N	Peoples Natural Gas, Rosemount, MN	4	06/30/1998
11798–N	Air Products & Chemicals, Inc., Allentown, PA	4	06/30/1998
11809–N	Laidlaw Environmental Services, Inc., Columbia, SC	4	06/30/1998
11815–N	Union Pacific Railroad Co., et al., Omaha, NE	4	06/30/1998
11817–N	FIBA Technologies, Inc., Westboro, MA	4	06/30/1998
11821–N	Wyoming Department of Transportation, Cheyenne, WY	4	06/30/1998
11841–N	Stepan Co., Northfield, IL	4	06/30/1998
11862–N	The BOC Group, Murray Hill, NJ	4	06/30/1998
11863–N	Carrier Corp./d/b/a United Technologies Carrier, Syracuse, NY	4	06/30/1998
11882–N	FMC Corporation, Philadelphia, PA	4	06/30/1998
11883–N	Brownie Tank Mfg. Co., Minneapolis, MN	4	06/30/1998
11884–N	Degussa Corp., Ridgefield Park, NJ	4	06/30/1998
11894–N	Quicksilver Fiberglass Manufacturing Ltd., Strome, Alberta, CN	4	06/30/1998
11899–N	Carleton Technologies Inc., Orchard Park, NY	4	07/31/1998
11911–N	Transfer Flow, Inc., Chico, CA	4	07/31/1998
11915–N	Lockheed Martin Aeronautical Systems, Marietta, GA	4	07/31/1998
11916–N	CP Industries, Inc., McKeesport, PA	4	04/15/1998
11918–N	E.I. DuPont de Nemours & Co., Inc., Wilmington, DE	4	07/31/1998
11923–N	Hoover Materials Handling Group	4	07/31/1998
11927–N	Alaska Marine Lines, Seattle, WA	4	07/31/1998
11934–N	UtiliCorp United, Inc., Omaha, NE	4	07/31/1998
11938–N	Steel Shipping Container Institute, Washington, DC	4	07/31/1998
11941–N	Oxychem, Deer Park, TX	4	08/31/1998
11944–N	Core Laboratories, Inc., Carrollton, TX	4	08/31/1998
11947–N	Patts Fabrication & Services, Odessa, TX	4	08/31/1998
11954–N	Republic Environmental Systems (PA), Inc., Hatfield, PA	4	08/31/1998
11965–N	J.R. Simplot Company, Edison, CA	4	08/31/1998
11966–N	FMC Corporation, Philadelphia, PA	4	08/31/1998
11967–N	Savage Industries Inc., Norristown, PA	4	08/31/1998
11968–N	Air Liquide America Corp., Houston, TX	4	08/31/1998
11970–N	Exxon Chemical, Inc., Baytown, TX	4	08/31/1998
11971–N	Regional Airline Assoc., Washington, DC	4, 4	08/31/1998
4354–M	PPG Industries, Inc., Pittsburgh, PA	1	05/29/1998
4661–M	Cyprus Foote Mineral Co., Kings Mountain, NC	4	05/29/1998
6610–M	ARCO Chemical Co., Newtown Square, PA	4	05/29/1998
7026–M	Walter Kidde Aerospace, Wilson, NC	4	05/29/1998
7879–M	Halliburton Energy Services, Duncan, OK	4	05/29/1998
8556–M	Air Products & Chemicals, Inc., Allentown, PA	4	05/29/1998
9064–M	Propack, Inc., Essington, PA	4	05/29/1998
9266–M	ERMEWA, Inc., Houston, TX	4	05/29/1998
9706–M	Taylor-Wharton, Harrisburg, PA	4	06/30/1998
9819–M	Halliburton Energy Services, Duncan, OK	4	06/30/1998
10138–M	BetzDearborn Inc., Trevose, PA	4	06/30/1998
10365–M	U.S. Enrichment Corporation, Bethesda, MD	4	06/30/1998
10429–M	Baker Performance Chemicals, Inc., Houston, TX	4	06/30/1998
10677–M	Primus AB, S–71 26 Solna, SW	4	06/30/1998
11005–M	Carleton Technologies Inc., Glen Burnie, MD	4	06/30/1998
11058–M	Spex Certiprep Inc., Metuchen, NJ	4	06/30/1998

NEW EXEMPTION APPLICATIONS—Continued

Application No.	Applicant	Reason for delay	Estimated date of completion
11167–M	Eco-Pak Specialty Packaging, Elizabethton, TN	4	06/30/1998
11254–M	Schlumberger Oilfield Services, Sugar Land, TX	4	07/31/1998
11344–M	E.I. DuPont, Wilmington, DE	4	07/31/1998
11378–M	Astrotech Space Operations, Inc., Titusville, FL	4	07/30/1998
11506–M	OEA, Inc., Denver, CO	4	07/30/1998
11516–M	Falcon Safety Products, Sommerville, NJ	4	07/30/1998
11952–M	Department of Defense, Falls Church, VA	4	07/30/1998

[FR Doc. 98–10271 Filed 4–17–98; 8:45 am]
BILLING CODE 4910–60–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection: Comment Request for Regulation Project; Regulations Under Tax Conventions—Ireland

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing regulation, Regulations Under Tax Conventions—Ireland (26 CFR Part 513).

DATES: Written comments should be received on or before June 19, 1998 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the income tax treaty should be directed to Carol Savage, (202) 622–3945, Internal Revenue Service, room 5569, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Regulations Under Tax Conventions—Ireland.

OMB Number: 1545–0834.

Abstract: The information required by these regulations is needed to allow taxpayers to receive benefits under the tax treaty, and to allow withholding agents to permit those benefits to be immediately realized by the taxpayers. The information is used by the Internal Revenue Service to determine if the treaty benefits are being used properly, to aid in determining whether income is being reported accurately, and to prevent evasion of income taxes.

Current Actions: These regulations were amended by TD 8734, 62 FR 53497 and 53498. The amendments result in a burden reduction because the letters of notification formerly required by §§ 513.3(b)(5), 513.4(c), and 513.5(c) are no longer required under the amendments. However, letters of notification are still required by § 513.6(b).

Type of Review: Revision of a currently approved collection.

Affected Public: Individuals or households, and business or other for-profit organizations.

Estimated Number of Respondents: 20.

Estimated Time Per Respondent: 15 minutes.

Estimated Total Annual Burden Hours: 5.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: April 14, 1998.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 98–10376 Filed 4–17–98; 8:45 am]
BILLING CODE 4830–01–U

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[Regulation Section 31.6001]

Proposed Collection; Comment Request For Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

Currently, the IRS is soliciting comments concerning existing regulations 26 CFR 31.6001–1, Records in general; 26 CFR 31.6001–2, Additional Records under FICA; 26 CFR 31.6001–3, Additional records under Railroad Retirement Tax Act; 26 CFR 31.6001–5, Additional records in

connection with collection of income tax at source on wages; 26 CFR 31.6001–6, Notice by District Director requiring returns, statements, or the keeping of records.

DATES: Written comments should be received on or before June 19, 1998 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection should be directed to Carol Savage, (202) 622–3945, Internal Revenue Service, room 5569, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: 26 CFR 31.6001–1, Records in general; 26 CFR 31.6001–2, Additional Records under FICA; 26 CFR 31.6001–3, Additional records under Railroad Retirement Tax Act; 26 CFR 31.6001–5, Additional records in connection with collection of income tax at source on wages; 26 CFR 31.6001–6, Notice by District Director requiring returns, statements, or the keeping of records.

OMB Number: 1545–0798.

Abstract: Internal Revenue Code section 6001 requires, in part, that every person liable for tax, or for the collection of that tax must keep such records and comply with such rules and regulations as the Secretary may from time to time prescribe. The recordkeeping requirements under 26 CFR 31.6001 have special application to employment taxes (and to employers) and are needed to ensure proper compliance with the Code. Upon examination, the records are needed by the taxpayer to establish the employment tax liability claimed on any tax return.

Current Actions: There is no change to these existing regulations.

Type of Review: Extension of OMB approval.

Affected Public: Individuals or households, business or other for-profit organizations, not-for-profit institutions, farms, and Federal, state, local or tribal governments.

Estimated Number of Recordkeepers: 5,676,263.

Estimated Time Per Recordkeeper: 5 hours, 20 minutes.

Estimated Total Annual Recordkeeping Hours: 30,273,950.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record.

Comments are invited on: (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: April 14, 1998

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 98–10377 Filed 4–17–98; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 8279

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 8279, Election To Be Treated as a FSC or as a Small FSC.

DATES: Written comments should be received on or before June 19, 1998, to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Martha R. Brinson, (202) 622–3869, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Election To Be Treated as a FSC or as a Small FSC.

OMB Number: 1545–0884

Form Number: 8279

Abstract: A foreign corporation and its shareholders must elect to be a Foreign Sales Corporation (FSC) or small FSC. Form 8279 is used to make the election. Form 8279 provides the IRS with the necessary information to determine that the foreign corporation qualifies to be a FSC, the number and types of shareholders, and the tax year of the FSC and its principal shareholder.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 5,000.

Estimated Time Per Respondent: 7 hr., 52 min.

Estimated Total Annual Burden Hours: 39,350.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

REQUEST FOR COMMENTS: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: April 10, 1998.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 98–10378 Filed 4–17–98; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 8809

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 8809, Request for Extension of Time To File Information Returns.

DATES: Written comments should be received on or before June 19, 1998, to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Martha R. Brinson, (202) 622–3869, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Request for Extension of Time To File Information Returns.

OMB Number: 1545–1081

Form Number: 8809

Abstract: Form 8809 is used to request an extension of time to file Forms W–2, W–2G, 1042–S, 1098, 1099, 5498, or 8027. The IRS reviews the information contained on the form to determine whether an extension should be granted.

Current Actions:

Two checkboxes are being added to Line 8 of Form 8809 to accommodate the new Forms 1098–E and 1098–T. Forms 1098–E and 1098–T were developed to implement sections 202 and 201, respectively, of the Taxpayer Relief Act of 1997.

Type of Review: Revision of a currently approved collection.

Affected Public: Business or other for-profit organizations, individuals, not-for-profit institutions, farms, and federal, state, local or tribal governments.

Estimated Number of Respondents: 50,000

Estimated Time Per Respondent: 2 hr., 40 min.

Estimated Total Annual Burden Hours: 133,000

The following paragraph applies to all of the collections of information covered by this notice:

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

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

REQUEST FOR COMMENTS: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: April 9, 1998.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 98–10379 Filed 4–17–98; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 8819

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

Currently, the IRS is soliciting comments concerning Form 8819, Dollar Election Under Section 985.

DATES: Written comments should be received on or before June 19, 1998, to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Martha R. Brinson, (202) 622–3869, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Dollar Election Under Section 985.

OMB Number: 1545–1189.

Form Number: 8819.

Abstract: Form 8819 is filed by U.S. and foreign businesses to elect the U.S. dollar as their functional currency or as the functional currency of their controlled entities. The IRS uses Form 8819 to determine if the election is properly made.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 1,500.

Estimated Time Per Respondent: 5 hr., 33 min.

Estimated Total Annual Burden Hours: 8,325.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

REQUEST FOR COMMENTS: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: April 10, 1998.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 98–10380 Filed 4–17–98; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Request for Information on Impact to Discontinue Use of Bisynchronous Communications for E-filing

AGENCY: Internal Revenue Service (IRS), Treasury.

SUMMARY: This announcement is requesting that current transmitters of electronically filed returns send to the Internal Revenue Service their comments on the impact of switching from bisynchronous communications to asynchronous or other file transfer protocols by the year 2000. Please submit your comments in writing to Carolyn E. N. Davis by May 15, 1998.

ADDRESSES: Questions or concerns should be directed to Carolyn E. N. Davis at IRS, Electronic Tax Administration, T:ETA:E:P, 5000 Ellin Road C4–187, Lanham, MD 20706 or via email at carolyn.e.davis@ccmail.irs.gov.

Approved:

Steve Holden,

National Director, Electronic Program Enhancement Office, Electronic Tax Administration.

[FR Doc. 98–10375 Filed 4–17–98; 8:45 am]

BILLING CODE 4830–01–U

Corrections

Federal Register
Vol. 63, No. 75
Monday, April 20, 1998

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Parts 10 and 12

[USCG–97–2799]

RIN 2115–AF49

User Fees for Licenses, Certificates of Registry, and Merchant Mariner Documents

Correction

In proposed rule document 98–8409, beginning on page 16024, in the issue of Wednesday, April 1, 1998, make the following correction:

On page 16029, in Table 10.109—FEES, in the fourth column, in the first entry, ''$5'' should read ''$45''.

BILLING CODE 1505-01-D

federal register

Monday
April 20, 1998

Part II

Environmental Protection Agency

40 CFR Part 63

National Emission Standards for Hazardous Air Pollutants for Source Categories: National Emission Standards for Primary Copper Smelters; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[IL–64–2–5807; FRL–5997–7]

RIN 2060–AE41

National Emission Standards for Hazardous Air Pollutants for Source Categories: National Emission Standards for Primary Copper Smelters

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule and notice of public hearing.

SUMMARY: This action proposes national emission standards for hazardous air pollutants (NESHAP) for new and existing primary copper smelters under section 112 of the Clean Air Act (Act), as amended in November 1990. Primary copper smelters can potentially emit significant amounts of certain toxic metals that have been identified in the Act as hazardous air pollutants (HAP). Overall, the HAP emitted in the largest quantities from primary copper smelters are arsenic compounds and lead compounds. Chronic exposure to arsenic is associated with human cancers of the skin, bladder, liver and lungs and can cause other developmental and reproductive effects. Exposure to lead compounds results in adverse effects on the blood, central nervous system, and kidneys. The proposed NESHAP would require use of air emission controls to reduce HAP emissions from primary copper smelters that produce anode copper using flash smelting furnaces integrated with batch copper converters. The EPA estimates that the proposed NESHAP would reduce annual nationwide HAP emissions from the source category by approximately 20 percent or 34 megagrams per year (37.5 tons per year). The NESHAP provides protection to the public by requiring the affected primary copper smelters to meet emission standards that reflect the application of maximum achievable control technology (MACT).

DATES: *Comments.* The EPA will accept comments regarding this proposed NESHAP on or before June 19, 1998.

Public Hearing. If anyone contacts the EPA requesting to speak at a public hearing May 11, 1998 a public hearing will be held May 20, 1998 beginning at 10:00 a.m. For more information, see section IX.B of **SUPPLEMENTARY INFORMATION**.

ADDRESSES: *Comments:* Written comments (in duplicate, if possible) should be submitted to Docket No. A–96–22 at the following address: U.S. Environmental Protection Agency, Air and Radiation Docket and Information Center (6102), 401 M Street, SW., Washington, DC 20460. The EPA requests that a separate copy of the comments also be sent to the contact person listed below. The docket is located at the above address in Room M–1500, Waterside Mall (ground floor).

A copy of today's notice and other materials related to this rulemaking are available for review in the docket. Copies of this information may be obtained by request from the Air Docket by calling (202) 260–7548. A reasonable fee may be charged for copying the docket materials.

Public Hearing. If anyone contacts the EPA requesting a public hearing by the required dates (see **DATES**), the public hearing will be held at the EPA Office of Administration Auditorium, Research Triangle Park, NC. Persons inquiring as to whether a hearing is to be held should call the contact person listed below.

FOR FURTHER INFORMATION CONTACT: Mr. Eugene Crumpler, Metals Group, Emission Standards Division (MD–13), U.S. Environmental Protection Agency, Research Triangle Park, NC, 27711, telephone number (919) 541–0881, facsimile number (919) 541–5600, electronic mail address ''crumpler.gene@epamail.epa.gov.''.

SUPPLEMENTARY INFORMATION:

Regulated Entities

Entities potentially regulated by this action are primary copper smelters (SIC 3339). No federal government entities nor State/local/tribal government entities would be regulated by final action on this proposal.

This description of the regulated entities is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by final action on this proposal. This description identifies the types of entities that the EPA is now aware could potentially be regulated by final action on this proposal. To determine whether your facility is regulated by final action on this proposal, you should carefully examine the applicability criteria in section V.A of this document, and in § 63.1440 of the proposed rule. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

Technology Transfer Network

The text of today's notice is also available on the Technology Transfer Network (TTN), one of EPA's electronic bulletin boards. The TTN provides information and technology exchange in various areas of air pollution control. The service is free, except for the cost of a phone call. Dial (919) 541–5742 for up to a 14,400 BPS modem. The TTN also is accessible through the Internet at ''TELNET ttnbbs.rtpnc.epa.gov.'' If more information on the TTN is needed, call the HELP line at (919) 541–5348. The HELP desk is staffed Monday through Friday from 11 a.m. to 5 p.m.; a voice menu system is available at other times.

Electronic Access and Filing Addresses

The official record for this rulemaking, as well as the public version, has been established under Docket No. A–96–22 (including comments and data submitted electronically). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as confidential business information (CBI), is available for inspection from 8 a.m. to 5:30 p.m. Monday through Friday, excluding legal holidays. The official rulemaking record is located at the address in **ADDRESSES** at the beginning of this document.

Electronic comments can be sent directly to EPA's Air and Radiation Docket and Information Center at: ''A-and-R-Docket@epamail.epa.gov.'' Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on disks in WordPerfect in 5.1 file format or ASCII file format. All comments and data in electronic form must be identified by the docket number (A–96–22). No CBI should be submitted through electronic mail. Electronic comments on this proposed rule may be filed online at many Federal Depository Libraries.

Outline

The information in this notice is organized as follows.

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II. Initial List of Categories of Major and Area Sources
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  A. ''Primary Copper Smelting'' Source Category Description
  B. HAP Emissions
  1. Process HAP Emissions
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  4. Existing Air Emission Controls
  C. Relationship to Other Air Rules
IV. NESHAP Decision Process
  A. Source of Authority for NESHAP Development
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V. Summary of the Proposed Standards
A. Applicability
B. Sources To Be Regulated
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1. Copper Concentrate Dryers
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4. Batch Copper Converters
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D. Compliance and Maintenance Requirements
1. Compliance Dates
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VII. Rationale for Selection of Proposed Standards
A. Selection of Pollutants
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2. Selection of Standards for Copper Concentrate Dryers
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VIII. Public Participation
IX. Administrative Requirements
A. Docket
B. Public Hearing
C. ''Significant Regulatory Action'' Determination Under Executive Order 12866
D. Enhancing the Intergovernmental Partnership Under Executive Order 12875
E. Clean Air Act
F. Paperwork Reduction Act
G. Pollution Prevention Act
H. Regulatory Flexibility
I. Unfunded Mandates Reform Act

I. Statutory Authority

The statutory authority for this proposal is provided by sections 101, 112, 114, 116, and 301 of the Clean Air Act, as amended (42 U.S.C. 7401, 7412, 7414, 7416, and 7601).

II. Initial List of Categories of Major and Area Sources

Section 112 of the Clean Air Act (Act) directs the EPA to establish national standards to control hazardous air pollutant (HAP) emissions from major and area sources, as defined in the Act. Control of HAP emissions is achieved by promulgating for specific source categories emission standards (under sections 112(d) and 112(f)) or operational and work practice standards (under section 112(h)).

The initial list of the source categories selected by the EPA for regulation under section 112 of the Act was published on July 16, 1992 (57 FR 31576). The EPA published an updated list of source categories (61 FR 28202, June 4, 1996) to reflect source category listing revisions that the EPA has made since the initial list was published. ''Primary Copper Smelting'' is one of the approximately 170 categories of sources listed.

The ''Primary Copper Smelting'' source category consists of facilities that produce anode copper by first flash smelting of copper ore concentrates to obtain molten copper matte and then directly convert the molten matte to blister copper using a batch copper converting process. Batch copper converting is characterized by the use of Pierce-Smith or Hoboken design copper converters to produce blister copper from molten copper matte in discrete batches using a sequence of charging, blowing, skimming, and pouring steps.

The origin of the HAP emissions from the ''Primary Copper Smelting'' source category is metallic compound impurities (e.g., compounds containing arsenic, lead, or other types of heavy metals) that naturally occur in the copper ore deposits. The listing of the ''Primary Copper Smelting'' source category is based on the Administrator's determination that existing and new individual facilities comprising this source category may reasonably be anticipated to emit these HAP in sufficient quantity to be designated a major source as defined under the Act. Information subsequently collected by the EPA as part of this rulemaking confirms that existing and new facilities in the ''Primary Copper Smelting'' source category do emit or have the potential to emit at levels greater than 10 tons per year (tpy) of an individual HAP or more than 25 tpy of total HAP and therefore are major sources. The primary source of these emissions are process fugitive emissions from the batch copper converting process. A detailed process description for the ''Primary Copper Smelting'' source category and the associated HAP emissions is presented in sections III.A and III.B to this preamble.

Since the listing of the ''Primary Copper Smelting'' source category, a new smelter operated by Kennecott Copper, in Garfield, Utah, has been constructed. This smelter employs a new continuous flash converting technology that is considerably different from the conventional batch converting process used at the smelters which form the basis for the listing of the ''Primary Copper Smelting'' source category. The design and operation of the continuous flash converting process eliminates many of the potential air pollutant emission sources associated with batch copper converting. As a result, the smelter does not emit HAP at major source levels and is therefore an area source.

III. Background

A. ''Primary Copper Smelting'' Source Category Description

The ''Primary Copper Smelting'' source category is comprised of a total of six existing facilities nationwide. Each of these facilities produces anode copper from copper ore concentrates using flash smelting integrated with batch copper converting. All of the primary copper smelters are owned and operated by major corporations (two companies each own and operate two smelters). Each smelter is located in relatively close proximity to the copper mines supplying the copper ore concentrate processed at the individual smelter. Three smelters are located in southeastern Arizona. Two smelters are located in southwestern New Mexico. One smelter is located in El Paso, Texas.

Copper ore deposits typically contain less than 1 percent copper. Once the ore is extracted from the ground, the ore is beneficated at the mine site to produce a processed form of copper ore with a higher copper content. Concentration of the ore is accomplished by crushing, grinding, and flotation purification to obtain a processed ore concentrate (referred to hereafter as ''copper concentrate'') typically having a concentration of 15 to 25 percent copper, 25 to 30 percent sulfur, 25 percent iron, 10 to 15 percent water, and small amounts of other metals. The type and quantity of these metals in the

copper concentrate vary depending on the source of the ore, and can include arsenic, antimony, bismuth, cadmium, lead, selenium, magnesium, aluminum, cobalt, tin, nickel, tellurium, silver, gold and palladium. The copper concentrate is shipped to the primary copper smelter by trucks, rail cars, and, in some cases, slurry pipelines.

All domestic primary copper smelters operate flash smelting furnaces. Once the copper concentrate is received at the smelter, the copper concentrate must be further processed before feeding it to the flash smelting furnace. Each smelter operates a combination of crushers and mills to obtain the proper size material for feeding to the smelting furnace. The copper concentrate is mixed with fluxes (materials that facilitate formation of slag containing iron oxides and other impurities). At most existing smelters, the moisture content of the copper concentrate is reduced by passing the copper concentrate through either a fluidized-bed dryer or rotary dryer. One existing smelter currently is able to feed its copper concentrate directly to the smelting furnace without prior drying.

The prepared copper concentrate and finely ground fluxes are injected together with oxygen and preheated air into the furnace which is maintained at approximately 1,000°C (1,830°F). The furnace uses the heat generated from the partial oxidation of the sulfide content in the copper concentrate to provide most, if not all of the energy required for the smelting process. Supplemental heat is supplied, as needed, using oil-fired or gas-fired burners to maintain the required smelting temperature. The resulting molten material collects in a bath at the bottom of the furnace. This molten bath separates into two layers. The lighter density material layer is called ''slag'' and contains iron silicates and other impurities. The heavier density material layer is called ''copper matte'' and contains up to 65 percent copper in the form of copper sulfide. The off-gases exhausted from the furnace contain concentrated sulfur dioxide (SO_2). These off-gases are treated in a contact sulfuric acid plant to remove 98 to 99 percent or more of the SO_2 in the gases before being vented to the smelter main stack.

The molten copper matte and slag are removed from the flash smelting furnace through tapholes along the side of the furnace. Separate tapholes are used to remove the copper matte and the slag. The molten material released through a taphole empties into a heated trough (called a ''launder''). The molten copper matte flows down the launders into large ladles for transfer to the batch copper converters. The molten slag from the furnace either is directly disposed by transferring it in slag pots to an on-site slag pile or, at some smelters, processed further before final disposal to increase the copper yield.

At two of the existing smelters, molten slag from the flash furnace can be transferred to a second furnace (referred to hereafter as a ''slag cleaning vessel''). In the slag cleaning vessel, the slag from the flash furnace is treated with coke or iron sulfide. Residual copper in the slag is converted to form a copper sulfide layer which is tapped and transferred to the batch copper converters. The slag is tapped and discarded. Off-gases from the slag cleaning vessel contain low concentrations of SO_2 and are typically vented to a separate wet scrubber control device.

Converting is an oxidation process that removes most of the sulfur, iron, and other impurities in the copper matte to produce blister copper (a 96 to 99 percent pure copper). Batch copper converting is performed using large refractory-lined cylindrical steel vessels mounted on trunnions at either end. A large circular opening on the vessel body (the ''converter mouth'') provides access for adding or removing molten materials and also allows gaseous by-products to escape from the converter. A drive mechanism is used to rotate the position of the converter mouth for charging materials to the converter and pouring molten materials from the converter.

Batch copper converting produces blister copper in an 8-to-12 hour batch cycle using three to five converters aligned in a row inside the converter building. Operation of the converters is staggered such that, at any given time, not all of the converters are being used for blister copper production, and those that are ''on-line'' are operating in different stages of the copper converting cycle. The batch copper converting cycle follows a sequence of steps involving charging of molten matte to the converter, blowing oxygen through the molten bath, skimming off slag, and finally pouring the blister copper at the end of the cycle. Material is added to or removed from each converter using large ladles which are positioned and transported using a traveling overhead crane. Off-gases from each converter are vented during blowing to a common ventilation system for routing to the sulfuric acid plant.

A converter batch cycle begins by charging an empty converter with molten matte tapped from the flash smelting furnace. Air or oxygen-enriched air is then blown into the molten matte through a series of pipes (called ''tuyeres'') on the side of the converter. The iron sulfide in the matte is preferentially oxidized to form iron oxides and SO_2. The SO_2 is exhausted from the converter in the off-gases vented to the sulfuric acid plant operated at the smelter site. Flux is added to combine with the iron oxide and forms a top layer of iron silicate slag on the molten bath in the converter. The resulting slag layer is removed from the molten bath by discontinuing blowing and then rotating the converter mouth down to skim off the slag. The blowing and slag skimming steps are repeated until an adequate amount of relatively pure copper sulfide (called ''white metal'') accumulates in the converter. A final blow oxidizes the copper sulfide to SO_2, and blister copper forms. At this time, the blister copper is poured from the converter for transfer to the copper refining operations. The converter is then available to begin a new batch cycle.

Two different batch copper converter designs are used in the United States. Five smelters use the Pierce-Smith converter design. An alternative to the Pierce-Smith converter is the Hoboken converter design, which is used by one domestic smelter. The design and operation of these two types of batch copper converters is similar with the exception of the means by which off-gases vented from the converter are captured for venting to the sulfuric acid plant.

The Pierce-Smith converter design uses a large external hood to cover the converter mouth when the converter is rotated into position for the blowing. The hood for each converter in the converter aisle is connected to a common ventilation system that exhausts the captured off-gases to the sulfuric acid plant.

In contrast, the Hoboken converter design does not use an external hood for capture of the off-gases during blowing. The Hoboken converter is fitted with a ''U''-shaped side flue located at one end of the converter. The side flue allows siphoning of the converter off-gases directly from the interior of the converter for venting to the sulfuric acid plant. Off-gases are prevented from escaping through the uncovered Hoboken converter mouth during blowing by operating the ventilation system draft at a level such that a slight negative pressure is maintained at the converter mouth.

At the end of the batch converting cycle, the blister copper is poured from the converter for further processing by fire refining to produce anode copper. Fire refining of blister copper is conducted in a cylindrical vessel similar

to a batch copper converter. Flux is added and air is blown through the molten blister copper mixture to oxidize the copper and any remaining impurities. The impurities are removed as slag. The remaining copper oxide is then subject to a reducing atmosphere to form a very high purity copper. The fire-refined copper is then cast into anodes for further electrolytic refining.

The anode copper is processed by an electrolytic process to obtain commercial grade copper for sale as a product. Electrolytic refining separates copper from the remaining impurities by electrolysis in a solution containing copper sulfate and sulfuric acid. The copper anode is dissolved and the elemental copper is re-deposited at the cathode. As the copper anode dissolves, residual metallic impurities in the anode copper precipitate in the acid solution and form a sludge. The resulting cathode copper is now more than 99.9 percent pure and is cast into bars, ingots, or slabs for sale.

B. HAP Emissions

Under section 112(b) of the Act, Congress listed specific chemicals, compounds, or groups of chemicals that are HAP's subject to control under a NESHAP. Metals beside copper naturally occur in copper ore deposits. These metallic ''impurities'' include metals that are listed as HAP. Lead and arsenic are found in the largest quantities in copper ore mined and smelted in the United States. Lesser quantities of antimony, beryllium, cadmium, chromium, cobalt, manganese, nickel, and selenium also are frequently present in U.S. copper ore. These metallic impurities in the copper ore can be released into the atmosphere in the form of particulate matter (PM) during certain smelting operations, and are the source of the HAP emissions from primary copper smelters. The composition and quantity of the potential HAP emissions from a given smelter is directly related to the level of metal impurities in the copper concentrate processed at the smelter. The organic chemicals and acid gases that are listed as HAP have no or minimal potential to be emitted to the atmosphere from domestic primary copper smelters.

On an industry-wide basis, the composition of the HAP emissions from primary copper smelters is approximately 50 percent lead compounds, 25 percent arsenic compounds, and lesser amounts of the other metals. The composition and quantity of the potential HAP emissions from a given smelter is directly related to the level of metal impurities in the copper concentrate processed at the smelter. The sources of HAP emitted from smelters using flash smelting furnaces integrated with batch copper converters can be characterized as: (1) process HAP emissions; (2) process fugitive HAP emissions; and (3) fugitive dust emissions. Electrolytic refining of anode copper does not produce any metallic HAP emissions.

1. Process HAP Emissions

Process HAP emissions are the HAP contained in the primary exhaust gas stream (i.e., off-gases) discharged from a process vessel. At primary copper smelters, the potential sources of process HAP emissions are the exhaust gas streams from copper concentrate drying, copper smelting, and copper converting operations. Process HAP emissions from the copper concentrate dryer are generated by the entrainment of particulate matter containing HAP in the exhaust gas stream from the dryer. A second source of process HAP emissions is the metal compound vapors in the off-gases exhausted from the flash smelting furnace. At those smelters operating slag cleaning vessels, process HAP emissions are released in the off-gases exhausted from the slag cleaning vessel. Process HAP emissions from the batch copper converters result when off-gases exhausted during blowing are not captured and controlled.

2. Process Fugitive HAP Emissions

Process fugitive emissions are those emissions associated with a particular process that are released directly from the process but are not emitted through a flue or duct in the process exhaust gas stream. At primary copper smelters, the potential sources of process fugitive HAP emissions primarily are associated with the flash smelting and batch copper converting operations. Hot fumes and gases containing metallic HAP are intermittently released when molten copper matte and slag are tapped from the flash smelting furnace or a slag cleaning vessel. Process fugitive HAP emissions from batch copper converters result when the off-gases generated during blowing escape capture. In the case of the Pierce-Smith converter design, this can be due to leakage around the primary hood. Improper ventilation system operation will allow off-gases to escape from the open converter mouth in the case of the Hoboken converter design. Also, process fugitive HAP emissions from either copper converter design can result during those times that the converter contains molten material and is rolled out from the blowing position. If not captured, process fugitive HAP emissions will be released to the atmosphere from openings in the converter building such as roof monitor vents or exhaust fans.

3. Fugitive Dust Emissions

Fugitive dust HAP emissions at primary copper smelters can be generated when dust from copper concentrate or other materials containing metallic HAP is released into the outdoor air. The entrainment of dust containing metallic HAP into the outdoor air may be caused by natural events (e.g., wind erosion of feed storage piles) or by operations conducted by the facility personnel. Potential fugitive dust emission sources at primary copper smelters include: (1) Dust entrained when transporting on unpaved roads at the smelter site, bulk copper-concentrate and other materials containing HAP in dump trucks, front-end loaders, and other vehicles; (2) dust generated when unloading copper ore concentrates from trucks or railcars; (3) wind erosion of outdoor material storage piles; (4) dust entrained when blending copper concentrate with other feed constituents in the bedding area; and (5) transferring copper ore concentrate or other HAP-containing materials to or from conveyor systems.

4. Existing Air Emission Controls

Air emission controls presently are used at all of the existing primary copper smelters in the United States to comply with Federal and State regulations limiting emissions of SO_2 and total particulate matter (PM). At each of these copper smelters, exhaust gases from the copper concentrate dryer are vented to either a baghouse or electrostatic precipitator (ESP) for control of PM emissions. Emissions of SO_2 are controlled by venting the process off-gases from flash smelting furnaces and batch copper converters to a contact sulfuric acid production process. At those smelters operating slag cleaning vessels, SO_2 emissions are controlled by venting the process off-gases to wet scrubbers. In addition to these air emission controls, each smelter operates different combinations of other types of controls for certain process fugitive sources and fugitive dust sources to comply with requirements imposed by the individual State standards and air permit conditions applicable to the smelter.

C. Relationship to Other Rules

The EPA has promulgated national emission standards applicable to primary copper smelters under two previous Clean Air Act rulemakings.

The first rule is the new source performance standards (NSPS) for primary copper smelters (40 CFR part 60, subpart P). This NSPS establishes a PM emission limit for new copper concentrate dryers and an SO_2 emission limit for new smelting furnaces and new copper converters. The NSPS does not specifically address HAP emissions from primary copper smelters.

The second rule applicable to primary copper smelters is the national emission standards for inorganic arsenic emissions from primary copper smelters (40 CFR part 61 subpart O). This rule establishes air emission control requirements for primary copper smelters at which the total annual average arsenic charging rate to the copper converters at the smelter is equal to or greater than 75 kilograms per hour (kg/hr). This rule was promulgated in 1986 before the changes to the NESHAP regulatory program required by the 1990 Amendments. Also, since the rule's promulgation date, the primary copper smelter industry has changed significantly with the industry-wide conversion to flash smelting technologies and a number of smelter closings. None of the primary copper smelters presently operating in the United States processes copper ore concentrates with arsenic content levels that require smelter owners and operators to meet the air emission control standards under subpart O (i.e., the annual average total arsenic charging rate for the copper converter department at each smelter is less than 75 kg/hr).

IV. NESHAP Decision Process

A. Source of Authority for NESHAP Development

The amended section 112 of the Act replaces the EPA's previous NESHAP development system of pollutant-by-pollutant health-based regulations that proved ineffective at controlling the high volumes and concentrations of HAP in air emissions. The 1990 Amendments readdress this deficiency by requiring the EPA to develop NESHAP by first establishing control technology-based standards for those sources emitting HAP, and that these control technology-based standards may later be reduced further to address residual risk that may remain even after implementing the technology-based controls.

B. Criteria for Development of NESHAP

The statutory directives set out in section 112 of the Act require NESHAP to be established for control of HAP emissions from both new and existing sources. The statute requires that the standards reflect the maximum degree of reduction of HAP emissions that is achievable taking into consideration the cost of achieving the emission reduction, any nonair quality health and environmental impacts, and energy requirements.

Emission reductions may be accomplished through application of measures, processes, methods, systems, or techniques, including, but not limited to: (1) reducing the volume of, or eliminating emissions of, such pollutants through process changes, substitution of materials, or other modifications, (2) enclosing systems or processes to eliminate emissions, (3) collecting, capturing, or treating such pollutants when released from a process, stack, storage, or fugitive emissions point, (4) design, equipment, work practice, or operational standards (including requirements for operator training or certification) as provided in section 112(h), or (5) a combination of the above. [See section 112(d)(2).]

To develop a NESHAP, the EPA collects information about the source category, including information on the emission source characteristics, control technologies, data from HAP emissions tests at well-controlled facilities, and information on the costs and other energy and environmental impacts of emission control techniques. The EPA uses this information to analyze possible regulatory approaches.

Although NESHAP are normally formatted in terms of numerical emission limits, alternative approaches are sometimes necessary. In some cases, for example, physically measuring emissions from a source may be impossible, or at least impractical, because of technological and economic limitations. Section 112(h) authorizes the Administrator to promulgate a design, equipment, work practice, or operational standard, or a combination thereof, in those cases when it is not feasible to prescribe or enforce an emissions standard.

If sources in a given source category are major sources of HAP emissions, then section 112 requires the EPA to establish national emission standards for these sources based on application of maximum achievable control technology (MACT). The regulation of the area sources in a source category, if any, is at the discretion of the EPA. If there is a finding by the EPA of a threat of adverse effects on human health or the environment from the area sources, then the source category can be added to the list of area sources to be regulated.

C. Determining the MACT Floor

After the EPA has identified the specific source categories or subcategories of major sources to regulate under section 112, it must set MACT standards for each category or subcategory. Section 112 limits the EPA's discretion by establishing a minimum baseline or ''MACT floor'' for these standards. For new sources, the standards for a source category or subcategory cannot be less stringent than the emission control that is achieved in practice by the best-controlled similar source, as determined by the Administrator. [See section 112(d)(3).]

The MACT standards for existing sources can be less stringent than MACT standards for new sources, but they cannot be less stringent than the average emission limitation achieved by the best-performing 12 percent of existing sources (excluding certain sources) for categories and subcategories with 30 or more sources, or the best-performing 5 sources for categories or subcategories with fewer than 30 sources. [See section 112(d)(3).]

After the MACT floor has been determined for a new or existing source in a source category or subcategory, the Administrator must set standards that are no less stringent than the MACT floor. Such standards must then be met by all major sources within the category or subcategory.

Section 112(d)(2) specifies that the EPA shall establish MACT standards that require the maximum degree of reduction in emissions of hazardous air pollutants

> * * * that the Administrator, taking into consideration the cost of achieving such emission reduction, and any non-air quality health and environmental impacts and energy requirements, determines is achievable* * *

In establishing MACT standards, the Administrator may distinguish among classes, types, and sizes of sources within a category or subcategory. [See section 112(d)(1).] For example, the Administrator could establish two classes of sources within a category or subcategory based on size and establish a different emission standard for each class, provided both standards are at least as stringent as the MACT floor for that class of sources.

The next step in establishing MACT standards is the investigation of regulatory alternatives. With MACT standards, only alternatives at least as stringent as the MACT floor may be selected. Information about the source category is analyzed to evaluate national impacts, including HAP emission

reduction levels, costs, energy, and secondary impacts. Several regulatory alternative levels (which may be different levels of emissions control or different levels of applicability or both) are then evaluated to select the regulatory alternative that best reflects the appropriate MACT level.

The selected alternative may be more stringent than the MACT floor, but the control level selected must be technically achievable. In selecting a regulatory alternative that represents MACT, the EPA considers the achievable emission reductions of HAP (and possibly other pollutants that are co-controlled), cost, and economic impacts, energy impacts, and other environmental impacts. The objective is to achieve the maximum degree of emissions reduction without unreasonable economic or other impacts. [See section 112(d)(2).] The regulatory alternatives selected for new and existing sources may be different because of different MACT floors, and separate regulatory decisions may be made for new and existing sources.

The selected regulatory alternative is then translated into a proposed rule. The rule implementing the MACT decision typically includes sections on applicability, standards, test methods and compliance demonstration, monitoring, reporting, and recordkeeping. The preamble to the proposed rule provides an explanation of the rationale for the decision. The public is invited to comment on the proposed rule during the public comment period. Based on an evaluation of these comments, the EPA reaches a final decision and promulgates the final rule.

V. Summary of the Proposed Standards

A. Applicability

The proposed NESHAP applies to owners and operators of copper smelters for which both of the following applicability conditions apply: (1) the facility produces anode copper by first flash smelting of copper ore concentrates to obtain molten copper matte and then converting the molten matte to blister copper using batch copper converters, and (2) the facility is a major source of HAP as defined in 40 CFR 63.2. If either one of these two conditions do not apply to a given smelter, then the owner and operator of the smelter would not be subject to the proposed NESHAP.

The first applicability condition requires that the copper smelter produces blister copper using batch copper converters. For the purpose of implementing the rule, a ''batch copper converter'' would be defined as one of the following copper converter designs: a Pierce-Smith converter; a Hoboken converter; or a similar design copper converter that produces blister copper in discrete batches using a sequence of charging, blowing, skimming, and pouring steps. A batch copper converter does not use continuous flash converting technology. Thus, the owner and operator of a copper smelter that uses continuous flash copper converters would not be not subject to the proposed NESHAP (the rationale for this decision is presented in Section II of this preamble).

The second applicability condition requires that the copper smelter be a major source of HAP emissions, as defined in 40 CFR 63.2. This means the copper smelter emits or has the potential to emit, considering application of air emission controls, 10 tpy or more of any single HAP compound or 25 tpy or more of any combination of HAP compounds. The proposed NESHAP would not apply to a copper smelter that is not a major source as defined by the EPA.

B. Sources To Be Regulated

The proposed NESHAP establishes air emission control requirements for specific HAP emission sources operating at a primary copper smelter subject to the rule. The HAP emission sources that would be affected by this rule are: (1) The copper concentrate dryer, (2) the flash smelting furnace, (3) the slag cleaning vessel, if used at a smelter, (4) the batch copper converters, and (5) the fugitive dust sources associated with the handling and storage of copper concentrate and other materials containing metallic HAP.

For the purpose of implementing the rule with respect to batch copper converters, the affected source would be the entire copper converter department. This area would be defined in the rule to be all of the batch copper converters and the associated capture systems used to collect gases and fumes emitted during copper converter operations (e.g., primary hood ventilation system, secondary hood ventilation system if used).

C. Emission Limits and Requirements

1. Copper Concentrate Dryers

The proposed standards establish emission limits for particulate matter contained in the exhaust gases discharged from each affected copper concentrate dryer. Separate emission standards would be established for existing sources and new sources. The standard would limit the concentration of particulate matter discharged from existing copper concentrate dryers to no more than 50 milligrams per dry standard cubic meter (mg/dscm) (approximately 0.022 grains per dry standard cubic foot (gr/dscf)). New copper concentrate dryers would be limited to no more than 23 mg/dscm (approximately 0.01 gr/dscf) of particulate matter. The rule would allow an owner or operator to use any type of particulate control device (i.e., baghouse, electrostatic precipitator, or wet scrubber) that meets the applicable PM emission limit.

2. Smelting Furnaces

The proposed standards for smelting furnaces are the same for both existing sources and new sources. The proposed rule requires the SO_2 rich off-gases from the smelting furnace to be vented to a by-product sulfuric acid plant or other type of sulfur recovery process unit that requires comparable levels of gas stream conditioning and pre-cleaning to remove particulate matter. The rationale for proposing an equipment standard for this source is described in section VII.C.3 of this document. In addition, the proposed rule requires that the hot metal vapors and fumes released when tapping molten matte or slag from the smelting furnace be captured using good ventilation practices (e.g., use of local ventilation hoods over the tapping port and launder) and vented to a control device. Particulate matter emissions from the control device would be limited to no more than 16 mg/dscm (approximately 0.007 gr/dscf).

3. Slag Cleaning Vessels

The proposed NESHAP establishes standards for those primary copper smelters that operate slag cleaning vessels as part of the copper smelting process. The requirements of proposed standards would be the same for existing sources and new sources. Particulate matter emissions contained in the off-gases exhausted from a slag cleaning vessel would be limited to no more than 46 mg/dscm (approximately 0.02 gr/dscf). As an alternative to complying with this standard, the rule would allow an owner or operator to exhaust the off-gases from the slag cleaning vessel directly to the by-product sulfuric acid plant (or other type of sulfur recovery process unit) used to control the off-gases from the smelting furnace.

Like the standards for smelting furnaces, the proposed rule also requires that the hot metal fume emissions released when tapping molten matte or slag from the slag cleaning vessel be captured using good ventilation

practices and vented to a suitable control device. Consistent with the standards for smelting furnaces, PM emissions from this control device would be limited to no more than 16 mg/dscm (approximately 0.007 gr/dscf).

4. Batch Copper Converters

The proposed NESHAP establishes emission standards for particulate matter and visible emissions from the batch copper converters at primary copper smelters subject to the rule. Separate standards would be established for existing sources and new sources. For existing sources, the proposed NESHAP establishes standards requiring that particulate matter emitted from the copper converters during blowing be captured and vented to a suitable control device. Different standards for existing sources would be established based on the type of copper converter designs used at the primary copper smelters (i.e., Pierce-Smith converters or Hoboken converters). For new sources, the proposed NESHAP establishes standards requires that particulate matter emitted from the copper converters during all operating modes be captured and vented to a suitable control device. The same standards for new sources would apply regardless of the design of the copper converters used at a smelter.

Existing Pierce-Smith Converters. The proposed standards for existing Pierce-Smith converters require that SO_2 rich off-gases generated during blowing be captured by a primary hood ventilation system and vented directly to the by-product sulfuric acid plant (or other type of sulfur recovery process unit) used to control the SO_2 rich gases exhausted from the smelting furnace. Additional capture devices (e.g., secondary hoods) vented to a control device would be required to collect PM emissions that escape capture by the primary hood as needed to achieve the visible emission limit established for the copper converter department. Particulate matter emissions from the control device would be limited to no more than 16 mg/dscm (approximately 0.007 gr/dscf).

The proposed rule requires that the primary hood and any supplemental capture system used to comply with the requirements of the rule be operated with sufficient ventilation draft such that the visible emissions exiting the roof monitors or roof exhaust fans on the building housing the copper converter department do not exhibit an average opacity greater than 3 percent as determined using the test protocol specified in the rule. (This test protocol is described later in this section under ''Performance Testing Requirements''). The owner or operator would be required to subsequently operate the capture system such that the system maintains the operating settings established at the time the owner or operator initially demonstrates compliance with this visible emission limit. Failure to do so would be a violation of the standard. The visible emission limit would apply only at those times when a performance test is conducted while establishing the capture system operating settings.

Existing Hoboken Converters. The proposed standards for existing Hoboken converters require that the SO_2-rich off-gases be evacuated directly from the interior of the copper converter (through the converter's side flue intake) to the by-product sulfuric acid plant (or other type of sulfur recovery process unit) used to control the SO_2-rich gases exhausted from the smelting furnace. In addition, the proposed rule requires that the side flue intake of each Hoboken copper converter be operated with sufficient ventilation draft during blowing such that the visible emissions exiting the roof monitors on the building housing the copper converter department do not exhibit an average opacity greater than 4 percent. Compliance with this visible emission limit would be demonstrated by following the same requirements and procedures described above for existing Pierce-Smith converters.

New Copper Converters. During the periods when a copper converter is positioned for blowing, the proposed standards for new sources require that the SO_2-rich off-gases generated during blowing be captured and vented directly to the by-product sulfuric acid plant (or other type of sulfur recovery process unit) used to control the SO_2-rich gases exhausted from the smelting furnace. In addition, the proposed rule requires that the capture system be designed and operated with sufficient ventilation draft whenever molten material is in the copper converter such that no visible emissions exit the building housing the copper converter department. The rule would require these captured gas streams to be vented to a suitable control device. Particulate matter emissions from the control device would be limited to no more than 16 mg/dscm (approximately 0.007 gr/dscf).

The proposed visible emission limit would provide flexibility by allowing the owner or operator to choose the capture system design to be used at a given smelter. The capture system design could use multiple intake and duct segments through which the ventilation rates are controlled independently of each other and individual duct segments could be connected to separate control devices (e.g., use of individual secondary air curtain hoods on each copper converter in combination with a building evacuation system). The occurrence of visible emissions from the building housing the copper converter department would be determined using Method 22 in appendix A of 40 CFR part 60.

5. Fugitive Dust Sources

Under the proposed NESHAP, the owner or operator of a primary copper smelter subject to the rule is required to control fugitive dust emissions according to a site-specific plan. This written plan would be prepared by the owner or operator and would describe the specific control measures that are used to limit fugitive dust emissions from the individual sources at the smelter site. The duty of the owner or operator to operate the smelter according to the fugitive dust control plan would be incorporated into the operating permit for the smelter site that is issued by the designated permitting authority under 40 CFR part 70 (the actual fugitive dust control plan for a given smelter would not be part of the permit).

The proposed rule defines a fugitive dust source as a source of PM emissions resulting from the handling, storage, transfer, or other management of solid copper-bearing materials defined in the rule where the source is not associated with a specific process, process vent, or stack. Fugitive dust emissions can be generated by a variety of different operations conducted at a primary smelter, such as dump truck traffic on smelter roadways; unloading of copper concentrates from dump trucks or railcars; wind erosion of outdoor piles used to store copper concentrate; blending of copper concentrate and other feed constituents in the bedding area; and uncovered conveyor systems used to transfer copper concentrate. Examples of control measures that could be included in the written fugitive dust control plan include, but are not limited to: erecting a building or other enclosure over the copper concentrate bedding area; covering conveyor systems and using local ventilation hoods vented to a control device at the conveyor transfer points; placing copper concentrate stockpiles below grade or installing wind screens or wind fences around the stockpiles; and spraying water or applying appropriate dust suppression agents on smelter roadways or outdoor storage piles.

6. Equivalent Standard for Combined Exhaust Gas Streams

At some existing primary copper smelters, exhaust gas streams from several sources are combined before being discharged to a single control device. The proposed rule addresses this situation by including an equation with which the owner or operator calculates the allowable PM emission limit for the combined exhaust gas stream based on the individual PM emission limits specified in the rule and the volumetric flow rates for the affected source gas streams composing the combined exhaust gas stream. This equivalent PM emission limit could be applied to a combined gas stream that contains any combination of the gas streams from the following affected sources: (1) exhaust gas stream from a copper concentrate dryer; (2) exhaust gas stream from a smelting vessel tapping port capture system; (3) exhaust gas stream from a slag cleaning vessel tapping port capture system; and (4) exhaust gas stream from a Pierce-Smith copper converter capture system other than the primary hood capture system (e.g., secondary hood, building evacuation system).

D. Compliance and Maintenance Requirements

1. Compliance Dates

Compliance with the air emission control standards under the NESHAP would be required within 2 years from the date of promulgation for existing sources and at startup for new or reconstructed sources. An ''existing source'' is a source that commenced construction or reconstruction before today's date. Sources that commence construction or reconstruction on or after today's date would be considered to be a ''new source.''

2. Operation and Maintenance Requirements

At all times, including periods of startup, shutdown, and malfunction, the owner or operator would be required to operate and maintain each affected source, including associated air pollution control equipment, according to the requirements in section 63.6 in the NESHAP general provisions (40 CFR part 63, subpart A). As part of the written startup, shutdown, and malfunction plan required by section 63.6(e)(3), the owner or operator would be required to include a description of the corrective action procedures to be implemented to restore a malfunctioning capture system or control device to proper operation.

E. Performance Testing Requirements

1. Particulate Matter Emission Performance Tests

Compliance with each of the PM emission limits in the proposed rule would be determined by performance tests that the owner or operator performs according to the NESHAP general provisions in § 63.7 under 40 CFR part 63, subpart A, and using specific EPA reference test methods. For each performance test, the sampling locations would be determined using EPA Method 1; the stack gas velocity and volumetric flow rate would be determined using EPA Method 2; and the gas analysis would be performed using EPA Methods 3 and 4. Each of these methods is included in appendix A to 40 CFR part 60. Measuring PM emissions would be performed using EPA Method 5, ''Determination of Particulate Matter Emissions from Stationary Sources'', in 40 CFR part 60, appendix A (Method 5D would be required for positive pressure baghouses). The average of three test runs (each run having a minimum sampling time of 60 minutes and minimum sampling volume of 0.85 dscm) would be used to determine compliance with the applicable PM emission limit specified in the rule. During the performance test, the owner or operator also would establish limits for appropriate control device operating parameters based on the actual values measured during this test.

2. Visible Emission Performance Tests

Existing Copper Converters. Compliance of existing Pierce-Smith or Hoboken copper converters with the applicable visible emission limit would be demonstrated using a specific test protocol that is being proposed in the rule. The proposed protocol is based on performing a series of opacity readings during specific copper converter operations using Method 9, ''Visual Determination of the Opacity of Emissions from Stationary Sources,'' in 40 CFR part 60, appendix A. The opacity observations would be made by a team of two qualified visible emission observers during the period when the primary copper smelter is operating under conditions representative of the smelter's normal blister copper production rate.

The total time of the observation period would be of sufficient duration to obtain a minimum of 20 uninterrupted 6-minute intervals during which opacity readings made using Method 9 (i.e., 24 readings, each reading made at a 15-second interval) are recorded for those conditions when at least one copper converter is operating in the blowing mode with no visible emission interferences from other smelter operations occur as specified in the rule. The total observation period may be divided into two or more segments performed on different days if a change in the outdoor conditions or copper production conditions prevents the required number of opacity readings from being obtained during one continuous period.

Throughout the opacity observation period, an additional person familiar with the primary copper smelter operation is stationed inside the building housing the copper converters to visually monitor the copper converter operations. These indoor process monitors maintain a log recording the process information. During the observation period, the owner or operator also would establish minimum or maximum limiting values, as appropriate, for selected capture system operating parameters based on the actual values measured during the test.

Upon completion of the opacity observations, the data recorded by the outdoor opacity observers and the indoor process monitors are summarized in a tabular format that is specified in the rule. Next, 6-minute average opacity values are calculated for all periods listed in the data summary table composed of six consecutive minutes of blowing with no interferences. A minimum of twenty 6-minute periods are required for the compliance calculation (if more than twenty 6-minute periods are included in the data summary table, then all of the 6-minute periods included in the table would be used for the compliance calculation). These twenty 6-minute periods (or more if applicable) are averaged to obtain a single opacity value to determine compliance with the visible emission limit applicable to a given smelter. Refer to the proposed rule text for more information regarding the test conditions, test notification requirements, procedure for conducting the opacity observations and gathering the converter process information, and the methods to be used for data reduction and calculation of the average opacity value.

New Copper Converters. Compliance of new copper converters with the no visible emission limit specified in the proposed rule would be demonstrated using Method 22, ''Visual Determination of Fugitive Emissions from Material Sources and Smoke Emissions from Flares,'' in appendix A of 40 CFR part 60. Method 22 requires only a determination as to whether a visible emission occurs and does not require

that the opacity of the emissions be determined. A minimum observation period of no less than 2 hours during normal copper production operations is proposed for the performance test.

F. Inspection and Monitoring Requirements

1. Capture System Inspections

Regular visual inspections of all capture systems used to comply with the standards would be required under the proposed NESHAP. The owner or operator would be required to conduct at least once per month a visual inspection of each capture system operated to meet standards under the rule. These inspections would involve visually inspecting all of the capture system components to check for any defects or damage that could diminish or impair capture system performance. Examples of these defects or damage include, but are not limited to: openings through which gas can escape as indicated by the presence of cracks, holes, or gaps in hoods or ductwork; flow constrictions caused by dents or accumulated dust in ductwork; and reduced fan performance as indicated by fan blade erosion. If a defect is detected, then the owner or operator would be required to replace or repair the defective or damaged components consistent with the measures for corrective action detailed in the facility startup, shutdown and malfunction plan. Completion of the repair would be required as soon as practical but no later than 30 calendar days after the date the defect is detected. Delay of repair beyond 30 calendar days of detecting the capture system defect would be allowed under special circumstances as specified in the rule.

2. Capture System Monitoring

Monitoring of appropriate operating parameters would be required for the copper converter capture system operated to comply with the converter building visible emission limit. No monitoring requirements for other capture systems operated at the smelter (e.g., smelting furnace tapping port and launder capture systems, slag cleaning vessel tapping port and launder capture systems) would be specified under the proposed rule.

The rule would not specify the individual operating parameters to be monitored by the owner or operator for the copper converter capture system. Instead, each owner or operator would be required to select a set of operating parameters appropriate for the capture system design used at the smelter that the owner or operator determines to be a representative and reliable indicator of the range within which the equipment can operate and achieve the visible emission limit. During the initial performance test to demonstrate compliance of the copper converter capture system with the applicable visible emission limit, the owner or operator would establish minimum operating parameter limits (or a maximum operating parameter limit if appropriate) for selected capture system operating parameters. The rule would require that the owner or operator install, calibrate, operate, and maintain monitoring devices equipped with a recorder to measure and record at 15-minute or more frequent intervals the actual value for each operating parameter for which operating limits are established. In cases when the monitoring regimen includes periodic checking by facility workers of the capture system fan motor amperages and damper positions, checks are to be made at least once-per-shift.

The owner or operator would be required to regularly inspect the data recorded by the monitoring system at a sufficient frequency to ensure the capture system continues to operate properly. If the recorded actual value of a selected operating parameter is less than the minimum operating parameter limit (or, if applicable, greater than the maximum operating parameter limit) established for the parameter, then an excursion would be determined to have occurred. The proposed rule requires that within 1 hour of detecting the excursion, the owner or operator initiate the corrective action procedures identified in the startup, shutdown, and malfunction plan as necessary to restore the operation of the capture system to the proper operating settings. Failure to take the necessary corrective actions to correct the operating problem would be a violation of the standard. Also, for a given operating parameter, if excursions occur six times in any semi-annual reporting period, then any subsequent excursion of that operating parameter during the reporting period would be a violation of the standard. For the purpose of determining the number of excursions in a semi-annual reporting period, only one excursion would be counted in any given 24-hour period.

3. Control Device Inspection and Monitoring

Baghouses. For each baghouse used to comply with the PM emission limits, the owner or operator would be required to operate the baghouse according to a written standard operating procedures (SOP) manual. This SOP manual would be prepared by the owner or operator, and the manual would describe in detail the inspection, maintenance, bag leak detection, and corrective action procedures to be implemented by the owner or operator for the baghouse. Specific inspection, maintenance, and monitoring requirements to be included by the owner or operator in the SOP manual are specified in the proposed rule. The proposed rule also requires the use of a bag leak detector system equipped with an audible alarm. Failure by the owner or operator to operate and maintain the baghouse according to the requirements specified in the SOP manual would be a violation of the standard. The inspection and monitoring requirements would not apply to a baghouse that is included in the smelter's fugitive dust control plan and exclusively operated to control fugitive dust emissions.

Venturi Wet Scrubbers. If an owner or operator elects to use a venturi wet scrubber to comply with a PM emission limit, the proposed rule requires that the owner or operator monitor the scrubber pressure drop and water flow rate. During the initial performance test to demonstrate compliance with the applicable standard, the owner or operator would establish minimum operating values for each of these parameters based on the actual values measured during this test. The rule would require that the owner or operator install, calibrate, operate, and maintain monitoring devices equipped with a recorder to measure and record at 15-minute or more frequent intervals the actual value for each operating parameter. An excursion would be determined to have occurred when the recorded actual value of the scrubber pressure drop or water flow rate is less than the minimum operating limit established for the parameter during the compliance test. Any excursion would be a violation of the standard.

Other Control Devices. If an owner or operator elects to use a control device other than a baghouse or venturi wet scrubber to comply with a PM emission limit (e.g., an ESP), the proposed rule requires that the owner or operator monitor appropriate operating parameters for the control device. The rule would not specify the individual operating parameters to be monitored. Instead, each owner or operator would be required to select a set of operating parameters appropriate for the control device design that the owner or operator determines to be a representative and reliable indicator of the control device performance. During the initial performance test to demonstrate compliance with the applicable standard, the owner or operator would

establish limiting values for selected operating parameters based on the actual values measured during this test. The rule would require that the owner or operator install, calibrate, operate, and maintain monitoring devices equipped with a recorder to measure and record at 15-minute or more frequent intervals the actual value for each operating parameter for which operating limits are established. The owner or operator would be required to regularly inspect the data recorded by the monitoring system at a sufficient frequency to ensure the control device is operating properly. An excursion occurs when the recorded actual value of a selected operating parameter is less than the minimum operating parameter limit (or, if applicable, greater than the maximum operating parameter limit) established for the parameter. When an excursion occurs, the owner or operator would be required to initiate the corrective action procedures identified in the startup, shutdown, and malfunction plan as necessary to restore the operation of the control device to the proper operating settings. Failure by the owner or operator to take the necessary corrective actions would be a violation of the standard.

G. Notification, Recordkeeping, and Reporting Requirements

The proposed rule requires the owner or operator to comply with the notification, recordkeeping, and reporting requirements in the general provisions in subpart A of 40 CFR part 63 with one exception. The notification, recordkeeping, and reporting requirements in the general provisions related directly to the visible emission limit compliance provisions specified in 40 CFR 63.6(h) would not apply to this rule.

1. Notifications

The owner or operator would be required to submit notifications described in the general provisions (40 CFR part 63, subpart A), which include initial notification of applicability, notifications of performance tests, and notification of compliance status.

2. Records

The owner or operator would be required to maintain records required by the general provisions and records needed to document compliance with the standard. For each control device used to comply with the rule, records would include copies of inspection records and a copy of the written maintenance plan.

The owner or operator would be required to retain all records for at least 5 years following the date of each occurrence, measurement, maintenance, corrective action, report, or record. The records for the most recent 2 years must be retained on site; records for the remaining 3 years may be retained off site but must still be readily available for review. The files could be retained on microfilm, microfiche, on a computer, or on computer or magnetic disks. The owner or operator could report required information on paper or a labeled computer disk using commonly available and compatible computer software.

3. Reports

As required by the general provisions, the owner or operator would be required to submit a report of performance test results; develop and implement a written startup, shutdown, and malfunction plan and report semi-annually any events where the plan was not followed; and submit semi-annual reports of any excursions when any monitored parameters fall outside the range of values established during the performance test.

VI. Impacts of Proposed Rule

A. Health Impacts

The Clean Air Act was created in part to protect and enhance the quality of the Nation's air resources so as to promote the public health and welfare and the productive capacity of its population. [See section 101(b)(1).] As previously explained, Congress specified in the 1990 Amendments that each standard for major sources require the maximum reduction in emissions of HAP that the EPA determines is achievable considering cost, health and environmental impacts, and energy impacts. In essence, these MACT standards would ensure that all major sources of air toxic emissions achieve the level of control already being achieved by the better controlled and lower emitting sources in each category. This approach provides assurance to citizens that each major source of toxic air pollution will be required to effectively control its emissions. At the same time, this approach provides a level playing field, ensuring that facilities that employ cleaner processes and good emissions control are not disadvantaged relative to competitors with poorer controls.

Emission data collected during development of the proposed NESHAP show that the pollutants that are listed in section 112(b)(1) and are emitted by primary copper smelters in the largest quantities are arsenic and lead compounds. Other HAP that are emitted in lesser quantities include antimony, beryllium, cadmium, chromium, cobalt, manganese, nickel, and selenium. These toxic metals can cause effects such as mucous membrane irritation (e.g., bronchitis, decreased lung capacity), gastrointestinal effects, nervous system disorders (from loss of function to tremor and numbness), skin irritation, and reproductive and developmental disorders. Chronic inhalation exposure to arsenic compounds is strongly associated with lung cancer; chronic oral exposure is linked to skin, bladder, liver, and lung cancer. Additionally, several of the metals accumulate in the environment and the human body. Cadmium, for example, is a cumulative pollutant, which can cause kidney effects after the cessation of exposure. Similarly, the onset of effects from beryllium exposure may be delayed 3 months to 15 years. Many of the metals also are known (arsenic, chromium VI, certain nickel compounds) or probable (cadmium, lead, and beryllium) human carcinogens.

In addition to HAP, the proposed rule would also reduce some of the pollutants whose emissions are controlled under the National Ambient Air Quality Standards (NAAQS). These pollutants include particulate matter and lead. The health effects of these pollutants are described in EPA's Criteria Documents, which support the NAAQS. Briefly, PM emissions have been associated with aggravation of existing respiratory and cardiovascular disease and increased risk of premature death. Depending on the degree of exposure, lead can cause subtle effects on behavior and cognition, increased blood pressure, reproductive effects, seizures, and even death. Children are particularly sensitive and exposure can also result in reduced growth. Lead compounds can be persistent in the environment and have the potential to accumulate in food chains.

The EPA does recognize that the degree of adverse effects to health can range from mild to severe. The extent and degree to which the health effects may be experienced is dependent upon: (1) the ambient concentrations observed in the area (e.g., as influenced by emission rates, meteorological conditions, and terrain), (2) the frequency and duration of exposures, (3) characteristics of exposed individuals (e.g., genetics, age, pre-existing health conditions, and lifestyle) which vary significantly with the population, and (4) pollution specific characteristics (e.g., toxicity, half-life in the environment, bioaccumulation, and persistence).

B. Air Quality Impacts

Nationwide HAP emissions from the ''Primary Copper Smelting'' source category are estimated to be approximately 189 Mg/yr (208 tpy). The EPA estimates that implementation of the NESHAP, as proposed, would reduce these nationwide HAP emissions by approximately 20 percent to 155 Mg/yr (171 tpy).

C. Other Environmental and Energy Impacts

Other environmental and energy impacts associated with implementing the requirements of the proposed rule primarily are expected to result from the operation of the capture systems and the PM control devices. No significant adverse water, solid waste, or energy impacts are expected as a result of the proposed rule.

Direct water quality impacts from the proposed rule would vary depending on the type of control devices that the smelter owners and operators choose to use to comply with the proposed particulate matter emission limits. No direct water quality impacts would result from operation of either a baghouse or electrostatic precipitators. If wet scrubbers are used to control PM emissions, wastewater from the scrubber blowdown would be generated. The EPA expects wet scrubbers to be used only in limited applications to comply with the rule (the most likely use of existing wet scrubbers is to meet the standards for slag cleaning vessels).

The dust collected in baghouses and electrostatic precipitators and the sludge generated by wet scrubbers would be potential sources of solid waste. At existing primary copper smelters, the common operating practice is to recycle the dust collected by the baghouses and electrostatic precipitators by feeding the material back to the flash smelting furnace and not dispose of this material as a solid waste.

Energy impacts would result from the increased consumption of electricity required at a primary copper smelter to operate any additional capture systems and control devices installed to meet the proposed rule requirements. Electricity is required to charge the collector plates in electrostatic precipitators. Electric motor-driven fans, blowers, or pumps, (depending on the type of control equipment) are used for operations such as moving the captured gas stream to the control device, operating baghouses, and circulating water through a wet scrubber.

D. Economic Impacts

The cost impacts of the proposed NESHAP are expected to result mainly from costs that some primary copper smelters may incur to replace or upgrade their existing copper converter secondary capture systems (e.g., install a new secondary hood design or increase the system draft by installing a larger fan) and costs for monitoring, recording, and recordkeeping. The EPA estimated the cost to owners and operators of implementing the requirements of the proposed rule at the smelter sites that the EPA expects are likely to be subject to the rule. The total nationwide capital investment cost to purchase and install the air emission controls that would be required by the rule is estimated by the EPA to be approximately $6 million. The total nationwide annual cost would be approximately $2.2 million per year.

Emission control costs as a percentage of sales revenues were estimated to evaluate the impact of the regulation on the primary copper smelting industry and affected individual facilities. Economic impacts are expected to be minimal. The annualized costs of the regulation represents approximately 0.07 percent of 1996 sales revenues for the industry. Individual copper smelting facilities are expected to experience emission control costs as a percent of sales ranging from 0.01 to 0.44 percent.

VII. Rationale for Selection of Proposed Standards

A. Selection of Pollutants

For the proposed NESHAP, the EPA decided that it is not practical to establish individual standards for each specific type of metallic HAP the could be present in a copper ore (e.g., separate standards for arsenic emissions, separate standards for lead emissions, and so forth for each of the metals listed as HAP and potentially could be present in the copper ore). When released into the air during the primary copper smelting operations, each of the metallic HAP compounds behaves as particulate matter. Therefore, the EPA decided to establish standards for total particulate matter as a surrogate pollutant for the individual types of metallic HAP emitted from primary copper smelters.

The type and concentration of the metallic HAP compounds contained in the copper ore concentrate shipped to a primary copper smelter is not constant but instead varies over time. The concentrations of each type of metallic HAP frequently vary throughout the copper ore deposit from which the copper concentrate is obtained. Establishing separate standards for each individual type of metallic HAP would impose costly and significantly more complex compliance and monitoring requirements on the primary copper smelter owners and operators and would achieve little, if any, more HAP emission reduction than would be achieved using the surrogate pollutant approach based on total particulate matter. On the other hand, strong correlations exist between air emissions of the selected surrogate pollutant and emissions of the individual metals it represents. The control technologies used for the control of PM emissions achieve equivalent levels of performance on metallic HAP emissions. Therefore, standards requiring good control of particulate matter will also achieve good control of the metallic HAP emitted from primary copper smelters.

B. Selection of Affected Sources

For the purpose of implementing a NESHAP, an *affected source* is defined to mean the stationary source, or portion of a stationary source that is regulated by a relevant standard or other requirement established under section 112 of the Act. Each relevant standard is to designate the ''affected source'' for the purpose of implementing that standard. Within a source category, the EPA decides which HAP emission sources (i.e., emission points or groupings of emission points) are most appropriate for establishing separate emission standards in the context of the Clean Air Act statutory requirements and the industry operating practices for the particular source category. The EPA selected the specific HAP emission sources requiring the development of air standards under this rulemaking based on consideration of test data and HAP emission estimates for these individual emission points.

The EPA reviewed available information regarding HAP emissions from anode copper fire refining operations. The information is insufficient to specifically quantify the level of HAP emissions from the anode furnaces and anode casting operations. However, at this stage of the copper production process, the residual content of metallic HAP in the blister copper is very low. Therefore, EPA decided not to propose specific emission standards for anode copper fire refining operations.

The EPA considered different approaches for designating the ''affected source'' for the selected emission point types ranging from using a broad definition (e.g., the entire smelter site) to narrow definitions (e.g., individual emission points). Designating the affected source for the NESHAP as the entire smelter site was dismissed by the EPA. This approach would require that the MACT floor be established by the

total smelter-wide HAP emissions indicative of the level that is achieved by the best-performing five existing smelters. Application of a single MACT floor to combinations of different process and fugitive emission points at a primary copper site would be difficult.

A second approach is to designate an affected source by grouping the same or similar types of emission points together under a single affected source designation. The EPA decided that grouping similar emission points was the appropriate approach to use for two of primary copper smelter HAP emission sources selected to be controlled: batch copper converters and fugitive dust sources.

At each of the existing primary copper smelters, a row of three to five batch copper converters are used to produce blister copper. Off-gases captured from each of the individual converters during blowing are exhausted to the sulfuric acid plant through a common ventilation system used for the entire group of converters. At those smelters currently operating secondary capture devices (e.g., secondary hoods or air curtains) on each of the copper converters, the secondary captured gas streams are vented to a separate control device. Considering the smelter operating practices and existing air pollution control configurations used for copper converters, the EPA decided it is appropriate to designate the entire group of copper converters as the affected source.

Fugitive dust sources are those sources of PM emissions at the primary copper smelter resulting from the handling, storage, transfer, or other management of copper concentrate or other materials containing metallic HAP where the source is not associated with a specific process, process vent, or stack. The type and number of individual fugitive dust sources varies from smelter-to-smelter. Therefore, the EPA decided it is appropriate to designate the entire group of fugitive dust sources as the affected source.

The narrowest designation of affected source is by individual emission point. At each of the existing primary copper smelters only one copper concentrate dryer and one flash smelting furnace (or flash smelting furnace and slag cleaning vessel combination) is used at the smelter site. Each of these individual emission points would potentially emit significant quantities of HAP emissions if not controlled. Therefore, the EPA decided to designate each individual copper concentrate dryer, smelting furnace, and slag cleaning vessel as a separate affected source.

C. Selection of Basis and Level of the Proposed Standards

1. Background

The Clean Air Act statutory requirements for determination of the MACT floor are explained in section IV.C of this document. Determination of MACT floor for existing sources is dependent on the nationwide number of existing sources within the source category. The source category for which the EPA is developing this NESHAP is comprised of six existing primary copper smelters nationwide (discussed in Section III.A of this preamble). For a source category with less than 30 existing sources, the MACT floor is the average emission limitation achieved by the best performing five existing sources. The MACT floor for new sources is defined by the emission control that is achieved in practice by the best-controlled source.

For the other NESHAP developed by the EPA to date, the Agency has used several different approaches to determine MACT floor for individual source categories depending on the type, quality, and applicability of available data. These approaches include determining a MACT floor based on: (1) emission test data that characterize actual HAP emissions from presently controlled sources included in the source category; (2) existing federally-enforceable emission limitations specified in air regulations and facility air permits applicable to the individual sources comprising the source category; or (3) application of a specific type of air emission control technology currently being used by sources in the source category or by sources with similar pollutant stream characteristics. For the ''Primary Copper Smelting'' source category, the EPA decided to use the approach best suited for establishing the MACT floor on an individual affected source basis.

Once the MACT floors are determined for new and existing sources in a source category, the EPA must establish standards under a NESHAP that are no less stringent than the applicable MACT floors. The Administrator may promulgate standards that are more stringent than the MACT floor when such standards are determined by the EPA to be achievable taking into consideration the cost of implementing the standards as well as any non-air quality health and environmental impacts and energy requirements.

Section 112 of the Act requires that emission standards for control of HAP be established unless it is the Administrator's judgment that emission standards cannot be established or enforced for a particular type of source. In those cases when it is not possible to establish or enforce an emission standard, an alternative format must be used. Section 112(h)(2) of the Act identifies two conditions under which the Administrator may use an alternative format: (1) If the pollutants cannot be emitted through a conveyance designed and constructed to emit or capture the pollutant; or (2) if the application of measurement technology to a particular class of sources is not practicable because of technology and economic limitations. In these cases, the EPA may instead establish design, equipment, work practice, or operational standards, or a combination of these.

2. Selection of Standards for Copper Concentrate Dryers

Emissions of HAP from the copper concentrate dryer result from the entrainment of particulate matter containing metallic HAP in the exhaust gas stream from the dryer. At all six existing copper smelters, PM emissions from copper concentrate dryers are controlled by venting the dryer exhaust gases to either a baghouse or ESP. All six of the existing copper concentrate dryers have federally enforceable PM emission limits. Four of the dryers are subject to the NSPS PM emission limit of 50 mg/dscm (0.022 gr/dscf) (See § 60.162 in 40 CFR part 60, subpart P). The other two dryers are subject to a PM emission limit established in each smelter's respective State air permit. One dryer is subject to a State permit PM emission limit of 0.01 gr/dscf (approximately 23 mg/dscm). The second dryer is subject to a State permit PM emission limit of 0.03 gr/dscf limit (approximately 69 mg/dscm). The EPA also has obtained copies of the results for the compliance tests for each of these sources. Upon consideration of the information available to the EPA, the Agency elected to select the MACT floor for copper concentrate dryers based on the federally enforceable PM emission limits.

Using the federally-enforceable PM limits for the top five controlled sources, the average PM emission limit for existing copper concentrate dryers is 0.45 mg/dscm. The median limit for the five sources is the NSPS level of 0.50 mg/dscm. The average and median values are essentially the same and represent the control level established by the NSPS. Therefore, the EPA selected the NSPS PM emission limit of 50 mg/dscm as the MACT floor control level for existing copper concentrate dryers.

The EPA established a separate MACT floor control level for new sources based on the best-controlled copper concentrate dryer. As discussed above, the federally-enforceable PM emission limit for the best-controlled existing source is 0.01 gr/dscf. Converting this value to metric units, the MACT floor control level selected for new copper concentrate dryers is the PM emission limit of 23 mg/dscm.

The format of both the existing NSPS and State standards for copper concentrate dryers is a numerical emission limit using a mass concentration limit format. Consistent with the directives of section 112(h) of the Act, the EPA selected a mass concentration limit format for the proposed standards.

The MACT floor control level selected for existing copper concentrate dryers is 50 mg/dscm. The EPA considered establishing regulatory alternatives more stringent than the MACT floor control level based on the actual emissions recorded during compliance testing at each source. After review of the available test data for the controlled sources, the EPA concluded that these test data indicate actual PM emissions from each of the six controlled copper concentrates dryers effectively are at or near the control level established for the MACT floor. Therefore, EPA selected the MACT floor level of 50 mg/dscm as the proposed PM emission limit for an existing copper concentrate dryer.

The MACT floor control level selected for new copper concentrate dryers is the PM emission limit of 23 mg/dscm. The EPA did not identify any regulatory alternatives beyond the MACT floor for new sources. Therefore, the EPA selected the MACT floor of 23 mg/dscm (0.01 grain/dscf) as the level for the proposed standard for new copper concentrate dryers.

3. Selection of Standards for Smelting Furnaces

The smelting of copper concentrate in a furnace to obtain copper matte results in two types of HAP emissions. Process HAP emissions from the flash smelting furnace are metallic compound vapors in the off-gases exhausted from the furnace. Process fugitive HAP emissions result from hot metal vapors released when molten copper matter or slag is tapped from the furnace. Separate standards are proposed for smelting furnace process HAP emissions and for process fugitive HAP emissions.

Process HAP Emissions. All six of the existing smelters operate some type of flash smelting furnace. Process HAP emissions from these furnaces are controlled by exhausting the SO_2 rich off-gases to a by-product sulfuric acid plant. These controls have been installed to comply with requirements established to meet the National Ambient Air Quality Standards (NAAQS) for SO_2 and, in five of the six smelters, the primary copper smelter NSPS (40 CFR 60 subpart P). The smelting furnace at the Phelps Dodge Hidalgo smelter is not subject to this NSPS standard because it was built before the effective date of the standard. The NSPS limits SO_2 emissions from affected smelting furnaces to no more than 650 parts per million. All requirements under the NSPS as well as the applicable State Implementation Plans (SIP) are federally-enforceable.

While the by-product sulfuric acid plants were originally installed at the smelters for controlling SO_2 emissions, the inherent design and operating requirements of these plants also provide effective control of the metallic HAP contained in the smelting furnace off-gases. The sulfuric acid production process involves the catalytic conversion of the SO_2 contained in the off-gases to produce liquid sulfuric acid. To optimize the process performance and prevent expensive damage to the catalysts and other critical process equipment, the first step of the process requires that the smelting furnace off-gases be pre-cleaned and conditioned. Typically, these pre-cleaning and conditioning operations involve first passing the gas stream through an ESP (to remove particulate matter) and then a wet scrubber (to remove particulate matter further and to reduce the gas stream temperature). By using multiple control devices in series, very high overall particulate matter removal efficiencies are achieved such that effectively no particulate matter (and, therefore no metallic HAP) are emitted in the tail gas from the sulfuric acid plant.

Considering that all existing smelters use the same control technology for the smelting furnace off-gases, the EPA elected to select the MACT floor for smelting furnaces process HAP emissions based on application of a specific air emission control technology being used by the existing sources in the source category. The MACT floor control level selected for process HAP emissions from existing smelting furnaces is to vent the SO_2 rich off-gases from the smelting furnace to a by-product sulfuric acid plant or other type of sulfur recovery process unit that requires comparable levels of gas stream conditioning and pre-cleaning to remove particulate matter. Since all of the existing smelting furnaces represent the best-controlled source, the new source MACT floor is the same as the existing source MACT floor for smelting furnace process HAP emissions. Furthermore, the EPA did not identify any regulatory alternatives beyond the MACT floor. Therefore, the EPA selected the MACT floor as the basis for a proposed standard to control HAP emissions from smelting furnace off-gases at both new and existing sources.

To prescribe numerical emission limits for metals or particulate matter in the tail gases from the by-product sulfuric acid plants operated at primary copper smelters is very difficult because any actual emissions of metals or particulate matter from the by-product sulfuric acid plant, if present at all, are very variable and occur in trace amounts. Section 112 of the Act requires that an emission standard for control of HAP be established except in those cases when it is the Administrator's judgement that it is not feasible to prescribe or enforce an emission standard. In this case, it is neither feasible nor practical to prescribe or enforce a numerical emission limit for gases vented to a sulfuric acid plant due to technological and economic limitations. Because rigorous precleaning and conditioning of the smelting furnace off-gases is a necessary operating condition for the by-product sulfuric acid plant, venting to this unit ensures that emissions of metallic and particulate matter HAPs are either nonexistent or limited to trace amounts. In such a case, it is neither feasible nor practical to prescribe, measure, and enforce a numerical emission limit for the by-product sulfuric acid plant at these emission levels and, not only would such a standard be essentially unworkable from a technical standpoint, it would also provide virtually no benefit.

As an alternative to establishing a numerical emission limit, the EPA is proposing an equipment-based format for the standard. The proposed standard requires that the off-gases from the smelting furnace be vented to a by-product sulfuric acid plant or other type of sulfur recovery process unit that requires comparable levels of gas stream pre-cleaning and conditioning to remove particulate matter. The NSPS and SIP requirements for each smelter already provide for continuous emission monitoring of SO_2 emissions from these by-product sulfuric acid plants to assure compliance and proper operation of the plants. When indicated by the SO_2 emission monitoring, the smelter owners and operators are required to implement appropriate corrective actions as necessary to prevent degradation of the by-product sulfuric

acid plant performance. The EPA believes that the mandatory gas stream pre-cleaning requirements imposed by this equipment standard together with the continuous SO_2 monitoring required by other federally-enforceable air rules assures that a consistently very high level of metallic HAP control is achieved for the off-gases exhausted from smelting furnaces without the need to establish a specific emission standard and perform emission testing to demonstrate compliance with the standard.

Fugitive Process HAP Emissions. At five of the six existing smelters, the hot metal vapors released during matte and slag tapping are captured using local hood ventilation systems. Because these emissions occur intermittently (only when matte or slag tapping is performed) and have relatively low SO_2 concentrations, the capture gas stream is not vented to the sulfuric acid plant but instead is vented to a separate baghouse or ESP. At the sixth smelter, the matte and slag tapping emissions are currently captured by a local ventilation hood system and vented to the smelter's main stack.

Not all of the controlled sources have federally enforceable PM emission limits. Four of the sources are subject to State air permit limits; however these PM emission limits vary in format and the type of particulate regulated, and therefore cannot be averaged together. The test data for these controlled sources are highly variable. The characteristics of the captured gas streams from smelting furnace matte and slag tapping operations are similar to the gas streams captured by Pierce-Smith converter secondary hood systems (e.g., same HAP constituents, similar particulate matter loadings, relatively low SO_2 concentrations, and emitted intermittently). Therefore, the EPA elected to establish the MACT floor for smelting furnace matte and slag tapping operations based on application of the control devices to a similar controlled source (i.e., lean SO_2 gas streams captured by Pierce-Smith copper converter secondary hood systems).

The MACT floor control level selected for control devices used to treat lean SO_2 gas streams from Pierce-Smith copper converters is a PM emission limit of 16 mg/dscm (the rationale for this level is described later in this section). Applying the same MACT floor to smelting furnaces, the MACT floor control level selected for smelting furnace process fugitive emission sources is a PM emission limit of 16 mg/dscm. No best-controlled smelting furnace could be identified by the EPA. Therefore, the new source MACT floor is the same as the existing source MACT floor.

The format selected for the standard is a numerical emission limit expressed as a mass concentration of particulate matter. The EPA did not identify any regulatory alternatives beyond the MACT floor for existing sources nor could the EPA identify a best-controlled source. Therefore, EPA selected the MACT floor of 16 mg/dscm as the level for the PM emission limit proposed for both existing and new smelting furnace matte and slag tapping operations.

4. Selection of Standards for Slag Cleaning Vessels

Two existing primary copper smelters operate a slag cleaning vessel in conjunction with the flash smelting furnace. At one of these smelters, the slag cleaning vessel currently is not being used as part of the smelting process, but representatives of the smelter have told the EPA that operation of this slag cleaning vessel may be resumed in the future.

Process HAP Emissions. The existing air emission control used for the slag cleaning vessels is to exhaust the off-gases from the slag cleaning vessel to a wet scrubber for control of sulfur oxide gases and particulate matter. One source is subject to a State air permit emission limit of 0.02 gr/dscf. The EPA's review of the available particulate matter emission test data for the wet scrubbers concluded that the data are limited, highly variable, and should not be used to characterize the actual emission levels for the purpose of establishing the MACT floor. The EPA elected to select the MACT floor for slag cleaning vessel exhaust gases based on the federally enforceable emission limit of 0.02 gr/dscf. Converting this value to metric units, the MACT floor control level selected for existing slag cleaning vessels is the PM emission limit of 46 mg/dscm.

The format selected for the standard is a numerical emission limit. The EPA did not identify any regulatory alternatives beyond the MACT floor for existing sources nor could the EPA identify a best-controlled source. Therefore, the EPA selected the MACT floor of 46 mg/dscm as the level for the PM emission limit proposed for the off-gases exhausted from existing and new slag cleaning vessels.

Process Fugitive HAP Emissions. Like smelting furnaces, process fugitive HAP emissions from slag cleaning vessels occur when molten copper matte or slag is tapped from the vessel. No data exists for these systems. At the one smelter currently operating a slag cleaning vessel, the hot metal vapors captured by the hood ventilation system over the slag cleaning vessel tapping ports are exhausted into the same control system used for the smelting furnace process fugitive emissions. Based on the application of air emission controls used by sources with similar pollutant stream characteristics, the MACT floor control level selected for slag cleaning vessel matte and slag tapping operations is the same PM emission limit of 16 mg/dscm established for smelting furnaces.

The format selected for the standard is a numerical emission limit. The EPA did not identify any regulatory alternatives beyond the MACT floor for existing sources nor could the EPA identify a best-controlled source. Therefore, EPA selected the MACT floor of 16 mg/dscm as the level for the PM emission limit proposed for both existing and new slag cleaning vessel matte and slag tapping operations. This is the same limit selected for control devices used to treat lean SO^2 gas streams from Pierce-Smith copper converters as described in the next section.

5. Selection of Standards for Batch Copper Converters

Selection of Regulatory Approach. Two different batch converter designs currently are used at primary copper smelters in the United States. The majority of the smelters use the Pierce-Smith converter design while one smelter uses the Hoboken converter design. These two designs differ significantly in the method used to capture the converter off-gases for air emission control. The side-flue design of the Hoboken converter evacuates the gases directly from the interior of the converter shell. In contrast, the design of the Pierce-Smith converter relies totally on the use of external hood systems positioned over the converter mouth to capture the gases after they have already exited the converter shell. These air emission capture methods are integrated into the overall design of each type of converter and are not interchangeable between the two designs (i.e., a Pierce-Smith converter cannot readily be retrofitted to use the Hoboken design). Thus, the EPA concluded that it is not appropriate to group the Hoboken converters with the Pierce-Smith converters for the purpose of establishing standards for existing batch copper converters. The EPA decided to develop separate standards for existing Pierce-Smith converters and for existing Hoboken converters.

Visual observations by EPA representatives of the converter capture systems in operation at each of the

smelters suggests that the capture efficiency varies from smelter-to-smelter because different capture system designs and operating practices are used at individual smelters. No data are available to determine a specific capture efficiency for the capture systems used for either Pierce-Smith converters or Hoboken converters. In lieu of having specific capture efficiency values, the EPA believes that the opacity of the visible emissions exiting the converter building roof vents or exhaust fans directly over the converter aisle is a direct function of converter capture system performance when the converters are operating under certain specific conditions. Thus, the approach selected by the EPA for establishing a MACT floor for the converter capture system performance is to use opacity and converter operating data gathered at each of the smelters during a series of site visits conducted by the Agency.

Converter Visible Emission Observations. In April and May of 1997, the EPA conducted a series of visible emission observations at existing primary copper smelters in the United States operating Pierce-Smith converters or Hoboken converters. A summary of protocol used for the field observation data collection and analysis is presented below. More detailed information about the site visits, the opacity observations, and EPA's analysis of the data are available in Docket No. A–96–22.

Visible emission readings of the converter building at each of the smelter sites were made by teams of certified observers. At the three primary copper smelters located in Arizona, opacity observations were made by a team of EPA observers and a team of observers from the State of Arizona Department of Environmental Quality. The opacity observations for the two smelters located in New Mexico were made by a team of EPA observers.

All of the opacity observations were performed using procedures specified in Method 9 in 40 CFR part 60, appendix A. The observers recorded opacity readings at 15-second intervals for those sections of the converter building roof monitor (or in the case of one smelter, the converter building roof exhaust fan outlets) that are positioned directly over the location of the copper converters inside the building. When it was possible for an observer to see two or more plumes emitted from the converter building roof during the same reading interval, the observer identified the plume having the highest opacity and recorded an opacity reading for that plume.

Throughout the periods when outdoor opacity observations were being made by the observer teams, an EPA representative familiar with primary copper smelter operations was stationed inside the converter building and visually monitored the copper converter operations. This observer recorded on a clock time basis the times when a converter was in the blowing position and times when events occurred which generated visible plumes inside the building. Additional information about the converter operations was obtained from the smelter's computer records of the individual converter blowing rates.

