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Monday
May 4, 1998

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WASHINGTON, DC

WHEN: May 19, 1998 at 9:00 am.

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Presidential Documents

Title 3—

The President

Proclamation 7088 of April 29, 1998

National Day of Prayer, 1998

By the President of the United States of America

A Proclamation

In every era of American history, devout men and women from every nation have come to our shores seeking the freedom to worship according to their own conscience. Recognizing the sacredness of this fundamental human right, our founders wisely guaranteed it in the First Amendment to the Constitution.

Prayer has always been an integral part of American life. In every city, town, and rural community across our country, people of every religious denomination gather to worship according to their faith. In churches, synagogues, temples, and mosques, Americans come together to pray. We pray for the health and happiness of loved ones; for inner peace and peace among nations; and for the wisdom and courage to face the challenges of the new millennium. And always we raise our voices and hearts in prayers of thanksgiving for the blessing of freedom.

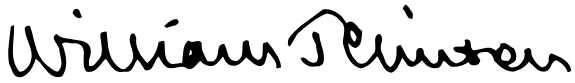
Just as Americans rely on prayer for strength and renewal in private life, so do we turn to it at moments of great joy or crisis in our public life as a Nation. Meeting in Philadelphia to make the momentous decisions that would ultimately determine the nature and form of American Government, the Continental Congress began daily deliberations with a prayer for God's blessings and assistance. In his first inaugural address, President George Washington also prayed for guidance from the Almighty as he began the enormous task of leading a new, untried democracy.

In this century, with America in the throes of the Great Depression and a world teetering on the brink of war, President Franklin Delano Roosevelt concluded his first inaugural address with a fervent prayer: ''In this dedication of a Nation we humbly ask the blessing of God. May He protect each and every one of us. May He guide me in the days to come.'' And today, as we look ahead to the promise of a new century, Americans continue to draw strength from the bedrock of faith and religious freedom upon which our democracy rests.

The Congress, by Public Law 100–307, has called on our citizens to reaffirm the role of prayer in our society and to honor the religious diversity our freedom permits by recognizing annually a ''National Day of Prayer.''

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, do hereby proclaim May 7, 1998, as a National Day of Prayer. I encourage the citizens of this great Nation to pray, each in his or her own manner, seeking strength from God to face the problems of today, requesting guidance for the uncertainties of tomorrow, and giving thanks for the rich blessings that our country has enjoyed throughout our history.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-ninth day of April, in the year of our Lord nineteen hundred and ninety-eight, and of the Independence of the United States of America the two hundred and twenty-second.



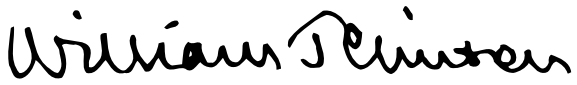
[FR Doc. 98–11921
Filed 5–1–98; 8:45 am]
Billing code 3195–01–P

Presidential Documents

Executive Order 13081 of April 30, 1998

Amendment to Executive Order No. 13038, Advisory Committee on Public Interest Obligations of Digital Television Broadcasters

By the authority vested in me as President by the Constitution and the laws of the United States of America and in order to extend the reporting deadline of the Advisory Committee on Public Interest Obligations of Digital Television Broadcasters, it is hereby ordered that Executive Order 13038, as amended, is further amended by deleting ''June 1, 1998'' in section 2 and inserting ''October 1, 1998'' in lieu thereof.



THE WHITE HOUSE,
April 30, 1998.

[FR Doc. 98–11922
Filed 5–1–98; 8:45 am]
Billing code 3195–01–P

Rules and Regulations

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Monday, May 4, 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 TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 96–NM–175–AD; Amendment 39–10509; AD 98–09–28]

RIN 2120–AA64

Airworthiness Directives; Short Brothers Model SD3–30 and SD3–60 Series Airplanes Equipped With Fire Fighting Enterprises (U.K.) Ltd. Fire Extinguishers

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to all Shorts Model SD3–30 and SD3–60 series airplanes equipped with certain fire extinguishers, that requires replacement of the covers for fire extinguisher adapter assemblies that are installed on certain bulkheads with new covers that swivel to lock the extinguishers in place; and replacement of nozzles and triggers on these fire extinguishers with better fitting nozzles and stronger triggers. It also requires the installation of new fire extinguisher point placards and a revision of the Airplane Flight Manual to instruct the flight crew in the use of the new covers for these adapter assemblies. This amendment is prompted by reports that these fire extinguishers are not discharging properly because they do not fit correctly with the adapter, and that triggers on these extinguishers are failing. The actions specified by this AD are intended to ensure that, in the event of fire in the baggage bay, extinguishing agent is properly distributed within this area, and portable extinguishers operate properly; and to prevent injury to crew and passengers when a portable extinguisher is discharged.

DATES: Effective June 8, 1998.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of June 8, 1998.

ADDRESSES: The service information referenced in this AD may be obtained from Short Brothers (USA), Inc., Civil Technical Operations, P.O. Box 211 (Route 76 East), Bridgeport, West Virginia 26330. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Norman B. Martenson, Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to all Shorts Model SD3–30 and SD3–60 series airplanes equipped with certain fire extinguishers was published in the **Federal Register** on January 27, 1997 (62 FR 3832). That action proposed to require replacement of the covers for fire extinguisher adapter assemblies that are installed on certain bulkheads with new covers that swivel to lock the extinguishers in place; and replacement of nozzles and triggers on these fire extinguishers with better fitting nozzles and stronger triggers. It also proposed to require the installation of new fire extinguisher point placards and a revision of the Airplane Flight Manual to instruct the flight crew in the use of the new covers for these adapter assemblies.

Comments

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

One commenter, an organization representing airline pilots, supports the proposed AD; however, it requests that the FAA implement specific training in the use of critical equipment such as fire extinguishers, including the actual equipment used in the aircraft.

The FAA acknowledges the commenter's concern. The FAA has determined that an unsafe condition exists, and that the actions required by this AD are adequate in order to ensure the continued safety of the affected fleet. While there may be merit to the commenter's suggestion, this AD is not the appropriate context in which to evaluate that suggestion. Since the suggested change would alter the actions currently required by this AD, additional rulemaking would be required. The FAA finds that to delay this action would be inappropriate in light of the identified unsafe condition. No change to this final rule is necessary.

The manufacturer of the affected airplanes notes that replacement of the discharge head assembly in accordance with Fire Fighting Enterprises (U.K.) Ltd. Service Bulletin 26–107, Revision 1, dated November 2, 1992, includes replacement of the trigger as also required by the company's Service Bulletin 26–108, dated September 1992. Both service bulletins are cited as the appropriate sources of service information in paragraph (c) of the proposed AD. The commenter requests that this information be provided in the AD so that operators would not rework the fire extinguisher head per Service Bulletin 26–107 (which would require the installation of a new trigger in accordance with Service Bulletin 26–108), only to discover that both actions could be accomplished by replacing the discharge head.

The FAA concurs that some confusion could result with regard to the current wording contained in paragraph (c)(1) of this final rule. Therefore, the FAA has changed paragraph (c)(1) to read, ''Install a chamfered nozzle on the discharge head assembly of each fire extinguisher and add a new trigger by replacing * * *.'' That change, together with the clarification contained in the service bulletin, should preclude any confusion in that regard.

The same commenter requests that an inspection procedure be provided in order to determine whether the trigger has actually been replaced in accordance with Service Bulletin 26–108. The commenter states that paragraph 3.A.(3)(h) of Service Bulletin 26–107, Revision 1, requires that the fire extinguisher trigger be marked with part number BA22988–3 after rework of the nozzle chamfer. The commenter further

asserts that, since effectivity of Service Bulletin 26–108 does not include discharge head part number BA22988–3, maintenance personnel may assume that, following accomplishment of Service Bulletin 26–107 (and re-marking of the part to BA22988–3), replacement of the trigger in accordance with Service Bulletin 26–108 is not necessary.

The FAA does not concur that an inspection should be added to this AD. Contrary to the commenter's assertion, Service Bulletin 26–107 requires that the reworked discharge head, not the trigger itself, be marked with part number BA22988–3. In any event, the AD requires replacement of the trigger with the stronger trigger, either through accomplishment of Service Bulletin 26–107, Revision 1, or 26–108, regardless of the part number marking on the fire extinguisher discharge head. However, replacement of the trigger is required only if such replacement has not been accomplished prior to the effective date of the AD. Investigation of airplane maintenance records may be necessary to confirm whether the stronger trigger has been installed. If there are no records showing that it has already been installed, the stronger trigger must be installed in accordance with this AD.

The commenter also provided corrected information concerning the address from which the referenced service bulletins may be obtained and the cost of parts needed for compliance. The correct address is shown above under the heading **ADDRESSES**, and the cost impact information presented below reflects the corrected information concerning the cost of parts. The cost impact information also reflects changes that have occurred in the number of affected U.S.-registered airplanes since the notice of proposed rulemaking was published.

Conclusion

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

Cost Impact

The FAA estimates that 33 Model SD3–30 series airplanes of U.S. registry will be affected by this AD. For these airplanes, it will take approximately 9 work hours per airplane to accomplish the required actions on airplanes with only a forward baggage bay, and 14 work hours per airplane to accomplish the required actions on airplanes with forward and aft baggage bays. The average labor rate is $60 per work hour. Required parts will cost approximately $735 per airplane. Based on these figures, the cost impact of the AD on U.S. operators of Model SD3–30 series airplanes is estimated to be between $42,075 and $51,975, or between $1,275 and $1,575 per airplane.

The FAA estimates that 52 Model SD3–60 series airplanes of U.S. registry will be affected by this AD. For these airplanes, it will take approximately 12 work hours per airplane to accomplish the required actions, at an average labor rate of $60 per work hour. Required parts will cost approximately $776 per airplane. Based on these figures, the cost impact of the AD on U.S. operators of Model SD3–60 series airplanes is estimated to be $77,792, or $1,496 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

98–09–28 Short Brothers, PLC: Amendment 39–10509. Docket 96–NM–175–AD.

Applicability: Model SD3–30 and SD3–60 series airplanes equipped with fire extinguishers manufactured by Fire Fighting Enterprises (U.K.) Ltd.; 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 ensure that, in the event of fire, extinguishing agent is properly distributed within the baggage bays and portable extinguishers operate properly; and to prevent injury to crew and passengers, accomplish the following:

(a) Within 6 months after the effective date of this AD, install a new cover on each fire extinguisher adapter assembly on bulkheads between the passenger cabin and aft and/or forward baggage bay, in accordance with Shorts Service Bulletin SD330–26–14, dated September 1994 (for Shorts Model SD3–30 series airplanes), or Shorts Service Bulletin SD360–26–11, dated July 1994 (for Shorts Model SD3–60 series airplanes), as applicable.

(b) Prior to further flight after accomplishing the actions required by paragraph (a) of this AD, accomplish both paragraphs (b)(1) and (b)(2) of this AD:

(1) Install new fire extinguisher point placards, in accordance with Shorts Service Bulletin SD330–26–14, dated September 1994 (for Shorts Model SD3–30 series airplanes), or Shorts Service Bulletin SD360–26–11, dated July 1994 (for Shorts Model SD3–60 series airplanes), as applicable. And

(2) Revise the Limitations Section of the FAA-approved Airplane Flight Manual (AFM), in accordance with Note 1 of Paragraph 1.C. of Shorts Service Bulletin SD330–26–14, dated September 1994 (for Shorts Model SD3–30 series airplanes), or Shorts Service Bulletin SD360–26–11, dated July 1994 (for Shorts Model SD3–60 series airplanes), as applicable.

(c) For airplanes equipped with fire extinguishers having part number (P/N) BA51012SR–3 or BA51012SR: Within 6 months after the effective date of this AD, accomplish either paragraph (c)(1) or (c)(2) of this AD:

(1) Install a chamfered nozzle on the discharge head assembly of each fire extinguisher and add a new trigger by replacing the discharge head assembly with a new discharge head assembly, having P/N BA22988–3, in accordance with Fire Fighting Enterprises (U.K.) Ltd. Service Bulletin 26–107, Revision 1, dated November 2, 1992. Or

(2) Replace the trigger on the discharge head assembly of each fire extinguisher with a new trigger, in accordance with Fire Fighting Enterprises (U.K.) Ltd. Service Bulletin 26–108, dated September 1992. After replacement, install a chamfered nozzle on the discharge head assembly of each fire extinguisher by reworking the discharge head assembly in accordance with Fire Fighting Enterprises (U.K.) Ltd. Service Bulletin 26–107, Revision 1, dated November 2, 1992.

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

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

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

(f) The actions shall be done in accordance with Short Brothers Shorts Service Bulletin SD330–26–14, dated September 1994; Short Brothers Shorts Service Bulletin SD360–26–11, dated July 1994; Fire Fighting Enterprises (U.K.) Ltd. Service Bulletin 26–107, Revision 1, dated November 2, 1992; and Fire Fighting Enterprises (U.K.) Ltd. Service Bulletin 26–108, dated September 1992; as applicable. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Short Brothers (USA), Inc., Civil Technical Operations, P.O. Box 211 (Route 76 East), Bridgeport, West Virginia 26330. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(g) This amendment becomes effective on June 8, 1998.

Issued in Renton, Washington, on April 22, 1998.

Gary L. Killion,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–11302 Filed 5–1–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–NM–05–AD; Amendment 39–10458]

RIN 2120–AA64

Airworthiness Directives; Bombardier Model CL–215–1A10 and CL–215–6B11 Series Airplanes; Correction

AGENCY: Federal Aviation Administration, DOT.

ACTION: Direct final rule; correction.

SUMMARY: This document corrects an error that appeared in amendment 39–10458 that was published in the **Federal Register** on April 10, 1998 (63 FR 17672). The error resulted in the inadvertent omission of the applicability statement of the amendment. This amendment is applicable to certain Bombardier Model CL–215–1A10 and CL–215–6B11 series airplanes. This amendment requires repetitive inspections to detect cracking on certain wing to fuselage frame-angles, and repair, if necessary.

DATES: Effective July 9, 1998.

The incorporation by reference of certain publications listed in the regulations was previously approved by the Director of the **Federal Register** as of July 9, 1998 (63 FR 17672, April 10, 1998).

FOR FURTHER INFORMATION CONTACT: Serge Napoleon, Aerospace Engineer, Airframe and Propulsion Branch, ANE–171, FAA, Engine and Propeller Directorate, New York Aircraft Certification Office, 10 Fifth Street, Third Floor, Valley Stream, New York 11581; telephone (516) 256–7512; fax (516) 568–2716.

SUPPLEMENTARY INFORMATION: Amendment 39–10458, applicable to certain Bombardier Model CL–215–1A10 and CL–215–6B11 series airplanes, was published in the **Federal Register** on April 10, 1998 (63 FR 17672). That amendment requires repetitive inspections to detect cracking on certain wing to fuselage frame-angles, and repair, if necessary.

As published, the applicability statement of the amendment was omitted inadvertently. The FAA has determined that this omission must be corrected. In all other respects, the original document is correct.

Since no other part of the regulatory information has been changed, the direct final rule is not being republished.

The effective date of this amendment remains July 9, 1998.

§ 39.13 [Corrected]

1. On page 17674, in the first column, the airworthiness directive, amendment 39–10458, is corrected by adding the applicability statement preceding Note 1 to read as follows:

* * * * *

Applicability: Model CL–215–1A10 and CL–215–6B11 series airplanes, serial numbers 1001 through 1125 inclusive, certificated in any category.

* * * * *

Issued in Renton, Washington, on April 24, 1998.

Gary L. Killion,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–11560 Filed 5–1–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 97–ANM–24]

Amendment of Class D Airspace; Twin Falls, ID

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; confirmation of effective date.

SUMMARY: This document confirms the effective date of the direct final rule published on February 25, 1998 (63 FR 9409) which changed the name of the airport in the Twin Fall, ID, Class D airspace legal description. During a review of Idaho airspace, it was discovered that the airport name needed updating because it was changed from Twin Falls-Sun Valley Regional, Joslin Field to Joslin Field-Magic Valley Regional. This rule also updated the coordinates for the airport.

EFFECTIVE DATE: The direct final rule published at 63 FR 9409 is effective 0910 UTC, May 26, 1998.

FOR FURTHER INFORMATION CONTACT:

Dennis Ripley, ANM–520.6, Federal Aviation Administration, 1601 Lind Avenue S.W., Renton, Washington, 98055–4056; telephone number: (425) 227–2527.

SUPPLEMENTARY INFORMATION: The FAA published the direct final rule with a request for comments in the **Federal Register** on February 25, 1998 (63 FR 9409). The FAA uses the direct final rulemaking procedure for a non-controversial rule where the FAA believes that there will be no adverse pubic comment. The comment period ended March 27, 1998. This direct final rule advised the public that no adverse comments were anticipated, and that unless a written adverse comment or a written notice for intent to submit such an adverse comment were received within the comment period, the regulation would become effective on May 26, 1998. No adverse comments were received, and thus this document confirms that the final rule will become effective on that date.

Issued in Seattle, Washington, on April 6, 1998.

Joe E. Gingles,

Acting Assistant Manager, Air Traffic Division, Northwest Mountain Region.

[FR Doc. 98–11766 Filed 5–1–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 92–ASW–35]

Establishment of Class E Airspace, Osceola, AR

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes the Class E airspace extending upward from 700 feet above ground level (AGL) at Osceola Municipal Airport, Osceola, AR. The development of a nondirectional radio beacon (NDB) Standard Instrument Approach Procedure (SIAP) to runway (RWY) 19 has made this rule necessary. This action is intended to provide adequate controlled airspace extending upward from 700 feet or more above the surface for Instrument Flight Rules (IFR) operations at Osceola Municipal Airport, Osceola, AR.

EFFECTIVE DATE: 0901 UTC, August 13, 1998.

FOR FURTHER INFORMATION CONTACT: Donald J. Day, Airspace Branch, Air Traffic Division, Southwest Region, Federal Aviation Administration, Fort Worth, TX 76193–0520, telephone 817–222–5593

SUPPLEMENTARY INFORMATION:

History

On June 15, 1995, a proposal to amend 14 CFR Part 71 to establish Class E airspace at Osceola, AR, was published in the **Federal Register** (60 FR 31424). The proposal was to establish controlled airspace extending upward from 700 feet AGL. The intended effect of the proposal was to provide adequate Class E airspace to contain aircraft executing the NDB RWY 19 SIAP at Osceola, AR.

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. The rule is adopted as proposed. The coordinates for this airspace docket are based on North American Datum 83. Designated Class E airspace areas 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 would be published subsequently in the order.

The Rule

This amendment to 14 CFR Part 71 establishes Class E airspace, at Osceola, AR, extending upward from 700 feet above the surface within a 6.4-mile radius of the Osceola Municipal Airport at Osceola, AR and within 8 miles west and 4 miles east of the 021° bearing from the Osceola NDB extending from the 6.4-mile radius to 9.9 miles north of the NDB.

The FAA has determined that this regulation only involves an established body of technical regulations that need frequent and routine amendments 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 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; 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 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.

* * * * *

ASW AR E5 Osceola, AR [New]

Osceola Municipal Airport, AR
(lat. 35°41′28″ N., long. 090°00′36″ W.)
Osceola NDB
(lat. 35°41′34″ N., long. 090°00′47″W.)

That airspace extending upward from 700 feet above the surface within a 6.4-mile radius of Osceola Municipal Airport and within 8 miles west and 4 miles east of the 021° bearing from the Osceola NDB to 9.9 miles.

* * * * *

Issued in Fort Worth, TX, on April 24, 1998.

Albert L. Viselli,

Acting Manager, Air Traffic Division, Southwest Region.

[FR Doc. 98–11768 Filed 5–1–98; 8:45 am]

BILLING CODE 4910–13–M

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 4

Commodity Pool Operators and Commodity Trading Advisors

Correction

In Title 17 of the Code of Federal Regulations, parts 1 to 199, revised as of April 1, 1997, page 191, in § 4.24 (j)(1)(v) is corrected by changing the reference ''(k)'' to read ''(j)''.

BILLING CODE 1505–01–D

DEPARTMENT OF COMMERCE

International Trade Administration

19 CFR Parts 351 and 354

[Docket No. 960123011–8040–02]

RIN 0625–AA43

Antidumping and Countervailing Duty Proceedings: Administrative Protective Order Procedures; Procedures for Imposing Sanctions for Violation of a Protective Order

AGENCY: International Trade Administration, Commerce.

ACTION: Final rule.

SUMMARY: The Department of Commerce (''the Department'') is amending its regulations on administrative protective order (''APO'') procedures in antidumping and countervailing duty proceedings to simplify and streamline the APO administrative process and reduce the administrative burdens on the Department and trade practitioners. The Department is also amending the regulations to simplify the procedures for investigating alleged violations of APOs and the imposition of sanctions. These changes are made in response to and in cooperation with the trade practitioners that are subject to these rules.

EFFECTIVE DATE: The effective date of this final rule is June 3, 1998. This final rule will apply to all investigations initiated on the basis of petitions filed on or after June 3, 1998, and other segments of proceedings initiated after this date.

FOR FURTHER INFORMATION CONTACT: For further information contact Joan L. MacKenzie or Mark A. Barnett, Office of Chief Counsel for Import Administration, (202) 482–1310 or (202) 482–2866, respectively.

SUPPLEMENTARY INFORMATION:

General Background

APO Procedures

On February 8, 1996, the Department published proposed rules governing procedures for providing access to business proprietary information submitted to the Department by other parties in U.S. antidumping (''AD'') and countervailing duty (''CVD'') proceedings. Proposed Rule and Request for Comment (Antidumping and Countervailing Duty Proceedings; Administrative Protective Order Procedures; Procedures for Imposing Sanctions for Violations of a Protective Order), 61 FR 4826 (''February Notice''). See also, Proposed Changes to Administrative Protective Order Procedures in Antidumping and Countervailing Duty Proceedings, APO Application Form and Standard APO, 59 FR 51559 (October 12, 1994) (''October Notice'').

The Department proposed these changes in APO procedures in consultation with trade practitioners, who are the ones most directly affected by these procedures. Specifically, Department staff consulted with representatives of the International Law Section of the District of Columbia Bar, the International Trade Committee of the Section of International Law and Practice of the American Bar Association, the ITC Trial Lawyers Association, and the Customs and International Trade Bar Association. As a result of the consultations, the Department proposed changes in the APO process to improve the process, to simplify and streamline the process for all concerned, including the Department, and at the same time to continue to ensure protection of business proprietary information from unauthorized disclosure.

After analyzing and carefully considering all of the comments that the Department received in response to the February Notice and after further review of the provisions of the proposed rule, the Department is publishing final regulations. These regulations improve, simplify, and streamline the APO process significantly and, at the same time, protect business proprietary information from unauthorized disclosure.

Effective Date

The new APO procedures, including the use of the revised application for APO, form ITA–367 (5.98), will become effective June 3, 1998. They will apply to all investigations initiated on the basis of petitions filed on or after June 3, 1998, and other segments of proceedings initiated after this date. Segments of proceedings to which these regulations do not apply will continue to be governed by the regulations in effect on the date the petitions were filed or other segments were initiated, to the extent that those regulations were not invalidated by the URAA or replaced by the interim final regulations published on May 11, 1995 (60 FR 25130 (1995)) and § 351.105 of the AD/CVD procedural regulations that the Department published separately on May 19, 1997 (62 FR 27296), (hereinafter referred to as the May 19 Regulations). In these segments of proceedings, the Department will require that parties use the old APO application form ITA–367 (3.89) for all requests to amend their existing APOs. If all parties in these segments of proceedings mutually agree to be bound by the new APO regulations and procedures, the parties must file a joint agreement and new applications for APO.

APO Sanctions

The Department is also amending its regulations concerning sanctions for violations of APOs. The regulations governing the imposition of sanctions for APO violations are set forth at 19 CFR Part 354. In the nine years since Part 354 was introduced, the Department has investigated and resolved numerous allegations of violations of APOs. Most charges have been settled, and none has resulted in a hearing before a presiding official or a decision by the APO Sanctions Board. Experience also has proven that, even if an individual has technically violated the terms of an APO, it is not always appropriate to impose a sanction. Rather, a warning may be appropriate in many instances. The Department also has found that situations arise in which the investigation can be shortened without limiting procedural rights. Additionally, under current regulations, it is unduly cumbersome to withdraw charges when the Department determines that they are not warranted. Finally, the Department recognizes that an individual with prior violations deserves to have his or her record cleared after a period of time without further violations. Therefore, the Department is amending Part 354 of its regulations to articulate a standard for issuance of a warning of an APO violation and to address the other situations described above.

The Department is amending the regulations to simplify the procedures for investigating alleged violations and the imposition of sanctions, establish criteria for abbreviating the investigation of an alleged violation, include private letters of reprimand among the sanctions available, and set a policy for determining when the Department issues warnings instead of sanctions. Further, the Department is revising the provisions dealing with settlement to make them consistent with practice. The Department also is simplifying the procedures for withdrawing charging letters. Finally, the amendments add a sunset provision that codifies existing practice regarding the rescission of charging letters.

Explanation of Particular Provisions

APO Procedures

The Department's AD regulations were contained in 19 CFR Part 353 and its CVD regulations were contained in 19 CFR Part 355. Parts 353 and 355 each contained separate provisions dealing with the treatment of business proprietary information and APO procedures. The Department consolidated the AD and CVD regulations and repealed existing Parts 353 and 355. *See* Antidumping Duties; Countervailing Duties; Final rule, 62 FR 27295 (May 19, 1997). We have drafted the regulations dealing with APO procedures in light of this consolidation. Accordingly, these regulations will be contained in 19 CFR Part 351, subpart C. More specifically, with the exception of the definitional provisions of § 351.102, the APO procedures will be contained in 19 CFR 351.304, 305, and 306. The procedures for imposing sanctions for violation of a protective order are contained in 19 CFR 354.

Definitions

Section 351.102 is a definitional section, based on previous 19 CFR 353.2 and 355.2. It was published separately with the May 19 regulations. Insofar as APO procedures are concerned, we added definitions of two new terms, now contained in the administrative protective order. Because these definitions apply to APO procedures, we are discussing them here.

The first term, *applicant,* is defined as an individual representative of an interested party that has applied for access to business proprietary information under an APO. The second term, ''authorized applicant,'' is defined as an applicant that the Secretary has authorized to receive business proprietary information under an APO, and is a term borrowed from the practice of the U.S. International Trade Commission (''ITC'').

One commenter noted that the definition of ''applicant'' contained in the Proposed AD/CVD Procedural Regulations was inconsistent with the description of that definition in the preamble to the February Notice. This commenter also suggested that a definition of ''representative'' be added to the regulations.

We revised the definition of ''applicant'' to make it consistent with the description of that term provided above. The term ''representative'' was defined in the model APO published with the February Notice. We have revised that definition to refer to an individual, enterprise or entity acting on behalf of an interested party.

Administrative Protective Order Unit and Central Records Unit

Section 351.103 defines the responsibilities of the Central Records Unit and the Administrative Protective Order Unit, both of which play a role protecting business proprietary information. The APO Unit was established with the reorganization of the Department that became effective July 1, 1996. Under the reorganization, the APO function is consolidated under the Director for Policy and Analysis, and is managed by a Senior APO Specialist who leads the APO Unit. The Senior APO Specialist is responsible for directing the Department's handling of business proprietary information.

The Administrative Protective Order Unit and the Dockets Center of the Central Records Unit have recently been relocated to shared space in room 1870. Because of the proximity of the two offices, business proprietary information released by the APO Unit to authorized representatives is conducted through the Dockets Center. Because the relocation of the Dockets Center occurred after the publication of the AD/CVD procedural regulations, we are taking this opportunity to amend § 351.103 to reflect these changes. Pursuant to Presidential order, security has been increased in Federal office buildings and delivery couriers are no longer permitted access to the Herbert C. Hoover Building (HCHB). Consequently, Import Administration has created the Dockets Center in Room 1870. The Dockets Center is accessible directly from the 15th Street courier's entrance to HCHB. Prior to being allowed in the building at this entrance all packages are scanned by Departmental security personnel. APO materials are picked up at this entrance from the APO Unit.

Section 351.304 Establishing Business Proprietary Treatment of Information.

Section 351.304 sets forth rules concerning the treatment of business proprietary information in general, and provides persons with the right to request that certain information be considered business proprietary or be exempt from disclosure under APO.

Customer Names

One commenter noted that section 777(c)(1)(A) of the Tariff Act of 1930, as amended, (''Act'') protects customer names from disclosure under APO in an investigation only until an order is published or the investigation is suspended or terminated, and suggested that the regulation should be revised to reflect this. We have not revised the regulation. The statute does not require the Department to disclose customer names under APO following publication of an order or following suspension or termination of the investigation. If the Department's final determination is challenged, parties may obtain access to customer names under the terms of a judicial protective order. Absent such litigation, we do not believe it necessary or appropriate to require parties to disclose additional information under protective order after an investigation has been completed, suspended or terminated.

Identification of Business Proprietary Information

Paragraph (b) of § 351.304 addresses the identification and marking of business proprietary information in submissions to the Department.

One commenter argued that the Department should clarify how the requirement to mark business proprietary information applies to materials in exhibits such as printouts, drawings, photographs, excerpts from brochures and other similar materials. The commenter pointed out that such materials are not always clearly identified as business proprietary, leaving the recipient to refer to the public version to determine whether any particular data are in fact claimed to be confidential.

The Department agrees that all business proprietary information should be marked in accordance with the regulations. This includes all verification exhibits. It is in the interest of all parties to prevent inadvertent APO violations that can occur when marking is incomplete or inaccurate. We recognize that marking printouts and voluminous exhibits presents challenges. Printouts may consist almost entirely of business proprietary information, with public information limited to certain headings or fields. In such cases, it may be easier for an authorized applicant to distinguish between public and proprietary information by reviewing the public version rather than searching for brackets in a document that contains nearly all business proprietary information. Moreover, because bracketing may be revised by a party within one day of the date of filing (see below), authorized applicants are encouraged to confirm their identification of public information by comparison to the public version source in order to avoid an inadvertent release of business proprietary information.

If a party objects to the submitting person's claim for business proprietary

treatment, the objection must be submitted in writing. The APO Unit is the point of contact for examining and resolving the issue whether information that is claimed as proprietary meets the standards in § 351.105 of the AD/CVD procedural regulations that the Department published separately on May 19, 1997.

Public Versions

Paragraph (c) of § 351.304 concerns the public version of a business proprietary submission, provides for a one-day lag rule (see also § 351.303(c)(2)), and addresses corrections to errors in bracketing business proprietary information. We reiterate that the Secretary will enforce vigorously the requirement for public summaries, and will grant claims that summarization is impossible only in exceptional circumstances. To assist in ensuring consistent enforcement of the Department's requirements for public summarization of numerical data and narrative portions of submissions, the APO Unit is the point of contact for examining and resolving complaints about inadequate public summaries.

One-Day Lag Rule

The one-day lag rule follows existing practice by permitting parties to file a public version of a document containing business proprietary information one business day after the due date of the business proprietary version of the document. This practice is known as the ''one-day lag'' rule. Under current practice, submitting persons may correct the bracketing of information in the business proprietary version up to the deadline for submission of the public version (i.e., they have one day in which to correct bracketing). The Department proposed to slightly modify the one-day lag rule to require a party to file the final business proprietary version of the document at the same time as the submitting party files the public version of the document. The specific filing requirements are contained in § 351.303 of the AD/CVD Procedural Regulations that the Department published separately on May 19, 1997. Comments on this provision were addressed in those regulations.

One commenter expressed concern regarding improper disclosure of APO protected information and the Department's statement that non-bracketed information will be treated as public information once bracketing has become final. We believe, however, that the commenter misunderstood the Department's statement. The statement only pertains to a party's own business proprietary information contained in a document it has submitted. The Department will always take and require immediate corrective action when information subject to an APO has been improperly disclosed and discovered in a reasonable amount of time.

Summarization of Numerical Data

One commenter argued that public summarization of numerical data should not be required, because the ITC does not require it. Other commenters requested that specific guidelines for summarization of numerical data be included in the regulation. Some commenters requested greater flexibility in ranging numbers that are very large or very small.

As one commenter recognized, a public summary, which is addressed in paragraph (c)(1), is required by section 777(b)(1)(B) of the Act and Article 6.5.1 of the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 (''AD Agreement''). Public summarization of numerical data is crucial to the ability of parties to participate in the Department's proceedings. Without adequate public summarization, interested parties without APO access will not be able to participate meaningfully in the Department's proceedings. The Department, therefore, will continue to require summarization of numerical data.

While there may be some benefits to consistent treatment of business proprietary information between the Department and the ITC, there are differences in each agency's mission that justify individual practices. Summarization of company-specific numerical information at the ITC is more difficult because the information concerns a company's performance using ''macro'' numbers and projected data. Moreover, in most cases, the ITC provides aggregate data where such information would not reveal an individual company's business proprietary information. It is this aggregate data, which is often available to the public, which is most relevant to the ITC's analysis and determinations. Information in the Department's proceedings, on the other hand, is often transaction-specific, ''micro'' information. Such information would be difficult to aggregate across companies and such aggregate data would be of almost no relevance to the Department's analysis and the public's understanding of that analysis. Therefore, it is preferable to continue to require that such information be ranged or indexed.

Omission of specific criteria for public summarization of numerical data previously contained in §§ 353.32(b)(1) and 355.32(b)(1) was an oversight. We are including the criteria for adequate summarization in § 351.304(c)(1) of these regulations. The Department has always allowed an exception to the public summarization requirement when it does not protect business proprietary information from disclosure, such as with very small or very large numbers. We will continue to permit such exceptions on a case-by-case basis in accordance with the requirements of § 351.304(c)(1).

Summarization of Narrative Portions of Submissions

One commenter argued that requiring a public summary of the narrative portion of a submission is a change in policy not required by the Uruguay Round Agreements Act (URAA) and is too burdensome. The commenter asserted that the proposed regulation will add hundreds of hours and thousands of dollars to the costs of participating in these cases. Finally, the commenter stated that the proposed regulation appears to create a presumption that all business proprietary information is public unless proven otherwise, which reverses agency practice designed to protect business proprietary information against disclosure.

The commenter is mistaken that the Department's regulation constitutes a change in practice. The Department has consistently required a public summary of the narrative portion of a submission containing business proprietary information.

Laws affecting disclosure of information by the federal government generally are pro-disclosure. The United States has the most transparent antidumping and countervailing duty procedures in the world. Protection of business proprietary information is a narrow exception to the requirement for disclosure and the preference for transparency. For these reasons, the regulations require parties to demonstrate that business proprietary information should be withheld from disclosure, rather than the reverse. There is a presumption that business proprietary information can be publicly summarized to permit meaningful participation by a party that does not have access to business proprietary information under APO.

Summarization of Business Proprietary Information of Other Parties

Three commenters raised concerns whether § 351.304(c)(1) requires authorized applicants to create public summaries of business proprietary information submitted by other parties.

It does not. The Department has never required authorized applicants to publicly summarize the business proprietary information of another party and the Department does not intend to change that practice. In fact, § 351.304 (c)(1) states that a submitter should not create a public summary of business proprietary information of another person.

Nonconforming Submissions

Paragraph (d) of § 351.304 deals with nonconforming submissions, *i.e.*, submissions that do not conform to the requirements of section 777(b) of the Act and paragraphs (a), (b), and (c) of § 351.304.

One commenter expressed concern that this provision might be abused by parties making unwarranted claims of a clear and compelling need to withhold business proprietary information from disclosure under APO merely to delay release of that information and thereby imperil the ability of other parties to participate in the proceeding in a timely fashion. Although we appreciate the concerns of the commenter, we do not believe that revision of the regulation is necessary. In most cases, the Department has been able to make determinations as to the status of information in much less than 30 days, and we expect that to continue to be the case. As written, the regulation provides greater flexibility for those determinations which may require more time for decision.

The Department does not believe that the regulation, as drafted, will lead to significant abuse. The Department's current experience has involved few situations of abuse. To the extent that baseless claims for non-release of information do occur, the Department retains the authority to deal with them expeditiously.

Another commenter proposed that the Department amend this regulation to permit the Secretary to return any part of a submission that does not meet the requirements of the regulations. We do not agree. For the same reasons the Department revised the one-day lag rule to require a new complete submission of a document that required correction, we also will require a complete new submission of any document returned because parts of it are defective.

Section 351.305 Access to Business Proprietary Information

Section 351.305 establishes procedures for obtaining business proprietary information under APO, including a new procedure based on the use of a single APO for each segment of a proceeding.

The Revised APO

Paragraph (a) of § 351.305 sets forth a new procedure in which the Secretary will place a single APO on the record for each segment of an AD or CVD proceeding, within two days after a petition is filed, or an investigation is self-initiated, or five days after the initiation of any other segment. (''Segment of the proceeding'' is defined in § 351.102 as a portion of the proceeding that is reviewable under section 516A of the Act.) All authorized applicants will be subject to the terms of this single APO. This new procedure will streamline the APO process dramatically, and will expedite the issuance of APOs and the disclosure of information to authorized applicants. Commenters strongly endorsed this new procedure, and agree it will streamline the APO process and expedite the issuance of APOs and the disclosure of information to authorized applicants.

APO Requirements

Paragraph (a) of § 351.305 also sets forth the requirements that are to be included in the APO and to which all authorized applicants must adhere. The Department proposed to eliminate from the APO detailed internal procedures that firms were required to follow to protect APO information from unauthorized disclosure. In paragraph (a)(1), the Department proposed to permit each applicant to establish its own internal procedures. All commenters agreed with this proposal, and we have adopted it in these final regulations.

Notification of Change of Facts

Paragraph (a)(2) of § 351.305 requires an authorized applicant to notify the Secretary of any changes in the facts asserted by the authorized applicant in its APO application. Paragraph (a)(2) does not require certification of these facts. Paragraph 6 of the proposed APO, however, would have required the authorized applicant to provide, at the conclusion of a segment of the proceeding, upon the departure of an authorized applicant from a firm, or when an individual no longer will have access to APO information, a certification that attests to the individual's compliance with the terms under which such access is granted. Two commenters questioned the necessity for such individual certifications. They argued that the thrust of the Department's new rules is to permit firms to develop their own internal procedures to protect business proprietary information, rather than for the Department to ''micro-manage'' APO issues. Thus, they asserted, firms will have internal procedures to ensure that persons leaving a firm, for example, destroy or return any documents containing business proprietary information. They point out that under the procedure proposed by the Department, applicants already sign an APO application individually, and the additional certification is therefore superfluous. Moreover, commenters argued, the Court of International Trade's (CIT) judicial protective orders permit a single certification, and there is no reason to follow two different procedures for appellate and administrative proceedings.

The Department agrees. Paragraph (a)(2) continues to require a party to notify the Department of any changes in the facts asserted by an authorized applicant in its application, but we have deleted the requirement for certification at the end of the proceeding segment in paragraph 6 of the APO. Authorized applicants are required to notify the Department of any possible violation of the APO; the additional certification is redundant. The Department presumes all authorized applicants are complying with the terms of the APO until we determine through an investigation under Part 354 that a violation of an APO has occurred. Thus we have retained the requirement that parties notify the Department and other parties of changes, but have removed from paragraph 6 of the APO the requirement that every individual certify its compliance with the regulations at the close of the person's participation under the APO.

Notification of Destruction of Business Proprietary Information

Paragraph (a)(4), now renumbered as paragraph (a)(3), of § 351.305 requires the destruction of business proprietary information when a party is no longer entitled to it, normally at the close of a segment of a proceeding. Paragraph 7 of the APO also required an individual certification from each authorized applicant that it complied with the terms of the APO. For the reasons stated above, we agree this certification is unnecessary. We presume that an authorized applicant will comply with the terms of the APO requiring destruction of business proprietary information at a designated time.

We will continue to require, however, notification to the Department of destruction of business proprietary information. Parties will be able to keep certain business proprietary information for more than one segment of a proceeding, and discipline in tracking and destroying information is more

important than ever. Therefore the Department will continue to hold parties accountable for timely destruction of material when no longer authorized by the APO to have it.

One commenter suggested that the failure to return or destroy APO material is a procedural issue and should not be viewed as constituting a violation of the APO if not satisfied. We disagree. Until business proprietary information is destroyed, there is a risk of disclosure. The destruction of business proprietary information material is important to prevent unauthorized disclosure. It is one of the few specific requirements in the regulations. While the failure to return or destroy may not result in actual disclosure of business proprietary information, and in certain circumstances may only result in a warning, it is clearly a violation of the regulations and the APO.

The Department proposed that an authorized applicant be required to destroy business proprietary information that the applicant is not authorized to retain within a thirty-day time period after the expiration of the time for filing for a judicial or binational panel review of the last segment for which the authorized applicant may retain the information. Thirty days should cover most contingencies, but the Department will be willing to grant extensions for good cause shown. Commenters supported this proposal and we will incorporate it into each APO, which will set specific deadlines on a case-by-case basis.

Electronic Data

Paragraph 3 of the APO places one restriction on the use of business proprietary information contained in electronic form; the information can not be accessible by a modem. We are restricting access to electronic information by modem, but not requiring any specific technical restrictions, instead leaving the method to be used to the individual authorized applicant. This proposal was supported by commenters. Commenters suggested a revision of the language of the paragraph to clarify this requirement, which we have incorporated into paragraph 3 of the APO.

Independent Contractors

The definition of ''support staff'' contained in the APO permits the use of independent contractors to perform photocopying and other production tasks involving APO information, provided that the independent contractors perform their work on the premises of the authorized applicant (e.g., at the firm), and the independent contractors work under the supervision of an authorized applicant.

Commenters requested a clarification that the Department also will allow parties to use employees or subcontracted individuals (e.g., courier services) to pick up or deliver APO information released by the Department, and to deliver APO information to other parties. One commenter also requested a clarification that ''independent contractors'' includes part-time employees. We agree that support staff and independent contractors can be used for all delivery functions and that ''independent contractors'' includes part-time employees.

In order to guard against unauthorized disclosure, however, the Department will continue its current practice of releasing APO information only if the employee or independent contractor presents a picture ID and a letter of identification from the firm of the authorized applicant that authorizes the Department to release the APO information to that particular individual.

Remand Proceedings

The Department proposed that the APO permit access to new business proprietary information submitted in the course of a remand during litigation involving the segment of the proceeding in which the initial APO was issued. Parties no longer will have to apply separately for access under an APO during a remand proceeding. Commenters supported this proposal. The APO issued in each proceeding will reflect this practice.

APO Applications

Paragraph (b) of § 351.305 deals with the APO application process itself, including permitting parties to use two independent representatives.

Multiple Authorized Applicants

Under current practice, the Department generally allows only one representative of a party to have access to business proprietary information under an APO. In response to requests from parties to proceedings, the Department proposed that two independent representatives of a party be allowed APO access, with one representative being designated as the lead representative. We also proposed granting APOs separately to non-legal representatives, who otherwise qualify to receive an APO, only if they had a significant practice before the Department. The purpose of this proposal was to ensure that effective sanctions could be imposed to deter APO violations. The Department will consider requests that more than two independent representatives be designated as authorized applicants on a case-by-case basis.

Commenters agreed with this proposal, and requested that the Department clarify that the lead authorized applicant will not be liable for APO infractions committed by a separately authorized applicant. We agree. Authorized applicants are responsible for violations committed by any person in the same firm, but not for violations committed by an individual at another entity that applied for APO access separately. The lead representative would not be responsible for APO violations committed by the separately authorized applicant.

Application for an APO

Paragraph (b)(2) of § 351.305 establishes a ''short form'' application that applicants can generate from their own word-processing equipment. An applicant must acknowledge that any discrepancies between the application and the Department's APO placed on the record will be interpreted in a manner consistent with the Department's APO. Parties agreed with this proposal and we have adopted it in paragraph (b)(2).

APO Application Coverage

Paragraph (b)(2) of § 351.305 also provides that an applicant must apply to receive all business proprietary information on the record of the particular segment of the proceeding in question. A party no longer may apply to receive only selected parties' business proprietary information. The purpose of this requirement is to eliminate the need for parties to prepare separate APO versions of submissions for each of the different parties involved in a proceeding and to reduce the number of APO violations that occur through the inadvertent service of a document containing business proprietary information to parties not authorized to receive it. In order to avoid forcing parties to receive submissions in which they have no interest, however, a party may waive service of business proprietary information it does not wish to have served on it by another party. Thus, for example, Respondent A may waive its right to be served with a copy of the business proprietary version of Respondent B's questionnaire response. Nonetheless, if Respondent A receives any of respondent B's proprietary information from any party by mistake, no APO violation will have occurred. Commenters generally supported the proposal, because it eases the burden on

submitters and reduces the likelihood of inadvertent APO violations.

One commenter strongly objected to the proposal as inconsistent with section 777 of the Act and burdensome on respondents. The commenter asserted that substitution of a waiver procedure for party-specific submissions is inadequate because respondents are nonetheless required to accept submissions by petitioners that contain the business proprietary information of several parties, including business proprietary information that the respondents may have had no reason to request. It asserted that by requiring respondents' representatives to accept from petitioners' representatives documents containing multi-party business proprietary information, the Department is unnecessarily shifting the burden and responsibility of complying with APO procedures from petitioners to respondents. Furthermore, where counsel is served a business proprietary document and then redacts only certain portions designated confidential by the filing party before transmitting the document to his client, there is no check on whether a proper redaction has been made. Neither the Department nor other parties have access to, or even knowledge of, the specially redacted version, and this procedure will heighten the risk of inadvertent disclosure of business proprietary information. Instead, the commenter argues, if the public summaries prepared by parties meet Commerce guidelines, the information contained in any public version of a filed document should be sufficient to inform a party already knowledgeable of the proprietary data represented by the public summary.

The Department recognizes that these rules place a new burden on a representative to ensure that when it receives a submission with business proprietary information from multiple parties, it takes steps to ensure no business proprietary information of another party is disclosed to its client. Each authorized applicant has pledged to do this when he or she signs the application for access to business proprietary information under an APO. The rules mitigate this additional burden by requiring parties to clearly identify the person to whom each item of business proprietary information pertains. Although adequate public summaries are helpful, they are not a substitute for a full discussion of a party's own business proprietary information. Public summaries serve to assist a party's participation where other parties' business proprietary information is involved.

Nothing in the statute prohibits these procedures. Section 777 of the Act requires the Department to ''make all business proprietary information presented to, or obtained by it, during a proceeding * * * available to interested parties who are parties to the proceeding under a protective order * * *.'' On balance, we believe the procedures adopted will spread the burden for protecting business proprietary information and reduce inadvertent disclosure of business proprietary information.

Deadline for Application for APO Access

Paragraph (b)(3) of § 351.305 concerns the deadline for applying for access to business proprietary information under APO. In deciding the question of APO application deadlines, the Department balances the need to provide maximum access by parties to APO information with the need to minimize the burden on the Department in processing APO applications, as well as the burden on parties and the Department that have to serve late applicants with APO information placed on the record before a late APO is granted. We proposed in paragraph (b)(3) to encourage parties to submit APO applications before the first questionnaire response is filed, but to permit parties to submit applications up to the date on which case briefs are due.

Two commenters requested that the Department have no deadline for APO applications. They did not provide any reason why a representative would need to have access to the entire record after the time case briefs are filed. Under § 351.309(b), which was published separately with the May 19 regulations, written argument will not be accepted after case or rebuttal briefs are filed unless requested by the Secretary. A party can always provide a representative with the party's own data, and represent the party before the Department during disclosure of that party's calculations. Providing a new representative with a record after the close of comments would be unduly burdensome for the Department staff which has extremely tight deadlines for issuing the final determination. A representative can obtain the entire record under judicial protective order during litigation if necessary. Therefore, we have incorporated the proposed deadline, the day case briefs are due, into the regulations.

We also have taken into account the burden imposed on parties by APO applications that are filed after major submissions have been made by other parties to the proceeding. Under current rules, parties have only two days in which to serve an authorized applicant that obtained its APO late in the proceeding with APO information that already has been placed on the record. Under the deadline set forth in paragraph (b)(3), the burden on parties may increase. We therefore proposed that parties have five days in which to serve late APO applicants. In addition, we required that late applicants be required to pay the costs associated with the additional production and service of business proprietary submissions that were served on other parties earlier in the proceeding. Commenters supported these proposals and they are incorporated into § 351.301, which was published separately.

The Department reemphasizes that it will not allow an APO application filed later in the proceeding to serve as the basis for extending any administrative deadline, such as a briefing or hearing schedule.

Approval of the APO Application and the APO Service List

Paragraph (c) of § 351.305 deals with the approval of an APO application. The Department proposed to approve an application within two days of its receipt in an investigation and within five days in other AD and CVD proceedings, unless there is a question concerning the eligibility of an applicant to receive access under APO. In that case, the Secretary will decide whether to approve the application within 30 days of receipt of the application. We amended the regulation to provide for a single five-day deadline to provide parties a reasonable time to comment on applications in all instances.

Commenters generally supported the Department's proposal because it will facilitate the timely completion of investigations and administrative reviews by providing expedited access to business proprietary information to all parties to a proceeding. They suggested that the Department's regulations also indicate that similarly expedited treatment will be provided to applications for amendments to APOs. The Department considers an application for an amendment to be subject to the same procedures as the original application.

Some commenters expressed concern that approving APO applications so quickly may create problems. In many cases, the APO application will be served by mail on other interested parties, and commenters were concerned that the Department could approve the application before the

parties have an opportunity to comment on it. When the APO material is already in the hands of an approved applicant who has filed for access for additional individuals, commenters asserted it is imperative that parties be informed of the existence of the amended application, and be given time to react, before APO material is released to any additional individuals. The problem is of special concern to commenters if the application seeks to add in-house counsel to the APO.

Although the Department agrees that the concerns raised by these commenters have merit, we must balance these concerns with the need of applicants to receive APO material expeditiously. We note that the Department rarely receives objections to applications to amend APOs. However, in recognition of the concerns raised, we intend to approve applications to amend the Department's APO service list to include an additional authorized applicant at the end of the five-day period. If a representative wishes to have its amendment approved before the five-day deadline, it should submit its application with a statement that all other parties to the proceeding have consented to the application.

Commenters proposed that if the APO applicant needs immediate access, service on the other parties could be made by hand delivery or overnight mail, by facsimile, or by E-mail. Alternatively, the applicant could file the application as a ''consent motion''. If there is no need for immediate access, commenters proposed that parties be permitted to serve by mail and that Department approval be held for five days to ensure that the other parties have had an opportunity to respond. Commenters also proposed that the regulations also should state that objections to applications must be filed within two days of receipt of the application and served by hand on the applicant.

One commenter, on the other hand, was concerned that parties to a case should not be able to delay release of proprietary documents merely by the objection, on whatever grounds, to the eligibility of an applicant to obtain information. Rather, the commenter proposed that the Department enunciate certain grounds that might serve as the proper basis for an objection, such as affiliation with the party in question, prior violations of protective orders or other ethical rules, or a potential conflict of interest that exists based on work done either within the government or at another firm involving the same or a similar matter. Commenters did not want parties to have the opportunity to delay approval of applications by minor objections, such as an objection to the number of applicants.

The Department recognizes that the current regulations permit a party to hand-serve an APO application (or an application for an amendment to the APO service list) on the Department, while serving the parties by mail. The Department could approve an application before parties even received notice that the application had been filed. We are therefore revising § 351.305(b)(2) to require parties to serve an APO application (including applications for amendments) on the Department and on the parties in the same manner, whether by hand or by mail. We are also extending the deadline in § 351.305(c) for approving an APO application (including an application to amend the APO service list) to five days from two for all segments of proceedings. These procedures should provide expedited approval of APO access while preserving the rights of parties to comment on APO applications. Although the Department may approve an APO application on or before the five-day deadline, a party objecting to an APO application may elect not to serve its business proprietary information on the applicant to which it is objecting until the Department has addressed the objection and has made a decision whether to grant the applicant access to the objecting party's proprietary information.

There are few bases on which a party can legitimately object to granting an APO so long as the applicant meets the conditions established in the APO application and APO. An objection based on the number of applicants would generally be considered frivolous; the Department does not interfere with a party's choice of representation or staffing. The only area where Import Administration has the authority to deny an individual the right to practice before it involves a finding, pursuant to our very detailed APO violation regulations, that a party has violated a protective order and that the violation warrants the extreme sanction of a ban from practice before Import Administration. An allegation in this area would require a detailed investigation. The restriction on practice before the Department because of an APO violation would be imposed through the APO violation proceeding, not through an objection to an APO application.

Import Administration does not have authority to address the post-employment restrictions contained in 18 U.S.C. 207. The authority to interpret post-employment restriction resides with the Assistant General Counsel for Administration at the Department of Commerce. Nor does the Department have the authority to advise on the application of state professional conduct rules to a party's practice before the Department. Any allegations of violations of the rules of a particular bar association must be raised with that organization.

Alternative Methods of APO Approval

In the October Notice, several commenters suggested alternative methods of approving APOs, such as the creation of a pre-approved roster of members of a representative's firm, or permitting a lead signatory in a firm to grant access to the other professionals within the firm. The Department did not adopt either alternative because there may be facts peculiar to a particular AD or CVD proceeding or a segment of a proceeding that render an otherwise eligible applicant ineligible, and the roster approach would preclude a party from raising legitimate objections to the approval of an APO application. Likewise, the lead signatory approach would preclude parties from exercising their right to object, for good cause, to the disclosure of APO information to a particular individual.

Two commenters continued to support the roster system. One pointed out that such a procedure would still allow Commerce to review the individual eligibility of each applicant and would allow far greater flexibility on the part of the participating firm. These commenters did not address the points raised by the Department in opposing the proposal, such as notice and certainty. As noted above, commenters expressed concern that they have an advance opportunity to comment on an APO application before access is granted. They were concerned that the Department might approve an APO application before parties had had a chance to review it because of the short two-day deadline the Department proposed for approving an application. We are therefore not adopting either alternative method of approving APO applications. The maximum five-day deadline for approving an application should enable parties to add representatives without undue delay.

Department Notification of APO Service List

If an application is approved, the Secretary will include the name of the authorized applicant on an APO service list that the Department will maintain for each segment of a proceeding. Paragraph (c) of § 351.305 provides that

the Secretary will use the most expeditious means available to provide parties with the APO service list on the day the list is issued or amended.

Commenters generally supported the proposal. While they supported a flexible approach with respect to promulgating and updating the APO service list, they also expressed concern with the lack of specificity as to the form of notice to anticipate. Commenters were particularly concerned with the use of the Internet to the extent the Department is contemplating reliance on electronic mail, based on the uncertainty of the timely receipt of information (particularly where the parties are out of the office) or even whether the information would be received at all. To the extent the Department elects to rely on any Internet or e-mail notification, commenters urged the Department to also send a copy of the notification by mail to the parties to ensure that actual notification was received.

Other commenters stated that the preferred method is by facsimile. They stated that most businesses, including law firms practicing before the Department, have procedures to ensure that incoming facsimiles rapidly come to the attention of the indicated recipient. Commenters noted that these procedures are not necessarily in place with respect to the Internet and transmission by mail involves at least two days of delay.

At this time, the Department will fax every change in the APO service list directly to each party on the service list for each proceeding. In addition, until the Department is assured that parties are routinely receiving notification of the APO service list by fax, the Department will mail hard copies of the service to the lead applicant. This will provide certainty and consistency necessary to effectively monitor APO service lists. APO service lists will be available to the public on Import Administration's home page on the Internet as a public service. The Department will adapt these procedures to advances in technology adopted by the trade bar in the future to ensure it provides notice as efficiently as possible.

Section 351.306 Use of Business Proprietary Information.

Section 351.306 sets forth rules concerning the use of business proprietary information.

Use of Business Proprietary Information by the Secretary

Paragraph (a) is based on existing §§ 353.32(f) and 355.32(f). One change is the reference in paragraph (a)(4) to the disclosure of information to the U.S. Trade Representative under 19 U.S.C. 3571(i). Section 3571(i) (section 281(i) of the URAA) deals with the enforcement of U.S. rights under the World Trade Organization Agreement on Subsidies and Countervailing Measures. Also, although the regulation itself is little changed, we note that the URAA amended section 777(b)(1)(A)(i) of the Act to clarify that the Department may use business proprietary information for the duration of an entire proceeding (from initiation to termination or revocation), as opposed to merely the particular segment of a proceeding for which information was submitted.

Use of Business Proprietary Information by Parties

Section 777 of the Act permits the Department to use business proprietary information for the duration of an entire proceeding, from initiation to termination or revocation. Under the current regulations, the Department limits the record of a segment of a proceeding to information submitted during that particular segment of the proceeding. 19 CFR 353.34(a). The Department limits the use of business proprietary information by representatives of parties to the segment of the proceeding in which the information was submitted. 19 CFR 353.34(b)(3)(ii). Although the Department may have access to business proprietary information from another segment of the proceeding, the Department may not base a decision on business proprietary information that is not on the record of the particular segment of the proceeding.

The URAA identifies three specific instances in which the Department would be expected to use information from different segments of proceedings or different proceedings: (1) Information from prior segments may be used in a sunset or changed circumstances review of the same proceeding (section 777(b)(1) of the Act); (2) business proprietary information from a sunset or changed circumstances review resulting in revocation may be used in an investigation on the same merchandise from the same country initiated within two years of revocation (section 777(b)(3) of the Act); and (3) information from a terminated investigation may be used in a new investigation on the subject merchandise from the same and another country within three months of termination of the prior investigation (sections 704 and 734 of the Act).

Paragraph (b) of § 351.306 deals with the use of business proprietary information by parties from one segment of a proceeding to another. In the February notice, the Department proposed to permit parties to retain business proprietary information released under APO for two segments of the proceeding subsequent to that in which the information was placed on the record. Paragraph (b) provided that normally an authorized applicant may use such information only in the particular segment of the proceeding in which the information was obtained. An authorized applicant could, we proposed, place business proprietary information received in one segment of a proceeding on the record of either of two subsequent consecutive segments (generally administrative reviews under section 751(a)) if the information is relevant to an issue in the subsequent segments.

We have modified this paragraph to give the Department greater flexibility in determining how business proprietary information may be used. Our intention at this time is to allow an authorized applicant to retain business proprietary information obtained in one segment of a proceeding for two subsequent consecutive administrative reviews and to use such business proprietary information in those administrative reviews or other segments of the proceeding initiated during that time. This use of business proprietary information will be authorized by the terms of the APOs.

Four commenters wanted to expand the policy by having essentially unlimited access to proprietary information for the entire duration of the proceeding and, in some cases, even across proceedings. These commenters suggested that any changes should be applied to current APOs, as well as future APOs. They argued that such broad ability to use business proprietary information was consistent with the statute and would best enable them to identify inconsistencies in submissions from one segment of a proceeding to another.

Four commenters supported the proposed policy with certain restrictions. These commenters urged the Department to prohibit wholesale incorporation of business proprietary information from another segment of the proceeding and, instead, require that any business proprietary information submitted from another segment of the proceeding be relevant to the segment in which it is submitted. Additionally, some of these commenters indicated that a shorter period of time (one

segment) would be sufficient to achieve the Department's goals.

Four commenters strongly opposed any change to current policy. They argued that the limited changes to the statute cannot justify the significant changes proposed in the regulations. This group argued that statutory requirements and prior CIT decisions regarding the record for review effectively prohibit the changes proposed by the Department. This group also cited concerns that the broader ability to retain and use business proprietary information would increase the likelihood of disclosure of that information and thereby discourage parties from participating in proceedings before the Department. The group contended that these changes will also impose additional burdens on parties (to monitor the use of their business proprietary information in subsequent segments and to whom their business proprietary information is released, and to maintain the ability to justify all differences in their reported information from one segment to the next). The group contended that this practice would also increase burdens on the Department to document and verify the bases for any differences across segments of proceedings.

We have not broadened the proposal to permit unlimited use of business proprietary information across all segments of a proceeding, or across all proceedings other than those specified in the statute. There is no legal support for the request to utilize business proprietary information across proceedings.

Nor do we agree with commenters totally opposing use of business proprietary information in more than one segment. The statute and CIT precedent do not prohibit the proposed changes. The proposed changes would provide for inclusion of the information from another segment on the record of the segment in question. The proposed changes were not based on statutory changes made by the URAA, but, rather, rely on authority which the Department has always possessed. We agree that these changes will create some additional burdens on all parties to monitor subsequent segments of proceedings to avoid release of their business proprietary information to a party to whom they object. These are rare occurrences, and we have attempted to minimize this burden and, thereby, minimize the likelihood that these changes will cause respondents to refuse to participate in the Department's proceedings due to concerns about their business proprietary information. Any additional burden on the Department will be minimized by the Department's ability to reject submissions of irrelevant business proprietary information from other segments.

We agree that wholesale incorporation of business proprietary information from prior segments should be rejected unless absolutely necessary. We also agree that the Department should reject business proprietary information from another segment which is not relevant to the ongoing segment. Such decisions, however, may be difficult to make and may present additional bases for appeal to the CIT. Therefore, the Department does not intend to make a decision on relevancy every time a party submits information from a prior segment into the current segment, but it reserves the right to do so in appropriate circumstances. At the same time, in order to avoid imposing undue burdens on the Department, we intend to consider such information only to the extent that is relevant to issues raised by interested parties or that the Department otherwise deems appropriate.

The Department expects that there will be a multitude of practical problems that will have to be worked out over time and with experience under these new procedures. Initially we will permit parties to retain business proprietary information for two additional segments (generally administrative reviews) after the segment in which the business proprietary information was submitted. This is a reasonable compromise between the long-held desires of petitioners to be able to address perceived inconsistencies between segments, and respondents' concerns that their business proprietary information not be distributed among representatives and across segments for indeterminate periods. Once business proprietary information is placed on the record of a subsequent segment of the proceeding, it remains a permanent addition to the later record, unless the Department rejects the information.

The Department believes that this new practice normally will be used to move business proprietary information from an investigation or administrative review to two subsequent consecutive administrative reviews. The Department also intends to authorize the use of business proprietary information submitted in an investigation or administrative review in other segments, such as scope proceedings or changed circumstances reviews, initiated during those two administrative reviews. If the Department determines, as it gains experience, that it is appropriate to modify this practice, it will do so by changing the terms of the APOs.

Identifying Parties Submitting Business Proprietary Information

Paragraph (c) of § 351.306 addresses identification of submitters of business proprietary information in submissions containing business proprietary information from multiple persons. The Department is requiring that APO applicants be required to request access to all business proprietary information submitted in a particular segment of a proceeding. In addition, we proposed that in the case of submissions, such as briefs, that include business proprietary information of different parties, the submission must identify each piece of business proprietary information included and the party to which the information pertains. (For example, Information Item #1 came from Respondent A, Information Item #2 came from Respondent B, etc.) The purpose of this proposal is to enable parties to submit a single business proprietary version of a submission that may be served on all parties represented by authorized applicants, instead of forcing parties to submit and serve different APO versions for each of the parties involved in a proceeding. In the case of a submission served on a party not represented by an authorized applicant (a relatively rare event), the submitter still would have to prepare and serve a separate submission containing only that party's business proprietary information.

Three commenters supported this proposal. They agree it will reduce the possibility of APO violations when documents contain business proprietary information provided by more than one party. Commenters further suggested that, when all business proprietary information in a submission is obtained from a single party, the Department's regulations permit the submitting party to identify the original submitter of the business proprietary information only once, on the title page of the submission. We agree and have incorporated this into § 351.306(c).

Commenters also suggested that the Department should clarify the proposed rule by stating that only business proprietary information of another party needs to be specifically identified by source. The commenter proposed that any business proprietary information that is bracketed in the submission should be assumed to be business proprietary information belonging to the party submitting the document unless otherwise identified as business proprietary information of another party. The commenter pointed out that

without this clarification, submissions to the Department would become cluttered with notations as to the original submitter of the business proprietary information and it may become very difficult to read the submission. We agree, and have incorporated this suggestion into § 351.306(c) of the regulations.

One commenter urged the Department to clarify what is meant by the term ''identify contiguously with each item'' so that parties can adapt their procedures accordingly. The commenter noted that particularly troublesome would be documents containing multi-party information on a single line. The commenter requested that the Department should clarify whether the identifying markings are also required in public versions.

The term ''contiguous'' was used to require identification closely enough with the item of business proprietary information so a party could clearly and quickly identify the original submitter of the business proprietary information. We do not want to be so specific that parties lose flexibility to respond to different situations. Documents can vary, and readability must not be sacrificed. In some situations, a notation next to the item of business proprietary will best serve everyone's interests. In a more complicated document, footnotes might be better. Since the public version of a submission should be identical with the business proprietary version except for the deletion of the proprietary information, the public submission will contain the identity of the original submitter of the proprietary information.

Some commenters objected to the Department's proposed exception (§ 351.306(c)(2)) to the single-version business proprietary information document rule where a party does not have a representative. They argued that it undermined the benefits gained from not having to file respondent-specific submissions and that adequate public summaries would be adequate.

The Department believes that this requirement is necessary. A party needs disclosure of another party's arguments against it to adequately defend itself. To fail to do so would not provide sufficient transparency to the proceeding.

Concern was expressed regarding the potential mismarking of business proprietary information in a document, and the reliance thereafter on the information mismarked by another party. The commenter urged that the latter party's reliance on the mismarked information should not constitute a breach of the protective order. Another commenter took the opposite view. It suggested that if a party mistakenly indicates the wrong original submitter of business proprietary information in a submission, the party should only be required to correct the mistake, and the mistake should not constitute an APO violation in and of itself. The commenter further argued, however, that if, as a result of a mistake, a party were to disclose business proprietary information to another party not authorized to receive it, that disclosure would constitute an APO violation under the existing APO rules.

Only the party creating the submission from multiple parties' business proprietary information knows with certainty the person that originally submitted the business proprietary information. Therefore the submitter must be responsible for the accuracy of the labeling. This is the purpose of the proposal. Unless an authorized applicant knows that an identification is incorrect, he or she should be entitled to rely on the identification. Otherwise the requirement serves no purpose. An unauthorized disclosure resulting from inaccurate labeling that leads to an APO violation will be attributed to the person labeling the original submitter of the business proprietary information.

Another commenter opposed the proposal altogether, arguing that the proposal is an attempt to shift costs and responsibility from petitioner to respondent, causing respondent to lose time reviewing petitioner's case brief in the five days that they have to prepare rebuttal briefs under proposed § 351.309(d). The commenter argued that while the number of inadvertent APO violations will decrease for petitioner's counsel, they will increase for respondent's counsel, because respondent's counsel must now make sure petitioner's documents do not include APO material that should not be released.

These proposed procedures formalize what has been the Department's practice since 1992. Moreover, we believe that these proposals balance the different interests of petitioners and respondents. Although there are risks of inadvertent APO violations associated with any option, we believe that the fact that all authorized applicants will have access to the business proprietary information of all parties (whether or not service is waived) should reduce significantly the number of inadvertent disclosures. In this regard, the inadvertent service on an authorized applicant of a submission containing information of a party for which the applicant has waived service would not constitute an APO violation.

Administrative Protective Order Sanction Procedures

Five parties commented on the proposed amendments to the APO sanction procedures. All commenters supported the proposed changes. Upon further reflection, the Department is amending its regulations consistent with the proposed regulations. As explained below, the Department also is making clerical revisions to use terms ''administrative protective order'' and ''business proprietary information'' consistently throughout this part, and to conform the regulations to changes made in the organization of the Department on July 1, 1996.

Section 354.2 Definitions.

The definition section is revised to be consistent with the definitions contained in the Department's proposed antidumping and countervailing procedural regulations at 19 CFR 351.102. The definitions of the terms ''administrative protective order'', ''Secretary'', ''segment of the proceeding'', and ''Senior APO Specialist'' are added to Part 354 in § 354.2.

The definition of ''director'' is revised to reflect the reorganization of the Department that became effective July 1, 1996. Under the reorganization, the APO function is consolidated under the Director for Policy and Analysis, and is managed by a Senior APO Specialist. The Senior APO Specialist is responsible for directing the Department's handling of business proprietary information. The Senior APO Specialist assists with investigations of alleged APO violations, which streamlines the APO violation investigation process. A definition of ''Senior APO Specialist'' is added in § 354.2, and the definition of ''director'' is revised to include the Senior APO Specialist. The definition of director is also amended to conform the regulation to the changes in office director positions made in the July 1, 1996 reorganization.

Section 354.5 Report of violation and investigation.

Paragraph (a)(1) is amended to require that all allegations of APO violations be reported to either the Senior APO Specialist or the Office of Chief Counsel for the Department. Under the current practice, alleged violations are reported to the APO specialist in the Office of Investigations or Office of Compliance, depending on where the alleged violation occurred. The amendment conforms the regulation to the July 1, 1996 reorganization of the Department.

Paragraphs (d) (7) and (8) are combined and revised to reflect changes in the Act and Department practice regarding the use of business proprietary information in segments of proceedings other than the one in which the information was originally submitted. These changes are discussed above. The Department's procedural regulations will now allow use of business proprietary information in more than one segment of a proceeding or another proceeding in limited situations. The segments of proceedings in which business proprietary information may be used will be contained in the administrative protective order. Paragraphs (d) (7) and (8) are combined and revised to reflect these changes.

Classification

E.O. 12866

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

Paperwork Reduction Act

This rule does not contain a collection of information for purposes of the Paperwork Reduction Act of 1980, as amended (44 U.S.C. 3501 *et seq.*).

Regulatory Flexibility Act

The Assistant General Counsel for Legislation and Regulation of the Department of Commerce has certified to the Chief Counsel for Advocacy of the Small Business Administration that these amendments would not have a significant economic impact on a substantial number of small business entities because the rule that they would amend does not have such an impact and, furthermore, the amendments would tend to simplify the procedures pertaining to administration of APO sanctions. The Deputy Under Secretary for International Trade is responsible for regulations governing sanctions for violations of APOs. The Assistant Secretary for Import Administration is responsible for the regulations governing issuance and use of APOs.

List of Subjects in 19 CFR Parts 351 and 354

Business and industry, Foreign trade, Imports, Trade practices.

Dated: April 29, 1998.

Timothy J. Hauser,

Deputy Under Secretary for International Trade.

Dated: April 29, 1998.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

For the reasons stated, 19 CFR chapter III is amended as follows:

PART 351—ANTIDUMPING AND COUNTERVAILING DUTIES

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

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

2. Section 351.103 is revised as follows:

§ 351.103 Central Records Unit and Administrative Protective Order Unit.

(a) Import Administration's Central Records Unit maintains a Public File Room in Room B–099 and a Dockets Center in Room 1870, U.S. Department of Commerce, Pennsylvania Avenue and 14th Street, NW., Washington, D.C. 20230. The office hours of the Public File Room and Dockets Center are between 8:30 a.m. and 5:00 p.m. on business days. Among other things, the Central Records Unit is responsible for maintaining an official and public record for each antidumping and countervailing duty proceeding (see § 351.104), the Subsidies Library (see section 775(2) and section 777(a)(1) of the Act), and the service list for each proceeding (see paragraph (c) of this section).

(b) *Filing of documents with the Department.* While persons are free to provide Department officials with courtesy copies of documents, no document will be considered as having been received by the Secretary unless it is submitted to the Import Administration Dockets Center in Room 1870 and is stamped with the date and time of receipt.

(c) *Service list.* The Central Records Unit will maintain and make available a service list for each segment of a proceeding. Each interested party that asks to be included on the service list for a segment of a proceeding must designate a person to receive service of documents filed in that segment. The service list for an application for a scope ruling is described in § 351.225(n).

(d) Import Administration's Administrative Protective Order Unit (APO Unit) is located in Room 1870, U.S. Department of Commerce, Pennsylvania Avenue and 14th Street, N.W., Washington, D.C. 20230. The office hours of the APO Unit are between 8:30 a.m. and 5:00 p.m. on business days. Among other things, the APO Unit is responsible for issuing administrative protective orders (APOs), maintaining the APO service list, releasing business proprietary information under APO, and APO violation investigations. The APO Unit also is the contact point for questions and concerns regarding claims for business proprietary treatment of information and proper public versions of submissions under § 351.105 and § 351.304.

3. Sections 351.304, 351.305 and 351.306 are added to subpart C to read as follows:

§ 351.304 Establishing business proprietary treatment of information.

(a) *Claim for business proprietary treatment.* (1) Any person that submits factual information to the Secretary in connection with a proceeding may:

(i) Request that the Secretary treat any part of the submission as business proprietary information that is subject to disclosure only under an administrative protective order,

(ii) Claim that there is a clear and compelling need to withhold certain business proprietary information from disclosure under an administrative protective order, or

(iii) In an investigation, identify customer names that are exempt from disclosure under administrative protective order under section 777(c)(1)(A) of the Act.

(2) The Secretary will require that all business proprietary information presented to, or obtained or generated by, the Secretary during a segment of a proceeding be disclosed to authorized applicants, except for

(i) Customer names submitted in an investigation,

(ii) Information for which the Secretary finds that there is a clear and compelling need to withhold from disclosure, and

(iii) Privileged or classified information.

(b) *Identification of business proprietary information.* (1) *In general.* A person submitting information must identify the information for which it claims business proprietary treatment by enclosing the information within single brackets. The submitting person must provide with the information an explanation of why each item of bracketed information is entitled to business proprietary treatment. A person submitting a request for business proprietary treatment also must include an agreement to permit disclosure under an administrative protective order,

unless the submitting party claims that there is a clear and compelling need to withhold the information from disclosure under an administrative protective order.

(2) *Information claimed to be exempt from disclosure under administrative protective order.* (i) If the submitting person claims that there is a clear and compelling need to withhold certain information from disclosure under an administrative protective order (see paragraph (a)(1)(ii) of this section), the submitting person must identify the information by enclosing the information within double brackets, and must include a full explanation of the reasons for the claim.

(ii) In an investigation, the submitting person may enclose business proprietary customer names within double brackets (see paragraph (a)(1)(iii) of this section).

(iii) The submitting person may exclude the information in double brackets from the business proprietary information version of the submission served on authorized applicants. See § 351.303 for filing and service requirements.

(c) *Public version.* (1) A person filing a submission that contains information for which business proprietary treatment is claimed must file a public version of the submission. The public version must be filed on the first business day after the filing deadline for the business proprietary version of the submission (see § 351.303(b)). The public version must contain a summary of the bracketed information in sufficient detail to permit a reasonable understanding of the substance of the information. If the submitting person claims that summarization is not possible, the claim must be accompanied by a full explanation of the reasons supporting that claim. Generally, numerical data will be considered adequately summarized if grouped or presented in terms of indices or figures within 10 percent of the actual figure. If an individual portion of the numerical data is voluminous, at least one percent representative of that portion must be summarized. A submitter should not create a public summary of business proprietary information of another person.

(2) If a submitting party discovers that it has failed to bracket information correctly, the submitter may file a complete, corrected business proprietary version of the submission along with the public version (see § 351.303(b)). At the close of business on the day on which the public version of a submission is due under paragraph (c)(2) of this section, however, the bracketing of business proprietary information in the original business proprietary version or, if a corrected version is timely filed, the corrected business proprietary version will become final. Once bracketing has become final, the Secretary will not accept any further corrections to the bracketing of information in a submission, and the Secretary will treat non-bracketed information as public information.

(d) *Nonconforming submissions.* (1) *In general.* The Secretary will return a submission that does not meet the requirements of section 777(b) of the Act and this section with a written explanation. The submitting person may take any of the following actions within two business days after receiving the Secretary's explanation:

(i) Correct the problems and resubmit the information;

(ii) If the Secretary denied a request for business proprietary treatment, agree to have the information in question treated as public information;

(iii) If the Secretary granted business proprietary treatment but denied a claim that there was a clear and compelling need to withhold information under an administrative protective order, agree to the disclosure of the information in question under an administrative protective order; or

(iv) Submit other material concerning the subject matter of the returned information. If the submitting person does not take any of these actions, the Secretary will not consider the returned submission.

(2) *Timing.* The Secretary normally will determine the status of information within 30 days after the day on which the information was submitted. If the business proprietary status of information is in dispute, the Secretary will treat the relevant portion of the submission as business proprietary information until the Secretary decides the matter.

§ 351.305 Access to business proprietary information.

(a) *The administrative protective order.* The Secretary will place an administrative protective order on the record within two days after the day on which a petition is filed or an investigation is self-initiated, or five days after initiating any other segment of a proceeding. The administrative protective order will require the authorized applicant to:

(1) Establish and follow procedures to ensure that no employee of the authorized applicant's firm releases business proprietary information to any person other than the submitting party, an authorized applicant, or an appropriate Department official identified in section 777(b) of the Act;

(2) Notify the Secretary of any changes in the facts asserted by the authorized applicant in its administrative protective order application;

(3) Destroy business proprietary information by the time required under the terms of the administrative protective order;

(4) Immediately report to the Secretary any apparent violation of the administrative protective order; and

(5) Acknowledge that any unauthorized disclosure may subject the authorized applicant, the firm of which the authorized applicant is a partner, associate, or employee, and any partner, associate, or employee of the authorized applicant's firm to sanctions listed in part 354 of this chapter (19 CFR part 354).

(b) *Application for access under administrative protective order.* (1) Generally, no more than two independent representatives of a party to the proceeding may have access to business proprietary information under an administrative protective order. A party must designate a lead firm if the party has more than one independent authorized applicant firm.

(2) A representative of a party to the proceeding may apply for access to business proprietary information under the administrative protective order by submitting Form ITA–367 to the Secretary. Form ITA–367 must identify the applicant and the segment of the proceeding involved, state the basis for eligibility of the applicant for access to business proprietary information, and state the agreement of the applicant to be bound by the administrative protective order. Form ITA–367 may be prepared on the applicant's own word-processing system, and must be accompanied by a certification that the application is consistent with Form ITA–367 and an acknowledgment that any discrepancies will be interpreted in a manner consistent with Form ITA–367. An applicant must apply to receive all business proprietary information on the record of the segment of a proceeding in question, but may waive service of business proprietary information it does not wish to receive from other parties to the proceeding. An applicant must serve an APO application on the other parties in the same manner and at the same time as it serves the application on the Department.

(3) To minimize the disruption caused by late applications, an application should be filed before the first

questionnaire response has been submitted. Where justified, however, applications may be filed up to the date on which the case briefs are due, but any applicant filing after the first questionnaire response is submitted will be liable for costs associated with the additional production and service of business proprietary information already on the record. Parties have five days to serve their business proprietary information already on the record to applicants authorized to receive such information after such information has been placed on the record.

(c) *Approval of access under administrative protective order; administrative protective order service list.* The Secretary will grant access to a qualified applicant by including the name of the applicant on an administrative protective order service list. Access normally will be granted within five days of receipt of the application unless there is a question regarding the eligibility of the applicant to receive access. In that case, the Secretary will decide whether to grant the applicant access within 30 days of receipt of the application. The Secretary will provide by the most expeditious means available the administrative protective order service list to parties to the proceeding on the day the service list is issued or amended.

§ 351.306 Use of business proprietary information.

(a) *By the Secretary.* The Secretary may disclose business proprietary information submitted to the Secretary only to:

(1) An authorized applicant;

(2) An employee of the Department of Commerce or the International Trade Commission directly involved in the proceeding in which the information is submitted;

(3) An employee of the Customs Service directly involved in conducting a fraud investigation relating to an antidumping or countervailing duty proceeding;

(4) The U.S. Trade Representative as provided by 19 U.S.C. 3571(i);

(5) Any person to whom the submitting person specifically authorizes disclosure in writing; and

(6) A charged party or counsel for the charged party under 19 CFR part 354.

(b) *By an authorized applicant.* An authorized applicant may retain business proprietary information for the time authorized by the terms of the administrative protective order. An authorized applicant may use business proprietary information for purposes of the segment of a proceeding in which the information was submitted. If business proprietary information that was submitted in a segment of the proceeding is relevant to an issue in a different segment of the proceeding, an authorized applicant may place such information on the record of the subsequent segment as authorized by the APO.

(c) *Identifying parties submitting business proprietary information.* (1) If a party submits a document containing business proprietary information of another person, the submitting party must identify, contiguously with each item of business proprietary information, the person that originally submitted the item (e.g., Petitioner, Respondent A, Respondent B). Business proprietary information not identified will be treated as information of the person making the submission. If the submission contains business proprietary information of only one person, it shall so state on the first page and identify the person that originally submitted the business proprietary information on the first page.

(2) If a party to a proceeding is not represented by an authorized applicant, a party submitting a document containing the unrepresented party's business proprietary information must serve the unrepresented party with a version of the document that contains only the unrepresented party's business proprietary information. The document must not contain the business proprietary information of other parties.

(d) *Disclosure to parties not authorized to receive business proprietary information.* No person, including an authorized applicant, may disclose the business proprietary information of another person to any other person except another authorized applicant or a Department official described in paragraph (a)(2) of this section. Any person that is not an authorized applicant and that is served with business proprietary information must return it to the sender immediately, to the extent possible without reading it, and must notify the Department. An allegation of an unauthorized disclosure will subject the person that made the alleged unauthorized disclosure to an investigation and possible sanctions under 19 CFR part 354.

PART 354 [AMENDED]

4–5. The authority citation for part 354 is revised to read as follows:

Authority: 5 U.S.C. 301, and 19 U.S.C. 1677.

6. All references in part 354 to ''protective order'' are revised to read ''administrative protective order'', all references to ''proprietary information'' are revised to read ''business proprietary information'', and all references to ''appropriate Director'' are revised to read ''Director''.

§ 354. 1 [Amended]

7. Section 354.1 is amended by removing the citations ''19 CFR 353.30 and 355.20'' and replacing them with ''19 CFR 351.306''.

8. Section 354.2 is revised as follows:

§ 354.2 Definitions.

For purposes of this part:

Administrative protective order (APO) means an administrative protective order described in section 777(c)(1) of the Tariff Act of 1930, as amended; APO Sanctions Board means the Administrative Protective Order Sanctions Board.

Business proprietary information means information the disclosure of which the Secretary has decided is limited under 19 CFR 351.105, or successor regulations;

Charged party means a person who is charged by the Deputy Under Secretary with violating a protective order;

Chief Counsel means the Chief Counsel for Import Administration or a designee;

Date of service means the day a document is deposited in the mail or delivered in person;

Days means calendar days, except that a deadline which falls on a weekend or holiday shall be extended to the next working day;

Department means the United States Department of Commerce;

Deputy Under Secretary means the Deputy Under Secretary for International Trade or a designee;

Director means the Senior APO Specialist or an office director under a Deputy Assistant Secretary, International Trade Administration, or a designee;

Lesser included sanction means a sanction of the same type but of more limited scope than the proposed sanction; thus a one-year bar on representations before the International Trade Administration is a lesser included sanction of a proposed seven-year bar;

Parties means the Department and the charged party or affected party in an action under this part;

Presiding official means the person authorized to conduct hearings in administrative proceedings or to rule on any motion or make any determination under this part, who may be an Administrative Law Judge, a Hearing Commissioner, or such other person who is not under the supervision or

control of the Assistant Secretary for Import Administration, the Deputy Under Secretary for International Trade, the Chief Counsel for Import Administration, or a member of the APO Sanctions Board;

Proprietary information means information the disclosure of which the Secretary has decided is limited under 19 CFR part 351 including business or trade secrets; production costs; distribution costs; terms of sale; prices of individual sales, likely sales, or offers; names of customers, distributors, or suppliers; exact amounts of the gross net subsidies received and used by a person; names of particular persons from whom proprietary information was obtained; and any other business information the release of which to the public would cause substantial harm to the competitive position of the submitter;

Secretary means the Secretary of Commerce or a designee;

Segment of the proceeding means a portion of an antidumping or countervailing duty proceeding that is reviewable under section 516A of the Tariff Act of 1930, as amended.

Senior APO Specialist means the Department employee under the Director for Policy and Analysis who leads the APO Unit and is responsible for directing Import Administration's handling of business proprietary information;

Under Secretary means the Under Secretary for International Trade or a designee.

9. Section 354.3 is amended by revising paragraphs (a)(3), and (a)(4), and by adding a new paragraph (a)(5), as follows:

§ 354.3 Sanctions.

(a) * * *

(3) Other appropriate administrative sanctions, including striking from the record any information or argument submitted by, or on behalf of, the violating party or the party represented by the violating party; terminating any proceeding then in progress; or revoking any order then in effect;

(4) Requiring the person to return material previously provided by the Secretary and all other materials containing the business proprietary information, such as briefs, notes, or charts based on any such information received under an administrative protective order; and

(5) Issuing a private letter of reprimand.

* * * * *

10. Section 354.5 is amended by revising paragraphs (a), (b), (c) and (d)(1), (d)(2), and (d)(7), and by removing paragraph (d)(8), and redesignating paragraph (d)(9) as (d)(8), as follows:

§ 354.5 Report of violation and investigation.

(a) An employee of the Department who has information indicating that the terms of an administrative protective order have been violated will provide the information to the Senior APO Specialist or the Chief Counsel.

(b) Upon receiving information which indicates that a person may have violated the terms of an administrative protective order from an employee of the Department or any other person, the director will conduct an investigation concerning whether there was a violation of an administrative protective order, and who was responsible for the violation, if any. No director shall investigate an alleged violation that arose out of a proceeding for which the director was responsible. For the purposes of this part, the director will be supervised by the Deputy Under Secretary for International Trade with guidance from the Chief Counsel. The director will conduct an investigation only if the information is received within 30 days after the alleged violation occurred or, as determined by the director, could have been discovered through the exercise of reasonable and ordinary care.

(c)(1) The director conducting the investigation will provide a report of the investigation to the Deputy Under Secretary for International Trade, after review by the Chief Counsel, no later than 90 days after receiving information concerning a violation if:

(i) The person alleged to have violated an administrative protective order personally notified the Secretary and reported the particulars surrounding the incident; and

(ii) The alleged violation did not result in any actual disclosure of business proprietary information. Upon the director's request, and if extraordinary circumstances exist, the Deputy Under Secretary for International Trade may grant the director up to an additional 90 days to conduct the investigation and submit the report.

(2) In all other cases, the director will provide a report of the investigation to the Deputy Under Secretary for International Trade, after review by the Chief Counsel, no later than 180 days after receiving information concerning a violation. Upon the director's request, and if extraordinary circumstances exist, the Deputy Under Secretary for International Trade may grant the director up to an additional 180 days to conduct the investigation and submit the report.

(d) * * *

(1) Disclosure of business proprietary information to any person other than the submitting party, an authorized applicant, or an appropriate Department official identified in section 777(b) of the Tariff Act of 1930, including disclosure to an employee of any other United States Government agency or a member of Congress.

(2) Failure to follow the terms and conditions outlined in the administrative protective order for safeguarding business proprietary information.

* * * * *

(7) Use of business proprietary information submitted in one segment of a proceeding in another segment of the same proceeding or in another proceeding, except as authorized by the Tariff Act of 1930 or by an administrative protective order.

* * * * *

11. Section 354.6 is revised as follows:

§ 354.6 Initiation of proceedings.

(a) *In general.* After an investigation and report by the director under § 354.5(c) and consultation with the Chief Counsel, the Deputy Under Secretary for International Trade will determine whether there is reasonable cause to believe that a person has violated an administrative protective order. If the Deputy Under Secretary for International Trade determines that there is reasonable cause, the Deputy Under Secretary for International Trade also will determine whether sanctions under paragraph (b) or a warning under paragraph (c) is appropriate for the violation.

(b) *Sanctions.* In determining under paragraph (a) of this section whether sanctions are appropriate, and, if so, what sanctions to impose, the Deputy Under Secretary for International Trade will consider the nature of the violation, the resulting harm, and other relevant circumstances of the case. If the Deputy Under Secretary for International Trade determines that sanctions are appropriate, the Deputy Under Secretary for International Trade will initiate a proceeding under this part by issuing a charging letter under § 354.7. The Deputy Under Secretary for International Trade will determine whether to initiate a proceeding no later than 60 days after receiving a report of the investigation.

(c) *Warning.* If the Deputy Under Secretary for International Trade determines under paragraph (a) of this

section that a warning is appropriate, the Deputy Under Secretary will issue a warning letter to the person believed to have violated an administrative protective order. Sanctions are not appropriate and a warning is appropriate if:

(1) The person took due care;

(2) The Secretary has not previously charged the person with violating an administrative protective order;

(3) The violation did not result in any disclosure of the business proprietary information or the Secretary is otherwise able to determine that the violation caused no harm to the submitter of the information; and

(4) The person cooperated fully in the investigation.

12. Section 354.7 is amended by revising paragraph (b), as follows:

§ 354.7 Charging letter.

* * * * *

(b) Settlement and amending the charging letter. The Deputy Under Secretary for International Trade and a charged or affected party may settle a charge brought under this part by mutual agreement at any time after service of the charging letter; approval of the presiding official or the administrative protective order Sanctions Board is not necessary. The charged or affected party may request a hearing but at the same time request that a presiding official not be appointed pending settlement discussions. Settlement agreements may include sanctions for purposes of § 354.18. The Deputy Under Secretary for International Trade may amend, supplement, or withdraw the charging letter as follows:

(1) If there has been no request for a hearing, or if supporting information has not been submitted under § 354.13, the withdrawal will not preclude future actions on the same alleged violation.

(2) If a hearing has been requested but no presiding official has been appointed, withdrawal of the charging letter will preclude the Deputy Under Secretary for International Trade from seeking sanctions at a later date for the same alleged violation.

(3) The Deputy Under Secretary for International Trade may amend, supplement or withdraw the charging letter at any time after the appointment of a presiding official, if the presiding official determines that the interests of justice would thereby be served. If the presiding official so determines, the presiding official will also determine whether the withdrawal will preclude the Deputy Under Secretary for International Trade from seeking sanctions at a later date for the same alleged violation.

* * * * *

13. Section 354.9 is amended by revising paragraph (b), as follows:

§ 354. 9 Request for a hearing.

(a) * * *

(b) Upon timely receipt of a request for a hearing, and unless the party requesting a hearing requests that the Under Secretary not appoint a presiding official, the Under Secretary will appoint a presiding official to conduct the hearing and render an initial decision.

§ 354.15 [Amended]

14. Section 354.15 is amended by removing paragraph (e).

§ 354.17 [Amended]

15. Section 354.17(b) is amended by removing the citations ''19 CFR 353.30 and § 355.20'' and replacing them with ''19 CFR 351.305(c)''.

16. Section 354.18 is added to part 354, to read as follows:

§ 354.18 Public notice of sanctions.

If there is a final decision under § 354.15 to impose sanctions, or if a charging letter is settled under § 354.7(b), notice of the Secretary's decision or of the existence of a settlement will be published in the **Federal Register**. If a final decision is reached, such publication will be no sooner than 30 days after issuance of a final decision or after a motion to reconsider has been denied, if such a motion was filed. In addition, whenever the Deputy Under Secretary for International Trade subjects a charged or affected party to a sanction under § 354.3(a)(1), the Deputy Under Secretary for International Trade also will provide such information to the ethics panel or other disciplinary body of the appropriate bar associations or other professional associations and to any Federal agency likely to have an interest in the matter. The Deputy Under Secretary for International Trade will cooperate in any disciplinary actions by any association or agency. Whenever the Deputy Under Secretary for International Trade subjects a charged or affected party to a private letter of reprimand under § 354.3(a)(5), the Secretary will not make public the identity of the violator, nor will the Secretary make public the specifics of the violation in a manner that would reveal indirectly the identity of the violator.

17. Section 354.19 is added to part 354, to read as follows:

§ 354.19 Sunset.

(a) If, after a period of three years from the date of issuance of a warning letter, a final decision or settlement in which sanctions were imposed, the charged or affected party has fully complied with the terms of the sanctions and has not been found to have violated another administrative protective order, the party may request in writing that the Deputy Under Secretary for International Trade rescind the charging letter. A request for rescission must include:

(1) A description of the actions taken during the preceding three years in compliance with the terms of the sanctions; and

(2) A letter certifying that: the charged or affected party complied with the terms of the sanctions; the charged or affected party has not received another administrative protective order sanction during the three-year period; and the charged or affected party is not the subject of another investigation for a possible violation of an administrative protective order.

(b) Subject to the Chief Counsel's confirmation that the charged or affected party has complied with the terms set forth in paragraph (a) of this section, the Deputy Under Secretary for International Trade will rescind the charging letter within 30 days after receiving the written request.

Appendix to 19 CFR Part 351, Subpart C

Note: The following appendix will not appear in the Code of Federal Regulations: Application for Administrative Protective Order in Antidumping or Countervailing Duty Proceeding, and Administrative Protective Order.

BILLING CODE 3510–DS–P

Case Number
Segment of Proceeding
(Period of Review)
Number of Pages
Public Document

United States Department of Commerce
International Trade Administration

APPLICATION FOR ADMINISTRATIVE PROTECTIVE ORDER
in
ANTIDUMPING OR COUNTERVAILING DUTY PROCEEDING

The Matter of the **Antidumping/Countervailing Duty (indicate one)** Proceeding on _____ _____ from _____ _____ (Country) _____ (Product)	ACCEPTED_____ REJECTED_____ DATE_____

This application covers business proprietary information in the following segment of the proceeding:

[ ] Investigation - petition filed on : _____

[ ] Administrative Review initiated on : _____ (___FR_____)

for period : _____to_____

[ ] Other _____ : _____(___FR_____)

_____
(specify)

This application is:

[ ] the initial application to be placed on the APO service list; or

[ ] a request to amend the APO service list.

FORM ITA-367 (5.98)

REPRESENTATION

1. I am an applicant for: _____ who is an interested party/parties as follows:

   [ ] petitioner; [ ] respondent; [ ] other interested party,

   as defined in 19 C.F.R. § _____ of the

   Department's regulations.

2. If the interested party/parties I represent have another

   authorized applicant or representative, _____

   _____

   is the lead firm.

REQUEST FOR INFORMATION

3. I request disclosure of all business proprietary information under administrative protective order ("APO") which will be or has been placed on the record of this segment of this proceeding that is releasable under 19 C.F.R. § 351.305 for the purpose of fully representing the interests of my client:

   [ ] all business proprietary information, including hard copy and electronic data; or

   [ ] all business proprietary information in hard copy form only.

INDIVIDUAL STATEMENTS

4. TO BE COMPLETED BY ATTORNEY APPLICANTS

   A. I **am/am not (indicate one)** an officer of the interested party or parties listed in paragraph 1, or of other competitors of the person submitting the business proprietary information requested in this application.

   B. I **do/do not (indicate one)** participate in the competitive decision-making activity of the interested party or parties listed in paragraph 1, or of other competitors of the person submitting the business proprietary information requested in this application. I understand that competitive decision-making activity includes advice on production, sales, operations, or investments, but does not include legal advice.

C. I **do/do not (indicate one)** have an official position or other business relationship other than providing advice for the purpose of this segment of the proceeding with the interested party or parties listed in paragraph 1, or with other competitors of the person submitting the business proprietary information requested in this application.

D. I **do/do not (indicate one)** currently intend within 12 months after the date upon which the final determination/results is/are published to enter into any of the relationships described in paragraphs 4A B and C.

E. Explain for each applicant any affirmative response to paragraph 4A, B, C or D: _____

_____.

5. TO BE COMPLETED BY NON-ATTORNEY APPLICANTS

A. I **am/am not (indicate one) employed by/retained by (indicate one)** a law firm representing the interested party or parties listed in paragraph 1.

B. If I am retained by an attorney, the name of the lawyer and law firm are:

_____

_____.

C. If I am not an employee of a law firm and have not been retained by the attorney for the interested party or parties listed in paragraph 1, in a separate attachment to this application I am providing information concerning my practice before the International Trade Administration ("ITA").

D. I **am/am not (indicate one)** an officer or employee of a interested party or parties listed in paragraph 1, or of other competitors of the submitter of the business proprietary information requested in this application.

E. I **do/do not (indicate one)** participate in the competitive decision-making activity of the interested party or parties listed in paragraph 1, or of other competitors of the person submitting the business proprietary information requested in this application. I understand that competitive decision-making activity includes advice on production, sales, operations, or investments, but does not include legal advice.

F. I **do/do not (indicate one)** have an official position or other business relationship other than providing advice for the purpose of this segment of the proceeding with the interested party or parties listed in paragraph 1, or with other competitors of the person submitting the business proprietary information requested in this application.

G. I **do/do not (indicate one)** currently intend within 12 months after the date upon which the final determination/results is/are published to enter into any of the relationships described in paragraphs 5D, E and F.

I. Explain for each applicant any affirmative response to paragraph 5D, E, F or G: _____

_____.

AGREEMENT TO BE BOUND

6. Recognizing the penalties for perjury under the laws of the United States, I affirm that all statements in this application are true, accurate, and complete to the best of my knowledge. I agree, individually and on behalf of my law firm, corporate law office, or company, if any, to be bound by the terms stated in the administrative protective order issued in this segment of the proceeding.

7. I certify that this application is a true and accurate copy of the Department's "Application for Administrative Protective Order", FORM ITA-367 (5.98). If there are any discrepancies, I agree to be bound by the Department's standard form.

INDIVIDUAL SIGNATORIES

8. ATTORNEY APPLICANTS (*SAMPLE FORMAT*)

Individual applicants:

(1) _____, _____, _____
(name of applicant) (signature) (date)

of _____
(name and address of law firm)

_____

I am admitted to practice in the following jurisdiction(s) and before the following court(s):

_____.

9. NON-ATTORNEY APPLICANTS (*SAMPLE FORMAT*)

Individual applicants:

(1) _____, _____, _____
(name of applicant) (signature) (date)

of _____
(name and address of firm)

_____

I am a member of the following professional association(s):

_____.

COURTESY PAGE
FOR
WAIVER OF SERVICE

If my application for administrative protective order ("APO") in this proceeding is granted, I waive service of the following business proprietary information that I would be authorized to receive under the APO:

o

o

o

o

Inadvertent service of a document containing business proprietary information on a party that has been granted APO access and has waived service IS NOT A VIOLATION OF THE APO.

A/C-___-___
(Segment of Proceeding)
(Period of Review)
Public Document

In the Matter of the Antidumping/Countervailing Duty)
(Segment of Proceeding) of [redacted])
from [redacted] (A/C-[redacted]-[redacted]))

ADMINISTRATIVE PROTECTIVE ORDER

IT IS HEREBY ORDERED THAT:

All business proprietary information submitted in the above-referenced segment of the proceeding, including new information submitted in a remand during litigation on this segment of the proceeding, which the submitting party agrees to release or the Department of Commerce ("the Department") determines to release, will be released to the authorized applicants on the administrative protective order (APO) service list for this segment of the proceeding, except the following:

- customer names in an investigation;
- specific information of a type for which the Department determines there is a clear and compelling need to withhold from disclosure.

USE OF BUSINESS PROPRIETARY INFORMATION UNDER THIS APO

Business proprietary information subject to this APO may be used by an authorized applicant in this segment of the proceeding and in the following other segments or proceedings:

> [This section will authorize use of business proprietary information in other segments of the same proceeding, or in other proceedings, consistent with the Tariff Act and the regulations. The terms in this section will vary, depending on what segment of the proceeding this APO covers. This section will also establish the deadline for destruction of business proprietary information in each set of circumstances.]

REQUIREMENTS FOR AUTHORIZED APPLICANTS

All applicants authorized to have access to business proprietary information under this APO are subject to the following terms:

1. The authorized applicant must establish and follow procedures to ensure that no employee of the authorized applicant's firm releases business proprietary information to any person other than the submitting party, an authorized applicant, or the appropriate Department official identified in section 351.306(a) of the regulations. No person in the authorized applicant's firm may release business proprietary information received under this APO to any person other than those described in this paragraph.

2. The authorized applicant may allow APO access to one or more paralegals, law clerks, secretaries, or other support staff employed by or on behalf of the applicant's firm and operating within the confines of the firm. The authorized applicant may also use the services of subcontracted individuals to pick up APO information released by the Department. All support staff must sign and date an acknowledgement that they will abide by the terms and conditions of the APO at the time they are first permitted access to any information subject to APO.

3. The authorized applicant must ensure that business proprietary information in an electronic format will not be accessible by modem to parties not authorized to receive business proprietary information.

4. The authorized applicant must pay all reasonable costs incurred by the submitter of the electronic business proprietary information for the copying of its electronic information released to the authorized applicant, if payment is requested. Reasonable costs include the cost of the electronic medium and the cost of copying the complete proprietary version of the electronic information/medium submitted to the Department in APO releasable form, but not costs borne by the submitter of the electronic data in the creation of the electronic data/medium submitted to the Department.

NOTIFICATION REQUIREMENTS

5. If changed circumstances affect the authorized applicant's representation of an interested party at any time authorized under this APO (i.e., reassignment, departure from firm), the authorized applicant must notify the Department in accordance with section 351.305(a)(2) of the regulations.

6. At the expiration of the time specified in this APO, the authorized applicant must destroy all business proprietary information and notify the Department of the destruction in accordance with section 351.305(a)(3) of the regulations, or provide to the Department official responsible for the administration of the APO in this segment of the proceeding a protective order issued by a court or in a binational panel proceeding.

SANCTIONS FOR BREACH OF THIS APO

7. The authorized applicant will be subject to any or all of the sanctions described in 19 C.F.R. Part 354 if there is a violation of this APO by the authorized applicant or any of the persons identified in item 9 of this APO.

8. The authorized applicant will accept full responsibility, individually and on behalf of the authorized applicant's firm or corporate office, for violation of this APO by any employee of the firm or corporate office, or support staff retained by the firm or corporate office, who is permitted access to APO information.

9. The authorized applicant will promptly report and confirm in writing any possible violation of this APO to the Department.

DEFINITIONS

For purposes of this APO, the following definitions apply:

"Representative" is an individual, enterprise, or entity acting on behalf of an interested party.

"Applicant" is a representative of an interested party who has applied for access to business proprietary information under this APO.

"Authorized applicant" is an applicant that the Secretary has authorized to receive business proprietary information under this APO.

"Lead firm" is the firm that will be the primary contact with the Department and that will accept service of all documents for the party it represents where two firms independently have access under APO.

"Support staff" includes paralegals, law clerks, secretaries and other support staff that are employed by or on behalf of the applicant's firm and operating within the premises of the firm, and work under the supervision of an authorized applicant, as well as subcontractors of the firm providing similar support staff functions.

"Electronic data" includes (1) data submitted by a party, generated by the Department, or entered by the recipient on computer tape, disk, diskette, or any other electronic computer

medium; and (2) all electronic work products resulting from manipulation of this data, as transferred in any form onto any other electronic computer medium, such as tape, disk, diskette, Bernoulli cartridge, removable disk pack, etc.

_____

(Signature of Department Official)
Typed Name
Title
Import Administration

_____

(date)

[FR Doc. 98–11802 Filed 5–1–98; 8:45 am]
BILLING CODE 3510–DS–C

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 184

[Docket No. 90G–0412]

Lipase Enzyme Preparation From Rhizopus Niveus; Affirmation of GRAS Status as a Direct Food Ingredient

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending its regulations to affirm that lipase enzyme preparation derived from *Rhizopus niveus* is generally recognized as safe (GRAS) for use as a direct human food ingredient. This action is in response to a petition submitted by Fuji Oil Co., Ltd.

DATES: The regulation is effective May 4, 1998. The Director of the Office of the Federal Register approves the incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51 of a certain publication listed in § 184.1420 (21 CFR 184.1420), effective May 4, 1998.

FOR FURTHER INFORMATION CONTACT: Linda S. Kahl, Center for Food Safety and Applied Nutrition (HFS–206), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3101.

SUPPLEMENTARY INFORMATION:

I. Background

In accordance with the procedures described in 21 CFR 170.35, Fuji Oil Co., Ltd., submitted a petition (GRASP 7G0330) requesting that lipase-protease enzyme preparation from *R. niveus* be affirmed as GRAS for use as a direct human food ingredient. FDA published a notice of filing of this petition in the **Federal Register** of June 18, 1992 (57 FR 27256), and gave interested persons an opportunity to submit comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857. FDA received no comments in response to the filing notice.

Although the petitioner proposed that the subject enzyme preparation be called by the common or usual name ''lipase-protease,'' the proposed use of the enzyme preparation is solely for its lipase activity. The GRAS exemption described in section 201(s) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321(s)) specifies that a GRAS substance must be generally recognized as safe ''under the conditions of its intended use.'' Thus, affirmation of GRAS status pertains to the particular use of a substance. Accordingly, FDA considers the enzyme preparation that is the subject of this document to be ''lipase enzyme preparation.'' To avoid confusion between lipase, the enzyme, and the lipase-containing enzyme preparation, which contains lipase as its characterizing enzyme activity, but which also contains diatomaceous earth as a carrier and may contain other enzyme activities and impurities, this document will henceforth use the terms ''lipase'' to refer to the enzyme and ''lipase enzyme preparation'' to refer to the fermentation-derived lipase enzyme preparation, including the carrier diatomaceous earth.

II. Standards for GRAS Affirmation

Under § 170.30 (21 CFR 170.30), general recognition of safety may be based only on the views of experts qualified by scientific training and experience to evaluate the safety of substances directly or indirectly added to food. The basis of such views may be either scientific procedures or, in the case of a substance used in food prior to January 1, 1958, experience based on common use in food. General recognition of safety based upon scientific procedures requires the same quantity and quality of scientific evidence as is required to obtain approval of a food additive regulation and ordinarily is based upon published studies, which may be corroborated by unpublished studies and other data and information (§ 170.30(b)). General recognition of safety through experience based on common use in food prior to January 1, 1958, may be determined without the quantity or quality of scientific procedures required for approval of a food additive regulation, and ordinarily is based upon generally available data and information.

FDA has evaluated Fuji Oil Co., Ltd.'s petition on the basis of scientific procedures to establish that the use of lipase enzyme preparation as an enzymatic catalyst for the interesterification of fats and oils is GRAS. In evaluating the petition, FDA considered: (1) Published and unpublished data and information relating to the identity and function of the enzyme component (i.e., lipase) (Refs. 1 through 5); (2) published and unpublished data and information relating to the production organism (Ref. 6); and (3) published and unpublished information, methods, and principles relating to the methods and processing aids used in the manufacture of the enzyme preparation (Refs. 4 and 7 through 10).

III. Safety Evaluation

A. Introduction

Commercial enzyme preparations that are used in food processing typically are not chemically pure but contain, in addition to the enzyme component, other components that derive from the production organism and the fermentation media, residual amounts of processing aids, and substances used as stabilizers, preservatives or diluents. Issues relevant to a safety evaluation of the enzyme preparation therefore include the safety of the enzyme component, the safety of the enzyme source, and the safety of processing aids and other substances added during the manufacturing process. As with all substances added to food, a safety evaluation of an enzyme preparation also includes consideration of dietary exposure to that preparation.

B. The Enzyme Component

Triglycerides are fats or oils comprised of fatty acids linked by ester bonds to each of the three hydroxyl groups of glycerol. Triacylglycerol lipases catalyze the hydrolysis of these ester bonds and can be grouped according to their specificity. The lipase produced by *Geotrichum candidium*, for example, preferentially cleaves triglycerides containing long-chain fatty acids with a cis double bond in the 9-position, but such specificity for the hydrolysis of esters containing a particular type of fatty acid is unusual. Several other lipases (e.g., the lipase derived from *Candida cylindracae*) are nonspecific with respect to either the chemical structure of the fatty acid moiety, or the position of the ester bond, that is hydrolyzed; these lipases catalyze the complete breakdown of triglycerides into glycerol and free fatty acids, and the mono- and diglycerides that are intermediates in the reaction do not normally accumulate (Refs. 2 and 4).

The largest group of triacylglycerol lipases exhibits specificity with respect to the position of the ester bond that is cleaved, i.e., only bonds at the 1- or 3-position of the glycerol component are hydrolyzed. Most of the lipases that are commonly used in food processing (e.g., animal lipase, esterase-lipase from *Mucor miehei*, and lipases derived from *Aspergillus niger*, *M. javanicus*, and *R. delemar*), including the *R. niveus*-derived lipase that is the subject of this document, belong to this group (EC No. 3.1.1.3; CAS Reg. No. 9001–62–1) (Refs. 2, 4, and 11).

Although the petitioner did not address the detailed molecular structure of lipase from *R. niveus*, most lipases that have been characterized at the

molecular level are glycoproteins that contain between 2 and 15 percent carbohydrates, with mannose as the major glycoside (Ref. 4). Lipases from animal and microbial sources have a long history of use in food. Animal lipase (21 CFR 184.1415) is affirmed as GRAS based on its common use in food prior to January 1, 1958. Esterase-lipase from the fungus *M. miehei* (21 CFR 173.140) is approved for use as a food additive. These enzymes are commonly used to enhance flavor production in cheese and in butterfat (Refs. 1, 12, and 13). In addition, lipases from animal sources (e.g., bovine stomach and hog or porcine pancreas) and microbial sources (including *R. arrhizus*, *R. delemar*, and *R. niveus*) have been listed in the Codex Alimentarius Commission ''Inventory of Processing Aids'' (Ref. 14).

The reaction product of the *R. niveus*-derived lipase is a mixture of mono- and diglycerides and free fatty acids (Refs. 2 through 5). The reaction catalyzed by this lipase is reversible and, therefore, under appropriate conditions the enzyme can catalyze the synthesis of triglycerides from a mixture of glycerides and free fatty acids. When this combination of hydrolysis and synthesis occurs within a mixture of triglycerides, or within a mixture of triglycerides and fatty acid esters, the reaction products are triglycerides that have been interesterified, i.e., triglycerides in which the fatty acid components have been exchanged between triglyceride molecules or between triglyceride molecules and fatty acid esters (Refs. 1 through 5). For example, the GRAS food ingredient ''cocoa butter substitute primarily from palm oil'' may be manufactured by the lipase-catalyzed interesterification of partially saturated palm oil-derived triglycerides with the fatty acid ester ethyl stearate (21 CFR 184.1259).

Interesterification also can be achieved through the use of chemical catalysts such as sodium methylate. Such chemical catalysis results in random interesterification, in which fatty acid interchange occurs at all three positions on the glycerol backbone. In contrast, enzymatic catalysis with a lipase, such as the lipase that is the subject of this document, results in selective interesterification at the 1- and 3-positions only. Random interesterification is used commercially in the manufacture of margarines and shortenings, but lipase-catalyzed selective interesterification, which allows an unsaturated fatty acid to remain at the 2-position, is important in the manufacture of fats and oils used in confectionery, such as cocoa butter substitute primarily from palm oil (Refs. 2 through 4). The petitioner stated that one of the primary uses of *R. niveus*-derived lipase enzyme preparation would be in the manufacture of cocoa butter substitute primarily from palm oil.

In general, issues relevant to a safety evaluation of proteins such as the enzyme component of an enzyme preparation are potential toxicity and allergenicity (Ref. 15). Pariza and Foster (Ref. 15) note that very few toxic agents have enzymatic properties, and those that do (e.g., diphtheria toxin and certain enzymes in the venom of poisonous snakes) catalyze unusual reactions that are not related to the reactions catalyzed by enzymes that are commonly used in food processing, such as the lipase that is the subject of this document. Further, the agency has recently noted, in the context of guidance to industry regarding the safety assessment of new plant varieties, that enzymes themselves do not generally raise safety concerns (57 FR 22984 at 23005, May 29, 1992). Exceptions include enzymes that produce substances that are not ordinarily digested and metabolized, or that produce toxic substances.

The catalytic activities of the lipase that is the subject of this document are well known. As already discussed, lipase catalyzes two related reactions: (1) The splitting of commonly consumed triglycerides into smaller components, i.e., fatty acids and mono- and diglycerides; and (2) the synthesis of triglycerides from fatty acids and mono- and diglycerides. The reaction products (i.e., fatty acids, mono- and diglycerides, and triglycerides) from both of these reactions are readily metabolized by the human body and do not have toxic properties (Ref. 16).

The agency is not aware of any reports of allergic reactions associated with the ingestion of enzymes derived from *Rhizopus* species. There have been, however, some reports of allergies and primary irritations from skin contact with enzymes or from inhalation of dust from concentrated enzymes (e.g., proteases used in the manufacture of laundry detergents) (Refs. 17 through 19). These reports relate primarily to workers in production plants (Ref. 18) and are not relevant to an evaluation of the safety of ingestion of such enzymes in food. Moreover, Pariza and Foster (Ref. 15) note that there are no confirmed reports of primary irritations in consumers caused by residues of food processing enzymes in food.

FDA concludes that generally available and accepted data and information establish that the use of lipase in food raises no toxicity or allergenicity concerns. FDA also concludes that generally available and accepted data and information establish that the lipase that is the subject of this document is capable of achieving its intended technical effect. Finally, FDA concludes that generally available and accepted data and information establish that the lipase that is the subject of this document is similar in function to other lipases that are used in food processing to catalyze the hydrolysis of ester bonds at the 1- or 3-position of the glycerol component of a triglyceride.

C. Enzyme Source, Manufacturing Methods, and Processing Aids

The source of the lipase that is the subject of this document is the fungus *R. niveus*. Fungally-derived enzyme preparations used in food processing are usually not chemically pure but contain, in addition to the enzyme component, other components that derive from the production organism and the fermentation media, residual amounts of processing aids, and substances used as stabilizers, preservatives or diluents. The petitioned enzyme preparation meets the general requirements and additional requirements for enzyme preparations in the monograph on Enzyme Preparations in the Food Chemicals Codex, 4th ed. (Ref. 20). When the *R. niveus*-derived lipase enzyme preparation is produced in accordance with current good manufacturing practice (CGMP), it is produced using processing aids that are substances that are acceptable for general use in foods and under culture conditions that ensure a controlled fermentation, thus preventing the introduction of extraneous microorganisms that could be the source of toxic materials and other toxic substances (Ref. 20).

The lipase enzyme preparation is produced in a multistage process by controlled fermentation[1] using a pure culture of the fungus *R. niveus* followed by isolation of the enzyme-containing fraction. Prior to its use in the interesterification of fats and oils, the enzyme-containing fraction is adsorbed onto diatomaceous earth as a carrier. These methods are based upon generally available and accepted methods used for fermentation, for processing fermentation-derived enzyme-containing fractions, and for immobilizing an enzyme-containing fraction on an insoluble carrier (Refs. 4 and 7 through 10).

[1] The stage of the manufacturing process in which the enzyme is being produced by an actively growing culture of microorganisms is referred to as fermentation.

In the initial stage of the fermentation process, the seed cultures of *R. niveus* are checked for purity and classification after growth on a potato-agar medium. The production cultures are suspended in sterile water and added to a previously autoclaved wheat bran culture medium. After growth for 28 to 32 hours, the broth is checked for quality and added to large batch-fermentors containing sterilized growth medium (semisolid wheat bran). The culture is monitored until the water content and pH value of the resulting malt, which is referred to as the ''koji,'' reach standard requirements.

A cell-free extract of the enzymes that are components of the fermentation mixture is prepared by sprinkling and steeping the koji with cold water, filtering the extracted koji through a filter press and a fine filtration apparatus, and precipitating the enzymes that are present in the resulting filtrate with ethanol. After decanting the supernatant and centrifuging the remaining slurry, the sediment containing the extracted enzymes is collected and dried overnight in a vacuum-dryer at 40 to 45 °C. The dried powder is ground, sized, and mixed before storing at room temperature. The finished product is adjusted to a standard activity by mixing the enzyme powder with dextrin as an excipient. The standardized enzyme powder is adsorbed onto diatomaceous earth carrier prior to its use in the interesterification of fats or oils. The petitioner provided a published scientific review article that discusses this immobilization technique with respect to use of lipase enzyme preparations (Ref. 4).

The production strain of *R. niveus* that is the source of the lipase enzyme is nontoxigenic and nonpathogenic. The manufacturing methods completely remove the organism from the enzyme-containing fraction (Ref. 4). Moreover, the petitioner provided documentation, based upon published methods for strain identification (Ref. 6), showing that the production strain was taxonomically identical to the strain used for the production of *R. niveus*-derived amyloglucosidase enzyme preparation, which is approved for use as a secondary direct food additive (21 CFR 173.110).

FDA concludes that the presence of added substances and impurities that are derived from the enzyme source or that are introduced by manufacturing does not present a basis for concern about the safety of the lipase enzyme preparation.

D. Dietary Exposure

FDA considered the estimated dietary exposure to lipase enzyme preparation for the proposed use as an enzymatic catalyst in the interesterification of fats and oils (Refs. 21 through 23). The predominant source of potential exposure to the total organic solids in the enzyme preparation will be baked goods that use interesterified fat at levels up to 30 percent. The petitioner stated that the standardized enzyme powder is adsorbed onto diatomaceous earth carrier prior to its use in the interesterification of fats or oils, so that it can be removed from the modified triglyceride following the enzyme-catalyzed interesterification. Because the adsorbed enzyme preparation is removed from the interesterified product following catalysis, no detectable enzyme remains in the interesterified product.

FDA concludes that dietary exposure to the lipase enzyme preparation is negligible and therefore does not present a basis for concern about use of the lipase enzyme preparation.

IV. Specifications

The agency finds that, because the potential impurities in the lipase enzyme preparation that may originate from the source or manufacturing process do not raise any basis for concern about the safe use of the preparation, the general requirements and additional requirements for enzyme preparations in the monograph on Enzyme Preparations in the Food Chemicals Codex, 4th ed. (1996), which are being incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51, are adequate as minimum criteria for food-grade lipase enzyme preparation. Lipase assay can be performed using a method entitled ''Lipase Activity'' (Ref. 24) or by using any appropriate validated method.

V. Conclusions

The agency has evaluated all available information and finds, based upon the published information about the identity and function of lipase, that the enzyme component of lipase enzyme preparation will achieve its intended technical effect and raises no toxicity or allergenicity concerns. In addition, the agency finds, based upon the published information about the identity and function of lipase, that the enzyme component of the lipase enzyme preparation is similar in function to other lipases that are used in food processing to catalyze the hydrolysis of ester bonds at the 1- or 3-position of the glycerol component of a triglyceride. The agency further finds, based upon generally available and accepted information, that when the lipase enzyme preparation is manufactured in accordance with § 184.1420, the source, *R. niveus*, and the manufacturing process will not introduce impurities into the preparation that may render its use unsafe. Finally, the agency finds that dietary exposure to the lipase enzyme preparation from the petitioned use does not present a basis for concern about use of the lipase enzyme preparation. Therefore, the agency concludes, based upon the evaluation of published data and information, corroborated by unpublished data and information, and based upon scientific procedures (§ 170.30(b)), that the lipase enzyme preparation described in the regulation set out below is GRAS for use as an enzymatic catalyst in the interesterification of fats and oils.

VI. Environmental Considerations

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

VII. Analysis For Executive Order 12866

FDA has examined the impacts of this final rule under Executive Order 12866. Executive Order 12866 directs Federal agencies to assess the costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects; distributive impacts; and equity). According to Executive Order 12866, a regulatory action is significant if it meets any one of a number of specified conditions, including having an annual effect on the economy of $100 million, adversely affecting in a material way a sector of the economy, competition, or jobs, or if it raises novel legal or policy issues. FDA finds that this final rule is not a significant regulatory action as defined by Executive Order 12866. In addition, the agency has determined that this final rule is not a major rule for the purpose of Congressional review.

The primary benefit of this action is to remove uncertainty about the regulatory status of the petitioned

substance. No compliance costs are associated with this final rule because no new activity is required and no current or future activity is prohibited by this rule.

VIII. Regulatory Flexibility Analysis

FDA has examined the impacts of this final rule under the Regulatory Flexibility Act. The Regulatory Flexibility Act (5 U.S.C. 601–612) requires Federal agencies to consider alternatives that would minimize the economic impact of their regulations on small entities. No compliance costs are associated with this final rule because no new activity is required and no current or future activity is prohibited. Accordingly, under the Regulatory Flexibility Act (5 U.S.C. 605(b)), the agency certifies that this final rule will not have a significant economic impact on a substantial number of small entities.

IX. References

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

1. Scott, D., ''Enzymes, Industrial,'' Encyclopedia of Chemical Technology, edited by Mark, H. F. et al., John Wiley and Sons, New York, 3d ed., 9:173–224, 1978.

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3. Ratledge, C., ''Biotechnology as Applied to the Oils and Fats Industry,'' *Fette Seifen Anstrichmittel*, 86:379–389, 1984.

4. MacRae, A. R., and R. C. Hammond, ''Present and Future Applications of Lipases,'' *Biotechnology and Genetic Engineering Reviews*, 3:193–217, 1985.

5. IUB, ''Enzyme Nomenclature 1992,'' Academic Press, New York, p. 307, 1992.

6. Inui, T., Y. Takeda, and H. Iizuka, ''Taxonomical Studies on Genus *Rhizopus*,'' *Journal of General and Applied Microbiology*, 11:1–121, 1965.

7. Beckhorn, E. J., M. D. Labee, and L. A. Underkofler, ''Production and Use of Microbial Enzymes for Food Processing,'' *Journal of Agricultural and Food Chemistry*, 13:30–34, 1965.

8. Underkofler, L. A., R. R. Barton, and S. S. Rennet, ''Microbiological Process Report—Production of Microbial Enzymes and Their Applications,'' *Applied Microbiology*, 6:212–221, 1958.

9. Chibata, Ichiro, ed., Immobilized Enzymes—Research and Development, John Wiley and Sons, New York, 1978.

10. Chaplin, M. F., and C. Bucke, Enzyme Technology, Cambridge University Press, New York, 1990.

11. Shahani, K. M., ''Lipases and Esterases,'' Enzymes in Food Processing, edited by Reed, G., Academic Press, New York, 2d ed., pp. 208–214, 1975.

12. Reed, G., ''Industrial Enzymes-Now Speed Natural Processes,'' *Food Engineering*, 24:105–109, 1952.

13. De Becze, G. I., ''Food Enzymes,'' *Critical Reviews in Food Technology*, 1:479–518, 1970.

14. Codex Alimentarius, Joint FAO/WHO Food Standards Programme, Food and Agriculture Organization of the United Nations/World Health Organization, Rome, vol. 1, 2d ed., 1992.

15. Pariza, M. W., and E. M. Foster, ''Determining the Safety of Enzymes Used in Food Processing,'' *Journal of Food Protection*, 46:453–468, 1983.

16. Shils, M. E., J. A. Olson and M. Shike, eds., Modern Nutrition in Health and Disease, Lea & Febiger, Philadelphia, 8th ed., pp. 51–57, 1994.

17. ''Evaluation of the Health Aspects of Papain as a Food Ingredient,'' Select Committee on GRAS Substances, Washington, DC, available through U.S. Department of Commerce, National Technical Information Service, Order No. PB–274–174, 1977.

18. Fulwiler, R. D., ''Detergent Enzymes—An Industrial Hygiene Challenge,'' *American Industrial Hygiene Association Journal*, 32:73–81, 1971.

19. ''Enzyme-containing Laundering Compounds and Consumer Health,'' National Research Council/National Academy of Sciences, National Technical Information Service, Washington, DC, Order No. PB–204–118, 1971.

20. Monograph on ''Enzyme Preparations,'' Food Chemicals Codex, National Academy Press, Washington, DC, 4th ed., pp. 131 and 133–134, 1996.

21. Memorandum dated October 21, 1988, from Food and Color Additives Review Section, FDA, to Direct Additives Branch, FDA, ''Lipase/Protease Enzyme Preparation Derived from *Rhizopus niveus*.''

22. Memorandum dated March 8, 1989, from Food and Color Additives Review Section, FDA, to Direct Additives Branch, FDA, ''Lipase-Protease Enzyme Preparation from *Rhizopus niveus*.''

23. Memorandum dated April 3, 1990, from Food and Color Additives Review Section, FDA, to Direct Additives Branch, FDA, ''Lipase/Protease Enzyme Preparation from *Rhizopus niveus*. Refinement of Estimated Daily Intake (EDI). Submission of 3–6–90.''

24. Monograph on ''Enzyme Preparations,'' Food Chemicals Codex, National Academy Press, Washington, DC, 4th ed., p. 803, 1996.

List of Subjects in 21 CFR Part 184

Food additives, Incorporation by reference.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, and redelegated to the Director, Center for Food Safety and Applied Nutrition, part 184 is amended as follows:

PART 184—DIRECT FOOD SUBSTANCES AFFIRMED AS GENERALLY RECOGNIZED AS SAFE

1. The authority citation for 21 CFR part 184 continues to read as follows:

Authority: 21 U.S.C. 321, 342, 348, 371.

2. Section 184.1420 is added to subpart B to read as follows:

§ 184.1420 Lipase enzyme preparation derived from Rhizopus niveus.

(a) Lipase enzyme preparation contains lipase enzyme (CAS Reg. No. 9001–62–1), which is obtained from the culture filtrate resulting from a pure culture fermentation of a nonpathogenic and nontoxigenic strain of *Rhizopus niveus*. The enzyme preparation also contains diatomaceous earth as a carrier. The characterizing activity of the enzyme, which catalyzes the interesterification of fats and oils at the 1- and 3-positions of triglycerides, is triacylglycerol lipase (EC 3.1.1.3).

(b) The ingredient meets the general requirements and additional requirements for enzyme preparations in the monograph on Enzyme Preparations in the ''Food Chemicals Codex,'' 4th ed. (1996), pp. 133 and 134, which is incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies are available from the National Academy Press, 2101 Constitution Ave. NW., Washington, DC 20418, or may be examined at the Center for Food Safety and Applied Nutrition's Library, 200 C St. SW., rm. 3321, Washington, DC, or the Office of the Federal Register, 800 North Capitol St. NW., suite 700, Washington, DC.

(c) In accordance with § 184.1(b)(1), the ingredient is used in food with no limitation other than current good manufacturing practice. The affirmation of this ingredient as generally recognized as safe as a direct human food ingredient is based upon the following current good manufacturing practice conditions of use:

(1) The ingredient is used as an enzyme as defined in § 170.3(o)(9) of this chapter for the interesterification of fats and oils.

(2) The ingredient is used in food at levels not to exceed current good manufacturing practice.

Dated: April 14, 1998.

L. Robert Lake,

Director, Office of Policy, Planning and Strategic Initiatives, Center for Food Safety and Applied Nutrition.

[FR Doc. 98–11681 Filed 5–1–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 522

Implantation or Injectable Dosage Form New Animal Drugs; Propofol

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a new animal drug application (NADA) filed by Abbott Laboratories. The NADA provides for veterinary prescription use of propofol emulsion for intravenous injection in dogs as an anesthetic.

EFFECTIVE DATE: May 4, 1998.

FOR FURTHER INFORMATION CONTACT: Melanie R. Berson, Center ForVeterinary Medicine (HFV–110), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–594–1612.

SUPPLEMENTARY INFORMATION: Abbott Laboratories, 1401 Sheridan Rd., North Chicago, IL 60064–4000, filed NADA 141–098 that provides for veterinary prescription use of PropoFlo® (propofol) emulsion for intravenous injection in dogs for induction of anesthesia, maintenance of anesthesia, or induction of anesthesia where maintenance is provided by inhalation anesthetic. The NADA is approved as of March 13, 1998, and the regulations are amended in 21 CFR 522.2005(b) to reflect the approval. The basis of approval is discussed in the freedom of information summary.

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

Under section 512(c)(2)(F)(ii) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b(c)(2)(F)(ii), this approval for nonfood-producing animals qualifies for 3 years of marketing exclusivity beginning March 13, 1998, because the application contains substantial evidence of the effectiveness of the drug involved and studies of animal safety required for approval and conducted or sponsored by the applicant.

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

List of Subjects in 21 CFR Part 522

Animal drugs.

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

PART 522—IMPLANTATION OR INJECTABLE DOSAGE FORM NEW ANIMAL DRUGS

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

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

§ 522.2005 [Amended]

2. Section 522.2005 *Propofol injection* is amended in paragraph (b) by removing ''No. 000061'' and adding in its place ''Nos. 000061 and 000074''.

Dated: April 22, 1998.

Stephen F. Sundlof,

Director, Center for Veterinary Medicine.

[FR Doc. 98–11740 Filed 5–1–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 558

New Animal Drugs For Use In Animal Feeds; Monensin

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of two supplemental new animal drug applications (NADA's) filed by Elanco Animal Health, Division of Eli Lilly and Co. The supplemental NADA's provide a revised specification for monensin bulk drug substance used to make monensin Type A medicated articles.

EFFECTIVE DATE: May 4, 1998.

FOR FURTHER INFORMATION CONTACT: Mary G. Leadbetter, Center for Veterinary Medicine (HFV–142), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–594–1662.

SUPPLEMENTARY INFORMATION: Elanco Animal Health, Division of Eli Lilly and Co., Lilly Corporate Center, Indianapolis, IN 46285, is the sponsor of NADA 38–878 that provides for use of monensin Type A medicated articles to make monensin Type C medicated feeds for chickens, turkeys, and quail, and NADA 95–735 that provides for use of monensin Type A medicated articles to make monensin Type B and C medicated feeds for cattle and goats. Elanco filed supplemental NADA's that provide revised assay information used in checking the specifications of the monensin bulk drug substance used in Type A medicated articles. The supplemental NADA's were approved as of March 17, 1997, and the regulations are amended in 21 CFR 558.355(a) to reflect the approval.

Approval of these supplements did not require a freedom of information summary because the approvals concern a change in specifications of the monensin bulk drug substance. This change does not affect the product's safety or effectiveness.

The agency has determined under 21 CFR 25.33(a)(3) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

List of Subjects in 21 CFR Part 558

Animal drugs, Animal feeds.

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

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

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

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

§ 558.355 [Amended]

2. Section 558.355 *Monensin* is amended in paragraph (a) after the parenthetical phrase by removing the period at the end of the second sentence, and by adding the phrase '', or, using High Performance Liquid Chromatography, the factor distribution of monensin Factor A or B is calculated as the percentage of total biopotency of all peaks.''

Dated: April 21, 1998.

Andrew J. Beaulieu,

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

[FR Doc. 98–11741 Filed 5–1–98; 8:45 am]

BILLING CODE 4160–01–F

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Part 4231

RIN 1212–AA69

Mergers and Transfers Between Multiemployer Plans

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final rule.

SUMMARY: The Pension Benefit Guaranty Corporation is amending its regulation on Mergers and Transfers Between Multiemployer Plans to clarify how the rules are to be applied to plans terminated by mass withdrawal and to make other minor changes and clarifications in the regulation.

EFFECTIVE DATE: June 3, 1998.

FOR FURTHER INFORMATION CONTACT: Deborah C. Murphy, Attorney, Office of the General Counsel, suite 340, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005–4026; 202–326–4024 (202–326–4179 for TTY and TDD).

SUPPLEMENTARY INFORMATION:

Background

Under section 4231 (a) and (b) of ERISA, a merger, or a transfer of assets and liabilities, between multiemployer plans must satisfy four requirements unless otherwise provided in regulations prescribed by the PBGC:

(1) The PBGC must receive 120 days' advance notice of the transaction;

(2) Accrued benefits must not be reduced;

(3) There must be no reasonable likelihood that benefits will be suspended as a result of plan insolvency; and

(4) An actuarial valuation of each affected plan must have been performed as prescribed in section 4231(b)(4).

The PBGC's regulation on Mergers and Transfers Between Multiemployer Plans (29 CFR part 4231) prescribes procedures for requesting a determination that a merger or transfer satisfies applicable requirements, allows the PBGC to waive the 120-day notice requirement, and sets higher-level and lower-level requirements for ''safe harbor'' plan solvency tests and for valuation standards. Whether the higher-level or lower-level requirements apply depends on whether a ''significant transfer'' is involved.

On May 1, 1997, the PBGC published for public comment (at 62 FR 23700) a proposed rule to amend part 4231. One commenter submitted comments. The final rule reflects changes made in response to the comments.

Terminated Plan Transactions

The proposed amendment provided that transactions involving plans terminated by mass withdrawal under ERISA section 4041A(a)(2) would (except for ''*de minimis*'' transactions) be governed by the higher-level valuation standard and ''safe harbor'' solvency test. The proposed amendment also extended to ''*de minimis*'' terminated plan transactions the requirement that actuarial valuation reports be submitted to the PBGC.

The commenter expressed concern that the proposed amendment would ''have the adverse effect of making it more expensive for a large, well-funded plan to rescue a small terminated plan by absorbing it into a large, stable asset pool.'' The final regulation adopts the commenter's suggestion that a plan not be subjected to the higher-level valuation provisions simply because it was involved in a terminated plan transaction if it were not otherwise ''significantly affected'' (see §§ 4231.5 and 4231.9(b)(1)(iii)).

Other Changes

The commenter pointed out that for consistency with other provisions, redesignated § 4231.6(a)(2) should refer to ''the first five years beginning on or after the proposed effective date'' (rather than just ''after'' that date). The PBGC agrees and has made the suggested change.

Paperwork Reduction Act

The collection of information requirements in Part 4231 as amended have been approved by the Office of Management and Budget under control number 1212–0022 (expires June 30, 2000). 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.

Compliance With Rulemaking Guidelines

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

The PBGC certifies that the amendment in this rule will not have a significant economic impact on a substantial number of small entities. This certification is based on the fact that the primary substantive effect of the amendment is to liberalize certain existing requirements and to clarify the application of existing requirements to a very rare category of transactions, viz., multiemployer mergers and transfers involving plans that have terminated by mass withdrawal. (The PBGC is aware of only two such transactions since section 4231 of ERISA was enacted.) Accordingly, as provided in section 605(b) of the Regulatory Flexibility Act, compliance with sections 603 and 604 of the Regulatory Flexibility Act is not required.

List of Subjects in 29 CFR Part 4231

Pensions, Reporting and recordkeeping requirements.

For the reasons given above, 29 CFR part 4231 is revised to read as follows.

PART 4231—MERGERS AND TRANSFERS BETWEEN MULTIEMPLOYER PLANS

Sec.
4231.1 Purpose and scope.
4231.2 Definitions.
4231.3 Requirements for mergers and transfers.
4231.4 Preservation of accrued benefits.
4231.5 Valuation requirement.
4231.6 Plan solvency tests.
4231.7 *De minimis* mergers and transfers.
4231.8 Notice of merger or transfer.
4231.9 Request for compliance determination.
4231.10 Actuarial calculations and assumptions.

Authority: 29 U.S.C. 1302(b)(3), 1411.

§ 4231.1 Purpose and scope.

(a) *Purpose.* The purpose of this part is to prescribe notice requirements under section 4231 of ERISA for mergers and transfers of assets or liabilities among multiemployer pension plans. This part also interprets the other requirements of section 4231 and prescribes special rules for *de minimis* mergers and transfers. The collections of information in this part have been approved by the Office of Management and Budget under OMB control number 1212–0022.

(b) *Scope.* This part applies to mergers and transfers among multiemployer plans where all of the plans immediately before and immediately after the transaction are multiemployer plans covered by title IV of ERISA.

§ 4231.2 Definitions.

The following terms are defined in § 4001.2 of this chapter: Code, EIN, ERISA, fair market value, IRS, multiemployer plan, PBGC, plan, plan year, and PN.

In addition, for purposes of this part:

Actuarial valuation means a valuation of assets and liabilities performed by an enrolled actuary using the actuarial assumptions used for purposes of determining the charges and credits to the funding standard account under section 302 of ERISA and section 412 of the Code.

Certified change of collective bargaining representative means a change of collective bargaining representative certified under the Labor-Management Relations Act of 1947, as amended, or the Railway Labor Act, as amended.

Fair market value of assets has the same meaning as the term has for minimum funding purposes under section 302 of ERISA and section 412 of the Code.

Merger means the combining of two or more plans into a single plan. For example, a consolidation of two plans into a new plan is a merger.

Significantly affected plan means a plan that—

(1) Transfers assets that equal or exceed 15 percent of its assets before the transfer,

(2) Receives a transfer of unfunded accrued benefits that equal or exceed 15 percent of its assets before the transfer,

(3) Is created by a spinoff from another plan, or

(4) Engages in a merger or transfer (other than a *de minimis* merger or transfer) either—

(i) After such plan has terminated by mass withdrawal under section 4041A(a)(2) of ERISA, or

(ii) With another plan that has so terminated.

Transfer and *transfer of assets or liabilities* mean a diminution of assets or liabilities with respect to one plan and the acquisition of these assets or the assumption of these liabilities by another plan or plans (including a plan that did not exist prior to the transfer). However, the shifting of assets or liabilities pursuant to a written reciprocity agreement between two multiemployer plans in which one plan assumes liabilities of another plan is not a transfer of assets or liabilities. In addition, the shifting of assets between several funding media used for a single plan (such as between trusts, between annuity contracts, or between trusts and annuity contracts) is not a transfer of assets or liabilities.

Unfunded accrued benefits means the excess of the present value of a plan's accrued benefits over the fair market value of its assets, determined on the basis of the actuarial valuation required under § 4231.5(b).

§ 4231.3 Requirements for mergers and transfers.

(a) *General requirements.* A plan sponsor may not cause a multiemployer plan to merge with one or more multiemployer plans or transfer assets or liabilities to or from another multiemployer plan unless the merger or transfer satisfies all of the following requirements:

(1) No participant's or beneficiary's accrued benefit is lower immediately after the effective date of the merger or transfer than the benefit immediately before that date.

(2) Actuarial valuations of the plans that existed before the merger or transfer have been performed in accordance with § 4231.5.

(3) For each plan that exists after the transaction, an enrolled actuary—

(i) Determines that the plan meets the applicable plan solvency requirement set forth in § 4231.6; or

(ii) Otherwise demonstrates that benefits under the plan are not reasonably expected to be subject to suspension under section 4245 of ERISA.

(4) The plan sponsor notifies the PBGC of the merger or transfer in accordance with § 4231.8.

(b) *Compliance determination.* If a plan sponsor requests a determination that a merger or transfer that may otherwise be prohibited by section 406(a) or (b)(2) of ERISA satisfies the requirements of section 4231 of ERISA, the plan sponsor must submit the information described in § 4231.9 in addition to the information required by § 4231.8. PBGC may request additional information if necessary to determine whether a merger or transfer complies with the requirements of section 4231 and this part. Plan sponsors are not required to request a compliance determination. Under section 4231(c) of ERISA, if the PBGC determines that the merger or transfer complies with section 4231 of ERISA and this part, the merger or transfer will not constitute a violation of the prohibited transaction provisions of section 406(a) and (b)(2) of ERISA.

(c) *Certified change in bargaining representative.* Transfers of assets and liabilities pursuant to a certified change in bargaining representative are governed by section 4235 of ERISA. Plan sponsors involved in such transfers are not required to comply with this part. However, under section 4235(f)(1) of ERISA, the plan sponsors of the plans involved in the transfer may agree to a transfer that complies with sections 4231 and 4234 of ERISA. Plan sponsors that elect to comply with sections 4231 and 4234 must comply with the rules in this part.

§ 4231.4 Preservation of accrued benefits.

Section 4231(b)(2) of ERISA and § 4231.3(a)(1) require that no participant's or beneficiary's accrued benefit may be lower immediately after the effective date of the merger or transfer than the benefit immediately before the merger or transfer. A plan that assumes an obligation to pay benefits for a group of participants satisfies this requirement only if the plan contains a provision preserving all accrued benefits. The determination of what is an accrued benefit must be made in accordance with section 411 of the Code and the regulations thereunder.

§ 4231.5 Valuation requirement.