In general, a sufficient number of opacity observations were obtained during the site visits to obtain a data base for each smelter consisting in the range of 400 to 500 minutes of opacity readings. Not included in the data base prepared for each smelter were any opacity readings made during periods when the converter operations were judged to not be representative of normal smelter operations (e.g., converter capture system malfunction) or when the opacity observation conditions did not meet Method 9 criteria (e.g., occurrence of high winds).

The analysis of the field data began by creating a spreadsheet data file for each smelter listing by the clock time at 1-minute intervals an average opacity value (based on the outside EPA and State observer opacity readings) and corresponding converter process information (based on the indoor process monitor log and records of the converter system blowing rates provided by the smelter operator). The 1-minute opacity value was calculated by averaging all of the 15-second readings made by the EPA and State observers during the clock time minute interval.

The EPA considered alternative approaches for determining an average opacity value for each smelter to represent the converter capture system performance. For each smelter data file, the EPA identified those clock minute intervals when one or more converters are operating in the blowing mode and none of the following ladle transfer operations were indicated in the file to be occurring in the converter aisle: charging of matte, reverts, or other materials to a converter; converter slag skimming from a converter; blister copper pouring from a converter; or slag return to the furnace. To account for the time delay between when visible emissions generated in the converter building are seen by the inside observer and when these impact the opacity recorded by the outside observers, the two minutes of opacity readings recorded immediately following the clock time recorded for cessation of the activity were assumed to be impacted by the visible emission event. The set of conditions when at least one of the converters is operating in the blowing mode and no visible emission events have occurred in the converter aisle during the preceding two minutes is referred to as ''blowing without interferences''. The EPA then calculated the average opacity value for each period consisting of 6 consecutive minutes during which ''blowing without interferences'' occurred.

Existing Pierce-Smith Copper Converters. Five existing primary copper smelters use Pierce-Smith converters. At each smelter, the air emissions from these copper converters during blowing are captured and controlled. The design and operation of the overall capture system used at each of these smelters to collect these emissions from Pierce-Smith converters varies from smelter-to-smelter. At every smelter, whenever each Pierce-Smith converter is positioned for blowing, the mouth of the converter is covered by a close-fitting primary hood. The gas stream captured by the primary hood is vented to the by-product sulfuric acid plant at the smelter. However, the primary hood does not completely seal the converter mouth since sufficient space must be provided to rotate the converter mouth out from under the hood during charging, skimming, and at other times.

To collect emissions that escape capture by the primary hoods, capture devices of various designs in addition to the primary hoods are used at each of the existing smelters (hereafter referred to collectively as the ''converter secondary capture system''). At four of the smelters, the converter secondary capture system consists of a second set of mechanical hoods (hereafter referred to as the ''secondary hoods'') positioned above the primary hoods. The secondary hoods used at the individual smelters vary in design, capture effectiveness, and operating practices.

The fifth smelter controls air emissions from its Pierce-Smith converter operations using a secondary air curtain hood for each individual converter and also evacuates the entire converter building to a baghouse. This capture system design effectively provides 100 percent capture of all converter process fugitive emissions (as well as those process fugitive emissions and fugitive dust emissions from other sources located inside the converter building). The State air permit requirement for this capture system is to operate with no visible emissions.

The approach selected by the EPA for establishing the MACT floor for the overall Pierces-Smith converter capture

system performance is to use opacity of the visible emissions from the converter building. The results for the EPA's field visible emission observations (described in the preceding section) were used to quantify the MACT floor control level. At the four smelters using primary hoods with secondary hoods to capture converter process fugitive emissions, the average converter building opacity observed at each of the individual smelters ranged from 0.7 percent to 7.1 percent. At the fifth smelter converter process fugitive emissions are controlled using secondary air curtain hoods in combination with a building evacuation system. Based on the State air permit requirement that the building evacuation system operate with no visible emissions, the EPA set the average converter building opacity for this smelter to be zero percent.

The arithmetic average of the opacity values for the five smelters operating Pierce-Smith converters is 2.8 percent. To establish the MACT floor, the EPA rounded this average opacity value to the nearest whole opacity value and selected 3 percent as the MACT floor converter capture system performance level for Pierce-Smith copper converters. The EPA did not identify any regulatory alternatives beyond the MACT floor for existing sources. Therefore, EPA selected the MACT floor of 3 percent as the level for the visible emission limit proposed for existing Pierce-Smith converters.

To establish the MACT floor for the level of control achieved for each of the captured converter gas streams, the EPA selected the approach of basing the MACT floor on application of the air emission control technology being used by the existing sources in the source category. Separate MACT floors were selected for the gas streams captured by the converter primary hoods and for the gas streams captured by the converter secondary capture system.

At each of the existing smelters, the SO_2 rich off-gases generated during converter blowing and captured by the primary hoods are blended with the off-gases from the smelting furnace and then vented to the smelter's by-product sulfuric acid plant. None of these converters is subject to the primary copper smelter NSPS (40 CFR 60 subpart P). Nonetheless, the control of the converter primary off-gases (i.e., SO_2 rich off-gases generated during converter blowing) is required under each smelter's SIP for attainment of the NAAQS for SO_2.

Given that the SO_2 rich off-gases exhausted from the Pierce-Smith converters and smelting furnace are treated by the same controls (i.e., the by-product sulfuric acid plant), it follows that the MACT floor for the converters should be the same as the MACT selected for the smelting furnace off-gases. As presented in section VII.C.3 of this preamble, the standard that the EPA selected for smelting furnaces is to vent the furnace off-gases to a by-product sulfuric acid plant (or other type of sulfur recovery process unit that requires comparable levels of gas stream pre-cleaning and conditioning to remove particulate matter). Therefore, the EPA selected the same MACT floor and standard for gas streams captured by the Pierce-Smith converter primary hoods.

The low SO_2 concentrations of gas streams captured by the Pierce-Smith converter secondary capture systems are not suitable for venting to the by-product sulfuric acid plant. Instead, PM emissions from the gas streams captured by the Pierce-Smith converter secondary capture systems (hereafter referred to as ''converter secondary emissions'') are controlled at each of the existing smelters by venting the gas streams to a separate control device. At four of the smelters operating Pierce-Smith copper converters, the converter secondary capture system is vented to a baghouse. At the fifth smelter, the converter secondary capture system is vented to an ESP.

Considering that four of the five existing smelters use the same control technology for the Pierce-Smith converter secondary emissions, the MACT floor control level selected for Pierce-Smith converter secondary emissions is to vent the captured gas streams to a baghouse (or other type particulate matter control device that achieves a comparable level of control for particulate matter emissions). Since this control technology also represents the best-controlled source, the new source MACT floor is the same as the existing source MACT floor for Pierce-Smith converter secondary emissions.

The EPA did not identify any regulatory alternatives beyond the MACT floor for control of gas streams captured by the converter secondary capture systems. Therefore, the EPA selected the application of baghouses as the basis for the proposed standards to control converter secondary emissions. Consistent with other standards the EPA has promulgated based on application of baghouses for control of PM emissions, the EPA selected the format of the standard to be a numerical emission limit expressed using a mass concentration.

The EPA used available test data to select a value for the numerical emission limit for Pierce-Smith converter secondary emissions. Particulate matter emission test data are available for each of the existing baghouses used to control Pierce-Smith converter secondary emissions. A data set consisting of results for three individual source test runs are available for each of the four baghouses. The results for these individual test runs show baghouse outlet PM concentrations range from approximately 0.002 gr/dscf to 0.01 gr/dscf. Averaging the results of the three individual runs for each baghouse shows that comparable levels of particulate matter emission control are achieved by all of the baghouses (the average baghouse outlet PM concentrations ranging from approximately 0.004 gr/dscf to 0.007 gr/dscf). Test results for a three-run source test are also available for the single ESP used to control Pierce-Smith converter secondary emissions. The ESP outlet PM concentrations measured by the three individual test runs range from approximately 0.002 gr/dscf to 0.004 gr/dscf. The data show that the ESP achieved a level of PM emission control similar to that demonstrated by the baghouses.

All of the control devices were operating properly when the source tests were conducted. Considering that the gas stream flow rates and inlet particulate matter concentrations varied between the individual control devices, the EPA cannot distinguish any real differences between the control levels measured for the control devices used to control Pierce-Smith converter secondary emissions. Therefore, for the numerical emission limit, the EPA selected the value at the upper end of the range of the average outlet PM concentrations in the data set (0.007 gr/dscf). It is the EPA's judgement that a control device outlet PM concentration of 0.007 gr/dscf best characterizes the level of actual emissions that can reasonably be expected to be consistently achieved by all well-controlled sources. Converting this value to metric units, the proposed standard for both existing and new sources selected for Pierce-Smith converter secondary emissions is the PM emission limit of 16 mg/dscm.

Existing Hoboken Copper Converters. One existing copper smelter uses Hoboken converters. The off-gases from these copper converters during blowing are evacuated through the side-flue and vented to the sulfuric acid plant at the smelter. At this smelter, the average converter building opacity value observed by the EPA was 3.8 percent. The MACT floor converter capture system performance level selected for

Hoboken copper converters is an average opacity value of 3.8 percent as measured at the converter building roof monitor using the test protocol developed by the EPA for this rulemaking. To be consistent with the method used to select the MACT floor for Pierce-Smith converters, the EPA rounded this average opacity value to the nearest whole opacity value and selected 4 percent as the MACT floor converter capture system performance level for Hoboken copper converters. The EPA did not identify any regulatory alternatives beyond the MACT floor for existing sources. Therefore, EPA selected the MACT floor of 4 percent as the level for the visible emission limit proposed for existing Hoboken converters.

Like the Pierce-Smith converters, the SO_2 rich off-gases exhausted from the Hoboken converters during converter blowing is blended with the off-gases stream from the smelting furnace and vented to the by-product sulfuric acid plant. For consistency with the Pierce-Smith converter standards, the EPA established the proposed standard for existing Hoboken converters to be that the SO_2 rich off-gases directly evacuated from the converters be vented to a by-product sulfuric acid plant or other type of sulfur recovery process unit that requires comparable levels of gas stream conditioning and pre-cleaning to remove particulate matter.

New Copper Converters. The EPA established a separate standard for new batch copper converters based on the best-controlled source. This source is the smelter that controls air emissions from the copper converter operations using secondary air curtain hoods and evacuation of the entire converter building to a baghouse. This capture system design effectively provides 100 percent capture of all converter emissions. The federally-enforceable opacity limit for the converter building at this smelter is no visible emissions. Although this capture system presently is used at a smelter operating Pierce-Smith converters, the capture system design is equally applicable to a smelter operating Hoboken converters. Therefore, the MACT floor capture system performance selected for any new batch copper converter, regardless of design, is to operate with sufficient ventilation draft whenever molten material is in the copper converter such that no visible emissions exit the building housing the copper converters.

For the captured gas streams, the control levels achieved by the best-controlled source are the same as the standards established for existing converters. Thus, the standard the EPA selected for new converters is to vent the SO_2 rich off-gases from the converter generated during blowing to a by-product sulfuric acid plant or other type of sulfur recovery process unit that requires comparable levels of gas stream conditioning and pre-cleaning to remove particulate matter. The EPA selected 16 mg/dscm to establish the proposed PM emission limit for the converter gases not controlled by venting to the sulfuric acid plant.

6. Selection of Standards for Fugitive Dust Sources

Fugitive dust emissions at existing primary copper smelters are controlled by using a variety of different methods. Not all smelters control the same sources nor use the same type of control. The fugitive dust control measures used at a given smelter varies depending on the dust controls required by the facility's State air permit and the facility owner's preferences and polices regarding fugitive dust control. These controls can range from daily water spraying of plant roads and outdoor storage piles to enclosure and venting of the source to a control device. No specific group of fugitive dust control measures could be identified that reflected an average emission limitation for the existing smelters. The EPA decided that MACT floor for fugitive dust sources is to develop and implement a site-specific set of fugitive dust control measures to be implemented by the smelter owner or operator according to a written plan. No best-controlled fugitive dust sources could be identified by the EPA. Therefore, the new source MACT floor is the same as the existing source MACT floor for fugitive dust sources.

Establishing and enforcing emission limitations for fugitive dust sources is not practical. The inherent mechanisms by which pollutants are emitted from fugitive dust sources prevents the application of batch stack sampling methods to measure the level of the emissions from these sources. It is not feasible to capture the emissions and subsequently discharge these emissions through a duct or other conveyance to a control device. Therefore, as allowed under section 112(h) of the Act, the EPA decided to use a work practice format for the proposed standards for fugitive sources.

The proposed standards would require the smelter owner or operator to implement appropriate work practice control measures specific to the types of fugitive dust sources at a smelter site. For many fugitive dust sources there are several equivalent control measures available for controlling fugitive dust emissions from a particular type of source. Therefore, the standard for each affected owner or operator to develop and implement a site-specific fugitive dust control plan is being proposed rather than the EPA establishing the specific individual work practices that all smelter owners and operators must use. The EPA believes that flexibility provided to the smelter owner and operator by the site-specific approach is needed because the best fugitive dust control options for a given smelter are determined by the physical layout of the smelter, the types of fugitive dust sources, and the control measures that are already being implemented. These factors vary significantly from smelter to smelter.

D. Selection of Compliance Requirements

1. Selection of Compliance Dates

Section 112(i)(3) of the Act requires the Administrator to establish a compliance date or dates for each category or subcategory of existing sources which provides for compliance with the applicable standards as expeditiously as practicable but in no event later than 3 years after the effective date of the standards. To select the proposed compliance date for existing affected sources at primary copper smelters, the EPA considered the time that would be necessary for owners and operators of existing primary copper smelters to complete the tasks required to comply with the proposed rule.

At all of the existing smelters, air emission control equipment capable of meeting the applicable proposed standard is currently in place for many of the affected sources that would be subject to the rule. For a few existing affected sources, an upgrade of an existing capture system or installation of new control equipment may be needed. Owners and operators* will need to develop and implement the required operating plan for control of fugitive dust sources, and implement the required operating and monitoring requirements for the air emission control equipment used to comply with the standards. The EPA concluded that it is reasonable to expect that achieving compliance of existing affected sources with the requirements of the proposed rule can be completed within a period significantly shorter than 3 years. The EPA selected the compliance date for existing affected sources at primary copper smelters to be no later than 2 years after the effective date of the standards. The EPA believes it is realistic and practical to accomplish the

tasks needed to comply with the proposed rule within 2 years, and this period fulfills the Clean Air Act directive that the Administrator establish a compliance date which provides for compliance with the applicable standards as expeditiously as practicable. Furthermore, should special circumstances arise at an individual smelter such that installation of controls which cannot be completed within the specified 2-year compliance period, section 63.6(i) of the NESHAP general provisions already provide for a compliance date extension (allowing up to 1 additional year for compliance) to be granted upon request of the owner or operator and approval by the Administrator or the delegated regulatory authority.

The compliance date for new affected sources was selected by the EPA to meet the requirements of section 112(i) of the Act. Owners or operators of new affected sources at primary copper smelters would be required to achieve compliance upon startup or the effective date of this NESHAP, whichever is later.

2. Selection of Test Methods

The proposed NESHAP would require the owner or operator to conduct an initial performance test to demonstrate compliance with each of the particulate matter emission limits specified in the rule that is applicable to a given smelter site. In addition, the rule would require that the owner or operator perform an initial performance test to determine the visible emissions from the building housing the copper converter department.

The EPA selected the performance test requirements to demonstrate compliance with the particulate matter emission limits based on the use of appropriate EPA reference test methods. Method 5 in appendix A to 40 CFR part 60 is an EPA reference test method that has been developed and validated for the measurement of PM emissions from stationary sources. Method 5D is a variation of Method 5 to be used for measuring PM emissions at the outlet to a positive pressure baghouse. For sampling and analysis of the gas stream the following EPA reference methods would be used with Method 5: Method 1 to select the sampling port location and the number of traverse points; Method 2 to measure the volumetric flow rate; Method 3 for gas analysis; and Method 4 to determine stack gas moisture.

As part of this rulemaking, the EPA is proposing a specific test protocol to be used for determining compliance with the visible emission limits established for existing Pierce-Smith and Hoboken copper converters. These standards establish average opacity limits for the visible emissions exiting the building roof monitors or exhaust fans directly above the copper converters. The test protocol includes making opacity readings using the Agency's EPA reference test method for the measurement of visible emissions from stationary sources (Method 9 in appendix A of 40 CFR part 60). This method is widely used in EPA air rules for determining compliance with visible emission limits. The EPA selected the procedures specified in the proposed test protocol based on the Agency's experience with the opacity observations performed during the smelter program the EPA conducted at existing primary copper smelters. A preliminary draft of the test protocol was reviewed by the State agencies and copper companies that participated in the field observation program. Based on comments received by the EPA from these reviewers, certain refinements to the opacity observation and data analysis procedures were incorporated into the test protocol included in the proposed NESHAP.

For determining compliance with the no visible emission limit proposed for new copper converters, the EPA selected Method 22, ''Visual Determination of Fugitive Emissions from Material Sources and Smoke Emissions from Flares,'' in appendix A of 40 CFR part 60. Method 22 requires only determination as to whether a visible emission occurs and does not require that the opacity of the emissions be determined. This method provides a simpler and less expensive method for determining compliance with a no visible emission limit than requiring new sources to use an appropriate version of the test protocol being proposed for existing sources. So that a performance test using Method 22 would represent a range of the different copper converter operations that typically occur inside the converter building during normal copper production, the EPA is proposing a minimum observation period of no less than 2 hours.

3. Selection of Monitoring Requirements

The EPA evaluates a hierarchy of options to select compliance assurance monitoring of HAP emissions from affected sources. This involved identifying and analyzing several different monitoring options for each of the affected sources and the proposed control equipment. This hierarchy includes measurement of the HAP or an appropriate surrogate pollutant by a continuous emission monitoring system (CEMS), installation of measurement devices for monitoring of process and/or control device operating parameters, and periodic or one-time performance tests. Each option is evaluated relative to its technical feasibility, cost, ease of implementation, and relevance to the process or air emission control equipment.

The use of a CEMS provides a direct measurement of the emissions from a given source. Monitors for measuring metallic HAP emissions are not commercially available. Monitors for measuring PM emissions as a surrogate for metallic HAP emissions have not yet been demonstrated for primary copper smelting operations. Therefore, the EPA did not consider further the use of CEMS for this proposed rule.

Another option for compliance assurance is monitoring appropriate process and/or control equipment operating parameters. Process parameters were not selected as indicators for metallic HAP emissions from the primary copper smelter sources because an adequate correlation does not exist between production or process parameters and emission rates. The EPA does believe that reasonable assurance of compliance with the standards proposed for this NESHAP can be achieved by the owner or through appropriate periodic inspection and continuous monitoring of the operation of the air emission control equipment that has been demonstrated by an initial performance test to achieve the applicable emission standards under the rule. Therefore, operating parameters were selected instead for the converter capture system and for control devices with one exception because measurements outside a range of values established during an initial performance test can be used to indicate the control device is not operating properly (i.e., not operating at the conditions under which compliance was demonstrated by performance testing).

A modified approach to monitoring control device operation parameters was selected for baghouses because the baghouse operating parameters routinely monitored do not correlate well with the particulate matter emission rates. The approach selected for baghouses uses a comprehensive, periodic inspection and maintenance program in combination with the use of bag leak detectors. The EPA has previously adopted this baghouse monitoring approach for similar types of metallurgical industry sources that use baghouses to control particulate matter emissions (e.g., secondary lead smelting

NESHAP under 40 CFR part 63, subpart X).

E. Selection of Notification, and Recordkeeping Reporting Requirements

Under section 114(a) of the Act, the EPA may require any owner or operator of a source subject to a NESHAP to establish and maintain records as well as prepare and submit notifications and reports to the EPA. The general recordkeeping, notification, and reporting requirements for NESHAP are specified in sections 63.9 and 63.10 of the NESHAP general provisions. The recordkeeping, notification, and reporting requirements for the proposed NESHAP were selected to be consistent with the general provisions requirements.

VIII. Public Participation

The EPA seeks full public participation in arriving at its final decisions, and strongly encourages comments on all aspects of this proposal from all interested parties. Full supporting data and detailed analyses should be submitted with comments to allow the EPA to make maximum use of the comments. All comments should be directed to the Air and Radiation Docket and Information Center, Docket No. A–96–22 (see **ADDRESSES**). Comments on this notice must be submitted on or before the date specified in **DATES.**

Commenters wishing to submit proprietary information for consideration should clearly distinguish such information from other comments, and clearly label it ''Confidential Business Information'' (CBI). Submissions containing such proprietary information should be sent directly to the following address, and not to the public docket, to ensure that proprietary information is not inadvertently placed in the docket: Attention: Mr. Gene Crumpler, c/o Ms. Melva Toomer, U.S. EPA Confidential Business Information Manager, OAQPS (MD–13), Research Triangle Park, NC 27711. Information covered by such a claim of confidentiality will be disclosed by the EPA only to the extent allowed and by the procedures set forth in 40 CFR part 2. If no claim of confidentiality accompanies the submission when it is received by the EPA, the submission may be made available to the public without further notice to the commenter.

IX. Administrative Requirements

A. Docket

The docket is an organized and complete file of all the information considered by the EPA in developing this rulemaking. The docket is a dynamic file, because material is added throughout the rulemaking development. The docketing system is intended to allow members of the public and industries involved to readily identify and locate documents so that they can effectively participate in the rulemaking process. Along with the proposed and promulgated standards and their preambles, the contents of the docket will serve as the record in case of judicial review. [See section 307(d)(7)(A) of the Act.]

B. Public Hearing

If a request to speak at a public hearing is received, a public hearing on the proposed standards will be held according to section 307(d)(5) of the Act. Persons wishing to present oral testimony or to inquire as to whether a hearing is to be held should contact the EPA (see **FOR FURTHER INFORMATION CONTACT**). To provide an opportunity for all who may wish to speak, oral presentations will be limited to 15 minutes each.

Any member of the public may file a written statement on or before June 19, 1998. Written statements should be addressed to the Air and Radiation Docket and Information Center (see **ADDRESSES**) and refer to Docket No. A–95–43. A verbatim transcript of the hearing and written statements will be placed in the docket and be available for public inspection and copying, or mailed upon request, at the Air and Radiation Docket and Information Center.

C. ''Significant Regulatory Action'' Determination Under Executive Order 12866

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the EPA must determine whether the regulatory action is ''significant'' and therefore subject to review by the Office of Management and Budget (OMB) and the requirements of the Executive Order. The Executive Order defines ''significant regulatory action'' as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or state, local, or tribal governments or communities;

(2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligation of recipients thereof; or

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

Under the terms of Executive Order 12866, it has been determined that this regulatory action is not significant because none of the listed criteria apply to this action. Consequently, this action was not submitted to OMB for review under Executive Order 12866.

D. Enhancing the Intergovernmental Partnership Under Executive Order 12875

In compliance with Executive Order 12875, the EPA involved State regulatory experts in the development of this proposed rule. No tribal governments are believed to be affected by this proposed rule. Although not directly impacted by the rule, State governments will be required to implement the rule by incorporating the rule into permits and enforcing the rule upon delegation. They will collect permit fees that will be used to offset the resources burden of implementing the rule. Comments have been solicited from State partners and have been carefully considered in the rule development process. In addition, all States are encouraged to comment on this proposed rule during the public comment period, and the EPA intends to fully consider these comments in the development of the final rule.

E. Clean Air Act

As directed by section 117 of the Act, publication of this proposal was preceded by consultation with appropriate advisory committees, independent experts, and Federal departments and agencies. This rule will be reviewed 8 years from the date of promulgation. This review will include an assessment of such factors as evaluation of the residual health risks, any overlap with other programs, the existence of alternative methods, enforceability, improvements in emission control technology and health data, and the recordkeeping and reporting requirements.

F. Paperwork Reduction Act

The information collection requirements in this proposed rule have been submitted for approval to the OMB under the requirements of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* An information collection request (ICR) document has been prepared by EPA (ICR No. 1850.01), and a copy may be obtained from Sandy Farmer, OPPE Regulatory Information

Division, U.S. Environmental Protection Agency (2137), 401 M Street SW., Washington, DC 20460, or by calling (202) 260–2740.

The proposed information requirements are based on notification, recordkeeping, and reporting requirements in the NESHAP general provisions (40 CFR part 63, subpart A), which are mandatory for all owners or operators subject to national emission standards. These recordkeeping and reporting requirements are specifically authorized by section 114 of the Act (42 U.S.C. 7414). All information submitted to the EPA for which a claim of confidentiality is made is safeguarded according to Agency policy under 40 CFR part 2, subpart B. [See 41 FR 36902.]

The proposed rule would require maintenance inspections of the control devices but would not require any notifications or reports beyond those required by the general provisions. The proposed recordkeeping requirements require only the specific information needed to determine compliance.

The annual monitoring, reporting, and recordkeeping burden for this collection (averaged over the first 3 years after the effective date of the rule) is estimated to be 11,400 labor hours per year at a total annual cost of $560,500. This estimate includes a one-time performance test and report (with repeat tests where needed); one-time submission of a startup, shutdown, and malfunction plan with semi-annual reports for any event when the procedures in the plan were not followed; semi-annual excess emission reports; maintenance inspections; notifications; and recordkeeping. Total capital/startup costs associated with the monitoring requirements over the 3-year period of the ICR are estimated at $156,000, with operation and maintenance costs of $72,000/yr.

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 purpose 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 respond to a collection of information; search existing data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15.

Comments are requested on the EPA's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including the use of automated collection techniques. Send comments on the ICR to the Director, OPPE Regulatory Information Division; U.S. Environmental Protection Agency (2137), 401 M Street SW., Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street NW., Washington, DC 20503, marked ''Attention: Desk Office for EPA.'' Include the ICR number in any correspondence. Because the OMB is required to make a decision concerning the ICR between 30 and 60 days after April 20, 1998, comment to OMB is best assured of having its full effect if OMB receives it by May 20, 1998. The final rule will respond to any OMB or public comments on the information collection requirements contained in this proposal.

G. Pollution Prevention Act

The Pollution Prevention Act of 1990 (42 U.S.C. 13101 *et seq.*, Pub. L. 101–508, November 5, 1990) establishes the national policy of the United States for pollution prevention. This act declares that: (1) pollution should be prevented or reduced whenever feasible; (2) pollution that cannot be prevented or reduced should be recycled or reused in an environmentally-safe manner wherever feasible; (3) pollution that cannot be recycled or reused should be treated; and (4) disposal or release into the atmosphere should be chosen only if none of the other options is available.

The HAP emitted during the copper smelting process result from metallic compound impurities that occur naturally in copper ore deposits. The House Conference Report on the 1990 Amendments specifically prevents the Administrator from considering the substitution of, or other changes in, metal or mineral bearing raw material used as feedstocks in establishing emission standards, work practice standards, operating standards, or other prohibitions for nonferrous metals source categories. Thus, no restrictions can be placed by the EPA on the HAP content of the copper ore shipped to primary copper smelters. Furthermore, there are no commercial-scale pretreatment processes available for removing or reducing the metallic HAP contained in the copper concentrate before feeding the material to the flash smelting furnace.

Opportunities for applying pollution prevention to the ''Primary Copper Smelting'' source category are basically limited to application of air emission controls to reduce the release of metallic HAP from the copper smelting process into the atmosphere. Particulate matter collected by baghouses or ESP's used to control the HAP emissions from the smelting processes can be recycled back through the flash smelting furnace for recovery of the residual copper contained in this material. Thus, to the extent possible, pollution prevention has been considered in the development of this rulemaking, and the NESHAP is consistent with the Pollution Prevention Act.

H. Regulatory Flexibility

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

The impact of the regulation on small entities was evaluated in the economic impact analysis. Companies engaged in primary copper smelting with less that 1,000 employees are classified as small businesses by the Small Business Administration. Based on the analysis conducted, none of the companies owning the six primary copper smelters potentially affected by this rulemaking are small entities. Under section 605(b) of the Regulatory Flexibility Act, the Administrator certifies that this rule will not have a significant economic impact on small entities.

I. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Pub. L. 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, the EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures by State, local, and tribal governments, in aggregate, or by the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires the EPA

to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows the EPA to adopt an alternative other than the least costly, most cost-effective, or least burdensome alternative if the Administrator publishes with the final rule an explanation of why that alternative was not adopted. Before the EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

The EPA has determined that this rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any one year. Thus, today's rule is not subject to the requirements of sections 202 and 205 of the UMRA. In addition, the EPA has determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments because it contains no requirements that apply to such governments or impose obligations upon them. Therefore, today's rule is not subject to the requirements of section 203 of the UMRA.

List of Subjects in 40 CFR Part 63

Environmental protection, Air pollution control, Hazardous substances, Primary copper smelter, Reporting and recordkeeping requirements.

Dated: April 9, 1998.

Carol M. Browner,

Administrator.

For the reasons set out in the preamble, part 63 of title 40, chapter I, of the Code of Federal Regulations is proposed to be amended as follows:

PART 63—NATIONAL EMISSION STANDARDS FOR HAZARDOUS AIR POLLUTANTS FOR SOURCE CATEGORIES

1. The authority citation for part 63 continues to read as follows:

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

2. Part 63 is amended by adding subpart QQQ to read as follows:

Subpart QQQ—National Emission Standards for Hazardous Air Pollutants From Primary Copper Smelters

Sec.

63.1440 Applicability.
63.1441 Definitions.
63.1442 [Reserved]
63.1443 Standards: Copper concentrate dryers.
63.1444 Standards: Smelting vessels.
63.1445 Standards: Slag cleaning vessels.
63.1446 Standards: Copper converters.
63.1447 [Reserved]
63.1448 Standards: Fugitive dust sources.
63.1449 Equivalent standards: combined exhaust gas streams.
63.1450 Compliance with standards and maintenance requirements.
63.1451 Performance testing requirements.
63.1452 Inspection and monitoring requirements.
63.1453 Notification requirements.
63.1454 Recordkeeping and reporting requirements.
63.1455 State authority and delegations.

Appendix A of Subpart QQQ to Part 63— Applicability of General Provisions (40 CFR part 63, subpart A) to Subpart QQQ.

Figure 1 of Subpart QQQ—Data Summary Sheet for Determination of Average Opacity.

Subpart QQQ—National Emission Standards for Hazardous Air Pollutants From Primary Copper Smelters

§ 63.1440 Applicability.

(a) The requirements of this subpart apply to the owner or operator of a facility for which both of the following conditions apply:

(1) The facility produces anode copper by first flash smelting of copper ore concentrates to obtain molten copper matte and then converting the molten matte to blister copper using batch copper converters as defined in § 63.1441 of this subpart.

(2) The facility is a major source as defined in § 63.2 of this part.

(b) The affected sources at a primary copper smelter subject to this subpart are the sources listed in paragraphs (b)(1) through (b)(5) of this section.

(1) *Copper concentrate dryers.* The affected source is each individual copper concentrate dryer as defined in § 63.1441 of this subpart.

(2) *Smelting vessels.* The affected source is each individual smelting vessel as defined in § 63.1441 of this subpart.

(3) *Slag cleaning vessels.* The affected source is each individual slag cleaning vessel as defined in § 63.1441 of this subpart.

(4) *Batch copper converters.* The affected source is the copper converter department as defined in § 63.1441 of this subpart.

(5) *Fugitive dust sources.* The affected source is the entire group of all fugitive dust sources, as defined in § 63.1441 of this subpart, that are located at a primary copper smelter.

(c) A new affected source is an affected source for which construction or reconstruction commences on or after April 20, 1998. New affected sources are subject to the relevant standards for new sources specified in this subpart.

(d) The requirements of the general provisions in subpart A of this part that apply and those that do not apply to owners and operators subject to this subpart are specified in appendix A to this subpart.

§ 63.1441 Definitions.

All terms used in this subpart shall have the meaning given to them in this section, § 63.2 of this part, or the Act.

Baghouse means a control device that collects particulate matter by filtering the gas stream through bags. A *baghouse* is also referred to as a ''fabric filter.''

Bag leak detection system means an instrument that can monitor particulate matter (e.g., dust) loadings in the exhaust of a baghouse to detect bag failures. A *bag leak detection system* includes, but is not limited to, an instrument that operates on triboelectric, light scattering, transmittance or other effect to monitor relative particulate matter loadings.

Batch copper converter means a copper converter that is one of the following copper converter designs: a Pierce-Smith converter; a Hoboken converter; or a similar design copper converter that produces blister copper in discrete batches using a sequence of charging, blowing, skimming, and pouring steps. A *batch copper converter* does not use continuous flash converting technology.

Blowing means the copper converter operating mode during which air or oxygen-enriched air is injected into the molten converter bath.

By-product sulfuric acid plant means a facility that produces sulfuric acid by a contact process involving the catalytic conversion of sulfur dioxide to sulfur trioxide followed by absorption of the sulfur trioxide in a sulfuric acid solution.

Capture system means the collection of components used to capture gases and fumes released from one or more emission points, and then convey the captured gas stream to a control device. A *capture system* may include, but is not limited to, the following components as applicable to a given capture system design: duct intake devices, hoods, enclosures, ductwork, manifolds, plenums, and fans.

Charging means the copper converter operating mode during which molten or solid material is added to a copper converter.

Control device means the air pollution control equipment used to collect particulate matter emissions. Examples of such equipment include, but are not limited, to a baghouse, an electrostatic precipitator, and a wet scrubber.

Copper concentrate dryer means a vessel in which copper concentrates are heated in the presence of air to reduce the moisture content of the material. Supplemental copper-bearing feed materials and fluxes may be added or mixed with the copper concentrates fed to a *copper concentrate dryer.*

Copper converter means a vessel in which copper matte or other copper-bearing material is oxidized to form blister copper.

Copper converter department means the area at a primary copper smelter in which operations are conducted to oxidize copper matte or other copper-bearing material to form blister copper. The *copper converter department* includes the batch copper converters and the associated capture systems used to collect gases and fumes emitted during copper converter operations (e.g., primary hood ventilation system, secondary hood ventilation system).

Copper matte means a material predominately composed of copper and iron sulfides produced by smelting copper ore concentrates.

Fugitive dust material means copper concentrate, dross, reverts, slag, speiss, or other solid copper-bearing materials.

Fugitive dust source means a stationary source of particulate matter emissions resulting from the handling, storage, transfer, or other management of fugitive dust materials where the source is not associated with a specific process, process vent, or stack. Examples of *fugitive dust sources* include, but are not limited to, plant roadways used by vehicles transporting copper concentrate, outdoor copper concentrate storage piles, bedding areas, and conveyor system transfer points.

Holding means the copper converter operating mode during which the molten bath is maintained in the copper converter but does not include periods of blowing or periods when material is being added or removed from the copper converter.

Opacity means the degree to which emissions reduce the transmission of light.

Operating parameter monitoring system means the total equipment that may be required to meet the data acquisition and availability requirements of this subpart used to sample, condition (if applicable), analyze, and provide a record of capture system or control device operating parameters.

Particulate matter means any finely divided solid or liquid material, other than uncombined water, as measured by the specific reference method.

Pouring means the copper converter operating mode during which molten copper is removed from the molten converter bath.

Primary copper smelter means a facility that produces anode copper by first flash smelting of copper ore concentrates to obtain molten copper matte and then converting the molten matte to blister copper using batch copper converters. Primary copper smelting includes the handling and blending of copper concentrate, the drying of copper concentrate, the flash smelting of copper concentrate to matte-grade copper, the conversion of matte-grade copper to blister-grade copper in a batch copper converter, the refining of blister-grade copper to anode-grade copper, and the casting of copper anodes.

Skimming means the copper converter operating mode during which molten slag is removed from the molten converter bath.

Slag cleaning vessel means a vessel that receives molten copper-bearing material and the predominant use of the vessel is to separate this material into molten copper matte and slag layers.

Smelting vessel means a furnace, reactor, or other type of vessel in which copper ore concentrate and fluxes are melted to form a molten mass of material containing copper matte and slag. Other copper-bearing materials may also be charged to the smelting vessel.

§ 63.1442 [Reserved].

§ 63.1443 Standards: Copper concentrate dryers.

(a) The requirements of this section apply to affected copper concentrate dryers at a primary copper smelter subject to this subpart. Standards for existing copper concentrate dryers are specified in paragraph (b) of this section. Standards for new copper concentrate dryers are specified in paragraph (c) of this section.

(b) The owner or operator shall not discharge nor cause to be discharged to the atmosphere from the exhaust vent for an existing copper concentrate dryer any gases that contain particulate matter greater than 50 milligrams per dry standard cubic meter (mg/dscm) as determined by a performance test conducted in accordance with the applicable requirements of § 63.1451 of this subpart.

(c) The owner or operator shall not discharge nor cause to be discharged to the atmosphere from the exhaust vent for a new copper concentrate dryer any gases that contain particulate matter greater than 23 mg/dscm as determined by a performance test conducted in accordance with the applicable requirements of § 63.1451 of this subpart.

§ 63.1444 Standards: Smelting vessels.

(a) The requirements of this section apply to affected existing and new smelting vessels at a primary copper smelter subject to this subpart.

(b) The owner or operator shall discharge the off-gases exhausted from the smelting vessel to a by-product sulfuric acid plant or another type of sulfur recovery process that requires comparable levels of gas stream pre-cleaning and conditioning to remove particulate matter. A performance test is not required for gas streams that meet the requirements of this paragraph.

(c) The owner or operator shall capture and control air emissions when tapping molten material from the smelting vessel in accordance with the requirements of paragraphs (c)(1) and (c)(2) of this section.

(1) The owner or operator shall install and operate a capture system to collect gases and fumes released from each opening to the smelting vessel that is used to tap molten material from the vessel. The design and placement of this capture system shall be such that the tapping port opening, launder, and molten material receiving vessel are positioned within the confines or influence of the system's ventilation draft during all periods when molten material flows from the tapping port into the molten material receiving vessel.

(2) The owner or operator of each capture system operated to comply with paragraph (c)(1) of this section shall not discharge nor cause to be discharged to the atmosphere from the capture system exhaust outlet any gases that contain particulate matter greater than 16 mg/dscm as determined by a performance test conducted in accordance with the

applicable requirements of § 63.1451 of this subpart.

§ 63.1445 Standards: Slag cleaning vessels.

(a) The requirements of this section apply to affected existing and new slag cleaning vessels at a primary copper smelter subject to this subpart.

(b) The owner or operator shall discharge the off-gases exhausted from the slag cleaning vessel in accordance with the requirements of either paragraph (b)(1) or (b)(2) of this section.

(1) The owner or operator shall discharge the off-gases exhausted from the slag cleaning vessel to a by-product sulfuric acid plant or another type of sulfur recovery process that requires comparable levels of gas stream pre-cleaning and conditioning to remove particulate matter. A performance test is not required for gas streams that meet the requirements of this paragraph.

(2) The owner or operator shall not discharge nor cause to be discharged to the atmosphere from the slag cleaning vessel any off-gases that contain particulate matter greater than 46 mg/dscm as determined by a performance test conducted in accordance with the applicable requirements of § 63.1451 of this subpart.

(c) The owner or operator shall capture and control air emissions when tapping molten material from the slag cleaning vessel in accordance with the requirements of paragraphs (c)(1) and (c)(2) of this section.

(1) The owner or operator shall install and operate a capture system to collect gases and fumes released from each opening to the slag cleaning vessel that is used to tap molten material from the vessel. The design and placement of this capture system shall be such that the tapping port opening, launder, and molten material receiving vessel are positioned within the confines or influence of the system's ventilation draft during all periods when molten material flows from the tapping port into the molten material receiving vessel.

(2) The owner or operator of each capture system operated to comply with paragraph (c)(1) of this section shall not discharge nor cause to be discharged to the atmosphere from the capture system exhaust outlet any gases that contain particulate matter greater than 16 mg/dscm as determined by a performance test conducted in accordance with the applicable requirements of § 63.1451 of this subpart.

§ 63.1446 Standards: Copper converters.

(a) *Applicability.* The requirements of this section apply to the affected copper converter department at a primary copper smelter subject to this subpart. Standards for existing copper converter departments are specified in paragraph (b) of this section. Standards for new copper converter departments are specified in paragraph (c) of this section.

(b) *Standards for existing copper converter departments.* The owner or operator shall install, operate, and maintain air emission controls for each copper converter located in the copper converter department. As applicable to the copper converter design, the air emission controls shall meet the requirements in either paragraphs (b)(1), (b)(2), or (b)(3) of this section.

(1) *Existing Pierce-Smith copper converters.* Gases and fumes emitted when the Pierce-Smith converter is operating in a blowing mode shall be collected by a capture system and the captured gases and fumes vented to a control device in accordance with the requirements of paragraphs (b)(1)(i) through (b)(1)(iii) of this section.

(i) The capture system design shall include use of a primary hood that covers the entire mouth of the copper converter when the copper converter is positioned for blowing. Additional hoods (e.g., secondary hoods) or other capture devices shall be included in the capture system design as needed to achieve the operating requirements in paragraph (b)(1)(ii) of this section. The capture system design may use multiple intake and duct segments through which the ventilation rates are controlled independently of each other and individual duct segments may be connected to separate control devices.

(ii) The capture system shall be operated with sufficient ventilation draft such that the visible emissions exiting the roof monitors or roof exhaust fans on the building housing the copper converter department do not exhibit an average opacity greater than 3 percent as determined by a performance test conducted in accordance with the requirements of § 63.1451(c) of this subpart. This visible emission limit shall apply only during those periods when a performance test is conducted in conjunction with establishing the capture system operating parameter limits in accordance with the requirements in § 63.1452(c)(1) of this subpart. The requirements for compliance with opacity and visible emission limits specified in § 63.6(h) of the general provisions in subpart A of this part do not apply to this paragraph.

(iii) Each capture system exhaust stream shall be vented to one of the air emission controls specified in paragraph (b)(1)(iii)(A) or (b)(1)(iii)(B) of this section, as applicable considering the sulfur oxide concentration of the individual gas stream.

(A) A by-product sulfuric acid plant or another type of sulfur recovery process that requires comparable levels of gas stream pre-cleaning and conditioning to remove particulate matter. A performance test is not required for gas streams that meet the requirements of this paragraph.

(B) A control device which does not exhaust any gases to the atmosphere that contain particulate matter greater than 16 mg/dscm as determined by a performance test conducted in accordance with the applicable requirements of § 63.1451 of this subpart.

(2) *Existing Hoboken copper converters.* Gases and fumes released when the Hoboken converter is operating in a blowing mode shall be evacuated directly from the interior of the copper converter into a side flue intake positioned at one end of the converter vessel and these captured gases and fumes vented to a control device in accordance with the requirements of paragraphs (b)(2)(i) and (b)(2)(ii) of this section.

(i) The side flue intake of each Hoboken copper converter shall be operated with sufficient ventilation draft during blowing such that the visible emissions exiting the roof monitors on the building housing the copper converter department do not exhibit an average opacity greater than 4 percent as determined by performance tests conducted in accordance with the requirements of § 63.1451(c) of this subpart. This visible emission limit shall apply only during those periods when a performance test is conducted in conjunction with establishing the capture system operating parameter limits in accordance with the requirements in § 63.1452(c)(1) of this subpart. The requirements for compliance with opacity and visible emission limits specified in § 63.6(h) of the general provisions in subpart A of this part do not apply to this paragraph.

(ii) Each side flue exhaust stream shall be vented through a capture system to a by-product sulfuric acid plant or another type of sulfur recovery process that requires comparable levels of gas stream pre-cleaning and conditioning to remove particulate matter. A performance test is not required for gas streams that meet the requirements of this paragraph.

(3) *Other existing batch copper converters.* Gases and fumes released from a batch copper converter that is neither a Pierce-Smith copper converter nor a Hoboken copper converter shall be

controlled in accordance with the requirements in paragraphs (b)(1)(i) through (b)(1)(iii) of this section.

(c) *Standards for new copper converter departments.* The owner or operator shall install, operate, and maintain air emission controls for each copper converter located in the copper converter department. The air emission controls shall meet the requirements in paragraphs (c)(1) through (c)(3) of this section.

(1) Gases and fumes emitted whenever molten material is in the copper converter shall be collected by a capture system, and the captured gases and fumes shall be vented to a control device. The capture system design may use multiple intake and duct segments through which the ventilation rates are controlled independently of each other, and individual duct segments may be connected to separate control devices. (e.g., use of individual hoods on each copper converter in combination with a building evacuation system).

(2) The capture system shall be operated with sufficient ventilation draft whenever molten material is in the copper converter such that no visible emissions exit the the building housing the copper converter department as determined by performance tests conducted in accordance with the requirements of § 63.1451(d) of this subpart.

(3) Each capture system exhaust stream shall be vented to one of the air emission controls specified in paragraphs (c)(3)(i) or (c)(3)(ii) of this section, as applicable considering the sulfur oxide concentration of the individual gas stream.

(i) A by-product sulfuric acid plant or a another type of sulfur recovery process that requires comparable levels of gas stream pre-cleaning and conditioning to remove particulate matter. A performance test is not required for gas streams that meet the requirements of this paragraph.

(ii) A control device which does not exhaust any gases to the atmosphere that contain particulate matter greater than 16 mg/dscm as determined by a performance test conducted in accordance with the applicable requirements of § 63.1451 of this subpart.

§ 63.1447 [Reserved].

§ 63.1448 Standards: Fugitive dust sources.

(a) The requirements of this section apply to existing and new affected sources of fugitive dust emissions at a primary copper smelter subject to this subpart.

(b) The owner or operator shall prepare and implement a written fugitive dust control plan in accordance with the requirements specified in paragraphs (b)(1) through (b)(3) of this section.

(1) The fugitive dust control plan shall describe the specific control measures that are used to reduce emissions from the individual fugitive dust sources at the smelter site. Examples of control measures that may be used include, but are not limited to: installing an enclosure, installing and operating a local hood capture system vented to a control device, placing stockpiles below grade, installing wind screens or wind fences, using water sprays, applying appropriate dust suppression agents, or any combination of these control measures as appropriate for a given fugitive dust source.

(2) The fugitive dust control plan shall include a description of the control measures implemented for each of the fugitive dust sources listed in paragraphs (b)(2)(i) through (b)(2)(vi) of this section.

(i) Roads or other areas within the plant property boundary used by trucks or other motor vehicles (e.g., front-end loaders) transporting bulk quantities of fugitive dust materials. Paved roads and areas of the smelter site that are not used by these vehicles are not required to be included in the plan (e.g., employee and visitor parking lots);

(ii) Operations to unload fugitive dust materials from trucks or railcars;

(iii) Outdoor piles used to store fugitive dust materials;

(iv) Bedding areas used for blending copper concentrate and other feed constituents;

(v) Transfer points in conveying systems used to convey fugitive dust materials. These points include, but are not limited to, those points where the material is transferred from a conveyor belt to a second conveyor belt or discharged from a conveyor to a hopper or bin; and

(vi) Other fugitive dust sources at a smelter site as designated by the Administrator or delegated permitting authority.

(3) The owner or operator shall submit a copy of the fugitive dust control plan to the designated permitting authority on or before the applicable compliance date for the affected source as specified in § 63.1450(b) of this subpart. The requirement for the owner or operator to operate the smelter according to a written fugitive dust control plan shall be incorporated in the operating permit for the smelter site that is issued by the designated permitting authority under part 70 of this chapter.

§ 63.1449 Equivalent standard: combined exhaust gas streams.

(a) As an alternative to complying with the individual particulate matter emission limits specified in this subpart for affected sources, an owner or operator may elect to combine two or more of the affected exhaust gas streams listed in paragraphs (a)(1) through (a)(4) of this section and route the combined exhaust gas stream to a single control device that meets the equivalent particulate emission limit specified in paragraph (b) of this section.

(1) Exhaust gas stream from a copper concentrate dryer that would otherwise be subject to § 63.1443 of this subpart;

(2) Exhaust gas stream from a smelting vessel capture system that would otherwise be subject to § 63.1444(c)(2) of this subpart;

(3) Exhaust gas stream from a slag cleaning vessel capture system that would otherwise be subject to § 63.1445(c)(2) of this subpart; and

(4) Exhaust gas stream from a copper converter capture system that would otherwise be subject to §§ 63.1446(b)(1)(iii)(B) or (c)(3)(ii) of this subpart.

(b) An owner or operator shall not discharge nor cause to be discharged to the atmosphere a combined exhaust gas stream that contains particulate matter greater than the particulate matter emission limit calculated for the combined exhaust gas stream using the procedure specified in paragraphs (b)(1) and (b)(2) of this section. Particulate matter emissions in the combined exhaust gas stream shall be determined by a performance test conducted in accordance with the applicable requirements of § 63.1451 of this subpart.

(1) The particulate matter emission limit for the combined exhaust gas stream shall be calculated using Equation 1:

$$E = \frac{E_d Q_d + E_{sv} Q_{sv} + E_{scv} Q_{scv} + E_{cc} Q_{cc}}{Q_d + Q_{sv} + Q_{scv} + Q_{cc}} \qquad \text{(Eq. 1)}$$

Where:

E=Particulate matter emission limit for the combined exhaust gas stream (mg/dscm);

E_d=Particulate matter emission limit applicable to copper concentrate dryer as specified in § 63.1443 of this subpart (mg/dscm);

Q_d=Copper concentrate dryer exhaust gas stream volumetric flow rate as determined by the procedure specified in paragraph (b)(2) of this section (dscm);

E_{sv}=Particulate matter emission limit for smelting vessel capture system as specified in § 63.1444(c)(2) of this subpart (mg/dscm);

Q_{sv}= Smelting vessel capture system exhaust gas stream volumetric flow rate as determined by the procedure in paragraph (b)(2) of this section (dscm);

E_{scv}=Particulate matter emission limit for slag cleaning vessel capture system as specified in § 63.1445(c)(2) of this subpart (mg/dscm).

Q_{scv}=Slag cleaning vessel capture system exhaust gas stream volumetric flow rate as determined by the procedure specified in paragraph (b)(2) of this section (dscm);

E_{cc}=Particulate emission limit for copper converter capture system as specified in § 63.1446(b)(1)(iii)(B) or § 63.1446(c)(iii) of this subpart as applicable to the copper converter department (mg/dscm); and

Q_{cc}=Copper converter capture system exhaust gas stream volumetric flow rate as determined by the procedure specified in paragraph (b)(2) of this section (dscm).

(2) The volumetric flow rate of each individual exhaust gas stream used for the calculation specified in paragraph (b)(1) of this section shall be the average of the volumetric flow rates measured during each performance test run performed in accordance with the requirements of § 63.1451(b) of this subpart and used to determine compliance with the applicable particulate matter emission limits specified in §§ 63.1443 through 63.1446 of this subpart.

§ 63.1450 Compliance with standards and maintenance requirements.

(a) *General.* The requirements of this section apply to an owner or operator of an affected source required to comply with applicable standards under this subpart.

(b) *Compliance dates.* (1) The owner or operator of an affected source for which construction or reconstruction commences on or after April 20, 1998 shall achieve compliance with the applicable requirements of this subpart upon initial startup or [date of publication of the final rule in the **Federal Register**], whichever date is later.

(2) The owner or operator of an affected source that commenced construction or reconstruction before April 20, 1998 shall achieve compliance with the applicable requirements of this subpart as expeditiously as practical, but no later than [date 2 years after date of publication of final rule in the **Federal Register**].

(c) *Operation and maintenance requirements.* (1) At all times, including periods of startup, shutdown, and malfunction, the owner or operator shall operate and maintain each affected source, including associated air pollution control equipment, in accordance with the requirements of § 63.6 of the general provisions in subpart A of this part.

(2) The owner or operator shall develop and implement a written startup, shutdown, and malfunction plan in accordance with the requirements to § 63.6(e)(3) of the general provisions in subpart A of this part that describes the specific procedures to be followed for operating and maintaining each affected source and its associated air pollution control equipment during periods of startup, shutdown, and malfunction. In addition to the information required in § 63.6(e)(3) of this part, the information specified in paragraphs (c)(2)(i) through (c)(2)(iii) of this section shall be included in each plan.

(i) For the copper converter department capture system required by § 63.1446 of this subpart, a description of the corrective actions to be implemented by the owner or operator in the event that the operating parameter monitoring system measures a value for an operating parameter that exceeds the limit established for the parameter under § 63.1452(c)(1) of this subpart.

(ii) For each baghouse that is used to comply with a particulate matter emission limit under §§ 63.1442 through 63.1446 of this subpart, a standard operating procedures (SOP) manual that specifies, in detail, the procedures to be used by the owner or operator for inspection, maintenance, bag leak detection, and corrective action. The procedures specified in the SOP manual for inspections and routine maintenance of the baghouse shall, at a minimum, include the requirements in § 63.1452(d) of this subpart. The requirements of this paragraph do not apply to a baghouse used exclusively for the control of fugitive dust emissions in accordance with the requirements under § 63.1448 of this subpart.

(iii) For each control device other than a baghouse that is used to comply with a particulate matter emission limit under §§ 63.1442 through 63.1446 of this subpart, a description of the corrective actions to be implemented by the owner or operator in the event that the operating parameter monitoring system measures a value for an operating parameter that exceeds the limit established for the parameter under § 63.1452(e)(1) of this subpart.

§ 63.1451 Performance testing requirements.

(a) *General.* The requirements of this section apply to an owner or operator required to conduct performance tests to demonstrate compliance by an affected source with applicable emission limits under §§ 63.1442 through 63.1446 of this subpart.

(b) *Conduct of particulate matter emission limit performance tests.* The owner or operator shall conduct each performance test required under this subpart to determine compliance with the applicable particulate matter emission limits specified in §§ 63.1443 through 63.1446 of this subpart in accordance with applicable requirements in § 63.7 of the general provisions in subpart A of this part and shall use reference methods specified in paragraphs (b)(1) through (b)(5) of this section.

(1) Method 1 in appendix A of part 60 of this chapter shall be used to select the sampling port location and the number or traverse points;

(2) Method 2 in appendix A of part 60 of this chapter shall be used to measure the volumetric flow rate;

(3) Method 3 in appendix A of part 60 of this chapter shall be used for gas analysis;

(4) Method 4 in appendix A of part 60 of this chapter shall be used to determine stack gas moisture; and

(5) Method 5 in appendix A to part 60 of this chapter shall be used for measurement of particulate matter

emissions from sources other than positive pressure baghouses. Method 5D in appendix A of part 60 of this chapter shall be used for measurement of particulate matter emissions from positive pressure baghouses. The minimum sampling time for each run shall be 60 minutes and the minimum sampling volume for the run shall be 0.85 dscm. Three runs shall be performed and the average of the three runs shall be used to determine compliance.

(c) *Conduct of existing copper converter department visible emissions performance tests.* The owner or operator shall determine compliance of an existing copper converter department with the applicable visible emission limit specified in § 63.1446(b) of this subpart by using the procedure specified in paragraphs (c)(1) through (c)(7) of this section.

(1) *Test conditions.* The opacity observations shall be made during the period when the primary copper smelter is operating under conditions representative of the smelter's normal blister copper production rate. Before conducting the opacity observations, the owner or operator shall prepare a written test plan specifying the copper production conditions to be maintained throughout the opacity observation period. A copy of the test plan shall be submitted for review and approval by the Administrator or delegated authority. During the observation period, the owner or operator shall collect appropriate process information to prepare sufficient documentation to verify that all opacity observations were made during the conditions specified in the approved test plan.

(2) *Test notification.* The owner or operator shall notify the Administrator or delegated authority before conducting the opacity observations to allow the Administrator or delegated authority the opportunity to have authorized representatives attend the test. Written notification of the location and scheduled date for conducting the opacity observations shall be received by the Administrator on or before 30 calendar days before this scheduled date.

(3) *Opacity observation period.* The total time that opacity observations are made shall be of sufficient duration to obtain a minimum of 20 uninterrupted 6-minute intervals during which opacity readings in accordance with Method 9 in appendix A of part 60 of this chapter (i.e., 24 opacity readings, each reading made at a 15-second interval) are recorded for those conditions when at least one copper converter is operating in the blowing mode and no interferences occur as specified in paragraph (c)(6) of this section. The total observation period may be divided into two or more segments performed on different days if changes in outdoor conditions (e.g., position of sun relative to observers does meet the Method 9 criteria) or copper production conditions (e.g., equipment malfunction or process upset) prevent the required number of opacity readings from being obtained during one continuous period. If the total observation period is divided into two or more segments, all opacity observations shall be made during the same set of copper production conditions specified in the approved test plan.

(4) *Conduct of opacity observations.* All opacity observations shall be made using Method 9 in appendix A to part 60 of this chapter and the procedures specified in paragraphs (c)(4)(i) through (c)(4)(iv) of this section.

(i) The opacity observations shall be performed by a team of qualified visible emission observers. A sufficient number of observers shall be used to obtain two complete concurrent sets of 24 opacity readings for each of the required 6-minute observation intervals. All concurrent sets of 24 opacity readings need not be made by the same two observers; observer substitutions are allowed to provide observer rest breaks.

(ii) Each visible emission observer shall be certified as a qualified observer by the procedure specified in section 3 of Method 9 in appendix A of part 60 of this chapter. The owner or operator shall obtain proof of current visible emission reading certification for each observer.

(iii) Before beginning the opacity readings, all of the outdoor opacity observers shall identify and designate using a common identification code (e.g., consecutive numbers, alphabetic letters) each of the copper converter department visible emission points on the building for which opacity readings are to be made. The copper converter department visible emission points are those sections of the building roof monitor or those roof exhaust fan outlets that are positioned over the location of the copper converters inside the building.

(iv) Each observer shall take a position that meets the criteria specified in section 2.1 of Method 9 in appendix A of part 60 of this chapter and provides the observer with an unobstructed view of the designated converter department visible emission points. For each opacity reading, the observer shall record the identification code for the converter department visible emission point for which the reading was made. When during an individual opacity reading it is possible for an observer to distinguish two or more visible emission plumes from the designated converter department visible emission points, the observer shall identify, to the extent feasible, the plume having the highest opacity and record his or her opacity reading for that plume.

(5) *Process information gathering.* Throughout the opacity observation period, one or more persons familiar with the primary copper smelter operations shall be stationed inside the building housing the copper converters to visually monitor the copper converter operations. Each indoor process monitor shall record all observations in an operating log using the procedure specified in paragraphs (c)(5)(i) and (c)(5)(ii) of this section.

(i) Before beginning the opacity readings, the actions specified in paragraphs (c)(5)(i)(A) and (c)(5)(i)(B) of this section.

(A) An identification code (e.g., a number, a letter) shall be assigned to each copper converter in the copper converter department; and

(B) The clock time setting on the watch or clock to be used by the indoor process monitor shall be synchronized with the clock times settings for the timepieces to be used by the outdoor opacity observers.

(ii) During all periods when opacity readings are being made by the outdoor opacity observers, the indoor process monitor shall record in the operating log the information specified in paragraphs (c)(5)(ii)(A) and (c)(5)(ii)(B) of this section.

(A) When a copper converter is positioned in the blowing mode, the operating log entry for each activity shall include, but is not limited to, the following information:

(*1*) The copper converter identification code;

(*2*) The clock times for when blowing begins and when blowing ends; and

(*3*) The converter blowing rate. This information may be recorded by a separate computer data system.

(B) When an activity related to operating the copper converters or occurring in a converter aisle is observed by an indoor process monitor to generate visible emissions inside the building housing the copper converters, the operating log entry for each activity shall include, but is not limited to, the following information:

(*1*) A description of the activity;

(*2*) The clock times when the activity begins and when the activity ends; and

(*3*) If the activity pertains to a specific copper converter, the copper converter identification code.

(6) *Data reduction.* Using the information recorded in opacity field data sheets prepared by the outdoor opacity observers and the indoor process operating logs prepared by the indoor process monitor, data summary sheets for the entire observation period shall be prepared using the procedure specified in paragraphs (c)(6)(i) and (c)(6)(ii) of this section.

(i) Prepare data summary sheets for the entire observation period that lists by the clock time at 1-minute intervals the average of the opacity values read by the two observers during each 1-minute interval. [see Figure 1 of this subpart for an example of the format to use for the data summary sheets.] The average opacity value to be recorded on the data summary sheet for each 1-minute interval shall be calculated as an average of the eight 15-second interval readings recorded on the field data sheets by the two observers during a given clock time minute interval (add the four consecutive 15-second interval opacity readings made by Observer A during the specified clock time minute plus the four consecutive 15-second interval opacity readings made by Observer B during the same clock time minute, and divide this resulting total by eight).

(ii) Using the complete set of data summary sheets prepared in accordance with paragraph (c)(6)(i) of this section, identify on each data summary sheet those 1-minute intervals when one or more converters are operating in the blowing mode and no interferences occur. An ''interference'' is a period composed of consecutive clock time minutes during which one or more of the interference activities listed in paragraph (c)(6)(ii)(A) of this section occurs plus an appropriate time delay factor to account for the time lag between when the visible emissions generated by this activity are seen by the indoor process monitor and when these emissions impact the opacity recorded by the outdoor opacity observers. The time delay factor shall be determined on a site-specific basis as specified in paragraph (c)(6)(ii)(B) of this section.

(A) *Interference activities.* For the purpose of identifying ''interferences'', only the activities listed in paragraphs (c)(6)(ii)(A)(*1*) through (c)(6)(ii)(A)(*6*) of this section are considered to be interference activities. Other ancillary activities that are conducted in or adjacent to the copper converter aisle during the opacity observations that could potentially cause higher opacity readings from the designated converter department visible emission points are not considered to be interference activities (e.g., converter aisle cleaning, placement of smoking ladles or skulls on the copper converter aisle floor). The following activities are interference activities:

(*1*) Charging of copper matte, reverts, or other materials to a copper converter;

(*2*) Skimming slag or other molten materials from a copper converter;

(*3*) Pouring of blister copper or other molten materials from a copper converter;

(*4*) Return of slag or other molten materials to the flash smelting furnace or slag cleaning vessel;

(*5*) Roll-out or roll-in of the copper converter; or

(*6*) Presence of smoke or fumes generated in the smelting vessel, slag cleaning vessel, or anode refining areas that drifts into the copper converter department.

(B) *Time delay factor.* The interference period may be extended beyond the clock time recorded for cessation of the interference activity by adding a time delay factor. This time delay factor shall be a constant number of minutes not to exceed 5 minutes that is added to the clock time recorded when cessation of the interference activity occurs. The number of minutes to be used for the time delay factor shall be determined based on the information in the data file. An explanation of the rationale for selecting the value used for the time delay factor shall be prepared and included in the test report.

(7) *Calculation of average opacity for determination of compliance with opacity standard.* Compliance shall be determined using only those opacity readings listed in the complete set of data summary sheets prepared in accordance with paragraph (c)(6) of this section that are identified as occurring during a period when one or more converters are operating in the blowing mode with no interferences.

(i) Beginning at the first clock minute listed on the data summary sheets prepared in accordance with paragraph (c)(6) of this section, calculate 6-minute average opacity values for those periods composed of six consecutive minutes of blowing with no interferences. A minimum of 20 6-minute periods is required for the compliance calculation. If more than twenty 6-minute periods are included in the set of data summary sheets, then all of the 6-minute periods included in the set of data summary sheets shall be used for the compliance calculation.

(ii) Average opacity shall be calculated using Equation 2:

$$VE_{ave} = \frac{1}{n}\sum_{i=1}^{n} VE_i \qquad \text{(Eq. 2)}$$

where

VE_{ave}=Average opacity to be used for compliance determination (percent);

n=Number of 6-minute opacity averages in the data set (at least 20);

i=Period ''i'' composed of 6 consecutive minutes with at least one converter blowing and no interferences; and

VE_i=6-minute average opacity calculated for period ''i'' (percent).

(d) *Conduct of new copper converter department visible emission performance tests.* The owner or operator shall determine compliance with the visible emission limit for new copper converter departments specified in § 63.1446(c) of this subpart by using the procedure specified in paragraphs (d)(1) through (d)(3) of this section.

(1) *Test conditions.* The test shall be made during the period when the primary copper smelter is operating under conditions representative of the smelter's normal blister copper production rate. Before conducting the opacity observations, the owner or operator shall prepare a written test plan specifying the copper production conditions to be maintained throughout the visible emission observation period. A copy of the test plan shall be submitted for review and approval by the Administrator or delegated authority. During the observation period, the owner or operator shall collect appropriate process information to prepare sufficient documentation to verify that all visible emission observations were made during the conditions specified in the approved test plan.

(2) *Test notification.* The owner or operator shall notify the Administrator or delegated authority before conducting the test to allow the Administrator or delegated authority the opportunity to have authorized representatives attend the test. Written notification of the location and scheduled date for conducting the visible emission observations shall be received by the Administrator on or before 30 calendar days before this scheduled date.

(3) *Test procedure.* The visible emissions from the building housing the copper converter department shall be determined using Method 22 in appendix A of part 60 of this chapter, with an observation period of no less than 2 hours.

§ 63.1452 Inspection and monitoring requirements.

(a) *General.* The requirements of this section apply to an owner or operator of an affected source required to install and operate air emission control equipment in accordance with

applicable standards under §§ 63.1442 through 63.1446 of this subpart.

(b) *Capture system inspection requirements.* The owner or operator shall inspect each capture system operated to meet applicable standards under § 63.1044 through § 63.1046 of this subpart in accordance with the requirements in paragraphs (b)(1) through (b)(4) of this section.

(1) Each inspection shall include visually checking all of the capture system components to detect any defects or damage that could diminish or impair capture system performance from the level that the capture system achieves when it is properly operated and maintained. Examples of such defects or damage include, but are not limited to, openings through which gases can escape as indicated by the presence of cracks, holes, or gaps in hoods or ductwork; flow constrictions caused by dents or accumulated dust in ductwork; and reduced fan performance as indicated by fan blade erosion.

(2) An inspection of each capture system shall be conducted at least once every month.

(3) In the event a defect or damaged component is detected, the owner or operator shall replace or repair the component consistent with the corrective action procedures identified in the startup, shutdown, and malfunction plan. The owner or operator shall complete the repair as soon as practicable but no later than 30 calendar days after the date of detection except under the special circumstances described in paragraph (b)(4) of this section.

(4) Delay of repair of a capture system defect beyond 30 calendar days is allowed when the repair cannot be completed within the 30-day period because of factors beyond the direct control of the owner or operator (e.g., time required to obtain a critical replacement part from the manufacturer). In this case, the repair shall be completed as soon as practicable, consistent with the corrective action procedures identified in the startup, shutdown, and malfunction plan. For each repair delay, the owner or operator shall maintain a record describing the work required to complete the repair, the reason for the repair delay, and the date that completion of the repair is planned.

(c) *Copper converter department capture system monitoring requirements.* The owner or operator shall ensure that each copper converter department capture system required under § 63.1446 of this subpart is properly operated and maintained by monitoring the operation of the capture system as required in paragraphs (c)(1) through (c)(5) of this section.

(1) During each performance test conducted to demonstrate compliance with a visible emission limit under § 63.1446 of this subpart, a range of operating values shall be established for the copper converter department capture system that is a representative and reliable indicator that the capture system is being properly operated and maintained (i.e., operating within the same range of conditions used to demonstrate compliance of the capture system with the applicable visible emission limit specified in § 63.1446 of this subpart). This range of operating values shall be established for the capture system using the procedure in paragraphs (c)(1)(i) through (c)(1)(iv) of this section.

(i) The owner or operator shall select a set of operating parameters appropriate for the capture system design that the owner or operator determines to be a representative and reliable indicator of the capture system performance. Appropriate capture system operating parameter sets include, but are not limited to:

(A) Capture system fan motor amperes with all duct damper position settings; or

(B) Volumetric flow rate through each separately ducted hood.

(ii) The owner or operator shall measure and record each of the selected operating parameters during all visible emission observations conducted for the capture system performance test. At a minimum, a value for each selected parameter shall be recorded at least once every 15 minutes.

(iii) For each selected operating parameter monitored in accordance with the requirements of paragraph (c)(1)(ii) of this section, the owner or operator shall establish a minimum operating parameter limit or a maximum operating parameter limit, as appropriate for the parameter, to define the operating limits within which the capture system can operate and still continuously achieve the same operating conditions used to demonstrate compliance of the capture system with the applicable visible emission limit specified in § 63.1446 of this subpart.

(iv) The owner or operator shall prepare written documentation to support the operating parameter limits established for the capture system. This documentation shall include a description for each selected parameter and the operating range and monitoring frequency required to ensure the capture system is being properly operated and maintained.

(2) The owner or operator shall monitor the selected operating parameters in accordance with the requirements of either paragraph (c)(2)(i) or (c)(2)(ii) of this section, as applicable.

(i) Except in those cases when the owner or operator elects to monitor the operating parameter set specified in paragraph (c)(1)(i)(A) of this section, the owner or operator shall install, calibrate, operate, and maintain a device equipped with a recorder to measure the values for each operating parameter selected in accordance with the requirements of paragraph (c)(1) of this section. The monitoring equipment shall be installed, calibrated, and maintained in accordance with the equipment manufacturer's specifications. The recorder shall be a data recording device that either records an instantaneous data value for the operating parameter at least once every 15 minutes or records 15-minute or more frequent block average values.

(ii) In those cases when the owner or operator elects to monitor the operating parameter set specified in paragraph (c)(1)(i)(A) of this section, the owner or operator shall develop and implement a written procedure for the converter operator or other appropriate worker to check at least once per shift that fan amperage and damper positions are within the operating parameter limits established for the capture system.

(3) The owner or operator shall regularly inspect the data recorded by the operating parameter monitoring system at a sufficient frequency to ensure the capture system is operating properly. An excursion is determined to have occurred any time that the actual value of a selected operating parameter is less than the minimum operating limit (or, if applicable, greater than the maximum operating limit) established for the parameter in accordance with the requirements of paragraph (c)(1) of this section.

(4) Whenever an excursion occurs, the owner or operator shall initiate within one hour of detecting the excursion the corrective action procedures identified in the startup, shutdown, and malfunction plan as necessary to restore the operation of the capture system to the proper operating settings. Failure to initiate the corrective action procedures within one hour of detecting an excursion or to take the necessary corrective actions to remedy the problem is a violation of the standard in this subpart.

(5) For a given operating parameter, if an excursion occurs six or more times in any semi-annual reporting period, then any subsequent excursion of that

operating parameter during the reporting period is a violation of the standard in this subpart. For the purpose of determining the number of excursions in a semi-annual reporting period, only one excursion shall be counted in any given 24-hour period.

(d) *Baghouse inspection and monitoring requirements.*

(1) The owner or operator shall prepare and at all times operate according to a standard operating procedures (SOP) manual for inspection, maintenance, and bag leak detection, and corrective action plans for each baghouse used to comply with applicable standards under §§ 63.1442 through 63.1446 of this subpart. The requirements of this paragraph do not apply to a baghouse that is operated exclusively to control fugitive dust emissions.

(2) The procedures specified in the SOP manual for inspections and routine maintenance of a baghouse shall, at a minimum, include the requirements of paragraphs (d)(2)(i) through (d)(2)(ix) of this section.

(i) Daily monitoring of pressure drop across each baghouse cell;

(ii) Weekly confirmation that dust is being removed from hoppers through visual inspection, or equivalent means of ensuring the proper functioning of removal mechanisms;

(iii) Daily check of compressed air supply for pulse-jet baghouses;

(iv) An appropriate methodology for monitoring cleaning cycles to ensure proper operation;

(v) Monthly check of bag cleaning mechanisms for proper functioning through visual inspection or equivalent means;

(vi) Quarterly check of bag tension on reverse air and shaker-type baghouses. Such checks are not required for shaker-type baghouses using self-tensioning (spring loaded) devices;

(vii) Quarterly confirmation of the physical integrity of the baghouse through visual inspection of the baghouse interior for air leaks;

(viii) Quarterly inspection of fans for wear, material buildup, and corrosion through visual inspection, vibration detectors, or equivalent means; and

(ix) Continuous operation of a bag leak detection system.

(3) The procedures for maintenance specified in the SOP manual shall, at a minimum, include a preventative maintenance schedule that is consistent with the baghouse manufacturer's instructions for routine and long-term maintenance.

(4) The bag leak detection system required by paragraph (d)(1) of this section, shall meet the specifications and requirements of paragraphs (d)(3)(i) through (d)(3)(viii) of this section.

(i) The bag leak detection system must be certified by the manufacturer to be capable of detecting particulate matter emissions at concentrations of 10 mg/acfm or less;

(ii) The bag leak detection system sensor must provide output of relative particulate matter loadings;

(iii) The bag leak detection system must be equipped with an alarm system that will sound an audible alarm when an increase in relative particulate loadings is detected over a preset level;

(iv) The bag leak detection system shall be installed and operated in a manner consistent with available written guidance from the U.S. Environmental Protection Agency or, in the absence of such written guidance, the manufacturer's written specifications and recommendations for installation, operation, and adjustment of the system;

(v) The initial adjustment of the system shall, at a minimum, consist of establishing the baseline output by adjusting the sensitivity (range) and the averaging period of the device, and establishing the alarm set points and the alarm delay time;

(vi) Following initial adjustment, the owner or operator shall not adjust the sensitivity or range, averaging period, alarm set points, or alarm delay time, except as detailed in the SOP manual required under paragraph (d)(1) of this section. In no event shall the sensitivity be increased by more than 100 percent or decreased more than 50 percent over a 365 day period unless such adjustment follows a complete baghouse inspection which demonstrates the baghouse is in good operating condition;

(vii) For negative pressure or induced air baghouses, and positive pressure baghouses that are discharged to the atmosphere through a stack, the bag leak detector must be installed downstream of the baghouse and upstream of any wet acid gas scrubber; and

(viii) Where multiple detectors are required, the system's instrumentation and alarm system may be shared among the detectors.

(5) The SOP manual required by paragraph (d)(1) of this section shall include a corrective action plan that specifies the procedures to be followed in the case of a bag leak detection system alarm. The corrective action plan shall include, at a minimum, the procedures used to determine and record the time and cause of the alarm as well as the corrective actions taken to correct the control device malfunction or minimize emissions as specified in paragraphs (d)(4)(i) and (d)(4)(ii) of this section. Failure to initiate the corrective action required by this paragraph is a violation of the standard in this subpart.

(i) The procedures used to determine the cause of the alarm must be initiated within 30 minutes of the time the alarm first sounds; and

(ii) The cause of the alarm must be alleviated by taking the necessary corrective action(s) which may include, but are not to be limited to, the actions in paragraphs (d)(5)(ii)(A) through (d)(5)(ii)(F) of this section.

(A) Inspecting the baghouse for air leaks, torn or broken filter elements, or any other malfunction that may cause an increase in emissions;

(B) Sealing off defective bags or filter media;

(C) Replacing defective bags or filter media, or otherwise repairing the control device;

(D) Sealing off a defective baghouse compartment;

(E) Cleaning the bag leak detection system probe, or otherwise repairing the bag leak detection system; or

(F) Shutting down the process producing the particulate emissions.

(e) *Monitoring of venturi wet scrubbers.* For each venturi wet scrubber operated to comply with applicable particulate matter emission limits in §§ 63.1442 through 63.1446 of this subpart, the owner or operator shall ensure that the venturi wet scrubber is properly operated and maintained by monitoring the operation of the wet control device as required in paragraphs (e)(1) through (e)(3) of this section.

(1) During each performance test conducted to demonstrate compliance of a venturi wet scrubber outlet gas stream with the applicable particulate matter emission limit, minimum operating values shall be established for the scrubber pressure drop and the scrubber water flow rate. These operating values shall be established for the venturi wet scrubber using the procedure in paragraphs (e)(1)(i) through (e)(1)(iii) of this section.

(i) The owner or operator shall measure and record values for the scrubber pressure drop and scrubber water flow rate during each test run conducted for a performance test to demonstrate compliance with the applicable standard. At a minimum, a value for each operating parameter shall be recorded at least once every 15 minutes during the test run.

(ii) For each operating parameter measured in accordance with the requirements of paragraphs (e)(1)(i) of this section, the owner or operator shall establish an operating parameter limit to define the minimum scrubber pressure drop and minimum scrubber water flow

rate at which the scrubber can operate and still continuously achieve the applicable particulate matter emission limit.

(iii) The owner or operator shall prepare written documentation to support the minimum operating parameter limits established for the scrubber.

(2) The owner or operator shall install, calibrate, operate, and maintain monitoring devices equipped with a recorder to measure the values for scrubber pressure drop and scrubber water flow rate. The monitoring equipment shall be installed, calibrated, and maintained in accordance with the equipment manufacturer's specifications. The recorder shall be a data recording device that either records an instantaneous data value for the operating parameter at least once every 15 minutes or records 15-minute or more frequent block average values.

(3) The owner or operator shall regularly inspect the data recorded by the operating parameter monitoring system at a sufficient frequency to ensure the scrubber is operating properly. An excursion is determined to have occurred any time that the actual value of the scrubber pressure drop or water flow rate is less than the minimum limit established for the parameter in accordance with the requirements of paragraph (e)(1) of this section. Any excursion recorded for the venturi wet scrubber shall be a violation of the standard in this subpart.

(f) *Monitoring of control devices other than baghouses or venturi wet scrubbers.* For each control device that is not a baghouse or venturi wet scrubber but is operated to comply with applicable particulate matter emission limits in §§ 63.1442 through 63.1446 of this subpart, the owner or operator shall ensure that the control device is properly operated and maintained by monitoring the operation of the control device as required in paragraphs (f)(1) through (f)(4) of this section.

(1) During each performance test conducted to demonstrate compliance of a control device outlet gas stream with the applicable particulate matter emission limit, a range of operating values shall be established for the control device that is a representative and reliable indicator that the control device is operating within the same range of conditions used to demonstrate compliance of the control device with the applicable particulate matter emission limit. This range of operating values shall be established for the control device using the procedure in paragraphs (f)(1)(i) through (f)(1)(iv) of this section.

(i) The owner or operator shall select a set of operating parameters appropriate for the control device design that the owner or operator determines to be a representative and reliable indicator of the control device performance.

(ii) The owner or operator shall measure and record values for each of the selected operating parameters during each test run conducted for the performance test to demonstrate compliance with the applicable standard. At a minimum, a value for each selected parameter shall be recorded at least once every 15 minutes.

(iii) For each selected operating parameter measured in accordance with the requirements of paragraphs (f)(1)(ii) of this section, the owner or operator shall establish a minimum operating parameter limit or a maximum operating parameter limit, as appropriate for the parameter, to define the operating limits within which the control device can operate and still continuously achieve the same operating conditions used to demonstrate compliance of the control device with the applicable particulate matter emission limit.

(iv) The owner or operator shall prepare written documentation to support the operating parameter limits established for the control device. This documentation shall include a description for each selected parameter and the operating range and monitoring frequency required to ensure the control device is being properly operated and maintained.

(2) The owner or operator shall install, calibrate, operate, and maintain a monitoring device equipped with a recorder to measure the values for each operating parameter selected in accordance with the requirements of paragraph (f)(1) of this section. The monitoring equipment shall be installed, calibrated, and maintained in accordance with the equipment manufacturer's specifications. The recorder shall be a data recording device that either records an instantaneous data value for the operating parameter at least once every 15 minutes or records 15-minute or more frequent block average values.

(3) The owner or operator shall regularly inspect the data recorded by the operating parameter monitoring system at a sufficient frequency to ensure the control device is operating properly. An excursion is determined to have occurred any time that the actual value of a selected operating parameter is less than the minimum operating limit (or, if applicable, greater than the maximum operating limit) established for the parameter in accordance with the requirements of paragraph (f)(1) of this section.

(4) Whenever an excursion occurs, the owner or operator shall initiate within one hour of detecting the excursion the corrective action procedures identified in the startup, shutdown, and malfunction plan as necessary to restore the operation of the control device to the proper operating settings. Failure to initiate the corrective action procedures within one hour of detecting an excursion or to take the necessary corrective actions to remedy the problem is a violation of the standard in this subpart.

§ 63.1453 Notification requirements.

(a) The requirements of this section apply to the owner and operator of a primary copper smelter that is subject to the requirements of this subpart.

(b) The owner or operator shall prepare and submit written notifications to the Administrator in accordance with § 63.9 of the general provisions in subpart A of this part.

§ 63.1454 Recordkeeping and reporting requirements.

(a) *General.* The requirements of this section apply to the owner and operator of a primary copper smelter that is subject to the requirements of this subpart.

(b) *Recordkeeping requirements.* The owner or operator shall prepare and maintain, in accordance with the requirements in § 63.10(b)(1) of the general provisions in subpart A of this part, files of information specified in paragraphs (b)(1) through (b)(9) of this section. The owner or operator shall maintain records for a least 5 years from the date of each record. The records for the most recent 2 years of operation shall be maintained at the smelter site. Records for previous years may be maintained at an off-site location.

(1) The occurrence and duration of each startup, shutdown, or malfunction of operation (i.e., process equipment);

(2) The occurrence and duration of each malfunction of the air pollution control equipment;

(3) All maintenance performed on the air pollution control equipment;

(4) Actions taken during periods of startup, shutdown, and malfunction (including corrective actions to restore malfunctioning process and air pollution control equipment to its normal or usual manner of operation) when such actions are different from the procedures specified in the affected source's startup, shutdown, and malfunction plan prepared in accordance with the requirements of § 63.6 of the general provisions in subpart A of this part.;

(5) Information necessary to demonstrate compliance with the affected source's startup, shutdown, and malfunction plan (prepared in accordance with the requirements of § 63.6 of this part) when all actions taken during periods of startup, shutdown, and malfunction (including corrective actions to restore malfunctioning process and air pollution control equipment to its normal or usual manner of operation) are consistent with the procedures specified in such plan. (The information needed to demonstrate conformance with the startup, shutdown, and malfunction plan may be recorded using a ''checklist,'' or another effective form of recordkeeping, to reduce the recordkeeping burden for conforming events);

(6) Measurements and other supporting documentation needed to demonstrate compliance with a relevant standard (including, but not limited to, raw performance testing measurements, and raw performance evaluation measurements, that support data that the source is required to report);

(7) Results of all performance tests and opacity observations performed in accordance with the requirements of this subpart;

(8) Data recorded to meet the applicable monitoring requirements of § 63.1452 of this subpart.

(9) Documentation supporting notifications submitted under § 63.1453 of this subpart.

(c) *Reporting requirements.* The owner or operator shall prepare and submit written reports to the Administrator in accordance with § 63.10 of the general provisions in subpart A of this part.

§ 63.1455 State authority and delegations.

(a) In delegating implementation and enforcement authority to a State under section 112(d) of the Act, the authority listed in paragraph (b) of this section shall be retained by the Administrator and not transferred to a State.

(b) Authority will not be delegated to States for approval of alternative test methods under § 63.1451 of this subpart.

Appendix A to Subpart QQQ—Applicability of General Provisions (40 CFR part 63, subpart A) to Subpart QQQ

Citation	Applies to subpart QQQ	Comment
63.1	yes	
63.2	yes	
63.3	yes	
63.4	yes	
63.5	yes	
63.6 (a)–63.6 (g).	yes	
63.6 (h) ...	no for existing sources.	Subpart QQQ specifies requirements to be used for compliance with the visible emission limits.
63.6 (i)–63.6 (j).	yes	
63.7	yes	
63.8	yes	
63.9 (a)–163.9 (e).	yes	
63.9 (f)	no for existing sources.	Subpart QQQ specifies notification requirements for visible emission limit compliance test.
63.9 (g)–63.9 (j).	yes	
63.10	yes	
63.11	no	Flares not used to comply with Subpart QQQ standards.
63.12–63.15.	yes	

FIGURE 1.—OF SUBPART QQQ DATA SUMMARY SHEET FOR DETERMINATION OF AVERAGE OPACITY

Clock time	Number of converters blowing	Converter aisle activity	1-minute average opacity (percent)	Blowing without Interferences (yes or no)	Continuous 6-minute average opacity (percent)

[FR Doc. 98–10142 Filed 4–17–98; 8:45 am]

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federal register

Monday
April 20, 1998

Part II

Environmental Protection Agency

40 CFR Part 63

National Emission Standards for Hazardous Air Pollutants for Source Categories: National Emission Standards for Primary Copper Smelters; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[IL–64–2–5807; FRL–5997–7]

RIN 2060–AE41

National Emission Standards for Hazardous Air Pollutants for Source Categories: National Emission Standards for Primary Copper Smelters

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule and notice of public hearing.

SUMMARY: This action proposes national emission standards for hazardous air pollutants (NESHAP) for new and existing primary copper smelters under section 112 of the Clean Air Act (Act), as amended in November 1990. Primary copper smelters can potentially emit significant amounts of certain toxic metals that have been identified in the Act as hazardous air pollutants (HAP). Overall, the HAP emitted in the largest quantities from primary copper smelters are arsenic compounds and lead compounds. Chronic exposure to arsenic is associated with human cancers of the skin, bladder, liver and lungs and can cause other developmental and reproductive effects. Exposure to lead compounds results in adverse effects on the blood, central nervous system, and kidneys. The proposed NESHAP would require use of air emission controls to reduce HAP emissions from primary copper smelters that produce anode copper using flash smelting furnaces integrated with batch copper converters. The EPA estimates that the proposed NESHAP would reduce annual nationwide HAP emissions from the source category by approximately 20 percent or 34 megagrams per year (37.5 tons per year). The NESHAP provides protection to the public by requiring the affected primary copper smelters to meet emission standards that reflect the application of maximum achievable control technology (MACT).

DATES: *Comments.* The EPA will accept comments regarding this proposed NESHAP on or before June 19, 1998.

Public Hearing. If anyone contacts the EPA requesting to speak at a public hearing May 11, 1998 a public hearing will be held May 20, 1998 beginning at 10:00 a.m. For more information, see section IX.B of **SUPPLEMENTARY INFORMATION**.

ADDRESSES: *Comments:* Written comments (in duplicate, if possible) should be submitted to Docket No. A–96–22 at the following address: U.S. Environmental Protection Agency, Air and Radiation Docket and Information Center (6102), 401 M Street, SW., Washington, DC 20460. The EPA requests that a separate copy of the comments also be sent to the contact person listed below. The docket is located at the above address in Room M–1500, Waterside Mall (ground floor).

A copy of today's notice and other materials related to this rulemaking are available for review in the docket. Copies of this information may be obtained by request from the Air Docket by calling (202) 260–7548. A reasonable fee may be charged for copying the docket materials.

Public Hearing. If anyone contacts the EPA requesting a public hearing by the required dates (see **DATES**), the public hearing will be held at the EPA Office of Administration Auditorium, Research Triangle Park, NC. Persons inquiring as to whether a hearing is to be held should call the contact person listed below.

FOR FURTHER INFORMATION CONTACT: Mr. Eugene Crumpler, Metals Group, Emission Standards Division (MD–13), U.S. Environmental Protection Agency, Research Triangle Park, NC, 27711, telephone number (919) 541–0881, facsimile number (919) 541–5600, electronic mail address ''crumpler.gene@epamail.epa.gov.''.

SUPPLEMENTARY INFORMATION:

Regulated Entities

Entities potentially regulated by this action are primary copper smelters (SIC 3339). No federal government entities nor State/local/tribal government entities would be regulated by final action on this proposal.

This description of the regulated entities is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by final action on this proposal. This description identifies the types of entities that the EPA is now aware could potentially be regulated by final action on this proposal. To determine whether your facility is regulated by final action on this proposal, you should carefully examine the applicability criteria in section V.A of this document, and in § 63.1440 of the proposed rule. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

Technology Transfer Network

The text of today's notice is also available on the Technology Transfer Network (TTN), one of EPA's electronic bulletin boards. The TTN provides information and technology exchange in various areas of air pollution control. The service is free, except for the cost of a phone call. Dial (919) 541–5742 for up to a 14,400 BPS modem. The TTN also is accessible through the Internet at ''TELNET ttnbbs.rtpnc.epa.gov.'' If more information on the TTN is needed, call the HELP line at (919) 541–5348. The HELP desk is staffed Monday through Friday from 11 a.m. to 5 p.m.; a voice menu system is available at other times.

Electronic Access and Filing Addresses

The official record for this rulemaking, as well as the public version, has been established under Docket No. A–96–22 (including comments and data submitted electronically). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as confidential business information (CBI), is available for inspection from 8 a.m. to 5:30 p.m. Monday through Friday, excluding legal holidays. The official rulemaking record is located at the address in **ADDRESSES** at the beginning of this document.

Electronic comments can be sent directly to EPA's Air and Radiation Docket and Information Center at: ''A-and-R-Docket@epamail.epa.gov.'' Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on disks in WordPerfect in 5.1 file format or ASCII file format. All comments and data in electronic form must be identified by the docket number (A–96–22). No CBI should be submitted through electronic mail. Electronic comments on this proposed rule may be filed online at many Federal Depository Libraries.