(a) *In general.* For a plan that is not a significantly affected plan, or that is a significantly affected plan only because the merger or transfer involves a plan that has terminated by mass withdrawal under section 4041A(a)(2) of ERISA, the actuarial valuation requirement under section 4231(b)(4) of ERISA and § 4231.3(a)(2) is satisfied if an actuarial valuation has been performed for the plan based on the plan's assets and liabilities as of a date not more than three years before the date on which the notice of the merger or transfer is filed.

(b) *Significantly affected plans.* For a significantly affected plan, other than a plan that is a significantly affected plan only because the merger or transfer involves a plan that has terminated by mass withdrawal under section 4041A(a)(2) of ERISA, the actuarial valuation requirement under section 4231(b)(4) of ERISA and § 4231.3(a)(2) is satisfied only if an actuarial valuation has been performed for the plan based on the plan's assets and liabilities as of a date not earlier than the first day of the last plan year ending before the proposed effective date of the transaction. The valuation must separately identify assets, contributions, and liabilities being transferred and must be based on the actuarial assumptions and methods that are expected to be used for the plan for the first plan year beginning after the transfer.

§ 4231.6 Plan solvency tests.

(a) *In general.* For a plan that is not a significantly affected plan, the plan solvency requirement of section 4231(b)(3) of ERISA and § 4231.3(a)(3)(i) is satisfied if—

(1) The expected fair market value of plan assets immediately after the merger or transfer equals or exceeds five times the benefit payments for the last plan year ending before the proposed

effective date of the merger or transfer; or

(2) In each of the first five plan years beginning on or after the proposed effective date of the merger or transfer, expected plan assets plus expected contributions and investment earnings equal or exceed expected expenses and benefit payments for the plan year.

(b) *Significantly affected plans.* The plan solvency requirement of section 4231(b)(3) of ERISA and § 4231.3(a)(3)(i) is satisfied for a significantly affected plan if all of the following requirements are met:

(1) Expected contributions equal or exceed the estimated amount necessary to satisfy the minimum funding requirement of section 412(a) of the Code (including reorganization funding, if applicable) for the five plan years beginning on or after the proposed effective date of the transaction.

(2) The expected fair market value of plan assets immediately after the transaction equal or exceed the total amount of expected benefit payments for the first five plan years beginning on or after the proposed effective date of the transaction.

(3) Expected contributions for the first plan year beginning on or after the proposed effective date of the transaction equal or exceed expected benefit payments for that plan year.

(4) Expected contributions for the amortization period equal or exceed unfunded accrued benefits plus expected normal costs. The actuary may select as the amortization period either—

(i) The first 25 plan years beginning on or after the proposed effective date of the transaction, or

(ii) The amortization period for the resulting base when the combined charge base and the combined credit base are offset under section 412(b)(4) of the Code.

(c) *Rules for determinations.* In determining whether a transaction satisfies the plan solvency requirements set forth in this section, the following rules apply:

(1) Expected contributions after a merger or transfer must be determined by assuming that contributions for each plan year will equal contributions for the last full plan year ending before the date on which the notice of merger or transfer is filed with the PBGC. Contributions must be adjusted, however, to reflect—

(i) The merger or transfer,

(ii) Any change in the rate of employer contributions that has been negotiated (whether or not in effect), and

(iii) Any trend of changing contribution base units over the preceding five plan years or other period of time that can be demonstrated to be more appropriate.

(2) Expected normal costs must be determined under the funding method and assumptions expected to be used by the plan actuary for purposes of determining the minimum funding requirement under section 412 of the Code (which requires that such assumptions be reasonable in the aggregate). If the plan uses an aggregate funding method, normal costs must be determined under the entry age normal method.

(3) Expected benefit payments must be determined by assuming that current benefits remain in effect and that all scheduled increases in benefits occur.

(4) The expected fair market value of plan assets immediately after the merger or transfer must be based on the most recent data available immediately before the date on which the notice is filed.

(5) Expected investment earnings must be determined using the same interest assumption to be used for determining the minimum funding requirement under section 412 of the Code.

(6) Expected expenses must be determined using expenses in the last plan year ending before the notice is filed, adjusted to reflect any anticipated changes.

(7) Expected plan assets for a plan year must be determined by adjusting the most current data on fair market value of plan assets to reflect expected contributions, investment earnings, benefit payments and expenses for each plan year between the date of the most current data and the beginning of the plan year for which expected assets are being determined.

§ 4231.7 De minimis mergers and transfers.

(a) *Special plan solvency rule.* The determination of whether a *de minimis* merger or transfer satisfies the plan solvency requirement in § 4231.6(a) may be made without regard to any other *de minimis* mergers or transfers that have occurred since the last actuarial valuation.

(b) De minimis *merger defined.* A merger is *de minimis* if the present value of accrued benefits (whether or not vested) of one plan is less than 3 percent of the fair market value of the other plan's assets.

(c) De minimis *transfer defined.* A transfer of assets or liabilities is *de minimis* if —

(1) The fair market value of the assets transferred, if any, is less than 3 percent of the fair market value of all the assets of the transferor plan;

(2) The present value of the accrued benefits transferred (whether or not vested) is less than 3 percent of the fair market value of all the assets of the transferee plan; and

(3) The transferee plan is not a plan that has terminated under section 4041A(a)(2) of ERISA.

(d) *Value of assets and benefits.* For purposes of paragraphs (b) and (c) of this section, the value of plan assets and accrued benefits may be determined as of any date prior to the proposed effective date of the transaction, but not earlier than the date of the most recent actuarial valuation.

(e) *Aggregation required.* In determining whether a merger or transfer is *de minimis,* the assets and accrued benefits transferred in previous *de minimis* mergers and transfers within the same plan year must be aggregated as described in paragraphs (e)(1) and (e)(2) of this section. For the purposes of those paragraphs, the value of plan assets may be determined as of the date during the plan year on which the total value of the plan's assets is the highest.

(1) A merger is not *de minimis* if the total present value of accrued benefits merged into a plan, when aggregated with all prior *de minimis* mergers of and transfers to that plan effective within the same plan year, equals or exceeds 3 percent of the value of the plan's assets.

(2) A transfer is not *de minimis* if, when aggregated with all previous *de minimis* mergers and transfers effective within the same plan year—

(i) The value of all assets transferred from a plan equals or exceeds 3 percent of the value of the plan's assets; or

(ii) The present value of all accrued benefits transferred to a plan equals or exceeds 3 percent of the plan's assets.

§ 4231.8 Notice of merger or transfer.

(a) *When to file.* Except as provided in paragraph (f) of this section, a notice of a proposed merger or transfer must be filed not less than 120 days before the effective date of the transaction. For purposes of this part, the effective date of a merger or transfer is the earlier of—

(1) The date on which one plan assumes liability for benefits accrued under another plan involved in the transaction; or

(2) The date on which one plan transfers assets to another plan involved in the transaction.

(b) *Who must file.* The plan sponsors of all plans involved in a merger or transfer, or the duly authorized representative(s) acting on behalf of the plan sponsors, must jointly file the notice required by this section.

(c) *Where to file.* The notice must be delivered to Reports Processing, Insurance Operations Department, Pension Benefit Guaranty Corporation, 1200 K Street NW., Washington, DC 20005–4026.

(d) *Filing date.* For purposes of paragraph (a) of this section, the notice is not considered filed until all of the information required by paragraph (e) of this section has been submitted. Information filed under this part is considered filed—

(1) On the date of the United States postmark stamped on the cover in which the information is mailed, if—

(i) The postmark was made by the United States Postal Service; and

(ii) The information was mailed postage prepaid, properly addressed to the PBGC; or

(2) On the date it is received by the PBGC, if the conditions stated in paragraph (d)(1) of this section are not met. Information received on a weekend or Federal holiday or after 5:00 p.m. on a weekday is considered filed on the next regular business day.

(e) *Information required.* Each notice must contain the following information:

(1) For each plan involved in the merger or transfer—

(i) The name of the plan;

(ii) The name, address and telephone number of the plan sponsor and of the plan sponsor's duly authorized representative, if any; and

(iii) The plan sponsor's EIN and the plan's PN and, if different, the EIN or PN last filed with the PBGC. If no EIN or PN has been assigned, the notice must so indicate.

(2) Whether the transaction being reported is a merger or transfer, whether it involves any plan that has terminated under section 4041A(a)(2) of ERISA, whether any significantly affected plan is involved in the transaction (and, if so, identifying each such plan), and whether it is a *de minimis* transaction as defined in § 4231.7 (and, if so, including an enrolled actuary's certification to that effect).

(3) The proposed effective date of the transaction.

(4) A copy of each plan provision stating that no participant's or beneficiary's accrued benefit will be lower immediately after the effective date of the merger or transfer than the benefit immediately before that date.

(5) For each plan that exists after the transaction, one of the following statements, certified by an enrolled actuary:

(i) A statement that the plan satisfies the applicable plan solvency test set forth in § 4231.6, indicating which is the applicable test.

(ii) A statement of the basis on which the actuary has determined that benefits under the plan are not reasonably expected to be subject to suspension under section 4245 of ERISA, including the supporting data or calculations, assumptions and methods.

(6) For each plan that exists before a transaction (unless the transaction is *de minimis* and does not involve any plan that has terminated under section 4041A(a)(2) of ERISA), a copy of the most recent actuarial valuation report that satisfies the requirements of § 4231.5.

(7) For each significantly affected plan that exists after the transaction, the following information used in making the plan solvency determination under § 4231.6(b):

(i) The present value of the accrued benefits and fair market value of plan assets under the valuation required by § 4231.5(b), allocable to the plan after the transaction.

(ii) The fair market value of assets in the plan after the transaction (determined in accordance with § 4231.6(c)(4)).

(iii) The expected benefit payments for the plan in the first plan year beginning on or after the proposed effective date of the transaction (determined in accordance with § 4231.6(c)(3)).

(iv) The contribution rates in effect for the plan for the first plan year beginning on or after the proposed effective date of the transaction.

(v) The expected contributions for the plan in the first plan year beginning on or after the proposed effective date of the transaction (determined in accordance with § 4231.6(c)(1)).

(f) *Waiver of notice.* The PBGC may waive the notice requirements of this section and section 4231(b)(1) of ERISA if—

(1) A plan sponsor demonstrates to the satisfaction of the PBGC that failure to complete the merger or transfer in less than 120 days after filing the notice will cause harm to participants or beneficiaries of the plans involved in the transaction;

(2) The PBGC determines that the transaction complies with the requirements of section 4231 of ERISA; or

(3) The PBGC completes its review of the transaction.

§ 4231.9 Request for compliance determination.

(a) *General.* The plan sponsor(s) of one or more plans involved in a merger or transfer, or the duly authorized representative(s) acting on behalf of the plan sponsor(s), may file a request for a determination that the transaction complies with the requirements of section 4231 of ERISA. The request must contain the information described in paragraph (b) or (c) of this section, as applicable.

(1) *The place of filing.* The request must be delivered to the address set forth in § 4231.8(c).

(2) *Single request permitted for all* de minimis *transactions.* Because the plan solvency test for *de minimis* mergers and transfers is based on the most recent valuation (without adjustment for intervening *de minimis* transactions), a plan sponsor may submit a single request for a compliance determination covering all *de minimis* mergers or transfers that occur between one plan valuation and the next. However, the plan sponsor must still notify PBGC of each *de minimis* merger or transfer separately, in accordance with § 4231.8. The single request for a compliance determination may be filed concurrently with any one of the notices of a *de minimis* merger or transfer.

(b) *Contents of request.* (1) *General.* A request for a compliance determination concerning a merger or transfer that is not *de minimis* must contain—

(i) A copy of the merger or transfer agreement;

(ii) A summary of the required calculations, including a complete description of assumptions and methods, on which the enrolled actuary based each certification that a plan involved in the merger or transfer satisfied a plan solvency test described in § 4231.6; and

(iii) For each significantly affected plan, other than a plan that is a significantly affected plan only because the merger or transfer involves a plan that has terminated by mass withdrawal under section 4041A(a)(2) of ERISA, copies of all actuarial valuations performed within the 5 years preceding the date of filing the notice required under § 4231.8.

(2) De minimis *merger or transfer.* A request for a compliance determination concerning a *de minimis* merger or transfer must contain one of the following statements for each plan that exists after the transaction, certified by an enrolled actuary:

(i) A statement that the plan satisfies one of the plan solvency tests set forth in § 4231.6(a), indicating which test is satisfied.

(ii) A statement of the basis on which the actuary has determined that benefits under the plan are not reasonably expected to be subject to suspension under section 4245 of ERISA, including supporting data or calculations, assumptions and methods.

§ 4231.10 Actuarial calculations and assumptions.

(a) *Most recent valuation.* All calculations required by this part must be based on the most recent actuarial valuation as of the date of filing the notice, updated to show any material changes.

(b) *Assumptions.* All calculations required by this part must be based on methods and assumptions that are reasonable in the aggregate, based on generally accepted actuarial principles.

(c) *Updated calculations.* If the actual effective date of the merger or transfer is more than one year after the date the notice is filed with the PBGC, PBGC may require the plans involved to provide updated calculations and representations based on the actual effective date of the transaction.

Issued in Washington, D.C., this 28th day of April 1998.

Alexis M. Herman,

Chairman, Board of Directors, Pension Benefit Guaranty Corporation.

Issued on the date set forth above pursuant to a resolution of the Board of Directors authorizing its Chairman to issue this final rule.

James J. Keightley,

Secretary, Board of Directors, Pension Benefit Guaranty Corporation.

[FR Doc. 98–11784 Filed 5–1–98; 8:45 am]

BILLING CODE 7708–01–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Parts 100 and 165

[USCG–1998–3772]

Safety Zones, Security Zones, and Special Local Regulations

AGENCY: Coast Guard, DOT.

ACTION: Notice of temporary rules issued.

SUMMARY: This document provides required notice of substantive rules adopted by the Coast Guard and temporarily effective between January 1, 1998 and March 31, 1998, which were not published in the **Federal Register**. This quarterly notice lists temporary local regulations, security zones, and safety zones, which were of limited duration and for which timely publication in the **Federal Register** may not have been possible.

DATES: This notice lists temporary Coast Guard regulations that became effective and were terminated between January 1, 1998 and March 31, 1998, as well as several regulations which were not included in the previous quarterly list.

ADDRESSES: The Docket Management Facility maintains the public docket for this notice. Documents indicated in this preamble will be available for inspection or copying at the Docket Management Facility, U.S. Department of Transportation, Room PL–401, 400 Seventh Street SW., Washington, DC 20593–0001 between 10 a.m. and 5 p.m., Monday through Friday, except Federal Holidays. You may electronically access the public docket for this notice on the Internet at http://dms.dot.gov, Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: For information concerning the quarterly list contact Lieutenant Christopher S. Keane, Office of Regulations and Administrative Law, USCG, at (202) 267–6233 between the hours of 8 a.m. and 3 p.m., Monday through Friday. For information concerning the Docket Management Facility contact Paullette Twine, Chief, Documentary Services Division, U.S. Department of Transportation, (202) 866–9329.

SUPPLEMENTARY INFORMATION: District Commanders and Captains of the Port (COTP) must be immediately responsive to the safety needs of the waters within their jurisdiction; therefore, District Commanders and COTPs have been delegated the authority to issue certain regulations. Safety zones may be established for safety or environmental purposes. A safety zone may be stationary and described by fixed limits or it may be described as a zone around a vessel in motion. Security zones limit access to vessels, ports, or waterfront facilities to prevent injury or damage. Special local regulations are issued to enhance the safety of participants and spectators at regattas and other marine events. Timely publication of these regulations in the **Federal Register** is often precluded when a regulation responds to an emergency, or when an event occurs without sufficient advance notice. However, the affected public is informed of these regulations through Local Notices to Mariners, press releases, and other means. However, actual notification is provided by Coast Guard patrol vessels enforcing the restrictions imposed by the regulation. Because mariners are notified by Coast Guard officials on-scene prior to an enforcement action, **Federal Register** notice is not required to place the special local regulation, security zone, or safety zone in effect. However, the Coast Guard, by law, must publish in the **Federal Register** notice of substantial rules adopted. To discharge this legal obligation without imposing undue expense on the public, the Coast Guard periodically publishes a list of these temporary special local regulations, security zones, and safety zones. Permanent regulations are not included in this list because they are published in their entirety in the **Federal Register**. Temporary regulations may also be published in their entirety if sufficient time is available to do so before they are placed in effect or terminated. The safety zones, special local regulations and security zones listed in this notice have been exempted from review under Executive Order 12866 because of their emergency nature, or limited scope and temporary effectiveness.

The following regulations were placed in effect temporarily during the period January 1, 1998 and March 31, 1998, unless otherwise indicated.

Michael L. Emge,

Commander, U.S. Coast Guard, Executive Secretary, Marine Safety Council.

QUARTERLY REPORT

District docket	Location	Type	Effective date
01–98–001	EAST RIVER, NEW YORK	SECURITY ZONE	1/8/98
01–98–003	EAST RIVER, NEW YORK	SECURITY ZONE	1/15/98
01–98–004	PORTLAND, ME	SAFETY ZONE	1/28/98
01–98–007	BATH, ME	SAFETY ZONE	1/24/98
01–98–010	PORTLAND, ME	SAFETY ZONE	2/18/98
01–98–011	PORTLAND, ME	SAFETY ZONE	3/16/98
01–98–019	KENNEBEC RIVER, BATH, ME	SAFETY ZONE	3/28/98
01–98–022	BOSTON, MA	SECURITY ZONE	3/13/98
05–98–003	JAMES RIVER, NEWPORT NEWS, VA	SAFETY ZONE	1/12/98
05–98–005	ALBERMARLE SOUND, HARVEY POINT, AND VICINITY	SECURITY ZONE	1/30/98

QUARTERLY REPORT—Continued

District docket	Location	Type	Effective date
05–98–007	OUTER BANKS, DUCK, NC, AND VICINITY	SECURITY ZONE	2/1/98
05–98–019	HAMPTON ROADS, WILLOUGHBY BAY, VA	SAFETY ZONE	3/11/98
05–98–022	PORT NORFOLK REACH, NORFOLK, VA	SAFETY ZONE	3/20/98
05–98–023	ELIZABETH RIVER, NORFOLK, VA	SAFETY ZONE	3/22/98
07–98–012	BAHIA DE MAYAGUEZ, PUERTO RICO	SPECIAL LOCAL	3/22/98
09–98–001	CALUMET RIVER	SAFETY ZONE	3/9/98
09–98–02	TOUSSAINT RIVER CHANNEL, OHIO	SAFETY ZONE	3/20/98
13–98–003	COLUMBIA RIVER, RICHLAND, WA	SECURITY/SAFETY ZONE	2/4/98
COTP Docket	**Location**	**Type**	**Effective date**
CORPUS CHRISTI 98–001	MATAGORDA BAY, INTRACOASTAL WATERWAY	SAFETY ZONE	2/2/98
HOUSTON-GALVESTON 98–001.	HOUSTON SHIP CHANNEL, HOUSTON, TX	SAFETY ZONE	1/10/98
HOUSTON-GALVESTON 98–002.	UPPER TRINITY BAY, HOUSTON, TX	SAFETY ZONE	1/18/98
HOUSTON-GALVESTON 98–003.	HOUSTON SHIP CHANNEL, HOUSTON, TX	SAFETY ZONE	1/22/98
HOUSTON-GALVESTON 98–004.	HOUSTON SHIP CHANNEL, HOUSTON, TX	SAFETY ZONE	2/19/98
HOUSTON-GALVESTON MSU 98–102.	BUOY, TX	SAFETY ZONE	2/8/98
HOUSTON-GALVESTON MSU 98–103.	GALVESTON SHIP CHANNEL, GALVESTON, TX	SAFETY ZONE	2/20/98
LOUISVILLE 98–001	OHIO RIVER, MAYSVILLE, KY	SAFETY ZONE	1/4/98
NEW ORLEANS 98–001	LWR MISSISSIPPI RIVER, M. 94 TO M. 96	SAFETY ZONE	2/23/98
NEW ORLEANS 98–002	LWR MISSISSIPPI RIVER, M. 94 TO M. 95	SAFETY ZONE	3/11/98
PORT ARTHUR 98–007	USNS BELLATRIX	SAFETY ZONE	3/21/98
PORT ARTHUR 98–005	NECHES RIVER CLOSURE	SAFETY ZONE	1/16/98
SAN DIEGO 98–002	SAN DIEGO, CA	SAFETY ZONE	1/17/98
SAN DIEGO 98–004	OCEANSIDE HARBOR, OCEANSIDE, CA	SAFETY ZONE	2/4/98
SAN DIEGO 98–008	SAN DIEGO, CA	SAFETY ZONE	3/30/98
SAN FRANCISCO BAY 98–001.	SACRAMENTO-SAN JOAQUIN DELTA, CA	SAFETY ZONE	2/14/98
SAN FRANCISCO BAY 98–002.	SAN FRANCISCO BAY, SAN FRANCISCO, CA	SAFETY ZONE	3/14/98
SAN FRANCISCO BAY 98–003.	SACRAMENTO-SAN JOAQUIN DELTA, CA	SAFETY ZONE	2/19/98
SAN FRANCISCO BAY 98–004.	SACRAMENTO-SAN JOAQUIN DELTA, CA	SAFETY ZONE	2/20/98
SAN FRANCISCO BAY 98–006.	SACRAMENTO-SAN JOAQUIN DELTA, CA	SAFETY ZONE	2/24/98
SAN FRANCISCO BAY 98–007.	HUMBOLDT BAY, CA	SAFETY ZONE	3/15/98
SAN JUAN 98–008	SAN JUAN, PUERTO RICO	SAFETY ZONE	2/14/98
SAN JUAN 98–011	SAN JUAN, PUERTO RICO	SAFETY ZONE	2/19/98
TAMPA 98–022	TAMPA, FL	SAFETY ZONE	3/24/98
TAMPA 98–023	TAMPA, FL	SAFETY ZONE	3/25/98

[FR Doc. 98–11773 Filed 5–1–98; 8:45 am]
BILLING CODE 4910–15–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD05–98–030]

RIN 2115–AE47

Drawbridge Operation Regulations; Atlantic Intracoastal Waterway, Hobucken, NC

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is removing the regulations that govern the operation of the S.R. 304 bridge across the Atlantic Intracoastal Waterway, mile 157.2, Hobucken, North Carolina, because the swing bridge has been removed.

DATES: This rule becomes effective on June 3, 1998.

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

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 553, a notice of proposed rulemaking (NPRM) was not published for this regulation. Good cause exists for not publishing a NPRM because prior removal of the bridge renders a notice and comment period unnecessary.

Background and Purpose

The swing bridge across the Atlantic Intracoastal Waterway, mile 157.2, at Hobucken, North Carolina, was replaced by a high level fixed bridge. The existing swing bridge has been removed, thereby eliminating the need for 33 CFR 117.821(a)(2). This action has no economic consequences. It merely removes regulations for a swing bridge that no longer exists.

This action necessitates redesignating the regulations listed in 33 CFR 117.821(a) (3), (4), (5), and (6) for the drawbridges at Surf City, Figure Eight, Wrightsville Beach, and Sunset Beach along the Atlantic Intracoastal Waterway within North Carolina.

Regulatory Evaluation

This final 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 final rule to be non-existent, therefore, a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), the Coast Guard must consider whether this 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).

This final rule does not affect vessel navigation on this waterway since it merely removes regulations for a bridge which no longer exists. Therefore, the Coast Guard certifies under 5 U.S.C. 605(b), that this final rule will not have a significant economic impact on a substantial number of small entities.

Collection of Information

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

Environment

The Coast Guard considered the environmental impact of this final rule and concluded that under section 2.B.2.b. and item (32)(e) of Figure 2–1 of Commandant Instruction M16475.1C dated November 14, 1997, this final 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

In consideration of the foregoing, the Coast Guard is amending Part 117 of Title 33, Code of Federal Regulations 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. In § 117.821, paragraph (a)(2) is removed and paragraphs (a) (3), (4), (5), and (6) are redesignated as paragraphs (a) (2), (3), (4), and (5), respectively.

Dated: April 23, 1998.

J. Carmichael,

Captain, U.S. Coast Guard, Acting Commander, Fifth Coast Guard District.

[FR Doc. 98–11774 Filed 5–1–98; 8:45 am]

BILLING CODE 4910–15–M

DEPARTMENT OF DEFENSE

Department of the Army, Corps of Engineers

33 CFR Part 207

Navigation Regulations

AGENCY: U.S. Army Corps of Engineers, DoD.

ACTION: Final rule.

SUMMARY: The Corps is amending the navigation regulations for the Red River Waterway, Louisiana and the Yazoo Diversion Canal at Vicksburg, Mississippi. The Red River Waterway navigation regulation is amended to prescribe the maximum length, width, and draft of vessel tows that are allowed to enter the lock chamber for each lockage. The Yazoo Diversion Canal navigation regulation is amended to establish procedures and location for mooring of vessels along the west bank. The maximum length of allowable vessel tow that may enter the lock chamber for each lockage on the Red River Waterway, is increased from 685 feet to 705 feet. The maximum allowable width and draft of tow remains the same at 80 feet and 9 feet, respectively. Increasing the usable tow length to 705 feet will increase the efficiency of lock operations by reducing the number of tow breakups during a locking operation. The navigation regulation for the Yazoo Diversion Canal will clarify vessel mooring locations along the canal west bank for various river stages and provide that fairways will be established by the Vicksburg District Engineer. Establishing fairways and specifying locations along the west bank where vessels may moor during various river stages will control indiscriminate vessel moorings and improve navigation safety.

DATES: The final rule is effective June 3, 1998.

ADDRESSES: HQUSACE, ATTN: CECW–OD, Washington, D.C. 20314–1000.

FOR FURTHER INFORMATION CONTACT: Mr. Jim Hilton, Dredging and Navigation Branch (CECW–OD) at (202) 761–8830 or Mr. Jim Jeffords, Vicksburg District, Operations Division at (601) 631–5274.

SUPPLEMENTARY INFORMATION: The notice of proposed rulemaking was published on Wednesday, March 5, 1997, Vol. 62, No. 43, pages 9996–9997.

Pursuant to its authorities in Section 7 of the Rivers and Harbors Act of 1917 (40 Stat. 266; 33 U.S.C. 1), the Corps is amending the regulations in 33 CFR Part 207. The Commanding Officer, Lower Mississippi Valley Division, Vicksburg, Mississippi has requested an amendment to the regulations in 33 CFR 207.249(b)(5)(iv) and 33 CFR 207.260 (c) and (g). The 685 feet maximum tow length currently allowed in the Red River Waterway lock chamber is based on the design vessel tow length. Increasing the tow length that may safely enter the lock chamber for each lockage to 705 feet, will not affect the safety of either the lock structure or the tow in the chamber during a filling or emptying operation, if the tow is properly secured and positioned.

Discussion of Public Comments and Changes

Section 207.249(b)(5)(iv). Two comments were received to the March 5, 1997, **Federal Register** notice to increase the tow length. These individuals supported the proposed increase in vessel tow length from 685 feet to 705 feet for vessels attempting to pass through the lock during normal pool stages in a single passage.

Section 207.260 (c) and (g). Five comments were received to the proposed amendment to regulate mooring along the east and west banks of the Yazoo Diversion Canal based on water level stages at the Vicksburg gage.

All individuals recognized the danger of mooring along the banks in close proximity to the confluence of the Yazoo Diversion Canal and the Mississippi River. However, there was no consensus on what distance from the confluence vessels could be safely moored along the banks of the canal. Several individuals requested that the proposed mooring location on the west bank be modified, since restricting mooring would cause economic hardship to adjacent property owners. A meeting with the five affected parties resulted in a resolution satisfactory to all. All agreed that no vessel or raft shall be moored along the east bank of the Yazoo Diversion Canal at any stage for approximately 750 feet from the mouth of the canal where it enters into the Mississippi River. Mooring along the west bank would be regulated as follows: At stages below 20 feet on the Vicksburg Gage, no vessel or raft shall be moored along the west bank of the canal between points Latitude 32°21′16″, Longitude 90°53′05″ and Latitude 32°20′55″, Longitude 90°53′18″, which is approximately 1200 feet above and 1200 feet below the public boat launch (foot of Clay Street) at Vicksburg City Front. No vessel or raft shall be moored along the west bank of the canal at any stage from the mouth of the Yazoo Diversion Canal where it enters into the Mississippi River to Latitude 32°20′21″, Longitude 90°53′44″, which is approximately 1200 feet from the mouth.

Procedural Requirements

A. Executive Order 12866

This final rule is not a significant regulatory action under E.O. 12866. The economic impact of this rule is so minimal that further regulatory evaluation is unnecessary. We conclude this because the change benefits the commercial towing industry.

B. Review Under the Regulatory Flexibility Act

These final rules were reviewed under the Regulatory Flexibility Act (Pub. L. 96–354), which requires the preparation of a regulatory flexibility analysis for any regulation that will have a significant economic impact on a substantial number of small entities (i.e., small businesses and small Governments). The economic impact of the change to the tow length on the Red River Waterway and mooring locations on the Yazoo Diversion Canal, will have a positive affect on the towing industry and the general public, with no anticipated navigational safety or interference with existing waterway traffic and accordingly certifies that this final rule has no significant economic impact on small entities.

C. Review Under the National Environmental Policy Act

An environmental assessment has been prepared for this action. We concluded, based on the Red River Waterway increase in tow length and Yazoo Diversion Canal mooring locations, that there is no significant impact to the human environment, and preparation of an environmental impact statement is not required. The environmental assessment was available for review during the public comment period at the Corps Vicksburg District Office, Vicksburg, Mississippi.

D. Collection of Information

This final rule contains no collection of information under the Paperwork Reduction Act (44 U.S.C. 3501 et seq.).

E. Federalism

The Corps has analyzed this final rule under principles and criteria in E.O. 12612 and determined that this final rule has no sufficient federalism implications to warrant preparation of a Federalism Assessment.

F. Unfunded Mandates Act

This final rule does not impose an enforceable duty among the private sector and therefore, is not a Federal private sector mandate and is not subject to the requirements of Section 202 or 205 of the Unfunded Mandates Act. We also found, under Section 203 of the Act, that small Governments are not significantly and uniquely affected by this rulemaking.

List of Subjects in 33 CFR Part 207

Navigation (water), Transportation, and Lockages.

For the reasons set out in the preamble, 33 CFR Part 207 is amended, as follows:

PART 207—NAVIGATION REGULATIONS

1. Authority citation for Part 207 continues to read as follows:

Authority: 40 Stat. 266 (33 U.S.C. 1).

2. Section 207.249 is amended by revising paragraphs (b)(5)(iv) to read as follows:

§ 207.249 Ouachita and Black Rivers, Ark. and La. Mile 0.0 to Mile 338.0 (Camden, Ark.) above the mouth of the Black River; the Red River, La., Mile 6.7 (Junction of Red, Atchafalaya and Old Rivers) to Mile 228.0 (Shreveport, La.); use, administration, and navigation.

* * * * *

(b) * * *

(5) * * *

(iv) The maximum dimensions on the Red River Waterway of a vessel tow attempting to pass through the lock during normal pool stages in a single passage are 80 feet wide, 705 feet long, and 9 feet draft. Tows requiring breaking into two or more sections to pass through the lock may transit the lock at such time as the lockmaster/lock operator determines that they will neither unduly delay the transit of craft of lesser dimensions, nor endanger the lock structure and appurtenances because of wind, current, or other adverse conditions. These craft are also subject to such special handling requirements as the lockmaster/lock operator finds necessary at the time of transit.

* * * * *

3. Section 207.260 is amended by revising paragraphs (c) and (g) to read as follows:

§ 207.260 Yazoo Diversion Canal, Vicksburg, Miss., from its mouth to the entrance of the upper Vicksburg Harbor Extension.

* * * * *

(c) *Mooring.* At stages below 20 feet on the Vicksburg Gage, no vessel or raft shall be moored along the west bank of the canal between points Latitude 32°21′16″, Longitude 90°53′05″ and Latitude 32°20′55″, Longitude 90°53′18″, which is approximately 1200 feet above and 1200 feet below the public boat launch (foot of Clay Street) at Vicksburg City Front. No vessel or raft shall be moored along the west bank of the canal at any stage from the mouth of the Yazoo Diversion Canal where it enters into the Mississippi River to Latitude 32°20′21″, Longitude 90°53′44″, which is approximately 1200 feet from the mouth of the canal. No vessel or raft shall be moored along the east bank of the canal at any stage from the mouth of the Yazoo Diversion Canal where it enters into the Mississippi River to Latitude 32°20′12″, Longitude 90°53′41″, which is approximately 750 feet from the mouth of the canal. When tied up, boats, barges, or rafts shall be moored by bow and stern lines parallel to the bank and as close in as practicable. Lines shall be secured at sufficiently close intervals to insure the vessel or raft will not be drawn away from the bank by winds, current, or other passing vessels. No vessel or raft shall be moored along the banks of the canal for a period longer than five (5) calendar days without written permission from the District Engineer, Corps of Engineers, Vicksburg District

Office, 4155 E. Clay St., Vicksburg, Mississippi 39180–3435.

* * * * *

(g) *Fairway*. A clear channel not less than 175 feet wide as established by the District Engineer shall be left open at all times to permit free and unobstructed navigation by all types of vessels.

Dated: March 25, 1998.

Approved:

Robert W. Burkhardt,

Colonel, Corps of Engineers, Executive Director of Civil Works.

[FR Doc. 98–11689 Filed 5–1–98; 8:45 am]

BILLING CODE 3710–92–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 51 and 85

[AMS–FRL–6007–3]

RIN 2060–AE19

IM Program Requirement—On-Board Diagnostic Checks; Amendment to the Final Rule

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: Today's action revises the federal vehicle inspection and maintenance (I/M) rules relating to the implementation deadline by which states are required to begin On-Board Diagnostic Checks (OBD) as a routine part of basic and enhanced I/M programs. This rule change delays to January 1, 2001, the required implementation date for OBD in basic and enhanced I/M program areas in the Ozone Transport Region (OTR) and in all other areas. During this time extension the Agency will generate, collect and analyze the data necessary to accord OBD checks the appropriate level of emission reduction credits. Additionally, certain clarifying amendments are being made to this rule to allow for updates to the Code of Federal Regulations which are cross-referenced in the OBD rule.

DATES: This rule change is effective May 4, 1998.

ADDRESSES: Materials relevant to this rulemaking are contained in the Public Docket No. A–94–21. The docket is located at the Air Docket, Room M–1500 (6102), Waterside Mall SW, Washington, DC 20460. The docket may be inspected between 8:30 a.m. and 12 noon and between 1:30 p.m. until 5:30 p.m. on weekdays. A reasonable fee may be charged for copying docket material.

FOR FURTHER INFORMATION CONTACT: Buddy Polovick, Office of Mobile Sources, National Vehicle and Fuel Emissions Laboratory, 2565 Plymouth Road, Ann Arbor, Michigan, 48105. Telephone (734) 741–7928.

SUPPLEMENTARY INFORMATION: The preamble, regulatory language and a regulatory announcement are available electronically from the EPA internet Web site. This service is free of charge, except for any cost one may already incur for internet connectivity. An electronic version is made available on the day of publication on the primary Web site listed below. The EPA Office of Mobile Sources also publishes these notices on the secondary Web site listed below.

http://www.epa.gov/EPA-AIR/
(either select desired date or use Search feature)
http://www.epa.gov/OMSWWW/
(look in What's New or under the specific rulemaking topic)

Please note that due to differences between the software used to develop the document and the software into which the document may be downloaded, minor changes in format, pagination, etc. may occur. The version published in the **Federal Register** is the official version of this document.

Regulated Entities

Entities potentially regulated by the minor amendment to the I/M rule are those which adopt, approve, fund or implement I/M programs. Regulated categories and entities include:

Category	Examples of regulated entities
Local government	Local air quality agencies.
State government	State air quality agencies responsible for I/M programs.
Federal government ..	DOT.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. This table lists the types of entities of which EPA is now aware that could potentially be regulated by this I/M amendment. Other types of entities not listed in the table could also be regulated. To determine whether your organization is regulated by this action, you should carefully examine the applicability criteria of 40 CFR 51.350 of the I/M 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.

I. Summary of Rule

Under the Clean Air Act as amended in 1990 (the Act), 42 U.S.C. 7401 *et seq.*, the U.S. Environmental Protection Agency (EPA) published in the **Federal Register** on November 5, 1992, (40 CFR part 51, subpart S) rules relating to motor vehicle inspection and maintenance (I/M) programs (hereafter referred to as the I/M rule; see 57 FR 52950). Subsequent to that rule, the EPA published in the **Federal Register** on August 6, 1996, (40 CFR parts 51 and 85) rules relating to the implementation of On-Board Diagnostic (OBD) checks as a routine part of I/M programs (hereafter referred to as the I/M OBD rule; see 61 FR 40940). EPA published a proposed rulemaking proposing changes to those rules in the **Federal Register** on December 22, 1997 (62 FR 66841). For a full description of all relevant background information please see that notice. EPA today takes final action to amend those OBD rules to delay to January 1, 2001, the deadline by which OBD checks must be implemented in I/M programs.

Today, EPA amends 40 CFR 51.373 to delay the implementation deadline for OBD checks in all I/M areas, including OTR low enhanced areas. Additionally, certain clarifying amendments have been made to allow for updates to Part 86 of the Code of Federal Regulations which are cross-referenced in the OBD rule. The requirement shall remain that states revise their I/M SIPs by August 6, 1998, to include the requirement to implement OBD checks by the January 1, 2001 deadline. For further information on this issue please see the **Public Participation** section of this rule.

Additionally, EPA amends here today two sections of the I/M OBD rule which were not proposed to be amended in the notice of proposed rulemaking for this rule. Those sections, 40 CFR 51.357(b)(4) and 85.2222(c), were inadvertently not identified as sections which also had dates that needed to be realigned with the new testing deadline of January 2001. Those sections indicated that by January 1, 2000, an incomplete readiness evaluation of the automobile's OBD system or a failure of the OBD diagnostic check were required to result in failure of the I/M test. Both of these sections should be amended to require failure under these circumstances by January 1, 2001, to be consistent with the change of the start of OBD testing. EPA regards this late addition to the rules to be amended as noncontroversial because such a timeline was implied by moving the start dates for those tests to January 1, 2001. Obviously vehicles could not be

required to fail before they are required to be tested.

EPA believes that the overall issue of revising dates to conform with delayed OBD testing was sufficiently raised in the rulemaking process and that further comment would be unnecessary. For these reasons, EPA invokes the ''good cause'' clause of the Administrative Procedure Act 553(b)(B) to make these changes today in this final notice instead of unnecessarily reproposing another rulemaking for these changes, which EPA believes would be contrary to the public interest in achieving prompt, consistent I/M OBD rules.

It is important to note that EPA has not changed the sections that allow for states to implement OBD inspections before the required deadline if desired, and to allow failure of OBD to result in failure of the I/M test, thereby requiring repair in such cases. Both efforts shall remain optional to the states. However, states which choose to conduct OBD checks, on vehicles so equipped, before the new deadline, may earn minimal emission reduction credits for doing so only if they perform the OBD checks in conjunction with the exhaust and (where applicable) evaporative tests. States may not yet earn emissions reductions credits for only OBD checks, in the absence of exhaust and evaporative testing, which are comparable to exhaust and evaporative test credits. Only after the Agency has accorded OBD a defined level of emissions reduction credit can states potentially drop the exhaust and evaporative tests and still earn comparable emission reduction credits for performing only OBD checks on those vehicles. Should EPA and states complete testing and review of OBD systems sooner than expected, the Agency may be able to make credit available for OBD testing without exhaust and evaporative testing, to states which choose to implement I/M OBD checks before January, 2001. Any questions about credit assignments for OBD checks should be directed to the contact person for this rule.

These amendments are consistent with the relevant requirements of the Act. These changes will not result in any change in health and environmental benefits. The only Act-required deadline with regard to OBD testing is that described above, such that states must revise their SIPs by August 6, 1998. [The Act requires such revisions by two years from promulgation of the OBD rules, or August 6, 1996 in this case.] That requirement has been retained in this amendment. The Act does not require a specific deadline for implementation of OBD testing. EPA believes it is reasonable to extend the previously established deadline pending further study of the effectiveness of OBD testing for the reasons stated above.

II. Public Participation

The following sections describe the submitted comments and EPA's response thereto.

A. Request to Extend Comment Period

1. Summary of Comments

One commenter requested an extension of the comment period from the 15 days provided in the NPRM to the full and customary 30 day period. They noted that the timing of the 15 day period coincided with the holidays and did not provide ample time to consider the NPRM and submit full comment.

2. Response to Comments

EPA noted in the NPRM for this rule that the shortened comment period was necessary because of the tight timeline for promulgating these amendments. Considerable advance notice of the Agency's intentions had been provided to all stakeholders months in advance of the NPRM. Because the timing of the rule may have been inconvenient and because the Agency was still reviewing comments, additional time was provided to that commenter to expand their comments. EPA opted to not pursue publishing a formal extension of the comment period for an additional 15 days because that time would likely have lapsed before such a notice would appear in the **Federal Register**. No other commenter expressed concern about needing additional time to amplify their comments. As it turned out, the commenter ultimately notified the Agency that after further reviewing the proposal and its initial comments it did not need to submit additional comments.

B. The Requirement to Revise I/M SIP Submittals by August 6, 1998

1. Summary of Comments

One commenter noted that while they support EPA's proposal to delay implementation of OBD to January 1, 2001, they recommend that EPA reconsider the requirement that states revise their I/M SIP submittals by August 6, 1998. They believe the requirement will force a commitment of resources to develop OBD programs well before they are required and that requirements may change in the interim. Furthermore, the commenter asserted that more pressing SIP submittals must be made in the near term.

2. Response to Comments

EPA recognizes that the new deadline delays a program requirement for a period of time during which I/M program requirements may change. However OBD requirements are projected to change little if any. Test procedures, standards and equipment needs are outlined in the original I/M OBD rule, and implementation guidelines will be available in 1998. EPA does not intend to require states to fully develop their OBD program almost three years before implementation as that is not necessary. However, the Clean Air Act, Section 202 (m)(3), does require that states amend their I/M SIP submittals within two years of promulgation of OBD regulations, to include the OBD checks. As EPA promulgated its original I/M OBD rule on August 6, 1996, by statute states must amend their SIPs by August 6, 1998 to require OBD checks in their I/M programs. To meet this requirement EPA will accept at a minimum, a brief SIP amendment which commits to implementing EPA approved OBD checks, as outlined in the I/M OBD rule, by January 1, 2001. A similar amendment to the applicable state I/M requirements shall be made which indicates that I/M OBD checks consistent with EPA rules are required to be conducted by January 1, 2001. No detailed OBD program submittal is required by August 6, 1998. Any questions about such requirements should be directed to the contact person for this rule.

C. Tachometer Connectors Without Mandatory OBD Checks

1. Summary of Comments

One of OBD's numerous functions is that it can be used to perform engine speed (RPM) measurements on vehicles so equipped. Because the RPM measurement is necessary for I/M idle tests, it is important for all new vehicles to be equipped with either tachometer connectors or OBD. One commenter noted that current regulations require MY '96 and newer vehicles, which are tested with idle tests, to use the OBD connector to perform the tachometer measurement. They note that because OBD was to be required by 1998, manufacturers may have stopped equipping cars with the tachometer loops used solely for measuring RPM. They are now concerned that without the OBD requirement that EPA may make manufacturers responsible to provide alternate means to perform the RPM measurement. They are concerned that states be permitted to use alternate means to make tachometer

measurements on OBD equipped vehicles during the period of delay. They seek to confirm EPA's policies with regard to RPM measurement for OBD equipped vehicles.

2. Response to Comments

EPA has no intention of making manufacturers responsible for resuming installation of tachometer connectors. OBD represents a new era in vehicle technology and nothing would be gained by going back to previous requirements for tachometer connectors on new vehicles. OBD systems offer substantial benefits regardless of I/M requirements, and for these reasons they shall continue to be required on newly manufactured vehicles.

While decentralized stations have the option of using OBD scanners or alternative tach measurement equipment before required OBD testing begins, most should already have OBD scan equipment simply because it is far more useful to them in other capacities, namely as a powerful diagnostic tool. Any test and repair facility which works on 1996 and newer cars will be highly motivated to make the investment in OBD scan tools solely to support the repair side of their shop. EPA maintains that this delay in OBD implementation will cause no additional expense for those stations other than what they would already have incurred as overhead for repairing those newer vehicles. Centralized I/M programs which opt to implement OBD checks before the new deadline have the option to use alternative RPM measurement equipment in that interim as well, however with their high lane throughput they will easily be able to afford OBD scanning equipment, as the per vehicle cost will be nominal.

The tachometer measurement on OBD equipped vehicles which do not have tach connectors can be made without querying the OBD system. Equipment is already available in the field to monitor the engine RPM. Radio frequency units and other technologies are used successfully and could easily take the place of OBD scanners for stations which choose not to invest in those units until required testing begins.

D. Ability of Aftermarket Business to Participate in Repair of OBD Failed Vehicles

1. Summary of Comments

One commenter noted their support for the delayed implementation of OBD checks but is concerned that once testing begins in 2001, failure of the OBD check shall mean automatic failure of the I/M test, thereby requiring repair. They oppose such mandatory OBD testing and repair for failed vehicles unless all independent aftermarket businesses can participate in the service and repair of such vehicles. They do not believe that aftermarket parts manufacturers currently have the information they need to manufacture the parts for these repairs. They feel EPA should use the extra time during the delay to ensure that such information is available.

2. Response to Comments

This comment is not directly related to the proposal to delay implementation of OBD checks because manufacturer information requirements are not affected. The commenter's information availability concerns have been addressed previously in another EPA rulemaking, the Service Information Rules, 60 FR 40474, published August 9, 1995. Those rules require automobile manufacturers to provide aftermarket service providers with information needed to make use of the OBD system and to make emission related repairs. Any further questions about those requirements should be directed to Holly Pugliese (734) 214–4288.

E. OBD Readiness Code Failures and Voluntary I/M Failure for OBD Checks

1. Summary of Comments

One commenter expressed support for EPA's proposal to delay implementation of OBD checks for many of the reasons cited above, namely that because OBD is a new technology a period of study is warranted so that program implementation and success is not compromised by startup problems. However the commenter did note several concerns with the I/M OBD rule and its requirements. One concern was that EPA left unchanged sections of the rule which allow for states to begin OBD checks before the proposed new deadline and to allow failure of the OBD check to trigger failure of the I/M test and require repair in such cases. They note that linking the I/M pass/fail decision to the OBD check before EPA's field evaluation is completed would be premature if there are technology and startup problems and could lead to consumer dissatisfaction and could adversely affect I/M programs. The commenter noted their concern with another section of the rule left unchanged which requires vehicles to be failed for the OBD check if the system's ''readiness evaluation'' is not completed at the time of inspection. They believe that rather than failing a vehicle for a readiness problem, the rule should require that if readiness codes are not set the default pass/fail determination should be made by an alternative tailpipe and/or evaporative test. Lastly the commenter noted that they believe EPA will have to reconsider the January 1, 2001 deadline if the field studies warrant it and they request that EPA commit to revisit the rules before then, if that is the case.

2. Response to Comments

EPA agrees there are both risks and benefits for states which begin OBD checks before the proposed new deadline of January 1, 2001 and before EPA has completed its field evaluation. States would benefit from increased consumer knowledge and acceptance of OBD while at the same time having the opportunity to work out startup problems such as complications with equipment and network compatibility. There may be some risk associated with failing vehicles for the I/M test if indicated only by the OBD check. [For instance, technical problems with certain OBD systems or other implementation problems may lead to some false failures. EPA believes that such risks are minimal considering the advanced nature of OBD technology, but these are normal for infant technology.] Furthermore, EPA is developing implementation guidelines for OBD checks and intends to make those guidelines final by late 1998.

EPA believes that states generally are sensitive to the integral nature of each I/M program element and are equally concerned with ensuring success of their programs in order to achieve the maximum air quality benefits. It would therefore not be expected that states would choose to implement OBD prematurely if doing so would place the broader I/M program at risk. EPA has and will continue to work with states individually to provide the guidance and information needed to optimize OBD's potential. It is important to note that under Section 116 of the Act states may make their I/M programs as stringent as they choose as long as they meet the minimum requirements set by EPA. Therefore they may opt to fail vehicles from their I/M test based on OBD failure alone, before the requirement to do so begins. EPA is confident that states can make the assessment whether or not it is beneficial for them to do so on an individual basis and we will endeavor to share useful information with those interested states.

With regard to the commenter's concerns about EPA rules requiring OBD failure for incomplete readiness status, EPA stands by its original requirement. EPA did not propose to

amend this requirement and does not believe it would be prudent to do so. The ''readiness evaluation'' means that the OBD system queries each of the individual emissions control monitor components during certain operating modes or conditions to ensure that the monitors are functioning properly. Once these determinations are made the readiness code is set to confirm that relevant monitors have successfully been queried. This feature is designed as such so that when a technician scans the OBD system and sees that all the readiness codes are set, they can be confident of the validity of any diagnostic trouble codes (DTCs) that may or may not be set. While a non functioning readiness monitor does not necessarily mean that a vehicle is operating dirty, it provides no assurance that the OBD system has fully evaluated the emissions performance of the vehicle and that the absence of DTCs indicates a properly functioning system. Without operational readiness criteria, a vehicle or component may be failing but a monitor will not have had the opportunity to evaluate operation and set DTCs as appropriate. Additionally, in such circumstances, the technician will not have an indicator of an emission component problem, unless he or she performs a tailpipe or evaporative emission test.

EPA does not believe states should be put in a position where they should have to rely on other I/M tailpipe or evaporative tests to make a pass fail decision for OBD equipped vehicles. Nor does EPA believe that the public should bear the burden of any readiness deficiencies. OBD has the potential to vastly streamline I/M testing and this cannot be achieved unless readiness criteria are included in the list of potential failure triggers. By January, 2001 manufacturers will have built at least 5 model years of OBD equipped vehicles and EPA believes that is ample time to correct any initial design or technical problems with the systems. To create special test requirements for readiness deficient vehicles runs the risk of fundamentally weakening I/M programs, particularly OBD's future. It would promote the idea throughout the I/M community and amongst vehicle owners that OBD technology is not as good as it was intended to be. It could erode the integrity of OBD sufficiently to draw public criticism. A vehicle owner may not understand why their OBD equipped vehicle must be subjected to a more time consuming and intrusive tailpipe or evaporative check when others are not. Furthermore, keeping the readiness failure criteria provides vehicle owners one more measure of a vehicle's performance, ensuring that manufacturers design and build the cleanest vehicles possible. For all the reasons noted above, EPA believes it is absolutely essential that readiness criteria remain as one of the triggers for failure of the OBD test once testing becomes mandatory in 2001. EPA declines to accept the commenter's recommendation to do otherwise. However, just as states have the flexibility to voluntarily implement OBD before January 2001, they are not bound to fail vehicles for OBD readiness deficiencies alone during these interim years. They may choose to confirm readiness code failures with alternate tailpipe and evaporative tests.

It is important to note that technicians in I/M lanes may encounter another type of readiness deficiency, not a problem of a design or technical nature but rather a situation where the vehicle which is presented for testing simply has not had the chance to operate each of its monitors. Generally each monitor can only be triggered while the vehicle is operating under certain conditions or operating modes, e.g., certain highway speeds, coolant temperatures, start/stop sequences, etc. If a vehicle owner drives only short distances or low speeds (for instance, because they may live near work or the test center), certain monitors may not get the opportunity to operate before the vehicle is presented for testing. As a result, the technician cannot complete the OBD check and will have to direct the vehicle owner to return after operating the vehicle in such a manner that all monitors have been operated. Evidence thus far indicates that such scenarios are rare. In most cases this means owners may have to operate on the highway for a certain period of time. This extra step is akin to what often occurs in traditional I/M testing (which requires the vehicle to be fully warmed before testing), whereby owners who present ''cold'' vehicles may be turned away to drive their vehicles until fully warmed. This particular type of readiness deficiency scenario is not expected to have a qualitative impact on the success of OBD but will be addressed in the implementation guidance.

Finally, the commenter's request that EPA commit to reconsider the deadline before the arrival of the January 1, 2001 deadline, should EPA determine the field studies warrant it, can be answered simply. EPA has no intention of implementing any program before it is ready, especially if such premature implementations would place the current benefits of an I/M program at risk. That is precisely one of the reasons for the delay promulgated here today. While it is too early to state definitively that no problems with OBD warranting further delay will be found, EPA is confident that the three year delay will be adequate to determine the state of the technology.

III. Administrative Requirements

A. Regulatory Flexibility

EPA has determined that it is not necessary to prepare a regulatory flexibility analysis in connection with this final rule. EPA has also determined that this rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises and small government jurisdictions. A small government jurisdiction is defined as governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than 50,000. This action will not have a significant economic impact on a substantial number of small entities and, therefore, is not subject to the requirement of a Regulatory Impact Analysis. This certification is based on the fact that the I/M areas impacted by this rulemaking do not meet the definition of a small government jurisdiction. The I/M rule applies only to urbanized areas with populations in excess of 100,000 or 200,000 depending upon location.

B. Unfunded Mandates Act

Under Section 202 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule where the estimated costs to State, local, or tribal governments, or to the private sector, will be $100 million or more. Under Section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objective of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly impacted by the rule. To the extent that the requirements in this action would impose any mandate at all as defined in Section 101 of the Unfunded Mandates Act upon the state, local, or tribal governments, or the private sector, this rule is not estimated to impose costs in excess of $100 million. Therefore, EPA is not required to and has not prepared a statement with respect to budgetary impacts. As noted above, this rule offers

opportunities to states to delay implementation of certain requirements and thus enables them to lower economic burdens from those resulting from the currently existing I/M rule.

C. Submission to Congress and the General Accounting Office

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

D. 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 Office of Management and Budget (OMB) review and the requirements of the Executive Order. The Order defines ''significant regulatory action'' as one that is likely to result in a rule that may: (1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another Agency; (3) Materially alter the budget impact of entitlement, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

It has been determined that this final action is not a ''significant regulatory action'' under the terms of Executive Order 12866 and is therefore not subject to OMB review.

E. Reporting and Recordkeeping Requirements

This regulatory action does not contain any information collection requirements which require the approval of the Office of Management and Budget under the Paperwork Reduction Act 44 U.S.C. 3501 *et seq.*

IV. Effective Date

This rule will take effect May 4, 1998. EPA finds good cause to have the rule take effect immediately because it relieves a restriction, which for the reasons described above EPA believes is inappropriate at this time, which took effect January 1, 1998. It would not be in the public interest to keep that restriction in effect once EPA has acted to relieve it.

List of Subjects

40 CFR Part 51

Environmental protection, Administrative practice and procedure, Air pollution control, Carbon monoxide, Intergovernmental relations, Lead, Motor vehicle pollution, Nitrogen oxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulphur oxides, Transportation, Volatile organic compounds.

40 CFR Part 85

Confidential business information, Imports, Labeling, Motor vehicle pollution, Reporting and recordkeeping requirements, Research, Warranties.

Dated: April 27, 1998.

Carol M. Browner,

Administrator.

For the reasons set out in the preamble, parts 51 and 85 of chapter I of title 40 of the Code of Federal Regulations are amended as follows:

PART 51—[AMENDED]

1. The authority citation for part 51 is revised to read as follows:

Authority: 42 U.S.C. 7401, 7411, 7412, 7413, 7414, 7470–7479, 7501–7508, 7601, and 7602.

2. Section 51.351 is amended by revising paragraph (c) to read as follows:

§ 51.351 Enhanced I/M performance standard.

* * * * *

(c) *On-board diagnostics (OBD).* The performance standard shall include inspection of all 1996 and later light-duty vehicles and light-duty trucks equipped with certified on-board diagnostic systems, and repair of malfunctions or system deterioration identified by or affecting OBD systems as specified in § 51.357.

* * * * *

3. Section 51.352 is amended by revising paragraph (c) to read as follows:

§ 51.352 Basic I/M performance standard.

* * * * *

(c) *On-board diagnostics (OBD).* The performance standard shall include inspection of all 1996 and later light-duty vehicles and light-duty trucks equipped with certified on-board diagnostic systems, and repair of malfunctions or system deterioration identified by or affecting OBD systems as specified in § 51.357.

* * * * *

4. Section 51.357 is amended by revising paragraph (b)(4) to read as follows:

§ 51.357 Test procedures and standards.

* * * * *

(b) * * *

(4) *On-board diagnostics test standards.* Vehicles shall fail the on-board diagnostic test if they fail to meet the requirements of 40 CFR 85.2207, at a minimum. Failure of the on-board diagnostic test need not result in failure of the vehicle inspection/maintenance test until January 1, 2001.

* * * * *

5. Section 51.373 is amended by revising paragraph (g) to read as follows:

§ 51.373 Implementation deadlines.

* * * * *

(g) On-Board Diagnostic checks shall be implemented in all basic, low enhanced and high enhanced areas as part of the I/M program by January 1, 2001.

PART 85—[AMENDED]

6. The authority citation for part 85 is revised to read as follows:

Authority: 42 U.S.C. 7521, 7522, 7524, 7525, 7541, 7542, 7601(a).

§ 85.2207 [Amended]

7. Section 85.2207 is amended by removing and reserving paragraphs (a) and (e).

8. Section 85.2222 is amended by revising paragraph (c) to read as follows:

§ 85.2222 On-board diagnostic test procedures.

* * * * *

(c) The test system shall send a Mode $01, PID $01 request in accordance with SAE J1979 to determine the evaluation status of the vehicle's on-board diagnostic system. The test system shall determine what monitors are supported by the on-board diagnostic system, and the readiness evaluation for applicable monitors in accordance with SAE J1979. The procedure shall be done in accordance with SAE J1979 ''E/E Diagnostic Test Modes,'' (DEC91). 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 of SAE

J1979 may be obtained from the Society of Automotive Engineers, Inc., 400 Commonwealth Drive, Warrendale, PA 15096–0001. Copies may be inspected at the EPA Docket No. A–94–21 at EPA's Air Docket (LE–131), Room 1500 M, 1st Floor, Waterside Mall, 401 M Street SW, Washington, DC, or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC. Beginning January 1, 2001, if the readiness evaluation indicates that any on-board tests are not complete the customer shall be instructed to return after the vehicle has been run under conditions that allow completion of all applicable on-board tests. If the readiness evaluation again indicates that any on-board test is not complete the vehicle shall be failed.

* * * * *

9. Section 85.2231 is amended by revising paragraph (b) to read as follows:

§ 85.2231 On-board diagnostic test equipment requirements.

* * * * *

(b) The test system shall be capable of communicating with the standard data link connector of vehicles with certified OBD systems.

* * * * *

[FR Doc. 98–11751 Filed 5–1–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[AZ059–0005; FRL–6004–5]

Approval and Promulgation of Implementation Plans; Arizona State Implementation Plan Revision, Maricopa County Environmental Services Department

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is taking final action to approve a revision to the Arizona State Implementation Plan (SIP). The revision concerns Maricopa County's Ordinance P–7, Maricopa County Trip Reduction Ordinance. This approval action will incorporate this ordinance into the federally-approved SIP. The intended effect of approving this ordinance is to reduce emissions of volatile organic compounds, nitrogen oxides, carbon monoxide, and particulate matter by reducing the number of single-occupant-vehicle commute trips in the Phoenix, Arizona, metropolitan area. EPA is finalizing the approval of this revision into the Arizona SIP under provisions of the CAA regarding EPA action on SIP submittals, SIPs for national primary and secondary ambient air quality standards and plan requirements for nonattainment areas.

EFFECTIVE DATE: June 3, 1998.

ADDRESSES: Copies of the SIP revision and supporting information are available for public inspection at EPA's Region IX office during normal business hours. Copies of the submitted rule revisions are available for inspection at the following location: Office of Air Planning (AIR–2), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105

FOR FURTHER INFORMATION CONTACT: Frances Wicker, Office of Air Planning, AIR–2, Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105, Telephone: (415) 744–1248.

SUPPLEMENTARY INFORMATION:

I. Background

On December 9, 1997 at 62 FR 64794, EPA proposed to approve Maricopa County's Ordinance P–7, Maricopa County Trip Reduction Ordinance which was revised by the Maricopa County, Arizona, Board of Supervisors on May 26, 1994 and submitted as a SIP revision to EPA by the Arizona Department of Environmental Quality on August 31, 1995. A discussion of the ordinance and EPA's proposed approval action can be found in the notice of proposed rulemaking (NPRM) cited above.

EPA has evaluated this ordinance for consistency with the requirements of the CAA and EPA regulations and EPA's interpretation of these requirements as expressed in the various Agency policy guidance documents referenced in the NPRM. EPA has found that the ordinance meets the applicable EPA requirements.

II. Public Comments

No comments were received on the proposed approval during the 30-day public comment period that was provided in 62 FR 64794.

III. EPA Action

EPA is approving the above submitted ordinance for inclusion into the federally-approved Arizona SIP. EPA is approving the submittal under section 110(k)(3) as meeting the requirements of section 110(a) and Part D of the CAA.

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

IV. Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from E.O. 12866 review.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not impose any new requirements, the Administrator certifies that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the CAA, preparation of a flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

C. Unfunded Mandates

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

may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new Federal requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

D. Submission to Congress and the General Accounting Office

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

E. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by July 6, 1998. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2)).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, *Hydrocarbons, Carbon monoxide, Particulate matter,* Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Note: Incorporation by reference of the State Implementation Plan for the State of Arizona was approved by the Director of the Federal Register on July 1, 1982.

Dated: March 20, 1998.

Felicia Marcus,

Regional Administrator, Region IX.

40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

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

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

Subpart D—Arizona

2. Section 52.120 by adding paragraph (c)(82)(i)(E) to read as follows:

§ 52.120 Identification of plan.

* * * * *

(c) * * *

(82) * * *

(i) * * *

(E) Maricopa County.

(*1*) Ordinance P–7, Maricopa County Trip Reduction Ordinance, adopted May 26, 1994.

* * * * *

[FR Doc. 98–11759 Filed 5–1–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL–5980–9]

Technical Amendments to Approval and Promulgation of Implementation Plans; Minnesota; Correction of Effective Date Under Congressional Review Act (CRA)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule; correction of effective date under CRA.

SUMMARY: On July 22, 1997 (62 FR 39120), the Environmental Protection Agency published in the **Federal Register** a direct final rule approving a revision to the Minnesota State Implementation Plan (SIP) for the Saint Paul particulate matter (PM) nonattainment area located in Ramsey County, Minnesota, which established an effective date of September 22, 1997. This document corrects the effective date of the rule to May 4, 1998 to be consistent with sections 801 and 808 of the Congressional Review Act (CRA), enacted as part of the Small Business Regulatory Enforcement Fairness Act, 5 U.S.C. 801 and 808.

EFFECTIVE DATE: This rule is effective on May 4, 1998.

FOR FURTHER INFORMATION CONTACT: Tom Eagles, Office of Air at (202) 260–5585.

Supplementary Information:

I. Background

Section 801 of the CRA precludes a rule from taking effect until the agency promulgating the rule submits a rule report, which includes a copy of the rule, to each House of Congress and to the Comptroller General of the General Accounting Office (GAO). EPA recently discovered that it had inadvertently failed to submit the above rule as required; thus, although the rule was promulgated on the date stated in the July 22, 1997, **Federal Register** document, by operation of law, the rule did not take effect on September 22, 1997, as stated therein. Now that EPA has discovered its error, the rule has been submitted to both Houses of Congress and the GAO. This document amends the effective date of the rule consistent with the provisions of the CRA.

Section 553 of the Administrative Procedure Act, 5 U.S.C. 553(b)(B), provides that, when an agency for good cause finds that notice and public procedure are impracticable, unnecessary or contrary to the public interest, an agency may issue a rule without providing notice and an opportunity for public comment. EPA has determined that there is good cause for making today's rule final without prior proposal and opportunity for comment because EPA merely is correcting the effective date of the promulgated rule to be consistent with the congressional review requirements of the Congressional Review Act as a matter of law and has no discretion in this matter. Thus, notice and public procedure are unnecessary. The Agency finds that this constitutes good cause under 5 U.S.C. 553(b)(B). Moreover, since today's action does not create any new regulatory requirements and affected parties have known of the underlying rule since July 22, 1997, EPA finds that good cause exists to provide for an immediate effective date pursuant to 5 U.S.C. 553(d)(3) and 808(2).

II. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and is therefore not subject to review by the Office of Management and Budget. In addition, this action does not impose any enforceable duty or contain any unfunded mandate as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), or require prior consultation with State officials as specified by Executive Order 12875 (58 FR 58093, October 28, 1993), or involve special consideration of environmental

justice related issues as required by Executive Order 12898 (59 FR 7629, February 16, 1994). Because this action is not subject to notice-and-comment requirements under the Administrative Procedure Act or any other statute, it is not subject to the regulatory flexibility provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). EPA's compliance with these statutes and Executive Orders for the underlying rule is discussed in the July 22, 1997, **Federal Register** document.

Pursuant to 5 U.S.C. 801(a)(1)(A), as added by the Small Business Regulatory Enforcement Fairness Act of 1996, 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 General Accounting Office; however, in accordance with 5 U.S.C. 808(2), this rule is effective on May 4, 1998. This rule is not a ''major rule'' as defined in 5 U.S.C. 804(2).

This final rule only amends the effective date of the underlying rule; it does not amend any substantive requirements contained in the rule. Accordingly, to the extent it is available, judicial review is limited to the amended effective date.

Dated: April 22, 1998.

Carol Browner,

Administrator.

[FR Doc. 98–11542 Filed 5–1–98; 8:45 am]

BILLING CODE 6560–50–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 60 and 63

[AD–FRL–6003–7]

RIN 2060–AH94

Standards of Performance for New Stationary Sources: General Provisions; National Emission Standards for Hazardous Air Pollutants for Source Categories: General Provisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: This action amends the General Control Device Requirements applicable to flares in 40 CFR Part 60 which were issued as a final rule on January 21, 1986, and the Control Device Requirements applicable to flares in 40 CFR Part 63 which were issued as a final rule on March 16, 1994. This action amends existing specifications to permit the use of hydrogen-fueled flares. For additional information concerning comments, see the parallel proposal found in the Proposed Rules Section of this **Federal Register**.

DATES: This direct final rule is effective June 23, 1998 without further notice unless the Agency receives relevant adverse comments by June 3, 1998. Should the Agency receive such comments, it will publish a document withdrawing this rule. The incorporation by reference of certain publications listed in the rule is approved by the Director of the Federal Register as of June 23, 1998.

ADDRESSES: *Comments.* Comments should be submitted (in duplicate, if possible) to: Air and Radiation Docket and Information Center (6102), Attention Docket No. A–97–48 (see docket section below), Room M–1500, U.S. Environmental Protection Agency, 401 M Street S.W., Washington, D.C. 20460. The EPA requests that a separate copy also be sent to Mr. Robert Rosensteel (see **FOR FURTHER INFORMATION CONTACT** section for address). Comments may also be submitted electronically by following the instructions provided in the **SUPPLEMENTARY INFORMATION** section. No Confidential Business Information (CBI) should be submitted through electronic mail.

Docket. The official record for these amendments has been established under docket number A–97–48. A public version of this record, including printed, paper versions of electronic comments and data, which does not include any information claimed as CBI, is available for inspection between 8 a.m. and 4 p.m., Monday through Friday, excluding legal holidays. The official rulemaking record is located at the address in the **ADDRESS** section. Alternatively, a docket index, as well as individual items contained within the docket, may be obtained by calling (202) 260–7548 or (202) 260–7549. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Rosensteel, Emission Standards Division (MD–13), U.S. Environmental Protection Agency, Office of Air Quality Planning and Standards, Research Triangle Park, North Carolina 27711, telephone number (919) 541–5608.

SUPPLEMENTARY INFORMATION:

Electronic Filing

Electronic comments and data can be sent directly to EPA at: a-and-r-docket@epamail.epa.gov. Electronic comments and data 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 diskette in Word Perfect 5.1 file format or ASCII file format. All comments and data in electronic form must be identified by the docket number A–97–48. Electronic comments may be filed online at many Federal Depository Libraries.

Electronic Availability

This document is available in Docket No. A–97–48, or by request from the EPA's Air and Radiation Docket and Information Center (see **ADDRESSES**), and is available for downloading from the Technology Transfer Network (TTN), the EPA's electronic bulletin board system. The TTN provides information and technology exchange in various areas of emissions control. The service is free, except for the cost of a telephone call. Dial (919) 541–5742 for up to a 14,000 baud per second modem. For further information, contact the TTN HELP line at (919) 541–5384, from 1:00 p.m. to 5:00 p.m., Monday through Friday, or access the TTN web site at: www.epa.gov/ttn/oarpg/rules.html.

Regulated Entities

Entities affected by this direct final rule include:

Category	Examples of regulated entities
Industry	Synthetic Organic Chemical Manufacturing Industries; and Petroleum Refining Industries.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. This table lists the types of entities that the EPA is now aware could potentially be affected by this action. Other types of entities not listed in the table could also be affected. If you have any questions regarding the applicability of this direct final rule to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

The information presented in this preamble is organized as follows:

I. Background
  A. Existing Flare Specifications
  B. DuPont's Request for Specifications for Hydrogen-Fueled Flares
II. DuPont Test Program For Hydrogen-Fueled Flares
  A. Summary of Earlier Relevant Hydrogen-Fueled Flares Tests
  B. Objectives of the DuPont Test Program
  C. Design and Implementation of DuPont Test Program
  D. Results of the Test Program
III. Rationale
  A. The Need for Specifications for Hydrogen-Fueled Flares
  B. Use of DuPont Test Results as the Basis for Hydrogen-Fueled Flare Specifications

C. Selection of Specifications for Hydrogen-Fueled Flares
D. Decision to Proceed With Direct Final Rulemaking
IV. Summary of the Amendments to the Flare Specifications
V. Impacts
A. Primary Air Impacts
B. Other Environmental Impacts
C. Energy Impacts
D. Cost and Economic Impacts
E. Summary of Impacts
VI. Administrative
A. Paperwork Reduction Act
B. Executive Order 12866
C. Regulatory Flexibility Act
D. Unfunded Mandates Reform Act
E. Submission to Congress and the Comptroller General

I. Background

The General Control Device Requirements of 40 CFR 60.18 were issued as a final rule on January 21, 1986 and are applicable to control devices complying with New Source Performance Standards (NSPS) promulgated by the Agency under Section 111 of the Clean Air Act (CAA), and National Emission Standards for Hazardous Air Pollutants (NESHAP) issued under the authority of Section 112 prior to the CAA Amendments of 1990. The Control Device Requirements of 40 CFR 63.11 were issued as a final rule on March 16, 1994 and are applicable to control devices used to comply with NESHAP issued under the authority of the CAA Amendments of 1990, for the control of hazardous air pollutants (HAP). These existing control device requirements contain specifications defining required operating conditions of control devices generally. Specifically, 40 CFR 60.18(b) through (d), and 40 CFR 63.11(b) contain the operating conditions for flares (i.e., existing flare specifications). Flares operating in accordance with these specifications destroy volatile organic compounds (VOC) or volatile HAP with a destruction efficiency of 98 percent or greater. These existing flare specifications were written for flares combusting organic emission streams. The current regulations do not permit the use of flares not meeting these specifications to satisfy control requirements under the CAA.

E.I. du Pont de Nemours and Company (DuPont) representatives requested that the EPA either add specific limits for hydrogen-fueled flares to the existing flare specifications or approve their hydrogen-fueled flares as alternate means of emission limitation under 40 CFR 61.484, 40 CFR 61.12(d) and 40 CFR 63.6(g) (Docket No. A–97–48, Item No. II–D–2). DuPont subsequently sponsored a testing program to demonstrate that hydrogen-fueled flares in use at DuPont destroy emissions with greater than 98 percent efficiency. The test program demonstrated that these hydrogen-fueled flares achieved greater than 98 percent destruction efficiency. Further, the EPA judged the conditions of the test program to be universally applicable under the specifications contained in these amendments. Therefore, this notice provides the background and rationale for this action to add specifications for hydrogen-fueled flares to the existing flare specifications.

This notice is being published as a direct final notice since the EPA does not anticipate relevant adverse comments. For the reasons discussed in this notice, the EPA believes that hydrogen-fueled flares meeting the operating specification in this amendment will achieve the same control efficiency, i.e., 98 percent or greater, as flares complying with the existing flare specifications. Further, these specifications will result in reduced emissions of carbon monoxide, nitrogen oxides, and carbon dioxide formed during the combustion of supplemental fuel necessary for hydrogen-fueled flares to comply with existing regulations. By promulgating these amendments some companies using hydrogen-fueled flares can, as of the effective date of this amendment, reduce supplemental fuel use resulting in cost savings and reduced emissions.

A. Existing Flare Specifications

Flares are commonly used in industry to safely combust VOC and volatile HAP. Flares can accommodate fluctuations in VOC or volatile HAP concentrations, flow rate, heating value, and inerts content. Further, flares are appropriate for continuous and intermittent flow applications. Some organic emission streams can be flared without the need for supplemental fuel. However, the use of supplemental organic fuel such as natural gas to ensure the complete combustion of emissions is common.

The EPA determined the destruction efficiency of flares combusting organic emissions in the early 1980's and developed the existing flare specifications as a result of this work. The testing was conducted with a nominal 8-inch diameter flare head furnished by a vendor (Docket No. A–97–48, Item No. I–II–12) and pilot-scale flares (Docket No. A–97–48, Item No. I–II–5). From destruction efficiency testing under a wide variety of velocities, gas compositions, tip diameters, air and steam assistance, and the presence or absence of a pilot burner, it was concluded that the destruction efficiency of flares was above 98 percent when operated within the conditions of the flare specifications. These specifications list the minimum heat content of the flame (British thermal units per standard cubic feet of gas, or Btu/scf), and the tip velocity (feet per second, or ft/s) allowed for steam-assisted, air-assisted and nonassisted flares.

B. DuPont's Request for Specifications for Hydrogen-Fueled Flares

DuPont operates six flares at three facilities which are used to combust waste gases containing hydrogen (from 13 to 22 mol percent), VOC and volatile HAP. These waste streams also contain other combustible waste gases, inerts, and oxygen. All of DuPont's hydrogen-fueled flares are nonassisted and use pilot burners.

The concentrations of the combustible gases are low, and since the heating value of hydrogen per unit of volume is low, the DuPont emission streams have lower volumetric heat contents than the streams of flares meeting the existing flare specifications. Because DuPont's six flares do not meet the existing flare specifications, and three of these flares are used to control emissions for HAP sources currently subject to NESHAP, DuPont initiated a process to demonstrate that their hydrogen-fueled flares achieve the same destruction efficiency as flares complying with the existing flare specifications. DuPont began the process by investigating the literature on hydrogen-fueled flares (Docket No. A–97–48, Item No. II–I–2). The objective of this investigation was to find any data that may exist in earlier hydrogen-fueled flare test reports that would support their assertion that hydrogen-fueled flares achieve a control efficiency for VOC and volatile HAP of 98 percent or greater. The investigation concluded that no such historical data exist.

At this point, DuPont wrote a letter to the EPA, discussed in the introduction to this section, asking the EPA to consider either adding specific limits for hydrogen-fueled flares to the existing specifications, or approving their hydrogen-fueled flares as an alternate means of emission limitation. DuPont stated that they would provide testing to support this request, and the EPA's Office of Air Quality Planning and Standards (OAQPS) and Office or Research and Development (ORD) agreed to review their test plan, observe testing and review the test report.

II. DuPont Test Program for Hydrogen-Fueled Flares

A. Summary of Earlier Relevant Hydrogen-Fueled Flares Tests

There has been previous testing of hydrogen-fueled flares. In 1970, a study was conducted to evaluate the stability of hydrogen-fueled flares (Docket No. A–97–48, Item No. II–I–6). In this study the velocity gradient and the volume percent hydrogen were correlated with the observation of blow out (i.e., when the flame is completely extinguished) for diffusion flares with hydrogen concentrations in the 50 to 100 volume-percent range. The velocity gradient is defined as the change in velocity at the boundary of the fuel and air. A critical velocity gradient for a given volume-percent of hydrogen was identified, above which the flame was unstable. The significance of this study was that the stability of hydrogen-rich flares (i.e., 50 to 100 volume-percent) was able to be predicted by calculating the velocity gradient. Another study was conducted in 1984 (Docket No. A–97–48, Item No. II–I–9), where the velocity gradient and predictions of flame stability were investigated, but in the range of hydrogen concentrations from 4 to 75 volume-percent hydrogen. However, data were not collected in these tests sufficient to determine destruction efficiencies.

B. Objectives of the DuPont Test Program

The primary objective of DuPont's hydrogen-fueled flare testing program was to demonstrate that the hydrogen-fueled flares used at their facilities were achieving a volatile HAP and VOC destruction efficiency equal to or greater than that of flares meeting the existing flare specifications. Specific technical objectives to support this primary objective were:

(1) To determine the limits of velocity and hydrogen content within which hydrogen-fueled flares are stable, and;

(2) To measure the destruction efficiencies of a surrogate for HAP under conditions corresponding to those in industrial hydrogen-fueled flares.

C. Design and Implementation of DuPont Test Program

The results of the testing program form the basis of these flare specification amendments. The testing program used a nominal 3-inch pipe flare with a hood and a stack suspended over the flare to capture the plume. Stability and destruction efficiency tests were performed on the test flare.

The first portion of the testing consisted of stability testing. To determine the flare's stability limit, a stable flame was first established, then the hydrogen flow rate was slowly reduced while holding the tip velocity constant. Hydrogen readings were recorded when the flame lifted off, and again when the flame completely blew out. This procedure was repeated at different tip velocities in the 16 to 130 ft/s range, for flares with and without pilot burners.

The destruction efficiency of the flare was tested at high gas velocities and hydrogen contents in the stable range. The gases in the waste gas stream and in the hood stack were sampled and analyzed for concentrations of the compound chosen as a surrogate for HAP. Since the surrogate is a VOC this destruction efficiency also demonstrates the destruction efficiency of VOC. Destruction efficiencies were then calculated from these results.

D. Results of the Test Program

1. *Flare Stability*

The measurements of the hydrogen volume percent at lift off and blow out for the piloted and unpiloted nominal 3-inch (2.9 inch inner diameter) pipe flare are shown in Figure 1 as a function of velocity. Because the hydrogen content at lift off was essentially the same for flares with and without a pilot burner, a single line was fit to the data sets of lift off measurements for piloted and unpiloted flares, this is represented by the upper curve in Figure 1. The data point in the far upper right corner of the figure is an unexplained outlier that is inconsistent with all other data points and was excluded from the linear regression analysis of the lift off data set. The middle and lower curves in Figure 1 are the blow out curves without and with a pilot, respectively.

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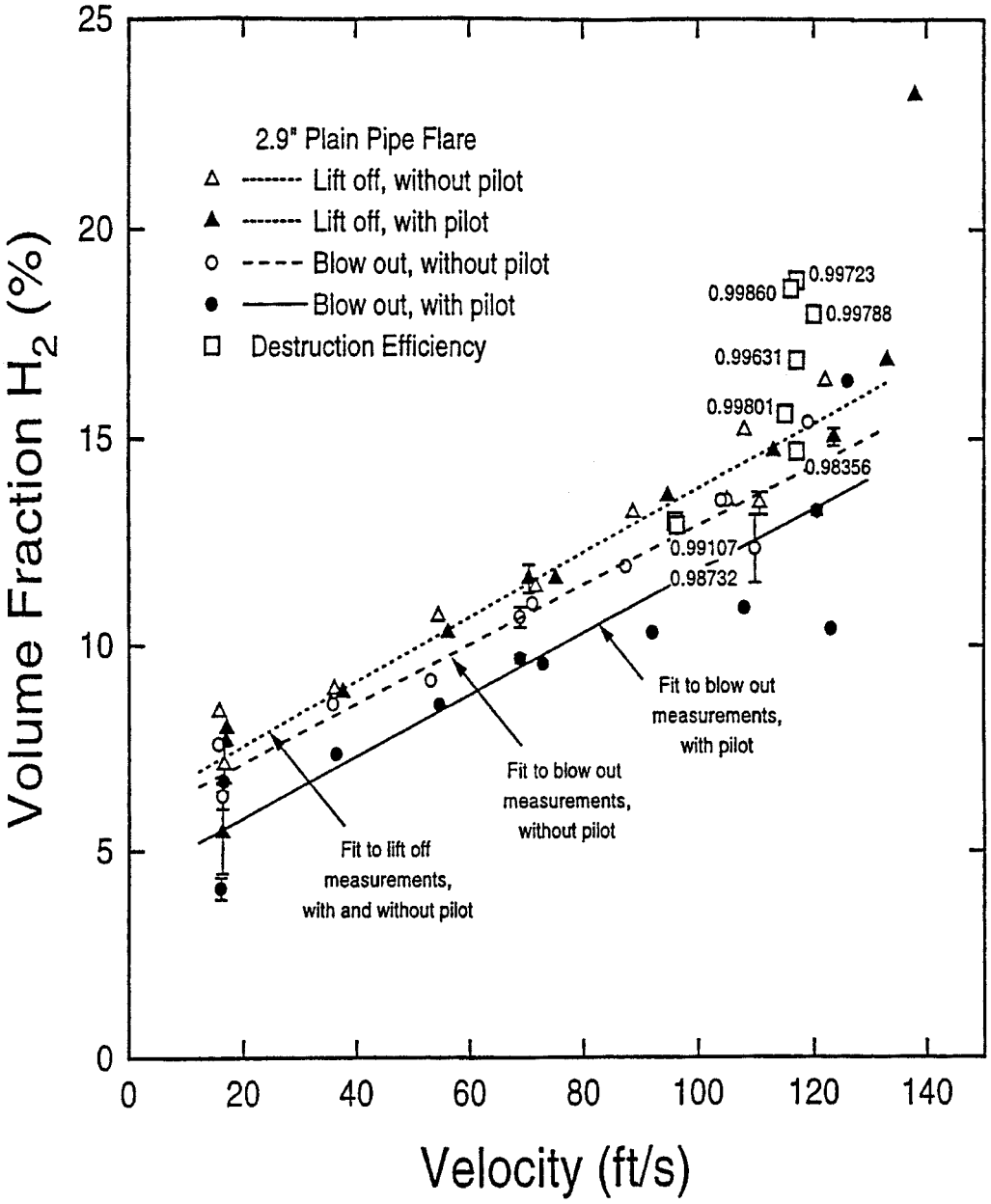

Figure 1. Hydrogen volume fractions measured at lift off and blow out on the nominal 3-inch plain pipe flare, with and without pilot flame (Docket No. A-97-48, II-I-1).

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2. Destruction Efficiency

The measured mean destruction efficiencies and destruction efficiencies at the 95 percent confidence level are shown in Figure 1. All the measurements of destruction efficiencies at conditions more stable than lift off were above 99 percent. Further, control efficiencies greater than 98 percent were found at hydrogen contents below the lift off curve.

III. Rationale

A. The Need for Specifications for Hydrogen-Fueled Flares

The EPA is taking this action to amend 40 CFR 60.18 and 40 CFR 63.11 since the EPA sees the need to permit the use of hydrogen-fueled flares to meet the EPA control requirements. As discussed below, hydrogen has a lower heat content than organics commonly combusted in flares meeting the existing flare specifications and cannot, therefore, be used to satisfy current control requirements. However, since the combustion of hydrogen is different than the combustion of organics, and the test report demonstrates a destruction efficiency greater than 98 percent, the EPA believes that hydrogen-fueled flares meeting the specifications outlined in the amendments will achieve a control efficiency of 98 percent or greater. This level of control is equivalent to the level of control achieved by flares meeting the existing specifications. In addition to achieving the same destruction efficiency of VOC or organic HAP, the adoption of these amendments has the added advantage of reducing the formation of secondary pollutants; since the combustion of supplemental fuel would not be required by hydrogen-fueled flares to meet the existing flare specifications.

1. The Heat Content of Hydrogen

The heat content of a substance is a measure of the amount of energy stored within the bonds between atoms in each molecule of the substance. Hydrogen is a simple molecule consisting of two hydrogen atoms held together by weak, hydrogen bonds, thus resulting in a low heat content. In comparison, organic chemicals are larger chains (or rings) of carbons with hydrogens and other atoms attached to them. These molecules are held together with a combination of ionic, covalent and hydrogen bonds, which contain substantially more energy (i.e., higher heat content) than the hydrogen bond in the hydrogen molecule.

2. The Difference in Combustion Between Hydrogen and Organics

The first phenomenon to explain the difference in combustion between hydrogen and organics is related to the thermodynamics of the combustion reaction. In order for the hydrogen atom to react in the combustion/oxidation reaction, the weak hydrogen bond between the two hydrogen atoms must first be broken. Because there is less energy holding the hydrogen atoms together, less energy (heat) is required to separate them. Once the hydrogen bonds are broken, the hydrogen atoms are free to react in the combustion reaction.

The second phenomenon explaining the difference in combustion between hydrogen and organics is due to hydrogen's upper and lower flammability limits. The flammability limits are the minimum (lower) and maximum (upper) percentages of the fuel in a fuel-air mixture that can propagate a self-sustaining flame. The lower and upper flammability limits of hydrogen are 4.0 and 74.2 percent, respectively, which is the second widest range of lower and upper limits of substances typically combusted in flares (Docket No. A–97–48, Item No. II–I–2).

The third phenomenon explaining the difference in combustion between hydrogen and organics is the relative difference in diffusivity between hydrogen and organics in air. Diffusivity refers to how easily molecules of one substance mix with molecules of another. Further, the quicker the fuel and air in a flare mix, the quicker the combustion reaction occurs. The measure of how quickly a substance mixes with another substances is expressed in terms of the diffusivity coefficient. The larger the diffusivity coefficient, the quicker the mixing. The diffusivity coefficient for the mixture of hydrogen and air is an order of magnitude higher than those for the mixture of air and volatile HAP with readily available diffusivity coefficients. Therefore, hydrogen is more diffuse in air compared to organics and more quickly enters the flammability range than organics.

B. Use of DuPont Test Results as the Basis for Hydrogen-Fueled Flare Specifications

These tests were conducted by DuPont primarily for their flaring conditions. However, after reviewing the test plan, observing the testing, and thoroughly reviewing the test report supplied by DuPont, the EPA concluded that the test results were applicable to all nonassisted flares with a hydrogen content of 8.0 percent (by volume) or greater, and a diameter of 3 inches or greater. The EPA believes that the test results are universally applicable since all the effective data points demonstrated a destruction efficiency greater than 98 percent, with the majority achieving greater than 99 percent destruction. Therefore, if the test flare can achieve these destruction efficiencies, then the EPA expects industrial flares meeting the flare specifications in these amendments to achieve a destruction efficiency of 98 percent or greater.

In selecting the conditions under which the pilot flare testing was to be conducted and interpreting the results of the testing, a ''conservative'' decision was made for each choice, that is the condition that would most likely assure that a full-scale flare would achieve at least as high and possibly higher destruction efficiency was chosen. This approach applied to the selection of flare tip design, flare tip diameter, pilot burner heat input, and characteristics of the surrogate for HAP for destruction testing. It also applied to the evaluation of stability testing and destruction efficiency results, as well as the selection of operating limits applying to hydrogen concentration and tip discharge velocity.

1. The Selection of the Flare Type

A nonassisted, plain-tip flare was used in the testing program because all of DuPont's flares are nonassisted. A nonassisted flare is a flare tip without any auxiliary provision for enhancing the mixing of air into its flame. The plain-tip means no tabs or other devices to redistribute flow were added to the rim of the flare. Because the presence of tabs improves the stability of the flare by channeling the flare's flow and improving mixing of fuel and air, it was concluded that the lack of tabs (i.e., plain tip) would result in the least stable test conditions.

2. The Comparison of the Selected Flare with the Existing Flare Specifications

A 3-inch flare was selected for the emission test since this was the same size flare used for the testing to establish the basis for the existing flare specifications in 40 CFR 60.18 and 40 CFR 63.11. Stability tests were conducted using propane to determine if the flare was operating properly and could meet the existing flare specifications. Test results demonstrated that this flare was stable when it was expected to be stable and not stable when it was not expected to be (i.e., as indicated by the existing flare specifications).

3. The Size of the Test Flare

Another reason for using the 3-inch flare for these tests is because a 3-inch flare is small, relative to the size of flares in industry (as a point of reference, the DuPont flares are 16 to 48 inches in diameter). Research indicates that smaller flares are less stable than larger flares (Docket No. A–97–48, Item No. II–I–1, Sec 4, page 6). Specifically, the physical parameter known as the velocity gradient can be used to predict when a flame will blow out by plotting the velocity gradient versus the volume-percent hydrogen. The larger the boundary velocity gradient, the more unstable the flame. Further, the velocity gradient is inversely proportional to the diameter of the pipe. Therefore, at a given velocity, the larger the pipe, the smaller the boundary velocity, and the more stable the flame. The EPA concludes that if a stable flame can be maintained with a smaller flare pipe, then a larger flare would be expected to be stable at lower hydrogen concentrations and higher velocities. Therefore, the EPA believes that 3-inch or larger flares that meet these specifications will have destruction efficiencies as high or higher than those obtained from the 3-inch pipe flares.

4. The Selection of the Size of the Pilot Burner

The amount of heat input from the pilots on DuPont's full-scale hydrogen-fueled flares are in the range from 0.05 to 0.6 percent of the total heat input to the flares. A venturi burner turned down to approximately one third of its 9,000 Btu/hr capacity was used for the tests described in this document, and the heat input was equal to 0.3 to 0.6 percent of the pilot flare's total heat input during the stability and destruction efficiency tests. Therefore, the heat input from the pilot during the tests was comparable to the heat input for the full-scale flares operated by DuPont.

The relatively small proportion of heat input from the venturi burner compared to the total heat input to the test flare would not be expected to have a significant effect on either the stability or destruction efficiency results, because this amount of heat is insignificant compared to the flare's total heat content. Also, the use of a pilot burner is consistent with EPA's flare specification which requires that the pilot flame be present at all times.

5. The Selection of Ethylene as the Surrogate for HAP to be used in the testing

For this study it was desired to select a surrogate for HAP that was more difficult to destroy than the volatile HAP present in the large scale flare waste streams, and which could be measured at a concentration of 10 parts per billion by volume and higher. In general, the difficulty of destruction for organics increases as the molecular weight decreases, but the limit of detection decreases as the molecular weight decreases. It is obvious then that there may be some compromise necessary in selecting a surrogate for HAP.

In order to compare the relative difficulty to destroy various species, a linear multiple regression model was used that calculates a destruction temperature using parameters describing the molecular structure, autoignition temperature, and residence time as inputs to the model. The destruction temperatures obtained are theoretical temperatures for plug flow reactors to achieve specified destruction allowing a comparison to be made among various chemical species to estimate relative destructibility (Docket No. A–97–48, Item No. II–I–14). As a first step the destruction temperatures were calculated for all the chemical species that were identified as present in DuPont's full-scale flare waste streams. The next step was to calculate destruction temperatures for the surrogates for HAP under consideration. (The results from this analysis are presented in Tables 4–3 and Table 4–4 of Docket Item II–I–14).

In comparing the model's destruction temperature estimates for candidate surrogates for HAP present in DuPont's flare streams, the best choice as a surrogate was methane, but the detection limit was too high to be accepted for the field study. The next choice was methanol but not only is the detection limit high, it is a HAP and it is also a liquid at ambient temperatures, presenting handling difficulties. The next candidate considered was ethylene which was selected for the study. It has a higher destruction temperature than all the organic HAP in the study, except methanol, and has an acceptable limit of detection. Therefore, the most difficult to destroy substance was chosen for the study that was feasible to use.

6. The Criteria for a Stable Flame

The hydrogen content reported when lift off was first observed was selected as the criterion for a stable flame, because it was easy and precise to identify. The EPA concluded that this was a conservative estimate for the stability limit because destruction efficiencies greater than 98 percent were noted even for hydrogen contents below the lift off level.

Another reason why the EPA concluded that lift off was a conservative criterion for a stable flame was based on a correlation between the stability ratio and the destruction efficiency observed in earlier flare testing conducted in the 1980's (Docket No. A–97–48, Item No. II–I–5). At that time it was demonstrated that the destruction efficiencies were directly proportional to the ratio of the flare gas heating value to the minimum heating value for flame stability (i.e., stability ratio). Regardless of the substance being combusted, it was observed that the destruction efficiency plateaued to greater than 98 percent destruction when the stability ratio was above approximately 1.2. For this test program, the destruction efficiency versus the ratio of actual hydrogen to hydrogen at lift off (analogous with the stability ratio, and referred to as the hydrogen ratio) was plotted for this test program. The curve of the data was similar to those obtained from the flare test programs in the 1980's. Three data points demonstrated that at stability ratios below 1.0, with the lowest stability ratio of 0.955, destruction efficiencies greater than 98 percent were achieved. Since the amendments for these flare specifications require a stability ratio of 1.0 or greater, it is assumed that a 98 percent or greater destruction efficiency will be achieved.

7. The Operating Parameters Used for Testing the Destruction Efficiency (i.e., Hydrogen Content and Flare Tip Velocity)

The destruction efficiency of ethylene for the hydrogen-fueled flares was tested at high tip velocities (i.e., approximately 100 to 120 ft/sec) because this is the velocity range expected to produce lower destruction efficiencies. Therefore, if acceptable destruction efficiencies are observed at high tip velocities, then at least as high or even higher destruction efficiencies are expected at lower tip velocities.

The expectation to observe decreased destruction efficiency at high tip velocities is explained by two phenomena. The first phenomenon is due to the increased fuel flow. The increased volume of fuel flow entrains more air, and more eddies are formed at the boundary between the fuel and the air. These eddies tend to strip off some of the gases' flow, even before the flame is able to combust the substances, so uncombusted or incompletely combusted substances may be lost to the ambient air.

Another phenomenon explaining the expectation of decreased destruction efficiency at increased tip velocities

results from comparisons of stability ratios at different tip velocities. For this test program the ratio of the hydrogen content at lift off to the hydrogen content at blow out with a pilot was used as an analogous ratio to the previously mentioned stability ratio. Further, the value of hydrogen at blow out was used as the minimum hydrogen content, since at essentially this level of hydrogen, the destruction efficiencies were above 98 percent for tip velocities of 100 and 120 ft/sec. The DuPont test program's data revealed a trend where the hydrogen ratios were lower at higher velocities compared to lower tip velocities, 1.15 to 1.17 versus 1.3, respectively. Since the test programs in the 1980's demonstrated that the destruction efficiency is directly proportional to the stability ratio, then it could be expected that the same or higher destruction efficiencies would be experienced at lower tip velocities where the hydrogen ratios are larger.

C. Selection of the Specifications for Hydrogen-Fueled Flares

The operating specification for hydrogen-fueled flares in these amendments is the maximum tip velocity for a given hydrogen content, from the equation of the line fitting the data from the stability testing at lift off conditions as seen in Figure 1. The equation in these amendments comes directly from the test report. This equation is presented in the appropriate form in Section IV of this preamble with the units changed to metric.

There are safety requirements that must be carefully considered for all flare installations, and this is the case for the user of these hydrogen-fueled flare amendments. As an example, if the discharge velocity is too low under certain conditions, the flame could propagate back into the process with potentially catastrophic results. These amendments only specify a maximum discharge velocity for the purpose of assuring efficient destruction of pollutants in waste streams and do not address any aspect of safe operation. The user of any EPA flare specifications should carefully consider all features of this application, not just the limitation on maximum discharge velocity, and implement all necessary measures to assure a safe operation. Safe operating conditions are always the responsibility of the owner/operator at each facility to assure that all applicable safety requirements are adhered to whether they are company, consensus and/or governmental requirements.

The EPA did not think that extrapolating the data outside the range of values tested to be prudent; therefore, the hydrogen-fueled flare specifications have been restricted to the confines of the conditions used for the test program. The following restrictions are included in the hydrogen-fueled flare specifications:

1. Nonassisted Flares

The amendments are applicable to only nonassisted flares because that is the only type of flare tested for these amendments.

2. Continuous Flame

The existing flare specifications require the presence of a continuous flame where reliable ignition is obtained by continuous pilot burners designed for stability. To ensure that the pilot is continuously lit, a flame detection device is required. These amendments incorporate the same requirements for the same reason, to ensure flame stability.

3. Minimum Flare Diameter

The testing was conducted on 3-inch flares, therefore this is the minimum flare diameter for the amendments.

4. Minimum Hydrogen Content

The minimum hydrogen content in the gas streams tested was rounded to the nearest whole number, 8.0 volume percent, and set as the defining minimum hydrogen concentration cutoff for a hydrogen-fueled flare.

5. Maximum Tip Velocity

The maximum tip velocity was set at 37.2 m/sec (122 ft/s), because that was the highest tip velocity tested.

6. Flame Stabilizers

Flame stabilizers (often called flame holders) are allowed because stability and destruction efficiency testing was conducted without them, so if these tabs stabilize the flame even better mixing, and potentially greater destruction efficiencies can be achieved.

7. Minimum Flare Tip Velocity

A minimum flare tip velocity was not listed since evidence indicates that performance will not be diminished due to lower tip velocities (See the preceding discussion concerning safety responsibilities).

D. Decision To Proceed With Direct Final Rulemaking

This notice is being published as a direct final notice since the EPA does not anticipate relevant adverse comments. For the reasons discussed in this notice, the EPA believes that hydrogen-fueled flares meeting the operating specification in this amendment will achieve the same control efficiency, i.e., 98 percent or greater, as flares complying with the existing flare specifications. Further, these specifications will result in reduced emissions of carbon monoxide, nitrogen oxides, and carbon dioxide formed during the combustion of supplemental fuel necessary for hydrogen-fueled flares to comply with existing regulations. By promulgating these amendments some companies using hydrogen-fueled flares can, as of the effective date of this amendment, reduce supplemental fuel use resulting in cost savings and reduced emissions.

IV. Summary of the Amendments to the Flare Specifications

The amendments to the flare specifications add requirements for nonassisted flares that combust 8.0 percent (by volume) or greater of hydrogen in the stream and have a 3-inch or greater diameter. The amendments present an equation that calculates the maximum allowable flare tip velocity for a given volume percent of hydrogen. This equation format is similar to the one used for air-assisted flares in the existing flare specifications. The specific equation for the maximum tip velocity for hydrogen-fueled flares is:

$V_{max}=(X_{H2}—K_1)* K_2$

Where:

V_{max}=Maximum permitted velocity, m/sec.

K_1=Constant, 6.0 volume-percent hydrogen.

K_2=Constant, 3.9(m/sec)/volume-percent hydrogen.

X_{H2}=The volume-percent of hydrogen, on a wet basis, as calculated by using the American Society for Testing and Materials (ASTM) Method D1946–77.

This direct final rule adds specifications for hydrogen-fueled flares to both 40 CFR 60.18 and 63.11. The amendments to the General Provisions for NSPS are contained in 40 CFR 60.18. In addition, 40 CFR 60.18 (c)(4)(i) was revised to correct an earlier published typographical error. The amendments to the General Provisions for NESHAP are contained in 40 CFR 63.11(b)(9). 40 CFR 63.11(b)(8) was also revised to make the number of significant figures consistent throughout the specifications.

IV. Impacts

The impacts discussed in this section are only for six DuPont flares that are required by current or pending EPA regulations to meet the existing flare specifications. The EPA does not have information, and cannot estimate

impacts for other hydrogen-fueled flares in the United States. Therefore, the following estimates are limited to these six DuPont flares.

A. Primary Air Impacts

The amended flare specifications will reduce emissions by the same amount (i.e., 98 percent or greater) as emissions would be reduced by using flares meeting the existing flare specifications.

B. Other Environmental Impacts

The Agency estimates that these amendments to the flare specifications will reduce secondary emissions of pollutants since the combustion of supplemental organic fuel will no longer be required; therefore, there will be no emissions resulting from the combustion of a supplemental fuel. It is estimated that these flare specification amendments will reduce annual emissions from the six affected DuPont flares by 147 megagrams (161 tons per year) of criteria pollutants (i.e., 124 megagrams (136 tons per year) of carbon monoxide, and 22.7 megagrams (25 tons per year) of nitrogen oxides) and 39,900 megagrams (44,000 tons per year) of carbon dioxide.

In addition to these secondary emission reductions, there may also be State regulations that require owners/operators to follow the existing flare specifications, and by allowing the owners/operators to meet the specifications in these amendments, there may be further reductions in secondary air emissions. Therefore, these impacts are a minimal estimate of the potential secondary air emission reductions.

C. Energy Impacts

These amendments to the flare specifications are expected to decrease the amount of energy used by DuPont's six hydrogen-fueled flares since these flares will no longer be required to combust secondary fuel. The expected energy savings is estimated to be 7.75×10^8 cubic feet of natural gas annually (7.75×10^{11} Btu/yr) .

D. Cost and Economic Impacts

Cost savings will be realized due to these amendments by not requiring the combustion of supplemental fuel (to comply with the original heat content requirements), and by not requiring the subsequent resizing of the existing flares that would result from a requirement to combust supplemental fuel in order to accommodate the additional flow of supplemental fuel. The cost of natural gas as supplemental fuel for the six affected flares is estimated to be $2.8 million per year. The capital investment to replace a smaller flare tip with a larger one is estimated to be approximately $667,000 per flare or $4 million for all six flares. The total annual savings achieved by allowing hydrogen-fueled flares that fulfill the specifications of these amendments are the sum of the annual fuel cost savings, and the annualization of the capital savings (calculated to be $280,000 per year). Therefore, total annual savings for the six affected DuPont flares are estimated to be $3.08 million per year. Since sources using these hydrogen-fueled flare specifications will experience savings, no adverse economic impacts will result from this action.

E. Summary of Impacts

This section discussed the cost savings, emission reduction of secondary pollutants, and energy savings from only the six DuPont flares subject to current or pending regulations. These flare specification amendments have the potential to reduce emissions and save money and fuel from hydrogen-fueled flares of which the EPA is not yet aware.

VI. Administrative

A. Paperwork Reduction Act

This rule does not contain any information collection subject to the Office of Management and Budget (OMB) approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*

B. Executive Order 12866 Review

Under Executive Order 12866, (58 FR 51735 (October 4, 1993) the Agency must determine whether the regulatory action is ''significant'' and therefore subject to OMB review and the requirements of the Executive Order. The Order defines ''significant regulatory action'' as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

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

It has been determined that these amendments are not a ''significant regulatory action'' under the terms of Executive Order 12866 and, therefore, are not subject to review by the Office of Management and Budget.

C. Regulatory Flexibility Act

EPA has determined that it is not necessary to prepare a regulatory flexibility analysis in connection with this final rule. EPA has also determined that this rule will not have a significant economic impact on a substantial number of small entities, because this rule imposes no additional regulatory requirements, but merely expands the types of flares that may be used to meet the requirements of 40 CFR 60 and 40 CFR 63.

D. Unfunded Mandates Reform Act

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

The EPA has determined that the final standards do not include a Federal mandate that may result in estimated costs of, in the aggregate, $100 million or more to either State, local, or tribal governments, or to the private sector, nor do the standards significantly or uniquely impact small governments, because they contain no requirements that apply to such governments or impose obligations upon them. Therefore, the requirements of the Unfunded Mandates Act do not apply to this final rule.

E. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General

of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects

40 CFR Part 60

Environmental protection, Air pollution control, Incorporation by reference.

40 CFR Part 63

Environmental protection, Air pollution control, Hazardous substances, Incorporation by reference.

Dated: April 17, 1998.

Carol M. Browner,

Administrator.

For the reasons set out in the preamble, title 40, chapter I of the Code of Federal Regulations is amended as follows:

PART 60—STANDARDS OF PERFORMANCE FOR NEW STATIONARY SOURCES

1. The authority citation for part 60 continues to read as follows:

Authority: 42 U.S.C. 7401, 7411, 7414, 7416, 7429, 7601 and 7607.

Subpart A—General Provisions

2. Section 60.17 is amended by revising paragraph (a)(6) to read as follows:

§ 60.17 Incorporation by reference.

* * * * *

(a) * * *

(6) ASTM D1946–77, Standard Method for Analysis of Reformed Gas by Gas Chromatography, IBR approved for §§ 60.45(f)(5)(i), 60.18(c)(3)(i), 60.18(f), 60.614(d)(2)(ii), 60.614(d)(4), 60.664(d)(2)(ii), 60.664(d)(4), 60.564(f), 60.704(d)(2)(ii) and 60.704(d)(4).

* * * * *

3. Section 60.18 is amended by revising paragraphs (c)(3) and (c)(4)(i), and by adding paragraphs (c)(3)(i) and (c)(3)(ii) to read as follows:

§ 60.18 General control device requirements.

* * * * *

(c) * * *

(3) An owner/operator has the choice of adhering to either the heat content specifications in paragraph (c)(3)(ii) of this section and the maximum tip velocity specifications in paragraph (c)(4) of this section, or adhering to the requirements in paragraph (c)(3)(i) of this section.

(i)(A) Flares shall be used that have a diameter of 3 inches or greater, are nonassisted, have a hydrogen content of 8.0 percent (by volume), or greater, and are designed for and operated with an exit velocity less than 37.2 m/sec (122 ft/sec) and less than the velocity, V_{max}, as determined by the following equation:

$V_{max}=(X_{H2}-K_1)* K_2$

Where:

V_{max}=Maximum permitted velocity, m/sec.

K_1=Constant, 6.0 volume-percent hydrogen.

K_2=Constant, 3.9(m/sec)/volume-percent hydrogen.

X_{H2}=The volume-percent of hydrogen, on a wet basis, as calculated by using the American Society for Testing and Materials (ASTM) Method D1946–77. (Incorporated by reference as specified in § 60.17).

(B) The actual exit velocity of a flare shall be determined by the method specified in paragraph (f)(4) of this section.

(ii) Flares shall be used only with the net heating value of the gas being combusted being 11.2 MJ/scm (300 Btu/scf) or greater if the flare is steam-assisted or air-assisted; or with the net heating value of the gas being combusted being 7.45 MJ/scm (200 Btu/scf) or greater if the flare is nonassisted. The net heating value of the gas being combusted shall be determined by the methods specified in paragraph (f)(3) of this section.

(4)(i) Steam-assisted and nonassisted flares shall be designed for and operated with an exit velocity, as determined by the methods specified in paragraph (f)(4) of this section, less than 18.3 m/sec (60 ft/sec), except as provided in paragraphs (c)(4)(ii) and (iii) of this section.

* * * * *

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, 7411, 7412, 7414, 7416, 7429, 7601 and 7607.

Subpart A—General Provisions

2. Section 63.11 is amended by revising paragraphs (b)(6) and (b)(8), and by adding paragraphs (b)(6)(i) and (b)(6)(ii) to read as follows:

§ 63.11 Control device requirements.

* * * * *

(b) * * *

(6) An owner/operator has the choice of adhering to the heat content specifications in paragraph (b)(6)(ii) of this section, and the maximum tip velocity specifications in paragraph (b)(7) or (b)(8) of this section, or adhering to the requirements in paragraph (b)(6)(i) of this section.

(i)(A) Flares shall be used that have a diameter of 3 inches or greater, are nonassisted, have a hydrogen content of 8.0 percent (by volume) or greater, and are designed for and operated with an exit velocity less than 37.2 m/sec (122 ft/sec) and less than the velocity V_{max}, as determined by the following equation:

$V_{max}=(X_{H2}-K_1)* K_2$

Where:

V_{max}=Maximum permitted velocity, m/sec.

K_1=Constant, 6.0 volume-percent hydrogen.

K_2=Constant, 3.9(m/sec)/volume-percent hydrogen.

X_{H2}=The volume-percent of hydrogen, on a wet basis, as calculated by using the American Society for Testing and Materials (ASTM) Method D1946–77. (Incorporated by reference as specified in § 63.14).

(B) The actual exit velocity of a flare shall be determined by the method specified in paragraph (b)(7)(i) of this section.

(ii) Flares shall be used only with the net heating value of the gas being combusted at 11.2 MJ/scm (300 Btu/scf) or greater if the flare is steam-assisted or air-assisted; or with the net heating value of the gas being combusted at 7.45 M/scm (200 Btu/scf) or greater if the flares is non-assisted. The net heating value of the gas being combusted in a flare shall be calculated using the following equation:

$$H_T = K\sum_{i=1}^{n} C_i H_i$$

Where:

H_T=Net heating value of the sample, MJ/scm; where the net enthalpy per mole of offgas is based on combustion at 25 °C and 760 mm Hg, but the standard temperature for determining the volume corresponding to one mole is 20 °C.

K=Constant=

$$1.740\times10^{-7}\left(\frac{1}{\text{ppmv}}\right)\left(\frac{\text{g-mole}}{\text{scm}}\right)\left(\frac{\text{MJ}}{\text{kcal}}\right)$$

where the standard temperature for (g-mole/scm) is 20 °C.

C_i=Concentration of sample component i in ppmv on a wet basis, as measured for organics by Test Method 18 and measured for hydrogen and carbon monoxide by American Society for Testing and Materials (ASTM) D1946–77 (incorporated by reference as specified in § 63.14).

H_i=Net heat of combustion of sample component i, kcal/g-mole at 25 °C and 760 mm Hg. The heats of combustion may be determined using ASTM D2382–76 (incorporated by reference as specified in § 63.14) if published values are not available or cannot be calculated.

n=Number of sample components.

* * * * *

(8) Air-assisted flares shall be designed and operated with an exit velocity less than the velocity V_{max}. The maximum permitted velocity, V_{max}, for air-assisted flares shall be determined by the following equation:

$V_{max}=8.71 + 0.708(H_T)$

Where:

V_{max}=Maximum permitted velocity, m/sec.

8.71=Constant.

0.708=Constant.

H_T=The net heating value as determined in paragraph (b)(6)(ii) of this section.

* * * * *

[FR Doc. 98–11262 Filed 5–1–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 81

[FRL–598–6]

Technical Amendments to Designation of Areas for Air Quality Planning Purposes; Texas; Revised Geographical Designation of Certain Air Quality Control Regions; Correction of Effective Date Under Congressional Review Act (CRA)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule; correction of effective date under CRA.

SUMMARY: On June 3, 1997 (62 FR 30270), the Environmental Protection Agency published in the **Federal Register** a direct final rule approving a July 2, 1993, request by the Governor of Texas to revise the geographical boundaries of seven Air Quality Control Regions (AQCRs) in the State of Texas to conform with the Texas Natural Resource Conservation Commission (TNRCC) regional boundaries, which established an effective date of August 4, 1997. This document corrects the effective date of the rule to May 4, 1998 to be consistent with sections 801 and 808 of the Congressional Review Act (CRA), enacted as part of the Small Business Regulatory Enforcement Fairness Act, 5 U.S.C. 801 and 808.

EFFECTIVE DATE: This rule is effective on May 4, 1998.

FOR FURTHER INFORMATION CONTACT: Tom Eagles, Office of Air, at (202) 260–5585.

SUPPLEMENTARY INFORMATION:

I. Background

Section 801 of the CRA precludes a rule from taking effect until the agency promulgating the rule submits a rule report, which includes a copy of the rule, to each House of Congress and to the Comptroller General of the General Accounting Office (GAO). EPA recently discovered that it had inadvertently failed to submit the above rule as required; thus, although the rule was promulgated on the date stated in the June 3, 1997, **Federal Register** document, by operation of law, the rule did not take effect on August 4, 1997, as stated therein. Now that EPA has discovered its error, the rule has been submitted both Houses of Congress and the GAO. This document amends the effective date of the rule consistent with the provisions of the CRA.

Section 553 of the Administrative Procedure Act, 5 U.S.C. 553(b)(B), provides that, when an agency for good cause finds that notice and public procedure are impracticable, unnecessary or contrary to the public interest, an agency may issue a rule without providing notice and an opportunity for public comment. EPA has determined that there is good cause for making today's rule final without prior proposal and opportunity for comment because EPA merely is correcting the effective date of the promulgated rule to be consistent with the congressional review requirements of the Congressional Review Act as a matter of law and has no discretion in this matter. Thus, notice and public procedure are unnecessary. The Agency finds that this constitutes good cause under 5 U.S.C. 553(b)(B). Moreover, since today's action does not create any new regulatory requirements and affected parties have known of the underlying rule since June 3 1997, EPA finds that good cause exists to provide for an immediate effective date pursuant to 5 U.S.C. 553(d)(3) and 808(2).

II. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and is therefore not subject to review by the Office of Management and Budget. In addition, this action does not impose any enforceable duty or contain any unfunded mandate as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), or require prior consultation with State officials as specified by Executive Order 12875 (58 FR 58093, October 28, 1993), or involve special consideration of environmental justice related issues as required by Executive Order 12898 (59 FR 7629, February 16, 1994). Because this action is not subject to notice-and-comment requirements under the Administrative Procedure Act or any other statute, it is not subject to the regulatory flexibility provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). EPA's compliance with these statutes and Executives Orders for the underlying rule is discussed in the June 3, 1997, **Federal Register** document.

Pursuant to 5 U.S.C. 801(a)(1)(A), as added by the Small Business Regulatory Enforcement Fairness Act of 1996, 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 General Accounting Office; however, in accordance with 5 U.S.C. 808(2), this rule is effective on May 4, 1998. This rule is not a ''major rule'' as defined in 5 U.S.C. 804(2).

This final rule only amends the effective date of the underlying rule; it does not amend any substantive requirements contained in the rule. Accordingly, to the extent it is available, judicial review is limited to the amended effective date.

Dated: April 22, 1998.

Carol Browner,

Administrator.

[FR Doc. 98–11544 Filed 5–1–98; 8:45 am]

BILLING CODE 6560–50–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 81

[FRL–5987–9]

Technical Amendments to Designation of Areas for Air Quality Planning Purposes; State of New Jersey; Correction of Effective Date Under Congressional Review Act (CRA)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final Rule; correction of effective date under CRA.

SUMMARY: On July 3, 1997 (62 FR 35972), the Environmental Protection Agency published in the **Federal Register** a direct final action to correct entries to the table in § 81.331 of Title 40 of the Code of Federal Regulations (CFR) for ''New Jersey-Carbon Monoxide,'' which established an effective date of July 3, 1997. This document corrects the effective date of the rule to May 4, 1998 to be consistent with sections 801 and 808 of the Congressional Review Act (CRA), enacted as part of the Small Business Regulatory Enforcement Fairness Act, 5 U.S.C. 801 and 808.

EFFECTIVE DATE: This rule is effective on May 4, 1998.

FOR FURTHER INFORMATION CONTACT: Tom Eagles, Office of Air at (202) 250–5585.

SUPPLEMENTARY INFORMATION:

I. Background

Section 801 of the CRA precludes a rule from taking effect until the agency promulgating the rule submits a rule report, which includes a copy of the rule, to each House of Congress and to the Comptroller General of the General Accounting Office (GAO) EPA recently discovered that it had inadvertently failed to submit the above rule as required; thus, although the rule was promulgated on the date stated in the July 3, 1997, **Federal Register** document, by operation of law, the rule did not take effect on July 3, 1997, as stated therein. Now that EPA has discovered its error, the rule has been submitted to both Houses of Congress and the GAO. This document amends the effective date the rule consistent with the provisions of the CRA.

Section 553 of the Administrative Procedure Act, 5 U.S.C. 553(b)(B), provides that, when an agency for good cause finds that notice and public procedure are impracticable, unnecessary or contrary to the public interest, an agency may issue a rule without providing notice and an opportunity for public comment. EPA has determined that there is good cause for making today's rule final without prior proposal and opportunity for comment because EPA merely is correcting the effective date of the promulgated rule to be consistent with the congressional review requirements of the Congressional Review Act as a matter of law and has no discretion in this matter. Thus, notice and public procedure are unnecessary. The Agency finds that this constitutes good cause under 5 U.S.C. 553(b)(B). Moreover, since today's action does not create any new regulatory requirements and affected parties have known of the underlying rule since July 3, 1997, EPA finds that good cause exists to provide for an immediate effective date pursuant to 5 U.S.C. 553(d)(3) and 808(2).

II. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and is therefore not subject to review by the Office of Management and Budget. In addition, this action does not impose any enforceable duty or contain any unfunded mandate as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), or require prior consultation with State officials as specified by Executive Order 12875 (58 FR 58093, October 28, 1993), or involve special consideration of environmental justice related issues as required by Executive Order 12898 (59 FR 7629, February 16, 1994). Because this action is not subject to notice-and-comment requirements under the Administrative Procedure Act or any other statute, it is not subject to the regulatory flexibility provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) EPA's compliance with these statutes and Executive Orders for the underlying rule is discussed in the July 3, 1997, **Federal Register** document.

Pursuant to 5 U.S.C. 801(a)(1)(A), as added by the Small Business Regulatory Enforcement Fairness Act of 1996, 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 General Accounting Office; however, in accordance with 5 U.S.C. 808(2), this rule is effective on May 4, 1998. This rule is not a ''major rule'' as defined in 5 U.S.C. 804(2).

This final rule only amends the effective date of the underlying rule; it does not amend any substantive requirements contained in the rule. Accordingly, to the extent it is available, judicial review is limited to the amended effective date.

Dated: April 22, 1998.

Carol Browner,

Administrator.

[FR Doc. 98–11546 Filed 5–1–98; 8:45 am]

BILLING CODE 6560–50–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 86

[FRL–5999–7]

Amendments to the Test Procedures for Heavy-Duty Engines, and Light-Duty Vehicles and Trucks and Amendments to the Emission Standard Provisions for Gaseous Fueled Vehicles and Engines

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: On September 5, 1997, EPA promulgated a direct final rulemaking that amended several sections of the heavy-duty engine test procedure regulations. These changes were needed in order to accommodate the use of new testing equipment, to provide greater flexibility in the type of testing equipment used and to ensure uniform calibration and use of the testing equipment. EPA stated that it would withdraw any provisions that received adverse or critical comments. EPA also published a notice of proposed rulemaking at that time proposing the same amendments. Due to adverse comments that were received regarding three provisions of the final rule, EPA is removing those three provisions in this action. The Agency intends to issue in the near future a final rule addressing these provisions.

EFFECTIVE DATE: June 3, 1998.

ADDRESSES: Materials relevant to this rulemaking are contained in Docket No. A–96–07, and are available for public inspection and photocopying between 8 a.m. and 5:30 p.m. Monday through Friday. EPA may charge a reasonable fee for copying docket materials.

FOR FURTHER INFORMATION CONTACT: Mr. Jaime Pagán, U.S. EPA, Engine Programs and Compliance Division, 2565 Plymouth Road, Ann Arbor, MI 48105. Telephone (734) 668–4574.

SUPPLEMENTARY INFORMATION:

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I. Introduction

On September 5, 1997, EPA published a direct final rule (62 FR 47114) and accompanying notice of proposed rule

(62 FR 46937) making amendments to the test procedures for heavy-duty engines and light duty vehicles and trucks. The changes were made in order to accommodate the use of new testing equipment and clarify certain issues that had been identified since the test procedures were first promulgated. Although EPA believed that the action was non-controversial, adverse comments were received from the Engine Manufacturers Association (EMA) and from the American Automobile Manufacturers Association (AAMA). Their respective adverse comments have been placed in the public docket for viewing.

Both of the comments received by EPA referred to changes made to §§ 86.1333–90, 86.119–90. 86–1319–84 and 86.1319–90. In § 86.1333–90 EPA provided a new requirement for cycle verification at idle conditions. The new requirement stated that for idle segments that are seven seconds or longer, the average feedback torque must fall within ±10 ft-lb of CITT. Both EMA and AAMA commented that current dynamometer systems utilized might not be capable of controlling torque to this specification and thus the time period might have to be lengthened or modifications made to dynamometer control systems.

EPA also revised §§ 86.119–90, 86.1319–84 and 86.1390–90 to require manufacturers to verify that the critical flow venturi is achieving critical flow when using a CFV–CVS sampling system during the emissions test. Both EMA and AAMA commented that, although they agree with the technical merits of such requirement, more lead time would be needed to make the software and hardware changes necessary to comply.

Finally, EPA made a correction to its light-duty diesel fuel cetane specification in § 86.113–94. In the Gaseous Fuels Rule (59 FR 48472) modifications to the section specifying certification fuel parameters for light-duty vehicles and trucks resulted in inadvertent changes to the diesel fuel specifications. In its comments, AAMA expressed concern that the change will not provide sufficient lead time for manufacturers to comply and that, in addition, diesel hydrocarbon emissions are sensitive to cetane levels and thus in-use compliance issues could be created in the future.

As a result of these adverse comments, EPA is removing the provisions of the direct final rule that pertain to the comments received. EPA is thus reinstating the regulatory language in those provisions as it was prior to the publication of the direct final rule on September 5, 1997. EPA's decision to remove these regulatory changes is not based on EPA's agreement or disagreement with the adverse comments received. The removal is based solely on the receipt of the comments themselves. As stated in the September 5, 1997 rule, the provisions would become effective only if no persons submitted adverse comments or requested an opportunity to comment.

As noted above, EPA published a notice of proposed rulemaking on September 5, 1997 (62 FR 46937) to accompany the direct final rule published on that date. As noted in that notice of proposed rulemaking, if EPA received adverse comments, all public comments received regarding the direct final rule would be addressed in a subsequent final rule based on the proposed rule. The Agency would not institute a second comment period on the proposed rule.

Therefore, EPA intends to issue a final rule in the near future regarding the portions of the direct final rule that the commenters addressed, and that are removed today. EPA will take the comments it has received into account in promulgating this final rule. No further comment period is contemplated prior to completion of the final rule.

II. Administrative Designation and Regulatory Analysis

Under Executive Order 12866 [58 FR 51735 (October 4, 1993)], the Agency must determine whether this regulatory action is ''significant and therefore subject to Office of Management and Budget (OMB) review and the requirements of the Executive Order. The Order defines ''significant'' regulatory action as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

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

Pursuant to the terms of Executive Order 12866, EPA has determined that this action is not a ''significant'' regulatory action within the meaning of the Executive Order and is therefore not subject to OMB review.

III. Regulatory Flexibility

EPA has determined that it is not necessary to prepare a regulatory flexibility analysis in connection with this final rule. In support of its proposed rule entitled *Control of Emissions of Air Pollution from Highway Heavy-Duty Engines* (61 FR 33421, June 27, 1996), EPA characterized the heavy-duty engine manufacturing industry in Chapter 3 of its Regulatory Impact Analysis (RIA). Based on that characterization, EPA has determined that these technical amendments will not have a significant impact on a substantial number of small entities.

IV. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), signed into law on March 22, 1995, EPA must prepare a written statement to accompany any rule where the estimated costs to State, local, or tribal governments, or to the private sector will be $100 million or more in any one year. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objective of the rule and that is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly and uniquely impacted by the rule. EPA has determined that the costs to State, local, or tribal governments, or the private sector, from this rule will be less than $100 million.

V. Paperwork Reduction Act

The technical amendments promulgated by this action do not create or change the information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et.seq.* The Office of Management and Budget (OMB) has previously approved the information collection requirements already contained in all the Part 86 sections amended by this action and has assigned OMB control numbers 2060–0104 and 2060–0064.

VI. Submission to Congress and the General Accounting Office

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report which includes a copy of the rule, to each House of

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, U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a ''major rule'' defined by 5 U.S.C. 804(2).

VII. Copies of Rulemaking Documents

Electronic copies of the preamble and the regulatory text of this rule are available via the Internet on the Office of Mobile Sources (OMS) Home Page (http://www.epa.gov/OMSWWW/). This service is free of charge, except for any cost you already incur for Internet connectivity. An electronic version is made available on the day of publication on the primary Web site (http://www.epa.gov/docs/fedrgstr/EPA–AIR/).

Please note that due to differences between the software used to develop the documents and the software into which the documents may be downloaded, changes in format, page length, etc., may occur.

List of Subjects in 40 CFR Part 86

Environmental protection, Administrative practice and procedure, Air pollution control, Confidential business information, Gasoline, Incorporation by reference, Labeling, Motor vehicle pollution, Motor vehicles, Reporting and recordkeeping requirements.

Dated: April 14, 1998.

Carol M. Browner,

Administrator.

For the reasons set forth in the preamble, part 86 of chapter I of title 40 of the Code of Federal Regulations is amended as follows:

PART 86—CONTROL OF AIR POLLUTION FROM NEW AND IN-USE MOTOR VEHICLES AND NEW AND IN-USE MOTOR VEHICLE ENGINES: CERTIFICATION AND TEST PROCEDURES

1. The authority citation for part 86 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

2. Section 86.113–94 of subpart B is amended by revising the table after paragraph (b)(2) to read as follows:

§ 86.113–94 Fuel specifications.

* * * * *

(b) * * *

(2) * * *

Item		ASTM test method No.	Type 2–D
Cetane Number		D613	42–50
Distillation range:			.....
IBP	°F	D86	340–400
	(°C)		(171.1–204.4)
10 pct. point	°F	D86	400–460
	(°C)		(204.4–237.8)
50 pct. point	°F	D86	470–540
	(°C)		(243.3–282.2)
90 pct. point	°F	D86	560–630
	(°C)		(293.3–332.2)
EP	°F	D86	610–690
	(°C)		(321.1–365.6)
Gravity	°API	D287	32–37
Total sulfur	pct.	D2622	0.03–0.05
Hydrocarbon composition:			
Aromatics, min.	pct.	D1319	27
Paraffins,		D1319	(1)
Naphthenes,			.....
Olefins			.....
Flashpoint, min.	°F	D93	130
	(°C)		(54.4)
Viscosity, centistokes		D445	2.0–3.2

1 Remainder.

* * * * *

3. Section 86.119–90 of Subpart B is amended by revising paragraph (b)(3) and removing paragraph (b)(8) to read as follows:

§ 86.119–90 CVS calibration.

* * * * *

(b) * * *

(3) Measurements necessary for flow calibration are as follows:

CALIBRATION DATA MEASUREMENTS

Parameter	Symbol	Units	Tolerances
Barometric pressure (corrected)	P_b	Inches Hg (kPa)	±.01 in Hg (±.034 kPa).
Air temperature, flowmeter	ETI	°F (°C)	±.25°F (±.14°C).
Pressure depression upstream of LFE	EPI	Inches H2O (kPa)	±.05 in H_2O (±.012 kPa).
Pressure drop across LFE matrix	EDP	Inches H2O (kPa)	±.005 in H_2O (±.001 kPa).
Air flow	Q_s	Ft^3/min. (m^3/min,)	±.5 pct.

CALIBRATION DATA MEASUREMENTS—Continued

Parameter	Symbol	Units	Tolerances
CFV inlet depression	PPI	Inches fluid (kPa)	±.13 in fluid (±.055 kPa).
Temperature at venturi inlet	T_v	°F (°C)	±0.5°F (±.28°C).
Specific gravity of manometer fluid (1.75 oil)	Sp. Gr		

* * * * *

4. Section 86.1319–84 of Subpart N is amended by revising paragraph (d)(3) and removing paragraph (d)(8) to read as follows:

§ 86.1319–84 CVS calibration.

* * * * *

(d) * * *

(3) Measurements necessary for flow calibration are as follows:

CALIBRATION DATA MEASUREMENTS

Parameter	Symbol	Units	Tolerances
Barometric pressure (corrected)	P_b	Inches Hg (kPa)	±.01 in Hg (±.034 kPa).
Air temperature, flowmeter	ETI	°F (°C)	±.25°F (±.14°C).
Pressure depression upstream of LFE	EPI	Inches H2O (kPa)	±.05 in H_2O (±.012 kPa).
Pressure drop across LFE matrix	EDP	Inches H2O (kPa)	±.005 in H_2O (±.001 kPa).
Air flow	Q_s	Ft^3/min. (m^3/min,)	±.5 pct.
CFV inlet depression	PPI	Inches fluid (kPa)	±.13 in fluid (±.055 kPa).
Temperature at venturi inlet	T_v	°F (°C)	±0.5°F (±0.28°C).
Specific gravity of manometer fluid (1.75 oil)	Sp. Gr		

* * * * *

5. Section 86.1319–90 of Subpart N is amended by revising paragraph (d)(3) and removing paragraph (d)(8) to read as follows:

§ 86.1319–90 CVS calibration.

* * * * *

(d) * * *

(3) Measurements necessary for flow calibration are as follows:

CALIBRATION DATA MEASUREMENTS

Parameter	Symbol	Units	Sensor-readout tolerances
Barometric pressure (corrected)	P_b	in Hg (kPa)	±.01 in Hg (±.034 kPa).
Air temperature, into flowmeter	ETI	°F (°C)	±0.5 °F (±0.28 °C).
Pressure drop between the inlet and throat of metering venturi	EDP	Inches H2O (kPa)	±0.05 in H_2O (±0.012 kPa).
Air flow	Q_s	Ft^3/min. (m^3/min,)	±.5% of NBS ''true'' value.
CFV inlet depression	PPI	Inches fluid (kPa)	±.13 in fluid (±.055 kPa).
Temperature at venturi inlet	T_v	°F (°C)	±4.0 °F (±2.22 °C).
Specific gravity of manometer fluid (1.75 oil)	Sp. Gr		

* * * * *

6. Section 86.1333–90 of Subpart N is amended by revising paragraphs (d) heading and introductory text, (d)(1) and (d)(2) to read as follows:

§ 86.1333–90 Transient test cycle generation.

* * * * *

(d) *Cold start enhancement devices.* The zero percent speed specified in the engine dynamometer schedules (appendix I (f)(1), (f)(2) or (f)(3) to this part) shall be superseded by proper operation of the engine's automatic cold start enhancement device.

(1) During automatic cold start enhancement device operation, a manual transmission engine shall be allowed to idle at whatever speed is required to produce a feedback torque of 0 ft-lbs. ±10 ft-lbs. (using, for example, clutch disengagement, speed to torque control switching, software overrides, etc.) at those points in appendix I (f)(1), (f)(2), or (f)(3) to this part where both reference speed and reference torque are zero percent values.

(2) During automatic cold start enhancement device operation, an automatic transmission engine shall be allowed to idle at whatever speed is required to produce a feedback torque of CITT ft-lbs. ±10 ft-lbs. (see paragraph (e)(2) of this section for definition of CITT) at those points in appendix I (f)(1), (f)(2), or (f)(3) to this part where both reference speed and reference torque are zero percent values.

* * * * *

[FR Doc. 98–10718 Filed 5–1–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[FRL–5982–3]

Technical Amendments to Imidacloprid; Pesticide Tolerances for Emergency Exemptions; Correction of Effective Date Under Congressional Review Act (CRA)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; correction of effective date under CRA.

SUMMARY: On July 9, 1997 (62 FR 36691), the Environmental Protection Agency published in the **Federal Register** a final rule establishing time-limited tolerances for combined residues of imidacloprid in or on the crop group citrus fruits and processed commodity dried citrus pulp, which established an effective date of July 9, 1997. This document corrects the effective date of the rule on May 4, 1998 to be consistent with sections 801 and 808 of the Congressional Review Act (CRA), enacted as part of the Small Business Regulatory Enforcement Fairness Act, 5 U.S.C. 801 and 808.

EFFECTIVE DATE: This rule is effective on May 4, 1998.

FOR FURTHER INFORMATION CONTACT: Angela Hofman, Office of Pesticide Programs and Toxic Substances at (202) 260–2922.

SUPPLEMENTARY INFORMATION:

I. Background

Section 801 of the CRA precludes a rule from taking effect until the agency promulgating the rule submits a rule report, which includes a copy of the rule, to each House of Congress and to the Comptroller General of the General Accounting Office (GAO). EPA recently discovered that it had inadvertently failed to submit the above rule as required; thus, although the rule was promulgated on the date stated in the July 9, 1997, **Federal Register** document, by operation of law, the rule did not take effect on July 9, 1997, as stated therein. Now that EPA has discovered its error, the rule has been submitted to both Houses of Congress and the GAO. This document amends the effective date of the rule consistent with the provisions of the CRA.

Section 408(e)(2) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(e)(2), provides that the Administrator, before issuing a final rule under section 408(e)(1), shall issue a proposed rule and allow 60 days for public comment unless the Administrator for good cause finds that it would be in the public interest to provide a shorter period. EPA has determined that there is good cause for making today's rule final without prior proposal and opportunity for comment because EPA merely is correcting the effective date of the promulgated rule to be consistent with the congressional review requirements of the Congressional Review Act as a matter of law and has no discretion in this matter. Thus, notice and public procedure are unnecessary. The Agency finds that this constitutes good cause under section 408(e)(2). Moreover, since today's action does not create any new regulatory requirements and affected parties have known of the underlying rule since July 9, 1997, EPA finds that good cause exists to provide for an immediate effective date pursuant to 5 U.S.C. 808(2). Under section 408(g)(1) of FFDCA, today's rule is effective upon publication.

Because the delay in the effective date was caused by EPA's inadvertent failure to submit the rule under the CRA, EPA does not believe that affected entities that acted in good faith relying upon the effective date stated in July 9, 1997, **Federal Register** should be penalized if they were complying with the rule as promulgated.

II. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and is therefore not subject to review by the Office of Management and Budget. In addition, this action does not impose any enforceable duty or contain any unfunded mandate as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), or require prior consultation with State officials as specified by Executive Order 12875 (58 FR 58093, October 28, 1993), or involve special consideration of environmental justice related issues as required by Executive Order 12898 (59 FR 7629, February 16, 1994). Because this action is not subject to notice-and-comment requirements under the Administrative procedure Act or any other statute, it is not subject to the regulatory flexibility provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). EPA's compliance with these statutes and Executive Orders for the underlying rule is discussed in the July 9, 1997, **Federal Register** document.

Pursuant to 5 U.S.C. 801(a)(1)(A), as added by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA will submit a report containing this rule and other required information to the U.S. House of Representatives and the Comptroller General of the General Accounting Office; however, in accordance with 5 U.S.C. 808(2), this rule is effective on May 4, 1998. This rule is not a ''major rule'' as defined in 5 U.S.C. 804(2).

This final rule only amends the effective date of the underlying rule; it does not amend any substantive requirements contained in the rule. Accordingly, to the extent it is available, judicial review is limited to the amendment effective date.

Dated: April 22, 1998.

Carol Browner,

Administrator.

[FR Doc. 98–11556 Filed 5–1–98; 8:45 am]

BILLING CODE 6560–50–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[FRL–5982–4]

Technical Amendments to Myclobutanil; Pesticide Tolerances for Emergency Exemptions; Correction of Effective Date Under Congressional Review Act (CRA)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; correction of effective date under CRA.

SUMMARY: On July 9, 1997 (62 FR 36671), the Environmental Protection Agency published in the **Federal Register** a final rule establishing a time-limited tolerance for combined residue of myclobutanil in or on peppers (bell and non-bell), peppermint and spearmint, which established an effective date of July 9, 1997. This document corrects the effective date of the rule to May 4, 1998 to be consistent with sections 801 and 808 of the Congressional Review Act (CRA), enacted as part of the Small Business Regulatory Enforcement Fairness Act, 5 U.S.C. 801 and 808.

EFFECTIVE DATE: This rule is effective May 4, 1998.

FOR FURTHER INFORMATION CONTACT: Angela Hofman, Office of Pesticide Programs and Toxic Substances at (202) 260–2922.

SUPPLEMENTARY INFORMATION:

I. Background

Section 801 of the CRA precludes a rule from taking effect until the agency promulgating the rule submits a rule report, which includes a copy of the rule, to each House of Congress and to

the Comptroller General of the General Accounting Office (GAO). EPA recently discovered that it had inadvertently failed to submit the above rule as required; thus, although the rule was promulgated on the date stated in the July 9, 1997, **Federal Register** document, by operation of law, the rule did not take effect on July 9, 1997, as stated therein. Now that EPA has discovered its error, the rule has been submitted to both Houses of Congress and the GAO. This document amends the effective date of the rule consistent with the provisions of the CRA.

Section 408(e)(2) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(e)(2), provides that the Administrator, before issuing a final rule under section 408(e)(1), shall issue a proposed rule and allow 60 days for public comment unless the Administrator for good cause finds that it would be in the public interest to provide a shorter period. EPA has determined that there is good cause for making today's rule final without prior proposal and opportunity for comment because EPA merely is correcting the effective date of the promulgated rule to be consistent with the congressional review requirements of the Congressional Review Act as a matter of law and has no discretion in this matter. Thus, notice and public procedure are unnecessary. The Agency finds that this constitutes good cause under section 408(e)(2). Moreover, since today's action does not create any new regulatory requirements and affected parties have known of the underlying rule since July 9, 1997, EPA finds that good cause exists to provide for an immediate effective date pursuant to 5 U.S.C. 808(2). Under section 408(g)(1) of FFDCA, today's rule is effective upon publication.

Because the delay in the effective date was caused by EPA's inadvertent failure to submit the rule under the CRA, EPA does not believe that affected entities that acted in good faith relying upon the effective date stated in the July 9, 1997, **Federal Register** should be penalized if they were complying with the rule as promulgated.

II. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and is therefore not subject to review by the Office of Management and Budget. In addition, this action does not impose any enforceable duty or contain any unfunded mandate as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), or require prior consultation with State official as specified by Executive Order 12875 (58 FR 58093, October 28, 1993) or involve special consideration of environmental justice related issues as required by Executive Order 12898 (59 FR 7629, February 16, 1994). Because this action is not subject to notice-and-comment requirements under the Administrative Procedure Act or any other statute, it is not subject to the regulatory flexibility provision of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). EPA's compliance with these statutes and Executive Orders for the underlying rule is discussed in the July 9, 1997, **Federal Register** document.

Pursuant to 5 U.S.C. 801(a)(1)(A), as added by the Small Business Regulatory Enforcement Fairness Act of 1996, 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 General Accounting Office; however, in accordance with 5 U.S.C. 808(2), this rule is effective on May 4, 1998. This rule is not a ''major rule'' as defined in 5 U.S.C. 804(2).

This final rule only amends the effective date of the underlying rule; it does not amend any substantive requirements contained in the rule. Accordingly, to the extent it is available, judicial review is limited to the amended effective date.

Dated: April 22, 1998.

Carol Browner,

Administrator.

[FR Doc. 98–11555 Filed 5–1–98; 8:45 am]

BILLING CODE 6560–50–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[FRL–5982–6]

Technical Amendments to Azoxystrobin; Pesticide Tolerances; Correction of Effective Date Under Congressional Review Act (CRA)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; correction of effective date under CRA.

SUMMARY: On July 9, 1997 (62 FR 36684), the Environmental Protection Agency published in the **Federal Register** a final rule establishing tolerances for residues of the fungicide azoxystrobin, which established an effective date of June 3, 1997. This document corrects the effective date of the rule to May 4, 1998 to be consistent with sections 801 and 808 of the Congressional Review Act (CRA), enacted as part of the Small Business Regulatory Enforcement Fairness Act, 5 U.S.C. 801 and 808.

EFFECTIVE DATE: This rule is effective on May 4, 1998.

FOR FURTHER INFORMATION CONTACT: Angela Hofman, Office of Pesticide Programs and Toxic Substances at (202) 260–2922.

SUPPLEMENTARY INFORMATION:

I. Background

Section 801 of the CRA precludes a rule from taking effect until the agency promulgating the rule submits a rule report, which includes a copy of the rule, to each House of Congress and to the Comptroller General of the General Accounting Office (GAO). EPA recently discovered that it had inadvertently failed to submit the above rule as required; thus, although the rule was promulgated on the date stated in the July 9, 1997, **Federal Register** document, by operation of law, the rule did not take effect on June 3, 1997, as stated therein. Now that EPA has discovered its error, the rule has been submitted to both Houses of Congress and the GAO. This document amends the effective date of the rule consistent with the provisions of the CRA.

Section 408(e)(2) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(e)(2), provides that the Administrator, before issuing a final rule under section 408(c)(1), shall issue a proposed rule and allow 60 days for public comment unless the Administrator for good cause finds that it would be in the public interest to provide a shorter period. EPA has determined that there is good cause for making today's rule final without prior proposal and opportunity for comment because EPA merely is correcting the effective date of the promulgated rule to be consistent with the congressional review requirements of the Congressional Review Act as a matter of law and has no discretion in this matter. Thus, notice and public procedure are unnecessary. The Agency finds that this constitutes good cause under section 408(e)(2). Moreover, since today's action does not create any new regulatory requirements and affected parties have know of the underlying rule since July 9, 1997, EPA finds that good cause exists to provide for an immediate effective date pursuant to 5 U.S.C. 808(2). Under section 408(g)(1) of FFDCA, today's rule is effective upon publication.

Because the delay in the effective date was caused by EPA's inadvertent failure to submit the rule under the CRA, EPA

does not believe that affected entities that acted in good faith relying upon the effective date stated in the July 9, 1997, **Federal Register** should be penalized if they were complying with the rule as promulgated.

II. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and is therefore not subject to review by the Office of Management and Budget. In addition, this action does not impose any enforceable duty or contain any unfunded mandate as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), or require prior consultation with State officials as specified by Executive Order 12875 (58 FR 58093, October 28, 1993), or involve special consideration of environmental justice related issues as required by Executive Order 12898 (59 FR 7629, February 16, 1994). Because this action is not subject to notice-and-comment requirements under the Administrative Procedure Act or any other statute, it is not subject to the regulatory flexibility provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). EPA's compliance with these statutes and Executive Orders for the underlying rule is discussed in the July 9, 1997, **Federal Register** document.

Pursuant to 5 U.S.C. 801(a)(1)(A), as added by the Small Business Regulatory Enforcement Fairness Act of 1996, 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 General Accounting Office; however, in accordance with 5 U.S.C. 808(2), this rule is effective on May 4, 1998. This rule is not a ''major rule'' as defined in 5 U.S.C. 804(2).

This final rule only amends the effective date of the underlying rule; it does not amend any substantive requirements contained in the rule. Accordingly, to the extent it is available, judicial review is limited to the amended effective date.

Dated: April 22, 1998.

Carol Browner,

Administrator.

[FR Doc. 98–11554 Filed 5–1–98; 8:45 am]

BILLING CODE 6560–50–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[FRL–5982–7]

Technical Amendments to Cyclanilide; Pesticide Tolerances, Correction; Correction of Effective Date Under Congressional Review Act (CRA)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; correction of effective date under CRA.

SUMMARY: On June 25, 1997 (62 FR 34182), the Environmental Protection Agency published in the **Federal Register** a final rule correction of the tolerance level for meat of cattle, goats, horses, hogs and sheep, which established an effective date of May 23, 1997. This document corrects the effective date of the rule to May 4, 1998 to be consistent with sections 801 and 808 of the Congressional Review Act (CRA), enacted as part of the Small Business Regulatory Enforcement Fairness Act, 5 U.S.C. 801 and 808.

EFFECTIVE DATE: This rule is effective on May 4, 1998.

FOR FURTHER INFORMATION CONTACT: Angela Hofman, Office of Pesticide Programs and Toxic Substances at (202) 260–2922.

SUPPLEMENTARY INFORMATION:

I. Background

Section 801 of the CRA precludes a rule from taking effect until agency promulgating the rule submits a rule report, which includes a copy of the rule, to each House of Congress and to the Comptroller General of the General Account Office (GAO). EPA recently discovered that it had inadvertently failed to submit the above rule as required; thus, although the rule was promulgated on the date stated in the June 25, 1997, **Federal Register** document, by operation of law, the rule did not take effect on May 23, 1997, as stated therein. Now that EPA has discovered its error, the rule has been submitted to both Houses of Congress and the GAO. This document amends the effective date of the rule consistent with the provisions of the CRA.

Section 408(e)(2) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(e)(2), provides that the Administrator, before issuing a final rule under section 408(e)(1), shall issue a proposed rule and allow 60 days for public comment unless the Administrator for good cause finds that it would be in the public interest to provide a shorter period. EPA has determined that there is good cause for making today's rule final without prior proposal and opportunity for comment because EPA merely is correcting the effective date of the promulgated rule to be consistent with the congressional review requirements of the Congressional Review Act as a matter of law and has no discretion in this matter. Thus, notice and public procedure are unnecessary. The Agency finds that this constitutes good cause under section 408(e)(2). Moreover, since today's action does not create any new regulatory requirements and affected parties have known of the underlying rule since June 25, 1997, EPA finds that good cause exists to provide for an immediate effective date pursuant to 5 U.S.C. 808(2). Under section 408(g)(1) of FFDCA, today's rule is effective upon publication.

Because the delay in the effective date was caused by EPA's inadvertent failure to submit the rule under the CRA, EPA does not believe that affected entities that acted in good faith relying upon the effective date stated in the June 25, 1997, **Federal Register** should be penalized if they were complying with the rule as promulgated.

II. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and is therefore not subject to review by the Office of Management and Budget. In addition, this action does not impose any enforceable duty or contain any unfunded mandate as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), or require prior consultation with State officials as specified by Executive Order 12875 (58 FR 58093, October 28, 1993), or involve special consideration of environmental justice related issues as required by Executive Order 12898 (59 FR 7629, February 16, 1994). Because this action is not subject to notice-and-comment requirements under the Administrative Procedure Act or any other statute, it is not subject to the regulatory flexibility provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

Pursuant to 5 U.S.C. 801(a)(1)(A), as added by the Small Business Regulatory Enforcement Fairness Act of 1996, 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 General Accounting Office; however, in accordance with 5 U.S.C. 808(2), this rule is effective on May 4, 1998. This rule is not a ''major rule'' as defined in 5 U.S.C. 804(2).

This final rule only amends the effective date of the underlying rule; it does not amend any substantive requirements contained in the rule. Accordingly, to the extent it is available, judicial review is limited to the amended effective date.

Dated: April 22, 1998.

Carol Browner,

Administrator.

[FR Doc. 98–11553 Filed 5–1–98; 8:45 am]

BILLING CODE 6560–50–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[FRL–5982–1]

Technical Correction to Heading of Federal Register Publication Announcing Final Authorization of Revisions to Arizona Hazardous Waste Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Technical correction.

SUMMARY: On March 7, 1997 (62 FR 10464), EPA published an immediate final rule concerning authorization of revisions to Arizona's hazardous waste management program under the Resource Conservation and Recovery Act (RCRA). The title to the **Federal Register** publication announcing the rule mistakenly referred to Nevada instead of Arizona. The purpose of this document is to correct this title.

EFFECTIVE DATE: This correction is effective on May 4, 1998.

FOR FURTHER INFORMATION CONTACT: Lisa McClain-Vanderpool, U.S. EPA Region IX (WST–3) 75 Hawthorne Street, San Francisco, CA 94105, telephone: (415) 744–2086.

SUPPLEMENTARY INFORMATION:

I. Background

Section 553 of the Administrative Procedure Act (5 U.S.C. 553(b)(B)) provides that when an agency for good cause finds that notice and public procedure are impracticable, unnecessary, or contrary to the public interest, an agency may issue a rule without providing notice and an opportunity for public comment. EPA has determined that there is good cause for making today's technical correction final without prior proposal and opportunity for comment because (1) the correction creates no new regulatory requirements, and (2) interested persons have already been put on notice of the error by a March 21, 1997, **Federal Register** publication (62 FR 13540) correcting the error and extending the effective date of the March 7, 1997, rule (the March 21, 1997 rule did not take effect, however, because EPA did not submit the rule to Congress as required by section 801 of the Congressional Review Act). For the same reasons, EPA finds that good cause exists to provide for an immediate effective date of this correction pursuant to 5 U.S.C. 553(d)(1) and 802.

II. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and is therefore not subject to review by the Office of Management and Budget. In addition, this action does not impose any enforceable duty or contain any unfunded mandate as describe in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), or require prior consultation with State officials as specified by Executive Order 12875 (58 FR 58093, October 18, 1993), or involve special consideration of environmental justice issues as required by Executive Order 12808 (59 FR 7629, February 16, 1994). Because this action is not subject to notice-and-comment requirements under the Administrative Procedure Act or any other statute, it is not subject to the regulatory flexibility provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). EPA's compliance with these statutes and Executive Orders for the underlying rule is discussed in the March 7, 1997, **Federal Register** document.

Pursuant to 5 U.S.C. 801(a)(1)(A), as added by the Small Business Regulatory Enforcement Fairness Act of 1996, 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 General Accounting Office; however, in accordance with 5 U.S.C. 808(2), this technical correction is effective on May 4, 1998. This correction is not a ''major rule'' as defined in 5 U.S.C. 804(2).

This rule only corrects the title to the March 21, 1997, **Federal Register** publication; it does not amend any substantive requirements contained in the rule. Under these circumstances, it is EPA's view that, to the extent it is available, any judicial review would be limited to this correction.

Dated: April 22, 1998.

Carol Browner,

Administrator.

[FR Doc. 98–11558 Filed 5–1–98; 8:45 am]

BILLING CODE 6560–50–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 281

[FRL–5981–2]

Technical Amendments to District of Columbia; Final Approval of State Underground Storage Tank Program; Correction of Effective Date Under Congressional Review Act (CRA)

AGENCY: Enviornmental Protection Agency (EPA).

ACTION: Notice of final determination on the District of Columbia's application for program approval; correction of effective date under CRA.

SUMMARY: On July 9, 1997 (62 FR 36698), the Environmental Protection Agency published in the **Federal Register** a notice of final determination on the District of Columbia's application for program approval concerning the District of Columbia's application for approval of its underground storage tank program under Subtitle I of the Resource Conservation and Recovery Act (RCRA), which established an effective date of August 8, 1997. This document corrects the effective date of the rule to May 4, 1998 to be consistent with sections 801 and 808 of the Congressional Review Act (CRA), enacted as part of the Small Business Regulatory Enforcement Fairness Act, 5 U.S.C. 801 and 808.

EFFECTIVE DATE: This rule is effective on May 4, 1998.

FOR FURTHER INFORMATION CONTACT: Barbara Hostage, Office of Solid Waste and Emergency Response at (202) 260–7979.

SUPPLEMENTARY INFORMATION:

I. Background

Section 801 of the CRA precludes a rule from taking effect until the agency promulgating the rule submits a rule report, which includes a copy of the rule, to each House of Congress and to the Comptroller General of the General Accounting Office (GAO). EPA recently discovered that it had inadvertently failed to submit the above rule as required; thus, although the rule was promulgated on the date stated in the July 9, 1997, **Federal Register** document, by operation of law, the July 9, 1997, rule did not take effect on August 8, 1997, as stated therein. Now that EPA has discovered its error, the rule has been submitted to both Houses of Congress and the GAO. This document amends the effective date of the rule consistent with the provisions of the CRA.

Section 553 of the Administrative Procedure Act, 5 U.S.C. 533(b)(B),

provides that, when an agency for good cause finds that notice and public procedure are impracticable, unnecessary or contrary to the public interest, an agency may issue a rule without providing notice and an opportunity for public comment. EPA has determined that there is good cause for making today's rule final without prior proposal and opportunity for comment because EPA merely is correcting the effective date of the promulgated rule to be consistent with the congressional review requirements of the Congressional Review Act as a matter of law and has no discretion in this matter. Thus, notice and public procedure are unnecessary. The Agency finds that this constitutes good cause under 5 U.S.C. 553(b)(B). Moreover, since today's action does not create any new regulatory requirements and affected parties have known of the underlying rule since July 9, 1997, EPA finds that good cause exists to provide for an immediate effective date pursuant to 5 U.S.C. 553(d)(3) and 808(2).

Because the delay in the effective date was caused by EPA's inadvertent failure to submit the rule under the CRA, EPA does not believe that affected entities that acted in good faith relying upon the effective date stated in the July 9, 1997, **Federal Register** should be penalized if they were complying with the rule as promulgated.

II. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and is therefore not subject to review by the Office of Management and Budget. In addition, this action does not impose any enforceable duty or contain any unfunded mandate as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), or require prior consultation with State officials as specified by Executive Order 12875 (58 FR 58093, October 28, 1993), or involve special consideration of environmental justice related issues under Executive Order 12898 (59 FR 7629, February 16, 1994). Because this action is not subject to notice-and-comment requirements under the Administrative Procedure Act or any other statute, it is not subject to the regulatory flexibility provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). EPA's compliance with these statutes and Executive Orders for the underlying rule is discussed in the July 9, 1997, **Federal Register** document.

Pursuant to 5 U.S.C. 801(a)(1)(A), as added by the Small Business Regulatory Enforcement Fairness Act of 1996, 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 General Accounting Office; however, in accordance with 5 U.S.C. 808(2), this rule is effective on May 4, 1998. This rule is not a ''major rule'' as defined in 5 U.S.C. 804(2).

This final rule only amends the effective date of the underlying rule; it does not amend any substantive requirements contained in the rule. Accordingly, to the extent it is available, judicial review is limited to the amended effective date.

Dated: April 22, 1998.

Carol Browner,

Administrator.

[FR Doc. 98–11543 Filed 5–1–98; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 97–223; RM–9014]

Radio Broadcasting Services; Ashdown and DeQueen, AR

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In response to a petition for rule making filed jointly on behalf of Bunyard Partnership, Jay W. Bunyard and Anne W. Bunyard, this document substitutes Channel 227C3 for Channel 221A at Ashdown, Arkansas, and modifies the license of Bunyard Partnership for Station KARQ(FM), as requested. Additionally, to accommodate the modification at Ashdown, Channel 221C2 is substituted for Channel 226C2 at DeQueen, Arkansas, and the license of Jay W. Bunyard and Anne W. Bunyard for Station KDQN-FM is modified accordingly. As the petitioners' modification request was filed pursuant to the provisions of Section 1.420(g)(3) of the Commission's Rules, competing expressions of interest for Channel 227C3 at Ashdown were not permitted. See 62 FR 58936, October 31, 1997. Coordinates for Channel 227C3 at Ashdown, Arkansas, are 33–40–22 and 94–11–02; coordinates for Channel 221C2 at DeQueen, Arkansas, are 34–13–35 and 94–17–35. With this action, the proceeding is terminated.

EFFECTIVE DATE: June 8, 1998.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 97–223, adopted April 15, 1998, and released April 24, 1998. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., 1231 20th Street, NW., Washington, DC 20036, (202) 857–3800.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

47 CFR Part 73—[AMENDED]

1. The authority citation for part 73 reads as follows:

Authority: 47 U.S.C. 154, 303, 334, 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Arkansas is amended by removing Channel 221A and adding Channel 227C3 at Ashdown.

3. Section 73.202(b), the Table of FM Allotments under Arkansas is amended by removing Channel 226C2 and adding Channel 221C2 at DeQueen.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 98–11738 Filed 5–1–98; 8:45 am]

BILLING CODE 6712–01–F

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

49 CFR Part 393

[FHWA Docket No. MC–94–31; FHWA–97–2318]

RIN 2125–AD42

Parts and Accessories Necessary for Safe Operation; Antilock Brake Systems

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Final rule.

SUMMARY: The FHWA is amending the Federal Motor Carrier Safety Regulations (FMCSRs) to require that air-braked truck tractors manufactured on or after March 1, 1997, and air-braked single-unit trucks, buses, trailers,

and converter dollies manufactured on or after March 1, 1998, be equipped with antilock brake systems (ABSs) that meet the requirements of Federal Motor Vehicle Safety Standard (FMVSS) No. 121. The FHWA is also requiring hydraulic-braked trucks and buses manufactured on or after March 1, 1999, to be equipped with ABSs that meet the requirements of FMVSS No. 105. In addition, the agency is requiring motor carriers to maintain the ABSs on these vehicles. This rulemaking is intended to ensure that the in-service brake standards of the FMCSRs are consistent with the FMVSSs. The rulemaking would also improve the safety of operation of commercial motor vehicles by reducing the incidence of accidents caused by jackknifing and other losses of directional stability and control during braking. With regard to commercial motor vehicles manufactured prior to the dates previously mentioned, the FHWA is not requiring motor carriers to retrofit such vehicles with ABSs.

DATES: This rule is effective June 3, 1998.

FOR FURTHER INFORMATION CONTACT: Mr. Larry W. Minor, Office of Motor Carrier Research and Standards, HCS–10, (202) 366–4009; or Mr. Charles E. Medalen, Office of the Chief Counsel, HCC–20, (202) 366–1354, Federal Highway Administration, 400 Seventh Street, SW., Washington, DC 20590–0001. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access

Internet users can access all comments received by the U.S. DOT Dockets, Room PL–401, by using the universal resource locator (URL): http://dms.dot.gov. It is available 24 hours each day, 365 days each year. Please follow the instructions online for more information and help.

An electronic copy of this document may be downloaded using a modem and suitable communications software from the **Federal Register** Electronic Bulletin Board Service at (202) 512–1661. Internet users may reach the **Federal Register**'s home page at: http://www.nara.gov/nara/fedreg and the Government Printing Office's database at: http://www.access.gpo.gov/su—docs.

Background

Section 4012 of the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA) (Pub. L. 102–240, 105 Stat. 1914, 2157) directs the Secretary of Transportation to initiate a rulemaking concerning methods for improving the braking performance of new commercial motor vehicles, [1] including truck tractors, trailers, and their dollies. Congress specifically directed that the rulemaking examine antilock systems, means of improving brake compatibility, and methods of ensuring effectiveness of brake timing.

The National Highway Traffic Safety Administration (NHTSA) Rulemaking

In response to the ISTEA, the NHTSA published a final rule amending Federal Motor Vehicle Safety Standard (FMVSS) No. 105, *Hydraulic Brake Systems*, and FMVSS No. 121, *Air Brake Systems*, to require that medium and heavy vehicles be equipped with an ABS to improve the lateral stability (i.e., traction) and steering control of these vehicles during braking (60 FR 13216, March 10, 1995). For truck tractors, the ABS requirement is supplemented by a 48.3 kilometer per hour (30-mph) braking-in-a-curve test on a low coefficient of friction surface using a full brake application. By improving lateral stability and control, these requirements will significantly reduce jackknifing and other losses of control during braking, as well as the deaths and injuries caused by those control problems.

In addition, the NHTSA final rule requires all powered heavy vehicles to be equipped with an in-cab lamp to indicate ABS malfunctions. Truck tractors and other trucks equipped to tow air-braked trailers are required to be equipped with two separate in-cab lamps: one indicating malfunctions in the towing vehicle ABS and the other in the trailer ABS. The requirement for the in-cab lamp to alert the driver of malfunctions in the trailer ABS applies to trucks and truck tractors manufactured on or after March 1, 2001 (61 FR 5949, February 15, 1996). Trailers produced during an initial 11-year period (March 1, 1998 through March 1, 2009) must also be equipped with an external malfunction indicator that is visible to the driver of the towing tractor (61 FR 5949).

The amendments to FMVSS No. 105 become effective on March 1, 1999. With the exception of the in-cab indicator for trailer ABS malfunctions, the amendments to FMVSS No. 121 became effective on March 1, 1997, for truck tractors, and on March 1, 1998, for air-braked trailers, converter dollies, single unit trucks, and buses.

FHWA Notice of Intent

On March 10, 1995, the FHWA published a notice of intent to initiate a rulemaking concerning requirements for ABSs on commercial motor vehicles operating in interstate commerce (60 FR 13306). The notice of intent included an extensive discussion of the NHTSA's ABS fleet study conducted between 1988 and 1993. Copies of the reports from the fleet study have been placed in the docket.[2] The NHTSA tracked the maintenance performance histories of 200 truck tractors and 50 semitrailers equipped with ABSs, as well as the histories of a comparison group of 88 truck tractors and 35 semitrailers that were not equipped with ABSs to determine the incremental maintenance costs and patterns associated with installing ABSs on these heavy vehicles.

The authors concluded that, based upon the data collected during the fleet study, currently available ABSs are reliable, durable, and maintainable. While an ABS is not a zero-cost maintenance item, its presence on a vehicle did not substantially increase maintenance costs (less than one percent for tractors, less than two percent for trailers) or decrease vehicle operational availability.

The NHTSA data indicate that ABSs are neither difficult nor unduly expensive to maintain. The fleet test results do not indicate that the level of maintenance required to keep an ABS functional is unreasonable relative to the safety benefits that will result from the use of these systems.

The FHWA concluded that a rulemaking should be initiated to propose amending the FMCSRs to include ABS requirements and solicited comments on this decision.

FHWA Notice of Proposed Rulemaking (NPRM)

On July 12, 1996, the FHWA published a notice of proposed rulemaking that would require motor carriers to maintain the ABSs on commercial motor vehicles manufactured on or after the effective dates of the NHTSA requirements (61 FR 36691). The NPRM discussed the comments received in response to the

[1] For the purposes of section 4012, the term ''commercial motor vehicle'' means any self-propelled or towed vehicle used on highways to transport passengers or property if such vehicle has a gross vehicle weight rating (GVWR) of 11,794 kilograms (kg) (26,001 pounds) or more. The NHTSA's final rule on ABS applies to medium and heavy vehicles with a GVWR of 4,536 kg (10,001 pounds) or more.

[2] ''An In-Service Evaluation of the Reliability, Maintainability, and Durability of Antilock Braking Systems (ABS) for Heavy Truck Tractors,'' DOT Report No. 807 846, March 1992, and ''An In-Service Evaluation of the Reliability, Maintainability, and Durability of Antilock Braking Systems (ABS) for Semitrailers,'' DOT Report No. 808 059, October 1993.

notice of intent and the FHWA's responses to the comments. The comments covered a range of issues including: Interpretation of 49 CFR 396.3—certain commenters believed an amendment to part 393 was not necessary and that § 396.3 could be used to assure that motor carriers provide appropriate maintenance for ABSs; research on ABS operation and failure modes; retrofitting; inspection procedures; and applicability to Canada- and Mexico-based motor carriers. The FHWA did not propose an exemption for commercial motor vehicles operated in the United States by Canada and Mexico-based motor carriers, but specifically requested comments from such motor carriers and original equipment manufacturers that sell vehicles for the Canadian and Mexican markets.

Discussion of Comments

The FHWA received 8 comments in response to the July 12, 1996, NPRM. The commenters were: Advocates for Highway and Auto Safety (the Advocates); the American Trucking Associations, Inc. (ATA); Insurance Institute for Highway Safety (IIHS); the International Brotherhood of Teamsters (the Teamsters); Midland-Grau Heavy Duty Systems; Rockwell WABCO Vehicle Control Systems (Rockwell WABCO); the Texas Department of Transportation (Texas DOT); and, the Truck Manufacturers Association (TMA).

Generally, the commenters were in favor of the FHWA establishing requirements for motor carriers to maintain the ABSs. However, the ATA expressed concerns about the FHWA's proposed cross-reference to FMVSS Nos. 105 and 121, and certain aspects of the proposed regulatory language that the ATA considered design restrictive. The Texas DOT supported the proposed requirements for ABSs, but expressed concern about radio frequency interference (RFI) problems with current generation ABSs. The specific concerns or issues raised by the commenters are discussed below.

Retrofitting

The ATA, Teamsters, Midland-Grau, Rockwell WABCO, and the TMA supported the FHWA's decision not to propose an ABS retrofitting requirement for vehicles manufactured prior to the effective date of the NHTSA requirements. None of the remaining commenters expressed views concerning retrofitting. Rockwell WABCO stated:

Rockwell WABCO agrees with the FHWA's position that it is inappropriate to require ABS to be retrofitted on commercial vehicles built prior to the effective date of the NHTSA regulation. Rockwell WABCO believes antilock braking systems (ABS) represent the best and most reliable technology available to improve the stability and control of medium and heavy vehicles during braking. However, for the systems to function as designed, they must be properly installed. Rockwell WABCO believes it would be extremely difficult to achieve quality installations if a nation-wide retrofit program were mandated on commercial vehicles built prior to the effective date of the regulation.

Today, commercial vehicle OEMs (original equipment manufacturers) are installing ABS in a reliable manner. With proper documentation and attention to harness design, wire routing, component mounting and quality control procedures, reliable ABS installations have become routine. However, without the infrastructure available at the OEM level, significant difficulties could result if ABS retrofitting was mandated.

It would be extremely difficult for ABS manufacturers to provide the necessary support to the large number of retrofit centers that would be required to perform a task of this magnitude. Because of the variety and configurations of vehicles involved, a significant amount of engineering would be required to accomplish a major retrofit program. As the NHTSA research has shown, even with the cooperation of a variety of suppliers, it potentially is difficult to achieve defect free tractor/truck ABS installations during a retrofitting process.

The TMA is an organization of truck manufacturers, including the Ford Motor Company, Freightliner Corporation, General Motors Corporation, Mack Trucks, Inc., Navistar International Transportation Corporation, PACCAR Inc. (manufacturers of Kenworth and Peterbilt trucks) and Volvo GM Heavy Truck Corporation. The TMA stated:

TMA does not support the concept of ABS retrofit. The FHWA is not proposing that motor carriers be required to retrofit vehicles manufactured prior to the dates previously mentioned, however, the FHWA requested comments on this subject. Kits for retrofit have not been designed and are, therefore, not commercially available.

The Teamsters stated:

The International Brotherhood of Teamsters agrees that retrofitting ABS for CMV's (commercial motor vehicles) currently in service would not be advisable. It would be extremely difficult and expensive to properly retrofit all the vehicles which are now in service. As the NHTSA Fleet Study proved, the technology is not currently available to allow a smooth retrofitting process. Many technical problems would be faced during the retrofitting process: pieces of equipment would have to be fabricated, and workers would have to be trained to install and service these ''new'' brake systems. According to the requirements of § 396.25, these workers would need to obtain one year of experience before working on ABS.

There would be no guarantee that the retrofitted brakes would operate properly and it might be possible to damage or disable the original brake system thus making it impossible to stop the vehicle within a safe distance. The International Brotherhood of Teamsters is inclined to agree with the FHWA assumption that the percentage of malfunctions of the retrofitted ABS would be ''* * * much greater if motor carriers were required to attempt retrofitting the innumerable configurations of air-braked vehicles.'' (61 FR 36695) For these reasons which could negatively impact on CMV safety the International Brotherhood of Teamsters believes it would not be prudent to require motor carriers to retrofit ABS at this time.

If, in the future, retrofit kits were developed which adequately addressed these safety concerns, then requiring retrofitting would be wise. These kits, provided by the manufacturers, could be designed for specific vehicles and provide detailed instructions to assist in their installation. Should these kits become available, the International Brotherhood of Teamsters would recommend that retrofitting be required.

The FHWA agrees with the commenters; statements about the difficulties the motor carrier industry would have retrofitting commercial motor vehicles with ABS. The FHWA believes the NHTSA research provides a strong indication of the types of technical problems that would be expected if motor carriers were required to retrofit vehicles with ABS.

As the FHWA noted in the preamble to the NPRM, at the time the NHTSA conducted its research, only one heavy truck manufacturer offered ABS as a fully-engineered production option on its line of trucks. In contrast, most of the remaining truck tractor manufacturers had only limited experience installing small numbers of ''current-generation'' ABSs and, therefore, had not worked out many of the detailed design aspects of installing the systems. The retrofitting of ABSs on truck tractors required teamwork on the part of ABS suppliers, truck manufacturers, wheel and hub suppliers, and wiring harness suppliers. Even with this team effort, some of the test vehicles were delivered to the participating motor carriers with pre-existing problems that, for one reason or another, prevented the ABS from functioning properly.

In all, 116 out of the 200 truck tractors (58 percent) experienced installation/pre-production design-related problems. The researchers indicated that the relatively high percentage is indicative of the ''newness'' of the systems in North American applications. Table 1

summarizes the types of problems that were experienced in the truck tractor portion of the fleet study. Table 2 summarizes installation-related problems in the semitrailer portion of the fleet study.

TABLE 1.—TRUCK TRACTOR ABS INSTALLATION/PRE-PRODUCTION DESIGN-RELATED PROBLEMS BY SYSTEM COMPONENT NEEDING WORK

ABS component	Number of trucks requiring inspections, adjustments or repairs of this component	Number of trucks requiring replacements of this component
Wiring Cables	12	[2] 23
Wiring Connectors	29	10
Sensors and Related Parts	5	10
Modulator Valves and Related Parts	13	[3] 50
Electronic Control Units (ECUs)	17	[2] 20
Others [1]	7	
Total Number of Trucks per Column	57	102
Overall Number of Trucks Involved in Installation/Pre-Production Design Related Problems	116	

[1] Others include: rewiring due to installation oversights; two miscellaneous wire resecurements; and the addition of one ground strap to adjust the ECU.
[2] One problem represented all of these replacements.
[3] One problem involved 40 of these trucks, while another involved 10 trucks.
Note: Individual column numbers are not additive since specific trucks may have needed maintenance on more than one component.

TABLE 2.—SEMITRAILER ABS INSTALLATION/PRE-PRODUCTION DESIGN-RELATED PROBLEMS BY SYSTEM COMPONENT NEEDING WORK

ABS component	Number of semitrailers requiring inspections, adjustments or repairs of this component	Number of semitrailers requiring replacements of this component
Wiring Cables	0	2
Wiring Connectors	11	0
Sensors and Related Parts	[2] 3	10
Modulator Valves and Related Parts	.....	.....
Electronic Control Units (ECUs)	.....	5
Others [1]	.....	26
Total Number of Semitrailers per Column	14	31
Overall Number of Semitrailers Involved in Installation/Pre-Production Design-Related Problems	31	

[1] Others include: Isolation diode installation and replacement of ECU grommets.
[2] Sensor adjustment resulted from incorrectly adjusted wheel bearings on new semitrailers.
Note: Individual column numbers are not additive since specific semitrailers may have needed maintenance on more than one component.

The NHTSA report on the truck tractor portion of the fleet study indicates the percentage of installation-related problems is similar to that observed by many of the participating fleets when they receive newly-built vehicles. However, the FHWA believes the percentage of malfunctions would be much greater if motor carriers were required to attempt retrofitting innumerable configurations of air-braked vehicles. The FHWA considers NHTSA's fleet study to be a best-case scenario for retrofitting ABS in that the vehicle and brake manufacturers (as well as wheel and hub manufacturers) worked together to complete the installations of the ABS. Even with this collaborative effort of experienced engineers, numerous problems related to the retrofitting process surfaced during the fleet study.

Although many motor carriers have excellent maintenance programs and talented engineering staff, the FHWA believes that the majority of motor carriers could not retrofit their vehicles without a substantial amount of technical assistance from vehicle and component manufacturers. Without this technical assistance, it is more likely than not that many of the retrofitted ABS installations would not be performed correctly, thereby creating the potential for a degradation of the CMV's braking performance. It is unrealistic to expect manufacturers to be able to help more than 300,000 motor carriers complete the retrofitting of several million vehicles while working on the design and installation of ABSs on newly manufactured vehicles.

The comments submitted by Rockwell WABCO, Midland-Grau, and the TMA suggest that brake system and vehicle manufacturers would not have the resources to assist motor carriers in complying with a retrofitting requirement. Even if there were a collaborative effort between vehicle and component manufacturers and the motor carriers, it is unlikely that the quality of the ABS installations would be better than those performed for the NHTSA fleet study.

Although none of the commenters to the NPRM specifically discussed the costs of retrofitting, the FHWA believes it is important to note that the cost of retrofitting a commercial motor vehicle with an ABS is likely to be higher than original equipment manufacturer (OEM) installations because the vehicle will have to be removed from revenue service during the retrofitting process. This is not the case for brand new vehicles. Also, repeated adjustments or repairs of the type described in the

NHTSA research reports would mean more down time for the retrofitted vehicles.

The FHWA agrees with the Teamsters' interpretation of § 396.25 of the FMCSRs, Qualifications of brake inspectors. As the agency indicated in the preamble to the NPRM, § 396.25 prohibits motor carriers from allowing their employees to be responsible for ensuring that brake-related inspection, repair, and maintenance tasks are performed correctly unless the employee has at least one year of training and/or experience. This requirement was issued in response to section 9110 of the Truck and Bus Safety and Regulatory Reform Act of 1988 (now codified at 49 U.S.C. 31137(b)). Therefore, motor carriers that lack sufficient staff with at least one year of training and/or experience at retrofitting ABSs prior to the effective date of a retrofitting requirement, would have to rely on commercial garages or similar facilities to fulfill a retrofitting requirement. Since many of these facilities would also have very little, if any, experience retrofitting ABSs, there is no assurance that they could do a better job than the motor carriers' employees. Therefore, most motor carriers could not allow their employees to attempt the retrofitting of ABSs, and would not have a practical means to satisfy a retrofitting requirement.

Roadside Inspection Procedures

Rockwell WABCO commented on the importance of having standardized roadside inspection procedures for the various ABSs. Rockwell WABCO stated:

> As stated in our earlier response to FHWA (after the agency's March 10, 1995, notice of intent), Rockwell WABCO would like to emphasize that the procedure must be short, simple and straightforward. The inspections should provide meaningful information about the condition of the ABS and take advantage of the self-diagnostic system capabilities required by (the NHTSA) rulemaking. Rockwell WABCO recommends that FHWA adopt a common inspection procedure for all ABS systems regardless of manufacturer or vehicle type.
>
> If FHWA decides that roadside inspections are necessary and effective to ensure ABS is properly maintained, Rockwell WABCO recommends the inspection consist of (1) a basic bulb check of the ABS indicator lamp to be conducted when the ignition switch is turned from the ''off'' to the ''on'' position followed by (2) verification that the ABS indicator lamp deactivates at the end of the check of lamp function.
>
> In order to pass the inspection, the bulb must illuminate during the bulb check and then deactivate. This will indicate the lamp is functioning properly and there are no current or pre-existing malfunctions present in the ABS. If the ABS indicator lamp does not activate at all when the ignition key is turned from the ''off'' to the ''on'' position, a potential bulb or indicator lamp circuit problem exists. If the indicator lamp does not deactivate after the bulb check, a current or pre-existing malfunction potentially exists in the ABS, requiring diagnosis and possible repair and/or adjustment.

The FHWA appreciates the information provided by Rockwell WABCO. The agency provided members of the Commercial Vehicle Safety Alliance's[3] (CVSA) Vehicle Committee with copies of the July 12, 1996, notice of proposed rulemaking which included a detailed discussion of the inspection procedures recommended by the brake manufacturers commenting to the docket. The FHWA will work with the appropriate committees within the CVSA to assist in the development of training material to help inspectors identify ABS components and determine if the ABSs are working properly.

The FHWA, through a contract with the Trucking Research Institute (TRI)[4], has developed videotapes to familiarize commercial motor vehicle drivers and maintenance personnel with ABSs. The FHWA has also developed an ABS brochure for drivers (''Truck Drivers Guide to Antilock Braking Systems,'' FHWA–MC–98–006, March 1998) and an ABS handbook for maintenance personnel (''Technician Guidelines for Antilock Braking Systems: Air-Braked Trucks, Tractors and Trailers,'' FHWA–MC–98–008, March 1998). The videotapes (''Antilock Braking Systems: What Every Driver Needs to Know'' and ''Technician Guidelines for ABS'') and driver brochure are available free of charge from the FHWA. Copies may be requested by contacting the Office of Motor Carrier Research and Standards at the address or telephone number listed at the beginning of this final rule. The technicians booklet will be available in July 1998 and may be purchased from the National Technical Information Service (NTIS), U.S. Department of Commerce, 5285 Port Royal Road, Springfield, Virginia 22161. The telephone number for ordering publications from the NTIS is 703–605–6000.

The FHWA believes the information included in the videotapes and publications can be used by the CVSA to help train employees of State agencies responsible for conducting roadside inspections within a relatively short period of time.

Inspection, Repair, and Maintenance Procedures

Two commenters discussed the need for inspection, repair, and maintenance procedures for motor carriers. The Teamsters stated:

> While the International Brotherhood of Teamsters agrees with the FHWA that specific roadside inspection procedures should not be included in the FMCSR there is a need to specify within the regulations the methodology of vehicle inspections for motor carriers. The vehicle inspections should include a review of the ABS malfunction indicator lamp, as well as any other appropriate inspection procedures. It is logical that specific language detailing the systematic inspection, maintenance, and repair of ABS should be included in part 396, appendix G, subpart B.

Midland-Grau stated:

> Regarding the need to add detailed systematic, inspection, repair, and maintenance requirements in part 396 of the FMCSRs, MIDLAND–GRAU believes this is not necessary. MIDLAND–GRAU along with other ABS suppliers and vehicle manufacturers, will continue their efforts to support the industry with the necessary product, inspection, repair, and service information. MIDLAND-GRAU believes there are already more effective methods to develop and distribute the subject information. The FHWA has in this notice defined clearly the appropriate sources for this information.

The FHWA does not agree with the Teamsters' argument that the FMCSRs should include detailed inspection procedures for motor carriers to maintain ABSs. The FMCSRs do not currently contain detailed inspection procedures for systems and components on commercial motor vehicles. The regulations provide inspection criteria and minimum qualifications for individuals performing the periodic or annual inspection, and motor carrier employees responsible for brake-related inspection, repair, and maintenance tasks. The FHWA believes this approach is more effective than trying to develop a single set of procedures to cover all types of ABSs, including present and future designs. As noted earlier, the agency has developed videotapes and publications to familiarize drivers and maintenance personnel with ABSs. The agency believes the videotapes and publications will provide the industry

[3] The Commercial Vehicle Safety Alliance (CVSA) is an organization of Federal, State and Provincial government agencies and representatives from private industry in the United States, Canada and Mexico dedicated to improvement of commercial vehicle safety. State agencies responsible for conducting roadside inspections are members of the CVSA.

[4] The Conference Committee report on the 1993 Department of Transportation Appropriations Act (Pub.L. 102–388, October 6, 1992) directed the FHWA to follow the instructions of the House report on obligating certain research funds, including funding research on means to improve the training of heavy truck brake mechanics. H.R. Conf. Rep. No. 102–924, at 35 (1992).

with basic information to effectively maintain ABSs and advice on when to seek expert assistance from vehicle and/or brake system manufacturers.

The FHWA appreciates the information provided by Midland-Grau. The agency notes that the TRI has worked with Midland-Grau and the other brake manufacturers in developing the ABS videotapes and publications for the FHWA. This cooperative effort between the private sector and the government to provide non-regulatory technical guidance to the industry is an effective alternative to prescriptive regulations concerning ABS maintenance procedures.

Applicability to Canadian and Mexican Vehicles

The Advocates, Teamsters, and TMA expressed support for the FHWA's proposal not to provide an exemption for commercial motor vehicles operated in the United States by Canada- and Mexico-based motor carriers. None of the other commenters expressed an opinion concerning this issue.

The Teamsters stated:

> The International Brotherhood of Teamsters strongly agrees with the FHWA that it '' * * * is appropriate to require ABS on foreign-based vehicles manufactured on or after the effective dates of the NHTSA requirements if those vehicles are operated within the United States.'' (61 FR 36696) This requirement would ensure that ''* * * all CMVs operating in interstate or foreign commerce within the United States are required to meet the same safety standards.'' (Ibid)
>
> The International Brotherhood of Teamsters encourages the strict enforcement of these requirements as it is currently known that a large percentage of those vehicles crossing the Mexican-United States border are not in compliance with the United States FMCSRs.

The Advocates stated:

> Advocates strongly supports this initiative by the FHWA and applauds the agency's determination not only to improve domestic commercial vehicle operating safety, but also to set an example for international harmonization that increases medium and heavy vehicle safety for Canadian and Mexican motor carriers. This rulemaking proposal is a textbook example of regulating in the public interest. We commend the agency for its resolve to move forward on this major safety policy despite adverse comments filed in response to the FHWA's March 10, 1995, notice of intent to initiate the instant rulemaking. Advocates endorses this proposal and, in light of the lead time for compliance that duplicates the calendars set forth for FMVSSs Nos. 105 and 135, asks that the agency promulgate a final rule as soon as possible that is effective on the date of publication.

The TMA stated:

> TMA feels that only commercial motor vehicles that meet all of the applicable requirements of part 393, including the proposed § 393.55 requirements that addresses ABS, should be allowed to operate in the U.S. Therefore, we support the FHWA proposal to not grant an exception for commercial motor vehicles operated in the U.S. by Canada- and Mexico-based motor carriers. Truck manufacturers, however, need timely resolution of the following questions so that they can appropriately advise their Canadian and Mexican motor carrier customers on ABS purchases.
>
> 1. When is the enforcement of this requirement going to commence?
>
> 2. When will the inspection procedures and criteria be finalized?
>
> 3. How will this requirement be enforced? Will it be handled at the border by U.S. Customs officials? By FHWA officials? By State officials? Or will it be enforced during random roadside inspections?

The FHWA agrees with the commenters. Although the NPRM explicitly requested comments from foreign carriers that would be subject to the proposed requirements, the agency did not receive any comments from Canada- or Mexico-based motor carriers operating within the United States. The agency is not aware of any technical or economic reasons why these carriers could not comply with the ABS requirements. Therefore, the final rule is applicable to CMVs operated in the United States by Canada- and Mexico-based motor carriers. The FHWA notes that this decision is consistent with the applicability of all of the agency's equipment-related regulations.

Currently, subpart C of part 393 cross-references FMVSS No. 105 (Hydraulic Brake Systems), FMVSS No. 106 (Brake Hoses), and FMVSS No. 121 (Air Brake Systems), as well as several other CMV-related FMVSSs. The FHWA's cross-references have the net effect of requiring that vehicles operated by Canada- and Mexico-based motor carriers be equipped with safety features and equipment that are compatible with the NHTSA requirements irrespective of where the vehicle was originally manufactured, or whether the vehicle was manufactured for sale or use in the United States. Commercial motor vehicles that do not meet all of the applicable requirements of part 393 cannot be operated in the United States. As such, commercial motor vehicles operated by foreign-based motor carriers are currently required by the FHWA to have, at a minimum, brake systems that comply with the applicable provisions of FMVSS Nos. 105, 106, and 121 in effect on the date of manufacture.

Although the FHWA does not have data on the extent to which CMVs manufactured for sale in Canada and Mexico comply with the current brake-related FMVSSs and FMCSRs, it is unlikely that there are technical reasons that would preclude manufacturers of these vehicles from offering ABS as an option. As previously mentioned, foreign-based motor carriers are currently required to operate commercial motor vehicles that comply with all of the applicable requirements of part 393 while in the United States.

Prior to issuing the NPRM, the FHWA contacted the TMA to determine the availability of ABS on air braked vehicles sold in Canada and Mexico.

The TMA indicated that five of the manufacturers that sell medium and heavy-duty trucks in Canada install ABSs as standard equipment. Another manufacturer offers ABSs as optional equipment for the Canadian market.

With regard to the Mexican market, none of the TMA's members install ABSs as standard equipment. Only two of the TMA's members offer ABSs as optional equipment. However, another member indicated it would make ABSs available on units manufactured in Mexico in the near future.

The FHWA also contacted Dina, a Mexican manufacturer of heavy trucks, and determined that ABSs are offered as optional equipment.

Based upon the information obtained from the TMA and Dina, and the docket comments received in response to the NPRM, the FHWA believes that requiring ABSs on Canadian and Mexican CMVs manufactured on or after the effective dates of NHTSA's ABS requirements, and operated in the United States, is appropriate. The FHWA notes that ABS is not yet commercially available for hydraulically-braked medium and heavy vehicles in the United States, Canada or Mexico. However, given the March 1, 1999, effective date of the FMVSS No. 105 requirements for ABSs, the FHWA believes these systems will be commercially available in time for motor carriers to comply with the FMCSRs.

In response to the TMA's questions about enforcement, the FHWA and the States may cite motor carriers for violations of the ABS requirements at any time after the final rule becomes effective. The ABS requirements will be enforced primarily through roadside inspections conducted by the States. Checking the status of the ABSs will be one of many items (e.g., brake adjustment and the condition of major brake system components; steering, suspension, and fuel systems; tires, wheels, and rims; axles and axle positioning components; lamps and reflectors; cargo securement) inspectors examine during roadside inspections.

The agency does not expect the recommended inspection procedures that may be used by the States to be complex or time consuming. The brake manufacturers' comments provided in response to the agency's March 10, 1995, notice of intent, and the July 12, 1996, NPRM include straightforward inspection procedures that could be used by the States at any time after the effective date of the final rule.

Cross-Referencing the FMVSSs

The ATA opposed the manner in which the FHWA cross-referenced FMVSS Nos. 105 and 121 and presented two possible alternative ways of writing § 393.55. The ATA stated:

> By referencing FMVSSs (Nos.) 105 and 121 in this proposed FMCSR, the agency is placing a burden on motor carriers to show compliance with new vehicle requirements which were written for manufacturers. Carriers cannot do this without help.
>
> While we agree with the FHWA/OMC's (Office of Motor Carriers) intent, we are concerned with the language of the regulation. The problem comes from the reference to the FMVSSs in the FMCSRs.
>
> FMVSSs are standards directed at manufacturers who have the personnel, facilities, and test equipment necessary to test their products. By requiring vehicle users to assure that replacement parts meet the FMVSSs, FHWA/OMC is requiring that consumers create the technical expertise of manufacturers for themselves. Virtually no motor carrier has either the staff, facilities or equipment with which to test products for compliance to FMVSS type requirements.
>
> If the agency wants vehicle users to purchase repair parts and components which meet FMVSSs, then it must work with the National Highway Traffic Safety Administration (NHTSA) to assure that new parts and components are labeled with compliance information or a code. This is already done in FMCSR § 393.67(f) for fuel tanks. Consumers, on their own, are incapable of certifying that replacement parts and components meet new vehicle or component standards. Consumers can ask suppliers to provide certifications, however, they cannot go beyond such an importune.

The ATA indicated that this issue was raised in its comments to the FHWA's notice of proposed rulemaking concerning automatic brake adjusters and brake adjustment indicators (59 FR 39518, August 3, 1994). The ATA quoted the FHWA's response to its comments. The agency's response, presented in the preamble to the final rule, indicated an in-use requirement for a commercial motor vehicle part or accessory that references an FMVSS does not place a burden on motor carriers (60 FR 46236, September 6, 1995). The agency also indicated motor carriers have ample experience in obtaining replacement parts for vehicle subsystems. The ATA believes the FHWA's response to its comments ''explicitly places in focus the problem which exists in this area.'' The ATA stated:

> Carriers face little difficulty acquiring replacement parts for lighting and illuminating systems, in compliance with FMCSR 393.11, because (paragraph 5.8), *Replacement Equipment,* of FMVSS 108 requires such parts to carry appropriate identification markings. The same is true for tires (S6.5 of FMVSS 119) and wheels (S5.3 of FMVSS 120). In the case of brake components like ABS parts, however, no such labeling is required.

The ATA also stated:

> Part of the concern which drives us to the conclusion that parts need to be marked in a manner that enables carriers to show continued compliance with FMVSSs stems from the fact that component systems are becoming obsolete at an unprecedented pace. It is not at all unusual for a carrier wanting to repair a system to find that it is better to upgrade than repair. Two important considerations in the decision are whether replacement parts identical to the original exist and whether the upgraded system will out-perform its forerunner.

The FHWA does not believe the ATA's concerns about cross-referencing FMVSS Nos. 105 and 121 are warranted. The regulatory language proposed did not include a requirement for motor carriers to conduct certification testing of ABSs in order to verify vehicles were equipped with an ABS that meets the NHTSA requirements.

Motor vehicle manufacturers must certify that the vehicles they manufacture for sale and use in the United States meet all applicable Federal Motor Vehicle Safety Standards issued by the NHTSA. In certain cases, the vehicle safety standards require motor vehicle equipment to be marked by the equipment manufacturer to certify that the product meets the applicable safety standard (e.g., retroreflective sheeting for use on trailers manufactured on or after December 1, 1993, are marked with DOT–C2, DOT–C3, or DOT–C4, depending on the width of the tape). During roadside inspections of commercial motor vehicles, Federal and State officials look for certification markings on components, such as, retroreflective sheeting, tires, brake hoses, fuel tanks, windshields, etc., because there are no other practical means to verify that such components or items meet the testing requirements specified in the Federal regulations. The certification markings for these components or items also help motor carriers identify products that meet applicable Federal requirements.

Through cross-references to the FMVSSs, the FHWA places upon motor carriers the responsibility for being knowledgeable about the Federal manufacturing standards that are applicable to heavy trucks, buses, and trailers. Motor carriers have the responsibility of purchasing vehicles and components from manufacturers that are able to certify that the products they sell meet the applicable Federal manufacturing standards. If the commercial motor vehicle is damaged during its service-life, or components wear out and require replacement, motor carriers are required to have the vehicle properly repaired by knowledgeable and capable maintenance personnel. Maintenance personnel should recognize that there are Federal safety standards and be capable of determining whether the repairs being performed will restore the vehicle to its previous condition.

Looking specifically at the cross-references to FMVSS Nos. 105 and 121, vehicle manufacturers are responsible for ensuring that the ABSs installed in new commercial motor vehicles meet the applicable requirements. The FHWA acknowledges that individual ABS components are not required to be marked or labeled by the manufacturer. However, there is no readily apparent reason why the ECU, sensors, modulator valves, tone rings and connectors would need certification markings in order for motor carriers to determine the appropriate replacement components for the ABSs. Motor carriers need only know that a specific component in the ABS needs to be replaced, locate the appropriate replacement part and ensure that it is properly installed in accordance with the vehicle or ABS manufacturer's recommendations. Generally, this will ensure that the ABS continues to perform as required.

With regard to the assertion that the regulatory language would prevent carriers from upgrading their ABSs in the future, the ATA has misinterpreted the proposed ABS requirements, as well as the current FMCSRs. The agency does not prohibit motor carriers from modifying their vehicles to meet the latest Federal safety standards. Motor carriers must, at a minimum, ensure that their vehicles meet the cross-referenced FMVSSs in effect at the time the commercial motor vehicle was manufactured, but may modify their vehicles to meet any subsequent version of the applicable safety standards.

Motor carriers who want to go beyond routine inspection, repair and maintenance tasks and attempt major upgrades of the ABSs on their commercial motor vehicles, are responsible for ensuring that the modified brake systems meet the

minimum performance requirements specified by the NHTSA. However, this does not mean that motor carriers cannot exceed those requirements or that they must conduct testing. Carriers may rely on installation instructions and other information from the ABS manufacturer to determine whether the upgraded ABS meets the NHTSA's performance requirements.

The argument by the ATA that motor carriers would be required to understand, in whole or in part, the test procedures that manufacturers are required to follow, or conduct testing in order to ensure compliance with the cross-referenced standards, is without basis. For more than 25 years, the FMCSRs have included cross-references to the FMVSS Nos. 105 and 121, with an apparently clear understanding by the vast majority of the regulated industry that motor carriers are not required to conduct certification testing. Although motor carriers and vehicle manufacturers have requested interpretations on numerous aspects of part 393 of the FMCSRs, the cross-references to the FMVSSs do not appear to have raised a discernible level of confusion or concern. Therefore, the FHWA has retained the cross-references to FMVSS Nos. 105 and 121.

Flexibility to Disconnect ABSs if Manufacturing or Design Defects are Suspected

The ATA expressed concerns that ABSs may fail in ways that could adversely impact the service brake system on commercial motor vehicles. The ATA believes the FHWA should allow carriers to disconnect ABSs if defects are suspected. The ATA stated:

> The agency implies that consumers need not worry about ABS failing unsafe. Based on NHTSA's FMVSS 121 demonstration work (previously referenced) this problem does, however, remain a serious concern.
>
> In our comments to the FHWA Notice of Intent in this docket, we raised the issue of carriers being able to disconnect ABSs if, ''because of existing circumstances, doing so is the safest policy.'' This Notice attempts to discount this concern on the basis that NHTSA will correct any serious failures through a safety-defect related recall and that ''* * *, there is no documentation of an ABS defect or malfunction contributing to an accident as the ATA suggests may occur in the future.''

A major and growing concern that carriers have with government is that it is not structured to react as fast as necessary given the ever increasing rate at which technology continues to change. While a suspect bolt in a system can be checked in a laboratory rather quickly, and a consensus on the results of that test rapidly formed, an unwanted transient system response, caused by a flaw in a microchip, is much harder to positively identify and diagnose. There is no way that NHTSA can respond with a safety recall program fast enough to assure a faulty ABS controller or modulator component does not lead to several accidents.

Past experience with many truck systems, including ABS, has taught motor carriers that certain product designs occasionally incorporate critical components that fail and that such failure will repeat across the fleet. This is not like a person with one automobile where the situation can be quickly assessed, the driver made aware of the problem and a repair made at the owner's convenience.

A fleet of hundreds or thousands of vehicles in many locations requires time to find the involved equipment and make the required repairs before the adverse effects of a defect can be mitigated. In the meantime, the fleet must be operated as safely as possible. This can call for quick temporary measures, to assure no further accidents happen, while solutions are developed, procedures and/or parts made available, and corrections made. What has been proposed in this docket should not be allowed to become a regulation which keeps fleets from quickly taking the most prudent course of safe action in dealing with a product defect.

While FHWA/OMC (Office of Motor Carriers) contends that no accidents caused by an ABS which did not fail-safe are yet documented, the fact is that a latent failure can exist in an ABS which will not surface until the systems have been in use for a number of years, in many different applications. For example, the situation that developed after air bags were in widespread use, i.e., injuring, sometimes fatally, young children and old people, is now being addressed.

A review of NHTSA's defect files will illustrate this point. We cite the heavy truck steering gear box failure which occurred several years ago that caused a major disruption in fleet operations. The manufacturer of the gear assembly asked owners of trucks all over the country to immediately stop their trucks until they could positively identify the problem and replace suspect gear boxes. This manufacturer-generated recall cost the industry many millions of dollars in vehicle downtime. If a defect surfaces in an ABS component which can cause it to malfunction in an unsafe way, e.g., unintentional release of the brakes, the involved vehicles should not be stopped until the problem is identified and corrected, when a simple ABS disconnect will allow them to operate safely.

Users of ABS not only have to be concerned about mechanical failures, like the one that occurred with the gear box, but, also with electrical failures and faulty algorithms programmed in the ECU, which, under certain circumstances, make a vehicle less safe. A prime example of this is the reduction in stopping capability caused when ABS equipped vehicles operate on unpaved roads. This discovery caused the logging truck tested in Canada to be equipped with a switch to disable the ABS when the truck was operated off of the paved highway (Forest Engineering Research Institute of Canada's report SR–97 (TP 11815E) entitled *Evaluation of an Antilock Braking System and Automatic Slip Regulation on a Log-Hauling Truck*).

The FHWA disagrees with the ATA's arguments and has not adopted regulatory language that would allow motor carriers to disconnect ABSs. Based upon the information presented in the NHTSA's research reports, and the preamble to the NHTSA's March 10, 1995, final rule concerning ABSs, the FHWA does not foresee the development of problems such as those anticipated by the ATA.

In the event an ABS or vehicle manufacturer, or the NHTSA determines that there is a safety-related defect, the manufacturers are responsible for notifying purchasers of the defective equipment and remedying the problem free of charge (49 CFR part 577, Defect and Noncompliance Notification). If a manufacturer or the NHTSA indicates there is an ABS defect of the severity alluded to by the ATA, the FHWA would immediately notify all Federal officials responsible for enforcing the FMCSRs and State officials responsible for enforcing compatible State regulations to ensure that carriers are not unfairly penalized for inoperable ABSs. However, in the absence of notification from a vehicle or ABS manufacturer or the NHTSA, the FHWA does not intend to allow motor carriers to disconnect the ABSs.

The preamble to NHTSA's March 10, 1995, final rule included a response to the ATA's concerns about alleged safety problems with current-generation ABSs. The NHTSA indicated that during the two-year evaluation of 200 ABS-equipped truck tractors, a total of 421 incidents were recorded involving in-service wear related ABS malfunctions. The vast majority (99.8 percent) of these malfunctions were benign. When the ABSs became inoperative, the vehicle reverted to a normally-braked vehicle

without ABS protection and remained fully operational until the malfunction was remedied. Similarly, during the two-year evaluation of 50 ABS-equipped semi-trailers, 44 such incidents were noted. All (100 percent) were benign.

The NHTSA indicated that only two ABS malfunction incidents occurred during the tractor fleet study that resulted in the vehicle having reduced braking performance. The first incident involved a manufacturing defect with the surface coating of a piston slide valve in the modulator section of a drive-axle-only ABS and only affected one truck-tractor. When the ABS manufacturer found the cause of this failure, a design change was made to rectify the problem and all the other test units in the fleet study were retrofitted with the improved components.

The second incident was discussed in the research report concerning the evaluation of trailer ABSs and involved a leaking relay valve. The motor carrier experienced periodic problems with leaking relay valves which were part of the ABS relay valve/modulator assemblies on their ABS-equipped tractors. The ABS modulator valves and relay valves were combined into one unit which serves the left and right brake chambers of the steer or drive axles on the tractor. In one of these cases, the supply air was found to be leaking to the relay valve exhaust port, a problem that had reportedly occurred on several previous occasions. The leaking valves were returned to the ABS manufacturer to determine the cause of this malfunction.

The ABS manufacturer disassembled the valves and determined that rust and oil sludge in the tractors' air systems were causing the relay valve's intake and exhaust seats to not seal properly, resulting in the air leakage. Therefore the problem was related to improper maintenance by the motor carrier and not the design, manufacture or installation of the ABS.

In responding to the ATA's descriptions of ABS problems experienced by motor carriers that were not involved in the NHTSA fleet study, the NHTSA stated:

> Contrary to ATA's allegations that existing ABSs have significant safety problems, most commenters, including vehicle and brake manufacturers, appear to agree with NHTSA's assessment that current generation ABSs are safe and reliable. Unlike the 1970's when several vehicle and brake manufacturers objected to the rulemaking, and ATA, TEBDA (Truck Equipment and Body Distributors Association), and PACCAR challenged the antilock standard in court, comments to the September 1993 NPRM indicate that vehicle and brake manufacturers now generally believe that the proposal was appropriate and today's antilock systems provide significant safety benefits. (60 FR 13216, 13242, March 10, 1995)

The NHTSA indicated that neither the vehicle nor brake manufacturers expressed concern that today's ABSs would fail in such a way as to compromise basic braking performance, as ATA alleges.

Although the ATA argues that the NHTSA cannot respond fast enough with a safety recall to assure a faulty ABS does not lead to accidents, the FHWA notes that vehicle and ABS manufacturers are responsible for notifying vehicle owners if there is a defect which relates to motor vehicle safety, or the product fails to conform to applicable Federal safety standards. If the manufacturer is aware of a defect relating to motor vehicle safety, the manufacturer must take action. The NHTSA has the authority (pursuant to 49 U.S.C. 30118(b)) to order a manufacturer to provide notification of a defect or noncompliance in the event a manufacturer disputes complaints about the existence of a safety-related defect or noncompliance.

The FHWA believes the ATA has overlooked manufacturers' responsibilities and focused on the amount of time it would take the NHTSA to force a manufacturer to take action. The FHWA does not intend to penalize motor carriers for inoperative ABSs when there is an acknowledged dispute between manufacturers and the NHTSA. The FHWA would notify enforcement officials about potential ABS problems irrespective of whether there was a NHTSA-ordered notification to ensure that motor carriers are not unfairly penalized. The FHWA's actions would not have any bearing on the NHTSA's procedures concerning defect and noncompliance notification, but would serve only as an advisory to enforcement officials that there could be a defect or noncompliance in certain ABSs and that motor carriers operating the vehicles in question should not be cited for the specific defect or noncompliance while the matter was being resolved by the NHTSA.

With regard to the ATA's reference to the NHTSA's handling of the air bag issue, the FHWA considers the comment inappropriate in the context of this rulemaking. The ATA has provided no information to support its comparison between the NHTSA's air bag and antilock brake system rulemakings. The FHWA has carefully reviewed all of the NHTSA's rulemaking notices and research reports relevant to ABSs and supports the NHTSA's decision to require that commercial motor vehicles be equipped with ABSs. Therefore, the FHWA is requiring motor carriers to maintain the ABSs.

ABS Malfunction Signals

The ATA believes the FHWA should establish performance-based requirements for ABS malfunction indicators, rather than use what the ATA considers to be design-restrictive standards specified by the NHTSA. The ATA stated:

> By referencing ''electrical circuit'' in the sections of the regulation applying to ABS malfunction signals, the agency is unnecessarily limiting the options of future designers. The final regulation should be performance, not design oriented.
>
> A major concern that commercial vehicle users have about FMVSS 121 is that it contains sections which are design rather than performance requirements. These sections contain design requirements because of the difficulty in writing performance standards. Specific design requirements can discourage the development of more effective designs. When FHWA/OMC (Office of Motor Carriers) incorporates design requirements into its regulations, then more effective components/systems cannot even be installed on used vehicles. And, if FMVSS 121 is changed to permit them, they still can't be used on older vehicles because they have to comply with FMVSS 121 as it was when the vehicle was built.
>
> An implicit assumption evidently made in all portions of the proposal dealing with malfunction signals is that they need to be transmitted through wires. While this is true today, some of the advanced concept ABSs and EBSs (electronically-controlled braking systems), which we have been privileged to see, use other technology. Fiber optics, infra-red, and radio frequency technologies can all be used to transmit malfunction signals and there is good reason to believe that, in the future, they will be.
>
> The proposed regulation needs to be changed to embrace such technology by deleting references to ''circuits'' and ''electrical circuit'' and refer instead to the generic ''system.'' This will make the proposal performance oriented, still require working malfunction systems, and preclude the need for modifications to the regulation to accommodate new technology.
>
> Also, because the proposed FMCSR incorporates NHTSA requirements for malfunction lamps, the proposed (Section 393.55(d)) contains requirements for ABS malfunction lamps on combination vehicles which are unnecessarily difficult for commercial vehicle users to understand and do not appear to comply with FHWA's zero-based rulemaking objectives.

The FHWA disagrees with the ATA's arguments against the use of the terms ''malfunction circuit'' and ''electrical circuit'' in the proposed ABS requirements. The FHWA believes the ATA has mistakenly associated the requirements for ABSs to be capable of detecting certain malfunctions and

transmitting the information to the driver, with the methods for transmitting the signals.

The NHTSA requires that each truck tractor manufactured on or after March 1, 1997, and each single-unit vehicle manufactured on or after March 1, 1998, be equipped with an electrical circuit that is capable of signaling a malfunction that affects the generation or transmission of response or control signals in the vehicle's ABSs. Each of these vehicles is also required to have an indicator lamp, mounted in front of, and in clear view of, the driver. The indicator lamp is activated whenever there is a malfunction that affects the generation or transmission of the response or control signals in an ABS. The indicator lamp must remain activated as long as the malfunction exists, whenever the ignition (start) switch is in the ''on'' (run) position, irrespective of whether the engine is running. Each message about the existence of a malfunction in an ABS must be stored after the ignition switch is turned to the ''off'' position and automatically reactivated when the ignition switch is turned to the ''on'' position. The indicator lamps also must be activated as a check of lamp function whenever the ignition is turned to the ''on'' or ''run'' position. The indicator lamp must be deactivated at the end of the check of lamp function, unless there is a malfunction or a message about a pre-existing malfunction. (49 CFR 571.121, paragraph S5.1.6.2(a))

Each truck tractor manufactured on or after March 1, 2001, and each single-unit vehicle manufactured on or after March 1, 2001, that is equipped to tow another air-braked vehicle must be equipped with an electrical circuit that is capable of transmitting a malfunction signal from the antilock brake system(s) on one or more towed vehicle(s) (e.g., trailer(s) and converter dolly(ies)) to the trailer ABS malfunction lamp in the cab of the towing vehicle, and must have a means for connecting the electrical circuit to the towed vehicle. Each truck tractor and single-unit vehicle must also be equipped with an indicator lamp (separate from the indicator lamp used to alert the driver of malfunctions in the truck tractor or single unit vehicle's ABS) mounted in front of, and in clear view of, the driver, which is activated whenever the malfunction signal circuit in the towing vehicle receives a signal indicating an ABS malfunction on one or more towed vehicle(s). The indicator lamp must remain activated as long as an ABS malfunction signal from one or more towed vehicle(s) is present, whenever the ignition (start) switch is in the ''on'' (''run'') position, irrespective of whether the engine is running. The indicator lamp must also be activated as a check of lamp function whenever the ignition is turned to the ''on'' (''run'') position. The indicator lamp shall be deactivated at the end of the check of lamp function unless a trailer ABS malfunction signal is present. (49 CFR 571.121, paragraph S5.1.6.2(b))

Section 571.121, paragraphs S5.2.3.2 and S5.2.3.3 provide requirements for ABS malfunction signals and indicators on trailers, respectively.

The FHWA believes the NHTSA requirements provide functional specifications for malfunction circuits and indicators, but do not limit manufacturers to the use of wires for transmitting signals between circuits or components. The FHWA has discussed the ABS requirements with the NHTSA and confirmed that the regulations do not prohibit the use of fiber optics, infra-red or radio-frequency technologies for the transmission of signals. The FHWA notes that with all of these alternative means of transmitting signals, electrical circuits are needed to generate and receive the signals. Therefore, the agency believes the use of the terms ''malfunction circuit'' and ''electrical circuit'' is appropriate and is retaining those terms in the regulatory language.

Radio-Frequency Interference (RFI)

The Texas DOT discussed problems with ABSs installed on some of its vehicles. The State believes the operational problems were caused by radio-frequency interference. Radio-frequency interference (RFI) is electrical interference from sources of energy outside a system(s), in contrast to electromagnetic interference generated inside systems. The Texas DOT stated:

> TxDOT's interests lie with the current state of technology in ABS systems, and potential problems involving this technology with regards to radio frequency interference (RFI).
>
> While we support the installation of ABS brakes, we believe that FHWA should take into account potential problems with this emerging technology. We have experienced sporadic RFI problems affecting the ABS systems on our light duty equipment fleet, thus our reason for concern on the larger and more complex equipment.
>
> Most carriers, like TxDOT, may have high power (≈100 watt) commercial two-way radios onboard their vehicles. TxDOT has shown over the last several years that the complex, heavily computerized environment which exists in modern vehicles is not conducive to such near-field radio frequency (RF) emissions. Radio transmissions can and do cause onboard system failures. Additional shielding and equipment design changes have been required in order for all systems to co-exist synergistically. TxDOT is currently working closely with the Society of Automotive Engineers (SAE) in promoting new standards for RFI protection in these areas.

The FHWA has reviewed the preamble to NHTSA's final rule on ABSs and the NHTSA's research reports (referenced previously in this document and available in the docket) on the in-service evaluation of ABSs. The preamble and the research reports suggest RFI problems are the exception and not the rule for current-generation ABSs. The preamble states:

> In the 1970s, there were several highly publicized incidents in which radio frequency interference (RFI) problems caused the ABS to cycle continuously during a brake application, thereby greatly diminishing braking power by venting brake system air pressure. The agency notes that manufacturers have completely eliminated the potential for RFI problems since current generation ABSs have been designed with shielded wiring systems and more sophisticated electronics that are better able to recognize spurious signals. No RFI problems have been reported with current-generation ABSs. (60 FR 13216, 13243, March 10, 1995)

The FHWA notes that the Texas DOT did not provide details on the year, make, and model of the vehicles in question or identify the manufacturer of the ABSs. In addition, the State did not indicate whether the RFI problems were reported to the NHTSA for appropriate action.

The FHWA considers the problems described by the Texas DOT to be serious, but emphasizes that the purpose of this rulemaking is to require motor carriers to maintain the ABSs on commercial motor vehicles subject to the NHTSA's requirements. The NHTSA, through notice-and-comment rulemaking, has provided all interested parties with the opportunity to discuss alleged safety problems with ABSs. The preamble to the NHTSA's March 10, 1995, final rule includes an extensive discussion of alleged safety problems with ABSs and the NHTSA's responses. The FHWA does not believe this rulemaking is the proper forum for debating such issues and has forwarded the Texas DOT's comments to the NHTSA.

Discussion of the Final Rule

Section 393.55

The FHWA is amending the FMCSRs by adding a new § 393.55, *Antilock brake systems.* This section is being added to subpart C, Brakes, of part 393. The provisions of paragraph (a) require that hydraulic braked trucks and buses manufactured on or after March 1, 1999, be equipped with an ABS that meets the requirements of FMVSS No. 105.

Paragraph (b) requires indicator lamps on hydraulic-braked vehicles to alert the driver of ABS malfunctions. Paragraph (c) requires that each air-braked truck tractor manufactured on or after March 1, 1997, be equipped with an ABS that meets the requirements of FMVSS No. 121. Paragraph (c) also covers air braked trucks, buses, trailers, and converter dollies manufactured on or after March 1, 1998. The requirement for ABS malfunction indicators on air braked vehicles is covered under paragraph (d). Paragraph (e) covers the requirement for the external indicator lamp on trailers and converter dollies manufactured between March 1, 1998, and March 1, 2009.

Applicability to Canadian and Mexican Vehicles

As discussed previously, the final rule is applicable to CMVs operated in the United States by Canada-and Mexico-based motor carriers. Although the Federal governments of Canada and Mexico have not indicated whether they intend to require ABSs for CMVs operating in their countries, the FHWA believes that it is appropriate to require ABS on foreign-based vehicles manufactured on or after the effective dates of the NHTSA requirements if those vehicles are operated within the United States.

Driveaway-Towaway Operations Exemption

The FHWA has revised the language for the final rule to include an exemption for commercial motor vehicles engaged in driveaway-towaway operations (as defined in § 390.5). This action was taken in response to recent telephone calls from vehicle manufacturers and letters from the Truck Trailer Manufacturers Association (TTMA) and the Canadian Transportation Equipment Association (CTEA). The TTMA and the CTEA asked whether the ABS requirements would be applicable to vehicles built in the United States and exported to Canada or other countries. The TTMA also asked about the applicability of the ABS requirements to vehicles manufactured for the military. The FHWA has advised vehicle manufacturers, the TTMA and the CTEA that it would consider these issues in developing the final rule. Copies of the TTMA and the CTEA's letters are in the docket along with the FHWA's responses.

The FHWA believes that an exemption is appropriate for vehicles that are manufactured exclusively for use outside of the United States. Although these vehicles are operated on public roads in the United States when they are being transported from the point of manufacture to the Canadian or Mexican border, or to railroad or shipping yards for subsequent movement to foreign destinations, the economic burden associated with requiring these vehicles to be equipped with ABSs for the one-way trip out of the United States would certainly exceed the potential benefits.

The driveaway-towaway exemption would also be applicable to vehicles being delivered to the Armed Forces of the United States. Therefore, motor carriers delivering new vehicles from manufacturers to the military cannot be penalized if the military purchases vehicles without ABSs. Vehicles operated by the military are exempt from the FMCSRs under § 390.3(f)(2).

The FHWA notes that the driveaway-towaway exemption provided in § 393.55 is consistent with exceptions provided by the NHTSA. Section 571.7(c) of the Federal Motor Vehicle Safety Standards provides an exception for vehicles and items of equipment manufactured for, and sold directly to the Armed Forces of the United States in conformity with contractual specifications. Section 571.7(d), through a cross-reference to the United States Code, indicates the FMVSSs do not apply to motor vehicles or motor vehicle equipment intended only for export, labeled for export on the vehicle or equipment and on the outside of any container of the vehicle or equipment, and exported (49 U.S.C. 30112(b)(2)). The FHWA believes that it is important to ensure, to the greatest extent practicable, consistency between the FMVSSs and the FMCSRs.

Rulemaking Analyses and Notices

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

The FHWA has determined that this action is not a significant regulatory action within the meaning of Executive Order 12866. No serious inconsistency or interference with another agency's actions or plans is likely to result, and it is unlikely that this regulatory action would have an annual effect on the economy of $100 million or more. The FHWA's regulation only requires maintenance of ABSs; the NHTSA final rule published on March 10, 1995, is the regulation which actually requires installation of ABSs. The data collected by NHTSA indicates that the level of maintenance required to keep an ABS functional would only increase incrementally and would not be unreasonable relative to the safety benefits that would result from the use of these systems. Therefore, it is anticipated that the economic impact of this rule will be minimal.

The preamble to NHTSA's March 10, 1995, final rule included estimates of the increased costs of operating heavy vehicles equipped with ABS. Three categories of operating costs were examined: lifetime maintenance costs; lifetime fuel costs due to the additional weight of the ABSs; and lifetime revenue loss due to payload displacement. The range of the increase in total lifetime operating costs related to equipping vehicles with ABS is from $201 for single-unit trucks and buses to $787 for truck tractors. The increase in total lifetime operating costs for trailers equipped to tow other trailers (i.e., used in multi-trailer combinations) is $524 while the increase in operating costs for non-towing trailers is $360. The increase in operating costs for trailer converter dollies is $687. The NHTSA indicated that the total estimated increase in lifetime vehicle operating costs associated with ABSs for all commercial motor vehicles will be $232 million per year when the majority of these vehicles are equipped with ABSs. A copy of the NHTSA's final economic assessment is included in the docket.

In addition, the FHWA has determined that this action is not a significant regulatory action under the Department of Transportation's regulatory policies and procedures because it does not concern a matter about which there is substantial public controversy, it will not have a substantial effect on State and local governments, or initiate a substantial regulatory program or change in policy.

Regulatory Flexibility Act

In compliance with 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 it will not have a significant economic impact on a substantial number of small entities. The FHWA finds that this rule will not significantly increase costs for motor carriers because FHWA regulations only require maintenance of brake systems and the data collected by the NHTSA shows that the presence of an ABS on a vehicle would not substantially increase maintenance costs (less than one percent for tractors and less than two percent for trailers) or decrease vehicle operational availability. The range of the increase in total lifetime operating costs related to having ABSs on a commercial motor vehicle (e.g., lifetime maintenance costs; lifetime fuel costs due to the additional weight of the ABSs; and lifetime revenue loss due to

payload displacement) is from $201 for single-unit trucks and buses to $787 for truck tractors. The increase in total lifetime operating costs for trailers equipped to tow other trailers (i.e., used in multi-trailer combinations) is $524 while the increase in operating costs for non-towing trailers is $360. The increase in operating costs for trailer converter dollies is $687.

For a small entity operating a newly purchased truck tractor and semitrailer, the increase in total lifetime operating costs for each of the vehicles would be spread over the useful service-life of the vehicle. If, for example, the useful service-life for the truck tractor is seven years, and the useful service-life for the semitrailer is 14 years, the small entity would expect to spend $787 during the useful service-life of the truck tractor and $360 during the useful service-life of the semitrailer. The small enitity would spend an additional $787 in increased total lifetime operating costs during the service-life of the replacement truck tractor. This would result in approximately $1,934 in increased total lifetime operating costs during a 14-year period in which the small entity purchases two new truck tractors and one semitrailer.

Executive Order 12612 (Federalism Assessment)

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that this rulemaking does not have sufficient Federalism implications to warrant the preparation of a Federalism assessment. These new safety requirements do not directly preempt any State law or regulation, and no additional costs or burdens would be imposed on the States as a result of this action. Furthermore, the State's ability to discharge traditional State governmental functions will not be affected by this rulemaking.

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 action does not contain a collection of information requirement for the purposes of the Paperwork Reduction Act of 1995, 44 U.S.C. 3501–3520.

National Environmental Policy Act

The agency has analyzed this rulemaking for the purpose of the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4347) and has determined that this action will not have any effect on the quality of the environment.

Unfunded Mandates Reform Act

This rule does not impose any unfunded mandates on State, local, or tribal governments as defined by the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1532–1538).

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 in 49 CFR Part 393

Highway safety, Incorporation by reference, Motor carriers, Motor vehicle equipment, Motor vehicle safety.

Issued on: April 17, 1998.

Gloria J. Jeff,

Deputy Administrator, Federal Highway Administration.

In consideration of the foregoing, the FHWA is amending title 49, Code of Federal Regulations, chapter III, subchapter B, as follows:

PART 393—[AMENDED]

1. The authority citation for part 393 continues to read as follows:

Authority: Section 1041(b) of Pub. L. 102–240, 105 Stat. 1914, 1993 (1991); 49 U.S.C. 31136 and 31502; 49 CFR 1.48.

2. Section 393.5 is amended by adding the definition of *antilock brake system*, in alphabetical order, to read as follows:

§ 393.5 Definitions.

* * * * *

Antilock Brake System or *ABS* means a portion of a service brake system that automatically controls the degree of rotational wheel slip during braking by:

(1) Sensing the rate of angular rotation of the wheels;

(2) Transmitting signals regarding the rate of wheel angular rotation to one or more controlling devices which interpret those signals and generate responsive controlling output signals; and

(3) Transmitting those controlling signals to one or more modulators which adjust brake actuating forces in response to those signals.

* * * * *

3. In subpart C, § 393.55 is added to read as follows:

§ 393.55 Antilock brake systems.

(a) *Hydraulic brake systems.* Each truck and bus manufactured on or after March 1, 1999 (except trucks and buses engaged in driveaway-towaway operations), and equipped with a hydraulic brake system, shall be equipped with an antilock brake system that meets the requirements of Federal Motor Vehicle Safety Standard (FMVSS) No. 105 (49 CFR 571.105, S5.5).

(b) *ABS malfunction indicators for hydraulic braked vehicles.* Each hydraulic braked vehicle subject to the requirements of paragraph (a) of this section shall be equipped with an ABS malfunction indicator system that meets the requirements of FMVSS No. 105 (49 CFR 571.105, S5.3).

(c) *Air brake systems.* (1) Each truck tractor manufactured on or after March 1, 1997 (except truck tractors engaged in driveaway-towaway operations), shall be equipped with an antilock brake system that meets the requirements of FMVSS No. 121 (49 CFR 571.121, S5.1.6.1(b)).

(2) Each air braked commercial motor vehicle other than a truck tractor, manufactured on or after March 1, 1998 (except commercial motor vehicles engaged in driveaway-towaway operations), shall be equipped with an antilock brake system that meets the requirements of FMVSS No. 121 (49 CFR 571.121, S5.1.6.1(a) for trucks and buses, S5.2.3 for semitrailers, converter dollies and full trailers).

(d) *ABS malfunction circuits and signals for air braked vehicles.* (1) Each truck tractor manufactured on or after March 1, 1997, and each single-unit air braked vehicle manufactured on or after March 1, 1998, subject to the requirements of paragraph (c) of this section, shall be equipped with an electrical circuit that is capable of signaling a malfunction that affects the generation or transmission of response or control signals to the vehicle's antilock brake system (49 CFR 571.121, S5.1.6.2(a)).

(2) Each truck tractor manufactured on or after March 1, 2001, and each single-unit vehicle that is equipped to tow another air-braked vehicle, subject to the requirements of paragraph (c) of this section, shall be equipped with an electrical circuit that is capable of transmitting a malfunction signal from the antilock brake system(s) on the towed vehicle(s) to the trailer ABS malfunction lamp in the cab of the

towing vehicle, and shall have the means for connection of the electrical circuit to the towed vehicle. The ABS malfunction circuit and signal shall meet the requirements of FMVSS No. 121 (49 CFR 571.121, S5.1.6.2(b)).

(3) Each semitrailer, trailer converter dolly, and full trailer manufactured on or after March 1, 2001, and subject to the requirements of paragraph (c)(2) of this section, shall be equipped with an electrical circuit that is capable of signaling a malfunction in the trailer's antilock brake system, and shall have the means for connection of this ABS malfunction circuit to the towing vehicle. In addition, each trailer manufactured on or after March 1, 2001, subject to the requirements of paragraph (c)(2) of this section, that is designed to tow another air-brake equipped trailer shall be capable of transmitting a malfunction signal from the antilock brake system(s) of the trailer(s) it tows to the vehicle in front of the trailer. The ABS malfunction circuit and signal shall meet the requirements of FMVSS No. 121 (49 CFR 571.121, S5.2.3.2).

(e) *Exterior ABS malfunction indicator lamps for trailers.* Each trailer (including a trailer converter dolly) manufactured on or after March 1, 1998 and before March 1, 2009, and subject to the requirements of paragraph (c)(2) of this section, shall be equipped with an ABS malfunction indicator lamp which meets the requirements of FMVSS No. 121 (49 CFR 571.121, S5.2.3.3).

[FR Doc. 98–11775 Filed 5–1–98; 8:45 am]

BILLING CODE 4910–22–P

Proposed Rules

Federal Register
Vol. 63, No. 85
Monday, May 4, 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.

DEPARTMENT OF AGRICULTURE

Office of the Secretary

7 CFR Part 1

USDA Freedom of Information Act Regulations

AGENCY: Department of Agriculture.

ACTION: Proposed rule.

SUMMARY: This proposed revision of the Department of Agriculture Freedom of Information Act (FOIA) regulations provides substantive and administrative changes to conform to the requirements of the Electronic FOIA Amendments of 1996, Pub. L. 104–231. It also provides guidance to the Department of Agriculture on implementation of this amended law.

DATES: Comments must be received by June 3, 1998.

ADDRESSES: Mail comments concerning this proposal to Andrea Fowler, FOIA Officer, Office of Communications, U.S. Department of Agriculture, Washington, DC 20250, or deliver them to room 536A, Jamie L. Whitten Federal Building, 1400 Independence Ave., SW, Washington, DC. Comments received may be reviewed between the hours of 9 am–4 pm Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Andrea E. Fowler, Office of Communications, (202) 720–8164.

SUPPLEMENTARY INFORMATION:

Background Information

On October 2, 1996, President Clinton signed into law the Electronic FOIA Amendments of 1996, Pub. L. 104–231. The amendments to the FOIA address electronic records in the text of the statute for the first time. The amendments include provisions that address the availability of ''reading room'' material by electronic telecommunication means, volume estimation, format of disclosure, marking of deletions, electronic searches, and the expedited processing of FOIA requests. In addition, the amendments extend the time limit for responding to an initial FOIA request from ten to twenty days, modify the requirements for reporting Freedom of Information activities to Congress, and clarify the extent to which an agency may extend the time within which it will respond to a FOIA request or appeal.

USDA, therefore, is revising its FOIA regulations to implement these statutory amendments. In addition, USDA is reorganizing, renumbering, and making clarifying and stylistic changes to its FOIA regulations. USDA is not revising Appendix A to the FOIA regulations at this time.

The following provisions in the revised regulations will implement the Electronic FOIA Amendments:

1. Section 1.4 incorporates a new provision to implement 5 U.S.C. 552(a)(2)(D), which creates a new category of records to receive ''reading room'' treatment: documents released in response to a FOIA request that may become the subject of subsequent requests for substantially the same records. 5 U.S.C. 552(a)(2)(D).

2. Section 1.4 also incorporates a new requirement that reading room records created on or after November 1, 1996, be made available to the public by ''computer telecommunications'' or other ''electronic means.'' 5 U.S.C. 552(a)(2).

3. Section 1.4 also incorporates a requirement that each agency maintain an index of FOIA processed records and make the index available on-line. 5 U.S.C. 552(a)(2).

4. Section 1.4 also incorporates a revision to require that each agency maintain reference material or a guide for requesting records or information from the agency. The guide must include an index of all major information systems of the agency, a description of major information and record locator systems, and a handbook for obtaining various types and categories of public information from the agency, both through FOIA requests and through other means. The guide should be made publicly available in agency reading rooms and through an electronic site, as well as upon request. 5 U.S.C. 552(g).

5. Section 1.7 increases the time limit to respond to an initial FOIA request from ten to twenty working days. 5 U.S.C. 552(a)(6)(D).

6. Section 1.8 provides for ''multitrack'' processing of FOIA requests, based on the amount of work or time (or both) that is involved in processing them. 5 U.S.C. 552(a)(6)(D).

7. Section 1.9 adds a requirement that each agency consider requests for ''expedited processing'' and grant such requests where the requester shows an imminent threat to life or physical safety or an urgency to inform the public about federal government activity. 5 U.S.C. 552(a)(6)(E).

8. Section 1.15 incorporates a new provision requiring that each agency make reasonable efforts to maintain its records in forms or formats that are reproducible for purposes of the FOIA. 552(a)(3)(B).

9. Section 1.15 incorporates a new requirement that each agency make reasonable efforts to search for records in electronic form or format, except when such efforts would interfere significantly with the operation of the agency's automated information system. 5 U.S.C. 552(a)(3)(C).

10. Section 1.15 incorporates a new requirement that each agency indicate, on the released portion of a redacted record, the amount of information that has been deleted from a record, unless including that indication would harm an interest protected by an applicable exemption. 5 U.S.C. 552(b).

11. Section 1.15 incorporates a requirement for each agency to make a reasonable effort to estimate the volume of matter being withheld, when entire records, or entire pages are withheld, and provide the estimate to the requester. 5 U.S.C. 552(a)(6)(F).

12. Section 1.15 requires that each agency provide records in any form or format requested, if the record is readily reproducible by the agency in the form or format requested. 5 U.S.C. 552(a)(3)(B).

13. Section 1.16 requires each agency to notify a requester of ''unusual circumstances'' that require additional time for processing a request, and offer the requester the opportunity to limit scope of the request, or arrange an alternative time frame for processing, or both. 5 U.S.C. 552(a)(6)(B)(I).

14. Section 1.16 incorporates a new provision to limit the conditions under which an agency backlog of FOIA requests may be considered an ''exceptional circumstance'' justifying a longer processing time. ''Exceptional circumstances'' will not include a delay that results from a predictable agency

workload of FOIA requests, unless the agency demonstrates reasonable progress in reducing its backlog of pending requests. 552(a)(6)(C)(ii).

15. Section 1.20 modifies the content, timetable, and procedure for filing the annual FOIA report. The annual reporting period will change from a calendar year to a fiscal year. 5 U.S.C. 552(e).

Revised Section

1. Section 1.4, Implementing regulations for the Office of the Secretary, has been incorporated into § 1.25.

Removed Section

1. Section 1.5(e), which allows oral FOIA requests, has been removed in order to ensure that agencies maintain accountability and are able to track requests and process them in the order of receipt within each agency.

List of Subjects in 7 CFR Part 1

Administrative practice and procedure, Freedom of information, Privacy.

Accordingly, it is proposed to revise 7 CFR, part 1, subpart A except Appendix A, to read as follows:

PART 1—ADMINISTRATIVE REGULATIONS

Supbart A—Offical Records

Sec.

1.1 Purpose and scope.
1.2 Policy.
1.3 Agency implementing regulations.
1.4 Public access to certain materials.
1.5 Requests for records.
1.6 Aggregating requests.
1.7 Agency response to requests for records.
1.8 Multitrack processing.
1.9 Expedited processing.
1.10 Search services.
1.11 Review services.
1.12 Handling information from a private business.
1.13 Date of receipt of requests or appeals.
1.14 Appeals.
1.15 General provisions respecting release of records.
1.16 Extension of administrative deadlines.
1.17 Failure to meet administrative deadlines.
1.18 Fee schedule.
1.19 Exemptions and discretionary release.
1.20 Annual report.
1.21 Compilation of new records.
1.22 Authentication.
1.23 Records in formal adjudication proceedings.
1.24 Preservation of records.
1.25 Implementing regulations for the Office of the Secretary and the Office of Communications.
Appendix A—Fee Schedule

Subpart A—Official Records

Authority: 5 U.S.C. 301, 552; 7 U.S.C. 3125a; 31 U.S.C. 9701; and 7 CFR 2.28(b)(7)(viii).

§ 1.1 Purpose and scope.

This subpart establishes policy, procedures, requirements, and responsibilities for administration and coordination of the Freedom of Information Act (''FOIA''), 5 U.S.C. 552, pursuant to which any person may obtain official records. It also provides rules pertaining to the disclosure of records pursuant to compulsory process. This subpart also serves as the implementing regulations (referred to in § 1.3, ''Agency implementing regulations'') for the Office of the Secretary (the immediate offices of the Secretary, Deputy Secretary, Under Secretaries and Assistant Secretaries) and for the Office of Communications. The Office of Communications has the primary responsibility for implementation of the FOIA in the Department of Agriculture (''USDA'' or ''Department''). The term ''agency'' or ''agencies'' is used throughout this subpart to include both USDA program agencies and staff offices.

§ 1.2 Policy.

(a) Agencies of USDA shall comply with the time limits set forth in the FOIA and in this subpart for responding to and processing requests and appeals for agency records, unless there are unusual circumstances within the meaning of 5 U.S.C. 552(a)(6)(B) and § 1.16(b). An agency shall notify a requester in writing whenever it is unable to respond to or process a request or appeal within the time limits established by the FOIA.

(b) All agencies of the Department shall comply with the fee schedule provided as appendix A to this subpart, with regard to the charging of fees for providing copies of records and related services to requesters.

§ 1.3 Agency implementing regulations.

(a) Each agency of the Department shall promulgate regulations setting forth the following:

(1) The location and hours of operation of the agency office or offices where members of the public may gain access to those materials required by 5 U.S.C. 552(a)(2) and § 1.4 to be made available for public inspection and copying.

(2) Information regarding the publication and distribution (by sale or otherwise) of indexes and supplements to indexes that are maintained in accordance with the requirements of 5 U.S.C. 552(a)(2) and § 1.4(c);

(3) The title and mailing address of the official or officials of the agency authorized to receive requests for records submitted in accordance with § 1.5(a), and to make determinations regarding whether to grant or deny such requests. Authority to make such determinations includes authority to:

(i) Extend the 20 working days administrative deadline for reply pursuant to § 1.16;

(ii) Make discretionary releases pursuant to § 1.19(b); and

(iii) Make determinations regarding the charging of fees pursuant to appendix A to this subpart;

(4) The title and mailing address of the official of the agency who is authorized to receive appeals submitted in accordance with § 1.4(e) and to make determinations regarding whether to grant or deny such appeals. Authority to determine appeals includes authority to:

(i) Extend the 20 working days administrative deadline for reply pursuant to § 1.16 (to the extent the maximum extension authorized by § 1.16(c) was not used with regard to the initial request);

(ii) Make discretionary releases pursuant to § 1.19(b); and

(iii) Make determinations regarding the charging of fees pursuant to appendix A to this subpart; and

(5) Other information which would be of concern to a person wishing to request records from that agency in accordance with this subpart.

§ 1.4 Public access to certain materials.

(a) In accordance with 5 U.S.C. 552(a)(2), each agency within the Department shall make the following materials available for public inspection and copying (unless they are promptly published and copies offered for sale):

(1) Final opinions, including concurring and dissenting opinions, as well as orders, made in the adjudication of cases;

(2) Those statements of policy and interpretation which have been adopted by the agency and are not published in the **Federal Register**;

(3) Administrative staff manuals and instructions to staff that affect a member of the public;

(4) Copies of all records, regardless of form or format, which have been released pursuant to a FOIA request under 5 U.S.C. 552(a)(3), and which because of the nature of their subject matter, have become or are likely to become the subject of subsequent requests for substantially the same records. Agencies shall decide on a case by case basis whether records fall into

this category, based on the following factors;

(i) Previous experience with similar records;

(ii) The particular characteristics of the records involved, including their nature and the type of information contained in them; and

(iii) The identity and number of requesters and whether there is widespread media, historical, academic, or commercial interest in the records.

(5) A general index of the records referred to in paragraph (a)(4) of this section.

(b) Records encompassed within paragraphs (a)(1) through (a)(5) of this section created on or after November 1, 1996, shall be made available to the public by computer telecommunications or, if computer telecommunications means have not been established by the agency, by other electronic means.

(c) Each agency of the Department shall maintain and make available for public inspection and copying current indexes providing identifying information regarding any matter issued, adopted, or promulgated after July 4, 1967, and required by paragraph (a) of this section to be made available or published. Each agency shall publish and make available for distribution copies of such indexes and supplements to such indexes at least quarterly, unless it determines by notice published in the **Federal Register** that publication would be unnecessary and impracticable. After issuance of such notice, each agency shall provide copies of any index upon request at a cost not to exceed the direct cost of duplication.

(d) Each agency is responsible for preparing reference material or a guide for requesting records or information from that agency. This guide shall also include an index of all major information systems, and a description of major information and record locator systems.

(e) Each agency shall also prepare a handbook for obtaining information from that agency. The handbook should be a short, simple explanation to the public of what the FOIA is designed to do, and how a member of the public can use it to access government records. The handbook should be available on paper and through electronic means, and it should identify how a requester can access agency Freedom of Information Act annual reports. Similarly, the annual reports should refer to the handbook and how to obtain it.

(f) It is appropriate to make frequently requested records available in accordance with paragraph (a)(4) of this section in situations where public access in a timely manner is important, and it is not intended to apply where there may be a limited number of requests over a short period of time from a few requesters. Agencies may remove a record from this access medium when the appropriate officials determine that it is unlikely there will be substantial further requests for that document.

§ 1.5 Requests for records.

(a) Any person who wishes to inspect or obtain copies of any record of any agency of the Department shall submit a request in writing and address the request to the official designated in regulations promulgated by that agency. The requester may ask for a fee waiver. All such requests for records shall be deemed to have been made pursuant to the Freedom of Information Act, regardless of whether the request specifically mentions the Freedom of Information Act. To facilitate processing of a request, the requester should place the phrase ''FOIA REQUEST'' in capital letters on the front of the envelope or on the cover sheet of the fax transmittal.

(b) A request must reasonably describe the records to enable agency personnel to locate them with reasonable effort. Where possible, a requester should supply specific information regarding dates, titles, names of individuals, names of offices, and names of agencies or other organizations that may help identify the records. If the request relates to a matter in pending litigation, the requester should identify the court and its location.

(c) If an agency determines that a request does not reasonably describe the records, the agency shall inform the requester of this fact and extend the requester an opportunity to clarify the request or to confer promptly with knowledgeable agency personnel to attempt to identify the records the requester is seeking. The ''date of receipt'' in such instances, for purposes of § 1.13, shall be the date of receipt of the amended or clarified request.

(d) If a requester for records or a fee waiver made under this subpart is denied, the requester shall have the right to appeal the denial. Requesters also may appeal agency determinations of a requester's status for purposes of fee levels under § 5 of appendix A to this subpart. All appeals must be in writing and addressed to the official designated in regulations promulgated by the agency which denied the request. To facilitate processing of an appeal, the requester should place the phrase ''FOIA APPEAL'' in capital letters on the front of the envelope or on the cover sheet of the fax transmittal.

(e) Requests that are not addressed to a specific agency in USDA, or which pertain to more than one USDA agency, or which are sent to the wrong agency of USDA, should be forwarded to the Department's FOIA Officer in the Office of Communications, U.S. Department of Agriculture, Washington, DC 20250.

(f) The Department FOIA Officer will determine which agency or agencies should process the request, and, where necessary, refer the request to the appropriate agency or agencies. The Department FOIA Officer will also notify the requester of the referral and of the name of each agency to which the request has been referred.

(g) A request will be properly received when it is in the possession of the component agency that has responsibility for maintaining the requested records.

(h) Each agency shall develop and maintain a record of all written requests and appeals received in that agency. The record shall include the names of the requester; a brief summary of the information requested; whether the request or appeal was granted, denied, or partially denied; the exemption from mandatory disclosure under 5 U.S.C. 552(b) upon which any denial was based; and the amount of any fees associated with the request or appeal.

§ 1.6 Aggregating requests.

When an agency reasonably believes that a requester, or a group of requesters acting in concert, is attempting to break a request down into a series of requests for the purpose of evading the assessment of fees, the agency may aggregate any such requests and charge accordingly. One element that may be considered in determining whether such a belief would be reasonable is the brevity of the time period during which the requests have been made.

§ 1.7 Agency response to requests for records.

(a) 5 U.S.C. 552(a)(6)(A)(l) provides that each agency of the Department to which a request for records or a fee waiver is submitted in accordance with § 1.5(a) shall inform the requester of its determination concerning that request within 20 working days of its date of receipt (excepting Saturdays, Sundays, and legal public holidays), plus any extension authorized under § 1.16. If the agency determines to grant the request, it shall inform the requester of any conditions surrounding the granting of the request (e.g., payment of fees) and the approximate date upon which the agency will provide the requested records. If the agency grants only a portion of the request, it shall treat the

portion not granted as a denial, and make a reasonable effort to estimate the volume of the records denied and provide this estimate to the requester, unless providing such an estimate would harm an interest protected by an exemption of the FOIA. If the agency determines to deny the request in part or in whole, it shall immediately inform the requester of that decision and provide the following:

(1) The reasons for the denial;

(2) The name and title or position of each person responsible for denial of the request;

(3) The requester's right to appeal such denial and the title and address of the official to whom such appeal is to be addressed; and

(4) The requirement that such appeal be made within 45 days of the date of the denial.

(b) If the reason for not fulfilling a request is that the records requested are in the custody of another agency outside USDA, other than in the permanent custody of the National Archives and Records Administration (''NARA''), the agency shall inform the requester of this fact and shall forward the request to that agency or Department for processing in accordance with its regulations. If the records are in the permanent custody of NARA, the agency shall so inform the requester. Information about obtaining access to records at NARA may be obtained through the NARA Archival Information Locator (NAIL) Database at http://www/nara.gov/nara.nail.html, or by calling NARA at (301) 713–6800. If the agency has no knowledge of requested records or if no records exist, the agency shall notify the requester of that fact.

§ 1.8 Multitrack processing.

(a)When an agency has a significant number of requests, the nature of which precludes a determination within 20 working days, the requests may be processed in a multitrack processing system, based on the date of receipt, the amount of work and time involved in processing the request, and whether the request qualifies for expedited processing.

(b) Agencies may establish as many processing tracks as appropriate; processing within each track shall be based on a first-in, first-out concept, and rank-ordered by the date of receipt of the request.

(c) Agencies may provide a requester whose request does not qualify for the fastest track an opportunity to limit the scope of the request in order to qualify for the fastest track. This multitrack processing system does not lessen agency responsibility to exercise due diligence in processing requests in the most expeditious manner possible.

(d) Agencies shall process requests in each track on a ''first-in, first-out'' basis, unless there are unusual circumstances as set forth in § 1.16, or the requester is entitled to expedited processing as set forth in § 1.9.

§ 1.9 Expedited processing.

(a) A requester may apply for expedited processing at the time of the initial request for records. Within ten calendar days of its receipt of a request for expedited processing, an agency shall decide whether to grant it, and shall notify the requester of the decision. Once the determination has been made to grant expedited processing, an agency shall process the request as soon as practicable. If a request for expedited processing is denied, the agency shall act expeditiously on any appeal of that decision.

(b) A request or appeal will be taken out of order and given expedited treatment whenever the agency determines that the requester has established either of the following criteria:

(1) Circumstances in which the lack of expedited treatment could reasonably be expected to pose an imminent threat to the life or physical safety of an individual; or

(2) An urgency to inform the public about an actual or alleged federal government activity, if made by an individual primarily engaged in disseminating information. Representatives of the news media would normally qualify as individuals primarily engaged in disseminating information; however, other requesters must demonstrate that their primary activity involves publishing or otherwise disseminating information to the public as a whole, and not just a particular segment or group. ''Urgency'' contemplates that the information has a particular value that will be lost if not disseminated quickly. Ordinarily this means a breaking news story of general public interest. Information of historical interest only or information sought for litigation or commercial activities would not meet the test of urgency, nor would a news media publication or broadcast deadline unrelated to the news breaking nature of the information.

(c) A requester who seeks expedited processing must provide a written statement that the requester has certified to be true and correct to the best of the requester's knowledge, explaining in detail the basis for requesting expedited processing. The agency will not consider the request to have been received unless accompanied by a written, certified statement, and will be under no obligation to consider the request for expedited processing until it receives such a written, certified statement.

(d) The same procedures apply to requests for expedited processing of administrative appeals.

§ 1.10 Search services.

Search services are services of agency personnel—clerical or professional—used in trying to find the records, that are responsive to a request. Search services includes both manual and electronic searches and time spend examining records for the purpose of fining information that is within the scope of the request. Search services also include services to transport personnel to places of record storage, or records to the location of personnel for the purpose of the search, if such services are reasonably necessary.

§ 1.11 Review services.

(a) Review services are services of agency personnel—clerical or professional—in examining records, both paper and electronic, located in response to a request that is for a commercial use (as specified in § 6 of appendix A to this subpart) to determine whether any portion of any record located is exempt from mandatory disclosure.

(b) Review services include processing any records for disclosure, e.g., doing all that is necessary to redact exempt portions and otherwise prepare records for release.

(c) Review services do not include the time spent resolving general legal or policy issues regarding the application of exemptions.

§ 1.12 Handling information from a private business.

Each USDA agency is responsible for making the final determination with regard to the disclosure or nondisclosure of information in agency records that has been submitted by a business. When, in the course of responding to an FOIA request, an agency cannot readily determine whether the information obtained from a person is privileged or confidential business information, the policy of USDA is to obtain and consider the views of the submitter of the information and to provide the submitter an opportunity to object to any decision to disclose the information. If a request (including a subpoena *duces tecum* as described in § 1.215) is received in USDA for

information that has been submitted by a business, the agency shall:

(a) Provide the business information submitter with prompt notification of a request for that information (unless it is readily determined by the agency that the information requested should not be disclosed or, on the other hand, that the information is not exempt by law from disclosure). Afford business information submitters reasonable time in which to object to the disclosure of any specified portion of the information. The submitter must explain fully all grounds upon which disclosure is opposed. For example, if the submitter maintains that disclosure is likely to cause substantial harm to its competitive position, the submitter must explain item-by-item why disclosure would cause such harm. Information provided by a business submitter pursuant to this paragraph may itself be subject to disclosure under FOIA;

(b) Notify the requester of the need to inform the submitter of a request for submitted business information;

(c) Determine whether the requested records are exempt from disclosure or must be released;

(d) Provide business information submitters with notice of any determination to disclose such records prior to the disclosure date, in order that the matter may be considered for possible judicial intervention; and

(e) Notify business information submitters promptly of all instances in which FOIA requesters bring suit seeking to compel disclosure of submitted information.

§ 1.13 Date of receipt of requests or appeals.

The date of receipt of a request or appeal shall be the date it is received in the agency and office responsible for the administrative processing of FOIA requests or appeals.

§ 1.14 Appeals.

(a) Requesters seeking administrative appeal of a denial of a request for records or denial of a fee waiver must ensure that the appeal is received by the agency within 45 days of the date of the denial letter.

(b) Each agency shall provide for review of appeals by an official different from the official or officials designated to make initial denials.

(c) 5 U.S.C. 552(a)(6)(A)(ii) provides that each agency in the Department to which an appeal of a denial is submitted shall inform the requester of its determination concerning that appeal within 20 working days (excepting Saturdays, Sundays, and legal public holidays), plus any extension authorized by § 1.16, of its date of receipt. If the agency determines to grant the appeal, it shall inform the requester of any conditions surrounding the granting of the request (e.g., payment of fees) and the approximate date upon which compliance will be effected. If the agency grants only a portion of the appeal, it shall treat the portion not granted as a denial. If it determines to deny the appeal either in part or in whole, it shall inform the requester of that decision and of the following:

(1) The reasons for denial;

(2) The name and title or position of each person responsible for denial of the appeal; and

(3) The right to judicial review of the denial in accordance with 5 U.S.C. 552(a)(4).

(d) Each agency, upon a determination that it wishes to deny an appeal, shall send a copy of the records requested and of all correspondence relating to the request to the Assistant General Counsel, General Law Division, Office of the General Counsel (''Assistant General Counsel''). When the volume of records is so large as to make sending a copy impracticable, the agency shall enclose an informative summary of those records. The agency shall not deny an appeal until it receives concurrence from the Assistant General Counsel.

(e) The Assistant General Counsel shall promptly review the matter (including necessary coordination with the agency) and render all necessary assistance to enable the agency to respond to the appeal within the administrative deadline or any extension of the administrative deadline.

§ 1.15 General provisions respecting release of records.

(a) When releasing documents, agencies shall provide the record in any form or format the requester specifies, if the record is readily reproducible in that form or format. Agencies shall make reasonable efforts to maintain their records in forms or formats that are reproducible. In responding to requests for records, agencies shall make reasonable efforts to search for records in electronic form or format, except when such efforts would significantly interfere with the operation of an agency's automated information system. Such determinations shall be made on a case by case basis.

(b) In the event a requested record contains some portions that are exempt from mandatory disclosure and others that are not, the official responding to the request shall ensure that all reasonably segregable nonexempt portions are disclosed, and that all exempt portions are identified according to the specific exemption or exemptions which are applicable. The amount of deleted information shall be indicated on the released portion of paper records. Deletions may be marked by use of brackets or darkened areas indicating removal of information, or by any other method that would reasonably demonstrate the extent of the deletion. In the case of electronic deletion, or deletion in audiovisual or microfiche records, if technically feasible, the amount of redacted information shall be indicated at the place in the record where such deletion was made. This may be done by use of brackets, shaded areas, or some other identifiable technique which will clearly show the limits of the deleted information.

(c) If, in connection with a request or an appeal, a charge is to be made in accordance with § 8 of appendix A to this subpart, agencies shall inform the requester of the fee amount and of the basis for the charge. Each agency, in accordance with § 8 of appendix A to this subpart, may require payment of the entire fee, or a portion of the fee, before it provides the requested records. An agency shall require full payment of any delinquent fee owed by the requester plus any applicable interest prior to releasing records on a subsequent request or appeal. If a requester refuses to remit payment in advance, an agency may refuse to process the request or appeal with written notice to that effect forwarded to the requester. The ''date of receipt'' of an appeal for which advance payment has been required shall be the date that payment is received.

(d) In the event compliance with the request or appeal involves inspection of records by the requester rather than providing copies of the records, the agency response shall include the name, mailing address, and telephone number of the person to be contacted to arrange a mutually convenient time for such inspection.

(e) Whenever duplication fees, or search fees for unsuccessful searchers (see § 4(f) of appendix A to this subpart), are anticipated to exceed $25.00, and the requester has not indicated, in advance, a willingness to pay fees as high as those anticipated, agencies shall notify the requester of the amount of the anticipated fee. If an extensive and therefore costly successful search is anticipated, agencies also should notify requesters of the anticipated fees. The notification shall offer the requester the opportunity to confer with agency personnel to reform the request to meet the requester's needs at a lower fee. In

appropriate cases, an advance deposit in accordance with § 8 of appendix A to this subpart may be required.

§ 1.16 Extension of administrative deadlines.

(a) In unusual circumstances as specified in this section, when additional time is needed to respond to the initial request or to an appeal, agencies shall acknowledge the request or the appeal in writing within the 20 working day time period, describe the unusual circumstances requiring the delay,and indicate the anticipated date for a substantive response that may not exceed 10 additional working days, except as provided in the following:

(1) In instances in which the agency, with respect to a particular request, has extended the response date by 10 additional working days, if the agency finds that it cannot make a response determination within the additional 10 working day period, the agency shall notify the requester and provide the requester an opportunity to limit the scope of the request to allow the agency to process the request within the extended time limit, or an opportunity to arrange an alternative time frame for processing the request or a modified request.

(2) If the requester refuses to reasonably modify the request or arrange for an alternative time frame for processing the request, the FOIA provides that such refusal shall be considered as a factor in determining whether there are exceptional circumstances that warrant granting additional time for the agency to complete its review of the records,as set forth in 5 U.S.C. 552(a)(6(C). The term ''exceptional circumstances'' does not include a delay that results from a predictable agency backlog, unless the agency demonstrates reasonable progress in reducing its backlog of pending requests.

(b) As used in this section, ''unusual circumstances'' that may justify delay are:

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

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

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

Note: consultation regarding policy or legal issues between an agency and the Office of the General Counsel, Office of Communications, or the Department of Justice is not a basis for extension under this section.

(c) The 10-day extension authorized by this section may be divided between the initial and appellate reviews, but in no event shall the total extension exceed 10 working days.

(d) Nothing in this section shall preclude the agency and the requester from agreeing to an extension of time. Any such agreement should be confirmed in writing and should specify clearly the total time agreed upon.

§ 1.17 Failure to meet administrative deadlines.

In the event an agency fails to meet the administrative deadlines set forth in § 1.7, or § 1.14, plus any extension authorized by § 1.16, it shall notify the requester, state the reasons for the delay, and the date by which it expects to dispatch a determination. Although the requester may be deemed to have exhausted his or her administrative remedies under 5 U.S.C. 552(a)(6)(C), the agency shall continue processing the request as expeditiously as possible and dispatch the determination when it is reached in the same manner and form as if it had been reached within the applicable deadline.

§ 1.18 Fee schedule.

Pursuant to § 2.28 of this title, the Chief Financial Officer is delegated authority to promulgate regulations providing for a uniform fee schedule applicable to all agencies of the Department regarding requests for records under this subpart. The regulations providing for a uniform fee schedule are found in appendix A to this subpart.

§ 1.19 Exemptions and discretionary release.

(a) All agency records, except those specifically exempted from mandatory disclosure by one or more provisions of 5 U.S.C. 552(b), shall be made promptly available to any person submitting a request under this subpart.

(b) Agencies are authorized in their sole discretion, to make discretionary releases when such release is not otherwise specifically prohibited by Executive Order, statute, or regulation.

§ 1.20 Annual report.

(a) Each agency of the Department shall compile the following Freedom of Information Act statistics on a fiscal year basis beginning October 1, 1997, and report the following information to the Office of Communications no later than November 30 following the fiscal year's close:

(1) The number of requests for records received and the number of requests which were processed;

(2) The number of determinations made not to comply with initial requests for records made to it under § 1.5(a), and the reasons for each such determination;

(3) The number of appeals made by persons under § 1.14(b), the result of such appeals, and the reason for the action upon each appeal that results in a denial of information;

(4) A complete list of all statutes that the agency relies upon to authorize the agency to withhold information under 5 U.S.C. 552(b)(3), a description of whether a court has upheld the decision of the agency to withhold information under each such statute, and a concise description of the scope of any information withheld;

(5) The number of requests for records pending before the agency as of September 30 of the preceding year, and the median number of days that such requests had been pending before the agency as of that date:

(6) The median number of days taken by the agency to process different types of requests;

(7) The total amount of fees collected by the agency for processing requests;

(8) The number of full-time staff of the agency devoted to processing requests for records under this section, and the total amount expended by the agency for processing such requests.

(b) Each agency shall compile the information required by paragraph (a) of this section for the preceding fiscal year into a report and submit this report to the Director of Communications, Office of Communications, no later than November 30 following the fiscal year's close.

(c) The Director of Communications, Office of Communications, shall combine the reports from all the agencies within USDA into a Departmental report, and shall submit to the Attorney General on or before February 1 of each year in accordance with 5 U.S.C. 552(e).

(d) Each agency shall make the report available to the public including by computer telecommunications, or if computer telecommunications means have not been established by the agency, by other electronic means.

§ 1.21 Compilation of new records.

Nothing in 5 U.S.C. 552 or this subpart requires that any agency create a new record in order to fulfill a request

for records. However, an agency is required to provide a record in a form or format specified by a requester, if the record is readily reproducible by the agency in the form or format requested. Creation of records may be undertaken voluntarily if the agency determines this action to be in the public interest or the interest of USDA.

§ 1.22 Authentication.

When a request is received for an authenticated copy of a document which the agency determines to make available to the requesting party, the agency shall cause a correct copy to be prepared and sent to the Office of the General Counsel which shall certify the same and cause the seal of the Department to be affixed, except that the Hearing Clerk in the Office of Administrative Law Judges may authenticate copies of documents in the records of the Hearing Clerk and that the Director of the National Appeals Division may authenticate copies of documents in the records of the National Appeals Division.

§ 1.23 Records in formal adjudication proceedings.

Records in formal adjudication proceedings are on file in the Hearing Clerk's office, Office of Administrative Law Judges, U.S. Department of Agriculture, Washington, DC 20250, and shall be made available to the public.

§ 1.24 Preservation of records.

Agencies shall preserve all correspondence relating to the requests it receives under this subpart, and all records processed pursuant to such requests, until such time as the destruction of such correspondence and records is authorized pursuant to Title 44 of the United States Code, and appropriate records disposition authority granted by NARA. Under no circumstances shall records be sent to a Federal Records Center, transferred to the permanent custody of NARA, or destroyed while they are the subject of a pending request, appeal, or civil action under the FOIA.

§ 1.25 Implementing regulations for the Office of the Secretary and the Office of Communications

(a) For the Office of the Secretary and for the Office of Communications, the regulations required by § 1.3 are as follows:

(1) Records available for public inspection and copying may be obtained in Room 536–A, Jamie L. Whitten Federal Building, USDA, Washington, DC 20250 during the hours of 9 a.m. to 5 p.m. by prior appointment;

(2) Any indexes and supplements which are maintained in accordance with the requirements of 5 U.S.C. 552(a)(2) and § 1.5(b) will also be available in Room 536–A, Jamie L. Whitten Federal Building, USDA, Washington, DC 20250 during the hours of 9 a.m. to 5 p.m.;

(3) The person authorized to receive Freedom of Information Act requests and to determine whether to grant or deny such requests is the FOIA Officer, Office of Communications, USDA, Washington, DC 20250;

(4) The official authorized to receive appeals from denials of FOIA requests and to determine whether to grant or deny such appeals is the Director of Communications, Office of Communications, USDA, Washington, DC 20250.

(b) The organization and functions of the Office of the Secretary and the Office of Communications is as follows:

(1) The Office of the Secretary provides the overall policy guidance and direction of the activities of the Department of Agriculture. Department-wide policy statements and announcements are made from this office.

(2) The Office of the Secretary consists of the Secretary, Deputy Secretary, Under Secretaries, Assistant Secretaries, and other staff members.

(3) In the absence of the Secretary and the Deputy Secretary, responsibility for the operation of the Department of Agriculture is as delegated at part 2, subpart A of this title.

(4) The Office of Communications provides policy direction, review, and coordination of public information programs of the Department of Agriculture. The Office of Communications has responsibility for maintaining the flow of information to the mass communications media, various constituency groups, and the general public.

(5) The Office of Communications is headed by the Director of Communications. In the Director's absence, the Office of Communications is headed by the Deputy Director.

* * * * *

Done at Washington, DC this 13 day of April, 1998.

Dan Glickman,

Secretary of Agriculture.

[FR Doc. 98–10432 Filed 5–1–98; 8:45 am]

BILLING CODE 3410–01–M

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 130

[Docket No. 94–115–1]

RIN 0579–AA70

Veterinary Diagnostic Services User Fees

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to revise user fees for veterinary diagnostic services to reflect changes in operating costs and changes in calculations. In addition, we are proposing to add new user fees to cover the costs of additional veterinary diagnostic services. In addition, we propose to reorganize these user fees by type of service and location where the service is provided, and to group reagents into categories. We are also proposing to revise user fees for the use of animal import centers operated by the Animal and Plant Health Inspection Service, and to add new user fees for new spaces. These actions are necessary to ensure that we recover our costs. The Food, Agriculture, Conservation, and Trade Act of 1990, as amended, authorizes us to set and collect these user fees.

DATES: Consideration will be given only to comments received on or before July 6, 1998.

ADDRESSES: Please send an original and three copies of your comments to Docket 94–115–1, Regulatory Analysis and Development, PPD, APHIS, suite 3C03, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comments refer to Docket No. 94–115–1. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect comments are requested to call ahead on (202) 690–2817 to facilitate entry into the comment reading room.

FOR FURTHER INFORMATION CONTACT: For information concerning services provided for live animals and germ plasm, contact Dr. Gary S. Colgrove, Chief Staff Veterinarian, National Center for Import and Export, VS, APHIS, 4700 River Road Unit 38, Riverdale, MD 20737–1231; (301) 734–3294.

For information concerning services provided for veterinary diagnostics, contact Dr. James E. Pearson, Director,

National Veterinary Services Laboratories, VS, APHIS, P.O. Box 844, Ames, IA 50010; (515) 239–8266.

For information concerning program operations for Veterinary Services, contact Ms. Louise Lothery, Director, Veterinary Services Resource Management Staff, APHIS, 4700 River Road Unit 44, Riverdale, MD 20737–1231; (301) 734–7517.

For information concerning rate development of the proposed user fees, contact Ms. Donna Ford, Section Head, Financial Systems and Services Branch, Budget and Accounting Division, APHIS, 4700 River Road Unit 54, Riverdale, MD 20737–1232; (301) 734–8351.

SUPPLEMENTARY INFORMATION:

Background

User Fees Authorized Under the Farm Bill

The Food, Agriculture, Conservation and Trade Act of 1990, as amended (referred to below as the Farm Bill), authorizes the Secretary to prescribe regulations and collect fees to reimburse the Secretary for the cost of carrying out the provisions of the Federal Animal Quarantine Laws that relate to the importation, entry, and exportation of animals, articles, or means of conveyance (sec. 2509(c)(1) of the Farm Bill). The Farm Bill also authorizes the Secretary of Agriculture, among other things, to prescribe regulations and collect fees to recover the costs of veterinary diagnostics relating to the control and eradication of communicable diseases of livestock or poultry within the United States (sec. 2509(c)(2) of the Farm Bill).

User fees to reimburse the Animal and Plant Health Inspection Service (APHIS) for the costs of providing veterinary diagnostic services and import-and export-related services for live animals and birds and animal products are contained in 9 CFR part 130 (the regulations).

Regulations Proposed in This Document

We propose to revise the user fees for certain veterinary diagnostic services, including certain diagnostic tests, reagents, and other veterinary diagnostic materials and services. Operating costs have increased since these user fees were established in a final rule published in the **Federal Register** on September 1, 1993 (58 FR 38954–38961, Docket No. 91–021–5). Therefore, the user fees need to be revised to reflect the increases. Additional reviews of these user fees show that some of the original estimates did not include enough direct labor hours and that the direct labor calculations need to be revised to accurately reflect the costs of providing services. In reexamining our user fees, we believe that a comprehensive overhaul of the Veterinary Diagnostics user fees would more accurately recover our costs and provide clarity and ease of use for customers needing to look up user fees for our tests and other services. As discussed below, this overhaul would include reorganizing the presentation of user fees in the regulations, grouping reagents into simpler categories, implementing new user fees, and revising all of the existing Veterinary Diagnostic user fees.

The proposed user fees increase by varying amounts based on how close the existing user fee is to our actual costs. Some user fees required modest adjustments while others required large increases. These proposed changes are based on recalculating user fees to include adequate direct labor hours and use average laboratory employee salaries to calculate direct labor costs. The amount of the change proposed varies based on individual tests and services; therefore, the amount of the changes varies. Overall, we do not expect these proposed changes to significantly impact users. In most cases, the historical volume, associated with the tests and services for which we propose significant increases, is small.

In addition, we are proposing to add new user fees for other veterinary diagnostic services we provide. We continue to provide new services as required. We need to add user fees for services that we have added since the veterinary diagnostic user fees were first established. In addition, we believe that we need to add user fees for specific services which may be required or requested and for which there are currently no specific user fees. These new user fees are discussed in detail later in this document.

We are proposing two changes in the organization of user fees for veterinary diagnostics. First, we would reorganize the user fees by type of service and location where the service is provided. Second, we would group diagnostic reagents into categories. These changes are discussed in detail later in this document.

Additionally, we propose to revise user fees for the use of APHIS-operated animal import centers, to cover the costs for birds or poultry requiring nonstandard housing, care, or handling and to more accurately reflect the space utilization. For example, expenses for offices and hallways would be included in the overhead portion of the user fee calculation, instead of the user fee portion available to the animals, which is higher than the overhead portion of the user fees. We propose to add new user fees for the use of new spaces at the APHIS animal import center in Newburgh, NY. We propose to revise the user fees specified in § 130.8 for import compliance assistance and release from agricultural hold to more accurately reflect the cost of the services we provide. We also propose miscellaneous changes to the user fee regulations to eliminate duplication, add clarity, and incorporate provisions of the Debt Collection Improvement Act of 1996.

Veterinary Diagnostics

Veterinary diagnostics is the work performed in a laboratory to determine if a disease-causing organism or chemical agent is present in body tissues or cells and, if so, to identify those organisms or agents. Services in this category include: (1) Performing laboratory tests and providing diagnostic reagents and other veterinary diagnostic materials and services at the National Veterinary Services Laboratories' (NVSL) Foreign Animal Disease Diagnostic Laboratory (FADDL) at Greenport, NY, and (2) performing identification, serology, and pathobiology tests and providing veterinary diagnostic reagents and other materials and services at NVSL at Ames, IA. Diagnostic reagents are biological materials used in diagnostic tests to detect disease agents or antibodies by causing an identifiable reaction. We also consider sterilization by gamma radiation to be a veterinary diagnostics service. Other miscellaneous veterinary diagnostic services include, but are not limited to, providing check tests, test kits, manuals, standard operating procedures, and training.

We have reviewed the user fees that we charge for these services and have determined that we need to revise the amount of these user fees to reflect changes in costs and to recover the full cost of providing veterinary diagnostic services. We are also proposing to add new user fees to cover all veterinary diagnostic services. All of the proposed veterinary diagnostic user fees are listed below by type of service.

Currently, the Veterinary Diagnostic user fees are contained in §§ 130.14–130.18 of the regulations. The regulations separately list user fees for tests at NVSL and FADDL; reference assistance tests at NVSL; diagnostic reagents at NVSL; diagnostic reagents, slide sets, and tissue sets at NVSL and FADDL; and sterilization by gamma radiation. The proposed regrouping of tests into identification, serology, or pathobiology tests and the regrouping of

reagents by bacteriology or virology type will be much easier for customers and the laboratories to reference. Due to the differences between requirements for tests being performed at NVSL and FADDL, we believe that user fees for these tests and services should be listed by location. In this proposal, all FADDL fees are listed in a single section (9 CFR 130.14). In addition, reference assistance tests are tests performed at NVSL, and the regulations currently unnecessarily duplicate these user fees. Therefore, we believe that all NVSL tests should be listed together.

In order to clarify, simplify, and eliminate redundancy, we are proposing to reorganize the veterinary diagnostic user fees into the following sections. Proposed § 130.14 would include user fees for laboratory tests, reagents, and other veterinary diagnostics services we perform at FADDL. Proposed § 130.15 would include user fees for laboratory tests we perform to isolate and identify pathogenic agents at the Diagnostic Bacteriology Laboratory (DBL) and at the Diagnostic Virology Laboratory (DVL) at NVSL. Proposed § 130.16 would include user fees for laboratory tests we perform as part of serology testing at DBL and DVL at NVSL. Proposed § 130.17 would include user fees for toxicological and other tests performed by the Pathobiology Laboratory (PL) at NVSL. Proposed § 130.18 would include user fees for diagnostic reagents we provide from NVSL. Proposed § 130.19 would include user fees for other veterinary diagnostics services we provide at NVSL (e.g., check tests, test kits, manuals, standard operating procedures, and training).

Currently, § 130.49 specifies exemptions to user fees for veterinary diagnostic services listed in §§ 130.14 through 130.18. These exemptions would still apply to all of our veterinary diagnostic services. Therefore, we propose to revise § 130.49 to specify that the exemptions apply to veterinary diagnostic services listed in §§ 130.14 through 130.19.

Components of Proposed User Fees

The user fees proposed in this document are based on fiscal year 1998 salaries, more accurate estimates of the average number of direct labor hours required to provide each service, and average salaries for the laboratory where the work is performed. The proposed user fees have been calculated to recover the full costs for tests, diagnostic reagents, and other veterinary diagnostic services. These costs include direct labor, administrative support, premium costs (if any), Agency overhead costs, and Departmental charges. These components are described below.

We propose to charge a specific dollar amount for each service we provide; that is, each test we perform or each diagnostic reagent or other veterinary diagnostic service we provide. We have attempted to minimize the cost of our services, thereby keeping APHIS user fees at the lowest possible level. If, in the future, a user requests a test, diagnostic reagent, or other veterinary diagnostic material or service that is not on the list, we would charge the proposed hourly user fee for the amount of time required to perform the service, calculated to the nearest quarter of an hour.

Each user fee varies based on the direct labor hours required to perform the test or provide the diagnostic reagent or other veterinary diagnostic material or service. For example, the time spent by laboratory personnel to prepare a sample and conduct and read the test would be part of the direct labor hours for testing a tissue sample for disease-causing organisms. In cases where a test is performed for more than one disease, it may take different amounts of time for each disease. Those times have been averaged to calculate the user fee. We have carefully calculated all of our proposed user fees to correctly reflect the direct labor hours required for each test, reagent, or service. We took into account variations in the time needed to provide a service by determining the average time necessary.

Direct labor costs are the average salary and benefit costs of the laboratory employees performing the service multiplied by the direct labor hours required. Average costs were used to calculate direct labor costs because we have determined that it is more accurate to use the average salary for the laboratory employees to calculate the user fee. Currently, some veterinary diagnostics user fees are based on salary and benefit costs for a specific employee at the laboratory. We have determined that this does not accurately reflect the cost of providing services, because in many cases various employees at different salaries may perform part or all of a test or service. The calculations for these proposed user fees are consistent with the calculations used for the other user fees throughout 9 CFR part 130.

Administrative support costs are incurred at the local level, that is, at the laboratories. They include clerical and administrative activities; direct materials; indirect labor hours; travel and transportation for personnel, supplies, equipment, and other necessary items; training; legal counsel; general supplies for offices, washrooms, cleaning, etc.; contractual services; grounds maintenance; and utilities. Direct materials include the cost of any materials needed to conduct the test or provide the diagnostic reagent, slide set, tissue set, or service. For example, direct materials for conducting a laboratory test include, but are not limited to, glassware, chemicals, and other supplies necessary to perform the test. These direct materials are included in administrative support costs because they are standard laboratory supplies and not purchased solely for a specific test. Indirect labor hours include supervision of personnel and time spent doing necessary work that is not directly connected with a test, diagnostic reagents, or other veterinary diagnostic material or service, such as equipment repair. Contractual services may include, but are not limited to, guard service and maintenance. Some administrative support items may or may not be contractual, depending on local circumstances. For example, trash pickup may be provided as a utility or a contractual service. However, the costs are all administrative support. Utilities include water, telephone, electricity, natural and propane gas, heating and diesel oil. The costs of administrative support are applied as a percentage of the base direct labor amount. At NVSL, administrative support is 113 percent of direct labor, and, at FADDL, administrative support is 625 percent of direct labor.

Premium costs are expenses that are incurred solely for a specific test or service. For example, certain tests require expensive reagents in addition to the direct labor time and laboratory materials included in administrative support costs. Premium costs required for the proposed flat rate user fees have already been included in the calculations. Any premium costs required for hourly rate user fees would be added to the calculated user fee. For example, the polymerase chain reaction test would be performed for an hourly rate user fee, and any applicable royalties for this test would be added to the calculated hourly rate user fee.

Agency overhead is the pro-rata share, attributable to a particular diagnostic reagent, material, or veterinary diagnostic service, of the management and support costs for all Agency activities at the regional level and above. Also included are the costs of providing budget and accounting services, management support at the headquarters and regional level, including the Administrator's office, and personnel services, public

information services, and liaison with Congress.

Departmental charges are APHIS's share, expressed as a percentage of the total cost, of services provided centrally by the U.S. Department of Agriculture. Services the Department provides centrally include the Federal telephone service; mail; National Finance Center processing of payroll, billing, collections, and other money management; unemployment compensation; Office of Workers Compensation Programs; and central supply for storing and issuing commonly used supplies and Departmental forms. The Department informs APHIS as to how much the agency owes for these services. We have included a pro-rata share of these Departmental charges, as attributed to a particular test, diagnostic reagent, or other veterinary diagnostic material or service, in our user fee calculations.

Rounding

When we first adopted user fees, we determined that it was reasonable that our user fees for veterinary diagnostic services should be rounded up to the nearest quarter. This is necessary to ensure that we collect enough revenue to cover the costs of providing these services. If we were to round down, many user fees would be lower than the cost of the service. As we do not have a reserve fund, there would be no immediate funds for us to draw on to make up the deficiency.

We have considered changing the rounding of user fees from rounding up to the nearest quarter to rounding up to the nearest dollar to make administration less burdensome and to simplify collections and accounting. We realize that rounding to the next whole dollar would add to the balance of overall user fees collected. The magnitude of this additional amount varies by user fee category, and would vary similarly in fees we intend to propose in the future, if the same technique were used. We would monitor the effects of rounding to the next whole dollar on the balances in the account and propose adjustments in the fees as necessary. We invite comments specifically addressing the advantages and disadvantages of this rounding technique. Such a change in our approach to rounding would be reflected in future APHIS user fee rulemaking.

Calculation of Proposed User Fees

The basic steps in the calculation, for each particular service, are: (1) Calculate direct labor costs by determining the average amount of direct labor required to perform the service and multiply the average direct labor hours by the average salary and benefit costs for laboratory employees; (2) calculate the pro-rata share of administrative support; (3) determine the premium costs (if any); (4) calculate the pro-rata share of Agency overhead and Departmental charges, respectively; (5) add all costs; and (6) round total cost up to the nearest quarter.

The result of these calculations is a user fee that covers the total cost to perform a particular test or provide a particular veterinary diagnostic material or service one time, rounded up to the nearest quarter.

We have individually calculated costs for each veterinary diagnostic test and service based on the formula shown in Table 1, FY 98 User Fee Calculations.

As is the case with all APHIS user fees, we intend to review, at least annually, the user fees proposed in this document. We will publish any necessary adjustments in the **Federal Register**.

FADDL Costs Compared to NVSL Costs

Readers may note that our proposed user fees for tests performed at FADDL are higher than our proposed user fees for the same tests performed at NVSL. Both FADDL and NVSL work with infectious and contagious disease agents. However, FADDL, which is isolated from the United States mainland, is designed to work specifically with highly infectious diseases exotic to the United States. Because of this, special biosecurity measures are required at FADDL that are not required at NVSL. As a result, FADDL operating costs are higher than NVSL operating costs. The higher FADDL operating costs are incorporated into the Administrative support costs; in addition to the typical administrative support costs, FADDL, as a high-tech facility requiring special biosecurity measures, generates additional, higher expenses. Primarily, the rent for the facility is significantly higher than for a standard laboratory. In addition, since FADDL must be located on an island, all employees and supplies must be transported by boat to the facility, therefore, high transportation expenses are included. The user fees we are proposing reflect this difference in costs.

TABLE 1.—FY 98 USER FEE CALCULATIONS

[Example using one hour of direct labor]

User fee component	Laboratory			
	NVSL			FADDL
	DVL	DBL	PL	
Laboratory average grade and step for salary	GS10–5	GS9–4	GS12–5	GS11–4
Hourly salary rate	$18.97	$16.33	$24.72	$20.30
+Benefits (calculated as a % of salary)	$4.15	$3.58	$5.41	$4.44
= Average laboratory salary and benefits	$23.12	$19.91	$30.13	$24.74
x Direct labor time (in hours)	1	1	1	1
= Direct labor costs (salary and benefits)	$23.12	$19.91	$30.13	$24.74
+ Administrative support costs[1] (113% of direct labor at NVSL, 625% of direct labor at FADDL)	$26.13	$22.50	$34.05	$154.63
+ Premium costs (if any)	$0.00	$0.00	$0.00	$0.00
Subtotal 1	$49.25	$42.21	$64.18	$179.37
+ Agency overhead (16.15% of subtotal 1)	$7.95	$6.85	$10.37	$28.97
Subtotal 2	$57.20	$49.26	$74.55	$208.34
+ Departmental charges (5.55% of subtotal 2)	$3.17	$2.73	$4.14	$11.46

TABLE 1.—FY 98 USER FEE CALCULATIONS—Continued

[Example using one hour of direct labor]

User fee component	Laboratory			
	NVSL			FADDL
	DVL	DBL	PL	
Subtotal 3 [2]	$60.37	$51.99	$78.69	$219.80
+ Rounding up to the nearest $0.25	$0.13	$0.01	$0.06	$0.20
User fee	$60.50	$52.00	$78.75	$220.00

[1] For every $1 incurred in direct labor at NVSL, another $1.13 is incurred in administrative support costs. For every $1 incurred in direct labor at FADDL, another $6.25 is incurred in administrative support costs.

[2] If the total direct labor time used produced more than one unit, then Subtotal 3 would be divided by the total number of units produced at this point. For example, when diagnostic reagents are produced, more than one unit of the reagent is produced in a batch, i.e., it takes approximately 54 hours to produce a batch of 200 individual 1 ml units of glanders CF antigen. Therefore, the subtotal would be divided by 200 to estimate the cost for a 1 ml unit.

Discounts

Currently, in §§ 130.14, 130.15, and 130.16 we discount user fees for the second and subsequent tests with multiple antigens performed on the same submission at FADDL and NVSL for the following tests: Complement fixation, hemagglutination inhibition, and virus neutralization. For example, in §§ 130.14 and 130.16, the user fee for a complement fixation test at NVSL is $9.00 for the first test performed on a sample and $2.00, or $1.80 (20 percent of $9.00) rounded up to the nearest quarter of a dollar, for the second and each subsequent complement fixation test on the same sample. As explained below, we are proposing to revise these discounts by (1) eliminating the discounts for tests performed at FADDL, (2) eliminating the discounts when the tests are performed for certain diseases, and (3) revising the way the discounts are applied. In addition, we propose to add discounts for several tests.

We have reviewed the costs for tests at FADDL that are currently listed in § 130.15 and have determined that, due to differences in workload, each subsequent test performed on a sample at FADDL costs the same as the first test. The discounted user fees have not recovered the full costs for tests performed at FADDL, and we propose to eliminate discounts at FADDL that are currently listed in § 130.15.

We have reviewed the costs for tests at NVSL (other than FADDL) that are currently listed in §§ 130.14 and 130.16 and have determined that the current discounts do not recover the full costs of performing the tests. For example, testing related to equine piroplasmosis, bovine plasmosis, dourine, and glanders require monoclonal antibodies that are expensive to produce. Because it costs as much to do each subsequent test, we do not recover our actual costs when we discount tests for these diseases. In addition, a certain amount of time and effort is required to prepare reagents and appropriate controls to conduct the first 10 of any of the other tests for which discounts are offered in §§ 130.14 and 130.16. Once the reagents and controls have been prepared for the first 10 tests, less time and effort is necessary to test additional samples and the costs are lower for each additional test. Because we discount the second and additional tests, the discounted user fees do not cover our actual costs to perform these tests. Therefore, we propose to eliminate the discount for testing related to equine piroplasmosis, bovine plasmosis, dourine, and glanders, and to revise the discounts for the other tests to apply to the 11th and subsequent tests of the same type on the same sample. The discounted user fee for the 11th and subsequent tests would be 20 percent of the proposed user fee for each subsequent test on the same submission by the same submitter for the same test and antigen. For example, the user fee for the fluorescent antibody test is $9.75, and the discounted user fee would be $2.00, or $1.95 (20 percent of $9.75) rounded up to the nearest quarter of a dollar.

We have determined that several additional tests performed at NVSL may be appropriate for discounts. Therefore, in proposed §§ 130.15(a) and 130.16 we propose to add discounts for fluorescent antibody, indirect fluorescent antibody, and peroxidase linked antibody tests. The discounted user fee for the 11th and subsequent tests would be 20 percent of the proposed user fee for each subsequent test on the same submission by the same submitter for the same test and antigen.

Hourly Rate Veterinary Diagnostic User Fees

We propose to add an hourly rate user fee for FADDL and NVSL to §§ 130.14(c) and 130.19, respectively. These hourly rate user fees would be used for services that do not have an identified flat rate user fee (for example, tests and reagents that are not available now and those services whose costs would be more accurately represented by an hourly rate user fee instead of a flat rate). For example, a per slide flat rate user fee for a polymerase chain reaction test would not take into account the differences in the time required based on the number of slides. Using an hourly rate user fee for the polymerase chain reaction test would more accurately reflect the time required to perform the test. Therefore, the hourly rate user fee would be charged.

The hourly rate user fees would be based on the actual time required to render the service calculated to the nearest quarter of an hour. Any applicable premium costs for hourly rate user fees would be added to the calculated user fee. For example, the polymerase chain reaction test would be performed for an hourly rate user fee and any applicable royalties.

In addition, we propose to remove the current flat rate user fee in §§ 130.14, 130.15, and 130.16 for histopathology and apply the hourly rate user fee to histopathology tests. We believe that the hourly rate user fee would provide a more accurate user fee based on the amount of time it takes to perform the test versus the flat rate user fee based on the number of slides that are tested. We believe that this change to an hourly rate user fee would allow for economies of scale and therefore, lower charges for tests requiring multiple slides.

Restructured CFR Sections

For clarity, simplicity, and ease of use, we are proposing to reorganize the veterinary diagnostic user fees in the regulations. Currently, the regulations list a separate user fee for each veterinary diagnostic test, reagent, and service. These user fees are currently grouped in the following manner: Tests related to the importation or exportation of animals or birds at NVSL or FADDL (§§ 130.14 and 130.15); reference assistance testing for a veterinarian, State animal health official, or university to establish or confirm a diagnosis (§ 130.16); reagents, slide sets, and tissue sets at NVSL or FADDL (§ 130.17); and sterilization by gamma radiation (§ 130.18).

We are proposing to revise the veterinary diagnostic user fee sections to group the user fees based on the type of service and the location where the service is provided. Currently, some of the veterinary diagnostic user fees are grouped by type of service and location. We propose to group all of the veterinary diagnostic user fees first by location and second by type of test or service.

We believe that we no longer need to separately distinguish reference assistance testing as is currently done in § 130.16 because these tests can be performed for reasons other than to establish or confirm a diagnosis for a veterinarian, State animal health official, or university. Regardless of the reason APHIS conducts the test, the user fee would be the same. Therefore, we no longer need to duplicate these user fees in a separate section for reference assistance testing. User fees for bacterial identification tests and toxicology tests, which are currently listed only as reference assistance tests, would be incorporated into proposed §§ 130.15 and 130.17, respectively. Because we would no longer separate reference assistance testing, we also propose to remove the definition for reference assistance testing.

As explained earlier, there are inherent differences between work that may be performed at FADDL and work that may be performed at NVSL or other authorized import sites (for example, handling foreign diseases). Therefore, we propose to group all FADDL user fees together. Currently, FADDL user fees are included in §§ 130.15, 130.16, 130.17, and 130.18. We propose to incorporate all FADDL user fees into a new § 130.14. The FADDL user fees would be grouped by reagents, tests, and other veterinary diagnostic services.

Currently, all NVSL user fees are listed in §§ 130.14, 130.16, and 130.17. We propose to group all NVSL veterinary diagnostic user fees by type of test: Identification tests (proposed § 130.15), serology tests (proposed § 130.16), and other tests (proposed § 130.17). The reagents would also be grouped by the type of reagent: Bacteriology and virology (proposed § 130.18). Within these reagent groups, we would change the reagent user fees from the current user fee for each individual reagent to a user fee for each category of reagent. These reagent categories are determined by the composition of the reagent and the application for the reagent. Finally, we propose to group the remaining other veterinary diagnostic services together (proposed § 130.19).