Outline

The information in this notice is organized as follows.

I. Statutory Authority
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I. Statutory Authority

The statutory authority for this proposal is provided by sections 101, 112, 114, 116, and 301 of the Clean Air Act, as amended (42 U.S.C. 7401, 7412, 7414, 7416, and 7601).

II. Initial List of Categories of Major and Area Sources

Section 112 of the Clean Air Act (Act) directs the EPA to establish national standards to control hazardous air pollutant (HAP) emissions from major and area sources, as defined in the Act. Control of HAP emissions is achieved by promulgating for specific source categories emission standards (under sections 112(d) and 112(f)) or operational and work practice standards (under section 112(h)).

The initial list of the source categories selected by the EPA for regulation under section 112 of the Act was published on July 16, 1992 (57 FR 31576). The EPA published an updated list of source categories (61 FR 28202, June 4, 1996) to reflect source category listing revisions that the EPA has made since the initial list was published. ''Primary Copper Smelting'' is one of the approximately 170 categories of sources listed.

The ''Primary Copper Smelting'' source category consists of facilities that produce anode copper by first flash smelting of copper ore concentrates to obtain molten copper matte and then directly convert the molten matte to blister copper using a batch copper converting process. Batch copper converting is characterized by the use of Pierce-Smith or Hoboken design copper converters to produce blister copper from molten copper matte in discrete batches using a sequence of charging, blowing, skimming, and pouring steps.

The origin of the HAP emissions from the ''Primary Copper Smelting'' source category is metallic compound impurities (e.g., compounds containing arsenic, lead, or other types of heavy metals) that naturally occur in the copper ore deposits. The listing of the ''Primary Copper Smelting'' source category is based on the Administrator's determination that existing and new individual facilities comprising this source category may reasonably be anticipated to emit these HAP in sufficient quantity to be designated a major source as defined under the Act. Information subsequently collected by the EPA as part of this rulemaking confirms that existing and new facilities in the ''Primary Copper Smelting'' source category do emit or have the potential to emit at levels greater than 10 tons per year (tpy) of an individual HAP or more than 25 tpy of total HAP and therefore are major sources. The primary source of these emissions are process fugitive emissions from the batch copper converting process. A detailed process description for the ''Primary Copper Smelting'' source category and the associated HAP emissions is presented in sections III.A and III.B to this preamble.

Since the listing of the ''Primary Copper Smelting'' source category, a new smelter operated by Kennecott Copper, in Garfield, Utah, has been constructed. This smelter employs a new continuous flash converting technology that is considerably different from the conventional batch converting process used at the smelters which form the basis for the listing of the ''Primary Copper Smelting'' source category. The design and operation of the continuous flash converting process eliminates many of the potential air pollutant emission sources associated with batch copper converting. As a result, the smelter does not emit HAP at major source levels and is therefore an area source.

III. Background

A. ''Primary Copper Smelting'' Source Category Description

The ''Primary Copper Smelting'' source category is comprised of a total of six existing facilities nationwide. Each of these facilities produces anode copper from copper ore concentrates using flash smelting integrated with batch copper converting. All of the primary copper smelters are owned and operated by major corporations (two companies each own and operate two smelters). Each smelter is located in relatively close proximity to the copper mines supplying the copper ore concentrate processed at the individual smelter. Three smelters are located in southeastern Arizona. Two smelters are located in southwestern New Mexico. One smelter is located in El Paso, Texas.

Copper ore deposits typically contain less than 1 percent copper. Once the ore is extracted from the ground, the ore is beneficated at the mine site to produce a processed form of copper ore with a higher copper content. Concentration of the ore is accomplished by crushing, grinding, and flotation purification to obtain a processed ore concentrate (referred to hereafter as ''copper concentrate'') typically having a concentration of 15 to 25 percent copper, 25 to 30 percent sulfur, 25 percent iron, 10 to 15 percent water, and small amounts of other metals. The type and quantity of these metals in the

copper concentrate vary depending on the source of the ore, and can include arsenic, antimony, bismuth, cadmium, lead, selenium, magnesium, aluminum, cobalt, tin, nickel, tellurium, silver, gold and palladium. The copper concentrate is shipped to the primary copper smelter by trucks, rail cars, and, in some cases, slurry pipelines.

All domestic primary copper smelters operate flash smelting furnaces. Once the copper concentrate is received at the smelter, the copper concentrate must be further processed before feeding it to the flash smelting furnace. Each smelter operates a combination of crushers and mills to obtain the proper size material for feeding to the smelting furnace. The copper concentrate is mixed with fluxes (materials that facilitate formation of slag containing iron oxides and other impurities). At most existing smelters, the moisture content of the copper concentrate is reduced by passing the copper concentrate through either a fluidized-bed dryer or rotary dryer. One existing smelter currently is able to feed its copper concentrate directly to the smelting furnace without prior drying.

The prepared copper concentrate and finely ground fluxes are injected together with oxygen and preheated air into the furnace which is maintained at approximately 1,000°C (1,830°F). The furnace uses the heat generated from the partial oxidation of the sulfide content in the copper concentrate to provide most, if not all of the energy required for the smelting process. Supplemental heat is supplied, as needed, using oil-fired or gas-fired burners to maintain the required smelting temperature. The resulting molten material collects in a bath at the bottom of the furnace. This molten bath separates into two layers. The lighter density material layer is called ''slag'' and contains iron silicates and other impurities. The heavier density material layer is called ''copper matte'' and contains up to 65 percent copper in the form of copper sulfide. The off-gases exhausted from the furnace contain concentrated sulfur dioxide (SO_2). These off-gases are treated in a contact sulfuric acid plant to remove 98 to 99 percent or more of the SO_2 in the gases before being vented to the smelter main stack.

The molten copper matte and slag are removed from the flash smelting furnace through tapholes along the side of the furnace. Separate tapholes are used to remove the copper matte and the slag. The molten material released through a taphole empties into a heated trough (called a ''launder''). The molten copper matte flows down the launders into large ladles for transfer to the batch copper converters. The molten slag from the furnace either is directly disposed by transferring it in slag pots to an on-site slag pile or, at some smelters, processed further before final disposal to increase the copper yield.

At two of the existing smelters, molten slag from the flash furnace can be transferred to a second furnace (referred to hereafter as a ''slag cleaning vessel''). In the slag cleaning vessel, the slag from the flash furnace is treated with coke or iron sulfide. Residual copper in the slag is converted to form a copper sulfide layer which is tapped and transferred to the batch copper converters. The slag is tapped and discarded. Off-gases from the slag cleaning vessel contain low concentrations of SO_2 and are typically vented to a separate wet scrubber control device.

Converting is an oxidation process that removes most of the sulfur, iron, and other impurities in the copper matte to produce blister copper (a 96 to 99 percent pure copper). Batch copper converting is performed using large refractory-lined cylindrical steel vessels mounted on trunnions at either end. A large circular opening on the vessel body (the ''converter mouth'') provides access for adding or removing molten materials and also allows gaseous by-products to escape from the converter. A drive mechanism is used to rotate the position of the converter mouth for charging materials to the converter and pouring molten materials from the converter.

Batch copper converting produces blister copper in an 8-to-12 hour batch cycle using three to five converters aligned in a row inside the converter building. Operation of the converters is staggered such that, at any given time, not all of the converters are being used for blister copper production, and those that are ''on-line'' are operating in different stages of the copper converting cycle. The batch copper converting cycle follows a sequence of steps involving charging of molten matte to the converter, blowing oxygen through the molten bath, skimming off slag, and finally pouring the blister copper at the end of the cycle. Material is added to or removed from each converter using large ladles which are positioned and transported using a traveling overhead crane. Off-gases from each converter are vented during blowing to a common ventilation system for routing to the sulfuric acid plant.

A converter batch cycle begins by charging an empty converter with molten matte tapped from the flash smelting furnace. Air or oxygen-enriched air is then blown into the molten matte through a series of pipes (called ''tuyeres'') on the side of the converter. The iron sulfide in the matte is preferentially oxidized to form iron oxides and SO_2. The SO_2 is exhausted from the converter in the off-gases vented to the sulfuric acid plant operated at the smelter site. Flux is added to combine with the iron oxide and forms a top layer of iron silicate slag on the molten bath in the converter. The resulting slag layer is removed from the molten bath by discontinuing blowing and then rotating the converter mouth down to skim off the slag. The blowing and slag skimming steps are repeated until an adequate amount of relatively pure copper sulfide (called ''white metal'') accumulates in the converter. A final blow oxidizes the copper sulfide to SO_2, and blister copper forms. At this time, the blister copper is poured from the converter for transfer to the copper refining operations. The converter is then available to begin a new batch cycle.

Two different batch copper converter designs are used in the United States. Five smelters use the Pierce-Smith converter design. An alternative to the Pierce-Smith converter is the Hoboken converter design, which is used by one domestic smelter. The design and operation of these two types of batch copper converters is similar with the exception of the means by which off-gases vented from the converter are captured for venting to the sulfuric acid plant.

The Pierce-Smith converter design uses a large external hood to cover the converter mouth when the converter is rotated into position for the blowing. The hood for each converter in the converter aisle is connected to a common ventilation system that exhausts the captured off-gases to the sulfuric acid plant.

In contrast, the Hoboken converter design does not use an external hood for capture of the off-gases during blowing. The Hoboken converter is fitted with a ''U''-shaped side flue located at one end of the converter. The side flue allows siphoning of the converter off-gases directly from the interior of the converter for venting to the sulfuric acid plant. Off-gases are prevented from escaping through the uncovered Hoboken converter mouth during blowing by operating the ventilation system draft at a level such that a slight negative pressure is maintained at the converter mouth.

At the end of the batch converting cycle, the blister copper is poured from the converter for further processing by fire refining to produce anode copper. Fire refining of blister copper is conducted in a cylindrical vessel similar

to a batch copper converter. Flux is added and air is blown through the molten blister copper mixture to oxidize the copper and any remaining impurities. The impurities are removed as slag. The remaining copper oxide is then subject to a reducing atmosphere to form a very high purity copper. The fire-refined copper is then cast into anodes for further electrolytic refining.

The anode copper is processed by an electrolytic process to obtain commercial grade copper for sale as a product. Electrolytic refining separates copper from the remaining impurities by electrolysis in a solution containing copper sulfate and sulfuric acid. The copper anode is dissolved and the elemental copper is re-deposited at the cathode. As the copper anode dissolves, residual metallic impurities in the anode copper precipitate in the acid solution and form a sludge. The resulting cathode copper is now more than 99.9 percent pure and is cast into bars, ingots, or slabs for sale.

B. HAP Emissions

Under section 112(b) of the Act, Congress listed specific chemicals, compounds, or groups of chemicals that are HAP's subject to control under a NESHAP. Metals beside copper naturally occur in copper ore deposits. These metallic ''impurities'' include metals that are listed as HAP. Lead and arsenic are found in the largest quantities in copper ore mined and smelted in the United States. Lesser quantities of antimony, beryllium, cadmium, chromium, cobalt, manganese, nickel, and selenium also are frequently present in U.S. copper ore. These metallic impurities in the copper ore can be released into the atmosphere in the form of particulate matter (PM) during certain smelting operations, and are the source of the HAP emissions from primary copper smelters. The composition and quantity of the potential HAP emissions from a given smelter is directly related to the level of metal impurities in the copper concentrate processed at the smelter. The organic chemicals and acid gases that are listed as HAP have no or minimal potential to be emitted to the atmosphere from domestic primary copper smelters.

On an industry-wide basis, the composition of the HAP emissions from primary copper smelters is approximately 50 percent lead compounds, 25 percent arsenic compounds, and lesser amounts of the other metals. The composition and quantity of the potential HAP emissions from a given smelter is directly related to the level of metal impurities in the copper concentrate processed at the smelter. The sources of HAP emitted from smelters using flash smelting furnaces integrated with batch copper converters can be characterized as: (1) process HAP emissions; (2) process fugitive HAP emissions; and (3) fugitive dust emissions. Electrolytic refining of anode copper does not produce any metallic HAP emissions.

1. Process HAP Emissions

Process HAP emissions are the HAP contained in the primary exhaust gas stream (i.e., off-gases) discharged from a process vessel. At primary copper smelters, the potential sources of process HAP emissions are the exhaust gas streams from copper concentrate drying, copper smelting, and copper converting operations. Process HAP emissions from the copper concentrate dryer are generated by the entrainment of particulate matter containing HAP in the exhaust gas stream from the dryer. A second source of process HAP emissions is the metal compound vapors in the off-gases exhausted from the flash smelting furnace. At those smelters operating slag cleaning vessels, process HAP emissions are released in the off-gases exhausted from the slag cleaning vessel. Process HAP emissions from the batch copper converters result when off-gases exhausted during blowing are not captured and controlled.

2. Process Fugitive HAP Emissions

Process fugitive emissions are those emissions associated with a particular process that are released directly from the process but are not emitted through a flue or duct in the process exhaust gas stream. At primary copper smelters, the potential sources of process fugitive HAP emissions primarily are associated with the flash smelting and batch copper converting operations. Hot fumes and gases containing metallic HAP are intermittently released when molten copper matte and slag are tapped from the flash smelting furnace or a slag cleaning vessel. Process fugitive HAP emissions from batch copper converters result when the off-gases generated during blowing escape capture. In the case of the Pierce-Smith converter design, this can be due to leakage around the primary hood. Improper ventilation system operation will allow off-gases to escape from the open converter mouth in the case of the Hoboken converter design. Also, process fugitive HAP emissions from either copper converter design can result during those times that the converter contains molten material and is rolled out from the blowing position. If not captured, process fugitive HAP emissions will be released to the atmosphere from openings in the converter building such as roof monitor vents or exhaust fans.

3. Fugitive Dust Emissions

Fugitive dust HAP emissions at primary copper smelters can be generated when dust from copper concentrate or other materials containing metallic HAP is released into the outdoor air. The entrainment of dust containing metallic HAP into the outdoor air may be caused by natural events (e.g., wind erosion of feed storage piles) or by operations conducted by the facility personnel. Potential fugitive dust emission sources at primary copper smelters include: (1) Dust entrained when transporting on unpaved roads at the smelter site, bulk copper-concentrate and other materials containing HAP in dump trucks, front-end loaders, and other vehicles; (2) dust generated when unloading copper ore concentrates from trucks or railcars; (3) wind erosion of outdoor material storage piles; (4) dust entrained when blending copper concentrate with other feed constituents in the bedding area; and (5) transferring copper ore concentrate or other HAP-containing materials to or from conveyor systems.

4. Existing Air Emission Controls

Air emission controls presently are used at all of the existing primary copper smelters in the United States to comply with Federal and State regulations limiting emissions of SO_2 and total particulate matter (PM). At each of these copper smelters, exhaust gases from the copper concentrate dryer are vented to either a baghouse or electrostatic precipitator (ESP) for control of PM emissions. Emissions of SO_2 are controlled by venting the process off-gases from flash smelting furnaces and batch copper converters to a contact sulfuric acid production process. At those smelters operating slag cleaning vessels, SO_2 emissions are controlled by venting the process off-gases to wet scrubbers. In addition to these air emission controls, each smelter operates different combinations of other types of controls for certain process fugitive sources and fugitive dust sources to comply with requirements imposed by the individual State standards and air permit conditions applicable to the smelter.

C. Relationship to Other Rules

The EPA has promulgated national emission standards applicable to primary copper smelters under two previous Clean Air Act rulemakings.

The first rule is the new source performance standards (NSPS) for primary copper smelters (40 CFR part 60, subpart P). This NSPS establishes a PM emission limit for new copper concentrate dryers and an SO_2 emission limit for new smelting furnaces and new copper converters. The NSPS does not specifically address HAP emissions from primary copper smelters.

The second rule applicable to primary copper smelters is the national emission standards for inorganic arsenic emissions from primary copper smelters (40 CFR part 61 subpart O). This rule establishes air emission control requirements for primary copper smelters at which the total annual average arsenic charging rate to the copper converters at the smelter is equal to or greater than 75 kilograms per hour (kg/hr). This rule was promulgated in 1986 before the changes to the NESHAP regulatory program required by the 1990 Amendments. Also, since the rule's promulgation date, the primary copper smelter industry has changed significantly with the industry-wide conversion to flash smelting technologies and a number of smelter closings. None of the primary copper smelters presently operating in the United States processes copper ore concentrates with arsenic content levels that require smelter owners and operators to meet the air emission control standards under subpart O (i.e., the annual average total arsenic charging rate for the copper converter department at each smelter is less than 75 kg/hr).

IV. NESHAP Decision Process

A. Source of Authority for NESHAP Development

The amended section 112 of the Act replaces the EPA's previous NESHAP development system of pollutant-by-pollutant health-based regulations that proved ineffective at controlling the high volumes and concentrations of HAP in air emissions. The 1990 Amendments readdress this deficiency by requiring the EPA to develop NESHAP by first establishing control technology-based standards for those sources emitting HAP, and that these control technology-based standards may later be reduced further to address residual risk that may remain even after implementing the technology-based controls.

B. Criteria for Development of NESHAP

The statutory directives set out in section 112 of the Act require NESHAP to be established for control of HAP emissions from both new and existing sources. The statute requires that the standards reflect the maximum degree of reduction of HAP emissions that is achievable taking into consideration the cost of achieving the emission reduction, any nonair quality health and environmental impacts, and energy requirements.

Emission reductions may be accomplished through application of measures, processes, methods, systems, or techniques, including, but not limited to: (1) reducing the volume of, or eliminating emissions of, such pollutants through process changes, substitution of materials, or other modifications, (2) enclosing systems or processes to eliminate emissions, (3) collecting, capturing, or treating such pollutants when released from a process, stack, storage, or fugitive emissions point, (4) design, equipment, work practice, or operational standards (including requirements for operator training or certification) as provided in section 112(h), or (5) a combination of the above. [See section 112(d)(2).]

To develop a NESHAP, the EPA collects information about the source category, including information on the emission source characteristics, control technologies, data from HAP emissions tests at well-controlled facilities, and information on the costs and other energy and environmental impacts of emission control techniques. The EPA uses this information to analyze possible regulatory approaches.

Although NESHAP are normally formatted in terms of numerical emission limits, alternative approaches are sometimes necessary. In some cases, for example, physically measuring emissions from a source may be impossible, or at least impractical, because of technological and economic limitations. Section 112(h) authorizes the Administrator to promulgate a design, equipment, work practice, or operational standard, or a combination thereof, in those cases when it is not feasible to prescribe or enforce an emissions standard.

If sources in a given source category are major sources of HAP emissions, then section 112 requires the EPA to establish national emission standards for these sources based on application of maximum achievable control technology (MACT). The regulation of the area sources in a source category, if any, is at the discretion of the EPA. If there is a finding by the EPA of a threat of adverse effects on human health or the environment from the area sources, then the source category can be added to the list of area sources to be regulated.

C. Determining the MACT Floor

After the EPA has identified the specific source categories or subcategories of major sources to regulate under section 112, it must set MACT standards for each category or subcategory. Section 112 limits the EPA's discretion by establishing a minimum baseline or ''MACT floor'' for these standards. For new sources, the standards for a source category or subcategory cannot be less stringent than the emission control that is achieved in practice by the best-controlled similar source, as determined by the Administrator. [See section 112(d)(3).]

The MACT standards for existing sources can be less stringent than MACT standards for new sources, but they cannot be less stringent than the average emission limitation achieved by the best-performing 12 percent of existing sources (excluding certain sources) for categories and subcategories with 30 or more sources, or the best-performing 5 sources for categories or subcategories with fewer than 30 sources. [See section 112(d)(3).]

After the MACT floor has been determined for a new or existing source in a source category or subcategory, the Administrator must set standards that are no less stringent than the MACT floor. Such standards must then be met by all major sources within the category or subcategory.

Section 112(d)(2) specifies that the EPA shall establish MACT standards that require the maximum degree of reduction in emissions of hazardous air pollutants

> * * * that the Administrator, taking into consideration the cost of achieving such emission reduction, and any non-air quality health and environmental impacts and energy requirements, determines is achievable* * *

In establishing MACT standards, the Administrator may distinguish among classes, types, and sizes of sources within a category or subcategory. [See section 112(d)(1).] For example, the Administrator could establish two classes of sources within a category or subcategory based on size and establish a different emission standard for each class, provided both standards are at least as stringent as the MACT floor for that class of sources.

The next step in establishing MACT standards is the investigation of regulatory alternatives. With MACT standards, only alternatives at least as stringent as the MACT floor may be selected. Information about the source category is analyzed to evaluate national impacts, including HAP emission

reduction levels, costs, energy, and secondary impacts. Several regulatory alternative levels (which may be different levels of emissions control or different levels of applicability or both) are then evaluated to select the regulatory alternative that best reflects the appropriate MACT level.

The selected alternative may be more stringent than the MACT floor, but the control level selected must be technically achievable. In selecting a regulatory alternative that represents MACT, the EPA considers the achievable emission reductions of HAP (and possibly other pollutants that are co-controlled), cost, and economic impacts, energy impacts, and other environmental impacts. The objective is to achieve the maximum degree of emissions reduction without unreasonable economic or other impacts. [See section 112(d)(2).] The regulatory alternatives selected for new and existing sources may be different because of different MACT floors, and separate regulatory decisions may be made for new and existing sources.

The selected regulatory alternative is then translated into a proposed rule. The rule implementing the MACT decision typically includes sections on applicability, standards, test methods and compliance demonstration, monitoring, reporting, and recordkeeping. The preamble to the proposed rule provides an explanation of the rationale for the decision. The public is invited to comment on the proposed rule during the public comment period. Based on an evaluation of these comments, the EPA reaches a final decision and promulgates the final rule.

V. Summary of the Proposed Standards

A. Applicability

The proposed NESHAP applies to owners and operators of copper smelters for which both of the following applicability conditions apply: (1) the facility produces anode copper by first flash smelting of copper ore concentrates to obtain molten copper matte and then converting the molten matte to blister copper using batch copper converters, and (2) the facility is a major source of HAP as defined in 40 CFR 63.2. If either one of these two conditions do not apply to a given smelter, then the owner and operator of the smelter would not be subject to the proposed NESHAP.

The first applicability condition requires that the copper smelter produces blister copper using batch copper converters. For the purpose of implementing the rule, a ''batch copper converter'' would be defined as one of the following copper converter designs: a Pierce-Smith converter; a Hoboken converter; or a similar design copper converter that produces blister copper in discrete batches using a sequence of charging, blowing, skimming, and pouring steps. A batch copper converter does not use continuous flash converting technology. Thus, the owner and operator of a copper smelter that uses continuous flash copper converters would not be not subject to the proposed NESHAP (the rationale for this decision is presented in Section II of this preamble).

The second applicability condition requires that the copper smelter be a major source of HAP emissions, as defined in 40 CFR 63.2. This means the copper smelter emits or has the potential to emit, considering application of air emission controls, 10 tpy or more of any single HAP compound or 25 tpy or more of any combination of HAP compounds. The proposed NESHAP would not apply to a copper smelter that is not a major source as defined by the EPA.

B. Sources To Be Regulated

The proposed NESHAP establishes air emission control requirements for specific HAP emission sources operating at a primary copper smelter subject to the rule. The HAP emission sources that would be affected by this rule are: (1) The copper concentrate dryer, (2) the flash smelting furnace, (3) the slag cleaning vessel, if used at a smelter, (4) the batch copper converters, and (5) the fugitive dust sources associated with the handling and storage of copper concentrate and other materials containing metallic HAP.

For the purpose of implementing the rule with respect to batch copper converters, the affected source would be the entire copper converter department. This area would be defined in the rule to be all of the batch copper converters and the associated capture systems used to collect gases and fumes emitted during copper converter operations (e.g., primary hood ventilation system, secondary hood ventilation system if used).

C. Emission Limits and Requirements

1. Copper Concentrate Dryers

The proposed standards establish emission limits for particulate matter contained in the exhaust gases discharged from each affected copper concentrate dryer. Separate emission standards would be established for existing sources and new sources. The standard would limit the concentration of particulate matter discharged from existing copper concentrate dryers to no more than 50 milligrams per dry standard cubic meter (mg/dscm) (approximately 0.022 grains per dry standard cubic foot (gr/dscf)). New copper concentrate dryers would be limited to no more than 23 mg/dscm (approximately 0.01 gr/dscf) of particulate matter. The rule would allow an owner or operator to use any type of particulate control device (i.e., baghouse, electrostatic precipitator, or wet scrubber) that meets the applicable PM emission limit.

2. Smelting Furnaces

The proposed standards for smelting furnaces are the same for both existing sources and new sources. The proposed rule requires the SO_2 rich off-gases from the smelting furnace to be vented to a by-product sulfuric acid plant or other type of sulfur recovery process unit that requires comparable levels of gas stream conditioning and pre-cleaning to remove particulate matter. The rationale for proposing an equipment standard for this source is described in section VII.C.3 of this document. In addition, the proposed rule requires that the hot metal vapors and fumes released when tapping molten matte or slag from the smelting furnace be captured using good ventilation practices (e.g., use of local ventilation hoods over the tapping port and launder) and vented to a control device. Particulate matter emissions from the control device would be limited to no more than 16 mg/dscm (approximately 0.007 gr/dscf).

3. Slag Cleaning Vessels

The proposed NESHAP establishes standards for those primary copper smelters that operate slag cleaning vessels as part of the copper smelting process. The requirements of proposed standards would be the same for existing sources and new sources. Particulate matter emissions contained in the off-gases exhausted from a slag cleaning vessel would be limited to no more than 46 mg/dscm (approximately 0.02 gr/dscf). As an alternative to complying with this standard, the rule would allow an owner or operator to exhaust the off-gases from the slag cleaning vessel directly to the by-product sulfuric acid plant (or other type of sulfur recovery process unit) used to control the off-gases from the smelting furnace.

Like the standards for smelting furnaces, the proposed rule also requires that the hot metal fume emissions released when tapping molten matte or slag from the slag cleaning vessel be captured using good ventilation

practices and vented to a suitable control device. Consistent with the standards for smelting furnaces, PM emissions from this control device would be limited to no more than 16 mg/dscm (approximately 0.007 gr/dscf).

4. Batch Copper Converters

The proposed NESHAP establishes emission standards for particulate matter and visible emissions from the batch copper converters at primary copper smelters subject to the rule. Separate standards would be established for existing sources and new sources. For existing sources, the proposed NESHAP establishes standards requiring that particulate matter emitted from the copper converters during blowing be captured and vented to a suitable control device. Different standards for existing sources would be established based on the type of copper converter designs used at the primary copper smelters (i.e., Pierce-Smith converters or Hoboken converters). For new sources, the proposed NESHAP establishes standards requires that particulate matter emitted from the copper converters during all operating modes be captured and vented to a suitable control device. The same standards for new sources would apply regardless of the design of the copper converters used at a smelter.

Existing Pierce-Smith Converters. The proposed standards for existing Pierce-Smith converters require that SO_2 rich off-gases generated during blowing be captured by a primary hood ventilation system and vented directly to the by-product sulfuric acid plant (or other type of sulfur recovery process unit) used to control the SO_2 rich gases exhausted from the smelting furnace. Additional capture devices (e.g., secondary hoods) vented to a control device would be required to collect PM emissions that escape capture by the primary hood as needed to achieve the visible emission limit established for the copper converter department. Particulate matter emissions from the control device would be limited to no more than 16 mg/dscm (approximately 0.007 gr/dscf).

The proposed rule requires that the primary hood and any supplemental capture system used to comply with the requirements of the rule be operated with sufficient ventilation draft such that the visible emissions exiting the roof monitors or roof exhaust fans on the building housing the copper converter department do not exhibit an average opacity greater than 3 percent as determined using the test protocol specified in the rule. (This test protocol is described later in this section under ''Performance Testing Requirements''). The owner or operator would be required to subsequently operate the capture system such that the system maintains the operating settings established at the time the owner or operator initially demonstrates compliance with this visible emission limit. Failure to do so would be a violation of the standard. The visible emission limit would apply only at those times when a performance test is conducted while establishing the capture system operating settings.

Existing Hoboken Converters. The proposed standards for existing Hoboken converters require that the SO_2-rich off-gases be evacuated directly from the interior of the copper converter (through the converter's side flue intake) to the by-product sulfuric acid plant (or other type of sulfur recovery process unit) used to control the SO_2-rich gases exhausted from the smelting furnace. In addition, the proposed rule requires that the side flue intake of each Hoboken copper converter be operated with sufficient ventilation draft during blowing such that the visible emissions exiting the roof monitors on the building housing the copper converter department do not exhibit an average opacity greater than 4 percent. Compliance with this visible emission limit would be demonstrated by following the same requirements and procedures described above for existing Pierce-Smith converters.

New Copper Converters. During the periods when a copper converter is positioned for blowing, the proposed standards for new sources require that the SO_2-rich off-gases generated during blowing be captured and vented directly to the by-product sulfuric acid plant (or other type of sulfur recovery process unit) used to control the SO_2-rich gases exhausted from the smelting furnace. In addition, the proposed rule requires that the capture system be designed and operated with sufficient ventilation draft whenever molten material is in the copper converter such that no visible emissions exit the building housing the copper converter department. The rule would require these captured gas streams to be vented to a suitable control device. Particulate matter emissions from the control device would be limited to no more than 16 mg/dscm (approximately 0.007 gr/dscf).

The proposed visible emission limit would provide flexibility by allowing the owner or operator to choose the capture system design to be used at a given smelter. The capture system design could use multiple intake and duct segments through which the ventilation rates are controlled independently of each other and individual duct segments could be connected to separate control devices (e.g., use of individual secondary air curtain hoods on each copper converter in combination with a building evacuation system). The occurrence of visible emissions from the building housing the copper converter department would be determined using Method 22 in appendix A of 40 CFR part 60.

5. Fugitive Dust Sources

Under the proposed NESHAP, the owner or operator of a primary copper smelter subject to the rule is required to control fugitive dust emissions according to a site-specific plan. This written plan would be prepared by the owner or operator and would describe the specific control measures that are used to limit fugitive dust emissions from the individual sources at the smelter site. The duty of the owner or operator to operate the smelter according to the fugitive dust control plan would be incorporated into the operating permit for the smelter site that is issued by the designated permitting authority under 40 CFR part 70 (the actual fugitive dust control plan for a given smelter would not be part of the permit).

The proposed rule defines a fugitive dust source as a source of PM emissions resulting from the handling, storage, transfer, or other management of solid copper-bearing materials defined in the rule where the source is not associated with a specific process, process vent, or stack. Fugitive dust emissions can be generated by a variety of different operations conducted at a primary smelter, such as dump truck traffic on smelter roadways; unloading of copper concentrates from dump trucks or railcars; wind erosion of outdoor piles used to store copper concentrate; blending of copper concentrate and other feed constituents in the bedding area; and uncovered conveyor systems used to transfer copper concentrate. Examples of control measures that could be included in the written fugitive dust control plan include, but are not limited to: erecting a building or other enclosure over the copper concentrate bedding area; covering conveyor systems and using local ventilation hoods vented to a control device at the conveyor transfer points; placing copper concentrate stockpiles below grade or installing wind screens or wind fences around the stockpiles; and spraying water or applying appropriate dust suppression agents on smelter roadways or outdoor storage piles.

6. Equivalent Standard for Combined Exhaust Gas Streams

At some existing primary copper smelters, exhaust gas streams from several sources are combined before being discharged to a single control device. The proposed rule addresses this situation by including an equation with which the owner or operator calculates the allowable PM emission limit for the combined exhaust gas stream based on the individual PM emission limits specified in the rule and the volumetric flow rates for the affected source gas streams composing the combined exhaust gas stream. This equivalent PM emission limit could be applied to a combined gas stream that contains any combination of the gas streams from the following affected sources: (1) exhaust gas stream from a copper concentrate dryer; (2) exhaust gas stream from a smelting vessel tapping port capture system; (3) exhaust gas stream from a slag cleaning vessel tapping port capture system; and (4) exhaust gas stream from a Pierce-Smith copper converter capture system other than the primary hood capture system (e.g., secondary hood, building evacuation system).

D. Compliance and Maintenance Requirements

1. Compliance Dates

Compliance with the air emission control standards under the NESHAP would be required within 2 years from the date of promulgation for existing sources and at startup for new or reconstructed sources. An ''existing source'' is a source that commenced construction or reconstruction before today's date. Sources that commence construction or reconstruction on or after today's date would be considered to be a ''new source.''

2. Operation and Maintenance Requirements

At all times, including periods of startup, shutdown, and malfunction, the owner or operator would be required to operate and maintain each affected source, including associated air pollution control equipment, according to the requirements in section 63.6 in the NESHAP general provisions (40 CFR part 63, subpart A). As part of the written startup, shutdown, and malfunction plan required by section 63.6(e)(3), the owner or operator would be required to include a description of the corrective action procedures to be implemented to restore a malfunctioning capture system or control device to proper operation.

E. Performance Testing Requirements

1. Particulate Matter Emission Performance Tests

Compliance with each of the PM emission limits in the proposed rule would be determined by performance tests that the owner or operator performs according to the NESHAP general provisions in § 63.7 under 40 CFR part 63, subpart A, and using specific EPA reference test methods. For each performance test, the sampling locations would be determined using EPA Method 1; the stack gas velocity and volumetric flow rate would be determined using EPA Method 2; and the gas analysis would be performed using EPA Methods 3 and 4. Each of these methods is included in appendix A to 40 CFR part 60. Measuring PM emissions would be performed using EPA Method 5, ''Determination of Particulate Matter Emissions from Stationary Sources'', in 40 CFR part 60, appendix A (Method 5D would be required for positive pressure baghouses). The average of three test runs (each run having a minimum sampling time of 60 minutes and minimum sampling volume of 0.85 dscm) would be used to determine compliance with the applicable PM emission limit specified in the rule. During the performance test, the owner or operator also would establish limits for appropriate control device operating parameters based on the actual values measured during this test.

2. Visible Emission Performance Tests

Existing Copper Converters. Compliance of existing Pierce-Smith or Hoboken copper converters with the applicable visible emission limit would be demonstrated using a specific test protocol that is being proposed in the rule. The proposed protocol is based on performing a series of opacity readings during specific copper converter operations using Method 9, ''Visual Determination of the Opacity of Emissions from Stationary Sources,'' in 40 CFR part 60, appendix A. The opacity observations would be made by a team of two qualified visible emission observers during the period when the primary copper smelter is operating under conditions representative of the smelter's normal blister copper production rate.

The total time of the observation period would be of sufficient duration to obtain a minimum of 20 uninterrupted 6-minute intervals during which opacity readings made using Method 9 (i.e., 24 readings, each reading made at a 15-second interval) are recorded for those conditions when at least one copper converter is operating in the blowing mode with no visible emission interferences from other smelter operations occur as specified in the rule. The total observation period may be divided into two or more segments performed on different days if a change in the outdoor conditions or copper production conditions prevents the required number of opacity readings from being obtained during one continuous period.

Throughout the opacity observation period, an additional person familiar with the primary copper smelter operation is stationed inside the building housing the copper converters to visually monitor the copper converter operations. These indoor process monitors maintain a log recording the process information. During the observation period, the owner or operator also would establish minimum or maximum limiting values, as appropriate, for selected capture system operating parameters based on the actual values measured during the test.

Upon completion of the opacity observations, the data recorded by the outdoor opacity observers and the indoor process monitors are summarized in a tabular format that is specified in the rule. Next, 6-minute average opacity values are calculated for all periods listed in the data summary table composed of six consecutive minutes of blowing with no interferences. A minimum of twenty 6-minute periods are required for the compliance calculation (if more than twenty 6-minute periods are included in the data summary table, then all of the 6-minute periods included in the table would be used for the compliance calculation). These twenty 6-minute periods (or more if applicable) are averaged to obtain a single opacity value to determine compliance with the visible emission limit applicable to a given smelter. Refer to the proposed rule text for more information regarding the test conditions, test notification requirements, procedure for conducting the opacity observations and gathering the converter process information, and the methods to be used for data reduction and calculation of the average opacity value.

New Copper Converters. Compliance of new copper converters with the no visible emission limit specified in the proposed rule would be demonstrated using Method 22, ''Visual Determination of Fugitive Emissions from Material Sources and Smoke Emissions from Flares,'' in appendix A of 40 CFR part 60. Method 22 requires only a determination as to whether a visible emission occurs and does not require

that the opacity of the emissions be determined. A minimum observation period of no less than 2 hours during normal copper production operations is proposed for the performance test.

F. Inspection and Monitoring Requirements

1. Capture System Inspections

Regular visual inspections of all capture systems used to comply with the standards would be required under the proposed NESHAP. The owner or operator would be required to conduct at least once per month a visual inspection of each capture system operated to meet standards under the rule. These inspections would involve visually inspecting all of the capture system components to check for any defects or damage that could diminish or impair capture system performance. Examples of these defects or damage include, but are not limited to: openings through which gas can escape as indicated by the presence of cracks, holes, or gaps in hoods or ductwork; flow constrictions caused by dents or accumulated dust in ductwork; and reduced fan performance as indicated by fan blade erosion. If a defect is detected, then the owner or operator would be required to replace or repair the defective or damaged components consistent with the measures for corrective action detailed in the facility startup, shutdown and malfunction plan. Completion of the repair would be required as soon as practical but no later than 30 calendar days after the date the defect is detected. Delay of repair beyond 30 calendar days of detecting the capture system defect would be allowed under special circumstances as specified in the rule.

2. Capture System Monitoring

Monitoring of appropriate operating parameters would be required for the copper converter capture system operated to comply with the converter building visible emission limit. No monitoring requirements for other capture systems operated at the smelter (e.g., smelting furnace tapping port and launder capture systems, slag cleaning vessel tapping port and launder capture systems) would be specified under the proposed rule.

The rule would not specify the individual operating parameters to be monitored by the owner or operator for the copper converter capture system. Instead, each owner or operator would be required to select a set of operating parameters appropriate for the capture system design used at the smelter that the owner or operator determines to be a representative and reliable indicator of the range within which the equipment can operate and achieve the visible emission limit. During the initial performance test to demonstrate compliance of the copper converter capture system with the applicable visible emission limit, the owner or operator would establish minimum operating parameter limits (or a maximum operating parameter limit if appropriate) for selected capture system operating parameters. The rule would require that the owner or operator install, calibrate, operate, and maintain monitoring devices equipped with a recorder to measure and record at 15-minute or more frequent intervals the actual value for each operating parameter for which operating limits are established. In cases when the monitoring regimen includes periodic checking by facility workers of the capture system fan motor amperages and damper positions, checks are to be made at least once-per-shift.

The owner or operator would be required to regularly inspect the data recorded by the monitoring system at a sufficient frequency to ensure the capture system continues to operate properly. If the recorded actual value of a selected operating parameter is less than the minimum operating parameter limit (or, if applicable, greater than the maximum operating parameter limit) established for the parameter, then an excursion would be determined to have occurred. The proposed rule requires that within 1 hour of detecting the excursion, the owner or operator initiate the corrective action procedures identified in the startup, shutdown, and malfunction plan as necessary to restore the operation of the capture system to the proper operating settings. Failure to take the necessary corrective actions to correct the operating problem would be a violation of the standard. Also, for a given operating parameter, if excursions occur six times in any semi-annual reporting period, then any subsequent excursion of that operating parameter during the reporting period would be a violation of the standard. For the purpose of determining the number of excursions in a semi-annual reporting period, only one excursion would be counted in any given 24-hour period.

3. Control Device Inspection and Monitoring

Baghouses. For each baghouse used to comply with the PM emission limits, the owner or operator would be required to operate the baghouse according to a written standard operating procedures (SOP) manual. This SOP manual would be prepared by the owner or operator, and the manual would describe in detail the inspection, maintenance, bag leak detection, and corrective action procedures to be implemented by the owner or operator for the baghouse. Specific inspection, maintenance, and monitoring requirements to be included by the owner or operator in the SOP manual are specified in the proposed rule. The proposed rule also requires the use of a bag leak detector system equipped with an audible alarm. Failure by the owner or operator to operate and maintain the baghouse according to the requirements specified in the SOP manual would be a violation of the standard. The inspection and monitoring requirements would not apply to a baghouse that is included in the smelter's fugitive dust control plan and exclusively operated to control fugitive dust emissions.

Venturi Wet Scrubbers. If an owner or operator elects to use a venturi wet scrubber to comply with a PM emission limit, the proposed rule requires that the owner or operator monitor the scrubber pressure drop and water flow rate. During the initial performance test to demonstrate compliance with the applicable standard, the owner or operator would establish minimum operating values for each of these parameters based on the actual values measured during this test. The rule would require that the owner or operator install, calibrate, operate, and maintain monitoring devices equipped with a recorder to measure and record at 15-minute or more frequent intervals the actual value for each operating parameter. An excursion would be determined to have occurred when the recorded actual value of the scrubber pressure drop or water flow rate is less than the minimum operating limit established for the parameter during the compliance test. Any excursion would be a violation of the standard.

Other Control Devices. If an owner or operator elects to use a control device other than a baghouse or venturi wet scrubber to comply with a PM emission limit (e.g., an ESP), the proposed rule requires that the owner or operator monitor appropriate operating parameters for the control device. The rule would not specify the individual operating parameters to be monitored. Instead, each owner or operator would be required to select a set of operating parameters appropriate for the control device design that the owner or operator determines to be a representative and reliable indicator of the control device performance. During the initial performance test to demonstrate compliance with the applicable standard, the owner or operator would

establish limiting values for selected operating parameters based on the actual values measured during this test. The rule would require that the owner or operator install, calibrate, operate, and maintain monitoring devices equipped with a recorder to measure and record at 15-minute or more frequent intervals the actual value for each operating parameter for which operating limits are established. The owner or operator would be required to regularly inspect the data recorded by the monitoring system at a sufficient frequency to ensure the control device is operating properly. An excursion occurs when the recorded actual value of a selected operating parameter is less than the minimum operating parameter limit (or, if applicable, greater than the maximum operating parameter limit) established for the parameter. When an excursion occurs, the owner or operator would be required to initiate the corrective action procedures identified in the startup, shutdown, and malfunction plan as necessary to restore the operation of the control device to the proper operating settings. Failure by the owner or operator to take the necessary corrective actions would be a violation of the standard.

G. Notification, Recordkeeping, and Reporting Requirements

The proposed rule requires the owner or operator to comply with the notification, recordkeeping, and reporting requirements in the general provisions in subpart A of 40 CFR part 63 with one exception. The notification, recordkeeping, and reporting requirements in the general provisions related directly to the visible emission limit compliance provisions specified in 40 CFR 63.6(h) would not apply to this rule.

1. Notifications

The owner or operator would be required to submit notifications described in the general provisions (40 CFR part 63, subpart A), which include initial notification of applicability, notifications of performance tests, and notification of compliance status.

2. Records

The owner or operator would be required to maintain records required by the general provisions and records needed to document compliance with the standard. For each control device used to comply with the rule, records would include copies of inspection records and a copy of the written maintenance plan.

The owner or operator would be required to retain all records for at least 5 years following the date of each occurrence, measurement, maintenance, corrective action, report, or record. The records for the most recent 2 years must be retained on site; records for the remaining 3 years may be retained off site but must still be readily available for review. The files could be retained on microfilm, microfiche, on a computer, or on computer or magnetic disks. The owner or operator could report required information on paper or a labeled computer disk using commonly available and compatible computer software.

3. Reports

As required by the general provisions, the owner or operator would be required to submit a report of performance test results; develop and implement a written startup, shutdown, and malfunction plan and report semi-annually any events where the plan was not followed; and submit semi-annual reports of any excursions when any monitored parameters fall outside the range of values established during the performance test.

VI. Impacts of Proposed Rule

A. Health Impacts

The Clean Air Act was created in part to protect and enhance the quality of the Nation's air resources so as to promote the public health and welfare and the productive capacity of its population. [See section 101(b)(1).] As previously explained, Congress specified in the 1990 Amendments that each standard for major sources require the maximum reduction in emissions of HAP that the EPA determines is achievable considering cost, health and environmental impacts, and energy impacts. In essence, these MACT standards would ensure that all major sources of air toxic emissions achieve the level of control already being achieved by the better controlled and lower emitting sources in each category. This approach provides assurance to citizens that each major source of toxic air pollution will be required to effectively control its emissions. At the same time, this approach provides a level playing field, ensuring that facilities that employ cleaner processes and good emissions control are not disadvantaged relative to competitors with poorer controls.

Emission data collected during development of the proposed NESHAP show that the pollutants that are listed in section 112(b)(1) and are emitted by primary copper smelters in the largest quantities are arsenic and lead compounds. Other HAP that are emitted in lesser quantities include antimony, beryllium, cadmium, chromium, cobalt, manganese, nickel, and selenium. These toxic metals can cause effects such as mucous membrane irritation (e.g., bronchitis, decreased lung capacity), gastrointestinal effects, nervous system disorders (from loss of function to tremor and numbness), skin irritation, and reproductive and developmental disorders. Chronic inhalation exposure to arsenic compounds is strongly associated with lung cancer; chronic oral exposure is linked to skin, bladder, liver, and lung cancer. Additionally, several of the metals accumulate in the environment and the human body. Cadmium, for example, is a cumulative pollutant, which can cause kidney effects after the cessation of exposure. Similarly, the onset of effects from beryllium exposure may be delayed 3 months to 15 years. Many of the metals also are known (arsenic, chromium VI, certain nickel compounds) or probable (cadmium, lead, and beryllium) human carcinogens.

In addition to HAP, the proposed rule would also reduce some of the pollutants whose emissions are controlled under the National Ambient Air Quality Standards (NAAQS). These pollutants include particulate matter and lead. The health effects of these pollutants are described in EPA's Criteria Documents, which support the NAAQS. Briefly, PM emissions have been associated with aggravation of existing respiratory and cardiovascular disease and increased risk of premature death. Depending on the degree of exposure, lead can cause subtle effects on behavior and cognition, increased blood pressure, reproductive effects, seizures, and even death. Children are particularly sensitive and exposure can also result in reduced growth. Lead compounds can be persistent in the environment and have the potential to accumulate in food chains.

The EPA does recognize that the degree of adverse effects to health can range from mild to severe. The extent and degree to which the health effects may be experienced is dependent upon: (1) the ambient concentrations observed in the area (e.g., as influenced by emission rates, meteorological conditions, and terrain), (2) the frequency and duration of exposures, (3) characteristics of exposed individuals (e.g., genetics, age, pre-existing health conditions, and lifestyle) which vary significantly with the population, and (4) pollution specific characteristics (e.g., toxicity, half-life in the environment, bioaccumulation, and persistence).

B. Air Quality Impacts

Nationwide HAP emissions from the ''Primary Copper Smelting'' source category are estimated to be approximately 189 Mg/yr (208 tpy). The EPA estimates that implementation of the NESHAP, as proposed, would reduce these nationwide HAP emissions by approximately 20 percent to 155 Mg/yr (171 tpy).

C. Other Environmental and Energy Impacts

Other environmental and energy impacts associated with implementing the requirements of the proposed rule primarily are expected to result from the operation of the capture systems and the PM control devices. No significant adverse water, solid waste, or energy impacts are expected as a result of the proposed rule.

Direct water quality impacts from the proposed rule would vary depending on the type of control devices that the smelter owners and operators choose to use to comply with the proposed particulate matter emission limits. No direct water quality impacts would result from operation of either a baghouse or electrostatic precipitators. If wet scrubbers are used to control PM emissions, wastewater from the scrubber blowdown would be generated. The EPA expects wet scrubbers to be used only in limited applications to comply with the rule (the most likely use of existing wet scrubbers is to meet the standards for slag cleaning vessels).

The dust collected in baghouses and electrostatic precipitators and the sludge generated by wet scrubbers would be potential sources of solid waste. At existing primary copper smelters, the common operating practice is to recycle the dust collected by the baghouses and electrostatic precipitators by feeding the material back to the flash smelting furnace and not dispose of this material as a solid waste.

Energy impacts would result from the increased consumption of electricity required at a primary copper smelter to operate any additional capture systems and control devices installed to meet the proposed rule requirements. Electricity is required to charge the collector plates in electrostatic precipitators. Electric motor-driven fans, blowers, or pumps, (depending on the type of control equipment) are used for operations such as moving the captured gas stream to the control device, operating baghouses, and circulating water through a wet scrubber.

D. Economic Impacts

The cost impacts of the proposed NESHAP are expected to result mainly from costs that some primary copper smelters may incur to replace or upgrade their existing copper converter secondary capture systems (e.g., install a new secondary hood design or increase the system draft by installing a larger fan) and costs for monitoring, recording, and recordkeeping. The EPA estimated the cost to owners and operators of implementing the requirements of the proposed rule at the smelter sites that the EPA expects are likely to be subject to the rule. The total nationwide capital investment cost to purchase and install the air emission controls that would be required by the rule is estimated by the EPA to be approximately $6 million. The total nationwide annual cost would be approximately $2.2 million per year.

Emission control costs as a percentage of sales revenues were estimated to evaluate the impact of the regulation on the primary copper smelting industry and affected individual facilities. Economic impacts are expected to be minimal. The annualized costs of the regulation represents approximately 0.07 percent of 1996 sales revenues for the industry. Individual copper smelting facilities are expected to experience emission control costs as a percent of sales ranging from 0.01 to 0.44 percent.

VII. Rationale for Selection of Proposed Standards

A. Selection of Pollutants

For the proposed NESHAP, the EPA decided that it is not practical to establish individual standards for each specific type of metallic HAP the could be present in a copper ore (e.g., separate standards for arsenic emissions, separate standards for lead emissions, and so forth for each of the metals listed as HAP and potentially could be present in the copper ore). When released into the air during the primary copper smelting operations, each of the metallic HAP compounds behaves as particulate matter. Therefore, the EPA decided to establish standards for total particulate matter as a surrogate pollutant for the individual types of metallic HAP emitted from primary copper smelters.

The type and concentration of the metallic HAP compounds contained in the copper ore concentrate shipped to a primary copper smelter is not constant but instead varies over time. The concentrations of each type of metallic HAP frequently vary throughout the copper ore deposit from which the copper concentrate is obtained. Establishing separate standards for each individual type of metallic HAP would impose costly and significantly more complex compliance and monitoring requirements on the primary copper smelter owners and operators and would achieve little, if any, more HAP emission reduction than would be achieved using the surrogate pollutant approach based on total particulate matter. On the other hand, strong correlations exist between air emissions of the selected surrogate pollutant and emissions of the individual metals it represents. The control technologies used for the control of PM emissions achieve equivalent levels of performance on metallic HAP emissions. Therefore, standards requiring good control of particulate matter will also achieve good control of the metallic HAP emitted from primary copper smelters.

B. Selection of Affected Sources

For the purpose of implementing a NESHAP, an *affected source* is defined to mean the stationary source, or portion of a stationary source that is regulated by a relevant standard or other requirement established under section 112 of the Act. Each relevant standard is to designate the ''affected source'' for the purpose of implementing that standard. Within a source category, the EPA decides which HAP emission sources (i.e., emission points or groupings of emission points) are most appropriate for establishing separate emission standards in the context of the Clean Air Act statutory requirements and the industry operating practices for the particular source category. The EPA selected the specific HAP emission sources requiring the development of air standards under this rulemaking based on consideration of test data and HAP emission estimates for these individual emission points.

The EPA reviewed available information regarding HAP emissions from anode copper fire refining operations. The information is insufficient to specifically quantify the level of HAP emissions from the anode furnaces and anode casting operations. However, at this stage of the copper production process, the residual content of metallic HAP in the blister copper is very low. Therefore, EPA decided not to propose specific emission standards for anode copper fire refining operations.

The EPA considered different approaches for designating the ''affected source'' for the selected emission point types ranging from using a broad definition (e.g., the entire smelter site) to narrow definitions (e.g., individual emission points). Designating the affected source for the NESHAP as the entire smelter site was dismissed by the EPA. This approach would require that the MACT floor be established by the

total smelter-wide HAP emissions indicative of the level that is achieved by the best-performing five existing smelters. Application of a single MACT floor to combinations of different process and fugitive emission points at a primary copper site would be difficult.

A second approach is to designate an affected source by grouping the same or similar types of emission points together under a single affected source designation. The EPA decided that grouping similar emission points was the appropriate approach to use for two of primary copper smelter HAP emission sources selected to be controlled: batch copper converters and fugitive dust sources.

At each of the existing primary copper smelters, a row of three to five batch copper converters are used to produce blister copper. Off-gases captured from each of the individual converters during blowing are exhausted to the sulfuric acid plant through a common ventilation system used for the entire group of converters. At those smelters currently operating secondary capture devices (e.g., secondary hoods or air curtains) on each of the copper converters, the secondary captured gas streams are vented to a separate control device. Considering the smelter operating practices and existing air pollution control configurations used for copper converters, the EPA decided it is appropriate to designate the entire group of copper converters as the affected source.

Fugitive dust sources are those sources of PM emissions at the primary copper smelter resulting from the handling, storage, transfer, or other management of copper concentrate or other materials containing metallic HAP where the source is not associated with a specific process, process vent, or stack. The type and number of individual fugitive dust sources varies from smelter-to-smelter. Therefore, the EPA decided it is appropriate to designate the entire group of fugitive dust sources as the affected source.

The narrowest designation of affected source is by individual emission point. At each of the existing primary copper smelters only one copper concentrate dryer and one flash smelting furnace (or flash smelting furnace and slag cleaning vessel combination) is used at the smelter site. Each of these individual emission points would potentially emit significant quantities of HAP emissions if not controlled. Therefore, the EPA decided to designate each individual copper concentrate dryer, smelting furnace, and slag cleaning vessel as a separate affected source.

C. Selection of Basis and Level of the Proposed Standards

1. Background

The Clean Air Act statutory requirements for determination of the MACT floor are explained in section IV.C of this document. Determination of MACT floor for existing sources is dependent on the nationwide number of existing sources within the source category. The source category for which the EPA is developing this NESHAP is comprised of six existing primary copper smelters nationwide (discussed in Section III.A of this preamble). For a source category with less than 30 existing sources, the MACT floor is the average emission limitation achieved by the best performing five existing sources. The MACT floor for new sources is defined by the emission control that is achieved in practice by the best-controlled source.

For the other NESHAP developed by the EPA to date, the Agency has used several different approaches to determine MACT floor for individual source categories depending on the type, quality, and applicability of available data. These approaches include determining a MACT floor based on: (1) emission test data that characterize actual HAP emissions from presently controlled sources included in the source category; (2) existing federally-enforceable emission limitations specified in air regulations and facility air permits applicable to the individual sources comprising the source category; or (3) application of a specific type of air emission control technology currently being used by sources in the source category or by sources with similar pollutant stream characteristics. For the ''Primary Copper Smelting'' source category, the EPA decided to use the approach best suited for establishing the MACT floor on an individual affected source basis.

Once the MACT floors are determined for new and existing sources in a source category, the EPA must establish standards under a NESHAP that are no less stringent than the applicable MACT floors. The Administrator may promulgate standards that are more stringent than the MACT floor when such standards are determined by the EPA to be achievable taking into consideration the cost of implementing the standards as well as any non-air quality health and environmental impacts and energy requirements.

Section 112 of the Act requires that emission standards for control of HAP be established unless it is the Administrator's judgment that emission standards cannot be established or enforced for a particular type of source. In those cases when it is not possible to establish or enforce an emission standard, an alternative format must be used. Section 112(h)(2) of the Act identifies two conditions under which the Administrator may use an alternative format: (1) If the pollutants cannot be emitted through a conveyance designed and constructed to emit or capture the pollutant; or (2) if the application of measurement technology to a particular class of sources is not practicable because of technology and economic limitations. In these cases, the EPA may instead establish design, equipment, work practice, or operational standards, or a combination of these.

2. Selection of Standards for Copper Concentrate Dryers

Emissions of HAP from the copper concentrate dryer result from the entrainment of particulate matter containing metallic HAP in the exhaust gas stream from the dryer. At all six existing copper smelters, PM emissions from copper concentrate dryers are controlled by venting the dryer exhaust gases to either a baghouse or ESP. All six of the existing copper concentrate dryers have federally enforceable PM emission limits. Four of the dryers are subject to the NSPS PM emission limit of 50 mg/dscm (0.022 gr/dscf) (See § 60.162 in 40 CFR part 60, subpart P). The other two dryers are subject to a PM emission limit established in each smelter's respective State air permit. One dryer is subject to a State permit PM emission limit of 0.01 gr/dscf (approximately 23 mg/dscm). The second dryer is subject to a State permit PM emission limit of 0.03 gr/dscf limit (approximately 69 mg/dscm). The EPA also has obtained copies of the results for the compliance tests for each of these sources. Upon consideration of the information available to the EPA, the Agency elected to select the MACT floor for copper concentrate dryers based on the federally enforceable PM emission limits.

Using the federally-enforceable PM limits for the top five controlled sources, the average PM emission limit for existing copper concentrate dryers is 0.45 mg/dscm. The median limit for the five sources is the NSPS level of 0.50 mg/dscm. The average and median values are essentially the same and represent the control level established by the NSPS. Therefore, the EPA selected the NSPS PM emission limit of 50 mg/dscm as the MACT floor control level for existing copper concentrate dryers.

The EPA established a separate MACT floor control level for new sources based on the best-controlled copper concentrate dryer. As discussed above, the federally-enforceable PM emission limit for the best-controlled existing source is 0.01 gr/dscf. Converting this value to metric units, the MACT floor control level selected for new copper concentrate dryers is the PM emission limit of 23 mg/dscm.

The format of both the existing NSPS and State standards for copper concentrate dryers is a numerical emission limit using a mass concentration limit format. Consistent with the directives of section 112(h) of the Act, the EPA selected a mass concentration limit format for the proposed standards.

The MACT floor control level selected for existing copper concentrate dryers is 50 mg/dscm. The EPA considered establishing regulatory alternatives more stringent than the MACT floor control level based on the actual emissions recorded during compliance testing at each source. After review of the available test data for the controlled sources, the EPA concluded that these test data indicate actual PM emissions from each of the six controlled copper concentrates dryers effectively are at or near the control level established for the MACT floor. Therefore, EPA selected the MACT floor level of 50 mg/dscm as the proposed PM emission limit for an existing copper concentrate dryer.

The MACT floor control level selected for new copper concentrate dryers is the PM emission limit of 23 mg/dscm. The EPA did not identify any regulatory alternatives beyond the MACT floor for new sources. Therefore, the EPA selected the MACT floor of 23 mg/dscm (0.01 grain/dscf) as the level for the proposed standard for new copper concentrate dryers.

3. Selection of Standards for Smelting Furnaces

The smelting of copper concentrate in a furnace to obtain copper matte results in two types of HAP emissions. Process HAP emissions from the flash smelting furnace are metallic compound vapors in the off-gases exhausted from the furnace. Process fugitive HAP emissions result from hot metal vapors released when molten copper matter or slag is tapped from the furnace. Separate standards are proposed for smelting furnace process HAP emissions and for process fugitive HAP emissions.

Process HAP Emissions. All six of the existing smelters operate some type of flash smelting furnace. Process HAP emissions from these furnaces are controlled by exhausting the SO_2 rich off-gases to a by-product sulfuric acid plant. These controls have been installed to comply with requirements established to meet the National Ambient Air Quality Standards (NAAQS) for SO_2 and, in five of the six smelters, the primary copper smelter NSPS (40 CFR 60 subpart P). The smelting furnace at the Phelps Dodge Hidalgo smelter is not subject to this NSPS standard because it was built before the effective date of the standard. The NSPS limits SO_2 emissions from affected smelting furnaces to no more than 650 parts per million. All requirements under the NSPS as well as the applicable State Implementation Plans (SIP) are federally-enforceable.

While the by-product sulfuric acid plants were originally installed at the smelters for controlling SO_2 emissions, the inherent design and operating requirements of these plants also provide effective control of the metallic HAP contained in the smelting furnace off-gases. The sulfuric acid production process involves the catalytic conversion of the SO_2 contained in the off-gases to produce liquid sulfuric acid. To optimize the process performance and prevent expensive damage to the catalysts and other critical process equipment, the first step of the process requires that the smelting furnace off-gases be pre-cleaned and conditioned. Typically, these pre-cleaning and conditioning operations involve first passing the gas stream through an ESP (to remove particulate matter) and then a wet scrubber (to remove particulate matter further and to reduce the gas stream temperature). By using multiple control devices in series, very high overall particulate matter removal efficiencies are achieved such that effectively no particulate matter (and, therefore no metallic HAP) are emitted in the tail gas from the sulfuric acid plant.

Considering that all existing smelters use the same control technology for the smelting furnace off-gases, the EPA elected to select the MACT floor for smelting furnaces process HAP emissions based on application of a specific air emission control technology being used by the existing sources in the source category. The MACT floor control level selected for process HAP emissions from existing smelting furnaces is to vent the SO_2 rich off-gases from the smelting furnace to a by-product sulfuric acid plant or other type of sulfur recovery process unit that requires comparable levels of gas stream conditioning and pre-cleaning to remove particulate matter. Since all of the existing smelting furnaces represent the best-controlled source, the new source MACT floor is the same as the existing source MACT floor for smelting furnace process HAP emissions. Furthermore, the EPA did not identify any regulatory alternatives beyond the MACT floor. Therefore, the EPA selected the MACT floor as the basis for a proposed standard to control HAP emissions from smelting furnace off-gases at both new and existing sources.

To prescribe numerical emission limits for metals or particulate matter in the tail gases from the by-product sulfuric acid plants operated at primary copper smelters is very difficult because any actual emissions of metals or particulate matter from the by-product sulfuric acid plant, if present at all, are very variable and occur in trace amounts. Section 112 of the Act requires that an emission standard for control of HAP be established except in those cases when it is the Administrator's judgement that it is not feasible to prescribe or enforce an emission standard. In this case, it is neither feasible nor practical to prescribe or enforce a numerical emission limit for gases vented to a sulfuric acid plant due to technological and economic limitations. Because rigorous precleaning and conditioning of the smelting furnace off-gases is a necessary operating condition for the by-product sulfuric acid plant, venting to this unit ensures that emissions of metallic and particulate matter HAPs are either nonexistent or limited to trace amounts. In such a case, it is neither feasible nor practical to prescribe, measure, and enforce a numerical emission limit for the by-product sulfuric acid plant at these emission levels and, not only would such a standard be essentially unworkable from a technical standpoint, it would also provide virtually no benefit.

As an alternative to establishing a numerical emission limit, the EPA is proposing an equipment-based format for the standard. The proposed standard requires that the off-gases from the smelting furnace be vented to a by-product sulfuric acid plant or other type of sulfur recovery process unit that requires comparable levels of gas stream pre-cleaning and conditioning to remove particulate matter. The NSPS and SIP requirements for each smelter already provide for continuous emission monitoring of SO_2 emissions from these by-product sulfuric acid plants to assure compliance and proper operation of the plants. When indicated by the SO_2 emission monitoring, the smelter owners and operators are required to implement appropriate corrective actions as necessary to prevent degradation of the by-product sulfuric

acid plant performance. The EPA believes that the mandatory gas stream pre-cleaning requirements imposed by this equipment standard together with the continuous SO_2 monitoring required by other federally-enforceable air rules assures that a consistently very high level of metallic HAP control is achieved for the off-gases exhausted from smelting furnaces without the need to establish a specific emission standard and perform emission testing to demonstrate compliance with the standard.

Fugitive Process HAP Emissions. At five of the six existing smelters, the hot metal vapors released during matte and slag tapping are captured using local hood ventilation systems. Because these emissions occur intermittently (only when matte or slag tapping is performed) and have relatively low SO_2 concentrations, the capture gas stream is not vented to the sulfuric acid plant but instead is vented to a separate baghouse or ESP. At the sixth smelter, the matte and slag tapping emissions are currently captured by a local ventilation hood system and vented to the smelter's main stack.

Not all of the controlled sources have federally enforceable PM emission limits. Four of the sources are subject to State air permit limits; however these PM emission limits vary in format and the type of particulate regulated, and therefore cannot be averaged together. The test data for these controlled sources are highly variable. The characteristics of the captured gas streams from smelting furnace matte and slag tapping operations are similar to the gas streams captured by Pierce-Smith converter secondary hood systems (e.g., same HAP constituents, similar particulate matter loadings, relatively low SO_2 concentrations, and emitted intermittently). Therefore, the EPA elected to establish the MACT floor for smelting furnace matte and slag tapping operations based on application of the control devices to a similar controlled source (i.e., lean SO_2 gas streams captured by Pierce-Smith copper converter secondary hood systems).

The MACT floor control level selected for control devices used to treat lean SO_2 gas streams from Pierce-Smith copper converters is a PM emission limit of 16 mg/dscm (the rationale for this level is described later in this section). Applying the same MACT floor to smelting furnaces, the MACT floor control level selected for smelting furnace process fugitive emission sources is a PM emission limit of 16 mg/dscm. No best-controlled smelting furnace could be identified by the EPA. Therefore, the new source MACT floor is the same as the existing source MACT floor.

The format selected for the standard is a numerical emission limit expressed as a mass concentration of particulate matter. The EPA did not identify any regulatory alternatives beyond the MACT floor for existing sources nor could the EPA identify a best-controlled source. Therefore, EPA selected the MACT floor of 16 mg/dscm as the level for the PM emission limit proposed for both existing and new smelting furnace matte and slag tapping operations.

4. Selection of Standards for Slag Cleaning Vessels

Two existing primary copper smelters operate a slag cleaning vessel in conjunction with the flash smelting furnace. At one of these smelters, the slag cleaning vessel currently is not being used as part of the smelting process, but representatives of the smelter have told the EPA that operation of this slag cleaning vessel may be resumed in the future.

Process HAP Emissions. The existing air emission control used for the slag cleaning vessels is to exhaust the off-gases from the slag cleaning vessel to a wet scrubber for control of sulfur oxide gases and particulate matter. One source is subject to a State air permit emission limit of 0.02 gr/dscf. The EPA's review of the available particulate matter emission test data for the wet scrubbers concluded that the data are limited, highly variable, and should not be used to characterize the actual emission levels for the purpose of establishing the MACT floor. The EPA elected to select the MACT floor for slag cleaning vessel exhaust gases based on the federally enforceable emission limit of 0.02 gr/dscf. Converting this value to metric units, the MACT floor control level selected for existing slag cleaning vessels is the PM emission limit of 46 mg/dscm.

The format selected for the standard is a numerical emission limit. The EPA did not identify any regulatory alternatives beyond the MACT floor for existing sources nor could the EPA identify a best-controlled source. Therefore, the EPA selected the MACT floor of 46 mg/dscm as the level for the PM emission limit proposed for the off-gases exhausted from existing and new slag cleaning vessels.

Process Fugitive HAP Emissions. Like smelting furnaces, process fugitive HAP emissions from slag cleaning vessels occur when molten copper matte or slag is tapped from the vessel. No data exists for these systems. At the one smelter currently operating a slag cleaning vessel, the hot metal vapors captured by the hood ventilation system over the slag cleaning vessel tapping ports are exhausted into the same control system used for the smelting furnace process fugitive emissions. Based on the application of air emission controls used by sources with similar pollutant stream characteristics, the MACT floor control level selected for slag cleaning vessel matte and slag tapping operations is the same PM emission limit of 16 mg/dscm established for smelting furnaces.

The format selected for the standard is a numerical emission limit. The EPA did not identify any regulatory alternatives beyond the MACT floor for existing sources nor could the EPA identify a best-controlled source. Therefore, EPA selected the MACT floor of 16 mg/dscm as the level for the PM emission limit proposed for both existing and new slag cleaning vessel matte and slag tapping operations. This is the same limit selected for control devices used to treat lean SO^2 gas streams from Pierce-Smith copper converters as described in the next section.

5. Selection of Standards for Batch Copper Converters

Selection of Regulatory Approach. Two different batch converter designs currently are used at primary copper smelters in the United States. The majority of the smelters use the Pierce-Smith converter design while one smelter uses the Hoboken converter design. These two designs differ significantly in the method used to capture the converter off-gases for air emission control. The side-flue design of the Hoboken converter evacuates the gases directly from the interior of the converter shell. In contrast, the design of the Pierce-Smith converter relies totally on the use of external hood systems positioned over the converter mouth to capture the gases after they have already exited the converter shell. These air emission capture methods are integrated into the overall design of each type of converter and are not interchangeable between the two designs (i.e., a Pierce-Smith converter cannot readily be retrofitted to use the Hoboken design). Thus, the EPA concluded that it is not appropriate to group the Hoboken converters with the Pierce-Smith converters for the purpose of establishing standards for existing batch copper converters. The EPA decided to develop separate standards for existing Pierce-Smith converters and for existing Hoboken converters.

Visual observations by EPA representatives of the converter capture systems in operation at each of the

smelters suggests that the capture efficiency varies from smelter-to-smelter because different capture system designs and operating practices are used at individual smelters. No data are available to determine a specific capture efficiency for the capture systems used for either Pierce-Smith converters or Hoboken converters. In lieu of having specific capture efficiency values, the EPA believes that the opacity of the visible emissions exiting the converter building roof vents or exhaust fans directly over the converter aisle is a direct function of converter capture system performance when the converters are operating under certain specific conditions. Thus, the approach selected by the EPA for establishing a MACT floor for the converter capture system performance is to use opacity and converter operating data gathered at each of the smelters during a series of site visits conducted by the Agency.

Converter Visible Emission Observations. In April and May of 1997, the EPA conducted a series of visible emission observations at existing primary copper smelters in the United States operating Pierce-Smith converters or Hoboken converters. A summary of protocol used for the field observation data collection and analysis is presented below. More detailed information about the site visits, the opacity observations, and EPA's analysis of the data are available in Docket No. A–96–22.

Visible emission readings of the converter building at each of the smelter sites were made by teams of certified observers. At the three primary copper smelters located in Arizona, opacity observations were made by a team of EPA observers and a team of observers from the State of Arizona Department of Environmental Quality. The opacity observations for the two smelters located in New Mexico were made by a team of EPA observers.

All of the opacity observations were performed using procedures specified in Method 9 in 40 CFR part 60, appendix A. The observers recorded opacity readings at 15-second intervals for those sections of the converter building roof monitor (or in the case of one smelter, the converter building roof exhaust fan outlets) that are positioned directly over the location of the copper converters inside the building. When it was possible for an observer to see two or more plumes emitted from the converter building roof during the same reading interval, the observer identified the plume having the highest opacity and recorded an opacity reading for that plume.

Throughout the periods when outdoor opacity observations were being made by the observer teams, an EPA representative familiar with primary copper smelter operations was stationed inside the converter building and visually monitored the copper converter operations. This observer recorded on a clock time basis the times when a converter was in the blowing position and times when events occurred which generated visible plumes inside the building. Additional information about the converter operations was obtained from the smelter's computer records of the individual converter blowing rates.

In general, a sufficient number of opacity observations were obtained during the site visits to obtain a data base for each smelter consisting in the range of 400 to 500 minutes of opacity readings. Not included in the data base prepared for each smelter were any opacity readings made during periods when the converter operations were judged to not be representative of normal smelter operations (e.g., converter capture system malfunction) or when the opacity observation conditions did not meet Method 9 criteria (e.g., occurrence of high winds).

The analysis of the field data began by creating a spreadsheet data file for each smelter listing by the clock time at 1-minute intervals an average opacity value (based on the outside EPA and State observer opacity readings) and corresponding converter process information (based on the indoor process monitor log and records of the converter system blowing rates provided by the smelter operator). The 1-minute opacity value was calculated by averaging all of the 15-second readings made by the EPA and State observers during the clock time minute interval.

The EPA considered alternative approaches for determining an average opacity value for each smelter to represent the converter capture system performance. For each smelter data file, the EPA identified those clock minute intervals when one or more converters are operating in the blowing mode and none of the following ladle transfer operations were indicated in the file to be occurring in the converter aisle: charging of matte, reverts, or other materials to a converter; converter slag skimming from a converter; blister copper pouring from a converter; or slag return to the furnace. To account for the time delay between when visible emissions generated in the converter building are seen by the inside observer and when these impact the opacity recorded by the outside observers, the two minutes of opacity readings recorded immediately following the clock time recorded for cessation of the activity were assumed to be impacted by the visible emission event. The set of conditions when at least one of the converters is operating in the blowing mode and no visible emission events have occurred in the converter aisle during the preceding two minutes is referred to as ''blowing without interferences''. The EPA then calculated the average opacity value for each period consisting of 6 consecutive minutes during which ''blowing without interferences'' occurred.

Existing Pierce-Smith Copper Converters. Five existing primary copper smelters use Pierce-Smith converters. At each smelter, the air emissions from these copper converters during blowing are captured and controlled. The design and operation of the overall capture system used at each of these smelters to collect these emissions from Pierce-Smith converters varies from smelter-to-smelter. At every smelter, whenever each Pierce-Smith converter is positioned for blowing, the mouth of the converter is covered by a close-fitting primary hood. The gas stream captured by the primary hood is vented to the by-product sulfuric acid plant at the smelter. However, the primary hood does not completely seal the converter mouth since sufficient space must be provided to rotate the converter mouth out from under the hood during charging, skimming, and at other times.

To collect emissions that escape capture by the primary hoods, capture devices of various designs in addition to the primary hoods are used at each of the existing smelters (hereafter referred to collectively as the ''converter secondary capture system''). At four of the smelters, the converter secondary capture system consists of a second set of mechanical hoods (hereafter referred to as the ''secondary hoods'') positioned above the primary hoods. The secondary hoods used at the individual smelters vary in design, capture effectiveness, and operating practices.

The fifth smelter controls air emissions from its Pierce-Smith converter operations using a secondary air curtain hood for each individual converter and also evacuates the entire converter building to a baghouse. This capture system design effectively provides 100 percent capture of all converter process fugitive emissions (as well as those process fugitive emissions and fugitive dust emissions from other sources located inside the converter building). The State air permit requirement for this capture system is to operate with no visible emissions.

The approach selected by the EPA for establishing the MACT floor for the overall Pierces-Smith converter capture

system performance is to use opacity of the visible emissions from the converter building. The results for the EPA's field visible emission observations (described in the preceding section) were used to quantify the MACT floor control level. At the four smelters using primary hoods with secondary hoods to capture converter process fugitive emissions, the average converter building opacity observed at each of the individual smelters ranged from 0.7 percent to 7.1 percent. At the fifth smelter converter process fugitive emissions are controlled using secondary air curtain hoods in combination with a building evacuation system. Based on the State air permit requirement that the building evacuation system operate with no visible emissions, the EPA set the average converter building opacity for this smelter to be zero percent.

The arithmetic average of the opacity values for the five smelters operating Pierce-Smith converters is 2.8 percent. To establish the MACT floor, the EPA rounded this average opacity value to the nearest whole opacity value and selected 3 percent as the MACT floor converter capture system performance level for Pierce-Smith copper converters. The EPA did not identify any regulatory alternatives beyond the MACT floor for existing sources. Therefore, EPA selected the MACT floor of 3 percent as the level for the visible emission limit proposed for existing Pierce-Smith converters.

To establish the MACT floor for the level of control achieved for each of the captured converter gas streams, the EPA selected the approach of basing the MACT floor on application of the air emission control technology being used by the existing sources in the source category. Separate MACT floors were selected for the gas streams captured by the converter primary hoods and for the gas streams captured by the converter secondary capture system.

At each of the existing smelters, the SO_2 rich off-gases generated during converter blowing and captured by the primary hoods are blended with the off-gases from the smelting furnace and then vented to the smelter's by-product sulfuric acid plant. None of these converters is subject to the primary copper smelter NSPS (40 CFR 60 subpart P). Nonetheless, the control of the converter primary off-gases (i.e., SO_2 rich off-gases generated during converter blowing) is required under each smelter's SIP for attainment of the NAAQS for SO_2.

Given that the SO_2 rich off-gases exhausted from the Pierce-Smith converters and smelting furnace are treated by the same controls (i.e., the by-product sulfuric acid plant), it follows that the MACT floor for the converters should be the same as the MACT selected for the smelting furnace off-gases. As presented in section VII.C.3 of this preamble, the standard that the EPA selected for smelting furnaces is to vent the furnace off-gases to a by-product sulfuric acid plant (or other type of sulfur recovery process unit that requires comparable levels of gas stream pre-cleaning and conditioning to remove particulate matter). Therefore, the EPA selected the same MACT floor and standard for gas streams captured by the Pierce-Smith converter primary hoods.

The low SO_2 concentrations of gas streams captured by the Pierce-Smith converter secondary capture systems are not suitable for venting to the by-product sulfuric acid plant. Instead, PM emissions from the gas streams captured by the Pierce-Smith converter secondary capture systems (hereafter referred to as ''converter secondary emissions'') are controlled at each of the existing smelters by venting the gas streams to a separate control device. At four of the smelters operating Pierce-Smith copper converters, the converter secondary capture system is vented to a baghouse. At the fifth smelter, the converter secondary capture system is vented to an ESP.

Considering that four of the five existing smelters use the same control technology for the Pierce-Smith converter secondary emissions, the MACT floor control level selected for Pierce-Smith converter secondary emissions is to vent the captured gas streams to a baghouse (or other type particulate matter control device that achieves a comparable level of control for particulate matter emissions). Since this control technology also represents the best-controlled source, the new source MACT floor is the same as the existing source MACT floor for Pierce-Smith converter secondary emissions.

The EPA did not identify any regulatory alternatives beyond the MACT floor for control of gas streams captured by the converter secondary capture systems. Therefore, the EPA selected the application of baghouses as the basis for the proposed standards to control converter secondary emissions. Consistent with other standards the EPA has promulgated based on application of baghouses for control of PM emissions, the EPA selected the format of the standard to be a numerical emission limit expressed using a mass concentration.

The EPA used available test data to select a value for the numerical emission limit for Pierce-Smith converter secondary emissions. Particulate matter emission test data are available for each of the existing baghouses used to control Pierce-Smith converter secondary emissions. A data set consisting of results for three individual source test runs are available for each of the four baghouses. The results for these individual test runs show baghouse outlet PM concentrations range from approximately 0.002 gr/dscf to 0.01 gr/dscf. Averaging the results of the three individual runs for each baghouse shows that comparable levels of particulate matter emission control are achieved by all of the baghouses (the average baghouse outlet PM concentrations ranging from approximately 0.004 gr/dscf to 0.007 gr/dscf). Test results for a three-run source test are also available for the single ESP used to control Pierce-Smith converter secondary emissions. The ESP outlet PM concentrations measured by the three individual test runs range from approximately 0.002 gr/dscf to 0.004 gr/dscf. The data show that the ESP achieved a level of PM emission control similar to that demonstrated by the baghouses.

All of the control devices were operating properly when the source tests were conducted. Considering that the gas stream flow rates and inlet particulate matter concentrations varied between the individual control devices, the EPA cannot distinguish any real differences between the control levels measured for the control devices used to control Pierce-Smith converter secondary emissions. Therefore, for the numerical emission limit, the EPA selected the value at the upper end of the range of the average outlet PM concentrations in the data set (0.007 gr/dscf). It is the EPA's judgement that a control device outlet PM concentration of 0.007 gr/dscf best characterizes the level of actual emissions that can reasonably be expected to be consistently achieved by all well-controlled sources. Converting this value to metric units, the proposed standard for both existing and new sources selected for Pierce-Smith converter secondary emissions is the PM emission limit of 16 mg/dscm.

Existing Hoboken Copper Converters. One existing copper smelter uses Hoboken converters. The off-gases from these copper converters during blowing are evacuated through the side-flue and vented to the sulfuric acid plant at the smelter. At this smelter, the average converter building opacity value observed by the EPA was 3.8 percent. The MACT floor converter capture system performance level selected for

Hoboken copper converters is an average opacity value of 3.8 percent as measured at the converter building roof monitor using the test protocol developed by the EPA for this rulemaking. To be consistent with the method used to select the MACT floor for Pierce-Smith converters, the EPA rounded this average opacity value to the nearest whole opacity value and selected 4 percent as the MACT floor converter capture system performance level for Hoboken copper converters. The EPA did not identify any regulatory alternatives beyond the MACT floor for existing sources. Therefore, EPA selected the MACT floor of 4 percent as the level for the visible emission limit proposed for existing Hoboken converters.

Like the Pierce-Smith converters, the SO_2 rich off-gases exhausted from the Hoboken converters during converter blowing is blended with the off-gases stream from the smelting furnace and vented to the by-product sulfuric acid plant. For consistency with the Pierce-Smith converter standards, the EPA established the proposed standard for existing Hoboken converters to be that the SO_2 rich off-gases directly evacuated from the converters be vented to a by-product sulfuric acid plant or other type of sulfur recovery process unit that requires comparable levels of gas stream conditioning and pre-cleaning to remove particulate matter.

New Copper Converters. The EPA established a separate standard for new batch copper converters based on the best-controlled source. This source is the smelter that controls air emissions from the copper converter operations using secondary air curtain hoods and evacuation of the entire converter building to a baghouse. This capture system design effectively provides 100 percent capture of all converter emissions. The federally-enforceable opacity limit for the converter building at this smelter is no visible emissions. Although this capture system presently is used at a smelter operating Pierce-Smith converters, the capture system design is equally applicable to a smelter operating Hoboken converters. Therefore, the MACT floor capture system performance selected for any new batch copper converter, regardless of design, is to operate with sufficient ventilation draft whenever molten material is in the copper converter such that no visible emissions exit the building housing the copper converters.

For the captured gas streams, the control levels achieved by the best-controlled source are the same as the standards established for existing converters. Thus, the standard the EPA selected for new converters is to vent the SO_2 rich off-gases from the converter generated during blowing to a by-product sulfuric acid plant or other type of sulfur recovery process unit that requires comparable levels of gas stream conditioning and pre-cleaning to remove particulate matter. The EPA selected 16 mg/dscm to establish the proposed PM emission limit for the converter gases not controlled by venting to the sulfuric acid plant.

6. Selection of Standards for Fugitive Dust Sources

Fugitive dust emissions at existing primary copper smelters are controlled by using a variety of different methods. Not all smelters control the same sources nor use the same type of control. The fugitive dust control measures used at a given smelter varies depending on the dust controls required by the facility's State air permit and the facility owner's preferences and polices regarding fugitive dust control. These controls can range from daily water spraying of plant roads and outdoor storage piles to enclosure and venting of the source to a control device. No specific group of fugitive dust control measures could be identified that reflected an average emission limitation for the existing smelters. The EPA decided that MACT floor for fugitive dust sources is to develop and implement a site-specific set of fugitive dust control measures to be implemented by the smelter owner or operator according to a written plan. No best-controlled fugitive dust sources could be identified by the EPA. Therefore, the new source MACT floor is the same as the existing source MACT floor for fugitive dust sources.

Establishing and enforcing emission limitations for fugitive dust sources is not practical. The inherent mechanisms by which pollutants are emitted from fugitive dust sources prevents the application of batch stack sampling methods to measure the level of the emissions from these sources. It is not feasible to capture the emissions and subsequently discharge these emissions through a duct or other conveyance to a control device. Therefore, as allowed under section 112(h) of the Act, the EPA decided to use a work practice format for the proposed standards for fugitive sources.

The proposed standards would require the smelter owner or operator to implement appropriate work practice control measures specific to the types of fugitive dust sources at a smelter site. For many fugitive dust sources there are several equivalent control measures available for controlling fugitive dust emissions from a particular type of source. Therefore, the standard for each affected owner or operator to develop and implement a site-specific fugitive dust control plan is being proposed rather than the EPA establishing the specific individual work practices that all smelter owners and operators must use. The EPA believes that flexibility provided to the smelter owner and operator by the site-specific approach is needed because the best fugitive dust control options for a given smelter are determined by the physical layout of the smelter, the types of fugitive dust sources, and the control measures that are already being implemented. These factors vary significantly from smelter to smelter.

D. Selection of Compliance Requirements

1. Selection of Compliance Dates

Section 112(i)(3) of the Act requires the Administrator to establish a compliance date or dates for each category or subcategory of existing sources which provides for compliance with the applicable standards as expeditiously as practicable but in no event later than 3 years after the effective date of the standards. To select the proposed compliance date for existing affected sources at primary copper smelters, the EPA considered the time that would be necessary for owners and operators of existing primary copper smelters to complete the tasks required to comply with the proposed rule.

At all of the existing smelters, air emission control equipment capable of meeting the applicable proposed standard is currently in place for many of the affected sources that would be subject to the rule. For a few existing affected sources, an upgrade of an existing capture system or installation of new control equipment may be needed. Owners and operators* will need to develop and implement the required operating plan for control of fugitive dust sources, and implement the required operating and monitoring requirements for the air emission control equipment used to comply with the standards. The EPA concluded that it is reasonable to expect that achieving compliance of existing affected sources with the requirements of the proposed rule can be completed within a period significantly shorter than 3 years. The EPA selected the compliance date for existing affected sources at primary copper smelters to be no later than 2 years after the effective date of the standards. The EPA believes it is realistic and practical to accomplish the

tasks needed to comply with the proposed rule within 2 years, and this period fulfills the Clean Air Act directive that the Administrator establish a compliance date which provides for compliance with the applicable standards as expeditiously as practicable. Furthermore, should special circumstances arise at an individual smelter such that installation of controls which cannot be completed within the specified 2-year compliance period, section 63.6(i) of the NESHAP general provisions already provide for a compliance date extension (allowing up to 1 additional year for compliance) to be granted upon request of the owner or operator and approval by the Administrator or the delegated regulatory authority.

The compliance date for new affected sources was selected by the EPA to meet the requirements of section 112(i) of the Act. Owners or operators of new affected sources at primary copper smelters would be required to achieve compliance upon startup or the effective date of this NESHAP, whichever is later.

2. Selection of Test Methods

The proposed NESHAP would require the owner or operator to conduct an initial performance test to demonstrate compliance with each of the particulate matter emission limits specified in the rule that is applicable to a given smelter site. In addition, the rule would require that the owner or operator perform an initial performance test to determine the visible emissions from the building housing the copper converter department.

The EPA selected the performance test requirements to demonstrate compliance with the particulate matter emission limits based on the use of appropriate EPA reference test methods. Method 5 in appendix A to 40 CFR part 60 is an EPA reference test method that has been developed and validated for the measurement of PM emissions from stationary sources. Method 5D is a variation of Method 5 to be used for measuring PM emissions at the outlet to a positive pressure baghouse. For sampling and analysis of the gas stream the following EPA reference methods would be used with Method 5: Method 1 to select the sampling port location and the number of traverse points; Method 2 to measure the volumetric flow rate; Method 3 for gas analysis; and Method 4 to determine stack gas moisture.

As part of this rulemaking, the EPA is proposing a specific test protocol to be used for determining compliance with the visible emission limits established for existing Pierce-Smith and Hoboken copper converters. These standards establish average opacity limits for the visible emissions exiting the building roof monitors or exhaust fans directly above the copper converters. The test protocol includes making opacity readings using the Agency's EPA reference test method for the measurement of visible emissions from stationary sources (Method 9 in appendix A of 40 CFR part 60). This method is widely used in EPA air rules for determining compliance with visible emission limits. The EPA selected the procedures specified in the proposed test protocol based on the Agency's experience with the opacity observations performed during the smelter program the EPA conducted at existing primary copper smelters. A preliminary draft of the test protocol was reviewed by the State agencies and copper companies that participated in the field observation program. Based on comments received by the EPA from these reviewers, certain refinements to the opacity observation and data analysis procedures were incorporated into the test protocol included in the proposed NESHAP.

For determining compliance with the no visible emission limit proposed for new copper converters, the EPA selected Method 22, ''Visual Determination of Fugitive Emissions from Material Sources and Smoke Emissions from Flares,'' in appendix A of 40 CFR part 60. Method 22 requires only determination as to whether a visible emission occurs and does not require that the opacity of the emissions be determined. This method provides a simpler and less expensive method for determining compliance with a no visible emission limit than requiring new sources to use an appropriate version of the test protocol being proposed for existing sources. So that a performance test using Method 22 would represent a range of the different copper converter operations that typically occur inside the converter building during normal copper production, the EPA is proposing a minimum observation period of no less than 2 hours.

3. Selection of Monitoring Requirements

The EPA evaluates a hierarchy of options to select compliance assurance monitoring of HAP emissions from affected sources. This involved identifying and analyzing several different monitoring options for each of the affected sources and the proposed control equipment. This hierarchy includes measurement of the HAP or an appropriate surrogate pollutant by a continuous emission monitoring system (CEMS), installation of measurement devices for monitoring of process and/or control device operating parameters, and periodic or one-time performance tests. Each option is evaluated relative to its technical feasibility, cost, ease of implementation, and relevance to the process or air emission control equipment.

The use of a CEMS provides a direct measurement of the emissions from a given source. Monitors for measuring metallic HAP emissions are not commercially available. Monitors for measuring PM emissions as a surrogate for metallic HAP emissions have not yet been demonstrated for primary copper smelting operations. Therefore, the EPA did not consider further the use of CEMS for this proposed rule.

Another option for compliance assurance is monitoring appropriate process and/or control equipment operating parameters. Process parameters were not selected as indicators for metallic HAP emissions from the primary copper smelter sources because an adequate correlation does not exist between production or process parameters and emission rates. The EPA does believe that reasonable assurance of compliance with the standards proposed for this NESHAP can be achieved by the owner or through appropriate periodic inspection and continuous monitoring of the operation of the air emission control equipment that has been demonstrated by an initial performance test to achieve the applicable emission standards under the rule. Therefore, operating parameters were selected instead for the converter capture system and for control devices with one exception because measurements outside a range of values established during an initial performance test can be used to indicate the control device is not operating properly (i.e., not operating at the conditions under which compliance was demonstrated by performance testing).

A modified approach to monitoring control device operation parameters was selected for baghouses because the baghouse operating parameters routinely monitored do not correlate well with the particulate matter emission rates. The approach selected for baghouses uses a comprehensive, periodic inspection and maintenance program in combination with the use of bag leak detectors. The EPA has previously adopted this baghouse monitoring approach for similar types of metallurgical industry sources that use baghouses to control particulate matter emissions (e.g., secondary lead smelting

NESHAP under 40 CFR part 63, subpart X).

E. Selection of Notification, and Recordkeeping Reporting Requirements

Under section 114(a) of the Act, the EPA may require any owner or operator of a source subject to a NESHAP to establish and maintain records as well as prepare and submit notifications and reports to the EPA. The general recordkeeping, notification, and reporting requirements for NESHAP are specified in sections 63.9 and 63.10 of the NESHAP general provisions. The recordkeeping, notification, and reporting requirements for the proposed NESHAP were selected to be consistent with the general provisions requirements.

VIII. Public Participation

The EPA seeks full public participation in arriving at its final decisions, and strongly encourages comments on all aspects of this proposal from all interested parties. Full supporting data and detailed analyses should be submitted with comments to allow the EPA to make maximum use of the comments. All comments should be directed to the Air and Radiation Docket and Information Center, Docket No. A–96–22 (see **ADDRESSES**). Comments on this notice must be submitted on or before the date specified in **DATES.**

Commenters wishing to submit proprietary information for consideration should clearly distinguish such information from other comments, and clearly label it ''Confidential Business Information'' (CBI). Submissions containing such proprietary information should be sent directly to the following address, and not to the public docket, to ensure that proprietary information is not inadvertently placed in the docket: Attention: Mr. Gene Crumpler, c/o Ms. Melva Toomer, U.S. EPA Confidential Business Information Manager, OAQPS (MD–13), Research Triangle Park, NC 27711. Information covered by such a claim of confidentiality will be disclosed by the EPA only to the extent allowed and by the procedures set forth in 40 CFR part 2. If no claim of confidentiality accompanies the submission when it is received by the EPA, the submission may be made available to the public without further notice to the commenter.

IX. Administrative Requirements

A. Docket

The docket is an organized and complete file of all the information considered by the EPA in developing this rulemaking. The docket is a dynamic file, because material is added throughout the rulemaking development. The docketing system is intended to allow members of the public and industries involved to readily identify and locate documents so that they can effectively participate in the rulemaking process. Along with the proposed and promulgated standards and their preambles, the contents of the docket will serve as the record in case of judicial review. [See section 307(d)(7)(A) of the Act.]

B. Public Hearing

If a request to speak at a public hearing is received, a public hearing on the proposed standards will be held according to section 307(d)(5) of the Act. Persons wishing to present oral testimony or to inquire as to whether a hearing is to be held should contact the EPA (see **FOR FURTHER INFORMATION CONTACT**). To provide an opportunity for all who may wish to speak, oral presentations will be limited to 15 minutes each.

Any member of the public may file a written statement on or before June 19, 1998. Written statements should be addressed to the Air and Radiation Docket and Information Center (see **ADDRESSES**) and refer to Docket No. A–95–43. A verbatim transcript of the hearing and written statements will be placed in the docket and be available for public inspection and copying, or mailed upon request, at the Air and Radiation Docket and Information Center.

C. ''Significant Regulatory Action'' Determination Under Executive Order 12866

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the EPA must determine whether the regulatory action is ''significant'' and therefore subject to review by the Office of Management and Budget (OMB) and the requirements of the Executive Order. The Executive Order defines ''significant regulatory action'' as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or state, local, or tribal governments or communities;

(2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligation of recipients thereof; or

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

Under the terms of Executive Order 12866, it has been determined that this regulatory action is not significant because none of the listed criteria apply to this action. Consequently, this action was not submitted to OMB for review under Executive Order 12866.

D. Enhancing the Intergovernmental Partnership Under Executive Order 12875

In compliance with Executive Order 12875, the EPA involved State regulatory experts in the development of this proposed rule. No tribal governments are believed to be affected by this proposed rule. Although not directly impacted by the rule, State governments will be required to implement the rule by incorporating the rule into permits and enforcing the rule upon delegation. They will collect permit fees that will be used to offset the resources burden of implementing the rule. Comments have been solicited from State partners and have been carefully considered in the rule development process. In addition, all States are encouraged to comment on this proposed rule during the public comment period, and the EPA intends to fully consider these comments in the development of the final rule.

E. Clean Air Act

As directed by section 117 of the Act, publication of this proposal was preceded by consultation with appropriate advisory committees, independent experts, and Federal departments and agencies. This rule will be reviewed 8 years from the date of promulgation. This review will include an assessment of such factors as evaluation of the residual health risks, any overlap with other programs, the existence of alternative methods, enforceability, improvements in emission control technology and health data, and the recordkeeping and reporting requirements.

F. Paperwork Reduction Act

The information collection requirements in this proposed rule have been submitted for approval to the OMB under the requirements of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* An information collection request (ICR) document has been prepared by EPA (ICR No. 1850.01), and a copy may be obtained from Sandy Farmer, OPPE Regulatory Information

Division, U.S. Environmental Protection Agency (2137), 401 M Street SW., Washington, DC 20460, or by calling (202) 260–2740.

The proposed information requirements are based on notification, recordkeeping, and reporting requirements in the NESHAP general provisions (40 CFR part 63, subpart A), which are mandatory for all owners or operators subject to national emission standards. These recordkeeping and reporting requirements are specifically authorized by section 114 of the Act (42 U.S.C. 7414). All information submitted to the EPA for which a claim of confidentiality is made is safeguarded according to Agency policy under 40 CFR part 2, subpart B. [See 41 FR 36902.]

The proposed rule would require maintenance inspections of the control devices but would not require any notifications or reports beyond those required by the general provisions. The proposed recordkeeping requirements require only the specific information needed to determine compliance.

The annual monitoring, reporting, and recordkeeping burden for this collection (averaged over the first 3 years after the effective date of the rule) is estimated to be 11,400 labor hours per year at a total annual cost of $560,500. This estimate includes a one-time performance test and report (with repeat tests where needed); one-time submission of a startup, shutdown, and malfunction plan with semi-annual reports for any event when the procedures in the plan were not followed; semi-annual excess emission reports; maintenance inspections; notifications; and recordkeeping. Total capital/startup costs associated with the monitoring requirements over the 3-year period of the ICR are estimated at $156,000, with operation and maintenance costs of $72,000/yr.

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 purpose 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 respond to a collection of information; search existing data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15.

Comments are requested on the EPA's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including the use of automated collection techniques. Send comments on the ICR to the Director, OPPE Regulatory Information Division; U.S. Environmental Protection Agency (2137), 401 M Street SW., Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street NW., Washington, DC 20503, marked ''Attention: Desk Office for EPA.'' Include the ICR number in any correspondence. Because the OMB is required to make a decision concerning the ICR between 30 and 60 days after April 20, 1998, comment to OMB is best assured of having its full effect if OMB receives it by May 20, 1998. The final rule will respond to any OMB or public comments on the information collection requirements contained in this proposal.

G. Pollution Prevention Act

The Pollution Prevention Act of 1990 (42 U.S.C. 13101 *et seq.*, Pub. L. 101–508, November 5, 1990) establishes the national policy of the United States for pollution prevention. This act declares that: (1) pollution should be prevented or reduced whenever feasible; (2) pollution that cannot be prevented or reduced should be recycled or reused in an environmentally-safe manner wherever feasible; (3) pollution that cannot be recycled or reused should be treated; and (4) disposal or release into the atmosphere should be chosen only if none of the other options is available.

The HAP emitted during the copper smelting process result from metallic compound impurities that occur naturally in copper ore deposits. The House Conference Report on the 1990 Amendments specifically prevents the Administrator from considering the substitution of, or other changes in, metal or mineral bearing raw material used as feedstocks in establishing emission standards, work practice standards, operating standards, or other prohibitions for nonferrous metals source categories. Thus, no restrictions can be placed by the EPA on the HAP content of the copper ore shipped to primary copper smelters. Furthermore, there are no commercial-scale pretreatment processes available for removing or reducing the metallic HAP contained in the copper concentrate before feeding the material to the flash smelting furnace.

Opportunities for applying pollution prevention to the ''Primary Copper Smelting'' source category are basically limited to application of air emission controls to reduce the release of metallic HAP from the copper smelting process into the atmosphere. Particulate matter collected by baghouses or ESP's used to control the HAP emissions from the smelting processes can be recycled back through the flash smelting furnace for recovery of the residual copper contained in this material. Thus, to the extent possible, pollution prevention has been considered in the development of this rulemaking, and the NESHAP is consistent with the Pollution Prevention Act.

H. Regulatory Flexibility

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

The impact of the regulation on small entities was evaluated in the economic impact analysis. Companies engaged in primary copper smelting with less that 1,000 employees are classified as small businesses by the Small Business Administration. Based on the analysis conducted, none of the companies owning the six primary copper smelters potentially affected by this rulemaking are small entities. Under section 605(b) of the Regulatory Flexibility Act, the Administrator certifies that this rule will not have a significant economic impact on small entities.

I. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Pub. L. 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, the EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures by State, local, and tribal governments, in aggregate, or by the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires the EPA

to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows the EPA to adopt an alternative other than the least costly, most cost-effective, or least burdensome alternative if the Administrator publishes with the final rule an explanation of why that alternative was not adopted. Before the EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

The EPA has determined that this rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any one year. Thus, today's rule is not subject to the requirements of sections 202 and 205 of the UMRA. In addition, the EPA has determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments because it contains no requirements that apply to such governments or impose obligations upon them. Therefore, today's rule is not subject to the requirements of section 203 of the UMRA.

List of Subjects in 40 CFR Part 63

Environmental protection, Air pollution control, Hazardous substances, Primary copper smelter, Reporting and recordkeeping requirements.

Dated: April 9, 1998.

Carol M. Browner,

Administrator.

For the reasons set out in the preamble, part 63 of title 40, chapter I, of the Code of Federal Regulations is proposed to be amended as follows:

PART 63—NATIONAL EMISSION STANDARDS FOR HAZARDOUS AIR POLLUTANTS FOR SOURCE CATEGORIES

1. The authority citation for part 63 continues to read as follows:

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

2. Part 63 is amended by adding subpart QQQ to read as follows:

Subpart QQQ—National Emission Standards for Hazardous Air Pollutants From Primary Copper Smelters

Sec.

63.1440 Applicability.
63.1441 Definitions.
63.1442 [Reserved]
63.1443 Standards: Copper concentrate dryers.
63.1444 Standards: Smelting vessels.
63.1445 Standards: Slag cleaning vessels.
63.1446 Standards: Copper converters.
63.1447 [Reserved]
63.1448 Standards: Fugitive dust sources.
63.1449 Equivalent standards: combined exhaust gas streams.
63.1450 Compliance with standards and maintenance requirements.
63.1451 Performance testing requirements.
63.1452 Inspection and monitoring requirements.
63.1453 Notification requirements.
63.1454 Recordkeeping and reporting requirements.
63.1455 State authority and delegations.

Appendix A of Subpart QQQ to Part 63— Applicability of General Provisions (40 CFR part 63, subpart A) to Subpart QQQ.

Figure 1 of Subpart QQQ—Data Summary Sheet for Determination of Average Opacity.

Subpart QQQ—National Emission Standards for Hazardous Air Pollutants From Primary Copper Smelters

§ 63.1440 Applicability.

(a) The requirements of this subpart apply to the owner or operator of a facility for which both of the following conditions apply:

(1) The facility produces anode copper by first flash smelting of copper ore concentrates to obtain molten copper matte and then converting the molten matte to blister copper using batch copper converters as defined in § 63.1441 of this subpart.

(2) The facility is a major source as defined in § 63.2 of this part.

(b) The affected sources at a primary copper smelter subject to this subpart are the sources listed in paragraphs (b)(1) through (b)(5) of this section.

(1) *Copper concentrate dryers.* The affected source is each individual copper concentrate dryer as defined in § 63.1441 of this subpart.

(2) *Smelting vessels.* The affected source is each individual smelting vessel as defined in § 63.1441 of this subpart.

(3) *Slag cleaning vessels.* The affected source is each individual slag cleaning vessel as defined in § 63.1441 of this subpart.

(4) *Batch copper converters.* The affected source is the copper converter department as defined in § 63.1441 of this subpart.

(5) *Fugitive dust sources.* The affected source is the entire group of all fugitive dust sources, as defined in § 63.1441 of this subpart, that are located at a primary copper smelter.

(c) A new affected source is an affected source for which construction or reconstruction commences on or after April 20, 1998. New affected sources are subject to the relevant standards for new sources specified in this subpart.

(d) The requirements of the general provisions in subpart A of this part that apply and those that do not apply to owners and operators subject to this subpart are specified in appendix A to this subpart.

§ 63.1441 Definitions.

All terms used in this subpart shall have the meaning given to them in this section, § 63.2 of this part, or the Act.

Baghouse means a control device that collects particulate matter by filtering the gas stream through bags. A *baghouse* is also referred to as a ''fabric filter.''

Bag leak detection system means an instrument that can monitor particulate matter (e.g., dust) loadings in the exhaust of a baghouse to detect bag failures. A *bag leak detection system* includes, but is not limited to, an instrument that operates on triboelectric, light scattering, transmittance or other effect to monitor relative particulate matter loadings.

Batch copper converter means a copper converter that is one of the following copper converter designs: a Pierce-Smith converter; a Hoboken converter; or a similar design copper converter that produces blister copper in discrete batches using a sequence of charging, blowing, skimming, and pouring steps. A *batch copper converter* does not use continuous flash converting technology.

Blowing means the copper converter operating mode during which air or oxygen-enriched air is injected into the molten converter bath.

By-product sulfuric acid plant means a facility that produces sulfuric acid by a contact process involving the catalytic conversion of sulfur dioxide to sulfur trioxide followed by absorption of the sulfur trioxide in a sulfuric acid solution.

Capture system means the collection of components used to capture gases and fumes released from one or more emission points, and then convey the captured gas stream to a control device. A *capture system* may include, but is not limited to, the following components as applicable to a given capture system design: duct intake devices, hoods, enclosures, ductwork, manifolds, plenums, and fans.

Charging means the copper converter operating mode during which molten or solid material is added to a copper converter.

Control device means the air pollution control equipment used to collect particulate matter emissions. Examples of such equipment include, but are not limited, to a baghouse, an electrostatic precipitator, and a wet scrubber.

Copper concentrate dryer means a vessel in which copper concentrates are heated in the presence of air to reduce the moisture content of the material. Supplemental copper-bearing feed materials and fluxes may be added or mixed with the copper concentrates fed to a *copper concentrate dryer.*

Copper converter means a vessel in which copper matte or other copper-bearing material is oxidized to form blister copper.

Copper converter department means the area at a primary copper smelter in which operations are conducted to oxidize copper matte or other copper-bearing material to form blister copper. The *copper converter department* includes the batch copper converters and the associated capture systems used to collect gases and fumes emitted during copper converter operations (e.g., primary hood ventilation system, secondary hood ventilation system).

Copper matte means a material predominately composed of copper and iron sulfides produced by smelting copper ore concentrates.

Fugitive dust material means copper concentrate, dross, reverts, slag, speiss, or other solid copper-bearing materials.

Fugitive dust source means a stationary source of particulate matter emissions resulting from the handling, storage, transfer, or other management of fugitive dust materials where the source is not associated with a specific process, process vent, or stack. Examples of *fugitive dust sources* include, but are not limited to, plant roadways used by vehicles transporting copper concentrate, outdoor copper concentrate storage piles, bedding areas, and conveyor system transfer points.

Holding means the copper converter operating mode during which the molten bath is maintained in the copper converter but does not include periods of blowing or periods when material is being added or removed from the copper converter.

Opacity means the degree to which emissions reduce the transmission of light.

Operating parameter monitoring system means the total equipment that may be required to meet the data acquisition and availability requirements of this subpart used to sample, condition (if applicable), analyze, and provide a record of capture system or control device operating parameters.

Particulate matter means any finely divided solid or liquid material, other than uncombined water, as measured by the specific reference method.

Pouring means the copper converter operating mode during which molten copper is removed from the molten converter bath.

Primary copper smelter means a facility that produces anode copper by first flash smelting of copper ore concentrates to obtain molten copper matte and then converting the molten matte to blister copper using batch copper converters. Primary copper smelting includes the handling and blending of copper concentrate, the drying of copper concentrate, the flash smelting of copper concentrate to matte-grade copper, the conversion of matte-grade copper to blister-grade copper in a batch copper converter, the refining of blister-grade copper to anode-grade copper, and the casting of copper anodes.

Skimming means the copper converter operating mode during which molten slag is removed from the molten converter bath.

Slag cleaning vessel means a vessel that receives molten copper-bearing material and the predominant use of the vessel is to separate this material into molten copper matte and slag layers.

Smelting vessel means a furnace, reactor, or other type of vessel in which copper ore concentrate and fluxes are melted to form a molten mass of material containing copper matte and slag. Other copper-bearing materials may also be charged to the smelting vessel.

§ 63.1442 [Reserved].

§ 63.1443 Standards: Copper concentrate dryers.

(a) The requirements of this section apply to affected copper concentrate dryers at a primary copper smelter subject to this subpart. Standards for existing copper concentrate dryers are specified in paragraph (b) of this section. Standards for new copper concentrate dryers are specified in paragraph (c) of this section.

(b) The owner or operator shall not discharge nor cause to be discharged to the atmosphere from the exhaust vent for an existing copper concentrate dryer any gases that contain particulate matter greater than 50 milligrams per dry standard cubic meter (mg/dscm) as determined by a performance test conducted in accordance with the applicable requirements of § 63.1451 of this subpart.

(c) The owner or operator shall not discharge nor cause to be discharged to the atmosphere from the exhaust vent for a new copper concentrate dryer any gases that contain particulate matter greater than 23 mg/dscm as determined by a performance test conducted in accordance with the applicable requirements of § 63.1451 of this subpart.

§ 63.1444 Standards: Smelting vessels.

(a) The requirements of this section apply to affected existing and new smelting vessels at a primary copper smelter subject to this subpart.

(b) The owner or operator shall discharge the off-gases exhausted from the smelting vessel to a by-product sulfuric acid plant or another type of sulfur recovery process that requires comparable levels of gas stream pre-cleaning and conditioning to remove particulate matter. A performance test is not required for gas streams that meet the requirements of this paragraph.

(c) The owner or operator shall capture and control air emissions when tapping molten material from the smelting vessel in accordance with the requirements of paragraphs (c)(1) and (c)(2) of this section.

(1) The owner or operator shall install and operate a capture system to collect gases and fumes released from each opening to the smelting vessel that is used to tap molten material from the vessel. The design and placement of this capture system shall be such that the tapping port opening, launder, and molten material receiving vessel are positioned within the confines or influence of the system's ventilation draft during all periods when molten material flows from the tapping port into the molten material receiving vessel.

(2) The owner or operator of each capture system operated to comply with paragraph (c)(1) of this section shall not discharge nor cause to be discharged to the atmosphere from the capture system exhaust outlet any gases that contain particulate matter greater than 16 mg/dscm as determined by a performance test conducted in accordance with the

applicable requirements of § 63.1451 of this subpart.

§ 63.1445 Standards: Slag cleaning vessels.

(a) The requirements of this section apply to affected existing and new slag cleaning vessels at a primary copper smelter subject to this subpart.

(b) The owner or operator shall discharge the off-gases exhausted from the slag cleaning vessel in accordance with the requirements of either paragraph (b)(1) or (b)(2) of this section.

(1) The owner or operator shall discharge the off-gases exhausted from the slag cleaning vessel to a by-product sulfuric acid plant or another type of sulfur recovery process that requires comparable levels of gas stream pre-cleaning and conditioning to remove particulate matter. A performance test is not required for gas streams that meet the requirements of this paragraph.

(2) The owner or operator shall not discharge nor cause to be discharged to the atmosphere from the slag cleaning vessel any off-gases that contain particulate matter greater than 46 mg/dscm as determined by a performance test conducted in accordance with the applicable requirements of § 63.1451 of this subpart.

(c) The owner or operator shall capture and control air emissions when tapping molten material from the slag cleaning vessel in accordance with the requirements of paragraphs (c)(1) and (c)(2) of this section.

(1) The owner or operator shall install and operate a capture system to collect gases and fumes released from each opening to the slag cleaning vessel that is used to tap molten material from the vessel. The design and placement of this capture system shall be such that the tapping port opening, launder, and molten material receiving vessel are positioned within the confines or influence of the system's ventilation draft during all periods when molten material flows from the tapping port into the molten material receiving vessel.

(2) The owner or operator of each capture system operated to comply with paragraph (c)(1) of this section shall not discharge nor cause to be discharged to the atmosphere from the capture system exhaust outlet any gases that contain particulate matter greater than 16 mg/dscm as determined by a performance test conducted in accordance with the applicable requirements of § 63.1451 of this subpart.

§ 63.1446 Standards: Copper converters.

(a) *Applicability.* The requirements of this section apply to the affected copper converter department at a primary copper smelter subject to this subpart. Standards for existing copper converter departments are specified in paragraph (b) of this section. Standards for new copper converter departments are specified in paragraph (c) of this section.

(b) *Standards for existing copper converter departments.* The owner or operator shall install, operate, and maintain air emission controls for each copper converter located in the copper converter department. As applicable to the copper converter design, the air emission controls shall meet the requirements in either paragraphs (b)(1), (b)(2), or (b)(3) of this section.

(1) *Existing Pierce-Smith copper converters.* Gases and fumes emitted when the Pierce-Smith converter is operating in a blowing mode shall be collected by a capture system and the captured gases and fumes vented to a control device in accordance with the requirements of paragraphs (b)(1)(i) through (b)(1)(iii) of this section.

(i) The capture system design shall include use of a primary hood that covers the entire mouth of the copper converter when the copper converter is positioned for blowing. Additional hoods (e.g., secondary hoods) or other capture devices shall be included in the capture system design as needed to achieve the operating requirements in paragraph (b)(1)(ii) of this section. The capture system design may use multiple intake and duct segments through which the ventilation rates are controlled independently of each other and individual duct segments may be connected to separate control devices.

(ii) The capture system shall be operated with sufficient ventilation draft such that the visible emissions exiting the roof monitors or roof exhaust fans on the building housing the copper converter department do not exhibit an average opacity greater than 3 percent as determined by a performance test conducted in accordance with the requirements of § 63.1451(c) of this subpart. This visible emission limit shall apply only during those periods when a performance test is conducted in conjunction with establishing the capture system operating parameter limits in accordance with the requirements in § 63.1452(c)(1) of this subpart. The requirements for compliance with opacity and visible emission limits specified in § 63.6(h) of the general provisions in subpart A of this part do not apply to this paragraph.

(iii) Each capture system exhaust stream shall be vented to one of the air emission controls specified in paragraph (b)(1)(iii)(A) or (b)(1)(iii)(B) of this section, as applicable considering the sulfur oxide concentration of the individual gas stream.

(A) A by-product sulfuric acid plant or another type of sulfur recovery process that requires comparable levels of gas stream pre-cleaning and conditioning to remove particulate matter. A performance test is not required for gas streams that meet the requirements of this paragraph.

(B) A control device which does not exhaust any gases to the atmosphere that contain particulate matter greater than 16 mg/dscm as determined by a performance test conducted in accordance with the applicable requirements of § 63.1451 of this subpart.

(2) *Existing Hoboken copper converters.* Gases and fumes released when the Hoboken converter is operating in a blowing mode shall be evacuated directly from the interior of the copper converter into a side flue intake positioned at one end of the converter vessel and these captured gases and fumes vented to a control device in accordance with the requirements of paragraphs (b)(2)(i) and (b)(2)(ii) of this section.

(i) The side flue intake of each Hoboken copper converter shall be operated with sufficient ventilation draft during blowing such that the visible emissions exiting the roof monitors on the building housing the copper converter department do not exhibit an average opacity greater than 4 percent as determined by performance tests conducted in accordance with the requirements of § 63.1451(c) of this subpart. This visible emission limit shall apply only during those periods when a performance test is conducted in conjunction with establishing the capture system operating parameter limits in accordance with the requirements in § 63.1452(c)(1) of this subpart. The requirements for compliance with opacity and visible emission limits specified in § 63.6(h) of the general provisions in subpart A of this part do not apply to this paragraph.

(ii) Each side flue exhaust stream shall be vented through a capture system to a by-product sulfuric acid plant or another type of sulfur recovery process that requires comparable levels of gas stream pre-cleaning and conditioning to remove particulate matter. A performance test is not required for gas streams that meet the requirements of this paragraph.

(3) *Other existing batch copper converters.* Gases and fumes released from a batch copper converter that is neither a Pierce-Smith copper converter nor a Hoboken copper converter shall be

controlled in accordance with the requirements in paragraphs (b)(1)(i) through (b)(1)(iii) of this section.

(c) *Standards for new copper converter departments.* The owner or operator shall install, operate, and maintain air emission controls for each copper converter located in the copper converter department. The air emission controls shall meet the requirements in paragraphs (c)(1) through (c)(3) of this section.

(1) Gases and fumes emitted whenever molten material is in the copper converter shall be collected by a capture system, and the captured gases and fumes shall be vented to a control device. The capture system design may use multiple intake and duct segments through which the ventilation rates are controlled independently of each other, and individual duct segments may be connected to separate control devices. (e.g., use of individual hoods on each copper converter in combination with a building evacuation system).

(2) The capture system shall be operated with sufficient ventilation draft whenever molten material is in the copper converter such that no visible emissions exit the the building housing the copper converter department as determined by performance tests conducted in accordance with the requirements of § 63.1451(d) of this subpart.

(3) Each capture system exhaust stream shall be vented to one of the air emission controls specified in paragraphs (c)(3)(i) or (c)(3)(ii) of this section, as applicable considering the sulfur oxide concentration of the individual gas stream.

(i) A by-product sulfuric acid plant or a another type of sulfur recovery process that requires comparable levels of gas stream pre-cleaning and conditioning to remove particulate matter. A performance test is not required for gas streams that meet the requirements of this paragraph.

(ii) A control device which does not exhaust any gases to the atmosphere that contain particulate matter greater than 16 mg/dscm as determined by a performance test conducted in accordance with the applicable requirements of § 63.1451 of this subpart.

§ 63.1447 [Reserved].

§ 63.1448 Standards: Fugitive dust sources.

(a) The requirements of this section apply to existing and new affected sources of fugitive dust emissions at a primary copper smelter subject to this subpart.

(b) The owner or operator shall prepare and implement a written fugitive dust control plan in accordance with the requirements specified in paragraphs (b)(1) through (b)(3) of this section.

(1) The fugitive dust control plan shall describe the specific control measures that are used to reduce emissions from the individual fugitive dust sources at the smelter site. Examples of control measures that may be used include, but are not limited to: installing an enclosure, installing and operating a local hood capture system vented to a control device, placing stockpiles below grade, installing wind screens or wind fences, using water sprays, applying appropriate dust suppression agents, or any combination of these control measures as appropriate for a given fugitive dust source.

(2) The fugitive dust control plan shall include a description of the control measures implemented for each of the fugitive dust sources listed in paragraphs (b)(2)(i) through (b)(2)(vi) of this section.

(i) Roads or other areas within the plant property boundary used by trucks or other motor vehicles (e.g., front-end loaders) transporting bulk quantities of fugitive dust materials. Paved roads and areas of the smelter site that are not used by these vehicles are not required to be included in the plan (e.g., employee and visitor parking lots);

(ii) Operations to unload fugitive dust materials from trucks or railcars;

(iii) Outdoor piles used to store fugitive dust materials;

(iv) Bedding areas used for blending copper concentrate and other feed constituents;

(v) Transfer points in conveying systems used to convey fugitive dust materials. These points include, but are not limited to, those points where the material is transferred from a conveyor belt to a second conveyor belt or discharged from a conveyor to a hopper or bin; and

(vi) Other fugitive dust sources at a smelter site as designated by the Administrator or delegated permitting authority.

(3) The owner or operator shall submit a copy of the fugitive dust control plan to the designated permitting authority on or before the applicable compliance date for the affected source as specified in § 63.1450(b) of this subpart. The requirement for the owner or operator to operate the smelter according to a written fugitive dust control plan shall be incorporated in the operating permit for the smelter site that is issued by the designated permitting authority under part 70 of this chapter.

§ 63.1449 Equivalent standard: combined exhaust gas streams.

(a) As an alternative to complying with the individual particulate matter emission limits specified in this subpart for affected sources, an owner or operator may elect to combine two or more of the affected exhaust gas streams listed in paragraphs (a)(1) through (a)(4) of this section and route the combined exhaust gas stream to a single control device that meets the equivalent particulate emission limit specified in paragraph (b) of this section.

(1) Exhaust gas stream from a copper concentrate dryer that would otherwise be subject to § 63.1443 of this subpart;

(2) Exhaust gas stream from a smelting vessel capture system that would otherwise be subject to § 63.1444(c)(2) of this subpart;

(3) Exhaust gas stream from a slag cleaning vessel capture system that would otherwise be subject to § 63.1445(c)(2) of this subpart; and

(4) Exhaust gas stream from a copper converter capture system that would otherwise be subject to §§ 63.1446(b)(1)(iii)(B) or (c)(3)(ii) of this subpart.

(b) An owner or operator shall not discharge nor cause to be discharged to the atmosphere a combined exhaust gas stream that contains particulate matter greater than the particulate matter emission limit calculated for the combined exhaust gas stream using the procedure specified in paragraphs (b)(1) and (b)(2) of this section. Particulate matter emissions in the combined exhaust gas stream shall be determined by a performance test conducted in accordance with the applicable requirements of § 63.1451 of this subpart.

(1) The particulate matter emission limit for the combined exhaust gas stream shall be calculated using Equation 1:

$$E = \frac{E_d Q_d + E_{sv} Q_{sv} + E_{scv} Q_{scv} + E_{cc} Q_{cc}}{Q_d + Q_{sv} + Q_{scv} + Q_{cc}} \qquad \text{(Eq. 1)}$$

Where:

E=Particulate matter emission limit for the combined exhaust gas stream (mg/dscm);

E_d=Particulate matter emission limit applicable to copper concentrate dryer as specified in § 63.1443 of this subpart (mg/dscm);

Q_d=Copper concentrate dryer exhaust gas stream volumetric flow rate as determined by the procedure specified in paragraph (b)(2) of this section (dscm);

E_{sv}=Particulate matter emission limit for smelting vessel capture system as specified in § 63.1444(c)(2) of this subpart (mg/dscm);

Q_{sv}= Smelting vessel capture system exhaust gas stream volumetric flow rate as determined by the procedure in paragraph (b)(2) of this section (dscm);

E_{scv}=Particulate matter emission limit for slag cleaning vessel capture system as specified in § 63.1445(c)(2) of this subpart (mg/dscm).

Q_{scv}=Slag cleaning vessel capture system exhaust gas stream volumetric flow rate as determined by the procedure specified in paragraph (b)(2) of this section (dscm);

E_{cc}=Particulate emission limit for copper converter capture system as specified in § 63.1446(b)(1)(iii)(B) or § 63.1446(c)(iii) of this subpart as applicable to the copper converter department (mg/dscm); and

Q_{cc}=Copper converter capture system exhaust gas stream volumetric flow rate as determined by the procedure specified in paragraph (b)(2) of this section (dscm).

(2) The volumetric flow rate of each individual exhaust gas stream used for the calculation specified in paragraph (b)(1) of this section shall be the average of the volumetric flow rates measured during each performance test run performed in accordance with the requirements of § 63.1451(b) of this subpart and used to determine compliance with the applicable particulate matter emission limits specified in §§ 63.1443 through 63.1446 of this subpart.

§ 63.1450 Compliance with standards and maintenance requirements.

(a) *General.* The requirements of this section apply to an owner or operator of an affected source required to comply with applicable standards under this subpart.

(b) *Compliance dates.* (1) The owner or operator of an affected source for which construction or reconstruction commences on or after April 20, 1998 shall achieve compliance with the applicable requirements of this subpart upon initial startup or [date of publication of the final rule in the **Federal Register**], whichever date is later.

(2) The owner or operator of an affected source that commenced construction or reconstruction before April 20, 1998 shall achieve compliance with the applicable requirements of this subpart as expeditiously as practical, but no later than [date 2 years after date of publication of final rule in the **Federal Register**].

(c) *Operation and maintenance requirements.* (1) At all times, including periods of startup, shutdown, and malfunction, the owner or operator shall operate and maintain each affected source, including associated air pollution control equipment, in accordance with the requirements of § 63.6 of the general provisions in subpart A of this part.

(2) The owner or operator shall develop and implement a written startup, shutdown, and malfunction plan in accordance with the requirements to § 63.6(e)(3) of the general provisions in subpart A of this part that describes the specific procedures to be followed for operating and maintaining each affected source and its associated air pollution control equipment during periods of startup, shutdown, and malfunction. In addition to the information required in § 63.6(e)(3) of this part, the information specified in paragraphs (c)(2)(i) through (c)(2)(iii) of this section shall be included in each plan.

(i) For the copper converter department capture system required by § 63.1446 of this subpart, a description of the corrective actions to be implemented by the owner or operator in the event that the operating parameter monitoring system measures a value for an operating parameter that exceeds the limit established for the parameter under § 63.1452(c)(1) of this subpart.

(ii) For each baghouse that is used to comply with a particulate matter emission limit under §§ 63.1442 through 63.1446 of this subpart, a standard operating procedures (SOP) manual that specifies, in detail, the procedures to be used by the owner or operator for inspection, maintenance, bag leak detection, and corrective action. The procedures specified in the SOP manual for inspections and routine maintenance of the baghouse shall, at a minimum, include the requirements in § 63.1452(d) of this subpart. The requirements of this paragraph do not apply to a baghouse used exclusively for the control of fugitive dust emissions in accordance with the requirements under § 63.1448 of this subpart.

(iii) For each control device other than a baghouse that is used to comply with a particulate matter emission limit under §§ 63.1442 through 63.1446 of this subpart, a description of the corrective actions to be implemented by the owner or operator in the event that the operating parameter monitoring system measures a value for an operating parameter that exceeds the limit established for the parameter under § 63.1452(e)(1) of this subpart.

§ 63.1451 Performance testing requirements.

(a) *General.* The requirements of this section apply to an owner or operator required to conduct performance tests to demonstrate compliance by an affected source with applicable emission limits under §§ 63.1442 through 63.1446 of this subpart.

(b) *Conduct of particulate matter emission limit performance tests.* The owner or operator shall conduct each performance test required under this subpart to determine compliance with the applicable particulate matter emission limits specified in §§ 63.1443 through 63.1446 of this subpart in accordance with applicable requirements in § 63.7 of the general provisions in subpart A of this part and shall use reference methods specified in paragraphs (b)(1) through (b)(5) of this section.

(1) Method 1 in appendix A of part 60 of this chapter shall be used to select the sampling port location and the number or traverse points;

(2) Method 2 in appendix A of part 60 of this chapter shall be used to measure the volumetric flow rate;

(3) Method 3 in appendix A of part 60 of this chapter shall be used for gas analysis;

(4) Method 4 in appendix A of part 60 of this chapter shall be used to determine stack gas moisture; and

(5) Method 5 in appendix A to part 60 of this chapter shall be used for measurement of particulate matter

emissions from sources other than positive pressure baghouses. Method 5D in appendix A of part 60 of this chapter shall be used for measurement of particulate matter emissions from positive pressure baghouses. The minimum sampling time for each run shall be 60 minutes and the minimum sampling volume for the run shall be 0.85 dscm. Three runs shall be performed and the average of the three runs shall be used to determine compliance.

(c) *Conduct of existing copper converter department visible emissions performance tests.* The owner or operator shall determine compliance of an existing copper converter department with the applicable visible emission limit specified in § 63.1446(b) of this subpart by using the procedure specified in paragraphs (c)(1) through (c)(7) of this section.

(1) *Test conditions.* The opacity observations shall be made during the period when the primary copper smelter is operating under conditions representative of the smelter's normal blister copper production rate. Before conducting the opacity observations, the owner or operator shall prepare a written test plan specifying the copper production conditions to be maintained throughout the opacity observation period. A copy of the test plan shall be submitted for review and approval by the Administrator or delegated authority. During the observation period, the owner or operator shall collect appropriate process information to prepare sufficient documentation to verify that all opacity observations were made during the conditions specified in the approved test plan.

(2) *Test notification.* The owner or operator shall notify the Administrator or delegated authority before conducting the opacity observations to allow the Administrator or delegated authority the opportunity to have authorized representatives attend the test. Written notification of the location and scheduled date for conducting the opacity observations shall be received by the Administrator on or before 30 calendar days before this scheduled date.

(3) *Opacity observation period.* The total time that opacity observations are made shall be of sufficient duration to obtain a minimum of 20 uninterrupted 6-minute intervals during which opacity readings in accordance with Method 9 in appendix A of part 60 of this chapter (i.e., 24 opacity readings, each reading made at a 15-second interval) are recorded for those conditions when at least one copper converter is operating in the blowing mode and no interferences occur as specified in paragraph (c)(6) of this section. The total observation period may be divided into two or more segments performed on different days if changes in outdoor conditions (e.g., position of sun relative to observers does meet the Method 9 criteria) or copper production conditions (e.g., equipment malfunction or process upset) prevent the required number of opacity readings from being obtained during one continuous period. If the total observation period is divided into two or more segments, all opacity observations shall be made during the same set of copper production conditions specified in the approved test plan.

(4) *Conduct of opacity observations.* All opacity observations shall be made using Method 9 in appendix A to part 60 of this chapter and the procedures specified in paragraphs (c)(4)(i) through (c)(4)(iv) of this section.

(i) The opacity observations shall be performed by a team of qualified visible emission observers. A sufficient number of observers shall be used to obtain two complete concurrent sets of 24 opacity readings for each of the required 6-minute observation intervals. All concurrent sets of 24 opacity readings need not be made by the same two observers; observer substitutions are allowed to provide observer rest breaks.

(ii) Each visible emission observer shall be certified as a qualified observer by the procedure specified in section 3 of Method 9 in appendix A of part 60 of this chapter. The owner or operator shall obtain proof of current visible emission reading certification for each observer.

(iii) Before beginning the opacity readings, all of the outdoor opacity observers shall identify and designate using a common identification code (e.g., consecutive numbers, alphabetic letters) each of the copper converter department visible emission points on the building for which opacity readings are to be made. The copper converter department visible emission points are those sections of the building roof monitor or those roof exhaust fan outlets that are positioned over the location of the copper converters inside the building.

(iv) Each observer shall take a position that meets the criteria specified in section 2.1 of Method 9 in appendix A of part 60 of this chapter and provides the observer with an unobstructed view of the designated converter department visible emission points. For each opacity reading, the observer shall record the identification code for the converter department visible emission point for which the reading was made. When during an individual opacity reading it is possible for an observer to distinguish two or more visible emission plumes from the designated converter department visible emission points, the observer shall identify, to the extent feasible, the plume having the highest opacity and record his or her opacity reading for that plume.

(5) *Process information gathering.* Throughout the opacity observation period, one or more persons familiar with the primary copper smelter operations shall be stationed inside the building housing the copper converters to visually monitor the copper converter operations. Each indoor process monitor shall record all observations in an operating log using the procedure specified in paragraphs (c)(5)(i) and (c)(5)(ii) of this section.

(i) Before beginning the opacity readings, the actions specified in paragraphs (c)(5)(i)(A) and (c)(5)(i)(B) of this section.

(A) An identification code (e.g., a number, a letter) shall be assigned to each copper converter in the copper converter department; and

(B) The clock time setting on the watch or clock to be used by the indoor process monitor shall be synchronized with the clock times settings for the timepieces to be used by the outdoor opacity observers.

(ii) During all periods when opacity readings are being made by the outdoor opacity observers, the indoor process monitor shall record in the operating log the information specified in paragraphs (c)(5)(ii)(A) and (c)(5)(ii)(B) of this section.

(A) When a copper converter is positioned in the blowing mode, the operating log entry for each activity shall include, but is not limited to, the following information:

(*1*) The copper converter identification code;

(*2*) The clock times for when blowing begins and when blowing ends; and

(*3*) The converter blowing rate. This information may be recorded by a separate computer data system.

(B) When an activity related to operating the copper converters or occurring in a converter aisle is observed by an indoor process monitor to generate visible emissions inside the building housing the copper converters, the operating log entry for each activity shall include, but is not limited to, the following information:

(*1*) A description of the activity;

(*2*) The clock times when the activity begins and when the activity ends; and

(*3*) If the activity pertains to a specific copper converter, the copper converter identification code.

(6) *Data reduction.* Using the information recorded in opacity field data sheets prepared by the outdoor opacity observers and the indoor process operating logs prepared by the indoor process monitor, data summary sheets for the entire observation period shall be prepared using the procedure specified in paragraphs (c)(6)(i) and (c)(6)(ii) of this section.

(i) Prepare data summary sheets for the entire observation period that lists by the clock time at 1-minute intervals the average of the opacity values read by the two observers during each 1-minute interval. [see Figure 1 of this subpart for an example of the format to use for the data summary sheets.] The average opacity value to be recorded on the data summary sheet for each 1-minute interval shall be calculated as an average of the eight 15-second interval readings recorded on the field data sheets by the two observers during a given clock time minute interval (add the four consecutive 15-second interval opacity readings made by Observer A during the specified clock time minute plus the four consecutive 15-second interval opacity readings made by Observer B during the same clock time minute, and divide this resulting total by eight).

(ii) Using the complete set of data summary sheets prepared in accordance with paragraph (c)(6)(i) of this section, identify on each data summary sheet those 1-minute intervals when one or more converters are operating in the blowing mode and no interferences occur. An ''interference'' is a period composed of consecutive clock time minutes during which one or more of the interference activities listed in paragraph (c)(6)(ii)(A) of this section occurs plus an appropriate time delay factor to account for the time lag between when the visible emissions generated by this activity are seen by the indoor process monitor and when these emissions impact the opacity recorded by the outdoor opacity observers. The time delay factor shall be determined on a site-specific basis as specified in paragraph (c)(6)(ii)(B) of this section.

(A) *Interference activities.* For the purpose of identifying ''interferences'', only the activities listed in paragraphs (c)(6)(ii)(A)(*1*) through (c)(6)(ii)(A)(*6*) of this section are considered to be interference activities. Other ancillary activities that are conducted in or adjacent to the copper converter aisle during the opacity observations that could potentially cause higher opacity readings from the designated converter department visible emission points are not considered to be interference activities (e.g., converter aisle cleaning, placement of smoking ladles or skulls on the copper converter aisle floor). The following activities are interference activities:

(*1*) Charging of copper matte, reverts, or other materials to a copper converter;

(*2*) Skimming slag or other molten materials from a copper converter;

(*3*) Pouring of blister copper or other molten materials from a copper converter;

(*4*) Return of slag or other molten materials to the flash smelting furnace or slag cleaning vessel;

(*5*) Roll-out or roll-in of the copper converter; or

(*6*) Presence of smoke or fumes generated in the smelting vessel, slag cleaning vessel, or anode refining areas that drifts into the copper converter department.

(B) *Time delay factor.* The interference period may be extended beyond the clock time recorded for cessation of the interference activity by adding a time delay factor. This time delay factor shall be a constant number of minutes not to exceed 5 minutes that is added to the clock time recorded when cessation of the interference activity occurs. The number of minutes to be used for the time delay factor shall be determined based on the information in the data file. An explanation of the rationale for selecting the value used for the time delay factor shall be prepared and included in the test report.

(7) *Calculation of average opacity for determination of compliance with opacity standard.* Compliance shall be determined using only those opacity readings listed in the complete set of data summary sheets prepared in accordance with paragraph (c)(6) of this section that are identified as occurring during a period when one or more converters are operating in the blowing mode with no interferences.

(i) Beginning at the first clock minute listed on the data summary sheets prepared in accordance with paragraph (c)(6) of this section, calculate 6-minute average opacity values for those periods composed of six consecutive minutes of blowing with no interferences. A minimum of 20 6-minute periods is required for the compliance calculation. If more than twenty 6-minute periods are included in the set of data summary sheets, then all of the 6-minute periods included in the set of data summary sheets shall be used for the compliance calculation.

(ii) Average opacity shall be calculated using Equation 2:

$$VE_{ave} = \frac{1}{n}\sum_{i=1}^{n} VE_i \qquad \text{(Eq. 2)}$$

where

VE_{ave}=Average opacity to be used for compliance determination (percent);

n=Number of 6-minute opacity averages in the data set (at least 20);

i=Period ''i'' composed of 6 consecutive minutes with at least one converter blowing and no interferences; and

VE_i=6-minute average opacity calculated for period ''i'' (percent).

(d) *Conduct of new copper converter department visible emission performance tests.* The owner or operator shall determine compliance with the visible emission limit for new copper converter departments specified in § 63.1446(c) of this subpart by using the procedure specified in paragraphs (d)(1) through (d)(3) of this section.

(1) *Test conditions.* The test shall be made during the period when the primary copper smelter is operating under conditions representative of the smelter's normal blister copper production rate. Before conducting the opacity observations, the owner or operator shall prepare a written test plan specifying the copper production conditions to be maintained throughout the visible emission observation period. A copy of the test plan shall be submitted for review and approval by the Administrator or delegated authority. During the observation period, the owner or operator shall collect appropriate process information to prepare sufficient documentation to verify that all visible emission observations were made during the conditions specified in the approved test plan.

(2) *Test notification.* The owner or operator shall notify the Administrator or delegated authority before conducting the test to allow the Administrator or delegated authority the opportunity to have authorized representatives attend the test. Written notification of the location and scheduled date for conducting the visible emission observations shall be received by the Administrator on or before 30 calendar days before this scheduled date.

(3) *Test procedure.* The visible emissions from the building housing the copper converter department shall be determined using Method 22 in appendix A of part 60 of this chapter, with an observation period of no less than 2 hours.

§ 63.1452 Inspection and monitoring requirements.

(a) *General.* The requirements of this section apply to an owner or operator of an affected source required to install and operate air emission control equipment in accordance with

applicable standards under §§ 63.1442 through 63.1446 of this subpart.

(b) *Capture system inspection requirements.* The owner or operator shall inspect each capture system operated to meet applicable standards under § 63.1044 through § 63.1046 of this subpart in accordance with the requirements in paragraphs (b)(1) through (b)(4) of this section.

(1) Each inspection shall include visually checking all of the capture system components to detect any defects or damage that could diminish or impair capture system performance from the level that the capture system achieves when it is properly operated and maintained. Examples of such defects or damage include, but are not limited to, openings through which gases can escape as indicated by the presence of cracks, holes, or gaps in hoods or ductwork; flow constrictions caused by dents or accumulated dust in ductwork; and reduced fan performance as indicated by fan blade erosion.

(2) An inspection of each capture system shall be conducted at least once every month.

(3) In the event a defect or damaged component is detected, the owner or operator shall replace or repair the component consistent with the corrective action procedures identified in the startup, shutdown, and malfunction plan. The owner or operator shall complete the repair as soon as practicable but no later than 30 calendar days after the date of detection except under the special circumstances described in paragraph (b)(4) of this section.

(4) Delay of repair of a capture system defect beyond 30 calendar days is allowed when the repair cannot be completed within the 30-day period because of factors beyond the direct control of the owner or operator (e.g., time required to obtain a critical replacement part from the manufacturer). In this case, the repair shall be completed as soon as practicable, consistent with the corrective action procedures identified in the startup, shutdown, and malfunction plan. For each repair delay, the owner or operator shall maintain a record describing the work required to complete the repair, the reason for the repair delay, and the date that completion of the repair is planned.

(c) *Copper converter department capture system monitoring requirements.* The owner or operator shall ensure that each copper converter department capture system required under § 63.1446 of this subpart is properly operated and maintained by monitoring the operation of the capture system as required in paragraphs (c)(1) through (c)(5) of this section.

(1) During each performance test conducted to demonstrate compliance with a visible emission limit under § 63.1446 of this subpart, a range of operating values shall be established for the copper converter department capture system that is a representative and reliable indicator that the capture system is being properly operated and maintained (i.e., operating within the same range of conditions used to demonstrate compliance of the capture system with the applicable visible emission limit specified in § 63.1446 of this subpart). This range of operating values shall be established for the capture system using the procedure in paragraphs (c)(1)(i) through (c)(1)(iv) of this section.

(i) The owner or operator shall select a set of operating parameters appropriate for the capture system design that the owner or operator determines to be a representative and reliable indicator of the capture system performance. Appropriate capture system operating parameter sets include, but are not limited to:

(A) Capture system fan motor amperes with all duct damper position settings; or

(B) Volumetric flow rate through each separately ducted hood.

(ii) The owner or operator shall measure and record each of the selected operating parameters during all visible emission observations conducted for the capture system performance test. At a minimum, a value for each selected parameter shall be recorded at least once every 15 minutes.

(iii) For each selected operating parameter monitored in accordance with the requirements of paragraph (c)(1)(ii) of this section, the owner or operator shall establish a minimum operating parameter limit or a maximum operating parameter limit, as appropriate for the parameter, to define the operating limits within which the capture system can operate and still continuously achieve the same operating conditions used to demonstrate compliance of the capture system with the applicable visible emission limit specified in § 63.1446 of this subpart.

(iv) The owner or operator shall prepare written documentation to support the operating parameter limits established for the capture system. This documentation shall include a description for each selected parameter and the operating range and monitoring frequency required to ensure the capture system is being properly operated and maintained.

(2) The owner or operator shall monitor the selected operating parameters in accordance with the requirements of either paragraph (c)(2)(i) or (c)(2)(ii) of this section, as applicable.

(i) Except in those cases when the owner or operator elects to monitor the operating parameter set specified in paragraph (c)(1)(i)(A) of this section, the owner or operator shall install, calibrate, operate, and maintain a device equipped with a recorder to measure the values for each operating parameter selected in accordance with the requirements of paragraph (c)(1) of this section. The monitoring equipment shall be installed, calibrated, and maintained in accordance with the equipment manufacturer's specifications. The recorder shall be a data recording device that either records an instantaneous data value for the operating parameter at least once every 15 minutes or records 15-minute or more frequent block average values.

(ii) In those cases when the owner or operator elects to monitor the operating parameter set specified in paragraph (c)(1)(i)(A) of this section, the owner or operator shall develop and implement a written procedure for the converter operator or other appropriate worker to check at least once per shift that fan amperage and damper positions are within the operating parameter limits established for the capture system.

(3) The owner or operator shall regularly inspect the data recorded by the operating parameter monitoring system at a sufficient frequency to ensure the capture system is operating properly. An excursion is determined to have occurred any time that the actual value of a selected operating parameter is less than the minimum operating limit (or, if applicable, greater than the maximum operating limit) established for the parameter in accordance with the requirements of paragraph (c)(1) of this section.

(4) Whenever an excursion occurs, the owner or operator shall initiate within one hour of detecting the excursion the corrective action procedures identified in the startup, shutdown, and malfunction plan as necessary to restore the operation of the capture system to the proper operating settings. Failure to initiate the corrective action procedures within one hour of detecting an excursion or to take the necessary corrective actions to remedy the problem is a violation of the standard in this subpart.

(5) For a given operating parameter, if an excursion occurs six or more times in any semi-annual reporting period, then any subsequent excursion of that

operating parameter during the reporting period is a violation of the standard in this subpart. For the purpose of determining the number of excursions in a semi-annual reporting period, only one excursion shall be counted in any given 24-hour period.

(d) *Baghouse inspection and monitoring requirements.*

(1) The owner or operator shall prepare and at all times operate according to a standard operating procedures (SOP) manual for inspection, maintenance, and bag leak detection, and corrective action plans for each baghouse used to comply with applicable standards under §§ 63.1442 through 63.1446 of this subpart. The requirements of this paragraph do not apply to a baghouse that is operated exclusively to control fugitive dust emissions.

(2) The procedures specified in the SOP manual for inspections and routine maintenance of a baghouse shall, at a minimum, include the requirements of paragraphs (d)(2)(i) through (d)(2)(ix) of this section.

(i) Daily monitoring of pressure drop across each baghouse cell;

(ii) Weekly confirmation that dust is being removed from hoppers through visual inspection, or equivalent means of ensuring the proper functioning of removal mechanisms;

(iii) Daily check of compressed air supply for pulse-jet baghouses;

(iv) An appropriate methodology for monitoring cleaning cycles to ensure proper operation;

(v) Monthly check of bag cleaning mechanisms for proper functioning through visual inspection or equivalent means;

(vi) Quarterly check of bag tension on reverse air and shaker-type baghouses. Such checks are not required for shaker-type baghouses using self-tensioning (spring loaded) devices;

(vii) Quarterly confirmation of the physical integrity of the baghouse through visual inspection of the baghouse interior for air leaks;

(viii) Quarterly inspection of fans for wear, material buildup, and corrosion through visual inspection, vibration detectors, or equivalent means; and

(ix) Continuous operation of a bag leak detection system.

(3) The procedures for maintenance specified in the SOP manual shall, at a minimum, include a preventative maintenance schedule that is consistent with the baghouse manufacturer's instructions for routine and long-term maintenance.

(4) The bag leak detection system required by paragraph (d)(1) of this section, shall meet the specifications and requirements of paragraphs (d)(3)(i) through (d)(3)(viii) of this section.

(i) The bag leak detection system must be certified by the manufacturer to be capable of detecting particulate matter emissions at concentrations of 10 mg/acfm or less;

(ii) The bag leak detection system sensor must provide output of relative particulate matter loadings;

(iii) The bag leak detection system must be equipped with an alarm system that will sound an audible alarm when an increase in relative particulate loadings is detected over a preset level;

(iv) The bag leak detection system shall be installed and operated in a manner consistent with available written guidance from the U.S. Environmental Protection Agency or, in the absence of such written guidance, the manufacturer's written specifications and recommendations for installation, operation, and adjustment of the system;

(v) The initial adjustment of the system shall, at a minimum, consist of establishing the baseline output by adjusting the sensitivity (range) and the averaging period of the device, and establishing the alarm set points and the alarm delay time;

(vi) Following initial adjustment, the owner or operator shall not adjust the sensitivity or range, averaging period, alarm set points, or alarm delay time, except as detailed in the SOP manual required under paragraph (d)(1) of this section. In no event shall the sensitivity be increased by more than 100 percent or decreased more than 50 percent over a 365 day period unless such adjustment follows a complete baghouse inspection which demonstrates the baghouse is in good operating condition;

(vii) For negative pressure or induced air baghouses, and positive pressure baghouses that are discharged to the atmosphere through a stack, the bag leak detector must be installed downstream of the baghouse and upstream of any wet acid gas scrubber; and

(viii) Where multiple detectors are required, the system's instrumentation and alarm system may be shared among the detectors.

(5) The SOP manual required by paragraph (d)(1) of this section shall include a corrective action plan that specifies the procedures to be followed in the case of a bag leak detection system alarm. The corrective action plan shall include, at a minimum, the procedures used to determine and record the time and cause of the alarm as well as the corrective actions taken to correct the control device malfunction or minimize emissions as specified in paragraphs (d)(4)(i) and (d)(4)(ii) of this section. Failure to initiate the corrective action required by this paragraph is a violation of the standard in this subpart.

(i) The procedures used to determine the cause of the alarm must be initiated within 30 minutes of the time the alarm first sounds; and

(ii) The cause of the alarm must be alleviated by taking the necessary corrective action(s) which may include, but are not to be limited to, the actions in paragraphs (d)(5)(ii)(A) through (d)(5)(ii)(F) of this section.

(A) Inspecting the baghouse for air leaks, torn or broken filter elements, or any other malfunction that may cause an increase in emissions;

(B) Sealing off defective bags or filter media;

(C) Replacing defective bags or filter media, or otherwise repairing the control device;

(D) Sealing off a defective baghouse compartment;

(E) Cleaning the bag leak detection system probe, or otherwise repairing the bag leak detection system; or

(F) Shutting down the process producing the particulate emissions.

(e) *Monitoring of venturi wet scrubbers.* For each venturi wet scrubber operated to comply with applicable particulate matter emission limits in §§ 63.1442 through 63.1446 of this subpart, the owner or operator shall ensure that the venturi wet scrubber is properly operated and maintained by monitoring the operation of the wet control device as required in paragraphs (e)(1) through (e)(3) of this section.

(1) During each performance test conducted to demonstrate compliance of a venturi wet scrubber outlet gas stream with the applicable particulate matter emission limit, minimum operating values shall be established for the scrubber pressure drop and the scrubber water flow rate. These operating values shall be established for the venturi wet scrubber using the procedure in paragraphs (e)(1)(i) through (e)(1)(iii) of this section.

(i) The owner or operator shall measure and record values for the scrubber pressure drop and scrubber water flow rate during each test run conducted for a performance test to demonstrate compliance with the applicable standard. At a minimum, a value for each operating parameter shall be recorded at least once every 15 minutes during the test run.

(ii) For each operating parameter measured in accordance with the requirements of paragraphs (e)(1)(i) of this section, the owner or operator shall establish an operating parameter limit to define the minimum scrubber pressure drop and minimum scrubber water flow

rate at which the scrubber can operate and still continuously achieve the applicable particulate matter emission limit.

(iii) The owner or operator shall prepare written documentation to support the minimum operating parameter limits established for the scrubber.

(2) The owner or operator shall install, calibrate, operate, and maintain monitoring devices equipped with a recorder to measure the values for scrubber pressure drop and scrubber water flow rate. The monitoring equipment shall be installed, calibrated, and maintained in accordance with the equipment manufacturer's specifications. The recorder shall be a data recording device that either records an instantaneous data value for the operating parameter at least once every 15 minutes or records 15-minute or more frequent block average values.

(3) The owner or operator shall regularly inspect the data recorded by the operating parameter monitoring system at a sufficient frequency to ensure the scrubber is operating properly. An excursion is determined to have occurred any time that the actual value of the scrubber pressure drop or water flow rate is less than the minimum limit established for the parameter in accordance with the requirements of paragraph (e)(1) of this section. Any excursion recorded for the venturi wet scrubber shall be a violation of the standard in this subpart.

(f) *Monitoring of control devices other than baghouses or venturi wet scrubbers.* For each control device that is not a baghouse or venturi wet scrubber but is operated to comply with applicable particulate matter emission limits in §§ 63.1442 through 63.1446 of this subpart, the owner or operator shall ensure that the control device is properly operated and maintained by monitoring the operation of the control device as required in paragraphs (f)(1) through (f)(4) of this section.

(1) During each performance test conducted to demonstrate compliance of a control device outlet gas stream with the applicable particulate matter emission limit, a range of operating values shall be established for the control device that is a representative and reliable indicator that the control device is operating within the same range of conditions used to demonstrate compliance of the control device with the applicable particulate matter emission limit. This range of operating values shall be established for the control device using the procedure in paragraphs (f)(1)(i) through (f)(1)(iv) of this section.

(i) The owner or operator shall select a set of operating parameters appropriate for the control device design that the owner or operator determines to be a representative and reliable indicator of the control device performance.

(ii) The owner or operator shall measure and record values for each of the selected operating parameters during each test run conducted for the performance test to demonstrate compliance with the applicable standard. At a minimum, a value for each selected parameter shall be recorded at least once every 15 minutes.

(iii) For each selected operating parameter measured in accordance with the requirements of paragraphs (f)(1)(ii) of this section, the owner or operator shall establish a minimum operating parameter limit or a maximum operating parameter limit, as appropriate for the parameter, to define the operating limits within which the control device can operate and still continuously achieve the same operating conditions used to demonstrate compliance of the control device with the applicable particulate matter emission limit.

(iv) The owner or operator shall prepare written documentation to support the operating parameter limits established for the control device. This documentation shall include a description for each selected parameter and the operating range and monitoring frequency required to ensure the control device is being properly operated and maintained.

(2) The owner or operator shall install, calibrate, operate, and maintain a monitoring device equipped with a recorder to measure the values for each operating parameter selected in accordance with the requirements of paragraph (f)(1) of this section. The monitoring equipment shall be installed, calibrated, and maintained in accordance with the equipment manufacturer's specifications. The recorder shall be a data recording device that either records an instantaneous data value for the operating parameter at least once every 15 minutes or records 15-minute or more frequent block average values.

(3) The owner or operator shall regularly inspect the data recorded by the operating parameter monitoring system at a sufficient frequency to ensure the control device is operating properly. An excursion is determined to have occurred any time that the actual value of a selected operating parameter is less than the minimum operating limit (or, if applicable, greater than the maximum operating limit) established for the parameter in accordance with the requirements of paragraph (f)(1) of this section.

(4) Whenever an excursion occurs, the owner or operator shall initiate within one hour of detecting the excursion the corrective action procedures identified in the startup, shutdown, and malfunction plan as necessary to restore the operation of the control device to the proper operating settings. Failure to initiate the corrective action procedures within one hour of detecting an excursion or to take the necessary corrective actions to remedy the problem is a violation of the standard in this subpart.

§ 63.1453 Notification requirements.

(a) The requirements of this section apply to the owner and operator of a primary copper smelter that is subject to the requirements of this subpart.

(b) The owner or operator shall prepare and submit written notifications to the Administrator in accordance with § 63.9 of the general provisions in subpart A of this part.

§ 63.1454 Recordkeeping and reporting requirements.

(a) *General.* The requirements of this section apply to the owner and operator of a primary copper smelter that is subject to the requirements of this subpart.

(b) *Recordkeeping requirements.* The owner or operator shall prepare and maintain, in accordance with the requirements in § 63.10(b)(1) of the general provisions in subpart A of this part, files of information specified in paragraphs (b)(1) through (b)(9) of this section. The owner or operator shall maintain records for a least 5 years from the date of each record. The records for the most recent 2 years of operation shall be maintained at the smelter site. Records for previous years may be maintained at an off-site location.

(1) The occurrence and duration of each startup, shutdown, or malfunction of operation (i.e., process equipment);

(2) The occurrence and duration of each malfunction of the air pollution control equipment;

(3) All maintenance performed on the air pollution control equipment;

(4) Actions taken during periods of startup, shutdown, and malfunction (including corrective actions to restore malfunctioning process and air pollution control equipment to its normal or usual manner of operation) when such actions are different from the procedures specified in the affected source's startup, shutdown, and malfunction plan prepared in accordance with the requirements of § 63.6 of the general provisions in subpart A of this part.;

(5) Information necessary to demonstrate compliance with the affected source's startup, shutdown, and malfunction plan (prepared in accordance with the requirements of § 63.6 of this part) when all actions taken during periods of startup, shutdown, and malfunction (including corrective actions to restore malfunctioning process and air pollution control equipment to its normal or usual manner of operation) are consistent with the procedures specified in such plan. (The information needed to demonstrate conformance with the startup, shutdown, and malfunction plan may be recorded using a ''checklist,'' or another effective form of recordkeeping, to reduce the recordkeeping burden for conforming events);

(6) Measurements and other supporting documentation needed to demonstrate compliance with a relevant standard (including, but not limited to, raw performance testing measurements, and raw performance evaluation measurements, that support data that the source is required to report);

(7) Results of all performance tests and opacity observations performed in accordance with the requirements of this subpart;

(8) Data recorded to meet the applicable monitoring requirements of § 63.1452 of this subpart.

(9) Documentation supporting notifications submitted under § 63.1453 of this subpart.

(c) *Reporting requirements.* The owner or operator shall prepare and submit written reports to the Administrator in accordance with § 63.10 of the general provisions in subpart A of this part.

§ 63.1455 State authority and delegations.

(a) In delegating implementation and enforcement authority to a State under section 112(d) of the Act, the authority listed in paragraph (b) of this section shall be retained by the Administrator and not transferred to a State.

(b) Authority will not be delegated to States for approval of alternative test methods under § 63.1451 of this subpart.

Appendix A to Subpart QQQ—Applicability of General Provisions (40 CFR part 63, subpart A) to Subpart QQQ

Citation	Applies to subpart QQQ	Comment
63.1	yes	
63.2	yes	
63.3	yes	
63.4	yes	
63.5	yes	
63.6 (a)–63.6 (g).	yes	
63.6 (h) ...	no for existing sources.	Subpart QQQ specifies requirements to be used for compliance with the visible emission limits.
63.6 (i)–63.6 (j).	yes	
63.7	yes	
63.8	yes	
63.9 (a)–163.9 (e).	yes	
63.9 (f)	no for existing sources.	Subpart QQQ specifies notification requirements for visible emission limit compliance test.
63.9 (g)–63.9 (j).	yes	
63.10	yes	
63.11	no	Flares not used to comply with Subpart QQQ standards.
63.12–63.15.	yes	

FIGURE 1.—OF SUBPART QQQ DATA SUMMARY SHEET FOR DETERMINATION OF AVERAGE OPACITY

Clock time	Number of converters blowing	Converter aisle activity	1-minute average opacity (percent)	Blowing without Interferences (yes or no)	Continuous 6-minute average opacity (percent)

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Part III

Department of Energy

41 CFR Chapter 109

Property Management Regulations; Final Rule

DEPARTMENT OF ENERGY

41 CFR Ch. 109

RIN 1991–AA28

Property Management Regulations

AGENCY: Department of Energy.

ACTION: Final Rule.

SUMMARY: The Department of Energy (DOE) today publishes a final rule to reissue the Department of Energy Property Management Regulation (DOE–PMR) in its entirety. This rule updates the DOE–PMR by deleting obsolete and unnecessary material and incorporating policy and procedure changes issued previously by the Department through Personal Property Letters and DOE–PMR Bulletins. This action provides DOE organizations and DOE contractors an up-to-date, single source for guidance on personal property management matters peculiar to the Department. Specific material that is incorporated, revised, or deleted from the DOE–PMR was summarized in the ''Section-by-Section Analysis'' which appeared in the Notice of Proposed Rulemaking published in the **Federal Register** on September 11, 1996. Revisions which resulted from comments received on the proposed rulemaking are summarized in Section II ''Comments on the Notice of Proposed Rulemaking.''

EFFECTIVE DATE: This final rule will be effective May 20, 1998.

FOR FURTHER INFORMATION CONTACT: Julia A. Harman, Office of Contract and Resource Management (HR–53), Office of Procurement and Assistance Management, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585 (202) 586–1435.

SUPPLEMENTARY INFORMATION:

I. Background
II. Comments on the Notice of Proposed Rulemaking
III. Procedural Requirements
A. Review Under Executive Order 12866
B. Review Under Executive Order 12988
C. Review Under the Regulatory Flexibility Act
D. Review Under the Paperwork Reduction Act
E. Review Under Executive Order 12612
F. Review Under the National Environmental Policy Act
G. Review Under Small Business Regulatory Enforcement Fairness Act of 1996
H. Review Under the Unfunded Mandates Reform Act of 1995

I. Background

The DOE–PMR, published at 41 CFR Ch. 109, has not been updated to reflect interim changes in Departmental personal property management policy and procedures since 1984. These interim changes, issued through Personal Property Letters and DOE–PMR Bulletins, were made to comply with Executive Orders, statutory requirements, and commitments made to Congress regarding weaknesses identified in the Department's personal property management practices.

The updating of the DOE–PMR completes phase I of the Department's two-phased commitment to bring about significant reform of its personal property management regulations. The phase I objective was to produce an up-to-date baseline document for use in the reform effort. Having done that, the phase II effort will concentrate on (a) significantly reducing and simplifying the personal property regulations in accordance with Executive Order 12988. Phase II is scheduled to be completed in calendar year 1998.

II. Comments on the Notice of Proposed Rulemaking

A Notice of Proposed Rulemaking was published in the **Federal Register** on September 11, 1996 (61 FR 48006). Interested parties were invited to participate in this rulemaking by submitting comments. The public comment period closed on November 12, 1996, a period of 60 days. During this period, comments were received from one DOE contractor and one DOE subcontractor employee commenting as a private citizen. The DOE contractor's comments focused on the Math and Science Equipment Gift Program covered in Subpart 109–50.2. The contractor recommended that:

1. The following authorities rest with the Head of the Contracting Activity (HCA), or designee, in lieu of DOE Headquarters: (1) Adding to the list of eligible equipment at §109–50.203; and (2) making gifts exceeding $25,000 cumulative book value to any one institution at §109–50.205. We disagree with both recommendations because the Executive Agencies that own the equipment are responsible for defining and regulating which specific equipment is eligible. In order to insure that all aspects of the equipment gift program (including equipment eligibility determinations and gift making authorizations) are applied uniformly throughout the Department, these authorities need to be maintained at the Headquarters level.

2. The limitations in § 109–50.205 be modified to significantly raise or eliminate the requirement to obtain DOE Headquarters authorization to make gifts exceeding $25,000 cumulative book value to any one institution. We disagree with the recommendation for several reasons. First of all, the distribution of equipment should be made to those schools with the greatest needs. The threshold is designed to encourage a fair and equitable distribution of equipment among those schools. Secondly, without such a threshold some schools would tend to benefit greatly at the expense of others. We do not believe that to be the intent of the gift program. Thirdly, since the threshold is based on book or depreciated value, a significant amount of equipment can be distributed under the $25,000 threshold. Finally, feedback on the equipment gift program to date does not indicate that the threshold is an impediment to meeting the program objectives.

3. Equipment in disposal condition codes 2 (unused-fair) and 5 (used-fair) be made eligible under the program. We disagree with the recommendation because equipment must be made available to schools at the lowest possible cost. To that end, the Department should only provide equipment that can be used ''as is'' for an extended period of time. The transfer of equipment in fair (i.e., marginal) condition would burden schools with immediate or near term costs for servicing, repair, and possible disposal of the equipment. While the recommendation is well meaning, we view it as counter to the spirit and intent of the program.

4. Section 109–50.205 be rewritten to remove apparent contradictions and clarify the hierarchy of distribution to and eligibility of potential recipients. We agree with the recommendation and have rewritten the section to clarify the procedure that was originally established in a July 17, 1995 DOE Headquarters memorandum that established the equipment gift program.

5. The requirement to forward a copy of each Equipment Gift Agreement to DOE Headquarters be eliminated or changed to the Head of the Contracting Activity or designee. We disagree with the recommendation because the Equipment Gift Agreements are used by DOE Headquarters (a) to monitor the success of and make adjustments to the program and (b) as source documents for preparing a report provided by the Department to the General Services Administration (GSA). The comments submitted by the DOE subcontractor employee who commented as a private citizen involved financial accounting issues. Although the comments were submitted under the rulemaking, the solutions are outside the scope of the DOE–PMR. The comments were forwarded to the DOE Office of Financial Policy for consideration as

proposed changes to DOE accounting directives. DOE field offices were also invited to submit comments, primarily for consideration under phase II of the Department's regulatory reform effort. Among the comments received were several regarding Executive Order 12999, which replaces Executive Order 12821. Executive Order 12999 will be implemented upon approval of the Department's implementation plan. However, a number of the comments were accepted for immediate implementation because they addressed areas affected by Presidential directive, recent Federal Property Management Regulation changes issued by GSA, or minor editorial and technical errors. The revisions made as a result of these comments are as follows:

1. The word ''capital'' in the term ''capital equipment,'' used extensively in part 1 of this regulation and defined in § 109–1.100–50, is removed to eliminate the confusion created by the use of the same term, with different meaning, by the Department's financial accounting organization. This change was formalized in a Departmental memorandum issued on August 29, 1996.

2. The acronyms CPPSR and HR in § 109–1.100–51 are deleted because neither acronym is used in the text.

3. Deviation requests in §109–1.110–50 involving aviation related matters are forwarded by the on-site DOE Aviation Management Officer, in lieu of the Organizational Property Management Officer, to the DOE Senior Aviation Management Official.

4. Loans in § 109–1.5102 are approved by the on-site property administrator when the OPMO is not located at the contractor facility.

5. Identification marking of property in § 109–1.5105 is expanded to allow the use of ''U.S. DOE'' as an alternative marking when there is not enough room to mark it as ''U.S. Government Property.''

6. The applicability of the policy and guidance in subpart 109–1.53 is limited to three categories of high risk personal property because other Departmental systems and procedures already provide the required controls for the remaining six categories.

7. The physical inventory requirement for sensitive items in § 109–1.5109 is modified to reflect changes that were authorized in Personal Property Letter 970–2 issued on February 23, 1996.

8. By a Presidential Memorandum dated February 10, 1993 Agency Heads were instructed to ''refrain from authorizing the use of Government vehicles for * * * deputies for daily home-to-work transportation.'' Accordingly, the authority for the Deputy Secretary contained in § 109–6.403(b) is eliminated.

9. Section 109–27.000–50 is deleted because the information in the section is redundant.

10. The stores inventory turnover ratio in § 109–27.5002 is corrected to show the proper comparative factors.

11. The subpart 27.51 dealing with precious metals management is updated to reflect the establishment of the Business Center for Precious Metals Sales and Recovery.

12. The periodic EHFFP program reviews in § 109–28.5005 are conducted by the on-site property administrator when the OPMO is not located at the contractor facility.

13. Part 109–37 dealing with aviation administration is reserved pending a complete revision of Departmental policies and procedures.

14. Definition of special purpose vehicles in § 109–38.001 is updated to include all terrain vehicles.

15. Section 109–38.106 is deleted as a result of Federal Property Management Regulation changes published in FPMR Amendment G–111, dated October 28, 1996.

16. Section 109–43.307–52(c) is moved to § 109–42.1102–8(a) and updated to include a reference to the Defense Demilitarization Manual because it deals with United States Munitions List items subject to demilitarization.

17. Sections 109–43.4701(a) and 109–44.4701(a) and §§ 109–45.1002–2, 109–45.4701, and 109–46.305 are removed as a result of a FPMR change, published as FPMR Amendment H–196, dated June 24, 1997, that eliminated several annual reports required by GSA.

18. Section 109–46.201(c) is updated to reflect a FPMR change, published as FPMR Amendment H–195, dated June 23, 1997, that reduced the number of Federal Supply Classification Groups on the exchange/sale authority exclusion list.

19. Section 109–50.106 is updated to delete references to the use of ADPE tapes and printed catalogs. Both are no longer in use.

Aside from these minor editorial and technical error corrections, there were no significant revisions to the rulemaking based on the submitted comments.

20. Subpart 109–50.3 is withdrawn and held in reserve pending resolution of outstanding issues related to economic development.

III. Procedural Requirements

A. Review Under Executive Order 12866

This regulatory action has been determined not to be a ''significant regulatory action'' under Executive Order 12866, ''Regulatory Planning and Review,'' (58 FR 51735, October 4, 1993). Accordingly, this action was not subject to review, under that Executive Order, by the Office of Information and Regulatory Affairs of the Office of Management and Budget (OMB).

B. Review Under Executive Order 12988

With respect to the review of existing regulations and the promulgation of new regulations, section 3(a) of Executive Order 12988, ''Civil Justice Reform,'' 61 FR 4729 (February 7, 1996), imposes on Executive agencies the general duty to adhere to the following requirements: (1) Eliminate drafting errors and ambiguity; (2) write regulations to minimize litigation; and (3) provide a clear legal standard for affected conduct rather than a general standard and promote simplification and burden reduction. With regard to the review required by section 3(a), section 3(b) of Executive Order 12988 specifically requires that Executive agencies make every reasonable effort to ensure that the regulation: (1) Clearly specifies the preemptive effect, if any; (2) clearly specifies any effect on existing Federal law or regulation; (3) provides a clear legal standard for affected conduct while promoting simplification and burden reduction; (4) specifies the retroactive effect, if any; (5) adequately defines key terms; and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. Section 3(c) of Executive Order 12988 requires Executive agencies to review regulations in light of applicable standards in section 3(a) and section 3(b) to determine whether they are met or it is unreasonable to meet one or more of them. DOE has completed the required review and determined that, to the extent permitted by law, the regulations meet the relevant standards of Executive Order 12988.

C. Review Under the Regulatory Flexibility Act

The rule was reviewed under the Regulatory Flexibility Act of 1980, Pub. L. 96–354, which requires preparation of an initial regulatory flexibility analysis for any rule that is likely to have a significant economic impact on a substantial number of small entities. In the background section of the rule, DOE noted that the rule was the first

phase of a two-phased approach to (1) streamline the personal property management process and (2) reduce constraints, prescriptive requirements, and administrative processes on DOE internal operations and large contractors who manage and operate DOE facilities. Based on this review, DOE certified that this rule will not have a significant economic impact on a substantial number of small entities and, therefore, no regulatory flexibility analysis had been prepared. DOE did not receive any comments on this certification.

D. Review Under the Paperwork Reduction Act

No new information collection or record keeping requirements are imposed by this rule. Accordingly, no OMB clearance is required under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501, *et seq.*).

E. Review Under Executive Order 12612

Executive Order 12612, entitled ''Federalism,'' 52 FR 41685 (October 30, 1987), requires that regulations, rules, legislation, and any other policy actions be reviewed for any substantial direct effects on States, on the relationship between the Federal Government and the States, or in the distribution of power and responsibilities among various levels of government. If there are sufficient substantial direct effects, then the Executive Order requires preparation of a federalism assessment to be used in all decisions involved in promulgating and implementing a policy action. DOE has determined that this rule will not have a substantial direct effect on the institutional interests or traditional functions of States.

F. Review Under the National Environmental Policy Act

Pursuant to the Council on Environmental Quality Regulations (40 CFR parts 1500–1508), the Department has established guidelines for its compliance with the provisions of the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321, *et seq.*). Pursuant to Appendix A of subpart D of 10 CFR part 1021, National Environmental Policy Act Implementing Procedures (Categorical Exclusion A6), DOE has determined that this rule is categorically excluded from the need to prepare an environmental impact statement or environmental assessment.

G. Review Under Small Business Regulatory Enforcement Fairness Act of 1996

As required by 5 U.S.C. 801, DOE will report to Congress promulgation of the rule prior to its effective date. The report will state that it has been determined that the rule is not a ''major rule'' as defined by 5 U.S.C. 804(3).

H. Review Under the Unfunded Mandates Reform Act of 1995

The Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) generally requires a Federal agency to perform a detailed assessment of costs and benefits of any rule imposing a Federal mandate with costs to State, local or tribal governments, or to the private sector, of $100 million or more. This rulemaking only affects DOE and private sector entities, and the impact is less than $100 million.

List of Subjects in 41 CFR Chapter 109

Government property management.

Issued in Washington, DC, on March 31, 1998.

Richard H. Hopf,

Deputy Assistant Secretary for Procurement and Assistance Management.

For the reasons set out in the preamble, Chapter 109 of Title 41 of the Code of Federal Regulations is revised as set forth below:

CHAPTER 109—DEPARTMENT OF ENERGY PROPERTY MANAGEMENT REGULATIONS

SUBCHAPTER A—GENERAL

Part
109–1 Introduction
109–6 Miscellaneous regulations

SUBCHAPTER B—[RESERVED]

SUBCHAPTER C—[RESERVED]

SUBCHAPTER D—[RESERVED]

SUBCHAPTER E—SUPPLY AND PROCUREMENT

109–25 General
109–26 Procurement sources and program
109–27 Inventory management
109–28 Storage and distribution
109–30 Federal catalog system

SUBCHAPTER F—[RESERVED]

SUBCHAPTER G—AVIATION, TRANSPORTATION, AND MOTOR VEHICLES

109–37 [RESERVED]
109–38 Motor equipment management
109–39 Interagency fleet management systems

SUBCHAPTER H—UTILIZATION AND DISPOSAL

109–42 Utilization and disposal of hazardous materials and certain categories of property
109–43 Utilization of personal property
109–44 Donation of personal property
109–45 Sale, abandonment, or destruction of personal property
109–46 Utilization and disposal of personal property pursuant to exchange/sale authority
109–48 Utilization, donation, or disposal of abandoned and forfeited personal property
109–50 Special DOE disposal authorities

SUBCHAPTER A—GENERAL

PART 109–1—INTRODUCTION

Subpart 109–1.1—Regulation System

Sec.
109–1.100–50 Scope of subpart.
109–1.100–51 Definitions and acronyms.
109–1.101 Federal Property Management Regulations System.
109–1.101–50 DOE–PMR System.
109.1.102 Federal Property Management Regulations.
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Authority: Sec. 644, Pub. L. 95–91, 91 Stat. 599 (42 U.S.C. 7254).

SUBCHAPTER A—GENERAL

PART 109–1—INTRODUCTION

Subpart 109–1.1—Regulation System

§109–1.100–50 Scope of subpart.

This subpart sets forth the Department of Energy (DOE) Property Management Regulations (DOE–PMR) which establish uniform DOE property management policies, regulations, and procedures that implement and supplement the Federal Property Management Regulations. Property management statutory authorities that are unique to the Department (e.g., section 161g of the Atomic Energy Act of 1954 (42 U.S.C. 2201(g)) and section 3155 of the National Defense Authorization Act for Fiscal Year 1994 (42 U.S.C. 72741)) are not addressed in these regulations.

§109–1.100–51 Definitions and acronyms.

(a) *Definitions.* As used in this chapter, the terms *personal property* and *property* are synonymous. In addition, the following definitions apply:

Administratively controlled items means personal property controlled at the discretion of individual DOE offices, but for which there is no DOE requirement to maintain formal records.

Automatic data processing equipment means, as used in this part and to the extent that such equipment is used to process export controlled information or unclassified controlled nuclear information, any equipment or interconnected system or subsystems of equipment that is used in the automatic acquisition, storage, manipulation, management, movement, control, display, switching, interchange, transmission, or reception of data or information.

Designated contractors means those on-site DOE contractors to which the DOE–PMR is made applicable when included as a contractual requirement. The contractors to which these regulations may be made applicable include management and operating (M&O) contractors, environmental restoration and management contractors, and other major prime contractors located at DOE sites.

Direct operations means operations conducted by DOE personnel.

Disposal means the process of reutilizing, transferring, donating, selling, abandoning, destroying, or other disposition of Government-owned personal property.

Dual-Use List means nuclear-related material, equipment, and related technology as described in the International Atomic Energy Agency Information Circular (INFCIRC) 254 Part 2.

Equipment means any item of personal property having a unit acquisition cost of $5,000 or more and having the potential for maintaining its integrity (i.e., not expendable due to use) as an item.

Especially designed or prepared property means equipment and material designed or prepared especially for use in the nuclear fuel cycle and described in the Nuclear Suppliers Group Trigger List (INFCIRC 254 Part 1).

Export controlled information means unclassified U.S. Government information under DOE cognizance that, if proposed for export by the private sector, would require a U.S. Department of Commerce or U.S. Department of State validated license, or a DOE authorization for export, and which, if given uncontrolled release, could reasonably be expected to adversely affect U.S. national security or nuclear nonproliferation objectives.

Export controlled property means property the export of which is subject to licensing by the U.S. Department of Commerce, the U.S. Department of State, the U.S. Nuclear Regulatory Commission, or authorized by the U.S. Department of Energy.

Hazardous property means any personal property, including scrap or waste but excluding property involving a radiological hazard, that is ignitable, corrosive, reactive, or toxic because of its quantity, concentration, or physical, chemical, or infectious characteristics, or that is deemed a hazardous material, chemical substance or mixture, or hazardous waste under the Hazardous Material Transportation Act, the Resource Conservation and Recovery Act, or the Toxic Substances Control Act. Such property may be in solid, liquid, semi-liquid, or contained gas form and may cause or significantly contribute to an increase in mortality or illness, or pose present or potential hazard to human health or the environment when improperly used, treated, stored, transported, disposed of, or mismanaged.

Heads of field organizations means the heads of any Departmental office located outside the Washington, D.C. metropolitan area. In addition, the Federal Energy Regulatory Commission, and the Office of Headquarters Procurement Operations, shall be considered a field organization for purposes of these regulations.

High risk personal property means property that, because of its potential impact on public health and safety, the environment, national security interests, or proliferation concerns, must be controlled, and disposed of in other than the routine manner. The categories of high risk property are automatic data processing equipment, especially designed or prepared property, export controlled information, export controlled property, hazardous property, nuclear weapon components or weapon-like components, proliferation sensitive property, radioactive property, special nuclear material, and unclassified controlled nuclear information.

Munitions list means articles, services, and related technical data designated as defense articles and defense services by the Arms Export Control Act of 1968, as amended.

Nuclear weapon component or weapon-like component means parts of whole war reserve nuclear weapon systems, joint test assemblies, trainers, or test devices, including associated testing, maintenance, and handling equipment; or items that simulate such parts.

Personal property means property of any kind, except for real estate and interests therein (such as easements and rights-of-way), and permanent fixtures which are Government-owned, chartered, rented, or leased from commercial sources by and in the custody of DOE or its designated contractors; source, byproduct, special nuclear materials, and atomic weapons as defined in section 11 of the Atomic Energy Act of 1954 (42 U.S.C. 2014), as amended; and petroleum in the Strategic Petroleum Reserve and the Naval Petroleum Reserves.

Personal property management means the development, implementation, and administration of policies, standards, programs, practices and procedures for effective and economical acquisition, receipt, storage, issue, use, control, physical protection, care and maintenance, determination of requirements, maintenance of related operating records, and disposal of personal property (exclusive of the property accounting records).

Proliferation-sensitive property means nuclear-related or dual-use equipment, material, or technology as described in the Nuclear Suppliers Group Trigger List and Dual-Use List, or equipment, material or technology used in the research, design, development, testing, or production of nuclear or other weapons.

Radioactive property means any item or material that is contaminated with radioactivity and which emits ionizing radiation in excess of background radiation as measured by appropriate instrumentation.

Sensitive items means those items of personal property which are considered to be susceptible to being appropriated for personal use or which can be readily converted to cash, for example: Firearms, portable photographic equipment, binoculars, portable tape recorders, portable calculators, portable power tools, portable computers, and portable communications equipment.

Special nuclear material means plutonium, uranium 233, uranium enriched in the isotope 233 or 235, any other materials which the Nuclear Regulatory Commission pursuant to the Atomic Energy Act of 1954, as amended, determines to be special nuclear material, or any material artificially enriched by any of the foregoing, but does not include source material.

Trigger List means nuclear material, equipment, and related technology as described in the INFCIRC 254, Part 1.

Unclassified controlled nuclear information means U.S. Government information pertaining to atomic energy defense activities as defined in section 148 of the Atomic Energy Act. Such information can relate to aspects of nuclear weapons design, development, testing, physical security, production, or utilization facilities.

(b) Acronyms. As used in this chapter, the following acronyms apply:

ADPE: Automatic Data Processing Equipment
CFR: Code of Federal Regulations
CSC: Customer Supply Center
DEAR: Department of Energy Acquisition Regulation
DOD: Department of Defense
DOE: Department of Energy
DOE–PMR: Department of Energy Property Management Regulations
DPMO: Departmental Property Management Officer
ECCN: Export Control Classification Number
ECI: Export Controlled Information
EHFFP: Equipment Held For Future Projects
EOQ: Economic Order Quantity
ERLE: Energy-Related Laboratory Equipment
FAR: Federal Acquisition Regulation
FPMR: Federal Property Management Regulations
FSC: Federal Supply Classification
FSCG: Federal Supply Classification Group
GAO: General Accounting Office
GSA: General Services Administration
GVWR: Gross Vehicle Weight Rating
INFCIRC: International Atomic Energy Agency Information Circular
IFMS: Interagency Fleet Management System
M&O: Management and Operating
MCTL: Military Critical Technologies List
OCRM: Office of Contract and Resource Management
OPMO: Organizational Property Management Officer
OPSEC: Operations Security
PPL: Personal Property Letter
REAPS: Reportable Excess Automated Property System
SNM: Special Nuclear Material
UCNI: Unclassified Controlled Nuclear Information
U.S.C.: United States Code

§109–1.101 Federal Property Management Regulations System.

§109–1.101–50 DOE–PMR System.

The DOE–PMR system described in this subpart is established to provide uniform personal property management policies, standards, and practices within the Department.

§109–1.102 Federal Property Management Regulations.

§109–1.102–50 DOE–PMRs.

The DOE–PMRs (41 CFR Ch. 109) implements and supplements the FPMR (41 CFR Ch. 101) issued by the General Services Administration (GSA), Public Laws, Executive Orders, Office of Management and Budget directives, and other agency issuances affecting the Department's personal property management program.

§109–1.103 FPMR temporary regulations.