Comparison of Proposed Veterinary Diagnostic User Fees With Current User Fees

The following comparison tables show the proposed changes from the current user fees, including the change in the dollar amount and the percentage change. When we proposed a new name for a user fee, the table lists the current name for comparison purposes. In addition, the reagent comparison tables list the specific current reagents that are combined into the proposed reagent categories.

FADDL Reagent User Fees

Table 2 shows the user fees proposed in § 130.14(a) for FADDL reagents. We propose to implement three new user fees for FADDL reagents. In addition, we propose to move nine user fees for FADDL reagents that are currently listed in § 130.17(b) of the regulations into § 130.14(a). These nine reagents would be grouped into seven reagent categories. All of these user fees would increase.

Table 2. User Fees for FADDL Reagents (Proposed § 130.14(a))

Proposed reagent	Proposed user fee	Unit	Current user fee	Change in user fee	
				Amount	Percent
Bovine antiserum, any agent	$80.00	1 ml			
(was Bovine antiserum, any agent)			$2.50	$77.50	3100
(was Foot-and-mouth disease anti-VIAA serum)			5.00	75.00	1500
Caprine antiserum, any agent	97.50	1 ml	0		
Cell culture antigen/microorganism	63.75	1 ml			
(was ASF-immunosmophoresis antigen)			60.75	3.00	5
(was FMD virus associated antigen)			36.75	27.00	73
Equine antiserum, any agent	100.50	1 ml	0		
Fluorescent antibody conjugate	120.25	1 ml	48.50	71.75	148
Monoclonal antibody (was Monoclonal antibodies, mouse ascitic fluid).	122.75	1 ml	14.75	108.00	732
Other spp. antiserum, any agent (was Anti-FMD antigen, guinea pig origin).	104.50	1 ml	12.75	91.75	720
Ovine antiserum, any agent	94.25	1 ml	2.00	92.25	4613
Porcine antiserum, any agent (was Swine antiserum, any agent)	81.25	1 ml	2.00	79.25	3963
Rabbit antiserum, any agent	98.50	1 ml	0		

FADDL Veterinary Diagnostic Tests User Fees

Table 3 shows the user fees proposed in § 130.14(b) for FADDL veterinary diagnostic tests. We propose to implement five new user fees for FADDL veterinary diagnostic tests. We propose to move 12 of the user fees currently listed in § 130.15(a) of the regulations into § 130.14(b). On average, most of these user fees would increase by less than 20 percent.

TABLE 3.—USER FEES FOR FADDL VETERINARY DIAGNOSTIC TESTS (PROPOSED § 130.14(B))

Proposed veterinary diagnostic test	Proposed user fee	Unit	Current user fee	Change in user fee	
				Amount	Percent
Agar gel immunodiffusion	$14.75	Test	$13.50	$1.25	9
Card	8.25	Test	0		
Complement fixation	33.00	Test	30.50	2.50	8
Direct immunofluorescent antibody	11.00	Test	9.50	1.50	16
Enzyme linked immunosorbent assay	12.75	Test	11.00	1.75	16
Fluorescent antibody neutralization (hog cholera)	96.00	Test	22.00	74.00	336
Hemagglutination inhibition	27.75	Test	0		
Immunoperoxidase	18.25	Test	0		
Indirect fluorescent antibody	23.25	Test	21.50	1.75	8
In-vitro safety	299.50	Test	0		
In-vivo safety	4,345.75	Test	4,177.00	168.75	4
Latex agglutination	11.00	Test	9.25	1.75	19
Tube agglutination	14.00	Test	0		
Virus isolation in embryonated eggs	176.00	Test	163.75	12.25	7
Virus isolation (oesophageal/pharyngeal)	88.25	Test	80.00	8.25	10
Virus isolation, other	84.50	Test	77.75	6.75	9
Virus neutralization	25.75	Test	22.00	3.75	17

FADDL Other Veterinary Diagnostics

Table 4 shows the user fees proposed in § 130.14(c) for other veterinary diagnostics provided at FADDL. We propose to implement new user fees for three tests and a new hourly user fee for other FADDL veterinary diagnostics for which there are no identified flat rate user fees or for which an hourly user fee is more appropriate. In addition, we propose to move four user fees currently listed in §§ 130.17(a) and (b) and 130.18 of the regulations into § 130.14(c). On average, these user fees would increase between 20 and 35 percent.

TABLE 4.—USER FEES FOR FADDL OTHER VETERINARY DIAGNOSTICS (PROPOSED § 130.14(C))

Other veterinary diagnostics	Proposed user fee	Unit	Current user fee	Change in user fee	
				Amount	Percent
Bacterial isolation	$55.00	Test	0		
Hourly user fee services	220.00	Hour	0		
	55.00	Quarter Hour	0		
Infected cells on chamber slides or plates (was ASF—slide set for direct fluorescent antibody test).	31.00	Slide	23.00	8.00	35
Reference animal tissues for immunohistochemistry (was ASF and Hog Cholera tissue sets).	94.25	set	76.75	17.50	23
Sterilization by gamma radiation	530.00	can	427.75	102.25	24
Training (school or technical assistance)	450.00	Per person per day.	0		
Virus Titration	55.00	Test	0		

Bacteriology Isolation and/or Identification Tests

Table 5 shows the user fees proposed in § 130.15(a) for bacteriology isolation and/or identification tests. We propose to implement 19 new user fees for bacteriology isolation and/or identification tests. In addition, we propose to move seven user fees that are currently listed in § 130.16(a) of the regulations into § 130.15(a). On average, these user fees would increase by less than 10 percent.

TABLE 5.—USER FEES FOR BACTERIOLOGY ISOLATION AND IDENTIFICATION TESTS (PROPOSED § 130.15(a))

Proposed bacteriology isolation or identification test	Proposed user fee	Unit	Current user fee	Change in user fee	
				Amount	Percent
Bacterial identification, automated (was Bacterial identification/isolation, routine).	$16.00	Isolate	$15.00	$1.00	7
Bacterial identification, non-automated	61.25	Isolate	0		
Bacterial isolation (was Bacterial identification/isolation, routine).	16.00	Sample	15.00	1.00	7
Bacterial serotyping, all other	30.75	Isolate	0		
Bacterial serotyping, Pasteurella multocida	7.50	Isolate	0		
Bacterial serotyping, Salmonella (was Salmonella serotyping).	21.25	Isolate	20.00	1.25	6
Bacterial toxin typing	91.50	Isolate	0		
Bacteriology requiring special characterization	27.00	Test	25.00	2.00	8
DNA fingerprinting	36.50	Test	0		

TABLE 5.—USER FEES FOR BACTERIOLOGY ISOLATION AND IDENTIFICATION TESTS (PROPOSED § 130.15(a))—Continued

Proposed bacteriology isolation or identification test	Proposed user fee	Unit	Current user fee	Change in user fee	
				Amount	Percent
DNA probe	29.50	Test	0		
Fluorescent antibody	9.75	Test	0		
Leptospira culturing (was Leptospira cultures)	27.00	Sample	25.00	2.00	8
Leptospira serotyping	80.50	Isolate	75.00	5.50	7
Mycobacterium avian serotyping	157.50	Isolate	0		
Mycobacterium identification (biochemicals)	63.25	Isolate	0		
Mycobacterium identification (gas chromatography)	26.50	Procedure	0		
Mycobacterium isolation, animal inoculations	520.50	Submission	0		
Mycobacterium isolation, all other	105.50	Submission	0		
Mycobacterium paratuberculosis isolation	26.50	Submission	0		
Mycology culture identification	52.75	Isolate	0		
Mycology/fungus culture or isolation	26.50	Sample	0		
Mycoplasma identification	26.25	Isolate	0		
Mycoplasma isolation	26.25	Sample	0		
Phage typing, Salmonella enteritidis (was Phage typing)	10.75	Isolate	10.00	0.75	8
Phage typing, all other	26.50	Isolate	0		
Plasmid typing	26.50	Isolate	25.00	1.50	6
Warburg	316.50	Isolate	0		

Virology Identification Tests

Table 6 shows the user fees proposed in § 130.15(b) for virology identification tests. We propose to implement a new user fee for virology identification tests. In addition, we propose to move two user fees that are currently listed in § 130.16(a) of the regulations into § 130.15(b). On average, these user fees would increase by less than 10 percent.

TABLE 6.—USER FEES FOR VIROLOGY IDENTIFICATION TESTS (PROPOSED § 130.15(b))

Proposed virology identification test	Proposed user fee	Unit	Current user fee	Change in user fee	
				Amount	Percent
Fluorescent antibody tissue section	$18.25	Test	0		
Virus isolation (except for Newcastle disease virus)	31.50	Test	29.75	1.75	6
Virus isolation for Newcastle disease virus	15.25	Test	14.00	1.25	9

Bacteriology Serology Tests

Table 7 shows the user fees proposed in § 130.16(a) for bacteriology serology tests. We propose to implement seven new user fees for bacteriology serology tests. In addition, we propose to move 11 user fees that are currently listed in § 130.14(a) of the regulations into § 130.16(a). On average, most of these user fees would increase by less than 15 percent.

TABLE 7.—USER FEES FOR BACTERIOLOGY SEROLOGY TESTS (PROPOSED § 130.16(a))

Proposed bacteriology serology test	Proposed user fee	Unit	Current user fee	Change in user fee	
				Amount	Percent
Brucella milk ELISA	$15.75	Test	0		
Brucella ring (BRT)	10.50	Test	0		
Brucella ring, heat inactivated (HIRT)	10.50	Test	0		
Brucella ring, serial (serial BRT)	15.75	Test	0		
Buffered acidified plate antigen presumptive	4.00	Test	3.50	0.50	14.29
Card	2.00	Test	2.00	0.00	0
Complement fixation	9.00	Test	9.00	0.00	0
Enzyme linked immunosorbent assay, all other	4.75	Test	4.75	0.00	0
Enzyme linked immunosorbent assay for dourine, glanders, or piroplasmosis.	9.00	Test	4.75	4.25	89
Indirect fluorescent antibody	9.75	Test	9.00	0.75	8
Mercaptoethanol	4.00	Test	3.50	0.50	14
Microscopic agglutination—includes up to 5 serovars	11.00	Sample	10.00	1.00	10
Mycology/fungus serology	10.50	Test	0		
Particle concentration fluorescent immuno assay (PCFIA)	18.25	Test	0		
Plate	4.00	Test	3.50	0.50	14
Rapid automated presumptive	4.25	Test	0		
Rivanol	4.00	Test	3.75	0.25	7
Tube agglutination	4.00	Test	3.50	0.50	14

Virology Serology Tests

Table 8 shows the user fees proposed in § 130.16(b) for virology serology tests. We propose to implement two new user fees for virology serology tests. In addition, we propose to move eight user fees that are currently listed in § 130.14(a) of the regulations into § 130.16(b). On average, these user fees would increase by less than 10 percent.

TABLE 8.—USER FEES FOR VIROLOGY SEROLOGY TESTS (PROPOSED § 130.16(b))

Proposed virology serology test	Proposed user fee	Unit	Current user fee	Change in user fee	
				Amount	Percent
Agar gel immunodiffusion	$5.00	Test	$4.75	$0.25	5
Complement fixation	9.00	Test	9.00	0.00	0
Enzyme linked immunosorbent assay	4.75	Test	4.75	0.00	0
Hemagglutination inhibition	7.50	Test	7.50	0.00	0
Indirect fluorescent antibody	9.75	Test	9.00	0.75	8
Latex agglutination	5.00	Test	4.75	0.25	5
Peroxidase linked antibody	9.75	Test	0	.....	.....
Plaque reduction neutralization (was Plaque neutralization)	7.75	Test	7.50	0.25	3
Rabies fluorescent antibody neutralization	26.50	Test	0	.....	.....
Virus neutralization	7.75	Test	7.50	0.25	3

Pathobiology Tests

Table 9 shows the user fees proposed in § 130.17 for pathobiology tests. We propose to implement 23 new user fees for pathobiology tests. In addition, we propose to move 11 user fees that are currently listed in §§ 130.14(a) and 130.16(a) of the regulations into § 130.17. On average, most of these user fees would increase between 5 and 15 percent.

TABLE 9.—USER FEES FOR PATHOBIOLOGY LABORATORY TESTS (PROPOSED § 130.17(a))

Proposed pathobiology laboratory test	Proposed user fee	Unit	Current user fee	Change in user fee	
				Amount	Percent
Aflatoxin quantitation	$20.50	Test	0	.....	.....
Aflatoxin screen	11.25	Test	.....	.....	.....
Agar gel immunodiffusion spp. identification	6.25	Test	0	.....	.....
Antibiotic (bioautography) quantitation	25.00	Test	0	.....	.....
Antibiotic (bioautography) screen	50.00	Test	0	.....	.....
Antibiotic inhibition	25.25	Test	0	.....	.....
Arsenic	6.75	Test	0	.....	.....
Ergot alkaloid screen	25.25	Test	0	.....	.....
Ergot alkaloid confirmation	33.00	Test	0	.....	.....
Feed microscopy	25.25	Test	0	.....	.....
Fumonisin only	20.50	Test	0	.....	.....
Gossypol	37.75	Test	0	.....	.....
Mercury	56.00	Test	0	.....	.....
Metals screen (was ICP metals—screen)	29.75	Test	26.25	3.50	13
Metals single element confirmation (was ICP metals—confirmation)	6.75	Test	6.00	0.75	13
Mycotoxin: aflatoxin-liver	82.25	Test	0	.....	.....
Mycotoxin screen	34.00	Test	30.75	3.25	11
Nitrate/nitrite	25.00	Test	0	.....	.....
Organic compound confirmation (was GC/MS organic compound—confirmation).	34.00	Test	31.00	3.00	10
Organic compound screen (was GC/MS organic compound—screen)	114.75	Test	106.50	8.25	8
Parasitology	19.25	Test	17.00	2.25	13
Pesticide quantitation	51.25	Test	47.50	3.75	8
Pesticide screen	38.00	Test	34.25	3.75	11
pH test	10.00	Test	0	.....	.....
Plate cylinder	37.75	Test	0	.....	.....
Selenium	33.25	Test	30.50	2.75	9
Silicate/carbonate disinfectant	25.00	Test	0	.....	.....
Temperature disks	50.25	Test	0	.....	.....
Toxicant quantitation, other	42.25	Test	39.75	2.50	6
Toxicant screen, other	25.00	Test	39.75	−14.75	−37
Vomitoxin only	20.75	Test	0	.....	.....
Water activity	12.50	Test	0	.....	.....
Zearaleone quantitation	20.50	Test	0	.....	.....
Zearaleone screen	11.25	Test	0	.....	.....

Diagnostic Bacteriology Reagents

Table 10 shows the user fees proposed in § 130.18(a) for diagnostic bacteriology reagents. We propose to implement 33 new user fees for reagent categories. In addition, we propose to move 11 user fees that are currently listed in

§ 130.17(a) of the regulations into § 130.18(a). All of these proposed reagent categories include changes in the amount of the user fee.

TABLE 10.—USER FEES FOR DIAGNOSTIC BACTERIOLOGY REAGENTS (PROPOSED § 130.18(a))

Proposed reagent	Proposed user fee	Unit	Current user fee	Change in user fee	
				Amount	Percent
Anaplasma card test antigen	$34.00	2 ml	0		
Anaplasma card test kit without antigen	105.50	Kit	0		
Anaplasma CF antigen	17.00	2 ml	0		
Anaplasma stabilate	67.25	4.5 ml	0		
Avian origin bacterial antiserums, mycoplasma	11.50	1 ml	0		
Avian origin bacterial antiserums, all other (was Pasteurella antiserum).	17.75	1 ml	10.00	7.75	78
Bacterial agglutinating antigens other than brucella and salmonella pullorum.	30.50	5 ml	0		
Bacterial conjugates (was Lepto FA conjugate)	36.00	1 ml	19.25	16.75	87
Bacterial disease CF antigens, all other (was Brucella ovis antigen).	8.50	1 ml	2.25/1 ml (5.50/2 ml)	6.25	278
Bacterial ELISA antigens	9.50	1 ml	0		
Bacterial or protozoal antiserums, all other	7.25	1 ml	0		
Bacterial reagent cultures (was Leptospira and Pasteurella antigens).	21.25	Culture	20.00	1.25	−125
Bacterial reference culture	63.25	Culture	0		
Bacteriophage reference culture	63.25	Culture	0		
Bovine serum factor	1.25	2 ml	0		
Brucella abortus CF antigen	34.00	60 ml	0		
Brucella agglutination antigens, all other	34.00	60 ml	0		
Brucella buffered plate antigen	50.00	60 ml	0		
Brucella canis tube antigen (was Brucella canis antigen)	30.50	25 ml	103.13/25 ml (8.25/2 ml)	−72.63	−70
Brucella card test antigen (packaged)	19.50	Package	0		
Brucella card test kit without antigen	70.25	Kit	0		
Brucella cells	5.25	Gram	0		
Brucella cells, dried	2.00	Pellet	0		
Brucella ring test antigen	72.75	60 ml	0		
Brucella rivanol solution	8.75	60 ml	0		
Dourine CF antigen	17.50	1 ml	0		
Dourine stabilate	34.75	4.5 ml	0		
Equine and bovine origin hemoparasitic antiserums	21.25	1 ml	0		
Equine negative control CF antigen	171.25	1 ml	0		
Equine origin glanders antiserum	18.25	1 ml	0		
Flazo-orange (was Lepto FA Flazo-orange)	6.25	3 ml	6.00	0.25	4
Glanders CF antigen	17.50	1 ml	0		
Hemoparasitic disease CF antigens, all other	158.25	1 ml	0		
Leptospira transport medium	3.25	10 ml	3.00	0.25	8
Monoclonal antibody	37.50	1 ml	0		
Mycobacterium spp. Old tuberculin (was Johnin OT)	3.75	1 ml	6.125/1 ml (12.25 /2 ml)	−2.38	−39
Mycobacterium spp. PPD (was Johnin PPD)	3.25	1 ml	5.38/1 ml (10.75/2 ml)	−2.13	−40
Mycoplasma hemagglutination antigens	105.50	5 ml	0		
Negative control serums	4.00	1 ml	0		
Other spp. antiserum, any	32.75	1 ml	0		
Rabbit origin bacterial antiserums (was Leptospira antiserum)	14.25	1 ml	2.25/1 ml (4.50/2 ml)	12.00	533
Salmonella pullorum microagglutination antigen	6.25	5 ml	0		
Stabilates, all other	258.25	4.5 ml	0		

Diagnostic Virology Reagents

Table 11 shows the user fees proposed in § 130.18(b) for diagnostic virology reagents. We propose to implement seven new user fees for reagent categories. In addition, we propose to move 125 user fees that are currently listed in § 130.17(a) of the regulations into § 130.18(b). The individual user fees for these 126 reagents would be reorganized into 12 reagent categories. All of these current user fees for reagents would change.

TABLE 11.—USER FEES FOR DIAGNOSTIC VIROLOGY REAGENTS (PROPOSED § 130.18(b))

Proposed reagent	Proposed user fee	Unit	Current user fee	Change in user fee	
				Amount	Percent
Antigen, except avian influenza and chlamydia psittaci antigens, any.	$41.50	2 ml			

TABLE 11.—USER FEES FOR DIAGNOSTIC VIROLOGY REAGENTS (PROPOSED § 130.18(b))—Continued

Proposed reagent	Proposed user fee	Unit	Current user fee	Change in user fee	
				Amount	Percent
(was Avian adenovirus 127, paramyxovirus-2, paramyxovirus-3; and Newcastle disease antigens).	.....	.....	$39.50	$2.00	5
(was Contagious ecthyma CF antigen)	.....	.....	14.00 /2 ml (7.00/1 ml)	27.50	196
(was Infectious bursal disease antigen)	.....	.....	16.00 /2 ml (8.00/1 ml)	25.50	159
Avian antiserum except avian influenza antiserum, any	23.00	2 ml	.....	.....	.....
(was Avian adenovirus 127, encephalomyelitis, paramyxovirus-2, and paramyxovirus-3; Duck viral enteritis; Infectious bronchitis virus, bursal disease, and laryngotracheitis; Newcastle disease; and Psittacine herpes virus (standard) antiserums).	.....	.....	21.75	1.25	6
(was Chlamydia psittaci antiserum)	.....	.....	43.50/2 ml (21.75/1 ml)	−20.50	−47
Avian influenza antigen, any	9.25	2 ml	8.75	0.50	6
Avian influenza antiserum, any	53.75	6 ml	51.00/6 ml	2.75	5
Bovine or ovine serum, any	88.00	2 ml	.....	.....	.....
(was Bluetongue; Bovine coronavirus, herpes virus type 1, herpes virus type 2, herpes virus type 4, papular stomatitis, parvovirus, respiratory syncytial virus, rotavirus, and viral diarrhea; Epizootic hemorrhagic disease; and Parainfluenza-3 antiserums).	.....	.....	83.50	4.50	5
(was Contagious ecthyma antiserum)	.....	.....	5.25/2 ml	82.75	1576
Cell culture	20.00	Flask	0	.....	.....
Chlamydia psittaci spp. of origin monoclonal antibody panel.	47.25	Panel	0	.....	.....
Conjugate, any	20.25	1 ml	.....	.....	.....
(was Bluetongue; Bovine coronavirus, herpes virus type 1, herpes virus type 2, herpes virus type 4, papular stomatitis, parvovirus, respiratory syncytial virus, rotavirus, viral diarrhea; Chlamydia psittaci; Contagious ecthyma; Encephalomyo-carditis; Epizootic hemorrhagic disease; Hemagglutinating encephalomyelitis; Parainfluenza-3; Porcine adenovirus (AV), parvovirus (PPV), reovirus, and rotavirus; Swine influenza, and Transmissible gastroenteritis conjugates).	.....	.....	19.25	1.00	5
(was Duck viral enteritis conjugate)	.....	.....	31.25	−11.00	−35
(was Equine adenovirus, Equine herpes type 1, and Psittacine herpes virus conjugates).	.....	.....	24.00	−3.75	−16
Diluted positive control serum, any	6.75	2 ml	.....	.....	.....
(was Encephalomyo-carditis; Hemagglutinating encephalomyelitis; Parainfluenza-3; Porcine parvovirus (PPV), and rotavirus; Swine influenza; and Transmissible gastroenteritis positive control serums).	.....	.....	6.25	0.50	8
(was Bovine herpes virus type 1, and type 2, parvovirus, respiratory syncytial virus, and viral diarrhea positive control serums).	.....	.....	4.50	2.25	50
Equine antiserum, any	12.25	2 ml	.....	.....	.....
(was Equine adenovirus, herpes type 1, herpes type 2, and herpes type 3 antiserums).	.....	.....	11.50	0.75	7
(was Equine influenza antiserum)	.....	.....	21.75	−9.50	−44
(was Equine viral arteritis antiserum)	.....	.....	19.30/2 ml (48.25/5 ml)	−7.05	−37
Hog Cholera tissue sets	81.50	Tissue set	76.75	4.75	6.19
Monoclonal antibody	37.50	1 ml	0	.....	.....
Other spp. antiserum, any	32.75	1 ml	0	.....	.....
Porcine antiserum, any (was Encephalomyo-carditis; Hemagglutinating encephalomyelitis; Porcine adenovirus (AV), parvovirus (PPV), reovirus, and rotavirus; Swine influenza; and Transmissible gastroenteritis antiserums).	60.50	2 ml	57.50	3.00	5
Positive control tissues, all	4.25	2 cm^2 section	0	.....	.....
Rabbit origin antiserums	14.25	1 ml	0	.....	.....
Reference virus, any	63.50	0.6 ml	0	.....	.....

TABLE 11.—USER FEES FOR DIAGNOSTIC VIROLOGY REAGENTS (PROPOSED § 130.18(b))—Continued

Proposed reagent	Proposed user fee	Unit	Current user fee	Change in user fee	
				Amount	Percent
Viruses (except reference viruses), chlamydia psittaci agent, or chlamydia psittaci antigen, any.	5.50	0.6 ml			
(was Avian encephalomyelitis, paramyxovirus-2, paramyxovirus-3, and reovirus; Bluetongue; Bovine coronavirus, herpes type 1, type 2, and type 4, papular stomatitis, parvovirus, respiratory syncytial, rotavirus, and viral diarrhea; Chlamydia psittaci agent; Contagious ecthyma; Duck viral enteritis; Encephalomyo-carditis; Epizootic hemorrhagic disease; Equine adenovirus, herpes type 1, type 2, and type 3, influenza, and viral arteritis; Hemagglutinating encephalomyelitis; Infectious bursal disease; Infectious laryngotracheitis; Newcastle disease; Parainfluenza-3; Porcine adenovirus (AV), parvovirus (PPV), reovirus, and rotavirus; Psittacine herpes; Quail bronchitis; Swine influenza; and Transmissible gastroenteritis viruses).			5.25	0.25	5
(was Chlamydia psittaci antigen)			3.15/0.6 ml (5.25/1 ml)	2.35	75
(was Infectious bronchitis virus)			4.50	1.00	22

Other Veterinary Diagnostics

Table 12 shows the user fees proposed in § 130.19 for other veterinary diagnostics. We propose to implement 13 new user fees and a new hourly user fee for other NVSL veterinary diagnostics for which there are no identified flat rate user fees or for which an hourly user fee is more appropriate. In addition, we propose to move a user fee that is currently listed in § 130.8(a) of the regulations into § 130.19.

TABLE 12.—USER FEES FOR OTHER VETERINARY DIAGNOSTICS (PROPOSED § 130.19)

Proposed other veterinary diagnostics services	Proposed user fee	Unit	Current user fee	Change in user fee	
				Amount	Percent
Antimicrobial susceptibility test	$30.50	Isolate	0		
Avian safety test	2701.75	Test	0		
Check tests, anaplasma complement fixation	132.00	Kit	0		
Check tests, culture	88.00	Kit	0		
Check tests, serology, all other	125.75	Kit	0		
Fetal bovine serum safety test (was fetal bovine serum sample verification).	673.50	Verification	666.00	7.50	1
Hourly user fee services	56.00	Hour	56.00	0.00	0
Quarter hour	14.00	Quarter hour	14.00	0.00	0
Minimum	16.50	Minimum	16.50	0.00	0
Manual, Brucellosis complement fixation	13.00	Manual	0		
Manual, Brucellosis culture	52.75	Manual	0		
Manual, Tuberculosis culture (English or Spanish)	79.25	Manual	0		
Manual, Veterinary mycology	105.50	Manual	0		
Manual, Anaplasmosis, Johne's disease, mycoplasma hyopnuemonia, piroplasmosis, dourine, or glanders.	21.25	Manual	0		
Manuals or standard operating procedure (SOP), All other	13.25	Manual or SOP copy	0		
Manuals or SOP, per page	2.00	Page	0		
Training (school or technical assistance)	120.00	Per person per day	0		

Definitions (§ 130.1)

We propose to add a definition for *APHIS representative* to the regulations. This term is defined and used throughout subchapter D, which covers the exportation and importation of animals (including poultry) and animal products. Currently, the terms *APHIS animal health technician* and *APHIS veterinarian* are defined in § 130.1. The term animal health technician is used in § 130.3 in reference to services provided at APHIS animal import centers. The term APHIS veterinarian is used in § 130.20 in reference to inspection services provided in conjunction with endorsements of export health certificates. For consistency, we propose to replace the terms *APHIS animal health technician* and *APHIS veterinarian* with *APHIS representative.* The proposed definition would read as follows: ''An individual, including, but not limited to animal health technicians and veterinarians, authorized by the Administrator to perform the services for which the user fees in this part are charged.'' Because an APHIS representative would cover APHIS animal health technicians and APHIS veterinarians, we propose to remove those definitions.

We propose to revise the definition for *export health certificate.* Currently, the definition specifies that an APHIS veterinarian endorses the export health certificate. In some cases an APHIS representative who is not a veterinarian may be able to endorse an export health certificate. For example, export health certificates for animal products may not require the endorsement of an APHIS veterinarian. Therefore, we propose to change APHIS veterinarian to APHIS representative in the definition for export health certificate. Currently, the definition for export health certificate covers only animals or birds. Based on an importing country's requirements, an export health certificate may be required for animal products, organisms, and vectors as well as animals and birds. Therefore, we propose to expand the definition to read as follows: ''An official document that, as required by the importing country, is endorsed by an APHIS representative and states that animals, animal products, organisms, vectors, or birds to be exported from the United States were found to be healthy and free from evidence of communicable diseases and pests.''

We propose to add new definitions for *nonstandard care and handling* and *nonstandard housing.* Currently, § 130.2 includes user fees for birds in nonstandard housing or receiving nonstandard care and handling at APHIS animal import centers. Nonstandard housing, care, and handling are defined in § 130.2(b) and (c). For consistency, we propose to move these definitions to § 130.1.

We propose to revise the definition of *pet birds.* Currently, the definition only covers birds that are imported. User fees may apply to pet birds that are exported, as for example, when another country requires an export health certificate for a pet bird. Therefore, we propose to extend the definition to include both importation and exportation. In addition, currently the definition of pet birds excludes only ratites. We believe that hatching eggs should also be excluded from consideration as pet birds. Therefore, we propose to add hatching eggs to the exceptions in the definition. The proposed definition would read as follows: Birds, except hatching eggs and ratites, that are imported or exported for the personal pleasure of their individual owners and are not intended for resale.

As discussed above, we believe we no longer need to separately identify reference assistance tests from other veterinary diagnostics tests. Therefore, we propose to remove the definition for *reference assistance testing.*

User Fees for Animal Import Centers (§ 130.2)

Currently, § 130.2 specifies the user fees for animals and birds quarantined in APHIS animal import centers. Currently, § 130.2(a) specifies the applicable user fees. Currently, §§ 130.2(b) through 130.2(e) address nonstandard housing, nonstandard care and handling, nonstandard feed, and reservation fees, respectively. As discussed above under definitions, we propose to move the definitions for nonstandard care, handling, and housing from § 130.2(b) and (c) to § 130.1. We have reviewed these user fees and are proposing several user fee changes and several nonsubstantive changes as described below.

Our review showed that we are not recovering our full costs for quarantining zoo animals in APHIS animal import centers. We have determined that our costs for quarantining zoo animals is equivalent to our costs for quarantining domestic animals. Therefore, we propose to combine the user fees for domestic and zoo animals. The user fees for domestic animals would remain the same; however, the user fee for zoo animals would increase from $32.25 to $56.50 per day. In addition, we would revise the list of domestic animals to correct an error by eliminating the word ''buffalo'' and adding the word ''bulls''. The list currently includes the word ''bison'' which covers buffalo. Bulls were inadvertently omitted. We propose to remove the separate listing for zoo animals.

Our review showed that we are not recovering our full costs for quarantining large birds or poultry receiving nonstandard care, handling, or housing in APHIS animal import centers. We believe that we need to increase this user fee to recover our costs; however, smaller birds and poultry receiving nonstandard care, handling, or housing in APHIS animal import centers do not cost as much to quarantine. Therefore, we propose separate user fees for birds or poultry requiring nonstandard care, handling, or housing based on the size of the bird or the type of poultry. Birds that are less than or equal to 250 grams, doves, pigeons, and quail would be charged $3.25 per day. This user fee would be less than the current user fee for birds and poultry. Birds that are between 251 and 1,000 grams, chickens, ducks, grouse, guinea fowl, partridges, pea fowl, and pheasants would be charged $7.50 per day. This user fee would remain the same for birds and would be less than the current user fee for poultry. Birds that are more than 1,000 grams, large poultry, and large waterfowl, including, but not limited to, game cocks, geese, swans, and turkeys, would be charged $14.00 per day. This user fee would be more than the current user fee for birds and poultry. In addition, we propose to move these user fees for nonstandard care, handling, and housing into a separate section (proposed § 130.2(b)) to replace the current sections defining nonstandard housing (§ 130.2(b)) and nonstandard care and handling (§ 130.2(c)).

As a result of these proposed changes, we would redesignate current § 130.2(d) on nonstandard feed as proposed § 130.2(c). We also propose to make nonsubstantive edits to the text.

Currently, § 130.2(e) specifies that a reservation fee paid by the importer under part 93 of this chapter will be applied to the APHIS user fee due for animals or birds quarantined in an animal import center operated by APHIS. Sections 130.2 and 130.3 both list user fees for animals or birds quarantined in animal import centers operated by APHIS. Therefore, § 130.2(e) should apply to the user fees in §§ 130.2 and 130.3. We believe that the reservation fees reference would be more appropriate in proposed § 130.50(b), which addresses associated charges. Therefore, we propose to move § 130.2(e) into proposed § 130.50(b)(1).

User Fees for Exclusive Use of Animal Import Centers (§ 130.3)

We reviewed our user fees for the exclusive use of APHIS animal import centers and have determined that we should change the way we calculate the user fees listed for the buildings in Newburgh, NY, and add a user fee for a new building, also in Newburgh, NY. Currently, the published dimensions represent the outside building dimensions. These measurements include office space, bathrooms, utility, and storage areas. We believe that the costs for those items should be included in the administrative support cost factor. Therefore, we recalculated the dimensions for spaces A and B and have recalculated the user fees based on the proposed dimensions. Space A would be $43,102.00 per month for 5,396 sq. ft. (503.1 sq. m.), rather than $47,609.00 per month for 5,904 sq. ft. (248.5 sq. m.). Space B would be $71,118.50 per month for 8,903 sq. ft. (827.1 sq. m.), rather than $78,555.00 per month for 9,742 sq. ft. (905 sq. m.). In addition, we propose to add a new, smaller space C at $7,229.00 per month for 905 sq. ft. (84.1 sq. m.).

User Fees for Services at Privately Operated Import Quarantine Facilities (§ 130.5)

Currently, § 130.5(a) addresses who must pay user fees for services at privately operated import quarantine facilities. Currently, § 130.5(b) lists the hourly rate user fees for these services. For consistency with § 130.9, which consolidates in § 130.9(a) the hourly rate user fees and the services to which they apply, we propose to consolidate in § 130.5(a) the hourly rate user fees and the services to which these user fees apply.

User Fees for Other Services (§ 130.8)

Currently, § 130.8 includes a user fee for fetal bovine serum sample verification. Fetal bovine serum sample verification is a veterinary diagnostics service which we provide at NVSL. We propose to add the user fee into proposed § 130.19, as explained above. Therefore, we propose to remove the user fee from § 130.8 to avoid duplication.

Currently, § 130.8 includes user fees for import compliance assistance and release from export agricultural hold. We have reviewed these user fees and determined that the estimates used for the current user fees do not include enough direct labor time for these services. In addition, the services we provide for both of these activities fall into two categories. First, all the information provided by the importer or exporter is complete and correct. In these cases, the processing is straightforward and generally takes less than half an hour to process. Second, the information provided by the importer or exporter is not complete or some other factor requires additional effort. In these cases, more time, on average 3.5 hours, is required, for example, to review the forms, to request more information from the importer/exporter, to research various aspects of the product, organism or vector being imported or exported, or to correspond with NVSL about tests. While our experience shows that most importers and exporters fit the first category, they should not have to subsidize those who fit into the second category. Therefore, we propose to set two user fees for each of these services. The user fee for a simple import compliance assistance or a simple release from agricultural hold would be $51.25. A simple case would be one that required 2 or less hours of assistance. The user fee for a complicated import compliance assistance or a complicated release from agricultural hold would be $131.75. A complicated case would be one that required more than 2 hours of assistance.

Hourly Rate User Fees (§ 130.21)

Currently, § 130.21(a) lists services for which hourly user fees are charged for inspection and supervision services provided within the United States for export animals, birds, and animal products. Currently, § 130.21(b) lists the hourly rate user fees for the services listed in § 130.21(a). For consistency with § 130.9, which consolidates in § 130.9(a) the hourly rate user fees and the services to which they apply, we propose to consolidate in § 130.21(a) the hourly rate user fees and the services to which these user fees apply.

In addition, we are proposing to remove the word ''byproducts'' from the section heading. The term ''byproducts'' is generally used to refer to inedible animal products. APHIS inspects and issues export health certificates for both inedible and edible animal products. The term ''products'' covers both. Therefore, we would change the section heading to ''User fees for inspection services provided within the United States for export animals, birds, and animal products.''

Payment of User Fees (§ 130.50)

To eliminate duplication throughout part 130 and to add clarity to the requirements in § 130.50, we are proposing miscellaneous nonsubstantive changes throughout § 130.50, including adding paragraph headers. As a result of these changes, § 130.50(a) and (b) would be redesignated as § 130.50(c) and (d), respectively. All of the changes to § 130.50 are described below and summarized in a chart at the end of this section.

We propose to add language in proposed § 130.50(a) to clarify who must pay APHIS user fees. In addition, we would specify throughout part 130 that all of the user fees listed must be paid in accordance with §§ 130.50 and 130.51.

Currently, §§ 130.14(c), 130.15(c), 130.16(c), 130.17(c), and 130.18(b) provide for payment of costs that are incurred due to special mail handling, such as express, overnight, or foreign mailing. If special mail handling is required, all costs incurred must be paid in addition to the user fee for the test or service requiring special mail handling. We believe that this same requirement should apply to the user fees listed throughout part 130. Therefore, we propose to eliminate duplication within §§ 130.14 through 130.18 and expand the special mail handling requirement to all of the user fees in part 130 by moving it from §§ 130.14(c), 130.15(c), 130.16(c), 130.17(c), and 130.18(b) into proposed § 130.50(b)(2), where it will apply to all user fees in part 130.

Currently, §§ 130.6(b), 130.7(b), 130.8(b), 130.14(b), 130.15(b), 130.16(b), and 130.20(e) provide for reimbursable overtime to be paid in addition to the listed flat rate user fee when we provide services during overtime (i.e., on a Sunday or holiday or at any other time outside the normal tour of duty of the employee). In addition, currently, §§ 130.5, 130.9, and 130.21 provide for the premium rate user fee to be applied in lieu of the hourly rate user fee when we provide services during overtime. All of our user fees were calculated based on direct labor costs for services provided during the normal tour of duty for our employees. When services are provided on overtime, reimbursable overtime or the premium user fee should be charged to recover the full costs of providing flat rate or hourly rate user fee services, respectively. Therefore, to eliminate duplication and expand these requirements for overtime services to cover all user fees in part 130, we would move the reimbursable overtime requirement from §§ 130.6(b), 130.7(b), 130.8(b), 130.14(b), 130.15(b), 130.16(b), and 130.20(e) into proposed § 130.50(b)(3)(i), where it would apply to all flat rate user fees in part 130. We would also move the premium rate user fee requirement from §§ 130.5, 130.9, and 130.21 into proposed § 130.50(b)(3)(ii), where it would apply to all hourly rate user fees in part 130.

Currently, § 130.50(a) specifies when user fee payments are due. We would redesignate current § 130.50(a) as proposed § 130.50(c) and revise the text to add references to the sections of the regulations that list the user fees for which payment is due, and to clarify and eliminate duplication, as described below.

Currently, §§ 130.50(a)(1) and (a)(2) specify when user fees for animals and birds in an animal import center or privately operated permanent import quarantine facility and animals and birds in a privately operated temporary import quarantine facility, respectively must be paid. All of these user fees must be paid when the animals or birds are released from quarantine. Therefore, we propose to combine §§ 130.50(a)(1) and (a)(2) into proposed § 130.50(c)(1) to eliminate duplication.

Currently, § 130.50(a)(3) contains provisions for the payment of user fees for inspection services, including when these services are covered by a compliance agreement signed in accordance with 9 CFR part 156. We

propose to expand this provision to include inspection services covered by any compliance agreement signed in accordance with title 9, chapter I, of the Code of Federal Regulations, and to put the expanded provision in proposed § 130.50(c)(2).

Currently, § 130.50(a)(4) provides for user fees for export health certificates to be paid when billed or prior to receipt of the endorsed certificate. We would clarify these provisions in proposed § 130.50(c)(3).

Currently, § 130.50(a)(5) specifies provisions for the payment of user fees for veterinary diagnostics. In proposed § 130.50(c)(4) we would clarify when the user fees could be paid when billed versus the requirement to be paid when the veterinary diagnostic service is requested. In addition, we would simplify the text by referring to these services as veterinary diagnostic services rather than listing tests, diagnostic reagents, slide sets, tissue sets, and sterilization by gamma radiation.

Currently, § 130.50(a)(6) contains provisions for payment of user fees for reference assistance tests. As stated earlier, we believe we no longer need to separately distinguish reference assistance testing from other veterinary diagnostic tests. We propose to include the user fees for these tests with other veterinary diagnostic tests. Therefore, the payment of these user fees would be covered by proposed § 130.50(c)(4), which would allow an additional option for paying user fees for these tests when billed.

Currently, § 130.50(a)(7) through (a)(9) specify provisions for the payment of user fees for live animals presented for importation at a port of entry, inspections and permit services, and hourly rate user fees, respectively. We would combine these provisions into proposed § 130.50(c)(5) and revise the payment options for the user fees specified in § 130.8 to include the option for payment when billed. In addition, we would edit the text to clarify that the user fees could be paid when billed versus the requirement to be paid when the service is provided.

In addition, we propose to combine §§ 130.50(b) and (c) into proposed § 130.50(d). Currently, § 130.50(b) identifies acceptable payment methods. Currently, § 130.50(c) specifies that payment must be for the exact amount due. We propose to combine these provisions to specify that payment for the exact amount due must be made by one of the acceptable methods. In addition, we propose to revise the cash payment provision currently in § 130.50(b)(4) to incorporate the provision currently specified in § 130.51(a)(4) that cash payments would be accepted only during normal business hours.

The following table summarizes all of these changes, listed in order for the proposed sections in § 130.50.

Proposed location	Requirement	Action
§ 130.50(a)	Any person for whom a service is performed and the person requesting the service would be jointly and severally liable for the payment of APHIS user fees.	Clarify by adding language from the Farm Bill.
§ 130.50(b)(1)	Reservation fees would be applied to the APHIS user fees specified in §§ 130.2 and 130.3.	Move from § 130.2(a) to expand the applicability to all relevant user fees.
§ 130.50(b)(2)	All costs incurred for special mail handling would be paid by the user, in addition to the user fee for the service.	Move from §§ 130.14(c), 130.15(c), 130.16(c), 130.17(c), 130.17(c), and 130.18(b) to eliminate duplication in these sections and to expand the applicability to all user fees in 9 CFR part 130.
§ 130.50(b)(3)(i)	Reimbursable overtime would be paid in addition to the listed flat rate user fee when we provide services during overtime.	Move from §§ 130.6(b), 130.7(b), 130.8(b), 130.14(b), 130.15(b), 130.16(b), and 130.20(e) to eliminate duplication and expand the applicability to all flat rate user fees in 9 CFR part 130.
§ 130.50(b)(3)(ii)	Premium rate user fees would be applied in lieu of the hourly rate user fee when we provide services during overtime.	Move from §§ 130.5(c), 130.9(b), and 130.21(c) to eliminate duplication and expand the applicability to all hourly rate user fees in 9 CFR part 130.
§ 130.50(c)(1)	User fees for animal and bird quarantines and related tests must be paid prior to their release from quarantine.	Combine § 130.50(a)(1) and (a)(2) to eliminate duplication and move into proposed § 130.50(c). In addition, add section references for user fees.
§ 130.50(c)(2)	User fees for supervision and inspection services for export animals and animal products must be paid when billed, or as specified in a compliance agreement.	Move from § 130.50(a)(3).
§ 130.50(c)(3)	User fees for export health certificates would be paid prior to receipt of endorsed certificates or when billed.	Move from § 130.50(a)(4), add section references for user fees, and clarify when the billing option would apply.
§ 130.50(c)(4)	User fees for veterinary diagnostics would be paid when the service is requested or when billed.	Move from § 130.50(a)(5), add section references for user fees, and clarify when the billing option would apply. (NOTE: This would also cover user fees formerly addressed by § 130.50(a)(6).)
§ 130.5(c)(5)	User fees for other services would be paid when the service is provided or when billed.	Combine § 130.50(a)(7), (8), and (9) to eliminate duplication; add section references for user fees; clarify when the billing option would apply; and expand the billing option to apply to user fees for inspection and permit services.
§ 130.50(d)(1) through (d)(4)	Acceptable forms of payment	Redesignate from § 130.50(b)(1) through (b)(4) and combine § 130.50(c).

Penalties for Nonpayment or Late Payment of User Fees (§ 130.51)

We are proposing several changes to § 130.51, including the incorporation of relevant provisions of the Debt Collection Improvement Act of 1996. These changes are described below. In addition we propose to make miscellaneous nonsubstantive changes, such as adding paragraph headers and renumbering paragraphs as necessitated by other proposed changes.

We propose to incorporate the provision currently specified in § 130.51(a)(4) that cash payments would be accepted only during normal business hours into proposed § 130.50(d)(1). Therefore, we propose to remove § 130.51(a)(4). As a result of this change, we would redesignate § 130.51(a)(5) as proposed § 130.51(a)(4).

Currently, §§ 130.51(b)(3) and (b)(4) refer to veterinary diagnostic tests and other veterinary diagnostic services, respectively. As we have proposed throughout part 130, we would combine these to group the veterinary diagnostics together. Therefore, proposed § 130.51(b)(3) would be simplified by referring to these services as veterinary diagnostic services.

We are proposing to add a new § 130.51(d) to specify that user fees paid with dishonored payments, such as a check returned for insufficient funds, will be subject to interest and penalty charges in accordance with the Debt Collection Improvement Act (as specified in 30 U.S.C. 3717). Administrative charges will be assessed at $20.00 per dishonored payment to be paid in addition to the original amount owed. These payments must be made in guaranteed form, such as money order, certified check, or cash.

We propose to add a new § 130.51(e) to incorporate the relevant provisions of the Debt Collection Improvement Act of 1996 (31 U.S.C. 3701, 3716, 3717, 3719, and 3720A). These provisions address taxpayer identification numbers, administrative offset, cross servicing, and delinquent debt reporting. Taxpayer identification numbers must be obtained from all persons, other than Federal agencies, who must pay user fees. All debts that have not been paid within 180 days would be eligible for administrative offset and cross servicing. Administrative offset means withholding funds payable by the United States (including funds payable by the United States on behalf of a State government) to, or held by the United States for, a person to satisfy a claim. Under administrative offset, APHIS would notify the Department of Treasury of the debts that are over 180 days delinquent and the Department of Treasury could offset the debt from certain Federal payments that may be made to the debtor. Cross servicing means that one program services many agencies. In this case, it means that the Department of Treasury could collect debts on behalf of APHIS. For cross servicing, APHIS would transfer debts that are over 180 days delinquent to the Department of Treasury. In addition, APHIS would report all unpaid debts to credit reporting bureaus.

In addition, we would add the relevant sections of the Debt Collection Improvement Act of 1996 to the authority citation for part 130.

Executive Order 12866 and Regulatory Flexibility Act

This proposed rule has been reviewed under Executive Order 12866. This rule has been determined to be significant for the purposes of Executive Order 12866 and, therefore, has been reviewed by the Office of Management and Budget.

Below is a summary of the economic analysis for the changes in APHIS user fees proposed in this document. The economic analysis provides a cost-benefit analysis as required by E.O. 12866 and the analysis of impacts of small entities as required by the Regulatory Flexibility Act. A copy of the full economic analysis, which includes comparisons of each user fee change and the change in collections for each user fee, is available for review at the location listed in the **ADDRESSES** section at the beginning of this document.

We do not have enough data for a comprehensive analysis of the economic impacts of this proposed rule on small entities. Therefore, in accordance with 5 U.S.C. 603, we have performed an Initial Regulatory Flexibility Analysis for this proposed rule. We are inviting comments about this proposed rule as it relates to small entities. In particular, we are interested in determining the number and kind of small entities that may incur benefits or costs from implementation of this proposed rule and the economic impact of those benefits or costs.

User Fees Authorized Under the Farm Bill

The provisions in 21 U.S.C. 114a authorize the Secretary of Agriculture to control and eradicate communicable diseases of livestock and poultry. The Food, Agriculture, Conservation and Trade Act of 1990, as amended (referred to below as the 1990 Farm Bill), authorizes the Secretary of Agriculture, among other things, to prescribe regulations and collect fees to recover the costs of carrying out the provisions of 21 U.S.C. 114a that relate to veterinary diagnostics (sec. 2509(c)(2) of the 1990 Farm Bill).

The 1990 Farm Bill further authorizes the Secretary to prescribe and collect fees to reimburse the Secretary for the cost of carrying out the provisions of the Federal Animal Quarantine laws that relate to the importation, entry, and exportation of animals, articles, or means of conveyance (section 2509(c)(1) of the 1990 Farm Bill).

In addition, section 2509(d) of the 1990 Farm Bill provides that the Secretary may prescribe such regulations as the Secretary determines necessary to carry out these provisions of the 1990 Farm Bill.

Regulations Proposed in This Document

We are proposing to revise the user fees for certain veterinary diagnostic services, including certain diagnostic tests, reagents, and other veterinary diagnostic materials and services. In addition, we are proposing to add new user fees for other veterinary diagnostic services we provide. We are proposing to reorganize the regulations in 9 CFR part 130 to list user fees by type of service and location where service is provided, and to group diagnostic reagents into categories.

Veterinary diagnostics is the work performed in a laboratory to determine if a disease-causing organism or chemical agent is present in body tissues or cells and to identify those organisms or agents. Services in this category include: (1) Performing laboratory tests and providing diagnostic reagents and other veterinary diagnostic materials and services at the Foreign Animal Disease Diagnostic Laboratory (FADDL) at Greenport, NY, and (2) performing identification, serology, and pathobiology tests and providing veterinary diagnostic reagents and other materials and services at the National Veterinary Services Laboratories (NVSL) at Ames, IA. Diagnostic reagents are biological materials used in diagnostic tests to detect disease agents or antibodies by causing an identifiable reaction. We also consider sterilization by gamma radiation to be a veterinary diagnostics service. Other miscellaneous veterinary diagnostic services include, but are not limited to, providing check tests, test kits, manuals, standard operating procedures, and training.

Small Entities Impacted by Proposed Changes

Users of these veterinary diagnostic services are importers, exporters, veterinarians, commercial laboratories,

State laboratories, universities, and foreign governments.

The Small Business Administration's criteria for a small entity engaged in importing and exporting live animals, poultry, and birds is one whose total sales are less than $5 million annually. This is also the criteria for small testing laboratories, veterinary service providers, and research organizations.

Except for those entities who deal exclusively in purebred or registered animals, 1995 data from the Bureau of the Census shows that the majority of agricultural entities who deal in grade animals can be considered small. However, the number of entities who specifically trade in live animals and who would qualify as a small entity under this definition cannot be determined.

According to the Bureau of the Census, 94 percent of testing laboratories can be considered small. While veterinary testing laboratories comprise part of this classification, it cannot be determined how many entities performing veterinary services would be considered small under the Small Business Administration's guidelines.

To the extent that changes in user fees alter operational costs, any entity who utilizes APHIS' services that are subject to user fees may be affected by the proposed changes in user fees. The degree to which an entity is affected depends on its market power, or the ability to which costs can be either absorbed or passed on to its buyers. Without information on either profit margins and operational expenses of the affected entities,[1] or the supply responsiveness of the affected industry,[2] the scale of impacts cannot be precisely predicted.

Changes in Collections

The estimated increased collections generated by the proposed user fees in this document could be $1.28 million annually (collections could increase from $2.13 million collected in FY 97 to $3.41 million). This represents an increase in user fee collections for veterinary diagnostics and other import- and export-related services of approximately 40 percent. (See Table 13.)

TABLE 13.—SUMMARY OF CURRENT AND PROJECTED COLLECTIONS FOR APHIS USER FEES

User fee categories	Current user fee collections [1]	Projected user fee collections	Change in user fee collections
Revised Veterinary Diagnostics User Fees:			
FADDL: [2]			
Reagents, Tests, Other (§ 130.14)	$508,297	$1,074,542	$566,245
NVSL:			
Identification Tests (§ 130.15)	398,023	428,581	30,558
Serology Tests (§ 130.16)	727,979	928,506	200,527
Pathobiology Tests (§ 130.17)	81,260	90,608	9,348
Reagents (§ 130.18)	76,534	84,321	7,787
Other (§ 130.19)	149,184	174,832	25,648
Total Revised Veterinary Diagnostics User Fees	1,941,277	2,781,390	840,113
New Veterinary Diagnostics User Fees:			
FADDL:			
Reagents, Tests, Other (§ 130.14)	.....	98,126	98,126
NVSL:			
Identification Tests (§ 130.15)	.....	47,476	47,476
Serology Tests (§ 130.16)	.....	1,000	1,000
Pathobiology Tests (§ 130.17)	.....	1,397	1,397
Reagents (§ 130.18)	.....	154,929	154,929
Other (§ 130.19)	.....	104,589	104,589
Total New Veterinary Diagnostics User Fees	.....	407,517	407,517
Total Veterinary Diagnostics User Fees Collections	1,941,277	3,188,907	1,247,630
Other User Fee Changes:			
Zoo Animals Quarantined in APHIS Animal Import Centers (§ 130.2 (a))	1,935	3,192	1,257
Non-Standard Care and Handling for Birds or Poultry (§ 130.2 (b))	33,780	37,965	4,185
Exclusive Use of Space at APHIS Animal Import Center in Newburgh, NY (§ 130.3)	126,164	121,450	(4,714)
User Fees for Other Services (§ 130.8)	27,528	62,970	35,442
Total Other User Fee Changes	189,407	225,577	36,170
Total Changes in User Fee Collections	2,130,684	3,414,484	1,283,800

[1] Source: USDA—APHIS—FSO, NVSL, FADDL.
[2] Includes collections from cooperative agreements where user fees are the basis for determining amount to be charged.

The benefit of user fees is the shift in the payment of services from taxpayers as a whole to those persons who are receiving the government services. While taxes may not change by the same amount as the change in user fee collections, there is a related shift in the appropriations of taxes to government programs, which allows those tax dollars to be applied to other programs which benefit the public in general. Therefore, there could be a relative

[1] Profits for sales of small entities are proprietary in nature and are not a part of the public record.

[2] The measurement of supply responsiveness would provide information on the likely impact on an entity's production due to changes in operating costs.

savings to taxpayers of $1.28 million annually as a result of the proposed changes in user fees.

The administrative cost involved in obtaining these savings would be minimal. APHIS already has a user fee program and a mechanism for collecting user fees in place. This proposal would update existing user fees in the system and require collection of additional user fees. Therefore, increases in administrative costs would be small. Because the savings are sufficiently large, and the administrative costs would be small, it is likely that the net gain in reducing the burden on taxpayers as a whole would outweigh the cost of administering the revisions of the user fees.

Estimated Impact

The proposed user fees fall into two categories: New and revised user fees. The vast majority of the proposed user fees are expected to make only small contributions to the total new collections. Most (nearly 70 percent) of the proposed new user fees would be less than $50 each and 40 percent would be less than $25. Most (approximately 70 percent) of the proposed revised user fees increase by less than 20 percent, with many (more than 50 percent) of them increasing by less than 10 percent.

We anticipate a low demand for the majority of the proposed new user fees that are greater than $50 and the proposed revised user fees that would increase by more than 20 percent. Most of the proposed new user fees that exceed $50 either include more direct labor time than those services with lower user fees or require premium costs to pay for special materials.

The proposed revised user fees that would increase by more than 20 percent include those user fees that were underestimated when initially established. Experience and more accurate accounting data have shown that most of these services require more direct labor hours, require premium costs to pay for special materials, or should be calculated using average lab salaries, which is consistent with the calculations for other user fees throughout 9 CFR part 130.

Alternatives

One alternative to this proposed rule would be to make no changes to the current user fees. We do not consider making no changes to the current user fees a reasonable alternative because we would not recover the full cost of providing veterinary diagnostic and import- and export-related services. Therefore, the only way to pay for these services is through charges to the customer through user fees or other forms of reimbursable agreements.

Another alternative to this proposed rule would be to either exempt small businesses from these user fees or establish a different user fee structure for small businesses. APHIS cannot exempt certain classes of users, such as small businesses, from the user fees, and cannot charge user fees that recover less than the full cost of providing the service. In addition, every business, including small businesses, using a government service needs to pay the cost of that service, rather than having other businesses pay a disproportionate share or passing those costs on to the general public, who are not the primary beneficiary of the service. Therefore, we do not consider exempting small businesses from these user fees or establishing a different user fee structure for small businesses as viable options.

Another alternative to this proposed rule would be to spread the proposed increased costs over all of the user fees, so no single user fee would increase significantly. Our user fees are calculated to recover the costs of the service for which each user fee is charged. To spread the proposed increases among user fees would mean that some entities would subsidize others. The intent of user fees is to shift the burden of the cost of these services from the general taxpayer to the entity receiving the service. Therefore, APHIS cannot spread the increases evenly over all of the user fees.

This proposed rule contains no new information collection or recordkeeping requirements.

Executive Order 12988

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

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the information collection or recordkeeping requirements included in this proposed rule have been approved by the Office of Management and Budget (OMB), and there are no new requirements. The assigned OMB control numbers are 0579–0015, 0579–0040, 0579–0055, and 0579–0094.

List of Subjects in 9 CFR Part 130

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

Accordingly, 9 CFR part 130 would be amended as follows:

PART 130—USER FEES

1. The authority citation for part 130 would be revised to read as follows:

Authority: 5 U.S.C. 5542; 7 U.S.C. 1622; 19 U.S.C. 1306; 21 U.S.C. 102–105, 111, 114, 114a, 134a, 134b, 134c, 134d, 134f, 135, 136, and 136a; 31 U.S.C. 3701, 3716, 3717, 3719, and 3720A; 7 CFR 2.22, 2.80, and 371.2(d).

2. Section 130.1 would be amended as follows:

a. The definitions for *APHIS animal health technician, APHIS veterinarian,* and *reference assistance testing would be removed.*

b. Definitions for *APHIS representative, nonstandard care* and *handling,* and *nonstandard housing* would be added, in alphabetical order, to read as set forth below.

c. The definitions for *export health certificate* and *pet birds* would be revised to read as set forth below.

d. Footnotes 3 and 4 and their references would be removed, and footnote 2 and its reference would be redesignated as footnote 3.

e. At the end of the definitions for *zoo bird* and *zoo equine* a reference to footnote 3 would be added.

§ 130.1 Definitions.

* * * * *

APHIS representative. An individual, including, but not limited to, animal health technicians and veterinarians, authorized by the Administrator to perform the services for which the user fees in this part are charged.

* * * * *

Export health certificate. An official document that, as required by the importing country, is endorsed by an APHIS representative and states that animals, animal products, organisms, vectors, or birds to be exported from the United States were found to be healthy and free from evidence of communicable diseases and pests.

* * * * *

Nonstandard care and handling. Nonstandard care and handling includes hand-feeding, more than one feeding per day, frequent observation, and any handling or observation which requires personnel to attend to the birds or poultry outside of normal business hours.[2]

[2] Normal business hours at the APHIS Animal Import Centers are: 7:30 a.m. to 11:30 a.m., Honolulu, HI; 7 a.m. to 3:30 p.m., Miami, FL; and 8 a.m. to 4:30 p.m., Newburgh, NY.

Nonstandard housing. Nonstandard housing is individual housing not normally available at an APHIS Animal Import Center, any housing constructed or purchased at the request of the importer, any housing with blinds, dense foliage, or plants, and any housing where the temperature can be adjusted.

* * * * *

Pet birds. Birds, except hatching eggs and ratites, which are imported or exported for the personal pleasure of their individual owners and are not intended for resale.

* * * * *

4. Section 130.2 would be revised to read as follows:

§ 130.2 User fees for individual animals and certain birds quarantined in APHIS Animal Import Centers.

(a) *Standard requirements.* User fees for each animal or bird receiving standard housing, care, feed, and handling while quarantined in an APHIS owned or operated Animal Import Center or quarantine facility are listed in the following table. Each user fee listed in the table is assessed per animal or bird quarantined by APHIS. The person for whom the service is provided and the person requesting the service are jointly and severally liable for payment of these user fees in accordance with §§ 130.50 and 130.51.

Animal or bird	Daily user fee
Birds (excluding ratites and pet birds imported in accordance with part 93 of this subchapter):	
0–250 grams	$1.00
251–1,000 grams	3.25
Over 1,000 grams	7.50
Domestic or zoo animals (except equines, birds, and poultry):	
Bison, bulls, camels, cattle, or zoo animals	56.50
All other—including but not limited to alpacas, llamas, goats, sheep, and swine	15.00
Equines (including zoo equines, but excluding miniature horses):	
1st through 3rd day	149.50
4th through 7th day	108.25
8th and subsequent days	91.75
Miniature horses	40.25
Poultry:	
Doves, pigeons, quail	2.00
Chickens, ducks, grouse, guinea fowl, partridges, pea fowl, pheasants	3.50
Large poultry and large waterfowl including but not limited to game cocks, geese, swans, and turkeys	8.25
Ratites:	
Chicks (less than 3 months old)	5.75
Juveniles (between 3 and 10 months old)	8.00
Adults (11 months old and older)	16.25

(b) *Special requirements.* User fees for birds or poultry, including zoo birds or poultry, receiving nonstandard housing, care, or handling to meet special requirements while quarantined in an APHIS owned or operated Animal Import Center or quarantine facility are listed in the following table. The user fees listed in the table are assessed for each bird or poultry quarantined by APHIS. Special requirements may be requested by the importer or required by an APHIS representative. Certain conditions or traits, such as pregnancy or aggression, may necessitate special requirements for certain birds or poultry. The person for whom the service is provided and the person requesting the service are jointly and severally liable for payment of these user fees in accordance with §§ 130.50 and 130.51.

Bird or poultry (nonstandard housing, care, or handling)	Daily user fee
Birds 0–250 grams and doves, pigeons, and quail	$3.25
Birds 251–1,000 grams and poultry such as chickens, ducks, grouse, guinea fowl, partridges, pea fowl, and pheasants	7.50
Birds over 1,000 grams and large poultry and large waterfowl including but not limited to game cocks, geese, swans, and turkeys	14.00

(c) *Feed.* The importer must either provide feed or pay for it on an actual cost basis, including the cost of delivery to the APHIS owned or operated Animal Import Center or quarantine facility, for any animal or bird that requires a diet other than standard feed, including but not limited to diets of fruit, insects, nectar, or fish.

(Approved by the Office of Management and Budget under control number 0579–0094)

5. Section 130.3 would be amended by revising paragraph (a)(1), including the table, to read as follows:

§ 130.3 User fees for exclusive use of space at APHIS Animal Import Centers.

(a)(1) An importer may request to exclusively occupy a space at an APHIS Animal Import Center. The user fees for spaces at APHIS Animal Import Centers are listed in the following table. The person for whom the service is provided and the person requesting the service are jointly and severally liable for payment of these user fees in accordance with §§ 130.50 and 130.51.

APHIS animal import center	Space	Monthly (30 day) user fee
* * * * * * *		
Newburgh, NY:		
Space A	5,396 sq. ft. (503.1 sq. m.)	$43,102.00
Space B	8,903 sq. ft. (827.1 sq. m.)	71,118.50

APHIS animal import center	Space	Monthly (30 day) user fee
Space C	905 sq. ft. (84.1 sq. m.)	7,229.00

* * * * *

6. Sections 130.5 through 130.8 would be revised to read as follows:

§ 130.5 User fees for services at privately operated permanent and temporary import quarantine facilities.

(a) User fees for each animal quarantined in a privately operated permanent or temporary import quarantine facility will be calculated at $56.00 per hour, or $14.00 per quarter-hour, with a minimum fee of $16.50, for each employee required to perform the service. The person for whom the service is provided and the person requesting the service are jointly and severally liable for payment of these user fees in accordance with §§ 130.50 and 130.51.

(b) [Reserved]

(Approved by the Office of Management and Budget under control number 0579–0094)

§ 130.6 User fees for import or entry services for live animals at land border ports along the United States-Mexico border.

(a) User fees, with a minimum fee of $16.50, for live animals presented for importation into or entry into the United States through a land border port along the United States-Mexico border are listed in the following table. The person for whom the service is provided and the person requesting the service are jointly and severally liable for payment of these user fees in accordance with the provisions in §§ 130.50 and 130.51.

Type of live animal	User fee (per head)
Feeder	$1.75
Slaughter	2.50
Horses, other than slaughter	29.25
In-bond or in transit	3.75
Any ruminants not covered above	6.00

(b) [Reserved]

(Approved by the Office of Management and Budget under control numbers 0579–0055 and 0579–0094)

§ 130.7 User fees for import or entry services for live animals at all other ports of entry.

(a) User fees, with a minimum fee of $16.50, for live animals presented for importation into or entry into the United States through any port of entry, other than a land border port along the border between the United States and Mexico, are listed in the following table. The person for whom the service is provided and the person requesting the service are jointly and severally liable for payment of these user fees in accordance with the provisions in §§ 130.50 and 130.51.

Type of live animal	User fee
Animals being imported into the United States:	
Horses, other than slaughter and in transit	$19.00 per head.
Breeding animals (Grade animals, except horses):	
Swine	0.50 per head.
Sheep and goats	0.50 per head.
All others	2.25 per head.
Registered animals, all types	4.00 per head.
Feeder animals:	
Cattle (not including calves)	1.00 per head.
Swine	0.25 per head.
Sheep and calves	0.25 per head.
Slaughter animals, all types	16.50 per load.
Poultry (including eggs), imported for any purpose	33.00 per load.
Animals transiting[1] the United States	
Cattle	1.00 per head.
Swine	0.25 per head.
Sheep and goats	0.25 per head.
Horses and all other animals	4.50 per head.

[1] The user fee in this section will be charged for intransit authorizations at the port where the authorization services are performed. For additional services provided by APHIS, at any port, the applicable hourly user fee will apply.

(b) [Reserved]

(Approved by the Office of Management and Budget under control numbers 0579-0055 and 0579–0094)

§ 130.8 User fees for other services.

(a) User fees for other services that are not specifically addressed elsewhere in part 130 are listed in the following table. The person for whom the service is provided and the person requesting the service are jointly and severally liable for payment of these user fees in accordance with the provisions in §§ 130.50 and 130.51.

Service	User fee
Germ Plasm Being exported: [2]	
Embryo:	
(up to 5 donor pairs)	$54.75 per certificate.
(each additional group of donor pairs, up to 5 pairs per group, on the same certificate)	24.75 per group of donor pairs.
Semen	33.50 per certificate.
Germ Plasm Being imported: [1]	
Embryo	39.50 per load.
Semen	39.50 per load.
Import compliance assistance:	
Simple (2 hours or less)	51.25 per release.
Complicated (more than 2 hours)	131.75 per release.
Inspection for approval of slaughter establishment:	
Initial approval	246.50 for all inspections required during the year.
Renewal	213.50 for all inspections required during the year.
Inspection of approved establishments, warehouses, and facilities under 9 CFR parts 94 through 96:	
Approval (Compliance Agreement)	262.75 for first year of 3-year approval (for all inspections required during the year).
Renewed approval	152.00 per year for second and third years of 3-year approval (for all inspections required during the year).
Pet birds, except pet birds of U.S. origin entering the United States from Canada:	
Which have been out of United States 60 days or less	71.25 per lot.
Which have been out of United States more than 60 days	169.75 per lot.
Processing VS form 16–3, ''Application for Permit to Import Controlled Material/Import or Transport Organisms or Vectors'':	
For permit to import fetal bovine serum when facility inspection is required	208.50 per application.
For all other permits	27.50 per application.
Amended application	11.50 per amended application
Application renewal	15.00 per application.
Release from export agricultural hold:	
Simple (2 hours or less)	51.25 per release.
Complicated (more than 2 hours)	131.75 per release.

[1] For inspection of empty containers being imported into the United States, the applicable hourly user fee would apply, unless a user fee has been assessed under 7 CFR 354.3.

[2] This user fee includes a single inspection and resealing of the container at the APHIS employee's regular tour of duty station or at a limited port. For each subsequent inspection and resealing required, the applicable hourly user fee would apply.

(b) [Reserved]

(Approved by the Office of Management and Budget under control numbers 0579–0015, 0579–0040, 0579–0055, and 0579–0094)

7. Section 130.9 would be amended by revising the introductory text of paragraph (a) to read as follows and by removing and reserving paragraph (b).

§ 130.9 User fees for miscellaneous import or entry services.

(a) User fees for import or entry services listed in (a)(1) through (a)(4) of this paragraph will be calculated at $56.00 per hour, or $14.00 per quarter hour, with a minimum fee of $16.50, for each employee required to perform the service. The person for whom the service is provided and the person requesting the service are jointly and severally liable for payment of these user fees in accordance with §§ 130.50 and 130.51.

* * * * *

(b) [Reserved]

(Approved by the Office of Management and Budget under control numbers 0579–0055 and 0579–0094)

8. In § 130.10, the introductory text of paragraph (a) would be revised to read as follows:

§ 130.10 User fees for pet birds quarantined at APHIS-owned or supervised quarantine facilities.

(a) User fees for each pet bird quarantined in an animal import center [4] or other APHIS-owned or supervised quarantine facility are listed in the following table. These user fees include standard care, feed, and handling. The person for whom the service is provided and the person requesting the service are jointly and severally liable for payment of these user fees in accordance with §§ 130.50 and 130.51.

* * * * *

9. Sections 130.14 through 130.18 would be revised to read as follows:

§ 130.14 User fees for FADDL veterinary diagnostics.

(a) *Diagnostic reagents.* User fees for diagnostic reagents [5] provided by

[4] APHIS animal import centers are located in Honolulu, HI, Miami, FL, and Newburgh, NY. The addresses of these facilities are published in part 93 of this chapter.

[5] Reagents provided by FADDL are for the diagnosis of animal diseases foreign to the United States. These reagents may be available to customers on the mainland after safety testing with permission from the Administrator. The customer may have to pay the cost for the safety test in addition to the reagent user fee. For more information on the specific reagents contact: Laboratory Chief, USDA, APHIS, VS, FADDL, Greenport, NY 11344; phone (516) 323–2500, FAX (516) 323–2798.

FADDL are listed in the following table. The person for whom the service is provided and the person requesting the service are jointly and severally liable for payment of these user fees in accordance with §§ 130.50 and 130.51.

Reagent	User fee	Unit
Bovine antiserum, any agent	$80.00	1 ml.
Caprine antiserum, any agent	97.50	1 ml.
Cell culture antigen/microorganism	63.75	1 ml.
Equine antiserum, any agent	100.50	1 ml.
Fluorescent antibody conjugate	120.25	1 ml.
Guinea pig antiserum, any agent	104.50	1 ml.
Monoclonal antibody	122.75	1 ml.
Ovine antiserum, any agent	94.25	1 ml.
Porcine antiserum, any agent	81.25	1 ml.
Rabbit antiserum, any agent	98.50	1 ml .

(b) *Veterinary diagnostics tests.* User fees for veterinary diagnostic tests performed at FADDL are listed in the following table. The person for whom the service is provided and the person requesting the service are jointly and severally liable for payment of these user fees in accordance with §§ 130.50 and 130.51.

Test	User fee	Unit
Agar gel immunodiffusion	$14.75	Test.
Card	8.25	Test.
Complement fixation	33.00	Test.
Direct immunofluorescent antibody	11.00	Test.
Enzyme linked immunosorbent assay	12.75	Test.
Fluorescent antibody neutralization (hog cholera)	96.00	Test.
Hemagglutination inhibition	27.75	Test.
Immunoperoxidase	18.25	Test.
Indirect fluorescent antibody	23.25	Test.
In-vitro safety	299.50	Test.
In-vivo safety	4345.75	Test.
Latex agglutination	11.00	Test.
Tube agglutination	14.00	Test.
Virus isolation (oesophageal/pharyngeal)	88.25	Test.
Virus isolation in embryonated eggs	176.00	Test.
Virus isolation, other	84.50	Test.
Virus neutralization	25.75	Test.

(c) *Other veterinary diagnostic services.* User fees for other veterinary diagnostic services performed at FADDL are listed in the following table. The person for whom the service is provided and the person requesting the service are jointly and severally liable for payment of these user fees in accordance with §§ 130.50 and 130.51.

Veterinary diagnostic service	User fee	Unit
Bacterial isolation	$55.00	Test.
Hourly user fee services [1]	220.00	Hour.
Hourly user fee services—Quarter hour	55.00	Quarter hour.
Infected cells on chamber slides or plates	31.00	Slide.
Reference animal tissues for immunohistochemistry	94.25	Set.
Sterilization by gamma radiation	530.00	Can.
Training (school or technical assistance)	450.00	Per person per day.
Virus titration	55.00	Test.

[1] For all veterinary diagnostic services for which there is no flat rate user fee, the hourly rate user fee will be calculated for the actual time required to provide the service.

(Approved by the Office of Management and Budget under control numbers 0579-0055 and 0579–0094)

§ 130.15 User fees for veterinary diagnostic isolation and identification tests performed at NVSL (excluding FADDL) or other authorized site.

(a) *Bacteriology isolation and identification tests.* User fees for bacteriology isolation and identification tests performed at NVSL (excluding FADDL) or other authorized sites are listed in the following table. The person for whom the service is provided and the person requesting the service are jointly and severally liable for payment of these user fees in accordance with §§ 130.50 and 130.51.

Test	User fee	Unit
Bacterial identification, automated	$16.00	Isolate.
Bacterial identification, non-automated	61.25	Isolate.
Bacterial isolation	16.00	Sample.
Bacterial serotyping, all other	30.75	Isolate.
Bacterial serotyping, Pasteurella multocida	7.50	Isolate.

Test	User fee	Unit
Bacterial serotyping, Salmonella	21.25	Isolate.
Bacterial toxin typing	91.50	Isolate.
Bacteriology requiring special characterization	27.00	Test.
DNA fingerprinting	36.50	Test.
DNA probe	29.50	Test.
Fluorescent antibody [1]	9.75	Test.
Leptospira culturing	27.00	Sample.
Leptospira serotyping	80.50	Isolate.
Mycobacterium avian serotyping	157.50	Isolate.
Mycobacterium identification (biochemical)	63.25	Isolate.
Mycobacterium identification (gas chromatography)	26.50	Procedure.
Mycobacterium isolation, animal inoculations	520.50	Submission.
Mycobacterium isolation, all other	105.50	Submission.
Mycobacterium paratuberculosis isolation	26.50	Submission.
Mycology culture identification	52.75	Isolate.
Mycology/fungus culture or isolation	26.50	Isolate.
Mycoplasma isolation	26.25	Sample.
Mycoplasma identification	26.25	Isolate.
Phage typing, all other	26.50	Isolate.
Phage typing, Salmonella enteritidis	10.75	Isolate.
Plasmid typing	26.50	Isolate.
Warburg	316.50	Isolate.

[1] A discount will apply to all diagnostic, non-import related complement fixation, hemagglutination inhibition, fluorescent antibody, indirect fluorescent antibody, virus neutralization, and peroxidase linked antibody tests. This discount only applies to the 11th and subsequent tests on the same submission by the same submitter for the same test and antigen. The user fee for each discounted test will be 20 percent of the original user fee rounded up to the nearest quarter. This discount will apply for tests for all diseases except equine piroplasmosis, bovine piroplasmosis, dourine, and glanders.

(b) *Virology identification tests.* User fees for virology identification tests performed at NVSL (excluding FADDL) or other authorized sites are listed in the following table. The person for whom the service is provided and the person requesting the service are jointly and severally liable for payment of these user fees in accordance with §§ 130.50 and 130.51.

Test	User fee	Unit
Fluorescent antibody tissue section	$18.25	Test.
Virus isolation for Newcastle disease virus	15.25	Test.
Virus isolation (except for Newcastle disease virus)	31.50	Test.

(Approved by the Office of Management and Budget under control numbers 0579–0055 and 0579–0094)

§ 130.16 User fees for veterinary diagnostic serology tests performed at NVSL (excluding FADDL) or at authorized sites.

(a) Bacteriology serology tests. User fees for bacteriology serology tests performed at NVSL (excluding FADDL) or other authorized sites are listed in the following table. The person for whom the service is provided and the person requesting the service are jointly and severally liable for payment of these user fees in accordance with §§ 130.50 and 130.51.

Test	User fee	Unit
Brucella milk ELISA	$15.75	Test.
Brucella ring (BRT)	10.50	Test.
Brucella ring, Heat inactivated (HIRT)	10.50	Test.
Brucella ring, Serial (Serial BRT)	15.75	Test.
Buffered acidified plate antigen presumptive	4.00	Test.
Card	2.00	Test.
Complement fixation [1]	9.00	Test.
Enzyme linked immunosorbent assay for dourine, glanders, or piroplasmosis	9.00	Test.
Enzyme linked immunosorbent assay, all other	4.75	Test.
Indirect fluorescent antibody [1]	9.75	Test.
Mercaptoethanol	4.00	Test.
Microscopic agglutination—includes up to 5 serovars [2]	11.00	Sample.
Mycology/fungus serology	10.50	Test.
Particle concentration fluorescent immunoassay (PCFIA)	18.25	Test.
Plate	4.00	Test.
Rapid automated presumptive	4.25	Test.
Rivanol	4.00	Test.
Tube agglutination	4.00	Test.

[1] A discount will apply to all diagnostic, non-import related complement fixation, hemagglutination inhibition, fluorescent antibody, indirect fluorescent antibody, virus neutralization, and peroxidase linked antibody tests. This discount only applies to the 11th and subsequent tests on the same submission by the same submitter for the same test and antigen. The user fee for each discounted test will be 20 percent of the original user fee rounded up to the nearest quarter. This discount will apply for tests for all diseases except equine piroplasmosis, bovine piroplasmosis, dourine, and glanders.

[2] The user fee for the sixth and subsequent serovar will be $2.00 each.

(b) *Virology serology tests.* User fees for virology serology tests performed at NVSL (excluding FADDL) or at authorized sites are listed in the following table. The person for whom the service is provided and the person requesting the service are jointly and severally liable for payment of these user fees in accordance with §§ 130.50 and 130.51.

Test	User fee	Unit
Agar gel immunodiffusion	$5.00	Test.
Complement fixation [1]	9.00	Test.
Enzyme linked immunosorbent assay	4.75	Test.
Hemagglutination inhibition [1]	7.50	Test.
Indirect fluorescent antibody [1]	9.75	Test.
Latex agglutination	5.00	Test.
Peroxidase linked antibody [1]	9.75	Test.
Plaque reduction neutralization	7.75	Test.
Rabies fluorescent antibody neutralization	26.50	Test.
Virus neutralization [1]	7.75	Test.

[1] A discount will apply to all diagnostic, non-import related complement fixation, hemagglutination inhibition, fluorescent antibody, indirect fluorescent antibody, virus neutralization, and peroxidase linked antibody tests. This discount only applies to the 11th and subsequent tests on the same submission by the same submitter for the same test and antigen. The user fee for each discounted test will be 20 percent of the original user fee rounded up to the nearest quarter. This discount will apply for tests for all diseases except equine piroplasmosis, bovine piroplasmosis, dourine, and glanders.

(Approved by the Office of Management and Budget under control numbers 0579–0055 and 0579–0094)

§ 130.17 User fees for other veterinary diagnostic laboratory tests performed at NVSL (excluding FADDL) or at authorized sites.

(a) User fees for veterinary diagnostic tests performed at the Pathobiology Laboratory at NVSL (excluding FADDL) or at authorized sites are listed in the following table. The person for whom the service is provided and the person requesting the service are jointly and severally liable for payment of these user fees in accordance with §§ 130.50 and 130.51.

Test	User fee	Unit
Aflatoxin quantitation	$20.50	Test.
Aflatoxin screen	11.25	Test.
Agar gel immunodiffusion spp. identification	6.25	Test.
Antibiotic (bioautography) quantitation	25.00	Test.
Antibiotic (bioautography) screen	50.00	Test.
Antibiotic inhibition	25.25	Test.
Arsenic	6.75	Test.
Ergot alkaloid screen	25.25	Test.
Ergot alkaloid confirmation	33.00	Test.
Feed microscopy	25.25	Test.
Fumonisin only	20.50	Test.
Gossypol	37.75	Test.
Mercury	56.00	Test.
Metals screen	29.75	Test.
Metals single element confirmation	6.75	Test.
Mycotoxin: aflatoxin-liver	82.25	Test.
Mycotoxin screen	34.00	Test.
Nitrate/nitrite	25.00	Test.
Organic compound confirmation	34.00	Test.
Organic compound screen	114.75	Test.
Parasitology	19.25	Test.
Pesticide quantitation	52.25	Test.
Pesticide screen	38.00	Test.
pH	10.00	Test.
Plate cylinder	37.75	Test.
Selenium	33.25	Test.
Silicate/carbonate disinfectant	25.00	Test.
Temperature disks	50.25	Test.
Toxicant quantitation, other	42.25	Test.
Toxicant screen, other	25.00	Test.
Vomitoxin only	20.75	Test.
Water activity	12.50	Test.
Zearaleone quantitation	20.50	Test.
Zearaleone screen	11.25	Test.

(b) [Reserved]

(Approved by the Office of Management and Budget under control numbers 0579–0055 and 0579–0094)

§ 130.18 User fees for veterinary diagnostic reagents produced at NVSL or other authorized site (excluding FADDL).

(a) *Bacteriology reagents.* User fees for bacteriology reagents produced by the Diagnostic Bacteriology Laboratory at NVSL (excluding FADDL) or other authorized site are listed in the following table. The person for whom the service is provided and the person requesting the service are jointly and severally liable for payment of these user fees in accordance with §§ 130.50 and 130.51.

Reagent	User fee	Unit
Anaplasma card test antigen	$34.00	2 ml.
Anaplasma card test kit without antigen	105.50	Kit.
Anaplasma CF antigen	17.00	2 ml.
Anaplasma stabilate	67.25	4.5 ml.
Avian origin bacterial antiserums, mycoplasma	11.50	1 ml.
Avian origin bacterial antiserums, all other	17.75	1 ml.
Bacterial agglutinating antigens other than brucella and salmonella pullorum	30.50	5 ml.
Bacterial conjugates	36.00	1 ml.
Bacterial disease CF antigens, all other	8.50	1 ml.
Bacterial ELISA antigens	9.50	1 ml.
Bacterial or protozoal antiserums, all other	7.25	1 ml.
Bacterial reagent culture [1]	21.25	Culture.
Bacterial reference culture [2]	63.25	Culture.
Bacteriophage reference culture	63.25	Culture.
Bovine serum factor	1.25	2 ml.
Brucella abortus CF antigen	34.00	60 ml.
Brucella agglutination antigens, all other	34.00	60 ml.
Brucella buffered plate antigen	50.00	60 ml.
Brucella canis tube antigen	30.50	25 ml.
Brucella card test antigen (packaged)	19.50	Package.
Brucella card test kit without antigen	70.25	Kit.
Brucella cells	5.25	Gram
Brucella cells, dried	2.00	Pellet
Brucella ring test antigen	72.75	60 ml.
Brucella rivanol solution	8.75	60 ml.
Dourine CF antigen	17.50	1 ml.
Dourine stabilate	34.75	4.5 ml.
Equine and bovine origin hemoparasitic antiserums	21.25	1 ml.
Equine negative control CF antigen	171.25	1 ml.
Equine origin glanders antiserum	18.25	1 ml.
Flazo-orange	6.25	3 ml.
Glanders CF antigen	17.50	1 ml.
Hemoparasitic disease CF antigens, all other	158.25	1 ml.
Leptospira transport medium	3.25	10 ml.
Monoclonal antibody	37.50	1 ml.
Mycobacterium spp. old tuberculin	3.75	1 ml.
Mycobacterium spp. PPD	3.25	1 ml.
Mycoplasma hemagglutination antigens	105.50	5 ml.
Negative control serums	4.00	1 ml.
Other spp. antiserum, any	32.75	1 ml.
Rabbit origin bacterial antiserum	14.25	1 ml.
Salmonella pullorum microagglutination antigen	6.25	5 ml.
Stabilates, all other	258.25	4.5 ml.

[1] A reagent culture is a bacterial culture that has been subcultured one or more times after being tested for purity and identity. It is intended for use as a reagent with a diagnostic test such as the leptospiral microagglutination test.

[2] A reference culture is a bacterial culture that has been thoroughly tested for purity and identity. It should be suitable as a master seed for future cultures.

(b) *Virology reagents.* User fees for virology reagents produced by the Diagnostic Virology Laboratory at NVSL (excluding FADDL) or at authorized sites are listed in the following table. The person for whom the service is provided and the person requesting the service are jointly and severally liable for payment of these user fees in accordance with §§ 130.50 and 130.51.

Reagent	User fee	Unit
Antigen, except avian influenza and chlamydia psittaci antigens, any	$41.50[2]	ml.
Avian antiserum except avian influenza antiserum, any	23.00	2 ml.
Avian influenza antigen, any	9.25	2 ml.
Avian influenza antiserum, any	53.75	6 ml.
Bovine or ovine serum, any	88.00	2 ml.
Cell Culture	20.00	Flask.
Chlamydia psittaci spp. of origin monoclonal antibody panel	47.25	Panel.
Conjugate, any	20.25	1 ml.
Diluted positive control serum, any	6.75	2 ml.
Equine antiserum, any	12.25	2 ml.
Hog Cholera tissue sets	81.50	Tissue set.
Monoclonal antibody	37.50	1 ml.
Other spp. antiserum, any	32.75	1 ml.
Porcine antiserum, any	60.50	2 ml.
Positive control tissues, all	.....	2 $cm.^2$
	4.25	section.
Rabbit origin antiserum	14.25	ml.

Reagent	User fee	Unit
Reference virus, any	63.50	0.6 ml.
Viruses (except reference viruses), chlamydia psittaci agent, or chlamydia psittaci antigen, any	5.50	0.6 ml.

(Approved by the Office of Management and Budget under control number 0579–0094)

10. A new § 130.19 would be added to read as follows:

§ 130.19 User fees for other veterinary diagnostic services or materials provided at NVSL (excluding FADDL).

(a) User fees for other veterinary diagnostic services or materials available from NVSL (excluding FADDL) are listed in the following table. The person for whom the service is provided and the person requesting the service are jointly and severally liable for payment of these user fees in accordance with §§ 130.50 and 130.51.

Service	User fee	Unit
Antimicrobial susceptibility test	$30.50	Isolate.
Avian safety test	2,701.75	Test.
Check tests, anaplasma complement fixation	132.00	Kit.[1]
Check tests, culture	88.00	Kit.[1]
Check tests, serology, all other	125.75	Kit.[1]
Fetal bovine serum safety test	673.50	Verification.
Hourly user fee services[2]	.....	
Hour	56.00	Hour.
Quarter hour	14.00	Quarter Hour.
Minimum	16.50	
Manual, Brucellosis complement fixation	13.00	1 copy.
Manual, Brucellosis culture	52.75	1 copy.
Manual, Tuberculosis culture (English or Spanish)	79.25	1 copy.
Manual, Veterinary mycology	105.50	1 copy.
Manual, Anaplasmosis, Johne's disease, mycoplasma hyopneumonia, piroplasmosis, dourine, or glanders	21.25	1 copy.
Manuals or standard operating procedure (SOP), all other	13.25	1 copy.
Manuals or SOP, per page	2.00	1 page.
Training (school or technical assistance)	120.00	Per person per day.

[1] Any reagents required for the check test will be charged separately.
[2] For veterinary diagnostic services for which there is no flat rate user fee the hourly rate user fee will be calculated for the actual time required to provide the service.

(b) [Reserved]

(Approved by the Office of Management and Budget under control number 0579–0094)

11. Section 130.20 would be amended by revising the introductory text in paragraphs (a) and (b)(1) to read as follows and by removing paragraph (d).

§ 130.20 User fees for endorsing export health certificates.

(a) User fees for the endorsement of export health certificates that do not require the verification of tests or vaccinations are listed in the following table. The user fees apply to each export health certificate [6] endorsed for the following types of animals, birds, or animal products, regardless of the number of animals, birds, or animal products covered by the certificate. The person for whom the service is provided and the person requesting the service are jointly and severally liable for payment of these user fees in accordance with §§ 130.50 and 130.51.

* * * * *

[6] An export health certificate may need to be endorsed for an animal being exported from the United States if the country to which the animal is being shipped requires one. APHIS endorses export health certificates as a service.

(b)(1) User fees for the endorsement of export health certificates that require the verification of tests or vaccinations are listed in the following table. The user fees apply to each export health certificate [6] endorsed for animals and birds depending on the number of animals or birds covered by the certificate and the number of tests required. The person for whom the service is provided and the person requesting the service are jointly and severally liable for payment of these user fees in accordance with the provisions in §§ 130.50 and 130.51.

* * * * *

12. Section 130.21 would be amended by revising the section heading and the introductory text in paragraph (a) to read as follows, by removing and reserving paragraph (b), and by removing paragraph (c).

§ 130.21 User fees for inspection and supervision services provided within the United States for export animals, birds, and animal products.

(a) User fees for inspection and supervision services listed in paragraph (a)(1) through (a)(7) of this section will be calculated at $56.00 per hour, or $14.00 per quarter-hour, with a minimum fee of $16.50, for each employee required to perform the service. The person for whom the service is provided and the person requesting the service are jointly and severally liable for payment of these user fees in accordance with §§ 130.50 and 130.51.

* * * * *

§ 130.49 [Amended]

13. In § 130.49, paragraph (a) would be amended by removing the reference ''130.18'' and adding the reference ''130.19'' in its place.

14. Sections 130.50 and 130.51 would be revised to read as follows:

§ 130.50 Payment of user fees.

(a) *Who must pay APHIS user fees?* Any person for whom a service is provided related to the importation, entry, or exportation of an animal, article, or means of conveyance or relating to veterinary diagnostics, and any person requesting such services, shall be jointly and severally liable for payment of fees assessed.

(b) *Associated charges.*

(1) *Reservation fee.* Any reservation fee paid by an importer under part 93 of this chapter will be applied to the APHIS user fees specified in §§ 130.2 and 130.3 for animals or birds

quarantined in an Animal Import Center.

(2) *Special handling expenses.* The user fees in this part do not include any costs that may be incurred due to special mail handling, including, but not limited to express, overnight, or foreign mailing. If any service requires special mail handling, all costs incurred must be paid by the user in addition to the user fee for the service.

(3) *Overtime charges.* If a test must be conducted on a Sunday or holiday or at any time outside the normal tour of duty of the employee, then, as provided for in part 97 of this chapter, one of the following will apply:

(i) *Overtime associated with flat rate user fees (i.e., for a specific service, test, or reagent).* Reimbursable overtime must be paid for performing each test, in addition to the flat rate user fee listed in this part.

(ii) *Overtime associated with hourly rate user fees.* The premium rate user fee, as listed in the following table, in lieu of the hourly rate user fee listed in this part, must be paid for each employee required to perform each service:

Premium rate user fee

	Outside the normal tour of duty	
	Weekdays and holidays	Sundays
Per hour	$65.00	$74.00
Per quarter-hour	16.25	18.50
Minimum	16.50	16.50

(c) *When are APHIS user fees due?*

(1) *Animal and bird quarantine and related tests.* User fees specified in §§ 130.2, 130.3, 130.5, 130.10, and tests specified in §§ 130.14 through 130.19 for animals and birds in an Animal Import Center or privately operated permanent or temporary import quarantine facilities, including user fees for tests conducted on these animals or birds, must be paid prior to the release of those animals or birds from quarantine;

(2) *Supervision and inspection services for export animals, animal products.* User fees for supervision and inspection services specified in § 130.21 must be paid when billed, or, if covered by a compliance agreement signed in accordance with this chapter, must be paid when specified in the agreement;

(3) *Export health certificates.* User fees for export health certificates specified in § 130.20 must be paid prior to receipt of endorsed certificates unless APHIS determines that the user has established an acceptable credit history, at which time payment may, at the option of the user, be made when billed;

(4) *Veterinary diagnostics.* User fees specified in §§ 130.14 through 130.19 for veterinary diagnostic services, such as tests on samples submitted to NVSL or FADDL, diagnostic reagents, slide sets, tissue sets, and other veterinary diagnostic services, must be paid when the veterinary diagnostic service is requested, unless APHIS determines that the user has established an acceptable credit history, at which time payment may, at the option of the user, be made when billed;

(5) *Other user fee services.* User fees specified in §§ 130.6, 130.7, 130.8, and 130.9 must be paid when service is provided (for example when live animals are inspected when presented for importation at a port of entry), unless APHIS determines that the user has established an acceptable credit history, at which time payment may, at the option of the user, be made when billed;

(d) *What payment methods are acceptable?* Payment must be for the exact amount due and may be paid by:

(1) Cash, will be accepted only during normal business hours if payment is made at an APHIS office [7] or an Animal Import Center;

(2) All types of checks, including traveler's checks, drawn on a U.S. bank in U.S. dollars and made payable to the U.S. Department of Agriculture or USDA;

(3) Money orders, drawn on a U.S. bank in U.S. dollars and made payable to the U.S. Department of Agriculture or USDA; or

(4) Credit cards (VISA™ and MasterCard™) if payment is made at an Animal Import Center or an APHIS office that is equipped to process credit cards.[7]

§ 130.51 Penalties for nonpayment or late payment.

(a) *Unpaid debt.* If any person for whom the service is provided fails to pay when due any debt to APHIS, including any user fee due under title 7 or title 9, Code of Federal Regulations, then:

(1) *Subsequent user fee payments.* Payment must be made for subsequent user fees before the service is provided if:

(i) For unbilled fees, the user fee is unpaid 60 days after the date the pertinent regulatory provision indicates payment is due;

(ii) For billed fees, the user fee is unpaid 60 days after date of bill;

(iii) The person for whom the service is provided or the person requesting the service has not paid the late payment penalty or interest on any delinquent APHIS user fee; or

(iv) Payment has been dishonored.

(2) *Resolution of difference between estimate and actual.* APHIS will estimate the user fee to be paid; any difference between the estimate and the actual amount owed to APHIS will be resolved as soon as reasonably possible following the delivery of the service, with APHIS returning any excess to the payor or billing the payor for the additional amount due.

(3) *Prepayment form.* The prepayment must be in guaranteed form, such as money order, certified check, or cash. Prepayment in guaranteed form will continue until the debtor pays the delinquent debt.

(4) *Denied service.* Service will be denied until the debt is paid if:

(i) For unbilled fees, the user fee is unpaid 90 days after date the pertinent regulatory provision indicates payment is due;

(ii) For billed fees, the user fee is unpaid 90 days after date of bill;

(iii) The person for whom the service is provided or the person requesting the service has not paid the late payment penalty or interest on any delinquent APHIS user fee; or

(iv) Payment has been dishonored.

(b) *Unpaid debt during service.* If APHIS is in the process of providing a

[7] A list of APHIS offices and Animal Import Centers that accept cash or credit cards may be obtained from the Animal and Plant Health Inspection Service, Veterinary Services, National Center for Import and Export, 4700 River Road Unit 38, Riverdale, MD 20738–1231.

service for which an APHIS user fee is due, and the user has not paid the fee within the time required, or if the payment offered by the user is inadequate or unacceptable, then APHIS will take the following action:

(1) *Animals or birds in quarantine.* If an APHIS user fee specified in § 130.2 or § 130.3 is due for animals or birds in quarantine at an Animal Import Center or at a privately operated import quarantine facility, APHIS will not release them;

(2) *Export health certificate.* If an APHIS user fee specified in § 130.20 is due for an export health certificate, APHIS will not release the certificate; and

(3) *Veterinary diagnostics.* If an APHIS user fee specified in §§ 130.14 through 130.19 is due for a veterinary diagnostic test or service, APHIS will not release the test result, any endorsed certificate, or any other veterinary diagnostic service.

(c) *Late payment penalty.* If for unbilled user fees, the user fees are unpaid 30 days after the date the pertinent regulatory provisions indicates payment is due, or if billed, are unpaid 30 days after the date of the bill, APHIS will impose a late payment penalty and interest charges in accordance with 31 U.S.C. 3717.

(d) *Dishonored payment penalties.* User fees paid with dishonored forms of payment, such as a check returned for insufficient funds, will be subject to interest and penalty charges in accordance with 30 U.S.C. 3717. Administrative charges will be assessed at $20.00 per dishonored payment to be paid in addition to the original amount owed. Payment must be in guaranteed form, such as cash, money order, or certified check.

(e) *Debt collection management.* In accordance with the Debt Collection Improvement Act of 1996, the following provisions apply:

(1) *Taxpayer identification number.* APHIS will collect a taxpayer identification number from all persons, other than federal agencies, who are liable for a user fee;

(2) *Administrative offset.* APHIS will notify the Department of Treasury of debts that are over 180 days delinquent for the purposes of administrative offset. Under administrative offset, the Department of Treasury will withhold funds payable by the United States to a person (i.e., Federal income tax refunds) to satisfy the debt to APHIS.

(3) *Cross-servicing.* APHIS will transfer debts that are over 180 days delinquent to the Department of Treasury for cross-servicing. Under cross-servicing, the Department of Treasury will collect debts on behalf of APHIS. Exceptions will be made for debts that meet certain requirements, for example, debts that are already at a collection agency or in payment plan; and

(4) *Report delinquent debt.* APHIS will report all unpaid debts to credit reporting bureaus.

(f) *Animals or birds abandoned after quarantine at an Animal Import Center.* Animals or birds left in quarantine at an Animal Import Center for more than 30 days after the end of the required quarantine period will be deemed to be abandoned.

(1) After APHIS releases the abandoned animals or birds from quarantine, APHIS may seize them and sell or otherwise dispose of them, as determined by the Administrator, provided that their sale is not contrary to any Federal law or regulation, and may recover all expenses of handling the animals or birds from the proceeds of their sale or disposition.

(2) If animals or birds abandoned in quarantine at an Animal Import Center cannot be released from quarantine, APHIS may seize and dispose of them, as determined by the Administrator, and may recover all expenses of handling the animals or birds from the proceeds of their disposition and from persons liable for user fees under § 130.50(a).

Done in Washington, DC, this 28th day of April 1998.

Charles P. Schwalbe,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 98–11776 Filed 5–1–98; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98–ANM–07]

Proposed Modification of Class D Airspace; Colorado Springs USAF Academy Airstrip, CO

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This proposal would amend the Class D airspace area at Colorado Springs United States Air Force (USAF) Academy Airstrip, CO. The intended effect of this action is to provide additional airspace in the Visual Flight Rules (VFR) traffic pattern by increasing the ceiling of the Class D airspace from 8600'MSL to 8800 MSL.

DATES: Comments must be received on or before June 18, 1998.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, Airspace Branch, ANM–520, Federal Aviation Administration, Docket No. 98–ANM–07, 1601 Lind Avenue SW, Renton, Washington 98055–4056.

The official docket may be examined in the office of the Assistant Chief Counsel for the Northwest Mountain Region at the same address.

An informal docket may also be examined during normal business hours in the office of the Manager, Air Traffic Division, Airspace Branch, at the address listed above.

FOR FURTHER INFORMATION CONTACT: Dennis Ripley, ANM–520.6, Federal Aviation Administration, Docket No. 98–ANM–07, 1601 Lind Avenue SW, Renton, Washington 98055–4056; telephone number: (425) 227–2527.

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–ANM–07.'' 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 contain in this notice may be changed in the light of comments received. All comments submitted will be available for examination at the address listed above, 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 NPRM by submitting a request to the

Federal Aviation Administration, Airspace Branch, ANM–520, 1601 Lind Avenue SW, Renton, Washington 98055–4056. 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 is considering an amendment to Title 14 Code of Federal Regulations, part 71 (14 CFR 71) to modify Class D airspace at Colorado Springs USAF Academy Airstrip, CO. The USAF Academy has seen substantial development adjacent to the airfield in recent years causing the VFR traffic pattern altitude to be increased to 7800'MSL (1000'AGL). In the interest of safety at this high intensity student training area, it is considered reasonable and necessary to have a 1000' Class D airspace area above the standard VFR traffic pattern. The 1000' of Class D area allows a student pilot a safety area of 500' above the standard VFR traffic pattern and still have 500' from overflights of the USAF Class D airspace. This proposal would satisfy the requirement of a 1000' safety area by increasing the Class D airspace area from 8600'MSL to 8800 MSL.

The area would be depicted on aeronautical charts for pilot reference. The coordinates for this airspace docket are based on North American Datum 83. Class D airspace areas designated as surface areas are published in Paragraph 5000 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 D airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves 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 signficiant 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 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 5000 General.

* * * * *

ANM CO D Colorado Springs USAF Academy Airstrip, CO [Revised]

Colorado Springs USAF Academy Airstrip, CO
(Lat. 38°58′11″ N, long. 104°48′47″ W)

That airspace extending upward from the surface to and including 8,800 feet MSL within a 3-mile radius of the USAF Academy Airstrip, excluding that airspace within the Colorado Springs, CO. Class C airspace area. This Class D airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Issued in Seattle, Washington, on April 6, 1998.

Joe E. Gingles,

Acting Assistant Manager, Air Traffic Division, Northwest Mountain Region.

[FR Doc. 98–11767 Filed 5–1–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1910

[Docket No. H–71]

RIN 1218–AA95

Methylene Chloride; Notice of Motion for Reconsideration; Proposed Rule

AGENCY: Occupational Safety and Health Administration (OSHA), Department of Labor.

ACTION: Notice of motion for reconsideration; proposed rule.

SUMMARY: The Occupational Safety and Health Administration (OSHA) has received a motion for reconsideration of certain provisions of its standard regulating occupational exposure to methylene chloride (MC), 62 FR 1494 (Jan. 10, 1997). The motion, filed jointly by the International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, UAW, the Halogenated Solvents Industry Alliance, Inc., and others asks OSHA to amend the methylene chloride standard by adding to the medical surveillance provisions of the standard a provision for temporary medical removal protection benefits for employees who are temporarily removed or transferred to another job because of a medical determination that exposure to methylene chloride may aggravate or contribute to the employee's existing skin, heart, liver, or neurological disease; and modifying certain startup dates for employers in certain identified application groups, i.e., who use MC in certain work operations. The standard currently requires employers with fewer than 20 employees to complete installation of engineering controls by April 10, 2000 and larger employers to do so by earlier dates. The motion asks that the April 10, 2000 startup date for engineering controls be applied to some additional small- and medium-sized employers in the identified application groups. Shorter startup date extensions are requested for the larger employers in those same application groups. The parties to the motion further request that respirator use to achieve the 8-hour time-weighted-average permissible exposure limit not be required before the engineering control startup dates for the employers covered by the motion.

OSHA tentatively concludes that the amendments are appropriate and are supported by the rulemaking record. Accordingly, OSHA is hereby proposing to amend the MC standard with the

modifications the parties have recommended. OSHA is reopening the rulemaking record for the methylene chloride standard for 30 days for the limited purpose of receiving public comment on the proposed amendments.

DATES: Comments concerning the proposed rule must be postmarked or transmitted by fax on or before June 3, 1998. Comments concerning the collection of information requirements must be postmarked or transmitted by fax on or before July 6, 1998.

ADDRESSES: Comments are to be submitted in quadruplicate to: The Docket Office, Docket No. H–71, Room N–2625, United States Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210, telephone (202) 219–7894. Comments of 10 pages or fewer may be transmitted by fax to (202) 219–5046, provided the original and three copies are sent to the Docket Office thereafter. The hours of operation of the Docket Office are 10:00 a.m. to 4:00 p.m.

FOR FURTHER INFORMATION CONTACT: Bonnie Friedman, Director, OSHA Office of Public Affairs, U.S. Department of Labor, Room N3647, 200 Constitution Avenue, NW., Washington, DC 20210, telephone (202) 219–8151.

SUPPLEMENTARY INFORMATION:

INFORMATION COLLECTION REQUIREMENTS: This proposed rule contains collection of information requirements in 29 CFR 1910.1052, ''Methylene Chloride,'' in paragraphs (j)(11)(B) and (j)(14)(i), (ii), and (iv). Under these requirements employers must provide certain employees with additional medical examinations beyond those now required under the standard. The proposed rule would not change the requirement in the existing standard that employers provide the employee with a copy of the written medical opinion for each medical examination required by the standard. Because it requires additional medical examinations than does the current rule and, for some of those examinations, the provision of more information about the results, the proposed rule imposes additional collection of information requirements on employers than the current standard. The Paperwork Reduction Act of 1995, 44 U.S.C. 3507(d), and 5 CFR 1320.11 require Federal agencies to submit collections of information contained in proposed rules to the Office of Management and Budget (OMB) for review. OSHA has submitted the appropriate request to OMB for approval. OSHA currently has approval for the collection of information requirements in the existing Methylene Chloride standard under OMB Control Number 1218–0179.

OSHA invites comments on whether the proposed collection of information:

1. Ensures that the collection of information is necessary for the proper performance of the functions of OSHA, including whether the information will have practical utility;

2. Estimates the projected burden accurately, including whether the methodology and assumptions used are valid;

3. Enhances the quality, utility and clarity of the information to be collected; and

4. Minimizes the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques, or other forms of information technology, e.g., permitting electronic submission of responses.

Title: Methylene Chloride (MC) (29 CFR 1910.1052).

Description: The purpose of this standard and its information collection requirements is to protect employees from adverse health effects associated with occupational exposure to MC. The current standard requires employers to monitor employee exposure to MC, inform employees of monitoring results, and notify employees of corrective action to be taken. Employers are also required to provide medical surveillance to employees who are exposed to MC above the action level. Employers must also provide information and training to employees on the following: health effects of MC, specifics regarding use of MC in the workplace, the content of the standard, and means the employees can take to protect themselves from overexposure to MC.

In response to a motion for reconsideration by the United Auto Workers (UAW), the Halogenated Solvents Industry Alliance, Inc., and others, the Agency is proposing to add paragraphs (j)(9)(i) (A) and (B), (j)(10), (j)(11), (j)(12), (j)(13), and (j)(14), dealing with medical removal protection, medical removal protection benefits, voluntary removal or restriction of an employee, and multiple health care professional review to the MC standard.

Respondents: The respondents are employers whose employees have occupational exposure to MC, Chemical Abstracts Service Registry Number 75–09–2, in general industry, construction and shipyard employment, approximately 92,000 respondents.

Estimate of Burden Hours: OSHA estimates that the total burden for the proposed MC collection of information provision will be 619 burden hours.

Estimate of Costs: OSHA estimates that the total cost for the first year will be $60,515 for the collection of information provision.

Interested parties are requested to send comments regarding this information collection to the Office of Information and Regulatory Affairs, Attn. OSHA Desk officer, OMB New Executive Office Building, 725 17th Street, NW, Room 10235, Washington, DC 20503. Commenters are encouraged to send a copy of their comments on the collection of information to OSHA along with their other comments.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the final information collection request: They will also become a matter of public record. Copies of the referenced information collection request are available for inspection and copying in the OSHA Docket office and will be mailed immediately to any person who requests copies by telephoning Adrian Corsey at (202) 219–7075 extension 105. For electronic copies of the MC information collection request, contact OSHA's WebPage on the Internet at http://www.osha.gov/ and click on ''**Federal Register** Notices''. Then click on ''Type of Publication'', then ''Notices'', and lastly ''1998''. Copies of the request are also available at the OMB docket office.

I. Background

On January 10, 1997, OSHA issued a standard regulating occupational exposure to methylene chloride (MC). 62 FR 1494. The standard was designed to reduce both the risk that worker exposure to MC will cause cancer and the risk that MC will cause or aggravate certain other adverse health effects. The standard reduced the prior 8-hour time-weighted-average permissible exposure limit (8-hour TWA PEL) to MC from 500 parts per million (ppm) to 25 ppm. It also set a short term exposure limit (STEL) of 125 ppm averaged over a 15 minute period.

The 8-hour TWA PEL was set at 25 ppm to reduce, to the extent feasible, the risk that workers exposed to MC would contract cancer. Data showing that MC exposure presents a risk of cancer included animal bioassay data, studies detailing the metabolism of MC to carcinogenic products in humans, and epidemiological studies suggesting an elevated risk of biliary cancer and astrocytic brain cancer in MC-exposed workers. The agency used a physiologically-based pharmacokinetic

(PBPK) model to estimate the cancer risk. OSHA's final risk assessment estimated that, at the prior 8-hour TWA PEL of 500 ppm (a level that the Agency found was considerably higher than the level at which most affected workers were currently exposed, see 62 FR 1565), lifetime occupational exposure to MC could result in approximately 125 cancer deaths per 1000 exposed workers. 62 FR 1563, Table VII. At the new 8-hour TWA PEL of 25 ppm, OSHA estimated that the excess cancer risk would be reduced to approximately 3.6 deaths per 1000 workers. Id. OSHA concluded that a significant risk to workers remains at an exposure level of 25 ppm but set the 8-hour TWA PEL at that level because it was the lowest level for which OSHA could document feasibility across all the affected application groups. 62 FR 1575.

The STEL was set at 125 ppm to minimize the adverse health effects caused by acute exposure to MC. Central nervous system (CNS) depression has been observed at MC concentrations as low as 175 ppm. CNS depression is characterized by fatigue, difficulty in maintaining concentration, dizziness, and headaches. These consequences of MC exposure constitute material impairments of health and, by reducing workers' coordination and concentration, can lead to workplace accidents. Also, MC is metabolized to carbon monoxide (CO) and therefore causes health impairment similar to that caused by direct exposure to CO. Carbon monoxide blocks the oxygen binding site on hemoglobin, producing carboxyhemoglobin, or COHb. Elevated COHb levels reduce the supply to oxygen to the heart and can aggravate pre-existing heart disease and lead to heart attacks. Physical exertion increases the concentration of COHb in MC-exposed workers and thus increases the risk of a heart attack, particularly to persons with silent or symptomatic cardiac disease, who may be susceptible to very small increases in COHb due to an already impaired blood supply to the heart.

The liver and skin are also susceptible to acute effects from MC exposure. Chlorinated hydrocarbons as a class (of which MC is a member) are generally toxic to the liver. However, animal studies indicate that MC is among the least hepatotoxic of this class of compounds. The limited amount of human data that are available is inconclusive but supports the hypothesis that MC is toxic to the liver. 62 FR at 1515. Prolonged skin contact with MC also causes irritation and skin burns. 62 FR at 1609.

Employers must achieve the 8-hour TWA PEL and the STEL, to the extend feasible, by engineering and work practice controls. If such controls are unable to achieve the exposure limits, and during the time they are being implemented, employers must provide, at no cost to employees, and ensure that employees use, appropriate respirators. The standard does not permit the use of air-purifying respirators to protect against MC exposure because MC 1uickly penetrates all currently available organic vapor cartridges, rendering air-purifying respirators ineffective after a relatively brief period of time. Therefore, when respiratory protection is required, the standard provides that atomsphere-supplying respirators must be used.

The standard requires employers to provide medical surveillance to employees who are exposed to MC either (1) at or above the action level on 30 or more days per year or at or above the 8-hour TWA PEL or STEL on 10 or more days per year; (2) at or above the 8-hour TWL Pel or STEL for any time period where an employee who has been identified by a physician or other licensed health care professional as being at risk from cardiac disease or from some other serious MC-related health condition requests inclusion in the medical surveillance program; or (3) during an emergency. The medical surveillance must include a comprehensive medical and work history that emphasizes neurological symptoms, skin conditions, history of hematologic or liver disease, signs or symptoms suggestive of heart disease (angina, coronary artery disease), risk factors for cardiac disease, MC exposures, and work practices and personal protective equipment used during such exposures. The standard's medical surveillance procedures focus on MC's noncarcinogenic health effects because a medical surveillance program cannot detect cancer at a preneoplastic state. 62 FR at 1589. However, the standard's medical surveillance provisions can lead to early detection of cancer and to higher survival rates from early treatment.

OSHA found that the standard was both technologically and economically feasible in all of the industrial applications that use MC. However, the Agency recognizes that larger employers are better able than smaller ones to absorb or pass through the costs associated with compliance with the standard. To avoid placing an undue economic burden on small businesses, OSHA provided for later startup dates for small employers. Larger employers were given until April 10, 1998 (one year after the standard's effective date) to complete installation of engineering controls to achieve the PEL and STEL, while employers with fewer than 20 employees were given a total of three years, or until April 10, 2000, to do so. Employers with fewer than 20 employees were also given more time than larger employers to comply with the other provisions of the standard. In addition, intermediate startup dates were established for polyurethane foam manufacturers with 20–99 employees because OSHA anticipated that firms in that group could have somewhat higher capital expenditures to meet the requirements of the standard.

II. The Motion for Reconsideration

The motion filed by the parties asks OSHA to reconsider two aspects of the standard: (1) The agency's decision not to include medical removal protection benefits in the medical surveillance provisions of the standard; and (2) the start-up dates for engineering controls and for use of respirators to achieve the 8-hour TWA PEL for employers using MC in certain specific applications.

Those applications are:

- Polyurethane foam manufacturing;
- Foam fabrication;
- Furniture refinishing;
- General aviation aircraft stripping;
- Formulation of products containing methylene chloride;
- Boat building and repair;
- Recreational vehicle manufacture;
- Van conversion;
- Upholstery; and
- Use of methylene chloride in construction work for restoration and preservation of buildings, painting and paint removal, cabinet making and/or floor refinishing and resurfacing.

The motion requests that the standard's current final engineering control startup date of April 10, 2000, which now applies to employers with fewer than 20 employees, be applied also to employers in the specified application groups with 20–49 employees and to foam fabricators with 20–149 employees. (In referring to an employer's number of employees, the parties to the motion explain that they intend for the number of employees to refer to the total number or workers employed by the particular employer, not the number who work at a particular facility or the number that use methylene chloride in their work.) The motion requests shorter extensions of the engineering control dates for larger employers in these application groups. The parties further request that respirator use to achieve the 8-hour TWA PEL not be required before the

engineering control startup dates for the employers covered by the motion.

In evaluating the motion, OSHA notes that the parties are not seeking to modify the fundamental protections provided to workers by the standard. They are not challenging the 8-hour TWA PEL or the STEL or the requirement that those limits be met, to the extent feasible, through engineering and work practice controls. Nor are the parties seeking modifications of the provisions in the standard for regulated areas, protective work clothing and equipment, hygiene facilities, hazard communication, employee information and training, and recordkeeping. Moreover, the extensions of the startup dates that they seek would not change the standard's current final compliance deadline of April 10, 2000 but would merely give additional employers the benefit of that startup date. The parties suggest that their proposed changes to startup dates will enhance long-term worker protection by enabling employers to use their resources effectively and efficiently in developing permanent engineering solutions to reduce MC exposures in their workplaces. The parties' proposed addition to the medical surveillance provisions of the standard—a provision for medical removal protection benefits—is also designed to enhance worker protection by encouraging worker participation in medical surveillance. Thus, the parties believe that the amendments they seek will promote worker protection while minimizing employers' compliance burdens.

III. Medical Removal Protection Benefits

OSHA set the permissible exposure limits for methylene chloride to eliminate significant risk, to the extent feasible, to workers exposed to MC. However, individuals vary in their response to chemical exposures. Some may see their health impaired, or preexisting medical conditions aggravated, at an exposure level that does not provoke such effects in most workers. Medical surveillance can identify those workers who exhibit signs or symptoms of illnesses that could be aggravated by exposure to a toxic substance and lead to treatment or reduction in exposure. OSHA has therefore provided for medical surveillance whenever it has issued a new standard for a single toxic substance.

Medical surveillance can result in a medical opinion that particular workers should be removed from their present jobs have their work activities otherwise restricted. This can lead to concern among workers that participation in medical surveillance could cost them their jobs. A worker who fear that medical surveillance may endanger his or her livelihood may be reluctant to consent to medical tests or to provide complete and accurate information during a medical examination. If employees whose health could be significantly impaired by continued MC exposure withhold their full cooperation, they might continue to be exposed to MC without being aware that such exposure poses a risk to their health. To avoid having the potential loss of a job act as a disincentive to workers participating in the standard's medical surveillance program, OSHA has, in certain of its toxic chemical standards, provided for medical removal protection benefits (MRPB). MRPB provisions require that an employer who must remove an employee from continued exposure to a chemical or otherwise restrict an employee's exposure to that chemical must maintain the employee's earnings and other employment rights and benefits for a specified time.

When it has included MRPB provisions in earlier standards, OSHA has delineated as specifically as possible the medical conditions that trigger removal. Where possible, the Agency has specified objective removal criteria. For example, the lead standard (29 CFR 1910.1025) requires that an employee be removed from exposure above the action level when an employee's blood lead concentration exceeds a certain value. Similarly, the cadmium standard (29 CFR 1910.1047) lists objective biological monitoring criteria that trigger medical removal.

OSHA has also, however, recognized that medical removal is sometimes appropriate without regard to specific biological markers when, in the judgment of a physician or other licenses health care professional, removal is necessary to protect the health of the employee. Thus, in addition to objective removal criteria, the lead and cadmium standards provide for medical removal based on the discretion of a health care professional. The lead standard requires medical removal ''on each occasion that a final medical determination results in a medical finding, determination, or opinion that the employee has a detected medical condition which places the employee at increased risk of material impairment to health from exposure to lead.'' Under the cadmium standard, an employee must be removed if a written medical opinion determines that removal is justified by ''biological monitoring results, inability to wear a respirator, evidence of illness, other signs or symptoms of cadmium-related dysfunction or disease, or any other reason deemed medically sufficient * * *.'' The formaldehyde standard (29 CFR 1910.1048) contains no objective criteria for medical removal but provides for removal ''if the physician finds that significant irritation of the mucosa of the eyes or of the upper airways, respiratory sensitization, dermal irritation, or dermal sensitization result from workplace formaldehyde exposure and recommends restrictions or removal.''

In the proposed MC rule, OSHA solicited comment on whether it should provide for medical removal protection benefits in the final rule. 56 FR at 57043 (Nov. 7, 1991). A number of commenters urged the Agency to do so on the basis that MRPB would encourage employee participation in medical surveillance. In the final rule, OSHA found, as it had in the earlier standards discussed above, that MRPB would increase employee participation in medical surveillance. However, the Agency declined to include such a provision in the standard because it did not believe it could offer substantive guidance to medical professionals as to when it would be appropriate to remove an employee from further MC exposure or to return a removed employee to the workplace. 62 FR at 1595.

The parties to the motion for reconsideration believe they have drafted a provision that is narrowly tailored to diseases that MC exposure may aggravate and that limits the scope of the provision in a way that avoids any undue economic burden on small employers. Under their proposal, MRPB would be required only when a physician or other licensed health care professional (PLHCP) determines that the employee's exposure to MC would contribute to or aggravate the employee's existing cardiac, hepatic, neurological (including stroke), or skin disease. The parties note that the heart, liver, central nervous system, and skin are the organs and systems that OSHA identified in the standard as being particularly susceptible to MC-induced noncarcinogenic health effects. They believe that physicians and other licensed health care professionals will be able to render an informed judgment as to whether MC exposure will contribute to or aggravate an existing disease affecting these systems or organs.

The parties further propose, in paragraph (j)(10), that the standard require the PLHCP to presume that MC exposure below the 8-hour TWA PEL

will not aggravate an existing disease of the heart, liver, central nervous system, or skin. Under the proposal, a PLHCP who recommends removal of an employee who is exposed below the 8-hour TWA PEL must cite specific medical evidence to support the recommendation. Absent such evidence, the employer need not remove the employee.

When a medical determination indicates removal, the parties' proposal requires the employer to either transfer the employee to comparable work where MC exposures are below the action level or remove the employee from MC exposure. For each employee thus removed or transferred, the employer must maintain the employee's earnings, seniority, and other employment rights and benefits for up to six months. The employer may cease paying MRP benefits before the end of the six-month period upon receipt of a medical determination that the employee's exposure to MC will no longer aggravate any existing cardiac, hepatic, neurological, or dermal disease, or upon receipt of a medical determination concluding that the employee can never return to MC exposure above the action level.

The parties also propose inclusion of provisions that OSHA has routinely included in previous standards that provided for MRPB. These provisions (1) allow an employer to condition an employee's receipt of MRPB on participation in follow-up medical surveillance; (2) provide for a diminution of MRP benefits to offset any workers' compensation indemnity payments the employee receives for the same period of time; (3) provide an offset of such benefits against compensation from a publicly or employer-funded compensation program or income the employee receives from other employment that is made possible by virtue of the employee's removal, and (4) require the employer to pay MRP benefits if it voluntarily removes or restricts an employee due to the effects of MC exposure on the employee's medical condition.

The current standard provides for the employer to select the PLHCP who conducts medical surveillance. Under the parties' proposal, the health care professional selected by the employer would make the medical determination whether to recommend that an employee be removed. The parties also, propose to include a provision that allows employees the option to have the recommendation of the employer-selected health care professional reviewed by a health care professional or the employee's choice. If the two health care professionals disagree, they jointly designate a third, who must be a specialist in the field at issue and whose written opinion is the definitive medical determination under the standard. The parties note that, in previous standards that have provided for MRPB, OSHA has included similar provisions for multi-step review to strengthen the basis for medical removal determinations and to increase employee confidence in those determinations.

The parties have also recommended a provision designed to avoid an undue burden that could result if a small business would need to provide medical removal protection benefits to more than one employee at the same time. Paragraph (j)(11)(i)(B) of their proposal states that if the employer receives a recommendation for medical removal of an additional employee and comparable work that does not involve exposure to MC at or above the action level is not available, the employer need not remove the additional employee if the employer can demonstrate that removal and the costs of MRP benefits to that employee, considering feasibility in relation to the size of the employer's business and the other requirements of this standard, make further reliance on MRP an inappropriate remedy. In such a case, the employer may retain the additional employee in the existence job until transfer or removal becomes appropriate, provided: (i) The employer or the PLHCP informs the additional employee of the risk to the employee's health from continued MC exposure; and (ii) the employer ensures that the employee receives medical surveillance, including a physical examination, at least every 60 days.

OSHA has carefully considered the parties' proposal in light of its earlier concern that a MRPB provision must provide sufficient guidance to licensed health care professionals as to when medical removal is indicated. OSHA concludes that the MRPB provision recommended by the parties delineates with sufficient specificity the circumstances that can trigger medical removal protection benefits. First, the provision requires MRPB only if the PLHCP finds that the employee has an identifiable disease of one or more specific organs that are known to be susceptible to MC exposure. Second, by providing for a rebuttable presumption that such a disease will not be aggravated by exposure to MC below the 8-hour TWA PEL, the parties' proposal ensures that the physician or other health care professional will take into account the level of methylene chloride to which the worker is exposed. OSHA believes that, with these constraints, the parties' proposal will improve employee confidence and participation in medical surveillance while providing adequate guidance to the physicians and other licensed health care professionals who will be conducting medical surveillance and making recommendations for medical removal under the standard.

OSHA also believes that the ancillary provisions of the MRPB program recommended by the parties are appropriate. The parties have patterned their recommendation on the existing OSHA standards that provide for MRPB. OSHA agrees that provisions it has routinely included as part of a MRPB program, including those providing for a multi-step review process, should be included in the methylene chloride standard. OSHA continues to believe that multi-step review is vital to ensuring employee confidence in medical removal determinations and is a necessary part of any standard that provides for medical removal protection benefits.

The one provision in the parties' proposal with no direct counterpart in earlier standards that provide for MRPB is the provision in proposed paragraph (j)(11)(i)(B) that would allow an employer who has already removed one or more employees under paragraph (j)(11) to retain an additional employee in the existing job despite a removal recommendation if removal would result in undue economic burden. In such a situation, the parties propose that the employer must provide enhanced medical surveillance to the employee and must ensure that the employee who is not removed is fully informed of the health risk presented by continued MC exposure.

OSHA agrees with the parties that, in the limited circumstances specified in this provision, it is appropriate to allow an employer to retain an employee in his or her present job, even when the PLHCP has recommended removal, provided the employer ensures that the employee receives the more frequent medical surveillance specified in the proposed provision and is fully aware of the health risk. Frequent medical surveillance and full information will enable the employer and employee to take steps to minimize the risk under exiting workplace conditions, by, for example, implementing those controls that are in place and strictly following work practices that are designed to minimize the employee's MC exposure. Thus, the parties' proposal provides additional protection to those workers who would be retained in their current jobs under paragraph (j)(11)(i)(B).

IV. Extensions of Startup Dates

The motion for reconsideration requests that the standard's current final engineering control startup date of April 10, 2000, which is limited in the final standard to employers with fewer than 20 employees, also apply to employers in the specified application groups who have 20–49 employees and to foam fabricators who have 20–149 employees. According to the parties employers in these application groups and size categories, like those with fewer than 20 employees, have limited resources with which to develop and implement engineering controls and will be able to use those resources more efficiently if given additional time to develop and install effective controls and to take advantage of the compliance assistance that OSHA plans to offer. The motion requests shorter extensions of the engineering control dates for larger employers in these application groups.

The parties further request that respirator use to achieve the 8-hour TWA PEL (currently required by Aug. 31, 1998 under a partial stay issued by OSHA on Dec. 18, 1997, 62 FR 66275) not be required before the engineering control startup dates for those employers covered by the motion. They contend that workers would be better protected if these employers can concentrate their limited resources on implementing effective engineering controls rather than diverting part of those resources to interim and expensive respiratory protection that would no longer be needed a short time later, once full compliance with the 8-hour TWA PEL and STEL is achieved by engineering controls.

The following chart shows the startup dates requested by the motion for reconsideration. Where the startup date for a provision has already passed, the chart lists that provision as being ''in effect.'' For the reasons discussed below, OSHA is now proposing to adopt the startup dates requested by the parties to the motion.

PROPOSED STARTUP DATES

	Employers with fewer than 20 employees	Polyurethane foam mfrs. with 20 or more employees	Selected applications[1] with 1–49 employees and foam fabricators with 1–149 employees	Selected applications[1] with 50 or more employees and foam fabricators with 150 or more employees	All other employers with 20 or more employees
Engineering controls to achieve 8-hour TWA PEL and STEL.	April 10, 2000 (unchanged from current standard).	October 10, 1999[2]	April 10, 2000[2]	April 10, 1999[2]	In effect.
Respirators to achieve 8-hour TWA PEL.	April 10, 2000[2]	October 10, 2000[2]	April 10, 2000[2]	April 10, 1999[2]	In effect.
Respirators to achieve STEL.	In effect	In effect	In effect	In effect	In effect.
All other provisions	In effect	In effect	In effect	In effect	In effect.

[1] As described earlier, the selected applications are furniture refinishing; general aviation aircraft stripping; product formulation; use of MC-based adhesive for boat building and repair, recreational vehicle manufacture, van conversion, or upholstery; and use of MC in construction work for restoration and preservation of buildings, painting and paint removal, cabinet making, or floor refinishing and resurfacing.

[2] Under a partial stay issued on December 18, 1997 (62 FR 66275) these dates are now December 10, 1998 for engineering controls and August 31, 1998 for respirators to achieve the 8-hour TWA PEL.

OSHA generally agrees that worker protection against MC exposure will best be achieved if employers develop and install effective engineering controls as soon as practicable. OSHA has long recognized that engineering controls are superior to respiratory protection as a means of protecting workers against inhalation of toxic chemicals. Engineering controls protect workers by reducing the airborne concentrations of methylene chloride to or below permitted limits. Their effectiveness does not, unlike respirator use, depend on the respiratory protection functioning as designed or on employers effectively supervising employees to ensure that they use and maintain respiratory equipment consistently and properly. Respirators also may present safety hazards by limiting workers' mobility, vision, and ability to communicate.

The agency also recognizes that employers require a reasonable amount of time to develop and install engineering controls. Engineering controls, such as local exhaust ventilation, must be properly designed and installed if they are to work efficiently. The parties request that OSHA help employers in the application groups for which relief is sought to develop effective engineering controls by offering compliance assistance that will give those employers guidance as to appropriate engineering controls and avoid the uncertainty and expense that would result if each employer were to attempt to design and implement its own controls. OSHA agrees that compliance assistance would help employers use their resources more efficiently and plans to offer such assistance. Already, OSHA has developed Fact Sheets for a number of applications that identify engineering controls and work practices that employers can use to protect their employees against MC exposure. OSHA has also developed a small entity compliance guide and has started conducting a series of outreach seminars on the MC standard in various cities around the country. OSHA intends to add to this information base to further help employers to develop engineering controls that would be both effective and feasible to implement in their facilities.

Although OSHA has long recognized the superiority of engineering controls, respirator use is necessary when engineering and work practice controls cannot achieve the required exposure levels. The Agency has consistently required that respirators be used when feasible engineering and work practice controls cannot achieve permissible exposure limits. OSHA also requires the use of respirators for interim protection while engineering controls are being developed and installed. For most toxic chemicals, air-purifying respirators, which are relatively inexpensive, provide effective protection at most workplace exposure levels. However, air-purifying respirators do not provide effective protection against MC exposure because MC quickly penetrates all currently available organic vapor cartridges. Therefore, when respirators are required under the MC standard,

atmosphere-supplying respirators must be used.

Atmosphere-supplying respirators are a relatively expensive type of respiratory equipment, requiring the employer not only to purchase the respiratory equipment itself but also to install an air compressor and associated ductwork or rent cylinders containing breathing air. In light of the relatively high cost associated with the atmosphere-supplying respirators required by the MC standard, OSHA agrees with the parties that the standard should permit employers in the identified application groups to concentrate their limited resources on developing permanent engineering solutions rather than diverting part of those resources to interim respiratory protection to achieve the 8-hour TWA PEL.

OSHA further notes that the parties' proposal will provide workers with significant interim protection before the final compliance deadline of April 10, 2000 or by whatever earlier date controls are required. First, under the parties' proposal, the STEL will go into effect as scheduled, and employers will be required to ensure that some combination of engineering controls, work practice controls, and respiratory protection reduce exposures below that level. Workers will therefore be protected against acute health effects associated with high short-term exposure to MC. Moreover, reduction of short-term exposures to below the STEL will, in many cases, help reduce 8-hour time-weighted average exposures as well and will thereby provide workers with some interim protection against the chronic effects of MC exposure.

The parties' proposal will also not delay compliance with the requirement that employers implement feasible work practices to reduce MC exposures. Such controls can achieve significant reductions in MC exposures in many workplaces at low cost. Early implementation of work practice controls will also enable employers to evaluate the extent to which exposures can be reduced by such controls and will enable them to better determine the nature and extent of the engineering controls they will need to achieve the 8-hour TWA PEL and STEL. Furthermore, the remaining protections of the standard (regulated areas, protective work clothing and equipment, hygiene facilities, hazard communication, employee information and training, and recordkeeping) will take effect as currently scheduled for all employers.

In many workplace situations, adherence to careful work practices will achieve substantial reductions in MC exposures. In its Fact Sheets, OSHA has identified feasible work practices for several of the application groups (furniture refinishing, polyurethane foam manufacturing, construction work) for which the parties seek relief. Many of the identified work practices would be feasible for and useful to facilities in other application groups as well. To facilitate widespread dissemination of the information on work practices in the Fact Sheets, OSHA is listing them below.

A. Furniture Refinishers

Keep MC Vapors Contained

- Keep the door to mixing/storage areas closed at all times.
- Store and transport MC only in approved safety containers.
- Properly label all MC containers to indicate their contents, hazards, and proper use, storage and disposal. Read these labels and follow the directions.
- Keep solution containers closed tightly when not in use.
- Avoid unnecessary transfer or movement of stripping solutions.
- Keep dip tanks and reservoir tanks covered when not in use.
- Keep the stripping solution at the appropriate temperature (often around 70° F). At this temperature, wax in the solution will form a vapor barrier that prevents the solution from evaporating too quickly. If the temperature is too high or too low, the wax will not form a vapor barrier.
- Do not let sludge dry on the stripping table. Place the wet sludge in sealed containers for later recovery or disposal, or dry it using proper engineering controls (e.g., local exhaust ventilation) to capture the MC vapors.

Avoid Breathing MC Vapors

- Turn on the dip tank or stripping table ventilation system at least an hour before work begins or leave it on overnight.
- Avoid breathing air directly above the stripping solution and dip tank. Do not lean over the tank when working.
- Avoid breathing the air directly above the furniture during manual stripping. Do not lean over an area covered with stripper.
- Do not work or stand between solution-covered furniture and the exhaust system.
- Turn the solution-recycling system off when it is not being used.
- Do not rely on the odor of MC to warn you of overexposure. People cannot smell MC until vapor concentrations are above 300 ppm, which is 12 times higher than the 8-hour time-weighted-average permissible exposure limit of 25 ppm. Also, you sense of smell can quickly get used to the odor of MC so that you stop noticing it.
- If you become dizzy, light-headed, or have other symptoms of MC exposure, go immediately to an area with fresh air.

Minimize the Chance of Spills and Leaks

- Develop and follow your facility's procedures for detecting MC leaks from process equipment, holding tanks, and spill control devices.
- Frequently inspect process equipment, holding tanks, and spill control devices for cracks, loose parts, and other possible sources of leaks.
- Where spills occur, follow procedures for containing them.
- Clean up all spills and leaks as quickly as possible.
- Place rags, waste, paper towels, or absorbent used to clean spills in a closed container (preferably a non-aluminum, all metal safety container) immediately after use.
- Make sure that leaks are repaired and spills cleaned up by employees who are trained in proper cleanup methods. These employees should wear appropriate personal protective equipment.

Take Extra Precautions in Low and Confined Spaces

MC vapors are heavier than air, so they tend to move to low, unventilated spaces such as tanks and maintenance pits.

- Do not enter or lean into a storage tank, dip tank, or low-lying confined area until it has been completely aired out and tested. Wear proper PPE and follow the appropriate confined space entry procedures outlined in OSHA's Permit Required Confined Spaces standard (29 CFR 1910.146).
- Use a long-handled tool to pick up items that you drop into a confined space or low-lying area.

B. Polyurethane Foam Manufacturers

Keep MC Vapors Contained

- Keep the doors to the pouring and cooling areas closed at all times.
- Store and transport MC only in approved safety containers.
- Properly label all MC containers to indicate their contents, hazards, and proper use, storage and disposal. Read these labels and follow the directions.
- Keep MC containers closed tightly when not in use.
- Avoid unnecessary transfer or movement of MC.
- Keep the openings on the sides of the tunnel closed when it is not in use.

This keeps MC vapors from escaping and ensures that the makeup air system at the end of the tunnel runs well.

Avoid Breathing MC Vapors

- Turn on local exhaust ventilation systems in the tunnel and cooling rooms at least an hour before work begins or leave them on overnight.
- Turn on the general ventilation system in the cooling room at least an hour before work beings or leave it on overnight.
- Avoid breathing air directly above cooling foam.
- When possible, minimize the amount of time spent near the cooling foam and tunnel openings because these areas are likely to have the highest levels of MC vapors.
- Do not work or stand between cooling foam and the exhaust system.
- Do not rely on the odor of MC to warn you of overexposure. People cannot smell MC until vapor concentrations are above 300 ppm, which is 12 times higher than the 8-hour time-weighted-average permissible exposure limit of 25 ppm. Also, you sense of smell can quickly get used to the odor of MC so that you stop noticing it.
- If you become dizzy, light-headed, or have other symptoms of MC exposure, go immediately to an area with fresh air.

Minimize the Chance of Spills and Leaks

- Develop and follow your facility's procedures for detecting MC leaks from process equipment, holding tanks, and spill control devices.
- Frequently inspect the tunnel and other equipment for cracks, loose parts, and other possible sources of leaks.
- Clean up all spills and leaks as quickly as possible.
- Place rags, waste, paper towels, or absorbent used to clean spills in a closed container (preferably a non-aluminum, all metal safety container) immediately after use.
- Make sure that leaks are repaired and spills cleaned up by employees who are trained in proper cleanup methods. These employees should wear appropriate personal protective equipment.

Take Extra Precautions in Low and Confined Spaces

MC vapors are heavier than air, so they tend to move to low, unventilated spaces.

- Do not enter or lean into a low-lying confined area until it has been completely aired out and tested. Wear proper PPE and follow the appropriate confined space entry procedures outlined in OSHA's Permit Required Confined Spaces standard (29 CFR 1910.146).
- Use a long-handled tool to pick up items that you drop into a confined space or low-lying area.

C. Construction Work

Keep MC Vapors Contained

- Store and transport MC products only in approved safety containers.
- Properly label all MC containers to indicate their contents, hazards, and proper use, storage and disposal. Read these labels and follow the directions.
- Keep MC product containers closed tightly when not in use.
- Avoid unnecessary transfer or movement of MC products.

Avoid Breathing MC Vapors

- Avoid breathing the air directly above areas covered with MC. Do not lean over an area covered with MC.
- Do not work or stand between MC-covered areas and the exhaust system.
- Do not rely on the odor of MC to warn you of overexposure. People cannot smell MC until vapor concentrations are above 300 ppm, which is 12 times higher than the 8-hour time-weighted-average permissible exposure limit of 25 ppm.

Also, your sense of smell can quickly get used to the odor of MC so that you stop noticing it.

- If you become dizzy, light-headed, or have other symptoms of MC exposure, go immediately to an area with fresh air.

Minimize the Chance of Spills and Leaks

- Develop and follow procedures for containing MC spills or leaks.
- Frequently inspect MC product containers for cracks or other possible sources of leaks.
- Clean up all spills and leaks as quickly as possible.
- Place rags, waste, paper towels, or absorbent used to clean spills in a closed container (preferably a non-aluminum, all metal safety container) immediately after use.
- Make sure that leaks are repaired and spills cleaned up by employees who are trained in proper cleanup methods. These employees should wear appropriate personal protective equipment.

Take extra Precautions in Low and Confined Spaces

MC vapors are heavier than air, so they tend to move to low, unventilated spaces.

- Do not enter or lean into a low-lying confined area until it has been completely aired out and tested. Wear proper PPE and follow the appropriate confined space entry procedures outlined in OSHA's Permit Required Confined Spaces standard (29 CFR 1910.146).
- Use a long-handled tool to pick up items that you drop in area where MC is being used.

V. Preliminary Economic and Regulatory Flexibility Analysis

OSHA is proposing to revise paragraph (j), Medical Surveillance, of the final rule governing occupational exposure to methlylene chloride (MC) (29 CFR 1910.1052) to add medical removal protection benefits to the rule. This preliminary economic analysis estimates the costs of complying with the proposed MRP provisions and then assesses the economic feasibility and potential economic impacts of these costs on firms in the affected sectors. The information used in this analysis is taken from the exposure profile, industry profile, and economic impacts analysis presented in the Final Economic Analysis (Ex. 129) that accompanied OSHA's final rule for methylene chloride (Federal Register Vol. 62, 7, pp. 1494 to 1619). Relying on the data developed for the analysis to support this proposed revision to the final rule ensures analytical consistency and comparability across the two economic analysis documents.

OSHA's final MC rule did not contain medical removal protection provisions. The revisions being proposed today respond to a motion for reconsideration filed by the United Auto Workers (UAW), the Halogenated Solvents Industry Alliance, Inc., and others. As requested in that motion, OSHA is proposing to add paragraphs (j)(9)(i) (A) and (B), (j)(10), (j)(11), (j)(12), (j)(13), and (j)(14), dealing with medical removal protection, medical removal protection benefits, voluntary removal or restriction of an employee, and multiple health care professional review, respectively, to the final rule. Medical removal protection (MRP) would apply only under certain limited circumstances, i.e., medical removal protection would be required only if a physician or other licensed health care professional finds that exposure to MC may contribute to or aggravate the employee's existing cardiac, hepatic, neurological (including stroke), or dermal disease. The proposed rule instructs the physician or other licensed health care professional to presume that a medical condition is unlikely to require removal form exposure to MC,

unless medical evidence indicates to the contrary, if the employee is not exposed to MC at concentrations above the 8-hour TWA PEL of 25 ppm. The physician or other licensed health care professional may also recommend removal from exposure to MC for any other condition that would, in the health care professional's opinion, place the employee's health at risk of material impairment from exposure to MC, but MRP would only be triggered by a finding that exposure to MC may contribute to or aggravate the employee's existing cardiac, hepatic, neurological (including stroke), or dermal disease.