§109–1.103–50 DOE–PMR temporary policies and bulletins

(a) Subject to applicable procedural requirements in 41 U.S.C. 418b, 42 U.S.C 7191 and 5 U.S.C 553, Personal Property Letters are authorized for publication of temporary policies that should not be codified in the Code of Federal Regulations (CFR).

(b) DOE–PMR Bulletins are used to disseminate information concerning personal property management matters not affecting policy or to clarify instructions in actions required by the FPMR or DOE–PMR.

§109–1.104 Publication and distribution of FPMR.

§109–1.104–50 Publication and distribution of DOE–PMR.

The DOE–PMR will be published in the **Federal Register** and will appear in the CFR as Chapter 109 of Title 41, Public Contracts and Property Management. Loose leaf publications of the DOE–PMR will be distributed to DOE offices.

§109–1.106 Applicability of FPMR.

§109–1.106–50 Applicability of FPMR and DOE–PMR.

(a) The FPMR and DOE–PMR apply to all direct operations.

(b) The DOE–PMR does not apply to facilities and activities conducted under Executive Order 12344 and Pub. L. 98–525.

(c) Unless otherwise provided in the appropriate part or subpart, the FPMR and DOE–PMR apply to designated contractors.

(d) The Procurement Executive or head of a contracting activity may designate contractors other than designated contractors to which the FPMR and DOE–PMR apply.

(e) The FPMR and DOE–PMR shall be used by contracting officers in the administration of applicable contracts, and in the review, approval, or appraisal of such contractor operations.

(f) Regulations for the management of Government property in the possession of other DOE contractors are contained in the Federal Acquisition Regulation (FAR), 48 CFR part 45, and in the DOE Acquisition Regulation (DEAR), 48 CFR part 945.

(g) Regulations for the management of personal property held by financial assistance recipients are contained in the DOE Financial Assistance Rules (10 CFR part 600) and DOE Order 534.1, Accounting.

§ 109–1.107 Agency consultation regarding FPMR.

§ 109–1.107–50 Consultation regarding DOE–PMR.

The DOE–PMR shall be fully coordinated with all Departmental elements substantively concerned with the subject matter.

§ 109–1.108 Agency implementation and supplementation of FPMR.

(a) The DOE–PMR includes basic and significant Departmental personal property management policies and standards which implement, supplement, or deviate from the FPMR.

In the absence of any DOE–PMR issuance, the basic FPMR material shall govern.

(b) The DOE–PMR shall be consistent with the FPMR and shall not duplicate or paraphrase the FPMR material.

(c) Implementing procedures, instructions, and guides which are necessary to clarify or to implement the DOE–PMR may be issued by Headquarters or field organizations, provided that the implementing procedures, instructions and guides:

(1) Are consistent with the policies and procedures contained in this regulation;

(2) To the extent practicable, follow the format, arrangement, and numbering system of this regulation; and

(3) Contain no material which duplicates, paraphrases, or is inconsistent with the contents of this regulation.

§ 109–1.110–50 Deviation procedures.

(a) Each request for deviation shall contain the following:

(1) A statement of the deviation desired, including identification of the specific paragraph number(s) of the DOE–PMR;

(2) The reason why the deviation is considered necessary or would be in the best interest of the Government;

(3) If applicable, the name of the contractor and identification of the contractor affected;

(4) A statement as to whether the deviation has been requested previously and, if so, circumstances of the previous request;

(5) A description of the intended effect of the deviation;

(6) A statement of the period of time for which the deviation is needed; and

(7) Any pertinent background information which will contribute to a full understanding of the desired deviation.

(b)(1) Requests for deviations from applicable portions of the FPMR and DOE–PMR (except aviation related portions) shall be forwarded with supporting documentation by the Organizational Property Management Officer (OPMO) to the Departmental Property Management Officer (DPMO).

(2) Requests for deviations from aviation related portions of the FPMR and DOE–PMR concerning aviation operations shall be forwarded by the OPMO or on-site DOE Aviation Management Officer with supporting documentation to the DOE Senior Aviation Management Official.

(c) The Deputy Assistant Secretary for Procurement and Assistance Management is authorized to grant deviations to the DOE–PMR.

(d) Requests for deviations from the FPMR will be coordinated with GSA by the DPMO.

Subpart 109–1.50—Personal Property Management Program

§ 109–1.5000 Scope of subpart.

This subpart supplements the FPMR, states DOE personal property management policy and program objectives, and prescribes authorities and responsibilities for the conduct of an efficient personal property management program in DOE.

§ 109–1.5001 Policy.

It is DOE policy that a program for the management of personal property shall be established and maintained to meet program needs efficiently and in accordance with applicable Federal statutes and regulations.

§ 109–1.5002 Personal property management program objectives.

The objectives of the DOE personal property management program are to provide:

(a) A system for efficiently managing personal property in the custody or possession of DOE organizations and designated contractors; and

(b) Uniform principles, policies, and standards for efficient management of personal property that are sufficiently broad in scope and flexible in nature to facilitate adaptation to local needs and various kinds of operations.

Subpart 109–1.51—Personal Property Management Standards and Practices

§ 109–1.5100 Scope of subpart.

This subpart provides guidance on DOE standards and practices to be applied in the management of personal property. The standards and practices that apply to equipment shall be based on the unit acquisition cost threshold specified in the definition of equipment contained in section § 109–1.100–51 of this part. No other acquisition cost threshold shall apply.

§ 109–1.5101 Official use of personal property.

Personal property shall be used only in the performance of official work of the United States Government, except:

(a) In emergencies threatening loss of life or property as authorized by law;

(b) As otherwise authorized by law and approved by the Director, Office of Administrative Services; heads of field organizations for their respective organizations; or a contracting officer for contractor-held property.

§ 109–1.5102 Maximum use of personal property.

Personal property management practices shall assure the best possible use of personal property. Supplies and equipment shall be generally limited to those items essential for carrying out the programs of DOE efficiently.

§ 109–1.5103 Loan of personal property.

(a) Personal property which is not excess and would otherwise be out of service for temporary periods may be loaned to other DOE offices and contractors, other Federal agencies, and to others for official purposes. The loan request shall be in writing, stating the purpose of the loan and period of time required. The loan shall be executed on DOE Form 4420.2, Personal Property Loan Agreement or computer generated equivalent when approved in writing by the OPMO or on-site DOE property administrator. When approved, a memorandum transmitting the loan agreement shall be prepared identifying the loan period, delivery time, method of payment and transportation, and point of delivery and return, to ensure proper control and protect DOE's interest. The loan period shall not exceed one year, but may be renewed in one year increments. Second renewals of loan agreements shall be reviewed and justified at a level of management at least two levels above that of the individual making the determination to loan the property. Third renewals shall be approved by the head of the field organization or designee.

(b) Requests for loans to foreign Governments and other foreign organizations shall be submitted to the Deputy Assistant Secretary for International Energy Policy, Trade and Investment for approval, with a copy to the cognizant Headquarters program office.

§ 109–1.5104 Borrowing of personal property.

(a) DOE organizations and designated contractors are encouraged to borrow personal property within DOE to further DOE programs. Property classified as Equipment Held For Future Projects (EHFFP) or as In Standby should be reviewed by those receiving availability inquiries for short-term use (one year or less). Borrowing of Government personal property from other Federal agencies is also encouraged when required for short periods of time. Such transactions shall be covered by written agreements which include all terms of the transaction.

(b) In determining whether it is practical and economical to borrow personal property, consideration shall

be given to suitability, condition, value, extent and nature of use, extent of availability, portability, cost of transportation, and other similar factors.

(c) Adequate records and controls shall be established and maintained for borrowed property to ensure its proper control and prompt return to the lender.

§ 109–1.5105 Identification marking of personal property.

(a) Personal property shall be marked ''U.S. Government property'' (if marking space is limited, property may be marked ''U.S. DOE'') subject to the criteria below. The markings shall be securely affixed to the property, legible, and conspicuous. Examples of appropriate marking media are bar code labels, decals, and stamping.

(1) Equipment and sensitive items shall be marked ''U.S. Government property'' and numbered for control purposes.

(2) Administratively controlled property and other personal property susceptible to unauthorized personal use should be marked ''U.S. Government property'' and numbered for control purposes.

(b) Personal property which by its nature cannot be marked, such as stores items, metal stock, etc., is exempted from this requirement.

(c) To the extent practicable and economical, markings shall be removed prior to disposal outside of DOE, or, if removal is impractical, additional permanent markings must be added to indicate such disposal.

§ 109–1.5106 Segregation of personal property.

Ordinarily, contractor-owned personal property shall be segregated from Government personal property. Commingling of Government and contractor-owned personal property may be allowed only when:

(a) The segregation of the property would materially hinder the progress of the work (i.e., segregation is not feasible for reasons such as small quantities, lack of space, or increased costs); and

(b) Control procedures are adequate (i.e., the Government property is specifically marked or otherwise identified as Government property).

§ 109–1.5107 Physical protection of personal property.

Controls such as property pass systems, memorandum records, regular or intermittent gate checks, and/or perimeter fencing shall be established as appropriate to prevent loss, theft, or unauthorized removal of property from the premises on which such personal property is located.

§ 109–1.5108 Personal property records requirements.

The contractor's property control records shall provide the following basic information for every accountable item of Government personal property in the contractor's possession and any other data elements required by specific contract provisions:

(a) Contract number or equivalent code designation.

(b) Asset type.

(c) Description of item (name, serial number, national stock number (if available)).

(d) Property control number (Government ownership identity).

(e) Unit acquisition cost (including delivery and installation cost, when appropriate, and unit of measure).

(f) Acquisition document reference and date.

(g) Manufacturer's name, model and serial number.

(h) Quantity received, fabricated, issued or on hand.

(i) Location (physical area)

(j) Custodian name and organization code.

(k) Use status (active, storage, excess, etc.)

(l) High risk designation.

(m) Disposition document reference and date.

§ 109–1.5108–1 Equipment.

An individual property record will be developed and maintained for each item of equipment.

§ 109–1.5108–2 Sensitive items.

Individual item records will be maintained for each sensitive item. Minimum dollar value thresholds for controlling sensitive items, if used, will be determined by the OPMO for each DOE organization in consultation with appropriate management officials. This threshold may be applied organization-wide or by individual contractors or location. Identification of types of property meeting the DOE-PMR definition of sensitive property should be the primary determinant of sensitive category, with dollar thresholds, if any, considered as a guideline only. Sensitive items which are also equipment will be controlled as both sensitive items and equipment.

§ 109–1.5108–3 Stores inventories.

Perpetual inventory records are to be maintained for stores inventory items.

§ 109–1.5108–4 Precious metals.

Perpetual inventory records are to be maintained for precious metals.

§ 109–1.5108–5 Administratively controlled items.

No formal property management records are required to be maintained for this category of personal property, which includes such items as those controlled for calibration or maintenance purposes, contaminated property, tool crib items, and equipment pool items. Various control records can be employed to help safeguard this property against waste and abuse, including purchase vs. use information, tool crib check-outs, loss and theft reports, calibration records, disposal records, and other similar records. Control techniques would include physical security, custodial responsibility, identification/marking, or other locally established control techniques.

§ 109–1.5109 Control of sensitive items.

(a) A list of types of personal property considered to be sensitive shall be developed and maintained by each DOE activity/site, taking into consideration value, costs of administration, need for control, and other factors that management determines should apply.

(b) Items of equipment which are also designated as sensitive items will be controlled as sensitive items and as equipment.

(c) Written procedures shall be established for control of sensitive items and shall address:

(1) Approval of purchase requisitions or issue documents at an appropriate supervisory level;

(2) Establishment of controls in the central receiving and warehousing department, such as extraordinary physical protection, handling, and maintenance of a current listing of sensitive items;

(3) Establishment and maintenance of appropriate records;

(4) Requirement for tagging and identification;

(5) Use of memorandum receipts or custody documents at time of assignment or change in custody;

(6) Establishment of custodial responsibilities describing:

(i) Need for extraordinary physical protection;

(ii) Requirement for efficient physical and administrative control of sensitive items assigned for general use within an organizational unit as appropriate to the type of property and the circumstances;

(iii) Requirement for prompt reporting and investigation of loss, damage or destruction; and

(iv) Requirement for promptly reporting changes in custody.

(7) Requirement for periodic physical inventories (see § 109–1.5110 of this part).

(8) Requirement for an employee transfer or termination check-out procedure and examination and adjustment of records;

(9) Reminder of prohibition of use for other than official purposes and penalties for misuse;

(10) A clear statement of the extent of responsibility for financial accountability depending upon contractor policy; and

(11) Other procedures which have demonstrated efficient physical and administrative control over sensitive items.

§ 109–1.5110 Physical inventories of personal property.

(a) Physical inventories of those categories of personal property as specified in paragraph (f) of this section shall be conducted at all DOE and designated contractor locations.

(b) Physical inventories shall be performed by the use of personnel other than custodians of the property. Where staffing restraints or other considerations apply, the inventory may be performed by the custodian with verification by a second party.

(c) Detailed procedures for the taking of physical inventories shall be developed for each DOE office and designated contractor. The OPMO shall review and approve the DOE office and contractor procedures.

(d) The conduct of a physical inventory will be observed, or follow-on audits made, by independent representatives, e.g., finance, audit, or property personnel, to the extent deemed necessary to assure that approved procedures are being followed and results are accurate. These observations or audits shall be documented and the documentation retained in the inventory record file.

(e) Procedures that are limited to a check-off of a listing of recorded property without actual verification of the location and existence of such property do not meet the requirements of a physical inventory.

(f) The frequency of physical inventories of personal property shall be as follows:

(1) Equipment—biennial.

(2) Sensitive items—annual (see paragraph 109–1.5110(l) of this section).

(3) Stores inventories—annual.

(4) Precious metals—annual.

(5) Administratively controlled items—There is no formal Department requirement for the performance of physical inventories of this property. However, OPMOs should determine such requirements based on management needs.

(g) Physical inventories shall be performed at intervals more frequently than required when experience at any given location or with any given item or items indicates that this action is necessary for effective property accounting, utilization, or control.

(h) Physical inventories of equipment may be conducted by the ''inventory by exception'' method. The system and procedures for taking physical inventories by this method must be fully documented and approved in writing by the OPMO.

(i) The results of physical inventories shall be reconciled with the property records, and with applicable financial control accounts.

(j) The results of physical inventories shall be reported to the OPMO within 30 days after the reconciliation required above.

(k) Physical inventories of equipment and stores inventories may be conducted using statistical sampling methods in lieu of the normal wall-to-wall method. The sampling methods employed must be statistically valid and approved in writing by the OPMO. If use of the statistical methods of physical inventory does not produce acceptable results, the wall-to-wall method shall be used to complete the inventories.

(l) Physical inventories of sensitive items (excluding arms, ammunition, and military property) having an acquisition cost of $2,000 or less may also be conducted using statistical sampling methods. However if statistical sampling methods are used, a wall-to-wall inventory is required no less frequently than every three years and at contract completion (unless there is a follow-on contract with the same contractor).

§ 109–1.5111 Retirement of property.

When Government property is worn out, lost, stolen, destroyed, abandoned, or damaged beyond economical repair, it shall be listed on a retirement work order. A full explanation shall be supported by an investigation, if necessary, as to the date and circumstances surrounding the wear, loss, theft, destruction, abandonment, or damage. The retirement work order shall be signed by the responsible official initiating the report and reviewed and approved by an official at least one supervisory level above the official initiating the report.

§ 109–1.5112 Loss, damage, or destruction of personal property in possession of DOE direct operations.

DOE offices shall establish procedures to provide for the reporting, documentation, and investigation of instances of loss, damage, or destruction of personal property including:

(a) Notification to appropriate DOE organizations and law enforcement offices;

(b) Determination of cause or origin;

(c) Liability and responsibility for repair or replacement; and

(d) Actions taken to prevent further loss, damage, or destruction, and to prevent repetition of similar incidents.

§ 109–1.5113 Loss, damage, or destruction of personal property in possession of designated contractors.

(a) Designated contractors shall report any loss, damage, or destruction of personal property in its possession or control, including property in the possession or control of subcontractors, to the property administrator as soon as it becomes known.

(b) When physical inventories, consumption analyses, or other actions disclose consumption of property considered unreasonable by the property administrator; or loss, damage, or destruction of personal property not previously reported by the contractor, the property administrator shall require the contractor to investigate the incidents and submit written reports.

(c) Reports of physical inventory results and identified discrepancies shall be submitted to the property administrator within 90 days of completion of physical inventories. An acceptable percentage of shrinkage for stores inventories shall be determined by the property administrator on a location-by-location basis, based on type and cost of materials, historical data, and other site-specific factors. This determination shall be in writing and be supported by appropriate documentation.

(d) The contractor's report referenced above shall contain factual data as to the circumstances surrounding the loss, damage, destruction or excessive consumption, including:

(1) The contractor's name and contract number;

(2) A description of the property;

(3) Cost of the property, and cost of repairs in instances of damage (in event actual cost is not known, use reasonable estimate);

(4) The date, time (if pertinent), and cause or origin; and

(5) Actions taken by the contractor to prevent further loss, damage, destruction, or unreasonable consumption, and to prevent repetition of similar incidents.

(e) The property administrator shall ensure that the corrective actions taken by the contractor under paragraph (d)(5) of this section satisfactorily address system weaknesses.

(f) The contracting officer shall make a determination of contractor liability

with a copy of the determination furnished to the contractor and the property administrator. Costs may be assessed against a contractor for physical inventory discrepancies or other instances of loss of Government property within the terms of the contract. Credit should only be applied if specific items reported as lost can be uniquely identified. General physical inventory write-ons are not to be used as a credit.

(g) If part of a designated contractor's personal property management system is found to be unsatisfactory, the property administrator shall increase surveillance of that part to prevent, to the extent possible, any loss, damage, destruction or unreasonable consumption of personal property. The property administrator shall give special attention to reasonably assuring that any loss, damage, destruction or unreasonable consumption occurring during a period when a contractor's personal property management system is not approved is identified before approval or reinstatement of approval.

§ 109–1.5114 Use of non-Government-owned property.

Non-Government-owned personal property shall not be installed in, affixed to, or otherwise made a part of any Government-owned personal property when such action will adversely affect the operation or condition of the Government property.

§ 109–1.5148 Personal property management reports.

Reports to be submitted to the DPMO are listed in Table 1:

TABLE 1

Report title	Due at DOE headquarters	References	Form No.
(1) Report of Exempted Motor Vehicles	On request	FPMR 101–38.204–4, DOE–PMR 109–38.204–4	Letter.
(2) Agency Report of Motor Vehicle Data	Oct. 31	FPMR 101–38.903, DOE–PMR 109–38.903	SF 82.
(3) Excess Personal Property Furnished to Non-Federal Recipients.	Nov. 15	FPMR 101–43.4701(c), DOE–PMR 109–43.4701(c).	Letter.
(4) Negotiated Sales	Nov. 15	FPMR 101–45.4702, DOE–PMR 109–45.4702	Letter.

Subpart 109–1.52—Personal Property Management Program for Designated Contractors

§ 109–1.5200 Scope of subpart.

This subpart prescribes policy and responsibilities for the establishment, maintenance, and appraisal of designated contractors' programs for the management of personal property.

§ 109–1.5201 Policy.

(a) Designated contractors shall establish, implement, and maintain a system that provides for an efficient personal property management program. The system shall be consistent with the terms of the contract; prescribed policies, procedures, regulations, statutes, and instructions; and directions from the contracting officer.

(b) Designated contractors' personal property management systems shall not be considered acceptable until reviewed and approved in writing by the cognizant DOE contracting office in accordance with § 109–1.5205 of this subpart.

(c) Designated contractors shall maintain their personal property management systems in writing. Revisions to the systems shall be approved in writing by the cognizant DOE contracting office in accordance with § 109–1.5205 of this subpart.

(d) Designated contractors shall include their personal property management system in their management surveillance or internal review program in order to identify weaknesses and functions requiring corrective action.

(e) Designated contractors are responsible and accountable for all Government personal property in the possession of subcontractors, and shall include appropriate provisions in their subcontracts and property management systems to assure that subcontractors establish and maintain efficient systems for the management of Government personal property in their possession in accordance with § 109–1.5204 of this subpart.

§ 109–1.5202 Establishment of a personal property holdings baseline.

(a) If the contractor is a new designated contractor, the contractor may accept the previous contractor's personal property records as a baseline or may perform a complete physical inventory of all personal property. This physical inventory is to be performed within the time period specified by the contracting officer or the contract, but no later than one year after the execution date of the contract. If the physical inventory is not accomplished within the allotted time frame, the previous contractor's records will be considered as the baseline.

(b) If any required physical inventories have not been accomplished within the time periods prescribed in § 109–1.5110(f) of this part, the new contractor shall either perform such physical inventories within 120 days of contract renegotiation, or accept the existing property records as the baseline.

§ 109–1.5203 Management of subcontractor-held personal property.

Designated contractors shall require those subcontractors provided Government-owned personal property to establish and maintain a system for the management of such property. As a minimum, a subcontractor's personal property management system shall provide for the following:

(a) Adequate records.

(b) Controls over acquisitions.

(c) Identification as Government-owned personal property.

(d) Physical inventories.

(e) Proper care, maintenance, and protection.

(f) Controls over personal property requiring special handling (i.e., nuclear-related, proliferation-sensitive, hazardous, or contaminated property).

(g) Reporting, redistribution, and disposal of excess and surplus personal property.

(h) Accounting for personal property that is lost, damaged, destroyed, stolen, abandoned, or worn out.

(i) Periodic reports, including physical inventory results and total acquisition cost of Government property.

(j) An internal surveillance program, including periodic reviews, to ensure that personal property is being managed in accordance with established procedures.

§ 109–1.5204 Review and approval of a designated contractor's personal property management system.

(a) An initial review of a designated contractor's personal property management system shall be performed

by the property administrator within one year after the execution date of the contract, except for contract extensions or renewals or when an existing contractor has been awarded a follow-on contract. The purpose of the review is to determine whether the contractor's system provides adequate protection, maintenance, utilization, and disposition of personal property, and reasonable assurance that the Department's personal property is safeguarded against waste, loss, unauthorized use, or misappropriation, in accordance with applicable statutes, regulations, contract terms and conditions, programmatic needs, and good business practices. If circumstances preclude completion of the initial review within the ''within one year'' initial review requirement, the property administrator shall request a deviation from the requirement in accordance with the provisions of § 109–1.110–50 of this part.

(b) If a designated contractor is the successor to a previous designated contractor and the contract award was based in part on the contractor's proposal to overhaul the existing personal property management system(s), the ''within one year'' initial review requirement may be extended based on:

(1) The scope of the overhaul; and

(2) An analysis of the cost to implement the overhaul within a year versus a proposed extended period.

(c) When an existing contract has been extended or renewed, or the designated contractor has been awarded a follow-on contract, an initial review of the contractor's personal property management system is not required. In such cases, the established appraisal schedule will continue to be followed as prescribed in paragraph (d) of this section.

(d) At a minimum of every three years after the date of approval of a designated contractor's property management system, the OPMO shall make an appraisal of the personal property management operation of the contractor. The purpose of the appraisal is to determine if the contractor is managing personal property in accordance with its previously approved system and procedures, and to establish whether such procedures are efficient. The appraisal may be based on a formal comprehensive appraisal or a series of formal appraisals of the functional segments of the contractor's operation.

(e) A designated contractor's property management system shall be approved, conditionally approved, or disapproved in writing by the head of the field organization with advice of the contracting officer, property administrator, OPMO, legal counsel, DPMO, and appropriate program officials. Approval authority may be redelegated to the contracting officer or contracting officer's designee. Conditional approval and disapproval authority cannot be redelegated. When a system is conditionally approved or disapproved, the property administrator or contracting officer shall advise the contractor, in writing, of deficiencies that need to be corrected, and a time schedule established for completion of corrective actions.

(f) Appropriate follow-up will be made by the property administrator to ensure that corrective actions have been initiated and completed.

(g) When a determination has been made by the property administrator that all major system deficiencies identified in the review or appraisal have been corrected, the head of the field organization shall withdraw the conditional approval or disapproval, and approve the system with the concurrence of the OPMO. The approval shall be in writing and addressed to appropriate contractor management.

(h) The property administrator shall maintain a copy of all designated contractor personal property management system appraisals and approvals in such manner as to be readily available to investigative and external review teams.

§ 109–1.5205 Personal property management system changes.

Any proposed significant change to a designated contractor's approved personal property management system shall be reviewed by the property administrator at the earliest possible time. Such changes should then be approved in writing on an interim basis, or disapproved in writing, by the property administrator as appropriate.

Subpart 109–1.53—Management of High Risk Personal Property

§ 109–1.5300 Scope of subpart.

(a) This subpart provides identification, accounting, control, and disposal policy guidance for the following categories of high risk personal property: especially designed or prepared property, export controlled property, nuclear weapon components or weapon-like components, and proliferation sensitive property. The guidance is intended to ensure that the disposition of these categories of high risk personal property does not adversely affect the national security or nuclear nonproliferation objectives of the United States.

(b) The other categories of high risk personal property are controlled by other life cycle management programs and procedures monitored by other Departmental elements.

§ 109–1.5301 Applicability.

This subpart is applicable to all DOE organizations which purchase, manage or dispose of Government personal property, or contract for the management of Government facilities, programs, or related services, which may directly or indirectly require the purchase, management, or disposal of Government-owned personal property. Using the high risk personal property control requirements in this subpart as guidance, heads of field organizations or OPMOs shall assure that designated contractors and financial assistance recipients are responsible for developing a cost effective high risk property management system, covering all operational responsibilities enumerated in this subpart.

§ 109–1.5302 Policies.

(a) It is the responsibility of DOE organizations and designated contractors to manage and control Government-owned high risk personal property in an efficient manner. High risk personal property will be managed throughout its life cycle so as to protect public and DOE personnel safety and to advance the national security and the nuclear nonproliferation objectives of the U.S. Government.

(b) The disposition of high risk property is subject to special considerations. Items of high risk property may present significant risks to the national security and nuclear nonproliferation objectives of the Government which must be evaluated. Organizations will identify high risk property and control its disposition to eliminate or mitigate such risks. In no case shall property be transferred or disposed unless it receives a high risk assessment and is handled accordingly.

§ 109–1.5303 Procedures.

(a) Identification, marking and control. To ensure the appropriate treatment of property at its disposal and to prevent inadvertent, uncontrolled release of high risk property, property should be assessed and evaluated as high risk property as early in its life cycle as practical.

(1) Newly acquired high risk personal property shall be identified and tracked during the acquisition process and marked upon receipt.

(2) All personal property shall be reviewed for high risk identification, marking, and database entry during

regularly scheduled physical inventories, unless access to the property is difficult or impractical because the property is a component of a larger assembly, a complex operating system, or an older facility. The review of this property will be completed, prior to disposition, when replacing components or when operating systems and facilities are decommissioned and dismantling.

(3) High risk personal property which by its nature cannot be marked, such as stores items and metal stock, is exempt from this requirement. However, personal property management programs should contain documentation on the characterization of this property as high risk.

(b) Disposition of high risk property.

(1) Prior to disposition, all personal property, materials or data will be assessed to determine:

(i) Whether it should be characterized as high risk and

(ii) What actions are necessary to ensure compliance with applicable national security or nonproliferation controls.

(2) The DOE or designated contractor property management organization may not process high risk personal property into a reutilization/disposal program without performing the reviews prescribed by the local high risk property management system. The reviews must be properly documented, and all appropriate certifications and clearances received, in accordance with the approved site or facility personal property management program.

(3) The disposition (including demilitarization of items on the Munitions List) and handling of high risk personal property are subject to applicable provisions of Subchapter H of the FPMR, subchapter H of this chapter, and the DOE Guidelines on Export Control and Nonproliferation.

(4) Documentation. All applicable documentation, including records concerning the property's categorization as high risk, shall be included as part of the property transfer. The documentation shall be included with all transfers within, or external to, DOE.

(5) Unless an alternative disposition option appears to be in the best interest of the Government, surplus Trigger List components, equipment, and materials and nuclear weapon components shall either be sold for scrap after being rendered useless for their originally intended purpose or destroyed, with the destruction verified and documented. Requests for approval of an alternative disposition may be made through the cognizant Assistant Secretary to the Director of the Office of Nonproliferation and National Security.

(6) Export Restriction Notice. The following Export Restriction Notice, or approved equivalent notice, shall be included in all transfers, sales, or other offerings:

Export Restriction Notice

The use, disposition, export and reexport of this property are subject to all applicable U.S. laws and regulations, including the Atomic Energy Act of 1954, as amended; the Arms Export Control Act (22 U.S.C. 2751 *et seq.*); the Export Administration Act of 1979 (560 U.S.C. Append 2401 *et seq.*); Assistance to Foreign Atomic Energy Activities (10 CFR part 810); Export and Import of Nuclear Equipment and Material (10 CFR part 110); International Traffic in Arms Regulations (22 CFR parts 120 *et seq.*); Export Administration Regulations (15 CFR part 730 *et seq.*); Foreign Assets Control Regulations (31 CFR parts 500 *et seq.*); and the Espionage Act (37 U.S.C. 791 *et seq.*) which among other things, prohibit:

a. The making of false statements and concealment of any material information regarding the use or disposition, export or reexport of the property; and

b. Any use or disposition, export or reexport of the property which is not authorized in accordance with the provisions of this agreement.

§ 109–1.5304 Deviations.

(a) Life cycle control determinations. When the HFO approves a contractor program containing controls, other than life cycle control consistent with this subpart, the decision shall be justified in writing and a copy sent to the Deputy Assistant Secretary for Procurement and Assistance Management. A HFO's decision not to provide life-cycle control should take into account:

(1) The nature and extent of high risk property typically purchased or otherwise brought to a DOE or designated contractor facility or site;

(2) The projected stability of DOE and designated contractor operations; and

(3) The degree of confidence in the property control measures available at disposition.

(b) Certain transfers, sales, or other offerings of high risk personal property may require special conditions or specific restrictions as determined necessary by the property custodian or cognizant program office.

(c) Requests for deviations from the requirements of this subpart may be made through the cognizant HFO to the Deputy Assistant Secretary for Procurement and Assistance Management.

PART 109–6—MISCELLANEOUS REGULATIONS

Subpart 109–6.4—Official Use of Government Passenger Carriers Between Residence and Place of Employment

Sec.
109–6.400 Scope and applicability.
109–6.400–50 Instructions to DOE passenger carrier operators.
109–6.402 Policy.
109–6.450 Statutory provisions.

Authority: Sec. 205(c), 63 Stat. 390 (40 U.S.C. 486(c); 31 U.S.C. 1344(e)(1).

Subpart 109–6.4—Official Use of Government Passenger Carriers Between Residence and Place of Employment

§ 109–6.400 Scope and applicability.

(a) With the exception of § 109–6.400–50, the provisions of this subpart and 41 CFR 101–6.4 do not apply to designated contractors. Official use provisions applicable to these contractors are contained in § 109–38.3 of this chapter.

(b) When an employee on temporary duty is authorized to travel by Government motor vehicle, and in the interest of the Government, is scheduled to depart before the beginning of regular working hours, or if there will be a significant savings in time, a Government motor vehicle may be issued at the close of the preceding working day. Similarly, when scheduled to return after the close of working hours, the motor vehicle may be returned the next regular working day. This use of a Government motor vehicle is not regarded as prohibited by 31 U.S.C. 1344 (25 Comp. Gen. 844).

§ 109–6.400–50 Instructions to DOE passenger carrier operators.

DOE offices shall ensure that DOE employees operating Government motor vehicles are informed concerning:

(a) The statutory requirement that Government motor vehicles shall be used only for official purposes;

(b) Personal responsibility for safe driving and operation of Government motor vehicles, and for compliance with Federal, state, and local laws and regulations, and all accident reporting requirements;

(c) The need to possess a valid state, District of Columbia, or commonwealth operator's license or permit for the type of vehicle to be operated and some form of agency identification;

(d) The penalties for unauthorized use of Government motor vehicles;

(e) The prohibition against providing transportation to strangers or hitchhikers;

(f) The proper care, control and use of Government credit cards;

(g) Mandatory use of seat belts by each employee operating or riding in a Government motor vehicle;

(h) The prohibition against the use of tobacco products in GSA-Interagency Fleet Management System (IFMS) motor vehicles;

(i) Any other duties and responsibilities assigned to operators with regard to the use, care, operation, and maintenance of Government motor vehicles;

(j) The potential income tax liability when they use a Government motor vehicle for transportation between residence and place of employment; and

(k) Protection for DOE employees under the Federal Tort Claims Act when acting within the scope of their employment.

§ 109–6.402 Policy.

(a) It is DOE policy that Government motor vehicles operated by DOE employees are to be used only for official Government purposes or for incidental purposes as prescribed in this section. Official use does not include use of vehicles between residence and place of employment unless provided for in accordance with paragraph (b) of this section. The Director, Office of Administrative Services and heads of field organizations for their respective organizations shall establish appropriate controls to ensure that the use of a Government motor vehicle for transportation between an employee's residence and place of employment is in accordance with the provisions of 41 CFR 101–6.4 and this subpart.

(b) The use of Government motor vehicles between an employee's residence and place of employment (home-to-work) is limited to:

(1) The Secretary of Energy; and

(2) Those persons engaged in field work as determined by the Secretary of Energy in accordance with 41 CFR 101–6.403(b).

(c) It is DOE policy that space in a Government motor vehicle used for home-to-work transportation may be shared with a spouse, relative, or friend in accordance with the restrictions contained in 41 CFR 101–6.402(f).

(d) A Departmental official who is authorized home-to-work transportation is permitted to use Government-owned or leased motor vehicles for non-official purposes incidental to the official use of the vehicle, provided that the incremental cost (e.g., driver time and mileage) of such use is *de minimis* or such costs are outweighed by other considerations, such as the efficient use of the official's time.

§ 109–6.450 Statutory provisions.

(a) In accordance with 31 U.S.C. 1349(b), any officer or employee of the Government who willfully uses or authorizes the use of a Government passenger motor vehicle for other than official purposes shall be suspended from duty by the head of the department concerned, without compensation, for not less than one month and shall be suspended for a longer period or summarily removed from office if circumstances warrant.

(b) Under the provisions of 18 U.S.C. 641, any person who knowingly misuses any Government property (including Government motor vehicles) may be subject to criminal prosecution and, upon conviction, to fines or imprisonment.

SUBCHAPTER E—SUPPLY AND PROCUREMENT

PART 109–25—GENERAL

Subpart 109–25.1—General Policies

Sec.
109–25.100 Use of Government personal property and nonpersonal services.
109–25.103 Promotional materials, trading stamps, or bonus goods.
109–25.103–1 General.
109–25.104 Acquisition of office furniture and office machines.
109–25–109 Laboratory and research equipment.
109–25–109–1 Identification of idle equipment.
109–25–109–2 Equipment pools.

Subpart 109–25.3—Use Standards

109–25.302 Office furniture, furnishings, and equipment.
109–25.350 Furnishing of Government clothing and individual equipment.

Subpart 109–25.4—Replacement Standards

109–25.401 General.
109–25.401–50 Replacement approvals.

Authority: Sec. 644, Pub. L. 95–91, 91 Stat. 599 (42 U.S.C. 7254).

Subpart 109–25.1—General Policies

§ 109–25.100 Use of Government personal property and nonpersonal services.

The Director, Office of Administrative Services and heads of field organizations shall ensure to restrict the use of Government property/services to officially designated activities.

§ 109–25.103 Promotional materials, trading stamps, or bonus goods.

§ 109–25.103–1 General.

DOE offices and designated contractors shall establish procedures for the receipt and disposition of promotional materials, trading stamps, or bonus goods consistent with the provisions of 41 CFR 101–25.103.

§ 109–25.104 Acquisition of office furniture and office machines.

DOE offices and designated contractors shall make the determination as to whether requirements can be met through the utilization of DOE owned furniture and office machines.

§ 109–25.109 Laboratory and research equipment.

The provisions of 41 CFR 101–25.109 and this section apply to laboratory and research equipment in the possession of DOE field organizations and designated contractors.

§ 109–25.109–1 Identification of idle equipment.

(a) At a minimum, management walk-throughs shall be conducted to provide for coverage of all operating and storage areas at least once every two years to identify idle and unneeded personal property. The submission to the head of the laboratory or facility of a report of walk-throughs conducted shall be at the discretion of the laboratory or facility management. However, DOE field organizations may require designated contractors to submit a report of walk-throughs to the OPMOs. Equipment identified as idle and unneeded shall be redeployed, reassigned, placed in equipment pools, or excessed, as appropriate. All walk-throughs shall be documented to include, at a minimum, the identity of the participants, areas covered, findings, recommendations, corrective action plans, and results achieved. The documentation shall be made available for review by appropriate contractor management, DOE offices, and audit teams.

(b) Members of management walk-through inspection teams should be coordinated with the property administrator and the OPMO.

(c) OPMOs shall periodically review walk-through procedures and practices of DOE offices and designated contractors to determine their effectiveness.

§ 109–25.109–2 Equipment pools.

(a)–(c) [Reserved]

(d) The report on the use and effectiveness of equipment pools shall be submitted to the head of the DOE office at the discretion of that official. However, documentation of evaluations of pools shall be maintained and made available for review by appropriate contractor management, DOE offices, and audit teams.

(e) Heads of field organizations shall require periodic independent reviews of equipment pool operations.

Subpart 109–25.3—Use Standards

§ 109–25.302 Office furniture, furnishings, and equipment.

The Director, Office of Administrative Services, heads of field organizations, and designated contractors shall establish criteria for the use of office furniture, furnishings, and equipment.

§ 109–25.350 Furnishing of Government clothing and individual equipment.

(a) Government-owned clothing and individual equipment may be furnished to employees:

(1) For protection from physical injury or occupational disease; or

(2) When employees could not reasonably be required to furnish them as a part of the personal clothing and equipment needed to perform the regular duties of the position to which they are assigned or for which services were engaged.

(b) This section does not apply to uniforms or uniform allowances under the Federal Employees Uniform Allowance Act of 1954, as amended.

Subpart 109–25.4—Replacement Standards

§ 109–25.401 General.

§ 109–25.401–50 Replacement approvals.

The Director, Office of Administrative Services and heads of field organizations are authorized to approve replacement of office machines, furniture, and materials handling equipment.

PART 109–26—PROCUREMENT SOURCES AND PROGRAM

Subpart 109–26.2—Federal Requisitioning System

Sec.

109–26.203 Activity address codes.

Subpart 109–26.5—GSA Procurement Programs

109–26.501 Purchase of new motor vehicles.
109–26.501–1 General.
109–26.501–4 Submission of orders.
109–26.501–50 Authority and allocations for the acquisition of passenger motor vehicles.
109–26.501–51 Used vehicles.
109–26.501–52 Justification for purchase.
109–26.501–53 Acquisitions by transfer.
109–26.501–54 Communications equipment.

Authority: Sec. 644, Pub. L. 95–91, 91 Stat. 599 (42 U.S.C. 7254).

Subpart 109–26.2—Federal Requisitioning System

§ 109–26.203 Activity address codes.

(a) DOE field organizations designated by OCMA are responsible for processing routine activity code related transactions for specified groupings of field organizations. Each field organization in a specified grouping will forward their activity address code related transactions to the grouping's lead organization for processing. Each lead organization shall designate a point of contact who will:

(1) Verify the need, purpose, and validity of each transaction; and

(2) Be the specified grouping's authorized point of contact for dealing directly with GSA.

(b) OCMA is responsible for:

(1) All policy matters related to the issuance and control of activity address codes within DOE; and

(2) Furnishing the identity of the lead field organization points of contact to GSA.

Subpart 109–26.5—GSA Procurement Programs

§ 109–26.501 Purchase of new motor vehicles.

§ 109–26.501–1 General.

(a) [Reserved].

(b) Motor vehicles may be purchased directly rather than through GSA when a waiver has been granted by GSA. The waiver request should be submitted directly to GSA and a copy forwarded to the DPMO. However, where GSA refuses to grant a waiver and it is believed that procurement through GSA would adversely affect or otherwise impair a program, the DPMO may, upon written request of the head of the DOE field organization, grant the authority for direct purchase of general purpose motor vehicles. Upon receipt of written authorization from the DPMO, the head of the field organization may authorize direct purchase of special purpose vehicles. The purchase price for passenger motor vehicles shall not exceed any statutory limitation in effect at the time the purchase is made.

§ 109–26.501–4 Submission of orders.

An original and two copies of requisitions for passenger motor vehicles and law enforcement motor vehicles shall be forwarded with justification for purchase to the DPMO, for approval and submission to GSA. Requisitions for all other types of motor vehicles shall be submitted directly to GSA.

§ 109–26.501–50 Authority and allocations for the acquisition of passenger motor vehicles.

(a) Authority for the acquisition of passenger motor vehicles is contained in the Department's annual appropriation act.

(b) DOE offices shall include in their budget submissions the number of passenger motor vehicles to be purchased during the fiscal year. The procurements will be identified as either additions to the motor vehicle fleet or replacement vehicles. A copy of the motor vehicle portion of the submission should be submitted to the DPMO.

(c) To assure that DOE does not exceed the number of passenger motor vehicles authorized to be acquired in any fiscal year, the Deputy Assistant Secretary for Procurement and Assistance Management or designee shall allocate to and inform the field organizations in writing of the number of passenger motor vehicles which may be acquired under each appropriation. These allocations and the statutory cost limitations imposed on these motor vehicles shall not be exceeded.

(d) The motor vehicle fleet manager shall provide written certification to the OPMO that disposition action has been taken on replaced passenger motor vehicles. Such certification shall be provided no later than 30 days after the disposition of the vehicle. Replaced passenger motor vehicles shall not be retained in service after receipt of the replacement vehicle.

§ 109–26.501–51 Used vehicles.

Normally, DOE does not purchase or authorize contractors to purchase used motor vehicles. However, the Director, Office of Administrative Services and heads of field organizations may authorize the purchase of used motor vehicles where justified by special circumstances, e.g., when new motor vehicles are in short supply; motor vehicles are to be used for experimental or test purposes; or motor vehicles are acquired from exchange/sale. The statutory passenger motor vehicle allocation requirements shall apply to any purchase of used passenger motor vehicles except in the case of motor vehicles to be used exclusively for experimental or test purposes.

§ 109–26.501–52 Justification for purchase.

(a) Requisitions for additions to the passenger motor vehicle fleet must contain adequate written justification of need. Such justifications shall be prepared by the motor vehicle fleet manager and approved by the OPMO, and should include:

(1) A statement as to why the present fleet size is inadequate to support requirements;

(2) Efforts made to achieve maximum use of on-hand motor vehicles through

pool arrangements, shuttle buses, and taxicabs;

(3) The programmatic requirement for the motor vehicles and the impact on the program/project if the requisitions are not filled;

(4) The established DOE or local utilization objectives used to evaluate the utilization of passenger motor vehicles and whether the objectives have been approved by the OPMO; and

(5) The date of the last utilization review and the number of passenger motor vehicles which did not meet the established utilization objectives and the anticipated mileage to be achieved by the new motor vehicles.

(b) Requisitions for replacement passenger motor vehicles should include a statement that utilization, pools, shuttle buses and taxicabs have been considered by the motor vehicle fleet manager and the OPMO. Specific information on the identification, age and mileage of the motor vehicles should be included. When a passenger motor vehicle being replaced does not meet Federal replacement standards, a description of the condition of the vehicle should also be provided.

§ 109–26.501–53 Acquisitions by transfer.

(a) The acquisition of passenger motor vehicles by transfer from another Government agency or DOE organization shall be within the allocations prescribed in § 109–26.501–50 of this subpart.

(b) Passenger motor vehicles may be acquired by transfer provided they are:

(1) Considered as an addition to the motor vehicle fleet of the receiving office;

(2) Acquired for replacement purposes and an equal number of replaced motor vehicles are reported for disposal within 30 days;

(3) For temporary emergency needs exceeding three months and approved in writing by the DPMO; or

(4) For temporary emergency needs of three months or less in lieu of commercial rentals. These transfers will not count toward the allocation.

§ 109–26.501–54 Communications equipment.

Communications equipment considered to be essential for the accomplishment of security and safety responsibilities is exempt from the requirements of 41 CFR 101–26.501. The Fleet Manager shall approve the installation of communications equipment in motor vehicles.

PART 109–27—INVENTORY MANAGEMENT

Sec.

109–27.000–50 Definitions.

Subpart 109–27.1—Stock Replenishment

109–27.102 Economic order quantity principle.
109–27.102–1 Applicability.
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Subpart 109–27.2—Management of Shelf-Life Materials

109–27.202 Applicability.

Subpart 109–27.3—Maximizing Use of Inventories

109–27.302 Applicability.

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Subpart 109–27.50—Inventory Management Policies, Procedures, and Guidelines

109–27.5001 Objectives.
109–27.5002 Stores inventory turnover ratio.
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109–27.5004 Sub-stores.
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109–27.5007 Physical inventories.
109–27.5007–1 Procedures.
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109–27.5008 Control of drug substances and potable alcohol.
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109–27.5010 Containers returnable to vendors.
109–27.5011 Identification marking of metals and metal products.
109–27.5011–1 General.
109–27.5011–2 Exception.

Subpart 109–27.51—Management of Precious Metals

109–27.5100 Scope of subpart.
109–27.5101 Definition.
109–27.5102 Policy.
109–27.5103 Precious Metals Control Officer.
109–27.5104 Practices and procedures.
109–27.5104–1 Acquisitions.
109–27.5104–2 Physical protection and storage.
109–27.5104–3 Perpetual inventory records.
109–27.5104–4 Physical inventories.
109–27.5104–5 Control and issue of stock.
109–27.5104–6 Control by using organization.
109–27.5105 Management reviews and audits.
109–27.5106 Precious metals pool.
109–27.5106–1 Purpose.
109–27.5106–2 Withdrawals.
109–27.5106–3 Returns.
109–27.5106–4 Withdrawals/returns forecasts.
109–27.5106–5 Assistance.
109–27.5107 Recovery of silver from used hypo solution and scrap film.

Authority: Sec. 644, Pub. L. 95–91, 91 Stat. 599 (42 U.S.C. 7254).

PART 109–27—INVENTORY MANAGEMENT

§ 109–27.000–50 Definitions.

As used in this part the following definitions apply:

Inventories mean stocks of stores, construction, supplies, and parts used in support of DOE programs.

Inventory management means the efficient use of methods, procedures and techniques for recording, analyzing, and adjusting inventories in accordance with established policy. The following related functions are included:

(1) Providing adequate protection against misuse, theft, and misappropriation.

(2) Providing accurate analyses of quantities to determine requirements so that only minimal obsolescence losses will be encountered, while ensuring adequate inventory levels to meet program schedules.

(3) Providing adequate and accessible storage facilities and services based upon analyses of program requirements so that a minimum and economical amount of time is required to service the program.

Stock record means a device for collecting, storing, and providing historical data on recurring transactions for each line item of inventory.

Sub-store means a geographically removed part of the main store's operation conducted as a subordinate element of it and subject to the same management policies and inventory controls.

Systems contracting means a materials management purchasing technique for the purchase of general, common-use, and repetitive supply items in a particular product family. An example is office supplies, purchased from a commercial vendor, that are needed for immediate use instead of purchasing in bulk for future use, storing in warehouses, and issuing to customers by use of a requisitioning system. Systems contracting and just-in-time contracting are synonymous.

Subpart 109–27.1—Stock Replenishment

§ 109–27.102 Economic order quantity principle.

§ 109–27.102–1 Applicability.

Replenishment of inventories of stock items having recurring demands will be by use of the economic order quantity (EOQ) principle. However, when considered more suitable, designated contractors may use other generally accepted approaches to EOQ.

§ 109–27.102–50 Systems contracting.

Systems contracting may be used instead of or along with EOQ once a determination is made that such a system is feasible and cost effective, and that adequate controls are in place to ensure proper use.

§ 109–27.102–51 Policy.

Systems contracting for supply operations is a proven cost-effective approach to meeting procurement needs and may be implemented in DOE offices and designated contractors wherever significant cost savings to the Government will result. Impacts on local suppliers and small and disadvantaged business concerns should be considered in the overall business strategy.

§ 109–27.102–52 Implementation.

(a) DOE OPMOs shall establish required property management controls relative to the implementation of systems contracting.

(b) DOE offices and designated contractors operating a materials management function who have not performed an initial feasibility study for the implementation of systems contracting shall perform such a study for selected commodity groups. The study may be accomplished over a period of time, until all commodity groups have been considered. The study should address functional requirements, activity levels of commodity groups and individual items, and potential impacts on local suppliers and small and disadvantaged businesses. An industrial relations analysis on existing labor relations and union contracts may also be necessary.

(c) As required in the DEAR, DOE offices and designated contractors are required to consider the use of GSA supply sources when economically advantageous to the Government. These sources must be considered in the conduct of the feasibility study.

(d) DOE contracting offices shall evaluate the initial cost benefit studies performed by contractors to verify the savings and other benefits of systems contracting, and shall approve its implementation. In those instances where a cost benefit study has previously been performed, the DOE contracting office shall ensure that those studies have been evaluated and the approval to proceed with systems contracting has been provided to the contractor in writing.

(e) DOE offices shall periodically reevaluate systems contracting operations conducted by their office and designated contractors to ensure that required property management controls are being followed.

Subpart 109–27.2—Management of Shelf-Life Materials

§ 109–27.202 Applicability.

When considered more suitable, designated contractors may use other generally accepted approaches to the management of shelf-life materials.

Subpart 109–27.3—Maximizing Use of Inventories

§ 109–27.302 Applicability.

When considered more suitable, designated contractors may use other generally accepted approaches to maximizing use of inventories.

Subpart 109–27.4—Elimination of Items From Inventory § 109–27.402 Applicability

When considered more suitable, designated contractors may use other generally accepted approaches to determine which items should be eliminated from inventory.

Subpart 109–27.50—Inventory Management Policies, Procedures, and Guidelines

§ 109–27.5001 Objectives.

Necessary inventories shall be established and maintained at reasonable levels, consistent with DOE requirements, applicable laws and regulations, and the following objectives:

(a) The maintenance of adequate stock levels through accurate analyses of quantities to determine requirements and stock replenishments so that only minimal obsolescence losses will be encountered while ensuring adequate inventory levels to meet program schedules;

(b) The protection of materials against misuse, theft, and misappropriation;

(c) The maintenance of an efficient operation; and

(d) The standardization of inventories to the greatest extent practicable.

§ 109–27.5002 Stores inventory turnover ratio.

Comparison of investment in stores inventories to annual issues shall be made to assure that minimum inventories are maintained for the support of programs. This comparison may be expressed either as a turnover ratio (dollar value of issues divided by dollar value of inventory) or in the average number of month's supply on hand. Turnover or number of month's supply is calculated only on current-use inventory. Performance goals, i.e., a six months investment or a turnover ratio of 2.0, shall be established for each stores using activity. It is recognized, however, that extenuating operating circumstances may preclude the achievement of such objectives.

§ 109–27.5003 Stock control.

(a) Stock control shall be maintained on the basis of stock record accounts of inventories on hand, on order, received, issued, and disposed of, and supported by proper documents in evidence of these transactions. Stock record accounts shall be available for review and inspection.

(b) Personal property under stock control for greater than 90 days shall be maintained in stock record accounts.

§ 109–27.5004 Sub-stores.

(a) Sub-stores shall be established when necessary to expedite delivery of materials and supplies to the users, serve emergencies, provide economy in transportation, reduce shop and site stocks, and enable stores personnel to provide assistance in obtaining materials and supplies as needed.

(b) Items stored for issue in the sub-stores shall be treated as inventory items for control and reporting purposes. Stock records shall be integrated with central stock records so that the total amount on hand of any item at all locations is known.

§ 109–27.5005 Shop, bench, cupboard or site stock.

Shop, bench, cupboard or site stocks are an accumulation of small inventories of fast-moving materials at the point of use. Normally, these inventories are expensed at time of issue from controlled stores. However, when stocks of such inventories are not consumed or do not turn over in a reasonable period of time, which normally should not exceed 90 days, these items should be subject to the required physical controls and recorded in the proper inventory account.

§ 109–27.5006 Stores catalogs.

A stores catalog for customer use that lists items available from stock shall be established for each stores operation. Exceptions to this requirement are authorized where establishment of a catalog is impracticable or uneconomical because of small total value or number of items involved, or temporary need for the facility.

§ 109–27.5007 Physical inventories.

§ 109–27.5007–1 Procedures.

The following procedures shall be established for taking physical inventory of stocks subjected to quantity

controls as well as those under financial control:

(a) Completion of a physical inventory not less frequently than every twelve months.

(b) Reconciliation of inventory quantities with the stock records.

(c) Preparation of a report of the physical inventory results.

§ 109–27.5007–2 Inventory adjustments.

Discrepancies between physical inventories and stock records shall be adjusted and the supporting adjustment records shall be reviewed and approved by a responsible official at least one supervisory level above the supervisor in charge of the warehouse or storage facility. Items on an adjustment report which are not within reasonable tolerances for particular items shall be thoroughly investigated before report approval. Adjustment reports shall be retained on file for inspection and review.

§ 109–27.5008 Control of drug substances and potable alcohol.

Effective procedures and practices shall provide for the management and physical security of controlled substances and potable alcohol from receipt to the point of use. Such procedures shall, as a minimum, provide for safeguarding, proper use, adequate records, and compliance with applicable laws and regulations. Controls and records of potable alcohol shall be maintained on quantities of one quart and above.

§ 109–27.5009 Control of hypodermic needles and syringes.

Effective procedures and practices shall provide for the management and physical security of hypodermic needles and syringes to prevent illegal use. Controls shall include supervisory approval for issue, storage in locked repositories, and the rendering of the items useless prior to disposal.

§ 109–27.5010 Containers returnable to vendors.

Containers furnished by vendors shall be administratively and physically controlled before and after issuance. Prompt action shall be taken to return such containers to vendors for credit after they have served their intended use.

§ 109–27.5011 Identification marking of metals and metal products.

§ 109–27.5011–1 General.

Metals and metal products shall be identified and marked in accordance with applicable Federal standards. This requirement applies to direct charges as well as to items procured for store, shop or floor stock, or for use on construction projects. Additional markings not covered by Federal standards should be used to show special properties, corrosion data, or test data as required. The preferred process is for the marking to be done in the manufacturing process, but it may be applied by suppliers when circumstances warrant.

§ 109–27.5011–2 Exception.

Exceptions to the marking requirement may be made when:

(a) It is necessary to procure small quantities from suppliers not equipped to do the marking;

(b) It would delay delivery of emergency orders; or

(c) Procurement is from DOE or other Federal agency excess.

Subpart 109–27.51—Management of Precious Metals

§ 109–27.5100 Scope of subpart.

This subpart provides policies, principles, and guidelines to be used in the management of purchased and recovered precious metals used to meet research, development, production, and other programmatic needs.

§ 109–27.5101 Definition.

Precious metals means uncommon and highly valuable metals characterized by their superior resistance to corrosion and oxidation. Included are gold, silver, and the platinum group metals—platinum, palladium, rhodium, iridium, ruthenium and osmium.

§ 109–27.5102 Policy.

DOE organizations and contractors shall establish effective procedures and practices for the administrative and physical control of precious metals in accordance with the provisions of this subpart.

§ 109–27.5103 Precious Metals Control Officer.

Each DOE organization and contractor holding precious metals shall designate in writing a Precious Metals Control Officer. This individual shall be the organization's primary point of contact concerning precious metals control and management, and shall be responsible for the following:

(a) Assuring that the organization's precious metals activities are conducted in accordance with Departmental requirements.

(b) Maintaining of an accurate list of the names of precious metals custodians.

(c) Providing instructions and training to precious metals custodians and/or users as necessary to assure compliance with regulatory responsibilities.

(d) Insuring that physical inventories are performed as required by, and in accordance with, these regulations.

(e) Witnessing physical inventories.

(f) Performing periodic unannounced inspections of a custodian's precious metals inventory and records.

(g) Conducting an annual review of precious metals holdings to determine excess quantities.

(h) Preparing and submitting to the Business Center for Precious Metals Sales and Recovery the annual forecast of anticipated withdrawals from, and returns to, the DOE precious metals pool.

(i) Conducting a program for the recovery of silver from used hypo solution and scrap film in accordance with 41 CFR 101–45.10 and § 109–45.10 of this chapter.

(j) Preparing and submitting of the annual report on recovery of silver from used hypo solution and scrap film as required by § 109–45.1002–2 of this chapter.

(k) Developing and issuing current authorization lists of persons authorized by management to withdraw precious metals from stockrooms.

§ 109–27.5104 Practices and procedures.

§ 109–27.5104–1 Acquisitions.

DOE organizations and contractors shall contact the Business Center for Precious Metals Sales and Recovery to determine the availability of precious metals prior to acquisition on the open market.

§ 109–27.5104–2 Physical protection and storage.

Precious metals shall be afforded exceptional physical protection from time of receipt until disposition. Precious metals not in use shall be stored in a noncombustible combination locked repository with access limited to the designated custodian and an alternate. When there is a change in custodian or alternate having access to the repository, the combination shall be changed immediately.

§ 109–27.5104–3 Perpetual inventory records.

Perpetual inventory records shall be maintained as specified in Chapter V of DOE Order 534.1, Accounting.

§ 109–27.5104–4 Physical inventories.

(a) Physical inventories shall be conducted annually by custodians, and witnessed by the Precious Metals Control Officer or his designee.

(b) Precious metals not in use shall be inspected and weighed on calibrated

scales. The inventoried weight and form shall be recorded on the physical inventory sheets by metal content and percent of metal. Metals in use in an experimental process or contaminated metals, neither of which can be weighed, shall be listed on the physical inventory sheet as observed and/or not observed as applicable.

(c) Any obviously idle or damaged metals should be recorded during the physical inventory. Justification for further retention of idle metals shall be required from the custodian and approved one level above the custodian, or disposed of in accordance with established procedures.

(d) The dollar value of physical inventory results shall be reconciled with the financial records. All adjustments shall be supported by appropriate adjustment reports, and approved by a responsible official.

§ 109–27.5104–5 Control and issue of stock.

Precious metals in stock are metals held in a central location and later issued to individuals when authorized requests are received. The following control procedures shall be followed for such metals:

(a) Stocks shall be held to a minimum consistent with efficient support to programs.

(b) The name and organization number of each individual authorized to withdraw precious metals, and the type and kind of metals, shall be prominently maintained in the stockroom. This authorization shall be issued by the Precious Metals Control Officer or his designee and updated annually. Issues of metals will be made only to authorized persons.

(c) Accurate records of all receipts, issues, returns, and disposals shall be maintained in the stockroom.

(d) Receipts for metal issues and returns to stock shall be provided to users. Such receipts, signed by the authorized requesting individual and the stockroom clerk, shall list the requesting organization, type and form of metal, quantity, and date of transaction.

§ 109–27.5104–6 Control by using organization.

(a) After receipt, the using organization shall provide necessary controls for precious metals. Materials shall be stored in a non-combustible, combination locked repository at all times except for quantities at the actual point of use.

(b) Each using organization shall maintain a log showing the individual user, type and form of metal, and the time, place, and purpose of each use. The log shall be kept in a locked repository when not in use.

(c) The logs and secured locked storage facilities are subject to review by the Precious Metals Control Officer and other audit or review staffs as required.

(d) Cognizant Departmental managers are responsible for assuring that minimum quantities of precious metals are withdrawn consistent with work requirements and that quantities excess to requirements are promptly returned to the stockroom.

(e) Employee termination and transfer procedures shall include clearance for precious metals possession.

§ 109–27.5105 Management reviews and audits.

(a) Unannounced inspections of custodian's precious metals inventory and records may be conducted between scheduled inventories.

(b) DOE organizations and contractors holding precious metals shall annually review the quantity of precious metals on hand to determine if the quantity is in excess of program requirements. Precious metals which are not needed for current or foreseeable requirements shall be promptly reported to the DOE precious metals pool. The results of this annual review are to be documented and entered into the precious metals inventory records.

§ 109–27.5106 Precious metals pool.

§ 109–27.5106–1 Purpose.

The purpose of the precious metals pool is to recycle, at a minimum cost to pool participants, DOE-owned precious metals within the Department and to dispose of DOE-owned precious metals that are excess to DOE needs. However, if the pool is unable to accept any potential precious metal return, the using activity will dispose of the precious metals through the disposal process specified in subchapter H of the FPMR and this regulation.

§ 109–27.5106–2 Withdrawals.

Pure metals, parts, fabricated products, catalysts, or solutions, are generally available and the Business Center for Precious Metals Sales and Recovery can provide assistance in supplying such requirements. Metals can be shipped to any facility to fulfill fabrication requirements.

§ 109–27.5106–3 Returns.

All excess precious metals must be returned to the precious metals pool except as noted in § 109–27.5106–1 of this subpart. The pool is entirely dependent on metal returns; therefore, metal inventories should be maintained on an as-needed basis, and any excess metals must be returned to the pool for recycling. With the exception of silver, this includes precious metals in any form, including shapes, scrap, or radioactively contaminated. Only high grade nonradioactively contaminated silver should be included. Procedures have been developed by the precious metals pool contractor for metal returns, including storing, packaging, shipping, and security.

§ 109–27.5106–4 Withdrawals/returns forecasts.

The Business Center for Precious Metals Sales and Recovery will request annually from each DOE field organization its long-range forecast of anticipated withdrawals from the pool and returns to the pool.

§ 109–27.5106–5 Assistance.

The Business Center for Precious Metals Sales and Recovery operates the precious metals pool. DOE organizations and contractors may obtain specific information regarding the operation of the precious metals pool (operating contractor's name, address, and telephone number; processing charges; etc.) by contacting the Chief, Property Management Branch, Oak Ridge Operations Office.

§ 109–27.5107 Recovery of silver from used hypo solution and scrap film.

The requirements for the recovery of silver from used hypo solution and scrap film are contained in § 109–45.1003 of this chapter.

PART 109–28—STORAGE AND DISTRIBUTION

Sec.
109–28.000–50 Policy.
109–28.000–51 Storage guidelines.

Subpart 109–28.3—Customer Supply Centers

109–28.306 Customer supply center (CSC) accounts and related controls.
109–28.306–3 Limitations on use.
109–28.306–5 Safeguards.

Subpart 109–28.50—Management of Equipment Held for Future Projects

109–28.5000 Scope of subpart.
109–28.5001 Definition.
109–28.5002 Objective.
109–28.5003 Records.
109–28.5004 Justification and review procedures.
109–28.5005 EHFFP program review.
109–28.5006 Utilization.

Subpart 109–28.51—Management of Spare Equipment

109–28.5100 Scope of subpart.
109–28.5101 Definition.
109–28.5102 Exclusions.
109–28.5103 Management policy.

Authority: 42 U.S.C. 7254.

§ 109–28.000–50 Policy.

DOE offices and designated contractors shall:

(a) Establish storage space and warehousing services for the receipt, storage, issue, safekeeping and protection of Government property;

(b) Provide storage space and warehousing services in the most efficient manner consistent with program requirements; and

(c) Operate warehouses in accordance with generally accepted industrial management practices and principles.

§ 109–28.000–51 Storage guidelines.

(a) Indoor storage areas should be arranged to obtain proper stock protection and maximum utilization of space within established floor load capacities.

(b) Storage yards for items not requiring covered protection shall be protected by locked fenced enclosures to the extent necessary to protect the Government's interest.

(c) Storage areas shall be prominently posted to clearly indicate that the property stored therein is U.S. Government property, with entrance to such areas restricted to authorized personnel only.

(d) Property in storage must be protected from fire, theft, deterioration, or destruction. In addition certain items require protection from dampness, heat, freezing, or extreme temperature changes. Other items must be stored away from light and odors, protected from vermin infestation, or stored separately because of their hazardous characteristics.

(e) Hazardous or contaminated property, including property having a history of use in an area where exposure to contaminated property may have occurred, shall not be commingled with non-contaminated property, but stored separately in accordance with instructions from the environmental, safety, and health officials.

(f) Unless inappropriate or impractical until declared excess, nuclear-related and proliferation-sensitive property shall be identified as such by use of a certification tag signed by an authorized program official (designated in writing with signature cards on file in the personal property management office). Such personal property shall not be commingled with other personal property, but stored separately in accordance with instructions from the cognizant program office.

Subpart 109–28.3—Customer Supply Centers

§ 109–28.306 Customer supply center (CSC) accounts and related controls.

§ 109–28.306–3 Limitations on use.

DOE offices and designated contractors shall establish internal controls for ensuring that the use of CSC accounts is limited to the purchase of items for official Government use.

§ 109–28.306–5 Safeguards.

DOE offices and designated contractors shall establish internal controls for ensuring that the customer access codes assigned for their accounts are properly protected.

Subpart 109–28.50—Management of Equipment Held for Future Projects

§ 109–28.5000 Scope of subpart.

This subpart provides policies, principles, and guidelines to be used in the management of equipment held for future projects (EHFFP).

§ 109–28.5001 Definition.

Equipment held for future projects means items being retained, based on approved justifications, for a known future use, or for a potential use in planned projects.

§ 109–28.5002 Objective.

The objective of the EHFFP program is to enable DOE offices and contractors to retain equipment not in use in current programs but which has a known or potential use in future DOE programs, while providing visibility on the types and amounts of equipment so retained through review and reporting procedures. It is intended that equipment be retained where economically justifiable for retention, considering cost of maintenance, replacement, obsolescence, storage, deterioration, or future availability; made available for use by others; and promptly excessed when no longer needed.

§ 109–28.5003 Records.

Records of all EHFFP shall be maintained by the holding organization, including a listing of items with original date of classification as EHFFP; initial justifications for retaining EHFFP; rejustifications for retention; and documentation of reviews made by higher levels of management.

§ 109–28.5004 Justification and review procedures.

Procedures shall provide for the following:

(a) The original decision to classify and retain equipment as EHFFP shall be justified in writing, providing sufficient detail to support the need for retention of the equipment. This justification will cite the project for which retained, the potential use to be made of the equipment, or other reasons for retention.

(b) The validity of the initial classification EHFFP shall be reviewed by management at a level above that of the individual making the initial determination.

(c) Retention of equipment as EHFFP must be rejustified annually to ensure that original justifications remain valid. The rejustifications will contain sufficient detail to support retention.

(d) When equipment is retained as EHFFP for longer than one year, the annual rejustification shall be reviewed at a level of management at least two levels above that of the individual making the determination to retain the EHFFP. Equipment retained as EHFFP for longer than three years should be approved by the head of the DOE field organization.

§ 109–28.5005 EHFFP program review.

OPMOs or on-site DOE property administrators shall conduct periodic reviews to ensure that the EHFFP program is being conducted in accordance with established procedures and this subpart. Included in the review will be proper determinations of property as EHFFP, the validity of justifications for retaining EHFFP, and the inclusion of EHFFP in management walk-throughs as prescribed in § 109–25.109–1 of this chapter.

§ 109–28.5006 Utilization.

It is DOE policy that, where practicable and consistent with program needs, EHFFP be considered as a source of supply to avoid or postpone acquisition.

Subpart 109–28.51—Management of Spare Equipment

§ 109–28.5100 Scope of subpart.

This subpart provides policy guidance to be used in the management of spare equipment.

§ 109–28.5101 Definition.

Spare equipment means items held as replacement spares for equipment in current use in DOE programs.

§ 109–28.5102 Exclusions.

The following categories of equipment will not be considered spare equipment:

(a) Equipment installed for emergency backup, e.g., an emergency power facility, or an electric motor or a pump, any of which is in place and electrically connected.

(b) Equipment items properly classified as stores inventory.

§ 109–28.5103 Management policy.

(a) Procedures shall require the maintenance of records for spare equipment, cross-referenced to the location in the facility and the engineering drawing number. The purpose for retention shall be in the records.

(b) Reviews shall be made based on technical evaluations of the continued need for the equipment. The reviews should be held biennially. In addition, individual item levels shall be reviewed when spare equipment is installed for use, the basic equipment is removed from service, or the process supported is changed.

(c) Procedures shall be established to provide for the identification and reporting of unneeded spare equipment as excess property.

PART 109–30—FEDERAL CATALOG SYSTEM

Sec.

109–30.001–50 Applicability.

Authority: 42 U.S.C. 7254.

§ 109–30.001–50 Applicability.

The provisions of 41 CFR part 101–30 do not apply to designated contractors.

SUBCHAPTER G—AVIATION, TRANSPORTATION, AND MOTOR VEHICLES

PART 109–37—[RESERVED]

PART 109–38—MOTOR EQUIPMENT MANAGEMENT

Sec.

109–38.000 Scope of part.
109–38.000–50 Policy.

Subpart 109–38.0—Definition of Terms

109–38.001 Definitions.

Subpart 109–38.1—Fuel Efficient Motor Vehicles

109–38.104 Fuel efficient passenger automobiles and light trucks.
109–38.105 Agency purchase and lease of motor vehicles.
109–38.106 Leasing of motor vehicles.

Subpart 109–38.2—Registration, Identification, and Exemptions

109–38.200 General requirements.
109–38.201 Registration and inspection.
109–38.201–50 Registration in foreign countries.
109–38.202 Tags.
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109–38.202–3 Records.
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109–38.203 Agency identification.
109–38.204 Exemptions.
109–38.204–1 Unlimited exemptions.
109–38.204–3 Requests for exempted motor vehicles in the District of Columbia.
109–38.204–4 Report of exempted motor vehicles.
109–38.204–50 Records of exempted motor vehicles.

Subpart 109–38.3—Official Use of Government Motor Vehicles

109–38.300 Scope.
109–38.301 Authorized use.
109–38.301–1 Contractors' use.
109–38.301–1.50 Authorization for transportation between residence and place of employment.
109–38.301–1.51 Emergency use.
109–38.301–1.52 Maintenance of records.
109–38.301–1.53 Responsibilities of motor vehicle operators.

Subpart 109–38.4—Use and Replacement Standards

109–38.401 Use standards.
109–38.401–2 Use of self-service pumps.
109–38.402 Replacement standards.
109–38.402–50 Prompt disposal of replaced motor vehicles.
109–38.403 Responsibility for damages.
109–38.403–1 Policy.
109–38.403–2 Responsibility.
109–38.403–3 Exceptions.

Subpart 109–38.5—Scheduled Maintenance

109–38.502 Guidelines.
109–38.502–50 DOE guidelines.

Subpart 109–38.7—Transfer, Storage, and Disposal of Motor Vehicles

109–38.701 Transfer of title for Government-owned motor vehicles.
109–38.701–50 Authority to sign Standard Form 97, The United States Government Certificate to Obtain Title to a Vehicle.

Subpart 109–38.8—Standard Form 149, U.S. Government National Credit Card

109–38.800 General.
109–38.801 Obtaining SF 149, U.S. Government National Credit Card.

Subpart 109–38.9—Federal Motor Vehicle Fleet Report

109–38.902 Records.
109–38.903 Reporting of data.
109–38.903–50 Reporting DOE motor vehicle data.

Subpart 109–38.51—Utilization of Motor Equipment

109–38.5100 Scope of subpart.
109–38.5101 Policy.
109–38.5102 Utilization controls and practices.
109–38.5103 Motor vehicle utilization standards.
109–38.5104 Other motor equipment utilization standards.
109–38.5105 Motor vehicle local use objectives.
109–38.5106 Application of motor vehicle use goals.

Subpart 109–38.52—Watercraft

109–38.5200 Scope of subpart.
109–38.5201 Definition.
109–38.5202 Watercraft operations.
109–38.5203 Watercraft identification and numbers.

Authority: 42 U.S.C. 7254.

§ 109–38.000 § Scope of part.

109–38.000–50 Policy.

Motor vehicles and watercraft shall be acquired, maintained, and utilized in support of DOE programs in the minimum quantity required and in the most efficient manner consistent with program requirements, safety considerations, fuel economy, and applicable laws and regulations.

Subpart 109–38.0—Definition of Terms

§ 109–38.001 Definitions.

Experimental vehicles means vehicles acquired solely for testing and research purposes or otherwise designated for experimental purposes. Such vehicles are to be the object of testing and research as differentiated from those used as vehicular support to testing and research. Experimental vehicles are not to be used for passenger carrying services unless required as part of a testing/evaluation program, and they are not subject to statutory price limitations or authorization limitations.

Motor equipment means any item of equipment which is self-propelled or drawn by mechanical power, including motor vehicles, motorcycles and scooters, construction and maintenance equipment, materials handling equipment, and watercraft.

Motor vehicle means any equipment, self-propelled or drawn by mechanical power, designed to be operated principally on highways in the transportation of property or passengers.

Special purpose vehicles means vehicles which are used or designed for specialized functions. These vehicles include, but are not limited to: Trailers, semi-trailers, other types of trailing equipment; trucks with permanently mounted equipment (such as aerial ladders); construction and other types of equipment set forth in Federal Supply Classification Group (FSCG) 38; material handling equipment set forth in FSCG 39; and fire fighting equipment set forth in FSCG 42. For reporting purposes within DOE, motorcycles, motor scooters and all terrain vehicles will also be reported as special purpose vehicles.

Subpart 109–38.1—Fuel Efficient Motor Vehicles

§ 109–38.104 Fuel efficient passenger automobiles and light trucks.

(a) [Reserved]

(b) All requests to purchase passenger automobiles larger than class IA, IB, or

II (small, subcompact, or compact) shall be forwarded with justification to the DPMO for approval and certification for compliance with the fuel economy objectives listed in 41 CFR 101–38.104.

(b)(1)–(b)(4) [Reserved]

(5) Requests to exempt certain light trucks from the fleet average fuel economy calculations shall be forwarded with justification to the DPMO for approval.

§ 109–38.105 Agency purchase and lease of motor vehicles.

(a) DOE activities shall submit a copy of all motor vehicle leases and purchases not procured through the GSA Automotive Commodity Center to GSA.

(b)–(c) [Reserved]

(d) DOE activities desiring to renew a commercial lease shall submit the requirement in writing to the DPMO for approval prior to submission by field offices to GSA.

(e) DOE activities shall submit a copy of all lease agreements to GSA.

Subpart 109–38.2—Registration, Identification, and Exemptions

§ 109–38.200 General requirements.

(a)–(e) [Reserved]

(f) Requests made pursuant to 41 CFR 101–38.200(f) for exemption from the requirement for displaying U.S. Government tags and other identification on motor vehicles, except for those vehicles exempted in accordance with § 109–38.204–1 of this subpart, shall be submitted through normal administrative channels to the DPMO for approval. Each approved exemption must be renewed annually, and the DPMO shall be notified promptly when the need for a previously authorized exemption no longer exists. Copies of certifications and cancellation notices required to be furnished to GSA pursuant to 41 CFR 101–38.200(f) will be transmitted to GSA by the DPMO.

(g) Requests for temporary removal and substitution of Government markings shall be submitted with justification to the DPMO for review and approval. Copies of the determination and justification required to be furnished to GSA will be transmitted to GSA by the DPMO.

§ 109–38.201 Registration and inspection.

§ 109–38.201–50 Registration in foreign countries.

Motor vehicles used in foreign countries are to be registered and carry license tags in accordance with the existing motor vehicle regulations of the country concerned. The person responsible for a motor vehicle in a foreign country shall make inquiry at the United States Embassy, Legation, or Consulate concerning the regulations that apply to registration, licensing, and operation of motor vehicles and shall be guided accordingly.

§ 109–38.202 Tags.

§ 109–38.202–2 Outside the District of Columbia.

The Director of Administrative Services and heads of field organizations shall make the determination concerning the use of tags outside the District of Columbia.

§ 109–38.202–3 Records.

(a) The DPMO assigns ''blocks'' of U.S. Government license tag numbers to DOE organizations and maintains a current record of such assignments. Additional ''blocks'' will be assigned upon request.

(b) Each DOE direct operation and designated contractor shall maintain a current record of individual assignments of license tags to the motor vehicles under their jurisdiction.

§ 109–38.202–50 Security.

Unissued license tags shall be stored in a locked drawer, cabinet, or storage area with restricted access to prevent possible fraud or misuse. Tags which are damaged or unusable will be safeguarded until destroyed.

§ 109–38.203 Agency identification.

Standard DOE motor vehicle window decals (DOE Form 1530.1), and door decals to be used only on vehicles without windows (DOE Form 1530.2), are available from the Office of Administrative Services, Logistics Management Division, Headquarters, using DOE Form 4250.2, ''Requisition for Supplies, Equipment or Services'', or as directed by that office.

§ 109–38.204 Exemptions.

§ 109–38.204–1 Unlimited exemptions.

(a)–(f) [Reserved]

(g) The Director, Office of Administrative Services and heads of field organizations for their respective organizations may approve exemptions from the requirement for the display of U.S. Government license tags and other official identification for motor vehicles used for security or investigative purposes.

§ 109–38.204–3 Requests for exempted motor vehicles in the District of Columbia.

The Director, Office of Administrative Services is designated to approve requests for regular District of Columbia license tags, and furnishes annually the name and specimen signature of each representative authorized to approve such requests to the District of Columbia Department of Transportation.

§ 109–38.204–4 Report of exempted motor vehicles.

DOE offices shall provide upon request the necessary information to the DPMO to enable that office to submit a report of exempted vehicles.

§ 109–38.204–50 Records of exempted motor vehicles.

The Director, Office of Administrative Services and heads of field organizations shall maintain records of motor vehicles exempted from displaying U.S. Government license tags and other identification. The records shall contain a listing, by type, of each exempted motor vehicle operated during the previous fiscal year, giving information for each motor vehicle on hand at the beginning of the year and each of those newly authorized during the year, including:

(a) Name and title of authorizing official (including any authorization by Headquarters and GSA);

(b) Date exemption was authorized;

(c) Justification for exemption and limitation on use of the exempted motor vehicle;

(d) Date of discontinuance for any exemption discontinued during the year; and

(e) Probable duration of exemptions for motor vehicles continuing in use.

Subpart 109–38.3—Official Use of Government Motor Vehicles

§ 109–38.300 Scope.

This subpart prescribes the requirements governing the use of Government motor vehicles for official purposes by designated contractors.

§ 109–38.301 Authorized use.

The use of Government motor vehicles by officers and employees of the Government is governed by the provisions of 41 CFR 101–6.4 and section 109–6.4 of this chapter.

§ 109–38.301–1 Contractors' use.

Heads of field organizations shall ensure that provisions of the FPMR concerning contractor use of Government motor vehicles are complied with by their designated contractors.

§ 109–38.301–1.50 Authorization for transportation between residence and place of employment.

(a) Government motor vehicles shall not be used for transportation between residence and place of employment by

designated contractor personnel except under extenuating circumstances specifically provided for under the terms of the contract. Examples of circumstances eligible for prior approval of home-to-work motor vehicle use which would be appropriate to include in the terms of the contract include: use related to safety or security operations, use related to compelling operational considerations, and use determined as cost effective to DOE's interest. Under no circumstances shall the comfort and convenience, or managerial position, of contractor employees be considered justification for authorization of use.

(b) The use of Government motor vehicles for transportation between residence and place of employment (including sporadic use) by designated contractor personnel shall be approved in writing by the Head of the field organization or designee, with delegation no lower than the Assistant Manager for Administration at the Operations Offices or the equivalent position at other DOE contracting activities provided that the individual is a warranted contracting officer. The contractor's request for approval shall include the name and title of the employee, the reason for the use, and the expected duration of the use. Each authorization is limited to one year, but can be extended for an unlimited number of additional one-year periods.

§ 109–38.301–1.51 Emergency use.

(a) Procedures for authorization of designated contractor use of Government motor vehicles in emergencies, including unscheduled overtime situations at remote sites where prior approval is not possible, shall be included in a contractor's approved property management procedures. The procedures shall include examples of emergency situations warranting such use. Records detailing instances of emergency use shall be maintained and review of all such emergency or overtime use must be certified through established audit procedures on at least an annual basis by the OPMO.

(b) In limiting the use of Government motor vehicles to official purposes, it is not intended to preclude their use in emergencies threatening loss of life or property. Such use shall be documented and the documentation retained for three years.

§ 109–38.301–1.52 Maintenance of records.

Designated contractors shall maintain logs or other records on the use of a Government motor vehicle for transportation between an employee's residence and place of employment. As a minimum, these logs shall indicate the employee's name, date of use, time of departure and arrival, miles driven, and names of other passengers. Cognizant finance offices shall be provided with applicable data on employees who utilize Government motor vehicles for such transportation for purposes of the Deficit Reduction Act of 1984 concerning the taxation of fringe benefits.

§ 109–38.301–1.53 Responsibilities of motor vehicle operators.

Designated contractors shall assure that their employees are aware of their responsibilities, identical to those listed in § 109–6.400–50 of this chapter for DOE employees, concerning the use and operation of Government motor vehicles.

Subpart 109–38.4—Use and Replacement Standards

§ 109–38.401 Use standards.

§ 109–38.401–2 Use of self-service pumps.

It is DOE policy that motor vehicle operators shall use self-service pumps in accordance with the provisions of 41 CFR 101–38.401–2.

§ 109–38.402 Replacement standards.

(a) [Reserved]

(b) Motor vehicles may be replaced without regard to the replacement standards in 41 CFR 101–38.402 only after certification by the Director of Administrative Services or the Head of the field organization for their respective organizations that a motor vehicle is beyond economical repair due to accident damage or wear caused by abnormal operating conditions.

§ 109–38.402–50 Prompt disposal of replaced motor vehicles.

A replaced motor vehicle shall be removed from service and disposed of prior to or as soon as practicable after delivery of the replacement motor vehicle to avoid concurrent operation of both motor vehicles.

§ 109–38.403 Responsibility for damages.

§ 109–38.403–1 Policy.

The policy for assigning responsibility for vehicle damage is to recover from users the costs for damages which would adversely affect the vehicle's resale.

§ 109–38.403–2 Responsibility.

The designated contractor will charge the using organization all costs resulting from damage, including vandalism, theft and parking lot damage to a DOE vehicle which occurs during the period that the vehicle is assigned to an employee of that organization. The charges recovered by the designated maintenance operation will be used to repair the vehicle. Other examples for which organizations will be charged are as follows:

(a) Damage caused by misuse or abuse inconsistent with normal operation and local conditions; or

(b) Repair costs which are incurred as a result of user's failure to obtain required preventative maintenance; or

(c) Unauthorized purchases or repairs, including credit card misuse, provided there is a clear, flagrant, and documented pattern of such occurrences.

§ 109–38.403–3 Exceptions.

Exceptions to § 109–38.403–2 of this subpart are as follows:

(a) As the result of the negligent or willful act of a party other than the organization or it's employee, and the responsible party can be determined; or

(b) As a result of mechanical failure and the employee was not otherwise negligent. Proof of the failure must be provided; or

(c) As a result of normal wear comparable to similar vehicles.

Subpart 109–38.5—Scheduled Maintenance

§ 109–38.502 Guidelines.

§ 109–38.502–50 DOE guidelines.

(a) Whenever practicable and cost effective, commercial service facilities shall be utilized for the maintenance of motor vehicles.

(b) Individual vehicle maintenance records shall be kept to provide records of past repairs, as a control against unnecessary repairs and excessive maintenance, and as an aid in determining the most economical time for replacement.

(c) One-time maintenance and repair limitations shall be established by the motor equipment fleet manager. To exceed repair limitations, approval of the motor equipment fleet manager is required.

(d) Warranties.

(1) Motor vehicles under manufacturer's warranty shall be repaired under the terms of the warranty.

(2) When motor vehicles are maintained in Government repair facilities in isolated locations that are distant from franchised dealer facilities, or when it is not practical to return the vehicles to a dealer, a billback agreement shall be sought from manufacturers to permit warranty work to be performed on a reimbursable basis.

Subpart 109–38.7—Transfer, Storage, and Disposal of Motor Vehicles

§ 109–38.701 Transfer of title for Government-owned motor vehicles.

§ 109–38.701–50 Authority to sign Standard Form 97, The United States Government Certificate to Obtain Title to a Vehicle.

The Standard Form (SF) 97 shall be signed by an appropriate contracting officer. The Director, Office of Administrative Services and heads of field organizations for their respective organizations may delegate the authority to sign SF 97 to responsible DOE personnel under their jurisdiction.

Subpart 109–38.8—Standard Form 149, U.S. Government National Credit Card

§ 109–38.800 General.

(a)—(c) [Reserved]

(d) The Director, Office of Administrative Services and heads of field organizations for their respective organizations shall be responsible for establishing procedures to provide for the administrative control of fleet credit cards. Administrative control shall include, as a minimum:

(1) A reconciliation of on-hand credit cards with the inventory list provided by GSA,

(2) Providing motor vehicle operators with appropriate instructions regarding the use and protection of credit cards against theft and misuse,

(3) The taking of reasonable precautions in the event an SF 149 or SF 149A is lost or stolen to minimize the opportunity of purchases being made by unauthorized persons, including notification to the paying office of the loss or theft,

(4) Validation of credit card charges to ensure they are for official use only items, and

(5) Being on the alert for any unauthorized bills.

§ 109–38.801 Obtaining SF 149, U.S. Government National Credit Card.

DOE offices electing to use national credit cards shall request the assignment of billing address code numbers from the DPMO. Following the assignment, DOE organizations shall submit orders for issuance of national credit cards in accordance with the instructions provided by GSA.

Subpart 109–38.9—Federal Motor Vehicle Fleet Report

§ 109–38.902 Records.

The Director, Office of Administrative Services and OPMOs for their respective organizations shall establish adequate records for accounting and reporting purposes.

§ 109–38.903 Reporting of data.

§ 109–38.903–50 Reporting DOE motor vehicle data.

(a) DOE offices and designated contractors operating DOE-owned or commercially-leased motor vehicles shall prepare the following reports using SF 82, Agency Report of Motor Vehicle Data or DOE approved equivalent, for the entire fleet including security vehicles.

(1) DOE Report of Motor Vehicle Data.

(2) DOE Report of Truck Data.

(b) Designated contractors shall submit the reports to the DOE contracting office for review and approval. DOE offices shall submit reports, including designated contractor reports, to the DPMO by November 15 of each year.

(c) Copies of the report forms may be obtained by contacting the DPMO.

(d) Personal computer generated reports are acceptable provided that the standard report format is followed.

Subpart 109–38.51—Utilization of Motor Equipment

§ 109–38.5100 Scope of subpart.

This subpart prescribes policies and procedures concerning the utilization of motor equipment.

§ 109–38.5101 Policy.

It is DOE policy to keep the number of motor vehicles and other motor equipment at the minimum needed to satisfy programmatic requirements. To attain this goal, controls and practices shall be established which will achieve the most practical and economical utilization of motor equipment. These controls and practices apply to all DOE-owned and commercially leased motor equipment and to GSA Interagency Fleet Management System motor vehicles.

§ 109–38.5102 Utilization controls and practices.

Controls and practices to be used by DOE organizations and designated contractors for achieving maximum economical utilization of motor equipment shall include, but not be limited to:

(a) The maximum use of motor equipment pools, taxicabs, shuttle buses, or other common service arrangements;

(b) The minimum, practicable assignment of motor equipment to individuals, groups, or specific organizational components;

(c) The maintenance of individual motor equipment use records, such as trip tickets or vehicle logs, or hours of use, as appropriate, showing sufficiently detailed information to evaluate appropriateness of assignment and adequacy of use being made. If one-time use of a motor vehicle is involved, such as assignments from motor pools, the individual's trip records must, as a minimum, identify the motor vehicle and show the name of the operator, dates, destination, time of departure and return, and mileage;

(d) The rotation of motor vehicles between high and low mileage assignments where practicable to maintain the fleet in the best overall replacement age and mileage balance and operating economy;

(e) The charging, if considered feasible, to the user organization for the cost of operating and maintaining motor vehicles assigned to groups or organizational components. These charge-back costs should include all direct and indirect costs of the motor vehicle fleet operation as determined by the field organization and contractor finance and accounting functions;

(f) The use of dual-purpose motor vehicles capable of hauling both personnel and light cargo whenever appropriate to avoid the need for two motor vehicles when one can serve both purposes. However, truck-type or van vehicles shall not be acquired for passenger use merely to avoid statutory limitations on the number of passenger motor vehicles which may be acquired;

(g) The use of motor scooters and motorcycles in place of higher cost motor vehicles for certain applications within plant areas, such as mail and messenger service and small parts and tool delivery. Their advantage, however, should be weighed carefully from the standpoint of overall economy (comparison with cost for other types of motor vehicles) and increased safety hazards, particularly when mingled with other motor vehicle traffic; and

(h) The use of electric vehicles for certain applications. The use of these vehicles is encouraged wherever it is feasible to use them to further the goal of fuel conservation.

§ 109–38.5103 Motor vehicle utilization standards.

(a) The following average utilization standards are established for DOE as objectives for those motor vehicles operated generally for those purposes for which acquired:

(1) Sedans and station wagons, general purpose use—12,000 miles per year.

(2) Light trucks (4×2's) and general purpose vehicles, one ton and under

(less than 12,500 GVWR)—10,000 miles per year.

(3) Medium trucks and general purpose vehicles, 1½ ton through 2½ ton (12,500 to 23,999 GVWR)—7,500 miles per year.

(4) Heavy trucks and general purpose vehicles, three ton and over (24,000 GVWR and over)—7,500 miles per year.

(5) Truck tractors—10,000 miles per year.

(6) All-wheel-drive vehicles—7,500 miles per year.

(7) Other motor vehicles—No utilization standards are established for other trucks, ambulances, buses, law enforcement motor vehicles, and special purpose vehicles. The use of these motor vehicles shall be reviewed at least annually by the motor equipment fleet manager and action shall be taken and documented to verify that the motor vehicles are required to meet programmatic, health, safety, or security requirements.

(b) When operating circumstances prevent the above motor vehicle utilization standards from being met, local use objectives must be established and met as prescribed in § 109–38.5105 of this subpart.

§ 109–38.5104 Other motor equipment utilization standards.

No utilization standards are established for motor equipment other than motor vehicles. Each DOE office should establish through an agreement between the fleet manager and the OPMO utilization criteria for other motor equipment including heavy mobile equipment and review, adjust, and approve such criteria annually. Utilization of various classifications of other motor equipment can be measured through various statistics including miles, hours of use, number of trips, and fuel consumption. A utilization review of other motor equipment shall be performed at least annually by the motor equipment fleet manager to justify retainment or disposition of excess equipment not needed to fulfill Departmental, programmatic, health, safety, or security requirements.

§ 109–38.5105 Motor vehicle local use objectives.

(a) Individual motor vehicle utilization cannot always be measured or evaluated strictly on the basis of miles operated or against any Department-wide mileage standard. For example, light trucks specifically fitted for use by a plumber, welder, etc., in the performance of daily work assignments, would have uniquely tailored use objectives, different from those set forth for a truck used for general purposes. Accordingly, efficient local use objectives, which represent practical units of measurement for motor vehicle utilization and for planning and evaluating future motor vehicle requirements, must be established and documented by the Organizational Motor Equipment Fleet Manager. The objectives should take into consideration past performance, future requirements, geographical disbursement, and special operating requirements.

(b) These objectives shall be reviewed and adjusted as appropriate, but not less often than annually, by the motor equipment fleet manager. The reviews shall be documented. The Organizational Motor Equipment Fleet Manager is responsible for reviewing and approving in writing all proposed local use objectives.

§ 109–38.5106 Application of motor vehicle use goals.

(a) At least annually, the motor equipment fleet manager will review motor vehicle utilization statistics and all motor vehicles failing to meet the applicable DOE utilization standard or local use objective must be identified.

(b) Prompt action must be initiated to:

(1) Reassign the underutilized motor vehicles;

(2) Dispose of the underutilized motor vehicles; or

(3) Obtain a special justification from users documenting their continued requirement for the motor vehicle and any proposed actions to improve utilization. Any requirement for underutilized motor vehicles which the motor equipment fleet manager proposes to continue in its assignment, must be submitted in writing to the Organizational Motor Equipment Fleet Manager for approval.

(c) Both Department-wide standards and local use objectives should be applied in such a manner that their application does not stimulate motor vehicle use for the purpose of meeting the objective. The ultimate standard against which motor vehicle use must be measured is that the minimum number of motor vehicles will be retained to satisfy program requirements.

Subpart 109–38.52—Watercraft

§ 109–38.5200 Scope of subpart.

This subpart establishes basic policies and procedures that apply to the management of watercraft operated by DOE organizations and designated contractors. The head of each Departmental organization operating watercraft shall issue such supplemental instructions as may be needed to ensure the efficient use and management of watercraft.

§ 109–38.5201 Definition.

As used in this subpart the following definition applies:

Watercraft means any vessel used to transport persons or material on water.

§ 109–38.5202 Watercraft operations.

(a) No person may operate a watercraft on a waterway until skill of operation and basic watercraft knowledge have been demonstrated.

(b) Operators of watercraft shall check the vessel to ensure that necessary equipment required by laws applicable to the area of operation are present, properly stowed, and in proper working order.

(c) Operators shall comply with all applicable Federal, state, and local laws pertaining to the operation of watercraft.

(d) Operators shall not use watercraft or carry passengers except in the performance of official Departmental assignments.

§ 109–38.5203 Watercraft identification and numbers.

Watercraft in the custody of DOE or designated contractors shall display identifying numbers, whether issued by the U.S. Coast Guard, State, or local field organization, in accordance with applicable requirements.

PART 109–39—INTERAGENCY FLEET MANAGEMENT SYSTEMS

Subpart 109–39.1—Establishment, Modification, and Discontinuance of Interagency Fleet Management Systems

Sec.

109–39.101 Notice of intention to begin a study.
109–39.101–1 Agency cooperation.
109–39.103 Agency appeals.
109–39.105 Discontinuance or curtailment of service.
109–39.105–2 Agency requests to withdraw participation.
109–39.106 Unlimited exemptions.
109–39.107 Limited exemptions.

Subpart 109–39.3—Use and Care of GSA Interagency Fleet Management System Vehicles

109–39.300 General.
109–39.301 Utilization guidelines.

Authority: 42 U.S.C. 7254.

Subpart 109–39.1—Establishment, Modification, and Discontinuance of Interagency Fleet Management Systems

§ 109–39.101 Notice of intention to begin a study.

§ 109–39.101–1 Agency cooperation.

The Director, Office of Administrative Services and heads of field organizations for their respective organizations shall designate representatives to coordinate with GSA concerning the establishment of a GSA fleet management system to serve their organization.

§ 109–39.103 Agency appeals.

The Director, Office of Administrative Services and heads of field organizations for their respective organizations may appeal, or request exemption from, a determination made by GSA concerning the establishment of a fleet management system. A copy of the appeal or request shall be forwarded to the DPMO.

§ 109–39.105 Discontinuance or curtailment of service.

§ 109–39.105–2 Agency requests to withdraw participation.

Should circumstances arise that would tend to justify discontinuance or curtailment of participation by a DOE organization of a given interagency fleet management system, the participating organization should forward complete details to the DPMO for consideration and possible referral to the Administrator of General Services.

§ 109–39.106 Unlimited exemptions.

The Director, Office of Administrative Services and heads of field organizations for their respective organizations shall make the determination that an unlimited exemption from inclusion of a motor vehicle in a fleet management system is warranted. A copy of the determination shall be forwarded to GSA and to the DPMO.

§ 109–39.107 Limited exemptions.

The Director, Office of Administrative Services and heads of field organizations for their respective organizations shall seek limited exemptions from the fleet management system.

Subpart 109–39.3—Use and Care of GSA Interagency Fleet Management System Vehicles

§ 109–39.300 General.

(a)–(c) [Reserved]

(d) Motor equipment fleet managers shall ensure that operators and passengers in GSA Interagency Fleet Management System (IFMS) motor vehicles are aware of the prohibition against the use of tobacco products in these vehicles.

§ 109–39.301 Utilization guidelines.

DOE activities utilizing GSA IFMS motor vehicles will receive and review vehicle utilization statistics in order to determine if miles traveled justify vehicle inventory levels. Activities should retain justification for the retention of vehicles not meeting DOE utilization guidelines or established local use objectives, as appropriate. Those vehicles not justified for retention shall be returned to the issuing GSA interagency fleet management center.

PART 109–40—TRANSPORTATION AND TRAFFIC MANAGEMENT

Subpart 109–40.1—General Provisions

Sec.

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109–40.103 Selection of carriers.
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Subpart 109–40.3—Traffic Management

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Subpart 109–40.50—Bills of Lading

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109–40.5001 Policy.
109–40.5002 Applicability.
109–40.5003 Commercial bills of lading.
109–40.5004 Government bills of lading.
109–40.5005 Description of property for shipment.

Subpart 109–40.51—Price-Anderson Coverage Certifications for Nuclear Shipments

109–40.5100 Scope of subpart.
109–40.5101 Policy.

Authority: Sec. 161, as amended, 68 Stat. 948; 42 U.S.C. 2201; sec. 205, as amended, 63 Stat. 390; 40 U.S.C. 486; sec. 644, 91 Stat. 585, 42 U.S.C. 7254.

Subpart 109–40.1—General Provision

§ 109–40.000 Scope of part.

This part describes DOE regulations governing transportation and traffic management activities. It also covers arrangements for transportation and related services by bill of lading. These regulations are designed to ensure that all transportation and traffic management activities will be carried out in the manner most advantageous to the Government in terms of economy, efficiency, service, environment, safety and security.

§ 109–40.000–50 Applicability to contractors.

DOE–PMR 109–40, Transportation and Traffic Management, should be applied to cost-type contractors' transportation and traffic management activities. Departure by cost-type contractors from the provisions of these regulations may be authorized by the contracting officer provided the practices and procedures followed are consistent with the basic policy objectives in these regulations and DOE Order 460.2, Departmental Materials Transportation and Packaging Management, except to the extent such departure is prohibited by statute or executive order.

§ 109–40.102 Representation before regulatory bodies.

Participation in proceedings related to carrier applications to regulatory bodies for temporary or permanent authority to operate in specified geographical locations shall be confined to statements or testimony in support of a need for service and shall not extend to support of individual carriers or groups of carriers.

§ 109–40.103 Selection of carriers.

§ 109–40.103–1 Domestic transportation.

(a) Preferential treatment, normally, shall not be accorded to any mode of transportation (motor, rail, air, water) or to any particular carrier when arranging for domestic transportation services. However where, for valid reasons, a particular mode of transportation or a particular carrier within that mode must be used to meet specific program requirements and/or limitations, only that mode or carrier shall be considered.

Examples of valid reasons for considering only a particular mode or carrier are:

(1) Where only a certain mode of transportation or individual carrier is able to provide the needed service or is able to meet the required delivery date; and

(2) Where the consignee's installation and related facilities preclude or are not conducive to service by all modes of transportation.

(b) The following factors are considered in determining whether a carrier or mode of transportation can meet DOE's transportation service requirements for each individual shipment:

(1) Availability and suitability of carrier equipment;

(2) Carrier terminal facilities at origin and destination;

(3) Pickup and delivery service, if required;

(4) Availability of required or accessorial and special services, if needed;

(5) Estimated time in transit;

(6) Record of past performance of the carrier; and

(7) Availability and suitability of transit privileges.

§ 109–40.103–2 Disqualification and suspension of carriers.

Disqualification and suspension are measures which exclude carriers from participation, for temporary periods of time, in DOE traffic. To ensure that the Government derives the benefits of full and free competition of interested carriers, disqualification and suspension shall not apply for any period of time longer than necessary to protect the interests of the Government.

§ 109–40.103–3 International transportation.

See 4 CFR 52.2 for a certificate required in nonuse of U.S. flag vessels or U.S. flag certificated air carriers.

(a) U.S.-flag ocean carriers. Arrangements for international ocean transportation services shall be made in accordance with the provisions of section 901(b) of the Merchant Marine Act of 1936, as amended (46 U.S.C. 1241(b)) concerning the use of privately owned U.S.-flag vessels.

(b) U.S.-flag certificated air carriers. Arrangements for international air transportation services shall be made in accordance with the provisions of section 5(a) of the International Air Transportation Fair Competition Practices Act of 1974 (49 U.S.C. 1517), which requires the use of U.S.-flag certificated air carriers for international travel of persons or property to the extent that services by these carriers is available.

§ 109–40.105 Use of Government-owned transportation equipment.

The preferred method of transporting property for the Government is through use of the facilities and services of commercial carriers. However, Government vehicles may be used when they are available to meet emergencies and accomplish program objectives which cannot be attained through use of commercial carriers.

§ 109–40.109 Utilization of special contracts and agreements.

From time to time special transportation agreements are entered into on a Government-wide or DOE-wide basis and are applicable, generally, to DOE shipments. The HQ DOE Manager, Transportation Operations and Traffic, will distribute information on such agreements to field offices as it becomes available.

§ 109–40.110 Assistance to economically disadvantaged transportation businesses.

§ 109–40.110–1 Small business assistance.

Consistent with the policies of the Government with respect to small businesses, DOE shall place with small business concerns a fair proportion of the total purchases and contracts for transportation and related services such as packing and crating, loading and unloading, and local drayage.

§ 109–40.110–2 Minority business enterprises.

Minority business enterprises shall have the maximum practical opportunity to participate in the performance of Government contracts. DOE shall identify transportation-related minority enterprises and encourage them to provide services that will support DOE's transportation requirements.

§ 109–40.112 Transportation factors in the location of Government facilities.

Transportation rate, charges, and commercial carrier transportation services shall be considered and evaluated prior to the selection of new site locations and during the planning and construction phases in the establishment of leased or relocated Government installations or facilities to ensure that consideration is given to the various transportation factors that may be involved in this relocation or deactivation.

§ 109–40.113 Insurance against transportation hazards.

The policy of the Government with respect to insurance of its property while in the possession of commercial carriers is set forth in 41 CFR 1–19.107.

Subpart 109–40.3—Traffic Management

§ 109–40.301 Traffic management functions administration.

The DOE traffic management functions are accomplished by established field traffic offices under provisions of appropriate Departmental directives and Headquarters' staff traffic management supervision.

§ 109–40.302 Standard routing principle.

(a) Shipments shall be routed using the mode of transportation, or individual carriers within the mode, that can provide the required service at the lowest overall delivered cost to the Government.

(b) When more than one mode of transportation, or more than one carrier within a mode, can provide equally satisfactory service at the same overall cost the traffic shall be distributed as equitably as practicable among the modes and among the carriers within the modes.

§ 109–40.303–3 Most fuel efficient carrier/mode.

When more than one mode, or more than one carrier within a mode, can satisfy the service requirements of a specific shipment at the same lowest aggregate delivered cost, the carrier/mode determined to be the most fuel efficient will be selected. In determining the most fuel efficient carrier/mode, consideration will be given to such factors as use of the carrier's equipment in ''turn around'' service, proximity of carrier equipment to the shipping activity, and ability of the carrier to provide the most direct service to the destination points.

§ 109–40.304 Rate tenders to the Government.

Under the provisions of section 10721 of the Interstate Commerce Act (49 U.S.C. 10721), common carriers are permitted to submit to the Government tenders which contain rates lower than published tariff rates available to the general public. In addition, rates tenders may be applied to shipments other than those made by the Government provided the total benefits accrue to the Government; that is, provided the Government pays the charges or directly and completely reimburses the party that initially bears the freight charges (323 ICC 347 and 332 ICC 161).

§ 109–40.305–50 Negotiations involving national security.

Title 49 U.S.C., section 10721(b)(2) provides that rate tenders to the Government must be filed by the carriers within the Interstate Commerce Commission unless a carrier is advised by the U.S. Government that disclosure of a quotation or tender of a rate established * * * for transportation provided to the U.S. Government would endanger the National security. Carriers will be informed by the negotiating official if any quotation or tender to the Department of Energy involves such information.

§ 109–40.306–1 Recommended rate tender format.

Only those rate tenders which have been submitted by the carriers in writing shall be considered for use. Carriers should be encouraged to use the format ''Uniform Tender of Rates and/or Charges for Transportation Services'' when preparing and submitting rate tenders to the Government. Rate tenders that are ambiguous in meaning shall be resolved in favor of the Government.

§ 109–40.306–2 Required shipping documents and annotations.

(a) To qualify for transportation under section 10721 rates, property must be shipped by or for the Government on:

(1) Government bills of lading;

(2) Commercial bills of lading endorsed to show that these bills of lading are to be converted to Government bills of lading after delivery to the consignee;

(3) Commercial bills of lading showing that the Government is either the consignor or the consignee and endorsed with the following statement:

Transportation hereunder is for the U.S. Department of Energy, and the actual total transportation charges paid to the carrier(s) by the consignor or consignee are assignable to, and are to be reimbursed by, the Government.

(b) When a rate tender is used for transportation furnished under a cost-reimbursable contract, the following endorsement shall be used on covering commercial bills of lading:

Transportation hereunder is for the U.S. Department of Energy, and the actual total transportation charges paid to the carrier(s) by the consignor or consignee are to be reimbursed by the Government, pursuant to cost-reimbursable contract number (insert contract number). This may be confirmed by contacting the agency representative at (name and telephone number).

See 332 ICC 161.

(c) To ensure proper application of a Government rate tender on all shipments qualifying for their use, the issuing officer shall show on the bills of lading covering such shipments the applicable rate tender number and carrier identification, such as: ''Section 10721 tender, ABC Transportation Company, ICC No. 374.'' In addition, if commercial bills of lading are used, they shall be endorsed as specified above.

§ 109–40.306–3 Distribution.

Each agency receiving rate tenders shall promptly submit one signed copy to the Transportation and Public Utilities Service (WIT), General Services Administration, Washington, DC 20407. Also, two copies (including at least one signed copy) shall be promptly submitted to the General Services Administration (TA), Chester A. Arthur Building, Washington, DC 20406.

Subpart 109–40.50—Bills of Lading

§ 109–40.5000 Scope of subpart.

This subpart sets forth the requirements under which commercial or Government bills of lading may be used.

§ 109–40.5001 Policy.

Generally DOE cost-type contractors will use commercial bills of lading in making shipments for the account of DOE. Cost-type contractors may be authorized by the contracting officer to use Government bills of lading if such use will be advantageous to the Government. Such authorizations shall be coordinated with the HQ DOE Manager, Transportation Operations and Traffic.

§ 109–40.5002 Applicability.

The policy and procedures set forth in this subpart shall be applied when DOE's cost-type contractors use commercial bills of lading.

§ 109–40.5003 Commercial bills of lading.

(a) DOE's cost-type contractors using commercial bills of lading in making shipments for the account of DOE shall include the following statement on all commercial bills of lading:

This shipment is for the account of the U.S. Government which will assume the freight charges and is subject to the terms and conditions set forth in the standard form of the U.S. Government bills of lading and to any available special rates or charges.

(b) The language in paragraph (a) of this section may be varied without materially changing its substance to satisfy the needs of particular cost-type contractors for the purpose of obtaining the benefit of the lowest available rates for the account of the Government.

(c) Where practicable, commercial bills of lading shall provide for consignment of a shipment to DOE c/o the cost-type contractor or by the contractor ''for the DOE.''

(d) Commercial bills of lading exceeding $10,000 issued by cost-type contractors shall be annotated with a typewritten, rubber stamp, or similar impression containing the following wording:

Equal Employment Opportunity. All provisions of Executive Order 11246, as amended by Executive Order 11375, and of the rules, regulations, and relevant orders of the Secretary of Labor are incorporated herein.

§ 109–40.5004 Government bills of lading.

In those instances where DOE cost-type contractors are authorized to use Government bills of lading, specific employees of cost-type contractors will be authorized by the contracting officer to issue such Government bills of lading (see Title V, U.S. Government Accounting Office Policy and Procedures Manual for Guidance of Federal Agencies).

§ 109–40.5005 Description of property for shipment.

(a) Each shipment shall be described on the bill of lading or other shipping document as specified by the governing freight classification, carrier's tariff, or rate tender. Shipments shall be described as specifically as possible. Trade names such as ''Foamite'' or ''Formica,'' or general terms such as ''vehicles,'' ''furniture,'' or ''Government supplies,'' shall not be used as bill of lading descriptions.

(b) A shipment containing hazardous materials, such as explosives, radioactive materials, flammable liquids, flammable solids, oxidizers, or poison A or poison B, shall be prepared for shipment and described on bills of lading or other shipping documents in accordance with the Department of Transportation Hazardous Materials Regulation, 49 CFR, parts 100–189.

Subpart 109–40.51—Price-Anderson Coverage Certifications for Nuclear Shipments

§ 109–40.5100 Scope of subpart.

This subpart sets forth the policy for issuance of certifications regarding Price-Anderson coverage of particular shipments of nuclear materials.

§ 109–40.5101 Policy.

Upon request of a carrier, an appropriate certification will be issued by an authorized representative of the DOE to the carrier regarding the applicability of Price-Anderson indemnity to a particular shipment. Copies of such certifications, if performed by a Field Manager or a DOE

cost-type contractor, shall be provided to the HQ DOE Manager, Transportation Operations and Traffic.

SUBCHAPTER H—UTILIZATION AND DISPOSAL

PART 109–42—UTILIZATION AND DISPOSAL OF HAZARDOUS MATERIALS AND CERTAIN CATEGORIES OF PROPERTY

Subpart 109–42.11—Special Types of Hazardous Material and Certain Categories of Property

Sec.
109–42.1100.50 Scope of subpart.
109–42.1100.51 Policy.
109–42.1102–8 United States Munitions List items which require demilitarization.
109–42.1102–51 Suspect personal property.
109–42.1102–52 Low level contaminated personal property.

Authority: 40 U.S.C. 486(c).

Subpart 109–42.11—Special Types of Hazardous Material and Certain Categories of Property

§ 109–42.1100.50 Scope of subpart.

This subpart sets forth policies and procedures for the utilization and disposal outside of DOE of excess and surplus personal property which has been radioactively or chemically contaminated.

§ 109–42.1100.51 Policy.

When the holding organization determines it is appropriate to dispose of contaminated personal property, it shall be disposed of by DOE in accordance with appropriate Federal regulations governing radiation/chemical exposure and environmental contamination. In special cases where Federal regulations do not exist or apply, appropriate state and local regulations shall be followed.

§ 109–42.1102–8 United States Munitions List items which require demilitarization.

Heads of field organizations shall determine demilitarization requirements regarding combat material and military personal property using DoD 4160.21–M–1, Defense Demilitarization Manual as a guide.

§ 109–42.1102–51 Suspect personal property.

(a) Excess personal property (including scrap) having a history of use in an area where radioactive or chemical contamination may occur shall be considered suspect and shall be monitored using appropriate instruments and techniques by qualified personnel of the DOE office or contractor generating the excess.

(b) With due consideration to the economic factors involved, every effort shall be made to reduce the level of contamination of excess or surplus personal property to the lowest practicable level. Contaminated personal property that exceeds applicable contamination standards shall not be utilized or disposed outside DOE.

(c) If contamination is suspected and the property is of such size, construction, or location as to make testing for contamination impossible, the property shall not be utilized or disposed outside of DOE.

§ 109–42.1102–52 Low level contaminated personal property.

If monitoring of suspect personal property indicates that contamination does not exceed applicable standards, it may be utilized and disposed of in the same manner as uncontaminated personal property, provided the guidance in § 109–45.5005–1(a) of this chapter has been considered. However, recipients shall be advised where levels of radioactive contamination require specific controls for shipment as provided in Department of Transportation Regulations (49 CFR parts 171–179) for shipment of radioactive personal property. In addition, when any contaminated personal property is screened within DOE, reported to GSA, or otherwise disposed of, the kind and degree of contamination must be plainly indicated on all pertinent documents.

PART 109–43—UTILIZATION OF PERSONAL PROPERTY

Sec.
109–43.001 Definition.

Subpart 109–43.1—General Provisions

109–43.101 Agency utilization reviews.
109–43.103 Agency utilization officials.

Subpart 109–43.3—Utilization of Excess

109–43.302 Agency responsibility.
109–43.302–50 Utilization by designated contractors.
109–43.304 Reporting requirements.
109–43.304–1 Reporting.
109–43.304–1.50 DOE reutilization screening.
109–43.304–1.51 Transfers within DOE.
109–43.304–2 Form and distribution of reports.
109–43.304–4 Property at installations due to be discontinued.
109–43.305 Property not required to be formally reported.
109–43.305–50 Nuclear-related and proliferation-sensitive personal property.
109–43.307 Items requiring special handling.
109–43.307–2 Hazardous materials.
109–43.307–2.50 Monitoring of hazardous personal property.
109–43.307–2.51 Holding hazardous personal property.
109–43.307–3 Conditional gifts for defense purposes.
109–43.307–4 Conditional gifts to reduce the public debt.
109–43.307–50 Export controlled personal property.
109–43.307–51 Classified personal property.
109–43.307–52 Nuclear-related or proliferation-sensitive personal property.
109–43.307–53 Automatic Data Processing Equipment (ADPE).
109–43.307–54 Unsafe personal property.
109–43.312 Use of excess personal property on cost-reimbursement contracts.
109–43.313 Use of excess personal property on cooperative agreements.
109–43.314 Use of excess personal property on grants.
109–43.315 Certification of non-Federal agency screeners.

Subpart 109–43.5—Utilization of Foreign Excess Personal Property

109–43.502 Holding agency responsibilities.

Subpart 109–43.47—Reports

109–43.4701 Performance reports.

Subpart 109–43.50—Utilization of Personal Property Held for Facilities in Standby

109–43.5000 Scope of subpart.
§ 109–43.5001 Definition.
109–43.5002 Reviews to determine need for retaining items.

Authority: 40 U.S.C. 486(c).

109–43.001 Definition.

DOE screening period means the period of time that reportable excess personal property is screened throughout DOE for reutilization purposes and, for selected items, through the Used Energy-Related Laboratory Equipment (ERLE) Grant Program.

Subpart 109–43.1—General Provisions

§ 109–43.101 Agency utilization reviews.

DOE offices and designated contractors are responsible for continuously surveying property under their control to assure maximum use, and shall promptly identify property that is excess to their needs and make it available for use elsewhere.

§ 109–43.103 Agency utilization officials.

The DPMO is designated as the DOE National Utilization Officer.

Subpart 109–43.3—Utilization of Excess

§ 109–43.302 Agency responsibility.

§ 109–43.302–50 Utilization by designated contractors.

Heads of field organizations may authorize designated contractors to

perform the functions pertaining to the utilization of excess personal property normally performed by a Federal agency, provided the designated contractors have written policies and procedures.

§ 109–43.304 Reporting requirements.

§ 109–43.304–1 Reporting.

§ 109–43.304–1.50 DOE reutilization screening.

(a) Prior to reporting excess personal property to GSA, reportable personal property shall be screened for reutilization within DOE through the Reportable Excess Automated Property System (REAPS) for a 30-day period. REAPS also provides for a 15-day expedited screening period for certain categories of personal property for economic development and to satisfy urgent conditions.

(b) An additional 30-day screening period shall be allocated for items eligible for screening by educational institutions through ERLE.

(c) Items in FSCG 66 (Instruments and Laboratory Equipment), 70 (General Purpose Information Processing Equipment (including firmware)), and 99 (Miscellaneous) are reportable when the unit acquisition cost is $1,000 or more.

(d) In exceptional or unusual cases when time is critical, screening of excess property may be accomplished by telegram or facsimile with due consideration given to the additional costs involved. Examples of situations when this method of screening would be used are when there is a requirement for quick disposal actions due to unplanned contract terminations or facilities closing; to alleviate the paying of storage costs; when storage space is critical; to process exchange/sale transactions; property dangerous to public health and safety; property determined to be classified or otherwise sensitive for reasons of national security (when classified communications facilities are used); or for hazardous materials which may not be disposed of outside of the Department.

(e) Concurrent DOE and Federal agency screening generally shall not be conducted.

§ 109–43.304–1.51 Transfers within DOE.

Transfers within DOE generally shall be effected by completion of a SF–122, Transfer Order Excess Personal Property. Except for those designated contractors authorized by the DOE contracting office to execute transfer orders, transfers to DOE contractors must be approved by the cognizant DOE property administrator for the contractor receiving the property.

§ 109–43.304–2 Form and distribution of reports.

Reportable property will be electronically reported by REAPS directly to GSA following internal DOE and ERLE screening.

§ 109–43.304–4 Property at installations due to be discontinued.

When closing installations, DOE offices shall work with the appropriate GSA regional offices to develop site utilization and disposal programs:

(a) In developing a disposal program, property shall be determined to be excess to DOE needs before reporting it to GSA.

(b) If a deviation from DOE policy or procedures is required, prior written approval of the Deputy Assistant Secretary for Procurement and Assistance Management shall be obtained.

(c) When deviation from existing GSA regulations is involved, approval by the appropriate GSA regional office will be sufficient to validate the disposition. A copy of the GSA approval should be forwarded for information to the DPMO.

§ 109–43.305 Property not required to be formally reported.

(a) [Reserved]

(b) Equipment, parts, accessories, jigs and components which are of special design, composition, or manufacture and which are intended for use only by specific DOE installations (such as spare parts for equipment used in atomic processes) are not reportable and shall not be formally screened within DOE or reported to GSA.

§ 109–43.305–50 Nuclear-related and proliferation-sensitive personal property.

Nuclear-related and proliferation-sensitive property is not reportable and shall not be formally screened within DOE or reported to GSA.

§ 109–43.307 Items requiring special handling.

§ 109–43.307–2 Hazardous materials.

§ 109–43.307–2.50 Monitoring of hazardous personal property.

To provide assurance that hazardous personal property is not being inadvertently released from the site by transfer or sale to the public, all hazardous or suspected hazardous personal property shall be checked for contamination by environmental, safety, and health officials. Contamination-free personal property will be tagged with a certification tag authorizing release for transfer or sale. Contaminated personal property will be referred back to the program office for appropriate action.

§ 109–43.307–2.51 Holding hazardous personal property.

Excess or surplus hazardous personal property shall not be commingled with non-hazardous personal property while waiting disposition action.

§ 109–43.307–3 Conditional gifts for defense purposes.

The Director, Office of Administrative Services and heads of field organizations shall take appropriate action as required when conditional gifts are offered.

§ 109–43.307–4 Conditional gifts to reduce the public debt.

The Director, Office of Administrative Services and heads of field organizations shall take appropriate action as required when conditional gifts are offered.

§ 109–43.307–50 Export controlled personal property.

(a) When personal property that is subject to export controls is being exported directly by DOE (e.g., a transfer of nuclear equipment or materials as part of a program of cooperation with another country), DOE or the DOE contractor must obtain the necessary export license.

(b) When personal property subject to export controls is transferred under work-for-others agreements, co-operative agreements, or technical programs, the recipients will be informed in writing that:

(1) The property is subject to export controls;

(2) They are responsible for obtaining export licenses or authorizations prior to transferring or moving the property to another country; and

(3) They are required to pass on export control guidance if they transfer the property to another domestic or foreign recipient.

§ 109–43.307–51 Classified personal property.

Classified personal property which is excess to DOE needs shall be stripped of all characteristics which cause it to be classified, or otherwise rendered unclassified, as determined by the cognizant program office, prior to any disposition action. The cognizant program office shall certify that appropriate action has been taken to declassify the personal property as required. Declassification shall be accomplished in a manner which will preserve, so far as practicable, any civilian utility or commercial value of the personal property.

§ 109–43.307–52 Nuclear-related or proliferation-sensitive personal property.

(a) Recognizing that property disposal officials will not have the technical knowledge to identify nuclear-related and proliferation-sensitive personal property, all such personal property shall be physically tagged with a certification signed by an authorized program official at time of determination by the program office of the personal property as excess. Such an authorized official should be designated in writing with signature cards on file in the property office.

(b) Nuclear-related and proliferation-sensitive personal property which is excess to DOE needs shall be stripped of all characteristics which cause it to be nuclear-related or proliferation-sensitive personal property, as determined by the cognizant program office, prior to disposal. The cognizant program office shall certify that appropriate actions have been taken to strip the personal property as required, or shall provide the property disposal office with adequate instructions for stripping the items. Such action shall be accomplished in a manner which will preserve, so far as practicable, any civilian utility or commercial value of the personal property.

§ 109–43.307–53 Automatic data processing equipment (ADPE).

All ADPE shall be sanitized before being transferred into excess to ensure that all data, information, and software has been removed from the equipment. Designated computer support personnel must indicate that the equipment has been sanitized by attaching a certification tag to the item. Sanitized ADPE will be utilized and disposed in accordance with the provisions of the FPMR.

§ 109–43.307–54 Unsafe personal property.

Personal property that is considered defective or unsafe must be mutilated prior to shipment for disposal.

§ 109–43.312 Use of excess personal property on cost-reimbursement contracts.

(a) [Reserved]

(b) It is DOE policy for designated contractors to use Government excess personal property to the maximum extent possible to reduce contract costs. However, the determination required in 41 CFR 101–43.312(b) does not apply to such contracts, and a DOE official is not required to execute transfer orders for authorized designated contractors. The procedures prescribed in 41 CFR 101–43.309–5 for execution of transfer orders apply.

§ 109–43.313 Use of excess personal property on cooperative agreements.

(a)—(c) [Reserved].

(d) Heads of field organizations shall ensure that required records are maintained in a current status.

§ 109–43.314 Use of excess personal property on grants.

(a)–(e) [Reserved]

(f) Heads of field organizations shall ensure that the records required by 41 CFR 101–43.314(f) are maintained.

§ 109–43.315 Certification of non-Federal agency screeners.

(a)–(c) [Reserved]

(d) Contracting officers shall maintain a record of the number of certified non-Federal agency screeners operating under their authority and shall immediately notify the appropriate GSA regional office of any changes in screening arrangements.

Subpart 109–43.5—Utilization of Foreign Excess Personal Property

§ 109–43.502 Holding agency responsibilities.

(a) [Reserved]

(b) Property which remains excess after utilization screening within the general foreign geographical area where the property is located shall be reported to the accountable field office or Headquarters program organization for consideration for return to the United States for further DOE or other Federal utilization. The decision to return property will be based on such factors as acquisition cost, residual value, condition, usefulness, and cost of transportation.

Subpart 109–43.47—Reports

§ 109–43.4701 Performance reports.

(a) and (b) [Reserved]

(c) The annual report of personal property furnished (e.g., transfers, gifts, loans, leases, license agreements, and sales) to non-Federal recipients, including elementary and secondary schools, is furnished to GSA by the DPMO. Feeder reports, using the format illustrated below, shall be submitted to the DPMO by November 15 of each year.

(1) Field office feeder reports shall include the following:

(i) Data for all excess personal property obtained from other Federal agencies and furnished to any DOE offsite or designated contractor or financial assistance recipient;

(ii) Data for all DOE personal property no longer needed by a DOE direct operation and subsequently furnished to any DOE offsite or designated contractor or financial assistance recipient.

(iii) Data for all personal property furnished to elementary and secondary schools and non-profit organizations under initiatives to support science and mathematics education.

(2) Field office feeder reports shall not include data for contractor inventory which is declared excess and subsequently redistributed through REAPS (or other means within DOE) to other DOE contractors or designated contractors' subcontractors.

(3) The feeder report from the Office of Science Education Programs, using the following format, will include data for all personal property furnished to non-federal recipients and institutions of higher learning under the ERLE Grant Program.

Name and address of recipient	Recipient's status	Original cost of property	Digit federal supply classification group

Subpart 109–43.50—Utilization of Personal Property Held for Facilities in Standby

§ 109–43.5000 Scope of subpart.

This subpart supplements 41 CFR part 101–43 by providing policies and procedures for the economic and efficient utilization of personal property associated with facilities placed in standby status.

§ 109–43.5001 Definition.

Facility in standby means a complete plant or section of a plant, which is neither in service or declared excess.

§ 109–43.5002 Reviews to determine need for retaining items.

Procedures and practices shall require an initial review at the time the plant is placed in standby to determine which items can be made available for use elsewhere within the established start-up criteria; periodic reviews (no less than biennially) to determine need for continued retention of property; and special reviews when a change in start-up time is made or when circumstances warrant. Such procedures should recognize that:

(a) Equipment, spares, stores items, and materials peculiar to a plant should be retained for possible future operation of the plant;

(b) Where practicable, common-use stores should be removed and used elsewhere; and

(c) Uninstalled equipment and other personal property not required should be utilized elsewhere on-site or be disposed of as excess.

PART 109–44—DONATION OF PERSONAL PROPERTY

Subpart 109–44.7—Donations of Property to Public Bodies

Sec.
109–44.701 Findings justifying donation to public bodies.
109–44.702 Donations to public bodies.
109–44.702–3 Hazardous materials.

Authority: Sec. 205(c), 63 Stat. 390; 40 U.S.C. 486(c).

Subpart 109–44.7—Donations of Property to Public Bodies

§ 109–44.701 Findings justifying donation to public bodies.

The Director, Office of Administrative Services and heads of field organizations shall appoint officials to make required findings and reviews.

§ 109–44.702 Donations to public bodies.

§ 109–44.702–3 Hazardous materials.

The Director, Office of Administrative Services and heads of field organizations shall be responsible for the safeguards, notifications, and certifications required by 41 CFR part 101–42 and part 109–42 of this chapter, as well as compliance with all other requirements therein.

PART 109–45—SALE, ABANDONMENT, OR DESTRUCTION OF PERSONAL PROPERTY

Subpart 109–45.1—General

Sec.
109–45.105 Exclusions and exemptions.
109–45.105–3 Exemptions.

Subpart 109–45.3—Sale of Personal Property

109–45.300–50 Sales by designated contractors.
109–45.301–51 Export/import clause.
109–45.302 Sale to Government employees.
109–45.302–50 Sales to DOE employees and designated contractor employees.
109–45.303 Reporting property for sale.
109–45.303–3 Delivery.
109–45.304 Sales methods and procedures.
109–45.304–2 Negotiated sales and negotiated sales at fixed prices.
109–45.304–2.50 Negotiated sales and negotiated sales at fixed prices by designated contractors.
109–45.304–6 Reviewing authority.
109–45.304–50 Processing bids and awarding of contracts.
109–45.304–51 Documentation.
109–45.309 Special classes of property.
109–45.309–2.50 Hazardous property.
109–45.309–51 Export controlled property.
109–45.309–52 Classified property.
109–45.309–53 Nuclear-related or proliferation-sensitive property.
109–45.309–54 Automatic Data Processing Equipment (ADPE).
109–45.310 Antitrust laws.
109–45.317 Noncollusive bids and proposals.

Subpart 109–45.6—Debarred, Suspended, and Ineligible Contractors

109–45.601 Policy.
109–45.602 Listing debarred or suspended contractors.

Subpart 109–45.9—Abandonment or Destruction of Personal Property

109–45.901 Authority to abandon or destroy.
109–45.902 Findings justifying abandonment or destruction.
109–45.902–2 Abandonment or destruction without notice.

Subpart 109–45.10—Recovery of Precious Metals

109–45.1002 Agency responsibilities.
109–45.1002–3 Precious metals recovery program monitor.
109–45.1003 Recovery of silver from precious metals bearing materials.
109–45.1004 Recovery and use of precious metals through the DOD Precious Metals Recovery Program.

Subpart 109–45.47—Reports

109–45.4702 Negotiated sales reports.

Subpart 109–45.50—Excess and Surplus Radioactively and Chemically Contaminated Personal Property

109–45.5005 Disposal.
109–45.5005–1 General.

Subpart 109–45.51—Disposal of Excess and Surplus Personal Property in Foreign Areas

109–45.5100 Scope of subpart.
109–45.5101 Authority.
109–45.5102 General.
109–45.5103 Definitions.
109–45.5104 Disposal.
109–45.5104–1 General.
109–45.5104–2 Methods of disposal.
109–45.5105 Reports.

Authority: Sec. 205(c), 63 Stat. 390; 40 U.S.C. 486(c), para. 101–45.400–45.405 also issued under sec. 307, 49 Stat. 880; 40 U.S.C. 3041.

Subpart 109–45.1—General

§ 109–45.105 Exclusions and exemptions.

§ 109–45.105–3 Exemptions.

GSA, by letter dated May 28, 1965, exempted contractor inventory held by DOE designated contractors from the GSA conducted sales provisions of 41 CFR 101–45.

Subpart 109–45.3—Sale of Personal Property

§ 109–45.300–50 Sales by designated contractors.

Sales of surplus contractor inventory will be conducted by designated contractors when heads of field organizations determine that it is in the best interest of the Government. OPMOs and appropriate program officials shall perform sufficient oversight over these sales to ensure that personal property requiring special handling or program office certification is sold in accordance with regulatory requirements.

§ 109–45.301–51 Export/import clause.

The following clause shall be included in all sales invitations for bid:

Personal property purchased from the U.S. Government may or may not be authorized for export/import from/into the country where the personal property is located. If export/import is allowed, the purchaser is solely responsible for obtaining required clearances or approvals. The purchaser also is required to pass on DOE's export control guidance if the property is resold or otherwise disposed.

§ 109–45.302 Sale to Government employees.

§ 109–45.302–50 Sales to DOE employees and designated contractor employees.

(a) DOE employees and employees of designated contractors shall be given the same opportunity to acquire Government personal property as is given to the general public, provided the employees warrant in writing prior to award that they have not either directly or indirectly:

(1) Obtained information not otherwise available to the general public regarding usage, condition, quality, or value of the personal property, or

(2) Participated in:

(i) The determination to dispose of the personal property;

(ii) The preparation of the personal property for sale; and

(iii) Determining the method of sale.

(b) Excess or otherwise unusable special, fitted clothing and other articles of personal property, acquired for the exclusive use of an individual employee, may be sold to the employee for the best price obtainable when the property is no longer required by the holding organization or the employee is terminated.

§ 109–45.303 Reporting property for sale.

§ 109–45.303–3 Delivery.

(a)–(b) [Reserved].

(c) Guidelines for signature authorization and control of blank copies of Standard Form 97, United States Government Certificate to Obtain Title to a Vehicle are contained in subpart 109–38.7 of this chapter.

§ 109–45.304 Sales methods and procedures.

§ 109–45.304–2 Negotiated sales and negotiated sales at fixed prices.

(a)(1) [Reserved].

(2) The head of each field organization shall designate a responsible person to approve

negotiated sales by DOE direct operations.

(3) Requests for prior approval of negotiated sales by DOE direct operations shall be submitted with justification to the OPMO for review and forwarding to GSA for approval.

(b) [Reserved]

§ 109–45.304–2.50 Negotiated sales and negotiated sales at fixed prices by designated contractors.

(a) Negotiated sales by designated contractors of surplus contractor inventory may be made when the DOE contracting officer determines and documents prior to the sale that the use of this method of sale is justified on the basis of the circumstances enumerated below, provided that the Government's interests are adequately protected. These sales shall be at prices which are fair and reasonable and not less than the proceeds which could reasonably be expected to be obtained if the personal property was offered for competitive sale. Specific conditions justifying negotiated sales include:

(1) No acceptable bids have been received as a result of competitive bidding under a suitable advertised sale;

(2) Personal property is of such small value that the proceeds to be derived would not warrant the expense of a formal competitive sale;

(3) The disposal will be to a state, territory, possession, political subdivision thereof, or tax-supported agency therein, and the estimated fair market value of the personal property and other satisfactory terms of disposal are obtained by negotiation;

(4) The specialized nature and limited use potential of the personal property would create negligible bidder interest;

(5) Removal of the personal property would result in a significant reduction in value, or the accrual of disproportionate expense in handling; or

(6) It can be clearly established that such action is in the best interests of the Government.

(b) When determined to be in the best interests of the Government, heads of field organizations may authorize fixed-price sales of surplus contractor inventory by designated contractors provided:

(1) The fair market value of the item to be sold does not exceed $15,000;

(2) Adequate procedures for publicizing such sales have been established;

(3) The sales prices are not less than could reasonably be expected if competitive bid sales methods were employed and the prices have been approved by a reviewing authority designated by the head of the field organization; and

(4) The warranty prescribed in § 109–45.302–50(a) of this subpart is obtained when sales are made to employees.

§ 109–45.304–6 Reviewing authority.

The reviewing authority may consist of one or more persons designated by the head of the field organization.

§ 109–45.304–50 Processing bids and awarding of contracts.

The procedures established in 48 CFR 14.4 and 48 CFR 914.4 shall be made applicable to the execution, receipt, safeguarding, opening, abstraction, and evaluation of bids and awarding contracts, except that in evaluating bids and awarding contracts, disposal under conditions most advantageous to the Government based on high bids received shall be the determining factor.

§ 109–45.304–51 Documentation.

Files pertaining to surplus property sales shall contain copies of all documents necessary to provide a complete record of the sales transactions and shall include the following as appropriate:

(a) A copy of the request/invitation for bids if a written request/ invitation for bids is employed. A list of items or lots sold, indicating acquisition cost, upset price and sales price indicated.

(b) A copy of the advertising literature distributed to prospective bidders.

(c) A list of prospective bidders solicited.

(d) An abstract of bids received.

(e) Copies of bids received, including Standard Form 119, Contractor's Statement of Contingent or Other Fees, together with other relevant information.

(f) A statement concerning the basis for determination that proceeds constitute a reasonable return for property sold.

(g) When appropriate, full and adequate justification for not advertising the sale when the fair market value of property sold in this manner in any one case exceeds $1,000.

(h) A justification concerning any award made to other than the high bidder.

(i) The approval of the reviewing authority when required.

(j) A copy of the notice of award.

(k) All related correspondence.

(l) In the case of auction or spot bid sales, the following additional information should be included:

(1) A summary listing of the advertising used (e.g., newspapers, radio, television, and public postings).

(2) The names of the prospective bidders who attended the sale.

(3) A copy of any pertinent contract for auctioneering services and related documents.

(4) A reference to files containing record of deposits and payments.

§ 109–45.309 Special classes of property.

§ 109–45.309–2.50 Hazardous property.

Hazardous property shall be made available for sale only after the review and certification requirements of § 109–43.307–2.50 of this subpart have been met.

§ 109–45.309–51 Export controlled property.

Export controlled property shall be made available for sale only after the export license requirements of § 109–43.307–50 of this subpart have been met.

§ 109–45.309–52 Classified property.

Classified property shall be made available for sale only after the declassification requirements of § 109–43.307–51 of this subpart have been met.

§ 109–45.309–53 Nuclear-related or proliferation sensitive property.

Nuclear-related or proliferation-sensitive property shall be made available for sale only after the stripping and certification requirements of § 109–43.307–52 of this subpart have been met.

§ 109–45.309–54 Automatic Data Processing Equipment (ADPE).

ADPE shall be made available for sale only after the sanitizing and certification requirements of § 109–43.307–53 of this subpart have been met.

§ 109–45.310 Antitrust laws.

DOE offices shall submit to the Deputy Assistant Secretary for Procurement and Assistance Management any request for a proposed sale of a patent, process, technique, or invention, regardless of cost; or of surplus personal property with a fair market value of $3,000,000 or more.

§ 109–45.317 Noncollusive bids and proposals.

(a) [Reserved]

(b) The head of the field organization shall make the determination required in 41 CFR 101–45.317(b). This authority cannot be redelegated.

Subpart 109–45.6—Debarred, Suspended, and Ineligible Contractors

§ 109–45.601 Policy.

(a)–(b) [Reserved]

(c) The Director, Office of Administrative Services and heads of

field organization shall make the compelling reason determination when entering into a contract for the purchase of surplus Government personal property by a debarred or suspended contractor.

(d) The Deputy Assistant Secretary for Procurement and Assistance Management shall make the determination for simultaneously debarring and suspending a contractor from the purchase of surplus Federal personal property and the award of sales contracts.

§ 109–45.602 Listing debarred or suspended contractors.

(a) [Reserved]

(b) The Director, Office of Administrative Services and heads of field organizations shall establish procedures to ensure that listed contractors are not awarded contracts.

Subpart 109–45.9—Abandonment or Destruction of Personal Property

§ 109–45.901 Authority to abandon or destroy.

Personal property in the possession of DOE offices or designated contractors may be abandoned or destroyed provided that a written determination has been made by the OPMO that property has no commercial value or the estimated cost of its continued care and handling would exceed the estimated proceeds from its sale.

§ 109–45.902 Findings justifying abandonment or destruction.

§ 109–45.902–2 Abandonment or destruction without notice.

The head of the field organization shall designate an official to make the findings justifying abandonment or destruction without public notice of personal property. The OPMO shall review and coordinate on the findings.

Subpart 109–45.10—Recovery of Precious Metals

§ 109–45.1002 Agency responsibilities.

The Director, Office of Administrative Services and heads of field organizations are responsible for establishing a program for the recovery of precious metals.

§ 109–45.1002–3 Precious metals recovery program monitor.

The DPMO shall be the precious metals recovery program monitor.

§ 109–45.1003 Recovery of silver from precious metals bearing materials.

The Director, Office of Administrative Services and heads of field organizations are responsible for the establishment and maintenance of a program for silver recovery from used hypo solution and scrap film.

§ 109–45.1004 Recovery and use of precious metals through the DOD Precious Metals Recovery Program.

DOE operates its own precious metals pool and therefore does not participate in the DOD Precious Metals Recovery Program. See § 109–27.5106 of this chapter for guidance on operation of the DOE precious metals pool.

Subpart 109–45.47—Reports

§ 109–45.4702 Negotiated sales reports.

The report of negotiated sales shall be submitted by DOE offices to the DPMO by November 15 of each year for furnishing to GSA.

Subpart 109–45.50—Excess and Surplus Radioactively and Chemically Contaminated Personal Property

§ 109–45.5005 Disposal.

§ 109–45.5005–1 General.

(a) Nuclear-related, proliferation-sensitive, low level contaminated property, and classified personal property shall not be transferred, sold, exchanged, leased, donated, abandoned, or destroyed without approval of the cognizant program office. Disposal of this personal property is subject to the restrictions contained in applicable sections of part 109–42 and §§ 109–43.307–50, 109–43.307–51, and 109–43.307–52 of this chapter, and applicable sections of 41 CFR part 101–42.

(b) Personal property that is considered defective or unsafe must be mutilated prior to shipment for disposal.

Subpart 109–45.51—Disposal of Excess and Surplus Personal Property in Foreign Areas

§ 109–45.5100 Scope of subpart.

This subpart sets forth policies and procedures governing the disposal of DOE-owned foreign excess and surplus personal property.

§ 109–45.5101 Authority.

The policies and procedures contained in this subpart are issued pursuant to the provisions of 40 USC 471, Federal Property and Administrative Services Act of 1949, as amended. Title IV of the Act entitled ''Foreign Excess Property'' provides that, except where commitments exist under previous agreements, all excess personal property located in foreign areas shall be disposed of by the owning agency, and directs that the head of the agency conform to the foreign policy of the United States in making such disposals.

§ 109–45.5102 General.

Disposal of Government-owned personal property in the custody of DOE organizations or its contractors in foreign areas shall be made in an efficient and economical manner, and in conformance with the foreign policy of the United States.

§ 109–45.5103 Definitions.

As used in this subpart, the following definitions apply:

Foreign means outside the United States, Puerto Rico, American Samoa, Guam, the Trust Territory of the Pacific Islands, and the Virgin Islands.

Foreign service post means the local diplomatic or consular post in the area where the excess personal property is located.

§ 109–45.5104 Disposal.

§ 109–45.5104–1 General.

Foreign excess personal property which is not required for transfer within DOE or to other U.S. Government agencies, except for the personal property identified in § 109–45.5005–1(a) of this part, shall be considered surplus and may be disposed of by transfer, sale, exchange, or lease, for cash, credit, or other property and upon such other terms and conditions as may be deemed proper. Such personal property may also be donated, abandoned, or destroyed under the conditions specified in § 109–45.5105–2(c) of this subpart. Most foreign governments have indicated to the U.S. State Department that they wish to be consulted before U.S. Government property is disposed of in their countries (except in the case of transfers to other U.S. Government agencies). Matters concerning customs duties and taxes, or similar charges, may require prior agreement with the foreign government involved. The State Department shall be contacted in regard to these issues. Whenever advice or approval of the State Department is required by this subpart, it may be obtained either through the foreign service post in the foreign area involved or from the State Department in Washington, DC. If the issue is to be presented to the State Department in Washington, DC, it shall be referred through appropriate administrative channels to the Deputy Assistant Secretary for Procurement and Assistance Management for review, coordination, and handling.

§ 109–45.5104–2 Methods of disposal.

(a) Sales of foreign surplus personal property shall be conducted in accordance with the following guidelines:

(1) Generally, all sales of foreign surplus personal property shall be conducted under the competitive bid process unless it is advantageous and more practicable to the Government not to do so. When competitive bids are not solicited, reasonable inquiry of prospective purchasers shall be made in order that sales may be made on terms most advantageous to the U.S. Government.

(2) In no event shall any personal property be sold in foreign areas without a condition which states that its importation into the United States is forbidden unless the U.S. Secretary of Agriculture (in the case of any agricultural commodity, food, cotton, or woolen goods), or the U.S. Secretary of Commerce (in the case of any other property), has determined that the importation of such property would relieve domestic shortages or otherwise be beneficial to the economy of the United States.

(3) Sales documents shall provide that the purchaser must pay any import duties or taxes levied against personal property sold in the country involved and further provide that the amount of this duty or tax shall not be included as a part of the price paid the U.S. Government for the personal property. In the event the levy is placed upon the seller by law, the buyer will be required to pay all such duties or taxes and furnish the seller copies of his receipts prior to the release of the personal property to him. However, if the foreign government involved will not accept payment from the buyer, the seller will collect the duties or taxes and turn the amounts collected over to the foreign government. Accounting for the amounts collected shall be coordinated with the disbursing officer of the nearest United States foreign service post. The property shall not be released to the purchaser until the disposal officer is satisfied that there is no responsibility for payment by the United States (as contrasted to collection by the United States) of taxes, duties, excises, etc.

(4) Certain categories of personal property, including small arms and machine guns; artillery and projectiles; ammunition, bombs, torpedoes, rockets and guided missiles; fire control equipment and range finders; tanks and ordnance vehicles; chemical and biological agents, propellants and explosives; vessels of war and special naval equipment; aircraft and all components, parts and accessories for aircraft; military electronic equipment; aerial cameras, military photo-interpretation, stereoscopic plotting and photogrammetry equipment; and all material not enumerated which is included in the United States Munitions List, 22 CFR 121.01, and is subject to disposal restrictions. Advance approval must be obtained from the State Department for the sale of all such articles. Therefore, prior to the sale of any of the articles enumerated in the U.S. Munitions List, the foreign service post in the area shall be consulted.

(5) Prior to the sale of personal property which has a total acquisition cost of $250,000 or more, plans for such sale shall be reported to the DPMO with ample time to allow consideration of possible foreign policy issues and advice thereon from the State Department (see section 109–45.5106(a) of this subpart). All proposed sales, regardless of the total acquisition cost of the personal property involved, which the head of the DOE foreign office believes might have a significant economic or political impact in a particular area, shall be discussed with the foreign service post.

(b) While there is authority for exchange or lease of foreign surplus personal property, such authority shall be exercised only when such action is clearly in the best interests of the U.S. Government. Disposals by exchange are subject to the same requirements as disposals by sale under § 109–45.5105–2(a) of this subpart.

(c)(1) Foreign excess or surplus personal property (including salvage and scrap) may be donated, abandoned, or destroyed provided:

(i) The property has no commercial value or the estimated cost of its care and handling would exceed the estimated proceeds from its sale; and

(ii) A written finding to that effect is made and approved by the Deputy Assistant Secretary for International Energy Policy, Trade and Investment.

(2) No personal property shall be abandoned or destroyed if donation is feasible. Donations under these conditions may be made to any agency of the U.S. Government, or to educational, public health, or charitable nonprofit organizations.

(3) Foreign excess personal property may also be abandoned or destroyed when such action is required by military necessity, safety, or considerations of health or security. A written statement explaining the basis for disposal by these means and approval by the Deputy Assistant Secretary for International Energy Policy, Trade and Investment is required.

(4) Property shall not be abandoned or destroyed in a manner which is detrimental or dangerous to public health and safety, or which will cause infringement on the rights of other persons.

§ 109–45.5105 Reports.

(a) Proposed sales of foreign surplus personal property having an acquisition cost of $250,000 or more shall be reported to the DPMO and should include all pertinent data, including the following:

(1) The description of personal property to be sold, including:

(i) Identification of personal property (description should be in terms understandable to persons not expert in technical nomenclature). Personal property covered by the U.S. Munitions List and regulations pertaining thereto (as published in 22 CFR 121.01) should be clearly identified;

(ii) Quantity;

(iii) Condition; and

(iv) Acquisition cost.

(2) The proposed method of sale (e.g., sealed bid, negotiated sale, etc.)

(3) Any currency to be received and payment provisions (i.e., U.S. dollars, foreign currency, or credit, including terms of the proposed sale).

(4) Any restrictions on use of personal property to be sold (such as resale of property, disposal as scrap, demilitarization, etc.).

(5) Any special terms or conditions of sale.

(6) The categories of prospective purchasers (e.g., host country, other foreign countries, special qualifications, etc.).

(7) How taxes, excises, duties, etc., will be handled.

(b) Instructions for reporting foreign excess utilization and disposal transactions are contained in Chapter III of DOE Order 534.1, Accounting.

PART 109–46—UTILIZATION AND DISPOSAL OF PERSONAL PROPERTY PURSUANT TO EXCHANGE/SALE AUTHORITY

Sec.

109–46.000 Scope of part.
109–46.000–50 Applicability.

Subpart 109–46.2—Authorization

109–46.202 Restrictions and limitations.
109–46.203 Special authorizations.

Authority: Sec. 205(c), 63 Stat. 390; 40 U.S.C. 486(c).

§ 109–46.000 Scope of part.

§ 109–46.000–50 Applicability.

(a) Except as set forth in paragraphs (a)(1)–(a)(5), the requirements of FPMR Part 101–46 and this part are not

applicable to designated contractors. Designated contractors shall comply with the following FPMR requirements:

(1) 101–46.200

(2) 101–46.201–1

(3) 101–46.202(b)(2), (3), (4), (5), (6), and (7)

(4) 101–46.202(c)(1), (2), (4), (5), (6), (7), (10), (11), and (12)

(5) 101–46.202(d)

(b) Items in the following Federal Supply Classification Groups (FSCG) are not eligible for processing under the exchange/sale provision. Requests for waivers must be processed through the DPMO to GSA.

Description

FSCG
10 Weapons
11 Nuclear ordnance
12 Fire control equipment
14 Guided missiles
15 Aircraft and airframe structural components (except FSC Class 1560, Airframe structural components)
20 Ship and marine equipment
22 Railway equipment
41 Firefighting, rescue, and safety equipment

Subpart 109–46.2—Authorization

§ 109–46.202 Restrictions and limitations.

(a), (b), (c)(1)–(c)(9) [Reserved]

(c)(10) The Director, Office of Administrative Services and heads of field organizations for their respective organizations shall designate an official to make the certification that a continuing valid requirement exists for excess personal property acquired and placed in official use for less than one year but no longer required and is to be disposed of under the exchange/sale provisions.

(c)(11) [Reserved]

(c)(12) Heads of field organizations shall make the determination concerning demilitarization of combat material.

§ 109–46.203 Special authorizations.

(a) [Reserved]

(b) The Director, Office of Administrative Services and heads of field organizations for their respective organizations shall designate an official to make the certification concerning the exchange of historic items for historical preservation or display.

PART 109–48—UTILIZATION, DONATION, OR DISPOSAL OF ABANDONED AND FORFEITED PERSONAL PROPERTY

Sec.
109–48.000 Scope of part.
109–48.000–50 Applicability.

Subpart 109–48.1—Utilization of Abandoned and Forfeited Personal Property

109–48.101 Forfeited or voluntarily abandoned property.
109–48.101–6 Transfer to other Federal agencies.

Authority: Sec. 205(c), 63 Stat. 390; 40 U.S.C. 486(c).

§ 109–48.000 Scope of part.

§ 109–48.000–50 Applicability.

This part is applicable to contractor operations where the abandoned or forfeited personal property is found on premises owned or leased by the Government that are managed and operated by designated contractors.

Subpart 109–48.1—Utilization of Abandoned and Forfeited Personal Property

§ 109–48.101 Forfeited or voluntarily abandoned property.

§ 109–48.101–6 Transfer to other Federal agencies.

(a)–(e) [Reserved]

(d) Transfer orders for forfeited or voluntarily abandoned distilled spirits, wine, and malt beverages for medicinal, scientific, or mechanical purposes or any other official purposes for which appropriated funds may be expended by a Government agency shall be forwarded through normal administrative channels for signature by the DPMO and for subsequent forwarding to GSA for release.

(f) Transfer orders for reportable forfeited drug paraphernalia shall be forwarded through normal administrative channels for signature by the DPMO and for subsequent forwarding to GSA for approval.

PART 109–50—SPECIAL DOE DISPOSAL AUTHORITIES

Sec.
109–50.000 Scope of part.
109–50.001 Applicability.

Subpart 109–50.1—Used Energy-Related Laboratory Equipment Grant Program

109–50.100 Scope of subpart.
109–50.101 Applicability.
109–50.102 General.
109–50.103 Definitions.
109–50.104 Equipment which may be granted.
109–50.105 Equipment which may not be granted.
109–50.106 Procedure.
109–50.107 Reporting.

Subpart 109–50.2—Math and Science Equipment Gift Program

109–50.200 Scope of subpart.
109–50.201 Applicability.
109–50.202 Definitions.
109–50.203 Eligible equipment.
109–50.204 Limitations.
109–50.205 Procedure.
109–50.206 Reporting.

Subpart 109–50.3—[Reserved]

Subpart 109–50.4—Programmatic Disposal to Contractors of DOE Property in a Mixed Facility

109–50.400 Scope of subpart.
109–50.401 Definitions.
109–50.402 Submission of proposals.
109–50.403 Need to establish DOE program benefit.

Subpart 109–50.48—Exhibits

109–50.4800 Scope of subpart.
109–50.4801 Equipment Gift Agreement.

Authority: Sec. 644, Pub. L. 95–91, 91 Stat. 599 (42 U.S.C. 7254); sec. 31, Atomic Energy Act, as amended; Energy Reorganization Act of 1974, secs. 103 and 107; Title III, Department of Energy Organization Act; E.O. 12999; sec. 3710(i), Stevenson-Wydler Technology Innovation Act, as amended (15 U.S.C. 3710(i)); Pub. L. 101–510, Department of Energy Science Education Enhancement Act; Pub. L. 102–245, American Technologies Preeminence Act of 1991 (15 U.S.C. 3701); Office of Energy Research Financial Assistance Regulations (10 CFR part 605).

§ 109–50.000 Scope of part.

This part provides guidance on the policies, practices, and procedures for the disposal of DOE property under special legislative authorities.

§ 109–50.001 Applicability.

The provisions of this part apply to direct DOE operations and to designated contractors only when specifically provided for in the appropriate subpart.

Subpart 109–50.1—Used Energy-Related Laboratory Equipment Grant Program

§ 109–50.100 Scope of subpart.

This subpart provides guidance on the granting of used energy-related laboratory equipment to universities and colleges and other nonprofit educational institutions of higher learning in the United States for use in energy-oriented educational programs.

§ 109–50.101 Applicability.

This subpart is applicable to DOE offices and designated contractors.

§ 109–50.102 General.

DOE, to encourage research and development in the field of energy, awards grants of excess energy-related laboratory equipment to eligible institutions for use in energy-oriented educational programs. Under the Used Energy-Related Laboratory Equipment (ERLE) Grant Program, grants of used energy-related equipment excess to the requirements of DOE offices and designated contractors may be made to eligible institutions prior to reporting the equipment to GSA for reutilization screening.

§ 109–50.103 Definitions.

As used in this subpart the following definitions apply: *Book value* means acquisition cost less depreciation. *DOE Financial Assistance Rules* (10 CFR part 600) means the DOE regulation which establishes a uniform administrative system for application, award, and administration of assistance awards, including grants and cooperative agreements.

Eligible institution means any nonprofit educational institution of higher learning, such as universities, colleges, junior colleges, hospitals, and technical institutes or museums located in the United States and interested in establishing or upgrading energy-oriented education programs.

Energy-oriented education program means one that deals partially or entirely in energy or energy-related topics.

§ 109–50.104 Equipment which may be granted.

Generally, equipment items classified in FSCG 66, Instruments and Laboratory Equipment, are eligible for granting under this program. Other selected items designated by the Office of Laboratory Policy and Infrastructure Management and approved by the DPMO, are made available under the program.

§ 109–50.105 Equipment which may not be granted.

Equipment which will not be granted include:

(a) Any equipment determined to be required by DOE direct operations or DOE designated contractors; or

(b) General supplies, such as Bunsen burners, hoods, work benches; office equipment and supplies; furniture; drafting supplies; refrigerators; tools; presses; lathes; furnaces; hydraulic and mechanical jacks; cranes; and hoists.

§ 109–50.106 Procedure.

(a) After DOE utilization screening through REAPS, items eligible for ERLE grants are extracted from the REAPS system and provided to the Office of Energy Research by electronic means.

(b) The Office of Energy Research provides this information to prospective grantees through an automated system.

(c) The following periods have been established during which time equipment will remain available to this program prior to reporting it to GSA for reutilization by other Federal agencies:

(1) Thirty days from the date DOE utilization screening is completed to permit suitable time for eligible institutions to review and earmark the desired equipment.

(2) An additional thirty days after the equipment is earmarked to permit the eligible institutions to prepare and submit an equipment proposal request and to provide time for field organizations to review and evaluate the proposal and take appropriate action.

(d) Upon approval of the proposal, a grant will be issued to the institution upon completion.

(e) A copy of the completed grant, shall be used to transfer title and drop accountability of the granted equipment from the financial records.

(f) The cost of care and handling of personal property incident to the grant shall be charged to the receiving institution. Such costs may consist of packing, crating, shipping and insurance, and are limited to actual costs. In addition, where appropriate, the cost of any repair and/or modification to any equipment shall be borne by the recipient institution.

§ 109–50.107 Reporting.

(a) Gifts made under this program shall be included in the annual report of property transferred to non-Federal recipients, as required by 41 CFR 101–43.4701(c) and 109–43.4701(c).

(b) A copy of each equipment agreement shall be forwarded to the Director, Office of Laboratory Policy and Infrastructure Management.

Subpart 109–50.2—Math and Science Equipment Gift Program

§ 109–50.200 Scope of subpart.

This subpart provides guidance on providing gifts of excess and/or surplus education related and Federal research equipment to elementary and secondary educational institutions or nonprofit organizations for the purpose of improving math and science curricula or conducting of technical and scientific education and research activities.

§ 109–50.201 Applicability.

The provisions of this subpart are applicable to DOE offices and designated contractors.

§ 109–50.202 Definitions.

As used in this subpart the following definitions apply:

DOE Field Organizations means the DOE Federal management activities, including Operations Offices, Field Offices, Area Offices, Site Offices, Energy Technology Centers, and Project Offices staffed by Federal employees.

Education-related and Federal research equipment includes but is not limited to DOE-owned property in FSCG 34, 36, 41, 52, 60, 61, 66, 67, 70, and 74 (See 41 CFR 101–43.4801(d)), and other related equipment, which is deemed appropriate for use in improving math and science curricula or activities for elementary and secondary school education, or for the conduct of technical and scientific education and research activities.

Eligible recipient means local elementary and secondary schools and nonprofit organizations.

Elementary and secondary schools means individual public or private educational institutions encompassing kindergarten through twelfth grade, as well as public school districts.

Facilities under DOE Field Organization cognizance means national laboratories, production plants, and project sites managed and operated by DOE contractors or subcontractors.

§ 109–50.203 Eligible Equipment.

(a) Education-related and research equipment will include, but is not limited to the following FSCGs:

FSCG and Description

34 Metalworking Machinery.
36 Special Industry Machinery.
41 Refrigeration, Air Conditioning and Air Circulating Equipment.
52 Measuring Tools
60 Fiber Optics Materials, Components, Assemblies and Accessories.
61 Electric Wire, and Power and Distribution Equipment.
66 Instruments and Laboratory Equipment.
67 Photographic Equipment.
70 General Purpose Automatic Data Processing Equipment (Including Firmware), Software, Supplies and Support Equipment
74 Office Machines, Text Processing Systems and Visible Record Equipment.

(b) Other related equipment may be provided if deemed appropriate and approved by the Director, Office of Laboratory Policy and Infrastructure Management.

§ 109–50.204 Limitations.

(a) Excess and/or surplus education-related and Federal research equipment at DOE Field Organizations and cognizant facilities is eligible for transfer as a gift under this program. However, safety, environmental, and health matters must be considered.

(b) Title to the equipment will transfer upon the recipient's written acknowledgement of receipt.

(c) The Director, Office of Laboratory Policy and Infrastructure Management may authorize gifts of excess and/or surplus education-related and Federal research equipment by signature on the appropriate gift instrument where the book value of an item of equipment exceeds $25,000 or the cumulative book value of the gifts under this program to any one institution exceeds $25,000.

HCA or designee may authorize gifts of excess and/or surplus education-related and Federal research equipment of lesser individual and cumulative book value by signature on the appropriate gift instrument. Delegations by the HCA to authorize gifts of excess and/or surplus education related and Federal research equipment shall be in writing to a specific individual, for a specified period of time, and for a specified (or unlimited) level of authority.

(d) Gifts shall be serviceable and in working order. Disposal Condition Codes 1 and 4, as defined in 41 CFR 101–43.4801(e), meet this criteria. Serviceability of equipment should be verified before the gift is made to the eligible recipient.

§ 109–50.205 Procedure.

(a) The DOE facility will set aside an appropriate amount of excess and/or surplus education-related and Federal research equipment for transfer under this program.

(b) A list of available education-related and Federal research equipment will be prepared and distributed to eligible recipients and the chief State School Board Officer.

(c) Precollege institutions with partnership arrangements with the DOE or its facilities (e.g., an adopted school) may receive gifts of equipment in support of the partnership.

(d) Precollege institutions not in a partnership with DOE may receive equipment at the recommendation of the chief State School Board Officer. The Chief State School Board Officer will determine which schools within the state will receive which equipment. Consideration for placement of the equipment should be based on:

(1) The elementary or secondary schools determined to have the greatest need; or

(2) Recipients of federally funded math and science projects where the equipment would further enhance the progress of the project.

(e) Eligible recipients will have 30 days to select and freeze, on a first come, first serve basis, the items desired and submit a request for selected items stating:

(1) Why the gift is needed; and

(2) How the gift will be used to improve math and science curricula or in the conduct of technical and scientific education and research activities.

(f) The cost of shipping should be minimal and not more than the actual equipment value.

(g) An Equipment Gift Agreement will be prepared and used to provide the gift to eligible recipients. The gift agreement will be in the format provided in section 109–50.4801 of this subchapter. The agreement shall be numbered for control purposes, and signed by the Director, Office of Laboratory Policy and Infrastructure Management or the HCA or designee, as appropriate, and an appropriate official representing the eligible recipient.

§ 109–50.206 Reporting.

(a) Gifts made under this program shall be included in the annual report of property transferred to non-Federal recipients, as required by 41 CFR 101–43.4701(c) and § 109–43.4701(c) of this chapter.

(b) A copy of each equipment agreement shall be forwarded to the Director, Office of Laboratory Policy and Infrastructure Management.

Subpart 109–50.3—[Reserved]

Subpart 109–50.4—Programmatic Disposal to Contractors of DOE Property in a Mixed Facility

§ 109–50.400 Scope of subpart.

This subpart contains policy to be followed when it is proposed to sell or otherwise transfer DOE personal property located in a mixed facility to the contractor who is the operator of that facility.

§ 109–50.401 Definitions.

As used in this subpart, the following definitions apply;

Contractor means the operator of the mixed facility.

DOE property means DOE-owned personal property located in a mixed facility.

Mixed facility means a partly DOE-owned and partly contractor-owned facility. For purposes of this subpart, however, this definition does not apply to such a facility operated by an educational or other nonprofit institution under a basic research contract with DOE.

§ 109–50.402 Submission of proposals.

Proposals involving programmatic disposals of DOE personal property located in mixed facilities to contractors operating that facility shall be forwarded through the appropriate program organization to the DPMO, for review and processing for approval. Each such request shall include all information necessary for a proper evaluation of the proposal. The proposal shall include, as a minimum:

(a) The purpose of the mixed facility;

(b) The description, condition, acquisition cost, and present use of the DOE personal property involved.

(c) The programmatic benefits which could accrue to DOE from the disposal to the contractor (including the considerations which become important if the disposal is not made);

(d) The appraised value of the DOE personal property (preferably by independent appraisers); and

(e) The proposed terms and conditions of disposal including:

(1) Price;

(2) Priority to be given work for DOE requiring the use of the transferred property, and including the basis for any proposed charge to DOE for amortizing the cost of plant and equipment items;

(3) Recapture of the property if DOE foresees a possible future urgent need; and

(4) Delivery of the property, whether ''as is-where is,'' etc.

§ 109–50.403 Need to establish DOE program benefit.

When approval for a proposed programmatic disposal of DOE personal property in a mixed facility is being sought, it must be established that the disposal will benefit a DOE program. For example, approval might be contingent on showing that:

(a) The entry of the contractor as a private concern into the energy program is important and significant from a programmatic standpoint; and

(b) The sale of property to the contractor will remove obstacles which otherwise discourage entry into the field.

Subpart 109–50.48—Exhibits

§ 109–50.4800 Scope of subpart.

This subpart exhibits information referenced in the text of part 109–50 of this chapter that is not suitable for inclusion elsewhere in that part.

§ 109–50.4801 Equipment Gift Agreement.

(a) The following Equipment Gift Agreement format will be used to provide gifts of excess and/or surplus equipment to eligible recipients under the Math and Science Equipment Gift Program (see subpart 109–50.2 of this chapter).

EQUIPMENT GIFT AGREEMENT

_____

(Reference Number)

Between The U.S. Department of Energy and

_____

(Name of Eligible Recipient)

I. Purpose

The Department of Energy shall provide as a gift, excess and/or surplus education-related and Federal research equipment to (Name of Eligible Recipient), hereafter referred to as the Recipient, for the purpose

of improving the Recipient's math and science education curricula or for the Recipient's conduct of technical and scientific education and research activities.

II. Authority

Federal agencies have been directed, to the maximum extent permitted by law, to give highest preference to elementary and secondary schools in the transfer or donation of education-related Federal equipment, at the lowest cost permitted by law. Furthermore, subsection 11(i) of the Stevenson Wydler Technology Innovation Act of 1980, as amended (15 U.S.C. 3710 (i)), authorizes the Director of a laboratory, or the head of any Federal agency or department to give excess research equipment to an educational institution or nonprofit organization for the conduct of technical and scientific education and research activities.

III. Agreement

A. The Department of Energy agrees to provide the equipment identified in the attached equipment gift list, as a gift for the purpose of improving the Recipient's math and science curricula or for the Recipient's conduct of technical and scientific education and research activities.

B. Title to the education-related and Federal research equipment, provided as a gift under this agreement, shall vest with the Recipient upon the Recipient's written acknowledgement of receipt of the equipment. The acknowledgement shall be provided to (Name of the DOE signatory) at (address).

C. The Recipient will be responsible for any repair and modification costs to any equipment received under this gift.

D. The Recipient hereby releases and agrees to hold the Government, the Department of Energy, or any person acting on behalf of the Department of Energy harmless, to the extent allowable by State law, for any and all liability of every kind and nature whatsoever resulting from the receipt, shipping, installation, operation, handling, use, and maintenance of the education-related and Federal Research equipment provided as a gift under this agreement.

E. The Recipient agrees to use the gift provided herein for the primary purpose of improving the math and science curricula or for the conduct of technical and scientific education and research activities.

F. The Recipient agrees to provide for the return of the equipment if such equipment, while still usable, has not been placed in use for its intended purpose within one year after receipt from the Department of Energy.

_____

(U.S. Department of Energy Office)

_____

(Name and Address of Recipient)

_____

(Signature of HCA or Designee)

_____

(Signature of Official)

_____

(Typed Name)

_____

(Typed Name)

_____

(Typed Title)

_____

(Typed Title)

_____

(Date)

(Date)

(b) The list of gifts that accompanies the Equipment Gift Agreement shall contain the Gift Agreement reference number, name of the eligible recipient, and the name of the DOE office. In addition, the following information shall be provided for each line item provided as a gift: DOE ID number, description (name, manufacturer, model number, serial number, etc.), FSC code, quantity, location, acquisition date, and acquisition cost.

[FR Doc. 98–9659 Filed 4–17–98; 8:45 am]

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Part III

Department of Energy

41 CFR Chapter 109

Property Management Regulations; Final Rule

DEPARTMENT OF ENERGY

41 CFR Ch. 109

RIN 1991–AA28

Property Management Regulations

AGENCY: Department of Energy.

ACTION: Final Rule.

SUMMARY: The Department of Energy (DOE) today publishes a final rule to reissue the Department of Energy Property Management Regulation (DOE–PMR) in its entirety. This rule updates the DOE–PMR by deleting obsolete and unnecessary material and incorporating policy and procedure changes issued previously by the Department through Personal Property Letters and DOE–PMR Bulletins. This action provides DOE organizations and DOE contractors an up-to-date, single source for guidance on personal property management matters peculiar to the Department. Specific material that is incorporated, revised, or deleted from the DOE–PMR was summarized in the ''Section-by-Section Analysis'' which appeared in the Notice of Proposed Rulemaking published in the **Federal Register** on September 11, 1996. Revisions which resulted from comments received on the proposed rulemaking are summarized in Section II ''Comments on the Notice of Proposed Rulemaking.''

EFFECTIVE DATE: This final rule will be effective May 20, 1998.

FOR FURTHER INFORMATION CONTACT: Julia A. Harman, Office of Contract and Resource Management (HR–53), Office of Procurement and Assistance Management, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585 (202) 586–1435.

SUPPLEMENTARY INFORMATION:

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II. Comments on the Notice of Proposed Rulemaking
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C. Review Under the Regulatory Flexibility Act
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F. Review Under the National Environmental Policy Act
G. Review Under Small Business Regulatory Enforcement Fairness Act of 1996
H. Review Under the Unfunded Mandates Reform Act of 1995

I. Background

The DOE–PMR, published at 41 CFR Ch. 109, has not been updated to reflect interim changes in Departmental personal property management policy and procedures since 1984. These interim changes, issued through Personal Property Letters and DOE–PMR Bulletins, were made to comply with Executive Orders, statutory requirements, and commitments made to Congress regarding weaknesses identified in the Department's personal property management practices.

The updating of the DOE–PMR completes phase I of the Department's two-phased commitment to bring about significant reform of its personal property management regulations. The phase I objective was to produce an up-to-date baseline document for use in the reform effort. Having done that, the phase II effort will concentrate on (a) significantly reducing and simplifying the personal property regulations in accordance with Executive Order 12988. Phase II is scheduled to be completed in calendar year 1998.

II. Comments on the Notice of Proposed Rulemaking

A Notice of Proposed Rulemaking was published in the **Federal Register** on September 11, 1996 (61 FR 48006). Interested parties were invited to participate in this rulemaking by submitting comments. The public comment period closed on November 12, 1996, a period of 60 days. During this period, comments were received from one DOE contractor and one DOE subcontractor employee commenting as a private citizen. The DOE contractor's comments focused on the Math and Science Equipment Gift Program covered in Subpart 109–50.2. The contractor recommended that:

1. The following authorities rest with the Head of the Contracting Activity (HCA), or designee, in lieu of DOE Headquarters: (1) Adding to the list of eligible equipment at §109–50.203; and (2) making gifts exceeding $25,000 cumulative book value to any one institution at §109–50.205. We disagree with both recommendations because the Executive Agencies that own the equipment are responsible for defining and regulating which specific equipment is eligible. In order to insure that all aspects of the equipment gift program (including equipment eligibility determinations and gift making authorizations) are applied uniformly throughout the Department, these authorities need to be maintained at the Headquarters level.

2. The limitations in § 109–50.205 be modified to significantly raise or eliminate the requirement to obtain DOE Headquarters authorization to make gifts exceeding $25,000 cumulative book value to any one institution. We disagree with the recommendation for several reasons. First of all, the distribution of equipment should be made to those schools with the greatest needs. The threshold is designed to encourage a fair and equitable distribution of equipment among those schools. Secondly, without such a threshold some schools would tend to benefit greatly at the expense of others. We do not believe that to be the intent of the gift program. Thirdly, since the threshold is based on book or depreciated value, a significant amount of equipment can be distributed under the $25,000 threshold. Finally, feedback on the equipment gift program to date does not indicate that the threshold is an impediment to meeting the program objectives.

3. Equipment in disposal condition codes 2 (unused-fair) and 5 (used-fair) be made eligible under the program. We disagree with the recommendation because equipment must be made available to schools at the lowest possible cost. To that end, the Department should only provide equipment that can be used ''as is'' for an extended period of time. The transfer of equipment in fair (i.e., marginal) condition would burden schools with immediate or near term costs for servicing, repair, and possible disposal of the equipment. While the recommendation is well meaning, we view it as counter to the spirit and intent of the program.

4. Section 109–50.205 be rewritten to remove apparent contradictions and clarify the hierarchy of distribution to and eligibility of potential recipients. We agree with the recommendation and have rewritten the section to clarify the procedure that was originally established in a July 17, 1995 DOE Headquarters memorandum that established the equipment gift program.

5. The requirement to forward a copy of each Equipment Gift Agreement to DOE Headquarters be eliminated or changed to the Head of the Contracting Activity or designee. We disagree with the recommendation because the Equipment Gift Agreements are used by DOE Headquarters (a) to monitor the success of and make adjustments to the program and (b) as source documents for preparing a report provided by the Department to the General Services Administration (GSA). The comments submitted by the DOE subcontractor employee who commented as a private citizen involved financial accounting issues. Although the comments were submitted under the rulemaking, the solutions are outside the scope of the DOE–PMR. The comments were forwarded to the DOE Office of Financial Policy for consideration as

proposed changes to DOE accounting directives. DOE field offices were also invited to submit comments, primarily for consideration under phase II of the Department's regulatory reform effort. Among the comments received were several regarding Executive Order 12999, which replaces Executive Order 12821. Executive Order 12999 will be implemented upon approval of the Department's implementation plan. However, a number of the comments were accepted for immediate implementation because they addressed areas affected by Presidential directive, recent Federal Property Management Regulation changes issued by GSA, or minor editorial and technical errors. The revisions made as a result of these comments are as follows:

1. The word ''capital'' in the term ''capital equipment,'' used extensively in part 1 of this regulation and defined in § 109–1.100–50, is removed to eliminate the confusion created by the use of the same term, with different meaning, by the Department's financial accounting organization. This change was formalized in a Departmental memorandum issued on August 29, 1996.

2. The acronyms CPPSR and HR in § 109–1.100–51 are deleted because neither acronym is used in the text.

3. Deviation requests in §109–1.110–50 involving aviation related matters are forwarded by the on-site DOE Aviation Management Officer, in lieu of the Organizational Property Management Officer, to the DOE Senior Aviation Management Official.

4. Loans in § 109–1.5102 are approved by the on-site property administrator when the OPMO is not located at the contractor facility.

5. Identification marking of property in § 109–1.5105 is expanded to allow the use of ''U.S. DOE'' as an alternative marking when there is not enough room to mark it as ''U.S. Government Property.''

6. The applicability of the policy and guidance in subpart 109–1.53 is limited to three categories of high risk personal property because other Departmental systems and procedures already provide the required controls for the remaining six categories.

7. The physical inventory requirement for sensitive items in § 109–1.5109 is modified to reflect changes that were authorized in Personal Property Letter 970–2 issued on February 23, 1996.

8. By a Presidential Memorandum dated February 10, 1993 Agency Heads were instructed to ''refrain from authorizing the use of Government vehicles for * * * deputies for daily home-to-work transportation.'' Accordingly, the authority for the Deputy Secretary contained in § 109–6.403(b) is eliminated.

9. Section 109–27.000–50 is deleted because the information in the section is redundant.

10. The stores inventory turnover ratio in § 109–27.5002 is corrected to show the proper comparative factors.

11. The subpart 27.51 dealing with precious metals management is updated to reflect the establishment of the Business Center for Precious Metals Sales and Recovery.

12. The periodic EHFFP program reviews in § 109–28.5005 are conducted by the on-site property administrator when the OPMO is not located at the contractor facility.

13. Part 109–37 dealing with aviation administration is reserved pending a complete revision of Departmental policies and procedures.

14. Definition of special purpose vehicles in § 109–38.001 is updated to include all terrain vehicles.

15. Section 109–38.106 is deleted as a result of Federal Property Management Regulation changes published in FPMR Amendment G–111, dated October 28, 1996.

16. Section 109–43.307–52(c) is moved to § 109–42.1102–8(a) and updated to include a reference to the Defense Demilitarization Manual because it deals with United States Munitions List items subject to demilitarization.

17. Sections 109–43.4701(a) and 109–44.4701(a) and §§ 109–45.1002–2, 109–45.4701, and 109–46.305 are removed as a result of a FPMR change, published as FPMR Amendment H–196, dated June 24, 1997, that eliminated several annual reports required by GSA.

18. Section 109–46.201(c) is updated to reflect a FPMR change, published as FPMR Amendment H–195, dated June 23, 1997, that reduced the number of Federal Supply Classification Groups on the exchange/sale authority exclusion list.

19. Section 109–50.106 is updated to delete references to the use of ADPE tapes and printed catalogs. Both are no longer in use.

Aside from these minor editorial and technical error corrections, there were no significant revisions to the rulemaking based on the submitted comments.

20. Subpart 109–50.3 is withdrawn and held in reserve pending resolution of outstanding issues related to economic development.

III. Procedural Requirements

A. Review Under Executive Order 12866

This regulatory action has been determined not to be a ''significant regulatory action'' under Executive Order 12866, ''Regulatory Planning and Review,'' (58 FR 51735, October 4, 1993). Accordingly, this action was not subject to review, under that Executive Order, by the Office of Information and Regulatory Affairs of the Office of Management and Budget (OMB).

B. Review Under Executive Order 12988

With respect to the review of existing regulations and the promulgation of new regulations, section 3(a) of Executive Order 12988, ''Civil Justice Reform,'' 61 FR 4729 (February 7, 1996), imposes on Executive agencies the general duty to adhere to the following requirements: (1) Eliminate drafting errors and ambiguity; (2) write regulations to minimize litigation; and (3) provide a clear legal standard for affected conduct rather than a general standard and promote simplification and burden reduction. With regard to the review required by section 3(a), section 3(b) of Executive Order 12988 specifically requires that Executive agencies make every reasonable effort to ensure that the regulation: (1) Clearly specifies the preemptive effect, if any; (2) clearly specifies any effect on existing Federal law or regulation; (3) provides a clear legal standard for affected conduct while promoting simplification and burden reduction; (4) specifies the retroactive effect, if any; (5) adequately defines key terms; and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. Section 3(c) of Executive Order 12988 requires Executive agencies to review regulations in light of applicable standards in section 3(a) and section 3(b) to determine whether they are met or it is unreasonable to meet one or more of them. DOE has completed the required review and determined that, to the extent permitted by law, the regulations meet the relevant standards of Executive Order 12988.

C. Review Under the Regulatory Flexibility Act

The rule was reviewed under the Regulatory Flexibility Act of 1980, Pub. L. 96–354, which requires preparation of an initial regulatory flexibility analysis for any rule that is likely to have a significant economic impact on a substantial number of small entities. In the background section of the rule, DOE noted that the rule was the first

phase of a two-phased approach to (1) streamline the personal property management process and (2) reduce constraints, prescriptive requirements, and administrative processes on DOE internal operations and large contractors who manage and operate DOE facilities. Based on this review, DOE certified that this rule will not have a significant economic impact on a substantial number of small entities and, therefore, no regulatory flexibility analysis had been prepared. DOE did not receive any comments on this certification.

D. Review Under the Paperwork Reduction Act

No new information collection or record keeping requirements are imposed by this rule. Accordingly, no OMB clearance is required under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501, *et seq.*).

E. Review Under Executive Order 12612

Executive Order 12612, entitled ''Federalism,'' 52 FR 41685 (October 30, 1987), requires that regulations, rules, legislation, and any other policy actions be reviewed for any substantial direct effects on States, on the relationship between the Federal Government and the States, or in the distribution of power and responsibilities among various levels of government. If there are sufficient substantial direct effects, then the Executive Order requires preparation of a federalism assessment to be used in all decisions involved in promulgating and implementing a policy action. DOE has determined that this rule will not have a substantial direct effect on the institutional interests or traditional functions of States.

F. Review Under the National Environmental Policy Act

Pursuant to the Council on Environmental Quality Regulations (40 CFR parts 1500–1508), the Department has established guidelines for its compliance with the provisions of the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321, *et seq.*). Pursuant to Appendix A of subpart D of 10 CFR part 1021, National Environmental Policy Act Implementing Procedures (Categorical Exclusion A6), DOE has determined that this rule is categorically excluded from the need to prepare an environmental impact statement or environmental assessment.

G. Review Under Small Business Regulatory Enforcement Fairness Act of 1996

As required by 5 U.S.C. 801, DOE will report to Congress promulgation of the rule prior to its effective date. The report will state that it has been determined that the rule is not a ''major rule'' as defined by 5 U.S.C. 804(3).

H. Review Under the Unfunded Mandates Reform Act of 1995

The Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) generally requires a Federal agency to perform a detailed assessment of costs and benefits of any rule imposing a Federal mandate with costs to State, local or tribal governments, or to the private sector, of $100 million or more. This rulemaking only affects DOE and private sector entities, and the impact is less than $100 million.

List of Subjects in 41 CFR Chapter 109

Government property management.