Any employee medically removed must (1) be provided with comparable work where MC exposures are below the action level, or (2) be completely removed from MC exposure. The employee's total pay, benefits and seniority must be maintained throughout the period of medical removal protection, even if the only way to remove the employee from MC exposure is to send him or her home for the duration of the medical removal protection period. The employer may reduce the amount paid to the removed worker to the extent that the worker's previous pay has been offset by other compensation (such as worker's compensation payments) or by wages from another job made possible by the medical removal.

The proposal would require employers to maintain medical removal protection benefits for up to six months. Medical removal protection may be terminated in less than 6 months if a medical determination shows that the employee may return to MC exposure, or a medical determination is made that the employee can never return to MC exposure.

In situations in which no comparable work is available for the medically removed employee, the proposal would allow the employer to demonstrate that the medical removal and the costs of medical removal protection benefits, considering feasibility in relation to the size of the employer's business and the other requirements of this standard, make reliance on medical removal protection an inappropriate remedy. In such a situation, the employer may retain the employee in the existing job until transfer or removal becomes appropriate, provided that the employer ensures that the employee receives additional medical surveillance, including a physical examination at least every 60 days until removal or transfer occurs, and that the employer or PLHCP informs the employee of the risk to the employee's health from continued MC exposure.

In conducting this economic analysis, OSHA has estimated the number of workers with the four listed types of conditions (neurological, hepatic, cardiac, and dermal disease) that can trigger MRP. OSHA has assumed that medical removal protection would be extended only to employees exposed above the PEL, as reflected by the presumption. This analysis also assumes that all employers will provide medical removal protection whenever a physician or other licensed health care provider recommends removal, i.e., OSHA has not quantified the number of times small firms may retain an employee for whom a removal recommendation has been made in the employee's existing job due to the employer's financial inability to remove the employee. Because some very small firms may find that medical removal protection is infeasible in their circumstances but this cost analysis assumes that all such employees will be removed, OSHA believes that this analysis is likely to overestimate the costs associated with MRP.

Cost of Medical Removal Protection Provisions

OSHA's estimates of the costs of the proposed medical removal protection provisions are calculated based on the number of workers eligible for medical removal protection times the frequency of the medical conditions that would trigger medical removal protection in the exposed population times the costs of medical removal protection for each type of medical condition.

Number of Workers Eligible for Medical Removal Protection Under the Proposal

Because of the presumption stated explicitly in the proposed revisions, medical removal protection will be limited in almost all cases to employees exposed to MC at concentrations above the PEL of 25 PPM as an 8-hour TWA. The Final Economic Analysis (Ex. 129) estimated that approximately 55,000 employees in all affected application groups are currently exposed above 25 ppm. This estimate is used here to calculate the number of employees potentially eligible for medical removal protection during the year in which medical removal protection would be in effect but the engineering control requirements of the rule would not yet be in effect for some of the application groups. Once the implementation of engineering controls is required, OSHA assumes, for the purposes of this analysis, that 10 percent of those employees previously exposed to an 8-hour TWA above 25 ppm (5,500 employees) would continue to be exposed to an 8-hour TWA above 25 ppm.

OSHA believes that reliance on these assumptions will lead to an overestimate of the number of employees eligible for medical removal protection because some firms will have implemented controls and lower the exposure of their employees well before the final standard requires them to do so. Once the standard requires employers to implement engineering controls, OSHA's Final Economic Analysis (Ex. 129) estimated that the exposure of almost all employees would be reduced to MC levels below 25 ppm as a 8-hour TWA. To capture all costs potentially associated with the proposed medical removal protection provisions, OSHA has assumed for this analysis that some employees will continue to be exposed above 25 ppm.

Frequency of Medical Removal Protection Under the Proposed Provisions

The proposed changes to the occupational exposure to methylene chloride standard allow for medical removal protection in the event that exposure to methylene chloride ''may contribute to or aggravate existing cardiac, hepatic, neurological (including stroke), or skin disease.'' Medical removal protection does not apply if the condition is such that removal from MC exposure must be permanent.

OSHA believes that MC-induced or aggravated neurological symptoms (other than stoke) occur infrequently and that when such protection is triggered by neurological manifestations (other than stroke), the period of time involved in the removal will be relatively brief. OSHA also believes that MC-induced or aggravated heart conditions or strokes are likely to result in permanent medical removal, and thus that employers will not incur the costs of medical removal protection in these cases. This analysis therefore focuses on medical removal protection for MC-induced or aggravated dermatitis or abnormal hepatic conditions. Each of these conditions is likely to resolve with time, proper treatment, or both, and these are therefore the conditions likely to result in a determination that temporary medical removal protection, rather than permanent removal, is needed.

Because the proposal would provide for medical removal protection in situations where exposure to MC contributes to or aggravates the listed condition, this analysis focuses on the frequency with which each covered

condition occurs in the working population, and not simply on the frequency with which MC causes these conditions. For the first year after the MRP provisions are in effect, OSHA has no evidence that hepatic conditions are more prevalent in workplaces that use MC than in the general working age population and therefore assumes that the prevalence of hepatic conditions will be the same as in the general working age population (18–65). OSHA estimates that 5 percent of the working population will be found on evaluation to have hepatic conditions sufficiently abnormal to trigger medical removal.

For dermatitis, which is seldom a lasting condition, OSHA similarly assumes, in the absence of evidence to the contrary, that the prevalence in the MC-exposed workforce is the same as the rate in the general working age population. For dermatitis, Vital and Health Statistics (National Center for Health Statistics, 1995) reports that, in 1993, the prevalence of dermatitis was 2.93 percent for persons between 18 and 45 and 2.18 percent for persons between 45 and65. Weighting using the BLS data cited above, OSHA finds that 2.7 percent of the MC-exposed workforce will be found on the first required medical evaluation to have dermatitis and will be medically removed.

After the proposed standard has been in effect for the first year, OSHA assumes that the prevalence of dermatitis will continue at the same rate. For liver conditions, OSHA assumes that most of the conditions that triggered removal in the first year will have been resolved and that the number of older cases that flare up and have to be treated again, combined with new cases that trigger medical removal, will occur at a combined rate ⅕ that of the initial rate.

Costs of Medical Removal Protection

Employers incur three kinds of costs for medical removal protection: costs for medical evaluations not already required; costs resulting from changing the employee's job, such as those related to retraining and lost productivity; and, where alternative jobs that do not involve MC exposure are not available, the costs of keeping a worker who is not working on the payroll.

Employers may incur costs for medical evaluations (over and above those already required for medical surveillance) for two reasons: to determine if the employee can return to work, and to determine, using multiple PLHCP review, whether the initial medical determination was correct. Because the proposal allows employees to be removed from medical removal protection status only on the basis of a new medical determination, every instance of medical removal protection will require one additional examination. OSHA estimated the cost of a medical examination at $130 in the Final Economic Analysis (Ex. 129). Every case of medical removal protection would require at least one additional medical evaluation. In addition, OSHA estimates that 10 percent of all removed cases will require a second medical evaluation either for the purpose of multiple health care professional review or because the first examination showed that the employee could not yet be returned to normal duty.

The largest MRP-related costs in almost all cases will be the cost of paying for time away from work for the removed employee. OSHA estimates that the typical dermatitis case will involve 6 days away from work. BLS (BLS, Occupational Injuries and Illnesses: Counts, Rates, and Characteristics, 1994) reports that, in 1994, the typical lost worktime case of dermatitis involved 3 days away from work. OSHA allowed an additional three days to allow time for a return-to-work determination to be made. For medical removal for hepatic conditions, OSHA estimates that a 4-week period of medical removal will normally be sufficient to provide for stabilization and a return to the normal range for the typical case of elevated liver enzymes. Because almost no cases will be resolved in less than 4 weeks and a small number of cases (such as those involving serious liver disease) may take much longer to resolve, OSHA's cost estimate estimates 5 weeks as the average period of medical removal for these cases.

For the short-term medical removal associated with dermatitis, OSHA has conservatively assumed that the employee will be paid full wages and benefits even though not at work. For the longer term medical removal associated with hepatic conditions, OSHA estimates that, in firms with more than 20 employees, alternative jobs not involving exposure to MC will be found for affected employees. OSHA estimates the costs of moving employees to alternative jobs as equivalent to the loss of 20 person hours in lost productivity and/or retraining expenses. For firms with fewer than 20 employees, OSHA expects that there may be more difficulty finding alternative positions both because fewer alternative positions are available and because more positions in the establishment are likely to involve exposure to MC.

For the very small firms in furniture stripping, where all jobs may involve exposure to MC, OSHA has assumed that all cases of medical removal will involve removing employees from work entirely, and thus that employers will incur the full costs of the employee's wages and benefits for the five weeks the employee is medically removed. Firms with fewer than 20 employees in other application groups tend to be somewhat larger than in furniture stripping and will therefore be more likely to have work that does not involve exposure to MC at levels above the action level. For example, in such small-business-dominated application groups as printing shops, and in small cold cleaning and paint stripping operations, exposure to MC tends to involve only a single employee and is commonly intermittent even for that employee. For establishments with fewer than 20 employees in application groups other than furniture stripping, OSHA estimates that 50% will be able to find alternative employment and 50% will need to send the employee home because alternative jobs without MC exposure cannot be found.

Annualized Cost Estimates

Table 1 shows OSHA's estimated annualized costs for firms in each application group. The total annualized costs for medical removal protection are estimated to be $920,387 per year for all affected employers. The greatest costs are in the cold cleaning application group, the all other industrial paint stripping application group, the construction application group, and the furniture stripping application group. All of these application groups have annualized MRP costs in excess of $100,000 per year.

TABLE 1.—ANNUALIZED COSTS OF MRP FOR METHYLENE CHLORIDE APPLICATION GROUPS

Application group	Annualized costs ($)
Methylene Chloride Manufacturing	70
Distribution/Formulation of Solvents	6,597
Metal Cleaning:	
Cold Degreasing and Other Cold Cleaning	307,216
Open-Top Vapor Degreasing	2,709
Conveyorized Vapor Degreasing	378
Semiconductors	1,147
Printed Circuit Boards	0
Aerosol Packaging	2,875
Paint Remover Manufacturing	593
Paint Manufacturing	823
Paint Stripping:	
Aircraft Stripping	9,662

TABLE 1.—ANNUALIZED COSTS OF MRP FOR METHYLENE CHLORIDE APPLICATION GROUPS—Continued

Application group	Annualized costs ($)
Furniture Stripping	80,579
All Other Industrial Paint Stripping	206,619
Flexible Polyurethane Foam Manufacturing	4,296
Plastics and Adhesives Manufacturing and Use	52,639

TABLE 1.—ANNUALIZED COSTS OF MRP FOR METHYLENE CHLORIDE APPLICATION GROUPS—Continued

Application group	Annualized costs ($)
Ink and Ink Solvent Manufacturing	182
Ink Solvent Use	53,298
Pesticide Manufacturing and Formulation	541
Pharmaceutical Manufacturing	3,576
Solvent Recovery	0
Film Base Manufacturing	0

TABLE 1.—ANNUALIZED COSTS OF MRP FOR METHYLENE CHLORIDE APPLICATION GROUPS—Continued

Application group	Annualized costs ($)
Polycarbonate Manufacturing	0
Construction	115,297
Shipyards	18,652
Total, All Application Groups	920,387

Source: Office of Regulatory Analysis; OSHA; Department of Labor.

TABLE 2.—SCREENING ANALYSIS TO IDENTIFY POSSIBLE ECONOMIC IMPACTS OF THE PROPOSED MC STANDARD'S MEDICAL REMOVAL PROVISIONS

Application group	Number of affected establishments	Annualized costs of compliance	
		as percent of sales	as percent of profit
Manufacture of MC	4	0.0000	0.0004
Distribution/Formulation of Solvents	320	0.0003	0.0046
Metal Cleaning:			
Cold Degreasing and Other Cold Cleaning	23,717	0.0001	0.0021
Open-Top Vapor Degreasing	278	0.0001	0.0016
Conveyorized Vapor Degreasing	45	0.0001	0.0014
Semiconductors	239	0.0000	0.0002
Printed Circuit Boards	141	0.0000	0.0000
Aerosol Packaging	50	0.0001	0.0012
Paint Remover Manufacturing	80	0.0001	0.0015
Paint Manufacturing	49	0.0001	0.0027
Paint Remover Use (Paint Stripping):			
Aircraft Stripping	300	0.0001	0.0017
Furniture Stripping	6,152	0.0154	0.2977
All Other Industrial Paint Stripping	35,041	0.0000	0.0010
Flexible Polyurethane Foam Manufacturing	100	0.0003	0.0093
Plastics and Adhesives Manufacturing and Use	3,487	0.0000	0.0000
Ink and Ink Solvent Manufacturing	15	0.0000	0.0003
Ink Solvent Use	11,869	0.0004	0.0098
Pesticide Manufacturing and Formulation	60	0.0001	0.0018
Pharmaceutical Manufacturing	108	0.0000	0.0004
Solvent Recovery	35	0.0000	0.0000
Film Base	1	0.0000	0.0000
Polycarbonates	4	0.0000	0.0000
Construction	9,504	0.0027	0.0705
Shipyards	25	0.0025	0.0655
All Application Groups	91,624	0.0014	0.0296

Source: Office of Regulatory Analysis; OSHA; Department of Labor

Economic Impacts

Table 2 combines the cost data from Table 1 and the economic profile information provided in the Final Economic Analysis for the Methylene Chloride rule (Ex. 129) to provide estimates of the potential impacts of these compliance costs on firms in affected application groups. The proposed medical removal protection is clearly economically feasible: on average, annualized compliance costs amount only to 0.0014 percent of estimated sales and 0.03 percent of profits. For all but one application group—furniture stripping—compliance costs are less than 0.07 percent of profits, and less than 0.003 percent of the value of sales. Even in furniture stripping, the annualized costs of medical removal protection are still only 0.015 percent of sales and 0.3 percent of profits. Impacts of this magnitude do not threaten the economic feasibility of firms in any affected application group. If highly unusual circumstances were to arise that pose such a threat, the proposed standard allows specifically for the cost impact to be considered on a case-by-case basis.

OSHA's cost methodology for this proposal tends to overestimate the costs and economic impacts of the standard for several reasons. First, OSHA has not taken into account cost savings that employers will realize from the extended startup dates that are being proposed. As discussed above, by extending the startup date for the use of respirators to achieve the 8-hour TWA PEL, this proposal will enable some employers to avoid using respirators at all because they will achieve the 8-hour TWA PEL by means of engineering controls before the date that respirator

use is required. Such employers will achieve significant cost savings as compared to the current standard. OSHA has not, however, attempted to quantify those savings.

Other aspects of OSHA's methodology also tend to result in cost overestimates. OSHA's use of general population prevalence data to estimate the prevalence of conditions that might lead to medical removal overestimates costs by ignoring the possibility that workers in MC establishments may be healthier than the general population, i.e., it ignores the ''healthy worker'' effect. OSHA has also assumed that all unusual hepatic conditions will lead to medical removal, when in many cases no medical removal protection will be necessary. Finally, OSHA has also included in its cost estimate all cases involving medical removal, when it is in fact likely that some smaller firms would be able to argue that the cost of extending MRP benefits to an additional employee would make reliance on MRP an inappropriate remedy and thereby avoid removing that additional employee, as allowed by the proposal.

Regulatory Flexibility Screening Analysis and Certification

Tables 3 and 4 provide a regulatory flexibility screening analysis. As in the analysis for all firms in Table 2, OSHA used the cost data presented in Table 1 in combination with the data on small firms presented in the Final Economic Analysis (Ex. 129). Table 3 shows annualized compliance costs as a percentage of revenues and profits using SBA definitions of small firms for each relevant SIC code within each application group. This analysis shows that costs as a percentage of revenues and profits are slightly greater than is the case for all firms in the SIC, but still average only 0.0017 percent of revenues and 0.035 percent of profits. The most heavily impacted industry is furniture stripping, but the impacts in this group are the same for all firms in the group because all furniture stripping firms are small using the SBA definition.

TABLE 3.—SCREENING ANALYSIS OF POTENTIAL ECONOMIC IMPACTS ON SMALLER FIRMS (SMALL ESTABLISHMENTS AND FIRMS AS DEFINED BY SBA UNDER SECTION 3 OF THE SMALL BUSINESS ACT)

Application group	Number of small establishments affected	Costs as a percentage of profits for small firms	Costs as a percentage of sales for small firms
Manufacture of MC	0	NA	NA
Distribution/Formulation of Solvents	278	0.0005	0.0072
Metal Cleaning:			
Cold Degreasing and Other Cold Cleaning	22.365	0.0003	0.0067
Open-Top Vapor Degreasing	262	0.0003	0.0051
Conveyorized Vapor Degreasing	42	0.0002	0.0044
Semiconductors	185	0.0000	0.0002
Printed Circuit Boards	109	0.0000	0.0000
Aerosol Packaging	47	0.0002	0.0019
Paint Remover Manufacturing	77	0.0001	0.0026
Paint Manufacturing	62	0.0002	0.0045
Paint Remover Use (Paint Stripping)	77	0.0001	0.0026
Aircraft Stripping	173	0.0004	0.0088
Furniture Stripping	6,152	0.0154	0.2977
All Other Industrial Paint Stripping	33,044	0.0001	0.0029
Flexible Polyurethane Foam Manufacturing	49	0.0001	0.0034
Plastics and Adhesives Manufacturing and Use	3,281	0.0002	0.0031
Ink and Ink Solvent Manufacturing	11	0.0000	0.0004
Ink Solvent Use	9,210	0.0005	0.0106
Pesticide Manufacturing and Formulation	49	0.0001	0.0034
Pharmaceutical Manufacturing	15	NA	NA
Solvent Recovery	24	0.0000	0.0000
Film Base	0	NA	NA
Polycarbonates	0	NA	NA
Construction	9,086	0.0033	0.0866
Shipyards	0	NA	0NA
All Application Groups	84,573	0.0017	0.0352

NA=No small firms in this application group.
Source: Office of Regulatory Analysis; OSHA; Department of Labor.

TABLE 4.—SCREENING ANAYLSIS OF POTENTIAL ECONOMIC IMPACTS ON FIRMS WITH FEWER THAN 20 EMPLOYEES

Application group	Number of small establishments affected	Costs as a percentage of profits for small firms	Costs as a percentage of sales for small firms
Manufacture of MC	0	NA	NA
Distribution/Formulation of Solvents	139	0.0018%	0.0322%
Metal Cleaning:			
Cold Degreasing and Other Cold Cleaning	9,223	0.0005	0.0110
Open-Top Vapor Degreasing	0	NA	NA
Conveyorized Vapor Degreasing	11	0.0005	0.0132
Semiconductors	0	NA	NA
Printed Circuit Boards	20	0.0000	0.0000
Aerosal Packaging	10	0.0006	0.0072
Paint Remover Manufacturing	34	0.0003	0.0114

TABLE 4.—SCREENING ANAYLSIS OF POTENTIAL ECONOMIC IMPACTS ON FIRMS WITH FEWER THAN 20 EMPLOYEES—Continued

Application group	Number of small establishments affected	Costs as a percentage of profits for small firms	Costs as a percentage of sales for small firms
Paint Manufacturing	7	0.0006	0.0194
Paint Remover Use (Paint Stripping)	34	0.0003	0.0114
Aircraft Stripping	75	0.0011	0.0335
Furniture Stripping	5.900	0.0155	0.3034
All Other Industrial Paint Stripping	25,441	0.0002	0.0042
Flexible Polyurethane Foam Manufacturing	8	0.0010	0.0386
Plastics and Adhesives Manufacturing and Use	498	0.0013	0.0264
Ink and Ink Solvent Manufacturing	3	0.0002	0.0022
Ink Solvent Use	5,395	0.0011	0.0237
Pesticide Manufacturing and Formulation	40	0.0010	0.0386
Pharmaceutical Manufacturing	0	NA	NA
Solvent Recovery	17	0.0000	0.0000
Film Base	0	NA	NA
Polycarbonates	0	NA	NA
Construction	9,085	0.0044	0.1596
Shipyards	0	NA	NA
All Application Groups	55,907	0.0026	0.0644

NA=No small firms in this application group.
Source: Office of Regulatory Analysis: OSHA; Department of Labor.

As noted in the discussion of costs, firms with fewer than 20 employees are much more likely to incur greater costs for medical removal protection because such firms may have difficulty in finding a job that does not involve exposure to MC at levels above the action level. OSHA therefore examined annualized compliance costs as a percentage of sales and profits for firms with fewer than 20 employees.

Table 4 shows the results of this analysis. For the typical affected firm with fewer than 20 employees, the annualized costs of medical removal protection represent 0.0026 percent of sales and 0.064 percent of profits. Furniture stripping has the greatest potential impacts—annualized costs are 0.016 percent of sales and 0.3 percent of profits for firms in this application group. These impacts do not constitute significant impacts, as envisioned by the Regulatory Flexibility Act. However, because unusually prolonged medical removal without an alternative job within the establishment might present problems for these very small firms, the proposed standard includes a provision requiring special consideration of the economic burden imposed by medical removal protection when an employer would otherwise need to provide MRP benefits to more than one employee. This provision ensures that impacts are not unduly burdensome even in rare and unusual circumstances. Therefore, based on its analyses both of impacts and small firms using the SBA definitions, and of very small firms with fewer than 20 employees, OSHA certifies that the proposed MRP provisions will not have a significant impact on a substantial number of small entities.

VI. Public Participation

Comments should be submitted to the OSHA Docket Office by June 3, 1998.

Note: OSHA is only reopening the record for comments on the two issues raised in the Motion for Reconsideration: the compliance dates and medical removal protection. It is not reopening the record or requesting comments on any other issues pertaining to the methylene chloride standard.

Authority and Signature: This document was prepared under the direction of Charles N. Jeffress, Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

List of Subjects in 29 CFR Part 1910

Chemicals, Hazardous substances, Occupational safety and health.

Signed at Washington, DC, this 29th day of April, 1998.

Charles N. Jeffress,

Assistant Secretary of Labor.

Part 1910 of title 29 of the Code of Federal Regulations is proposed to be amended as follows:

PART 1910—[AMENDED]

1. The general authority citation for subpart Z of CFR 29 part 1910 continues to read, in part, as follows:

Authority: Sections 4, 6, and 8 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, and 657); Secretary of Labor's Order No. 12–71 (36 FR 8754), 8–76 (41 FR 25059), 9–83 (48 FR 35736), 1–90 (55 FR 9033), or 6–96 (62 FR 111), as applicable; and 29 CFR Part 1911.

* * * * *

2. Section 1910.1052 would be amended by revising paragraphs (j)(9)(i)(A) and (B) and paragraph (n)(2), and by adding paragraphs (j)(10), (j)(11), (j)(12), (j)(13), and (j)(14) as follows:

§ 1910.1052 Methylene Chloride.

* * * * *

(j) Medical surveillance.

* * * * *

(9) Written medical opinions.

(i) * * *

(A) The physician or other licensed health care professional's opinion concerning whether exposure to MC may contribute to or aggravate the employee's existing cardiac, hepatic, neurological (including stroke) or dermal disease or whether the employee has any other medical condition(s) that would place the employee's health at increased risk of material impairment from exposure to MC.

(B) Any recommended limitations upon the employee's exposure to MC, including removal from MC exposure, or upon the employee's use of respirators, protective clothing, or other protective equipment.

* * * * *

(10) Medical Presumption. For purposes of this paragraph (j) of this section, the physician or other licensed health care professional shall presume,

unless medical evidence indicates to the contrary, that a medical condition is unlikely to require medical removal from MC exposure if the employee is not exposed to MC above the 8-hour TWA PEL. If the physician or other licensed health care professional recommends removal for an employee exposed below the 8-hour TWA PEL, the physician or other licensed health care professional shall cite specific medical evidence, sufficient to rebut the presumption that exposure below the 8-hour TWA PEL is unlikely to require removal, to support the recommendation. If such evidence is cited by the physician or other licensed health care professional, the employer must remove the employee. If such evidence is not cited by the physician or other licensed health care professional, the employer is not required to remove the employee.

(11) Medical Removal Protection (MRP). (i) Temporary medical removal and return of an employee.

(A) Except as provided in paragraph (j)(10) of this section, when a medical determination recommends removal because the employee's exposure to MC may contribute to or aggravate the employee's existing cardiac, hepatic, neurological (including stroke), or skin disease, the employer must provide medical removal protection benefits to the employee and either:

(*1*) Transfer the employee to comparable work where methylene chloride exposure is below the action level; or

(*2*) Remove the employee from MC exposure.

(B) If comparable work is not available and the employer is able to demonstrate that removal and the costs of extending MRP benefits to an additional employee, considering feasibility in relation to the size of the employer's business and the other requirements of this standards, make further reliance on MRP an inappropriate remedy, the employer may retain the additional employee in the existing job until transfer or removal becomes appropriate, provided:

(*1*) The employer ensures that the employee receives additional medical surveillance, including a physical examination at least every 60 days until transfer or removal occurs; and

(*2*) The employer or PLHCP informs the employee of the risk to the employee's health from continued MC exposure.

(C) The employer shall maintain in effect any job-related protective measures or limitations, other than removal, for as long as a medical determination recommends them to be necessary.

(ii) End of MRP benefits and return of the employee to former job status.

(A) The employer may cease providing MRP benefits at the earliest of the following:

(*1*) Six months;

(*2*) Return of the employee to the employee's former job status following receipt of a medical determination concluding that the employee's exposure to MC no longer will aggravate any cardiac, hepatic, neurological (including stroke), or dermal disease;

(*3*) Receipt of a medical determination concluding that the employee can never return to MC exposure.

(B) For the purposes of this paragraph (j), the requirement that an employer return an employee to the employee's former job status is not intended to expand upon or restrict any rights an employee has or would have had, absent temporary medical removal, to a specific job classification or position under the terms of a collective bargaining agreement.

(12) Medical Removal Protection Benefits. (i) For purposes of this paragraph (j), the term medical removal protection benefits means that, for each removal, an employer must maintain for up to six months the earnings, seniority, and other employment rights and benefits of the employee as though the employee had not been removed from MC exposure or transferred to a comparable job.

(ii) During the period of time that an employee is removed from exposure to MC, the employer may condition the provision of medical removal protection benefits upon the employee's participation in follow-up medical surveillance made available pursuant to this section.

(iii) If a removed employee files a workers' compensation claim for an MC-related disability, the employer shall continue the MRP benefits required by this paragraph until either the claim is resolved or the 6-month period for payment of MRP benefits has passed, whichever occurs first. To the extent the employee is entitled to indemnity payments for earnings lost during the period of removal, the employer's obligation to provide medical removal protection benefits to the employee shall be reduced by the amount of such indemnity payments.

(iv) The employer's obligation to provide medical removal protection benefits to a removed employee shall be reduced to the extent that the employee receives compensation for earnings lost during the period of removal from either a publicly or an employer-funded compensation program, or receives income from employment with another employer made possible by virtue of the employee's removal.

(13) Voluntary Removal or Restriction of an Employee. Where an employer, although not required by this section to do so, removes an employee from exposure to MC or otherwise places any limitation on an employee due to the effects of MC exposure on the employee's medical condition, the employer shall provide medical removal protection benefits to the employee equal to those required by paragraph (j)(12) of this section.

(14) Multiple Health Care Professional Review Mechanism. (i) If the employer selects the initial physician or licensed health care professional (PLHCP) to conduct any medical examination or consultation provided to an employee under this paragraph (j)(11), the employer shall notify the employee of the right to seek a second medical opinion each time the employer provides the employee with a copy of the written opinion of that PLHCP.

(ii) If the employee does not agree with the opinion of the employer-selected PLHCP, notifies the employer of that fact, and takes steps to make an appointment with a second PLHCP within 15 days of receiving a copy of the written opinion of the initial PLHCP, the employer shall pay for the PLHCP chosen by the employee to perform at least the following:

(A) Review any findings, determinations or recommendations of the initial PLHCP; and

(B) Conduct such examinations, consultations, and laboratory tests as the PLHCP deems necessary to facilitate this review.

(iii) If the findings, determinations or recommendations of the second PLHCP differ from those of the initial PLHCP, then the employer and the employee shall instruct the two health care professional to resolve the disagreement.

(iv) If the two health care professionals are unable to resolve their disagreement within 15 days, then those two health care professionals shall jointly designate a PLHCP who is a specialist in the field at issue. The employer shall pay for the specialist to perform at least the following:

(A) Review the findings, determinations, and recommendations of the first two PLHCPs; and

(B) Conduct such examinations, consultations, laboratory tests and discussions with the prior PLHCPs as the specialist deems necessary to resolve the disagreements of the prior health care professionals.

(v) The written opinion of the specialist shall be the definitive medical determination. The employer shall act consistent with the definitive medical determination, unless the employer and employee agree that the written opinion of one of the other two PLHCPs shall be the definitive medical determination.

(vi) The employer and the employee or authorized employee representative may agree upon the use of any expeditious alternate health care professional determination mechanism in lieu of the multiple health care professional review mechanism provided by this paragraph so long as the alternate mechanism otherwise satisfies the requirements contained in this paragraph.

* * * * *

(n) Dates.

* * * * *

(2) Start-up dates.

(i) Initial Monitoring required by paragraph (d)(2) of this section shall be completed according to the following schedule:

(A) For employers with fewer than 20 employees, within 300 days after the effective date of this section.

(B) For polyurethane foam manufacturers with 20 to 99 employees, within 255 days after the effective date of this section.

(C) For all other employers, within 150 days after the effective date of this section.

(ii) Engineering controls required under paragraph (f)(1) of this section shall be implemented according to the following schedule:

(A) For employers with fewer than 20 employees: within three (3) years after the effective date of this section.

(B) For employers with fewer than 150 employees engaged in foam fabrication; for employers with fewer than 50 employees engaged in furniture refinishing, general aviation aircraft stripping, and product formulation; for employers with fewer than 50 employees using MC-based adhesives for boat building and repair, recreational vehicle manufacture, van conversion, and upholstering; for employers with fewer than 50 employees using MC in construction work for restoration and preservation of buildings, painting and paint removal, cabinet making and/or floor refinishing and resurfacing: within three (3) years after the effective date of this section.

(C) For employers engaged in polyurethane foam manufacturing with 20 employees or more: within thirty (30) months after the effective date of this section.

(D) For employers with 150 or more employees engaged in foam fabrication; for employers with 50 or more employees engaged in furniture refinishing, general aviation aircraft stripping, and product fabrication; for employers with 50 or more employees using MC-based adhesives in boat building and repair, recreational vehicle manufacture, van conversion and upholstering; and for employers with 50 or more employees using MC in construction work for restoration and preservation of buildings, painting and paint removal, cabinet making and/or floor refinishing and resurfacing: within two (2) years after the effective date of this section.

(E) For all other employers: within one (1) year after the effective date of this section.

(iii) Employers identified in paragraphs (n)(2)(ii) (B), (C), and (D) of this section shall comply with the following requirements listed in this paragraph by the dates indicated:

(A) Use of respiratory protection whenever an employee's exposure to MC exceeds or can reasonably be expected to exceed the 8-hour TWA PEL, in accordance with paragraphs (c)(1), (e)(3), (f)(1) and (g)(1) of this section: by the applicable dates set out in paragraphs (n)(2)(ii) (B), (C) and (D) of this section for the installation of engineering controls.

(B) Use of respiratory protection whenever an employee's exposure to MC exceeds or can reasonably be expected to exceed the STEL in accordance with paragraphs (e)(3), (f)(1), and (g)(1) of this section: by the applicable dates indicated in paragraph (n)(2)(iv) of this section.

(C) Implementation of work practices (such as leak and spill detection, cleanup and enclosure of containers) required by paragraph (f)(1) of this section: by the applicable dates indicated in paragraph (n)(2)(iv) of this section.

(D) Notification of corrective action under paragraph (d)(5)(ii) of this section: no later than (90) days before the compliance date applicable to such corrective action.

(iv) Unless otherwise specified in this paragraph (n), all other requirements of this section shall be complied with according to the following schedule:

(A) For employers with fewer than 20 employees, within one (1) year after the effective date of this section.

(B) For employers engaged in polyurethane foam manufacturing with 20 to 99 employees, within 270 days after the effective date of this section.

(C) For all other employers, within 255 days after the effective date of this section.

* * * * *

[FR Doc. 98–11797 Filed 5–1–98; 8:45 am]

BILLING CODE 4510–26–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 60 and 63

[AD–FRL–6003–6]

RIN 2060–AH94

Standards of Performance for New Stationary Sources: General Provisions; National Emission Standards for Hazardous Air Pollutants for Source Categories: General Provisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This action amends the General Control Device Requirements (40 CFR 60.18) which were issued as a final rule on January 21, 1986, and the Control Device Requirements (40 CFR 63.11) which were issued as a final rule on March 16, 1994. This action amends the flare provisions contained in these requirements to include operating specifications for flares that contain substantial amounts of hydrogen in their waste streams. EPA believes that hydrogen-fueled flares meeting the operating specifications in this amendment will achieve the same control efficiency, i.e., 98 percent or greater, as flares complying with the existing flare specifications. Further, these specifications will result in reduced emissions of carbon monoxide, nitrogen oxides, and carbon dioxide formed during the combustion of supplemental fuel necessary for hydrogen-fueled flares to comply with existing regulations.

Because these amendments are only adding specifications for hydrogen-fueled flares and do not otherwise alter the level of pollutant reduction required for flares used to comply with the requirements of the Clean Air Act, the EPA does not anticipate receiving adverse comments. Consequently, the proposed revisions to the promulgated rule are also being issued as a direct final rule in the final rules section of this **Federal Register**. If no relevant adverse comments are received by the due date for comments (see **DATES** section), no further action will be taken with respect to this proposal, and the

direct final rule will become final on the date provided in that action.

DATES: *Comments.* Comments must be received on or before June 3, 1998, unless a hearing is requested by May 14, 1998. If a hearing is requested, written comments must be received by June 18, 1998.

Public Hearing. Anyone requesting a public hearing must contact the EPA no later than May 14, 1998. If a hearing is held, it will take place on May 19, 1998 beginning at 10:00 a.m.

ADDRESSES: *Comments.* Comments should be submitted (in duplicate, if possible) to the Air and Radiation Docket and Information Center (6102), Attention Docket No. A–97–48 (Hydrogen-Fueled Flares), Room M–1500, U. S. Environmental Protection Agency, 401 M Street S.W., Washington, DC 20460. The EPA requests that a separate copy also be sent to Mr. Robert Rosensteel (see **FOR FURTHER INFORMATION CONTACT** section for address). Comments may also be submitted electronically by following the instructions provided in the **SUPPLEMENTARY INFORMATION** section. No Confidential Business Information (CBI) should be submitted through electronic mail.

Public Hearing. If a public hearing is held, it will be held at the EPA's Office of Administration Auditorium, Research Triangle Park, North Carolina. Persons interested in attending the hearing or wishing to present oral testimony should call Ms. Marguerite Thweatt, Organic Chemicals Group, (MD–13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone number (919) 541–5673.

Docket. The official record for this rulemaking has been established under docket Number A–97–48 (Hydrogen-Fueled Flares). A public version of this record, including printed, paper versions of electronic comments and data, which does not include any information claimed as CBI, is available for inspection between 8 a.m. and 4 p.m., Monday through Friday, excluding legal holidays. The official rulemaking record is located at the address in the **ADDRESSES** section. Alternatively, a docket index, as well as individual items contained within the docket, may be obtained by calling (202) 260–7548 or (202) 260–7549. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: For information concerning the technical analysis for this rule, contact Mr. Robert Rosensteel at (919) 541–5608, Organic Chemicals Group, Emission Standards Division (MD–13), U. S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711.

SUPPLEMENTARY INFORMATION:

Electronic Filing

Electronic comments and data can be sent directly to EPA at: a-and-r-docket@epamail.epa.gov. Electronic comments and data 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 diskette in WordPerfect 5.1 file format or ASCII file format. All comments and data in electronic form must be identified by the docket number A–97–48. Electronic comments may be filed online at many Federal Depository Libraries.

Electronic Availability

This document is available in docket number A–97–48 or by request from the EPA's Air and Radiation Docket and Information Center (see **ADDRESSES**), and is available for downloading from the Technology Transfer Network (TTN), the EPA's electronic bulletin board system. The TTN provides information and technology exchange in various areas of emissions control. The service is free, except for the cost of a telephone call. Dial (919) 541–5742 for up to a 14,000 baud per second modem. For further information, contact the TTN HELP line at (919) 541–5384, from 1:00 p.m. to 5:00 p.m., Monday through Friday, or access the TTN web site at: www.epa.gov/ttn/oarpg/rules.html.

Regulated Entities

Entities affected by this action, upon promulgation, will include:

Category	Examples of regulated entities
Industry	Synthetic Organic Chemical Manufacturing Industries; and Petroleum Refining Industries.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. This table lists the types of entities that the EPA is now aware could potentially be affected by this action. Other types of entities not listed in the table could also be affected. If you have questions regarding the applicability of these proposed amendments to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

If no relevant, adverse comments are timely received, no further activity is contemplated in relation to this proposed rule and the direct final rule in the final rules section of this **Federal Register** will automatically go into effect on the date specified in that rule. If relevant adverse comments are timely received, the direct final rule will be withdrawn and all public comment received will be addressed in a subsequent final rule. Because the EPA will not institute a second comment period on this proposed rule, any parties interested in commenting should do so during this comment period.

For further supplemental information and the rule provisions, see the information provided in the direct final rule in the final rules section of this **Federal Register**.

Administrative

A. Paperwork Reduction Act

This rule does not contain any information collection subject to the Office of Management and Budget (OMB) approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*

B. Executive Order 12866 Review

Under Executive Order 12866, (58 FR 51735 (October 4, 1993)) the Agency must determine whether the regulatory action is ''significant'' and therefore subject to OMB review and the requirements of the Executive Order. The Order defines ''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 entitlement, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

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

It has been determined that this amendment is not a ''significant regulatory action'' under the terms of Executive Order 12866 and is therefore not subject to review by the Office of Management and Budget.

C. Regulatory Flexibility Act

EPA has determined that it is not necessary to prepare a regulatory flexibility analysis in connection with this proposed rule. EPA has also determined that this rule will not have

a significant economic impact on a substantial number of small entities, because this rule imposes no additional regulatory requirements, but merely expands the types of flares that may be used to meet the requirements of 40 CFR parts 60 and 63. The Administrator certifies that this rule will not have a significant economic impact on small entities.

D. Unfunded Mandates Reform Act

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

The EPA has determined that the final standards do not include a Federal mandate that may result in estimated costs of, in the aggregate, $100 million or more to either State, local, or tribal governments, or to the private sector, nor do the standards significantly or uniquely impact small governments, because they contain no requirements that apply to such governments or impose obligations upon them. Therefore, the requirements of the Unfunded Mandates Act do not apply to this proposed rule.

List of Subjects

40 CFR Part 60

Environmental protection, and Air pollution control.

40 CFR Part 63

Environmental protection, Air pollution control, and Hazardous substances.

Dated: April 17, 1998.

Carol M. Browner,

Administrator.

[FR Doc. 98–11261 Filed 5–1–98; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 98–58, RM–9252]

Radio Broadcasting Services; Brewster, MA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by Brewster Broadcasting Company proposing the allotment of Channel 232A to Brewster, Massachusetts, as that community's first local broadcast service. The channel can be allotted to Brewster with a site restriction 6.3 kilometers (3.9 miles) west of the community at coordinates 41–46–31 and 70–00–38..

DATES: Comments must be filed on or before June 15, 1998, and reply comments on or before June 30, 1998.

ADDRESSES: Federal Communications Commission, Washington, DC. 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner's counsel, as follows: Gary S. Smithwick, Smithwick & Belendiuk, P.C., 1990 M Street, NW., Suite 510, Washington, D.C. 20036.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 98–58, adopted April 15, 1998, and released April 24, 1998. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 1231 20th Street, NW., Washington, DC. 20036, (202) 857–3800, facsimile (202) 857–3805.

Provisions of the Regulatory Flexibility Act of l980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 98–11737 Filed 5–1–98; 8:45 am]

BILLING CODE 6712–01–F

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 98–59; RM–9256]

Radio Broadcasting Services; Casper, Wyoming

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by Citicasters Co. proposing the allotment of Channels 228C1, 243C1, and 263C1 at Casper, Wyoming, as the community's eighth, ninth, and tenth local commercial FM transmission services. Channel 228C1 can be allotted to Casper in compliance with the Commission's minimum distance separation requirements with a site restriction of 7.9 kilometers southwest to avoid a short-spacing to the allotment reference site for Channel 228A, Moorcroft, Wyoming. The coordinates for Channel 228C1 at Casper are North Latitude 42–47–45 and West Longitude 106–22–53. Additionally, Channel 243C1 can be allotted at Casper with a site restriction of 3.5 kilometers (2.2 miles) southeast to avoid a short-spacing to the construction permit site of Station KYTI(FM), Channel 243C3, Sheridan, Wyoming; and Channel 263C1 can be allotted to Casper with site restriction of 9.7 kilometers (6.0 miles) southwest to avoid a short-spacing to the licensed site of Station KGWY(FM), Channel 264C1, Gillette, Wyoming. *See* Supplementary Information, *infra*.

DATES: Comments must be filed on or before June 15, 1998, and reply comments on or before June 30, 1998.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, his counsel, or consultant, as follows: Cindy D. Jackson, Hogan & Hartson, L.L.P., 555 13th Street, NW., Washington, DC 20004–1009 (Counsel for Petitioner).

FOR FURTHER INFORMATION CONTACT: Sharon P. McDonald, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 98–59, adopted April 15, 1998, and released April 24, 1998. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., (202) 857–3800, 1231 20th Street, NW., Washington, DC 20036.

The coordinates for Channel 243C1 at Casper are North Latitude 42–49–13 and West Longitude 106–17–22; and the coordinates for Channel 263C1 at Casper are North Latitude 42–46–05 and West Longitude 106–21–56.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 98–11736 Filed 5–1–98; 8:45 am]

BILLING CODE 6712–01–F

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 98–57, RM–9251]

Radio Broadcasting Services; Jacksonville and Center, TX

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by Robert W. Shivery requesting the substitution of Channel 272C2 for Channel 272A at Jacksonville, Texas, and the modification of Station KLJT(FM)'s license to reflect the higher powered channel. To accommodate the upgrade at Jacksonville, Shivery also requests the substitution of Channel 272A for Channel 263A and the change of transmitter site for Station KDET(FM) at Center, Texas, and the modification of Station KDET(FM)'s license accordingly. Channel 272C2 and Channel 263A can be allotted to Jacksonville and Center, respectively, in compliance with the Commission's minimum distance separation requirements. Channel 272C2 can be allotted to Jacksonville with a site restriction of 14.4 kilometers (9.0 miles) southeast at coordinates 31–52–52 NL and 95–09–30 WL. Channel 263A can be allotted to Center with a site restriction of 12.6 kilometers (7.8 miles) southeast at coordinates 31–42–13 NL and 94–06–05 WL. As requested, we also propose to modify the license for Station KLJT(FM) to specify operation on Channel 272C2. In accordance with Section 1.420(g) of the Commission's Rules, we will not accept competing expressions of interest for the use of Channel 272C2 at Jacksonville or require petitioner to demonstrate the availability of an additional equivalent class channel for use by such parties.

DATES: Comments must be filed on or before June 15, 1998, and reply comments on or before June 30, 1998.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: David Tillotson, 4606 Charleston Terrace, NW, Washington, DC 20007 (Counsel for petitioner).

FOR FURTHER INFORMATION CONTACT: Pam Blumenthal, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 98–57, adopted April 15, 1998, and released April 24, 1998. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Center (Room 239), 1919 M Street, NW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, ITS, Inc., (202) 857–3800, 1231 20th Street, NW, Washington, DC 20036.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments.

See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR PART 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 98–11735 Filed 5–1–98; 8:45 am]

BILLING CODE 6712–01–F

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 98–53, RM–9253]

Radio Broadcasting Services; Malvern and Bryant, AR

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition for rule making filed on behalf of Malvern Entertainment Corporation, licensee of Station KBOK-FM, Channel 227A, Malvern, Arkansas, requesting the reallotment of Channel 227A from Malvern to Bryant, Arkansas, and modification of the license for Station KBOK-FM to specify Bryant as its community of license, pursuant to the provisions of Section 1.420(i) of the Commission's Rules. Coordinates used for Channel 227A at Bryant are 34–30–30 NL and 92–32–42 WL.

DATES: Comments must be filed on or before June 15, 1998, and reply comments on or before June 30, 1998.

ADDRESSES: Secretary, Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner's counsel, as follows: Jerrold Miller, Esq., Miller & Miller, P.C., P.O. Box 33003, Washington, DC 20033.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 98–53, adopted April 8, 1998, and

released April 24, 1998. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., 1231 20th Street, NW., Washington, DC 20036, (202) 857–3800.

Provisions of the Regulatory Flexibility Act of l980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division,Mass Media Bureau.

[FR Doc. 98–11734 Filed 5–1–98; 8:45 am]

BILLING CODE 6712–01–F

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 544

[Docket No. 98–001; Notice 01]

RIN 2127–AH05

Insurer Reporting Requirements; List of Insurers Required to File Reports

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Notice of proposed rulemaking.

SUMMARY: NHTSA proposes to update its lists in appendices A, B, and C of part 544 of passenger motor vehicle insurers that are required to file reports on their motor vehicle theft loss experiences. If these revised appendices are adopted in a final rule, each insurer included in any of these appendices must file a report for the 1995 calendar year not later than October 25, 1998. Further, as long as they remain listed, they must submit reports by each subsequent October 25.

DATES: Comments on this proposed rule must be received by this agency not later than July 6, 1998. If this rule is made final, insurers listed in the appendices would be required to submit reports beginning with the one due October 25, 1998.

ADDRESSES: Comments on this proposed rule must refer to the docket number referenced in the heading of this notice, and be submitted to: Docket Section, NHTSA, Room 5109, 400 Seventh Street, SW, Washington, DC 20590. Docket hours are 9:30 a.m. to 4 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Ms. Rosalind Proctor, Office of Planning and Consumer Programs, NHTSA, 400 Seventh Street, SW, Washington, DC 20590. Ms. Proctor's telephone number is (202) 366–0846. Her fax number is (202) 493–2739.

SUPPLEMENTARY INFORMATION:

Background

Pursuant to 49 U.S.C. 33112, *Insurer reports and information*, NHTSA requires certain passenger motor vehicle insurers to file an annual report. Each insurer's report includes information about thefts and recoveries of motor vehicles, the rating rules used by the insurer to establish premiums for comprehensive coverage, the actions taken by the insurer to reduce such premiums, and the actions taken by the insurer to reduce or deter theft. Under the agency's implementing regulation, 49 CFR part 544, the following insurers are subject to the reporting requirements: (1) Those issuers of motor vehicle insurance policies whose total premiums account for 1 percent or more of the total premiums of motor vehicle insurance issued within the United States; (2) Those issuers of motor vehicle insurance policies whose premiums account for 10 percent or more of total premiums written within any one State; and (3) Rental and leasing companies with a fleet of 20 or more vehicles not covered by theft insurance policies issued by insurers of motor vehicles, other than any governmental entity.

Pursuant to its statutory exemption authority, the agency has exempted smaller passenger motor vehicle insurers from the reporting requirements.

A. Small Insurers of Passenger Motor Vehicles

Section 33112(f)(2) provides that the agency shall exempt small insurers of passenger motor vehicles if NHTSA finds that such exemptions will not significantly affect the validity or usefulness of the information in the reports, either nationally or on a State-by-State basis. The term ''small insurer'' is defined in section 33112(f)(1)(A) and (B) as an insurer whose premiums for motor vehicle insurance issued directly or through an affiliate, including pooling arrangements established under State law or regulation for the issuance of motor vehicle insurance, account for less than 1 percent of the total premiums for all forms of motor vehicle insurance issued by insurers within the United States. However, that section also stipulates that if an insurance company satisfies this definition of a ''small insurer,'' but accounts for 10 percent or more of the total premiums for all motor vehicle insurance issued in a particular State, the insurer must report about its operations in that State.

As described in the final rule establishing the requirement for insurer reports (52 FR 59, January 2, 1987), in 49 CFR part 544, NHTSA exercises its exemption authority by listing in appendix A each insurer which must report because it had at least 1 percent of the motor vehicle insurance premiums nationally. Listing the insurers subject to reporting instead of each insurer exempted from reporting because it had less than 1 percent of the premiums nationally is administratively simpler since the former group is much smaller than the latter. In appendix B, NHTSA lists those insurers that are required to report for particular states because each insurer had a 10 percent or a greater market share of motor vehicle premiums in those States. In the January 1987 final rule, the agency stated that appendices A and B will be updated annually. It has been NHTSA's practice to update the appendices based on data voluntarily provided by insurance companies to A.M. Best, and made available for the agency each spring. The agency uses the data to determine the insurers' market shares nationally and in each state.

B. Self-insured Rental and Leasing Companies

In addition, upon making certain determinations, NHTSA is authorized to grant exemptions to self-insurers, i.e., any person who has a fleet of 20 or more motor vehicles (other than any governmental entity) which are used primarily for rental or lease and which are not covered by theft insurance policies issued by insurers of passenger motor vehicles, 49 U.S.C. 33112(b)(1) and (f). NHTSA may exempt a self-insurer from reporting, if the agency determines:

(1) The cost of preparing and furnishing such reports is excessive in relation to the size of the business of the insurer; and

(2) The insurer's report will not significantly contribute to carrying out the purposes of Chapter 331.

In a final rule published June 22, 1990 (55 FR 25606), the agency granted a class exemption to all companies that rent or lease fewer than 50,000 vehicles because it believed that reports from only the largest companies would sufficiently represent the theft experience of rental and leasing companies. NHTSA concluded those reports by the many smaller rental and leasing companies do not significantly contribute to carrying out NHTSA's statutory obligations, and that exempting such companies will relieve an unnecessary burden on most companies that potentially must report. As a result of the June 1990 final rule, the agency added a new appendix C, which consists of an annually updated list of the self-insurers that are subject to part 544. Following the same approach as in the case of appendix A, NHTSA has included, in appendix C, each of the relatively few self-insurers which are subject to reporting instead of relatively numerous self-insurers which are exempted. NHTSA updates appendix C based primarily on information from the publications *Automotive Fleet Magazine* and *Business Travel News*.

C. When a Listed Insurer Must File a Report

Under part 544, as long as an insurer is listed, it must file reports on or before each October 25. Thus, any insurer listed in the appendices as of the date of the most recent final rule must file a report by the following October 25, and by each succeeding October 25, absent a further amendment removing the insurer's name from the appendices.

Notice of Proposed Rulemaking

1. Insurers of Passenger Motor Vehicles

Based on the 1995 calendar year A.M. Best data for market shares, NHTSA proposes to amend the list in appendix A of insurers which must report because each had at least 1 percent of the motor vehicle insurance premiums on a national basis. The list was last amended in a notice published on June 23, 1997 (See 62 FR 33754). One company, Metropolitan Group, included in the June 1997 listing, is proposed to be removed from appendix A. Three companies, American Financial Group, Erie Insurance Company, and Zurich Insurance Group-U.S., are proposed to be added.

Each of the 20 insurers listed in appendix A of this notice would be required to file a report not later than October 25, 1998, setting forth the information required by part 544 for each State in which it did business in the 1995 calendar year. As long as those 20 insurers remain listed, they would be required to submit reports by each subsequent October 25 for the calendar year ending slightly less than 3 years before.

Appendix B lists those insurers that would be required to report for particular States for calendar year 1995, because each insurer had a 10 percent or a greater market share of motor vehicle premiums in those States. Based on the 1995 calendar year A.M. Best data for market shares, it is proposed that Integon Corporate Group, reporting on its activities in the State of North Carolina be removed from appendix B. Two companies, Allmerica P & C Companies and Island Insurance, that were not listed in appendix B, are proposed to be added.

The 12 insurers listed in appendix B of this notice would be required to report on their calendar year 1995 activities in every State in which they had a 10 percent or a greater market share. These reports must be filed no later than October 25, 1998, and set forth the information required by part 544. As long as those 12 insurers remain listed, they would be required to submit reports on or before each subsequent October 25 for the calendar year ending slightly less than 3 years before.

2. Rental and Leasing Companies

Based on information in *Automotive Fleet Magazine and Business Travel News* for 1995, the most recent year for which data are available, NHTSA proposes several changes in appendix C. As indicated above, that appendix lists rental and leasing companies required to file reports. Based on the data reported in the above mentioned publications, it is proposed that five rental and leasing companies, Associates Leasing Inc., Enterprise-Rent-A-Car, GE Capital Fleet Services, PHH Vehicle Management Services, and Wheels, Inc., be included in appendix C. Accordingly, each of the 20 companies (including franchisees and licensees) listed in this notice in appendix C would be required to file reports for calendar year 1995 no later than October 25, 1998, and set forth the information required by part 544. As long as those 20 companies remain listed, they would be required to submit reports on or before each subsequent October 25 for the calendar year ending slightly less than 3 years before.

Regulatory Impacts

1. Costs and Other Impacts

This notice has not been reviewed under Executive Order 12866. NHTSA has considered the impact of this proposed rule and has determined the action not to be ''significant'' within the meaning of the Department of Transportation's regulatory policies and procedures. This proposed rule implements the agency's policy of ensuring that all insurance companies that are statutorily eligible for exemption from the insurer reporting requirements are in fact exempted from those requirements. Only those companies that are not statutorily eligible for an exemption are required to file reports.

NHTSA does not believe that this proposed rule, reflecting more current data, affects the impacts described in the final regulatory evaluation prepared for the final rule establishing part 544 (52 FR 59, January 2, 1987). Accordingly, a separate regulatory evaluation has not been prepared for this rulemaking action. The cost estimates in the 1987 final regulatory evaluation were adjusted for inflation, using the Bureau of Labor Statistics Consumer Price Index for 1997. The agency estimates that the cost of compliance will be about $70,500 for any insurer that is added to appendix A, about $28,200 for any insurer added to appendix B, and about $10,956 for any insurer added to appendix C. If this proposed rule is made final, for appendix A, the agency would add three insurers and remove one insurer; for appendix B, the agency would remove one and add two insurers; and for appendix C, the agency would add five additional companies.

The agency therefore estimates that the net effect of this proposal, if made final, would be a cost increase to insurers, as a group of approximately $223,980.

Interested persons may wish to examine the 1987 final regulatory evaluation. Copies of that evaluation have been placed in Docket No. T86–01; Notice 2. Any interested person may obtain a copy of this evaluation by writing to NHTSA, Docket Section, Room 5109, 400 Seventh Street, SW., Washington, DC 20590, or by calling (202) 366–4949.

2. Paperwork Reduction Act

The information collection requirements in this proposed rule have been submitted to and approved by the

Office of Management and Budget (OMB) pursuant to the requirements of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). This collection of information was assigned OMB Control Number 2127–0547 (''Insurer Reporting Requirements'') and was approved for use through July 31, 2000.

3. Regulatory Flexibility Act

The agency has also considered the effects of this rulemaking under the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*). I certify that this proposed rule would not have a significant economic impact on a substantial number of small entities. The rationale for the certification is that none of the companies proposed to be included on appendices A, B, or C would be construed to be a small entity within the definition of the RFA. ''Small insurer'' is defined in part under 49 U.S.C. 33112 as any insurer whose premiums for all forms of motor vehicle insurance account for less than 1 percent of the total premiums for all forms of motor vehicle insurance issued by insurers within the United States, or any insurer whose premiums within any State, account for less than 10 percent of the total premiums for all forms of motor vehicle insurance issued by insurers within the State. This notice would exempt all insurers meeting those criteria. Any insurer too large to meet those criteria is not a small entity. In addition, in this rulemaking, the agency proposes to exempt all ''self insured rental and leasing companies'' that have fleets of fewer than 50,000 vehicles. Any self insured rental and leasing company too large to meet that criterion is not a small entity.

4. Federalism

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

5. Environmental Impacts

In accordance with the National Environmental Policy Act, NHTSA has considered the environmental impacts of this proposed rule and determined that it would not have a significant impact on the quality of the human environment.

Interested persons are invited to submit comments on the proposal. It is requested but not required that two copies of the comments be submitted. All comments must not exceed 15 pages in length. (49 CFR 553.21). Necessary attachments may be appended to these submissions without regard to the 15 page limit. This limitation is intended to encourage commenters to detail their primary arguments in a concise fashion.

If a commenter wishes to submit certain information under a claim of confidentiality, two copies of the complete submission, including purportedly confidential business information, should be submitted to the Chief Counsel, NHTSA, at the street address given above, and one copy from which the purportedly confidential information has been deleted should be accompanied by cover letter setting forth the information specified in the agency's confidential business information regulation. (49 CFR part 512).

All comments received before the close of business on the comment closing date indicated above for the proposal will be considered, and will be available for examination in the docket at the above address both before and after the date. To the extent possible, comments filed after the closing date will also be considered. Comments received too late for consideration in regard to the final rule will be considered as suggestions for further rulemaking action. Comments on the proposal will be available for inspection in the docket. NHTSA will continue to file relevant information as it becomes available in the docket after the closing date, and it is recommended that interested persons continue to examine the docket for new material.

Those persons desiring to be notified upon receipt of their comments in the rules docket should enclose a self-addressed, stamped postcard in the envelope with their comments. Upon receiving the comments, the docket supervisor will return the postcard by mail.

List of Subjects in 49 CFR Part 544

Crime Insurance, Insurance, Insurance Companies, Motor Vehicles, Reporting and recordkeeping requirements.

In consideration of the foregoing, 49 CFR part 544 is proposed to be amended as follows:

PART 544—[AMENDED]

1. The authority citation for part 544 would continue to read as follows:

Authority: 49 U.S.C. 33112; delegation of authority at 49 CFR 1.50.

2. Paragraph (a) of § 544.5 would be revised to read as follows:

§ 544.5 General requirements for reports.

(a) Each insurer to which this part applies shall submit a report annually not later than October 25, beginning on October 25, 1986. This report shall contain the information required by § 544.6 of this part for the calendar year three years previous to the year in which the report is filed (e.g., the report due by October 25, 1998 shall contain the required information for the 1995 calendar year).

* * * * *

3. Appendix A to part 544 would be revised to read as follows:

Appendix A—Insurers of Motor Vehicle Insurance Policies Subject to the Reporting Requirements in Each State in Which They Do Business

Aetna Life & Casualty Group
Allstate Insurance Group
American Family Group
American Financial Group [1]
American International Group
California State Auto Association
CNA Insurance Group
Erie Insurance Group [1]
Farmers Insurance Group
GEICO Corporation Group
ITT Hartford Insurance Group
Liberty Mutual Group
Nationwide Group
Progressive Group
Prudential of America Group
Safeco Insurance Companies
State Farm Group
Travelers Insurance Group
USAA Group
Zurich Insurance Group-U.S. [1]

4. Appendix B to Part 544 would be revised to read as follows:

Appendix B—Issuers of Motor Vehicle Insurance Policies Subject to the Reporting Requirements Only in Designated States

Alfa Insurance Group (Alabama)
Allmerica P & C Companies (Michigan) [1]
Arbella Mutual Insurance (Massachusetts)
Auto Club of Michigan Group (Michigan)
Commerce Group, Inc. (Massachusetts)
Commercial Union Insurance Companies (Maine)
Concord Group Insurance Companies (Vermont)
Island Insurance Group (Hawaii) [1]
Kentucky Farm Bureau Group (Kentucky)
Nodak Mutual Insurance Company (North Dakota)
Southern Farm Bureau Group (Arkansas, Mississippi)
Tennessee Farmers Companies (Tennessee)

5. Appendix C to part 544 would be revised to read as follows:

Appendix C—Motor Vehicle Rental and Leasing Companies (Including Licensees and Franchisees) Subject to the Reporting Requirements of Part 544

Alamo Rent-A-Car, Inc.
ARI (Automotive Rentals, Inc.)
Associates Leasing Inc.1
A T & T Automotive Services, Inc.
Avis, Inc.
Budget Rent-A-Car Corporation

Citicorp Bankers Leasing Corporation
Dollar Rent-A-Car Systems, Inc.
Donlen Corporation
Enterprise Rent-A-Car [1]
GE Capital Fleet Services [1]
Hertz Rent-A-Car Division (subsidiary of Hertz Corporation)
Lease Plan USA, Inc.
National Car Rental System, Inc.
Penske Truck Leasing Company
PHH Vehicle Management Services [1]
Ryder System, Inc. (Both rental and leasing operations)
U-Haul International, Inc. (Subsidiary of AMERCO)
USL Capital Fleet Services
Wheels Inc.[1]

Issued on: April 29, 1998.

L. Robert Shelton,

Associate Administrator for Safety Performance Standards.

[FR Doc. 98–11781 Filed 5–1–98; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 600

[I.D. 042798D]

Magnuson-Stevens Act Provisions; Essential Fish Habitat

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

ACTION: Proposed recommendations for essential fish habitat; notice of public hearings and request for public comments.

SUMMARY: NMFS requests public comments on proposed recommendations for essential fish habitat (EFH) to the Western Pacific Fishery Management Council (Council) for its fishery management plans (FMP) for bottomfish, crustaceans, pelagics and precious corals. NMFS also announces a public hearing on the proposed recommendations.

DATES: Comments must be received by June 22, 1998. The public hearing will be held at 7:00pm, May 20, 1998, in Honolulu, HI.

ADDRESSES: The meeting will be held at Tokai University, Pacific Center, 2241 Kapiolani Blvd., Honolulu, HI. Send comments or requests for a copy of the proposed EFH recommendations for any or all of the FMPs to: NMFS, Southwest Region, 2570 Dole Street, Room 106, Honolulu, HI 96822–2396.

FOR FURTHER INFORMATION CONTACT: John Naughton, NMFS, Southwest Region, Pacific Islands Area Office, (808) 973–2940.

SUPPLEMENTARY INFORMATION: The Sustainable Fisheries Act of 1996 amended the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) to establish new requirements for EFH descriptions in FMPs and require consultation between NMFS and Federal agencies on activities that may adversely impact EFH for species managed under FMPs. The Magnuson-Stevens Act requires all Councils to amend their FMPs by October 1998 to describe and identify EFH for each managed fishery. In accordance with the Magnuson-Stevens Act, NMFS published an interim final rule in the **Federal Register** on December 19, 1997 (62 FR 66531), providing guidelines to assist the Councils in description and identification of EFH in FMPs (including adverse impacts on EFH) and consideration of actions to ensure conservation and enhancement of EFH. The Magnuson-Stevens Act also requires NMFS to provide each Council with recommendations and information regarding EFH for each fishery under that Council's authority.

NMFS has developed proposed EFH recommendations for the identification of EFH for each of the Western Pacific Council's FMPs through a process that has involved input from the Council, its advisory bodies, and the fishing industry at the Council's public meetings in November 1997, and April 1998. .

The proposed EFH recommendations for each FMP include a description of EFH for the managed species; a description of adverse effects to EFH, including fishing and non-fishing threats; and a description of measures to ensure the conservation and enhancement of EFH. Copies of the proposed EFH recommendations are available (see **ADDRESSES**). Public comments are requested by June 22, 1998.

Special Accommodations

This meeting will be physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to John Naughton (see **FOR FURTHER INFORMATION CONTACT**) at least 5 working days prior to the hearing date.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: April 28, 1998.

James P. Burgess,

Director, Office of Habitat Conservation, National Marine Fisheries Service.

[FR Doc. 98–11778 Filed 5–1–98; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[I.D. 121197E]

RIN 0648–AJ16

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Reef Fish Fishery of the Gulf of Mexico; Resubmission of Disapproved and Revised Measure in Amendment 11

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

ACTION: Notice of agency decision.

SUMMARY: NMFS announces the disapproval of a revised, previously disapproved measure submitted by the Gulf of Mexico Fishery Management Council (Council) and originally contained in Amendment 11 to the Fishery Management Plan for the Reef Fish Resources of the Gulf of Mexico (FMP). The measure would have redefined optimum yield (OY) for that FMP.

ADDRESSES: Requests for copies of the documents supporting the disapproval decision should be mailed to the Southeast Regional Office, NMFS, 9721 Executive Center Drive N., St. Petersburg, FL 33702.

FOR FURTHER INFORMATION CONTACT: Robert Sadler, 813-570-5305.

SUPPLEMENTARY INFORMATION: The Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) requires each regional fishery management council to submit any fishery management plan or amendment to NMFS for review and approval, disapproval, or partial approval. The Magnuson-Stevens Act also requires that NMFS, upon receiving an amendment, immediately publish a document in the **Federal Register** stating that the amendment is available for public review and comment.

On December 31, 1997, NMFS published a notice of availability (NOA) of a revised, previously disapproved measure originally in Amendment 11, and requested comments (62 FR 68246). The revised definition would have

[1] Indicates a newly listed company which must file a report beginning with the report due on October 25, 1998.

initially set OY for each reef fish stock managed under the FMP at a yield level that would result in at least a 30–percent spawning potential ratio (SPR) for that stock. This measure would have allowed the Council to propose setting OY for these species based on a more conservative (higher) SPR level if the Reef Fish Stock Assessment Panel indicates that appropriate biological information supports such action. Additional background, the Council's rationale for the revised measure in the amendment, and NMFS' concerns about inconsistency with national standards 1 and 2 of the Magnuson-Stevens Act are contained in the NOA.

On April 3, 1998, after considering the public comment received on the revised measure, NMFS disapproved the revised measure based on concerns expressed in the NOA and summarized here.

Comments and Responses

One public comment on the revised measure was received.

Comment: A recreational fishing association opposed an OY definition of 40–percent SPR for reef fish because it would be inconsistent with the Magnuson-Stevens Act and not based on the best available scientific information. The commenter did not provide any rationale in support of this position or address the concerns raised by NMFS.

Response: NMFS disagrees with this comment because the best available scientific information indicates that for some species an OY definition based on a 40–percent SPR would be necessary to prevent overfishing. As a result, such a definition would be necessary for the FMP to be consistent with the Magnuson-Stevens Act. NMFS' reasons for disapproving the revised OY definition further explain why NMFS disagrees with this public comment.

NMFS' Reasons for Disapproving the Revised Measure

Comments from the Southeast Fisheries Science Center (SEFSC) indicate that OY should be defined at a more biologically conservative level than 30–percent SPR for species for which biological information is presently unavailable and for those species that may be especially vulnerable to overfishing because they change sex and are believed to be less resilient as they mature. The SEFSC recommended that OY be defined as a fishing mortality rate that allows a 40–percent SPR for these 15 species: red porgy (removed from the FMP under Amendment 15 to provide for management by Florida), rock hind, speckled hind, yellowedge grouper, red hind, jewfish, red grouper, misty grouper, warsaw grouper, snowy grouper, Nassau grouper, yellowmouth grouper, gag, scamp, and yellowfin grouper. Jewfish and Nassau grouper are overfished species.

The SEFSC concluded that the 30–percent OY is inappropriate for the 15 listed species. Specifically, an OY definition based on a 30–percent SPR does not address the fact that some species change sex from female to male, which reduces egg production and is believed to make the population less resilient to fishing and environmental factors that reduce reproductive success. Use of a 30–percent SPR to define OY for such species not only would fail to incorporate the best available scientific information for the sex-changing species, but also would put them at risk of overfishing.

For the species listed above for which biological information is currently unavailable, the definition of OY based on a 30–percent SPR is inconsistent with NMFS' policy of employing a precautionary approach to fishery management. An OY definition based on a 40–percent SPR for species for which biological information is presently unavailable is more appropriate than one based on a 30–percent SPR, because an OY based on 30–percent SPR could produce a fishing mortality rate that exceeds maximum sustainable yield (MSY) and result in overfishing. It has been shown over a wide range of stock-recruitment parameter combinations that an OY based on a 40–percent SPR has a relatively low risk of producing a fishing mortality rate that would exceed MSY and result in overfishing. The Magnuson-Stevens Act requires that OY be no higher than MSY. For these reasons, NMFS has determined that approval of the resubmitted measure would risk overfishing of these species.

Public comments on the SEFSC's concerns were specifically invited in the NOA. The public comment did not address the SEFSC's concerns or provide a basis for approval of the revised measure. Following consideration of this comment and all other available information, NMFS found that the OY definition is inconsistent with national standards 1 and 2. This finding formed the basis for the final agency decision to disapprove the OY definition as part of Amendment 11.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: April 28, 1998.

Rolland A. Schmitten,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 98–11777 Filed 5–1–98; 8:45 am]

BILLING CODE 3510–22–F

Notices

Federal Register
Vol. 63, No. 85
Monday, May 4, 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

Commodity Credit Corporation

Request for an Approval of a New Information Collection

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Notice and request for comments.

SUMMARY: The Commodity Credit Corporation (CCC) is seeking approval from the Office of Management and Budget (OMB) to establish procedures for determining the computing capabilities of vendors, contractors, and other potential electronic commerce trading partners. Participants would include, but not be limited to: Contractors that supply bids to supply commodities for use under export donation programs; vendors that supply bids for transportation of commodities; and contractors that supply bids to store commodities.

An Electronic Commerce Capability Survey will provide for submission of computing capability information from the trade. Currently there is no procedure in place to allow for the collection of computing capability information. The new procedure will allow CCC to collect the information needed to target specific labor and paper intensive processes for migration towards electronic commerce.

DATES: Comments on this notice must be received on or before July 6, 1998 to be assured consideration.

FOR FURTHER INFORMATION CONTACT: Timothy P. Mehl, Chief, Planning and Analysis Division, Kansas City Commodity Office, 9200 Ward Parkway, Kansas City, Missouri 64114, telephone (816) 926–3536, fax (816) 926–6767.

SUPPLEMENTARY INFORMATION:

Title: Electronic Commerce Capability Survey.

OMB Number: New submission.

Type of Request: Approval of a new information collection.

Abstract: CCC conducts a variety of programs under which information is submitted and manually entered by CCC. A brief description of each of these programs is explained below.

The Dairy and Domestic Operations Division (D&DOD) issues invitations for purchase of commodities for domestic and dairy programs on a monthly, multi-month, quarterly and yearly basis. Vendors respond by making offers using the form KC–327, Domestic Offer Form. D&DOD verifies that the KC–327 is responsive and manually enters the information on the form into the bid evaluation program. The keypunched data is then uploaded into the Processed Commodities Inventory Management System (PCIMS). As an alternative to keypunch, bids are entered manually by using PCIMS bid input screens.

Export Operations Division (EOD) issues invitations to purchase or process commodities for food donation programs monthly. Special invitations, however, are issued throughout the month. Steamship lines currently respond to these invitations with offers for transportation via hard copy form KC–324, Steamship Line Service Offer. Responsive offers are analyzed by Traffic Management Division; the lowest U.S. and foreign flag offers for each U.S. port and foreign discharge port are recorded on form KC–149, Ocean Rates. Form KC–149's are reviewed for accuracy and form KC–148, Commodity Requests, is attached. Ocean rate forms and commodity request forms are forwarded to Information Management Processing Division (IMPD) for data entry and proof lists are printed for review.

Bulk Grain Division (BGD) issues invitations as needed for purchase of grains for use in export donation programs. Grain export companies respond to these invitations for offers on form KC–331, Procurement Offer Form, which is a part of each invitation. At the same time BGD issues the invitation, EOD communicates with the Private Volunteer Organization (PVO) booking agent, to issue a freight tender for ocean freight. Once the steamship line's bid for ocean freight is received from the booking agent, the offers are manually recorded on a spread sheet. When the grain offers are evaluated, they are combined with the ocean freight received from the booking agent to determine lowest landed cost to destination. Data entry requires dual bid entry for verification purposes.

CCC conducts a program to provide storage adequate to fulfill its program needs by contracting with commercial warehouses to store grain in country, sub-terminal, and terminal locations. CCC contracts for the use of privately owned facilities in carrying out this program. Grain, cotton, and processed commodity warehouse operators interested in storing and/or handling CCC-interest commodities are required to have entered into a Uniform Storage Agreement with CCC. Warehouse operators must meet certain standards and complete documents prior to receiving CCC approval. Information which is provided by warehouse operators is entered into the Grain Inventory Management System (GIMS) which is in turn used by numerous other Agency entities. CCC uses this data to develop policy and implement program operations.

The current keypunching processes require entering handwritten data and then verifying the results. This information collection will enable CCC to analyze the computing capability of its trading partners and move processes towards electronic commerce in a logical and orderly fashion.

Estimate of Burden: Public reporting burden for collecting information under this notice is estimated to average 15 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Respondents: Business and other for profit organizations.

Respondents: 3,750.

Estimated Number of Annual Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 937 hours.

Proposed topics for comment include: (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 burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information collected; or (d) ways to

minimize the burden of the collection of the 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. Comments regarding this information collection requirement may be directed to the Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for USDA, Washington, DC 20503, and to Timothy P. Mehl, Chief, Planning and Analysis Division, Kansas City Commodity Office, 9200 Ward Parkway, Kansas City, Missouri 64114, telephone (816) 926–3536, fax (816) 926–6767.

All comments will become a matter of public record.

Signed at Washington, DC, April 24, 1998.

Keith Kelly,

Executive Vice President, Commodity Credit Corporation.

[FR Doc. 98–11697 Filed 5–1–98; 8:45 am]

BILLING CODE 3410–05–P

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

Uniform Grain and Rice Storage Agreement Fees

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Notice of fees.

SUMMARY: The purpose of this notice is to publish a schedule of fees to be paid to Commodity Credit Corporation (CCC) by grain and rice warehouse operators requesting to enter into a storage agreement; increase the capacity of an existing storage agreement; or renew an existing storage agreement.

EFFECTIVE DATE: April 1, 1998.

FOR FURTHER INFORMATION CONTACT: Howard Froehlich, Chief, Storage Contract Branch, Warehouse and Inventory Division, Farm Service Agency, United States Department of Agriculture, 1400 Independence Avenue, S.W., STOP 0553, Washington, D.C. 20250–0553, telephone (202) 720–7398, FAX (202) 690–3123.

In accordance with the provisions of the Commodity Credit Corporation Charter Act (15 U.S.C. 714 *et seq*), CCC enters into storage agreements with private grain and rice warehouse operators to provide for the storage of commodities owned by CCC or pledged as security to CCC for marketing assistance and price support loans.

Specifically, 7 CFR 1421.5558 provides that all grain and rice warehouse operators who do not have an existing agreement with CCC for storage and handling of CCC-owned commodities or commodities pledged to CCC as loan collateral, but who desire such an agreement, must pay an application and examination fee for each warehouse for which CCC approval is sought prior to CCC conducting the original warehouse examination.

A review of the revenue collected for application and examination fees indicates that the fees collected are insufficient to meet costs incurred by CCC for warehouse examinations and contract origination administrative functions. Accordingly, beginning April 1 with the start of the 1998–99 contract year, the fees are changed by increasing by 10 percent those fees applicable to the 1997–98 contract year. The fee will be computed at the rate of $15 for each 10,000 bushels of storage capacity or fraction thereof, but the fee will be not less than $150 nor more than $1,500.

Further, each warehouse operator who has a non-federally licensed grain or rice warehouse in States that do not have a cooperative agreement with CCC for warehouse examinations must pay an annual fee to CCC for each such warehouse which is approved by CCC or for which CCC approval is sought. The collection of the annual fee by CCC is currently suspended. CCC continues to suspend collection of the annual fee, but CCC may reinstate the annual fee by future notice to the industry.

Signed at Washington, DC, on April 27, 1998.

Keith Kelly,

Executive Vice President, Commodity Credit Corporation.

[FR Doc. 98–11695 Filed 5–1–98; 8:45 am]

BILLING CODE 3410–05–P

DEPARTMENT OF AGRICULTURE

Rural Housing Service

Rural Business-Cooperative Service

Rural Utilities Service

Farm Service Agency

Notice of Request for Reinstatement of an Information Collection

AGENCY: Rural Housing Service, Rural Business-Cooperative Service, Rural Utilities Service, and Farm Service Agency, USDA.

ACTION: Proposed collection: Comments request.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Rural Housing Service (RHS), the Rural Business-Cooperative Service (RBS), Rural Utilities Service (RUS), and the Farm Service Agency's (FSA) intention to request an extension for a currently approved information collection in support of compliance with Civil Rights laws.

DATES: Comments on this notice must be received by July 6, 1998 to be assured of consideration.

FOR FURTHER INFORMATION CONTACT: Jacqueline Micheli, Equal Opportunity Specialist, Rural Development, U.S. Department of Agriculture, STOP 0703, 1400 Independence Ave., S.W., Washington, DC 20250–0703, Telephone (202) 690–9812 (voice) or 690–9809 (TDD).

SUPPLEMENTARY INFORMATION:

Title: 7 CFR 1901–E, Civil Rights Compliance Requirements.

OMB Number: 0575–0018.

Type of Request: Reinstatement of an information collection.

Abstract: The information collection under OMB Number 0575–0018 enables the RHS, RBS, RUS, and FSA to effectively monitor a recipient's compliance with the civil rights laws, and to determine whether or not service and benefits are being provided to beneficiaries on an equal opportunity basis.

The RBS, RHS, RUS, and FSA, formerly the Farmers Home Administration, are required to provide Federal financial assistance through its farmer, housing, and community and business programs on an equal opportunity basis. The laws implemented in 7 CFR Part 1901, Subpart E (''1901–E''), require the recipients of RBS, RHS, RUS, and FSA's Federal financial assistance to collect various types of information, including information on participants in certain of these agencies' programs, by race, color, and national origin. While these agencies realize that the provisions of 1901–E are outdated as the result of statutory amendment and other processes of law, the information needed to be collected under this implementing regulation is not affected by the obsolete nature of the regulation. The RBS, RHS, RUS, and FSA use the information to monitor a recipient's compliance with the civil rights laws, and to determine whether or not service and benefits are being provided to beneficiaries on an equal opportunity basis. The agencies are in the process of revising 1901–E, and expect to publish for comment a **Federal Register** document proposing these revisions in 1998. The following laws implemented are 7 CFR 1901–E:

a. Title VI of the Civil Rights Act of 1964 (''Title VI''). The implementing

regulations for this Act issued by the Department of Justice and the Department of Agriculture requires recipients of RBS', RHS' RUS' and FSA's program assistance to collect information on the race/national origin of the beneficiaries of their specific programs. This information is used by the RBS, RHS, RUS, and FSA for compliance review and monitoring purposes for Title VI.

b. Title VIII of the Civil Rights Act of 1968 (as amended) (''Title VIII). Section 808a of Title VIII (42 U.S.C. 3608a (1988)), in pertinent part, requires the Secretary of Agriculture to collect racial and ethnic data on beneficiaries and recipients of USDA housing programs. Furthermore, the implementing regulations issued by the Department of Housing and Urban Development (''HUD'') and adopted by the RBS, RHS, RUS, and FSA, requires recipients and other participants in RHS's housing programs affirmatively to further fair housing by providing housing and the opportunity to acquire housing in a non-discriminatory fashion. One way to demonstrate compliance with Title VIII is to prepare affirmative fair housing marketing plans, and to collect and maintain data to reflect compliance with the requirements of that plan. Furthermore, under the Memorandum of Understanding between HUD and USDA, many complaints of fair housing violation by USDA recipients will be processed by HUD. The collection and maintenance of these data will assist in this enforcement effort.

c. Executive Order 11246. The implementing regulations issued by the Department of Labor (DOL) and adopted by the RBS, RHS, RUS, and FSA, require recipients of Federally assisted construction contracts of $10,000 or more to maintain goals for hiring minorities and females, and to submit employment utilization reports to the DOL's Office of Federal Contract Compliance Programs.

The information collected and maintained by the recipients of certain programs from RBS, RHS, RUS, and FSA is used internally by these agencies for monitoring compliance with the civil rights laws and regulations. This information is made available to USDA officials, officials of other Federal agencies, and to Congress for reporting purposes. Without the required information, RBS, RHS, RUS, FSA and its recipients will lack the necessary documentation to demonstrate that their programs are being administered in a nondiscriminatory manner and in full compliance with the civil rights laws. In addition, the RBS, RHS, RUS, and FSA, and their recipients would be vulnerable in lawsuits alleging discrimination in the affected programs of these agencies and would be without appropriate data and documentation to defend themselves by demonstrating that services and benefits are being provided to beneficiaries on an equal opportunity basis.

Estimate of Burden: The public reporting burden for this collection of information is estimated to average 1 hour per response.

Respondents: Recipients of RBS, RHS, RUS, and FSA's Federal financial assistance, loan, and loan guarantee programs.

Estimated Number of Respondents: 19,565.

Estimated Number of Responses per Respondent: 5.40.

Estimated Total Annual Burden on Respondents: 533,017.

Copies of this information collection can be obtained from Richard Gartman, Regulations and Paperwork Management Branch, Support Services Division, at (202) 720–9745.

Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Rural Development, including whether the information will have practical utility; (b) the accuracy of the Agencies' 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 other forms of information technology. Comments may be sent to Richard Gartman, Regulations and Paperwork Management Branch, Support Services Division, U.S. Department of Agriculture, Rural Development, Ag Box 0743, Washington, DC 20250. 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 20, 1998.

Jill Long Thompson,

Under Secretary, Rural Development.

Dated: April 4, 1998.

August Schumacher, Jr.,

Under Secretary, Farm and Foreign Agricultural Services.

[FR Doc. 98–11693 Filed 5–1–98; 8:45 am]

BILLING CODE 3410–XT–U

DEPARTMENT OF AGRICULTURE

Farm Service Agency

List of Warehouses and Availability of List of Cancellations and/or Terminations

AGENCY: Farm Service Agency, USDA.

ACTION: Notice of publication.

SUMMARY: Notice is hereby given that the Farm Service Agency has published a list of warehouses licensed under the United States Warehouse Act (7 U.S.C. 241 *et. seq.*) as of December 31, 1997, as required by section 26 of that Act (7 U.S.C. 266). A list of cancellations or terminations that occurred during calendar year 1997 is also available. Interested persons may obtain a copy of either list from the person listed below.

FOR FURTHER INFORMATION CONTACT: Judy Fry, Farm Service Agency, Warehouse and Inventory Division, U.S. Department of Agriculture, STOP 0553, 1400 Independence Avenue, S.W., Washington, DC 20250–0553; e-mail requests may be sent: Judy—Fry@wdc.fsa.usda.gov.; telephone 202–720–3822.

Signed at Washington, D.C., on April 24, 1998.

Keith Kelly,

Administrator, Farm Service Agency.

[FR Doc. 98–11696 Filed 5–1–98; 8:45 am]

BILLING CODE 3410–05–P

DEPARTMENT OF AGRICULTURAL

Foreign Agricultural Service

Types and Quantities of Agricultural Commodities Available for Donation Overseas Under Section 416(b) of the Agricultural Act of 1949, as Amended, in Fiscal Year 1998

AGENCY: Foreign Agricultural Service, USDA.

ACTION: Notice.

SUMMARY: On April 6, 1998, the Secretary of Agriculture determined that 10,500 metric tons of nonfortified nonfat dry milk packaged in 25 kilogram bags are available for donation overseas under section 416(b) of the Agricultural Act of 1949, as amended, during fiscal year 1998.

FOR FURTHER INFORMATION CONTACT:

Ira Branson, Director, CCC Program Support Division, FAS, USDA, (202) 720–3573.

Dated: April 28, 1998.

Christopher E. Goldthwait,

Acting Administrator, Foreign Agricultural Service.

[FR Doc. 98–11698 Filed 5–1–98; 8:45 am]

BILLING CODE 3410–10–M

DEPARTMENT OF AGRICULTURE

Foreign Agricultural Service

Notice of Agricultural Policy Advisory Committee for Trade and Agricultural Technical Advisory Committees for Trade Meetings

AGENCY: Foreign Agricultural Service.

ACTION: Notice of meetings.

SUMMARY: The Agricultural Policy Advisory Committee for Trade (APAC) and the Agricultural Technical Advisory Committees for Trade (ATACs) will hold meetings during the period of May 1, 1998–December 20, 1998. The meetings will include a review and discussion of current issues which influence U.S. agricultural trade policy that include, but are not limited to, issues concerning GATT accession negotiations with various countries; U.S./Mexico bilateral agricultural trade issues; U.S./Canada bilateral agricultural trade issues; international sanitary and phytosanitary barriers to trade; and WTO Uruguay Round Agreement implementation issues.

Pursuant to section 2155(f)(2) of title 19 of the United States Code, the U.S. Trade Representative has determined that these meetings will be concerned solely with matters the disclosure of which would seriously compromise the development by the United States Government of trade policy priorities, negotiating objectives, bargaining positions. Accordingly, these meetings will be closed to the public.

ADDRESSES: The meetings will be held at the U.S. Department of Agriculture, 14th and Independence Avenues, S.W., Washington, D.C. 20250 unless an alternate site is necessary.

FOR FURTHER INFORMATION CONTACT: Pate Felts, Director of Intergovernmental Affairs, Office of the United States Trade Representative at (202) 395–6120 or Paula Thomasson, Joint Executive Secretary, Agricultural Policy Advisory Committee for Trade, Foreign Agricultural Service, U.S. Department of Agriculture, at (202) 720–6829.

Dated: April 28, 1998.

Lon Hatamiya,

Administrator, Foreign Agricultural Service.

[FR Doc. 98–11789 Filed 5–1–98; 8:45 am]

BILLING CODE 3410–10–M

DEPARTMENT OF AGRICULTURE

Grain Inspection, Packers and Stockyards Administration

Designation for the Champaign (IL), Eastern Iowa (IA), and Enid (OK) Areas

AGENCY: Grain Inspection, Packers and Stockyards Administration (GIPSA).

ACTION: Notice.

SUMMARY: GIPSA announces the designation of Champaign-Danville Grain Inspection Departments, Inc. (Champaign), Eastern-Iowa Grain Inspection and Weighing Service, Inc. (Eastern Iowa), and Enid Grain Inspection Company, Inc. (Enid), to provide official services under the United States Grain Standards Act, as amended (Act).

EFFECTIVE DATE: May 1, 1998.

ADDRESSES: USDA, GIPSA, Janet M. Hart, Chief, Review Branch, Compliance Division, STOP 3604, Room 1647–S, 1400 Independence Avenue, S.W., Washington, DC 20250–3604.

FOR FURTHER INFORMATION CONTACT: Janet M. Hart, at 202–720–8525.

SUPPLEMENTARY INFORMATION: This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12866 and Departmental Regulation 1512–1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

In the December 1, 1997, **Federal Register** (62 FR 63513), GIPSA asked persons interested in providing official services in the geographic areas assigned to Champaign and Enid to submit an application for designation. Applications were due by December 30 1997. Champaign and Enid, the only applicants, each applied for designation to provide official services in the entire area currently assigned to them.

In the December 17, 1997, **Federal Register** (62 FR 66051), GIPSA asked persons interested in providing official services in the geographic area assigned to Eastern Iowa to submit an application for designation. Applications were due by January 15 1998. Eastern Iowa, the only applicant, applied for designation to provide official services in the entire area currently assigned to them.

Since Champaign, Eastern Iowa, and Enid were the only applicants, GIPSA did not ask for comments on them.

GIPSA evaluated all available information regarding the designation criteria in Section 7(f)(l)(A) of the Act and, according to Section 7(f)(l)(B), determined that Champaign, Eastern Iowa, and Enid are able to provide official services in the geographic areas for which they applied. Effective June 1, 1998, and ending May 31, 2001, Champaign is designated to provide official services in the geographic area specified in the December 1, 1997, **Federal Register**. Effective August 1, 1998, and ending May 31, 2001, Eastern Iowa is designated to provide official services in the geographic area specified in the December 17, 1997, **Federal Register**. Effective July 1, 1998, and ending May 31, 2001, Enid is designated to provide official services in the geographic area specified in the December 1, 1997, **Federal Register**.

Interested persons may obtain official services by contacting Champaign at 217–398–0723, Eastern Iowa at 319–322–7149, and Enid at 405–233–1121.

Authority: Pub. L. 94–582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*).

Dated: April 27, 1998.

Neil E. Porter,

Director, Compliance Division.

[FR Doc. 98–11694 Filed 5–1–98; 8:45 am]

BILLING CODE 3410–EN–P

DEPARTMENT OF AGRICULTURE

Natural Resource Conservation Service

Notice of Proposed Change to the Natural Resources Conservation Service's National Handbook of Conservation Practices

AGENCY: Natural Resources Conservation Service (NRCS), U.S. Department of Agriculture, New York State Office.

ACTION: Notice of availability of proposed changes in the NRCS National Handbook of Conservation Practices, Section IV of the New York State NRCS Field Office Technical Guide (FOTG) for review and comment.

SUMMARY: It is the intention of NRCS to issue a series of new conservation practice standards in its National Handbook of Conservation Practices. These new standards include; Agrichemical Mixing Facility (NY702) and Record Keeping (NY748).

DATES: Comments will be received on or before June 3, 1998.

FOR FURTHER INFORMATION CONTACT: Inquire in writing to Richard D. Swenson, State Conservationist, Natural Resources Conservation Service (NRCS), 441 S. Salina Street, Fifth Floor, Suite 354, Syracuse, New York, 13202–2450. Copies of these standards are available by request from the above individual.

SUPPLEMENTARY INFORMATION: Section 343 of the Federal Agricultural

Improvement and Reform Act of 1996 states that revisions made after the enactment of the law to NRCS State Technical Guides used to carry out highly erodible land and wetland provisions of the law shall be made available for public review and comment. For the next 30 days the NRCS will receive comments relative to the proposed changes. Following that period a determination will be made by the NRCS regarding disposition of those comments and a final determination of change will be made.

Dated: April 24, 1998.

Steven L. Machovec,

Acting State Conservationist, Natural Resources Conservation Service, Syracuse, NY.

[FR Doc. 98–11593 Filed 5–1–98; 8:45 am]

BILLING CODE 3410–16–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–201–802]

Gray Portland Cement and Clinker From Mexico: Amended Final Results of Antidumping Duty Administrative Review

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

EFFECTIVE DATE: May 4, 1998.

FOR FURTHER INFORMATION CONTACT: Nithya Nagarajan, Kristen Stevens, or John Totaro, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue N.W, Washington, D.C. 20230; telephone: (202) 482–3793.

SUPPLEMENTARY INFORMATION:

Applicable Statute

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (hereinafter, ''the Act'') by the Uruguay Round Agreements Act (''URAA''). In addition, unless otherwise indicated, all citations to the Department's regulations are to the old regulations (19 CFR part 353 (1997)).

Scope of the Review

The products covered by this review include gray portland cement and clinker. Gray portland cement is a hydraulic cement and the primary component of concrete. Clinker, an intermediate material product produced when manufacturing cement, has no use other than being ground into finished cement. Gray portland cement is currently classifiable under the Harmonized Tariff Schedule (HTS) item number 2523.29 and cement clinker is currently classifiable under HTS item number 2523.10. Gray portland cement has also been entered under HTS item number 2523.90 as ''other hydraulic cements.'' The HTS subheadings are provided for convenience and U.S. Customs Service purposes only. Our written description of the scope of the order remains dispositive.

Amendment of Final Results

On March 16, 1998, the Department of Commerce (the Department) published the final results of the administrative review of the antidumping duty order on Gray Portland Cement and Clinker from Mexico (63 FR 12764). This review covered CEMEX S.A de C.V (CEMEX), and its affiliate, Cementos de Chihuahua (CDC), manufacturers/exporters of the subject merchandise to the United States. The period of review (POR) is August 1, 1995 through July 31, 1996.

On March 24, 1998, counsel for petitioner, the Southern Tier Cement Producers Committee, filed allegations of clerical errors with regard to the final results in the sixth administrative review of the antidumping duty order of gray portland cement and clinker from Mexico. On April 3, 1997, counsel for the respondent, CEMEX, also filed allegations of clerical errors with regard to this review. Petitioner then filed rebuttal comments on April 10, 1998. The Department, upon review of the allegations, agrees that certain aspects of the final results constitute ministerial errors within the meaning of 19 CFR 353.28, and is hereby issuing an amended final based on corrections for these ministerial errors.

First, CEMEX and petitioner noted that the margin program contained an incorrect instruction which resulted in an incorrect calculation of home market credit and inventory carrying cost. The Department, upon review of the margin program determined that the original final margin program failed to perform the proper mathematical calculation in calculating home market credit and inventory carrying cost, and U.S. credit and inventory carrying cost. The Department has corrected the amended final margin program to reflect these changes. For a complete discussion of the Department's corrected margin program, please see the amended final results analysis memo from the case analyst to the file.

Second, CEMEX contends that the Department used an incorrect factor to convert quantities from short tons to metric tons in the margin calculation program. CEMEX did not raise this alleged error in its case brief for the sixth review. The petitioner argues that the Department used this conversion factor in the fifth review amended final results, the sixth review preliminary results, and the sixth review final results. We agree with petitioner, moreover, CEMEX did not object to the explicit statement in the **Federal Register** notice of the fifth review amended final results that the Department used the conversion factor CEMEX now contests—.907194 metric tons per short ton—in the amended final results. The Department's short ton/metric ton conversion factor (1 MT=1.1023 ST; 1/1.1023=0.907194) varies by 0.000009 from the factor proposed by CEMEX as the ''numerically correct'' factor (1 ST=2000 Lbs.; 1 MT=2,204.623 Lbs.; 2000/2,204.623=*0.907185).* Clearly, the Department's conversion factor is also ''numerically correct,'' but reflects a different calculation methodology from that proposed by CEMEX. Thus, the Department did not err by using this factor, and we will not depart from established practice by adopting CEMEX's conversion factor for the sixth review amended final results.

Third, CEMEX alleges that the Department used incorrect inflation factors for the months of December 1995 and January 1996 in its calculation of the difference in merchandise (DIFMER) adjustment. Petitioner did not object to the corrected inflation factor, but noted that the Department failed to use the appropriate costs, as revised after verification, in the DIFMER adjustment calculation. Upon review of the margin program, the Department determined that CEMEX and petitioner are both correct, therefore, we have revised the inflation factors for the months of December 1995 and January 1996, revised the cost of production to reflect the costs as reported to us after verification, and recalculated DIFMER for both CEMEX and its collapsed affiliate, CDC. For a complete discussion of the Department's corrected margin program, please see the amended final results analysis memo from the case analyst to the file.

Finally, petitioner alleges that the Department failed to issue a final duty absorption finding in the **Federal Register** notice for the final results of review. CEMEX did not rebut petitioner's allegation. Upon review of the final results, the Department has determined that its position has not altered from the preliminary results of review and has determined that the

parties to the proceeding did not comment on the Department's preliminary finding. Therefore, consistent with our prior practice, the Department will continue to adhere to its preliminary finding for the final results of review. However, due to the fact that the final weighted-average dumping margin was revised between the preliminary and final results, we have finally determined that CEMEX has margins on 92.49 percent of its U.S. sales.

Pursuant to section 353.28 of the Department's regulations, parties to the proceeding will have 5 days after the date of publication of this notice to notify the Department of other ministerial or clerical errors, as well as, 5 days thereafter to rebut any comments by parties.

Amended Final Results of Review

As a result of our review, we have determined that the following margins exist:

Manufacturer/Exporter	Time period	Margin (percent)
CEMEX S.A de C.V	8/1/95–7/31/96	37.49

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. Individual differences between United States price and foreign market value may vary from the percentages stated above. The Department will issue appraisement instructions directly to the Customs Service.

Furthermore, the following deposit requirements will be effective, upon publication of this notice of amended final results of review for all shipments of gray portland cement and clinker from Mexico, entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(1) of the Act: (1) The cash deposit rates for the reviewed companies will be the rates for those firms as stated above; (2) for previously investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, or the original investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will continue to be 61.85 percent for gray portland cement and clinker, the all others rate established in the LTFV investigations. See Final Determination of Sales at Less Than Fair Value: Gray Portland Cement and Clinker from Mexico, 55 FR 29244, (1990).

These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

This notice serves as a final reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This notice also serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with section 353.34(d) of the Department's regulations. Timely notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This administrative review and notice are in accordance with section 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22.

Dated: April 21, 1998.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 98–11429 Filed 5–1–98; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–508–605]

Industrial Phosphoric Acid from Israel; Extension of Time Limit for Countervailing Duty Administrative Review

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

ACTION: Notice of extension of time limit for countervailing duty administrative review.

SUMMARY: The Department of Commerce is extending the time limit for the preliminary results of the administrative review of the countervailing duty order on industrial phosphoric acid from Israel, covering the period January 1, 1996 through December 31, 1996. This extension is made pursuant to section 751(a)(3)(A) of the Tariff Act of 1930, as amended by the Uruguay Round Agreements Act.

EFFECTIVE DATE: May 4, 1998.

FOR FURTHER INFORMATION CONTACT: Dana Mermelstein or Maria MacKay, Office of CVD/AD Enforcement VI, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–2786.

POSTPONEMENT: Under the Act, the Department of Commerce (the Department) may extend the deadline for issuance of the preliminary results of review if it determines that it is not practicable to issue the preliminary results within the statutory time limit of 245 days after the last day of the month in which the anniversary of the date of the publication of the order occurs. The Department finds that it is not practicable to issue the preliminary results for the calendar year 1996 administrative review of industrial phosphoric acid from Israel within this time limit. (See Memorandum from the Acting Deputy Assistant Secretary for Import Administration, dated April 27, 1998, to the Acting Assistant Secretary for Import Administration, ''Industrial Phosphoric Acid from Israel: Extension of the Deadline for the Preliminary Results of the 1996 Administrative Review (January 1, 1996 through December 31, 1996''), which is a public document on file in the Central Records Unit.)

In accordance with section 751(a)(3)(A) of the Tariff Act of 1930, as amended by the Uruguay Round Agreements Act, the Department will extend the time for issuance of the preliminary results of this review from May 4, 1998 to no later than August 31, 1998.

Dated: April 27, 1998.

Maria Harris Tildon,

Acting Deputy Assistant Secretary for Import Administration.

[FR Doc. 98–11801 Filed 5–1–98; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 042798A]

Incidental Take of Marine Mammals; Bottlenose Dolphins and Spotted Dolphins

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

ACTION: Notice of issuance of letters of authorization.

SUMMARY: In accordance with the Marine Mammal Protection Act (MMPA) as amended, and implementing regulations, notification is hereby given that 1-year letters of authorization to take bottlenose and spotted dolphins incidental to oil and gas structure removal activities were issued on February 12, 1998, to Pogo Producing Co.; and on April 1, 1998, to Burlington Resources Offshore, Inc. and Apache Corp, all of Houston TX; and, on April 24, 1998, to Chevron U.S.A. of New Orleans, LA.

ADDRESSES: The applications and letters are available for review in the following offices: Office of Protected Resources, NMFS, 1315 East-West Highway, Silver Spring, MD 20910 and the Southeast Region, NMFS, 9721 Executive Center Drive N, St. Petersburg, FL 33702.

FOR FURTHER INFORMATION CONTACT: Kenneth R. Hollingshead, Office of Protected Resources, NMFS, (301) 713–2055 or Colleen Coogan, Southeast Region (813) 570–5312.

SUPPLEMENTARY INFORMATION: Section 101(a)(5)(A) of the MMPA (16 U.S.C. 1361 *et seq.*) directs NMFS to allow, on request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region, if certain findings are made and regulations are issued. Under the MMPA, the term ''taking'' means to harass, hunt, capture, or kill or to attempt to harass, hunt, capture or kill marine mammals.

Permission may be granted for periods up to 5 years if NMFS finds, after notification and opportunity for public comment, that the taking will have a negligible impact on the species or stock(s) of marine mammals and will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses. In addition, NMFS must prescribe regulations that include permissible methods of taking and other means effecting the least practicable adverse impact on the species and its habitat, and on the availability of the species for subsistence uses, paying particular attention to rookeries, mating grounds, and areas of similar significance. The regulations must include requirements pertaining to the monitoring and reporting of such taking. Regulations governing the taking of bottlenose and spotted dolphins incidental to oil and gas structure removal activities in the Gulf of Mexico were published on October 12, 1995 (60 FR 53139), and remain in effect until November 13, 2000.

Issuance of these letters of authorization are based on a finding that the total takings will have a negligible impact on the bottlenose and spotted dolphin stocks of the Gulf of Mexico.

Dated: April 29, 1998.

P. Michael Payne,

Chief, Marine Mammal Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 98–11780 Filed 5–1–98; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 042098C]

Marine Mammals; Permit No. 959

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

ACTION: Receipt of application for amendment.

SUMMARY: Notice is hereby given that the Cetacean Research Unit, P.O. Box 159, Gloucester, Massachusetts 01930, has requested an amendment to scientific research Permit No. 959.

DATES: Written comments must be received on or before June 3, 1998.

ADDRESSES: The amendment request and related documents are available for review upon written request or by appointment in the following office(s):

Permits Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910 (301/713–2289);

Regional Administrator, Northeast Region, National Marine Fisheries Service, One Blackburn Drive, Gloucester, MA 01930–2298 (508/281–9250); and

Regional Administrator, Southeast Region, National Marine Fisheries Service, 9721 Executive Center Drive, North, St. Petersburg, FL 33702–2432 (813/570–5301).

Written data or views, or requests for a public hearing on this request should be submitted to the Chief, Permits Division, F/PR1, Office of Protected Resources, National Marine Fisheries Service, Silver Spring, MD 20910. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular request would be appropriate.

FOR FURTHER INFORMATION CONTACT: Jeannie Drevenak, 301/713–2289.

SUPPLEMENTARY INFORMATION: The subject amendment is requested under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216).

The Permit Holder is currently authorized to conduct photo-identification and observational studies on 400 humpback whales(*Megaptera novaeangliae*), 250 finback whales (*Balaenoptera physalus*),50 sei whales (*Balaenoptera borealis*), and 50 right whales (*Eubalaena glacialis*) annually in the waters of Maine, New Hampshire, Massachusetts, Virginia, North Carolina, Georgia, and Florida over a 5-year period.

The Holder is now requesting that the Permit be amended to authorize: (1) biopsy sampling of up to 150 humpback whales from the Gulf of Maine feeding population, ranging from New York to Nova Scotia; and (2) suction cup tagging with time-depth recorders/VHF radio tags of up to 50 humpback whales from the same population, and 50 finback whales from the New England feeding population, over the remaining duration of the permit. The biopsy samples will be used for several purposes, including an investigation into using skin collagen tensile strength as a means to estimate the age of a sampled whales, an examination of its recent exposure to human pathogens, and molecular genetic studies. Time-depth recorders/VHF radio tags multi-sensor packages will be used in conjunction with sonar traces to understand the feeding ecology of endangered whales in New England.

Concurrent with the publication of this notice in the **Federal Register**, NMFS is forwarding copies of this application to the Marine Mammal

Commission and its Committee of Scientific Advisors.

Dated: April 28, 1998.

Ann D. Terbush,

Chief, Permits and Documentation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 98–11779 Filed 5–1–98; 8:45 am]

BILLING CODE 3510–22–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Amendment of Coverage of Import Limits and Visa and Certification Requirements for Certain Part-Categories Produced or Manufactured in Various Countries; Textile and Apparel Categories With the Harmonized Tariff Schedule of the United States: Changes to the 1998 Correlation; Corrections

April 28, 1998.

In the letter to the Commissioner of Customs published in the **Federal Register** on March 31, 1998 (63 FR 15387), 2nd column, in the table under ''HTS change,'' lines 10 and 11, correct the 1st four digits of each HTS number for Category 670–L from ''4209'' to ''4202.''

In the letter to the Commissioner of Customs published in the **Federal Register** on April 13, 1998 (63 FR 17993), 2nd column, in the table under ''HTS Change'' for Categories 369–L and 670–L, correct the 1st four digits of each HTS number from ''4209'' to ''4202.''

In the notice published in the **Federal Register** on April 13, 1998 (63 FR 17993), 3rd column, in the table, correct the 1st four digits of each HTS number from ''4209'' to ''4202.''

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 98–11727 Filed 5–1–98; 8:45 am]

BILLING CODE 3510–DR–F

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Commodity Futures Trading Commission.

TIME AND DATE: 11:00 a.m., Friday, May 29, 1998.

PLACE: 1155 21st St., N.W., Washington, D.C., 9th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–418–5100.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 98–11827 Filed 4–30–98; 10:29 am]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Commodity Futures Trading Commission.

TIME AND DATE: 11:00 a.m., Friday, May 22, 1998.

PLACE: 1155 21st St., N.W., Washington, D.C., 9th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–418–5100.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 98–11828 Filed 4–30–98; 10:29 am]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Commodity Futures Trading Commission.

TIME AND DATE: 11:00 a.m., Friday, May 15, 1998.

PLACE: 1155 21st St., N.W., Washington, D.C., 9th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–418–5100.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 98–11829 Filed 4–30–98; 10:29 am]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Commodity Futures Trading Commission.

TIME AND DATE: 11:00 a.m., Friday, May 8, 1998.

PLACE: 1155 21st St., N.W., Washington, D.C., 9th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–418–5100.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 98–11830 Filed 4–30–98; 10:29 am]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Commodity Futures Trading Commission.

TIME AND DATE: 11:00 a.m., Friday, May 1, 1998.

PLACE: 1155 21st St., N.W., Washington, D.C., 9th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb. 202–418–5100.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 98–11831 Filed 4–30–98; 10:29 am]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Commodity Futures Trading Commission.

TIME AND DATE: 2:00 p.m., Monday, May 25, 1998.

PLACE: 1155 21st St., N.W., Washington, D.C., 9th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Adjudicatory Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–418–5100.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 98–11832 Filed 4–30–98; 10:30 am]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Commodity Futures Trading Commission.

TIME AND DATE: 2:00 p.m., Monday, May 18, 1998.

PLACE: 1155 21st St., N.W., Washington, D.C., 9th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Adjudicatory Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–418–5100.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 98–11833 Filed 4–30–98; 10:30 am]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Commodity Futures Trading Commission.

TIME AND DATE: 2:00 p.m., Monday, May 11, 1998.

PLACE: 1155 21st St., N.W., Washington, D.C., 9th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Adjudicatory Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–418–5100.

Jean W. Webb,

Secretary of the Commission.

[FR Doc. 98–11834 Filed 4–30–98; 10:30 am]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Commodity Futures Trading Commission.

TIME AND DATE: 2:00 p.m., Monday, May 4, 1998.

PLACE: 1155 21st., N.W., Washington, D.C., 9th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Adjudicatory Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–418–5100.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 98–11835 Filed 4–30–98; 10:30 am]

BILLING CODE 6351–01–M

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0088]

Submission for OMB Review; Comment Request Entitled Travel Costs

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for public comments regarding a revision 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 a revision of a currently approved information collection requirement concerning Travel Costs. A request for public comments was published at 62 FR 64932, December 9, 1997. No comments were received.

DATES: Comments may be submitted on or before June 3, 1998.

FOR FURTHER INFORMATION CONTACT: Linda Nelson, Federal Acquisition Policy Division, GSA, (202) 501–1900.

SUPPLEMENTARY INFORMATION:

A. Purpose

FAR 31.205–46, Travel Costs, requires that, except in extraordinary and temporary situations, costs incurred by a contractor for lodging, meals, and incidental expenses shall be considered to be reasonable and allowable only to the extent that they do not exceed on a daily basis the per diem rates in effect as of the time of travel as set forth in the Federal Travel Regulation for travel in the conterminous 48 United States, the Joint Travel Regulations, Volume 2, Appendix A, for travel is Alaska, Hawaii, the Commonwealth of Puerto Rico, and territories and possessions of the United States, and the Department of State Standardized Regulations, section 925, ''Maximum Travel Per Diem Allowances for Foreign Areas.'' The burden generated by this coverage is in the form of the contractor preparing a justification whenever a higher actual expense reimbursement method is used.

B. Annual Reporting Burden

Public reporting burden for this collection of information is estimated to average *.25 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, *16,000;* responses per respondent, *10;* total annual responses, *58,000;* preparation hours per response, *.25;* and total response burden hours, *40,000.*

Obtaining Copies of Proposal

Requester may obtain copies of OMB applications or justifications 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. 9000–0088, Travel Costs, in all correspondence.

Dated: April 28, 1998.

Sharon A. Kiser,

FAR Secretariat.

[FR Doc. 98–11700 Filed 5–1–98; 8:45 am]

BILLING CODE 6820–34–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0138]

Submission for OMB Review; Comment Request Entitled Contract Financing

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for comments regarding an extension to an existing OMB clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 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 to a currently approved information collection requirement concerning Contract Financing A request for public comments was published at 63 FR 9212, February 24, 1998. No comments were received.

DATES: Comments may be submitted on or before June 3, 1998.

FOR FURTHER INFORMATION CONTACT: Jerry Olson, Federal Acquisition Policy Division, GSA (202) 501–3221.

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. 9000–0138, Contract Financing, in all correspondence.

SUPPLEMENTARY INFORMATION:

A. Purpose

The Federal Acquisition Streamlining Act of 1994, Public Law 103–355, provided authorities that streamlined the acquisition process and minimize burdensome government-unique requirements. Sections 2001 and 2051 of the Federal Acquisition Streamlining Act of 1994 substantially changed the statutory authorities for Government financing of contracts. Sections 2001(f) and 2051(e) provide specific authority for Government financing of purchases of commercial items, and sections 2001(b) and 2051(b) substantially revised the authority for Government financing of purchases of non-commercial items.

Sections 2001(f) and 2051(e) provide specific authority for Government financing of purchases of commercial items. These paragraphs authorize the Government to provide contract financing with certain limitations.

Sections 2001(b) and 2051(b) also amended the authority for Government financing of non-commercial purchases by authorizing financing on the basis of certain classes of measures of performance.

To implement these changes, DOD, NASA, and GSA amended the Federal Acquisition Regulation by revising Subparts 32.0, 32.1, and 32.5; by adding new Subparts 32.2 and 32.10; and by adding new clauses to 52.232.

The coverage enables the Government to provide financing to assist in the performance of contracts for commercial items and provide financing for non-commercial items based on contractor performance.

B. Annual Reporting Burden

Public reporting burden for this collection of information is estimated to average *2* hours per request for commercial financing and *2* hours per request for performance-based financing, 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 for Commercial Financing is estimated as follows: Respondents, *1,000*; responses per respondent, *5*; total annual responses, *5,000*; preparation hours per response, *2*; and total response burden hours, *10,000*.

The annual reporting burden for Performance-Based Financing is estimated as follows: Respondents, *500*; responses per respondent, *12*; total annual responses, *6,000*; preparation hours per response, *2*; and total response burden hours, *12,000*.

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. 9000–0138, Contract Financing, in all correspondence.

Dated: April 28, 1998.

Sharon A. Kiser,

FAR Secretariat.

[FR Doc. 98–11701 Filed 5–1–98; 8:45 am]

BILLING CODE 6820–34–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Partnership Council Meeting

AGENCY: Department of Defense.

ACTION: Notice of meeting.

SUMMARY: The Department of Defense (DoD) announces a meeting of the Defense Partnership Council. Notice of this meeting is required under the Federal Advisory Committee Act. This meeting is open to the public. The topics to be covered will include the DoD Personnel System Initiative concept and other matters related to the enhancement of Labor-Management Partnership throughout DoD.

DATES: The meeting is to be held May 20, 1998, in room 1E801, Conference Room 7, the Pentagon, from 1:00 p.m. until 3:00 p.m. Comments should be received by May 13, 1998, in order to be considered at the May 20 meeting.

ADDRESSES: We invite interested persons and organizations to submit written comments or recommendations. Mail or deliver your comments or recommendations to Mr. Kenneth Oprisko at the address shown below. Seating is limited and available on a first-come, first-serve basis. Individuals wishing to attend who do not possess an appropriate Pentagon building pass should call the below listed telephone number to obtain instructions for entry into the Pentagon. Handicapped individuals wishing to attend should also call the below listed telephone number to obtain appropriate accommodations.

FOR FURTHER INFORMATION CONTACT: Mr. Kenneth Oprisko, Chief, Labor Relations Branch, Field Advisory Services Division, Defense Civilian Personnel Management Service, 1400 Key Blvd, Suite B–200, Arlington, VA 22209–5144, (703) 696–6301, ext. 704.

Dated: April 28, 1998.

L.M. Bynum,

Alternate CSD Federal Register, Liaison Officer, Department of Defense.

[FR Doc. 98–11722 Filed 5–1–98; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Advisory Committee on Military Personnel Testing

ACTION: Notice.

Pursuant to Public Law 92–463, notice is hereby given that a meeting of the Defense Advisory Committee on Military Personnel Testing is scheduled to be held from 8:30 a.m. to 4:30 p.m. on June 25, 1998, and from 8:30 a.m. to 4:30 p.m. on June 26, 1998. The meeting will be held at The Crowne Plaza Hotel, 555 East Canal Street, Richmond, Virginia 23219. The purpose of the meeting is to review planned changes and progress in developing paper-and-pencil and computerized enlistment tests and renorming of the tests. Persons desiring to make oral presentations or submit written statements for consideration at the Committee meeting must contact Dr. Jane M. Arabian, Assistant Director, Accession Policy, Office of the Assistant Secretary of Defense (Force Management Policy), Room 2B271, The Pentagon, Washington, DC 20301–4000, telephone (703) 697–9271, no later than June 8, 1998.

Dated: April 28, 1998.

L.M. Bynum,

Alternate OSD Federal Register, Liaison Officer, Department of Defense.

[FR Doc. 98–11723 Filed 5–1–98; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Science Board Task Force on Test and Evaluation

AGENCY: Notice of advisory committee meetings.

SUMMARY: The Defense Science Board Task Force on Test and Evaluation will meet in closed session on May 27–28, 1998 at Strategic Analysis, Inc., 4001 N. Fairfax Drive, Arlington, Virginia.

The mission of the Defense Science Board is to advise the Secretary of Defense through the Under Secretary of Defense for Acquisition and Technology on scientific and technical matters as they affect the perceived needs of the Department of Defense. At this meeting the Task Force will review the entire range of activities relating to Test and Evaluation and recommend new and innovative ways that the T&E community can better support the warfighter.

In accordance with Section 10(d) of the Federal Advisory Committee Act, Public Law 92–463, as amended (5 U.S.C. App. II, (1994)), it has been determined that this DSB Task Force meeting concerns matters listed in 5 U.S.C. 552b(c)(1) (1994), and that accordingly this meeting will be closed to the public.

Dated: April 28, 1998.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 98–11724 Filed 5–1–98; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Science Board Task Force on Coalition Warfare

ACTION: Notice of Advisory Committee Meetings.

SUMMARY: The Defense Science Board Task Force on Coalition Warfare will meet in closed session on April 22–23, 1998 at Strategic Analysis, Inc., 4001 N. Fairfax Drive, Arlington, Virginia.

The mission of the Defense Science Board is to advise the Secretary of Defense through the Under Secretary of Defense for Acquisition and Technology on scientific and technical matters as they affect the perceived needs of the Department of Defense. At these meetings the Task Force will address how best to make future U.S. military capabilities, embodied by JV2010, coalition compatible.

In accordance with Section 10(d) of the Federal Advisory Committee Act, Public Law 92–463, as amended (5 U.S.C. App. II, (1994)), it has been determined that these DSB Task Force meetings concern matters listed in 5 U.S.C. 552b(c)(1) (1994), and that accordingly these meetings will be closed to the public.

Dated: April 28, 1998.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 98–11725 Filed 5–1–98; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Availability of Invention for Licensing; Government Owned Invention

AGENCY. Department of the Navy, DoD.

ACTION: Notice.

SUMMARY: The invention listed below is assigned to the United States Government as represented by the Secretary of the Navy and is available for licensing by the Department of the Navy.

Patent Application entitled ''Adhesion Enhancement for Underplating Problem,'' filed December 17, 1996, Serial No. 08/594,957.

Requests for copies of the patent application cited should be directed to the Office of Naval Research, ONR 00CC, Ballston Tower One, 800 North Quincy Street, Arlington, Virginia 22217–5660, and must include the application number.

FOR FURTHER INFORMATION CONTACT: Mr. R. J. Erickson, Staff Patent Attorney, Office of Naval Research, ONR 00CC, Ballston Tower One, 800 North Quincy Street, Arlington, Virginia 22217–5660, telephone (703) 696–4001.

(Authority: 35 U.S.C. 207, 37 CFR part 404).

Dated: April 17, 1998.

Michael I. Quinn,

Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 98–11786 Filed 5–1–98; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Intent to Grant Exclusive Patent License; Madison Technology International, Ltd.

AGENCY: Department of the Navy, DoD.

ACTION: Notice.

SUMMARY: The Department of the Navy hereby gives notice of intent to grant to Madison Technology International, Ltd., a revocable, nonassignable, exclusive license in the United States, to practice the Government owned invention described in U.S. Patent Application Serial No. 08/840112 entitled ''Amplification of Signals from High Impedance Sources.''

DATES: Anyone wishing to object to the grant of this license must file written objections, along with supporting evidence, not later than July 6, 1998.

ADDRESSES: Written objections are to be filed with the Office of Naval Research, ONR 00CC, Ballston Tower One, 800 North Quincy Street, Arlington, Virginia 22217–5660.

FOR FURTHER INFORMATION CONTACT: Mr. R. J. Erickson, Staff Patent Attorney, Office of Naval Research, ONR 00CC, Ballston Tower One, 800 North Quincy Street, Arlington, Virginia 22217–5660, telephone (703) 696–4001.

(Authority: 35 U.S.C. 207, 37 CFR Part 404)

Dated: April 17, 1998.

Michael I. Quinn,

Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 98–11785 Filed 5–1–98; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of Proposed Information Collection Requests.

SUMMARY: The Acting Deputy Chief Information Officer, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: An emergency review has been requested in accordance with the Act (44 U.S.C. Chapter 3507(j)), since public harm is reasonably likely to result if normal clearance procedures are followed. Approval by the Office of Management and Budget (OMB) has been requested by May 4, 1998. A regular clearance process is also beginning. Interested persons are invited to submit comments on or before July 6, 1998.

ADDRESSES: Written comments regarding the emergency review should be addressed to the Office of Information and Regulatory Affairs, Attention: Danny Werfel, Desk Officer:

Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, D.C. 20503. Requests for copies of the proposed information collection request should be addressed to Patrick J. Sherrill, Department of Education, 7th and D Streets, S.W., Room 5624, Regional Office Building 3, Washington, D.C. 20202–4651. Written comments regarding the regular clearance and requests for copies of the proposed information collection requests should be addressed to Patrick J. Sherrill, Department of Education, 600 Independence Avenue, S.W., Room 5624, Regional Office Building 3, Washington, D.C. 20202–4651, or should be electronically mailed to the internet address Pat__Sherrill@ed.gov, or should be faxed to 202–708–9346.

FOR FURTHER INFORMATION CONTACT: Patrick J. Sherrill (202) 708–8196. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 3506(c)(2)(A) requires that the Director of OMB provide interested Federal agencies and the public an early opportunity to comment on information collection requests. The Office of Management and Budget (OMB) may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Acting Deputy Chief Information Officer, Office of the Chief Information Officer, publishes this notice containing proposed information collection requests at the beginning of the Departmental review of the information collection. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. ED invites public comment at the address specified above. Copies of the requests are available from Patrick J. Sherrill at the address specified above.

The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department, (2) will this information be processed and used in a timely manner, (3) is the estimate of burden accurate, (4) how might the Department enhance the quality, utility, and clarity of the information to be collected, and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: April 30, 1998.

Hazel Fiers,

Acting Deputy Chief Information Officer, Office of the Chief Information Officer.

Office of Elementary and Secondary Education

Type of Review: Reinstatement.

Title: Safe and Drug-Free School Recognition Program.

Abstract: The Safe and Drug-Free School Recognition Program will identify schools that are doing an exemplary job of creating safe schools and will provide a brief description of what each school is doing.

Additional Information: In December, 1997, President Clinton directed the Department of Education and the Department of Justice to produce an annual report on school safety. A draft outline of the report was released in late February. A key component of the proposed report will be a description of effective models for safe schools. A mechanism for identifying and assessing the quality and effectiveness of school-based models will be this Recognition Program. Therefore, the Department is requesting an emergency clearance by May 4, 1998 in order to meet the request from the White House. Failure to recognize these schools in time for the report may result in having no guidance to offer as a counter balance to information on crime and violence statistics in schools.

Frequency: One time.

Affected Public: State, local or Tribal Gov't; SEAs or LEAs.

Annual Reporting and Recordkeeping Hour Burden:

Responses: 130.

Burden Hours: 2,760.

[FR Doc. 98–11949 Filed 5–1–98; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Solicitation for Financial Assistance Number DE–PS07–98ID13651—Industrial Process Control With Laser-Based Ultrasonics

AGENCY: Idaho Operations Office, DOE.

SUMMARY: The U.S. Department of Energy (DOE), Idaho Operations Office (ID) is seeking applications for cost-shared research and development of Laser-Based Ultrasonic technologies that will enhance economic competitiveness, reduce energy consumption and reduce environmental impacts of the steel industry. The objective of the solicitation is to develop and use an integrated laser ultrasonic system for in-process manufacturing applications in the U.S. steel industry. A workshop on Industrial Applications of Laser Ultrasonics held December 9 and 10, 1997, identified significant applications of laser ultrasonic techniques in industrial process monitoring and control. These applications, generally encompassing manufacturing processes in all IOF industries, include measurement of temperature, thickness, and material properties (stress, defects, and other intrinsic physical parameters). The Workshop addressed current status and future research and development needs in laser ultrasonic techniques as well as barriers for technology use. Two of the primary barriers identified in the Workshop will be addressed by this solicitation; they are (1) development of an integrated sensor system to combine the use of laser ultrasonics with other measurement tools to meet the in-process monitoring requirements for accuracy and reproducibility and (2) installation and use of this integrated system in an industrial process demonstrating the cost-savings utility to the industry. A total of $1,500,000 in federal funds ($550,000 in fiscal year 1998, $500,000 in fiscal year 1999, and $450,000 in fiscal year 2000) is expected to be available to fund this effort. DOE anticipates making a single award with a duration of three years or less. A minimum of 30% non-federal cost-share is required for research and development and a minimum of 50% non-federal cost-share is required for later demonstration and process evaluation. Collaborations between industry, university, and Federal Laboratory participants are encouraged.

FOR FURTHER INFORMATION CONTACT: T. Wade Hillebrant, Contract Specialist; Procurement Services Division; U.S. DOE, Idaho Operations Office, 850 Energy Drive, MS 1221, Idaho Falls, ID 83401–1563; telephone (208) 526–0547.

SUPPLEMENTARY INFORMATION: The statutory authority for the program is the Federal Non-Nuclear Energy Research and Development Act of 1974 (Pub. L. 93–577). The Catalog of Federal Domestic Assistance (CFDA) Number for this program is 81.086. The solicitation text has been posted on the ID Procurement Services Division home page, and may be accessed using Universal Resource Locator address at http://www.id.doe.gov/doeid/solicit.html. This site also includes a link to the report of the workshop on Industrial Applications of Laser Ultrasonics The Application Instruction package forms (Nos. 1 through 6 and 7 if applicable) may be accessed at http://www.id.doe.gov/doeid/application.html. Sources intending to propose must send a notice of intent to propose to Mr. Hillebrant (point of contact listed above). Hard copies of the solicitation and the application forms may also be requested from Mr. Hillebrant.

Issued in Idaho Falls, Idaho, on April 20, 1998.

Michael Adams,

Acting Director, Procurement Services Division.

[FR Doc. 98–11770 Filed 5–1–98; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

[FE Docket Nos. 98–10–NG, 98–14–NG, 97–06–NG, 96–92–NG, 98–18–NG, 98–21–NG, 98–22–NG, 98–23–NG, 95–11–NG, 98–24–NG]

Office of Fossil Energy; Kimball Energy Corporation, et al.; Orders Granting, Amending and Vacating Blanket Authorizations To Import and/or Export Natural Gas

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of orders.

SUMMARY: The Office of Fossil Energy (FE) of the Department of Energy gives notice that it has issued Orders granting, amending and vacating various natural gas import and export authorizations. These Orders are summarized in the attached appendix.

These Orders may be found on the FE web site at http://www.fe.doe.gov., or on the electronic bulletin board at (202) 586–7853.

They are also available for inspection and copying in the Office of Natural Gas & Petroleum Import and Export Activities, Docket Room 3E–033, Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C. 20585, (202) 586–9478. The Docket Room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, D.C., on April 23, 1998.

John W. Glynn,

Manager, Natural Gas Regulation, Office of Natural Gas & Petroleum Import and Export Activities, Office of Fossil Energy.

Attachment

APPENDIX—IMPORT/EXPORT BLANKET AUTHORIZATIONS GRANTED AND AMENDED

Order No.	Date issued	Importer/Exporter FE Docket No.	Two-year maximum		Comments
			Import volume	Export volume	
1365	03/03/98	Kimball Energy Corporation 98–10–NG	75 Bcf	.....	Import from Canada beginning on April 1, 1998, through March 31, 2000.
1366	03/05/98	Duke Energy LNG Marketing and Management Company 98–14–NG.	700 Bcf	.....	Import LNG from various international sources beginning on the date of first shipment.
1240–B	03/06/98	CXY Energy Marketing (U.S.A.) Inc. 97–06–NG.	.....	.....	Authority vacated.
1228–A	03/06/98	CXY Energy Marketing (U.S.A.) Inc. (Formerly Wascana Energy Marketing (U.S.) Inc.) 96–92–NG.	.....	.....	Name change.
1368	03/19/98	POCO Marketing LTD. 98–18–NG	250 Bcf	.....	Import from Canada beginning April 1, 1998, through March 31, 2000.
1369	03/19/98	Tristar Gas Marketing Company 98–21–NG	20 Bcf		Import and export up to a combined total from and to Mexico beginning on April 1, 1998, through March 31, 2000.
1370	03/20/98	Tractebel Energy Marketing, Inc. 98–22–NG	24 Bcf		Import and export up to a combined total from and to Canada beginning on the date of first import or export delivery.
1371	03/25/98	The Brooklyn Union Gas Company 98–23–NG.	50 Bcf	.....	Import from Canada beginning on date of first delivery.
1026–A	03/26/98	Black Hills Energy Resources, Inc. (Formerly Wickford Energy Marketing, Inc.) 95–11–NG.	.....	.....	Name change.
1372	03/31/98	Williams Energy Services Company 98–24–NG.	400 Bcf		Import and export up to a combined total from and to Mexico beginning on April 1, 1998, through March 31, 2000.

[FR Doc. 98–11772 Filed 5–1–98; 8:45 am]
BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

[Docket No. FE C&E 98–03—Certification Notice—158]

Office of Fossil Energy; Borger Energy Associates, L.P.; Notice of Filing of Coal Capability Powerplant and Industrial Fuel Use Act

AGENCY: Office of Fossil Energy, Department of Energy.

ACTION: Notice of filing.

SUMMARY: On April 11, 1998, Borger Energy Associates, L.P. submitted a coal capability self-certification pursuant to section 201 of the Powerplant and Industrial Fuel Use Act of 1978, as amended.

ADDRESSES: Copies of self-certification filings are available for public inspection, upon request, in the Office of Coal & Power Im/Ex, Fossil Energy, Room 4G–039, FE–27, Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C. 20585.

FOR FURTHER INFORMATION CONTACT: Ellen Russell at (202) 586–9624

SUPPLEMENTARY INFORMATION: Title II of the Powerplant and Industrial Fuel Use Act of 1978 (FUA), as amended (42 U.S.C. 8301 *et seq.*), provides that no new baseload electric powerplant may be constructed or operated without the capability to use coal or another alternate fuel as a primary energy source. In order to meet the requirement of coal capability, the owner or operator of such facilities proposing to use natural gas or petroleum as its primary energy source shall certify, pursuant to FUA section 201(d), to the Secretary of Energy prior to construction, or prior to operation as a base load powerplant, that such powerplant has the capability to use coal or another alternate fuel. Such certification establishes compliance with section 201(a) as of the date filed with the Department of Energy. The Secretary is required to publish a notice in the **Federal Register** that a certification has been filed. The following owner/operator of the proposed new baseload powerplant has filed a self-certification in acccordance with section 201(d).

Owner: Borger Energy Associates, L.P.

Operator: Quixx Power Services, Inc.

Location: Borger, Texas on Spur 119 North.

Plant Configuration: Topping-Cycle, Cogeneration.

Capacity: 200 megawatts.

Fuel: Natural gas.

Purchasing Entities: Southwestern Public Service Company.

In-Service Date: July 17, 1998 (simple-cycle), February 17, 1999 (cogen. operation).

Issued in Washington, D.C., April 28, 1998.

Anthony J. Como,

Director, Electric Power Regulation, Office of Coal & Power Im/Ex, Office of Coal & Power Systems, Office of Fossil Energy.

[FR Doc. 98–11771 Filed 5–1–98; 8:45 am]
BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98–266–000]

Enogex Interstate Transmission L.L.C. and Ozark Gas Transmission, L.L.C.; Notice of Site Visit

April 28, 1998.

On May 13, 1998, the Office of Pipeline Regulation (OPR) staff will conduct an aerial inspection of the proposed Ozark/NOARK Expansion Project in Sebastian, Franklin, Logan, Johnson, Pope, Conway, Van Buren, Stone, Izard, Baxter, Sharp, Lawrence, Greene, and Clay Counties, Arkansas. The aerial inspection will begin at 9:00 a.m. at Mid South Aviation, Inc., North Little Rock Airport, North Little Rock, Arkansas. If weather conditions preclude an overflight, the inspection will be canceled. A representative of the project sponosrs, Enogex Interstate Transmission L.L.C. and Ozark Gas Transmission, L.L.C., will accompany the OPR staff.

All interested parties may attend, although those planning to attend must provide their own transportation.

For further information, please contact Paul McKee at (202) 208–1088.

Robert Arvedlund,

Chief, Environmental Review & Compliance Branch I.

[FR Doc. 98–11707 Filed 5–1–98; 8:45 am]
BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Presentation

April 28, 1998.

Take notice that on Tuesday, May 5, 1998, a presentation will be made by representatives of Morgan Stanley Co., Inc. to the Commissioners and staff. The subject of the presentation is Locational Pricing and the Convergence of Physical and Financial Markets in the Electricity and Natural Gas Industries.

The presentation will take place at 3 p.m. in Room 3M–3 at the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. The meeting is open to the public. Questions concerning the presentation should be directed to Kay Morice, 202–208–0507.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–11702 Filed 5–1–98; 8:45 am]
BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98–368–000]

Northern Border Pipeline Company; Notice of Request Under Blanket Authorization

April 28, 1998.

Take notice that on April 20, 1998, as supplemented on April 24, 1998, Northern Border Pipeline Company (Applicant), P.O. Box 3330, Omaha, Nebraska 68124–3330, filed in Docket No. CP98–368–000 a request pursuant to Sections 157.205 and 157.212 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 157.211) for approval to construct a new delivery tap on Applicant's system in Cedar County, Iowa for possible future service to North Star Steel Company (North Star), under Applicant's blanket certificate issued in Docket Nos. CP84–420–000, pursuant to Section 7(c) of the Natural Gas Act (NGA), all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Applicant proposes to construct a tap which will consist of a six-inch tee and valve. Applicant asserts that the estimated cost of the proposed facilities is $39,000, which North Star has agreed to reimburse Applicant. Applicant states that it will file to obtain Commission approval to operate the proposed tap, at such time as North Star elects to interconnect with Applicant.

Any person or the Commission's Staff may, within 45 days of the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214), a motion to intervene and pursuant to § 157.205 of the regulations under the Natural Gas Act (18 CFR 157.205), a protest to the request. If no protest is filed within the time allowed therefor, the proposed activities shall be deemed to be

authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–11703 Filed 5–1–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing With the Commission

April 28, 1998.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Minor License.

b. *Project No.:* P–2927–004.

c. *Date Filed:* September 29, 1997.

d. *Applicant:* Aquamac Corporation.

e. *Name of Project:* Aquamac Hydroelectric Project.

f. *Location:* On the Merrimack River, in the City of Lawrence, Essex, County, Massachusetts.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)—825(r).

h. *Applicant Contact:* Mr. Gerard Griffin, Jr., Aquamac Corporation, 9 South Canal St., Lawrence, MA 01842, (505 686–0342.

i. *FERC Contact:* Mark Pawlowski (202) 219–2795.

j. *Deadline Date:* June 26, 1998.

k. *Status of Environmental Analysis:* This application has been accepted, but is not ready for environmental analysis at this time—see attached paragraph D7.

l. *Description of Project:* The existing run-of river project utilizes flows diverted by the upstream Lawrence Hydro Project and consisting of: (1) A transhrack structure; (2) manually operated headgate and penstock; (3) a single 250-kW generating unit; and (4) appurtenant facilities. There is no dam and reservoir associated with the project. The applicant estimates that the total average annual generation would be 1,600 Mwh.

m. *Purpose of Project:* All generated power is sold to the Merrimac Paper Company for its manufacturing processes.

n. *This notice also consists of the following standard paragraphs:* A2, A9, B1, and D7.

o. *Available Locations of Application:* A copy of the application, as amended and supplemented, is available for inspection and reproduction at the Commission's Public Reference and Files and Maintenance Branch, located at 888 First Street, N.E., Room 2A–1, Washington, D.C. 20426, or by calling (202) 208–2326. A copy is also available for inspection and reproduction at Aquamac Corporation, 9 South Canal St., Lawrence, Massachusetts 30246, (508) 656–0342.

A2. Development Application—Any qualified applicant desiring to file a competing application must submit to the Commission, on or before the specified deadline date for the particular application, a competing development application, or a notice of intent to file such an application. Submission of a timely notice of intent allows an interested person to file the competing development application no later than 120 days after the specified deadline date for the particular application. Applications for preliminary permits will not be accepted in response to this notice.

A9. Notice of intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

B1. Protests or Motions to Intervene—Anyone may submit a protest or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, and 385.214. In determining the appropriate action to take, the Commission will consider all protests filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any protests or motions to intervene must be received on or before the specified deadline date for the particular application.

D7. Filing and Service of Responsive Documents—The application is not ready for environmental analysis at this time; therefore, the Commission is not now requesting comments, recommendations, terms and conditions, or prescriptions.

When the application is ready for environmental analysis, the Commission will issue a public notice requesting comments, recommendations, terms and conditions, or prescriptions.

All filings must (1) bear in all capital letters the title ''PROTEST'' or ''MOTION TO INTERVENE,'' ''NOTICE OF INTENT TO FILE COMPETING APPLICATION,'' or ''COMPETING APPLICATION;'' (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. Any of these documents must be filed by providing the original and the number of copies required by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. An additional copy must be sent to Director, Division of Project Review, Office of Hydropower Licensing, Federal Energy Regulatory Commission, at the above address. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–11704 Filed 5–1–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing With the Commission

April 28, 1998.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Minor License.

b. *Project No.:* P–2928–004.

c. *Date Filed:* September 29, 1997.

d. *Applicant:* Merrimac Paper Company.

e. *Name of Project:* Merrimac Hydroelectric Project.

f. *Location:* On the Merrimac River, in the City of Lawrence, Essex County, Massachusetts.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Gerard Griffin, Jr., Merrimac Paper Company, Inc., 9 South Canal St., Lawrence, MA 01842, (508) 686–0342.

i. *FERC Contact:* Mark Pawlowski (202) 219–2795.

j. *Deadline Date:* June 26, 1998.

k. *Status of Environmental Analysis:* This application has been accepted, but

is not ready for environmental analysis at this time—see attached paragraph D7.

l. *Description of Project:* The existing run-of river project utilizes flows diverted by the upstream Lawrence Hydro Project and consisting of: (1) A trashrack structure; (2) manually operated headgate and penstock; (3) three generating units of an installed total capacity of 1250–kW; and (4) appurtenant facilities. There is no dam and reservoir associated with the project. The applicant estimates that the total average annual generation would be 7,300 Mwh.

m. *Purpose of Project:* All generated power is used by the applicant for its paper manufacturing processes.

n. *This notice also consists of the following standard paragraphs:* A2, A9, B1, and D7.

o. *Available Locations of Application:* A copy of the application, as amended and supplemented, is available for inspection and reproduction at the Commission's Public Reference and Files and Maintenance Branch, located at 888 First Street, N.E., Room 2A–1, Washington, D.C. 20426, or by calling (202) 208–2326. A copy is also available for inspection and reproduction at Merrimac Paper Company, Inc., 9 South Canal St., Lawrence, Massachusetts 30246, (508) 656–0342.

A2. Development Application—Any qualified applicant desiring to file a competing application must submit to the Commission, on or before the specified deadline date for the particular application, a competing development application, or a notice of intent to file such an application. Submission of a timely notice of intent allows an interested person to file the competing development application no later than 120 days after the specified deadline date for the particular application. Applications for preliminary permits will not be accepted in response to this notice.

A9. Notice of intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be serve don the applicant(s) named in this public notice.

B1. Protests or Motions to Intervene—Anyone may submit a protest or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, and 385.214. In determining the appropriate action to take, the Commission will consider all protests filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any protests or motions to intervene must be received on or before the specified deadline date for the particular application.

D7. Filing and Service of Responsive Documents—The application is not ready for environmental analysis at this time; therefore, the Commission is not now requesting comments, recommendations, terms and conditions, or prescriptions.

When the application is ready for environmental analysis, the Commission will issue a public notice requesting comments, recommendations, terms and conditions, or prescriptions.

All filings must (1) bear in all capital letters the title ''PROTEST'' or ''MOTION TO INTERVENE,'' ''NOTICE OF INTENT TO FILE COMPETING APPLICATION,'' or ''COMPETING APPLICATION;'' (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. Any of these documents must be filed by providing the original and the number of copies required by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. An additional copy must be sent to Director, Division of Project Review, Office of Hydropower Licensing, Federal Energy Regulatory Commission, at the above address. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–11705 Filed 5–1–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Ready for Environmental Analysis

April 28, 1998.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of application:* Minor License.

b. *Project No.:* P–11574–000.

c. *Date Filed:* February 23, 1996.

d. *Applicant:* City of Norwich, Department of Public Utilities.

e. *Name of Project:* Occum Hydro Project.

f. *Location:* On the Shetucket River, near the City of Norwich, New London County, Connecticut.

g. *Filed Pursuant to:* Federal Power Act 16 USC 791(a)—825(r).

h. *Applicant Contact:* Mr. Peter Polubiatko, Electric Division Manager, City of Norwich Department of Utilities, 16 Golden Street, Norwich, CT 06360, (203) 823–4153.

i. *FERC Contact:* Ed Lee (202) 219–2809.

j. *Deadline for Comments, Recommendations, Terms and Conditions, and Prescriptions:* See paragraph D9.

k. *Status of Environmental Analysis:* This application is now ready for environmental analysis—see attached paragraph D9.

l. *Description of Project:* The existing project consists of: (1) A 605-foot-long, 28-foot-high dam with masonry and concrete spillway sections, an earth embankment section and intake structure; (2) a reservoir with a 90 acre surface area and a 600 acre-foot gross storage capacity at normal pool elevation 66.1 feet NGVD; (3) a powerhouse containing one generation unit with a capacity of 800 kW and an average annual generation of 3.75 GWh; (4) a 125-foot-long, 4.8–kV transmission line; and (5) appurtenant facilities.

m. *Purpose of Project:* All project power would be used by the applicant.

n. *This notice also consists of the following standard paragraphs:* A4 and D9.

o. *Available Locations of Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference and Files Maintenance Branch, located at 888 First Street N.W., Washington, DC 20426, or by calling (202) 208–1371. A copy is also available for inspection and reproduction at the address shown in Item h.

A4. Development Application—Public notice of the filing of the initial development application, which has already been given, established the due date for filing competing applications or notices of intent. Under the Commission's regulations, any competing development application must be filed in response to and in compliance with public notice of the initial development application. No competing applications or notices of

intent may be filed in response to this notice.

D9. Filing and Service of Responsive Documents—The application is ready for environmental analysis at this time, and the Commission is requesting comments, reply comments, recommendations, terms and conditions, and prescriptions.

The Commission directs, pursuant to Section 4.34(b) of the Regulations (see Order No. 533 issued May 8, 1991, 56 FR 23108, May 20, 1991) that all comments, recommendations, terms and conditions and prescriptions concerning the application be filed with the Commission within 60 days from the issuance date of this notice. All reply comments must be filed with the Commission within 105 days from the date of this notice.

Anyone may obtain an extension of time for these deadlines from the Commission only upon a showing of good cause or extraordinary circumstances in accordance with 18 CFR 385.2008.

All filings must (1) bear in all capital letters the title ''COMMENTS'', ''REPLY COMMENTS'', ''RECOMMENDATIONS,'' ''TERMS AND CONDITIONS,'' or ''PRESCRIPTIONS;'' (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person submitting the filing; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, terms and conditions or prescriptions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). Any of these documents must be filed by providing the original and the number of copies required by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. An additional copy must be sent to Director, Division of Project Review, Office of Hydropower Licensing, Federal Energy Regulatory Commission, at the above address. Each filing must be accompanied by proof of service on all persons listed on the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b), and 385.2010.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–11706 Filed 5–1–98; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6008–3]

Agency Information Collection Activities: Submission for OMB Review; Comment Request; National Pollutant Discharge Elimination System (NPDES)/Sewage Sludge Monitoring Reports

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: National Pollutant Discharge Elimination System (NPDES)/Sewage Sludge Monitoring Reports, EPA ICR No. 229.11, and OMB Control No. 2040–0004, expiring May 31, 1998. 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 June 3, 1998.

FOR FURTHER INFORMATION CONTACT: Contact Sandy Farmer at EPA by phone at (202) 260–2740, by e-mail at farmer.sandy@epamail.epa.gov, or download off the Internet at http://www.epa.gov/icr and refer to EPA ICR No. 229.11.

SUPPLEMENTARY INFORMATION:

Title: The Discharge Monitoring Report for the National Pollutant Discharge Elimination System (NPDES)/Sewage Sludge Monitoring Reports (OMB Control No. 2040–0004; EPA ICR No. 229.11) expiring 5/31/98. This is a request for extension of a currently approved collection.

Abstract: This ICR estimates the current monitoring, reporting, and record keeping burden and costs associated with submitting and reviewing Discharge Monitoring Reports (DMRs), sewage sludge monitoring reports, and other monitoring reports under the Environmental Protection Agency's (EPA) NPDES program. The NPDES program regulations, codified at 40 CFR parts 122 through 125, require permitted municipal and non-municipal point source discharges to collect, analyze, and submit data on their wastewater discharges. Under these regulations, the permittee is required to collect and analyze wastewater samples or have the analysis performed at an outside laboratory and report the results to the permitting authority (EPA or an authorized NPDES State) using DMRs, a pre-printed form used for reporting pollutant discharge information. Sample monitoring, analysis, and reporting frequencies vary by permit, but must be performed at least annually for all permitted discharges except for certain storm water discharges.

Upon renewal of this ICR, the permitting authority will continue to require NPDES and sewage sludge facilities to report pollutant discharge monitoring data. The permitting authority will use the data from these forms to assess permittee compliance, modify/add new permit requirements, and revise effluent guidelines. The monitoring data required of NPDES and sewage sludge facilities represents the minimum information necessary to achieve the Agency's goals and satisfy regulatory standards.

Due to the re-estimation of burden for this collection, the burden hours associated with this new ICR have been greatly reduced from the hours of the current ICR. This decrease is due to more accurate estimates, which reflect the general practice of using outside laboratory services. The change in burden is reflected in higher operation and maintenance costs, due to the cost associated with using the services of outside laboratories.

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** document required under 5 CFR 1320.8(d), soliciting comments on this collection of information was published on 11/24/97 (62 FR 62590); one comment was received.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 10.7 hours per response. 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: NPDES permittees including publicly owned treatment works, privately owned treatment works industrial facilities, and storm water permittees. The sewage sludge record keeping and reporting requirements identified in this ICR apply to treatment works (public and private) treating domestic sewage and to domestic septage haulers.

Estimated Number of Respondents: 130,380.

Frequency of Response: Varies depending on nature and effect of the discharge, but, except for storm water discharge, is not less than annually.

Estimated Total Annual Hour Burden: 6,540,416 hours.

Estimated Total Annualized Cost Burden: $278,450,948.

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. 0229.11 and OMB Control No.2040–0004 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 28, 1998.

Joseph Retzer,

Director, Regulatory Information Division.

[FR Doc. 98–11756 Filed 5–1–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6008–2]

Agency Information Collection Activities Under OMB Review; Comment Requests; Identification, Listing and Rulemaking Petitions

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: Identification, Listing and Rulemaking Petitions, expiring 06/30/98. 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 June 3, 1998.

FOR FURTHER INFORMATION CONTACT: For a copy of the ICR, call Sandy Farmer at EPA, (202) 260–2740, or download off the Internet at *http://www.epa.gov/icr/icr.htm* and refer to EPA ICR No. 1189.06.

SUPPLEMENTARY INFORMATION:

Title: Identification, Listing and Rulemaking Petitions, OMB Control No. 2050–0053; EPA ICR No. 1189.06. This is a request for extension of a currently approved collection.

Abstract: Under 40 CFR 260.20(b), all rulemaking petitioners must submit basic information with their demonstrations, including name, address, and statement of interest in the proposed action. Under section 260.21, all petitioners for equivalent testing or analytical methods must include specific information in their petitions and demonstrate to the satisfaction of the Administrator that the proposed method is equal to or superior to the corresponding method in terms of its sensitivity, accuracy, and reproducibility. Under section 260.22, petitions to amend part 261 to exclude a waste produced at a particular facility (more simply, to delist a waste) must meet extensive informational requirements. When a petition is submitted, the Agency reviews materials, deliberates, publishes its tentative decision in the **Federal Register**, and requests public comment. EPA also may hold informal public hearings (if requested by an interested person or at the discretion of the Administrator) to hear oral comments on its tentative decision. After evaluating all comments, EPA publishes its final decision in the **Federal Register**.

40 CFR 260.30, 260.31, and 260.33 comprise the standards, criteria, and procedures for variances from classification as a solid waste for three types of materials: materials that are collected speculatively without sufficient amounts being recycled; materials that are reclaimed and then reused within the original primary production process in which they were generated; and materials which have been reclaimed, but must be reclaimed further before the materials are completely recovered. This variance is available to owners or operators of enclosed flame combustion devices.

40 CFR 261.33 and 261.4 contain provisions that allow generators to obtain a hazardous waste exclusion for certain types of wastes. Facilities applying for these exclusions must either submit supporting information or keep detailed records. Under section 261.3(a)(2)(iv), generators may obtain a hazardous waste exclusion for wastewater mixtures subject to Clean Water Act regulation. Under section 261.3(c)(2)(ii)(C), generators may obtain an exclusion for certain non-wastewater residues resulting from high metals recovery processing (HTMR) or K061, K062 and F006 waste. In addition, under section 261.4(b)(6), generators of chromium-containing waste may obtain a hazardous waste exclusion under certain conditions.

Also addressed under this section is the shipment of samples between generators and laboratories for the purpose of testing to determine its characteristics or composition. Sample handlers who are not subject to DOT or USPS shipping requirements must comply with the information requirements of section 261.4(d)(2).

When intended for treatability studies, hazardous waste otherwise subject to regulation under Subtitle C of RCRA is exempted from these regulations, provided that the requirements in section 261.4(e)-(f) are met, including the following information requests: Initial notification, recordkeeping, reporting, and final notification. In addition, generators and collectors of treatability study samples also may request quantity limit increases and time extensions, as specified in section 261.4(e)(3).

40 CFR 261.31(b)(2)(ii) governs procedures and informational requirements for generators and treatment, storage and disposal facilities to obtain exemptions from listing as F037 and F038 wastes. Also under this section are regulations promulgated in 1990 under section 261.35(b) and governing procedures and information requirements for the cleaning or replacement of all process equipment that may have come into contact with chlorophenolic formulations or constituents thereof, including, but not limited to, treatment cylinders, sumps, tanks, piping systems, drip pads, fork lifts, and trams.

EPA anticipates that some data provided by respondents will be claimed as Confidential Business Information (CBI). Respondents may make a business confidentiality claim by marking the appropriate data as CBI.

Respondents may not withhold information from the Agency because they believe it is confidential. Information so designated will be disclosed by EPA only to the extent set forth in 40 CFR part 2.

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** document required under 5 CFR 1320.8(d), soliciting comments on this collection of information was published on January 23, 1998 (63 FR 3561–3562). One comment was received.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 57 hours per response. 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: Hazardous Waste Handlers, Generators, or Treatment, Storage and Disposal Facilities

Estimated Number of Respondents: 330.

Frequency of Response: 1.

Estimated Total Annual Hour Burden: 18,670 hours.

Estimated Total Annualized Cost Burden: $41,000.

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. 1189.06 and OMB Control No. 2050–0053 in any correspondence.

Ms. Sandy Farmer, U.S. Environmental Protection Agency, OPPE Regulatory Information Division (2137), 401 M Street, SW, Washington, DC 20460 (or E-Mail Farmer.Sandy@epamail.epa.gov); 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 28, 1998.

Joseph Retzer,

Director, Regulatory Information Division.

[FR Doc. 98–11757 Filed 5–1–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6008–1]

National Advisory Council for Environmental Policy and Technology, Title VI Implementation Advisory Committee

AGENCY: Environmental Protection Agency (EPA).

ACTION: Amendment to Notice Published April 28, 1998.

SUMMARY: Pursuant to the Federal Advisory Committee Act (Pub. L. 92–463), the U.S. Environmental Protection Agency (EPA) now gives notice of a meeting of the Title VI Implementation Advisory Committee of the National Advisory Council for Environmental Policy and Technology (NACEPT).

Title VI of the Civil Rights Act of 1964 prohibits recipients of federal financial assistance from discriminating on the basis of race, color, or national origin in their programs or activities. The purpose of the Title VI Implementation Advisory Committee is to advise the Administrator and Deputy Administrator of EPA on techniques that may be used by EPA funding recipients to operate environmental permitting programs in compliance with Title VI. The Title VI Implementation Advisory Committee is one of four standing committees of NACEPT.

The Committee consists of 23 independent representatives drawn from among state and local governments, industry, the academic community, tribal and indigenous interests, and grassroots environmental and other non-governmental organizations.

DATES: The previous notice announced in error that the Committee would meet on April 18 and 19. We regret the confusion and any inconvenience that this error may have caused.

The Committee will meet on May 18, 1998 from 9:00 a.m. to 7:00 p.m. and May 19, 1998 from 9:00 a.m. to 3:00 p.m. The public comment session will be held on May 18 from 5:00 p.m. to 7:00 p.m.

Members of the public who wish to make brief oral presentations should contact Lois Williams at 202–260–6891 by May 11, 1998 to reserve time during the public comment session. Individuals or groups making presentations will be limited to a total time of five minutes. Those who have not reserved time in advance may make comments during the public comment session as time allows.

ADDRESSES: The Sheraton National Hotel, Columbia Pike and Washington Boulevard, Arlington, VA 22204. The meeting is open to the public. However, seating will be limited and available on a first-come, first-served basis.

FOR FURTHER INFORMATION CONTACT: Mr. Gregory Kenyon, Designated Federal Officer, U.S. EPA, Office of Cooperative Environmental Management, telephone 202–260–8169.

Dated: April 28, 1998.

Gregory Kenyon,

Designated Federal Officer, NACEPT Title VI Implementation Advisory Committee.

[FR Doc. 98–11758 Filed 5–1–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6008–5]

Notice of Stakeholder Meeting on the Draft 1999 Drinking Water Infrastructure Needs Survey Approach

AGENCY: Environmental Protection Agency.

ACTION: Announcement of stakeholder meeting.

SUMMARY: The U.S. Environmental Protection Agency (EPA) will hold a public meeting to brief interested parties and collect their opinions on the Draft 1999 Drinking Water Infrastructure Needs Survey Approach. The EPA will consider the comments and views expressed at these meetings in developing the final survey approach. EPA encourages the full participation of all stakeholders.

DATES: The stakeholder meeting regarding the Draft 1999 Drinking Water Infrastructure Needs Survey Approach will be held on Tuesday, May 19, 1998, from 9:30 AM to 4:00 PM EDT.

ADDRESSES: The May 19, 1998 stakeholder meeting will be held in the WIC Conference Room 17, U. S. EPA Headquarters, 401 M Street SW, Washington, DC. To register for the meeting, please contact the EPA Safe

Drinking Water Hotline at 1–800–426–4791, or Rick Naylor of EPA's Office of Ground Water and Drinking Water at (202) 260–5135. Participants registering in advance will be mailed a packet of materials before the meeting. Interested parties who cannot attend the meeting in person may participate via conference call and should register with the Safe Drinking Water Hotline. Conference lines are limited and will be allocated on the basis of first-reserved, first served.

FOR FURTHER INFORMATION CONTACT: For information on meeting logistics, please contact the Safe Drinking Water Hotline at 1–800–426–4791 or Rick Naylor of EPA's Office of Ground Water and Drinking Water at (202) 260–5135.

SUPPLEMENTARY INFORMATION: The Safe Drinking Water Act (SDWA) Amendments of 1996 require EPA to conduct an assessment of water system capital improvement needs of all eligible public water systems in the United States every four years. The first (1995) Drinking Water Infrastructure Needs Survey [EPA 812–R–97–001] was submitted to Congress in January 1997. This document may be obtained by contacting the Safe Drinking Water Hotline at 1–800–426–4791 or from the EPA Web Site at: http//www.epa.gov/OGWDW/docs/needs/. The 1999 Drinking Water Infrastructure Needs Survey Report to Congress is due February 2001.

Dated: April 28, 1998.

Robert J. Blanco,

Acting Director, Office of Ground Water and Drinking Water, U.S. Environmental Protection Agency.

[FR Doc. 98–11754 Filed 5–1–98; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Submitted to OMB for Review and Approval

April 27, 1998

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before June 3, 1998. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Judy Boley, Federal Communications Commission, Room 234, 1919 M St., NW., Washington, DC 20554 or via internet to jboley@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s), contact Judy Boley at 202–418–0214 or via internet at jboley@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Control No.: 3060–0313.

Title: Section 76.207, Political File.

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit.

Number of Respondents: 5,375.

Estimated Time Per Response: 1 hour.

Frequency of Response: Recordkeeping requirement.

Cost to Respondents: $10,750. The photocopying and stationery costs associated with this recordkeeping requirement are estimated to be $2 per system (5,375 x $2. = $10,750).

Total Annual Burden: 5,375 hours.

Needs and Uses: Section 76.207 requires every cable television system to keep and permit public inspection of a complete record (political file) of all requests for cable cast time made by or on behalf of candidates for public office, together with an appropriate notation showing the disposition made by the system of such requests, the charges made, if any, if the request is granted. The disposition includes the schedule of time purchased, when the spots actually aired, the rates charged, and the classes to time purchased. Also, when free time is provided for use by or on behalf of candidates, a record of the free time provided is to be placed in the political file. The data are used by the public in order to assess the amount of money expended and time allotted to a political candidate to ensure that equal access was afforded to other legally qualified candidates for public office.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 98–11733 Filed 5–1–98; 8:45 am]

BILLING CODE 6712–01–F

FEDERAL DEPOSIT INSURANCE CORPORATION

Sunshine Act Meeting; Notice of a Change in Subject Matter of Agency Meeting

Pursuant to the provisions of subsection (e)(2) of the ''Government in the Sunshine Act'' (5 U.S.C. 552b(e)(2)), notice is hereby given that at its open meeting held at 10:00 a.m. on Tuesday, April 28, 1998, the Corporation's Board of Directors determined, on motion of Director Joseph H. Neely (Appointive), seconded by Director Julie L. Williams (Acting Comptroller of the Currency), concurred in by Ms. Carolyn Buck, acting in the place and stead of Director Ellen S. Seidman (Director, Office of Thrift Supervision), and Acting Chairman Andrew C. Hove, Jr., that Corporation business required the withdrawal from the agenda for consideration at the meeting, on less than seven days' notice to the public, of the following matter: Memorandum re: General Counsel Opinion Regarding Interest Charges by Interstate State Banks.

The Board further determined, by the same majority vote, that no notice earlier than April 22, 1998, of this change in the subject matter of the meeting was practicable.

Dated: April 29, 1998.

Federal Deposit Insurance Corporation.

James D. LaPierre,

Deputy Executive Secretary.

[FR Doc. 98–11940 Filed 4–30–98; 2:55 pm]

BILLING CODE 6714–01–M

FEDERAL MARITIME COMMISSION

Ocean Freight Forwarder License Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission applications for licenses as ocean freight

forwarders pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718 and 46 CFR Part 510).

Persons knowing of any reason why any of the following applicants should not receive a license are requested to contact the Office of Freight Forwarders, Federal Maritime Commission, Washington, DC 20573.

International Transportation Consultants, Ltd., d/b/a I.T.C., Ltd., 1551–53 Carmen Drive, Elk Grove Village, IL 60007

Officers: Wladimir Leonartowicz, President, Marc Leonartowicz, Vice President

Dated: April 28, 1998.

Joseph C. Polking,

Secretary.

[FR Doc. 98–11680 Filed 5–1–98; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

Sunshine Act Meeting

TIME AND DATE: 9:00 a.m. (EDT), May 11, 1998.

PLACE: 4th Floor, Conference Room, 1250 H Street, N.W., Washington, D.C.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. National Finance Center record keeping.
2. Congressional/agency/participant liaison.
3. Benefits administration.
4. Investments.
5. Participant communications.
6. Approval of the minutes of the April 13, 1998, Board member meeting.
7. Thrift Savings Plan activity report by the Executive Director.
8. Approval of the update of the FY 1998 budget and FY 1999 estimates.
9. Investment policy review.
10. Review of KPMG Peat Marwick audit report: ''Pension and Welfare Benefits Administration Review of Capacity Planning and Performance Management of the Thrift Savings Plan at the United States Department of Agriculture, National Finance Center.''
11. Status of audit recommendations.

CONTACT PERSON FOR MORE INFORMATION: Thomas J. Trabucco, Director, Office of External Affairs, (202) 942–1640.

Dated: April 29, 1998.

Roger W. Mehle,

Executive Director, Federal Retirement Thrift Investment Board.

[FR Doc. 98–11819 Filed 4–29–98; 4:56 pm]

BILLING CODE 6760–01–M

FEDERAL TRADE COMMISSION

[File No. 981–0040]

Digital Equipment Corporation; Analysis to Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed Consent Agreement.

SUMMARY: The consent agreement in this matter settles alleged violations of federal law prohibiting unfair or deceptive acts or practices of unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the draft complaint that accompanies the consent agreement and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

DATES: Comments must be received on or before July 6, 1998.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, Room 159, 6th St. and Pa. Ave., N.W., Washington, D.C. 20580.

FOR FURTHER INFORMATION CONTACT: William Baer or Willard Tom, FTC/H–374, Washington, D.C. 20580 (202) 326–2932 or 326–2786.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and Section 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for April 23, 1998), on the World Wide Web, at ''http://www.ftc.gov/os/actions97.htm.'' A paper copy can be obtained from the FTC Public Reference Room, Room H–130, Sixth Street and Pennsylvania Avenue, N.W., Washington, D.C. 20580, either in person or by calling (202) 326–3627. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with Section 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

Analysis To Aid Public Comment

I. Introduction

The Federal Trade Commission (''Commission'') has accepted from Digital Equipment Corporation (''Digital'') an Agreement Containing Consent Order (''Proposed Consent Order''). The Proposed Consent Order is designed to remedy anticompetitive effects likely to occur in three product markets as a result of the acquisition by Intel Corporation (''Intel'') of certain assets of Digital. The Order requires that Digital License its Alpha microprocessor technology to two Commission-approved companies to ensure that there are independent suppliers and developers of Alpha. The Order ensures that Intel will not have exclusive control over the technology, and that Alpha will remain competitive.

II. Description of the Parties and the Transaction

Digital is a Massachusetts corporation headquartered in Maryland, Massachusetts, with sales of approximately $13 billion and net income of over $140 million for the fiscal year ended June 28, 1997. Digital manufactures and sells computer systems, and develops, manufactures, and sells microprocessors based on its proprietary 64-bit [1] Alpha architecture.

The Alpha microprocessor is widely regarded as among the highest performing general purpose microprocessors available and is the only non-Intel microprocessor architecture that can run the Windows NT operating system in ''native'' mode.[2] Digital is the largest consumer of Alpha chips, which it uses in its computer systems.

Intel Corporation (''Intel''), a Delaware corporation headquartered in Santa Clara, California, is the world's leading semiconductor manufacturer. Intel reported 1996 sales of approximately $20.8 billion and net income of more than $5 billion. Intel supplies a broad

[1] The number of bits generally correlates with the amount of data that a microprocessor can process during one clock cycle. Intel's current Pentium microprocessors have a 32-bit architecture (known as IA–32), while Digital's alpha chip has a 64-bit architecture.

[2] Windows and Windows NT are operating systems. Operating systems are a type of software that acts as an intermediary between applications software and the microprocessor. An operating system runs in ''native'' mode when it is specifically written to interact optimally with the particular microprocessor architecture. Microsoft, the developer of Windows NT, today supports only two microprocessor architectures—Intel's and Digital's—to run Windows NT in native mode. Other microprocessor architectures today must use translation software in order to run Windows NT, significantly reducing performance and speed.

line of semiconductor devices used as computer system components, including x86-compatible microprocessors [3] such as the Pentium line, which are used primarily in conjunction with Microsoft's Windows and Windows NT operating systems. Intel has been working with other companies to develop a 64-bit microprocessor (currently known by the project name Merced) with a new 64-hit architecture (known as IA–64), which is intended to extend Intel's current x86 architecture and compete with Digital's Alpha architecture.

The proposed transaction resolves three pending lawsuits between Digital and Intel relating to microprocessor intellectual property and technology rights. Digital initiated that litigation in May 1997, claiming the Intel infringed ten Digital patents by making and selling Intel Pentium chips. Intel countersued, claiming, among other things, that Digital is infringing nine Intel patents by making and selling Alpha microprocessors.

On October 26, 1997, the parties agreed to settle the litigation and grant each other broad patent cross-licenses. Intel would also buy Digital's microprocessor production facilities (such a facility is known in industry parlance as a ''fab'') for net book value (approximately $650 million). In addition, Intel agreed to produce Alpha microprocessors for supply exclusively to Digital. Digital agreed to endorse publicly these IA–64 architecture and design some Digital computer systems based on Intel 64-bit microprocessors. Digital will retain the intellectual property rights and design assets for Alpha, including the design engineers who conduct research and development for the Alpha architecture.

III. Competitive Concerns

A. Relevant Markets

The draft Complaint alleges three relevant markets: (1) The manufacture and sale of high-performance, general-purpose microprocessors that are capable of running the Windows NT operating system in native mode; (2) the manufacture and sale of all general-purpose microprocessors and (3) the design and development of future generations of high performance, general-purpose microprocessors.

The Complaint alleges that microprocessors designed to run the Windows NT Operating system and its complementary application programs constitute a relevant antitrust product market. The demand for microprocessors is determined indirectly by the demand for operating systems, which is determined in part by the software applications that run on those systems. Applications are designed for specific operating systems; operating systems can optimally run application programs only when the operating system is written for the microprocessor architecture (so that the microprocessor runs native on that operating (system). Consumers cannot readily switch between computer systems that use different microprocessor architectures, because in most cases such a switch also requires changing the operating system and application programs, an expensive proposition and one that may not yield the same level of functionality enjoyed by consumers on their former systems.

Windows NT is currently written in two versions, so that only the Alpha microprocessor and the Intel-based microprocessors can run it in native mode.[4] Windows NT will also be compatible with Merced, Intel's 64-bit chip, which will not be commercially available until 1999. Thus, consumers using software optimized for use with Windows NT must choose between Intel-based and Alpha-based systems. Thus, if the price of Alpha and high-end Intel microprocessors were to increase by 5 percent, consumers using Windows NT would not readily switch to computer systems built with alternative microprocessors.

The Complaint also alleges that a second relevant product market includes all general-purpose microprocessors, a category that includes devices based on the Intel and Alpha architectures, as well as microprocessors based on other rival architectures such as those developed by Hewlett-Packard (PA–RISC), Sun Microsystems (SPARC), IBM (PowerPC), and Silicon Graphics (MIPS). Because only Alpha and Intel microprocessors can optimally run Windows NT, however, these two microprocessors are the closest substitutes in this broader, differentiated product market.

Finally, the Complaint alleges that the transaction will reduce competition in the innovation market for the design of microprocessors. Intel and Digital are two of a very few competitors developing next-generation, high-performance microprocessors. Computer makers choose microprocessors based, in part, on the ''roadmap'' provided by each microprocessor manufacturer—that is, the manufacturer's projection of future expected increases in performance and functionality for successive generations of microprocessors based on the same architecture. Roadmaps therefore provide an essential element of microprocessor competition. Intel and Digital compete for sales to computer manufacturers, based on their roadmaps, and they use each other's roadmaps as benchmarks for developing next-generation products to leapfrog the performance of the rival company's chips.

B. Barriers to Entry

The Complaint alleges there are significant barriers to entry in the market, including incurring large sunk costs to build a fab and design a microprocessor, overcoming the network externalities and Intel's installed base, obtaining Microsoft support to obtain Windows NT-compatibility, building a reputation as a reliable microprocessor manufacturer and innovator.

Building a new microprocessor facility requires the expenditure of substantial fixed and sunk costs and takes many years. A new entrant must also design the microprocessor, an expensive and lengthy process.

Most important, a successful entrant would need to convince computer system manufacturers to design their systems around the new microprocessor. Entrants, however, face a significant ''Catch-22'' in this endeavor because of ''network externalities.'' Externalities exist where consumers place more value on a particular technology (microprocessor, operating system, peripherals, applications, etc.) that is more widely adopted than other technologies. Software developers and computer system manufacturers are unwilling to support a new microprocessor technology unless they first see that it enjoys consumer interest. Because of these network externalities and reputational effects, however, consumers are unwilling to switch to a new microprocessor technology unless they first see that it has compatible operating systems, software, and peripherals. In this environment, consumer and industry expectations about the degree to which a manufacturer will be able to get network externalities and reputational effects working for it in the near future are critical.

The importance of these expectations is illustrated by Intel's recent marketing efforts on behalf of the Merced, its new 64-bit microprocessor. Even though

[3] ''X–86 architecture'' generally refers to the original line of Intel microprocessor products for personal computers and includes successive generations such as the 8096, 286, 386, 486 and the Pentium family of chips.

[4] *See* fn. 2.

Merced has yet to be tested and will not be available for more than a year, Intel has already successfully obtained commitments from a large share of the software vendors and computer system manufacturers to write software and build computers for it.

C. Competitive Effects

Intel has market power in both relevant microprocessor product markets. Intel accounts for nearly 90 percent of dollar sales and nearly 85 percent of unit sales of microprocessors for Windows NT and for nearly 90 percent of dollar sales and 80 percent of unit sales of general-purpose microprocessors. No firm other than Intel accounts for more than 4 percent of dollar sales of microprocessors or for more than 10 percent of unit sales of microprocessors. Finally, the competitive significance of other high-performance microprocessors—such as Hewlett-Packard's PA–RISC, Sun Microsystems' SPARC, PowerPC from the Motorola/IBM/Apple venture, and Silicon Graphics' MIPS microprocessors—has been declining.

The transaction also threatens to increase concentration significantly in the relevant innovation market. Digital and Intel are two of the most significant innovation competitors in the design and development of high-performance microprocessors. Even with its comparatively small share of the relevant markets, the Alpha architecture (because of Alpha's superior processing performance) represents the most significant threat to Intel's continued market dominance. Intel's documents refer repeatedly to the competitive threat posed by Alpha, which is acknowledged by many as possibly the best performing and fastest microprocessor in the world. Innovation and actual competition between the two companies is likely to increase in the future because of the growing popularity of Microsoft's Windows NT operating system, which currently supports only Digital's Alpha and Intel's advanced microprocessors. As the demand for and functionality of Windows NT grow, the competition between the Alpha and Intel architecture is likely to intensify.

On these facts, it is clear that an acquisition of Digital by Intel would substantially lessen competition. Although the transaction at issue here does not involve an outright acquisition of Alpha technology, it nevertheless threatens competition in the relevant markets. Under the terms of the settlement, Intel will acquire Digital's Alpha fabrication plant (known as Fab 6) and will produce Alpha chips for Digital. Digital will retain its Alpha intellectual property and design team and is, therefore, only receiving ''foundry'' services (that is, a supply agreement where one company manufactures the product for another) from Intel. The parties will also end the patent litigation and sign a patent cross-license agreement.

The proposed transaction has positive implications for the future of Digital's Alpha systems. The supply agreement frees Digital from operating a plant that it was not able to utilize efficiently. Because Intel manufactures a vast line of semiconductor products, it can utilize the plant more efficiently than Digital. As a result, overall manufacturing costs will go down and, under the Digital-Intel agreement, those cost reductions will be passed on to Digital. Under the agreement, Digital will also be able to bring the next generation of Alphas—based on an improved .18 micron process technology—to market earlier than it would have absent the transaction.

Digital's move to this ''fabless'' business model of operation is not unprecedented. Other successful companies—like Sun Microsystems, Inc. and Silicon Graphics—have designed high performance microprocessors while relying on third-party foundries for manufacturing. None of the other fabless microprocessor companies, however, placed manufacturing in the hands of such a dominant competitor.

Because of this unique characteristic, the proposed transaction creates the opportunity for Intel to slow down or otherwise impair the supply of Alpha microprocessors, harming competition in the relevant markets. In particular, the transaction presents a risk that Intel will not provide the necessary level of coordination between the design and manufacturing processes, and that Intel may take other steps to reduce quality and slow the supply of Alpha microprocessors to Digital. Every foundry arrangement requires design engineers and manufacturing process engineers to coordinate their efforts. The development of a microprocessor involves conforming that design to the process technology and vice-versa. The Digital-Intel settlement separates these functions and provides no incentive for Intel to ''tweak'' its own processes to conform to Digital's products.

Furthermore, the transaction as proposed threatens the continued viability of Digital's sales of Alpha to the ''merchant market.'' [5] As part of this transaction, Digital is selling off most of its semiconductor business to Intel and thus will have no economic need for a marketing staff, which includes people who market Alpha to other computer system manufacturers. Without a marketing staff to service and pursue the merchant market, the loss of competition would be significant.[6] Computer system manufacturers using Alpha microprocessors have pioneered the opening of new market segment for Alpha-based systems, such as media graphics. With the expected growth of Windows NT, Alpha and Intel should go head-to-head in competition in these market segments for these systems. The uncertainty created by the proposed transaction, had it not been addressed by the proposed consent, could have reduced competition between Intel and Alpha processors, resulting in higher prices, reduced consumer choice, and lower rates of innovation.

The Complaint concludes that, unless remedied, the transaction is likely to create uncertainty regarding the future competitive viability of Alpha, thereby maintaining and enhancing Intel's market power, which could result in increased prices and reduced quality and innovation in each of the relevant markets for the following reasons: (1) By making it less likely that Digital would maintain the sales force to continue ''merchant market'' sales of Alpha microprocessors and other products to other computer system manufacturers, it would reduce competition between Intel and Digital for such sales; and (2) putting Digital's supply of Alpha solely in the hands of Intel would give Intel the opportunity to delay production of Alpha microprocessors, impede the development of new generations of Alpha microprocessors, and otherwise undermine the competitiveness of Alpha. In these ways, according to the Complaint, the consummation of the proposed transaction, without any changes, would violate Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45, and Section 7 of the Clayton Act, as amended, 15 U.S.C. 18.

IV. The Proposed Consent Order

The Commission has entered into an agreement containing a Proposed Consent Order with Digital in settlement of the draft Complaint. The Proposed Consent Order is designed to preserve Alpha's future viability by ensuring alternative sources for production,

[5] Merchant market means sales of separate microprocessor chips to computer system manufacturers, who then use them as a component in their own computer systems.

[6] As explained more fully below, as part of this consent agreement, Digital will be licensing Alpha to Samsung, a company that plans to sell the Alpha chip in the merchant market through a U.S. subsidiary.

marketing, and development of Alpha products. The Proposed Consent Order requires Digital to enter into or to continue certain licensing arrangements and alliances with Advanced Micro Devices, Inc. (''AMD''), Samsung Electronics Co., Ltd. (''Samsung''), or some other Commission-approved licensee, and to be begin the process of certifying International Business Machines, Inc. (''IBM''), or some other Commission-approved company, to become an Alpha foundry. The purpose of these provisions is to establish two licensees and another foundry as providers and developers of Alpha devices, independent of Intel.

The Proposed Consent Order binds Digital to comply with the terms of agreements it already has entered into with Samsung. Under those agreements, Samsung will obtain an architectural license and technical support. Furthermore, Digital will grant to Samsung a non-exclusive AlphaPowered trademark license and the assistance and support necessary to enable Samsung to enter rapidly and expand the merchant market segment for Alpha products.[7] Under the current version of the Samsung-Digital agreement, Samsung will be creating a U.S. subsidiary, to be known as the Alpha Volume Company, that plans to market Alpha chips to the merchant market segment. Furthermore, Digital has committed to purchase substantial volumes of its Alpha products needs at a competitive price from Samsung, thus reducing its reliance on Intel.

The Proposed Consent Order also requires Digital to enter into a broad license with AMD, or a Commission-approved licensee, that includes a license to the Alpha architecture and software tools that enable AMD to develop microprocessors compatible with the Alpha architecture. Digital must provide technical and engineering support until AMD is capable of independently developing and producing products based on the Alpha architecture, but in no event for more than two years.

The licenses with AMD and Samsung (or two other Commission-approved companies) are architectural licenses, meaning that the license is to the Alpha architecture, as defined by convention in Digital's official reference manual. Under such license, the licensee is free to create its own implementations and derivative works—that is, to design original chips around the architecture—with the one caveat that it maintain backward compatibility with the existing Alpha architecture.[8] In this way, a licensee will have every incentive to develop the merchant market aggressively because it will have the ability to create Alpha-derivative innovations that can give it profitable ''design wins''—that is, agreements with computer system manufacturers by which the computer system manufacturers will design a computer line around the licensee's chip. These architectural licenses also provide assurance to customers who commit to the Alpha architecture because the licenses provide independent sources of supply and innovation for these microprocessors.

The Proposed Consent Order also requires Digital to enter into an agreement, subject to Commission approval, with IBM or some other Commission-approved company to evaluate that company as a potential foundry for Alpha parts and to inform that foundry partner of the steps necessary to become a qualified supplier of Alpha products. Submission of that agreement is required within six months of Commission approval of the Proposed Consent Order. Alternatively, the Proposed Consent Order permits Digital to demonstrate why such an agreement is unnecessary.

Samsung is a leading supplier of DRAM technology, is considered to have excellent manufacturing quality, and will receive marketing assistance from Digital. Samsung is already in the merchant market and the Order should empower Sumsung to further its marketing efforts in this important segment. AMD is the leading challenger to Intel for x86-compatible microprocessors and already a major merchant market supplier, with excellent design capabilities. Though AMD does not yet produce Alpha chips, it should have every ability to do so. AMD is a major supplier of microprocessors and should have significant incentives to develop an Alpha-based business because it does not otherwise have a 64-bit architecture capable of challenging the upcoming Intel IA–64 architecture. IBM is an established high-performance microprocessor foundry, likely to be capable of producing Alpha products. All three of these companies, or other licensees, help to ensure adequate and independent supplies of Alpha microprocessors.

V. Opportunity for Public Comment

The Proposed Consent Order has been placed on the public record for sixty (60) days for receipt of comments by interested persons about both the appropriateness of the relief provided herein as well as the suitability of Samsung, AMD, and IBM as licensees who can ensure alternative sources for the manufacture, marketing, and development of Alpha products. Comments received during this period will become part of the public record. After sixty days, the Commission will again review the Proposed Consent Order and the comments received and will decide whether it should withdraw from the Proposed Consent Order or make it final.

By accepting the Proposed Consent Order subject to final approval, the Commission anticipates that the competitive problems alleged in the Complaint will be resolved. The purpose of this analysis is to invite public comment on the Proposed Consent Order, including the proposed licenses and alliances, to help the Commission determine whether to make final the Proposed Consent Order contained in the agreement. This analysis is not intended to constitute an official interpretation of the Proposed Consent Order, nor is it intended to modify the terms of the Proposed Consent Order in any way.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 98–11798 Filed 5–1–98; 8:45 am]

BILLING CODE 6750–01–M

[7] The Proposed Consent Order also includes provisions for an ''Interim Trustee'' (i.e., an auditor) and a licensing trustee. The Interim Trustee provision assures early assessment and monitoring of Digital's agreements with the licensees and continuing monitoring and reporting to the Commission of how the provisions are working. The licensing trustee provision is triggered if the parties to a licensing agreement fail to agree within the requisite time.

[8] An architectural integrity provision in the Order preserves backward compatibility for existing applications written to exploit the architecture, and to make designing easier for applications developers that have not yet ported applications to Alpha. If Digital fails to innovate and improve the performance of the Alpha architecture, however, the Order allows AMD to modify the base architecture without Digital approval.

GENERAL SERVICES ADMINISTRATION

Notice of Availability (NOA); Record of Decision (ROD); Immigration and Naturalization Service (INS) Lease Construction and Consolidation, Dade County, Florida

April 23, 1998.

This is the Record of Decision (ROD) for the GSA Proposed Action, which is to lease a building to be constructed at 9300–9499 NW 41st Street in Western Dade County, Florida. This building would consolidate the INS District

Office, the Executive Office for Immigration Review (EOIR), and the Asylum Office. This is the GSA preferred alternative.

The purpose of this project is to consolidate the INS into one facility to accommodate their legislatively mandated growth. INS needs a consolidated facility to better accommodate this growth, to better coordinate its functions, and to meet the need to locate closer to the Krome Service Processing Center, and to its operation at the Miami International Airport (MIA). This consolidation would improve the overall efficiency of the INS operations. Current inefficiencies result from separated functions at their existing facilities that can not accommodate projected INS requirements. Employees and clients must often travel over an hour between locations. Separated functions require duplicate functions transportation of records and personnel around Metro Dade County. This lengthens the time it takes the INS to administer its case load. The distance between the District Office and the Krome Center has caused serious administrative and security problems. A consolidated facility located closer to the Krome Center and west of the MIA would provide more effective coordination of functions, including the INS Foreign Inspection Service located at MIA.

The current District Office at 7880 Biscayne Boulevard can not accommodate the projected growth. The building has small floor plates, inadequate waiting areas, and elevator and building systems that are not adequate to service the requirements of the current and projected INS space needs.

Pursuant to Section 102(2)(C) of the National Environmental Policy Act (NEPA) of 1969, the Council on Environmental Quality Regulations (40 CFR part 1500–1508), and GSA Order PBS P 1095.4B, GSA prepared an Environmental Impact Statement (EIS) for the Proposed Action. The purpose of the EIS is to:

- Identify the alternatives considered including the Proposed Action;
- Solicit public comments and incorporate response into the analysis;
- Identify potential impacts of the alternatives considered;
- Disclose potential impacts resulting from the alternatives considered;
- Identify measures to mitigate adverse impacts;
- Incorporate the impacts and mitigation into the decision process.

This ROD will communicate GSA's decision on implementing the Proposed Action, the basis for that decision, and identify mitigation measures to be implemented as part of the decision. The Draft and Final EIS documents are incorporated into this ROD by reference, and are available upon request from GSA.

This EIS was prepared because of the level and intensity of public response received by GSA during the final comment period after GSA had completed an Environmental Assessment (EA). GSA completed an EA in July 1996 and executed a Findings of No Significant Impact (FONSI). GSA provided 30-days of final public comment prior to taking action. Because of the level and intensity of the public responses received, GSA determined that there were ''potentially significant'' issues associated with proceeding with the Proposed Action. GSA therefore elected to elevate its environmental analysis to an EIS, the highest level of analysis. GSA then began the environmental process a second time with the publication of a Notice of Intent (NOI) to prepare an EIS in the **Federal Register** on September 27TH. Notice was also placed in the Miami Herald and letters were mailed to all potentially impacted parties as part of a second public scoping process.

The EIS examined the impacts for both the Proposed Action and the No Action. If GSA proceeds with the Proposed Action, there are potential impacts to both the ''Doral'' area from the relocation of INS, and potential impacts to the 7880 Byscayne Boulevard area that would result from INS vacating the current location. Conversely, in the case of the No Action, there are potential impacts to the 7880 Byscayne area from the INS remaining at their current location and potential impacts to the INS from continued operations in their current facilities.

GSA released the Draft EIS with publication in the **Federal Register** for a 45-day public comment period that began on January 24, 1997. A Public Meeting was conducted in Miami on February 12TH. The Final EIS was released for a 30-day public comment period with publication in the **Federal Register** on March 28TH. The final comment period closed on April 28TH. GSA provided written notices of availability for these documents in the **Federal Register**, the Miami Herald, through the Metro-Dade Library, and through direct mailings to interested parties and using a mailing list provided by the West Dade Federation of Homeowners Associations (WDFHA). GSA distributed approximately 150 copies of the Draft and Final EIS to Federal, State and local governments, elected officials, neighborhood associations, the business community, and to all interested parties identified during scoping process.

GSA made diligent efforts to solicit input from all potentially impacted parties, and GSA also made diligent efforts to keep the community fully informed during the NEPA process. This was accomplished using newspaper Public Notices, direct mailings, written correspondence, a Public Meeting, and through keeping an open dialogue with representatives of the WDFHA. GSA communicated regularly and openly with the WDFHA, to keep all parties fully informed during the environmental process. GSA provided factual information to interested parties in a timely manner. GSA also extended the comment periods several times, when requested to do so, so as to provide additional time for those wishing to provide comments.

Alternatives Considered

GSA spent over three years exploring and analyzing alternatives to meet the requirements of the INS consolidation within the Delineated Area (DA). In 1992 the INS provided GSA with the Delineated Area (DA). This DA was outlined by the INS as a 95 square mile area surrounded by Flagler Street on the South, 135th Street on the North, LeJeune Road on the East, and 107th Avenue on the West.

The DA was selected based on the accessibility of major thoroughfares including the Florida Turnpike, the Palmetto and Dolphin Expressways, and LeJeune Road. The requirement was that the DA to be in a more centralized portion of Dade County with access to major roadways, MIA, and the Krome Facility. The survey conducted as part of the EIS concluded that during the survey period, 25.4% of the INS client visits originated from outside Dade County. A 1991 INS survey indicated that 78% of clients who filed petitions with the INS lived either west of LeJeune Road or north of Flagler Street. Demographic forecasts predict that the majority of future residential and commercial growth will occur in the western side of Miami.

During the period from 1993 until April 1996, GSA analyzed and considered over 20 alternative locations and delivery options within the DA. This included leasing existing building(s), building(s) purchase, and the consideration of lease construction alternatives at various sites that would be either donated to GSA or made available through a no cost purchase option.

GSA conducted financial analysis on the methods available for delivering the

needed space to meet the INS' requirements. This was done to determine the most economical and cost effective delivery method. As part of the Prospectus submittal process, GSA used both the Net Present Value and an Income/Expense approach, to compute the lowest cost to the taxpayer. This analysis concluded that leasing was the most cost effective method and the lowest cost to the taxpayer. In April 1995 GSA received Congressional approval to lease 214,607 occupiable square feet of space within the DA to meet the requirements of the INS. Only lease acquisition was authorized by Congress under this Prospectus approval. The Draft and Final EIS contain a complete and comprehensive explanation of the alternative development and screening processes followed by GSA for this project from 1992 to date.

After GSA Congressional approval of the lease Prospectus in April 1995, a market survey was initiated by GSA to identify lease alternatives and to identify prospective offerors. On December 1, 1995, GSA issued a Solicitation for Offers (SFO), an open market competitive request for offers to provide leased space that would meet the requirements of the INS consolidation as outlined in the SFO. A total of seven initial offers were received by GSA. Best and Final Offers (BAFO) were due by April 28, and all but one offeror withdrew their offers prior to BAFO. Only one offer remained open at BAFO.

Therefore, the EIS analyzed the two alternatives remaining open and viable to GSA. These alternatives are the Proposed Action Alternative and the No Action Alternative. All other alternatives were either withdrawn prior to BAFO, or were initially screened from consideration by GSA based on economic, technical, or operational criteria.

No Action Alternative

Under this alternative, the INS would continue to be housed at its current locations, and would meet its increased space requirements through a series of ad hoc leases. The INS would continue to operate at dispersed locations and in overcrowded conditions at the District Office. INS would meet its growth needs by leasing additional space in close proximity to its current locations.

Proposed Action

Under this alternative, the GSA would execute an agreement with a private developer, already selected by GSA through an open and competitive procurement, for the lease construction of a building to house the consolidated INS. The building would be 214,607 osf, would employ about 500 persons in 1998 increasing to 763 persons by the year 2005. The building would provide 885 parking spaces. Approximately 1,100 persons would visit the facility daily to transact business with the INS. The building would be constructed with three floors and a parking garage in rear. The building would be designed as a modern office building to fit the style and character of the commercial buildings that currently surround the vacant site. The building would be designed to efficiently accommodate the unique requirements of the INS. This is the GSA preferred alternative.

Environmental Consequences and Mitigation

Based on the analysis contained in both the EA and the EIS, there were no potentially significant environmental impacts from either the Proposed Action or the No Action except for those discussed in this ROD. These impacts were associated with public controversy and land use issues, and not with impacts to the natural environment. Therefore, neither alternative was considered to be environmentally preferred over the other. Additional potential impacts to the natural and human environment were considered and found to be minor or not significant. This is documented in both the Draft EIS and the Final EIS by reference.

The Proposed Action

The issues that were identified during the scoping process fall into one of the following general categories: Impacts to streets and traffic; impacts to property values (primarily residential), impacts to the character and economic stability of the neighborhood and surrounding community, and impacts to the area from increased crime.

The Proposed Action would result in the construction of a building to suit facility to house the INS, and would require a lease agreement to be executed between GSA and a private developer. GSA would assume a leasehold interest in the building for a period of 10 years. There would be no Federal ownership of the facility. The developer would be responsible for obtaining all local and state approvals prior to beginning construction. These would include all zoning approvals, Concurrency Review, land use approvals, and all building permits that require conformance to various local, State, and Federal statutes.

The approval and permitting process would be the responsibility of the developer, and thus obtaining permits and Concurrency review would serve to mitigate many of the impacts that have been identified.

Concurrency is the process by which Dade County examines proposed projects and determines whether the necessary public facilities and infrastructure capacity is available. Seven agencies are involved in the review process for Concurrency in Dade County and they are: Building and Zoning; Department of Environmental and Resource Management (DERM); Fire Department; Metro Dade Transit Authority; Parks and Recreation; Public Works; and Solid Waste.

Concurrency is part of the permitting process. The infrastructure and service capacity must be available before a developer is granted a Final Development Order. The analysis of potential impacts undertaken in the EIS is based on the Standards for Concurrency required by Dade County. The Concurrency review and a Final Development Order application takes place at the County level, and these permitting decisions are based on the available capacity at the time of the application by a developer.

Traffic

A traffic study was undertaken by traffic consultants Carr-Smith Associates, to determine the potential impact of the Proposed Action on the roadways around the potentially affected area. To determine the number of vehicle trips that would be generated, an internal survey was conducted by the INS to determine the origin and destination of all employees and visitors during a five day period (October 23–29, 1996). This was considered a typical work week. Employees located at the District Office and at other INS offices that would be part of the consolidation were included in the survey. A total of 438 current INS employees would move to the proposed facility. A total of 1092 client visits per day were identified for the survey week.

All employees would not be onsite everyday, and the arrivals of the clients occurred throughout the business day. These factors were considered in the formula for computing the number of the vehicle trips generated. Levels of Service (LOS) standards were provided by the Metro-Dade Planning Department for the surrounding roadways. Current traffic counts were taken. LOS levels were computed using the current data collected and using the projected growth rates provided by Dade County. The LOS levels with the Proposed Action were calculated and found to remain within acceptable Dade County LOS Standards.

Based on the findings of this traffic study, the impact of the proposed INS facility is within Metro-Dade County's Concurrency requirements. In addition, planned expansions in the transit service to the area and soon to be implemented changes in the INS application and processing procedures, will serve to mitigate some of the resulting traffic impacts of the new facility. Because of technology improvements in the processing procedures, and because of expected reductions in both staff and applicants in the Citizenship USA program, INS projects that the number of daily client visits to be less than the 1,092 persons who visited the current INS facilities during the survey period of October 23–29, 1996. These anticipated reductions, coupled with anticipated route alterations of the mass transit system, will serve to mitigate some of the increased traffic projected to be associated with the INS facility.

A copy of the traffic study, will full analysis and conclusions and methodology, is contained in the EIS. The developer would be required to meet Concurrency Review for traffic prior to permitting any proposed construction.

Mass Transit

Metro Dade transit Authority does not alter bus routes until a project has established a completion date and demonstrates a need for additional service. GSA and INS will contact Metro Dade Transit Authority at the appropriate time in this process, and formally request that additional service be provided to the facility based on the need and date of occupancy. GSA anticipates no difficulties in increasing the service levels once the need is demonstrated to the Metro Dade Transit Authority. Increased levels of public transportation to the facility will serve to mitigate some of the vehicle trips generated by the INS.

Metro-Bus service is available directly in front of the site. However, there is currently only one bus in the morning and one in the afternoon serving the site. Busses currently service 84th Avenue (No. 87 Bus) every 30 minutes during peak hours, and every hour during non-peak hours, from 6AM to 9PM. This route provides direct service from Dadeland and the Metrorail to the south, from the Okeechobee Metrorail Station to the north. The route also has connections at Flagler Street from Downtown (Route 11, running every 10 minutes, all day). This route runs about one mile east of the proposed site. Alteration of this route west to 97th Avenue would provide regular bus service to the facility throughout the day.

Other potential mitigation measures would be the INS promoting ride sharing, staggered work hours, and subsidized public transportation for employees. Still others include the addition of express busses, and private jitney minibus service as regulated countywide by the 1985 Jitney Ordinance.

The Proposed Action would be required to under go Concurrency review for by Metro-Dade Transit Authority.

Parking

The proposed facility would include 885 spaces. Dade County requires one space for every 300 osf or 715 required spaces. The Proposed facility exceeds the Dade County parking requirement.

Land Use/Zoning

The Proposed Action is in substantial compliance with Land Use and Zoning Comprehensive Plans for the area. The developer would be required to obtain Zoning and Land Use approvals prior to construction and as part of the Concurrency review.

Impacts to Property Values

The site of the Proposed Action is surrounding by commercial office buildings on both the east and the west and the proposed use is in conformance with Dade County land use plans.

GSA's contractor, Radian International, secured a professional opinion from a Licensed State Certified Appraiser familiar with the area around the proposed site. The Appraiser did not provide data or render an opinion that the proposed INS facility would have any direct or unique impacts on the surrounding property values. Other private and government buildings, of similar size and use in the area, have not had any detrimental impacts on property values. No cause-effect relationship was established between the location of the INS Offices and surrounding property values.

The proposed site is located on Section 28, Range 40, Township 53. Section 28 is 640 acre (one mile square) area surrounded by four major roadways: 41st Street on the north; 25th Street on the south; 87th Avenue on the east; and 97th Avenue on the west. There are other government and commercial uses on the contiguous 640 acre Section 28 including: Metro-Dade Police Headquarters, an FAA lease for a radar tower, the Federal Reserve Bank of Miami, and the just completed US Army Southern Command Headquarters Administrative facility (SOUTHCOM). This Army relocation of the SOUTHCOM from Panama to Dade County will be completed by May 31, 1998. This new facility has been leased by the Army for a 10-year term, is approximately 154,000 square feet, and will employee about 900 persons. The Proposed INS location is located just northeast of the SOUTHCOM facility (about three quarters of a mile) on Section 28. The WDFHA did not oppose this relocation of SOUTHCOM to the Doral area. The Appraiser retained by GSA stated that none of the aforementioned and varied government uses on Section 28, demonstrated any negative impacts to the surrounding property values.

Crime

Western Dade is projected to develop both commercially and residentially by the Dade County Comprehensive Development Master Plan. As this growth occurs, an increase in crime is projected, with or without the INS consolidation.

The INS facility would be designed to accommodate the INS needs. These design factors would include a larger floor plate, adequate parking, faster processing times for clients and fewer people at the site at any one time, required security procedures, and assigned waiting areas. These measures will serve to process INS clients efficiently at the facility.

The Metro-Dade Police Station is located on Section 28, (less than one mile south of the proposed site), and its presence, would serve to deter crime in the area. There was no cause-effect relationship found that would uniquely link the INS presence to increased crime rates in the area.

Neighborhood Impacts to the Doral Area

The residents of the Doral area strongly oppose the proposed INS location. The Doral area is seeking to become an independent municipality, separate from Dade County. The proposed site in the center of the proposed City of Doral. The WDFHA has suggested that the proposed INS location would be the preferred location for the new ''Village of Doral'' municipal complex. If the Doral Incorporation is successful, the proposed action would negatively impact the goals of the community as stated in their Incorporation Petition.

The Doral community, through its representative the WDFHA, is on the record stating that they oppose the INS locating at the current site, or at any other site in the same general area. There has been no previous opposition by WDFHA to the other government

uses on Section 28, including the recent lease construction of 150,000 square foot building for SOUTHCOM Headquarters.

Other land use on Section 28 include several large office buildings (former Eastern Doral Computer Center and Headquarters Carnival Cruise Lines), an FAA radar facility, the Metro-Dade Police Headquarters, the 80 acre Miami West Park, and light industrial and warehouse buildings. Given the mix of uses, including other substantial government facilities on Section 28, the INS at the proposed lease construction would not be out of character with other surrounding land uses. Included in the Police Station complex on Section 28 are four buildings totaling over 300,000 square feet including the Metro-Dade Police Headquarters, Police District #3 Doral West, maintenance and vehicle storage, and detention facilities.

The INS facility at the proposed location would be in substantial zoning compliance and would conform to land uses on other surrounding properties. The building would be designed as a commercial office building of similar size and appearance to other nearby buildings. The above are mitigating factors demonstrating that the proposed facility is not out of character to other land uses in Section 28, and therefore should have no unqiue impact on the surrounding community.

A Final Development Order will be required by Dade County at the conclusion of the Concurrency review. This review will determine if public services and infrastructure are available to support the proposed project. If the capacity is not available, then permitting would not be available to the developer, or alterations to the proposed development would be required by Dade County in order to meet Concurrency Standards. This process would serve to mitigate potential impacts this project would cause to the infrastructure and public services in the area.

No Action

INS relocation to Western Dade County cause would a small negative impact to the area around the 7880 Biscayne Boulevard location due to potential loss of retail and service business. However, due to the high crime rates in the general area, most INS employees do not patronize nearby retail establishments.

Some of the nearby businesses generate income from the INS clients who often spend hours waiting in line due to the inefficient layout at the current facility. Mitigating factors to these impacts would include the two-year lead time the property owner would have to find a replacement tenant, and the two-year lead time period the existing business would have to make appropriate adjustments in their business plans. Efforts are underway by the Biscayne Area Chamber of Commerce to promote Downtown Development Initiatives and obtain grants to stimulate the economy in the area.

There would be serious adverse impacts to the INS if they remained long term in their current facilities. There is no opportunity for expansion. Continued operation of physically separated functions will continue to hinder the INS in performing its mission. INS performs an important function for the United States with the administration and enforcement of US Immigration Laws. Operating in inadequate facilities and separated locations would negatively impact the INS' ability to effectively service its clients as well as the public.

Rationale for Decision

1. The proposed action was found to fall within the Dade County Concurrency Standards for traffic based on a traffic study conducted as part of the EIS.

2. Public transportation is available at the proposed location. Based on the existing route system, the capacity exists to increase the level of public transportation to the proposed facility. GSA will contact Metro-Dade Transit Authority at the appropriate point in the process to facilitate route and service alteration at the proposed facility to accommodate the public transportation needs.

3. The proposed facility is in compliance with local zoning, land use and comprehensive plans, contains more than the required parking, and would be subject to Concurrency review as part of the permitting process. The developer would be required to obtain permits and local approvals.

4. There are currently other substantial government facilities located on Section 28, including the FAA radar tower, the US Army Southern Command Headquarters (SOUTHCOM), and the Metro-Dade Police Station and Doral Substation including detention facilities. There was no evidence found that any of these other public uses have caused negative impacts to property values, nor any evidence that the INS would negatively impact property values. SOUTHCOM has just leased a new 150,000 square foot building, less than a mile southeast of the proposed site, to house 900 federal employees for occupancy June 1, 1997. In the opinion of an Appraiser retained by GSA, the INS facility would not constitute a stigma development.

5. The INS facility will be designed to accommodate the needs of the INS and to provide a secure building that will be visually and functionally compatible with other nearby commercial and public use buildings.

6. There was no evidence presented to indicate that this project would uniquely contribute to increased crime in the area.

Therefore, having given consideration to all of the factors discovered during the 13 month environmental review process, it is GSA's decision to proceed with the Proposed Action: Lease construction of a building of 214,607 occupiable square feet of space, to house the INS consolidation on a 7.3 acre site is located at 9300–9499 NW 41st Street in Miami.

Dated: April 23, 1998.

Phil Youngberg,

Regional Environmental Officer (PT).

[FR Doc. 98–11719 Filed 5–1–98; 8:45 am]

BILLING CODE 6820–23–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Public Health and Science Region, VI; Announcement of Availability of a Grant for a Family Planning Information, Education and Clinical Services Linkage Innovations Research Project

AGENCY: Office of Family Planning, Region VI.

ACTION: Notice.

SUMMARY: The Office of Family Planning (OPF), Region VI, requests applications for a new research grant in family planning services delivery improvement.

DATES: To receive consideration, applications must be postmarked or delivered to the Office of Grants Management no later than June 15, 1998.

ADDRESSES: Completed applications should be sent to: Office of Grants Management, U.S. Public Health Service, DHHS Region VI, 1301 Young St., Suite 766, Dallas, XT 75202.

FOR FURTHER INFORMATION CONTACT: Evelyn Glass, Family Planning Unit Chief—214–767–3088, for assistance on technical and program aspects; Maureen Picket, Grants Management Officer—214–767–3401, to answer questions about the preparation of grant applications.

Requests for applications kits may be faxed to 214–767–3425.

ELIGIBILITY: Any public or private non-profit organization or agency which has offices in Region VI (Arkansas, Louisiana, New Mexico, Oklahoma, and Texas) and which has the ability to coordinate the project across state boundaries is eligible to apply for this grant. The grant will be awarded only to an organization or agency which demonstrates a capability to provide the proposed services, meets the statutory requirements, and currently maintains an office in the region.

The applicant who receives funds under this announcement must be knowledgeable regarding reproductive health needs within Region VI states, must have the ability to work with and obtain information from Title X grantees, State Family Planning Training Coordinators, and various community groups across the Region, and must be able to coordinate and facilitate technical assistance and training activities with community-based demonstration projects in the region.

SUPPLEMENTARY INFORMATION: Title X of the Public Health Service Act, 42 U.S.C. 300, *et sea.,* authorizes the Secretary of Health and Human Services (OHS) to award grants and contracts to: (1) Establish and operate family planning clinics; (2) provide training for personnel to carry out family planning service programs; (3) provide research in fields related to family planning service and service delivery; and (4) develop and distribute family planning informational and educational materials.

Section 1001 of the statute authorizes the Secretary to award grants to public or private non-profit entities to assist in the establishment and operation of voluntary family planning projects to provide a broad range of acceptable and effective family planning methods and services (including natural family planning methods, infertility services, and services for adolescents). The statute requires that, to the extent practicable, entities shall encourage family participation. Title X funds may not be used in programs where abortion is a method of family planning. Implementing regulations for Section 1001 appear at 42 CFR part 59, subpart A.

Section 1004 authorizes the Secretary to make grants to public or private non-profit entities and individuals for projects for research in the biomedical, contraceptive development, behavioral and program implementation fields related to family planning and population. Implementing regulations for Section 1004 appear at 42 CFR part 52. Region VI Office of Family Planning intends to make available funds to investigate innovative approaches for providing family planning/reproductive health related information and services targeted to specific hard to reach populations.

Purposes of Grant

This notice announces the availability for funds to support a new research project to address two (2) of the five (5) Title X program priorities:

(1) Increasing outreach to individuals not likely to seek services, including males, homeless persons, disabled persons, substance abusers, and adolescents; and

(3) Serving adolescents, including more community education, emphasis on postponement of sexual activity, and more accessible provision of contraceptive counseling and contraception.

The family planning services program, authorized by Section 1001 of Title X, is required by law to provide family planning services, including education and counseling, to all persons desiring such services. There are subgroups of the population which have been under-represented in the traditional family planning delivery system. Experience has shown that it is difficult to draw some sub-populations, such as males of all ages, certain adolescents, homeless persons, disabled persons, and substance abusers, into the traditional clinic setting for family planning/reproductive health related information and services. This effort, authorized under Section 1004 of the Title X statute, is an attempt to look at ways to link family planning/ reproductive health services with community-based providers of clinical, social and educational services to the under-served populations.

Approximately $1.2 million is available to support the research project, and $1 million of that amount is available to support new innovations for linking providers of family planning information, education, and clinical services to populations that are less likely to seek services and are often hard to reach (such as but not limited to males, homeless persons, disabled persons, substance abusers, and adolescents). An applicant for a grant under this announcement may elect to support the development of a network of linkages between agencies which service any of the hard to reach populations, including but not limited to those described above, and appropriate services and activities relating to family planning/reproductive health. The linkages might involve arranging for the production and distribution of appropriate and relevant patient educational materials; making transportation available for clinical services; or, providing for public information and education on family planning/reproductive health issues.

In addition, with approximately $200,000, and in close collaboration with Region VI staff, the applicant who receives funds under this announcement will be responsible for the following activities:

- Advertise the availability of funds for the community-based projects;
- Assist community-based organizations with development and preparation of proposals;
- Provide technical assistance to interested organizations;
- Receive and screen proposals;
- Assemble an Objective Review Committee to review proposals;
- Arrange for the transfer of funds to community-based organizations whose projects are selected for funding; and
- Provide assistance with regular follow-up and program evaluation.

Application Consideration and Assessment

Applications will be reviewed by a multidisciplinary panel of independent reviewers and assessed according to the following criteria:

(1) A clear description of the project, including goals and objectives, methods of achieving objectives, a reasonable work plan and timetable, and a clear statement of results or benefits expected. (20 points)

(2) The feasibility of the project and the likelihood of its producing meaningful results, as evidenced by the applicant's sound methodology to measure the extent to which the proposed approach enhances the delivery of family planning/ reproductive health education, counseling and/or services to hard to reach populations and its potential for replication. (25 points)

(3) The history of the applicant organization in successfully providing a variety of services, such as clinical, social, educational, training, vocational, and legal services, to under-served and hard to reach populations or in under-served communities or collaborating with agencies that serve these populations. (25 points)

(4) The administrative and management capability of the applicant organization in relation to the type of project proposed, the project period, and the adequacy of the applicant's resources for the project. (15 points)

(5) Letters of support from community-based organizations indicating their support of the project and their interest in participating in the project. (15 points)

Applications must be postmarked or, if not sent by U.S. mail, received at the Office of Grants Management no later than the close of business on June 15, 1998. Private metered postmarks will not be acceptable as proof of timely mailing. Applications which are postmarked later than June 15, 1998 will be judged late and will not be accepted for review. (Applicants should request a legibly dated postmark from the U.S. Postal Service.) Applications which do not conform to the requirements of this program announcement or do not meet the applicable regulatory requirements will not be accepted for review. Applicants will be so notified, and the applications will be returned.

Grant Award

The grant will be funded in annual increments (budget periods). The project may be funded for up to three (3) years. Funding for all approved budget periods beyond the first year is contingent upon the availability of funds, satisfactory progress of the project, and adequate stewardship of federal funds.

Review Under Executive Order 12372

Applicants under this announcement are subject to the review requirements of Executive Order 12372, Intergovernmental Review of Department of Health and Human Services Programs and Activities, as implemented by 45 CFR part 100. As soon as possible, the applicant should discuss the project with the State Single Point of Contact (SPOC) for each State to be served. The application kit contains the currently available listing of the SPOCs which have elected to be informed of the submission of applications. For those States not represented on the listing, further inquiries should be made to the Governor's office of the pertinent states for information regarding the review process designated by their state or the SPOC for the state in question.

SPOC comments must be received by the Office of Grants Management 30 days prior to the funding date to be considered.

When the final funding decision has been made, each applicant will be notified by letter of the outcome of its application. The official document notifying an applicant that a project application has been approved for funding is the Notice of Grant Award, which specifies to the grantee the amount of money awarded, the purposes of the grant, and terms and condition of the grant award.

Dated: April 8, 1998.

James Randolph Farris,

Regional Health Administrator.

[FR Doc. 98–11688 Filed 5–1–98; 8:45 am]

BILLING CODE 4160–17–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Injury Research Grant Review Committee: 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: Injury Research Grant Review Committee (IRGRC).

Time and Date: 6:30 p.m.–9 p.m., June 6, 1998; 8 a.m.–5 p.m., June 7, 1998.

Place: Renaissance Atlanta Hotel-Downtown, 590 West Peachtree Street, NW, Atlanta, Georgia 30308.

Status: Open: 6:30 p.m.–7 p.m., June 6, 1998. Closed: 7 p.m.–9 p.m., June 6, 1998, through 5 p.m., June 7, 1998.

Purpose: This committee is charged with advising the Secretary of Health and Human Services, the Assistant Secretary for Health, and the Director, CDC, regarding the scientific merit and technical feasibility of grant applications received from academic institutions and other public and private profit and nonprofit organizations, including State and local government agencies, to conduct specific injury research that focus on prevention and control and to support injury prevention research centers.

Matters To Be Discussed: Agenda items include announcements, discussion of review procedures, and review of grant applications.

Beginning at 7 p.m., June 6, through 5 p.m., June 7, the Committee will meet to conduct a review of grant applications. This portion of the meeting will be closed to the public in accordance with provisions set forth in section 552b(c)(4) and (6), title 5 U.S.C., and the Determination of the Associate Director for Management and Operations, CDC, pursuant to Public Law 92–463.

Agenda items are subject to change as priorities dictate.

Contact Person For More Information: Richard W. Sattin, M.D., Executive Secretary, IRGRC, National Center for Injury Prevention and Control, CDC, 4770 Buford Highway, NE, M/S K58, Atlanta, Georgia 30341–3724, telephone 770/488–4580.

Dated: April 27, 1998.

Nancy C. Hirsch,

Acting Director, Management Analysis and Services Office Centers for Disease Control and Prevention (CDC).

[FR Doc. 98–11715 Filed 5–1–98; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Research Studies to Support Microbial Risk Assessment Modeling; Availability of Cooperative Agreements; Request for Applications

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA), Center for Food Safety and Applied Nutrition (CFSAN) is announcing the availability of approximately $800,000 for research funds for fiscal year (FY) 1998 to conduct research to support the development of risk assessment dose-response models for microbiological hazards associated with food. FDA anticipates making two to three awards at $250,000 to $400,000 (direct and indirect costs) per award per year. Support of these agreements may be up to 3 years. The number of agreements funded will depend on the quality of the applications received and the availability of Federal funds to support the project. After the first year, 2 additional years of noncompetitive support are predicated upon performance and the availability of Federal FY funds.

DATES: Submit applications by June 18, 1998. If the closing date falls on a weekend, it will be extended to Monday; if the date falls on a holiday, it will be extended to the following workday.

ADDRESSES: Application forms are available from, and completed applications should be submitted to: Robert L. Robins, Grants Management Officer, Division of Contracts and Procurement Management (HFA–520), Food and Drug Administration, Park Bldg., 5600 Fishers Lane, rm. 3–40, Rockville, MD 20857, 301–443–6170. Applications hand-carried or commercially delivered should be addressed to Park Bldg., 12420 Parklawn Dr., rm. 3–40, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Regarding the administrative and financial management aspects of

this notice: Robert L. Robins (address above).

Regarding the programmatic aspects of this notice: Wes R. Long, Food Safety Initiative Risk Assessment Lead, Center for Food Safety and Applied Nutrition, Food and Drug Administration (HFS–301), 200 C St. SW., Washington, DC 20204, 202–205–4064.

SUPPLEMENTARY INFORMATION: FDA will support the research studies covered by this notice under section 301 of the Public Health Service Act (42 U.S.C. 241). FDA's research program is described in the Catalog of Federal Domestic Assistance, No. 93.103.

The Public Health Service (PHS) strongly encourages all award recipients to provide a smoke-free workplace and to discourage the use of all tobacco products. This is consistent with the PHS mission to protect and advance the physical and mental health of the American people.

PHS urges applicants to submit work plans that address specific objectives of ''Healthy People 2000.'' Potential applicants may obtain a copy of ''Healthy People 2000'' (Full Report, stock No. 017–0010–0474–0) through the Superintendent of Documents, Government Printing Office, Washington, DC 20402–9325, 202–512–1800.

I. Background

FDA is mandated by the President's Food Safety Initiative (FSI) to develop risk assessment tools to help assure the microbiological safety of foods. Even though the American food supply is among the safest in the world, millions of Americans are stricken by illness each year caused by the food they consume, and some 9,000 Americans a year, primarily the very young and elderly, die as a result. The goal of FSI is to further reduce the incidence of food borne disease to the greatest extent possible. Risk assessment helps promote this goal by determining the likelihood that exposure to a hazard, such as a food borne pathogen, will result in harm or disease. Risk assessment methods help characterize the nature and size of risks to human health associated with food borne hazards and assist regulators in making decisions about where in the food chain to allocate public resources to reduce those risks that have the greatest consequences for human health. Carefully formulated risk assessments based on the best available data generated from research lead to more informed risk management and better decisions. The President's FSI requires that 1998 funds be used to develop better data and modeling techniques to assess the exposure of the population to microbial contaminants and the range of health consequences of that exposure.

Research is needed to develop improved methods and models that will make it possible to perform quantitative microbial risk assessments to the degree of complexity needed for most food-safety issues. Such research requires an integration of work in the biological sciences, predictive microbiology, and applied mathematics. Risk assessment's FSI activities focus on developing models for improving risk assessments. Fundamentally, however, additional data is needed to assist in the development of these models. For dose-response models—that is, determining the quantity of a virulent organism ingested and the likely outcome of that event—there are numerous data needs. Risk assessors have mostly relied on qualitative or semi-quantitative criteria, such as outbreak reports or surveillance data, to develop these models. Significant improvements in modeling dose-response relationships for the human population could be realized from a coordinated research effort that leverages completed, ongoing, or planned human clinical trials funded by the National Institutes of Health (NIH), the Environmental Protection Action (EPA), the Department of Defense (DOD), and others and emphasizes expansion of clinical studies to include the acquisition of data needed in the areas of dose-response relationships at low-dose levels, assessment of potential biomarkers of infection caused by food borne pathogens, and the effects of food matrices on dose-response; also the development of correlative dose-response data from relevant animal surrogates.

II. Research Goals and Objectives

The specific objective of this program of research will be to conduct research to complement the use, development, or improvement of dose-response models for use in risk assessment.

Applications that fulfill the following specific project objectives will be considered for funding. Collaborations among researchers with complementary capabilities are encouraged.

A. Project Objectives

To generate dose-response data from human clinical studies and develop correlative dose-response data from relevant animal surrogates. The FDA seeks to support research to complement completed, ongoing, and planned controlled clinical infection studies, such as those supported by NIH, EPA, or DOD, for the purpose of providing data on the dose-response relationship in humans ingesting food borne pathogenic microorganisms.

Research would be conducted to expand clinical studies to include additional strains and/or lower-dose levels to facilitate dose-response modeling. It may also include collection and use of subject samples (e.g., stools, peripheral blood) in the development of in vitro or ex vivo correlates (biomarkers) of human susceptibility, and/or expansion of clinical studies to collect data on food matrix effects.

In addition, the research must include the development of correlative dose-response data from relevant animal surrogates using the same bacterial strains, prepared under the same conditions, as used in the human dosing experiments, utilizing an appropriate dose range to allow extrapolation to low doses. Oral dose-response in animals will be required. Research may include both normal animals and immunocompromised animals. Applicable models of compromised host subpopulations include, but are not limited to, animals with defined defects of the innate or acquired immune system or with disruption of the composition and/or diversity of the indigenous gut microflora.

B. Protection of Human Research Subjects

Some activities carried out by a recipient under this announcement may be governed by the Department of Health and Human Services' (DHHS) regulations for the protection of human research subjects (45 CFR part 46). These regulations require recipients to establish procedures for the protection of subjects involved in any research activities. Prior to funding and upon request of the Office for Protection from Research Risks (OPRR), prospective recipients must have on file with OPRR an assurance to comply with 45 CFR part 46. This assurance to comply is called an Assurance document. It includes the designated Institutional Review Board for review and approval of procedures for carrying out any research activities occurring in conjunction with this award. If an applicable Assurance document for the applicant is not already on file with OPRR, a formal request for the required Assurance will be issued by OPRR at an appropriate point in the review process, prior to award, and examples of required materials will be supplied at that time. No applicant or performance site, without an approved and applicable Assurance on file with OPRR, may spend funds on human subject activities or accrue subjects. No performance site, even with an OPRR-

approved and applicable Assurance, may proceed without approval by OPRR of an applicable Assurance for the recipients. Applicants may wish to contact OPRR by facsimile (301–402–0527) to obtain preliminary guidance on human subjects issues. When contact OPRR, applicants should provide their institutional affiliation, geographic location, and all available request for application (RFA) citation information.

III. Reporting Requirements

A Program Progress Report and a Financial Status Report (FSR) (SF–269) are required. An original FSR and two copies shall be submitted to FDA's Grants Management Officer within 90 days of the budget expiration date of the cooperative agreement. Failure to file the FSR (SF–269) on time may be grounds for suspension or termination of the agreement. Progress reports will be required quarterly within 30 days following each Federal fiscal quarter (January 31, April 30, July 30, October 31), except that the fourth report which will serve as the annual report and will be due 90 days after the budget expiration date. CFSAN program staff will advise the recipient of the suggested format for the Program Progress Report at the appropriate time. A final FSR (SF–269), Program Progress Report and Invention Statement must be submitted within 90 days after the expiration of the project period as noted on the Notice of Grant Award.

Program monitoring of recipients will be conducted on an ongoing basis and written reports will be reviewed and evaluated at least quarterly by the Project Officer and the Project Advisory Group. Project monitoring may also be in the form of telephone conversations between the Project Officer/Grants Management Specialist and the Principal Investigator and/or a site visit with appropriate officials of the recipient organization. The results of these monitoring activities will be duly recorded in the official file and may be available to the recipient upon request.

IV. Mechanism of Support

A. Award Instrument

Support for this program will be in the form of cooperative agreements. These cooperative agreements will be subject to all policies and requirements that govern the research grant programs of the PHS, including the provisions of 42 CFR part 52 and 45 CFR parts 74 and 92. The regulations issued under Executive Order 12372 do not apply to this program.

B. Eligibility

These cooperative agreements are available to any public or private nonprofit entity (including State and local units of government) and any for-profit entity. For-profit entities must commit to excluding fees or profit in their request for support to receive awards. Organizations described in section 501(c)(4) of the Internal Revenue Code of 1968 are not eligible to receive awards.

Members of the Food Safety Initiative Risk Assessment Consortium and/or their collaborators are *not* eligible to compete for these program funds.

C. Length of Support

The length of support will be for up to 3 years. Funding beyond the first year will be noncompetitive and will depend on: (1) Satisfactory performance during the preceding year, and/or (2) the availability of Federal FY funds.

V. Delineation of Substantive Involvement

Inherent in the cooperative agreement award is substantive involvement by the awarding agency. Accordingly, FDA will have a substantive involvement in the programmatic activities of all the projects funded under this RFA. Substantive involvement includes but is not limited to the following:

1. FDA will appoint project officers who will actively monitor the FDA supported program under each award.

2. FDA will establish an Project Advisory Group which will provide guidance and direction to the project officer with regard to the scientific approaches and methodology that may be used by the investigator.

FDA scientists will collaborate with the recipient and have final approval on the experimental protocol. This collaboration may include protocol design, data analysis, interpretation of findings, co-authorship of publications, and the development and filing of patents.

VI. Review Procedure and Criteria

A. Review Method

All applications submitted in response to this RFA will first be reviewed by grants management and program staff for responsiveness. If applications are found to be nonresponsive, they will be returned to the applicant without further consideration.

Responsive applications will be reviewed and evaluated for scientific and technical merit by an ad hoc panel of experts in the subject field of the specific application. Responsive applications will also be subject to a second level of review by a National Advisory Council for concurrence with the recommendations made by the first level reviewers. Final funding decisions will be made by the Commissioner of Food and Drugs or his designee.

B. Program Priorities and Review Criteria

Funding priority will be for research proposals that will provide data for dose-response models for the following foodborne pathogens: Shiga-like toxin-producing *Cryptosporidium parvum*, pathogenic *Escherichia coli, Listeria monocytogenes*, Norwalk virus, *Salmonella* spp., *Shigella* spp., *Vibrio* spp., and *Staphyloccocus* spp. enterotoxin. Other foodborne pathogens will also be considered. As previously stated, proposed research must be conducted in collaboration with completed, ongoing, or planned human clinical trials.

All comments received on the funding priority will be taken into consideration and will receive a response.

All applications will be evaluated by program and grants management staff for responsiveness. Applications determined not to be within the scope of the project objectives will be considered nonresponsive. Applications considered nonresponsive will be returned to the applicant, without being reviewed. Applicants are strongly encouraged to contact FDA to resolve any questions regarding criteria prior to the submission of their application. All questions of a technical or scientific nature must be directed to the CFSAN program staff and all questions of an administrative or financial nature must be directed to the grants management staff (address above). Applications will be based on the following criteria:

1. Research should be proposed on dose-response that is within the objectives listed in Research Goals and Objectives, section II of this document.

2. Whether the proposed study is within the budget and costs have been adequately justified and fully documented;

3. Soundness of the rationale for the proposed study and appropriateness of the study design to address the objectives of RFA;

4. Availability and adequacy of laboratory and associated animal facilities;

5. Availability and adequacy of support services, e.g., biostatistical computer, data bases, etc., and;

6. Research experience, training, and competence of the principal investigator and support staff.

VII. Submission Requirements

The original and five copies of the completed Grant Application Form PHS 398 (Rev. 5/95) or the original and two copies of the PHS 5161 (Rev. 7/92) for State and local governments, with copies of the appendices for each of the copies, should be delivered to Robert L. Robins (address above). State and local governments may choose to use the PHS 398 application form in lieu of the PHS 5161. The application receipt date is June 18, 1998. If the receipt date falls on a weekend, it will be extended to Monday; if the date falls on a holiday, it will be extended to the following workday. No supplemental or addendum material will be accepted after the receipt date.

The outside of the mailing package and item 2 of the application face page should be labeled ''Response to RFA–FDA–CFSAN–98–1.''

VIII. Method of Application

A. Submission Instructions

Applications will be accepted during working hours, 8 a.m. to 4:30 p.m., Monday through Friday, on or before the established receipt date. Applications will be considered received on time if sent or mailed on or before the receipt date as evidenced by a legible U.S. Postal Service dated postmark or a legible date receipt from a commercial carrier, unless they arrive too late for orderly processing. Private metered postmarks shall not be acceptable as proof of timely mailing. Applications not received on time will not be considered for review and will be returned to the applicant. Applicants should note that the U.S. Postal Service does not uniformly provide dated postmarks. Before relying on this method, applicants should check with their local post office.

Do not send applications to the Center for Scientific Research (CSR), NIH. Any application that is sent to NIH, that is then forwarded to FDA and not received in time for orderly processing, will be deemed unresponsive and returned to the applicant. Instructions for completing the application forms can be found on the NIH home page on the Internet (address: http://www.nih.gov/grants/funding/phs398/phs398.html; the forms can be found at http://www.nih.gov/grants/funding/phs398/forms__toc.html). However, as noted previously, applications are not to be mailed to NIH. Applications must be submitted via mail delivery as stated previously. FDA is unable to receive applications via Internet.

B. Format for Application

Submission of the application must be on Grant Application Form PHS 398 (Rev. 5/95). All ''General Instructions'' and ''Specific Instructions'' in the application kit should be followed with the exception of the receipt dates and the mailing label address. Applicants are also advised that FDA does not adhere to the page limitations or the type size and line spacing requirements imposed by NIH on its applications. Do not send applications to CSR, NIH. Applications from State and local governments may be submitted on Form PHS 5161 (Rev. 7/92) or Form PHS 398 (Rev. 5/95).

The face page of the application should reflect RFA's number RFA–FDA–CFSAN–98–1.

Data included in the application, if restricted with the legend specified below, may be entitled to confidential treatment as trade secret or confidential commercial information within the meaning of the Freedom of Information Act (FOIA) (5 U.S.C. 552(b)(4)) and FDA's implementing regulations (21 CFR 20.61).

Information collection requirements requested on Form PHS 398 and the instructions have been submitted by PHS to the Office of Management and Budget (OMB) and were approved and assigned OMB control number 0925–0001.

C. Legend

Unless disclosure is required by FOIA as amended (5 U.S.C. 552), as determined by the freedom of information officials of DHHS or by a court, data contained in the portions of this application which have been specifically identified by page number, paragraph, etc., by the applicant as containing restricted and/or proprietary information shall not be used or disclosed except for evaluation purposes.

Dated: April 3, 1998.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 98–11743 Filed 5–1–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 96P–0090]

Determination That Testosterone Propionate 2% Ointment Was Not Withdrawn From Sale for Reasons of Safety or Effectiveness; Amendment

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is amending a previous determination regarding the fact that testosterone propionate 2% ointment (Perandren Ointment) was not withdrawn from sale for reasons of safety or effectiveness. FDA has determined that it is not appropriate at this time to accept abbreviated new drug applications (ANDA's) for testosterone propionate 2% ointment.

FOR FURTHER INFORMATION CONTACT: David T. Read, Center for Drug Evaluation and Research (HFD–7), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20855, 301–594–2041.

SUPPLEMENTARY INFORMATION: ANDA sponsors must, with certain exceptions, show that the drug for which they are seeking approval contains the same active ingredient in the same strength and dosage form as a ''listed drug.'' A listed drug is one that has an effective approval, either under section 505(c) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 355(c)) for safety and effectiveness or under section 505(j) of the act, which has not been withdrawn for reasons of safety or effectiveness (21 CFR 314.3, see also 21 U.S.C. 355(j)(6)). Neither at the time of ANDA submission nor at the time of ANDA approval is it essential that a listed drug be currently marketed.

FDA's ''Approved Drug Products with Therapeutic Equivalence Evaluations'' (popularly referred to as the ''Orange Book'') contains the official register of listed drugs, and a drug is removed from this register in either of two ways. First, a listed drug is removed if the agency withdraws or suspends approval of the drug's new drug application (NDA) or ANDA for reasons of safety or effectiveness. Second, in the case of a listed drug that was discontinued from sale but did not have its approval withdrawn or had its approval withdrawn for reasons other than safety or effectiveness, the drug is removed if FDA determines that it was discontinued from sale for reasons of

safety or effectiveness (21 CFR 314.162). FDA may be called upon to make such a finding when petitioned by a potential ANDA applicant (§ 314.161 (21 CFR 314.161)).

On March 19, 1996, Richard Hamer Associates, Inc., submitted a citizen petition (Docket No. 96P–0090/CP1), under 21 CFR 10.25(a), 10.30, and 314.161(b), requesting that the agency determine whether testosterone propionate 2% ointment was discontinued from sale for reasons of safety or effectiveness and, if the agency determines that the drug was not discontinued from sale for reasons of safety or effectiveness, to relist the drug in the Orange Book. Testosterone propionate 2% ointment (Perandren Ointment) was the subject of NDA 0–0499 held by Ciba Pharmaceutical Co. This NDA was submitted to FDA on January 24, 1939, and under the procedures of the act at that time, the NDA ''became effective'' (the statutory equivalent of ''approval'' under the act as it appears now) on March 7, 1939, 23 years before passage of the 1962 amendments to the act. The significance of these dates is that from 1938 through 1962, FDA reviewed drugs only to pass upon their safety. The 1962 amendments to the act (Pub. L. 87–781 (October 10, 1962)) required FDA to review drugs not only for safety, but also for effectiveness. The effectiveness standard applied both prospectively to new drugs entering the market and retrospectively to drugs whose applications became effective between 1938 and 1962.

In the **Federal Register** of September 23, 1971 (36 FR 18885), FDA withdrew approval of NDA 0–0499 for Perandren Ointment based on the applicant's failure to submit required annual reports (section 505(e) of the act and 21 CFR 314.80 and 314.81).

In the **Federal Register** of December 6, 1996 (61 FR 64754), FDA in responding to the Hamer petition, announced its determination that testosterone propionate 2% ointment (Perandren Ointment) was not discontinued from sale for reasons of safety or effectiveness. In that same notice, FDA announced that this determination will allow FDA to approve ANDA's for testosterone propionate 2% ointment. Upon further investigation, however, FDA has determined that NDA 0–0499 for Perandren Ointment was never approved as effective for any of its labeled indications and, therefore, was never a ''listed drug'' such that it could be ''relisted.'' As discussed previously, for a drug approved under section 505(c) of the act to be a ''listed drug,'' it must have been approved for effectiveness as well as safety. No information was ever submitted on the effectiveness of this product prior to its withdrawal of approval in 1971. So, while it remains true that NDA 0–0499 was not discontinued from sale for reasons of safety or effectiveness, it is not appropriate at this time to accept ANDA's for testosterone propionate 2% ointment.

The **Federal Register** notice of December 6, 1996, is amended insofar as it is inconsistent with the findings of this notice.

Dated: April 27, 1998.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 98–11684 Filed 5–1–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 96E–0189]

Determination of Regulatory Review Period for Purposes of Patent Extension; LIPOSORBER® LA–15 System

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for LIPOSORBER® LA–15 System and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Commissioner of Patents and Trademarks, Department of Commerce, for the extension of a patent which claims that medical device.

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

FOR FURTHER INFORMATION CONTACT: Brian J. Malkin, Office of Health Affairs (HFY–20), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–6620.

SUPPLEMENTARY INFORMATION: The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Pub. L. 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: A testing phase and an approval phase. For medical devices, the testing phase begins with a clinical investigation of the device and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the device and continues until permission to market the device is granted. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Commissioner of Patents and Trademarks may award (half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a medical device will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(3)(B).

FDA recently approved for marketing the medical device LIPOSORBER® LA–15 System. LIPOSORBER® LA–15 System is indicated for use in performing low density lipoprotein cholesterol (LDL–C) apheresis to acutely remove LDL–C from the plasma of high risk patient populations for whom diet has been ineffective and maximum drug therapy has either been ineffective or not tolerated. Subsequent to this approval, the Patent and Trademark Office received a patent term restoration application for LIPOSORBER® LA–15 System (U.S. Patent No. 4,637,994) from Kanegafuchi Kagaku Kogyo Kabushiki Kaisha, and the Patent and Trademark Office requested FDA's assistance in determining this patent's eligibility for patent term restoration. In a letter dated August 7, 1996, FDA advised the Patent and Trademark Office that this medical device had undergone a regulatory review period and that the approval of LIPOSORBER® LA–15 System represented the first permitted commercial marketing or use of the product. Shortly thereafter, the Patent and Trademark Office requested that FDA determine the product's regulatory review period.

FDA has determined that the applicable regulatory review period for LIPOSORBER® LA–15 System is 3,598 days. Of this time, 1,995 days occurred during the testing phase of the regulatory review period, while 1,603 days occurred during the approval

phase. These periods of time were derived from the following dates:

1. *The date a clinical investigation involving this device was begun*: April 18, 1986. FDA has verified the applicant's claim that the date the investigational device exemption (IDE) required under section 520(g) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360j(g)) for human tests to begin became effective April 18, 1996, the date that the IDE for a similar, related product, LIPOSORBER® LA–40 System, was approved.

Although the device was subsequently modified, the results of the initial clinical investigations on the earlier model, LIPOSORBER® LA–40 System were included in FDA's analysis of the approved product's safety and effectiveness. The test on the earlier model is, therefore, part of the testing phase.

Additionally, the product is of a type which, under present regulations, would require IDE approval prior to the start of clinical investigations, and normally the initiation of the testing phase for a medical device is determined by reference to the approval phase of the relevant IDE.

2. *The date an application was initially submitted with respect to the device under section 515 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360e)*: October 3, 1991. The applicant claims March 24, 1988, as the date the premarket approval application (PMA) for the LIPOSORBER® LA–40 System (PMA 880019) was initially submitted, which applicant argues should be used in place of the PMA for LIPOSORBER® LA–15 System (PMA 910018). FDA records indicate that PMA 880019 was received by the agnecy on March 25, 1998, but this PMA was never filed, and it was withdrawn by the applicant on April 3, 1996. The applicant claims that PMA 910018 was submitted on March 26, 1991, but FDA records indicate that it was submitted on October 3, 1991.

The applicant argues that the PMA for the LA–40 device should be used as the start of the approval phase for the LA–15 device, because its liposorber technology and adsorbent are identical to those described in the patent for which applicant is requesting extension, U.S. Patent No. 4,637,994. The LA–15 device contains additional components of a plasma separator, the tubing system for plasmaphereses and the apheresis unit.

However, the patent term restoration regulations define the approval phase of medical device in terms of the actual approved product, not an earlier tested product. For example, while the patent term restoration statute does define drug product as the active ingredient of a new drug, ''product'' for ''medical devices'' has been defined as ''[a]ny medical device * * * subject to regulation under the Federal Food, Drug, and Cosmetic Act'' (35 U.S.C. 156(f)). Given that the LA–40 device was withdrawn by applicant from further regulatory consideration, the LA–15 device is the only applicable medical device subject to FDA regulations.

Regarding the definition of regulatory review period for the start of the approval phase of a medical device, the regulations state ''* * * the period beginning on the date the application was initially submitted with respect to the device under section 515 and ending on the date such application was approved under such Act * * *'' 35 U.S.C. 156(g)(3)(B); see also 21 CFR 60.22(c)(2)(i). In this case, the only PMA which submitted, filed, and approved under section 515 of the Federal Food, Drug, and Cosmetic Act was PMA P910018, which was submitted on October 3, 1991, and is, therefore, the appropriate date the approval application was initially submitted for LIPOSORBER® LA–15 System.

3. *The date the application was approved*: February 21, 1996. FDA has verified the applicant's claim that PMA P9910018 was approved on February 21, 1996.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the U.S. Patent and Trademark Office applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 1,825 days of patent term extension.

Anyone with knowledge that any of the dates as published is incorrect may, on or before July 6, 1998, submit to the Dockets Management Branch (address above) written comments and ask for a redetermination. Furthermore, any interested person may petition FDA, on or before November 2, 1998, for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Comments and petitions should be submitted to the Dockets Management Branch (address above) in three copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. Comments and petitions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: March 31, 1998.

Thomas J. McGinnis,

Deputy Associate Commissioner for Health Affairs.

[FR Doc. 98–11682 Filed 5–1–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Dental Plaque Subcommittee of the Nonprescription Drugs Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Dental Plaque Subcommittee of the Nonprescription Drugs Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA's regulatory issues.

Date and Time: The meeting will be held on May 27, 28, and 29, 1998, 8:30 a.m. to 5 p.m.

Location: Holiday Inn, Two Montgomery Village Ave., Gaithersburg, MD.

Contact Person: Robert L. Sherman or Stephanie A. Mason, Center for Drug Evaluation and Research (HFD–560), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD, 301–827–5191, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 12541. Please call the Information Line for up-to-date information on this meeting.

Agenda: On May 27, 1998, the subcommittee will discuss: (1) The safety and effectiveness of the combination of stannous pyrophosphate and zinc citrate; (2) the effectiveness of the combination of hydrogen peroxide, sodium lauryl sulfate, sodium citrate and zinc chloride; (3) the safety and effectiveness of hexetidine, soluble pyrophosphate, nonsaponifiable fraction of corn oil, bromchlorophene and chlorhexidine digluconate; and (4) final formulation testing. On May 28, 1998, the subcommittee will discuss labeling

of over-the-counter antiplaque-antigingivitis drug products. On May 29, 1998, the subcommittee will discuss recommended therapeutic combinations for antiplaque-antigingivitis drug products.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by May 20, 1998. Oral presentations from the public will be scheduled between approximately 8:30 a.m. and 12 m. on May 27, 28, and 29, 1998. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before May 20, 1998, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: April 24, 1998.

Michael A. Friedman,

Deputy Commissioner for Operations.

[FR Doc. 98–11742 Filed 5–1–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 98D–0191]

Testing for Skin Sensitization to Chemicals in Latex Products; Draft Guidance; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of the draft guidance document entitled ''Testing for Skin Sensitization to Chemicals in Latex Products.'' This draft guidance is intended to provide alternative claims for medical devices containing natural rubber latex to the ''hypoallergenic'' claim that no longer will be acceptable after September 30, 1998. The draft guidance, which is not in effect at this time, is being issued for comment. This draft guidance was reviewed by the General Hospital and Personal Use Devices Panel in September 1997, and it will be posted on the Internet.

DATES: Written comments concerning this guidance must be received by August 3, 1998.

ADDRESSES: Written comments concerning the draft guidance must be submitted to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857. Comments should be identified with the docket number found in brackets in the heading of this document. Submit written requests for singles copies of the draft guidance to the Division of Small Manufacturers Assistance (DSMA), Center for Devices and Radiological Health (HFZ–220), Food and Drug Administration, 1350 Piccard Dr., Rockville, MD 20850. Send two self-addressed adhesive labels to assist that office in processing your request, or fax your request to 301–443–8818. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance.

FOR FURTHER INFORMATION CONTACT: Chiu S. Lin, Center for Devices and Radiological Health (HFZ–480), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–443–8913.

SUPPLEMENTARY INFORMATION:

I. Background

This is the second draft of the guidance entitled ''Testing for Skin Sensitization to Chemicals in Latex Products,'' and it replaces the July 28, 1997, version that was posted on the Internet and distributed by DSMA to manufacturers of medical devices made of natural rubber to consumer groups and other agencies of the Federal Government for comment. This draft guidance was also discussed during the General Hospital and Personal Use Devices Advisory Panel meeting on September 15, 1997. This second draft incorporates comments received from the General Hospital and Personal Use Devices Advisory Panel meeting, consumer groups, and medical device manufacturers. This draft guidance is intended to provide alternative claims for medical devices containing natural rubber latex to replace the ''hypoallergenic'' claim. The ''hypoallergenic'' claim will no longer be acceptable after September 30, 1998, which is the effective date of the final rule on medical devices containing natural-rubber that published in the **Federal Register** of September 30, 1997 (62 FR 51021). This draft guidance also includes test methods for supporting these claims. When this draft guidance becomes final, the manufacturers of latex containing medical devices may use it to address label options and what tests FDA regards as appropriate to support statements that replace the current ''hypoallergenic'' statement.

II. Significance of Guidance

The draft guidance represents the agency's recommended tests to support label claims for reduced chemical sensitivity during use of latex products and label options. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the applicable statute, regulations, or both. The agency has adopted Good Guidance Practices (GGP's), which set forth the agency's policies and procedures for the development, issuance, and use of guidance documents (62 FR 8961, February 27, 1997). This guidance document is being issued as a Level 1 guidance consistent with GGP's.

III. Electronic Access

In order to receive the draft guidance entitled ''Testing for Skin Sensitization to Chemicals in Latex Products'' via your fax machine, call the CDRH Facts-On-Demand system at 800–899–0381 or 301–827–0111 from a touch-tone telephone. At the first voice prompt press 1 to access DSMA Facts, at second voice prompt press 2, and then enter the document number (944) followed by the pound sign (#). Then follow the remaining voice prompts to complete your request.

Persons interested in obtaining a copy of the guidance may also do so using the World Wide Web (WWW). The Center for Devices and Radiological Health (CDRH) maintains an entry on the WWW for easy access to information including text, graphics, and files that may be downloaded to a personal computer with access to the Web. Updated on a regular basis, the CDRH home page includes ''Testing for Skin Sensitization to Chemicals in Latex Products,'' device safety alerts, **Federal Register** reprints, information on premarket submissions (including lists of approved applications and manufacturers addresses), small manufacturers' assistance, information on video conferencing and electronic submissions, mammography matters, and other device-oriented information. The CDRH home page may be accessed at http://www.fda.gov/cdrh. The draft guidance entitled ''Testing for Skin Sensitization to Chemicals in Latex Products'' will be available at http://www.fda.gov/cdrh/ode/ed—rp.html.

A text-only version of the CDRH Web site is also available from a computer or VT–100 compatible terminal by dialing 1–800–222–0185 (terminal settings are 8/1/N). Once the modem answers, press

Enter several times and then select menu choice 1: FDA BULLETIN BOARD SERVICE. From there follow instructions for logging in, and at the BBS TOPICS PAGE, arrow down to the FDA home page (do not select the first CDRH entry). Then select Medical Devices and Radiological Health. From there select CENTER FOR DEVICES AND RADIOLOGICAL HEALTH for general information, or arrow down for specific topics.

IV. Comments

Interested persons may, on or before August 3, 1998, submit to the Dockets Management Branch written comments regarding this guidance document. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. The guidance document and received comments may be in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

Dated: April 14, 1998.

D.B. Burlington,

Director, Center for Devices and Radiological Health.

[FR Doc. 98–11683 Filed 5–1–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

John E. Fogarty International Center for Advanced Study in the Health Sciences; Notice of Meeting of the Fogarty International Center Advisory Board

Pursuant to Public Law 92–463, as amended, notice is hereby given of the thirty-eighth meeting of the Fogarty International Center (FIC) Advisory Board, May 19, 1998, in the Lawton Chiles International House (Building 16) at the National Institutes of Health. The Research Awards Subcommittee will meet on May 18 in the FIC Conference Room, Building 31, Room B2C07, from 1:00 p.m. to approximately 4:00 p.m., and will be closed to the public.

The meeting of the Board will be open to the public from 8:30 a.m. to approximately 12:00 noon.

In addition to a report by the Director, FIC, the agenda will include presentations on FIC Evolution and Long-Range Planning; the Status of FIC International Training and Research Programs; ICD-Wide Initiatives in Support of International Relations; and FIC International Policy Support to NIH and other Government Agencies.

In accordance with the provisions of sections 552b(c)(4) and 552b(c)(6), Title 5, United States Code and section 10(d) of Public Law 92–463, as amended, the entire meeting of the Research Awards Subcommittee on May 18 will be closed to the public from 1:00 p.m. to approximately 4:00 p.m., and the Board meeting on May 19 will be closed to the public from 1:00 p.m. to adjournment for the review of applications for awards under the Senior International Fellowship and International Fellowship Programs; and the Fogarty International Research Collaboration Awards and HIV, AIDS and Related Illnesses Collaboration Awards.

Paula Cohen, Committee Management Officer, Fogarty International Center, National Institutes of Health, Building 31, Room B2C08, 31 CENTER DR MSC 2220, Bethesda, Maryland 20892–2220, telephone: 301–496–1491, will provide a summary of the meeting and a roster of the committee members upon request.

Irene Edwards, Executive Secretary, Fogarty International Center Advisory Board, Building 31, Room B2C08, telephone: 301–496–1491, will provide substantive program information.

Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact Ms. Cohen at least 2 weeks in advance of the meeting.

(Catalog of Federal Domestic Assistance Program No. 93.989, Senior International Fellowship Awards Programs; and 93.934, Fogarty International Research Collaboration Award)

Dated: April 24, 1998.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 98–11676 Filed 5–1–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Meeting of the National Cancer Advisory Board and Its Subcommittees

Pursuant to the Federal Advisory Committee Act, as amended, notice is hereby given of the meeting of the National Cancer Advisory Board (Board), National Cancer Institute (NCI), and its Subcommittees on May 11–13, 1998. The meeting of the Board and its Subcommittees will be open to the public as indicated below. Attendance by the public will be limited to space available.

A portion of the Board meeting will be closed to the public as indicated below in accordance with the provisions set forth in sections 552(c)(4) and 552(c)(6), Title 5 U.S.C. and section 10(d) of Public Law 92–463, for the review, discussion and evaluation of individual grant applications and for discussion of issues pertaining to programmatic areas and/or NCI personnel. These applications and discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning the individuals associated with the applications or programs, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

The Committee Management Office, National Cancer Institute, National Institutes of Health, Executive Plaza North, Room 609, 6130 Executive Boulevard, MSC 7410, Bethesda, Maryland 20892–7410, (310) 496–5708 will provide summaries of the meetings and rosters of the Board members, upon request.

Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact Mrs. Linda Quick-Cameron, Committee Management Officer, at (301) 496–5708 in advance of the meetings.

Name of Committee(s): Subcommittee on Activities and Agenda, Subcommittee on Cancer Centers, Subcommittee on Clinical Investigations, Subcommittee on Planning and Budget.

Date: May 11, 1998.

Time: 7:00 p.m.—Adjournment.

Place: Hyatt Regency Bethesda, One Bethesda Metro, Bethesda, Maryland 20814.

Agenda(s): See NCI Homepage/Advisory Board and Groups,

http://deainfo.nci.nih.gov/ADVISORY/boards.htm

Tentative agenda available 10 working days prior to meetings;

Final agenda available 5 working days prior to meetings.

Contact Person: Dr. Marvin R. Kalt, Executive Secretary, National Cancer Institute, NIH, Executive Plaza North, Room 600, 6130 Executive Blvd., MSC 7405, Bethesda, MD 20892–7405, (301) 496–5147.

Name of Committee: National Cancer Advisory Board.

Dates: May 12–13, 1998.

Place: Building 31C, Conference Room 10, National Institutes of Health, 3100 Center Drive, Bethesda, MD. 20892.

Open: May 12—9:00 a.m. to 4:00 p.m.; May 13—9:00 a.m. to 12:20 p.m.

Agenda: Program reports and presentations; business of the Board. For a

detailed agenda: See NCI Homepage/Advisory Board and Groups, http://deainfo.nci.gov./ADVISORY/boards.htm

Tentative agenda available 10 working days prior to meetings;

Final agenda available 5 working days prior to meetings.

Closed: May 12—Approximately 4:35 p.m.–Adjournment.

Contact Person: Dr. Marvin R. Kalt, Executive Secretary, National Cancer Institute, NIH, Executive Plaza North, Room 600, 6130 Executive Blvd., MSC 7405, Bethesda, MD 20892–7405, (301) 496–5147.

This notice is being published less than 15 days prior to the meeting due to the urgent need to meet timing limitations imposed by the review and funding cycle.

(Catalog of Federal Domestic Assistance Program Numbers: 93.393, Cancer Cause and Prevention Research; 93.392, Cancer Detection and Diagnosis Research; 93.394, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control)

Dated: April 24, 1998.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 98–11677 Filed 5–1–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting of the National Cancer Institute Special Emphasis Panel (SEP) meeting:

Name of SEP: Cancer Research Network Across Health Care Systems Video Conference Call.

Date: May 12, 1998.

Time: 1:00 p.m. to Adjournment.

Place: Executive Plaza South, Conference Room 540, 6130 Executive Boulevard, Bethesda, MD 20892

Contact Person: Courtney M. Kerwin, Ph.D., M.P.H., Scientific Review Administrator, National Cancer Institute, NIH, Executive Plaza North, Room 630I, 6130 Executive Boulevard, MSC 7405, Bethesda, MD 20892–7405, Telephone: 301/496–7421.

Purpose/Agenda: To review, discuss and evaluate grant applications.

This notice is being published less than 15 days prior to the meeting due to the urgent need to meet timing limitations imposed by the review and funding cycle.

The meeting will be closed in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program Numbers: 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support, 93.398, Cancer Research Manpower; 93.399, Cancer Control)

Dated: April 24, 1998.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 98–11678 Filed 5–1–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Eye Institute; Notice of Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following National Eye Institute Special Emphasis Panel (SEP) meeting:

Name of SEP: Clinical Research.

Date: May 20, 1998.

Time: 2:00 p.m.

Place: Telephone Conference, Executive Plaza South, Suite 350.

Contact Person: Andrew P. Mariani, Ph.D., Executive Plaza South, Room 350, 6120 Executive Blvd., Bethesda, MD 20892–7164, (301) 496–5561.

Purpose/Agenda: Review of Grant Applications.

Name of SEP: Clinical Research.

Date: May 21, 1998.

Time: 8:30 a.m.

Place: National Eye Institute, Executive Plaza South, Suite 350, 6120 Executive Blvd., Bethesda, MD 20892–7164.

Contact Person: Andrew P. Mariani, Ph.D., Executive Plaza South, Room 350, 6120 Executive Blvd., Bethesda, MD 20892–7164, (301) 496–5561.

Purpose/Agenda: Review of Grant Applications.

These meetings will be closed in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program No. 93.867, Vision Research: National Institutes of Health)

Dated: April 22, 1998.

LaVerne Stringfield,

Committee Management Officer, NIH.

[FR Doc. 98–11679 Filed 5–1–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Arthritis and Musculoskeletal and Skin Diseases; Notice of Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following National Institute of Arthritis and Musculoskeletal and Skin Diseases Special Emphasis Panel (SEP) meeting.

Name of SEP: Program Project Committee.

Date: May 21, 1998.

Time: 8:30 a.m.–adjournment.

Place: Holiday Inn, Georgetown, 2101 Wisconsin Avenue, N.W., Washington, DC 20007.

Contact Person: Tommy Broadwater, Ph.D., Chief, Grant Review Branch, Natcher Building, Room 5AS25U, Bethesda, Maryland 20819, Telephone: 301–594–4952.

Purpose/Agenda: To evaluate and review a grant application.

This meeting will be closed in accordance with the provisions set forth in section 552b(c)(4) and 552b(c)(6), Title 5 U.S.C. The discussion of this application could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with this application, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program Nos. [93.846, Project Grants in Arthritis, Musculoskeletal and Skin Diseases Research], National Institutes of Health, HHS)

Dated: April 24, 1998.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 98–11675 Filed 5–1–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

SAMHSA Special Emphasis Panel II; Notice of Meeting

Pursuant to Public Law 92–463, notice is hereby given of the following teleconference meeting of the SAMHSA Special Emphasis Panel II in May.

A summary of the meeting and a roster of the members may be obtained from: Ms. Dee Herman, Committee Management Liaison, SAMHSA Office of Extramural Activities Review, 5600 Fishers Lane, Room 17–89, Rockville, Maryland 20857. Telephone: 301–443–7390.

Substantive program information may be obtained from the individual named as Contact for the meeting listed below.

The meeting will include the review, discussion and evaluation of individual grant applications. The discussion could reveal personal information concerning individuals associated with the applications. Accordingly, this meeting is concerned with matters exempt from mandatory disclosure in Title 5 U.S.C. 552b(c)(6) and 5 U.S.C. App.2, Section 10(d).

Committee Name: SAMHSA Special Emphasis Panel II (SEP II).

Meeting Dates: May 12, 1998 2 p.m.–3:30 p.m.

Place: Parklawn Building, Room 16C–26—Telephone Conference, 5600 Fishers Lane, Rockville, Maryland 20852.

Closed: May 12, 1998 2 p.m.–3:30 p.m.

Panel: FEMA—Crisis Counseling—Florida.

Contact: Lionel Fernandez, Ph.D., Review Administrator, Room 17–89, Parklawn Building, Telephone: 301–443–4266 and FAX: 301–443–3437.

This notice is being published less than 15 days prior to the meeting due to the urgent need to meet timing limitations imposed by the review and funding cycle.

Dated: April 28, 1998.

Jeri Lipov,

Committee Management Officer, Substance Abuse and Mental Health Administration.

[FR Doc. 98–11739 Filed 5–1–98; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4349–N–17]

Submission For OMB Review: Comment Request

AGENCY: Office of the Assistant Secretary for Administration, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: Comments due date: June 3, 1998.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments must be received within thirty (30) days from the date of this Notice. Comments should refer to the proposal by name and/or OMB approval number and should be sent to: Joseph F. Lackey, Jr., OMB Desk Officer, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Wayne Eddins, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 708–1305. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Eddins.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the OMB approval number, if applicable; (4) the description of the need for the information and its proposed use; (5) the agency form number, if applicable; (6) what members of the public will be affected by the proposal; (7) how frequently information submissions will be required; (8) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (9) whether the proposal is new, an extension, reinstatement, or revision of an information collection requirement; and (10) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: April 28, 1998.

David S. Cristy,

Director, IRM Policy, and Management Division.

Title of Proposal: Operating Budget, Supporting Schedules and Board Resolution.

Office: Public and Indian Housing.

OMB Approval Number: 2577–0026.

Description of The Need For The Information and Its Proposed Use: HUD needs this information to ensure that sound financial practices are followed by PHAs and that Federal funds are used for eligible expenditures. For PHAs, as a financial summary and analysis of immediate and long-term operating programs and plans, it is used to provide control over operations and to achieve objectives.

Form Number: HUD–52564, 52567, 52571, 52571, 52573 and 52574.

Respondents: State, Local, or Tribal Governments and non-Profit Institutions.

Frequency of Submission: Annually and Recordkeeping.

Reporting Burden:

	Number of respondents	x	Frequency of response	x	Hours per response	=	Burden hours
Information Collection	3580		1		120		429,600

Total Estimated Burden hours: 429,600.

Status: Reinstatement with change.

Contact: Joan DeWitt, HUD, (202) 708–1875 Joseph F. Lackey, Jr., OMB, (202) 395–7316.

Dated: April 28, 1998.

[FR Doc. 98–11793 Filed 5–1–98; 8:45 am]

BILLING CODE 4210–01–M

DEPARTMENT OF THE INTERIOR

Draft Environmental Impact Statement/ Environmental Impact Report on the Draft Truckee River Operating Agreement; Correction

AGENCY: Department of the Interior.

ACTION: Notice; correction.

SUMMARY: The Department of the Interior published a document in the **Federal Register** issue of March 13, 1998, concerning the availability for a draft environmental impact statement/ draft environmental impact report; INT–DES–98–8. The dates and locations of the formal public hearings have changed.

Correction

In the **Federal Register** issue of March 13, 1998, in FR Doc. 98–6517 on page 12502, in the third column replace the dates and locations of public hearings with the following:

DATES: Formal public hearings on the environmental document are scheduled as listed below. Organizations and individuals may present oral or written comments at the public hearings by signing up when arriving at the hearing.

- May 11, 1998, 12:30—3:30 p.m., Elks Point NV
- May 11, 1998, 6—9 p.m., Truckee CA
- May 12, 1998, 6—9 p.m., Fallon NV
- May 13, 1998, 6—9 p.m., Nixon NV
- May 14, 1998, 6—9 p.m., Fernley NV
- May 15, 1998, 6—9 p.m., Sparks NV

Locations

- Tahoe Regional Planning Agency, 308 Dorla Court, Elks Point NV
- Truckee-Donner Public Utilities District Board Room, 11571 Donner Pass Road, Truckee CA
- Community Center, 100 Campus Way, Fallon NV
- Pyramid Lake Tribal Council Chambers, 210 Capitol Hill, Nixon NV
- Fernley Town Complex, 595 Silver Lace, Fernley NV
- Sparks City Council Chambers, 431 Prater Way, Sparks NV

FOR FURTHER INFORMATION CONTACT: Mr. David Overvold, Bureau of Reclamation, PO Box 640, Carson City NV 89702–0640, telephone (702) 882–3436; Mr. Chet Buchanan, U.S. Fish and Wildlife Service, 4600 Kietzke Lane, Reno NV 89502-5093, telephone (702) 784–5227; or Mr. Paul Dabbs, California Department of Water Resources, 3251 S Street, Sacramento CA 95816, telephone (916) 227–7564.

Dated: April 28, 1998.

Willie R. Taylor,

Director, Office of Environmental Policy and Compliance.

[FR Doc. 98–11769 Filed 5–1–98; 8:45 am]

BILLING CODE 4310–94–P

DEPARTMENT OF THE INTERIOR

Privacy Act of 1974, As Amended; Revisions to Existing System of Records

AGENCY: Department of the Interior.

ACTION: Proposed revisions to an existing system of records.

SUMMARY: In accordance with the Privacy Act of 1974 (5 U.S.C. 55a(e)(11), as amended (Privacy Act of 1974 (5 U.S.C. 552a(e)(11)), as amended (Privacy Act), the Department of the Interior (DOI) is issuing public notice of its intent to amend the existing system of records entitled ''Payroll, Attendance, Retirement, and Leave Records—Interior, Office of the Secretary-85'' (OS–85), by adding a new routine use, and updating several other sections of the system notice.

DATES: Persons wishing to comment on the proposed routine use must do so by June 3, 1998.

Effective Date: The proposed revised system of records will become effective without further notice on June 3, 1998, unless comments received result in a contrary determination. DOI will publish a new notice if changes are made based on review of comments received.

ADDRESSES: Interested individuals may comment on this publication by writing to the Privacy Act Officer, Department of the Interior, 1849 C Street NW, Mail Stop 5312, Washington, DC 20240. Hand delivered comments may be made to DOI, 1849 C Street NW, room 5312, Washington, DC 20240, from 8: a.m. to 4:30 p.m. on business days, or they may be sent by facsimile transmission to FAX number (202) 501–2360. Comments will be available for inspection at the DOI, 1849 C Street NW, room 5312, from 8 a.m. to 4:30 p.m. on business days.

FOR FURTHER INFORMATION CONTACT: William W. Wolf, Office of Information Resources Management, DOI, 1849 C Street N.W., Mail Stop 5312, Washington, D.C. 20240, telephone: (202) 208–5339.

SUPPLEMENTARY INFORMATION: Pursuant to Public Law 104–193, the Personal Responsibility and Work Reconciliation Act of 1996, the DOI will disclose data from its payroll records (OS–85) to the Office Support Enforcement, Administration for Children and Families, Department of Health and Human Services, for use in the National Database of New Hires, part of the Federal Parent Locator System (FPLS) and Federal Tax Offset System, DHHS/OCSE No. 09–90–0074, last published in the **Federal Register** on July 25, 1996 (61 FR 38754). A description of the Federal Locator Service was published in the **Federal Register** on October 2, 1997 (62 FR 51663).

The FPLS is a computerized network through which States request location information from Federal and State agencies to find non-custodial parents and their employers for purposes of establishing paternity and securing support. On October 1, 1997, the FPLS was expanded to include the National Directory of New Hires, a database containing employment information on employees recently hired, quarterly wage data on private and public sector employees, and information on unemployment compensation benefits. On October 1, 1998, the FPLS will be expanded further to include a Federal Case Registry. The Federal Case Registry will contain abstracts on all participants involved in child support enforcement cases. When the Federal Case Registry is instituted, its files will be matched on an ongoing basis against the files in the National Directory of New Hires to determine if an employee is a participant in a child support case anywhere in the country. If the FPLS identifies a person as being a participant in a State child support case, that State will be notified. State requests to the FPLS for location information will also continue to be processed after October 1, 1998.

When individuals are hired by the DOI, it may disclose to the FPLS their names, social security numbers, home address, dates of birth, dates of hire, and information identifying the DOI as the employer. The DOI also may disclose to FPLS names, social security numbers, and quarterly earnings if each DOI employee, within one month of the end of the quarterly reporting period.

Information submitted by the DOI to the FPLS will be disclosed by the Office of Child Support Enforcement to the Social Security Administration for verification to ensure that the social security number provided is correct. The data disclosed by the DOI to the FPLS also will be disclosed by the Office of Child Support Enforcement to the Secretary of the Treasury for use in verifying claims for the advance payment of the earned income tax credit or to verify a claim of employment on a tax return.

The DOI also is updating the following sections of the system notice: System Location; Categories of Records in the System; Storage and System Manager(s) and address.

Accordingly, the DOI proposes to amend OS–85, originally published at 51 FR 39918 (November 3, 1986), and amended at 53 FR 51324 (December 21, 1988), as follows:

Dated: April 29, 1998.

William W. Wolf,

Departmental Privacy Act Officer.

INTERIOR/OS-85

SYSTEM NAME:

Payroll, Attendance, Retirement, and Leave Records Interior—Office of the Secretary-85.

SYSTEM LOCATION:

(1) Bureau of Reclamation, Administrative Service Center, Payroll Operations Division, 7201 West Mansfield Avenue, Denver, CO 80235–2230.

(2) All Departmental Offices and locations which prepare and provide input documents and information for data processing and administrative actions.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEMS:

All employees of the Department of the Interior, and employees of Independent Agencies, Councils, and Commissions who are provided payroll administrative support by the Department.

CATEGORIES OF RECORDS IN THE SYSTEMS:

Employee identification, pay rate and grade, retirement, and location data; length of service; pay, leave, time and attendance, allowances, and cost distribution records; deductions for Medicare or FICA, savings bonds, FEGLI, union dues, taxes, allotments, quarters, charities, health benefits, Thrift Savings Fund contributions, awards, shift schedules, pay differentials, IRS tax lien data, commercial garnishments, child support and/or alimony wage assignments; and related payroll and personnel data. Also included is information on debts owed to the government as a result of overpayment, refunds owed, or a debt referred for collection on a transferred employee. The payroll, attendance, retirement, and leave records described in this notice form a part of the information contained in the Department's integrated payroll and personnel automated information system. Personnel records contained in the system are covered under the governmentwide system of records notice published by the Office of Personnel Management (OPM/GOVT–1).

AUTHORITY FOR MAINTENANCE OF THE SYSTEMS:

5 U.S.C. 5101, et seq; 31 U.S.C. 3512.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

The primary uses of the records are for fiscal operations for payroll, attendance, leave, insurance, tax, retirement and cost accounting programs; and to prepare related reports to other Federal agencies including the Department of the Treasury and the Office of Personnel Management. Disclosures outside the Department of the Interior may be made: (1) To the Department of the Treasury for preparation of payroll checks and other checks to Federal, State, and local government agencies, non-governmental organizations, and individuals; (2) to the Internal Revenue Service and to State, local, tribal and territorial governments for tax purposes; (3) to the Office of Personnel Management in connection with programs administered by that office; (4) to another Federal agency to which an employee has transferred; (5) to the U.S. Department of Justice or in a proceeding before a court or adjudicative body when (a) the United States, the Department of the Interior, a component of the Department or, when represented by the government, an employee of the Department is a party to litigation or anticipated litigation or has an interest in such litigation, and (b) the Department of the Interior determines that the disclosure is relevant or necessary to the litigation and is compatible with the purpose for which the records were compiled; (6) to disclose pertinent information to an appropriate Federal, State, local, or foreign agency responsible for investigating, prosecuting, enforcing, or implementing a statute, rule, regulation, or order, where the disclosing agency becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation; (7) to a congressional office from the record of an individual in response to an inquiry from that congressional office made at the request of the individual; (8) to a Federal agency which has requested information relevant or necessary to its hiring or retention of an employee, or issuance of a security clearance, license, contract, grant or other benefit; (9) to Federal, State or local agencies where necessary to enable the Department of the Interior to obtain information relevant to the hiring or retention of an employee, or the issuance of a security clearance, contract, license, grant or other benefit; (10) to appropriate Federal and State agencies to provide required reports including data on unemployment insurance; (11) to the Social Security administration to report FICA deductions; (12) to labor unions to report union dues deductions; (13) to insurance carriers to report withholdings for health insurance; (14) to charitable institutions to report contributions; (15) to a Federal agency for the purpose of collecting a debt owed the Federal government through administrative or salary offset; (16) to other Federal agencies conducting computer matching programs to help eliminate fraud and abuse and to detect unauthorized overpayments made to individuals; (17) to provide addresses obtained from the Internal Revenue Service to debt collection agencies for purposes of locating a debtor to collect or compromise a Federal claim against the debtor; (18) with respect to Bureau of Indian Affairs employee records, to a Federal, State, local agency, or Indian tribal group or any establishment or individual that assumes jurisdiction, either by contract or legal transfer, of any program under the control of the Bureau of Indian Affairs; (19) with respect to Bureau of Reclamation employee records, to non-Federal auditors under contract with the Department of the Interior or Energy or water user and other organizations with which the Bureau of Reclamation has written agreements permitting access to financial records to perform financial audits; (20) to the Federal Retirement Thrift Investment Board with respect to Thrift Savings Fund contributions; (21) to disclose debtor information to the IRS, or another Federal agency or its contractor solely to aggregate information for the IRS, to collect debts owed to the Federal government through the offset of tax refunds; (22) to disclose the names, social security numbers, home addresses, dates of birth, dates of hire, quarterly earnings, employer identifying information, and State of hire of employees to the Office of Child Support Enforcement, Administration for Children and Families, Department of Health and Human Services for the purposes of locating individuals to establish paternity, establishing and modifying orders of child support, identifying sources of income, and for other child support enforcement actions as required by the Personal Responsibility and Work Opportunity Reconciliation Act (Welfare Reform Law, Pub. L. 104–193).

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Disclosure pursuant to 5 U.S.C. 552a(b)(12). Disclosures may be made from this system to consumer reporting agencies as defined in the Fair Credit Reporting Act (15 U.S.C. 1681a(f)) or the Federal Claims Act of 1966 (31 U.S.C. 3701(a)(3)).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained in manual, microfilm, microfiche, imaged and printout form in the Payroll Office. Currently applicable records are stored on magnetic media at the computer processing center, historic records are stored on magnetic media at the computer center. Original input documents are kept in standard office

filing equipment and/or stored as imaged documents on magnetic media.

RETRIEVABILITY:

Indexed by name, social security number, and organizational code.

SAFEGUARDS:

Maintained with safeguards meeting the requirements of 43 CFR 2.51.

RETENTION AND DISPOSAL:

The records contained in this system of records have varying retention periods as described in General Records Schedule 2 issued by the Archivist of the United States, and are disposed of in accordance with the National Archives and Records Administration Regulations, 36 CFR part 1228 et seq.

SYSTEM MANAGER(S) AND ADDRESS:

The following system manager is responsible for the payroll records contained in the Department's integrated payroll and personnel automated information system. These records are pertinent to all Department of the Interior bureaus and offices and client agencies. Personnel records contained in the system fall under the jurisdiction of the Office of Personnel Management as prescribed in 5 CFR part 293 and 5 CFR part 297.

Chief, Benefits and Program Information Branch, Bureau of Reclamation, Administrative Service Center, Payroll Operations Division, 7201 West Mansfield Avenue, Denver, CO 80235–2230.

NOTIFICATION PROCEDURES:

Inquiries regarding the existence of records should be addressed to the System Manager. The request must be in writing, signed by the requester, and meet the content requirements of 43 CFR 2.60.

RECORDS ACCESS PROCEDURES:

A request for access may be addressed to the System Manager. The request must be in writing, signed by the requester, and meet the content requirements of 43 CFR 2.63.

CONTESTING RECORD PROCEDURES:

A petition for amendment should be addressed to the System Manager. The request must be in writing, signed by the requester, and meet the content requirements of 43 CFR 2.71.

RECORDS SOURCE CATEGORIES:

Individuals on whom the records are maintained, supervisors, timekeepers, official personnel records, previous employers, and the Internal Revenue Service.

[FR Doc. 98–11718 Filed 5–1–98; 8:45 am]

BILLING CODE 4310–RK–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Intent To Amend an Incidental Take Permit: Inclusion of Bull Trout on the Plum Creek Timber Company Permit for Timber Harvest in the State of Washington

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: This notice advises the public that the Fish and Wildlife Service (Service) has received a request to add bull trout (*Salvelinus confluentus*) to the species covered by permit PRT–808398 issued to Plum Creek Timber Company, L.P., on June 27, 1996. This request is pursuant to the Implementation Agreement for the Habitat Conservation Plan accompanying incidental take permit PRT–808398. The Service is proposing to add bull trout to Plum Creek's permit.

DATES: Written comments regarding the addition of bull trout to the Plum Creek permit should be received on or before June 3, 1998.

ADDRESSES: Written comments should be addressed to Mr. John Engbring, Western Washington Fish and Wildlife Office, 510 Desmond Drive, S.E., Suite 101, Lacey, Washington 98503. Documents cited in this notice and comments received will be available for public inspection by appointment during normal business hours (8 a.m. to 5 p.m., Monday through Friday).

FOR FURTHER INFORMATION CONTACT: Mr. William Vogel, Wildlife Biologist, Western Washington Fish and Wildlife Office, 510 Desmond Drive, S.E., Suite 101, Lacey, Washington 98503; telephone (360) 753–4367.

SUPPLEMENTARY INFORMATION:

Background

On June 27, 1996, the Fish and Wildlife Service (Service) issued an incidental take permit (PRT–808398) to Plum Creek Timber Company, L.P., pursuant to Section 10(a)(1)(B) of the Endangered Species Act (Act) of 1973, as amended (16 U.S.C. 1532 *et seq.*). This permit authorizes the incidental take of the threatened northern spotted owl (*Strix occidentalis caurina*), marbled murrelet (*Brachyramphus marmoratus marmoratus*), and grizzly bear (*Ursus arctos*=U.a. *horribilis*), and the endangered gray wolf (*Canis lupus*), in the course of the otherwise legal forest management and related land-use activities in portions of King and Kittitas Counties, Washington. Pursuant to the Habitat Conservation Plan and the Implementation Agreement, Plum Creek received assurances from the Service that then-unlisted vertebrate species would be added to the permit upon listing under the Act, if doing so were consistent with the Implementation Agreement.

On June 13, 1997 (62 FR 32268), the Service proposed to list the Klamath River population of bull trout as endangered and the Columbia River population of bull trout as threatened. On September 11, 1997, Plum Creek requested that bull trout be added to its permit. While the Service has not yet made a final decision on listing bull trout as a threatened or endangered species, the Service is proposing to respond to Plum Creek's request and determine if addition of the Columbia River distinct population segment of bull trout to the permit is warranted. The purpose of this notice is to seek public comment on the Service's proposal to add bull trout to Plum Creek's permit.

Implementation Agreement Provisions

The Implementation Agreement is a legal document describing the roles and responsibilities of the Service and Plum Creek during the permit period. Under the Implementation Agreement, plan species are those vertebrate species dependent on the various habitat types analyzed in the Habitat Conservation Plan. In the Plum Creek Habitat Conservation Plan, bull trout are a plan species. The Implementation Agreement specifies that should any of the plan species that were unlisted at the time of permit issuance subsequently become listed under the Act, Plum Creek may request a permit amendment to have that species added to their permit.

Plum Creek received assurances that, absent extraordinary circumstances, plan species would be added to the permit without requiring additional mitigation from Plum Creek if the Service determined that such action would not appreciably reduce the likelihood of the survival and recovery of the affected species, or any other species, in the wild and that adding the species to the permit would be consistent with the Service's other responsibilities. Absent extraordinary circumstances, plan species would be added to the permit without requiring additional mitigation from Plum Creek. Extraordinary circumstances are defined in the Implementation Agreement as a substantial and material adverse change in the status of the species.

To determine whether adding bull trout to Plum Creek's permit would appreciably reduce the likelihood of the survival and recovery of bull trout or

any other species, the Service will reinitiate the Section 7 process under the Act. The Service will also determine whether the permit amendment meets each of the issuance criteria described in Section 10(a)(2)(B) and that a substantial and material adverse change in the status of bull trout has not occurred since the permit issuance.

Bull Trout Requirements and New Information Since Permit Issuance

The Service is currently reviewing information about bull trout to determine whether extraordinary circumstances exist and/or whether adding bull trout to Plum Creek's permit would appreciably reduce the ability of bull trout to survive and recover in the wild. The Service is also reviewing public comments on the proposed rule to list the Klamath River population of bull trout as endangered and the Columbia River population of bull trout as threatened, and will make a final listing determination soon. Information collected as part of the listing determination process is also being used to make the permit amendment decision. This information is available for review at the address listed above.

The Service has identified five distinct population segments of bull trout: (1) Coastal/Puget Sound; (2) Klamath River; (3) Columbia River; (4) Jarbidge River; and (5) Saskatchewan River (June 13, 1997, 62 FR 32268). The Columbia River population segment includes the entire Columbia River Basin and all its tributaries, excluding the isolated bull trout populations found in the Jarbidge River of Nevada. In the Plum Creek Habitat Conservation Plan area, bull trout have been documented in the Yakima River subbasin, which is part of the proposed Columbia River Basin distinct population segment. Within the planning area, bull trout are documented to occur upstream of Cle Elum Lake, within and upstream of Kachess and Kechelus Lakes, and in the Cle Elum River downstream of Kechelus Lake.

The Yakima River subbasin encompasses 6,155 square miles and contains about 1,900 river miles of perennial streams. Predominant land use within the subbasin includes irrigated agriculture (~1,000 square miles), urbanization (~50 square miles), timber harvesting (~2,200 square miles), and grazing (~2,900 square miles) (DOI 1996). About 150 square miles of the subbasin is managed for timber production by Plum Creek and these lands are located within 3 subpopulation areas of the 7 subpopulation areas within the Yakima River subbasin.

Despite an extensive survey effort, bull trout have not been found in the Green River drainage upstream of the Howard Hansen Dam. The Green River drainage is part of the Coastal/Puget Sound distinct population segment. The Coastal/Puget Sound distinct population segment has not been proposed for listing under the Act (June 13, 1997, 62 FR 32268) and is not being considered for addition to the Plum Creek permit.

Bull trout rely on cold, clean water. They are most closely associated with complex habitats, including large woody debris, undercut banks, boulders, and pools. Cover provides critical rearing, foraging, and resting habitat, and protection from predators. The fact that bull trout spawn in the fall and that the young have a strong association with substrates makes them particularly vulnerable to altered stream flow patterns and channel instability. Bull trout prefer cold, low-gradient streams with loose, clean gravels for spawning and rearing. Bull trout appear to have strict water temperature tolerances and maintaining cold water temperatures is important for bull trout. Water temperature is controlled not only by shade (as influenced by canopy coverage of adjacent riparian stands), but by groundwater sources, sedimentation, influx of water from upstream areas, presence of large woody debris, elevation, and other factors.

Historic adverse impacts to bull trout from forest management and related land-use activities include removal of large woody debris from streams and riparian areas, inputs of sediment from upslope logging and road construction, elevated stream temperatures, and transportation of logs within the channel network. Current management actions to minimize impacts from timber harvest include managing riparian buffers to provide large woody debris, shade, root strength, detrital inputs, and sediment filtration; managing upslope areas to reduce peak flows, mass-wasting, and other man-caused inputs of sediment; adequately addressing construction, maintenance, and abandonment of roads so as to reduce the delivery of fine sediments to streams; and avoiding any unnatural blockages to fish passage or alterations in channel morphology. There are several recent treatments of the effects of forest management, especially forest roads, on bull trout (Baxter *et al.* In press; Quigley and Arbelbide 1997; Quigley *et al.* 1996; and Thurow *et al.* 1997). Thurow determined that increasing road densities and their related effects are associated with declines in four non-anadromous salmonid species (including bull trout). Thurow found a correlation between low road densities and healthy populations of salmonids. Therefore, addressing impacts from roads is extremely important to protect critical bull trout habitat requirements.

Minimization and Mitigation Measures

The Environmental Impact Statement developed for the initial permit decision analyzed the effects that implementing the Habitat Conservation Plan would have on bull trout. The Service believed that the Habitat Conservation Plan would have minimal adverse impacts on bull trout and that it generally provided improving conditions for bull trout. Buffers on fishbearing and other perennial streams were expected to provide for the natural processes and functions that bull trout rely on such as large woody debris inputs, detrital and litter input, root-strength and bank stability. The Service expected to see reductions in delivery of fine sediment from roads and recovery of forest stand structures to improve hydrologic conditions, and reductions in peak flows and mass-wasting risks.

The Plum Creek Habitat Conservation Plan utilizes a combination of conservation measures that are expected to protect bull trout. All fishbearing streams receive a conservatively managed buffer 200 feet in width (measured horizontally). The first 30 feet is a no-harvest zone. Perennial streams without fish and spatially intermittent streams containing perennial subsurface flow both receive a 100-foot managed buffer if they are located above bull trout streams. The management of these buffers is dictated by post-harvest criteria as well as by stand-level amounts of various forest stages. For instance, over the 50-year duration Habitat Conservation Plan, these areas are scheduled to improve from 37 percent mature forest or better to 60 percent mature forest or better. Any riparian habitat area entered for selective harvest must retain minimum standards designed to maintain riparian functions. Inner gorges and mass-wasting areas are protected. The entire area is undergoing Watershed Analysis on an accelerated 5-year schedule that can only increase (not decrease) the level of protection these streams and sensitive areas receive. Even-aged harvest units will contain an average of 6 snags or snag recruitment trees per acre. Where harvest units contain ephemeral streams with definable channels, a portion of the leave trees are often aggregated in these areas due to logistical constraints. Additionally,

because rotations are long (65–120 years depending on species and site) and selective harvest is used liberally (about 80 percent of east-side harvests are uneven-aged management), fewer ephemeral streams are exposed to the temporary yet harsh conditions of a standard clearcut at any given time than would be observed under standard commercial forestry.

Road management is another important component of the Habitat Conservation Plan and will also be addressed through watershed analysis. Watershed Analysis examines potential risks to the resources, such as sediment delivery from roads, and develops prescriptions to reduce the vulnerability of the resources. For instance, as a result of the Quartz Mountain Watershed Analysis within the Habitat Conservation Plan area, a road-sediment budget was established that included an elaborate monitoring system. In that watershed, sediment delivery must be reduced to target levels prior to construction of new roads.

In the Plum Creek Habitat Conservation Plan area, the known bull trout locations are within the Grizzly Bear Recovery Zone. In that area, as part of the Habitat Conservation Plan's grizzly bear conservation strategy, open roads under Plum Creek's control must be reduced to below 1 mile per section within the first 10 years of the plan.

The minimization and mitigation measures described above represent the minimum level of riparian conservation that Plum Creek has committed to implement. Several aspects of the Habitat Conservation Plan, including watershed analysis, are subject to adaptive management as described below. If additional actions are necessary to protect bull trout, adjustments would be made to watershed analysis-derived prescriptions and to the interim and minimum buffer prescriptions.

Monitoring and Adaptive Management: To ensure that the mitigation and minimization strategies are effective, the Habitat Conservation Plan incorporates a variety of aquatic monitoring components that will provide feedback for adaptive management. For habitat conditions, Plum Creek will conduct bank-full and low-flow cross-sectional and longitudinal channel profiles, Wolman pebble counts, large woody debris counts, permanent photo points to document changes in channel morphology and substrate composition, and measurement of the frequency and residual volume of pools. To analyze the effects on stream temperatures, Plum Creek will initiate a study to measure potential differences in stream temperatures for four riparian prescriptions, including 300-foot no-harvest riparian buffers on fish-bearing streams on National Forest lands. Streams with verified populations of bull trout, or those on the Clean Water Act 303(d) list, will be monitored for stream temperature at a minimum of two locations per stream. Diurnal fluctuations and maximum annual temperature will be evaluated. Bull trout streams will have additional temperature measurements to monitor conditions during the spawning season, and to evaluate the effects of groundwater input on stream temperature. Ambient air temperature will also be monitored.

In addition to habitat monitoring, Plum Creek will assess salmonid populations in a watershed with recovering habitat conditions. To assess the biological integrity of streams, Plum Creek will continue long-term monitoring of aquatic macro-invertebrates.

Plum Creek will also conduct watershed analysis and re-evaluations of watershed analyses to provide updated information on hillslope conditions, stream channel conditions, and the effectiveness of resource protection prescriptions. Examples of monitoring and research done as a result of watershed analysis include: (1) A road sediment production study; (2) McNeil sampling of streams to assess fine sediment levels; (3) installation of stream gages; (4) testing of digital elevation hydrologic models; (5) stream temperature monitoring; and (6) stream surveys to evaluate channel changes and large woody debris levels. If monitoring results indicate that prescriptions are ineffective or inadequate, the prescriptions will be changed to make them effective and adequate.

References

Baxter, C.V., Frissell, C.A. and F.R. Hauer. In press. Geomorphology, logging roads and the distribution of bull trout (Salvelinus confluentus) spawning in a forested river basin: implications for management and conservation.

Quigley, T.M., R.W. Haynes and R.T. Graham, technical editors. 1996. Integrated scientific assessment for ecosystem management in the interior Columbia Basin and portions of the Klamath and Great Basins. U.S. Department of Agriculture, Forest Service, Pacific Northwest Research Station. Portland, Oregon.

Quigley, T.M. and S.J. Arbelbide, technical editors. 1997. An assessment of ecosystem components in the interior Columbia Basin and portions of the Klamath and Great Basins: Volume III. U.S. Department of Agriculture, Forest Service, Pacific Northwest Research Station. Portland, Oregon.

Thurow, R.F., D.C. Lee and B.E. Rieman. 1997. Distribution and status of seven native salmonids in the Interior Columbia River Basin and portions of the Klamath River and Great Basins. North American Journal of Fisheries Management 17: 1094–1110.

U.S. Department of Interior, U.S. Department of Commerce. 1996. Final Environmental Impact Statement for the Proposed Issuance of a Permit to Allow Incidental Take of Threatened and Endangered Species: Plum Creek Timber Company, L.P., Lands in the I–90 Corridor, King and Kittitas Counties, Washington. (U.S. Fish and Wildlife Service, National Marine Fisheries Service). Olympia, Washington. March 1996.

Dated: April 29, 1998.

Thomas J. Dwyer,

Acting Regional Director, Region 1, Portland, Oregon.

[FR Doc. 98–11825 Filed 5–1–98; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Geological Survey

Technology Transfer Act of 1986

AGENCY: United States Geological Survey, Interior.

ACTION: Notice to accept contribution from private source.

SUMMARY: The U.S. Geological Survey is accepting a $10,000 contribution from the National Stone Association to expedite a digital map showing potential sources of crushed stone in the conterminous United States.