Issued in Washington, DC, on March 31, 1998.

Richard H. Hopf,

Deputy Assistant Secretary for Procurement and Assistance Management.

For the reasons set out in the preamble, Chapter 109 of Title 41 of the Code of Federal Regulations is revised as set forth below:

CHAPTER 109—DEPARTMENT OF ENERGY PROPERTY MANAGEMENT REGULATIONS

SUBCHAPTER A—GENERAL

Part
109–1 Introduction
109–6 Miscellaneous regulations

SUBCHAPTER B—[RESERVED]

SUBCHAPTER C—[RESERVED]

SUBCHAPTER D—[RESERVED]

SUBCHAPTER E—SUPPLY AND PROCUREMENT

109–25 General
109–26 Procurement sources and program
109–27 Inventory management
109–28 Storage and distribution
109–30 Federal catalog system

SUBCHAPTER F—[RESERVED]

SUBCHAPTER G—AVIATION, TRANSPORTATION, AND MOTOR VEHICLES

109–37 [RESERVED]
109–38 Motor equipment management
109–39 Interagency fleet management systems

SUBCHAPTER H—UTILIZATION AND DISPOSAL

109–42 Utilization and disposal of hazardous materials and certain categories of property
109–43 Utilization of personal property
109–44 Donation of personal property
109–45 Sale, abandonment, or destruction of personal property
109–46 Utilization and disposal of personal property pursuant to exchange/sale authority
109–48 Utilization, donation, or disposal of abandoned and forfeited personal property
109–50 Special DOE disposal authorities

SUBCHAPTER A—GENERAL

PART 109–1—INTRODUCTION

Subpart 109–1.1—Regulation System

Sec.
109–1.100–50 Scope of subpart.
109–1.100–51 Definitions and acronyms.
109–1.101 Federal Property Management Regulations System.
109–1.101–50 DOE–PMR System.
109.1.102 Federal Property Management Regulations.
109–1.102–50 DOE–PMRs.
109–1.103 FPMR temporary regulations.
109–1.103–50 DOE–PMR temporary policies and bulletins.
109–1.104 Publication and distribution of FPMR.
109–1.104–50 Publication and distribution of DOE–PMR.
109–1.106 Applicability of FPMR.
109–1.106–50 Applicability of FPMR and DOE–PMR.
109–1.107 Agency consultation regarding FPMR.
109–1.107–50 Consultation regarding DOE–PMR.
109–1.108 Agency implementation and supplementation of FPMR.
109–1.110–50 Deviation procedures.

Subpart 109–1.50—Personal Property Management Program

109–1.5000 Scope of subpart.
109–1.5001 Policy.
109–1.5002 Personal property management program objectives.

Subpart 109–1.51—Personal Property Management Standards and Practices

109–1.5100 Scope of subpart.
109–1.5101 Official use of personal property.
109–1.5102 Maximum use of personal property.
109–1.5103 Loan of personal property.
109–1.5104 Borrowing of personal property.
109–1.5105 Identification marking of personal property.
109–1.5106 Segregation of personal property.
109–1.5107 Physical protection of personal property.
109–1.5108 Personal property records requirements.
109–1.5108–1 Equipment.
109–1.5108–2 Sensitive items.
109–1.5108–3 Stores inventories.
109–1.5108–4 Precious metals.
109–1.5108–5 Administratively controlled items.
109–1.5109 Control of sensitive items.
109–1.5110 Physical inventories of personal property.
109–1.5111 Retirement of property.
109–1.5112 Loss, damage, or destruction of personal property in possession of DOE direct operations.
109–1.5113 Loss, damage, or destruction of personal property in possession of designated contractors.

109–1.5114 Use of non-Government-owned property.
109–1.5148 Personal property management reports.

Subpart 109–1.52—Personal Property Management Program for Designated Contractors

109–1.5200 Scope of subpart.
109–1.5201 Policy.
109–1.5202 Establishment of a personal property holdings baseline.
109–1.5203 Management of subcontractor-held personal property.
109–1.5204 Review and approval of a designated contractor's personal property management system.
109–1.5205 Personal property management system changes.

Subpart 109–1.53—Management of High Risk Personal Property

109–1.5300 Scope of subpart.
109–1.5301 Applicability.
109–1.5302 Policies.
109–1.5303 Procedures.
109–1.5304 Deviations.

Authority: Sec. 644, Pub. L. 95–91, 91 Stat. 599 (42 U.S.C. 7254).

SUBCHAPTER A—GENERAL

PART 109–1—INTRODUCTION

Subpart 109–1.1—Regulation System

§109–1.100–50 Scope of subpart.

This subpart sets forth the Department of Energy (DOE) Property Management Regulations (DOE–PMR) which establish uniform DOE property management policies, regulations, and procedures that implement and supplement the Federal Property Management Regulations. Property management statutory authorities that are unique to the Department (e.g., section 161g of the Atomic Energy Act of 1954 (42 U.S.C. 2201(g)) and section 3155 of the National Defense Authorization Act for Fiscal Year 1994 (42 U.S.C. 72741)) are not addressed in these regulations.

§109–1.100–51 Definitions and acronyms.

(a) *Definitions.* As used in this chapter, the terms *personal property* and *property* are synonymous. In addition, the following definitions apply:

Administratively controlled items means personal property controlled at the discretion of individual DOE offices, but for which there is no DOE requirement to maintain formal records.

Automatic data processing equipment means, as used in this part and to the extent that such equipment is used to process export controlled information or unclassified controlled nuclear information, any equipment or interconnected system or subsystems of equipment that is used in the automatic acquisition, storage, manipulation, management, movement, control, display, switching, interchange, transmission, or reception of data or information.

Designated contractors means those on-site DOE contractors to which the DOE–PMR is made applicable when included as a contractual requirement. The contractors to which these regulations may be made applicable include management and operating (M&O) contractors, environmental restoration and management contractors, and other major prime contractors located at DOE sites.

Direct operations means operations conducted by DOE personnel.

Disposal means the process of reutilizing, transferring, donating, selling, abandoning, destroying, or other disposition of Government-owned personal property.

Dual-Use List means nuclear-related material, equipment, and related technology as described in the International Atomic Energy Agency Information Circular (INFCIRC) 254 Part 2.

Equipment means any item of personal property having a unit acquisition cost of $5,000 or more and having the potential for maintaining its integrity (i.e., not expendable due to use) as an item.

Especially designed or prepared property means equipment and material designed or prepared especially for use in the nuclear fuel cycle and described in the Nuclear Suppliers Group Trigger List (INFCIRC 254 Part 1).

Export controlled information means unclassified U.S. Government information under DOE cognizance that, if proposed for export by the private sector, would require a U.S. Department of Commerce or U.S. Department of State validated license, or a DOE authorization for export, and which, if given uncontrolled release, could reasonably be expected to adversely affect U.S. national security or nuclear nonproliferation objectives.

Export controlled property means property the export of which is subject to licensing by the U.S. Department of Commerce, the U.S. Department of State, the U.S. Nuclear Regulatory Commission, or authorized by the U.S. Department of Energy.

Hazardous property means any personal property, including scrap or waste but excluding property involving a radiological hazard, that is ignitable, corrosive, reactive, or toxic because of its quantity, concentration, or physical, chemical, or infectious characteristics, or that is deemed a hazardous material, chemical substance or mixture, or hazardous waste under the Hazardous Material Transportation Act, the Resource Conservation and Recovery Act, or the Toxic Substances Control Act. Such property may be in solid, liquid, semi-liquid, or contained gas form and may cause or significantly contribute to an increase in mortality or illness, or pose present or potential hazard to human health or the environment when improperly used, treated, stored, transported, disposed of, or mismanaged.

Heads of field organizations means the heads of any Departmental office located outside the Washington, D.C. metropolitan area. In addition, the Federal Energy Regulatory Commission, and the Office of Headquarters Procurement Operations, shall be considered a field organization for purposes of these regulations.

High risk personal property means property that, because of its potential impact on public health and safety, the environment, national security interests, or proliferation concerns, must be controlled, and disposed of in other than the routine manner. The categories of high risk property are automatic data processing equipment, especially designed or prepared property, export controlled information, export controlled property, hazardous property, nuclear weapon components or weapon-like components, proliferation sensitive property, radioactive property, special nuclear material, and unclassified controlled nuclear information.

Munitions list means articles, services, and related technical data designated as defense articles and defense services by the Arms Export Control Act of 1968, as amended.

Nuclear weapon component or weapon-like component means parts of whole war reserve nuclear weapon systems, joint test assemblies, trainers, or test devices, including associated testing, maintenance, and handling equipment; or items that simulate such parts.

Personal property means property of any kind, except for real estate and interests therein (such as easements and rights-of-way), and permanent fixtures which are Government-owned, chartered, rented, or leased from commercial sources by and in the custody of DOE or its designated contractors; source, byproduct, special nuclear materials, and atomic weapons as defined in section 11 of the Atomic Energy Act of 1954 (42 U.S.C. 2014), as amended; and petroleum in the Strategic Petroleum Reserve and the Naval Petroleum Reserves.

Personal property management means the development, implementation, and administration of policies, standards, programs, practices and procedures for effective and economical acquisition, receipt, storage, issue, use, control, physical protection, care and maintenance, determination of requirements, maintenance of related operating records, and disposal of personal property (exclusive of the property accounting records).

Proliferation-sensitive property means nuclear-related or dual-use equipment, material, or technology as described in the Nuclear Suppliers Group Trigger List and Dual-Use List, or equipment, material or technology used in the research, design, development, testing, or production of nuclear or other weapons.

Radioactive property means any item or material that is contaminated with radioactivity and which emits ionizing radiation in excess of background radiation as measured by appropriate instrumentation.

Sensitive items means those items of personal property which are considered to be susceptible to being appropriated for personal use or which can be readily converted to cash, for example: Firearms, portable photographic equipment, binoculars, portable tape recorders, portable calculators, portable power tools, portable computers, and portable communications equipment.

Special nuclear material means plutonium, uranium 233, uranium enriched in the isotope 233 or 235, any other materials which the Nuclear Regulatory Commission pursuant to the Atomic Energy Act of 1954, as amended, determines to be special nuclear material, or any material artificially enriched by any of the foregoing, but does not include source material.

Trigger List means nuclear material, equipment, and related technology as described in the INFCIRC 254, Part 1.

Unclassified controlled nuclear information means U.S. Government information pertaining to atomic energy defense activities as defined in section 148 of the Atomic Energy Act. Such information can relate to aspects of nuclear weapons design, development, testing, physical security, production, or utilization facilities.

(b) Acronyms. As used in this chapter, the following acronyms apply:

ADPE: Automatic Data Processing Equipment
CFR: Code of Federal Regulations
CSC: Customer Supply Center
DEAR: Department of Energy Acquisition Regulation
DOD: Department of Defense
DOE: Department of Energy
DOE–PMR: Department of Energy Property Management Regulations
DPMO: Departmental Property Management Officer
ECCN: Export Control Classification Number
ECI: Export Controlled Information
EHFFP: Equipment Held For Future Projects
EOQ: Economic Order Quantity
ERLE: Energy-Related Laboratory Equipment
FAR: Federal Acquisition Regulation
FPMR: Federal Property Management Regulations
FSC: Federal Supply Classification
FSCG: Federal Supply Classification Group
GAO: General Accounting Office
GSA: General Services Administration
GVWR: Gross Vehicle Weight Rating
INFCIRC: International Atomic Energy Agency Information Circular
IFMS: Interagency Fleet Management System
M&O: Management and Operating
MCTL: Military Critical Technologies List
OCRM: Office of Contract and Resource Management
OPMO: Organizational Property Management Officer
OPSEC: Operations Security
PPL: Personal Property Letter
REAPS: Reportable Excess Automated Property System
SNM: Special Nuclear Material
UCNI: Unclassified Controlled Nuclear Information
U.S.C.: United States Code

§109–1.101 Federal Property Management Regulations System.

§109–1.101–50 DOE–PMR System.

The DOE–PMR system described in this subpart is established to provide uniform personal property management policies, standards, and practices within the Department.

§109–1.102 Federal Property Management Regulations.

§109–1.102–50 DOE–PMRs.

The DOE–PMRs (41 CFR Ch. 109) implements and supplements the FPMR (41 CFR Ch. 101) issued by the General Services Administration (GSA), Public Laws, Executive Orders, Office of Management and Budget directives, and other agency issuances affecting the Department's personal property management program.

§109–1.103 FPMR temporary regulations.

§109–1.103–50 DOE–PMR temporary policies and bulletins

(a) Subject to applicable procedural requirements in 41 U.S.C. 418b, 42 U.S.C 7191 and 5 U.S.C 553, Personal Property Letters are authorized for publication of temporary policies that should not be codified in the Code of Federal Regulations (CFR).

(b) DOE–PMR Bulletins are used to disseminate information concerning personal property management matters not affecting policy or to clarify instructions in actions required by the FPMR or DOE–PMR.

§109–1.104 Publication and distribution of FPMR.

§109–1.104–50 Publication and distribution of DOE–PMR.

The DOE–PMR will be published in the **Federal Register** and will appear in the CFR as Chapter 109 of Title 41, Public Contracts and Property Management. Loose leaf publications of the DOE–PMR will be distributed to DOE offices.

§109–1.106 Applicability of FPMR.

§109–1.106–50 Applicability of FPMR and DOE–PMR.

(a) The FPMR and DOE–PMR apply to all direct operations.

(b) The DOE–PMR does not apply to facilities and activities conducted under Executive Order 12344 and Pub. L. 98–525.

(c) Unless otherwise provided in the appropriate part or subpart, the FPMR and DOE–PMR apply to designated contractors.

(d) The Procurement Executive or head of a contracting activity may designate contractors other than designated contractors to which the FPMR and DOE–PMR apply.

(e) The FPMR and DOE–PMR shall be used by contracting officers in the administration of applicable contracts, and in the review, approval, or appraisal of such contractor operations.

(f) Regulations for the management of Government property in the possession of other DOE contractors are contained in the Federal Acquisition Regulation (FAR), 48 CFR part 45, and in the DOE Acquisition Regulation (DEAR), 48 CFR part 945.

(g) Regulations for the management of personal property held by financial assistance recipients are contained in the DOE Financial Assistance Rules (10 CFR part 600) and DOE Order 534.1, Accounting.

§ 109–1.107 Agency consultation regarding FPMR.

§ 109–1.107–50 Consultation regarding DOE–PMR.

The DOE–PMR shall be fully coordinated with all Departmental elements substantively concerned with the subject matter.

§ 109–1.108 Agency implementation and supplementation of FPMR.

(a) The DOE–PMR includes basic and significant Departmental personal property management policies and standards which implement, supplement, or deviate from the FPMR.

In the absence of any DOE–PMR issuance, the basic FPMR material shall govern.

(b) The DOE–PMR shall be consistent with the FPMR and shall not duplicate or paraphrase the FPMR material.

(c) Implementing procedures, instructions, and guides which are necessary to clarify or to implement the DOE–PMR may be issued by Headquarters or field organizations, provided that the implementing procedures, instructions and guides:

(1) Are consistent with the policies and procedures contained in this regulation;

(2) To the extent practicable, follow the format, arrangement, and numbering system of this regulation; and

(3) Contain no material which duplicates, paraphrases, or is inconsistent with the contents of this regulation.

§ 109–1.110–50 Deviation procedures.

(a) Each request for deviation shall contain the following:

(1) A statement of the deviation desired, including identification of the specific paragraph number(s) of the DOE–PMR;

(2) The reason why the deviation is considered necessary or would be in the best interest of the Government;

(3) If applicable, the name of the contractor and identification of the contractor affected;

(4) A statement as to whether the deviation has been requested previously and, if so, circumstances of the previous request;

(5) A description of the intended effect of the deviation;

(6) A statement of the period of time for which the deviation is needed; and

(7) Any pertinent background information which will contribute to a full understanding of the desired deviation.

(b)(1) Requests for deviations from applicable portions of the FPMR and DOE–PMR (except aviation related portions) shall be forwarded with supporting documentation by the Organizational Property Management Officer (OPMO) to the Departmental Property Management Officer (DPMO).

(2) Requests for deviations from aviation related portions of the FPMR and DOE–PMR concerning aviation operations shall be forwarded by the OPMO or on-site DOE Aviation Management Officer with supporting documentation to the DOE Senior Aviation Management Official.

(c) The Deputy Assistant Secretary for Procurement and Assistance Management is authorized to grant deviations to the DOE–PMR.

(d) Requests for deviations from the FPMR will be coordinated with GSA by the DPMO.

Subpart 109–1.50—Personal Property Management Program

§ 109–1.5000 Scope of subpart.

This subpart supplements the FPMR, states DOE personal property management policy and program objectives, and prescribes authorities and responsibilities for the conduct of an efficient personal property management program in DOE.

§ 109–1.5001 Policy.

It is DOE policy that a program for the management of personal property shall be established and maintained to meet program needs efficiently and in accordance with applicable Federal statutes and regulations.

§ 109–1.5002 Personal property management program objectives.

The objectives of the DOE personal property management program are to provide:

(a) A system for efficiently managing personal property in the custody or possession of DOE organizations and designated contractors; and

(b) Uniform principles, policies, and standards for efficient management of personal property that are sufficiently broad in scope and flexible in nature to facilitate adaptation to local needs and various kinds of operations.

Subpart 109–1.51—Personal Property Management Standards and Practices

§ 109–1.5100 Scope of subpart.

This subpart provides guidance on DOE standards and practices to be applied in the management of personal property. The standards and practices that apply to equipment shall be based on the unit acquisition cost threshold specified in the definition of equipment contained in section § 109–1.100–51 of this part. No other acquisition cost threshold shall apply.

§ 109–1.5101 Official use of personal property.

Personal property shall be used only in the performance of official work of the United States Government, except:

(a) In emergencies threatening loss of life or property as authorized by law;

(b) As otherwise authorized by law and approved by the Director, Office of Administrative Services; heads of field organizations for their respective organizations; or a contracting officer for contractor-held property.

§ 109–1.5102 Maximum use of personal property.

Personal property management practices shall assure the best possible use of personal property. Supplies and equipment shall be generally limited to those items essential for carrying out the programs of DOE efficiently.

§ 109–1.5103 Loan of personal property.

(a) Personal property which is not excess and would otherwise be out of service for temporary periods may be loaned to other DOE offices and contractors, other Federal agencies, and to others for official purposes. The loan request shall be in writing, stating the purpose of the loan and period of time required. The loan shall be executed on DOE Form 4420.2, Personal Property Loan Agreement or computer generated equivalent when approved in writing by the OPMO or on-site DOE property administrator. When approved, a memorandum transmitting the loan agreement shall be prepared identifying the loan period, delivery time, method of payment and transportation, and point of delivery and return, to ensure proper control and protect DOE's interest. The loan period shall not exceed one year, but may be renewed in one year increments. Second renewals of loan agreements shall be reviewed and justified at a level of management at least two levels above that of the individual making the determination to loan the property. Third renewals shall be approved by the head of the field organization or designee.

(b) Requests for loans to foreign Governments and other foreign organizations shall be submitted to the Deputy Assistant Secretary for International Energy Policy, Trade and Investment for approval, with a copy to the cognizant Headquarters program office.

§ 109–1.5104 Borrowing of personal property.

(a) DOE organizations and designated contractors are encouraged to borrow personal property within DOE to further DOE programs. Property classified as Equipment Held For Future Projects (EHFFP) or as In Standby should be reviewed by those receiving availability inquiries for short-term use (one year or less). Borrowing of Government personal property from other Federal agencies is also encouraged when required for short periods of time. Such transactions shall be covered by written agreements which include all terms of the transaction.

(b) In determining whether it is practical and economical to borrow personal property, consideration shall

be given to suitability, condition, value, extent and nature of use, extent of availability, portability, cost of transportation, and other similar factors.

(c) Adequate records and controls shall be established and maintained for borrowed property to ensure its proper control and prompt return to the lender.

§ 109–1.5105 Identification marking of personal property.

(a) Personal property shall be marked ''U.S. Government property'' (if marking space is limited, property may be marked ''U.S. DOE'') subject to the criteria below. The markings shall be securely affixed to the property, legible, and conspicuous. Examples of appropriate marking media are bar code labels, decals, and stamping.

(1) Equipment and sensitive items shall be marked ''U.S. Government property'' and numbered for control purposes.

(2) Administratively controlled property and other personal property susceptible to unauthorized personal use should be marked ''U.S. Government property'' and numbered for control purposes.

(b) Personal property which by its nature cannot be marked, such as stores items, metal stock, etc., is exempted from this requirement.

(c) To the extent practicable and economical, markings shall be removed prior to disposal outside of DOE, or, if removal is impractical, additional permanent markings must be added to indicate such disposal.

§ 109–1.5106 Segregation of personal property.

Ordinarily, contractor-owned personal property shall be segregated from Government personal property. Commingling of Government and contractor-owned personal property may be allowed only when:

(a) The segregation of the property would materially hinder the progress of the work (i.e., segregation is not feasible for reasons such as small quantities, lack of space, or increased costs); and

(b) Control procedures are adequate (i.e., the Government property is specifically marked or otherwise identified as Government property).

§ 109–1.5107 Physical protection of personal property.

Controls such as property pass systems, memorandum records, regular or intermittent gate checks, and/or perimeter fencing shall be established as appropriate to prevent loss, theft, or unauthorized removal of property from the premises on which such personal property is located.

§ 109–1.5108 Personal property records requirements.

The contractor's property control records shall provide the following basic information for every accountable item of Government personal property in the contractor's possession and any other data elements required by specific contract provisions:

(a) Contract number or equivalent code designation.

(b) Asset type.

(c) Description of item (name, serial number, national stock number (if available)).

(d) Property control number (Government ownership identity).

(e) Unit acquisition cost (including delivery and installation cost, when appropriate, and unit of measure).

(f) Acquisition document reference and date.

(g) Manufacturer's name, model and serial number.

(h) Quantity received, fabricated, issued or on hand.

(i) Location (physical area)

(j) Custodian name and organization code.

(k) Use status (active, storage, excess, etc.)

(l) High risk designation.

(m) Disposition document reference and date.

§ 109–1.5108–1 Equipment.

An individual property record will be developed and maintained for each item of equipment.

§ 109–1.5108–2 Sensitive items.

Individual item records will be maintained for each sensitive item. Minimum dollar value thresholds for controlling sensitive items, if used, will be determined by the OPMO for each DOE organization in consultation with appropriate management officials. This threshold may be applied organization-wide or by individual contractors or location. Identification of types of property meeting the DOE-PMR definition of sensitive property should be the primary determinant of sensitive category, with dollar thresholds, if any, considered as a guideline only. Sensitive items which are also equipment will be controlled as both sensitive items and equipment.

§ 109–1.5108–3 Stores inventories.

Perpetual inventory records are to be maintained for stores inventory items.

§ 109–1.5108–4 Precious metals.

Perpetual inventory records are to be maintained for precious metals.

§ 109–1.5108–5 Administratively controlled items.

No formal property management records are required to be maintained for this category of personal property, which includes such items as those controlled for calibration or maintenance purposes, contaminated property, tool crib items, and equipment pool items. Various control records can be employed to help safeguard this property against waste and abuse, including purchase vs. use information, tool crib check-outs, loss and theft reports, calibration records, disposal records, and other similar records. Control techniques would include physical security, custodial responsibility, identification/marking, or other locally established control techniques.

§ 109–1.5109 Control of sensitive items.

(a) A list of types of personal property considered to be sensitive shall be developed and maintained by each DOE activity/site, taking into consideration value, costs of administration, need for control, and other factors that management determines should apply.

(b) Items of equipment which are also designated as sensitive items will be controlled as sensitive items and as equipment.

(c) Written procedures shall be established for control of sensitive items and shall address:

(1) Approval of purchase requisitions or issue documents at an appropriate supervisory level;

(2) Establishment of controls in the central receiving and warehousing department, such as extraordinary physical protection, handling, and maintenance of a current listing of sensitive items;

(3) Establishment and maintenance of appropriate records;

(4) Requirement for tagging and identification;

(5) Use of memorandum receipts or custody documents at time of assignment or change in custody;

(6) Establishment of custodial responsibilities describing:

(i) Need for extraordinary physical protection;

(ii) Requirement for efficient physical and administrative control of sensitive items assigned for general use within an organizational unit as appropriate to the type of property and the circumstances;

(iii) Requirement for prompt reporting and investigation of loss, damage or destruction; and

(iv) Requirement for promptly reporting changes in custody.

(7) Requirement for periodic physical inventories (see § 109–1.5110 of this part).

(8) Requirement for an employee transfer or termination check-out procedure and examination and adjustment of records;

(9) Reminder of prohibition of use for other than official purposes and penalties for misuse;

(10) A clear statement of the extent of responsibility for financial accountability depending upon contractor policy; and

(11) Other procedures which have demonstrated efficient physical and administrative control over sensitive items.

§ 109–1.5110 Physical inventories of personal property.

(a) Physical inventories of those categories of personal property as specified in paragraph (f) of this section shall be conducted at all DOE and designated contractor locations.

(b) Physical inventories shall be performed by the use of personnel other than custodians of the property. Where staffing restraints or other considerations apply, the inventory may be performed by the custodian with verification by a second party.

(c) Detailed procedures for the taking of physical inventories shall be developed for each DOE office and designated contractor. The OPMO shall review and approve the DOE office and contractor procedures.

(d) The conduct of a physical inventory will be observed, or follow-on audits made, by independent representatives, e.g., finance, audit, or property personnel, to the extent deemed necessary to assure that approved procedures are being followed and results are accurate. These observations or audits shall be documented and the documentation retained in the inventory record file.

(e) Procedures that are limited to a check-off of a listing of recorded property without actual verification of the location and existence of such property do not meet the requirements of a physical inventory.

(f) The frequency of physical inventories of personal property shall be as follows:

(1) Equipment—biennial.

(2) Sensitive items—annual (see paragraph 109–1.5110(l) of this section).

(3) Stores inventories—annual.

(4) Precious metals—annual.

(5) Administratively controlled items—There is no formal Department requirement for the performance of physical inventories of this property. However, OPMOs should determine such requirements based on management needs.

(g) Physical inventories shall be performed at intervals more frequently than required when experience at any given location or with any given item or items indicates that this action is necessary for effective property accounting, utilization, or control.

(h) Physical inventories of equipment may be conducted by the ''inventory by exception'' method. The system and procedures for taking physical inventories by this method must be fully documented and approved in writing by the OPMO.

(i) The results of physical inventories shall be reconciled with the property records, and with applicable financial control accounts.

(j) The results of physical inventories shall be reported to the OPMO within 30 days after the reconciliation required above.

(k) Physical inventories of equipment and stores inventories may be conducted using statistical sampling methods in lieu of the normal wall-to-wall method. The sampling methods employed must be statistically valid and approved in writing by the OPMO. If use of the statistical methods of physical inventory does not produce acceptable results, the wall-to-wall method shall be used to complete the inventories.

(l) Physical inventories of sensitive items (excluding arms, ammunition, and military property) having an acquisition cost of $2,000 or less may also be conducted using statistical sampling methods. However if statistical sampling methods are used, a wall-to-wall inventory is required no less frequently than every three years and at contract completion (unless there is a follow-on contract with the same contractor).

§ 109–1.5111 Retirement of property.

When Government property is worn out, lost, stolen, destroyed, abandoned, or damaged beyond economical repair, it shall be listed on a retirement work order. A full explanation shall be supported by an investigation, if necessary, as to the date and circumstances surrounding the wear, loss, theft, destruction, abandonment, or damage. The retirement work order shall be signed by the responsible official initiating the report and reviewed and approved by an official at least one supervisory level above the official initiating the report.

§ 109–1.5112 Loss, damage, or destruction of personal property in possession of DOE direct operations.

DOE offices shall establish procedures to provide for the reporting, documentation, and investigation of instances of loss, damage, or destruction of personal property including:

(a) Notification to appropriate DOE organizations and law enforcement offices;

(b) Determination of cause or origin;

(c) Liability and responsibility for repair or replacement; and

(d) Actions taken to prevent further loss, damage, or destruction, and to prevent repetition of similar incidents.

§ 109–1.5113 Loss, damage, or destruction of personal property in possession of designated contractors.

(a) Designated contractors shall report any loss, damage, or destruction of personal property in its possession or control, including property in the possession or control of subcontractors, to the property administrator as soon as it becomes known.

(b) When physical inventories, consumption analyses, or other actions disclose consumption of property considered unreasonable by the property administrator; or loss, damage, or destruction of personal property not previously reported by the contractor, the property administrator shall require the contractor to investigate the incidents and submit written reports.

(c) Reports of physical inventory results and identified discrepancies shall be submitted to the property administrator within 90 days of completion of physical inventories. An acceptable percentage of shrinkage for stores inventories shall be determined by the property administrator on a location-by-location basis, based on type and cost of materials, historical data, and other site-specific factors. This determination shall be in writing and be supported by appropriate documentation.

(d) The contractor's report referenced above shall contain factual data as to the circumstances surrounding the loss, damage, destruction or excessive consumption, including:

(1) The contractor's name and contract number;

(2) A description of the property;

(3) Cost of the property, and cost of repairs in instances of damage (in event actual cost is not known, use reasonable estimate);

(4) The date, time (if pertinent), and cause or origin; and

(5) Actions taken by the contractor to prevent further loss, damage, destruction, or unreasonable consumption, and to prevent repetition of similar incidents.

(e) The property administrator shall ensure that the corrective actions taken by the contractor under paragraph (d)(5) of this section satisfactorily address system weaknesses.

(f) The contracting officer shall make a determination of contractor liability

with a copy of the determination furnished to the contractor and the property administrator. Costs may be assessed against a contractor for physical inventory discrepancies or other instances of loss of Government property within the terms of the contract. Credit should only be applied if specific items reported as lost can be uniquely identified. General physical inventory write-ons are not to be used as a credit.

(g) If part of a designated contractor's personal property management system is found to be unsatisfactory, the property administrator shall increase surveillance of that part to prevent, to the extent possible, any loss, damage, destruction or unreasonable consumption of personal property. The property administrator shall give special attention to reasonably assuring that any loss, damage, destruction or unreasonable consumption occurring during a period when a contractor's personal property management system is not approved is identified before approval or reinstatement of approval.

§ 109–1.5114 Use of non-Government-owned property.

Non-Government-owned personal property shall not be installed in, affixed to, or otherwise made a part of any Government-owned personal property when such action will adversely affect the operation or condition of the Government property.

§ 109–1.5148 Personal property management reports.

Reports to be submitted to the DPMO are listed in Table 1:

TABLE 1

Report title	Due at DOE headquarters	References	Form No.
(1) Report of Exempted Motor Vehicles	On request	FPMR 101–38.204–4, DOE–PMR 109–38.204–4	Letter.
(2) Agency Report of Motor Vehicle Data	Oct. 31	FPMR 101–38.903, DOE–PMR 109–38.903	SF 82.
(3) Excess Personal Property Furnished to Non-Federal Recipients.	Nov. 15	FPMR 101–43.4701(c), DOE–PMR 109–43.4701(c).	Letter.
(4) Negotiated Sales	Nov. 15	FPMR 101–45.4702, DOE–PMR 109–45.4702	Letter.

Subpart 109–1.52—Personal Property Management Program for Designated Contractors

§ 109–1.5200 Scope of subpart.

This subpart prescribes policy and responsibilities for the establishment, maintenance, and appraisal of designated contractors' programs for the management of personal property.

§ 109–1.5201 Policy.

(a) Designated contractors shall establish, implement, and maintain a system that provides for an efficient personal property management program. The system shall be consistent with the terms of the contract; prescribed policies, procedures, regulations, statutes, and instructions; and directions from the contracting officer.

(b) Designated contractors' personal property management systems shall not be considered acceptable until reviewed and approved in writing by the cognizant DOE contracting office in accordance with § 109–1.5205 of this subpart.

(c) Designated contractors shall maintain their personal property management systems in writing. Revisions to the systems shall be approved in writing by the cognizant DOE contracting office in accordance with § 109–1.5205 of this subpart.

(d) Designated contractors shall include their personal property management system in their management surveillance or internal review program in order to identify weaknesses and functions requiring corrective action.

(e) Designated contractors are responsible and accountable for all Government personal property in the possession of subcontractors, and shall include appropriate provisions in their subcontracts and property management systems to assure that subcontractors establish and maintain efficient systems for the management of Government personal property in their possession in accordance with § 109–1.5204 of this subpart.

§ 109–1.5202 Establishment of a personal property holdings baseline.

(a) If the contractor is a new designated contractor, the contractor may accept the previous contractor's personal property records as a baseline or may perform a complete physical inventory of all personal property. This physical inventory is to be performed within the time period specified by the contracting officer or the contract, but no later than one year after the execution date of the contract. If the physical inventory is not accomplished within the allotted time frame, the previous contractor's records will be considered as the baseline.

(b) If any required physical inventories have not been accomplished within the time periods prescribed in § 109–1.5110(f) of this part, the new contractor shall either perform such physical inventories within 120 days of contract renegotiation, or accept the existing property records as the baseline.

§ 109–1.5203 Management of subcontractor-held personal property.

Designated contractors shall require those subcontractors provided Government-owned personal property to establish and maintain a system for the management of such property. As a minimum, a subcontractor's personal property management system shall provide for the following:

(a) Adequate records.

(b) Controls over acquisitions.

(c) Identification as Government-owned personal property.

(d) Physical inventories.

(e) Proper care, maintenance, and protection.

(f) Controls over personal property requiring special handling (i.e., nuclear-related, proliferation-sensitive, hazardous, or contaminated property).

(g) Reporting, redistribution, and disposal of excess and surplus personal property.

(h) Accounting for personal property that is lost, damaged, destroyed, stolen, abandoned, or worn out.

(i) Periodic reports, including physical inventory results and total acquisition cost of Government property.

(j) An internal surveillance program, including periodic reviews, to ensure that personal property is being managed in accordance with established procedures.

§ 109–1.5204 Review and approval of a designated contractor's personal property management system.

(a) An initial review of a designated contractor's personal property management system shall be performed

by the property administrator within one year after the execution date of the contract, except for contract extensions or renewals or when an existing contractor has been awarded a follow-on contract. The purpose of the review is to determine whether the contractor's system provides adequate protection, maintenance, utilization, and disposition of personal property, and reasonable assurance that the Department's personal property is safeguarded against waste, loss, unauthorized use, or misappropriation, in accordance with applicable statutes, regulations, contract terms and conditions, programmatic needs, and good business practices. If circumstances preclude completion of the initial review within the ''within one year'' initial review requirement, the property administrator shall request a deviation from the requirement in accordance with the provisions of § 109–1.110–50 of this part.

(b) If a designated contractor is the successor to a previous designated contractor and the contract award was based in part on the contractor's proposal to overhaul the existing personal property management system(s), the ''within one year'' initial review requirement may be extended based on:

(1) The scope of the overhaul; and

(2) An analysis of the cost to implement the overhaul within a year versus a proposed extended period.

(c) When an existing contract has been extended or renewed, or the designated contractor has been awarded a follow-on contract, an initial review of the contractor's personal property management system is not required. In such cases, the established appraisal schedule will continue to be followed as prescribed in paragraph (d) of this section.

(d) At a minimum of every three years after the date of approval of a designated contractor's property management system, the OPMO shall make an appraisal of the personal property management operation of the contractor. The purpose of the appraisal is to determine if the contractor is managing personal property in accordance with its previously approved system and procedures, and to establish whether such procedures are efficient. The appraisal may be based on a formal comprehensive appraisal or a series of formal appraisals of the functional segments of the contractor's operation.

(e) A designated contractor's property management system shall be approved, conditionally approved, or disapproved in writing by the head of the field organization with advice of the contracting officer, property administrator, OPMO, legal counsel, DPMO, and appropriate program officials. Approval authority may be redelegated to the contracting officer or contracting officer's designee. Conditional approval and disapproval authority cannot be redelegated. When a system is conditionally approved or disapproved, the property administrator or contracting officer shall advise the contractor, in writing, of deficiencies that need to be corrected, and a time schedule established for completion of corrective actions.

(f) Appropriate follow-up will be made by the property administrator to ensure that corrective actions have been initiated and completed.

(g) When a determination has been made by the property administrator that all major system deficiencies identified in the review or appraisal have been corrected, the head of the field organization shall withdraw the conditional approval or disapproval, and approve the system with the concurrence of the OPMO. The approval shall be in writing and addressed to appropriate contractor management.

(h) The property administrator shall maintain a copy of all designated contractor personal property management system appraisals and approvals in such manner as to be readily available to investigative and external review teams.

§ 109–1.5205 Personal property management system changes.

Any proposed significant change to a designated contractor's approved personal property management system shall be reviewed by the property administrator at the earliest possible time. Such changes should then be approved in writing on an interim basis, or disapproved in writing, by the property administrator as appropriate.

Subpart 109–1.53—Management of High Risk Personal Property

§ 109–1.5300 Scope of subpart.

(a) This subpart provides identification, accounting, control, and disposal policy guidance for the following categories of high risk personal property: especially designed or prepared property, export controlled property, nuclear weapon components or weapon-like components, and proliferation sensitive property. The guidance is intended to ensure that the disposition of these categories of high risk personal property does not adversely affect the national security or nuclear nonproliferation objectives of the United States.

(b) The other categories of high risk personal property are controlled by other life cycle management programs and procedures monitored by other Departmental elements.

§ 109–1.5301 Applicability.

This subpart is applicable to all DOE organizations which purchase, manage or dispose of Government personal property, or contract for the management of Government facilities, programs, or related services, which may directly or indirectly require the purchase, management, or disposal of Government-owned personal property. Using the high risk personal property control requirements in this subpart as guidance, heads of field organizations or OPMOs shall assure that designated contractors and financial assistance recipients are responsible for developing a cost effective high risk property management system, covering all operational responsibilities enumerated in this subpart.

§ 109–1.5302 Policies.

(a) It is the responsibility of DOE organizations and designated contractors to manage and control Government-owned high risk personal property in an efficient manner. High risk personal property will be managed throughout its life cycle so as to protect public and DOE personnel safety and to advance the national security and the nuclear nonproliferation objectives of the U.S. Government.

(b) The disposition of high risk property is subject to special considerations. Items of high risk property may present significant risks to the national security and nuclear nonproliferation objectives of the Government which must be evaluated. Organizations will identify high risk property and control its disposition to eliminate or mitigate such risks. In no case shall property be transferred or disposed unless it receives a high risk assessment and is handled accordingly.

§ 109–1.5303 Procedures.

(a) Identification, marking and control. To ensure the appropriate treatment of property at its disposal and to prevent inadvertent, uncontrolled release of high risk property, property should be assessed and evaluated as high risk property as early in its life cycle as practical.

(1) Newly acquired high risk personal property shall be identified and tracked during the acquisition process and marked upon receipt.

(2) All personal property shall be reviewed for high risk identification, marking, and database entry during

regularly scheduled physical inventories, unless access to the property is difficult or impractical because the property is a component of a larger assembly, a complex operating system, or an older facility. The review of this property will be completed, prior to disposition, when replacing components or when operating systems and facilities are decommissioned and dismantling.

(3) High risk personal property which by its nature cannot be marked, such as stores items and metal stock, is exempt from this requirement. However, personal property management programs should contain documentation on the characterization of this property as high risk.

(b) Disposition of high risk property.

(1) Prior to disposition, all personal property, materials or data will be assessed to determine:

(i) Whether it should be characterized as high risk and

(ii) What actions are necessary to ensure compliance with applicable national security or nonproliferation controls.

(2) The DOE or designated contractor property management organization may not process high risk personal property into a reutilization/disposal program without performing the reviews prescribed by the local high risk property management system. The reviews must be properly documented, and all appropriate certifications and clearances received, in accordance with the approved site or facility personal property management program.

(3) The disposition (including demilitarization of items on the Munitions List) and handling of high risk personal property are subject to applicable provisions of Subchapter H of the FPMR, subchapter H of this chapter, and the DOE Guidelines on Export Control and Nonproliferation.

(4) Documentation. All applicable documentation, including records concerning the property's categorization as high risk, shall be included as part of the property transfer. The documentation shall be included with all transfers within, or external to, DOE.

(5) Unless an alternative disposition option appears to be in the best interest of the Government, surplus Trigger List components, equipment, and materials and nuclear weapon components shall either be sold for scrap after being rendered useless for their originally intended purpose or destroyed, with the destruction verified and documented. Requests for approval of an alternative disposition may be made through the cognizant Assistant Secretary to the Director of the Office of Nonproliferation and National Security.

(6) Export Restriction Notice. The following Export Restriction Notice, or approved equivalent notice, shall be included in all transfers, sales, or other offerings:

Export Restriction Notice

The use, disposition, export and reexport of this property are subject to all applicable U.S. laws and regulations, including the Atomic Energy Act of 1954, as amended; the Arms Export Control Act (22 U.S.C. 2751 *et seq.*); the Export Administration Act of 1979 (560 U.S.C. Append 2401 *et seq.*); Assistance to Foreign Atomic Energy Activities (10 CFR part 810); Export and Import of Nuclear Equipment and Material (10 CFR part 110); International Traffic in Arms Regulations (22 CFR parts 120 *et seq.*); Export Administration Regulations (15 CFR part 730 *et seq.*); Foreign Assets Control Regulations (31 CFR parts 500 *et seq.*); and the Espionage Act (37 U.S.C. 791 *et seq.*) which among other things, prohibit:

a. The making of false statements and concealment of any material information regarding the use or disposition, export or reexport of the property; and

b. Any use or disposition, export or reexport of the property which is not authorized in accordance with the provisions of this agreement.

§ 109–1.5304 Deviations.

(a) Life cycle control determinations. When the HFO approves a contractor program containing controls, other than life cycle control consistent with this subpart, the decision shall be justified in writing and a copy sent to the Deputy Assistant Secretary for Procurement and Assistance Management. A HFO's decision not to provide life-cycle control should take into account:

(1) The nature and extent of high risk property typically purchased or otherwise brought to a DOE or designated contractor facility or site;

(2) The projected stability of DOE and designated contractor operations; and

(3) The degree of confidence in the property control measures available at disposition.

(b) Certain transfers, sales, or other offerings of high risk personal property may require special conditions or specific restrictions as determined necessary by the property custodian or cognizant program office.

(c) Requests for deviations from the requirements of this subpart may be made through the cognizant HFO to the Deputy Assistant Secretary for Procurement and Assistance Management.

PART 109–6—MISCELLANEOUS REGULATIONS

Subpart 109–6.4—Official Use of Government Passenger Carriers Between Residence and Place of Employment

Sec.
109–6.400 Scope and applicability.
109–6.400–50 Instructions to DOE passenger carrier operators.
109–6.402 Policy.
109–6.450 Statutory provisions.

Authority: Sec. 205(c), 63 Stat. 390 (40 U.S.C. 486(c); 31 U.S.C. 1344(e)(1).

Subpart 109–6.4—Official Use of Government Passenger Carriers Between Residence and Place of Employment

§ 109–6.400 Scope and applicability.

(a) With the exception of § 109–6.400–50, the provisions of this subpart and 41 CFR 101–6.4 do not apply to designated contractors. Official use provisions applicable to these contractors are contained in § 109–38.3 of this chapter.

(b) When an employee on temporary duty is authorized to travel by Government motor vehicle, and in the interest of the Government, is scheduled to depart before the beginning of regular working hours, or if there will be a significant savings in time, a Government motor vehicle may be issued at the close of the preceding working day. Similarly, when scheduled to return after the close of working hours, the motor vehicle may be returned the next regular working day. This use of a Government motor vehicle is not regarded as prohibited by 31 U.S.C. 1344 (25 Comp. Gen. 844).

§ 109–6.400–50 Instructions to DOE passenger carrier operators.

DOE offices shall ensure that DOE employees operating Government motor vehicles are informed concerning:

(a) The statutory requirement that Government motor vehicles shall be used only for official purposes;

(b) Personal responsibility for safe driving and operation of Government motor vehicles, and for compliance with Federal, state, and local laws and regulations, and all accident reporting requirements;

(c) The need to possess a valid state, District of Columbia, or commonwealth operator's license or permit for the type of vehicle to be operated and some form of agency identification;

(d) The penalties for unauthorized use of Government motor vehicles;

(e) The prohibition against providing transportation to strangers or hitchhikers;

(f) The proper care, control and use of Government credit cards;

(g) Mandatory use of seat belts by each employee operating or riding in a Government motor vehicle;

(h) The prohibition against the use of tobacco products in GSA-Interagency Fleet Management System (IFMS) motor vehicles;

(i) Any other duties and responsibilities assigned to operators with regard to the use, care, operation, and maintenance of Government motor vehicles;

(j) The potential income tax liability when they use a Government motor vehicle for transportation between residence and place of employment; and

(k) Protection for DOE employees under the Federal Tort Claims Act when acting within the scope of their employment.

§ 109–6.402 Policy.

(a) It is DOE policy that Government motor vehicles operated by DOE employees are to be used only for official Government purposes or for incidental purposes as prescribed in this section. Official use does not include use of vehicles between residence and place of employment unless provided for in accordance with paragraph (b) of this section. The Director, Office of Administrative Services and heads of field organizations for their respective organizations shall establish appropriate controls to ensure that the use of a Government motor vehicle for transportation between an employee's residence and place of employment is in accordance with the provisions of 41 CFR 101–6.4 and this subpart.

(b) The use of Government motor vehicles between an employee's residence and place of employment (home-to-work) is limited to:

(1) The Secretary of Energy; and

(2) Those persons engaged in field work as determined by the Secretary of Energy in accordance with 41 CFR 101–6.403(b).

(c) It is DOE policy that space in a Government motor vehicle used for home-to-work transportation may be shared with a spouse, relative, or friend in accordance with the restrictions contained in 41 CFR 101–6.402(f).

(d) A Departmental official who is authorized home-to-work transportation is permitted to use Government-owned or leased motor vehicles for non-official purposes incidental to the official use of the vehicle, provided that the incremental cost (e.g., driver time and mileage) of such use is *de minimis* or such costs are outweighed by other considerations, such as the efficient use of the official's time.

§ 109–6.450 Statutory provisions.

(a) In accordance with 31 U.S.C. 1349(b), any officer or employee of the Government who willfully uses or authorizes the use of a Government passenger motor vehicle for other than official purposes shall be suspended from duty by the head of the department concerned, without compensation, for not less than one month and shall be suspended for a longer period or summarily removed from office if circumstances warrant.

(b) Under the provisions of 18 U.S.C. 641, any person who knowingly misuses any Government property (including Government motor vehicles) may be subject to criminal prosecution and, upon conviction, to fines or imprisonment.

SUBCHAPTER E—SUPPLY AND PROCUREMENT

PART 109–25—GENERAL

Subpart 109–25.1—General Policies

Sec.
109–25.100 Use of Government personal property and nonpersonal services.
109–25.103 Promotional materials, trading stamps, or bonus goods.
109–25.103–1 General.
109–25.104 Acquisition of office furniture and office machines.
109–25–109 Laboratory and research equipment.
109–25–109–1 Identification of idle equipment.
109–25–109–2 Equipment pools.

Subpart 109–25.3—Use Standards

109–25.302 Office furniture, furnishings, and equipment.
109–25.350 Furnishing of Government clothing and individual equipment.

Subpart 109–25.4—Replacement Standards

109–25.401 General.
109–25.401–50 Replacement approvals.

Authority: Sec. 644, Pub. L. 95–91, 91 Stat. 599 (42 U.S.C. 7254).

Subpart 109–25.1—General Policies

§ 109–25.100 Use of Government personal property and nonpersonal services.

The Director, Office of Administrative Services and heads of field organizations shall ensure to restrict the use of Government property/services to officially designated activities.

§ 109–25.103 Promotional materials, trading stamps, or bonus goods.

§ 109–25.103–1 General.

DOE offices and designated contractors shall establish procedures for the receipt and disposition of promotional materials, trading stamps, or bonus goods consistent with the provisions of 41 CFR 101–25.103.

§ 109–25.104 Acquisition of office furniture and office machines.

DOE offices and designated contractors shall make the determination as to whether requirements can be met through the utilization of DOE owned furniture and office machines.

§ 109–25.109 Laboratory and research equipment.

The provisions of 41 CFR 101–25.109 and this section apply to laboratory and research equipment in the possession of DOE field organizations and designated contractors.

§ 109–25.109–1 Identification of idle equipment.

(a) At a minimum, management walk-throughs shall be conducted to provide for coverage of all operating and storage areas at least once every two years to identify idle and unneeded personal property. The submission to the head of the laboratory or facility of a report of walk-throughs conducted shall be at the discretion of the laboratory or facility management. However, DOE field organizations may require designated contractors to submit a report of walk-throughs to the OPMOs. Equipment identified as idle and unneeded shall be redeployed, reassigned, placed in equipment pools, or excessed, as appropriate. All walk-throughs shall be documented to include, at a minimum, the identity of the participants, areas covered, findings, recommendations, corrective action plans, and results achieved. The documentation shall be made available for review by appropriate contractor management, DOE offices, and audit teams.

(b) Members of management walk-through inspection teams should be coordinated with the property administrator and the OPMO.

(c) OPMOs shall periodically review walk-through procedures and practices of DOE offices and designated contractors to determine their effectiveness.

§ 109–25.109–2 Equipment pools.

(a)–(c) [Reserved]

(d) The report on the use and effectiveness of equipment pools shall be submitted to the head of the DOE office at the discretion of that official. However, documentation of evaluations of pools shall be maintained and made available for review by appropriate contractor management, DOE offices, and audit teams.

(e) Heads of field organizations shall require periodic independent reviews of equipment pool operations.

Subpart 109–25.3—Use Standards

§ 109–25.302 Office furniture, furnishings, and equipment.

The Director, Office of Administrative Services, heads of field organizations, and designated contractors shall establish criteria for the use of office furniture, furnishings, and equipment.

§ 109–25.350 Furnishing of Government clothing and individual equipment.

(a) Government-owned clothing and individual equipment may be furnished to employees:

(1) For protection from physical injury or occupational disease; or

(2) When employees could not reasonably be required to furnish them as a part of the personal clothing and equipment needed to perform the regular duties of the position to which they are assigned or for which services were engaged.

(b) This section does not apply to uniforms or uniform allowances under the Federal Employees Uniform Allowance Act of 1954, as amended.

Subpart 109–25.4—Replacement Standards

§ 109–25.401 General.

§ 109–25.401–50 Replacement approvals.

The Director, Office of Administrative Services and heads of field organizations are authorized to approve replacement of office machines, furniture, and materials handling equipment.

PART 109–26—PROCUREMENT SOURCES AND PROGRAM

Subpart 109–26.2—Federal Requisitioning System

Sec.

109–26.203 Activity address codes.

Subpart 109–26.5—GSA Procurement Programs

109–26.501 Purchase of new motor vehicles.
109–26.501–1 General.
109–26.501–4 Submission of orders.
109–26.501–50 Authority and allocations for the acquisition of passenger motor vehicles.
109–26.501–51 Used vehicles.
109–26.501–52 Justification for purchase.
109–26.501–53 Acquisitions by transfer.
109–26.501–54 Communications equipment.

Authority: Sec. 644, Pub. L. 95–91, 91 Stat. 599 (42 U.S.C. 7254).

Subpart 109–26.2—Federal Requisitioning System

§ 109–26.203 Activity address codes.

(a) DOE field organizations designated by OCMA are responsible for processing routine activity code related transactions for specified groupings of field organizations. Each field organization in a specified grouping will forward their activity address code related transactions to the grouping's lead organization for processing. Each lead organization shall designate a point of contact who will:

(1) Verify the need, purpose, and validity of each transaction; and

(2) Be the specified grouping's authorized point of contact for dealing directly with GSA.

(b) OCMA is responsible for:

(1) All policy matters related to the issuance and control of activity address codes within DOE; and

(2) Furnishing the identity of the lead field organization points of contact to GSA.

Subpart 109–26.5—GSA Procurement Programs

§ 109–26.501 Purchase of new motor vehicles.

§ 109–26.501–1 General.

(a) [Reserved].

(b) Motor vehicles may be purchased directly rather than through GSA when a waiver has been granted by GSA. The waiver request should be submitted directly to GSA and a copy forwarded to the DPMO. However, where GSA refuses to grant a waiver and it is believed that procurement through GSA would adversely affect or otherwise impair a program, the DPMO may, upon written request of the head of the DOE field organization, grant the authority for direct purchase of general purpose motor vehicles. Upon receipt of written authorization from the DPMO, the head of the field organization may authorize direct purchase of special purpose vehicles. The purchase price for passenger motor vehicles shall not exceed any statutory limitation in effect at the time the purchase is made.

§ 109–26.501–4 Submission of orders.

An original and two copies of requisitions for passenger motor vehicles and law enforcement motor vehicles shall be forwarded with justification for purchase to the DPMO, for approval and submission to GSA. Requisitions for all other types of motor vehicles shall be submitted directly to GSA.

§ 109–26.501–50 Authority and allocations for the acquisition of passenger motor vehicles.

(a) Authority for the acquisition of passenger motor vehicles is contained in the Department's annual appropriation act.

(b) DOE offices shall include in their budget submissions the number of passenger motor vehicles to be purchased during the fiscal year. The procurements will be identified as either additions to the motor vehicle fleet or replacement vehicles. A copy of the motor vehicle portion of the submission should be submitted to the DPMO.

(c) To assure that DOE does not exceed the number of passenger motor vehicles authorized to be acquired in any fiscal year, the Deputy Assistant Secretary for Procurement and Assistance Management or designee shall allocate to and inform the field organizations in writing of the number of passenger motor vehicles which may be acquired under each appropriation. These allocations and the statutory cost limitations imposed on these motor vehicles shall not be exceeded.

(d) The motor vehicle fleet manager shall provide written certification to the OPMO that disposition action has been taken on replaced passenger motor vehicles. Such certification shall be provided no later than 30 days after the disposition of the vehicle. Replaced passenger motor vehicles shall not be retained in service after receipt of the replacement vehicle.

§ 109–26.501–51 Used vehicles.

Normally, DOE does not purchase or authorize contractors to purchase used motor vehicles. However, the Director, Office of Administrative Services and heads of field organizations may authorize the purchase of used motor vehicles where justified by special circumstances, e.g., when new motor vehicles are in short supply; motor vehicles are to be used for experimental or test purposes; or motor vehicles are acquired from exchange/sale. The statutory passenger motor vehicle allocation requirements shall apply to any purchase of used passenger motor vehicles except in the case of motor vehicles to be used exclusively for experimental or test purposes.

§ 109–26.501–52 Justification for purchase.

(a) Requisitions for additions to the passenger motor vehicle fleet must contain adequate written justification of need. Such justifications shall be prepared by the motor vehicle fleet manager and approved by the OPMO, and should include:

(1) A statement as to why the present fleet size is inadequate to support requirements;

(2) Efforts made to achieve maximum use of on-hand motor vehicles through

pool arrangements, shuttle buses, and taxicabs;

(3) The programmatic requirement for the motor vehicles and the impact on the program/project if the requisitions are not filled;

(4) The established DOE or local utilization objectives used to evaluate the utilization of passenger motor vehicles and whether the objectives have been approved by the OPMO; and

(5) The date of the last utilization review and the number of passenger motor vehicles which did not meet the established utilization objectives and the anticipated mileage to be achieved by the new motor vehicles.

(b) Requisitions for replacement passenger motor vehicles should include a statement that utilization, pools, shuttle buses and taxicabs have been considered by the motor vehicle fleet manager and the OPMO. Specific information on the identification, age and mileage of the motor vehicles should be included. When a passenger motor vehicle being replaced does not meet Federal replacement standards, a description of the condition of the vehicle should also be provided.

§ 109–26.501–53 Acquisitions by transfer.

(a) The acquisition of passenger motor vehicles by transfer from another Government agency or DOE organization shall be within the allocations prescribed in § 109–26.501–50 of this subpart.

(b) Passenger motor vehicles may be acquired by transfer provided they are:

(1) Considered as an addition to the motor vehicle fleet of the receiving office;

(2) Acquired for replacement purposes and an equal number of replaced motor vehicles are reported for disposal within 30 days;

(3) For temporary emergency needs exceeding three months and approved in writing by the DPMO; or

(4) For temporary emergency needs of three months or less in lieu of commercial rentals. These transfers will not count toward the allocation.

§ 109–26.501–54 Communications equipment.

Communications equipment considered to be essential for the accomplishment of security and safety responsibilities is exempt from the requirements of 41 CFR 101–26.501. The Fleet Manager shall approve the installation of communications equipment in motor vehicles.

PART 109–27—INVENTORY MANAGEMENT

Sec.

109–27.000–50 Definitions.

Subpart 109–27.1—Stock Replenishment

109–27.102 Economic order quantity principle.
109–27.102–1 Applicability.
109–27.102–50 Systems contracting.
109–27.102–51 Policy.
109–27.102–52 Implementation.

Subpart 109–27.2—Management of Shelf-Life Materials

109–27.202 Applicability.

Subpart 109–27.3—Maximizing Use of Inventories

109–27.302 Applicability.

Subpart 109–27.4—Elimination of Items from Inventory

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109–27.5001 Objectives.
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109–27.5007 Physical inventories.
109–27.5007–1 Procedures.
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109–27.5008 Control of drug substances and potable alcohol.
109–27.5009 Control of hypodermic needles and syringes.
109–27.5010 Containers returnable to vendors.
109–27.5011 Identification marking of metals and metal products.
109–27.5011–1 General.
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Subpart 109–27.51—Management of Precious Metals

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109–27.5101 Definition.
109–27.5102 Policy.
109–27.5103 Precious Metals Control Officer.
109–27.5104 Practices and procedures.
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109–27.5104–2 Physical protection and storage.
109–27.5104–3 Perpetual inventory records.
109–27.5104–4 Physical inventories.
109–27.5104–5 Control and issue of stock.
109–27.5104–6 Control by using organization.
109–27.5105 Management reviews and audits.
109–27.5106 Precious metals pool.
109–27.5106–1 Purpose.
109–27.5106–2 Withdrawals.
109–27.5106–3 Returns.
109–27.5106–4 Withdrawals/returns forecasts.
109–27.5106–5 Assistance.
109–27.5107 Recovery of silver from used hypo solution and scrap film.

Authority: Sec. 644, Pub. L. 95–91, 91 Stat. 599 (42 U.S.C. 7254).

PART 109–27—INVENTORY MANAGEMENT

§ 109–27.000–50 Definitions.

As used in this part the following definitions apply:

Inventories mean stocks of stores, construction, supplies, and parts used in support of DOE programs.

Inventory management means the efficient use of methods, procedures and techniques for recording, analyzing, and adjusting inventories in accordance with established policy. The following related functions are included:

(1) Providing adequate protection against misuse, theft, and misappropriation.

(2) Providing accurate analyses of quantities to determine requirements so that only minimal obsolescence losses will be encountered, while ensuring adequate inventory levels to meet program schedules.

(3) Providing adequate and accessible storage facilities and services based upon analyses of program requirements so that a minimum and economical amount of time is required to service the program.

Stock record means a device for collecting, storing, and providing historical data on recurring transactions for each line item of inventory.

Sub-store means a geographically removed part of the main store's operation conducted as a subordinate element of it and subject to the same management policies and inventory controls.

Systems contracting means a materials management purchasing technique for the purchase of general, common-use, and repetitive supply items in a particular product family. An example is office supplies, purchased from a commercial vendor, that are needed for immediate use instead of purchasing in bulk for future use, storing in warehouses, and issuing to customers by use of a requisitioning system. Systems contracting and just-in-time contracting are synonymous.

Subpart 109–27.1—Stock Replenishment

§ 109–27.102 Economic order quantity principle.

§ 109–27.102–1 Applicability.

Replenishment of inventories of stock items having recurring demands will be by use of the economic order quantity (EOQ) principle. However, when considered more suitable, designated contractors may use other generally accepted approaches to EOQ.

§ 109–27.102–50 Systems contracting.

Systems contracting may be used instead of or along with EOQ once a determination is made that such a system is feasible and cost effective, and that adequate controls are in place to ensure proper use.

§ 109–27.102–51 Policy.

Systems contracting for supply operations is a proven cost-effective approach to meeting procurement needs and may be implemented in DOE offices and designated contractors wherever significant cost savings to the Government will result. Impacts on local suppliers and small and disadvantaged business concerns should be considered in the overall business strategy.

§ 109–27.102–52 Implementation.

(a) DOE OPMOs shall establish required property management controls relative to the implementation of systems contracting.

(b) DOE offices and designated contractors operating a materials management function who have not performed an initial feasibility study for the implementation of systems contracting shall perform such a study for selected commodity groups. The study may be accomplished over a period of time, until all commodity groups have been considered. The study should address functional requirements, activity levels of commodity groups and individual items, and potential impacts on local suppliers and small and disadvantaged businesses. An industrial relations analysis on existing labor relations and union contracts may also be necessary.

(c) As required in the DEAR, DOE offices and designated contractors are required to consider the use of GSA supply sources when economically advantageous to the Government. These sources must be considered in the conduct of the feasibility study.

(d) DOE contracting offices shall evaluate the initial cost benefit studies performed by contractors to verify the savings and other benefits of systems contracting, and shall approve its implementation. In those instances where a cost benefit study has previously been performed, the DOE contracting office shall ensure that those studies have been evaluated and the approval to proceed with systems contracting has been provided to the contractor in writing.

(e) DOE offices shall periodically reevaluate systems contracting operations conducted by their office and designated contractors to ensure that required property management controls are being followed.

Subpart 109–27.2—Management of Shelf-Life Materials

§ 109–27.202 Applicability.

When considered more suitable, designated contractors may use other generally accepted approaches to the management of shelf-life materials.

Subpart 109–27.3—Maximizing Use of Inventories

§ 109–27.302 Applicability.

When considered more suitable, designated contractors may use other generally accepted approaches to maximizing use of inventories.

Subpart 109–27.4—Elimination of Items From Inventory § 109–27.402 Applicability

When considered more suitable, designated contractors may use other generally accepted approaches to determine which items should be eliminated from inventory.

Subpart 109–27.50—Inventory Management Policies, Procedures, and Guidelines

§ 109–27.5001 Objectives.

Necessary inventories shall be established and maintained at reasonable levels, consistent with DOE requirements, applicable laws and regulations, and the following objectives:

(a) The maintenance of adequate stock levels through accurate analyses of quantities to determine requirements and stock replenishments so that only minimal obsolescence losses will be encountered while ensuring adequate inventory levels to meet program schedules;

(b) The protection of materials against misuse, theft, and misappropriation;

(c) The maintenance of an efficient operation; and

(d) The standardization of inventories to the greatest extent practicable.

§ 109–27.5002 Stores inventory turnover ratio.

Comparison of investment in stores inventories to annual issues shall be made to assure that minimum inventories are maintained for the support of programs. This comparison may be expressed either as a turnover ratio (dollar value of issues divided by dollar value of inventory) or in the average number of month's supply on hand. Turnover or number of month's supply is calculated only on current-use inventory. Performance goals, i.e., a six months investment or a turnover ratio of 2.0, shall be established for each stores using activity. It is recognized, however, that extenuating operating circumstances may preclude the achievement of such objectives.

§ 109–27.5003 Stock control.

(a) Stock control shall be maintained on the basis of stock record accounts of inventories on hand, on order, received, issued, and disposed of, and supported by proper documents in evidence of these transactions. Stock record accounts shall be available for review and inspection.

(b) Personal property under stock control for greater than 90 days shall be maintained in stock record accounts.

§ 109–27.5004 Sub-stores.

(a) Sub-stores shall be established when necessary to expedite delivery of materials and supplies to the users, serve emergencies, provide economy in transportation, reduce shop and site stocks, and enable stores personnel to provide assistance in obtaining materials and supplies as needed.

(b) Items stored for issue in the sub-stores shall be treated as inventory items for control and reporting purposes. Stock records shall be integrated with central stock records so that the total amount on hand of any item at all locations is known.

§ 109–27.5005 Shop, bench, cupboard or site stock.

Shop, bench, cupboard or site stocks are an accumulation of small inventories of fast-moving materials at the point of use. Normally, these inventories are expensed at time of issue from controlled stores. However, when stocks of such inventories are not consumed or do not turn over in a reasonable period of time, which normally should not exceed 90 days, these items should be subject to the required physical controls and recorded in the proper inventory account.

§ 109–27.5006 Stores catalogs.

A stores catalog for customer use that lists items available from stock shall be established for each stores operation. Exceptions to this requirement are authorized where establishment of a catalog is impracticable or uneconomical because of small total value or number of items involved, or temporary need for the facility.

§ 109–27.5007 Physical inventories.

§ 109–27.5007–1 Procedures.

The following procedures shall be established for taking physical inventory of stocks subjected to quantity

controls as well as those under financial control:

(a) Completion of a physical inventory not less frequently than every twelve months.

(b) Reconciliation of inventory quantities with the stock records.

(c) Preparation of a report of the physical inventory results.

§ 109–27.5007–2 Inventory adjustments.

Discrepancies between physical inventories and stock records shall be adjusted and the supporting adjustment records shall be reviewed and approved by a responsible official at least one supervisory level above the supervisor in charge of the warehouse or storage facility. Items on an adjustment report which are not within reasonable tolerances for particular items shall be thoroughly investigated before report approval. Adjustment reports shall be retained on file for inspection and review.

§ 109–27.5008 Control of drug substances and potable alcohol.

Effective procedures and practices shall provide for the management and physical security of controlled substances and potable alcohol from receipt to the point of use. Such procedures shall, as a minimum, provide for safeguarding, proper use, adequate records, and compliance with applicable laws and regulations. Controls and records of potable alcohol shall be maintained on quantities of one quart and above.

§ 109–27.5009 Control of hypodermic needles and syringes.

Effective procedures and practices shall provide for the management and physical security of hypodermic needles and syringes to prevent illegal use. Controls shall include supervisory approval for issue, storage in locked repositories, and the rendering of the items useless prior to disposal.

§ 109–27.5010 Containers returnable to vendors.

Containers furnished by vendors shall be administratively and physically controlled before and after issuance. Prompt action shall be taken to return such containers to vendors for credit after they have served their intended use.

§ 109–27.5011 Identification marking of metals and metal products.

§ 109–27.5011–1 General.

Metals and metal products shall be identified and marked in accordance with applicable Federal standards. This requirement applies to direct charges as well as to items procured for store, shop or floor stock, or for use on construction projects. Additional markings not covered by Federal standards should be used to show special properties, corrosion data, or test data as required. The preferred process is for the marking to be done in the manufacturing process, but it may be applied by suppliers when circumstances warrant.

§ 109–27.5011–2 Exception.

Exceptions to the marking requirement may be made when:

(a) It is necessary to procure small quantities from suppliers not equipped to do the marking;

(b) It would delay delivery of emergency orders; or

(c) Procurement is from DOE or other Federal agency excess.

Subpart 109–27.51—Management of Precious Metals

§ 109–27.5100 Scope of subpart.

This subpart provides policies, principles, and guidelines to be used in the management of purchased and recovered precious metals used to meet research, development, production, and other programmatic needs.

§ 109–27.5101 Definition.

Precious metals means uncommon and highly valuable metals characterized by their superior resistance to corrosion and oxidation. Included are gold, silver, and the platinum group metals—platinum, palladium, rhodium, iridium, ruthenium and osmium.

§ 109–27.5102 Policy.

DOE organizations and contractors shall establish effective procedures and practices for the administrative and physical control of precious metals in accordance with the provisions of this subpart.

§ 109–27.5103 Precious Metals Control Officer.

Each DOE organization and contractor holding precious metals shall designate in writing a Precious Metals Control Officer. This individual shall be the organization's primary point of contact concerning precious metals control and management, and shall be responsible for the following:

(a) Assuring that the organization's precious metals activities are conducted in accordance with Departmental requirements.

(b) Maintaining of an accurate list of the names of precious metals custodians.

(c) Providing instructions and training to precious metals custodians and/or users as necessary to assure compliance with regulatory responsibilities.

(d) Insuring that physical inventories are performed as required by, and in accordance with, these regulations.

(e) Witnessing physical inventories.

(f) Performing periodic unannounced inspections of a custodian's precious metals inventory and records.

(g) Conducting an annual review of precious metals holdings to determine excess quantities.

(h) Preparing and submitting to the Business Center for Precious Metals Sales and Recovery the annual forecast of anticipated withdrawals from, and returns to, the DOE precious metals pool.

(i) Conducting a program for the recovery of silver from used hypo solution and scrap film in accordance with 41 CFR 101–45.10 and § 109–45.10 of this chapter.

(j) Preparing and submitting of the annual report on recovery of silver from used hypo solution and scrap film as required by § 109–45.1002–2 of this chapter.

(k) Developing and issuing current authorization lists of persons authorized by management to withdraw precious metals from stockrooms.

§ 109–27.5104 Practices and procedures.

§ 109–27.5104–1 Acquisitions.

DOE organizations and contractors shall contact the Business Center for Precious Metals Sales and Recovery to determine the availability of precious metals prior to acquisition on the open market.

§ 109–27.5104–2 Physical protection and storage.

Precious metals shall be afforded exceptional physical protection from time of receipt until disposition. Precious metals not in use shall be stored in a noncombustible combination locked repository with access limited to the designated custodian and an alternate. When there is a change in custodian or alternate having access to the repository, the combination shall be changed immediately.

§ 109–27.5104–3 Perpetual inventory records.

Perpetual inventory records shall be maintained as specified in Chapter V of DOE Order 534.1, Accounting.

§ 109–27.5104–4 Physical inventories.

(a) Physical inventories shall be conducted annually by custodians, and witnessed by the Precious Metals Control Officer or his designee.

(b) Precious metals not in use shall be inspected and weighed on calibrated

scales. The inventoried weight and form shall be recorded on the physical inventory sheets by metal content and percent of metal. Metals in use in an experimental process or contaminated metals, neither of which can be weighed, shall be listed on the physical inventory sheet as observed and/or not observed as applicable.

(c) Any obviously idle or damaged metals should be recorded during the physical inventory. Justification for further retention of idle metals shall be required from the custodian and approved one level above the custodian, or disposed of in accordance with established procedures.

(d) The dollar value of physical inventory results shall be reconciled with the financial records. All adjustments shall be supported by appropriate adjustment reports, and approved by a responsible official.

§ 109–27.5104–5 Control and issue of stock.

Precious metals in stock are metals held in a central location and later issued to individuals when authorized requests are received. The following control procedures shall be followed for such metals:

(a) Stocks shall be held to a minimum consistent with efficient support to programs.

(b) The name and organization number of each individual authorized to withdraw precious metals, and the type and kind of metals, shall be prominently maintained in the stockroom. This authorization shall be issued by the Precious Metals Control Officer or his designee and updated annually. Issues of metals will be made only to authorized persons.

(c) Accurate records of all receipts, issues, returns, and disposals shall be maintained in the stockroom.

(d) Receipts for metal issues and returns to stock shall be provided to users. Such receipts, signed by the authorized requesting individual and the stockroom clerk, shall list the requesting organization, type and form of metal, quantity, and date of transaction.

§ 109–27.5104–6 Control by using organization.

(a) After receipt, the using organization shall provide necessary controls for precious metals. Materials shall be stored in a non-combustible, combination locked repository at all times except for quantities at the actual point of use.

(b) Each using organization shall maintain a log showing the individual user, type and form of metal, and the time, place, and purpose of each use. The log shall be kept in a locked repository when not in use.

(c) The logs and secured locked storage facilities are subject to review by the Precious Metals Control Officer and other audit or review staffs as required.

(d) Cognizant Departmental managers are responsible for assuring that minimum quantities of precious metals are withdrawn consistent with work requirements and that quantities excess to requirements are promptly returned to the stockroom.

(e) Employee termination and transfer procedures shall include clearance for precious metals possession.

§ 109–27.5105 Management reviews and audits.

(a) Unannounced inspections of custodian's precious metals inventory and records may be conducted between scheduled inventories.

(b) DOE organizations and contractors holding precious metals shall annually review the quantity of precious metals on hand to determine if the quantity is in excess of program requirements. Precious metals which are not needed for current or foreseeable requirements shall be promptly reported to the DOE precious metals pool. The results of this annual review are to be documented and entered into the precious metals inventory records.

§ 109–27.5106 Precious metals pool.

§ 109–27.5106–1 Purpose.

The purpose of the precious metals pool is to recycle, at a minimum cost to pool participants, DOE-owned precious metals within the Department and to dispose of DOE-owned precious metals that are excess to DOE needs. However, if the pool is unable to accept any potential precious metal return, the using activity will dispose of the precious metals through the disposal process specified in subchapter H of the FPMR and this regulation.

§ 109–27.5106–2 Withdrawals.

Pure metals, parts, fabricated products, catalysts, or solutions, are generally available and the Business Center for Precious Metals Sales and Recovery can provide assistance in supplying such requirements. Metals can be shipped to any facility to fulfill fabrication requirements.

§ 109–27.5106–3 Returns.

All excess precious metals must be returned to the precious metals pool except as noted in § 109–27.5106–1 of this subpart. The pool is entirely dependent on metal returns; therefore, metal inventories should be maintained on an as-needed basis, and any excess metals must be returned to the pool for recycling. With the exception of silver, this includes precious metals in any form, including shapes, scrap, or radioactively contaminated. Only high grade nonradioactively contaminated silver should be included. Procedures have been developed by the precious metals pool contractor for metal returns, including storing, packaging, shipping, and security.

§ 109–27.5106–4 Withdrawals/returns forecasts.

The Business Center for Precious Metals Sales and Recovery will request annually from each DOE field organization its long-range forecast of anticipated withdrawals from the pool and returns to the pool.

§ 109–27.5106–5 Assistance.

The Business Center for Precious Metals Sales and Recovery operates the precious metals pool. DOE organizations and contractors may obtain specific information regarding the operation of the precious metals pool (operating contractor's name, address, and telephone number; processing charges; etc.) by contacting the Chief, Property Management Branch, Oak Ridge Operations Office.

§ 109–27.5107 Recovery of silver from used hypo solution and scrap film.

The requirements for the recovery of silver from used hypo solution and scrap film are contained in § 109–45.1003 of this chapter.

PART 109–28—STORAGE AND DISTRIBUTION

Sec.
109–28.000–50 Policy.
109–28.000–51 Storage guidelines.

Subpart 109–28.3—Customer Supply Centers

109–28.306 Customer supply center (CSC) accounts and related controls.
109–28.306–3 Limitations on use.
109–28.306–5 Safeguards.

Subpart 109–28.50—Management of Equipment Held for Future Projects

109–28.5000 Scope of subpart.
109–28.5001 Definition.
109–28.5002 Objective.
109–28.5003 Records.
109–28.5004 Justification and review procedures.
109–28.5005 EHFFP program review.
109–28.5006 Utilization.

Subpart 109–28.51—Management of Spare Equipment

109–28.5100 Scope of subpart.
109–28.5101 Definition.
109–28.5102 Exclusions.
109–28.5103 Management policy.

Authority: 42 U.S.C. 7254.

§ 109–28.000–50 Policy.

DOE offices and designated contractors shall:

(a) Establish storage space and warehousing services for the receipt, storage, issue, safekeeping and protection of Government property;

(b) Provide storage space and warehousing services in the most efficient manner consistent with program requirements; and

(c) Operate warehouses in accordance with generally accepted industrial management practices and principles.

§ 109–28.000–51 Storage guidelines.

(a) Indoor storage areas should be arranged to obtain proper stock protection and maximum utilization of space within established floor load capacities.

(b) Storage yards for items not requiring covered protection shall be protected by locked fenced enclosures to the extent necessary to protect the Government's interest.

(c) Storage areas shall be prominently posted to clearly indicate that the property stored therein is U.S. Government property, with entrance to such areas restricted to authorized personnel only.

(d) Property in storage must be protected from fire, theft, deterioration, or destruction. In addition certain items require protection from dampness, heat, freezing, or extreme temperature changes. Other items must be stored away from light and odors, protected from vermin infestation, or stored separately because of their hazardous characteristics.

(e) Hazardous or contaminated property, including property having a history of use in an area where exposure to contaminated property may have occurred, shall not be commingled with non-contaminated property, but stored separately in accordance with instructions from the environmental, safety, and health officials.

(f) Unless inappropriate or impractical until declared excess, nuclear-related and proliferation-sensitive property shall be identified as such by use of a certification tag signed by an authorized program official (designated in writing with signature cards on file in the personal property management office). Such personal property shall not be commingled with other personal property, but stored separately in accordance with instructions from the cognizant program office.

Subpart 109–28.3—Customer Supply Centers

§ 109–28.306 Customer supply center (CSC) accounts and related controls.

§ 109–28.306–3 Limitations on use.

DOE offices and designated contractors shall establish internal controls for ensuring that the use of CSC accounts is limited to the purchase of items for official Government use.

§ 109–28.306–5 Safeguards.

DOE offices and designated contractors shall establish internal controls for ensuring that the customer access codes assigned for their accounts are properly protected.

Subpart 109–28.50—Management of Equipment Held for Future Projects

§ 109–28.5000 Scope of subpart.

This subpart provides policies, principles, and guidelines to be used in the management of equipment held for future projects (EHFFP).

§ 109–28.5001 Definition.

Equipment held for future projects means items being retained, based on approved justifications, for a known future use, or for a potential use in planned projects.

§ 109–28.5002 Objective.

The objective of the EHFFP program is to enable DOE offices and contractors to retain equipment not in use in current programs but which has a known or potential use in future DOE programs, while providing visibility on the types and amounts of equipment so retained through review and reporting procedures. It is intended that equipment be retained where economically justifiable for retention, considering cost of maintenance, replacement, obsolescence, storage, deterioration, or future availability; made available for use by others; and promptly excessed when no longer needed.

§ 109–28.5003 Records.

Records of all EHFFP shall be maintained by the holding organization, including a listing of items with original date of classification as EHFFP; initial justifications for retaining EHFFP; rejustifications for retention; and documentation of reviews made by higher levels of management.

§ 109–28.5004 Justification and review procedures.

Procedures shall provide for the following:

(a) The original decision to classify and retain equipment as EHFFP shall be justified in writing, providing sufficient detail to support the need for retention of the equipment. This justification will cite the project for which retained, the potential use to be made of the equipment, or other reasons for retention.

(b) The validity of the initial classification EHFFP shall be reviewed by management at a level above that of the individual making the initial determination.

(c) Retention of equipment as EHFFP must be rejustified annually to ensure that original justifications remain valid. The rejustifications will contain sufficient detail to support retention.

(d) When equipment is retained as EHFFP for longer than one year, the annual rejustification shall be reviewed at a level of management at least two levels above that of the individual making the determination to retain the EHFFP. Equipment retained as EHFFP for longer than three years should be approved by the head of the DOE field organization.

§ 109–28.5005 EHFFP program review.

OPMOs or on-site DOE property administrators shall conduct periodic reviews to ensure that the EHFFP program is being conducted in accordance with established procedures and this subpart. Included in the review will be proper determinations of property as EHFFP, the validity of justifications for retaining EHFFP, and the inclusion of EHFFP in management walk-throughs as prescribed in § 109–25.109–1 of this chapter.

§ 109–28.5006 Utilization.

It is DOE policy that, where practicable and consistent with program needs, EHFFP be considered as a source of supply to avoid or postpone acquisition.

Subpart 109–28.51—Management of Spare Equipment

§ 109–28.5100 Scope of subpart.

This subpart provides policy guidance to be used in the management of spare equipment.

§ 109–28.5101 Definition.

Spare equipment means items held as replacement spares for equipment in current use in DOE programs.

§ 109–28.5102 Exclusions.

The following categories of equipment will not be considered spare equipment:

(a) Equipment installed for emergency backup, e.g., an emergency power facility, or an electric motor or a pump, any of which is in place and electrically connected.

(b) Equipment items properly classified as stores inventory.

§ 109–28.5103 Management policy.

(a) Procedures shall require the maintenance of records for spare equipment, cross-referenced to the location in the facility and the engineering drawing number. The purpose for retention shall be in the records.

(b) Reviews shall be made based on technical evaluations of the continued need for the equipment. The reviews should be held biennially. In addition, individual item levels shall be reviewed when spare equipment is installed for use, the basic equipment is removed from service, or the process supported is changed.

(c) Procedures shall be established to provide for the identification and reporting of unneeded spare equipment as excess property.

PART 109–30—FEDERAL CATALOG SYSTEM

Sec.

109–30.001–50 Applicability.

Authority: 42 U.S.C. 7254.

§ 109–30.001–50 Applicability.

The provisions of 41 CFR part 101–30 do not apply to designated contractors.

SUBCHAPTER G—AVIATION, TRANSPORTATION, AND MOTOR VEHICLES

PART 109–37—[RESERVED]

PART 109–38—MOTOR EQUIPMENT MANAGEMENT

Sec.

109–38.000 Scope of part.
109–38.000–50 Policy.

Subpart 109–38.0—Definition of Terms

109–38.001 Definitions.

Subpart 109–38.1—Fuel Efficient Motor Vehicles

109–38.104 Fuel efficient passenger automobiles and light trucks.
109–38.105 Agency purchase and lease of motor vehicles.
109–38.106 Leasing of motor vehicles.

Subpart 109–38.2—Registration, Identification, and Exemptions

109–38.200 General requirements.
109–38.201 Registration and inspection.
109–38.201–50 Registration in foreign countries.
109–38.202 Tags.
109–38.202–2 Outside the District of Columbia.
109–38.202–3 Records.
109–38.202–50 Security.
109–38.203 Agency identification.
109–38.204 Exemptions.
109–38.204–1 Unlimited exemptions.
109–38.204–3 Requests for exempted motor vehicles in the District of Columbia.
109–38.204–4 Report of exempted motor vehicles.
109–38.204–50 Records of exempted motor vehicles.

Subpart 109–38.3—Official Use of Government Motor Vehicles

109–38.300 Scope.
109–38.301 Authorized use.
109–38.301–1 Contractors' use.
109–38.301–1.50 Authorization for transportation between residence and place of employment.
109–38.301–1.51 Emergency use.
109–38.301–1.52 Maintenance of records.
109–38.301–1.53 Responsibilities of motor vehicle operators.

Subpart 109–38.4—Use and Replacement Standards

109–38.401 Use standards.
109–38.401–2 Use of self-service pumps.
109–38.402 Replacement standards.
109–38.402–50 Prompt disposal of replaced motor vehicles.
109–38.403 Responsibility for damages.
109–38.403–1 Policy.
109–38.403–2 Responsibility.
109–38.403–3 Exceptions.

Subpart 109–38.5—Scheduled Maintenance

109–38.502 Guidelines.
109–38.502–50 DOE guidelines.

Subpart 109–38.7—Transfer, Storage, and Disposal of Motor Vehicles

109–38.701 Transfer of title for Government-owned motor vehicles.
109–38.701–50 Authority to sign Standard Form 97, The United States Government Certificate to Obtain Title to a Vehicle.

Subpart 109–38.8—Standard Form 149, U.S. Government National Credit Card

109–38.800 General.
109–38.801 Obtaining SF 149, U.S. Government National Credit Card.

Subpart 109–38.9—Federal Motor Vehicle Fleet Report

109–38.902 Records.
109–38.903 Reporting of data.
109–38.903–50 Reporting DOE motor vehicle data.

Subpart 109–38.51—Utilization of Motor Equipment

109–38.5100 Scope of subpart.
109–38.5101 Policy.
109–38.5102 Utilization controls and practices.
109–38.5103 Motor vehicle utilization standards.
109–38.5104 Other motor equipment utilization standards.
109–38.5105 Motor vehicle local use objectives.
109–38.5106 Application of motor vehicle use goals.

Subpart 109–38.52—Watercraft

109–38.5200 Scope of subpart.
109–38.5201 Definition.
109–38.5202 Watercraft operations.
109–38.5203 Watercraft identification and numbers.

Authority: 42 U.S.C. 7254.

§ 109–38.000 § Scope of part.

109–38.000–50 Policy.

Motor vehicles and watercraft shall be acquired, maintained, and utilized in support of DOE programs in the minimum quantity required and in the most efficient manner consistent with program requirements, safety considerations, fuel economy, and applicable laws and regulations.

Subpart 109–38.0—Definition of Terms

§ 109–38.001 Definitions.

Experimental vehicles means vehicles acquired solely for testing and research purposes or otherwise designated for experimental purposes. Such vehicles are to be the object of testing and research as differentiated from those used as vehicular support to testing and research. Experimental vehicles are not to be used for passenger carrying services unless required as part of a testing/evaluation program, and they are not subject to statutory price limitations or authorization limitations.

Motor equipment means any item of equipment which is self-propelled or drawn by mechanical power, including motor vehicles, motorcycles and scooters, construction and maintenance equipment, materials handling equipment, and watercraft.

Motor vehicle means any equipment, self-propelled or drawn by mechanical power, designed to be operated principally on highways in the transportation of property or passengers.

Special purpose vehicles means vehicles which are used or designed for specialized functions. These vehicles include, but are not limited to: Trailers, semi-trailers, other types of trailing equipment; trucks with permanently mounted equipment (such as aerial ladders); construction and other types of equipment set forth in Federal Supply Classification Group (FSCG) 38; material handling equipment set forth in FSCG 39; and fire fighting equipment set forth in FSCG 42. For reporting purposes within DOE, motorcycles, motor scooters and all terrain vehicles will also be reported as special purpose vehicles.

Subpart 109–38.1—Fuel Efficient Motor Vehicles

§ 109–38.104 Fuel efficient passenger automobiles and light trucks.

(a) [Reserved]

(b) All requests to purchase passenger automobiles larger than class IA, IB, or

II (small, subcompact, or compact) shall be forwarded with justification to the DPMO for approval and certification for compliance with the fuel economy objectives listed in 41 CFR 101–38.104.

(b)(1)–(b)(4) [Reserved]

(5) Requests to exempt certain light trucks from the fleet average fuel economy calculations shall be forwarded with justification to the DPMO for approval.

§ 109–38.105 Agency purchase and lease of motor vehicles.

(a) DOE activities shall submit a copy of all motor vehicle leases and purchases not procured through the GSA Automotive Commodity Center to GSA.

(b)–(c) [Reserved]

(d) DOE activities desiring to renew a commercial lease shall submit the requirement in writing to the DPMO for approval prior to submission by field offices to GSA.

(e) DOE activities shall submit a copy of all lease agreements to GSA.

Subpart 109–38.2—Registration, Identification, and Exemptions

§ 109–38.200 General requirements.

(a)–(e) [Reserved]

(f) Requests made pursuant to 41 CFR 101–38.200(f) for exemption from the requirement for displaying U.S. Government tags and other identification on motor vehicles, except for those vehicles exempted in accordance with § 109–38.204–1 of this subpart, shall be submitted through normal administrative channels to the DPMO for approval. Each approved exemption must be renewed annually, and the DPMO shall be notified promptly when the need for a previously authorized exemption no longer exists. Copies of certifications and cancellation notices required to be furnished to GSA pursuant to 41 CFR 101–38.200(f) will be transmitted to GSA by the DPMO.

(g) Requests for temporary removal and substitution of Government markings shall be submitted with justification to the DPMO for review and approval. Copies of the determination and justification required to be furnished to GSA will be transmitted to GSA by the DPMO.

§ 109–38.201 Registration and inspection.

§ 109–38.201–50 Registration in foreign countries.

Motor vehicles used in foreign countries are to be registered and carry license tags in accordance with the existing motor vehicle regulations of the country concerned. The person responsible for a motor vehicle in a foreign country shall make inquiry at the United States Embassy, Legation, or Consulate concerning the regulations that apply to registration, licensing, and operation of motor vehicles and shall be guided accordingly.

§ 109–38.202 Tags.

§ 109–38.202–2 Outside the District of Columbia.

The Director of Administrative Services and heads of field organizations shall make the determination concerning the use of tags outside the District of Columbia.

§ 109–38.202–3 Records.

(a) The DPMO assigns ''blocks'' of U.S. Government license tag numbers to DOE organizations and maintains a current record of such assignments. Additional ''blocks'' will be assigned upon request.

(b) Each DOE direct operation and designated contractor shall maintain a current record of individual assignments of license tags to the motor vehicles under their jurisdiction.

§ 109–38.202–50 Security.

Unissued license tags shall be stored in a locked drawer, cabinet, or storage area with restricted access to prevent possible fraud or misuse. Tags which are damaged or unusable will be safeguarded until destroyed.

§ 109–38.203 Agency identification.

Standard DOE motor vehicle window decals (DOE Form 1530.1), and door decals to be used only on vehicles without windows (DOE Form 1530.2), are available from the Office of Administrative Services, Logistics Management Division, Headquarters, using DOE Form 4250.2, ''Requisition for Supplies, Equipment or Services'', or as directed by that office.

§ 109–38.204 Exemptions.

§ 109–38.204–1 Unlimited exemptions.