ADDRESSES: If any other parties are interested in making contributions for the same or similar purposes, please contact Mr. William Langer, U.S. Geological Survey, Mineral Resources Program, Box 25046, Mail Stop 973, Denver, CO 80225; telephone (303) 236–1249; e-mail blanger@usgs.gov.

SUPPLEMENTARY INFORMATION: This notice is to meet the USGS requirement stipulated in the Survey Manual.

Dated: April 14, 1998.

P. Patrick Leahy,

Chief, Geologic Division.

[FR Doc. 98–11787 Filed 5–1–98; 8:45 am]

BILLING CODE 4310–Y7–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY–060–1610–00]

Notice of Availability

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Availability of the second draft Environmental Impact Statement (EIS) for the Newcastle Resource Management Plan (RMP) for the Public Lands administered by the Bureau of Land Management (BLM) in the Wyoming portion of the Newcastle Resource Area.

SUMMARY: The first draft EIS for the Newcastle RMP was issued in September, 1993. It has been decided to update and reissue a second draft for further comment because some public comments were inappropriately accepted on the first draft after the comment period ended. All public comments received on the first draft EIS have been considered and changes in the second draft document have been made based on those comments. When published, the final EIS will contain the proposed Newcastle Resource Management Plan, the comments on the second draft EIS, and the BLM responses to them.

EFFECTIVE DATES: Written comments concerning the analysis will be accepted for 90 days following the date the Environmental Protection Agency (EPA) publishes a notice of availability and filing of the draft EIS in the **Federal Register**. The EPA notice of availability is expected to be published on April 24, 1998.

Public meetings will be held in Sundance, Newcastle, and Lusk, Wyoming, to provide opportunities for the public to meet with representatives from the BLM and to comment on the draft EIS. A court reporter will be in attendance to record all comments for the record. When the times, dates, and places for these meetings are established, the public will be notified in advance through **Federal Register** or other notices, news releases, or mailings. Persons who wish to be placed on the mailing list or participate in the Newcastle RMP planning process should contact the person(s) identified below at the Newcastle Resource Area Office.

The draft EIS may be viewed at the following locations: Newcastle Resource Area BLM Office, 1101 Washington Blvd., Newcastle, Wyoming; Wyoming BLM State Office, 5353 Yellowstone Road, Cheyenne, Wyoming; and county and city libraries in Crook, Niobrara and Weston counties. Copies of the draft EIS may be obtained from the address below.

FOR FURTHER INFORMATION CONTACT: Gary Johnson, Area Manager, or Project Leaders, Jack Hanson or Shelley Peele, Bureau of Land Management, Newcastle Resource Area, 1101 Washington Blvd., Newcastle, Wyoming 82701, phone 307–746–4453.

Comments, including names and street addresses of respondents, will be available for public review at the above address during regular business hours (7:45 a.m. to 4:30 p.m.), Monday through Friday, except holidays, and may be published with the final EIS. Individual respondents may request confidentiality. If you wish to withhold your name or street address from public review or from disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your written comment. Such requests will be honored to the extent allowed by law. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be available for public inspection in their entirety.

SUPPLEMENTARY INFORMATION: The Bureau of Land Management Newcastle Resource Area administers all public lands and minerals (as defined by the Federal Land Management Policy Act (FLPMA)) in Crook, Niobrara, and Weston counties. The draft EIS for the Newcastle RMP presents four alternative multiple use management plans (or four alternative RMPs) for those public lands that were analyzed in detail: Alternative A (continuation of existing management direction) and three other alternatives that provide a variety of land use and resource management options for the public lands.

Issues addressed in the draft EIS include split-estate lands and the related limitations of BLM management responsibilities (particularly those involving non-Federal land surface over Federally owned minerals), the control of prairie dogs on intermingled public and private land ownerships, whether or not public lands in the Lance Creek Fossil Area should be designated an Area of Critical Environmental Concern (ACEC), and clarification of several maps in the first draft EIS to distinguish between public and non-Federal lands.

Dated: April 27, 1998.

Alan L. Kesterke,

Associate State Director.

[FR Doc. 98–11610 Filed 5–1–98; 8:45 am]

BILLING CODE 4310–22–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Environmental Documents Prepared for Proposed Oil and Gas Operations on the Gulf of Mexico Outer Continental Shelf (OCS)

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the Availability of Environmental Documents Prepared for OCS Mineral Proposals on the Gulf of Mexico OCS.

SUMMARY: The Minerals Management Service (MMS), in accordance with Federal Regulations (40 CFR 1501.4 and 1506.6) that implement the National Environmental Policy Act (NEPA), announces the availability of NEPA-related Site-Specific Environmental Assessments (SEA's) and Findings of No Significant Impact (FONSI's), prepared by the MMS for the following oil and gas activities proposed on the Gulf of Mexico OCS. This listing includes all proposals for which the FONSI's were prepared by the Gulf of Mexico OCS Region in the period subsequent to publication of the preceding notice.

Activity/Operator	Location	
PGS Reservoir (U.S.), Inc., G&G Activity, SEA No. L98–3	Green Canyon Area, 130 miles south of Terrebonne Parish, Louisiana.	02/13/98
ARN Pipeline Company, Pipeline Activity, SEA No. G–17713 ...	Eugene Island Area, Blocks 63, 62, 55, 40, 34, and 33, Lease OCS–G 17713, 63 miles southwest of Terrebonne Parish, Louisiana.	02/20/98

Activity/Operator	Location	
Transcontinental Gas Pipe Line Corporation, Pipeline Activity, SEA Nos. G–18794A and G–18795.	Main Pass Area, South and East Addition, Blocks 261, 247, 226, 216, 195 and 191; Viosca Knoll Area, Blocks 428, 427, 383, 339, 295, 251, 207, 208, 163, 119, 75, and 31; Mobile Area, Blocks 999, 955, 954, 910, 866, and 822; Leases OCS–G 18794A and 18795; 61 miles south of Dauphin Island, Alabama.	02/02/98
Poseidon Oil Pipeline Company, L.L.C., and Amerada Hess Corporation; Pipeline Activity; SEA Nos. G–18837, G–18838, and P–11615.	Garden Banks Area, Blocks 260, 259, 215, 216, 172, 128, 84, and 85; South Marsh Island Area, South Addition, Blocks 204 and 205; Leases OCS–G18837, 18838, and 7462; 93 to 110 miles south-Southwest of Terrebonne Parish, Louisiana.	01/28/98
Shell Gas Gathering Company, Pipeline Activity, SEA No. G–19668.	Viosca Knoll Area, Blocks 780, 736, and 692; Main Pass Area, South and East Addition, Blocks 282 and 260; Lease OCS–G 19668; 60 to 68 miles south of Mobile County, Alabama.	03/20/98
Phillips Petroleum Company, Pipeline Activity, SEA Nos. G–19662 and G–19663.	Ship Shoal Area, South Addition, Blocks 361, 260, 259, and 349, Leases OCS–G19662 and 19663, 69 to 71 miles south of Terrebonne Parish, Louisiana.	01/26/98
Texaco Exploration and Production, Inc., Pipeline Activity, SEA No. G–19672.	Viosca Knoll Area, Blocks 786, 742, 698, and 697; Main Pass Area, South and East Addition, Blocks 225, 256, and 252; Lease OCS–G 19672; 56 to 67 miles south of Baldwin County, Alabama.	03/09/98
Zilkha Energy Company, Exploration Activity, SEA No. N–5931A.	High Island Area, East Addition, South Extension, Block A–355, Lease OCS–G 17213, 102 miles southeast of the nearest coastline of Galveston Island, Texas.	01/09/98
Amoco Exploration and Production, Development Activity, SEA No. N–5963A.	Mississippi Canyon Area, Blocks 173 and 217; Desoto Canyon Area, Blocks 133 and 177; Leases OCS–G 9789, 9790, 10444, and 10445; 100 miles south of Dauphin Island, Alabama.	02/05/98
Chevron U.S.A., Exploration Activity, SEA No. N–5997	Mobile Area, Block 873, Lease OCS–G 16527, 4.7 miles south of Baldwin County, Alabama.	02/04/98
Coastal Oil & Gas Corporation, Exploration Activity, SEA No. N–5696A.	Garden Banks Area, Block 139, Lease OCS–G 17295, 123 miles southeast of Galveston Island, Texas.	12/22/97
Oryx Energy Company, Temporary Mooring System Request, SEA No. TMS–1–98.	Main Pass Area, South and East Addition, Blocks 284 and 285, Lease OCS–G 16514, 50 miles east of Plaquemines Parish, Louisiana.	02/26/98
Ensearch Exploration, Inc., Development Activity, SEA No. S–4581UA.	Garden Banks Area, Blocks 344 and 388, Leases OCS–G 8232 and 7486, 125 miles south of Vermilion Parish, Louisiana.	02/09/98
Mobil Exploration & Producing U.S. Inc.'s, Development Activity, SEA No. S–4554U.	Mobile Area, Block 823, Lease OCS–G 5057, 4 miles south of Dauphin Island, Alabama.	12/22/97
Chevron U.S.A., Exploration Activity, SEA No. S–4619	Viosca Knoll Area, Block 69, Lease OCS–G 7877, 20 miles south of Gulf Island National Seashore, Jackson County, Mississippi.	03/04/98
Exxon Company, U.S.A., Development Activity, SEA No. R–3182.	West Delta Area, Block 30, Lease OCS 026, 9 miles south of Plaquemines Parish, Louisiana.	03/18/98
Texaco Exploration and Production, Inc., Exploration, Exploration Activity, SEA No. R–3189.	Green Canyon Area, Blocks 416 and 460, Leases OCS–G 9932 and 9934, 104 miles south of Terrebonne Parish, Louisiana.	03/12/98
Chevron U.S.A. Inc., Structure Removal Operations, SEA No. ES/SR 98–003.	South Timbalier Area, Block 24, Lease OCS 0387, 10 miles offshore the Louisiana coast.	02/12/98
North Central Oil Corporation, Structure Removal Operations, SEA No. ES/SR 98–008.	South Timbalier Area, Block 136, Lease OCS–G 8720, 33 miles offshore the Louisiana coast.	02/05/98
Murphy Exploration & Producing Co., Structure Removal Operations, SEA No. ES/SR 98–009.	Matagorda Island Area, Block 604, Lease OCS–G6037, 18 miles southeast of Calhoun County, Texas.	01/28/98
Chevron U.S.A. Inc., Structure Removal Operations, SEA No. ES/SR 98–010.	Viosca Knoll Area, Block 24, Lease OCS–G 8763, 18 miles south of Jackson County, Mississippi.	03/19/98
Vastar Resources, Inc., Structure Removal Operations, SEA No. ES/SR 98–013.	South Marsh Island Area, Block 24, Lease OCS–G 14437, 46 miles south of the Louisiana coast.	02/23/98
Walter Oil & Gas Corporation, Structure Removal Operation, SEA Nos. ES/SR 98–011 and 98–012.	Galveston Area, Blocks 350 and 228, Leases OCS–G 4721 and 9040, 38 miles south of Galveston County, Texas.	03/27/98
The Houston Exploration Company, Structure Removal Operations, SEA No. ES/SR 98–014.	Eugene Island Area, Block 48, Lease OCS–G 7727, 28 miles south of the Louisiana coast.	02/19/98
Kerr-McGee Corporation, Structure Removal Operations, SEA No. ES/SR 98–015.	Main Pass Area, Block 90, Lease OCS–G 9704, 6 miles east of Brenton National Wildlife Refuge and Wilderness Area, south of the state of Mississippi.	03/05/98
Kerr-McGee Corporation, Structure Removal Operations, SEA No. ES/SR 98–016.	High Island Area, Block 34, Lease OCS–G 6137, 9 miles south of Jefferson County, Texas.	03/27/98
Samedan Oil Corporation, Structure Removal Operations, SEA No. ES/SR 98–026.	East Cameron Area, Block 226, Lease OCS–G 10633, 66 miles south of Cameron Parish, Louisiana.	04/13/98
Linder Oil Company, Structure Removal Operations, SEA No. ES/SR 98–029.	Eugene Island Area, Block 133, Lease OCS–G 4445, 32 miles South-southwest of Terrebonne Parish, Louisiana.	03/30/98
Walter Oil & Gas Corporation, Structure Removal Operations, SEA No. ES/SR 98–030.	West Cameron Area, Block 254, Lease OCS–G 7608, 52 miles south of Cameron Parish, Louisiana.	04/13/98

Activity/Operator	Location	
Taylor Energy Company, Structure Removal Operations, SEA No. ES/SR 98–031.	South Marsh Island Area, Block 69, Lease OCS–G 1201, 52 miles south of St. Mary Parish, Louisiana.	04/02/98
LL&E, Structure Removal Operations, SEA Nos. ES/SR 98–032 and 98–033.	Eugene Island Area, Blocks 108 and 364, Leases OCS–G 3811 and 9600, 68 miles south of Terrebonne Parish, Louisiana.	04/02/98
Kerr-McGee Corporation, Structure Removal Operations, SEA No. ES/SR 98–034.	Ship Shoal Area, Block 241, Lease OCS–G 14505, 40 miles south of Terrebonne Parish, Louisiana.	04/14/98
Burlington Resources Offshore, Inc., Structure Removal Operations, SEA No. ES/SR 98–037.	Euguene Island Area, Block 93, Lease OCS 0228, 37 miles southwest of St. Mary Parish, Louisiana.	04/03/98

Persons interested in reviewing environmental documents for the proposals listed above or obtaining information about EA's and FONSI's prepared for activities on the Gulf of Mexico OCS are encouraged to contact the MMS office in the Gulf of Mexico OCS Region.

FOR FURTHER INFORMATION: Public Information Unit, Information Services Section, Gulf of Mexico OCS Region, Minerals Management Service, 1201 Elmwood Park Boulevard, New Orleans, Louisiana 70123–2394, Telephone (504) 736–2519.

SUPPLEMENTARY INFORMATION: The MMS prepares EA's and FONSI's for proposals which relate to exploration for and the development/production of oil and gas resources on the Gulf of Mexico OCS. The EA's examine the potential environmental effects of activities described in the proposals and present MMS conclusions regarding the significance of those effects. Environmental Assessments are used as a basis for determining whether or not approval of the proposals constitutes major Federal actions that significantly affect the quality of the human environment in the sense of NEPA Section 102(2)(C). A FONSI is prepared in those instances where the MMS finds that approval will not result in significant effects on the quality of the human environment. The FONSI briefly presents the basis for that finding and includes a summary or copy of the EA.

This notice constitutes the public notice of availability of environmental documents required under the NEPA Regulations.

J. Michael Melancon,

Acting Regional Director.

[FR Doc. 98–11699 Filed 5–1–98; 8:45 am]

BILLING CODE 4310–MR–M

DEPARTMENT OF THE INTERIOR

National Park Service

Boundary Revision: Chesapeake and Ohio Canal National Historical Park

AGENCY: National Park Service, Interior.

ACTION: Notice of boundary revision.

SUMMARY: Notice is hereby given that the National Park Service is revising the boundary of Chesapeake and Ohio Canal National Historical Park to include one additional tract of land.

FOR FURTHER INFORMATION, CONTACT: Chief, Acquisition Division, National Park Service, AT/LAFO, PO Box 908, Martinsburg, WV 25402, (304) 263–4943.

SUPPLEMENTARY INFORMATION: Public Law 91–664, enacted January 8, 1971 authorizes the acquisition of certain lands for the Chesapeake and Ohio Canal National Historical Park. Section 7(c)(ii) of the Land and Water Conservation Fund Act, as amended by Pub. L. 104–333, authorizes minor boundary revisions of areas within the National Park System. Such boundary revisions may be made, when necessary, after advising the appropriate Congressional Committees and following publication in the **Federal Register**.

In order to properly interpret and preserve the historic character of the Chesapeake and Ohio Canal National Historical Park it is necessary to revise the existing boundary to include one additional tract of land comprising approximately 115.24 acres. The property is being acquired by donation.

Notice is hereby given that the exterior boundary of the Chesapeake and Ohio Canal National Historical Park is hereby revised to include the following tract of land: All of the same land acquired by Adele C. Charpentier and Cleopatra Charpentier, from the Mount Vernon Trust Company, by deed dated December 1, 1941 and recorded December 8, 1941 in Deed Book 217, Page 322 in the Land Records of Washington County, State of Maryland.

Subject to existing easements for public roads and highways, public utilities, railroads and pipelines.

This tract of land is depicted on Segment Map 81, identified as P81–1 dated June, 1971. The maps are on file and available for inspection in the office of the National Park Service, Appalachian Trail Land Acquisition Field Office, 1314 Edwin Miller Boulevard, P. O. Box 908, Martinsburg, West Virginia 25401

Dated: April 1, 1998.

Terry R. Carlstrom,

Regional Director.

[FR Doc. 98–11717 Filed 5–1–98; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

Fort Baker Comprehensive Plan, Golden Gate National Recreation Area, Marin County, California; Notice of Intent To Prepare an Environmental Impact Statement

SUMMARY: In accordance with section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*), Golden Gate National Recreation Area is undertaking a conservation planning and impact analysis process to identify and assess potential impacts of alternate management concepts for future activities at the Fort Baker area. Notice is hereby given that the National Park Service will prepare a draft environmental impact statement and comprehensive plan.

Background

Fort Baker is within the boundary of Golden Gate National Recreation Area (GGNRA), a unit of the National Park System comprised of coastal lands in Marin, San Francisco and San Mateo Counties, California. Fort Baker (just north of the Golden Gate Bridge) is a historic district on the National Register of Historic Places. It has over one and one-half miles of San Francisco Bay shoreline, and habitat for the endangered Mission Blue Butterfly is found on hillsides above developed portions of the site. More than 170,000 visitors annually use the Bay Area Discovery Museum (a Fort Baker educational opportunity created within several rehabilitated historic buildings which were transferred to the National Park Service in 1986). Portions of the site still under the jurisdiction of the

Army, including over 70 acres of land and 50 historic buildings, will be transferred to the NPS by 2001. Also included in the transfer will be over 180 acres of San Francisco Bay tidelands.

The conservation planning and impact analysis process will focus primarily on lands and buildings to be transferred by the Army to the National Park Service (NPS), with consideration of the site as a whole. Concepts for the use and development of this site were approved in the 1980 General Management Plan (1980 GMP) for GGNRA, including the use of historic buildings for a conference center, restoration of a natural beach and waterfront, and general site improvements to better accommodate park visitors.

Proposal Alternatives Developed to Date

The proposed activities currently include the following: Rehabilitation of historic buildings, possible use of non-historic buildings and potential limited new construction to accommodate an education and retreat center; restoration of the beach and waterfront to enhance natural values and improve visitor access; modification of the marina and boat house to accommodate public uses; protection of sensitive natural resources; expansion to accommodate the needs of the existing Bay Area Discovery Museum and the Coast Guard Station; and improvements to vehicle and pedestrian access and circulation.

Other alternatives currently being evaluated include the following: for use of the historic buildings—an emphasis on park-partner programs, residential academy of environmental sciences and arts for school-aged youth, and general residential uses; for the waterfront—retaining the bulkhead, protecting the filled former beach with rip-rap, and including a more urban landscape treatment of the waterfront; for the marina—retaining the current marina development as a public facility and converting its use to accommodate only short-term moorings for park visitors; for the non-historic residences—removal or retention and rehabilitation to support the use of historic structures; for the Coast Guard Station and Bay Area Discovery Museum—retaining them at their current size with no expansion.

Specific outcomes of this conservation planning and impact analysis process are a comprehensive plan for Fort Baker, including a building re-use plan, a developed area plan and a waterfront design. The plan will amend the 1980 GMP. Additional information about Fort Baker can be found on the Internet at http://www.nps.gov/goga/fortbaker/fortbaker.htm.

Scoping To Date/Decision Process

A **Federal Register** notice, published August 19, 1997 to initiate the scoping process for environmental analysis, indicated no decision had been made about whether to prepare an Environmental Assessment or Environmental Impact Statement. Scoping activities were undertaken in fall 1997. These included tours of Fort Baker, a public workshop, and planning presentations (including the scoping document and proposed alternatives) made at GGNRA Advisory Commission meetings in winter 1997–1998. A brochure describing the planning process and preliminary alternatives and issues was also distributed to the public. Upon consideration of public responses obtained through this scoping effort, it has been determined that an Environmental Impact Statement will be prepared.

All comments received during the initial scoping phase have been documented and will be considered during EIS preparation. Interested individuals, organizations and agencies wishing to provide additional comments or suggestions, or wishing to now be added to the project mailing list, should respond to: Fort Baker EIS; Attn: Nancy Hornor, Fort Mason; Golden Gate National Recreation Area; San Francisco, CA 94123. Any new comments must be postmarked no later than thirty (30) days following publication of this notice (or if via e-mail, transmitted no later than this date to fortbaker@nps.gov).

Availability of the Draft EIS (DEIS) for review and written comment will be announced by formal Notice, via local and regional news media, and direct mailing. At this time the DEIS is anticipated to be available for public review during summer 1998, and that subsequently a Final EIS (FEIS) will be completed in fall/winter 1998. To afford an additional comment opportunity on the DEIS, public meetings will be held through the GGNRA Advisory Commission (full details on dates and locations for these sessions may be obtained from the project contact noted above). Notice of the Record of Decision will be published in the **Federal Register** not sooner than thirty (30) days after the FEIS is distributed. The official responsible for the decision is the Regional Director, Pacific West Region, National Park Service; the official responsible for implementation will be the Superintendent, Golden Gate National Recreation Area. A solicitation, evaluation, and selection process will follow completion of the above process to select a partner to implement the selected plan for the historic buildings and possible other elements of the plan.

Dated: April 15, 1998.

Patricia L. Neubacher,

Acting Regional Director, Pacific West.

[FR Doc. 98–11716 Filed 5–1–98; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before April 25, 1998. Pursuant to § 60.13 of 36 CFR part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, PO Box 37127, Washington, DC 20013–7127. Written comments should be submitted by May 19, 1998.

Carol D. Shull,

Keeper of the National Register.

ALASKA

Anchorage Borough-Census Area

Loussac—Sogn Building, 425 D St., Anchorage, 98000567

COLORADO

Custer County

Beckwith Ranch, 64159 CO 69, Westcliffe vicinity, 98000568

GEORGIA

Thomas County

Poe, Martha, Dogtrot House, 0.75 W of jct of Twelve Mile Post Rd. and GA 19, Metcalf vicinity, 98000569

LOUISIANA

Orleans Parish

Maylie's Restaurant, 1007–09 Poydras St., New Orleans, 98000577

St. Martin Parish

Stephanie Plantation House, 1862 LA 347, Arnaudville, 98000570

Tangipahoa Parish

Cate House, 111 N. Magnolia St., Hammond, 98000571

NEW YORK

Rensselaer County

Pumpkin House, 180 Fourth St., Troy, 98000573

Schuyler County

Lee School, NY 14, Montour, 98000572

RHODE ISLAND

Providence County

Blackstone Park Historic District, Roughly bounded by Seekonk R., Laurell Ave., Blackstone Blvd., and S. Angell St., Providence, 98000575

Tower—Flagg Barn Complex, 100 Abbott Run Valley Rd., Cumberland, 98000574

WISCONSIN

Milwaukee County

Public Service Building, 231 W. Michigan St., Milwaukee, 98000576

[FR Doc. 98–11748 Filed 5–1–98; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF JUSTICE

Bureau of Justice Assistance

[OJP(BJA)–1173]

RIN 1121–ZB11

Bureau of Justice Assistance FY 1998 Open Solicitation Announcement: Call for Papers

AGENCY: Office of Justice Programs, Bureau of Justice Assistance, Justice.

ACTION: Request for concept papers.

SUMMARY: Announcement of the Bureau of Justice Assistance (BJA) FY 1998 Open Solicitation. BJA is seeking innovative solutions to criminal justice problems facing local communities. BJA invites eligible State, local, and tribal governments and their agencies to submit brief concept papers describing emerging or chronic criminal justice issues within their jurisdictions and partnership-based strategies to address those issues.

DATES: Submissions must be received by BJA by close of business (5:30 p.m. E.S.T.) July 2, 1998. BJA will not grant extensions of the deadline or accept faxed submissions.

ADDRESSES: Submissions must be mailed or delivered to: Bureau of Justice Assistance Control Desk, 5640 Nicholson Lane, Suite 300, Rockville, MD, 20852.

FOR FURTHER INFORMATION CONTACT: The U.S. Department of Justice Response Center at 1–800–421–6770. Copies of the FY 1998 Open Solicitation Announcement may be obtained by calling the BJA Clearinghouse at 1–800–688–4252, or by accessing the BJA World Wide Web home page at http://www.ojp.usdoj.gov/BJA.

SUPPLEMENTARY INFORMATION:

Authority

This action is authorized under the Omnibus Crime Control and Safe Streets Act of 1968, as amended, 42 U.S.C. 3751–59 (1994).

Background

The Bureau of Justice Assistance (BJA) is soliciting concept papers in order to continue to encourage, support and publicize local innovations and to build safe and healthy communities. Applicants may submit only one concept paper in each topic area. Applicants may apply for as many topic areas as they wish, but must submit a different concept for each topic. Concept papers must address the topic areas listed below.

FY 1998 Open Solicitation Topic Areas are as follows: (1) Community Justice: strategies to create partnerships between communities and local criminal justice systems to combat crime; (2) Law Enforcement Partnerships to Address Hate Crimes: strategies that address crimes committed against individuals or groups because of race, ethnicity, religious affiliation, gender, disability, or sexual orientation; (3) Criminal Justice Challenges for Rural or Tribal Communities: strategies that address criminal justice challenges unique to rural or tribal communities; (4) Criminal Justice Responses to Senior Citizens: strategies that address issues presented by senior citizens' participation in the criminal justice system as victims, witnesses, defendants, offenders, and volunteers; (5) The Role of Alcohol and Crime: strategies that address the link between alcohol and crime; (6) Indigent Defense: strategies that enhance the representation of indigent criminal defendants; (7) Cultural Barriers to Justice: strategies to reduce cultural barriers preventing individuals from participating fully in the criminal justice system by virtue of language, philosophy, or experience; (8) Nontraditional Uses of Prosecution Resources to Enhance Public Safety: strategies which use prosecutors or prosecution resources to enhance public safety through nontraditional outreach in areas such as schools, community groups, and special needs populations; (9) Public Health and Criminal Justice Collaborations: strategies to develop collaborative efforts among public health and criminal justice agencies to prevent or reduce the incidence of violent crime in the community; and (10) Local Priorities: criminal justice strategies to address local problem areas not described in topic areas (1) through (9).

Submissions will be reviewed by panels of practitioners, who will make recommendations for awards to the Director of BJA. Awards will be worth up to $150,000 and cover a period of 18 months. All submissions must adhere to the requirements outlined in the FY 1998 Open Solicitation Announcement.

Eligibility

Eligibility for the FY 1998 Open Solicitation Progam to units and agencies of State, local, or tribal governments. Units of tribal governments must represent federally recognized tribes. Eligibility includes, but is not limited to: States, counties, municipalities, villages, towns, townships, courts, prosecution, indigent defense, probation, parole, pretrial services, corrections, law enforcement, and social services. This restriction does not preclude private/not-for-profit agencies from collaborating with eligible applicants, not does it preclude two or more units of government from applying under the cover of one authorized applicant, which will be responsible for the administration of the award.

Dated: April 29, 1998.

Nancy E. Gist,

Director, Bureau of Justice Assistance.

[FR Doc. 98–11788 Filed 5–1–98; 8:45 am]

BILLING CODE 4410–18–P

DEPARTMENT OF JUSTICE

National Institute of Justice

[OJP (NIJ)–1174]

RIN 1121–ZA12

Announcement of the Availability of the National Institute of Justice Solicitation for Research and Evaluation on Violence Against Women

AGENCY: Office of Justice Programs, National Institute of Justice, Justice.

ACTION: Notice of solicitation.

SUMMARY: Announcement of the availability of the National Institute of Justice ''Research and Evaluation on Violence Against Women: Practitioner-Researcher Collaboration; Evaluation of Policies and Programs including Experimental Research Designs; Longitudinal Studies of Women's Experience with Violence; and Basic Research.''

DATES: Due date for receipt of proposals is close of business, July 7, 1998.

ADDRESSES: National Institute of Justice, 810 Seventh Street, NW, Washington, DC 20531.

FOR FURTHER INFORMATION CONTACT: For a copy of the solicitation, please call NCJRS 1–800–851–3420. For general information about application

procedures for solicitations, please call the U.S. Department of Justice Response Center 1–800–421–6770.

SUPPLEMENTARY INFORMATION:

Authority

This action is authorized under the Omnibus Crime Control and Safe Streets Act of 1968, sections 201–03, as amended, 42 U.S.C. 3721–23 (1994).

Background

NIJ is soliciting proposals for research and evaluation on violence against women. Four major program areas are identified in the request for proposals. They are Practitioner-Researcher Collaborations, Evaluation of Policies and Programs including Experimental Research Designs, Longitudinal Studies of Women's Experience with Violence, and Basic Research. For this solicitation, violence against women includes domestic or intimate partner violence, sexual assault, other assaultive behaviors against women and stalking. NIJ anticipates awarding a total of 15 to 20 grants in the four program areas with a funding total of $4,000,000.

Interested organizations should call the National Criminal Justice Reference Service (NCJRS) at 1–800–851–3420 to obtain a copy of ''Research and Evaluation on Violence Against Women: Practitioner-Researcher Collaboration; Evaluation of Policies and Programs including Experimental Research Designs; Longitudinal Studies of Women's Experience with Violence; and Basic Research'' (refer to document no. SL000279). For World Wide Web access, connect to either NIJ at http://www.ojp.usdoj.gov/nij/funding.htm, or the NCJRS Justice Information Center at http://www.ncjrs.org/fedgrant.htm#nij.

Jeremy Travis,

Director, National Institute of Justice.

[FR Doc. 98–11690 Filed 5–1–98; 8:45 am]

BILLING CODE 4410–18–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (98–060)]

Notice of Prospective Patent License

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of prospective patent license.

SUMMARY: NASA hereby gives notice that Omni Technologies, Inc., of Kenner, Louisiana, has applied for an exclusive license to practice the invention disclosed in NASA Case No. SSC–00052 entitled ''Apparatus & Method for Effecting Data Transfer Between Data Systems,'' for which a U.S. Patent Application was filed and assigned to the United States of America as represented by the Administrator of the National Aeronautics and Space Administration. Written objections to the prospective grant of a license should be sent to John F. Kennedy Space Center.

DATES: Responses to this Notice must be received on or before July 6, 1998.

FOR FURTHER INFORMATION CONTACT: Beth Vrioni at (407) 867–6225, Mail Code MM–E, John F. Kennedy Space Center, FL 32899.

Dated: April 27, 1998.

Edward A. Frankle,

General Counsel.

[FR Doc. 98–11744 Filed 5–1–98; 8:45 am]

BILLING CODE 7510–01–M

NUCLEAR REGULATORY COMMISSION

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: U. S. Nuclear Regulatory Commission (NRC).

ACTION: Notice of pending NRC action to submit an information collection request to OMB and solicitation of public comment.

SUMMARY: The NRC is preparing a submittal to OMB for review of continued approval of information collections under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

Information pertaining to the requirement to be submitted:

1. *The title of the information collection:* 10 CFR part 73—Physical Protection of Plants and Materials.

2. *Current OMB approval number:* 3150–0002.

3. *How often the collection is required:* On occasion. Required reports are submitted and evaluated as events occur.

4. *Who is required or asked to report:* Persons who possess, use, import, export, transport, or deliver to a carrier for transport, special nuclear material.

5. *The number of annual responses:* 68,643.

6. *The number of hours needed annually to complete the requirement or request:* The industry total burden is 410,602 hours annually (43,241.7 hours for reporting and 367,359.8 hours for recordkeeping).

7. *Abstract:* NRC regulations in 10 CFR part 73 prescribe requirements for establishment and maintenance of a physical protection system with capabilities for protection of special nuclear material at fixed sites and in transit and of plants in which special nuclear material is used. The information in the reports and records is used by the NRC staff to ensure that the health and safety of the public is protected and that licensee possession and use of special nuclear material is in compliance with license and regulatory requirements.

Submit, by July 6, 1998, comments that address the following questions:

1. Is the proposed collection of information necessary for the NRC to properly perform its functions? Does the information have practical utility?

2. Is the burden estimate accurate?

3. Is there a way to enhance the quality, utility, and clarity of the information to be collected?

4. How can the burden of the information collection be minimized, including the use of automated collection techniques or other forms of information technology?

A copy of the draft supporting statement may be viewed free of charge at the NRC Public Document Room, 2120 L Street, NW (lower level), Washington, DC. OMB clearance requests are available at the NRC worldwide web site (http://www.nrc.gov) under the FedWorld collection link on the home page tool bar. The document will be available on the NRC home page site for 60 days after the signature date of this notice.

Comments and questions about the information collection requirements may be directed to the NRC Clearance Officer, Brenda Jo. Shelton, U.S. Nuclear Regulatory Commission, T–6 F33, Washington, DC, 20555–0001, or by telephone at 301–415–7233, or by Internet electronic mail at BJS1@NRC.GOV.

Dated at Rockville, Maryland, this 23th day of April 1998.

For the Nuclear Regulatory Commission.

Brenda Jo. Shelton,

NRC Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 98–11729 Filed 5–1–98; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: U.S. Nuclear Regulatory Commission (NRC).

ACTION: Notice of the OMB review of information collection and solicitation of public comment.

SUMMARY: The NRC has recently submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). The NRC hereby informs potential respondents that an agency may not conduct or sponsor, and that a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

1. Type of submission, new, revision, or extension: Revision.

2. The title of the information collection: 10 CFR part 4, ''Nondiscrimination in Federally Assisted Commission Programs.''

3. The form number if applicable: 3150–0053.

4. How often the collection is required: Occasionally.

5. Who will be required or asked to report: Recipients of Federal financial assistance provided by the Nuclear Regulatory Commission.

6. An estimate of the number of responses: 30.

7. The estimated number of annual respondents: 30.

8. An estimate of the total number of hours needed annually to complete the requirement or request: 8 hours annually (16 minutes per recordkeeper).

9. An indication of whether Section 3507(d), Pub. L. 104–13 applies: Not applicable.

10. Abstract: Recipients of NRC financial assistance provide data to demonstrate assurance to NRC that they are in compliance with nondiscrimination regulations and policies.

A copy of the final supporting statement may be viewed free of charge at the NRC Public Document Room, 2120 L Street, NW (lower level), Washington, DC. OMB clearance requests are available at the NRC worldwide web site (http://www.nrc.gov) under the FedWorld collection link on the home page tool bar. The document will be available on the NRC home page site for 60 days after the signature date of this notice.

Comments and questions should be directed to the OMB reviewer by June 3, 1998: Erik Godwin, Office of Information and Regulatory Affairs (3150–0053), NEOB–10202, Office of Management and Budget, Washington, DC 20503.

Comments can also be submitted by telephone at (202) 395–3084.

The NRC Clearance Officer is Brenda Jo Shelton, 301–415–7233.

Dated at Rockville, Md., this 24th day of April 1998.

For the Nuclear Regulatory Commission.

Brenda Jo Shelton,

NRC Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 98–11730 Filed 5–1–98; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–400]

Carolina Power and Light; 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–63, issued to Carolina Power & Light (CP&L or the licensee), for operation of the Shearon Harris Nuclear Power Plant located in Wake and Chatham Counties, North Carolina.

The proposed amendment would revise Technical Specification (TS) 3/4.3.2, ''Engineered Safety Features Actuation System Instrumentation'' to allow a 2-hour surveillance interval to facilitate testing of the 6.9 kV Emergency Bus Undervoltage relays. Specifically, CP&L proposes modifying TS Table 3.3.3 Items 9.a. and 9.b. to change the Action from 15 to 15a. Action 15a would maintain all of the requirements of Action 15 and allow removal of 6.9 kV Emergency Bus Undervoltage relays for 2 hours for surveillance testing provided the redundant train Emergency 6.9 kV Bus and associated undervoltage primary and secondary relays are operable. With the proposed modification, CP&L would be able to perform surveillance testing of the relays without entering TS 3.0.3.

To adequately perform a TS-required surveillance test, the Harris Nuclear Plant must enter TS 3.0.3 which could lead to an unnecessary plant shutdown. The surveillance interval for this test is at least once per 31 days. There is insufficient time between test performance to process a license amendment through normal means.

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. The proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

Loss-of-Offsite Power Emergency Bus undervoltage relays are not accident initiating components as described in the Final Safety Analysis Report. The proposed change allows a surveillance test interval to facilitate required testing per the Harris Nuclear Plant Technical Specifications (TS). Redundancy of emergency buses, availability of alternate automatic loss-of-offsite power protection, and the capability of manual initiation of affected components combined with the short duration allowed for testing, compensate for the new allowed surveillance interval.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

Loss-of-Offsite Power Emergency Bus undervoltage relays are not accident initiating components as described in the Final Safety Analysis Report (FSAR). The proposed change only affects testing of the Loss-of-Offsite Power Emergency Bus undervoltage relays while not affecting other structures, systems, or components.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed amendment does not involve a significant reduction in the margin of safety.

The proposed change to testing of Loss-of-Offsite Power Emergency Bus undervoltage relays does not affect any of the parameters that relate to the margin of safety as described in the Bases of the TS or the FSAR. Accordingly, NRC Acceptance Limits are not affected by this change.

Therefore, the proposed change does not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are

satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

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 June 3, 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 Cameron Village Regional Library, 1930 Clark Avenue, Raleigh, North Carolina 27605. 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, 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 William D. Johnson, Vice President and Senior Counsel, Carolina Power & Light Company, Post Office Box 1551, Raleigh, North Carolina 27602, 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 24, 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 Cameron Village Regional Library, 1930 Clark Avenue, Raleigh, North Carolina 27605.

Dated at Rockville, Maryland, this 27 day of April 1998.

For the Nuclear Regulatory Commission.

Scott C. Flanders,

Project Manager, Project Directorate II–1, Division of Reactor Projects -I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 98–11731 Filed 5–1–98; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–423]

Central Maine Power Co; Millstone Nuclear Power Station, Unit 3; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering approval under Title 10 of the Code of Federal Regulations (10 CFR) § 50.80, by issuance of an Order, of the transfer of control of Facility Operating License No. NPF–49, to the extent held by Central Maine Power Company (CMP), which holds a partial ownership interest in the Millstone Nuclear Power Station, Unit 3, located in New London County, Connecticut.

Environmental Assessment

Identification of the Proposed Action

The proposed action would consent to the transfer of control of the license, to the extent effected by a proposed restructuring of CMP. Under the restructuring, CMP would become a wholly owned subsidiary of a newly created holding company but would continue to hold a partial ownership interest in Millstone Unit 3. No direct transfer of the license would occur. Northeast Nuclear Energy Company would continue to be the licensed operator for Millstone Unit 3, and is not involved in the proposed transaction. The proposed action is in accordance with the submittal, dated March 4, 1998, from Central Maine Power Company, by and through its counsel, Morgan, Lewis, and Bockius.

The proposed action is needed, to the extent the proposed restructuring of CMP will effect a transfer of control of the license as held by CMP, to permit the restructuring to occur. CMP has stated that the proposed restructuring will provide long-term advantages through increased management and financial flexibility that will better position CMP and its existing nonutility subsidiaries to compete effectively in a changing commercial and regulatory environment. CMP has also stated that this structure will also serve to insulate CMP's utility business from business risks associated with the activities of the nonutility subsidiaries and be consistent with the corporate structure used by many other utilities in the United States.

Environmental Impacts of the Proposed Action

The Commission has completed its evaluation of the proposed corporate restructuring and concludes that there will be no physical or operational changes to Millstone Unit 3. The corporate restructuring will not affect the qualifications or organizational affiliation of the personnel who operate or maintain the facility, as Northeast Nuclear Energy Company, which is not involved in the proposed restructuring of CMP, will continue to be exclusively responsible for the operation and maintenance of Millstone Unit 3.

The Commission has evaluated the environmental impact of the proposed action and has determined that the probability or consequences of accidents will not be increased by the proposed action, and that post-accident radiological releases will not be greater than previously determined. Further, the Commission has determined that the proposed action will not affect routine radiological exposure. Accordingly, the Commission concludes that there are no significant radiological environmental impacts associated with the proposed action.

With regard to potential nonradiological impacts, the proposed action does not affect nonradiological plant effluents and has no other environmental impact. Therefore, the Commission concludes that there are no significant nonradiological environmental impacts associated with the proposed action.

Alternatives to the Proposed Action

Since the Commission has concluded that there is no measurable environmental impact associated with the proposed action, any alternative with equal or greater environmental impact need not be evaluated.

As an alternative to the proposed requested action, the staff considered denial of the proposed action. Denial of the application would result in no change in current environmental impacts. The environmental impacts of the proposed action and the alternative action are similar.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the Final Environmental Statement for Millstone Unit 3, dated December 1984.

Agencies and Persons Contacted

In accordance with its stated policy, on April 20, 1998, the staff consulted with the Connecticut State Official, Kevin T. A. McCarthy, of the Monitoring and Radiation Division, Department of Environmental Protection, regarding the environmental impact of the proposed action. The State Official had no comments.

Finding of No Significant Impact

Based upon the environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the application dated March 4, 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 24th day of April 1998.

For the Nuclear Regulatory Commission.

Phillip F. McKee,

Deputy Director for Licensing, Special Projects Office, Office of Nuclear Reactor Regulation.

[FR Doc. 98–11728 Filed 5–1–98; 8:45 am]

BILLING CODE 7590–01–P

PENSION BENEFIT GUARANTY CORPORATION

Proposed Submission of Information Collection for OMB Review; Comment Request; Liability for Termination of Single-Employer Plans

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Notice of intention to request extension of OMB approval.

SUMMARY: The Pension Benefit Guaranty Corporation (''PBGC'') intends to request that the Office of Management and Budget (''OMB'') extend approval, under the Paperwork Reduction Act, of a collection of information contained in its regulation on Liability for Termination of Single-Employer Plans, 29 CFR Part 4062 (OMB control number 1212–0017; expires September 30, 1998). This notice informs the public of the PBGC's intent and solicits public comment on the collection of information.

DATES: Comments should be submitted by July 6, 1998.

ADDRESSES: Comments may be mailed to the Office of the General Counsel, suite 340, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005–4026, or delivered to that address between 9 a.m. and 4 p.m. on business days. Written comments will be available for public inspection at the PBGC's Communications and Public Affairs Department, suite 240 at the same address, between 9 a.m. and 4 p.m. on business days.

Copies of the collection of information may be obtained without charge by writing to the PBGC's Communications and Public Affairs Department at the address given above or calling 202–326–4040. (For TTY and TDD, call 800–877–8339 and request connection to 202–326–4040). The regulation on Liability for Termination of Single-employer Plans can be accessed on the PBGC's home page at http://www.pbgc.gov.

FOR FURTHER INFORMATION CONTACT: Harold J. Ashner, Assistant General Counsel, or Catherine B. Klion, Attorney, Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005–4026, 202–326–4024. (For TTY and TDD, call 800–877–8339 and request connection to 202–326–4024).

SUPPLEMENTARY INFORMATION: Section 4062 of the Employee Retirement Income Security Act of 1974 provides that the contributing sponsor of a single-employer pension plan and members of the sponsor's controlled group (''the employer'') incur liability (''employer liability'') if the plan terminates with assets insufficient to pay benefit liabilities under the plan. The PBGC's statutory lien for employer liability and the payment terms for employer liability are affected by whether and to what extent employer liability exceeds 30 percent of the employer's net worth.

Section 4062.6 of the PBGC's employer liability regulation (29 CFR 4062.6) requires a contributing sponsor or member of the contributing sponsor's controlled group who believes employer liability upon plan termination exceeds 30 percent of the employer's net worth to so notify the PBGC and to submit net worth information. This information is necessary to enable the PBGC to determine whether and to what extent employer liability exceeds 30 percent of the employer's net worth.

The collection of information under the regulation has been approved by OMB under control number 1212–0017 through September 30, 1998. The PBGC intends to request that OMB extend its approval for another three years. 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 PBGC estimates that an average of 13 contributing sponsors or controlled group members per year will respond to this collection of information. The PBGC further estimates that the average annual burden of this collection of information will be 12 hours and $1800 per respondent, with an average total annual burden of 156 hours and $23,400.

The PBGC is soliciting public comments to—

- evaluate 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;
- evaluate the accuracy of the agency's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;
- enhance the quality, utility, and clarity of the information to be collected; and
- minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Issued in Washington, DC, this 27th day of April, 1998.

David M. Strauss,

Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 98–11710 Filed 5–1–98; 8:45 am]

BILLING CODE 7708–01–P

PENSION BENEFIT GUARANTY CORPORATION

Proposed Submission of Information Collection for OMB Review; Comment Request; Disclosure to Participants

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Notice of intention to request extension of OMB approval.

SUMMARY: The Pension Benefit Guaranty Corporation (''PBGC'') intends to request that the Office of Management and Budget (''OMB'') extend approval, under the Paperwork Reduction Act, of the collection of information under its regulation on Disclosure to Participants, 29 CFR Part 4011 (OMB control number 1212–0050; expires September 30, 1998). This notice informs the public of the PBGC's intent and solicits public comment on the collection of information.

DATES: Comments should be submitted by July 6, 1998.

ADDRESSES: Comments may be mailed to the Office of the General Counsel, suite 340, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005–4026, or delivered to that address between 9 a.m. and 4 p.m. on business days. Written comments will be available for public inspection at the PBGC's Communications and Public Affairs Department, suite 240 at the same address, between 9 a.m. and 4 p.m. on business days.

Copies of the collection of information may be obtained without charge by writing to the PBGC's Communications and Public Affairs Department at the address given above or calling 202–326–4040. (For TTY and TDD, call 800–877–8339 and request connection to 202–326–4040). The regulation on Disclosure to Participants can be accessed on the PBGC's home page at http://www.pbgc.gov.

FOR FURTHER INFORMATION CONTACT: Harold J. Ashner, Assistant General Counsel, or Catherine B. Klion, Attorney, Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005–4026, 202–326–4024. (For TTY and TDD, call 800–877–8339 and request connection to 202–326–4024).

SUPPLEMENTARY INFORMATION: Section 4011 of the Employee Retirement Income Security Act of 1974 requires plan administrators of certain underfunded single-employer pension plans to provide an annual notice to plan participants and beneficiaries of the plan's funding status and the limits on the PBGC's guarantee.

The PBGC's regulation implementing this provision (29 CFR Part 4011) prescribes which plans are subject to the notice requirement, who is entitled to receive the notice, and the time, form, and manner of issuance of the notice. The notice provides recipients with meaningful, understandable, and timely information that will help them become better informed about their plans and assist them in their financial planning.

The collection of information under the regulation has been approved by OMB under control number 1212–0050 through September 30, 1998. The PBGC intends to request that OMB extend its approval for another three years. 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 PBGC estimates that an average of 3,500 plans per year will respond to this collection of information. The PBGC further estimates that the average annual burden of this collection of information is 1.97 hours and $74 per plan, with an average total annual burden of 6,904 hours and $258,900.

The PBGC is soliciting public comments to—

- evaluate 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;
- evaluate the accuracy of the agency's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;
- enhance the quality, utility, and clarity of the information to be collected; and
- minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Issued in Washington, DC, this 27th day of April, 1998.

David M. Strauss,

Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 98–11711 Filed 5–1–98; 8:45 am]

BILLING CODE 7708–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39923; File No. SR–CBOE–97–50]

Self-Regulatory Organizations; Order Granting Approval to Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval to Amendment Nos. 1 and 2 to Proposed Rule Change by the Chicago Board Options Exchange, Inc., Relating to ''Go Along'' Orders

April 27, 1998.

Introduction

On September 25, 1997,[1] the Chicago Board Options Exchange, Inc. (''CBOE'' or ''Exchange'') submitted to the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[2] and Rule 19b–4 thereunder,[3] a proposed rule change to issue a regulatory circular which would establish the representation of ''go along'' orders on the floor of the Exchange as a violation of just and equitable principles of trade pursuant to Exchange Rule 4.1.

The proposed rule change, together with the substance of the proposal, was published for comment in Securities Exchange Act Release No. 39261 (October 20, 1997) 62 FR 55663 (October 27, 1998). One comment letter was receive in response to the proposal.[4] The Exchange subsequently filed Amendment Nos. 1 and 2 to the proposed rule change on January 20, 1998 and February 10, 1998, respectively.[5]

[1] The Exchange originally submitted this proposal as SR–CBOE–96–67 on November 11, 1996, and withdrew it at the request of the Commission on February 18, 1997.

[2] 15 U.S.C. 78s(b)(1).

[3] 17 CFR 240.19b–4.

[4] See letter and attachment from Trent Cutler, TSC Partners, L.P., to Jonathan Katz, Secretary, Commission, dated January 7, 1998.

[5] Amendment No. 1 clarifies the definition of ''go-along'' orders in the regulatory circular that the Exchange expects to issue to its members. Amendment No. 1 deletes ''generally'' from the first sentence of the circular entitled ''Definition of Go Along Orders.'' In addition, Amendment No. 1 clarifies the definition by explaining there are two elements that an instruction to a floor broker must meet before those instructions make an order a ''go along'' order. First, the floor broker must be instructed to bid or offer when one or more participant in the trading crowd are bidding or offering. Second, the floor broker must be instructed to bid or offer at the price established by the other participants in the trading crowd. Furthermore, the Exchange is proposing to add a sentence to make clear that the prohibition against ''go along'' orders is not intended to prohibit a floor broker from properly exercising discretion in the representation of an order. Amendment No. 2 further clarifies the definition of ''go along'' order to state that the floor broker must be instructed to bid (offer) on a contract only when particular market-makers in the trading crowd are bidding (offering) on that contract, that the floor broker must be instructed to bid (offer) at the prices established by such market-makers in the trading crowd. Amendment No. 2 also amends the last sentence the last sentence of the first paragraph of the definition section to state that the prohibition against ''go along'' orders prevents a floor broker from accepting a specific instruction to trade ''in a manner that mimics the trading behavior of one or more market makers.'' See letters from Timothy H. Thompson, Senior Attorney, CBOE, to Michael Walinskas, Senior Special Counsel, Market Regulation, Commission, dated January 16, 1998 (''Amendment No. 1'') and February 9, 1998 (''Amendment No. 2'').

II. Background and Description

The purpose of the proposed rule change is to prohibit floor brokers from representing or executing ''go along'' orders (as further described below) on the floor of the Exchange. The Exchange will consider the representation or execution of such orders an act inconsistent with just and equitable principles of trade pursuant to Exchange Rule 4.1. The Exchange proposes to set forth the prohibition against the representation of ''go along'' orders in a regulatory circular describing the types of conduct which would be considered to be violative of just and equitable principles of trade. The proposed regulatory circular will state the following:

Definition of ''Go Along'' Orders

A ''go along'' order, or a ''not held with the crowd'' order, is an order that instructs a floor broker to bid or offer (as appropriate for the type of order) on a contract only (i) when a particular market-makers in the trading crowd are bidding or offering on the contract and (ii) at the price or prices established by such market-makers in the trading crowd. The prohibition of ''go along'' orders does not limit a floor broker's use of discretion in representing an order on behalf of a customer. Instead, the prohibition is intended to prohibit a floor broker from accepting a specific instruction to trade in a manner that mimics the trading behavior of one or more market-makers.

Generally, customers submitting ''go along'' orders to floor brokers will specify whether the order is to buy or sell, the number of contracts, the series, and the strike price. Typically, the floor broker will be instructed to buy when

the majority of the market-makers participating on a trade are buying or to sell the majority of the market-makers participating on a trade are selling. Similarly, a floor broker may be instructed to buy when a particular market-maker (or combination of market-makers) is buying (selling) on a trade. ''Go along'' orders can be entered from off the floor of the Exchange and can be concealed at the complete discretion of the customer. CBOE represents that ''go along'' orders often are placed by market-making firms as a side business, by upstairs broker-dealers who want to participate in ''market making,'' and by specialists on other exchanges, who are attempting to receive the benefits of market-making without assuming the affirmative obligations to provide markets. These orders are entered in both multiply-traded and singly listed option classes.

Rationale for the Prohibition

The CBOE believes that the proliferation of ''go along'' orders interferes with the risk-reward trade-off of Exchange market-making. ''Go along'' order participants, according to CBOE, generally are professional traders that are attempting to accept the rewards of market making without accepting any of the risks. In addition, CBOE does not believe these orders provide any incremental liquidity or price discovery because market participants entering ''go along'' orders are merely trading at a price and size at which market-makers are willing to trade. ''Go along'' order participants, as customers, however, are not obliged to fulfill the affirmative market-making obligations of market-makers and their activity is not necessarily subject to Commission or Exchange oversight.

III. Summary of Comments

The Commission received one comment letter opposing the proposed rule change from members of the Pacific Exchange, Inc. (''PCX'').[6] The commenters argue that the proposed rule change, by prohibiting orders ''that don't match the trading crowd as long as the broker has discretion'' makes this a rule restricting discretionary orders, which is much broader than a rule restricting ''go along'' orders. The commenters state that the rule is attempting to reduce competitive forces on the trading floor, which would reduce liquidity and pricing efficiency for all market participants, which, in turn damages the Exchange's long-term competitive position.

[6] See supra note 3.

IV. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b)(5)[7] that the rules of the Exchange be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.[8]

The Commission finds that it is reasonable for CBOE to prohibit floor brokers from accepting ''go along'' orders. CBOE has determined that the use of ''go along'' orders is an abusive trading practice whereby professional traders, including market-makers, attempt to mimic the trading pattern of particular market-makers. More specifically, CBOE believes that the proliferation of ''go along'' order use could seriously threaten its market-maker system, by reducing market-maker trading opportunities. ''Go along'' orders often obtain parity with the bid/offer of the market-maker(s) they are designed to trade along with, thereby diluting market-maker participation in these affected trades. In essence, traders submitting ''go along'' orders are attempting to achieve the same time and place advantage held by market-makers on the floor. However, market-makers, in return for their time and place advantage, are subject to affirmative and negative market-making obligations.[9] While it is certainly possible that market-makers on CBOE's floor can mimic the trading behavior of other market-makers, they are required to make an active market while present in a particular trading crowd.[10] Customers submitting ''go along'' orders, by contrast, have no market-making responsibilities, and therefore, should not be afforded benefits derived from the special time and place benefits that are unique to market-makers.

Notwithstanding the appropriate basis for prohibiting ''go along'' orders, restrictions on abusive trading practices must be carefully crafted so as not to restrict trading beyond that necessary to curb the identified abuse.[11] In this regard, the Commission emphasizes that CBOE's proposed restriction is narrowly tailored to apply only in the specific instance where a customer instructs a floor broker to bid (or offer) on a contract when particular market-makers are bidding or offering, at the price or prices established by such market-makers. The prohibition against ''go along'' orders does not limit any category of market participant from access to CBOE markets and does not impair market participants from effecting legitimate trading strategies, including obtaining the best available price. The proposed rule change also does not prohibit a floor broker from accepting an order that directs him or her to buy (or sell) along with the trend of the crowd. If given such instructions, a floor broker may, in his or her own expert judgment, trade in a manner that mimics the behavior of one or more market-makers.

The comment letter objected to original language in the definition of ''go along'' order that stated ''Such an order is prohibited even if the bid or offer does not match exactly the price established by the other participants in the trading crowd as long as the customer has given the broker discretion to determine what to bid or offer based upon the prices established by the other participants.'' The Commission notes that the Exchange has eliminated this provision. The Commission also notes, as discussed more fully above, that the prohibition of ''go along'' orders does not limit a floor broker's discretion, but instead prohibits a customer from giving a floor broker specific instructions to trade in a particular manner.

The Commission finds good cause to approve Amendment Nos. 1 and 2 to the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. Amendment Nos. 1 and 2 both clarify the definition of ''go along'' order to narrowly outline the boundaries of the restriction and to ensure that the prohibition against ''go

[7] 15 U.S.C. 78f(b)(5).

[8] In approving this rule, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[9] See CBOE Rules 8.7; 8.15 (Lead Market-Makers and Supplemental Market-Makers); and 8.16 (RAES Eligibility in Option Classes Other Than DJX). See also Securities Exchange Act Release Nos. 28021 (May 16, 1990), 55 FR 21131 (May 22, 1990) (''* * * the Commission notes that the position of options market makers on the floor provides them substantial time and place advantages over other market participants.'') and 21008 (June 1, 1984), 49 FR 23721 (June 7, 1984) (''In return for assuming these obligations to the marketplace, market makers are permitted to trade on the floor of the exchange, thus being provided significant ''time and place'' as well as margin credit (''exempt credit'') advantages over other market participants.'').

[10] CBOE Rule 8.7(b) and phone conversation between Timothy H. Thompson, Senior Attorney, CBOE, and Michael Walinskas, Deputy Associate Director, Market Regulation, Commission, on April 24, 1998.

[11] *Cf.* Amex intra-day trading restriction. See Securities Exchange Act Release No. 34363 (July 13, 1994), 59 FR 36808 (July 19, 1994).

along'' orders does not prohibit a floor broker from properly exercising discretion in the representation of an order or prevent market participants from effecting legitimate trading strategies. In addition, the proposed rule change was published for the full comment period and Amendment Nos. 1 and 2 do not substantively change the proposal. Accordingly, the Commission believes that it is consistent with Section 6(b)(5) of the Act to approve Amendment Nos. 1 and 2 to the proposal on an accelerated basis.

Interested persons are invited to submit written data, views, and arguments concerning Amendment Nos. 1 and 2 to the rule proposal, including whether Amendment Nos. 1 and 2 are 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 at the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–CBOE–97–50 and should be submitted by May 26, 1998.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[12] that the proposed rule change (SR–CBOE–97–50), including Amendment Nos. 1 and 2, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

Jonathan G. Katz,

Secretary.

[FR Doc. 98–11746 Filed 5–1–98; 8:45 am]

BILLING CODE 8010–01–M

[12] 15 U.S.C. 78s(b)(2).

[13] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39925; File No. SR–CBOE–97–67]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Chicago Board Options Exchange, Incorporated, Relating to Substantive Revisions of the Exchange's Rules Governing Margin Regulation

April 27, 1998.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on December 29, 1997, the Chicago Board Options Exchange, Incorporated (''Exchange'' or ''CBOE'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes substantive changes to its rules concerning margin requirements. The revisions would: (i) Expand the types of short positions that would be considered ''covered'' in a cash account, specifically, certain short positions that are components of limited-risk spread strategies (*e.g.*, butterfly and box spreads); (ii) allow a bank-issued escrow agreement to serve as cover in lieu of cash for certain spread positions held in a cash account; (iii) recognize butterfly and box spreads as strategies for purposes of margin treatment and establish appropriate margin requirements; (iv) recognize various strategies involving stocks (or other underlying instruments) paired with long options, and provide for lower maintenance margin requirements on such hedged stock positions; (v) permit the extension of credit on certain long term options and certain long box spreads; (vi) consolidate in one chapter, the various margin requirements that presently are dispersed throughout the Exchange's rules; (vii) revise other Exchange rules impacted by the proposal; and (viii) update and improve, as necessary, current margin rules.

The text of the proposed rule change is available at the Office of the Secretary, the Exchange, and at the Commission.

[1] 15 U.S.C. 78s(b)(1).

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to make revisions to its rules governing margin regulation that would: (i) Expand the types of short positions that would be considered ''covered'' in a cash account, specifically, certain short positions that are components of limited-risk spread strategies (*e.g.*, butterfly and box spreads); (ii) allow a bank-issued escrow agreement to serve as cover in lieu of cash for certain spread positions held in a cash account; (iii) recognize butterfly and box spreads as strategies for purposes of margin treatment and establish appropriate margin requirements; (iv) recognize various strategies involving stocks (or other underlying instruments) paired with long options, and provide for lower maintenance margin requirements on such hedged stock positions; (v) permit the extension of credit on certain long term options and certain long box spreads; (vi) consolidate in one chapter, the various margin requirements that presently are dispersed throughout the Exchange's rules; (vii) revise other Exchange rules impacted by the proposal; and (viii) update and improve, as necessary, current margin rules.

Previously, the margin requirements governing options were set forth in Regulation T, ''Credit by Brokers and Dealers.'' [2] However, recent amendments to Regulation T that became effective June 1, 1997, modified or deleted certain margin requirements regarding options transactions in favor of rules to be adopted by the option self-regulatory organizations (''OSROs''),

[2] 12 CFR 220 *et seq.* The Board of Governors of the Federal Reserve System issued Regulation T pursuant to the Act.

subject to approval by the Commission.[3] In a rule filing approved last year, the Exchange adopted certain options-related margin requirements that were dropped from Regulation T.[4] The rule filing also made changes to clarify several margin rules and to establish consistency with certain margin rules maintained by the New York Stock Exchange (''NYSE'').

At the present time, the Exchange seeks to revise its margin rules to implement enhancements long desired by Exchange members and member firms, public investors, and the Exchange staff. The Exchange believes that certain multiple options position strategies and other strategies that combine stock with option positions warrant identification and recognition for purposes of establishing more equitable margin requirements. Currently, the two components of a strategy that combines stock with an options position must be margined separately. The Exchange believes the risk limitation that results if the stock and options position are viewed collectively is not reflected in the current maintenance margin requirements.[5] Lastly, the proposal would permit credit to be extended on certain types of options.

During the development of the proposed rule change, the Exchange reviewed its margin rules with a view towards updating and improving the rules. In some instances, the Exchange found it necessary to make minor changes to certain rules because they would be impacted by the more substantive proposals.

a. *Definition Section.* Presently, the Exchange's definition ''current market value'' is equivalent to the definition found in Regulation T. Instead of repeating the Regulation T definition, the proposal would revise the definition found in the Exchange's rules to note that the meaning of the term ''current market value'' is as defined in Regulation T. Because the Exchange and other OSROs intend to seek a change in the Regulation T definition, a linkage to the Regulation T definition would keep the Exchange's definition equivalent without requiring a future rule filing.

The Exchange also seeks to establish definitions for the ''butterfly spread'' and ''box spread'' options strategies. The definitions relate to the Exchange's proposed rules that would recognize and specify cash and margin account requirements for butterfly and box spreads.[6] The Exchange believes the definitions are necessary to specifically establish what multiple option positions, if held together, qualify for classification as butterfly or box spreads, and consequently are eligible for the proposed cash and margin treatment.

Finally, the proposal would define the term ''listed.'' Because ''listed'' is frequently used in the Exchange's margin rules, the Exchange believes it would be more efficient to define the term once rather than specifying the meaning each time the term is utilized.

b. *Extension of Credit on Long Options, Stock Index Warrants, Foreign Currency Warrants, and Currency Index Warrants.* The proposal would allow extensions of credit on certain listed long options and warrant productions (including currency and index warrants, but excluding traditional stock warrants issued by a corporation on its own stock).[7] Only those options or warrants that are more than 9 months from expiration would be eligible for credit extension. The proposal requires initial and maintenance margin of not less than 75% of the current market value of a listed option or warrant. Therefore, a broker-dealer would be able to loan up to 25% of the current market value of a listed option or warrant.

The proposal also would permit the extension of credit on options and warrants not listed or traded on a registered national securities exchange or a registered securities association (''OTC options''). However, in addition to being more than 9 months from expiration, an OTC option or warrant must be in-the-money and guaranteed by the carrying broker-dealer. The proposal requires initial and maintenance margin of not less than 75% of the OTC option's (warrant's) in-the-money amount (or intrinsic value), plus 100% of the amount, if any, by which the current market value of the OTC option or warrant exceeds the in-the-money amount.

When the time remaining until expiration for a warrant or option (listed and OTC) on which credit has been extended reaches nine months, the maintenance margin requirement would become 100% of the purchase price.

The proposal also would provide for the extension of credit on a long box spread composed entirely of European-style option. A long box spread is a strategy composed of four option positions which essentially lock-in the ability to buy and sell the underlying component or index for a profit, even after netting the cost of establishing the long box. The two exercise prices embedded in the strategy determine the buy and the sell price. The Exchange believes that because the cost of establishing the long box is covered by the profit realizable at expiration, there is no risk in carrying the debit incurred to establish the box spread. Although the Exchange believes that 100% of the debit could be loaned, the Exchange proposes to implement a margin requirement and approximates 50% of the debit. The Exchange's proposal would require 50% of the aggregate difference in the two exercise prices (buy and sell) which results in a margin requirement slightly higher than 50% of the debit typically incurred. This is both an initial and maintenance margin requirement. The proposal would afford a long box position a market value for margin equity purposes of not more than 100% of the aggregate exercise price differential.

c. *Cash Account.* The proposal would make butterfly and box spreads in cash-settled, European-style options eligible for the cash account. To quality for carrying in the cash account, the butterfly and box spreads would be required to meet the specifications, contained in the proposed definition section. The proposal would require full cash payment of the debit that is incurred when a long butterfly or box spread strategy is established. The Exchange believes that if the debit is fully paid, there is no risk to the carrying broker-dealer.

Short butterfly spread generate a credit balance when established. However, in the worst case scenario where all options are exercised, a debit (loss) greater than the initial credit balance received would accrue to the account. This debit or loss is limited. To eliminate the risk to the carrying broker-dealer, the proposal would require that the initial credit balance, plus an amount equal to the difference between the initial credit and the total risk, be held in the account in the form of cash or cash equivalents. The total risk potential in a short butterfly spread comprised of call options is the aggregate difference between the two lowest exercise prices. When respect to short butterfly spreads comprised of put options, the total potential is the aggregate difference between the two highest exercise prices. Therefore, to carry short butterfly spreads in the cash

[3] See Board of Governors of the Federal Reserve System Docket No. R–0772 (Apr. 26, 1996), 61 FR 20386 (May 6, 1996).

[4] See Securities Exchange Act Release No. 38709 (June 2, 1997), 62 FR 31643 (June 10, 1997).

[5] Telephone conversation between Richard Lewandowski, Assistant Vice President, Exchange, and Michael Loftus, Attorney, Division of Market Regulation, Commission, April 27, 1998.

[6] The proposed rules are outlined below under the ''Cash Account'' and ''Margin Account'' sections.

[7] Throughout the remainder of this notice, the term ''warrant(s)'' means this type of warrant.

account, the proposal would require that cash or cash equivalents equal to the maximum risk be held or deposited.

Short box spreads also generate a credit balance when established, but unlike the butterfly spread, this credit is sufficient to cover the total debit (loss) that, in the case of a box spread, will accrue to the account if held to expiration. The Exchange believes the credit should be retained in the account. Therefore, the proposal would require that cash or cash equivalent coverings the maximum risk, which is equal to the aggregate difference in the two exercise prices involved, be held or deposited.

In addition, the proposal would allow an escrow agreement to be utilized in lieu of the cash or cash equivalents that are a prerequisite to carrying short butterfly and box spreads in the cash account.

d. *Margin Account.* Currently, the Exchange's margin rules do not recognize butterfly and box spreads for margin purposes. Therefore, margin requirements tailored to the risks of these respective strategies, which the Exchange believes have limited risk, are not currently provided. A butterfly spread is a pairing of two standard spreads, one bullish and one bearish. Under current Exchange margin rules, the two spreads (bullish and bearish) must be margined separately. The Exchange believes this practice requires more margin than necessary because the two spreads serve to offset each other with respect to risk. The Exchange believes that the two individual spreads should be viewed in combination to form a butterfly spread, and that commensurate with the lower combined risk, investors should receive the benefit of lower margin requirements. The proposal would recognize butterfly spreads as distinct strategies and specify requirements that are the same as the cash account requirements described above.

As noted earlier, under the proposal the margin required for a long box spread would be 50% of the aggregate difference in the two exercise prices framing the strategy. This is both an initial and maintenance margin requirement. For margin equity purposes, a long box spread could not be valued at more than 100% of the aggregate exercise price differential. The requirement for a short box spread in the margin account would be the same as the cash account requirement described earlier. Short box spreads would not be recognized for margin equity purposes.

In addition to butterfly and box spreads, the Exchange proposes to recognize five options strategies that are designed to limit the risk of a position in the underlying component. The strategies are: (i) Long Put/Long Stock; (ii) Long Call/Short Call; (iii) Conversion; (iv) Reverse Conversion; and (v) Collar. Proposed Exchange Rule 12.3(c)(5)(C)(3), ''Exceptions,'' would identify and set forth the requirements for these hedge strategies.

The five strategies are summarized below in terms of a stock position held in conjunction with an overlying option (or options). However, the proposal is structured to also apply to components that underlie index options and warrants. The Exchange's proposal only addresses maintenance margin relief for the stock component (or other underlying instrument) of the five proposed strategies. The Exchange believes that a reduction in the initial margin for the stock component of these strategies is not currently possible because the 50% initial margin requirement under Regulation T continues to apply, and the Exchange does not possess the independent authority to lower the initial margin requirement for stock. However, the Exchange notes that the Federal Reserve Board is considering recognizing the reduced risk afforded stock by these option strategies for the purpose of lowering initial stock margin requirements and is also considering other changes that would facilitate risk-based margins.

The ''Long Put/Long Stock'' and the ''Long Call/Short Stock'' strategies are very similar to the ''Collar'' and ''Reverse Conversion'' strategies that are addressed below.

A ''Conversion'' is a long stock position held in conjunction with a long put and a short call. The put and call must have the same expiration and exercise price. The long put/short call is essentially a synthetic short stock position which offsets the long stock, and the exercise price of the options acts like a predetermined sale price. The short call is covered by the long stock and the long put is a right to sell the stock at a predetermined price—the put exercise price. Regardless of any decline in market value, the stock, in effect, is worth no less than the put exercise price.

A ''Reverse Conversion'' is a short stock, short put, and long call trio. Again, the put and call must have the same expiration and exercise price. The long call/short put is essentially a synthetic long stock position which offsets the short stock and the exercise price of the options acts like a predetermined purchase (buy-in) price. The short put is covered by the short stock and the long call is a right to buy the stock (in this case closing the short position) at a predetermined price—the call exercise price. Regardless of any rise in market value, the stock can be acquired for the call exercise price, in effect, the short position is valued at no more than the call exercise price. The ''Long Call/Short Stock'' hedge described above is a Reverse Conversion without the short put, or simply short stock offset by a long call.

A ''Collar'' is a long stock position held in conjunction with a long put and a short call. A Collar differs from a Conversion in that the exercise price of the put is lower than the exercise price of the call in the Collar strategy, therefore, the options do not constitute a pure synthetic short stock position. The ''Long Put/Long Stock'' hedge mentioned above is similar to a Collar without the short call, or simply long stock hedged by a long put.

The proposal would establish reduced maintenance margin requirements for the stock component of these five strategies as described below:

1. Long Put/Long Stock

The lesser of:

- 10% of the put exercise price, plus 100% of any amount by which the put is out-of-the-money; or
- 25% of the long stock market value.

2. Long Call/Short Stock

The lesser of:

- 10% of the call exercise price, plus 100% of any amount by which the call is out-of-the-money; or
- The maintenance margin requirement on the short stock.

3. Conversion

- 10% of the exercise price.

The stock may not be valued at more than the exercise price.[8]

4. Reverse Conversion

- 10% of the exercise price, plus any in-the-money amount.[9]

5. Collar

The lesser of:

- 10% of the put exercise price, plus 100% of any amount by which the put is out-the-money; or

[8] The writer of a call option has an obligation to sell the underlying component at the call exercise price. The writer cannot receive the benefit of a market value that is above the call exercise price because, if assigned an exercise, the underlying component would be sold at the exercise price, not the market price.

[9] The writer of a put option has an obligation to buy the underlying component at the put exercise price. If assigned an exercise, the underlying component would be purchased (the short position effectively closed) at the exercise price, even in the event the market price is lower. To offset the benefit to the account of a lower market value, the put in-the-money amount is added to the requirement.

• 25% of the call exercise price.

The stock may not be valued at more than the call exercise price.

These same maintenance margin requirements will apply, for example, when these strategies are utilized with a mutual fund or a stock basket underlying index options or warrants.

e. *Restructuring.* The proposal would replace the present margin requirement for short (uncovered) listed options with current Interpretation and Policy .01 to Exchange Rule 12.3 (''Interpretation''). The Interpretation contains a table listing all existing options and warrant products, their underlying component or index, the percentage used in a basic formula for calculating the margin requirement, and the percentage used in the calculation of a minimum requirement that becomes operative whenever the basic formula results in a lower requirement.[10] The revision will ensure that the margin requirements for all types of options and warrants will be set forth in one section in an efficient and organized manner. The restructuring also allows the deletion of the short, uncovered option margin requirements for option/warrant products that now appear in the other chapters (Chapter 23 (interest rate options), Chapter 24 (index options), and Chapter 30 (warrants)) because the methodology for calculating the margin is identical—only the percentages and underlying components or indexes differ.

The margin requirements for short (uncovered) positions in OTC options would be relocated under Exchange Rule 12.3(c)(5)(B). The text of the Interpretation (margin requirements for short listed options) currently differs from the text of the Exchange rule that sets forth the margin requirements for short OTC options. The difference stems from the fact that the current Exchange rule relating to OTC options was modeled after the NYSE margin rule. To establish consistency and better organization, the proposal would revise the text of the margin requirements for both listed and OTC short options to make them similar. The Exchange has noted that the methodology of both margin requirements is essentially the same, only different percentages are applied.

In addition, to the extent possible, the proposal has combined the margin requirements pertaining to long position offsets for short OTC options with those for short listed options. The revision will combine two sets of relatively identical requirements that currently exist.

f. *Consolidation.* For the most part, the proposal would delete the margin requirements applicable to short options/warrants and spreads that currently appear in Chapters 23, 24, and 30. Exchange Rule 12.3 would be restructured to generically cover the margin requirements for short and spread positions in options/warrants of the types currently in the other chapters. Other complex requirements located elsewhere that are not amenable to such generic treatment, have been incorporated into Exchange Rule 12.3 as necessary.

g. *Miscellaneous.* 1. *Time Margin Must Be Obtained.* The proposal would clarify the time in which initial margin, or payment in respect of cash account transactions, is due. Exchange Rule 12.2, which was adopted at a time when the Exchange had authority only to set maintenance margin levels, currently requires that margin be obtained as promptly as possible. Because the Exchange now has additional rulemaking responsibility for initial margin requirements, the proposal specifies that initial margin requirements are due in one ''payment period'' as defined in Regulation T.[11] The proposal also revises Exchange Rule 12.2 to specify that maintenance margin must be obtained as promptly as possible, but in any event within 15 days (rather than the former standard—''within a reasonable time''). The Exchange believes this revision is consistent with the current NYSE requirement.

2. *Effect of Mergers and Acquisitions on the Margin Required for Short Equity Options.* The proposal would implement as Interpretation and Policy .13 of Exchange Rule 12.3, an exception to the margin requirement for short options in the event trading in the underlying security ceases due to a merger or acquisition. The exception currently exists pursuant to an Exchange Regulatory Circular. Under the exception, if an underlying security ceases to trade due to a merger or acquisition, and a cash settlement price has been anounced by the issuer of the option, margin would be required only for in-the-money options and would be set at 100% of the in-the-money amount. The Exchange has noted that the NYSE currently maintains a similar written interpretation.

3. *Determination of Value for Margin Purposes.* The proposal would revise Exchange Rule 12.5 to make it consistent with the other portion of the Exchange's proposal that allows the extension of credit on certain long-term options. Currently, Exchange Rule 12.5 does not allow the market value of long-term options to be considered for margin equity purposes. The revision would allow options and warrants eligible for loan value pursuant to proposed Rule 12.3 to be valued at current market prices for margin purposes. The Exchange believes the change in necessary to ensure that the value of the option or warrant (the collateral) is sufficient to cover the debit carried in conjunction with the purchase.

4. *OTC Options.* Some minor corrections have been made to the table in Exchange Rule 12.3(c)(5)(B) that displays the margin requirements for short OTC options.

5. *Exempted Securities.* Currently, the Exchange's maintenance margin requirement for a non-convertible debt security is found in Exchange Rule 12.3(c)(1), ''Exempted Securities.'' However, the term ''non-convertible debt security'' refers to corporate bonds which are not considered exempt securities under the Act. Therefore, the Exchange seeks to remove the paragraph regarding non-convertible debt securities from the ''Exempted Securities'' category, and redesignate it as a separate section of Exchange Rule 12.3(c)(2).

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with and furthers the objectives of Section 6(b)(5) of the Act,[12] in that it is designed to perfect the mechanisms of a free and open market, and to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange did not solicit or receive written comments with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal**

[10] A row also has been added to the table to incorporate the margin requirement for a narrow-based stock index warrant. This requirement is being moved from Chapter 30.

[11] 12 CFR 220.2.

[12] 15 U.S.C. 78f(b)(5).

Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding, or (ii) as to which the Exchange consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, 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 submissions, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any persons, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submission should refer to File No. SR–CBOE–97–67 and should be submitted May 26, 1998.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

Jonathan G. Katz,

Secretary.

[FR Doc. 98–11747 Filed 5–1–98; 8:45 am]

BILLING CODE 8010–01–M

[13] 17 CFR 200.30–3(a)(12)

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39924; File No. SR–DTC–98–01]

Self-Regulatory Organizations; The Depository Trust Company; Order Granting Accelerated Approval of Proposed Rule Change to Conform DTC's Rules to Revised Article 8 of the Uniform Commercial Code of the State of New York

April 27, 1998.

On January 14, 1998, The Depository Trust Company (''DTC'') filed with the Securities and Exchange Commission (''Commission'') a proposed rule change (File No. SR–DTC–97–14) 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 April 14, 1998.[2] The Commission received no comment letters in response to the filing. For the reasons discussed below, the Commission is granting accelerated approval of the proposed rule change.

I. Description

The rule change amends DTC's rules to make them consistent with revised Article 8 of the Uniform Commercial Code (''UCC'') as adopted by the State of New York. Generally, the revisions to Article 8, which governs the transfer of securities, reflect that the transfer of ownership of securities and other investment vehicles are no longer effected by the delivery and holding of certificates. Instead, securities are transferred by debits and credits to securities accounts maintained by securities intermediaries. The rule change adds new terminology to DTC's rules,[3] revises certain definitions,[4] and deletes section references based on the prior version of Article 8. The amendments do not change the substance or meaning of DTC's current rules.

The rule change also amends DTC Rule 20 to specifically state that DTC's board of directors may be resolution delegate to the chairman of the board the power to approve fees and charges.

II. Discussion

Section 17A(b)(3)(F)[5] of the Act requires that the rules of a clearing agency be designed to assure the safeguarding of securities and funds which are in the custody or control of the clearing agency or for which it is responsible. The Commission believes that the proposed rule changes are consistent with this requirement because by conforming its rules to the revised Article 8 of the UCC, DTC should help maintain certainty with respect to the substantive rights and obligations under New York State's version of the UCC that are applicable to DTC and its participants.

The Commission also believes that providing DTC's board of directors with the authority to delegate to the chairman of the board the power to approve fees and charges is consistent with this requirement because it allows DTC's board to act more expeditiously.

DTC has requested that the Commission find good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of the filing. The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after publication in order to enable DTC to revise its rules to be consistent with New York State's version of Article 8 of the UCC as soon as possible.[6]

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–98–01) be, and hereby is, approved on an accelerated basis.

[1] 15 U.S.C. 78s(b)(1).

[2] Securities Exchange Act Release No. 39836 (April 7, 1998), 63 FR 18239.

[3] The proposed rule change will add the following terms to DTC's rules: (1) Certificated security; (2) control; (3) deposit; (4) entitlement holder; (5) entitlement order; (6) free pledge; (7) free release; (8) NYUCC; (9) person; (10) pledge; (11) pledge versus payment; (12) release; (13) release versus payment; (14) security entitlement; (15) security certificate; (16) uncertificated security; and (17) withdrawal.

[4] The proposed rule change will make technical revisions to the following terms: (1) Clearing agency agreement; (2) deliverer; (3) delivery; (4) deposited security; (5) incomplete transaction; (6) instructor; (7) minimum amount securities; (8) net addition securities; (9) participant; (10) payee; (11) payor; (12) pledge security; (13) pledgee; (14) pledgor; (15) receiver; (16) securities account; (17) security; (18) segregated account; and (19) settlement amount.

[5] 15 U.S.C. 78q–1(b)(3)(F).

[6] The staff of the Board of Governors of the Federal Reserve System has concurred with the Commission's granting of accelerated approval. Telephone conversation between Kristen Wells, Senior Analyst, Division of Reserve Bank Operations, Board of Governors of the Federal Reserve System, and Jeffrey Mooney, Special Counsel, Division of Market Regulation, Commission (April 24, 1998).

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[7]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–11745 Filed 5–1–98; 8:45 am]

BILLING CODE 8010–01–M

SMALL BUSINESS ADMINISTRATION

Capstone Ventures SBIC, L.P. (License No. 09/79–0413)

Notice of Issuance of a Small Business Investment Company License

On September 19, 1997, an application was filed by Capstone Ventures SBIC, L.P., at 3000 Sand Hill Road, Bldg. 1, Suite 290, Menlo Park, California 94025, with the Small Business Administration (SBA) pursuant to Section 107.300 of the Regulations governing small business investment companies (13 CFR 107.300 (1997)) for a license to operate as a small business investment company.

Notice is hereby given that, pursuant to Section 301(c) of the Small Business Investment Act of 1958, as amended, after having considered the application and all other pertinent information, SBA issued License No. 09/79–0413 on April 7, 1998, to Capstone Ventures SBIC, L.P. to operate as a small business investment company.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: April 22, 1998.

Don A. Christensen,

Associate Administrator for Investment.

[FR Doc. 98–11794 Filed 5–1–98; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF STATE

[Public Notice 2798]

Bureau of Political-Military Affairs; Imposition of Missile Proliferation Sanctions Against Entities in North Korea and Pakistan

AGENCY: Department of State.

ACTION: Notice.

SUMMARY: The United States Government has determined that entities in North Korea and Pakistan have engaged in missile technology proliferation activities that require imposition of sanctions pursuant to the Arms Export Control Act, as amended, and the Export Administration Act of 1979, as amended (as carried out under Executive Order 12424 of August 19, 1994).

EFFECTIVE DATE: April 17, 1998.

FOR FURTHER INFORMATION CONTACT: Vann H. Van Diepen, Office of Chemical, Biological and Missile Nonproliferation, Bureau of Political-Military Affairs, Department of State, (202–647–1142).

SUPPLEMENTARY INFORMATION: Pursuant to Section 73(a)(1) of the Arms Export Control Act (22 U.S.C. 2797b(a)(1)), Section 11B(b)(1) of the Export Administration Act of 1979 (50 U.S.C. app. 2401b(b)(1)), as carried out under Executive Order 12924 of August 19, 1994 (hereinafter cited as the ''Export Administration Act of 1979''), and Executive Order 12851 of June 11, 1993, the United States Government determined on April 17, 1998, that the following foreign persons have engaged in missile technology proliferation activities that require the imposition of the sanctions described in Sections 73(a)(2) (B) and (C) of the Arms Export Control Act (22 U.S.C. 2797b(a)(2) (B) and (C)) and Sections 11B(b)(1)(B) (ii) and (iii) of the Export Administration Act of 1979 (50 U.S.C. app. 2410b(b)(1)(B) (ii) and (iii)) on these entities:

1. Changgwang Sinyong Corporation (a.k.a. North Korea Mining Development Trading Corporation) (North Korea) and its sub-units, successors, and affiliated companies; and

2. Khan Research Laboratories (Pakistan) and its sub-units and successors.

Accordingly, the following sanctions are being imposed on these entities:

(A) New individual licenses for export to the entities described above of items controlled pursuant to the Export Administration Act of 1979 will be denied for two years;

(B) New licenses for export to the entities described above of items controlled pursuant to the Arms Export Control Act will be denied for two years;

(C) No United States Government contracts involving the entities described above will be entered into for two years; and

(D) No products produced by the entities described above will be imported into the United States for two years.

With respect to items controlled pursuant to the Export Administration Act of 1979, the export sanction only applies to exports made pursuant to individual export licenses.

Additionally, because of the definition of ''person'' in section 74(8)(B) of the Arms Export Control Act (22 U.S.C. 2797c(8)(B)) and North Korea's status as a country with a non-market economy that is not a former member of the Warsaw Pact, the following sanctions shall be applied to all activities of the North Korean government relating to the development of production of missile equipment or technology and all activities of the North Korean government affecting the development or production of electronics, space systems or equipment, and military aircraft:

(A) New licenses for export to the government activities described above of items controlled pursuant to the Arms Export Control Act will be denied for two years;

(B) No U.S. Government contracts involving the government activities described above will be entered into for two years; and

(C) No products produced by the government activities described above will be imported into the United States for two years.

These measures shall be implemented by the responsible agencies as provided in Executive Order 12851 of June 11, 1993.

Dated: April 24, 1998.

Eric D. Newsom,

Acting Assistant Secretary of State for Political Military Affairs.

[FR Doc. 98–11935 Filed 5–1–98; 8:45 am]

BILLING CODE 4710–25–M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–97–3052; Notice 2]

Kolcraft Enterprises, Inc.; Grant of Application for Decision of Inconsequential Noncompliance

Kolcraft Enterprises of Chicago, Illinois, has determined that approximately 107,000 child restraint systems fail to comply with Federal Motor Vehicle Safety Standard (FMVSS) No. 213, ''Child Restraint Systems,'' and has filed an appropriate report pursuant to 49 CFR part 573, ''Defects and Noncompliance Reports.'' Kolcraft has also applied to be exempted from the notification and remedy requirements of 49 U.S.C. Chapter 301—''Motor Vehicle Safety'' on the basis that the noncompliance is inconsequential to motor vehicle safety.

Notice of receipt of the application was published, with a 30-day comment period, on November 25, 1997, in the

[7] 17 CFR 200.30–3(a)(12).

Federal Register (62 FR 59755). NHTSA received no comments.

FMVSS No. 213, paragraph S5.7, requires that each material used in a child restraint system shall conform to S4 of FMVSS No. 302, ''Flammability of Interior Materials.'' This specifies that any material that does not adhere to other material(s) at every point of contact shall meet the burn rate requirements of S4.3 when tested separately. Materials are to be tested as a composite only if the material adheres to other material(s) at every point of contact.

The Kolcraft child restraints affected and the dates of production are as follows: Plus 4, Infant Rider (Models 36822–HY and 13x22–HY; 1/96 to 4/97); Plus 4, Infant Rider (Models 36820–LM and 13822–LM; 2/96 to 4/97); Plus 4, Travel-About, Infant Rider (Models 36820–RF and 138x2–RF; 3/96 to 4/97); Plus 4, Plus 5, Infant Rider, Travel-About (Models 368xx–SE and 13xx2–SE; 2/96 to 12/96); Rock n' Ride (Model 13100–PJ; 1/96 to 5/97; no longer in production); and Performa (Model 23305–TU; 3/96 to 10/96). The seat covers are constructed either of fabric, fiberfill and backing (scrim) or of vinyl, foam, and vinyl backing. In each of the affected models, one or more of the filling, face, or backing materials exceeded the 4 inches per minute burn rate when tested in accordance with S5 of FMVSS No. 302. Kolcraft estimates that about 107,000 child restraints potentially contain the non-compliant materials.

Kolcraft supports its application for inconsequential noncompliance with the following:

Kolcraft tested all potentially affected child restraint seat covers in the composite state and disaggregated state, and confirmed that all seat covers comply with the flammability standards of FMVSS No. 302 when tested in the composite state (as incorporated into FMVSS No. 213). Kolcraft also found that all potentially affected child restraint seat covers passed the cigarette burn test contained in California Technical Bulletin 116 when tested in the composite state.

Kolcraft maintains that the construction of the potentially affected seat covers makes it very unlikely that the various layers of its child restraint seat covers would ever be exposed to fire separately. The layers of fabric are securely bonded or sewn together around the entire perimeter of the seat cover and other areas. Kolcraft contends that it is unlikely that a large section of the fabric would be torn away, and extremely remote that that particular portion would be exposed to a potential ignition source. The most common source of ignition, and the source that FMVSS No. 302 is primarily designed to protect against, is a lighted cigarette. As stated above, all of Kolcraft's child restraints passed the cigarette burn test contained in California Technical Bulletin 116.

Kolcraft also contends that the frequency of incidents involving nonconforming materials or equipment should be a factor in determining whether noncompliance has an impact on safety. Kolcraft notes that, to its knowledge, there has not been one incident of a child injured by a fire that originated in a child restraint in the last 19 years.

Based on the above factors, Kolcraft contends that its child restraint seat pads, by virtue of complying with the flammability requirements of FMVSS No. 302 when tested in the composite state and by passing the cigarette burn test contained in California Technical Bulletin 116, comply with the purpose and intent of FMVSS Nos. 213 and 302, and therefore, the noncompliance is inconsequential to motor vehicle safety.

The agency has reviewed Kolcraft's application and has determined that the noncompliance is inconsequential to motor vehicle safety. NHTSA agrees with Kolcraft that the noncompliant seat covers are unlikely to pose a flammability risk when they are securely sewn to the seat, which is the normal condition for these seats.

Kolcraft supported this point by performing flammability testing under two conditions: first on the seat and cover as a composite, i.e., as it exists on a child seat with the items sewn together; and second, by performing the cigarette burn test contained in California Technical Bulletin 116 on the seat covers in the composite state. In both cases, the seat cover burned at a rate below the four inches per minute maximum set out in FMVSS No. 302.

The agency granted an application for inconsequential noncompliance submitted by Century Products Co. (60 FR 41148) in which the circumstances were identical to those in this application. The granting of Century's application was based, in part, on the agency's decision to grant a petition for inconsequential noncompliance submitted by PACCAR (57 FR 45868) in which the circumstances were similar to those presented in the Century, and now, Kolcraft application. PACCAR manufactures mattresses for the sleeper areas of certain truck tractors. A small portion of the material used in the construction of the mattresses, and subject to the requirements of FMVSS No. 302, failed the burn rate test. The agency determined that ignition of the noncompliant material was unlikely and, due to the small volume of the material, would not pose the threat of a serious fire if ignited. As a result of this analysis, the PACCAR petition was granted.

The circumstances here are similar to those in which the agency granted a petition for inconsequentiality by General Motors in connection with a noncompliance of the upper beam indicator, 56 FR 33323 (1991). The indicator was noncompliant only when the cigarette lighter was operating. The agency determined that the possibility of the upper beams being operated simultaneously with the cigarette lighter posed a very limited safety hazard. Similarly, it is unlikely that the various layers of the child restraint seat covers large enough to cause serious burn injuries would be separated from the remainder of the seat cover. Further, even if a large section of the seat cover was torn away, NHTSA considers the possibility that this material would be exposed to a potential ignition source to be extremely remote.

Although it is possible that fuel-fed fires from vehicle crashes could consume a vehicle's interior, the flammability of the seat cover materials would be irrelevant to the severity of such a fire and to the potential injuries incurred by a child.

NHTSA's evaluation of the consequentiality of this noncompliance should not be interpreted as a diminution of the agency's concern for child safety. Rather, it represents NHTSA's assessment of the gravity of the noncompliance based upon the likely consequences. Ultimately, the issue is whether this particular noncompliance is likely to increase the risk to safety. Although empirical results are not determinative, the absence of any reports of fires originating in these child restraints supports the agency's decision that the noncompliance does not have a consequential effect on safety.

For the above reasons, the agency has determined that Kolcraft has met its burden of persuasion that the noncompliance at issue here is inconsequential to motor vehicle safety and its application is granted. Accordingly, Kolcraft is hereby exempted from the notification and remedy provisions of 49 U.S.C. 30118 and 30120.

Authority: 49 U.S.C. 30118(d), 30120(h) delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: April 27, 1998.

L. Robert Shelton,

Associate Administrator for Safety Performance Standards.

[FR Doc. 98–11783 Filed 5–1–98; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

Petition for Modification of Exemption From the Vehicle Theft Prevention Standard; General Motors Corp.

AGENCY: National Highway Traffic Safety Administration (NHTSA) Department of Transportation (DOT).

ACTION: Grant of petition for exemption.

SUMMARY: This notice grants in full the petition of General Motors Corporation (GM) for an exemption of a high-theft line, the Oldsmobile Alero (formerly the Oldsmobile Achieva), from the parts-marking requirements of the Federal Motor Vehicle Theft Prevention Standard. This petition is granted because the agency has determined that the antitheft device to be placed on the line as standard equipment is likely to be as effective in reducing and deterring motor vehicle theft as compliance with the parts-marking requirements of the Theft Prevention Standard. GM requested confidential treatment for some of the information and attachments submitted in support of its petition. In a letter to GM dated November 26, 1997, the agency granted the petitioner's request for confidential treatment of most aspects of its petition.

DATES: The exemption granted by this notice is effective beginning with model year (MY) 1999.

FOR FURTHER INFORMATION CONTACT: Ms. Rosalind Proctor, Office of Planning and Consumer Programs, NHTSA, 400 Seventh Street, S.W., Washington, DC 20590. Ms. Proctor's telephone number is (202) 366–0846. Her fax number is (202) 493–2739.

SUPPLEMENTARY INFORMATION: In a petition dated October 25, 1997, General Motors Corporation (GM) informed the agency of its planned nameplate change for its Oldsmobile Achieva car line beginning with model year (MY) 1999. GM also informed the agency that the nameplate for the Oldsmobile Achieva will be changed to Oldsmobile Alero, and that the Alero car line will be a continuation of the Achieva line. The Achieva car line is subject to the parts-marking requirements of the theft prevention standard.

In its petition dated October 25, 1997, GM requested an exemption from the parts-marking requirements of the Theft Prevention Standard (49 CFR part 541) for the Oldsmobile Alero car line. The petition is pursuant to 49 CFR part 543, Exemption From Vehicle Theft Prevention Standard, based on the installation of an antitheft device as standard equipment for the entire line.

GM's submittal is considered a complete petition, as required by 49 CFR 543.7, in that it met the general requirements contained in § 543.5 and the specific content requirements of § 543.6.

In its petition, GM provided a detailed description and diagram of the identity, design, and location of the components of the antitheft device for the new line. GM will install its ''Passlock'' antitheft device as standard equipment on its MY 1999 Oldsmobile Alero car line.

In order to ensure the reliability and durability of the device, GM conducted tests based on its own specified standards. GM provided a detailed list of the tests conducted. GM stated its belief that the device is reliable and durable since the device complied with GM's specified requirements for each test.

GM compared the ''Passlock'' device proposed for the Alero car line with its first generation ''PASS-Key'' and ''PASS-Key II'' devices which the agency has determined to be as effective in reducing and deterring motor vehicle theft as would compliance with the parts-marking requirements. GM believes that its ''Passlock'' antitheft device will be at least as effective as the ''PASS-Key'' and ''PASS-Key II'' devices.

The following GM car lines have the ''Passlock'' device as standard equipment and have been granted a full exemption from the parts-marking requirements: The Chevrolet Cavalier, beginning with MY 1997 (see 61 FR 12132, March 25, 1996) and the Pontiac Sunfire, beginning with MY 1998 (see 62 FR 20240, April 25, 1997). The ''Passlock'' device provides the same kind of functionality as the ''PASS-Key'' and ''PASS-Key II'' devices, but features a coded lock cylinder rather than an electrically coded ignition key. The ''Passlock'' device utilizes an electronic sensor located near the ignition lock instead of a coded key, allowing the device to incorporate a standard key. GM stated that when the sensor detects proper lock rotation, it sends a code to the controller. If the correct code is received, fuel is enabled. If an incorrect code is received, fuel is disabled.

GM also stated that the theft rates, as reported by the National Crime Information Center, are lower for GM models equipped with ''PASS-Key''-like devices which have been granted exemptions from the parts-marking requirements than theft rates for similar, earlier models that have been parts-marked. Therefore, GM concludes that the ''PASS-Key''-like devices are more effective in deterring motor vehicle theft than the parts-marking requirements of 49 CFR part 541. GM also concluded that based on the system performance of the ''PASS-Key''-like devices on other GM models, and the similarity of design and functionality of the device on the Oldsmobile Alero to the ''PASS-Key'' device, GM believes that the agency should determine that the ''Passlock'' device will be at least as effective in reducing and deterring motor vehicle theft as the parts-marking requirements of the Theft Prevention Standard (49 CFR part 541).

Based on comparison of the reduction in theft rates of Corvettes using a passive antitheft system and audible/visible alarm with the reduction in theft rates for Chevrolet Camaro and Pontiac Firebird models equipped with a passive antitheft device without an alarm, GM believes that an alarm or similar attention attracting device is not necessary and does not compromise the antitheft performance of these systems.

The agency notes that the reason that the vehicle lines whose theft data GM cites in support of its petition received only a partial exemption from parts-marking was that the agency did not believe that the antitheft device on these vehicles (''PASS-Key'' and ''PASS-Key II'') by itself would be as effective as parts-marking in deterring theft because it lacked an alarm system. On that basis, it decided to require GM to mark the vehicle's most interchangeable parts (the engine and the transmission), as a supplement to the antitheft device. Like those earlier antitheft devices GM used, the new ''Passlock'' device on which this petition is based also lacks an alarm system. Accordingly, it cannot perform one of the functions listed in 49 CFR Part 542.6(a)(3), that is, to call attention to unauthorized attempts to enter or move the vehicle.

Since deciding those petitions, however, the agency became aware that theft data shows declining theft rates for GM vehicles equipped with either version of the ''PASS-Key'' system. Based on that data, it concluded that the lack of a visual or audio alarm had not prevented the antitheft system from being effective protection against theft and granted two GM petitions for full exemptions for car lines equipped with ''PASS-Key II''. See 60 FR 25939 (May 15, 1995) granting in full the petition for

Chevrolet Lumina and Buick Regal car lines equipped with ''PASS-Key II''; and 58 FR 44874 (August 25, 1993), granting in full the petition for exemption of Buick Riviera and Oldsmobile Aurora car lines equipped with ''PASS-Key II''. In both of those instances, the agency concluded that a full exemption was warranted because ''PASS-Key II'' had shown itself as likely as parts-marking to be effective protection against theft despite the absence of a visual or audio alarm.

The agency concludes that, given the similarities between the ''Passlock'' device and the ''PASS-Key'' and ''PASS-Key II'' systems, it is reasonable to assume that ''Passlock'', like those systems, will be as effective as parts-marking in deterring theft. Accordingly, it has granted this petition for exemption in full and will not require any parts to be marked on the Oldsmobile Alero car line beginning with MY 1999.

The agency believes that the device will provide the types of performance listed in 49 CFR 543.6(a)(3): promoting activation; preventing defeat or circumvention of the device by unauthorized persons; preventing operation of the vehicle by unauthorized entrants; and ensuring the reliability and durability of the device.

As required by 49 U.S.C. 33106 and 49 CFR 543.6(a)(4) and (5), the agency finds that GM has provided adequate reasons for its belief that the antitheft device will reduce and deter theft. This conclusion is based on the information GM provided about its antitheft device. This confidential information included a description of reliability and functional tests conducted by GM for the antitheft device and its components.

For the foregoing reasons, the agency hereby grants in full GM's petition for exemption for the MY 1999 Oldsmobile Alero car line from the parts-marking requirements of 49 CFR part 541.

If GM decides not to use the exemption for this line, it must formally notify the agency, and, thereafter, the line must be fully marked as required by 49 CFR 541.5 and 541.6 (marking of major component parts and replacement parts).

NHTSA notes that if GM wishes in the future to modify the device on which this exemption is based, the company may have to submit a petition to modify the exemption. § 543.7(d) states that a part 543 exemption applies only to vehicles that belong to a line exempted under this part and equipped with the antitheft device on which the line's exemption is based. Further, § 543.9(c)(2) provides for the submission of petitions ''to modify an exemption to permit the use of an antitheft device similar to but differing from the one specified in that exemption.'' The agency wishes to minimize the administrative burden which § 543.9(c)(2) could place on exempted vehicle manufacturers and itself.

The agency did not intend in drafting part 543 to require the submission of a modification petition for every change to the components or design of an antitheft device. The significance of many such changes could be *de minimis.* Therefore, NHTSA suggests that if the manufacturer contemplates making any changes the effects of which might be characterized as *de minimis,* it should consult the agency before preparing and submitting a petition to modify.

Authority: 49 U.S.C. 33106; delegation of authority at 49 CFR 1.50.

Issued on: April 29, 1998.

L. Robert Shelton,

Associate Administrator for Safety Performance Standards.

[FR Doc. 98–11782 Filed 5–1–98; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

[STB Ex Parte No. 627]

Market Dominance Determinations—Product and Geographic Competition

AGENCY: Surface Transportation Board.

ACTION: Notice of Proposal to Eliminate Product and Geographic Competition From Consideration in Market Dominance Determinations.

SUMMARY: Pursuant to its decision in *Review of Rail Access and Competition Issues,* STB Ex Parte No. 575 (STB served Apr. 17, 1998), the Board is instituting a proceeding to consider removing product and geographic competition as factors in market dominance determinations in railroad rate proceedings. The Board requests that persons intending to participate in this proceeding notify the agency of that intent. A separate service list will be issued based on the notices of intent to participate that the Board receives.

DATES: Notices of intent to participate in this proceeding are due May 12, 1998. Comments on this proposal are due May 29, 1998. Replies are due June 29, 1998.

ADDRESSES: An original plus 12 copies of all comments and replies, referring to STB Ex Parte No. 627, must be sent to the Office of the Secretary, Case Control Unit, ATTN: STB Ex Parte No. 627, Surface Transportation Board, 1925 K Street, N.W., Washington, DC 20423–0001.

Copies of the written comments will be available from the Board's contractor, D.C. News and Data, Inc., located in Room 210 in the Board's building. D.C. News can be reached at (202) 289–4357. The comments will also be available for viewing and self copying in the Board's Microfilm Unit, Room 755.

In addition to an original and 12 copies of all paper documents filed with the Board, the parties shall submit their pleadings, including any graphics, on a 3.5-inch diskette formatted for WordPerfect 7.0 (or in a format readily convertible into WordPerfect 7.0). All textual material, including cover letters, certificates of service, appendices and exhibits, shall be included in a single file on the diskette. The diskettes shall be clearly labeled with the filer's name, the docket number of this proceeding, STB Ex Parte No. 627, and the name of the electronic format used on the diskette for files other than those formatted in WordPerfect 7.0. All pleadings submitted on diskettes will be posted on the Board's website (www.stb.dot.gov). The electronic submission requirements set forth in this notice supersede, for the purposes of this proceeding, the otherwise applicable electronic submission requirements set forth in the Board's regulations. See 49 CFR 1104.3(a), as amended in *Expedited Procedures for Processing Rail Rate Reasonableness, Exemption and Revocation Proceedings,* STB Ex Parte No. 527, 61 FR 52710, 711 (Oct. 8, 1996), 61 FR 58490, 58491 (Nov. 15, 1996).[1]

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 565–1600. [TDD for the hearing impaired: (202) 565–1695.]

SUPPLEMENTARY INFORMATION: In STB Ex Parte No. 575, the Board conducted two days of informational hearings, on April 2 and 3, 1998, to examine issues of rail access and competition in today's railroad industry, and the statutory remedies and agency regulations and procedures that relate to those matters. As a result of those hearings, we announced, *inter alia,* that we would commence a proceeding to consider eliminating the product and geographic competition factors of our market dominance guidelines in cases challenging the reasonableness of rail rates.[2]

Under 49 U.S.C. 10707, the Board can entertain a challenge to the reasonableness of a rail rate only if we

[1] A copy of each diskette submitted to the Board should be provided to any other party upon request.

[2] The current market dominance guidelines are set forth in *Product and Geographic Competition,* 2 I.C.C.2d 1, 20–22 (1985) (*Market Dominance III*).

first find that the rail carrier has market dominance over the traffic to which the rate applies, that is, that there is no effective competition for that traffic. In making that determination, we now consider four forms of competition that may effectively constrain the carrier's pricing: *intramodal competition* (whether the shipper could obtain the transportation service that it needs from other railroads); *intermodal competition* (whether the shipper could obtain service by another transportation mode); *product competition* (whether the shipper can use a suitable substitute product that can be acquired without relying on the services of the same carrier); and *geographic competition* (whether the shipper can obtain the product it needs from a different source and/or by shipping its goods to a different destination using another carrier). Shippers have the burden of showing that there is no effective intramodal and intermodal competition; carriers have the burden of identifying any product and geographic competition and showing its effectiveness.

At the Ex Parte 575 hearings, shippers complained about the difficulties associated with seeking rate relief from the Board today, particularly the complexity and burden of litigating issues of product and geographic competition, issues that they charge have transformed the threshold market dominance phase of a rail rate complaint into a full-blown antitrust-style case of its own. Shippers regard product and geographic competition issues as major, undue litigation obstacles that discourage captive shippers from even seeking regulatory relief from unreasonably high rates in both large and small rates cases. Accordingly, consistent with our determination in Ex Parte 575 to reexamine certain aspects of our current regulatory regime in the context of today's more consolidated rail industry—particularly those that concern the availability of regulatory relief—we are instituting this proceeding to consider eliminating product and geographic competition from our market dominance analysis.

We note that our predecessor, the Interstate Commerce Commission (ICC), initially concluded that consideration of product and geographic competition issues would complicate rate proceedings unduly. *Special Procedures for Making Findings of Market Dominance,* 353 I.C.C. 875, 905–06, *modified,* 355 I.C.C. 12 (1976) (*Market Dominance I*), *aff'd in relevant part sub nom. Atchison, T. & S.F. Ry.* v. *ICC,* 580 F.2d 623 (D.C. Cir. 1978). The ICC subsequently reversed course and decided that consideration of these issues would be manageable. *Market Dominance Determinations,* 365 I.C.C. 118, 127–31 (1981) (*Market Dominance II*), *aff'd sub nom. Western Coal Traffic League* v. *United States,* 719 F.2d 772 (5th Cir. 1983) (*en banc*), *cert. denied,* 466 U.S. 953 (1984). Later, recognizing that it is inherently ''much more difficult'' for shippers to prove the ineffectiveness of these factors than of intramodal and intermodal competition, the ICC placed upon the railroads the burden of both identifying any product and geographic competition and demonstrating the effectiveness of such competition in individual cases. *Market Dominance III,* 2 I.C.C.2d at 15.

The comments presented in the Ex Parte 575 hearings suggest, however, that, even without bearing the burden of proof on these issues, shippers find that the product and geographic competition inquiry remains an imposing burden upon their ability to prosecute rail rate complaints. Aggressive use of the discovery process may be partly responsible for the heavy burdens associated with the inquiry into product and geographic competition, and we have recently taken action to prevent a rail carrier from effectively shifting those burdens onto a complaining shipper through unsupported and/or overreaching discovery demands. *FMC Wyoming Corp. et al.* v. *Union Pac. R.R.,* STB Docket No. 42022 (STB served Apr. 17, 1998). However, curbing individual instances of discovery abuses may not be sufficient to address the shippers' concerns. Therefore, we are instituting this proceeding to obtain public comment on whether we should eliminate product and geographic competition from consideration altogether.

Any person that wishes to participate as a party of record in this matter must notify us of this intent by May 12, 1998. In order to be designated a party of record, a person must satisfy the filing requirements outlined in the **ADDRESSES** section. We will then compile and issue a service list. Copies of comments and replies must be served on all persons designated on the list as a party of record. Comments on the proposal are due May 29, 1998; replies are due June 29, 1998.

A copy of this decision is being served on all persons on the service list in Ex Parte No. 575. This decision will serve as notice that persons who were parties of record in the Ex Parte 575 proceeding will not be placed on the service list in the Ex Parte 627 proceeding unless they notify us of their intent to participate therein.

The Board preliminarily certifies that the proposal to eliminate product and geographic competition from its market dominance analysis, if adopted, would not have a significant effect on a substantial number of small entities. While the proposal, if adopted, may ease the burdens on those prosecuting rate complaints, we do not expect it to affect a substantial number of small entities. The Board, however, seeks comments on whether there would be effects on small entities that should be considered.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

Decided: April 28, 1998.

By the Board, Chairman Morgan and Vice Chairman Owen.

Vernon A. Williams,

Secretary.

[FR Doc. 98–11669 Filed 5–1–98; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–290 (Sub–No. 200X)]

Norfolk and Western Railway Company; Abandonment Exemption; in Dickenson and Buchanan Counties, VA

Norfolk and Western Railway Company (NW) has filed a notice of exemption under 49 CFR part 1152 Subpart F—*Exempt Abandonments* to abandon 3.34 miles of its line of railroad between milepost CL–13.56 at Duty and milepost CL–16.90 at Clinchfield Coal in Dickenson and Buchanan Counties, VA.[1] The line traverses United States Postal Service Zip Codes 24217 and 24066.

NW has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) any overhead traffic on the line can be rerouted over other lines; (3) no formal complaint filed by a user of rail service on the line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Surface Transportation Board (Board) or with any U.S. District Court or has been decided in favor of complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (environmental reports), 49 CFR 1105.8 (historic reports), 49 CFR 1105.11 (transmittal letter), 49 CFR

[1] On April 23, 1998, NW informed the Board that the actual mileage for the line is 3.34 miles instead of 3.3 miles as stated in its verified notice.

1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met. As a condition to this exemption, any employee adversely affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment— Goshen,* 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed. Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on June 3, 1998, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[2] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[3] and trail use/rail banking requests under 49 CFR 1152.29 must be filed by May 14, 1998. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by May 26, 1998, with: Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, NW., Washington, DC 20423. A copy of any petition filed with the Board should be sent to applicant's representative: James R. Paschall, General Attorney, Norfolk Southern Corporation, Three Commercial Place, Norfolk, VA 23510.

If the verified notice contains false or misleading information, the exemption is void *ab initio.*

NW has filed an environmental report which addresses the abandonment's effects, if any, on the environment and historic resources. The Section of Environmental Analysis (SEA) will issue an environmental assessment (EA) by May 8, 1998. Interested persons may obtain a copy of the EA by writing to SEA (Room 500, Surface Transportation Board, Washington, DC 20423) or by calling SEA, at (202) 565–1545. Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Pursuant to the provisions of 49 CFR 1152.29(e)(2), NW shall file a notice of consummation with the Board to signify that it has exercised the authority granted and fully abandoned the line. If consummation has not been effected by NW's filing of a notice of consummation by May 4, 1999, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire.

Decided: April 23, 1998.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 98–11517 Filed 5–1–98; 8:45 am]

BILLING CODE 4915–00–P

[2] The Board will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Board's Section of Environmental Analysis in its independent investigation) cannot be made before the exemption's effective date. See Exemption of Out-of-Service Rail Lines, 5 I.C.C.2d 377 (1989). Any request for a stay should be filed as soon as possible so that the Board may take appropriate action before the exemption's effective date.

[3] Each offer of financial assistance must be accompanied by the filing fee, which currently is set at $1000. See 49 CFR 1002.2(f)(25).

DEPARTMENT OF THE TREASURY

Commission to Study Capital Budgeting

AGENCY: Advisory Commission to the President of the United States.

ACTION: Notice of meetings.

SUMMARY: The agenda for the next meetings of the Commission to Study Capital Budgeting includes discussions and hearing of testimony on capital budgeting issues on Friday, May 8. On Saturday morning, May 9, the Commission will hear reports from its working groups studying different aspects of capital budgeting and discuss the next steps to be taken in preparation of its report.The Commission's final report on capital budgeting is due on December 13, 1998. Meetings are open to the public. Limited seating capacity is available.

Dates, Times and Places of the Next Commission Meetings

May 8, 1998, 9 a.m. to 5 p.m.

The Federal Courthouse
Conference Room 850, Eighth Floor
500 Pearl Street
New York, NY 10007

May 9, 1998, 9 a.m. to 12 noon

The Federal Courthouse
Conference Room 850, Eighth Floor
500 Pearl Street
New York, NY 10007.

The Commission is seeking all views on capital budgeting. Interested parties may submit their views to: President's Commission to Study Capital Budgeting, Old Executive Office Building (Room 258), Washington, DC 20503, Voice: (202) 395–4630, Fax: (202) 395–6170, E-Mail: capital__budget@eop.gov, Website: http://www.whitehouse.gov/wh/eop/omb/pcscb/.

FOR FURTHER INFORMATION CONTACT: E. William Dinkelacker, Designated Federal Official, Room 4456 Main Treasury, Washington, DC 20220, Voice: (202) 622–1285, Fax: (202) 622–1294, E-Mail: william.dinkelacker@treas.sprint.com.

Angel E. Ray,

Committee Management Officer.

[FR Doc. 98–11790 Filed 5–1–98; 8:45 am]

BILLING CODE 4810–25–M

DEPARTMENT OF THE TREASURY

Fiscal Service

Surety Companies Acceptable on Federal Bonds: Zenith Insurance, Ltd.—Fraudulent Bonding

AGENCY: Financial Management Service, Fiscal Service, Department of the Treasury.

ACTION: Notice.

SUMMARY: This is regarding Treasury Department Circular 570; 1997 Revision, published July 1, 1997, at 62 FR 35548.

FOR FURTHER INFORMATION CONTACT: Surety Bond Branch at (202) 874–6850.

SUPPLEMENTARY INFORMATION: Federal bond-approving officers are advised that Zenith Insurance Company, Woodland Hills, CA, a Treasury certified company, does not issue construction, bid, performance or payment bonds and is in no way related to Zenith Insurance, Ltd. Zenith Insurance, Ltd. is not a Treasury approved surety company.

Please refer to the State of California Department of Insurance Press Release #041, dated April 3, 1998, for additional information regarding Zenith Insurance, Ltd.

Questions related to the authenticity of Zenith bonds should be directed to Zenith Insurance company at (818) 587–5721. The authenticity of its bonds currently in force, that were written during the past year, should also be verified.

The Treasury Department Circular 570 may be viewed and downloaded through the Internet at http://www.fms.treas.gov/c570/index.html or through our computerized public bulletin board system (FMS Inside Line) at (202) 874–6887. A hard copy of the Circular may be purchased from the Government Printing Office (GPO) Subscription Service, Washington, DC, Telephone (202) 512–1800. When ordering the Circular from GPO, use the following stock number: 048000–00509–8.

Questions concerning this Notice may be directed to the U.S. Department of the Treasury, Financial Management Service, Funds Management Division, Surety Bond Branch, 3700 East-West Highway, Room 6A11, Hyattsville, MD 20792.

Dated: April 27, 1998.

Mitchell A. Levine,

Assistant Commissioner, Financial Information, Financial Management Service.

[FR Doc. 98–11800 Filed 5–1–98; 8:45 am]

BILLING CODE 4810–35–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Revenue Procedure 98–32

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 Revenue Procedure 98–32, Electronic Federal Tax Payment System (EFTPS) Programs for Reporting Agents.

DATES: Written comments should be received on or before July 6, 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 revenue procedure should be directed to Carol Savage, (202) 622–3945, Internal Revenue Service, room 5569, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Electronic Federal Tax Payment System (EFTPS) Programs for Reporting Agents.

OMB Number: 1545–1601.

Revenue Procedure Number: Revenue Procedure 98–32.

Abstract: This revenue procedure provides information about the Electronic Federal Tax Payment System (EFTPS) programs for Batch Filers and Bulk Filers (Filers). EFTPS is an electronic remittance processing system for making federal tax deposits (FTDs) and federal tax payments (FTPs). The Batch Filer and Bulk Filer programs are used by Filers for electronically submitting enrollments, FTDs, and FTPs on behalf of multiple taxpayers.

Current Actions: There are no changes being made to the revenue procedure at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other-for-profit organizations.

Estimated Number of Respondents/ Recordkeepers: 620.

Estimated Time Per Respondent/ Recordkeeper: 83 hours, 41 minutes.

Estimated Total Annual Reporting/ Recordkeeping Burden Hours: 51,885.

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 27, 1998.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 98–11687 Filed 5–1–98; 8:45 am]

BILLING CODE 4830–01–U

UNITED STATES INFORMATION AGENCY

Culturally Significant Objects Imported for Exhibition Determinations

Notice is hereby given of the following determinations: Pursuant to the authority vested in my by the Act of October 19, 1965 (79 Stat. 985, 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978 (43 FR 13359, March 29, 1978), and Delegation Order No. 85–5 of June 27, 1985 (50 FR 27393, July 2, 1985), I hereby determine that the objects to be included in the exhibit, ''Songs on Stone: James McNeill Whistler and the Art of Lithography,'' (see list),[1] imported from abroad for the temporary exhibition without profit within the United States, are of cultural significance. These objects are imported pursuant to loan agreements with foreign lenders. I also determine that the exhibition or display of the listed exhibit objects at The Art Institute of Chicago from June 6 to August 30, 1998, is in the national interest. Public Notice of these determinations is ordered to be published in the **Federal Register**.

Dated: April 28, 1998.

Les Jin,

General Counsel.

[FR Doc. 98–11712 Filed 5–1–98; 8:45 am]

BILLING CODE 8230–01–M

DEPARTMENT OF VETERANS AFFAIRS

Privacy Act of 1974; Report of Amended Matching Program

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

Notice is hereby given that the Department of Veterans Affairs (VA) intends to conduct a recurring computer matching program matching Social Security Administration (SSA) records with VA pension and parents' dependency and indemnity compensation (DIC) records.

The goal of this match is to compare income status as reported to VA with records maintained by SSA.

The Department of Veterans Affairs plans to match records of veterans and surviving spouses and children who receive pension, and parents who receive DIC, with the Master Beneficiary Record (MBR) and Master Earnings File (MEF) maintained by SSA.

VA will use this information to update the master records of VA beneficiaries receiving income dependent benefits and to adjust VA benefit payments as prescribed by law. The proposed matching program will enable VA to ensure accurate reporting of income.

[1] A copy of this list may be obtained by contacting Ms. Carol Epstein, Assistant General Counsel, at 202/619–6981. The address is U.S. Information Agency, 301 4th Street, SW., Room 700, Washington, DC 20547–0001.

RECORDS TO BE MATCHED: The VA records involved in the match are the VA system of records, Compensation, Pension, Education and Rehabilitation Records—VA (58 VA 21/22) first published at 41 FR 9294, March 3, 1976 and last amended at 63 FR 7196, February 12, 1998. The SSA records consist of information from SSA ''Master Beneficiary Record (MBR) 09–60–0090,'' published at 60 FR 2144, January 6, 1995 and last amended October 11, 1995 at 60 FR 52948 (Routine Use #24(b)). In the absence of MBR data, SSA will attempt to verify the SSN in VA records using the Master Earnings File (MEF) 09–60–0059,'' published at 59 FR 62407 December 5, 1994 and last amended 62 FR 11939, March 13, 1997 (Routine Use #26). In accordance with Title 5 U.S.C. subsection 552a(o)(2) and (r), copies of the agreement are being sent to both Houses of Congress and to the Office of Management and Budget.

This notice is provided in accordance with the provisions of the Privacy Act of 1974 as amended by Public Law 100–503.

The match will start no sooner than 30 days after publication of this Notice in the **Federal Register**, or 40 days after copies of this Notice and the agreement of the parties is submitted to Congress and the Office of Management and Budget, whichever is later, and end not more than 18 months after agreement is properly implemented by the parties. The involved agencies' Data Integrity Boards (DIB) may extend this match for 12 months provided the agencies certify to their DIBs, within three months of the ending date of the original match, that the matching program will be conducted without change and that the matching program has been conducted in compliance with the original matching program.

ADDRESSES: Interested individuals may submit written comments to the Director, Office of Regulations Management (02D), Department of Veterans Affairs, 810 Vermont Avenue, NW, Room 1154, Washington, DC 20420. Comments will be available for public inspection at the above address in the Office of Regulations Management, Room 1158, between 8 a.m. and 4:30 p.m., Mondays through Fridays, except holidays.

FOR FURTHER INFORMATION CONTACT: Paul Trowbridge (213B), (202) 273–7218.

SUPPLEMENTARY INFORMATION: This information is required by Title 5 U.S.C. subsection 552a(e)(12), the Privacy Act of 1974. A copy of this notice has been provided to both Houses of Congress and the Office of Management and Budget.

Approved: April 22, 1998.

Togo D. West, Jr.,

Acting Secretary of Veterans Affairs.

[FR Doc. 98–11713 Filed 5–1–98; 8:45 am]

BILLING CODE 8320–01–M

DEPARTMENT OF VETERANS AFFAIRS

A Nursing Home/Residential Care Facility at VA Palo Alto Health Care System

AGENCY: Department of Veterans Affairs.

ACTION: Notice of designation.

SUMMARY: THe Secretary of the Department of Veterans Affairs is designating the VA Palo Alto Health Care System (VAPAHCS) for an Enhanced-Use lease development. The Department intends to enter into a long-term lease of real property with the developer whose proposal will provide improved quality and access to nursing home/residential care services while offering a return of ''in-kind'' services to VA which will further enhance quality of care to veteran patients at VAPAHCS.

FOR FURTHER INFORMATION CONTACT:

Jacob Gallun, Office of Asset and Enterprise Development (189), Veterans Health Administration, Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC 20420, (202) 565–4307.

SUPPLEMENTARY INFORMATION: 38 U.S.C. 8161 *et seq.* specifically provides that the Secretary may enter into an Enhanced-Use lease, if the Secretary determines that at least part of the use of the property under the lease will be to provide appropriate space for an activity contributing to the mission of the Department; the lease will not be inconsistent with and will not adversely affect the mission of the Department; and the lease will enhance the property. This project meets these requirements.

Approved: April 23, 1998.

Togo D. West, Jr.,

Acting Secretary.

[FR Doc. 98–11714 Filed 5–1–98; 8:45 am]

BILLING CODE 8320–01–M

Corrections

Federal Register

Vol. 63, No. 85

Monday, May 4, 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 HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 101

[Docket No. 98N-0044]

RIN 0910-AA59

Regulations on Statements Made for Dietary Supplements Concerning the Effect of the Product on the Structure or Function of the Body

Correction

In proposed rule document 98–11294, appearing on pages 23624-23632, in the issue of Wednesday, April 29, 1998, the running head''Rules and Regulations'' should read ''Proposed Rules''.

BILLING CODE 1505-01-D

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-39413; File No. SR-PCX-97-37]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change and Amendment Nos. 1 and 2 Thereto by the Pacific Exchange, Inc. Relating to Market Maker Outside Trading Accounts

Correction

In notice document 98–32756 beginning on page 65840, in the issue of Tuesday, December 16, 1997, under the subject heading, insert ''December 8, 1997.''.

BILLING CODE 1505-01-D

SECURITIES AND EXCHANGE COMMISSION

[Release 34-39700; International Series Release No. 1122; File No. 600-20]

Self-Regulatory Organizations; International Securities Clearing Corporation; Notice of Filing of and Order Approving a Request for Extension of Temporary Registration as a Clearing Agency

Correction

In notice document 98–5550 beginning on page 10669, in the issue of Wednesday, March 4, 1998, make the following correction:

On page 10670, in the first column, above the FR Doc. line, the signature was omitted and should read as set forth below.

Margaret H. McFarland,

Deputy Secretary.

BILLING CODE 1505-01-D

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-39635; File No. SR-PCX-97-21]

Self-Regulatory Organizations; Order Approving Proposed Rule Change by the Pacific Exchange, Inc. Relating to the Suspension of Its Automatic Execution System (''Auto-Ex'') During Unusual Market Conditions

Correction

In notice document 98–3999 beginning on page 8246, in the issue of Wednesday, February 18, 1998, under the subject heading, insert ''February 9, 1998.''.

BILLING CODE 1505-01-D

Federal Register

Monday
May 4, 1998

Part II

Environmental Protection Agency

40 CFR Parts 148, et al.

Organobromine Production Wastes; Identification and Listing of Hazardous Waste; Land Disposal Restrictions; Listing of CERCLA Hazardous Substances, Reportable Quantities; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 148, 261, 268, 271, and 302

[FRL–5999–9]

RIN 2050–AD79

Organobromine Production Wastes; Identification and Listing of Hazardous Waste; Land Disposal Restrictions; Listing of CERCLA Hazardous Substances, Reportable Quantities

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The EPA is adding two new hazardous waste codes to its current lists of hazardous waste found in 40 CFR part 261. One waste type to be added and designated by the hazardous waste code K140 is floor sweepings, off-specification product and spent filter media from the production of 2,4,6-tribromophenol. The second waste is 2,4,6-tribromophenol and is being added both to the list of commercial chemical products, designated by the hazardous waste code U408 and to the list of hazardous constituents in Appendix VIII of 40 CFR part 261. EPA is also modifying the land disposal treatment standards for hazardous waste in 40 CFR part 268 by adding these new wastes. The effect of listing this waste will be to subject it to stringent management and treatment standards under RCRA, as well as to emergency notification requirements for releases of hazardous substances to the environment. These notifications are required under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA or Superfund) and the Emergency Planning and Community Right to Know Act (EPCRA). EPA is also issuing Reportable Quantity (RQ) requirements for these notifications. EPA has made a final determination not to list as hazardous ten waste streams from the production of bromochloromethane, ethyl bromide, tetrabromobisphenol A, 2,4,6-tribromophenol wastewaters, octabromodiphenyl oxide, and decabromodiphenyl oxide.

DATES: Effective Date: November 4, 1998.

ADDRESSES: The official record of this action is identified by Docket number F–98–OBLF–FFFFF and is located at the following address: EPA Docket Clerk, U.S. EPA, Crystal Gateway #1, 1st Floor, 1235 Jefferson Davis Highway, Arlington, VA. The docket is open from 9 a.m. to 4 p.m., Monday through Friday, excluding Federal holidays. The public must make an appointment to review docket materials by calling (703) 603–9230. The public may copy 100 pages from the docket at no charge; additional copies are $0.15 per page.

FOR FURTHER INFORMATION CONTACT: The RCRA/Superfund Hotline, at (800) 424–9346 (toll-free) or (703) 412–9810, in the Washington, DC metropolitan area. The TDD Hotline number is (800) 553–7672, or (703) 486–3323, locally. For technical information on the final listing determination, contact Anthony Carrell at (703) 308–0458, or carrell.anthony@epamail.epa.gov.

For technical information on the CERCLA aspects of this rule, contact: Elizabeth Zeller, Office of Emergency and Remedial Response (5204G), U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460, (703) 603–8744.

SUPPLEMENTARY INFORMATION:

This rule is available on the Internet. Please follow these instructions to access the rule electronically: From the World Wide Web (WWW), type http://www.epa.gov/epaoswer, then select option for Rules and Regulations.

The official record for this action is kept in a paper format, and is maintained at the address in the **ADDRESSES** section at the beginning of this document.

I. Affected Entities
II. Legal Authority
III. Summary of the Proposed and Final Rules
A. Background Analysis
B. Summary of Proposed Rule
C. Additional Opportunity to Comment
D. Final Rule
IV. Response to Comments
A. Development of Structure-Activity Relationship (SAR) Analyses
B. Why the SAR Analysis of 2,4,6-TCP and 2,4,6-TBP Constitutes a Scientific Study That Shows Toxic Effects
C. Issues Regarding the Use of Structure-Activity Relationship (SAR) Analysis
D. Addition of Constituent to Appendix VIII
E. Plausible Mismanagement Scenario and Other Issues in the Listing Determination for Waste Solids From the Production of 2,4,6-Tribromophenol
F. Listing Determination for Wastes From the Production of Tetrabromobisphenol-A
G. Other Issues
V. Conclusions
VI. Land Disposal Restrictions
A. Treatment Standards for Organobromine Waters
B. Applicable Technology
C. Capacity Analysis Results Summary
VII. Waste Minimization Opportunities in the Industry
VIII. State Program Implementation
A. Applicability of Rules in States
B. Effect on State Authorizations
IX. Compliance and Implementation
A. Section 3010 Notification
B. Compliance Dates for Facilities
X. Listing as CERCLA Hazardous Substances and RQ Adjustment
XI. Regulatory Impact Analysis and Compliance Costs
A. Regulatory Impact Analysis Pursuant to Executive Order 12866
B. Regulatory Flexibility Analysis
XII. Paperwork Reduction Act
XIII. Unfunded Mandates Reform Act
XIV. National Technology Transfer and Advancement Act
XV. Submission to Congress and the General Accounting Office

I. Affected Entities

Entities potentially affected by this action are those which handle either the waste stream or the chemical being added to EPA's list of hazardous wastes under RCRA, and to the CERCLA list of hazardous substances, entities which need to respond to releases of hazardous substances, states that are required to adopt RCRA hazardous waste programs. Affected entities include:

Category	Affected entities
Industry	Generators of the listed waste solids and filter cartridges from the production of 2,4,6-tribromophenol; or the product 2,4,6-tribromophenol, or entities that treat, store, transport, or dispose of these wastes.
State, Local, Tribal Govt	State and Local Emergency Planning entities.
Federal Govt	National Response Center, and any Federal Agency that handles the listed waste or chemical.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. This table lists those entities that EPA now is aware potentially could be affected by this action. Other entities not listed in the table also could be affected. To determine whether your facility is regulated by this action, you should examine 40 CFR parts 260 and 261 carefully in concert with the amended

rules found at the end of this **Federal Register** document. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

II. Legal Authority

These regulations are promulgated under the Solid Waste Disposal Act (SWDA), as amended by various other Acts over time. These statutes are commonly referred to as the Resource Conservation and Recovery Act (RCRA) and are codified at Volume 42 of the United States Code (U.S.C.), sections 6901 through 6992k (42 U.S.C. 6901–6992k).

Section 3001(a) of RCRA, 42 U.S.C. 6921(a), requires EPA to promulgate criteria for identifying characteristics of hazardous wastes and for listing hazardous wastes. Section 3001(b) of RCRA requires EPA to promulgate regulations, based on these criteria, identifying and listing hazardous wastes which shall be subject to the requirements of RCRA Subtitle C.

Hazardous waste is defined at section 1004(5) of RCRA, 42 U.S.C. 6903(5). There are two types of hazardous waste. First, hazardous wastes are those solid wastes which may cause or significantly contribute to an increase in mortality, serious irreversible illness, or incapacitating reversible illness. In addition, hazardous wastes are those solid wastes which may pose a substantial present or potential hazard to human health or the environment when improperly managed.

EPA's regulations establishing criteria for listing hazardous wastes are codified at volume 40 of the Code of Federal Regulations (CFR) at § 261.11 (40 CFR 261.11). Section 261.11 states three criteria for identifying characteristics and for listing wastes as hazardous.

First, wastes may be classified as ''characteristic'' wastes if they have the properties described at 40 CFR 261.20 which would cause them to be classified as having the characteristics of ignitability, corrosivity, reactivity and toxicity.

Second, wastes may be classified as acute hazardous wastes if they are fatal to humans at low doses, lethal in animal studies at particular doses designated in the regulation, or otherwise capable of causing or significantly contributing to an increase in serious illness.

Third, wastes may be listed as hazardous if they contain hazardous constituents identified in appendix VIII of 40 CFR part 261 and the Agency concludes, after considering eleven factors enumerated in § 261.11(a)(3), that the waste is capable of posing a substantial present or potential hazard to human health or the environment when improperly managed. Under § 261.11(a)(3), a substance is listed in appendix VIII if it has been ''shown in scientific studies'' to have toxic effects on life forms.

Wastes listed as hazardous are subject to federal requirements under RCRA for persons who generate, transport, treat, store or dispose of such waste. Facilities that must meet the hazard waste treatment, storage and disposal requirements, including the need to obtain permits to operate, are commonly referred to as RCRA Subtitle C or ''Subtitle C'' facilities. Subtitle C is Congress' original statutory designation for that part of RCRA that directs EPA to issue regulations for hazardous wastes as may be necessary to protect human health or the environment. Thus, facilities like incinerators or landfills that are required to comply with RCRA requirements for hazardous waste are referred to as Subtitle C incinerators or landfills.

Subtitle C is codified as Subchapter III of Chapter 82 (Solid Waste Disposal) of Volume 42 of the United States Code, 42 U.S.C. 6921 thru 6939e. EPA standards and procedural regulations implementing subtitle C are found generally at 40 CFR parts 260 through 272.

Section 3001(e)(2) of RCRA (42 U.S.C. 6921(e)(2)) requires EPA to determine whether to list, as hazardous, wastes generated by various chemical production processes, including the production of organobromines.

Solid wastes which are not hazardous wastes may be disposed of at facilities which are overseen by state and local governments. These are the so-called subtitle D facilities. Subtitle D is Congress' original statutory designation for that part of RCRA which deals with non-hazardous solid waste.

Subtitle D is codified as Subchapter IV of Chapter 82 (Solid Waste Disposal) of Volume 42 of the United States Code (42 U.S.C. 6941 thru 6949a). EPA regulations affecting subtitle D facilities are found generally at 40 CFR parts 240 thru 247, and 255 thru 258.

In response to the mandate on organobromine production wastes in RCRA section 3001(e)(2), the Agency undertook a two-year study of the industry and, eventually, listed several wastes from the production of ethylene dibromide (EDB) and methyl bromide.

The final rule listing wastes from the production of EDB was published in the **Federal Register** on February 13, 1986 (51 FR 5327). These wastes are listed in Title 40 of the Code of Federal Regulations § 261.32 (40 CFR 261.32) and are designated by EPA hazardous waste numbers K117, K118, and K136. The final rule listing wastes from methyl bromide production was published on October 6, 1989 (54 FR 41402). These wastes are listed at 40 CFR 261.32 and are designated by hazardous waste codes K131 and K132. Methyl bromide and ethylene dibromide are also on the Appendix VIII list of hazardous constituents.

In June of 1991, EPA entered into a proposed consent decree in a lawsuit filed by the Environmental Defense Fund, et al. (*EDF* v. *Reilly*, Civ. No. 89–0598 (D.D.C.)), in which the Agency agreed, among other things, to publish proposed and final determinations whether to list wastes from the production of the five other organobromine chemicals evaluated in this rulemaking.

Under a recently lodged proposed consent order in that case, the Agency is required to promulgate on or before April 15, 1998 a final decision on whether or not to list these wastes as hazardous. The Agency reserves the right to evaluate wastes from the production of other organobromine compounds in the future, if and when such an evaluation is deemed necessary.

III. Summary of the Proposed and Final Rules

A. Background Analysis

To provide a sound technical basis for this listing determination, EPA conducted a study of the organobromine chemicals industry in 1991 and 1992. Six firms were identified as currently manufacturing organobromine chemicals at eight facilities in the United States. The majority of organobromine chemicals are currently sold as flame retardants. Most are solid compounds that are incorporated into polymers, which are then used in a variety of products. Smaller volumes of organobromine chemicals are used as reagent chemicals and pharmaceutical intermediates. Under the authority of RCRA Section 3007, EPA sent questionnaires to these firms and four of them were selected for engineering site visits. These four facilities account for over 99 percent of total domestic production. Samples of process residuals were collected during the site visits to familiarize the Agency with the types of materials generated by the industry. Later in the study, record samples to be used as part of the technical basis to decide whether a listing rule is appropriate were collected at facilities of the two largest domestic producers. EPA published a proposed rule on the listing of organobromine

wastes in the **Federal Register** on May 11, 1994 (59 FR 24530). The Listing Background Document for this proposed listing determination contains a detailed description of the Agency's basis for proposing to list this waste stream, and for proposing not to list nine other waste streams; EPA proposed to defer action on one waste. The public version of this document, which does not contain confidential business information, can be copied at the RCRA public docket. See **ADDRESSES** section.

The third criterion described above for listing hazardous wastes in 40 CFR 261.11, is applicable to the listing of organobromine wastes. That is, wastes may be listed if they contain hazardous constituents identified in Appendix VIII of 40 CFR Part 261 and the Agency concludes the waste is capable of posing a substantial present or potential hazard to human health or the environment when improperly managed.

With respect to the other two criteria, the wastes under consideration here are not acutely hazardous. Further, ''characteristic'' wastes, in general, are not listed separately, since their classification depends upon whether, on a case-by-case basis, they qualify as wastes based on various tests described in the regulations. EPA notes that any of the organobromine wastes could be classified as ''characteristic'' wastes if they ''fail'' the applicable tests.

B. Summary of Proposed Rule

Consistent with its regulations, EPA, before proposing to list the organobromine production wastes determined whether there were present any Appendix VIII constituents and whether there was information on any other constituents of the waste that could lead to health or environmental concerns. The health effects data, along with other factors (generally related to exposure) required to be considered under 40 CFR 261.11(a)(3), were then evaluated to decide whether the wastes should be listed as hazardous wastes.

In this rulemaking EPA has considered all relevant factors for each waste stream. The critical factors, which vary depending on the individual waste stream, were identified in the rulemaking record for the proposal and are summarized at 59 FR 24536 to 24541. The record for this rule contains responses to all comments submitted on the relevant factors.

EPA proposed not to list as hazardous nine waste streams from the production of organobromine compounds. The Agency also proposed to defer action on the listing determination for one waste stream from the manufacture of tetrabromobisphenol A (TBBPA) because of inadequate information on the process. In the proposal the Agency stated, ''Based on comments received, including any data, EPA may choose, rather than deferring, to promulgate a final determination either to list or not to list tetrabromobisphenol A waste as a hazardous waste under RCRA'' (59 FR 24537).

EPA proposed to list as hazardous one waste stream from the production of 2,4,6-tribromophenol (2,4,6-TBP). The listing of this waste, as noted above, required consideration of whether an Appendix VIII constituent was present. While none of the constituents had been listed in Appendix VIII at the time of proposal, EPA did consider that the 2,4,6-tribromophenol present in the waste would likely qualify for Appendix VIII listing. Accordingly, along with the proposed hazardous waste listing, EPA proposed to include 2,4,6-tribromophenol in Appendix VIII.

The proposed addition to Appendix VIII is discussed at 59 FR 24531 and 24538. While EPA did not have a laboratory study directly showing that 2,4,6-tribromophenol has toxic effects on life forms, the Agency explored the use of structure-activity relationships to determine whether, nevertheless, there are other types of scientific studies that could indirectly show that this compound has toxic effects and, thereby, qualify for listing on Appendix VIII under 40 CFR 261.11(a)(3). Structure-activity relationships involve the use of health effects information for a compound with a chemical structure and properties very similar to those of the chemical of concern. The Agency determined that this technique could be used for 2,4,6-tribromophenol because the chemical behavior and mechanism of action for this compound is expected to be similar to its chlorinated analogue, 2,4,6-trichlorophenol.

After considering the data supporting the Appendix VIII listing determination and factors under 40 CFR 261.11(a)(3), EPA proposed to list as hazardous waste solids and filter cartridges from the production of 2,4,6-tribromophenol and designate it as K140. These waste solids consisted of floor sweepings and off-specification product from the production of 2,4,6-tribromophenol. EPA also proposed to add 2,4,6-tribromophenol to the list of commercial chemical products (as U408) that are hazardous wastes if discarded (40 CFR 261.33).

Under section 102(b) of CERCLA, all hazardous wastes newly listed under CERCLA have statutory reportable quantities (RQs) of one pound unless and until adjusted by regulation. Waste U408 is 2,4,6-tribromophenol, an individual hazardous substance. Based on its evaluation, the Agency proposed an adjusted RQ of 100 pounds for 2,4,6-tribromophenol.

The only hazardous constituent identified in the other waste proposed for listing, K140, is 2,4,6-tribromophenol. In accordance with the RQ adjustment methodology for hazardous waste streams, the RQ for K140 is being adjusted to 100 pounds based on the 100 pound RQ of its only hazardous constituent, 2,4,6-tribromophenol.