(a)–(f) [Reserved]

(g) The Director, Office of Administrative Services and heads of field organizations for their respective organizations may approve exemptions from the requirement for the display of U.S. Government license tags and other official identification for motor vehicles used for security or investigative purposes.

§ 109–38.204–3 Requests for exempted motor vehicles in the District of Columbia.

The Director, Office of Administrative Services is designated to approve requests for regular District of Columbia license tags, and furnishes annually the name and specimen signature of each representative authorized to approve such requests to the District of Columbia Department of Transportation.

§ 109–38.204–4 Report of exempted motor vehicles.

DOE offices shall provide upon request the necessary information to the DPMO to enable that office to submit a report of exempted vehicles.

§ 109–38.204–50 Records of exempted motor vehicles.

The Director, Office of Administrative Services and heads of field organizations shall maintain records of motor vehicles exempted from displaying U.S. Government license tags and other identification. The records shall contain a listing, by type, of each exempted motor vehicle operated during the previous fiscal year, giving information for each motor vehicle on hand at the beginning of the year and each of those newly authorized during the year, including:

(a) Name and title of authorizing official (including any authorization by Headquarters and GSA);

(b) Date exemption was authorized;

(c) Justification for exemption and limitation on use of the exempted motor vehicle;

(d) Date of discontinuance for any exemption discontinued during the year; and

(e) Probable duration of exemptions for motor vehicles continuing in use.

Subpart 109–38.3—Official Use of Government Motor Vehicles

§ 109–38.300 Scope.

This subpart prescribes the requirements governing the use of Government motor vehicles for official purposes by designated contractors.

§ 109–38.301 Authorized use.

The use of Government motor vehicles by officers and employees of the Government is governed by the provisions of 41 CFR 101–6.4 and section 109–6.4 of this chapter.

§ 109–38.301–1 Contractors' use.

Heads of field organizations shall ensure that provisions of the FPMR concerning contractor use of Government motor vehicles are complied with by their designated contractors.

§ 109–38.301–1.50 Authorization for transportation between residence and place of employment.

(a) Government motor vehicles shall not be used for transportation between residence and place of employment by

designated contractor personnel except under extenuating circumstances specifically provided for under the terms of the contract. Examples of circumstances eligible for prior approval of home-to-work motor vehicle use which would be appropriate to include in the terms of the contract include: use related to safety or security operations, use related to compelling operational considerations, and use determined as cost effective to DOE's interest. Under no circumstances shall the comfort and convenience, or managerial position, of contractor employees be considered justification for authorization of use.

(b) The use of Government motor vehicles for transportation between residence and place of employment (including sporadic use) by designated contractor personnel shall be approved in writing by the Head of the field organization or designee, with delegation no lower than the Assistant Manager for Administration at the Operations Offices or the equivalent position at other DOE contracting activities provided that the individual is a warranted contracting officer. The contractor's request for approval shall include the name and title of the employee, the reason for the use, and the expected duration of the use. Each authorization is limited to one year, but can be extended for an unlimited number of additional one-year periods.

§ 109–38.301–1.51 Emergency use.

(a) Procedures for authorization of designated contractor use of Government motor vehicles in emergencies, including unscheduled overtime situations at remote sites where prior approval is not possible, shall be included in a contractor's approved property management procedures. The procedures shall include examples of emergency situations warranting such use. Records detailing instances of emergency use shall be maintained and review of all such emergency or overtime use must be certified through established audit procedures on at least an annual basis by the OPMO.

(b) In limiting the use of Government motor vehicles to official purposes, it is not intended to preclude their use in emergencies threatening loss of life or property. Such use shall be documented and the documentation retained for three years.

§ 109–38.301–1.52 Maintenance of records.

Designated contractors shall maintain logs or other records on the use of a Government motor vehicle for transportation between an employee's residence and place of employment. As a minimum, these logs shall indicate the employee's name, date of use, time of departure and arrival, miles driven, and names of other passengers. Cognizant finance offices shall be provided with applicable data on employees who utilize Government motor vehicles for such transportation for purposes of the Deficit Reduction Act of 1984 concerning the taxation of fringe benefits.

§ 109–38.301–1.53 Responsibilities of motor vehicle operators.

Designated contractors shall assure that their employees are aware of their responsibilities, identical to those listed in § 109–6.400–50 of this chapter for DOE employees, concerning the use and operation of Government motor vehicles.

Subpart 109–38.4—Use and Replacement Standards

§ 109–38.401 Use standards.

§ 109–38.401–2 Use of self-service pumps.

It is DOE policy that motor vehicle operators shall use self-service pumps in accordance with the provisions of 41 CFR 101–38.401–2.

§ 109–38.402 Replacement standards.

(a) [Reserved]

(b) Motor vehicles may be replaced without regard to the replacement standards in 41 CFR 101–38.402 only after certification by the Director of Administrative Services or the Head of the field organization for their respective organizations that a motor vehicle is beyond economical repair due to accident damage or wear caused by abnormal operating conditions.

§ 109–38.402–50 Prompt disposal of replaced motor vehicles.

A replaced motor vehicle shall be removed from service and disposed of prior to or as soon as practicable after delivery of the replacement motor vehicle to avoid concurrent operation of both motor vehicles.

§ 109–38.403 Responsibility for damages.

§ 109–38.403–1 Policy.

The policy for assigning responsibility for vehicle damage is to recover from users the costs for damages which would adversely affect the vehicle's resale.

§ 109–38.403–2 Responsibility.

The designated contractor will charge the using organization all costs resulting from damage, including vandalism, theft and parking lot damage to a DOE vehicle which occurs during the period that the vehicle is assigned to an employee of that organization. The charges recovered by the designated maintenance operation will be used to repair the vehicle. Other examples for which organizations will be charged are as follows:

(a) Damage caused by misuse or abuse inconsistent with normal operation and local conditions; or

(b) Repair costs which are incurred as a result of user's failure to obtain required preventative maintenance; or

(c) Unauthorized purchases or repairs, including credit card misuse, provided there is a clear, flagrant, and documented pattern of such occurrences.

§ 109–38.403–3 Exceptions.

Exceptions to § 109–38.403–2 of this subpart are as follows:

(a) As the result of the negligent or willful act of a party other than the organization or it's employee, and the responsible party can be determined; or

(b) As a result of mechanical failure and the employee was not otherwise negligent. Proof of the failure must be provided; or

(c) As a result of normal wear comparable to similar vehicles.

Subpart 109–38.5—Scheduled Maintenance

§ 109–38.502 Guidelines.

§ 109–38.502–50 DOE guidelines.

(a) Whenever practicable and cost effective, commercial service facilities shall be utilized for the maintenance of motor vehicles.

(b) Individual vehicle maintenance records shall be kept to provide records of past repairs, as a control against unnecessary repairs and excessive maintenance, and as an aid in determining the most economical time for replacement.

(c) One-time maintenance and repair limitations shall be established by the motor equipment fleet manager. To exceed repair limitations, approval of the motor equipment fleet manager is required.

(d) Warranties.

(1) Motor vehicles under manufacturer's warranty shall be repaired under the terms of the warranty.

(2) When motor vehicles are maintained in Government repair facilities in isolated locations that are distant from franchised dealer facilities, or when it is not practical to return the vehicles to a dealer, a billback agreement shall be sought from manufacturers to permit warranty work to be performed on a reimbursable basis.

Subpart 109–38.7—Transfer, Storage, and Disposal of Motor Vehicles

§ 109–38.701 Transfer of title for Government-owned motor vehicles.

§ 109–38.701–50 Authority to sign Standard Form 97, The United States Government Certificate to Obtain Title to a Vehicle.

The Standard Form (SF) 97 shall be signed by an appropriate contracting officer. The Director, Office of Administrative Services and heads of field organizations for their respective organizations may delegate the authority to sign SF 97 to responsible DOE personnel under their jurisdiction.

Subpart 109–38.8—Standard Form 149, U.S. Government National Credit Card

§ 109–38.800 General.

(a)—(c) [Reserved]

(d) The Director, Office of Administrative Services and heads of field organizations for their respective organizations shall be responsible for establishing procedures to provide for the administrative control of fleet credit cards. Administrative control shall include, as a minimum:

(1) A reconciliation of on-hand credit cards with the inventory list provided by GSA,

(2) Providing motor vehicle operators with appropriate instructions regarding the use and protection of credit cards against theft and misuse,

(3) The taking of reasonable precautions in the event an SF 149 or SF 149A is lost or stolen to minimize the opportunity of purchases being made by unauthorized persons, including notification to the paying office of the loss or theft,

(4) Validation of credit card charges to ensure they are for official use only items, and

(5) Being on the alert for any unauthorized bills.

§ 109–38.801 Obtaining SF 149, U.S. Government National Credit Card.

DOE offices electing to use national credit cards shall request the assignment of billing address code numbers from the DPMO. Following the assignment, DOE organizations shall submit orders for issuance of national credit cards in accordance with the instructions provided by GSA.

Subpart 109–38.9—Federal Motor Vehicle Fleet Report

§ 109–38.902 Records.

The Director, Office of Administrative Services and OPMOs for their respective organizations shall establish adequate records for accounting and reporting purposes.

§ 109–38.903 Reporting of data.

§ 109–38.903–50 Reporting DOE motor vehicle data.

(a) DOE offices and designated contractors operating DOE-owned or commercially-leased motor vehicles shall prepare the following reports using SF 82, Agency Report of Motor Vehicle Data or DOE approved equivalent, for the entire fleet including security vehicles.

(1) DOE Report of Motor Vehicle Data.

(2) DOE Report of Truck Data.

(b) Designated contractors shall submit the reports to the DOE contracting office for review and approval. DOE offices shall submit reports, including designated contractor reports, to the DPMO by November 15 of each year.

(c) Copies of the report forms may be obtained by contacting the DPMO.

(d) Personal computer generated reports are acceptable provided that the standard report format is followed.

Subpart 109–38.51—Utilization of Motor Equipment

§ 109–38.5100 Scope of subpart.

This subpart prescribes policies and procedures concerning the utilization of motor equipment.

§ 109–38.5101 Policy.

It is DOE policy to keep the number of motor vehicles and other motor equipment at the minimum needed to satisfy programmatic requirements. To attain this goal, controls and practices shall be established which will achieve the most practical and economical utilization of motor equipment. These controls and practices apply to all DOE-owned and commercially leased motor equipment and to GSA Interagency Fleet Management System motor vehicles.

§ 109–38.5102 Utilization controls and practices.

Controls and practices to be used by DOE organizations and designated contractors for achieving maximum economical utilization of motor equipment shall include, but not be limited to:

(a) The maximum use of motor equipment pools, taxicabs, shuttle buses, or other common service arrangements;

(b) The minimum, practicable assignment of motor equipment to individuals, groups, or specific organizational components;

(c) The maintenance of individual motor equipment use records, such as trip tickets or vehicle logs, or hours of use, as appropriate, showing sufficiently detailed information to evaluate appropriateness of assignment and adequacy of use being made. If one-time use of a motor vehicle is involved, such as assignments from motor pools, the individual's trip records must, as a minimum, identify the motor vehicle and show the name of the operator, dates, destination, time of departure and return, and mileage;

(d) The rotation of motor vehicles between high and low mileage assignments where practicable to maintain the fleet in the best overall replacement age and mileage balance and operating economy;

(e) The charging, if considered feasible, to the user organization for the cost of operating and maintaining motor vehicles assigned to groups or organizational components. These charge-back costs should include all direct and indirect costs of the motor vehicle fleet operation as determined by the field organization and contractor finance and accounting functions;

(f) The use of dual-purpose motor vehicles capable of hauling both personnel and light cargo whenever appropriate to avoid the need for two motor vehicles when one can serve both purposes. However, truck-type or van vehicles shall not be acquired for passenger use merely to avoid statutory limitations on the number of passenger motor vehicles which may be acquired;

(g) The use of motor scooters and motorcycles in place of higher cost motor vehicles for certain applications within plant areas, such as mail and messenger service and small parts and tool delivery. Their advantage, however, should be weighed carefully from the standpoint of overall economy (comparison with cost for other types of motor vehicles) and increased safety hazards, particularly when mingled with other motor vehicle traffic; and

(h) The use of electric vehicles for certain applications. The use of these vehicles is encouraged wherever it is feasible to use them to further the goal of fuel conservation.

§ 109–38.5103 Motor vehicle utilization standards.

(a) The following average utilization standards are established for DOE as objectives for those motor vehicles operated generally for those purposes for which acquired:

(1) Sedans and station wagons, general purpose use—12,000 miles per year.

(2) Light trucks (4×2's) and general purpose vehicles, one ton and under

(less than 12,500 GVWR)—10,000 miles per year.

(3) Medium trucks and general purpose vehicles, 1½ ton through 2½ ton (12,500 to 23,999 GVWR)—7,500 miles per year.

(4) Heavy trucks and general purpose vehicles, three ton and over (24,000 GVWR and over)—7,500 miles per year.

(5) Truck tractors—10,000 miles per year.

(6) All-wheel-drive vehicles—7,500 miles per year.

(7) Other motor vehicles—No utilization standards are established for other trucks, ambulances, buses, law enforcement motor vehicles, and special purpose vehicles. The use of these motor vehicles shall be reviewed at least annually by the motor equipment fleet manager and action shall be taken and documented to verify that the motor vehicles are required to meet programmatic, health, safety, or security requirements.

(b) When operating circumstances prevent the above motor vehicle utilization standards from being met, local use objectives must be established and met as prescribed in § 109–38.5105 of this subpart.

§ 109–38.5104 Other motor equipment utilization standards.

No utilization standards are established for motor equipment other than motor vehicles. Each DOE office should establish through an agreement between the fleet manager and the OPMO utilization criteria for other motor equipment including heavy mobile equipment and review, adjust, and approve such criteria annually. Utilization of various classifications of other motor equipment can be measured through various statistics including miles, hours of use, number of trips, and fuel consumption. A utilization review of other motor equipment shall be performed at least annually by the motor equipment fleet manager to justify retainment or disposition of excess equipment not needed to fulfill Departmental, programmatic, health, safety, or security requirements.

§ 109–38.5105 Motor vehicle local use objectives.

(a) Individual motor vehicle utilization cannot always be measured or evaluated strictly on the basis of miles operated or against any Department-wide mileage standard. For example, light trucks specifically fitted for use by a plumber, welder, etc., in the performance of daily work assignments, would have uniquely tailored use objectives, different from those set forth for a truck used for general purposes. Accordingly, efficient local use objectives, which represent practical units of measurement for motor vehicle utilization and for planning and evaluating future motor vehicle requirements, must be established and documented by the Organizational Motor Equipment Fleet Manager. The objectives should take into consideration past performance, future requirements, geographical disbursement, and special operating requirements.

(b) These objectives shall be reviewed and adjusted as appropriate, but not less often than annually, by the motor equipment fleet manager. The reviews shall be documented. The Organizational Motor Equipment Fleet Manager is responsible for reviewing and approving in writing all proposed local use objectives.

§ 109–38.5106 Application of motor vehicle use goals.

(a) At least annually, the motor equipment fleet manager will review motor vehicle utilization statistics and all motor vehicles failing to meet the applicable DOE utilization standard or local use objective must be identified.

(b) Prompt action must be initiated to:

(1) Reassign the underutilized motor vehicles;

(2) Dispose of the underutilized motor vehicles; or

(3) Obtain a special justification from users documenting their continued requirement for the motor vehicle and any proposed actions to improve utilization. Any requirement for underutilized motor vehicles which the motor equipment fleet manager proposes to continue in its assignment, must be submitted in writing to the Organizational Motor Equipment Fleet Manager for approval.

(c) Both Department-wide standards and local use objectives should be applied in such a manner that their application does not stimulate motor vehicle use for the purpose of meeting the objective. The ultimate standard against which motor vehicle use must be measured is that the minimum number of motor vehicles will be retained to satisfy program requirements.

Subpart 109–38.52—Watercraft

§ 109–38.5200 Scope of subpart.

This subpart establishes basic policies and procedures that apply to the management of watercraft operated by DOE organizations and designated contractors. The head of each Departmental organization operating watercraft shall issue such supplemental instructions as may be needed to ensure the efficient use and management of watercraft.

§ 109–38.5201 Definition.

As used in this subpart the following definition applies:

Watercraft means any vessel used to transport persons or material on water.

§ 109–38.5202 Watercraft operations.

(a) No person may operate a watercraft on a waterway until skill of operation and basic watercraft knowledge have been demonstrated.

(b) Operators of watercraft shall check the vessel to ensure that necessary equipment required by laws applicable to the area of operation are present, properly stowed, and in proper working order.

(c) Operators shall comply with all applicable Federal, state, and local laws pertaining to the operation of watercraft.

(d) Operators shall not use watercraft or carry passengers except in the performance of official Departmental assignments.

§ 109–38.5203 Watercraft identification and numbers.

Watercraft in the custody of DOE or designated contractors shall display identifying numbers, whether issued by the U.S. Coast Guard, State, or local field organization, in accordance with applicable requirements.

PART 109–39—INTERAGENCY FLEET MANAGEMENT SYSTEMS

Subpart 109–39.1—Establishment, Modification, and Discontinuance of Interagency Fleet Management Systems

Sec.

109–39.101 Notice of intention to begin a study.
109–39.101–1 Agency cooperation.
109–39.103 Agency appeals.
109–39.105 Discontinuance or curtailment of service.
109–39.105–2 Agency requests to withdraw participation.
109–39.106 Unlimited exemptions.
109–39.107 Limited exemptions.

Subpart 109–39.3—Use and Care of GSA Interagency Fleet Management System Vehicles

109–39.300 General.
109–39.301 Utilization guidelines.

Authority: 42 U.S.C. 7254.

Subpart 109–39.1—Establishment, Modification, and Discontinuance of Interagency Fleet Management Systems

§ 109–39.101 Notice of intention to begin a study.

§ 109–39.101–1 Agency cooperation.

The Director, Office of Administrative Services and heads of field organizations for their respective organizations shall designate representatives to coordinate with GSA concerning the establishment of a GSA fleet management system to serve their organization.

§ 109–39.103 Agency appeals.

The Director, Office of Administrative Services and heads of field organizations for their respective organizations may appeal, or request exemption from, a determination made by GSA concerning the establishment of a fleet management system. A copy of the appeal or request shall be forwarded to the DPMO.

§ 109–39.105 Discontinuance or curtailment of service.

§ 109–39.105–2 Agency requests to withdraw participation.

Should circumstances arise that would tend to justify discontinuance or curtailment of participation by a DOE organization of a given interagency fleet management system, the participating organization should forward complete details to the DPMO for consideration and possible referral to the Administrator of General Services.

§ 109–39.106 Unlimited exemptions.

The Director, Office of Administrative Services and heads of field organizations for their respective organizations shall make the determination that an unlimited exemption from inclusion of a motor vehicle in a fleet management system is warranted. A copy of the determination shall be forwarded to GSA and to the DPMO.

§ 109–39.107 Limited exemptions.

The Director, Office of Administrative Services and heads of field organizations for their respective organizations shall seek limited exemptions from the fleet management system.

Subpart 109–39.3—Use and Care of GSA Interagency Fleet Management System Vehicles

§ 109–39.300 General.

(a)–(c) [Reserved]

(d) Motor equipment fleet managers shall ensure that operators and passengers in GSA Interagency Fleet Management System (IFMS) motor vehicles are aware of the prohibition against the use of tobacco products in these vehicles.

§ 109–39.301 Utilization guidelines.

DOE activities utilizing GSA IFMS motor vehicles will receive and review vehicle utilization statistics in order to determine if miles traveled justify vehicle inventory levels. Activities should retain justification for the retention of vehicles not meeting DOE utilization guidelines or established local use objectives, as appropriate. Those vehicles not justified for retention shall be returned to the issuing GSA interagency fleet management center.

PART 109–40—TRANSPORTATION AND TRAFFIC MANAGEMENT

Subpart 109–40.1—General Provisions

Sec.

109–40.000 Scope of part.
109–40.000–50 Applicability to contractors.
109–40.102 Representation before regulatory bodies.
109–40.103 Selection of carriers.
109–40.103–1 Domestic transportation.
109–40.103–2 Disqualification and suspension of carriers.
109–40.103–3 International transportation.
109–40.104 Use of Government-owned transportation equipment.
109–40.109 Utilization of special contracts and agreements.
109–40.110 Assistance to economically disadvantaged transportation businesses.
109–40.110–1 Small business assistance.
109–40.110–2 Minority business enterprises.
109–40.112 Transportation factors in the location of Government facilities.
109–40.113 Insurance against transportation hazards.

Subpart 109–40.3—Traffic Management

109–40.301 Traffic management functions administration.
109–40.302 Standard routing principle.
109–40.303–3 Most fuel efficient carrier/mode.
109–40.304 Rate tenders to the Government.
109–40.305–50 Negotiations involving national security.
109–40.306–1 Recommended rate tender format.
109–40.306–2 Required shipping documents and annotations.
109–40.306–3 Distribution.

Subpart 109–40.50—Bills of Lading

109–40.5000 Scope of subpart.
109–40.5001 Policy.
109–40.5002 Applicability.
109–40.5003 Commercial bills of lading.
109–40.5004 Government bills of lading.
109–40.5005 Description of property for shipment.

Subpart 109–40.51—Price-Anderson Coverage Certifications for Nuclear Shipments

109–40.5100 Scope of subpart.
109–40.5101 Policy.

Authority: Sec. 161, as amended, 68 Stat. 948; 42 U.S.C. 2201; sec. 205, as amended, 63 Stat. 390; 40 U.S.C. 486; sec. 644, 91 Stat. 585, 42 U.S.C. 7254.

Subpart 109–40.1—General Provision

§ 109–40.000 Scope of part.

This part describes DOE regulations governing transportation and traffic management activities. It also covers arrangements for transportation and related services by bill of lading. These regulations are designed to ensure that all transportation and traffic management activities will be carried out in the manner most advantageous to the Government in terms of economy, efficiency, service, environment, safety and security.

§ 109–40.000–50 Applicability to contractors.

DOE–PMR 109–40, Transportation and Traffic Management, should be applied to cost-type contractors' transportation and traffic management activities. Departure by cost-type contractors from the provisions of these regulations may be authorized by the contracting officer provided the practices and procedures followed are consistent with the basic policy objectives in these regulations and DOE Order 460.2, Departmental Materials Transportation and Packaging Management, except to the extent such departure is prohibited by statute or executive order.

§ 109–40.102 Representation before regulatory bodies.

Participation in proceedings related to carrier applications to regulatory bodies for temporary or permanent authority to operate in specified geographical locations shall be confined to statements or testimony in support of a need for service and shall not extend to support of individual carriers or groups of carriers.

§ 109–40.103 Selection of carriers.

§ 109–40.103–1 Domestic transportation.

(a) Preferential treatment, normally, shall not be accorded to any mode of transportation (motor, rail, air, water) or to any particular carrier when arranging for domestic transportation services. However where, for valid reasons, a particular mode of transportation or a particular carrier within that mode must be used to meet specific program requirements and/or limitations, only that mode or carrier shall be considered.

Examples of valid reasons for considering only a particular mode or carrier are:

(1) Where only a certain mode of transportation or individual carrier is able to provide the needed service or is able to meet the required delivery date; and

(2) Where the consignee's installation and related facilities preclude or are not conducive to service by all modes of transportation.

(b) The following factors are considered in determining whether a carrier or mode of transportation can meet DOE's transportation service requirements for each individual shipment:

(1) Availability and suitability of carrier equipment;

(2) Carrier terminal facilities at origin and destination;

(3) Pickup and delivery service, if required;

(4) Availability of required or accessorial and special services, if needed;

(5) Estimated time in transit;

(6) Record of past performance of the carrier; and

(7) Availability and suitability of transit privileges.

§ 109–40.103–2 Disqualification and suspension of carriers.

Disqualification and suspension are measures which exclude carriers from participation, for temporary periods of time, in DOE traffic. To ensure that the Government derives the benefits of full and free competition of interested carriers, disqualification and suspension shall not apply for any period of time longer than necessary to protect the interests of the Government.

§ 109–40.103–3 International transportation.

See 4 CFR 52.2 for a certificate required in nonuse of U.S. flag vessels or U.S. flag certificated air carriers.

(a) U.S.-flag ocean carriers. Arrangements for international ocean transportation services shall be made in accordance with the provisions of section 901(b) of the Merchant Marine Act of 1936, as amended (46 U.S.C. 1241(b)) concerning the use of privately owned U.S.-flag vessels.

(b) U.S.-flag certificated air carriers. Arrangements for international air transportation services shall be made in accordance with the provisions of section 5(a) of the International Air Transportation Fair Competition Practices Act of 1974 (49 U.S.C. 1517), which requires the use of U.S.-flag certificated air carriers for international travel of persons or property to the extent that services by these carriers is available.

§ 109–40.105 Use of Government-owned transportation equipment.

The preferred method of transporting property for the Government is through use of the facilities and services of commercial carriers. However, Government vehicles may be used when they are available to meet emergencies and accomplish program objectives which cannot be attained through use of commercial carriers.

§ 109–40.109 Utilization of special contracts and agreements.

From time to time special transportation agreements are entered into on a Government-wide or DOE-wide basis and are applicable, generally, to DOE shipments. The HQ DOE Manager, Transportation Operations and Traffic, will distribute information on such agreements to field offices as it becomes available.

§ 109–40.110 Assistance to economically disadvantaged transportation businesses.

§ 109–40.110–1 Small business assistance.

Consistent with the policies of the Government with respect to small businesses, DOE shall place with small business concerns a fair proportion of the total purchases and contracts for transportation and related services such as packing and crating, loading and unloading, and local drayage.

§ 109–40.110–2 Minority business enterprises.

Minority business enterprises shall have the maximum practical opportunity to participate in the performance of Government contracts. DOE shall identify transportation-related minority enterprises and encourage them to provide services that will support DOE's transportation requirements.

§ 109–40.112 Transportation factors in the location of Government facilities.

Transportation rate, charges, and commercial carrier transportation services shall be considered and evaluated prior to the selection of new site locations and during the planning and construction phases in the establishment of leased or relocated Government installations or facilities to ensure that consideration is given to the various transportation factors that may be involved in this relocation or deactivation.

§ 109–40.113 Insurance against transportation hazards.

The policy of the Government with respect to insurance of its property while in the possession of commercial carriers is set forth in 41 CFR 1–19.107.

Subpart 109–40.3—Traffic Management

§ 109–40.301 Traffic management functions administration.

The DOE traffic management functions are accomplished by established field traffic offices under provisions of appropriate Departmental directives and Headquarters' staff traffic management supervision.

§ 109–40.302 Standard routing principle.

(a) Shipments shall be routed using the mode of transportation, or individual carriers within the mode, that can provide the required service at the lowest overall delivered cost to the Government.

(b) When more than one mode of transportation, or more than one carrier within a mode, can provide equally satisfactory service at the same overall cost the traffic shall be distributed as equitably as practicable among the modes and among the carriers within the modes.

§ 109–40.303–3 Most fuel efficient carrier/mode.

When more than one mode, or more than one carrier within a mode, can satisfy the service requirements of a specific shipment at the same lowest aggregate delivered cost, the carrier/mode determined to be the most fuel efficient will be selected. In determining the most fuel efficient carrier/mode, consideration will be given to such factors as use of the carrier's equipment in ''turn around'' service, proximity of carrier equipment to the shipping activity, and ability of the carrier to provide the most direct service to the destination points.

§ 109–40.304 Rate tenders to the Government.

Under the provisions of section 10721 of the Interstate Commerce Act (49 U.S.C. 10721), common carriers are permitted to submit to the Government tenders which contain rates lower than published tariff rates available to the general public. In addition, rates tenders may be applied to shipments other than those made by the Government provided the total benefits accrue to the Government; that is, provided the Government pays the charges or directly and completely reimburses the party that initially bears the freight charges (323 ICC 347 and 332 ICC 161).

§ 109–40.305–50 Negotiations involving national security.

Title 49 U.S.C., section 10721(b)(2) provides that rate tenders to the Government must be filed by the carriers within the Interstate Commerce Commission unless a carrier is advised by the U.S. Government that disclosure of a quotation or tender of a rate established * * * for transportation provided to the U.S. Government would endanger the National security. Carriers will be informed by the negotiating official if any quotation or tender to the Department of Energy involves such information.

§ 109–40.306–1 Recommended rate tender format.

Only those rate tenders which have been submitted by the carriers in writing shall be considered for use. Carriers should be encouraged to use the format ''Uniform Tender of Rates and/or Charges for Transportation Services'' when preparing and submitting rate tenders to the Government. Rate tenders that are ambiguous in meaning shall be resolved in favor of the Government.

§ 109–40.306–2 Required shipping documents and annotations.

(a) To qualify for transportation under section 10721 rates, property must be shipped by or for the Government on:

(1) Government bills of lading;

(2) Commercial bills of lading endorsed to show that these bills of lading are to be converted to Government bills of lading after delivery to the consignee;

(3) Commercial bills of lading showing that the Government is either the consignor or the consignee and endorsed with the following statement:

Transportation hereunder is for the U.S. Department of Energy, and the actual total transportation charges paid to the carrier(s) by the consignor or consignee are assignable to, and are to be reimbursed by, the Government.

(b) When a rate tender is used for transportation furnished under a cost-reimbursable contract, the following endorsement shall be used on covering commercial bills of lading:

Transportation hereunder is for the U.S. Department of Energy, and the actual total transportation charges paid to the carrier(s) by the consignor or consignee are to be reimbursed by the Government, pursuant to cost-reimbursable contract number (insert contract number). This may be confirmed by contacting the agency representative at (name and telephone number).

See 332 ICC 161.

(c) To ensure proper application of a Government rate tender on all shipments qualifying for their use, the issuing officer shall show on the bills of lading covering such shipments the applicable rate tender number and carrier identification, such as: ''Section 10721 tender, ABC Transportation Company, ICC No. 374.'' In addition, if commercial bills of lading are used, they shall be endorsed as specified above.

§ 109–40.306–3 Distribution.

Each agency receiving rate tenders shall promptly submit one signed copy to the Transportation and Public Utilities Service (WIT), General Services Administration, Washington, DC 20407. Also, two copies (including at least one signed copy) shall be promptly submitted to the General Services Administration (TA), Chester A. Arthur Building, Washington, DC 20406.

Subpart 109–40.50—Bills of Lading

§ 109–40.5000 Scope of subpart.

This subpart sets forth the requirements under which commercial or Government bills of lading may be used.

§ 109–40.5001 Policy.

Generally DOE cost-type contractors will use commercial bills of lading in making shipments for the account of DOE. Cost-type contractors may be authorized by the contracting officer to use Government bills of lading if such use will be advantageous to the Government. Such authorizations shall be coordinated with the HQ DOE Manager, Transportation Operations and Traffic.

§ 109–40.5002 Applicability.

The policy and procedures set forth in this subpart shall be applied when DOE's cost-type contractors use commercial bills of lading.

§ 109–40.5003 Commercial bills of lading.

(a) DOE's cost-type contractors using commercial bills of lading in making shipments for the account of DOE shall include the following statement on all commercial bills of lading:

This shipment is for the account of the U.S. Government which will assume the freight charges and is subject to the terms and conditions set forth in the standard form of the U.S. Government bills of lading and to any available special rates or charges.

(b) The language in paragraph (a) of this section may be varied without materially changing its substance to satisfy the needs of particular cost-type contractors for the purpose of obtaining the benefit of the lowest available rates for the account of the Government.

(c) Where practicable, commercial bills of lading shall provide for consignment of a shipment to DOE c/o the cost-type contractor or by the contractor ''for the DOE.''

(d) Commercial bills of lading exceeding $10,000 issued by cost-type contractors shall be annotated with a typewritten, rubber stamp, or similar impression containing the following wording:

Equal Employment Opportunity. All provisions of Executive Order 11246, as amended by Executive Order 11375, and of the rules, regulations, and relevant orders of the Secretary of Labor are incorporated herein.

§ 109–40.5004 Government bills of lading.

In those instances where DOE cost-type contractors are authorized to use Government bills of lading, specific employees of cost-type contractors will be authorized by the contracting officer to issue such Government bills of lading (see Title V, U.S. Government Accounting Office Policy and Procedures Manual for Guidance of Federal Agencies).

§ 109–40.5005 Description of property for shipment.

(a) Each shipment shall be described on the bill of lading or other shipping document as specified by the governing freight classification, carrier's tariff, or rate tender. Shipments shall be described as specifically as possible. Trade names such as ''Foamite'' or ''Formica,'' or general terms such as ''vehicles,'' ''furniture,'' or ''Government supplies,'' shall not be used as bill of lading descriptions.

(b) A shipment containing hazardous materials, such as explosives, radioactive materials, flammable liquids, flammable solids, oxidizers, or poison A or poison B, shall be prepared for shipment and described on bills of lading or other shipping documents in accordance with the Department of Transportation Hazardous Materials Regulation, 49 CFR, parts 100–189.

Subpart 109–40.51—Price-Anderson Coverage Certifications for Nuclear Shipments

§ 109–40.5100 Scope of subpart.

This subpart sets forth the policy for issuance of certifications regarding Price-Anderson coverage of particular shipments of nuclear materials.

§ 109–40.5101 Policy.

Upon request of a carrier, an appropriate certification will be issued by an authorized representative of the DOE to the carrier regarding the applicability of Price-Anderson indemnity to a particular shipment. Copies of such certifications, if performed by a Field Manager or a DOE

cost-type contractor, shall be provided to the HQ DOE Manager, Transportation Operations and Traffic.

SUBCHAPTER H—UTILIZATION AND DISPOSAL

PART 109–42—UTILIZATION AND DISPOSAL OF HAZARDOUS MATERIALS AND CERTAIN CATEGORIES OF PROPERTY

Subpart 109–42.11—Special Types of Hazardous Material and Certain Categories of Property

Sec.
109–42.1100.50 Scope of subpart.
109–42.1100.51 Policy.
109–42.1102–8 United States Munitions List items which require demilitarization.
109–42.1102–51 Suspect personal property.
109–42.1102–52 Low level contaminated personal property.

Authority: 40 U.S.C. 486(c).

Subpart 109–42.11—Special Types of Hazardous Material and Certain Categories of Property

§ 109–42.1100.50 Scope of subpart.

This subpart sets forth policies and procedures for the utilization and disposal outside of DOE of excess and surplus personal property which has been radioactively or chemically contaminated.

§ 109–42.1100.51 Policy.

When the holding organization determines it is appropriate to dispose of contaminated personal property, it shall be disposed of by DOE in accordance with appropriate Federal regulations governing radiation/chemical exposure and environmental contamination. In special cases where Federal regulations do not exist or apply, appropriate state and local regulations shall be followed.

§ 109–42.1102–8 United States Munitions List items which require demilitarization.

Heads of field organizations shall determine demilitarization requirements regarding combat material and military personal property using DoD 4160.21–M–1, Defense Demilitarization Manual as a guide.

§ 109–42.1102–51 Suspect personal property.

(a) Excess personal property (including scrap) having a history of use in an area where radioactive or chemical contamination may occur shall be considered suspect and shall be monitored using appropriate instruments and techniques by qualified personnel of the DOE office or contractor generating the excess.

(b) With due consideration to the economic factors involved, every effort shall be made to reduce the level of contamination of excess or surplus personal property to the lowest practicable level. Contaminated personal property that exceeds applicable contamination standards shall not be utilized or disposed outside DOE.

(c) If contamination is suspected and the property is of such size, construction, or location as to make testing for contamination impossible, the property shall not be utilized or disposed outside of DOE.

§ 109–42.1102–52 Low level contaminated personal property.

If monitoring of suspect personal property indicates that contamination does not exceed applicable standards, it may be utilized and disposed of in the same manner as uncontaminated personal property, provided the guidance in § 109–45.5005–1(a) of this chapter has been considered. However, recipients shall be advised where levels of radioactive contamination require specific controls for shipment as provided in Department of Transportation Regulations (49 CFR parts 171–179) for shipment of radioactive personal property. In addition, when any contaminated personal property is screened within DOE, reported to GSA, or otherwise disposed of, the kind and degree of contamination must be plainly indicated on all pertinent documents.

PART 109–43—UTILIZATION OF PERSONAL PROPERTY

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109–43.001 Definition.

Subpart 109–43.1—General Provisions

109–43.101 Agency utilization reviews.
109–43.103 Agency utilization officials.

Subpart 109–43.3—Utilization of Excess

109–43.302 Agency responsibility.
109–43.302–50 Utilization by designated contractors.
109–43.304 Reporting requirements.
109–43.304–1 Reporting.
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109–43.304–1.51 Transfers within DOE.
109–43.304–2 Form and distribution of reports.
109–43.304–4 Property at installations due to be discontinued.
109–43.305 Property not required to be formally reported.
109–43.305–50 Nuclear-related and proliferation-sensitive personal property.
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109–43.307–3 Conditional gifts for defense purposes.
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109–43.307–53 Automatic Data Processing Equipment (ADPE).
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109–43.312 Use of excess personal property on cost-reimbursement contracts.
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109–43.315 Certification of non-Federal agency screeners.

Subpart 109–43.5—Utilization of Foreign Excess Personal Property

109–43.502 Holding agency responsibilities.

Subpart 109–43.47—Reports

109–43.4701 Performance reports.

Subpart 109–43.50—Utilization of Personal Property Held for Facilities in Standby

109–43.5000 Scope of subpart.
§ 109–43.5001 Definition.
109–43.5002 Reviews to determine need for retaining items.

Authority: 40 U.S.C. 486(c).

109–43.001 Definition.

DOE screening period means the period of time that reportable excess personal property is screened throughout DOE for reutilization purposes and, for selected items, through the Used Energy-Related Laboratory Equipment (ERLE) Grant Program.

Subpart 109–43.1—General Provisions

§ 109–43.101 Agency utilization reviews.

DOE offices and designated contractors are responsible for continuously surveying property under their control to assure maximum use, and shall promptly identify property that is excess to their needs and make it available for use elsewhere.

§ 109–43.103 Agency utilization officials.

The DPMO is designated as the DOE National Utilization Officer.

Subpart 109–43.3—Utilization of Excess

§ 109–43.302 Agency responsibility.

§ 109–43.302–50 Utilization by designated contractors.

Heads of field organizations may authorize designated contractors to

perform the functions pertaining to the utilization of excess personal property normally performed by a Federal agency, provided the designated contractors have written policies and procedures.

§ 109–43.304 Reporting requirements.

§ 109–43.304–1 Reporting.

§ 109–43.304–1.50 DOE reutilization screening.

(a) Prior to reporting excess personal property to GSA, reportable personal property shall be screened for reutilization within DOE through the Reportable Excess Automated Property System (REAPS) for a 30-day period. REAPS also provides for a 15-day expedited screening period for certain categories of personal property for economic development and to satisfy urgent conditions.

(b) An additional 30-day screening period shall be allocated for items eligible for screening by educational institutions through ERLE.

(c) Items in FSCG 66 (Instruments and Laboratory Equipment), 70 (General Purpose Information Processing Equipment (including firmware)), and 99 (Miscellaneous) are reportable when the unit acquisition cost is $1,000 or more.

(d) In exceptional or unusual cases when time is critical, screening of excess property may be accomplished by telegram or facsimile with due consideration given to the additional costs involved. Examples of situations when this method of screening would be used are when there is a requirement for quick disposal actions due to unplanned contract terminations or facilities closing; to alleviate the paying of storage costs; when storage space is critical; to process exchange/sale transactions; property dangerous to public health and safety; property determined to be classified or otherwise sensitive for reasons of national security (when classified communications facilities are used); or for hazardous materials which may not be disposed of outside of the Department.

(e) Concurrent DOE and Federal agency screening generally shall not be conducted.

§ 109–43.304–1.51 Transfers within DOE.

Transfers within DOE generally shall be effected by completion of a SF–122, Transfer Order Excess Personal Property. Except for those designated contractors authorized by the DOE contracting office to execute transfer orders, transfers to DOE contractors must be approved by the cognizant DOE property administrator for the contractor receiving the property.

§ 109–43.304–2 Form and distribution of reports.

Reportable property will be electronically reported by REAPS directly to GSA following internal DOE and ERLE screening.

§ 109–43.304–4 Property at installations due to be discontinued.

When closing installations, DOE offices shall work with the appropriate GSA regional offices to develop site utilization and disposal programs:

(a) In developing a disposal program, property shall be determined to be excess to DOE needs before reporting it to GSA.

(b) If a deviation from DOE policy or procedures is required, prior written approval of the Deputy Assistant Secretary for Procurement and Assistance Management shall be obtained.

(c) When deviation from existing GSA regulations is involved, approval by the appropriate GSA regional office will be sufficient to validate the disposition. A copy of the GSA approval should be forwarded for information to the DPMO.

§ 109–43.305 Property not required to be formally reported.

(a) [Reserved]

(b) Equipment, parts, accessories, jigs and components which are of special design, composition, or manufacture and which are intended for use only by specific DOE installations (such as spare parts for equipment used in atomic processes) are not reportable and shall not be formally screened within DOE or reported to GSA.

§ 109–43.305–50 Nuclear-related and proliferation-sensitive personal property.

Nuclear-related and proliferation-sensitive property is not reportable and shall not be formally screened within DOE or reported to GSA.

§ 109–43.307 Items requiring special handling.

§ 109–43.307–2 Hazardous materials.

§ 109–43.307–2.50 Monitoring of hazardous personal property.

To provide assurance that hazardous personal property is not being inadvertently released from the site by transfer or sale to the public, all hazardous or suspected hazardous personal property shall be checked for contamination by environmental, safety, and health officials. Contamination-free personal property will be tagged with a certification tag authorizing release for transfer or sale. Contaminated personal property will be referred back to the program office for appropriate action.

§ 109–43.307–2.51 Holding hazardous personal property.

Excess or surplus hazardous personal property shall not be commingled with non-hazardous personal property while waiting disposition action.

§ 109–43.307–3 Conditional gifts for defense purposes.

The Director, Office of Administrative Services and heads of field organizations shall take appropriate action as required when conditional gifts are offered.

§ 109–43.307–4 Conditional gifts to reduce the public debt.

The Director, Office of Administrative Services and heads of field organizations shall take appropriate action as required when conditional gifts are offered.

§ 109–43.307–50 Export controlled personal property.

(a) When personal property that is subject to export controls is being exported directly by DOE (e.g., a transfer of nuclear equipment or materials as part of a program of cooperation with another country), DOE or the DOE contractor must obtain the necessary export license.

(b) When personal property subject to export controls is transferred under work-for-others agreements, co-operative agreements, or technical programs, the recipients will be informed in writing that:

(1) The property is subject to export controls;

(2) They are responsible for obtaining export licenses or authorizations prior to transferring or moving the property to another country; and

(3) They are required to pass on export control guidance if they transfer the property to another domestic or foreign recipient.

§ 109–43.307–51 Classified personal property.

Classified personal property which is excess to DOE needs shall be stripped of all characteristics which cause it to be classified, or otherwise rendered unclassified, as determined by the cognizant program office, prior to any disposition action. The cognizant program office shall certify that appropriate action has been taken to declassify the personal property as required. Declassification shall be accomplished in a manner which will preserve, so far as practicable, any civilian utility or commercial value of the personal property.

§ 109–43.307–52 Nuclear-related or proliferation-sensitive personal property.

(a) Recognizing that property disposal officials will not have the technical knowledge to identify nuclear-related and proliferation-sensitive personal property, all such personal property shall be physically tagged with a certification signed by an authorized program official at time of determination by the program office of the personal property as excess. Such an authorized official should be designated in writing with signature cards on file in the property office.

(b) Nuclear-related and proliferation-sensitive personal property which is excess to DOE needs shall be stripped of all characteristics which cause it to be nuclear-related or proliferation-sensitive personal property, as determined by the cognizant program office, prior to disposal. The cognizant program office shall certify that appropriate actions have been taken to strip the personal property as required, or shall provide the property disposal office with adequate instructions for stripping the items. Such action shall be accomplished in a manner which will preserve, so far as practicable, any civilian utility or commercial value of the personal property.

§ 109–43.307–53 Automatic data processing equipment (ADPE).

All ADPE shall be sanitized before being transferred into excess to ensure that all data, information, and software has been removed from the equipment. Designated computer support personnel must indicate that the equipment has been sanitized by attaching a certification tag to the item. Sanitized ADPE will be utilized and disposed in accordance with the provisions of the FPMR.

§ 109–43.307–54 Unsafe personal property.

Personal property that is considered defective or unsafe must be mutilated prior to shipment for disposal.

§ 109–43.312 Use of excess personal property on cost-reimbursement contracts.

(a) [Reserved]

(b) It is DOE policy for designated contractors to use Government excess personal property to the maximum extent possible to reduce contract costs. However, the determination required in 41 CFR 101–43.312(b) does not apply to such contracts, and a DOE official is not required to execute transfer orders for authorized designated contractors. The procedures prescribed in 41 CFR 101–43.309–5 for execution of transfer orders apply.

§ 109–43.313 Use of excess personal property on cooperative agreements.

(a)—(c) [Reserved].

(d) Heads of field organizations shall ensure that required records are maintained in a current status.

§ 109–43.314 Use of excess personal property on grants.

(a)–(e) [Reserved]

(f) Heads of field organizations shall ensure that the records required by 41 CFR 101–43.314(f) are maintained.

§ 109–43.315 Certification of non-Federal agency screeners.

(a)–(c) [Reserved]

(d) Contracting officers shall maintain a record of the number of certified non-Federal agency screeners operating under their authority and shall immediately notify the appropriate GSA regional office of any changes in screening arrangements.

Subpart 109–43.5—Utilization of Foreign Excess Personal Property

§ 109–43.502 Holding agency responsibilities.

(a) [Reserved]

(b) Property which remains excess after utilization screening within the general foreign geographical area where the property is located shall be reported to the accountable field office or Headquarters program organization for consideration for return to the United States for further DOE or other Federal utilization. The decision to return property will be based on such factors as acquisition cost, residual value, condition, usefulness, and cost of transportation.

Subpart 109–43.47—Reports

§ 109–43.4701 Performance reports.

(a) and (b) [Reserved]

(c) The annual report of personal property furnished (e.g., transfers, gifts, loans, leases, license agreements, and sales) to non-Federal recipients, including elementary and secondary schools, is furnished to GSA by the DPMO. Feeder reports, using the format illustrated below, shall be submitted to the DPMO by November 15 of each year.

(1) Field office feeder reports shall include the following:

(i) Data for all excess personal property obtained from other Federal agencies and furnished to any DOE offsite or designated contractor or financial assistance recipient;

(ii) Data for all DOE personal property no longer needed by a DOE direct operation and subsequently furnished to any DOE offsite or designated contractor or financial assistance recipient.

(iii) Data for all personal property furnished to elementary and secondary schools and non-profit organizations under initiatives to support science and mathematics education.

(2) Field office feeder reports shall not include data for contractor inventory which is declared excess and subsequently redistributed through REAPS (or other means within DOE) to other DOE contractors or designated contractors' subcontractors.

(3) The feeder report from the Office of Science Education Programs, using the following format, will include data for all personal property furnished to non-federal recipients and institutions of higher learning under the ERLE Grant Program.

Name and address of recipient	Recipient's status	Original cost of property	Digit federal supply classification group

Subpart 109–43.50—Utilization of Personal Property Held for Facilities in Standby

§ 109–43.5000 Scope of subpart.

This subpart supplements 41 CFR part 101–43 by providing policies and procedures for the economic and efficient utilization of personal property associated with facilities placed in standby status.

§ 109–43.5001 Definition.

Facility in standby means a complete plant or section of a plant, which is neither in service or declared excess.

§ 109–43.5002 Reviews to determine need for retaining items.

Procedures and practices shall require an initial review at the time the plant is placed in standby to determine which items can be made available for use elsewhere within the established start-up criteria; periodic reviews (no less than biennially) to determine need for continued retention of property; and special reviews when a change in start-up time is made or when circumstances warrant. Such procedures should recognize that:

(a) Equipment, spares, stores items, and materials peculiar to a plant should be retained for possible future operation of the plant;

(b) Where practicable, common-use stores should be removed and used elsewhere; and

(c) Uninstalled equipment and other personal property not required should be utilized elsewhere on-site or be disposed of as excess.

PART 109–44—DONATION OF PERSONAL PROPERTY

Subpart 109–44.7—Donations of Property to Public Bodies

Sec.
109–44.701 Findings justifying donation to public bodies.
109–44.702 Donations to public bodies.
109–44.702–3 Hazardous materials.

Authority: Sec. 205(c), 63 Stat. 390; 40 U.S.C. 486(c).

Subpart 109–44.7—Donations of Property to Public Bodies

§ 109–44.701 Findings justifying donation to public bodies.

The Director, Office of Administrative Services and heads of field organizations shall appoint officials to make required findings and reviews.

§ 109–44.702 Donations to public bodies.

§ 109–44.702–3 Hazardous materials.

The Director, Office of Administrative Services and heads of field organizations shall be responsible for the safeguards, notifications, and certifications required by 41 CFR part 101–42 and part 109–42 of this chapter, as well as compliance with all other requirements therein.

PART 109–45—SALE, ABANDONMENT, OR DESTRUCTION OF PERSONAL PROPERTY

Subpart 109–45.1—General

Sec.
109–45.105 Exclusions and exemptions.
109–45.105–3 Exemptions.

Subpart 109–45.3—Sale of Personal Property

109–45.300–50 Sales by designated contractors.
109–45.301–51 Export/import clause.
109–45.302 Sale to Government employees.
109–45.302–50 Sales to DOE employees and designated contractor employees.
109–45.303 Reporting property for sale.
109–45.303–3 Delivery.
109–45.304 Sales methods and procedures.
109–45.304–2 Negotiated sales and negotiated sales at fixed prices.
109–45.304–2.50 Negotiated sales and negotiated sales at fixed prices by designated contractors.
109–45.304–6 Reviewing authority.
109–45.304–50 Processing bids and awarding of contracts.
109–45.304–51 Documentation.
109–45.309 Special classes of property.
109–45.309–2.50 Hazardous property.
109–45.309–51 Export controlled property.
109–45.309–52 Classified property.
109–45.309–53 Nuclear-related or proliferation-sensitive property.
109–45.309–54 Automatic Data Processing Equipment (ADPE).
109–45.310 Antitrust laws.
109–45.317 Noncollusive bids and proposals.

Subpart 109–45.6—Debarred, Suspended, and Ineligible Contractors

109–45.601 Policy.
109–45.602 Listing debarred or suspended contractors.

Subpart 109–45.9—Abandonment or Destruction of Personal Property

109–45.901 Authority to abandon or destroy.
109–45.902 Findings justifying abandonment or destruction.
109–45.902–2 Abandonment or destruction without notice.

Subpart 109–45.10—Recovery of Precious Metals

109–45.1002 Agency responsibilities.
109–45.1002–3 Precious metals recovery program monitor.
109–45.1003 Recovery of silver from precious metals bearing materials.
109–45.1004 Recovery and use of precious metals through the DOD Precious Metals Recovery Program.

Subpart 109–45.47—Reports

109–45.4702 Negotiated sales reports.

Subpart 109–45.50—Excess and Surplus Radioactively and Chemically Contaminated Personal Property

109–45.5005 Disposal.
109–45.5005–1 General.

Subpart 109–45.51—Disposal of Excess and Surplus Personal Property in Foreign Areas

109–45.5100 Scope of subpart.
109–45.5101 Authority.
109–45.5102 General.
109–45.5103 Definitions.
109–45.5104 Disposal.
109–45.5104–1 General.
109–45.5104–2 Methods of disposal.
109–45.5105 Reports.

Authority: Sec. 205(c), 63 Stat. 390; 40 U.S.C. 486(c), para. 101–45.400–45.405 also issued under sec. 307, 49 Stat. 880; 40 U.S.C. 3041.

Subpart 109–45.1—General

§ 109–45.105 Exclusions and exemptions.

§ 109–45.105–3 Exemptions.

GSA, by letter dated May 28, 1965, exempted contractor inventory held by DOE designated contractors from the GSA conducted sales provisions of 41 CFR 101–45.

Subpart 109–45.3—Sale of Personal Property

§ 109–45.300–50 Sales by designated contractors.

Sales of surplus contractor inventory will be conducted by designated contractors when heads of field organizations determine that it is in the best interest of the Government. OPMOs and appropriate program officials shall perform sufficient oversight over these sales to ensure that personal property requiring special handling or program office certification is sold in accordance with regulatory requirements.

§ 109–45.301–51 Export/import clause.

The following clause shall be included in all sales invitations for bid:

Personal property purchased from the U.S. Government may or may not be authorized for export/import from/into the country where the personal property is located. If export/import is allowed, the purchaser is solely responsible for obtaining required clearances or approvals. The purchaser also is required to pass on DOE's export control guidance if the property is resold or otherwise disposed.

§ 109–45.302 Sale to Government employees.

§ 109–45.302–50 Sales to DOE employees and designated contractor employees.

(a) DOE employees and employees of designated contractors shall be given the same opportunity to acquire Government personal property as is given to the general public, provided the employees warrant in writing prior to award that they have not either directly or indirectly:

(1) Obtained information not otherwise available to the general public regarding usage, condition, quality, or value of the personal property, or

(2) Participated in:

(i) The determination to dispose of the personal property;

(ii) The preparation of the personal property for sale; and

(iii) Determining the method of sale.

(b) Excess or otherwise unusable special, fitted clothing and other articles of personal property, acquired for the exclusive use of an individual employee, may be sold to the employee for the best price obtainable when the property is no longer required by the holding organization or the employee is terminated.

§ 109–45.303 Reporting property for sale.

§ 109–45.303–3 Delivery.

(a)–(b) [Reserved].

(c) Guidelines for signature authorization and control of blank copies of Standard Form 97, United States Government Certificate to Obtain Title to a Vehicle are contained in subpart 109–38.7 of this chapter.

§ 109–45.304 Sales methods and procedures.

§ 109–45.304–2 Negotiated sales and negotiated sales at fixed prices.

(a)(1) [Reserved].

(2) The head of each field organization shall designate a responsible person to approve

negotiated sales by DOE direct operations.

(3) Requests for prior approval of negotiated sales by DOE direct operations shall be submitted with justification to the OPMO for review and forwarding to GSA for approval.

(b) [Reserved]

§ 109–45.304–2.50 Negotiated sales and negotiated sales at fixed prices by designated contractors.

(a) Negotiated sales by designated contractors of surplus contractor inventory may be made when the DOE contracting officer determines and documents prior to the sale that the use of this method of sale is justified on the basis of the circumstances enumerated below, provided that the Government's interests are adequately protected. These sales shall be at prices which are fair and reasonable and not less than the proceeds which could reasonably be expected to be obtained if the personal property was offered for competitive sale. Specific conditions justifying negotiated sales include:

(1) No acceptable bids have been received as a result of competitive bidding under a suitable advertised sale;

(2) Personal property is of such small value that the proceeds to be derived would not warrant the expense of a formal competitive sale;

(3) The disposal will be to a state, territory, possession, political subdivision thereof, or tax-supported agency therein, and the estimated fair market value of the personal property and other satisfactory terms of disposal are obtained by negotiation;

(4) The specialized nature and limited use potential of the personal property would create negligible bidder interest;

(5) Removal of the personal property would result in a significant reduction in value, or the accrual of disproportionate expense in handling; or

(6) It can be clearly established that such action is in the best interests of the Government.

(b) When determined to be in the best interests of the Government, heads of field organizations may authorize fixed-price sales of surplus contractor inventory by designated contractors provided:

(1) The fair market value of the item to be sold does not exceed $15,000;

(2) Adequate procedures for publicizing such sales have been established;

(3) The sales prices are not less than could reasonably be expected if competitive bid sales methods were employed and the prices have been approved by a reviewing authority designated by the head of the field organization; and

(4) The warranty prescribed in § 109–45.302–50(a) of this subpart is obtained when sales are made to employees.

§ 109–45.304–6 Reviewing authority.

The reviewing authority may consist of one or more persons designated by the head of the field organization.

§ 109–45.304–50 Processing bids and awarding of contracts.

The procedures established in 48 CFR 14.4 and 48 CFR 914.4 shall be made applicable to the execution, receipt, safeguarding, opening, abstraction, and evaluation of bids and awarding contracts, except that in evaluating bids and awarding contracts, disposal under conditions most advantageous to the Government based on high bids received shall be the determining factor.

§ 109–45.304–51 Documentation.

Files pertaining to surplus property sales shall contain copies of all documents necessary to provide a complete record of the sales transactions and shall include the following as appropriate:

(a) A copy of the request/invitation for bids if a written request/ invitation for bids is employed. A list of items or lots sold, indicating acquisition cost, upset price and sales price indicated.

(b) A copy of the advertising literature distributed to prospective bidders.

(c) A list of prospective bidders solicited.

(d) An abstract of bids received.

(e) Copies of bids received, including Standard Form 119, Contractor's Statement of Contingent or Other Fees, together with other relevant information.

(f) A statement concerning the basis for determination that proceeds constitute a reasonable return for property sold.

(g) When appropriate, full and adequate justification for not advertising the sale when the fair market value of property sold in this manner in any one case exceeds $1,000.

(h) A justification concerning any award made to other than the high bidder.

(i) The approval of the reviewing authority when required.

(j) A copy of the notice of award.

(k) All related correspondence.

(l) In the case of auction or spot bid sales, the following additional information should be included:

(1) A summary listing of the advertising used (e.g., newspapers, radio, television, and public postings).

(2) The names of the prospective bidders who attended the sale.

(3) A copy of any pertinent contract for auctioneering services and related documents.

(4) A reference to files containing record of deposits and payments.

§ 109–45.309 Special classes of property.

§ 109–45.309–2.50 Hazardous property.

Hazardous property shall be made available for sale only after the review and certification requirements of § 109–43.307–2.50 of this subpart have been met.

§ 109–45.309–51 Export controlled property.

Export controlled property shall be made available for sale only after the export license requirements of § 109–43.307–50 of this subpart have been met.

§ 109–45.309–52 Classified property.

Classified property shall be made available for sale only after the declassification requirements of § 109–43.307–51 of this subpart have been met.

§ 109–45.309–53 Nuclear-related or proliferation sensitive property.

Nuclear-related or proliferation-sensitive property shall be made available for sale only after the stripping and certification requirements of § 109–43.307–52 of this subpart have been met.

§ 109–45.309–54 Automatic Data Processing Equipment (ADPE).

ADPE shall be made available for sale only after the sanitizing and certification requirements of § 109–43.307–53 of this subpart have been met.

§ 109–45.310 Antitrust laws.

DOE offices shall submit to the Deputy Assistant Secretary for Procurement and Assistance Management any request for a proposed sale of a patent, process, technique, or invention, regardless of cost; or of surplus personal property with a fair market value of $3,000,000 or more.

§ 109–45.317 Noncollusive bids and proposals.

(a) [Reserved]

(b) The head of the field organization shall make the determination required in 41 CFR 101–45.317(b). This authority cannot be redelegated.

Subpart 109–45.6—Debarred, Suspended, and Ineligible Contractors

§ 109–45.601 Policy.

(a)–(b) [Reserved]

(c) The Director, Office of Administrative Services and heads of

field organization shall make the compelling reason determination when entering into a contract for the purchase of surplus Government personal property by a debarred or suspended contractor.

(d) The Deputy Assistant Secretary for Procurement and Assistance Management shall make the determination for simultaneously debarring and suspending a contractor from the purchase of surplus Federal personal property and the award of sales contracts.

§ 109–45.602 Listing debarred or suspended contractors.

(a) [Reserved]

(b) The Director, Office of Administrative Services and heads of field organizations shall establish procedures to ensure that listed contractors are not awarded contracts.

Subpart 109–45.9—Abandonment or Destruction of Personal Property

§ 109–45.901 Authority to abandon or destroy.

Personal property in the possession of DOE offices or designated contractors may be abandoned or destroyed provided that a written determination has been made by the OPMO that property has no commercial value or the estimated cost of its continued care and handling would exceed the estimated proceeds from its sale.

§ 109–45.902 Findings justifying abandonment or destruction.

§ 109–45.902–2 Abandonment or destruction without notice.

The head of the field organization shall designate an official to make the findings justifying abandonment or destruction without public notice of personal property. The OPMO shall review and coordinate on the findings.

Subpart 109–45.10—Recovery of Precious Metals

§ 109–45.1002 Agency responsibilities.

The Director, Office of Administrative Services and heads of field organizations are responsible for establishing a program for the recovery of precious metals.

§ 109–45.1002–3 Precious metals recovery program monitor.

The DPMO shall be the precious metals recovery program monitor.

§ 109–45.1003 Recovery of silver from precious metals bearing materials.

The Director, Office of Administrative Services and heads of field organizations are responsible for the establishment and maintenance of a program for silver recovery from used hypo solution and scrap film.

§ 109–45.1004 Recovery and use of precious metals through the DOD Precious Metals Recovery Program.

DOE operates its own precious metals pool and therefore does not participate in the DOD Precious Metals Recovery Program. See § 109–27.5106 of this chapter for guidance on operation of the DOE precious metals pool.

Subpart 109–45.47—Reports

§ 109–45.4702 Negotiated sales reports.

The report of negotiated sales shall be submitted by DOE offices to the DPMO by November 15 of each year for furnishing to GSA.

Subpart 109–45.50—Excess and Surplus Radioactively and Chemically Contaminated Personal Property

§ 109–45.5005 Disposal.

§ 109–45.5005–1 General.

(a) Nuclear-related, proliferation-sensitive, low level contaminated property, and classified personal property shall not be transferred, sold, exchanged, leased, donated, abandoned, or destroyed without approval of the cognizant program office. Disposal of this personal property is subject to the restrictions contained in applicable sections of part 109–42 and §§ 109–43.307–50, 109–43.307–51, and 109–43.307–52 of this chapter, and applicable sections of 41 CFR part 101–42.

(b) Personal property that is considered defective or unsafe must be mutilated prior to shipment for disposal.

Subpart 109–45.51—Disposal of Excess and Surplus Personal Property in Foreign Areas

§ 109–45.5100 Scope of subpart.

This subpart sets forth policies and procedures governing the disposal of DOE-owned foreign excess and surplus personal property.

§ 109–45.5101 Authority.

The policies and procedures contained in this subpart are issued pursuant to the provisions of 40 USC 471, Federal Property and Administrative Services Act of 1949, as amended. Title IV of the Act entitled ''Foreign Excess Property'' provides that, except where commitments exist under previous agreements, all excess personal property located in foreign areas shall be disposed of by the owning agency, and directs that the head of the agency conform to the foreign policy of the United States in making such disposals.

§ 109–45.5102 General.

Disposal of Government-owned personal property in the custody of DOE organizations or its contractors in foreign areas shall be made in an efficient and economical manner, and in conformance with the foreign policy of the United States.

§ 109–45.5103 Definitions.

As used in this subpart, the following definitions apply:

Foreign means outside the United States, Puerto Rico, American Samoa, Guam, the Trust Territory of the Pacific Islands, and the Virgin Islands.

Foreign service post means the local diplomatic or consular post in the area where the excess personal property is located.

§ 109–45.5104 Disposal.

§ 109–45.5104–1 General.

Foreign excess personal property which is not required for transfer within DOE or to other U.S. Government agencies, except for the personal property identified in § 109–45.5005–1(a) of this part, shall be considered surplus and may be disposed of by transfer, sale, exchange, or lease, for cash, credit, or other property and upon such other terms and conditions as may be deemed proper. Such personal property may also be donated, abandoned, or destroyed under the conditions specified in § 109–45.5105–2(c) of this subpart. Most foreign governments have indicated to the U.S. State Department that they wish to be consulted before U.S. Government property is disposed of in their countries (except in the case of transfers to other U.S. Government agencies). Matters concerning customs duties and taxes, or similar charges, may require prior agreement with the foreign government involved. The State Department shall be contacted in regard to these issues. Whenever advice or approval of the State Department is required by this subpart, it may be obtained either through the foreign service post in the foreign area involved or from the State Department in Washington, DC. If the issue is to be presented to the State Department in Washington, DC, it shall be referred through appropriate administrative channels to the Deputy Assistant Secretary for Procurement and Assistance Management for review, coordination, and handling.

§ 109–45.5104–2 Methods of disposal.

(a) Sales of foreign surplus personal property shall be conducted in accordance with the following guidelines:

(1) Generally, all sales of foreign surplus personal property shall be conducted under the competitive bid process unless it is advantageous and more practicable to the Government not to do so. When competitive bids are not solicited, reasonable inquiry of prospective purchasers shall be made in order that sales may be made on terms most advantageous to the U.S. Government.

(2) In no event shall any personal property be sold in foreign areas without a condition which states that its importation into the United States is forbidden unless the U.S. Secretary of Agriculture (in the case of any agricultural commodity, food, cotton, or woolen goods), or the U.S. Secretary of Commerce (in the case of any other property), has determined that the importation of such property would relieve domestic shortages or otherwise be beneficial to the economy of the United States.

(3) Sales documents shall provide that the purchaser must pay any import duties or taxes levied against personal property sold in the country involved and further provide that the amount of this duty or tax shall not be included as a part of the price paid the U.S. Government for the personal property. In the event the levy is placed upon the seller by law, the buyer will be required to pay all such duties or taxes and furnish the seller copies of his receipts prior to the release of the personal property to him. However, if the foreign government involved will not accept payment from the buyer, the seller will collect the duties or taxes and turn the amounts collected over to the foreign government. Accounting for the amounts collected shall be coordinated with the disbursing officer of the nearest United States foreign service post. The property shall not be released to the purchaser until the disposal officer is satisfied that there is no responsibility for payment by the United States (as contrasted to collection by the United States) of taxes, duties, excises, etc.

(4) Certain categories of personal property, including small arms and machine guns; artillery and projectiles; ammunition, bombs, torpedoes, rockets and guided missiles; fire control equipment and range finders; tanks and ordnance vehicles; chemical and biological agents, propellants and explosives; vessels of war and special naval equipment; aircraft and all components, parts and accessories for aircraft; military electronic equipment; aerial cameras, military photo-interpretation, stereoscopic plotting and photogrammetry equipment; and all material not enumerated which is included in the United States Munitions List, 22 CFR 121.01, and is subject to disposal restrictions. Advance approval must be obtained from the State Department for the sale of all such articles. Therefore, prior to the sale of any of the articles enumerated in the U.S. Munitions List, the foreign service post in the area shall be consulted.

(5) Prior to the sale of personal property which has a total acquisition cost of $250,000 or more, plans for such sale shall be reported to the DPMO with ample time to allow consideration of possible foreign policy issues and advice thereon from the State Department (see section 109–45.5106(a) of this subpart). All proposed sales, regardless of the total acquisition cost of the personal property involved, which the head of the DOE foreign office believes might have a significant economic or political impact in a particular area, shall be discussed with the foreign service post.

(b) While there is authority for exchange or lease of foreign surplus personal property, such authority shall be exercised only when such action is clearly in the best interests of the U.S. Government. Disposals by exchange are subject to the same requirements as disposals by sale under § 109–45.5105–2(a) of this subpart.

(c)(1) Foreign excess or surplus personal property (including salvage and scrap) may be donated, abandoned, or destroyed provided:

(i) The property has no commercial value or the estimated cost of its care and handling would exceed the estimated proceeds from its sale; and

(ii) A written finding to that effect is made and approved by the Deputy Assistant Secretary for International Energy Policy, Trade and Investment.

(2) No personal property shall be abandoned or destroyed if donation is feasible. Donations under these conditions may be made to any agency of the U.S. Government, or to educational, public health, or charitable nonprofit organizations.

(3) Foreign excess personal property may also be abandoned or destroyed when such action is required by military necessity, safety, or considerations of health or security. A written statement explaining the basis for disposal by these means and approval by the Deputy Assistant Secretary for International Energy Policy, Trade and Investment is required.

(4) Property shall not be abandoned or destroyed in a manner which is detrimental or dangerous to public health and safety, or which will cause infringement on the rights of other persons.

§ 109–45.5105 Reports.

(a) Proposed sales of foreign surplus personal property having an acquisition cost of $250,000 or more shall be reported to the DPMO and should include all pertinent data, including the following:

(1) The description of personal property to be sold, including:

(i) Identification of personal property (description should be in terms understandable to persons not expert in technical nomenclature). Personal property covered by the U.S. Munitions List and regulations pertaining thereto (as published in 22 CFR 121.01) should be clearly identified;

(ii) Quantity;

(iii) Condition; and

(iv) Acquisition cost.

(2) The proposed method of sale (e.g., sealed bid, negotiated sale, etc.)

(3) Any currency to be received and payment provisions (i.e., U.S. dollars, foreign currency, or credit, including terms of the proposed sale).

(4) Any restrictions on use of personal property to be sold (such as resale of property, disposal as scrap, demilitarization, etc.).

(5) Any special terms or conditions of sale.

(6) The categories of prospective purchasers (e.g., host country, other foreign countries, special qualifications, etc.).

(7) How taxes, excises, duties, etc., will be handled.

(b) Instructions for reporting foreign excess utilization and disposal transactions are contained in Chapter III of DOE Order 534.1, Accounting.

PART 109–46—UTILIZATION AND DISPOSAL OF PERSONAL PROPERTY PURSUANT TO EXCHANGE/SALE AUTHORITY

Sec.

109–46.000 Scope of part.
109–46.000–50 Applicability.

Subpart 109–46.2—Authorization

109–46.202 Restrictions and limitations.
109–46.203 Special authorizations.

Authority: Sec. 205(c), 63 Stat. 390; 40 U.S.C. 486(c).

§ 109–46.000 Scope of part.

§ 109–46.000–50 Applicability.

(a) Except as set forth in paragraphs (a)(1)–(a)(5), the requirements of FPMR Part 101–46 and this part are not

applicable to designated contractors. Designated contractors shall comply with the following FPMR requirements:

(1) 101–46.200

(2) 101–46.201–1

(3) 101–46.202(b)(2), (3), (4), (5), (6), and (7)

(4) 101–46.202(c)(1), (2), (4), (5), (6), (7), (10), (11), and (12)

(5) 101–46.202(d)

(b) Items in the following Federal Supply Classification Groups (FSCG) are not eligible for processing under the exchange/sale provision. Requests for waivers must be processed through the DPMO to GSA.

Description

FSCG
10 Weapons
11 Nuclear ordnance
12 Fire control equipment
14 Guided missiles
15 Aircraft and airframe structural components (except FSC Class 1560, Airframe structural components)
20 Ship and marine equipment
22 Railway equipment
41 Firefighting, rescue, and safety equipment

Subpart 109–46.2—Authorization

§ 109–46.202 Restrictions and limitations.

(a), (b), (c)(1)–(c)(9) [Reserved]

(c)(10) The Director, Office of Administrative Services and heads of field organizations for their respective organizations shall designate an official to make the certification that a continuing valid requirement exists for excess personal property acquired and placed in official use for less than one year but no longer required and is to be disposed of under the exchange/sale provisions.

(c)(11) [Reserved]

(c)(12) Heads of field organizations shall make the determination concerning demilitarization of combat material.

§ 109–46.203 Special authorizations.

(a) [Reserved]

(b) The Director, Office of Administrative Services and heads of field organizations for their respective organizations shall designate an official to make the certification concerning the exchange of historic items for historical preservation or display.

PART 109–48—UTILIZATION, DONATION, OR DISPOSAL OF ABANDONED AND FORFEITED PERSONAL PROPERTY

Sec.
109–48.000 Scope of part.
109–48.000–50 Applicability.

Subpart 109–48.1—Utilization of Abandoned and Forfeited Personal Property

109–48.101 Forfeited or voluntarily abandoned property.
109–48.101–6 Transfer to other Federal agencies.

Authority: Sec. 205(c), 63 Stat. 390; 40 U.S.C. 486(c).

§ 109–48.000 Scope of part.

§ 109–48.000–50 Applicability.

This part is applicable to contractor operations where the abandoned or forfeited personal property is found on premises owned or leased by the Government that are managed and operated by designated contractors.

Subpart 109–48.1—Utilization of Abandoned and Forfeited Personal Property

§ 109–48.101 Forfeited or voluntarily abandoned property.

§ 109–48.101–6 Transfer to other Federal agencies.

(a)–(e) [Reserved]

(d) Transfer orders for forfeited or voluntarily abandoned distilled spirits, wine, and malt beverages for medicinal, scientific, or mechanical purposes or any other official purposes for which appropriated funds may be expended by a Government agency shall be forwarded through normal administrative channels for signature by the DPMO and for subsequent forwarding to GSA for release.

(f) Transfer orders for reportable forfeited drug paraphernalia shall be forwarded through normal administrative channels for signature by the DPMO and for subsequent forwarding to GSA for approval.

PART 109–50—SPECIAL DOE DISPOSAL AUTHORITIES

Sec.
109–50.000 Scope of part.
109–50.001 Applicability.

Subpart 109–50.1—Used Energy-Related Laboratory Equipment Grant Program

109–50.100 Scope of subpart.
109–50.101 Applicability.
109–50.102 General.
109–50.103 Definitions.
109–50.104 Equipment which may be granted.
109–50.105 Equipment which may not be granted.
109–50.106 Procedure.
109–50.107 Reporting.

Subpart 109–50.2—Math and Science Equipment Gift Program

109–50.200 Scope of subpart.
109–50.201 Applicability.
109–50.202 Definitions.
109–50.203 Eligible equipment.
109–50.204 Limitations.
109–50.205 Procedure.
109–50.206 Reporting.

Subpart 109–50.3—[Reserved]

Subpart 109–50.4—Programmatic Disposal to Contractors of DOE Property in a Mixed Facility

109–50.400 Scope of subpart.
109–50.401 Definitions.
109–50.402 Submission of proposals.
109–50.403 Need to establish DOE program benefit.

Subpart 109–50.48—Exhibits

109–50.4800 Scope of subpart.
109–50.4801 Equipment Gift Agreement.

Authority: Sec. 644, Pub. L. 95–91, 91 Stat. 599 (42 U.S.C. 7254); sec. 31, Atomic Energy Act, as amended; Energy Reorganization Act of 1974, secs. 103 and 107; Title III, Department of Energy Organization Act; E.O. 12999; sec. 3710(i), Stevenson-Wydler Technology Innovation Act, as amended (15 U.S.C. 3710(i)); Pub. L. 101–510, Department of Energy Science Education Enhancement Act; Pub. L. 102–245, American Technologies Preeminence Act of 1991 (15 U.S.C. 3701); Office of Energy Research Financial Assistance Regulations (10 CFR part 605).

§ 109–50.000 Scope of part.

This part provides guidance on the policies, practices, and procedures for the disposal of DOE property under special legislative authorities.

§ 109–50.001 Applicability.

The provisions of this part apply to direct DOE operations and to designated contractors only when specifically provided for in the appropriate subpart.

Subpart 109–50.1—Used Energy-Related Laboratory Equipment Grant Program

§ 109–50.100 Scope of subpart.

This subpart provides guidance on the granting of used energy-related laboratory equipment to universities and colleges and other nonprofit educational institutions of higher learning in the United States for use in energy-oriented educational programs.

§ 109–50.101 Applicability.

This subpart is applicable to DOE offices and designated contractors.

§ 109–50.102 General.

DOE, to encourage research and development in the field of energy, awards grants of excess energy-related laboratory equipment to eligible institutions for use in energy-oriented educational programs. Under the Used Energy-Related Laboratory Equipment (ERLE) Grant Program, grants of used energy-related equipment excess to the requirements of DOE offices and designated contractors may be made to eligible institutions prior to reporting the equipment to GSA for reutilization screening.

§ 109–50.103 Definitions.

As used in this subpart the following definitions apply: *Book value* means acquisition cost less depreciation. *DOE Financial Assistance Rules* (10 CFR part 600) means the DOE regulation which establishes a uniform administrative system for application, award, and administration of assistance awards, including grants and cooperative agreements.

Eligible institution means any nonprofit educational institution of higher learning, such as universities, colleges, junior colleges, hospitals, and technical institutes or museums located in the United States and interested in establishing or upgrading energy-oriented education programs.

Energy-oriented education program means one that deals partially or entirely in energy or energy-related topics.

§ 109–50.104 Equipment which may be granted.

Generally, equipment items classified in FSCG 66, Instruments and Laboratory Equipment, are eligible for granting under this program. Other selected items designated by the Office of Laboratory Policy and Infrastructure Management and approved by the DPMO, are made available under the program.

§ 109–50.105 Equipment which may not be granted.

Equipment which will not be granted include:

(a) Any equipment determined to be required by DOE direct operations or DOE designated contractors; or

(b) General supplies, such as Bunsen burners, hoods, work benches; office equipment and supplies; furniture; drafting supplies; refrigerators; tools; presses; lathes; furnaces; hydraulic and mechanical jacks; cranes; and hoists.

§ 109–50.106 Procedure.

(a) After DOE utilization screening through REAPS, items eligible for ERLE grants are extracted from the REAPS system and provided to the Office of Energy Research by electronic means.

(b) The Office of Energy Research provides this information to prospective grantees through an automated system.

(c) The following periods have been established during which time equipment will remain available to this program prior to reporting it to GSA for reutilization by other Federal agencies:

(1) Thirty days from the date DOE utilization screening is completed to permit suitable time for eligible institutions to review and earmark the desired equipment.

(2) An additional thirty days after the equipment is earmarked to permit the eligible institutions to prepare and submit an equipment proposal request and to provide time for field organizations to review and evaluate the proposal and take appropriate action.

(d) Upon approval of the proposal, a grant will be issued to the institution upon completion.

(e) A copy of the completed grant, shall be used to transfer title and drop accountability of the granted equipment from the financial records.

(f) The cost of care and handling of personal property incident to the grant shall be charged to the receiving institution. Such costs may consist of packing, crating, shipping and insurance, and are limited to actual costs. In addition, where appropriate, the cost of any repair and/or modification to any equipment shall be borne by the recipient institution.

§ 109–50.107 Reporting.

(a) Gifts made under this program shall be included in the annual report of property transferred to non-Federal recipients, as required by 41 CFR 101–43.4701(c) and 109–43.4701(c).

(b) A copy of each equipment agreement shall be forwarded to the Director, Office of Laboratory Policy and Infrastructure Management.

Subpart 109–50.2—Math and Science Equipment Gift Program

§ 109–50.200 Scope of subpart.

This subpart provides guidance on providing gifts of excess and/or surplus education related and Federal research equipment to elementary and secondary educational institutions or nonprofit organizations for the purpose of improving math and science curricula or conducting of technical and scientific education and research activities.

§ 109–50.201 Applicability.

The provisions of this subpart are applicable to DOE offices and designated contractors.

§ 109–50.202 Definitions.

As used in this subpart the following definitions apply:

DOE Field Organizations means the DOE Federal management activities, including Operations Offices, Field Offices, Area Offices, Site Offices, Energy Technology Centers, and Project Offices staffed by Federal employees.

Education-related and Federal research equipment includes but is not limited to DOE-owned property in FSCG 34, 36, 41, 52, 60, 61, 66, 67, 70, and 74 (See 41 CFR 101–43.4801(d)), and other related equipment, which is deemed appropriate for use in improving math and science curricula or activities for elementary and secondary school education, or for the conduct of technical and scientific education and research activities.

Eligible recipient means local elementary and secondary schools and nonprofit organizations.

Elementary and secondary schools means individual public or private educational institutions encompassing kindergarten through twelfth grade, as well as public school districts.

Facilities under DOE Field Organization cognizance means national laboratories, production plants, and project sites managed and operated by DOE contractors or subcontractors.

§ 109–50.203 Eligible Equipment.

(a) Education-related and research equipment will include, but is not limited to the following FSCGs:

FSCG and Description

34 Metalworking Machinery.
36 Special Industry Machinery.
41 Refrigeration, Air Conditioning and Air Circulating Equipment.
52 Measuring Tools
60 Fiber Optics Materials, Components, Assemblies and Accessories.
61 Electric Wire, and Power and Distribution Equipment.
66 Instruments and Laboratory Equipment.
67 Photographic Equipment.
70 General Purpose Automatic Data Processing Equipment (Including Firmware), Software, Supplies and Support Equipment
74 Office Machines, Text Processing Systems and Visible Record Equipment.

(b) Other related equipment may be provided if deemed appropriate and approved by the Director, Office of Laboratory Policy and Infrastructure Management.

§ 109–50.204 Limitations.

(a) Excess and/or surplus education-related and Federal research equipment at DOE Field Organizations and cognizant facilities is eligible for transfer as a gift under this program. However, safety, environmental, and health matters must be considered.

(b) Title to the equipment will transfer upon the recipient's written acknowledgement of receipt.

(c) The Director, Office of Laboratory Policy and Infrastructure Management may authorize gifts of excess and/or surplus education-related and Federal research equipment by signature on the appropriate gift instrument where the book value of an item of equipment exceeds $25,000 or the cumulative book value of the gifts under this program to any one institution exceeds $25,000.

HCA or designee may authorize gifts of excess and/or surplus education-related and Federal research equipment of lesser individual and cumulative book value by signature on the appropriate gift instrument. Delegations by the HCA to authorize gifts of excess and/or surplus education related and Federal research equipment shall be in writing to a specific individual, for a specified period of time, and for a specified (or unlimited) level of authority.

(d) Gifts shall be serviceable and in working order. Disposal Condition Codes 1 and 4, as defined in 41 CFR 101–43.4801(e), meet this criteria. Serviceability of equipment should be verified before the gift is made to the eligible recipient.

§ 109–50.205 Procedure.

(a) The DOE facility will set aside an appropriate amount of excess and/or surplus education-related and Federal research equipment for transfer under this program.

(b) A list of available education-related and Federal research equipment will be prepared and distributed to eligible recipients and the chief State School Board Officer.

(c) Precollege institutions with partnership arrangements with the DOE or its facilities (e.g., an adopted school) may receive gifts of equipment in support of the partnership.

(d) Precollege institutions not in a partnership with DOE may receive equipment at the recommendation of the chief State School Board Officer. The Chief State School Board Officer will determine which schools within the state will receive which equipment. Consideration for placement of the equipment should be based on:

(1) The elementary or secondary schools determined to have the greatest need; or

(2) Recipients of federally funded math and science projects where the equipment would further enhance the progress of the project.

(e) Eligible recipients will have 30 days to select and freeze, on a first come, first serve basis, the items desired and submit a request for selected items stating:

(1) Why the gift is needed; and

(2) How the gift will be used to improve math and science curricula or in the conduct of technical and scientific education and research activities.

(f) The cost of shipping should be minimal and not more than the actual equipment value.

(g) An Equipment Gift Agreement will be prepared and used to provide the gift to eligible recipients. The gift agreement will be in the format provided in section 109–50.4801 of this subchapter. The agreement shall be numbered for control purposes, and signed by the Director, Office of Laboratory Policy and Infrastructure Management or the HCA or designee, as appropriate, and an appropriate official representing the eligible recipient.

§ 109–50.206 Reporting.

(a) Gifts made under this program shall be included in the annual report of property transferred to non-Federal recipients, as required by 41 CFR 101–43.4701(c) and § 109–43.4701(c) of this chapter.

(b) A copy of each equipment agreement shall be forwarded to the Director, Office of Laboratory Policy and Infrastructure Management.

Subpart 109–50.3—[Reserved]

Subpart 109–50.4—Programmatic Disposal to Contractors of DOE Property in a Mixed Facility

§ 109–50.400 Scope of subpart.

This subpart contains policy to be followed when it is proposed to sell or otherwise transfer DOE personal property located in a mixed facility to the contractor who is the operator of that facility.

§ 109–50.401 Definitions.

As used in this subpart, the following definitions apply;

Contractor means the operator of the mixed facility.

DOE property means DOE-owned personal property located in a mixed facility.

Mixed facility means a partly DOE-owned and partly contractor-owned facility. For purposes of this subpart, however, this definition does not apply to such a facility operated by an educational or other nonprofit institution under a basic research contract with DOE.

§ 109–50.402 Submission of proposals.

Proposals involving programmatic disposals of DOE personal property located in mixed facilities to contractors operating that facility shall be forwarded through the appropriate program organization to the DPMO, for review and processing for approval. Each such request shall include all information necessary for a proper evaluation of the proposal. The proposal shall include, as a minimum:

(a) The purpose of the mixed facility;

(b) The description, condition, acquisition cost, and present use of the DOE personal property involved.

(c) The programmatic benefits which could accrue to DOE from the disposal to the contractor (including the considerations which become important if the disposal is not made);

(d) The appraised value of the DOE personal property (preferably by independent appraisers); and

(e) The proposed terms and conditions of disposal including:

(1) Price;

(2) Priority to be given work for DOE requiring the use of the transferred property, and including the basis for any proposed charge to DOE for amortizing the cost of plant and equipment items;

(3) Recapture of the property if DOE foresees a possible future urgent need; and

(4) Delivery of the property, whether ''as is-where is,'' etc.

§ 109–50.403 Need to establish DOE program benefit.

When approval for a proposed programmatic disposal of DOE personal property in a mixed facility is being sought, it must be established that the disposal will benefit a DOE program. For example, approval might be contingent on showing that:

(a) The entry of the contractor as a private concern into the energy program is important and significant from a programmatic standpoint; and

(b) The sale of property to the contractor will remove obstacles which otherwise discourage entry into the field.

Subpart 109–50.48—Exhibits

§ 109–50.4800 Scope of subpart.

This subpart exhibits information referenced in the text of part 109–50 of this chapter that is not suitable for inclusion elsewhere in that part.

§ 109–50.4801 Equipment Gift Agreement.

(a) The following Equipment Gift Agreement format will be used to provide gifts of excess and/or surplus equipment to eligible recipients under the Math and Science Equipment Gift Program (see subpart 109–50.2 of this chapter).

EQUIPMENT GIFT AGREEMENT

_____

(Reference Number)

Between The U.S. Department of Energy and

_____

(Name of Eligible Recipient)

I. Purpose

The Department of Energy shall provide as a gift, excess and/or surplus education-related and Federal research equipment to (Name of Eligible Recipient), hereafter referred to as the Recipient, for the purpose

of improving the Recipient's math and science education curricula or for the Recipient's conduct of technical and scientific education and research activities.

II. Authority

Federal agencies have been directed, to the maximum extent permitted by law, to give highest preference to elementary and secondary schools in the transfer or donation of education-related Federal equipment, at the lowest cost permitted by law. Furthermore, subsection 11(i) of the Stevenson Wydler Technology Innovation Act of 1980, as amended (15 U.S.C. 3710 (i)), authorizes the Director of a laboratory, or the head of any Federal agency or department to give excess research equipment to an educational institution or nonprofit organization for the conduct of technical and scientific education and research activities.

III. Agreement

A. The Department of Energy agrees to provide the equipment identified in the attached equipment gift list, as a gift for the purpose of improving the Recipient's math and science curricula or for the Recipient's conduct of technical and scientific education and research activities.

B. Title to the education-related and Federal research equipment, provided as a gift under this agreement, shall vest with the Recipient upon the Recipient's written acknowledgement of receipt of the equipment. The acknowledgement shall be provided to (Name of the DOE signatory) at (address).

C. The Recipient will be responsible for any repair and modification costs to any equipment received under this gift.

D. The Recipient hereby releases and agrees to hold the Government, the Department of Energy, or any person acting on behalf of the Department of Energy harmless, to the extent allowable by State law, for any and all liability of every kind and nature whatsoever resulting from the receipt, shipping, installation, operation, handling, use, and maintenance of the education-related and Federal Research equipment provided as a gift under this agreement.

E. The Recipient agrees to use the gift provided herein for the primary purpose of improving the math and science curricula or for the conduct of technical and scientific education and research activities.

F. The Recipient agrees to provide for the return of the equipment if such equipment, while still usable, has not been placed in use for its intended purpose within one year after receipt from the Department of Energy.

_____

(U.S. Department of Energy Office)

_____

(Name and Address of Recipient)

_____

(Signature of HCA or Designee)

_____

(Signature of Official)

_____

(Typed Name)

_____

(Typed Name)

_____

(Typed Title)

_____

(Typed Title)

_____

(Date)

(Date)

(b) The list of gifts that accompanies the Equipment Gift Agreement shall contain the Gift Agreement reference number, name of the eligible recipient, and the name of the DOE office. In addition, the following information shall be provided for each line item provided as a gift: DOE ID number, description (name, manufacturer, model number, serial number, etc.), FSC code, quantity, location, acquisition date, and acquisition cost.

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36 Parts			
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40 Parts:			
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45 Parts:			
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47 Parts:			
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[1] Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

[2] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[3] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

[4] No amendments to this volume were promulgated during the period Apr. 1, 1990 to Mar. 31, 1997. The CFR volume issued April 1, 1990, should be retained.

[5] No amendments to this volume were promulgated during the period July 1, 1996 to June 30, 1997. The volume issued July 1, 1996, should be retained.

[6] No amendments to this volume were promulgated during the period January 1, 1997 through December 31, 1997. The CFR volume issued as of January 1, 1997 should be retained.