C. Additional Opportunities To Comment

In the original listing determination, EPA presumed that the plausible management scenario for the 2,4,6-tribromophenol waste solids was disposal in an unlined landfill. This was critical in the Agency's determining that the waste presented a substantial risk. However, comments on the rule by the only manufacturer of 2,4,6-tribromophenol showed that these wastes had been sent voluntarily, over a period of more than fifteen years, to a number of different Subtitle C landfills. Accordingly, EPA reevaluated the management scenario to comport with the actual Subtitle C disposal scenarios.

Since EPA's reexamination evaluated information not previously placed in the record, the Agency provided notice of this new information and its reevaluation in a letter dated September 3, 1997. This letter, sent to three commenters on the original proposal who were expected to have a direct interest in the listing of the particular waste, added additional information to the rulemaking record and explained the Agency's new rationale for listing the 2,4,6-tribromophenol waste solids.

EPA received comments from the three entities that received the notice letter. One commenter supported the decision to list 2,4,6-TBP production wastes, and two opposed the listing. The substance of the September 3 letter and EPA's response to the comments appears below in Unit IV.E. The Unit IV.E. deals with response to comments on the plausible mismanagement scenario for the 2,4,6-tribromophenol waste solids.

The commenter supporting the listing decision also argued that EPA underestimated the risks posed by disposal of the 2,4,6-TBP waste in a Subtitle C landfill, because EPA had ignored the presence of other toxic contaminants in the waste. The Agency reexamined the analytical data for the waste samples from the 2,4,6-tribromophenol production waste.

Based on that reexamination, EPA found that the waste contained another toxic constituent (ethylene dibromide) that appeared to further support the listing. EPA provided additional notice of this additional constituent to the interested party that is the sole generator of the waste in a letter dated January 14, 1998. The generator submitted comments on this second notice letter, and Unit IV.E also discusses the Agency's responses to these comments.

D. Final Rule

The final rule promulgated today is based on consideration of all comments submitted on the proposed rule, including those submitted in response to the reevaluation in the September 3 letter, and all relevant information available in the rulemaking record. Today's rule issues the final listing for 2,4,6-tribromophenol as a hazardous constituent in Appendix VIII of 40 CFR part 261, promulgates the listing of floor sweeping, off-specification product and spent filter media from the production of 2,4,6-tribromophenol as hazardous waste K140 (40 CFR 261.32) and lists the 2,4,6-tribromophenol commercial chemical product as a hazardous waste when discarded, with a waste code of U408 (40 CFR 261.33 (f)). These listings are based on the presence in the waste of 2,4,6-tribromophenol. EPA also has determined not to list any of the other wastes described in the proposed rule, including wastes from the production of tetrabromobisphenol A, on which the Agency had originally proposed to defer a final decision.

Also included in today's final rule, the Agency is adding 2,4,6-tribromophenol and K140 to the list of CERCLA hazardous substances in Table 302.4 of 40 CFR 302.4. CERCLA defines the term ''hazardous substance'' chiefly by reference to various Federal environmental statutes. For example, the term includes ''any hazardous waste having the characteristics identified under or listed pursuant to RCRA Section 3001.'' Thus, on the effective date of today's rulemaking, when 2,4,6-tribromophenol and K140 are added as RCRA hazardous wastes, these wastes automatically become CERCLA hazardous substances. In today's final rule, EPA also is adjusting the reportable quantities (RQs) for 2,4,6-tribromophenol (U408) and K140 to 100 pounds in Table 302.4 of 40 CFR part 302.

In the subsequent sections of today's notice, EPA responds to public comments received on the proposal and on the reevaluations and provides its reasons for changing the final rule from proposal or declining to make changes suggested by commenters. Table 1 summarizes the basis for the listing determinations.

TABLE 1.—BASIS FOR LISTING DETERMINATIONS

Product	Waste stream	Analysis	Decision
Dibromomethane	Filters	Very small volume (less than 1 kkg/yr) One producer.	No List.
	Wastewaters	Deep-well injected at site with approved no-migration petition (only one producer).	No List.
Ethyl Bromide	Filters	Very small volume stream (less than 1.5 kkg/yr)	No List.
	Wastewaters	Only constituent identified is ethanol at low concentration.	No List.
Tetrabromobisphenol A	Wastewaters	Stream is already listed as K131 for methyl bromide. Also contains 15,000 ppm tribromophenol.	Already listed waste.
Octabromodiphenyl oxide	Filter cake	Toluene and brominated dibenzofurans present at levels below concern. Assuming worst case for leachate, risk for the maximally exposed individual estimated to be below 10^{-6} for octabromodiphenyl oxide.	No list.
	Wastewaters	Major constituent of concern, brominated dibenzofurans, shows minimal risk; solubility of octabromodiphenyl oxide is very low; modeling of worst case for wastewaters showed risk below 10^{-6} for octabromodiphenyl oxide.	No list.
Decabromodiphenyl oxide.	Filter cake	The major constituent in waste (decabromodiphenyl oxide) could not be quantified. Assuming worst case for leachate, risk below 10^{-6} level because of very low solubility for this chemical.	No list.
	Wastewaters	The major constituent in waste (decabromodiphenyl oxide) could not be quantified. Assuming worst case for leachate, risk below 10^{-6} level because of very low solubility.	No list.
Tetrabromobisphenol A	Off-specification product	Tetrabromobisphenol A is of relatively low toxicity and has limited mobility. Levels of tribromophenol in leachate are below those for concern.	No list.
Tribromophenol	Wastewaters	Used structure activity relationship analysis for tribromophenol. Data collected indicate releases during deep-well injection are not likely to occur or would be of low risk. Tribromophenol not detected in groundwater at site.	No list.

TABLE 1.—BASIS FOR LISTING DETERMINATIONS—Continued

Product	Waste stream	Analysis	Decision
	Floor sweepings, off-specification product and spent filter media from the production of 2,4,6-tribromophenol; discarded commercial chemical product.	Used structure activity relationship analysis to show carcinogenicity of tribromophenol. High concentration of chemical in solids and TCLP leachate. Mobile in leachate and would present high risk if released from landfill, even a Subtitle C landfill.	List as hazardous waste (K140) and commercial chemical product (U408).

IV. Response to Comments

Seven parties submitted comments on the proposed rulemaking. Comments were received from two companies that manufacture bromine products, one trade association representing industrial chemical producers, two manufacturers of chemical products other than bromines, one company involved in the treatment and destruction of hazardous and toxic wastes, and one environmental interest group. The major issue addressed by commenters to the original proposal was the Agency's use of structure-activity relationship (SAR) analysis to support a listing determination. The major issue addressed with respect to the September 3 reevaluation was on EPA's use of Subtitle C landfills as a mismanagement scenario for modeling purposes and the assessment of risk relating to Subtitle C landfills. EPA also discusses the January 14, 1998 reevaluation of additional constituents found in the 2,4,6-TBP production wastes. More detailed summaries of the comments and complete Agency responses are provided in the Public Comment Summary & Response Document and the Supplementary Comment Summary & Response Document prepared for comments on the September 3, 1997, and January 14, 1998 letters. These documents are included as appendices to the Listing Background Document supporting today's rule (available in the public docket—see **ADDRESSES** section).

Before addressing the public comments in detail, some of the basic concepts related to the use of SAR analysis for this rulemaking are addressed here.

A. Development of Structure-Activity Relationship (SAR) Analyses

1. Principles Related to SAR Analyses

In the preamble to the proposed rule, EPA briefly discussed the basis for using SAR analyses for regulatory purposes. The scientific process used in SAR analysis also was presented in *Development of Provisional Human Health Reference Value for 2,4,6-Tribromophenol* and the Listing Background Document for the proposed listing (henceforth collectively termed ''the Listing Background Document.'') SAR analyses are based on the observation that structurally similar compounds have similar chemical properties. Thus, they may be absorbed, distributed, and metabolized in similar ways, and may have similar mechanisms of action and toxic properties. If two compounds or a group of compounds are chemically related, toxicologic data for one or more compounds in the group can be used to predict the toxicologic effects of other compounds in the group. The more closely related two compounds are, the more similar their toxic properties are likely to be.

The validity of SAR analysis is related to the degree of similarity of the candidate (the compound for which adequate toxicity information are lacking) and the surrogate (the chemical used as the basis for the analysis), and the amount of information available on how any differences between the two chemicals affects their activity. Because chemical similarity plays a critical role in SAR analysis, this discussion begins with a brief primer on chemical structure.

The periodic table of the elements arranges elements in order of increasing atomic number, in a manner that shows their chemical relatedness. Elements that are in the same column on the periodic table have the same number of electrons in their outer shell, and are chemically similar. Elements that lack one electron in their outer shell are in the same column, and are called halogens. This group includes fluorine, chlorine, bromine, and iodine, which react in chemically similar ways. Bromine and chlorine are the most similar halogens; fluorine binds to carbon much more strongly than do chlorine or bromine, while the reactivity of iodine is also influenced by its larger size. When chemical groups replace the hydrogen atoms in organic (carbon-containing) molecules, the molecules are called ''substituted.'' The chemical groups that do the substituting are called ''substituents,'' and play a large role in determining the chemical reactivity of the compound.

Figure 1 compares the structures of the two compounds studied in the SAR analysis, and shows the structure of the parent compound, phenol. 2,4,6-Trichlorophenol (TCP) is phenol with chlorine substitution at the 2-, 4-, and 6-positions. Similarly, 2,4,6-tribromophenol (TBP) is phenol with bromine substitution at the 2-, 4-, and 6-positions. Thus, the two compounds are phenols substituted with closely related halogens at the same positions. Note that both the position and number of substitutions are the same in the two compounds. If the two compounds were substituted by different numbers of halogen atoms, or at different positions from each other, they would be expected to be less similar chemically and physically. This is because both the type and location of the substitution contribute to the electronic, steric, and other attributes of the molecule.[1]

BILLING CODE 6560–50–P

[1] Waser J., N. Trueblood, and C. M. Knobler. 1976. Chem One. New York, NY: McGraw-Hill pp. 25–29.

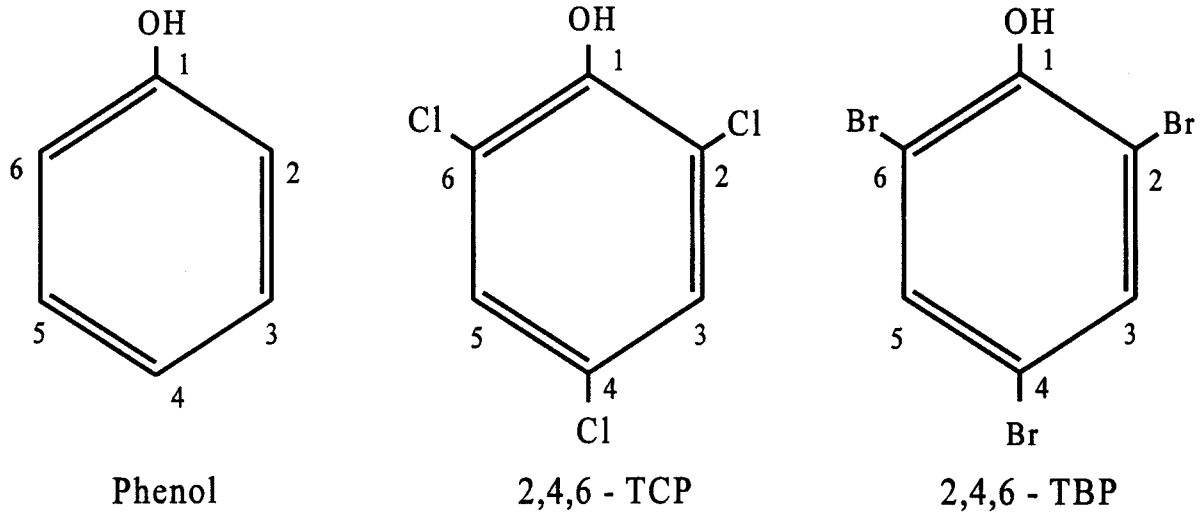

Figure 1 - Structures of 2,4,6 - TCP, 2,4,6 - TBP, and the parent compound, phenol.

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2. Structure-Activity Relationship Analysis

In the proposed rule, EPA developed a Quantitative SAR (QSAR) analysis for 2,4,6-TBP using 2,4,6-TCP as the surrogate, and attempting to adjust the cancer slope factor based on the closely-related electronic properties of bromine and chlorine. However, EPA received a number of comments stating that this analysis was too oversimplified to be reliable. In particular, commenters stated that additional parameters should be used in such an analysis. It was suggested that data on hydrophobicity (a description of the degree to which a compound repels water) and steric effects be incorporated into the analysis. Information on the hydrophobicity of a molecule is relevant to understanding how a molecule distributes in the body (e.g., fatty tissues versus blood), whether it accumulates in the fat, and the ease or difficulty with which the molecule may move across cell membranes to its site of action. This attribute of a molecule is often expressed as the octanol-water partition coefficient, which quantitatively indicates the degree to which the compound partitions to either water or lipid materials. The water solubility of a molecule, i.e., the amount that will dissolve in pure water, also influences the octanol-water partition coefficient. Steric (spatial) effects, which are caused by the different orientation of atoms in space relative to each other, are important because they provide information on whether the molecule's size and shape allow it to interact with receptors in biological systems, such as enzymes, hormones, and genetic material.

EPA has re-evaluated the SAR analysis in light of these comments, and agrees that additional parameters could have been considered; however, available data are insufficient to adequately account for these additional parameters. Despite the lack of adequate information to evaluate all parameters affecting the relative toxicity of 2,4,6-TCP and 2,4,6-TBP, the Agency believes that these compounds are so similar that it is appropriate to use the 2,4,6-TCP slope factor as an estimated slope factor for 2,4,6-TBP. Many of the toxicological similarities are discussed further in the following sections. In addition, the very factors suggested by comments for consideration, as noted above, provide a further basis for showing how these two chemicals are closely related. For example, when the Agency adjusted the slope factor for electronic effects, the change was less than 1%. Also, a key measure of hydrophobicity, the log of the octanol-water partition coefficients ($\log K_{ow}$), is similar for these two chemicals; the values of $\log K_{ow}$ are 4.23 for 2,4,6-TBP and 3.69 for 2,4,6-TCP. All of these factors lead the Agency to conclude that 2,4,6–TCP can be used as a direct surrogate for 2,4,6-TBP.

3. 2,4,6-TBP Slope Factor and Risk Estimate

Although EPA is using the 2,4,6-TCP cancer slope factor as a default for 2,4,6-TBP, the Agency examined the impact of modifying the cancer slope factor in response to public and favorable peer reviewer comment, to account for the difference in molecular weight of 2,4,6-TCP and 2,4,6-TBP.

The molecular weight of a compound is the weight in grams of a specified number (a mole) of molecules of that compound, and is used to convert between the weight of a sample of a compound and a measure of the number of molecules in that sample.[2] Because a bromine atom is heavier than a chlorine atom, one gram of 2,4,6-TBP has fewer molecules in it than does a gram of 2,4,6-TCP, and therefore a gram of 2,4,6-TBP would be less potent than a gram of 2,4,6-TCP, all other things being equal. This is because chemically-induced cancer results from molecules binding to DNA or to another molecule in the body,[3] and, therefore, a compound's cancer potency is related most directly to the number of molecules administered (rather than the weight alone). As a result, the 2,4,6-TCP slope factor may be multiplied by the

[2] Waser, J., K.N. Trueblood, and C.M. Knobler. 1976. Chem One. New York, NY: McGraw-Hill pp. 25–29.

[3] William, G.M. and J.H. Weisburger. 1991. Chemical carcinogenesis. In: Amdur, M.O., J. Doull, and C.D. Klaassen. Casarett and Doull's Toxicology: The Basic Science of Poisons, 4th ed. New York, NY: Pergamon Press. pp. 127–200.

ratio of the 2,4,6-TCP molecular weight (197) to the 2,4,6-TBP molecular weight (331). Adjusting for molecular weight would result in a default value for the 2,4,6-TBP CSF of 6.5×10^{-3} (mg/kg/day)$^{-1}$, compared with 1.1×10^{-2} (mg/kg/day)$^{-1}$ for 2,4,6-TCP. If this slope factor were applied in a risk analysis in the preamble to the proposed rule, it would have little effect on results. Using the corrected cancer risk factor, the estimated individual risk from exposure to 2,4,6-TBP in groundwater would be 4.2×10^{-4} and 1.2×10^{-5} for the off-specification product and the filter cartridges, respectively, compared with risks of 7×10^{-4} and 2×10^{-5} calculated without the correction in the proposed rule. These changes are minor and would not change the Agency's decision, i.e., the risks posed by these wastes warrant control through listing.

4. Notice and Comment for the Use of an SAR

To check its analysis, EPA subjected it to both internal Agency review and external peer review. External peer review was solicited on a draft of the Public Comment Summary & Response Document. As background, the peer reviewers were provided the risk assessment section of the Listing Background Document for the proposal and the public comments on that part of the proposal. Three individuals with experience in SAR analyses were asked: (1) Is the SAR presented for 2,4,6-TBP sufficiently rigorous to be scientifically defensible and could the reviewers identify major areas of uncertainty with the analysis? (2) Is it appropriate for the Agency to conclude that 2,4,6-TCP and 2,4,6-TBP are similar and is 2,4,6-TCP an appropriate surrogate for 2,4,6-TBP? (3) Was all of the available information about the mechanism of toxicity for 2,4,6-TBP considered? (4) Is there any genetic toxicity data that could be included in the analysis? and (5) Could any additional information be provided to strengthen the Agency's conclusions?

All three peer reviewers agreed that a SAR analysis was appropriate for this rule. Additionally, the peer reviewers agreed that 2,4,6-TCP is the most appropriate surrogate for 2,4,6-TBP, and that it is appropriate to use the cancer potency factor for 2,4,6-TCP as a default value for 2,4,6-TBP. (One commenter also suggested that the potency factors be adjusted for the differences in molecular weight. This confirmed EPA's analysis. EPA has addressed the substantive technical issues raised by the commenters in a detailed memorandum to the file, which is in the docket.

B. Why the SAR Analysis of 2,4,6-TCP and 2,4,6-TBP Constitutes a Scientific Study That Shows Toxic Effects

1. Why This Is a Scientific Study

Although EPA usually uses controlled animal studies or epidemiological studies of human exposure as the basis for its regulations, 40 CFR 261.11(a)(3) does not preclude the use of other types of scientific studies. Moreover, EPA's interpretation of its own regulations to include SAR analysis as a scientific study is entitled to substantial deference.

SAR analysis is interpreted by EPA to be a scientific study. The scientific principles on which SAR analyses are based were developed from many years of chemical review and analysis and, more recently, toxicity studies on related compounds. For example, the SAR analysis for 2,4,6-BP rests not only on the chemical similarity of 2,4,6-TBP and 2,4,6-TCP, but also on toxicity studies showing structurally similar brominated and chlorinated compounds to be related in terms of whether they are carcinogens. These studies are discussed in more detail in Section III.C.3. of this preamble.

EPA has, in the past, relied on scientific studies in the form of sophisticated statistical analyses that are one step removed from a laboratory study much in the same way SAR analysis is. In addition, EPA has used meta-analyses, a statistical tool for combining the data from multiple studies, in several risk assessments, including the risk assessment for environmental tobacco smoke.[4]

Furthermore, the controlled animal studies performed on 2,4,6-TCP are indisputably scientific studies and these studies, with the aid of SAR analysis, show that 2,4,6-TBP is a potential carcinogen, as discussed below.

2. Does It ''Show'' Toxic Effects?

Section 40 CFR 260.11(a)(3) does not specify that EPA must conduct laboratory studies that directly implicate the precise chemical. In this case, the finding that 2,4,6-TCP is carcinogenic in animal studies, together with the SAR analysis demonstrating the close chemical similarity of 2,4,6-TCP and 2,4,6-TBP, shows that 2,4,6-TBP is expected to be carcinogenic because they provide a sound basis for EPA to infer the toxic effects of 2, 4, 6–TBP from the toxic effects demonstrated for 2,4,6-TCP, as noted below.

It also is important to recognize that all scientific studies that actually measure toxic effects in a laboratory have some level of uncertainty when used as the basis for regulatory action. Uncertainty is caused by:

a. Extrapolation from animal models to humans;

b. Variable responses among animals within a study;

c. Statistical variability of results between different studies (*i.e.*, if the experiment were to be repeated, one would not necessarily observe exactly the same tumor incidences);

d. Extrapolation from high laboratory doses to low actual human exposures; and

e. Extrapolation to humans from studies in animals that live for a fraction of the human life span.

Uncertainty in carcinogen assessment is discussed in detail in EPA's Proposed Guidelines for Carcinogen Risk Assessment, and articles cited therein.[5]

From a scientific perspective it is impossible to ''show'' anything without some uncertainty. Therefore, EPA interprets the language of the regulation as a requirement to ''show'' with a scientifically reasonable level of uncertainty. In this case, the level of uncertainty associated with this particular SAR is reasonable for the two chemicals being compared in this rulemaking because:

- 2,4,6-TBP and 2,4,6-TCP are both tri-halogenated phenols with substitutions at the same positions;
- The physical and chemical properties, such as the octanol-water partition coefficient and the water solubility, of the compounds are similar;
- Available genetic toxicity data show consistent results for 2,4,6-TCP and 2,4,6-TBP; and
- Examples in the literature and in Section C.3 of this preamble (e.g., 1,2-dibromoethane and 1,2-dichloroethane) support the idea that if a chlorinated compound is a carcinogen, the compound formed by substitution of a chlorine with bromine will still be a carcinogen.

Some commenters provided examples of chemical pairs where SAR analysis would be inappropriate, such as benzene/toluene and methanol/ethanol (see Figure 2 and the accompanying text for a further discussion of these chemicals). EPA agrees that for these pairs, a SAR analysis should not be used for regulatory purposes. However, the data support a conclusion that the structural and chemical similarities

[4] USEPA. 1992. Respiratory health effects of passive smoking: Lung cancer and other disorders. ORD, USEPA, Washington DC, 20460. EPA/600/6–90/006F.

[5] Proposed Guidelines for Carcinogen Risk Assessment. **Federal Register** 61(79): 17960–18011, Tuesday, April 23, 1996.

between 2,4,6-TBP and 2,4,6-TCP are much stronger than those in the pairs in Figure 2, and thus the uncertainty for the current rulemaking is much less than the uncertainty/error would be for a SAR analysis for any of the chemical pairs in the counter example. EPA has determined that these data support the regulation of 2,4,6-TBP under RCRA, because they reasonably support a conclusion that 2,4,6-TBP has a level of carcinogenicity comparable to that of 2,4,6-TCP, a known carcinogen.

C. Issues Regarding the Use of Structure-Activity Relationship (SAR) Analysis

1. Use of SARs to Support Listing Constituents in Appendix VIII

All seven commenters addressed the use of structure-activity relationships (QSARs) in this rulemaking. Two commenters stated that SAR analysis cannot be used to support listing a constituent in Appendix VIII, citing the language of 40 CFR 261.11(a)(3), which states that constituents may be listed in Appendix VIII ''only if they have been shown in scientific studies to have toxic, carcinogenic, mutagenic, or teratogenic effects on humans or other life forms.'' The commenters stated that SARs are not equivalent to empirical data, do not represent ''scientific studies'' and do not show that 2,4,6-tribromophenol has toxic effects on life forms. Therefore, the commenters stated that information on structure-activity relationships cannot be used to list constituents in Appendix VIII and, consequently, may not be used to list hazardous wastes under EPA's regulation.

EPA disagrees with the commenters. The commenters interpret ''shown in scientific studies'' to mean directly shown in laboratory studies that pertain to the constituent in question. EPA does not interpret the phrase so narrowly. SAR analysis represents a valid scientific approach for assessing toxicity. As noted above, EPA has concluded that there is sufficient similarity between 2,4,6-TBP and 2,4,6-TCP to justify using a SAR analysis for this rulemaking.

EPA's use of SAR analysis in regulatory programs is not unprecedented. EPA has used SAR analysis for assessing the hazards of chemicals to human health and the environment for 15 years in the New Chemicals Program under section 5 of TSCA. The process of using SAR takes into account the similarity of the surrogate chemicals with regard not only to chemical structure and functional reactive groups, but physical/chemical properties as well (*e.g.*, water solubility and octanol/water partition coefficients). Physical/chemical properties such as water solubility and octanol/water partition coefficients are important because they are related to how a compound is absorbed and distributed in the body. In particular, the octanol/water partition coefficient is a measure of a compound's relative solubility in octanol and water, and is related to how well a compound dissolves in fat versus the blood. The octanol/water partition coefficient describes a compound's hydrophobicity, which was mentioned in Section III.A.2. of this preamble. In cases where direct chemical-specific toxicity data are lacking and where appropriate analogue chemicals exist to allow valid comparisons to be drawn, SAR analysis represents a scientifically valid approach for assessing the potential toxicity of a chemical. As discussed in Section III.B. of this preamble, EPA regards SAR as ''scientific studies'' and believes that the SAR analysis conducted for this rulemaking does ''show'' toxic effects of 2,4,6-TBP sufficiently to support its listing in Appendix VIII.

2. Use of SARs Is a Departure From Agency Policy

Two commenters stated that the use of SAR analysis in this rulemaking represents a departure from Agency policy. The commenters added that the use of SARs in making hazardous waste determinations establishes a new criterion for identifying hazardous wastes and the public was not given sufficient opportunity to comment on this new criterion.

The Agency agrees that this listing represents a new element in the Agency's hazardous waste listing determination policy in that this is the first listing to use SAR as a basis for listing a waste stream as hazardous. However, the SAR analysis is consistent with 40 CFR 260.11(a)(3) of EPA's regulations, since EPA's decision to list a constituent in Appendix VIII makes use of a scientific study that shows the toxic effects of that constituent. There has been adequate opportunity to comment on this issue, since the Agency explained in the proposal that it was interpreting 40 CFR 260.11(a)(3) to allow use of structure-activity relationships. Indeed, the bulk of comments on the proposed rule dealt with the highly technical issue of whether SAR could be used to list hazardous wastes. This is a strong indication that commenters understood that they were being given the opportunity to express their views on this matter. EPA takes the position that, depending on the strength of the evidence, SAR-based listings are appropriate to use for the hazardous waste listings program. SAR is an available tool that can solve a problem the Agency faces in the case: Making risk-based regulatory decisions (such as listing determinations) in the absence of Agency-verified or provisional health benchmarks (*e.g.*, reference dose (RfD), reference concentration (RfC), or cancer slope factor (CSF).

As described in further detail in other places in this preamble, the evidence in this case rests on four points: 2,4,6-TCP is a close structural analogue to 2,4,6-TBP; the physical and chemical properties of the compounds are similar; the available genetic toxicity data also show consistent results for 2,4,6-TCP and 2,4,6-TBP; and examples in the literature support the idea that if a chlorinated compound is a carcinogen, the compound formed by substitution of a chlorine with bromine will still be a carcinogen.

SAR is one approach that was designed specifically to address this problem. The use of SAR is particularly compelling in the organobromines listing determination. The constituent 2,4,6-TBP has an extremely close structural analogue (2,4,6-TCP) for which direct toxicity data are available. Because of this, the Agency specifically solicited comment on the policy implications of the use of QSAR/SAR in the organobromines proposal.

The Agency has concluded that SAR currently is a viable approach for making a human health impact determination for the waste stream of concern. The strong technical argument involved, that the principal toxicant of concern, 2,4,6-TBP, is a highly similar analogue of 2,4,6-TCP, makes this listing the appropriate place to use SAR. It is important to note, however, that the determination to list 2,4,6-TBP-containing residuals as hazardous wastes is *not* based solely on the SAR analysis for 2,4,6-TBP. Other factors were included in the risk assessment, including the concentrations of 2,4,6-TBP in the waste, the volumes of waste generated, the mobility of the 2,4,6-TBP in leachate tests of the waste, plausible mismanagement scenarios, and potential receptors.

3. Validity of SAR Analysis in Supporting the Hazardous Waste Listing Determination for 2,4,6-TBP Production Wastes

All seven commenters addressed the general validity of the SAR analysis employed in this rulemaking. One commenter supported the Agency's use

of SARs and the inference that 2,4,6-TBP and 2,4,6-TCP are similar, but the other six commenters raised scientific and procedural concerns related to the use of SAR analysis to support a listing determination. Some of the comments were specific to the SAR analysis in the proposed rule. Specifically, two commenters objected to the analysis being based on electronic effects alone, instead of also considering hydrophobic and steric effects. Other comments addressed the general aspects of the analysis, *i.e.*, the appropriateness of 2,4,6-TCP as a surrogate for 2,4,6-TBP. In light of the quantitative uncertainties raised and other issues, the Agency believes that a SAR analysis does show that 2,4,6-TCP is an appropriate surrogate for 2,4,6-TBP, based on their high degree of structural similarity, *i.e.*, both are tri-substituted phenols with the closely-related halogens chlorine (2,4,6-TCP) or bromine (2,4,6-TBP) located at the 2-, 4-, 6-positions (see Section A1. for a more detailed discussion of the structural similarity between 2,4,6-TBP and 2,4,6-TCP).

As mentioned in Section III.A.3., the Agency is adopting one quantitative manipulation suggested by both a commenter and a peer reviewer. They noted that the differing molecular weights of the two compounds should be taken into account in the slope factor projection; this change has been adopted. When making this adjustment, however, the Agency found that the change would not exert a significant change in the risk results (*i.e.*, a 40% decrease in risk). Even if EPA made the change, the risk would still warrant listing.

As part of the support for SAR analysis, this discussion summarizes the available data related to the carcinogenic activity of 2,4,6-TCP and the genetic toxicity of 2,4,6-TCP and 2,4,6-TBP. 2,4,6-TCP carcinogenicity was tested in mice and rats. Based on the results of this study, 2,4,6-TCP is classified as a probable human carcinogen (B2), and the CSF for 2,4,6-TCP was calculated based on leukemia in male rats. No long-term animal studies that could detect cancer have been conducted with 2,4,6-TBP.

Results from short-term genetic toxicity studies, such as those described in the following paragraphs, provide information on whether the compound of interest interacts with DNA and causes mutations or other DNA damage, such as chromosome aberrations. These data are used to predict whether a compound is likely to be carcinogenic, and to help interpret results of cancer assays in animals. A variety of different genetic toxicity tests commonly are used. Because no single test can detect all types of damage, a battery of tests is necessary to assess completely a compound's potential to cause DNA damage. Findings in mammalian cells generally are considered more relevant than findings in bacterial cells. For 2,4,6-TCP, genetic toxicity studies appear to indicate that 2,4,6-TCP is positive in mammalian cell gene mutation assays, and negative in a bacterial (*Salmonella typhimurium*) mutation assay and in a mammalian cell chromosome aberration assay. Genetic toxicity data for 2,4,6-TBP are limited to a negative result in a *S. typhimurium* gene mutation assay.[6] Although this single negative result might appear to predict that 2,4,6-TBP is not carcinogenic, 2,4,6-TCP also produced negative results in this bacterial assay,[7] but is carcinogenic in rats. Therefore, the *S. typhimurium* gene mutation assay does not appear to accurately predict whether this class of compounds is carcinogenic.

One commenter believed that the analysis should have compared 2,4,6-TBP to an entire class of compounds rather than to a single chemical compound. The Agency believes that comparison with a single compound is acceptable for SAR analysis in cases such as this, when the structural similarities between the two compounds are so strong. Comparisons across multiple chemicals are needed for larger structural differences. This commenter also stated that the QSAR/SAR analysis disregarded documented differences between the carcinogenicity of chlorinated and brominated analogues. For example, the commenter noted differences in the species and tissue (*e.g.*, kidney or liver) in which tumors develop following administration of trihalomethanes ranging from chloroform ($CHCl_3$) to bromoform ($CHBr_3$). The compounds in the series represent a series of replacements of chlorine atoms by bromine atoms (i.e., 3 chlorines; 2 chlorines and 1 bromine; etc.).

Because the trihalomethanes are such small molecules, the three halogen atoms constitute a relatively large percentage of the total volume of the molecule. Thus, substituting bromine for chlorine would be expected to have a larger effect than the same substitution in the large 2,4,6-TCP/2,4,6-TBP molecules. This difference in size may explain the observed differences in target organs among the trihalomethanes. An important point to note is that all four trihalomethanes are carcinogens, regardless of the target tissue.

Regarding the issue of the appropriateness of SAR analyses based on analogues in which a chlorine is substituted by a bromine, the Agency notes that there are additional well-studied examples in which substitution of a chlorine by a bromine has resulted in retention of carcinogenic activity. For example, both 1,2-dichloroethane (ethylene dichloride)[8] and 1,2-dibromoethane (ethylene dibromide)[9] are multi-target carcinogens, causing tumors in the lung, the forestomach, the circulatory system, and the mammary gland. The Agency recognizes that examples of bromine/chlorine substitutions in which both the chlorinated analogue and the brominated analogue are carcinogens are not sufficient to show that such substitutions in general will not change a carcinogen into a noncarcinogen. However, based on these examples and in light of the carcinogenicity of 2,4,6-TCP in animal testing, it is plausible to conclude that 2,4,6-TBP is a potential carcinogen. (For a more detailed discussion of many of the scientific bases underlying SAR and the rationale behind the selection of cancer as the endpoint for human exposure, see the Response to Public Comment Document for this rulemaking, in the public docket.)

One commenter expressed concerns that the use of SAR analyses to make predictions of the expected types of toxicity produced by a compound can result in erroneous predictions. The commenter illustrated the point by providing several cases (e.g., benzene/toluene, methanol/ethanol, methyl n-butyl ketone/methyl isobutyl ketone (MnBK/MIBK)) in which predictive errors would occur based on SAR analysis performed with structurally similar chemicals. The Agency recognizes the limitations to SAR

[6] Zieger, E., B. Anderson, S. Halworth, T. Lawlor, K. Mortelmans, and W. Speck. 1987. Salmonella mutagenicity tests. III. Results from the testing of 225 chemicals. Environ Mutagen 9 (Suppl. 9) 1–109. As cited in Docket #F–94–OBLP–S0013.

[7] Haworth, S., T. Lawlor, K. Mortelmans, W. Speck, and E. Zeiger. 1983. Salmonella mutagenicity test result for 250 chemicals. Environ Mutagen Suppl 1:3–142.

Rasanen, L., M. L. Hattula, and A. U. Arstila. 1977. The mutagenicity of MCPA and its soil metabolities, chlorinated phenols, catechols and some widley used slimicides in Finland. Bull Environ Contam Toxicol 18:565–571.

[8] NCI. 1978. Bioassay of 1,2-dichloroethane for possible carcinogenicity. National Cancer Institute, Bethesda Maryland. NCI–CG–TR No. 66; DHEW/PUB/NIH–78–1361.

[9] NTP. 1982. Carcinogenesis bioassay of 1,2-dibromoethane for possible carcinogenicity F344 rats and $B6C3F_1$ mice. U.S. National Toxicology Program, Research Triangle Park, North Carolina. NTP–TR No. 210; NIH/PUB 87–1766.

analysis and agrees that the choice of surrogate needs to carefully take into account the degree of similarity between the chemical of interest (the ''candidate'') and the surrogate (from which predictions are made). The structural and chemical similarities between 2,4,6-TCP and 2,4,6-TBP are greater than those in the pairs cited by the commenter. Both 2,4,6-TBP and 2,4,6-TCP consist of a phenol molecule with halogen substitutions at the 2-, 4-, and 6-positions, and differ only in the identity of the halogen. As shown in Figure 2, the differences in the pairs listed by the commenter are much larger. The pairs cited by the commenter differ in having/not having a substituent group (benzene/toluene), or are positional isomers (1-/2-naphthylamine), homologues (methanol/ethanol, n-hexane/n-heptane), or structural isomers (MnBK/MIBK). These differences in the cited pairs have greater potential to change the chemical properties of the molecule. For example, the addition of the methyl group in the benzene/toluene pair changes the way that the molecule is converted to other molecules and removed from the body. Toluene is converted (metabolized) to compounds with low toxicity (*e.g.*, benzoic acid) that are dissolved easily in water and removed from the body. Benzene's structure does not allow the use of this pathway for removing the chemical. Instead, benzene is converted and removed via a pathway that creates cancer-producing compounds.[10]

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[10] Andrews, L.S. and R. Snyder. 1991. Toxic effects of solvents and vapors. In: Amdur, M.O., J. Doull, and C.D. Klaassen. Casarett and Doull's Toxicology: The Basic Science of Poisons, 4th ed. New York, NY: Pergamon Press. pp. 681–722.

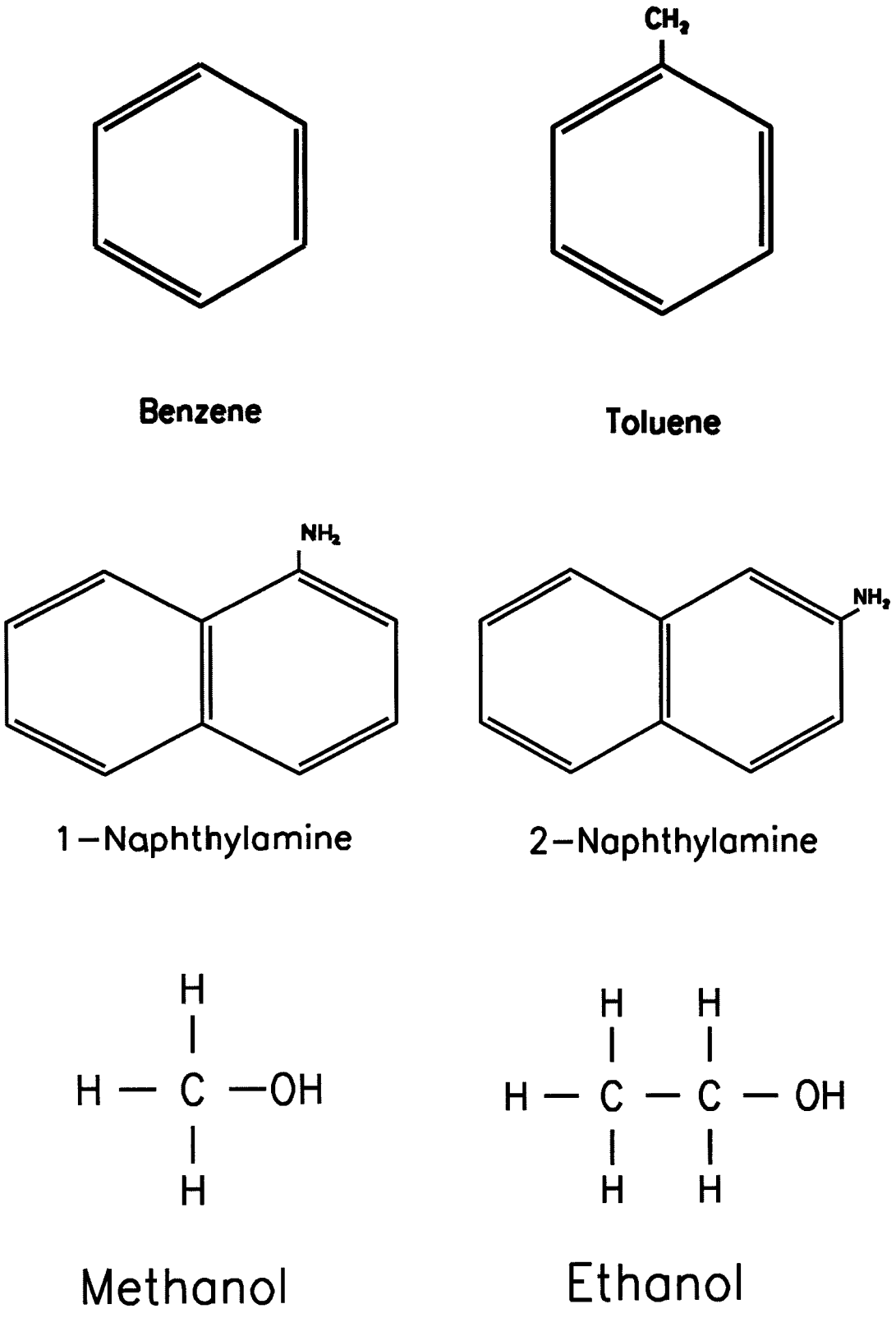

Figure 2. SAR pairs discussed by commenter

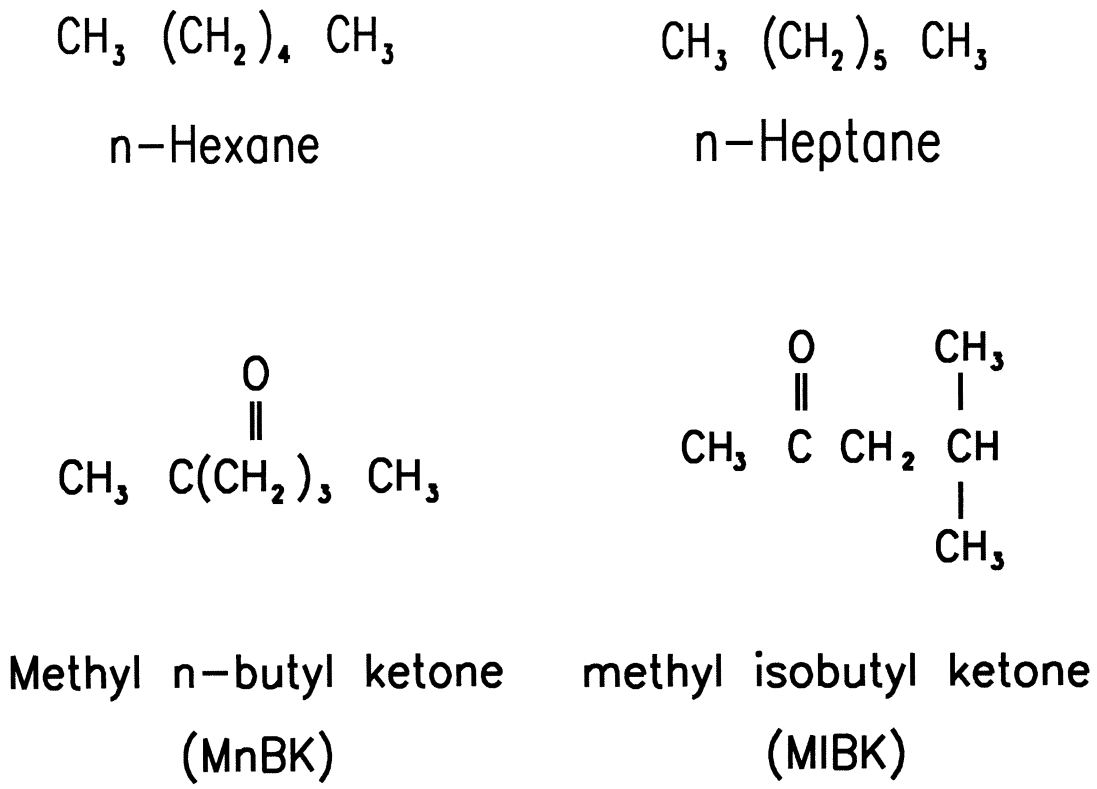

Figure 2 (con't). SAR pairs discussed by commenter

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Thus, the structural similarities between 2,4,6-TCP and 2,4,6-TBP are greater than those between pairs of chemicals cited by a commenter in a counter-example. As described in the Listing Background Document and the Response to Public Comment Document, the physical properties of the compounds are also similar, with similar octanol/water partition coefficients and solubility in the same solvents. The available genetic toxicity data show consistent results for 2,4,6-TCP and 2,4,6-TBP, although data for the latter compound are quite limited. Finally, examples in the literature support the idea that if a chlorinated compound is a carcinogen, the compound formed by substitution of a chlorine with bromine still will be a carcinogen. Based on this line of reasoning, the Agency believes that a SAR is appropriate in this case, and the very strong chemical similarities between 2,4,6-TCP and 2,4,6-TBP justify the use of the cancer slope factor for 2,4,6-TCP as a default value for 2,4,6-TBP.

Two commenters expressed reservations regarding the use of QSAR/SAR analysis to support listing determinations, but outlined conditions under which the use of SARs may be acceptable. Both of these commenters recommended that the Agency require some level of peer review of SAR results as a standard procedure, including both internal reviews by Agency senior scientists and external peer reviews. EPA is cognizant of the novelty of the use of SAR analysis for this hazardous waste determination and, therefore, has subjected its analysis to both internal Agency review and external peer review, as described in Section III.A.4.

4. Types of Data Appropriate to Support or Refute SAR Predictions

Five commenters responded to the Agency's request for information on the types of data appropriate in supporting or refuting SAR results. Three commenters stated that actual data should be used to confirm or refute SAR predictions and that empirical evidence should take precedence over modeling predictions. One commenter added that the Agency should simplify delisting procedures for sole-constituent wastes that were listed based on SAR analysis such that if actual data become available that refute the SAR conclusions, the Agency could delist the waste. EPA appreciates the commenters' response to its request for information on the types of data appropriate for supporting or refuting SAR analyses. If toxicity data for 2,4,6-TBP become available at some point in the future and these data refute the results of the Agency's SAR analysis for this rulemaking, EPA could take appropriate action at that time to revisit the listing investigation for 2,4,6-TBP production wastes.

D. Addition of Constituent to Appendix VIII

Two commenters stated that EPA cannot simultaneously propose to list a constituent in Appendix VIII and propose to list a waste as hazardous because it contains that constituent. The commenters contended that this approach is illegal and violates the procedures established in 40 CFR 261.11(a)(3), which require the Agency to list a constituent in Appendix VIII based on the results of ''scientific studies'' demonstrating that the substance has toxic or other adverse effects. Following the listing of a constituent in Appendix VIII, the Agency may use that constituent to justify a hazardous waste listing. Therefore, they reasoned that EPA may not proceed with listing the 2,4,6-tribromophenol production wastes because the hazardous constituent (2,4,6-tribromophenol) was proposed for inclusion in Appendix VIII simultaneously with the proposed hazardous waste listing.

EPA disagrees and finds no basis in the regulation to support this contention. Furthermore, this practice is long-standing. Other simultaneous listings are found at 59 FR 24530 (May 11, 1994), 59 FR 458 (Jan. 4, 1994), 54 FR 50968 (Dec. 11, 1989), and 51 FR 6537 (Feb. 25, 1986).

The plain language of 40 CFR 261.11(a)(3) provides that a waste shall be listed if it contains an Appendix VIII constituent *and* the Administrator concludes it poses a hazard after considering the eleven factors cited in the regulation. Neither the August 1986 preamble text to which the commenter makes reference nor the regulatory language of 40 CFR 261.11(a)(3) suggest that a sequential determination is required. In the August 1986 rule, the Agency stated that the significance of placing a constituent in Appendix VIII includes the fact that the constituent then can be cited as a basis for listing toxic wastes (51 FR 28296, August 6, 1986). Nothing in this statement suggests that an Appendix VIII listing must be proposed for public comment and finalized separately from an associated hazardous waste listing. The public was given ample opportunity to comment on all relevant issues concerning both the hazardous waste listing and the Appendix VIII listing on which it is based.

Not only is there nothing in the regulation that precludes EPA from considering Appendix VIII and hazardous waste listings in the same proposal but, in many instances, to do otherwise could lead to absurd and futile results. In general, because listing a substance in Appendix VIII and listing a substance or a waste stream as a hazardous waste under 40 CFR 261.11(a)(3) involve consideration of a common factor, toxicity, simultaneous listing is appropriate.

E. Plausible Mismanagement Scenario and Other Issues in the Listing Determination for Waste Solids From the Production of 2,4,6-Tribromophenol.

1. Comments on the Proposed Rule

In comments on the proposed rule published May 11, 1994 (59 FR 24530), one commenter disputed the plausible mismanagement scenario used by the Agency to support the proposed listing of 2,4,6-TBP production wastes (disposal in unlined Subtitle D landfills), and noted that the proposed rule contained errors in the description of 2,4,6-TBP waste quantities and management practices. The commenter stated that it was the sole generator of TBP wastes covered by the proposed listing and that all of its solid streams containing TBP are shipped to a Subtitle C disposal facility. The generator subsequently submitted information showing that it disposed of these wastes in Subtitle C facilities for many years. (See letter to Anthony Carrell, EPA, from Stephen M. Wallace, Great Lakes Chemical Corporation, dated April 23, 1997). The generator reported sending the waste to various Subtitle C landfills since 1981 (1981–1990, Chemical Waste Management, Emelle, AL; 1991–1994, Chemical Waste Management, Carliss, LA; 1995–1996, American Ecology, Winona, TX; 1997, Philips Environmental, Avalon, TX). The commenter noted that the only waste from 2,4,6-TBP production disposed in a Subtitle D landfill consists of 10 tons of empty soda ash bags that do not contain any TBP. The commenter stated that the other combined waste solids from TBP production (floor sweepings, off-specification product and spent carbon from filters) total approximately 34 tons annually. The commenter argued that EPA's selection of an unlined Subtitle D landfill as a plausible mismanagement scenario is erroneous and, therefore, EPA's risk analysis significantly overstates the risk.

After considering these comments, EPA issued the September 3, 1997, letter, noted above, which evaluated additional information to support the

Agency's listing decision. The following paragraphs in this section describe the substance of the September 3 letter, including the new risk analysis and the new plausible mismanagement scenario of voluntary disposal in a Subtitle C landfill for this waste stream. Responses to the additional comments received on the September 3 letter are discussed in the remaining sections of this Unit.

In the September 3 letter, EPA stated that based on the information provided by the commenter, the Agency agrees that the quantity of waste solids from 2,4,6-TBP production that contain 2,4,6-TBP levels of concern should be approximately 34 tons, and should not include the 10 tons of empty bags. The Agency also acknowledges that the generator apparently has a long record of disposing the wastes with high 2,4,6-TBP content in a lined Subtitle C hazardous waste landfill. However, EPA continues to believe that the waste solids from production of 2,4,6-TBP should be listed as hazardous, even if the waste continues to be sent to Subtitle C landfills. EPA considered several critical factors in deciding to list this waste stream.

First, Congress clearly expressed its intent that the Agency is not to place excessive reliance on confidence in landfill design and liners for problematic wastes. In the Hazardous and Solid Waste Amendments (HSWA) of 1984, Congress explicitly added as one of the ''findings'' to RCRA that ''land disposal facilities are not capable of assuring long-term containment of certain hazardous wastes'' and that ''reliance on land disposal should be minimized or eliminated.'' RCRA section 1002(b)(7), 42 U.S.C. 6902(b)(7). As a result of this finding, and others, Congress added the land disposal restriction (LDR) program to RCRA, which significantly restricts land disposal of hazardous wastes. Further, it was made very clear in the Conference Report for HSWA that the new findings in RCRA were intended to House Report No. 98–1133, 98th Cong., 2d Sess. at 80–81 (Oct. 3, 1984). EPA views the statute and legislative history as sufficient justification to evaluate in a listing determination all risks of land disposal, including in appropriate cases risks from voluntary disposal in permitted Subtitle C facilities. This is particularly true where risks presented by a waste might be high if releases occur, and treatment of the waste under Subtitle C would significantly reduce these risks.

Accordingly, EPA added to the rulemaking record additional data on the effects of disposal in Subtitle C landfills and reevaluated its analysis of the factors contained in 40 CFR 261.11(a)(3) that are relevant to listing the 2,4,6-tribromophenol waste solids. The following analysis describes the September 3 letter's evaluation of, in particular, the inherent toxicity of the hazard constituent in the waste (§ 261.11(a)(3)(i)), concentration of the hazardous constituent in the waste (§ 261.11(a)(3)(ii)), the potential of the hazardous constituent to migrate into the environment (§ 261.11(a)(iii)), the relevance of the quantities of the waste generated (§ 261.11(a)(3)(viii)) when compared with these other factors, and how these factors are weighed when considered with the plausible management scenario of voluntary disposal of the waste in a Subtitle C landfill (§ 261.11(a)(3)(vii)). EPA concluded, after balancing these factors in accordance with the Agency's listing determination policy described in its December 22, 1994, proposed rule listing certain wastes generated during the production of dyes and pigments (59 FR 66073–78) that the 2,4,6-tribromophenol waste solids are capable of posing a substantial present or potential hazard to human health or the environment.

Review of the scientific data, particularly sample analysis and Structure Activity Relationships (SAR), shows that evaluation of disposal in subtitle C facilities is especially appropriate for untreated 2,4,6-tribromophenol waste solids. The waste contains a highly toxic chemical, 2,4,6-TBP, which may present significant carcinogenic risk even at low concentrations. This chemical was also found to be present in the wastes of concern at extremely high concentrations. EPA's analytical data show levels up to 40% (equivalent to 400,000 ppm) in the waste solids. Thus, while the volume of wastes generated (approximately 34 tons annually) is not very large, the extremely high levels of 2,4,6-TBP render this waste highly toxic. As a general matter, when settings its own priorities, EPA would not ordinarily consider it a priority to make a listing determination on a small-volume waste from a single generator. However, EPA has a set of statutory obligations to make a prescribed set of listing determinations and a determination on this particular waste stream is an obligation under the consent decree governing EPA's completion of those obligations.

Furthermore, EPA's data show that 2,4,6-TBP is relatively mobile and will leach out of the waste at high concentrations. In the proposal, EPA used the TCLP method to estimate the potential concentration of waste constituents that could be in leachate generated from disposal of the waste in a landfill, and found up to 760 mg/L of 2,4,6-TBP in the TCLP leachate. This level is 76,000 times the health-based criteria of 0.01 mg/L that corresponds to the 10^{-6} cancer risk level for ingestion. The proposed rule estimated risks of 7×10^{-4} from migration to groundwater, if this waste were placed in an unlined landfill (see the proposed rule, 59 FR 24538). Although the generator has sent this waste to a lined Subtitle C facility in the past, EPA believes that the risks estimated from migration from an unlined landfill provide an indication of the potential risks that could occur if 2,4,6-TBP is released from the lined landfill due to failure of the unit to contain the waste leachate. The Agency agrees that the liner/leachate collection system in a Subtitle C unit would serve to contain the waste, and would substantially lessen the risk even in the case of liner failure. However, EPA believes that the purpose of the RCRA hazardous waste treatment requirements (as expressed by Congress) is to reduce the uncertainty inherent in engineered containment approaches.

In past rulemakings EPA has assumed that waste containment systems will tend to degrade with time. In the proposal for the Land Disposal Restrictions (January 14, 1986, 51 FR 1641) EPA noted that in the long-term (beyond the post-closure period) the efficiency of cover and liner systems will degrade. Eventually synthetic liners will degrade and leachate collection systems will cease operation. In the proposed Liner and Leak Detection Rule (May 29, 1987; 52 FR 20218) EPA also stated that no liner can be expected to remain impervious forever. As a result of interactions with waste, environmental effects, installation problems, and operating practices, liners eventually may degrade, tear, or crack and allow liquids to migrate out of the unit. In evaluating the benefits of this rule (see 52 FR 20270), EPA noted that a properly installed double liner and leachate collection system, together with a final cover placed at closure, substantially reduces release during the operating life and post-closure care period. However, these technologies may not effectively reduce the longer-term risk for landfills, especially for persistent and mobile compounds, because the containment system may only delay leachate release from the landfill until after the post-closure period, when the cap and leachate collection system begin to fail.

EPA has attempted to account for the effect of Subtitle C containment (covers and liners) in the Regulatory Impact Analyses (RIA) completed for other

recent rulemakings. (See the RIA for the Land Disposal Restrictions—Phase II rule, pages 5–10, in the docket for the final Phase II rule, published September 19, 1994, 59 FR 47980; and the RIA for the final rule on Corrective Action Management Units, Appendix C, in the docket for the rule published February 16, 1993, 58 FR 8658.) These documents are incorporated by reference into the docket for this rule. As EPA noted in the source document used in these RIAs (Technical Guidance Document, ''Indexing of Long-Term Effectiveness of Waste Containment Systems for a Regulatory Impact Analysis,'' Office of Solid Waste, November 1992; this document has been placed in the public docket for today's rule), the structural integrity of waste containment systems degrades over time due to stresses on system components. EPA noted that failures of multi-component liner systems have been reported in the literature, and that some liners fail unpredictably with time. While acknowledging the uncertainties in predicting long-term effectiveness, EPA estimated that the effectiveness of Subtitle C composite liner systems may decrease significantly with time.

Although it is difficult to quantify the impact of the long-term degradation of liner systems, the high level of risk estimated from disposal of this waste in an unlined landfill (7×10^{-4}) means that even a modest reduction in long-term liner effectiveness would present risks of concern. For example, if the long-term effectiveness of the landfill liner and containment system were on the order of 95%, which would reduce the potential risks from releases to groundwater by 20-fold, the residual risk would exceed 3×10^{-5}. In fact, the containment systems would have to be in excess of 98% effective for the estimated risk to drop below $1 \times 10-5$. The risks for this particular untreated waste, therefore, would remain above EPA's presumptive level of concern for listing ($>10-5$), whether they were sent to an unlined landfill or a Subtitle C landfill (for a discussion in risk levels used in listing determination see December 22, 1994, 59 FR 66075).

The Agency recognizes that a recent court decision (*Dithiocarbamate Task Force* v. *EPA*, 98 F.3d 1394 (D.C. Cir. 1996), raised questions as to what constitutes ''plausible'' mismanagement under the listing regulations (§ 261.11(a)(3)). However, EPA has not yet fully evaluated the recent court decision to determine how to weigh possible future changes in management practices and is not relying on projecting new management practices in this listing decision. For the purposes of the analysis in the September 3 letter, EPA assumed that the current waste management practices continue (i.e., disposal of the untreated waste in Subtitle C landfills).

To respond to the commenter's concern related to waste solids that do not contain 2,4,6-TBP, EPA is revising the regulatory language to clarify that the wastes covered in the listing are those of concern, i.e., those containing high levels of 2,4,6-TBP. This avoids capturing the empty soda ash bags, and possibly other waste solids downstream from the production unit that EPA did not intend to cover in the listing. Therefore, the final listing reads as follows:

K140—Floor sweepings, off-specification product, and spent filter media from the production of 2,4,6-tribromophenol.

Another commenter stated that the high concentrations of TBP in the floor sweepings sampled by EPA provide singular justification for the listing of these wastes. EPA agrees with the commenter that the high concentration of the toxic chemical, 2,4,6-TBP, is a major concern. However, EPA did not consider this factor in isolation, but also considered the mobility of the waste and its inherent toxicity as equally important factors, and balanced all of these factors in the risk assessment. As noted above, the risk assessment predicts TBP leaching from unlined and lined landfills to receptor drinking-water wells at concentrations well above health-based levels of concern.

2. Comments on the September 3, 1997, Notice Letter

As noted previously in today's rule, EPA provided an opportunity for further comment on the Agency's reevaluation, described above, of the rationale for the listing determination for the waste solids from the production of 2,4,6-TBP. EPA sent letters of notice to three parties who commented on the proposed rule and could be expected to have an interest in the final decision and the revised rationale for listing. EPA received the comments noted below from the three entities that received the notice letter; one supported the decision to list 2,4,6-TBP production wastes, and two opposed the listing. EPA's response to these new comments are summarized below and are described in more detail in the docket. (See ''Supplementary Response To Public Comment'', April 1998)

a. Procedural Comments. One commenter challenged EPA's approach of sending notice letters to only three commenters on procedural grounds, and claimed that EPA was soliciting comments through a ''selective notice procedure'' that fails to give the general public opportunity to be heard on several issues. The commenter argued that others should have a chance to comment on the idea that placement of waste in a Subtitle C landfill that is in compliance with appropriate regulations may be ''mismanagement,''because this may have significant ramifications for individuals who did not previously comment and has ''far-reaching effects for those operating and using'' hazardous waste facilities.

Another commenter argued that EPA cannot list wastes based on the theory that Subtitle C disposal constitutes ''mismanagement'' without amending its listing criteria, stating that EPA must first propose and seek comment on the new theory of mismanagement before it can redefine its basic approach to the listing process.

EPA does not agree that notice was inadequate, nor does the Agency agree the listing criteria must be amended. Due to the limited time EPA has for completing this action, the Agency decided that letters providing actual notice to the parties who commented on the proposed rule and could be expected to have a direct interest in the final rule decision was appropriate. Those receiving the letter included the only current generator of the waste, and the industry group and environmental group that commented on the proposed rule. These are the parties EPA decided were arguably affected by the recharacterization of the rationale for listing. EPA is not aware of any other generators of this waste or any other persons who would have a direct interest in this decision. The actual notice given in this case is sufficient.

No reasons offered by the commenters indicate any need to go beyond the actual notice EPA provided. The decision in this case does not have ''palpable effects upon a regulated industry or the public in general.'' Instead, it affects this wastestream, alone, and those that can argue they have an interest in the wastestream. To the extent a similar analysis may be used for other wastestreams EPA may consider listing in the future, the affected parties will have adequate opportunity to comment then. Moreover, today's action does not compromise their legal rights to challenge such EPA listing decisions in the future.

Also, there are no ramifications for individuals who did not previously comment. The fact of the matter is that the revised rationale described in the letter will not have ''far-reaching

effects'' for those operating and using hazardous waste landfills. Rather, this decision is being made on the basis of risk for one specific waste with certain properties and does not reflect any new policy direction towards any other operators or users of hazardous waste landfills. No persons are expected to change their habits, for example, in changing the operations of their landfills, as a result of this decision. No persons who operate their landfills in accordance with Agency regulations will be affected by this decision. In any future circumstances in which EPA chooses to evaluate, as part of a listing decision, the risk basis of voluntarily putting a waste in a Subtitle C landfill ample opportunity for comment will be provided.

Further, the commenter's concern that disposal of untreated waste in a Subtitle C landfill that complies with regulations may be mismanagement is misleading. Disposal of untreated waste in any type of landfill could be considered mismanagement, despite compliance with all applicable landfill design and operation regulations. No one would want highly dangerous materials voluntarily placed in a Subtitle C landfill. Clearly, some untreated wastes could pose a potential hazard of such magnitude that merely voluntarily placing them in a lined landfill would not be sufficient. In this instance, applying the factors in § 261.11(a)(3), EPA has concluded that the disposal of this highly toxic, untreated waste in a Subtitle C landfill is improper management within the meaning of that subsection of the regulations. EPA is not suggesting that the landfills in question have been mismanaged. On the contrary, the voluntary use of Subtitle C landfills by the generator has been laudable. However, for purposes of a listing determination, the overall practice is improper management in that is does not adequately control risks to human health and the environment.

EPA also does not agree that the listing criteria have to be modified in any way to allow the Agency to make the listing determination for the organobromine waste at issue. The regulations (see § 261.11(a)(3)) clearly permit EPA to render a listing decision based on a variety of factors. These factors were weighed when considered with the plausible management scenario of voluntary disposal of the waste in a Subtitle C landfill without previous treatment. After balancing these factors EPA concluded that the 2,4,6-tribromophenol waste solids are capable of posing a substantial present or potential hazard to human health or the environment. It is consistent with the regulations to reason that, if voluntary Subtitle C landfilling (absent treatment) presents a substantial present or potential hazard, the practice constitutes improper management under § 261.11(a)(3)(vii). Therefore, a regulatory change is definitely not needed prior to making this listing determination.

b. Risks Related To Plausible Mismanagement Scenario. One commenter stated that EPA's proposed listing is based on a management scenario that is unsupported and implausible, and further noted that the evaluation of future failure rates of Subtitle C landfill containment systems is not supported by evidence in the docket. The commenter states that the one study relied upon by EPA fails to account for the multi-component nature of liner systems and does not specify how it accounts for these factors, making it impossible to determine the validity of the assigned failure rates. The commenter claimed EPA's sole reliance on this study is arbitrary and capricious. The commenter also stated that EPA did not consider site-specific factors (e.g, liner type, soil type, annual precipitation) to determine if leachate will reach groundwater. The commenter claimed, therefore, that EPA has not made a reasoned determination that the long-term effectiveness evaluation is valid at these specific facilities.

The commenter is wrong for a number of reasons. The effectiveness-time relationships given in the reference used by EPA (*Indexing of Long-Term Effectiveness of Waste Containment Systems for a Regulatory Impact Analysis,* USEPA, November 1992) was based on an examination of the technical literature on the subject, and an evaluation of many technical factors. The document evaluated the effectiveness of various components of the containment system, and identified the likely degradation mechanisms. For example, landfill containment systems may leak due to improper installation, and may be degrade by subsidence, drying/cracking, freeze-thaw cycles, burrowing of animals, leachate incompatibility, and vehicle loads. This analysis considered the composite clay/geomembrane liners and caps required under RCRA Subtitle C regulations. The document also provided data and cited references showing that even configurations like RCRA Subtitle C liners do, in some cases, leak over time. Concerning the leachate collection system, EPA notes that the regulations require operation and maintenance of these collection and leak detection systems for 30 years after closure of the landfill (see 40 CFR 264.117). Over the long-term, therefore, EPA cannot rely on leachate collection systems to prevent the eventual release of leachate of untreated waste from the landfill if the liner system fails.

EPA agrees that the degradation of a containment system depends to some extent on the systems design and other site-specific factors. However, the commenter provided no specific data indicating what site-specific factors would prevent release of constituents from the wastes disposed, or what the long-term containment efficiencies might exist for the landfills at the sites in question. Therefore, EPA has no reason to alter its analysis on this basis. Furthermore, EPA does not believe that such a site-specific analysis is appropriate in this case, because the generator may use many different landfills for disposal. In fact, the history of the generator's disposal practices (See letter from Great Lakes Chemical Corporation to EPA dated April 23, 1997) shows that the generator changed disposal sites quite often (e.g., the generator sent the waste to three different landfills between 1994 and 1997).

One commenter stated that EPA has turned this inquiry from determining whether dangerous ''mismanagement'' is plausible into an inquiry into whether it can be ruled out completely, and cites EPA's admission that there is at least a 95% chance that C landfills will not leak. The commenter claims EPA argues that ''nothing lasts forever,'' and therefore Subtitle C disposal can be mismanagement. The commenter argues that this type of logic was unacceptable in the *Dithiocarbamate* case. The commenter states that EPA effectively writes the requirement of a ''plausible mismanagement scenario'' out of the listing rule, and that recent court decisions do not allow EPA to evaluate such a factor so as to drain it of all content.

As a preliminary matter, EPA points out that this listing is wholly consistent with the *Dithiocarbamate Task Force* case. The Agency has found that the common practice of the only generator of the waste over more than 15 years is the plausible management scenario. The assessment of all relevant factors under § 261.11(a)(3) led the Agency to conclude that voluntary Subtitle C landfill disposal is improper management.

Furthermore, the Agency has not turned this into an inquiry about whether ''mismanagement'' can be ruled out completely. Rather, the Agency has evaluated this particular waste under the conditions of plausible management and reached a conclusion that there is

a substantial present or potential risk. The commenter is attempting to turn the Agency's risk analysis into a narrow inquiry into plausible mismanagement. This is simply incorrect.

With respect to the EPA's analysis of risk, the Agency did not state that there is a 95% chance that C landfills will not leak. Rather, EPA was indicating that even if the containment system was 95% effective, the potential risks from the waste in question are so high that it would still present a risk at levels of concern. Even if a Subtitle C landfill was 98% effective in reducing risk relative to risk in an unlined landfill (*e.g.*, the Subtitle C landfill's effectiveness decreased 2% from a combination of cap failure and abandonment of active landfill management), the estimated risk would still exceed $1 \times 10-5$. The actual long-term efficiency is extremely difficult to estimate, given the highly uncertain long-term integrity of liners/leachate collection systems and landfill caps. The document cited by EPA that attempts to evaluate the effectiveness of liner systems estimated it would degrade to an efficiency well below 95% over the long term (*e.g.*, one hundred years). EPA is not attempting to absolutely rule out certain management scenarios, but rather to account for the likely degradation of a Subtitle C containment system over the long-term. Certainly the available data (cited in the document used by EPA) clearly show that the materials that make up liners and caps are expected to degrade over time. Therefore, given this fact, in conjunction with the available estimates of long-term effectiveness, EPA believes that the highly toxic waste in question may present a significant risk when placed in any landfill, even a Subtitle C unit.

One commenter stated that EPA's legislative references do not support the idea that disposal in Subtitle C landfills constitutes mismanagement, but rather relate to historic problems caused by unregulated disposal, and expressed support for minimizing the quantities and toxicity of wastes that must be disposed. The commenter states Congress did not require all wastes to be treated before land disposal, but only wastes that are hazardous, and notes that the fact that treatment might reduce the hazardousness of a waste is not a relevant factor in EPA's listing criteria.

EPA disagrees with the claim that Congress was concerned only with unregulated land disposal. The statute itself clearly states Congressional intent: ''certain classes of land disposal facilities are not capable of assuring long-term containment of certain hazardous wastes * * * and land disposal, particularly landfill and surface impoundment, should be the least favored method for managing hazardous wastes.'' (See RCRA, section 1002(b)(7)). EPA agrees that Congress did not require all wastes to be treated prior to land disposal. However, in this case EPA believes the waste in question presents a substantial hazard when land filled, even in a Subtitle C landfill, in the form in which it is generated (i.e., untreated). Therefore, EPA believes the waste is, in fact, hazardous and should be subject to full regulation under Subtitle C, including the land disposal restrictions.

One commenter stated that, while EPA is not relying on projecting new management practices in this listing decision, the *Dithiocarbamates* decision is still controlling. The commenter noted that when the court struck down the K160 listing, it did not remand it to allow EPA to reevaluate whether disposal in a Subtitle C landfill constitutes ''plausible mismanagement,'' as EPA is attempting to do here. The commenter went on to say that, in striking down 24 other waste listing (U-listings) in the *Dithiocarbamate* decision, the court refused to accept as examples of mismanagement various past or future accidents, and stated that EPA assertions that ''accidents will happen'' does not constitute ''plausible mismanagement.'' The commenter claimed this analysis is equally applicable to EPA's assumption that all landfills will leak eventually, and the fact that some unquantified uncertainty exists regarding long-term risks from Subtitle C disposal does not mean that such disposal is mismanagement. The commenter argued that the only change listing the waste would cause would be to require compliance with land disposal treatment standards and it is difficult to see how a listing would substantially reduce risks. The commenter stated that EPA did not address the question of how much risk reduction would result from treatment. The commenter also noted that the fact that treatment might reduce the hazardousness of a waste is not a relevant factor under § 261.11(a)(3) in deciding whether to list a waste as hazardous.

The commenter's reference to ''the *Dithiocarbamate* case'' is not relevant in this context. In the *Dithiocarbamate* case, the court did not address the issue of Subtitle C management in any substantive way. The court stated that it was vacating the listing of K160 ''[b]ecause EPA failed to identify a plausible mismanagement scenario * * *'' (98 F.3d at 1404) and did not reach the issue of whether voluntary disposal in a Subtitle C landfill (absent treatment) would present a substantial risk. The decision in no way limits the Agency from considering potential risks from Subtitle C management. EPA had not raised the issue in rulemaking because the Agency had determined that the plausible management scenario was an unlined landfill. The Agency did not conduct a risk assessment on the Subtitle C landfill because it did not believe it had to.

The reference to consideration of the U wastes in the *Dithiocarbamate* case is also irrelevant in this context. The commenter is confusing EPA's acknowledgment of the uncertainty in quantitatively estimating the long-term efficiency of Subtitle C containment systems as being equivalent to assertions that ''accidents happen,'' referenced by the *Dithiocarbamate* case. As noted in response to other comments in this proceeding, EPA's evaluation attempted to account for the likely degradation of a Subtitle C containment system over the long-term. Therefore, EPA continues to believe that it is logical and appropriate to assume that the containment efficiency of landfills will degrade sufficiently so that, for this highly toxic waste, disposal of the untreated material in a Subtitle C landfill may present a substantial present and potential hazard.

As noted in the commenter's own statements, unlike in the *Dithiocarbamate* case, in which the court did not see how U-listings would avert accidents, a listing of the 2,4,6-TBP waste solids would, in fact, prevent the placement of untreated wastes in the landfill. Further, the treatment standards for this newly listed waste (see the land disposal restrictions section of today's rule) require levels of 2,4,6-TBP for nonwastewaters to be no greater than 7.4 mg/kg. This level equates to a reduction of up to a 50,000-fold reduction in the level of 2,4,6-TBP in the waste. Such a reduction in 2,4,6-TBP levels will likely result in significant risk reduction—a clear benefit of the listing. Furthermore, the § 261.11(a)(3) criteria, as noted by the commenter, does not require the Agency to consider risk reduction. Section 261.11 is promulgated under the authority of section 3001 of RCRA, which requires EPA to identify criteria for listing. Once listed, the wastes would become subject to the management requirements of Subtitle C. The regulations for management requirements are promulgated under other sections of RCRA, like sections 3002 (generator standards), 3003 (transportation standards), 3004

(standards for treatment, storage and disposal facilities), and 3005 (permits for treatment, storage or disposal). These are the sections under which EPA would consider risk reduction measures that would be protective of human health or the environment.

While one commenter supported EPA's decision to list the 2,4,6-TBP solids and filter cartridges, the commenter stated that EPA assumes in its reevaluation that the wastes at issue will always be landfilled in a Subtitle C facility, even though the regulated community is under no legal or technical mandate to do so in the absence of a hazardous waste listing. The commenter claimed that EPA's proposed listing rationale based on Subtitle C landfilling substantially understates the risks, and argues that EPA should not assume past disposal practices represent the only plausible mismanagement practice for at least four reasons: (1) There is no technical or other bar to additional companies producing 2,4,6-TBP and generating the wastes at issue, either at existing organobromine chemical production facilities or at new locations. Therefore identification of plausible mismanagement scenarios should involve more than an analysis of one company's historic disposal practices; (2) the wastes at issue (floor sweepings and filter cartridges) are frequently observed in the organobromine chemical industry, and in many cases are landfilled onsite in nonhazardous units. Thus, EPA should consider how similar wastes from other organobromine production processes are managed when identifying plausible mismanagement scenarios; (3) the company currently generating these wastes has used three different landfills since 1994, suggesting that cost is the overriding factor in the company's disposal decision. It is not unreasonable for EPA to assume the cost differential between Subtitle C and D landfills may cause the company to use a nonhazardous waste landfill; and (4) the production facility's 1995 TRI report reveals that half of the TRI chemicals sent offsite for disposal were sent to a nonhazardous landfill. Thus, even at this one facility Subtitle C landfilling is not uniformly practiced.

As a general response to these comments, the Agency notes that these arguments have no practical effect and would not change EPA's decision to list the waste. In the original proposal to list the 2,4,6-TBP production solids, EPA estimated the risks from disposal in an unlined landfill would warrant listing the waste (see proposed rule, 59 FR 24530, May 11, 1994). As noted in the September 3, 1997 notice letter, the risks from such disposal would be mitigated in a Subtitle C landfill, but would still be at levels of concern. Therefore, EPA does not need to rely on projecting new management practices in this listing decision. EPA intends to address the more general issue of how to weigh potential changes in management practice in the future.

Two commenters argued that EPA did not fully consider the impact of the existing RCRA Subtitle C regulations in its analysis of potential risks from disposal in such a regulated landfill. One argued that the proposed mismanagement scenario presumes that all landfill operators are in violation of RCRA regulations, and noted that the regulations require that liner/leachate collection systems prevent migration out of landfills during the active life (including the closure period) of the landfill. The commenter argues that the resources spent on landfill design and construction have resulted in more than a 20-fold decrease in risk posed by the waste disposed. The commenter stated that if EPA is concerned with releases from landfills, the proper place to address this is through the regulations governing land disposal units, and not the listing process.

The other commenter stated that comprehensive landfill regulations prevent the release of hazardous constituents from the waste into the environment by: Double liners and leachate collection systems, groundwater monitoring, and corrective action requirements in case of a release. The commenter also noted that the performance of Subtitle C landfills is guaranteed by operating, closure, and post-closure permits, but stated that none of these safeguards were addressed in EPA's reevaluation.

EPA agrees that the regulations governing Subtitle C landfills are stringent and are designed to prevent releases from the unit, to detect if such leaks occur, and to take corrective action if necessary. However, EPA is not assuming that all landfill operators will be in violation of RCRA. EPA is simply recognizing that such standards are not protective in perpetuity nor for every possible waste. EPA is not saying that voluntary Subtitle C landfilling is always ''improper'', just that there are wastes that should not go into them if they are not treated. EPA agrees that properly installed liner systems and final covers substantially reduce the potential for releases during the operating life and post-closure period (see 52 FR 20270, May 29, 1987). EPA also agrees that permits for landfills help to ensure the implementation of stringent requirements for groundwater monitoring and corrective action. The RCRA regulations require a 30 year post-closure period, during which the unit is maintained and monitored (see 40 CFR 264.117), but after the post-closure monitoring ends releases may not be detected or corrected. While extending the post-closure period might be one way to decrease potential risks from Subtitle C landfills, EPA notes that treatment under the land disposal restrictions program is another way (and perhaps a more direct way) of ensuring long-term risks are minimized. Listing the waste solids from the production of 2,4,6-TBP ensures that this highly toxic waste will be treated prior to landfill disposal.

c. Demonstration of a Substantial Hazard. One commenter claimed that EPA's approach does not demonstrate that the TBP wastes managed in Subtitle C landfills pose a substantial hazard as required by the statute and EPA's rules (§ 261.11(a)(3)). The commenter argued that no human health or environmental damage has ever occurred as a result of improper management of TBP wastes, and the quantity of the TBP waste (35 tons per year) is ''inconsequential.'' The commenter also stated that the court in the *Dithiocarbamate* case indicated that EPA must balance the toxicity of the chemicals with other factors specified in EPA's listing criteria. Finally, the commenter noted that EPA's estimate of risks above 10^{-5} from TBP wastes in Subtitle C landfills is ''based on improper extrapolation from Subtitle D risk modeling.''

EPA disagrees with the commenter's assessment of the hazard posed by the TBP wastes. First, the regulatory criteria for listing wastes as hazardous is that the wastes *may* * * * pose a substantial present or *potential* hazard.'' These wastes certainly meet that criteria. While EPA has not found damage cases that document health or environmental damage from disposal of this waste, this is only one of the factors EPA considers in its listing decisions. While EPA has not identified any cases of actual damages from this waste, EPA has explained how it considered the other factors under § 262.11(a)(3). The risk assessment, after consideration of all of these factors shows individual risk numbers to be above EPA's level of concern. Furthermore, by listing a waste as hazardous, EPA hopes to prevent such damage from occurring, and the Agency has often listed wastes in the absence of definitive damage cases. Contrary to the comment, EPA does not concede that the volume of waste at issue (34 tons annually) is necessarily ''inconsequential.'' The volume of waste

must be examined in conjunction with the concentration and properties of toxic constituents present. In this case, the relatively small quantity of waste contains very high concentrations of a highly toxic constituent, 2,4,6-TBP.

As noted elsewhere in today's rule, EPA continues to believe that the SAR results demonstrate that 2,4,6-TBP is highly toxic. Furthermore, EPA has shown how this toxic chemical, in a highly concentrated waste, may potentially cause a substantial risk even if managed in a Subtitle C landfill. The waste in question is so toxic and concentrated that release may occur at levels of concern, even if the containment system of a Subtitle C landfill were very high (e.g., 95%). Given this result, EPA believes that listing is warranted.

d. Other Risk Issues. Two commenters argued that the Agency's toxicity assumptions for 2,4,6-TBP are invalid. One stated that EPA failed to address comments on the use of Quantitative Structure Activity Relationships (QSAR) in its risk analysis, and incorporated its previous comments by reference. The commenter also noted that a proposal by EPA to gather the data necessary to evaluate 2,4,6-TBP was rejected by the Interagency Testing Committee (ITC). The commenter stated that, while the ITC originally proposed to include 2,4,6-TBP on the priority testing list under Section 4(e) of the Toxic Substances Control Act (TSCA), following receipt of exposure information from an industry group and the producer of 2,4,6-TBP, the ITC revised its position and removed 2,4,6-TBP from the priority list. The commenter stated that the rationale for removal of 2,4,6-TBP was based on the ITC's determination that ''environmental and workplace monitoring indicate that 2,4,6-tribromophenol is not likely to result in substantial environmental releases or significant exposures to workers, consumers or the general population.''

EPA has not ignored the comments received on the Agency's use of Structure Activity Relationships for estimating the toxicity of 2,4,6-TBP. EPA responds fully to all comments related to this issue in a separate section of today's preamble. As the commenter noted, the ITC's 40th Report revised the TSCA section 4(e) Priority Testing List by removing 2,4,6,-TBP, which had previously been recommended for testing in its 39th report (62 FR 8578, February 25, 1997). The ITC stated that it removed 2,4,6-TBP after reviewing data that demonstrated that: (1) It is used as a chemical intermediate to produce flame retardants; (2) greater than 99% of 2,4,6-TBP used as an end-product is shipped overseas to be used as an intermediate in the production of brominated flame retardants; and (3) environmental and workplace monitoring indicate that 2,4,6-TBP is not likely to result in substantial environmental releases or significant exposures to workers, consumers, or the general public. Exposure and release information provided by industry and the CMA include an industrial hygiene survey from 1979, a historical prospective mortality study of workers, a pollution evaluation, and a determination of brominated organic compounds in environmental matrices (secondary effluents). The available exposure information pertains to workers and the potential for general population exposure from manufacturing sites. In deciding to list waste solids from the production of 2,4,6-TBP, however, EPA considered in detail the potential exposure and risks due to the disposal of wastes generated, not product use. EPA notes that none of the exposure studies used in the ITC decision deal with RCRA issues, for example, the presence of TBP in waste streams, its subsequent disposal in a landfill, and the potential hazards associated with leakage from such a landfill or with any mismanagement scenario.

EPA further examined the rationale for the removal of 2,4,6-TBP from the Priority Testing List and does not agree that this action in any way undermines EPA's use of SAR to estimate the chemical's toxicity. 2,4,6-TBP was not removed from the ITC Priority Testing List because the ITC had found that TBP was not toxic. Indeed, the chemical was originally included on the List because the NIEHS needed chronic toxicity and 2-year carcinogenesis study data. The availability of these data would obviate the need for the use of a qualitative or quantitative SAR by EPA, which would prefer to use actual data on the constituent in question whenever possible. Among the studies cited by CMA and GLCC as available for EPA review are acute toxicity (oral, inhalation, and dermal), dermal sensitization, skin and eye irritation, 21-day inhalation toxicity, 28-day subacute dermal toxicity, clearance, teratogenicity, genotoxicity, and pharmacokinetics. None of these studies are sufficient to judge the carcinogenic potential of TBP, which is the primary endpoint of concern for this chemical. Therefore, EPA does not believe that the ITC decision to remove TBP from the Priority Testing List addresses EPA's determination that 2,4,6-TBP is highly toxic as indicated by SAR and that disposal of wastes containing high levels of this toxic chemical in a landfill (even a Subtitle C landfill) poses a substantial hazard that requires listing the waste as hazardous.

One commenter supported the proposed decision to list waste solids from the production of 2,4,6-tribromophenol, but argued that EPA underestimated the risks posed by disposal of the waste in a Subtitle C landfill for at least three reasons. The reasons noted by the commenter were: (1) The TCLP understates the leaching potential of the waste in a Subtitle C landfill by at least an order of magnitude, because the waste may be exposed to solvents and other chemicals that encourage contaminant leaching, and because the TCLP appears ''uniquely ineffective'' in leaching contaminants from the waste; (2) EPA's risk estimates are based on the presence of 2,4,6-TBP only and ignore the presence of arsenic and other toxic contaminants in the waste and TCLP leachate; (3) EPA's assumption of 95% containment efficiency for a Subtitle C landfill is unreasonable given that owner/operator's post-closure responsibilities typically end after 30 years; containment efficiency would drop to 60% at 100 years, and beyond 100 years additional declines can be expected.

As a general response to the argument that EPA underestimated the risks posed by Subtitle C disposal for the wastes in question, the Agency notes that these arguments have no practical effect and would not change EPA's decision to list the waste. However, EPA does not agree with some of the arguments put forth by the commenter, and is responding to them for this reason. EPA does not agree that the TCLP underestimates the leaching potential of the waste in question for reasons discussed below. Absent any firm data to conclude otherwise, EPA finds no reason to conclude that the TCLP underestimates the leaching potential of the 2,4,6-TBP production wastes. As a preliminary matter, EPA notes that the commenter cites no basis for its quantified estimate that the leaching is underestimated by one order of magnitude. Moreover, there is no indication that the TCLP is ''uniquely ineffective'' in leaching contaminants from this waste, as the commenter claims. The properties of 2,4,6-TBP indicate that the relatively low leaching efficiency is not unexpected. This chemical is not highly soluble in water (70 ppm; see The Merck Index, Ninth Edition, 1976) and would not be expected to leach from the organic waste matrix at very high levels.

The octanol-water partition coefficient (Kow) for this substance is on the order of 17,000 (or in log form, 4.23); this coefficient is a measure of the tendency of the chemical to partition into organic phases compared to water, and this value indicates the chemical is expected to be at 17,000-fold higher concentration in the organic phase compared to water. It, therefore, would be expected to remain bound in the organic phase and would tend to be less mobile. Furthermore, the lower leaching from the spent filter material is also logical, because the filter material is activated carbon. Activated carbon is used expressly to remove organic material from a process stream, and the 2,4,6-TBP is expected to be relatively tightly adsorbed to this matrix. Therefore, EPA has no reason to believe, despite the commenters assertions, that the TCLP results are not valid for this waste.

EPA's decision to list this waste focused on 2,4,6-TBP because this chemical was found at levels that greatly exceeded the other constituents detected. While other constituents were detected in the waste, many were also found in blank laboratory QC samples (e.g., methylene chloride) indicating that the detection of these volatile constituents in waste samples may have been due to some sample contamination, perhaps in the laboratory. Concerning arsenic, the analytical results are suspect due to known problems with measuring some metals in these type of waste matrices. (See Method 6020, Test Methods for Evaluating Solid Waste, Physical/ Chemical Methods, third edition, 1994; OSW/USEPA). One of the waste samples (spent carbon filter material, number GL–08) showed the presence of other brominated phenols, notably 2,4-dibromophenol; however, EPA does not have any health-based levels to rigorously evaluate them.

Analysis of the other sample (floor sweepings and off-specification product, GL–09) showed the presence of several volatile constituents that were found in the blank samples. However, this sample also contained significant levels of 1,2-dibromoethane (also known as ethylene dibromide, or EDB). As evidenced by the very low drinking water standard established for this chemical (the maximum contaminant level, or MCL, is 0.00005 mg/L; see 40 CFR 141.61), this substance is highly toxic, and the level reported in the TCLP analysis (36 mg/L) is 720,000 times the existing MCL. The Agency believes that the relatively high levels of this chemical in the waste (and the corresponding TCLP sample) further confirms that these production solids contain high levels of highly toxic chemicals and present a substantial hazard, even if managed in a Subtitle C landfill. There is further discussion of the presence of EDB in the following Unit IV.E.3.

In its reevaluation, EPA did not conclude that the containment efficiency for a Subtitle c landfill was necessarily 95%. The Agency's point was, even if the efficiency was as high as 95%, the potential release from 2,4,6-TBP production solids in a landfill may present risks at levels of concern. While estimating the long-term efficiency of containment is highly uncertain, EPA agrees that it may be less than 95%, thereby making the potential risk higher.

e. Other Comments. The commenter that supports EPA's decision to list the waste at issue noted that the disposal of wastes with high concentrations of organic contaminants is what Congress sought to restrict through the Land Disposal Restrictions program. The commenter argued that a hazardous waste listing for these wastes is appropriate to ensure Congressional objectives of the LDR program are achieved. The commenter claims EPA must consider these expressions of ''proper'' management when applying its criteria for listing hazardous waste.

EPA agrees that in establishing the Land Disposal Restrictions program, Congress found land disposal to be incapable of ensuring long-term containment of hazardous waste. However, EPA does not agree that the high content of organic contaminants is, by itself, sufficient to require listing. The listing decision is based on the highly toxic nature of the constituent in question (2,4,6,-TBP), in conjunction with potential risks associated with its release, even if placed in a Subtitle C landfill. Therefore, EPA agrees that listing, and the associated treatment required under the land disposal restrictions program, are appropriate because of the chemicals high toxicity and potential mobility in groundwater. EPA does not agree that listing is appropriate merely to comply with Congressional intent for treatment of hazardous waste, because a waste must first be determined to be hazardous before the LDR program applies.

One commenter argued that EPA's reevaluation could be read as an indictment of the Agency's comprehensive Subtitle C program for managing hazardous wastes in landfills, and indicated that if Subtitle C disposal is not protective and constitutes mismanagement, then EPA's landfill standards are inadequate. The commenter does not believe this is the case and claims the criticism of the long-term integrity of landfills is an effort to avoid the implications of the *Dithiocarbamate* decision. The commenter stated that, even is some uncertain degree of risk is posed in the long term by such disposal, this uncertainty is not a sufficient basis for listing these wastes.

As noted elsewhere in response to other related comments, EPA believes the extensive regulatory controls provide management that reduces the potential for releases to the environments. EPA's decision to list the solids from the production of 2,4,6-TBP is in not an indictment of the Agency's Subtitle C program, but is based on the specific characteristics of this waste (i.e., toxicity, mobility) and the potential risks that would occur if these wastes were disposed without prior treatment, and the long-term containment systems in a Subtitle C landfill degrade over time, as expected.

3. Comments on the January 14, 1998 Notice Letter

As noted in the above section, a reexamination of the analytical data of the samples from the 2,4,6-TBP production waste showed that 1,2-dibromoethane (EDB) was found in both the total and TCLP analyses of the sample of floor sweepings and off-specification product. The EPA sent a letter of notice to the interested parties (i.e.,the sole generator of this waste and the commenter that originated the comment about additional constituents being present in the waste). The letter explains the new piece of information and notes that the presence of this highly toxic chemical appears to further support the Agency's contention that the waste warrants listing. EPA received comments from the generator, and the Agency's responses are summarized below. The comments and responses are described in more detail in the docket. (See ''Supplementary Response To Public Comment,'' April 1998).

The commenter challenged the validity of the analytical results showing the presence of EDB in the waste, because of technical flaws in the analytical procedure. The commenter collected more samples of the floor sweepings and product, and submitted chemical analyses that did not show the presence of EDB. The commenter went on to note that EDB is not used as a raw material, nor is it produced as a by-product in the 2,4,6-TBP process. The commenter argued that even if the EDB was found in the floor sweepings, the presence of EDB could not justify the scope of the Agency's proposed listing. The commenter stated that, since EDB is

not present in the 2,4,6-TBP process, its presence would have to be the result of a mixture of 2,4,6-TBP and EDB.

EPA disagrees with the contention that the Agency's analysis was flawed. EPA reexamined the raw analytical data for this sample and the data clearly indicate that EDB was detected and quantified as reported. EPA has provided a full response in the docket to these and other comments related to the analysis of the wastes under study (see the Supplementary Comment Summary & Response Document in the docket). EPA agrees that EDB does not appear to be used in the 2,4,6-TBP process, and that it is unlikely to form as a by-product. However, EDB is used as a raw material elsewhere in the facility, and the raw analytical data clearly support the finding of EDB in the waste. Therefore its presence may be due to the cross contamination of waste streams, as the commenter suggested. The lack of EDB in the recent samples obtained by the commenter suggest that EDB may not be present in all samples of waste. Given the limited data, EPA agrees that EDB is not the primary basis of listing this waste, but that the presence of the 2,4,6-TBP itself is the major concern.

The commenter stated the Agency did not provide public notice of its intent to list 2,4,6-TBP production wastes based on the presence of EDB, and that this is in violation of the Administrative Procedures Act. Furthermore, the commenter contends that the EPA's ''new rationale'' to list TBP as hazardous would fail to take into account the marked shift in emphasis between the proposed and final rules.

As EPA noted in its response to similar comments on the first notice letter (see subsection 2.a above), due to the limited time EPA has for completing this action, the Agency decided that a letter of actual notice to the aforementioned interested parties was appropriate. The generator of the 2,4,6-tribromophenol production waste is the only party EPA believes would be affected by the recharacterization of the rationale for listing and that would have a direct interest in the final listing decision. The Agency is not aware of any other generators of this waste, or any other persons who would have a direct interest in this decision, thus the actual notice given in this case is sufficient.

Finally, the commenter stated that it had not received any response to its previous comments challenging the use of QSAR as a basis for alleging that 2,4,6-TBP itself is toxic. The commenter also stated that EPA does not have any data indicating that 2,4,6-TBP is toxic, and is instead relying on predictive models that were never intended to be used for this purpose. The commenter submitted further comments on this issue.

EPA was not seeking further comments on the use of QSAR in this listing determination. The Agency's responds to all comments concerning QSAR submitted on the proposed rule in Units IV.A, IV.B, and IV.C of today's final rule. These responses are also given in the Public Comment Summary and Response Document found in the docket as an appendix to the background document.

F. Listing Determination for Wastes From the Production of Tetrabromobisphenol-A

1. Solids

In the proposed rule, EPA deferred a hazardous waste listing decision on waste solids from the production of tetrabromobisphenol-A (TBBPA), based on a lack of information on waste characterization and toxicity. In the absence of data on the amount of brominated phenols in TBBPA product, the leachability of brominated phenols from the product matrix and toxicological data on TBBPA solids, the EPA was unable to analyze the potential risks associated with TBBPA migrating to ground water if managed in unlined landfills. The Agency, accordingly, requested this information in the proposal and also noted that if sufficient information to support a listing determination was received during the public comment period, the Agency may choose to promulgate a determination rather than defer action in the final rule.

One commenter provided toxicological data on TBBPA that support an assessment of the potential for environmental risk from release of TBBPA. (The toxicological data were previously submitted to EPA under Section 8(d) of the Toxic Substances Control Act (TSCA) and as the result of a TSCA Section 4 Test Rule.) The test data on the toxicology of TBBPA indicate that TBBPA product ''does not pose a health hazard to mammals.'' One reason appears to be that TBBPA is poorly absorbed when ingested. In 1985, the Interagency Testing Committee reviewed TBBPA and found no need to conduct further health effects testing. In addition, the results of ecological testing submitted to the Agency by the Brominated Flame Retardant Industry Panel do not indicate an unacceptable level of hazard for aquatic organisms.

Ecological effects data submitted by the commenter (and previously collected by EPA under TSCA as noted above) indicate that TBBPA is not particularly toxic to aquatic test species (e.g., fathead minnow, bluegill, daphia); no long-term aquatic effects are observed with tetrabromobisphenol-A in water at levels below 0.22 mg/L. Using the data on fish and assuming that the waste was placed in an unlined landfill close to a stream into which ground water discharged, the Agency made a worst-case assumption that leachate from the landfill would be saturated with tetrabromobisphenol-A at the chemicals solubility level (4.16 mg/L). This leachate would be diluted before reaching any nearby stream (in the proposed rule, EPA estimated a dilution fraction on the order of 100 for leachate exiting a landfill), and then diluted further after discharge to such a stream. Therefore, the diluted concentration in the stream after such a scenario would be well below the above-stated long-term aquatic effect level of 0.22 mg/L.

In determining potential risk from the TBBPA waste, EPA also considered the possible risk due to the presence of traces of 2,4,6-TBP in the TBBPA waste. The commenter provided the Agency with data on concentrations of 2,4,6-tribromophenol in the TBBPA product. In considering whether to list spilled product and floor sweepings from the packaging of TBBPA due to the possible presence of 2,4,6-TBP, EPA assumed that the 2,4,6-TBP concentration in the spilled product would be no greater than the 2,4,6-TBP concentration in the TBBPA product itself. (Note that this appears to be a worst case assumption because 2,4,6-TBP is not handled in the packaging area, thus the spilled product should not be contaminated with any further 2,4,6-TBP; the commenter confirmed that waste solids from production of TBBPA are floor sweepings generated from spills in the packaging area, and not the production area). The commenter reported that commercial TBBPA has less than 1% impurities, and the primary impurities are isomers of tribromobisphenol A, not 2,4,6-TBP. The concentration of 2,4,6-TBP in the TBBPA product reported by the commenter is more than 100 times less than the concentration of 2,4,6-TBP EPA found in the off-specification 2,4,6-TBP product.

The TCLP leaching data presented in the proposed rule show a maximum concentration of 760 mg/l of 2,4,6-TBP in leachate extracts from the off-specification 2,4,6-TBP product. In the absence of TCLP leaching data for the TBBPA solids, EPA assumed the TCLP leaching efficiency of 2,4,6-TBP from the spilled TBBPA product and floor sweepings would be comparable to the

leaching efficiency of 2,4,6-TBP measured for the off-specification TBP product. Thus, the TCLP level for 2,4,6-TBP from the TBBPA solids was assumed to be more than 100-fold less than the TCLP level found in the TBP off-specification product. As described in the proposed rule, the level of estimated individual risk from exposure to 2,4,6-TBP in groundwater for disposal of the off-specification 2,4,6-TBP product in an unlined Subtitle D landfill was 7×10^{-4} (with the SAR-based health number is corrected for molecular weight differences of 2,4,6-TCP and 2,4,6-TBP as noted in today's notice, the risk would be 4.2×10^{-4}). Using this analysis, any risk posed by TBBPA solids under the same disposal scenario would be more than a 100-fold less, or less than 10–$^{-6}$. Therefore, this waste is not a candidate for listing as hazardous based on the presence of 2,4,6-TBP.

In addition, EPA has monitoring data that also indicate TBBPA wastes do not present a significant risk. As stated in the proposed rule, record sampling of an on-site landfill at one plant where TBBPA solids formerly were disposed for a number of years showed the absence of TBBPA and any brominated compounds in the landfill leachate. Therefore, based on the data submitted by the commenter, the available data on the limited toxicity of TBBPA noted above, and the monitoring data, the Agency has decided not to list waste solids from the production of TBBPA.

2. Wastewaters

As discussed in the proposed rule (59 FR 24537), wastewaters from the manufacture of tetrabromobisphenol-A already are listed and carry the hazardous waste code of K131. Methyl bromide and TBBPA are produced in the same process. One commenter objected to the language used in the proposed rule to describe the process step that generates wastewaters. The proposal states ''process wastewater originates from the distillation step where methyl bromide is recovered.'' The commenter contended that the wastewater originated from a distillation step where methanol is recovered. The commenter believed the language in the proposed rule was inconsistent with the existing listing description for K131 and was concerned that EPA was attempting to amend the K131 listing as part of this rulemaking.

The Agency concedes that the language used in the proposed rule was misleading. Indeed, the distillation step is where methanol, or both methanol and methyl bromide, can be recovered, as described in the Listing Background Document. The Agency was not referring to a specific process at any one facility. It was simply attempting to make the point that TBBPA and methyl bromide are produced in the same process and the wastewaters arising from that process meet the existing listing description for K131. As a result, there is no need for further action on a hazardous waste listing for wastewaters from TBBPA production.

In response to a petition filed by the Ethyl Corporation for judicial review of the K131 listing, the Agency stayed the K131 listing as it applies to the ''liquid material exiting the reactor producing methyl bromide located at Ethyl Corporation's production facility.'' This facility currently recycles the wastewaters, after solids removal, to the bromine plant for recovery of bromine values. As directed by the terms of the stay, the Agency is in the process of ''determining whether the wastewater stream generated at this facility contains a solid waste and, if so, whether it is eligible for an exemption or variance.'' EPA clarifies that today's rulemaking does not affect the Agency's ongoing effort to respond to this petition. EPA is not attempting to reach a decision on the applicability of the K131 listing to Ethyl's wastewater stream as part of the listing determination for wastes from organobromines production.

G. Other Issues

One commenter felt that the model used by the Agency for assessing migration of 2,4,6-tribromophenol wastewaters from the deep formations into which they were injected was very conservative and over-estimated potential risks. The commenter felt that many of the assumptions of the model describe physical conditions that are known not to exist.

In response, the Agency notes that the model was intended to represent a conservative scenario in order to identify any potential risk if leakage were to occur. The Agency reexamined the record and agrees that the existing data collected for the site suggest that the release scenario modeled is not likely to exist. The information available indicates that the only abandoned wells found in the area of the injection wells that are deep enough to penetrate the injection zone are in fact known to be plugged and should not serve as potential conduits for release of waste constituents from the injection zone to the upper drinking water aquifer. Furthermore, as noted in the proposed rule, sampling of drinking water wells on the plant site and in the vicinity of the plant did not find any trace of tribromophenol in the groundwater, even though disposal has been occurring for nearly twenty years. In any case, the comment is moot, since EPA has decided not to list wastewaters from the production of 2,4,6-TBP.

One commenter requested that the Agency provide a detailed definition of the term ''production'' as used in the proposed listing description for K140. The commenter suggested that production be defined to limit the reach of the listing to wastes resulting from the actual synthesis of 2,4,6-TBP (*i.e.,* the listing should not encompass wastes from processes that isolate an intermediate or a product other than 2,4,6-TBP).

The Agency does not believe it is necessary for this final rule to define ''production'' because the majority of wastes listed in 40 CFR 261.37 include the unambiguous term ''production.'' The fact that intermediates or co-products may arise from the same process that produces 2,4,6-TBP is irrelevant to the basis for listing the process wastes from the production of 2,4,6-TBP. If listings were constructed so narrowly as to capture wastes from the production of a given product only when the process produced that product alone, vast amounts of process waste containing similarly hazardous constituents would remain unregulated. In this case, by manipulating the process, a producer of tribromophenol may co-produce di-, tetra-, or penta-brominated phenols along with tribromophenol from the same process. If the listing were crafted the way the commenter suggests, the operator of such a process would escape the intent of this regulation, while still producing 2,4,6-TBP.

One commenter expressed concern that the proposed rule may have the unintended effect of increasing the land disposal of wastes containing 2,4,6-TBP by preventing their use as feedstocks to bromine recovery units (BRUs). EPA does not agree with this statement. The listing of TBP production wastes should not affect the current management of these materials in BRUs. EPA clarifies that BRUs are halogen acid furnaces, which meet the definition of industrial furnace in 40 CFR 260.10. As stated in the proposed rule, the combustion of hazardous waste in industrial furnaces is regulated under 40 CFR part 266, subpart H. The commenter noted that EPA issued a correction notice on August 27, 1991 that excluded from regulation certain brominated materials combusted in halogen acid furnaces (56 FR 42504). The Agency agrees that the provision added by the correction notice effectively excludes brominated materials meeting the criteria in 40 CFR 261.2(d)(2)(i)–(iii) from designation as

''inherently waste-like'' materials. Accordingly, these materials are not hazardous wastes; thus, furnaces processing them are not processing hazardous wastes and are not subject to the BIF regulations. Listed and characteristic brominated streams that do not meet the criteria of 40 CFR 261.2(d)(2), *i.e.*, that contain >1% of Appendix VIII materials, are considered inherently waste-like and should not be burned in non-RCRA facilities. Today's listing of TBP wastes does not alter the criteria of this exclusion nor subject the commenter's BRUs to any additional requirements. If the commenter's brominated waste streams meet the criteria for the exclusion, the BRUs to which these streams are fed are not subject to regulation under part 266, subpart H.

Finally, the Agency notes that the sole generator of the 2,4,6-tribromophenol production solids did not attempt to use this material as feedstock for the BRU, even in the absence of a hazardous waste listing.

One commenter questioned the accuracy of early sampling and analysis results obtained at one facility. This commenter submitted a letter to the Agency in 1993 detailing concerns over the quality and accuracy of some of the analytical results. The commenter concluded in the 1993 letter, ''There are a great many non-credible and questionable analyses in this study. We believe that the analytical work will simply not stand up to close scrutiny. The analytical results are not of a quality that lend themselves to making a valid risk assessment or developing regulations for the organo-bromine industry. The validity and accuracy simply aren't there.'' EPA prepared a complete response to the issues enumerated in that letter and has placed it in the public docket for today's rulemaking. EPA notes that none of the questioned data were used as a basis for the decision to list wastes from the production of 2,4,6-tribromophenol.

V. Conclusions

The Agency is listing, as EPA Hazardous Waste No. K140, floor sweepings, off-specification product, and spent filter media from the production of 2,4,6-tribromophenol. EPA is also listing discarded 2,4,6-TBP product as EPA Hazardous Waste No. U408. EPA received no comments objecting to the listing of U408, except to the extent that issues relating to SAR may be considered relevant to the U408 listing. (EPA notes, however, that the analysis completed for the listing of K140 also included an evaluation of the risks posed by off-specification 2,4,6-tribromophenol product. Such off-specification product should be very similar to discarded material that might carry the U408 listing and, as such, the discarded U-waste may present comparable risks and is even more likely to be disposed of in an unlined landfill). EPA responded above, and in the separate Response to Public Comment Document, to all comments on the SAR analysis. These listing determinations are based on the projected toxicity of 2,4,6-TBP from structural activity studies, and the assessment of risk from potential exposure to this chemical. EPA's decision to list these wastes as hazardous represents a determination by the Agency that the wastes identified in this action meet the criteria for listing hazardous wastes presented in 40 CFR 261.11. Specifically, based on available evidence, the Agency concludes that 2,4,6-tribromophenol is similar in toxicity to its chlorinated analogue (2,4,6-trichlorophenol) and, therefore, may pose a risk to human health and the environment if improperly land-disposed.

Based on the data collected by the Agency during the recent organobromines industry study and the unique conditions of the industry regarding limitations to future expansion, EPA believes there is ample justification for a no-list determination for wastes generated from production of the other organobromine chemicals identified in the proposed consent decree (*i.e.*, tetrabromobisphenol A, bromochloromethane, ethyl bromide, octabromodiphenyl oxide, and decabromodiphenyl oxide) and for wastewaters from 2,4,6-tribromophenol production. After considering the collected information and data from toxicological, chemical, hydrogeological, and engineering viewpoints, EPA has concluded that the disposal of any wastes from these processes that are not currently listed in 40 CFR part 261, subpart D does not pose a substantial present or future risk to human health or the environment. Therefore, EPA is not listing any additional hazardous wastes generated from the production of these chemicals. The Agency received no comments objecting to its decision not to list these wastes.

VI. Land Disposal Restrictions

A. Treatment Standards for Organobromine Wastes

In the land disposal restrictions Phase III proposed rule (60 FR 11722, March 2, 1995), EPA proposed that the newly identified K140 and U408 wastes comply with numerical treatment standards for 2,4,6-tribromophenol to be promulgated in 40 CFR 268.40, and that 2,4,6-tribromophenol be added as a underlying hazardous constituent subject to the universal treatment standards of 40 CFR 268.48.

Since treatment data currently are not available for 2,4,6-TBP, the Agency proposed to set the UTS for 2,4,6-TBP based on analytical detection limit data transferred from 2,4,6-trichlorophenol. The structures of 2,4,6-tribromophenol and 2,4,6-trichlorophenol are sufficiently similar to be considered halogenated congeners of phenol. Both halogenated phenols contain three symmetrically placed bromine or chlorine substituents that are difficult to remove by chemical substitution. The chemical behavior and mechanisms of action for 2,4,6-tribromophenol are expected to be similar to its chlorinated analogue, 2,4,6-trichlorophenol. Thus, the Agency proposed the treatment standards for 2,4,6-tribromophenol at 7.4 mg/kg for nonwastewaters and 0.035 mg/L for wastewaters for 2,4,6-tribromophenol.

The Agency solicited comment regarding the achievability of this standard by demonstrated available technologies and regarding the analytical detection limit of 2,4,6-TBP in treatment residual matrices. The Agency also solicited any available data on the concentrations 2,4,6-TBP in treatment residuals from the recovery or destruction of wastes containing 2,4,6-TBP. The analytical method for 2,4,6-TBP is SW–846 method 8270 (GC/MS for semivolatiles, capillary column).

In response to the Agency's request for comment, Chemical Waste Management, Inc. supported the Agency's proposed treatment standards associated with organobromine wastes; the Environmental Technology Council, while objecting to setting treatment standards on the sole basis of analytical detection limits, noted that EPA can use technology transfer to develop standards from similar chlorinated organics. Therefore, EPA is promulgating the proposed UTS for 2,4,6-TBP at 7.4 mg/kg for nonwastewaters and 0.035 mg/L for wastewaters.

B. Applicable Technology

The single facility that produces 2,4,6-TBP wastes uses a bromine recovery unit (BRU) to recover bromine values from organic liquid and vapor waste streams. In this unit, the organics are burned and the combustion products are removed by a wet scrubber. The BRU is a halogen acid furnace which meets the regulatory definition of industrial furnace in 40 CFR 260.10. The

combustion of hazardous waste in industrial furnaces is regulated under 40 CFR part 266, subpart H, which regulates air emissions from these units and requires monitoring and analyses.

Treatment of 2,4,6-TBP wastes in the BRU should be effective in destroying the phenolic component of 2,4,6-tribromophenol and providing for recovery of bromine. Based on available information, EPA proposed that the best demonstrated available technology (BDAT) for 2,4,6-tribromophenol wastes is treatment by BRU. EPA solicited comment on this assertion and on the potential applicability of other technologies which destroy 2,4,6-tribromophenol and provide recovery of bromine.

Great Lakes Chemical Corporation (GLCC) commented that EPA's assumption that TBP waste generated by GLCC currently is managed in a bromine recovery unit (BRU) is incorrect. GLCC maintains that treatment of TBP in the existing BRU would be very difficult, if not impossible (both technically and legally). Accordingly, GLCC concluded that the proposed TBP treatment standard is flawed. The Agency disagrees. Because tribromophenol is not refractory, EPA believes the BRU technology clearly is applicable to waste treatment of the K140 and U408 wastes and, therefore, may form the basis of a standard. There are various combustion technologies capable of meeting the numerical treatment standards, one of which is BRU. The Agency stated in error in the proposal that the existing BRU already is subject to the performance standards of part 266, subpart H. However, in order to treat the listed organobromine wastes, the subject BRU would be subject to the part 266, subpart H performance standards. EPA has assessed the costs associated with incineration of the newly identified organobromine wastes as part of its regulatory impact analysis. See the regulatory impact analysis discussion in Section X of this preamble. Because the Agency has promulgated the universal treatment standards for the organobromine wastes, treaters are free to use any technology capable of achieving the numerical standard promulgated today (so long as the standard is not achieved by means of impermissible dilution).

C. Capacity Analysis Results Summary

1. Introduction

This section summarizes the results of the capacity analysis for the wastes covered by today's rule. For a detailed discussion of capacity analysis-related data sources, methodology, and detailed response to comments for each group of wastes covered in this rule, see the following document: ''Background Document for Capacity Analysis for Land Disposal Restrictions: Surfaced-disposed Organobromine Production Wastes (Final Rule)'' (i.e., the Capacity Background Document).

When EPA establishes land disposal restrictions (LDR) determinations, LDR treatment standards become effective when promulgated unless the Agency grants a national capacity variance delaying the effective date. RCRA section 3004(h)(2), 42 U.S.C. 6924(h)(2) authorizes EPA to grant a national capacity variance for the waste and to establish a different date (not to exceed two years beyond the statutory deadline) based on ''* * * the earliest date on which adequate alternative treatment, recovery, or disposal capacity which protects human health and the environment will be available'' if there is inadequate alternative treatment/recovery capacity.

In general, EPA's capacity analysis focuses on the amount of waste to be restricted from land disposal that is currently managed in land-based units and will therefore require alternative treatment as a result of the LDRs. The quantity of wastes that are not managed in land-based units (e.g., wastewater managed only in RCRA exempt tanks, with discharge to a Publicly Owned Treatment Works (POTW)) is not included in the quantities requiring alternative treatment as a result of the LDRs. Also, wastes that do not require alternative treatment (e.g., those that are currently treated using an appropriate treatment technology) are not included in these quantity estimates. Land-disposed wastes requiring alternative treatment or recovery capacity that is available on-site or within the same company as the generator are also omitted from the required commercial capacity estimates.

EPA's decisions on whether to grant a national capacity variance are based on the availability of alternative treatment or recovery technologies. Consequently, the methodology focuses on deriving estimates of the quantities of waste that will require either commercial treatment or the construction of new on-site treatment or recovery unit as a result of the LDRs. The resulting estimates of required commercial capacity are then compared to estimates of available commercial capacity. If adequate commercial capacity exists, the waste is restricted from further land disposal before meeting the LDR treatment standards. If adequate capacity does not exist, RCRA section 3004(h) authorizes EPA to grant a national capacity variance for the waste for up to two years or until adequate alternative treatment or recovery capacity becomes available.

2. Capacity Analysis Results Summary

A brief summary of the capacity analysis performed to support this rule is presented below. For additional detailed information, please refer to the ''Background Document for Capacity Analysis for Land Disposal Restrictions: Surfaced-disposed Organobromine Production Wastes (Final Rule)''.

For this capacity analysis, EPA examined data on waste characteristics and management practices that have been gathered for the organobromine production industry study in the 1992 RCRA Section 3007 survey. The Agency analyzed the capacity-related information from the survey responses, reviewed the public comments received in response to the proposed rule, and identified the following annualized quantities of newly listed hazardous wastes requiring commercial treatment: Less than 100 tons of organobromine nonwastewater wastes (K140, U408) are expected to require alternative treatment capacity. The available data sources indicate that there are no quantities of K140 and U408 wastewaters that will require alternative commercial treatment, and therefore this volume is assumed to be zero.

EPA is finalizing the rule to apply UTS to these wastes. The treatment standards for organobromine production wastes are concentrations which in turn are based on bromine recovery unit as the BDAT. Additionally, EPA believes that incineration and thermal destruction technologies are applicable technologies to meet these treatment standards. The Agency estimated that the commercially available sludge and solid combustion capacity is approximately 430,000 MT per year and sufficient to treat these wastes when the listing determinations for these wastes become effective. Since EPA is finalizing numerical standards for these wastes, the Agency does not exclude the use of other technologies capable of meeting the final LDR treatment standards. Sufficient commercial capacity exists to treat theses wastes to meet the LDR standards. Therefore, EPA is not granting a national capacity variance under LDR for these wastes. The LDR standards for these wastes will become effective when the listings become effective.

For soil and debris contaminated with the newly listed wastes, EPA proposed to not grant a national capacity variance. EPA received no comments regarding

this issue. EPA believes that the contaminated soil and debris can be managed on-site or if necessary, off-site commercial treatment capacity is available. Therefore, EPA is not granting a national capacity variance to hazardous soil and debris contaminated with the newly listed wastes covered under this rule. Based on the questionnaire, there were no data showing the mixed radioactive wastes with the newly listed wastes. There were also no comments concerning the radioactive wastes mixed with the newly identified wastes. EPA is not granting a national capacity variance for mixed radioactive wastes or soil and debris contaminated with these mixed radioactive wastes.

VII. Waste Minimization Opportunities in the Industry

During the industry study, the Agency identified two potential opportunities for waste minimization. The first involves the recovery of tribromophenol in the tetrabromobisphenol-A and tribromophenol process. Commercial tetrabromobisphenol-A is made by condensation of phenol and acetone and, hence, the feedstock contains some unreacted phenol. Record sampling of one wastewater stream, which leaves the process hot, revealed that it contained tribromophenol. The Agency appreciates the effort that the commenter has made to recover TBP and understands the difficulty of recovering pure product. The Agency received some information from the two manufacturers of TBBPA. One firm claimed the idea was impractical. The second has installed a process to recover a low-grade material which is a mixture containing underbrominated bisphenol-A compounds. It is yet unknown if this material can be marketed successfully as a low-grade flame retardant formulation. The facility has informed the Agency that if the material cannot be marketed it will be sent to Subtitle C facilities for disposal. This plant also is recycling the wastewater, after solids removal, to the bromine plant for recovery of bromine from the sodium bromide present. Removal of the solids is necessary to prevent problems in the bromine recovery operation.

The second area where savings could be achieved is in product packaging. Materials spilled in the packaging areas are drummed and shipped to Subtitle C facilities. Presently, the two major manufacturers of organobromine chemicals generate over 300 tons per year of various spilled solid products. Improved housekeeping in the packaging areas will reduce the volumes of these wastes.

VIII. State Program Implementation

A. Applicability of Rules in States

Under section 3006 of RCRA, EPA may authorize qualified States to administer and enforce RCRA programs within the State. (See 40 CFR part 271 for the standards and requirements for authorization.) Following authorization EPA retains enforcement authority under sections 3008, 7003, and 3013 of RCRA, although authorized States have primary enforcement responsibility.

Prior to the Hazardous and Solid Waste Amendments of 1984 (HSWA), a State with final RCRA authorization administered its authorized hazardous waste program entirely in lieu of EPA. The Federal requirements no longer applied in the authorized State, and EPA could not issue permits for any facilities in the State which the State was authorized to permit. When new, more stringent Federal requirements were promulgated or enacted, the State was obliged to enact equivalent authority within specified time frames. New Federal requirements did not take effect in an authorized State until the State adopted the requirements as State law.

In contrast, under section 3006(g) of RCRA (42 U.S.C. 6926(g)), new requirements and prohibitions imposed by the HSWA take effect in authorized States at the same time that they take effect in unauthorized States. EPA is directed to implement these requirements and prohibitions in authorized States, including the issuance of permits, until the State modifies its program to reflect the Federal standards, and applies for and is granted authorization. While EPA initially implements HSWA-related provisions in authorized States, States still must adopt these provisions as State law to retain final authorization.

Today's rule for listing EPA Hazardous Waste Nos. K140 and U408 is being promulgated pursuant to section 3001(e)(2) of RCRA, a provision added by the HSWA. With these rules being promulgated today, EPA considers its HSWA obligation to make a determination regarding listing organobromine wastes to be fulfilled. Therefore, the Agency is adding these requirements to Table 1 in 40 CFR 271.1(j), which identifies the Federal program requirements that are promulgated pursuant to the HSWA and that take effect in all States, regardless of their authorization status. The land disposal restrictions and treatment standards in today's rule are being promulgated pursuant to section 3004(g) and (m) of RCRA, provisions also added by HSWA. Table 2 in 40 CFR 271.1(j) is modified to indicate that these requirements are self-implementing. States may apply for final authorization for the HSWA provisions identified in 40 CFR 271.1(j), as discussed in the following section of the preamble.

B. Effect on State Authorizations

As noted previously, today's rule is being promulgated pursuant to provisions added by HSWA. The additions of K140 to the list of hazardous wastes from specific sources and of U408 to the list of commercial chemical products that are hazardous when discarded are promulgated pursuant to Section 3001(e)(2) of RCRA, a provision added by the HSWA.

The land disposal restrictions and treatment standards are promulgated pursuant to Sections 3004 (g) and (m), also HSWA provisions.

As noted above, EPA will implement the HSWA portions of today's rule in authorized States until they modify their programs to adopt these rules and such modifications are approved by EPA. Because this rule will be promulgated pursuant to HSWA, a State submitting a program modification may apply to receive either interim authorization under RCRA section 3006(g), if the State regulations are substantially equivalent to EPA's regulations, or final authorization under RCRA sections 3006(b), if the State regulations are fully equivalent to EPA's regulations. The procedures and schedule for State programs modifications for either interim or final authorization are described in 40 CFR 271.21. It should be noted that all HSWA interim authorizations will expire on January 1, 2003 (see 40 CFR 271.24(c), 52 FR 60129, December 18, 1992).

It should be noted that 40 CFR 271.21(e) requires that States having final RCRA authorization must modify their programs to reflect Federal program changes and subsequently must submit the modifications to EPA for approval. The deadline by which States must modify their programs to adopt today's rule will be determined by the date of promulgation of the final rule in accordance with 40 CFR 271.21(e)(2). Once EPA approves the modification, the State requirements become RCRA Subtitle C requirements.

States with authorized RCRA programs already may have regulations similar to those in today's rule. Such State regulations have not been assessed against the Federal regulations being promulgated today to determine whether they meet the tests for authorization. Thus, these State regulations will not be deemed as RCRA

requirements until the State program modification is submitted to EPA and approved. Of course, States with existing regulations may continue to administer and enforce those regulations as a matter of State law. In addition, in implementing the Federal program, EPA will work with the States under cooperative agreements to minimize duplication of efforts; in many cases, EPA will be able to defer to the States in their efforts to implement their programs, rather than take separate actions under Federal authority.

States that submit their official applications for final authorization less than 12 months after the effective date of EPA's regulations are not required to include regulations equivalent to the EPA regulations in their application. However, States must modify their programs by the deadlines set forth in 40 CFR 271.21(e). States that submit official applications for final authorization 12 months after the effective date of these standards must include standards equivalent to these standards in their application. The requirements States must meet when submitting final authorization applications are set forth in 40 CFR 271.3.

IX. Compliance and Implementation

A. Section 3010 Notification

Generally, when new hazardous wastes are listed, all persons who generate, transport, treat, store, or dispose of the newly listed wastes are required to notify either EPA, or a State authorized by EPA to operate the hazardous waste program, of their activities pursuant to section 3010 of RCRA. However, under the Solid Waste Disposal Amendments of 1980 (Pub. L. 96–482), EPA was given the option of waiving the notification requirement for persons who handle wastes that are covered by today's listing and already have notified EPA that they manage other hazardous wastes and have received an EPA identification number. This waiver is being promulgated because of the likelihood that persons managing today's promulgated wastes already are managing one or more hazardous wastes that generally are associated with the generation of EPA Hazardous Waste Nos. K140 and U408 and, therefore, have previously notified EPA and received an EPA identification number. In the event that any person who generates, transports, treats, stores, or disposes these wastes and has not previously notified and received an identification number, that person must obtain an identification number pursuant to 40 CFR 262.12 before that person can generate, transport, treat, store, or dispose of these wastes.

B. Compliance Dates for Facilities

The effective date of today's rule is November 4, 1998. Today's listings will be promulgated pursuant to HSWA. HSWA requirements are applicable in authorized States at the same time as in unauthorized States. Therefore, EPA will regulate the wastes being promulgated today until States are authorized to regulate these wastes. Once these regulations are promulgated in a final rule by EPA, the Agency will apply these Federal regulations to these wastes and to their management in both authorized and unauthorized States.

1. Facilities Newly Subject to RCRA Permit Requirements

Facilities that treat, store, or dispose of wastes that are subject to RCRA regulation for the first time by this rule (that is, facilities that have not previously received a permit pursuant to section 3005 of RCRA and are not currently operating pursuant to interim status), might be eligible for interim status (see section 3005(e)(1)(A)(ii) of RCRA). In order to obtain interim status based on treatment, storage or disposal of such newly identified wastes, eligible facilities are required to comply with 40 CFR 270.70(a) and 270.10(e) by providing notice under section 3010 and submitting a Part A permit application no later than November 4, 1998. Such facilities are subject to regulation under 40 CFR part 265 until a permit is issued.

In addition, under section 3005(e)(3)and 40 CFR 270.73(d), not later than November 4, 1998, land disposal facilities newly qualifying for interim status under section 3005(e)(1)(A)(ii) also must submit a Part B permit application and certify that the facility is in compliance with all applicable groundwater monitoring and financial responsibility requirements. If the facility fails to submit these certifications and a permit application, interim status will terminate on that date.

2. Existing Interim Status Facilities

Pursuant to 40 CFR 270.72(a)(1), all existing hazardous waste management facilities (as defined in 40 CFR 270.2) that treat, store, or dispose of the newly identified hazardous wastes and are currently operating pursuant to interim status under section 3005(e) of RCRA must file an amended Part A permit application with EPA no later than the effective date of today's rule, (i.e., November 4, 1998. By doing this, the facility may continue managing the newly listed wastes. If the facility fails to file an amended Part A application by that date, the facility will not receive interim status for management of the newly listed hazardous wastes, and may not manage those wastes until the facility receives either a permit or a change in interim status allowing such activity (40 CFR 270.10(g)).

3. Permitted Facilities

Facilities that already have RCRA permits must request permit modifications if they want to continue managing newly listed wastes. See 40 CFR 270.42(g). This provision states that a permittee may continue managing the newly listed wastes by following certain requirements, including submitting a Class 1 permit modification request by the date on which the waste or unit becomes subject to the new regulatory requirements (i.e., the effective date of today's rule), complying with the applicable standards of 40 CFR parts 265 and 266, and submitting a Class 2 or 3 permit modification request within 180 days of the effective date.

Generally, a Class 2 modification is appropriate if the newly listed wastes will be managed in existing permitted units or in newly regulated tank or container units and will not require additional or different management practices than those authorized in the permit. A Class 2 modification requires the facility owner to provide public notice of the modification request, a 60-day public comment period, and an informal meeting between the owner and the public within the 60-day period. The Class 2 process includes a ''default provision,'' which provides that if the Agency does not reach a decision within 120 days, the modification is automatically authorized for 180 days. If the Agency does not reach a decision by the end of that period, the modification is permanently authorized. See 40 CFR 270.42(b).

A Class 3 modification is generally appropriate if management of the newly listed wastes requires additional or different management practices than those authorized in the permit or if newly regulated land-based units are involved. The initial public notification and public meeting requirements are the same as for Class 2 modifications. However, after the end of the 60-day public comment period, the Agency will grant or deny the permit modification request according to the more extensive procedures of 40 CFR part 124. There is no default provision for Class 3 modifications. See 40 CFR 270.42(c).

Under 40 CFR 270.42(g)(1)(v), for newly regulated land disposal units, permitted facilities must certify that the facility is in compliance with all

applicable 40 CFR part 265 ground-water monitoring and financial responsibility requirements no later than November 4, 1998. If the facility fails to submit these certifications, authority to manage the newly listed wastes under 40 CFR 270.42(g) will terminate on that date.

X. Listing as CERCLA Hazardous Substances and RQ Adjustment

All hazardous wastes listed in 40 CFR 261.31 through 261.33, as well as any solid waste that meets one or more of the characteristics of a RCRA hazardous waste (as defined at 40 CFR 261.21 through 261.24), are hazardous substances under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (CERCLA), pursuant to CERCLA section 101(14)(C), 42 U.S.C. 9601(14). CERCLA hazardous substances and their reportable quantities (RQs) are listed in Table 302.4 at 40 CFR 302.4. Therefore, in addition to the K140 listing being promulgated today for 40 CFR 261.32 and the U408 listing being promulgated for 40 CFR 261.33, the Agency also is adding K140 and 2,4,6-tribromophenol to the list of CERCLA hazardous substances at Table 302.4 of 40 CFR 302.4.

Reporting Requirements. Under CERCLA section 103(a), the person in charge of a vessel or facility from which a hazardous substance has been released in a quantity that equals or exceeds its RQ must immediately notify the National Response Center of the release.[11] In addition to this reporting requirement under CERCLA, section 304 of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA), 42 U.S.C. 11004, requires owners or operators of certain facilities to report the release of a CERCLA hazardous substance in a quantity that equals or exceeds its RQ to State and local authorities. EPCRA section 304 notification must be given to the community emergency coordinator of the local emergency planning committee (LEPC) for each area likely to be affected by the release, and to the State emergency response commission (SERC) of any State likely to be affected by the release.

Adjustment of RQs. Under section 102(b) of CERCLA, all hazardous substances under CERCLA have a statutory RQ of one pound unless and until adjusted by regulation. The Agency's methodology for adjusting RQs of individual hazardous substances begins with an evaluation of the intrinsic physical, chemical, and toxicological properties of each hazardous substance.[12] The intrinsic properties examined—called ''primary criteria''—are aquatic toxicity, acute mammalian toxicity (oral, dermal, and inhalation), ignitability, reactivity, chronic toxicity, and potential carcinogenicity. Generally, for each intrinsic property, the Agency ranks hazardous substances on a scale, associating a specific range of values on each scale with an RQ of 1, 10, 100, 1000, or 5000 pounds. Each hazardous substance may receive several tentative RQ values based on the primary criteria. The lowest of the tentative RQs becomes the ''primary criteria RQ'' for that substance.

After the primary criteria RQs are assigned, substances are evaluated further for their susceptibility to certain degradative processes, which are used as secondary RQ adjustment criteria. These natural degradative processes are biodegradation, hydrolysis, and photolysis (BHP). If a hazardous substance, when released into the environment, degrades relatively rapidly to a less hazardous form by one or more of the BHP processes, its RQ (as determined by the primary RQ adjustment criteria) generally is raised one level.[13] This adjustment is made because the relative potential for harm to public health or welfare or the environment posed by the release of such a substance is reduced by these degradative processes. Conversely, if a hazardous substance degrades to a more hazardous product after its release, the original substance is assigned an RQ equal to the RQ for the more hazardous substance, which may be one or more levels lower than the RQ (as determined by the primary RQ adjustment criteria) for the original substance. The downward adjustment is appropriate because the potential for harm posed by the release of the original substance is increased as a result of degradative processes.

The methodology summarized above is applied to adjust the RQs of individual hazardous substances. An additional process applies to RCRA listed wastestreams, which contain individual hazardous constituents. As the Agency has stated (54 FR 33440, August 14, 1989), to assign an RQ to a RCRA wastestream, the Agency determines the RQ for each constituent within the wastestream and establishes the lowest RQ value of these constituents as the adjusted RQ for the wastestream.

Adjusted RQs for 2,4,6-tribromophenol and K140. Waste U408 is 2,4,6-tribromophenol, an individual hazardous substance. It has been evaluated for the six primary RQ adjustment criteria—aquatic toxicity, acute mammalian toxicity, ignitability, reactivity, chronic toxicity, and potential carcinogenicity—and the secondary adjustment criteria of BHP. Available studies of aquatic toxicity have measured an LC50 of 6.54 mg/L for the fathead minnow, resulting in a primary criterion RQ of 100 pounds for the substance.

In addition, based on an analysis of the structural and chemical similarities of 2,4,6-tribromophenol and 2,4,6-trichlorophenol and an evaluation of the potential carcinogenicity of the latter of the two substances, EPA has estimated a low hazard ranking for the potential carcinogenicity of 2,4,6-tribromophenol. This low hazard ranking results in a primary criterion RQ of 100 pounds. Based on this evaluation and the absence of relevant BHP data, the Agency today is finalizing an adjusted RQ of 100 pounds for 2,4,6-tribromophenol.

The EPA is adjusting the RQ of waste K140 in accordance with the methodology for adjusting RQs of hazardous wastestreams by assigning them RQs equal to that of the wastestream constituent with the lowest RQ.

XI. Regulatory Impact Analysis and Compliance Costs

A. Regulatory Impact Analysis Pursuant to Executive Order 12866

Executive Order 12866 requires that a regulatory agency determine whether a new regulation will have ''significant regulatory action'' and, if so, that a cost-benefit analysis be conducted. This analysis is a quantification of the potential benefits, costs, and economic impacts of a rule. A significant regulatory action is defined as a regulation that has an annual cost to the economy of $100 million or more that adversely affects in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or

[11] The toll free telephone number of the National Response Center is 800–424–8802; in the Washington, DC metropolitan area, the number is 202–267–2675.

[12] For more detailed information on this methodology, see the preamble to an RQ adjustment final rule published on August 14, 1989 (54 FR 33426). A different methodology is used to assign adjusted RQs to radionuclides (see 54 FR 22524, May 24, 1989).

[13] No RQ level increase based on BHP occurs if the primary criteria RQ already is at its highest possible level (100 pounds for potential carcinogens and 5000 pounds for all other types of hazardous substances except radionuclides). BHP is not applied to radionuclides.

state, local, or tribal governments or communities; creates a serious inconsistency with actions taken or planned by another agency; materially alters the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations or recipients thereof; or raises novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

The Agency estimated the costs of today's rule to determine if it is a significant regulation as defined by Executive Order 12866. Today's rule is estimated to have an annualized incremental cost of well below $100,000. Based on this compliance cost estimate, today's rule is not considered to be an economically significant regulatory action. However, the Agency believes that this action is significant for novel policy reasons. The following section discusses the results of the economic analyses used to support the Agency's determination.

Approach

To estimate the costs, economic impacts, and benefits of today's rule, the Agency compared post-regulatory costs, benefits, and economic impacts with those resulting under baseline conditions. Benefits are addressed in the risk assessment section of this preamble. The baseline management practice for this waste is disposal in a Subtitle D landfill, because this would the least expensive disposal option.

Results

The facility generating this waste is already in the Subtitle C universe because it generates other listed hazardous wastes. Therefore, costs associated with entering the RCRA hazardous waste system are not attributable to this listing. The owner/operator of the affected facility currently manage wastes off-site, and it is assumed for purposes of this analysis that off-site management would continue under Subtitle C.

At the time of the proposed listing there were two available options for handling the waste—land filling and incineration. The initial costs were based on the cost of management in a Subtitle C landfill. During the time between the proposal and final promulgation of this listing, Land Disposal Restrictions (LDRs), requiring incineration, were proposed for this waste. Using costs from the *Assessment of the Potential Costs and Benefits of the Hazardous Waste Identification Rule for Industrial Process Wastes*, Volume One: Chapter 3, May 25, 1995, incineration of low volumes of hazardous waste are assumed to be $1,428/ton. Additionally, costs of $130/ton are needed to handle the residual which is assumed to be one-quarter of the original tonnage, by weight. For disposal of the 34 tons [14] of waste and residual generated by the affected facility, the marginal compliance cost of this listing would be' would less than $48,000 per year. The transportation costs are assumed to equivalent to the Subtitle D handling because there is a hazardous waste incinerator in El Dorado, Arkansas.

Disposal method		Cost/year	Marginal difference
Hazardous			
	Incineration	$48,552	.....
	Residual-Sub C	1,105	.....
	Land filling	.....	.....
	Total post-rule	49,657	
Baseline	Subtitle D landfilling	1,700	47,957

B. Regulatory Flexibility Analysis

Pursuant to the Regulatory Flexibility Act of 1980, 5 U.S.C. 601 *et seq.*, when an agency publishes a notice of rulemaking, for a rule that will have a significant effect on a substantial number of small entities, the agency must prepare and make available for public comment a regulatory flexibility analysis that considers the effect of the rule on small entities (*i.e.*, small businesses, small organizations, and small governmental jurisdictions).

With respect to organobromine producing facilities that are small entities, the Agency does not believe that today's final rulemaking will have a significant impact. The organobromine chemical-producing industry in the U.S. is geographically limited by the location of underground bromide-bearing brine deposits. EPA identified two firms in southern Arkansas that account for 95% of the organobromine chemicals produced in the U.S. EPA evaluated the economic effect of the rule as discussed in the cost and economic impact section of this rulemaking, and determined that no facilities would be significantly affected.

For the reasons discussed above in the cost and economic impact section, EPA has determined that today's final rule will not have a significant impact to a substantial number of these small entities. Based on the foregoing discussion, I hereby certify that this rule will not have a significant adverse economic impact on a substantial number of small entities. This rule, therefore, does not require a regulatory flexibility analysis.

XII. Paperwork Reduction Act

This rule does not contain any new information collection requirements subject to OMB review under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 *et seq.* Facilities will have to comply with the existing Subtitle C recordkeeping and reporting requirements for the newly listed wastestreams.

To the extent that this rule imposes any information collection requirements under existing RCRA regulations promulgated in previous rulemakings, those requirements have been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, and have been assigned OMB control numbers 2050–0009 (ICR 1573, Part B Permit Application, Permit Modifications, and Special Permits); 2050–0120 (ICR 1571, General Facility Hazardous Waste Standards); 2050–0028 (ICR 261, Notification of Hazardous Waste Activity); 2050–0034 (ICR 262, RCRA Hazardous Waste Permit Application and Modification, Part A); 2050–0039 (ICR 801, Requirements for Generators, Transporters, and Waste Management Facilities under the Hazardous Waste Manifest System); 2050–0035 (ICR 820, Hazardous Waste Generator Standards);

[14] In the proposal, this analysis considered waste volumes as CBI, however, in the docket comments received by the Agency from Great Lakes Chemical Company publicly state the generation of 34 tons of waste per year.

and 2050-0024 (ICR 976, 1997 Hazardous Waste Report).

Release reporting required as a result of listing wastes as hazardous substances under CERCLA and adjusting the reportable quantities (RQs) has been approved under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, and has been assigned OMB control number 2050–0046 (ICR 1049, Notification of Episodic Release of Oil and Hazardous Substances).

XIII. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on state, local, and tribal governments, and on the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to state, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

EPA has determined that this rule does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate because this rule imposes no enforceable duty on any State, local, or tribal governments. The rule would not impose any federal intergovernmental mandate because it imposes no enforceable duty upon State, tribal or local governments. States, tribes and local governments would have no compliance costs under this rule, which applies only to facilities managing the listed organobromine production wastes and the discarded product waste. It is expected that states will adopt similar rules, and submit those rules for inclusion in their authorized RCRA programs, but they have no legally enforceable duty to do so.

For the same reasons, EPA also has determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments. In addition, as discussed above, the private sector is not expected to incur costs exceeding $100 million. EPA has fulfilled the requirement for analysis under the Unfunded Mandates Reform Act.

XIV. National Technology Transfer and Advancement Act

Under section 12(d) of the National Technology Transfer and Advancement Act (''NTTAA''), the Agency is required to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, business practice, etc.) which are developed or adopted by voluntary consensus standard bodies. Where available and potentially applicable voluntary consensus standards are not used by EPA, 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. EPA identified no potentially applicable voluntary consensus standards for today's final rule.

XV. Submission to Congress and the General Accounting Office

Under 5 U.S.C. 801(A)(1)(a) as added by the Small Business Regulatory Enforcement Act of 1996, EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the General Accounting Office prior to publication of the rule in today's **Federal Register**. This rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects

40 CFR Part 148

Administrative practice and procedure, Hazardous waste, Reporting and recordkeeping requirements, Water supply.

40 CFR Part 261

Environmental protection, Hazardous wastes, Recycling, Reporting and recordkeeping requirements.

40 CFR Part 268

Hazardous waste, Reporting and recordkeeping requirements.

40 CFR Part 271

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

40 CFR Part 302

Air pollution control, Chemicals, Emergency Planning and Community Right-To-Know Act, Extremely hazardous substances, Hazardous chemicals, Hazardous materials, Hazardous materials transportation, Hazardous substances, Hazardous wastes, Intergovernmental relations, Natural resources, Pesticides and pests, Reporting and recordkeeping requirements, Superfund, Waste treatment and disposal, Water pollution control, Water supply.

Dated: April 15, 1998.

Carol M. Browner,

Administrator.

For the reasons set out in the preamble, title 40 of the Code of Federal Regulations is amended as follows:

PART 148—HAZARDOUS WASTE INJECTION RESTRICTIONS

1. The authority citation for part 148 continues to read as follows:

Authority: Secs. 3004, Resource Conservation and Recovery Act, 42 U.S.C. 6901 *et seq.*

2. Section 148.18 is amended by adding paragraph (f) to read as follows:

§ 148.18 Waste specific prohibitions-newly listed and identified wastes.

* * * * *

(f) Effective August 3, 1998, the wastes specified in 40 CFR 261.32 as EPA Hazardous Waste number K140, and in 40 CFR 261.33(f) as EPA Hazardous Waste number U408 are prohibited from underground injection.

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

3. The authority citation for Part 261 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921, 6922, 6924(y) and 6938.

4. In § 261.32 the table is amended by adding in numerical order the following waste stream to the subgroup 'Organic chemicals':

§ 261.32 Hazardous wastes from specific sources.

* * * * *

Industry and EPA hazardous waste No.	Hazardous waste	Hazard code
*	*	*
K140	Floor sweepings, off-specification product and spent filter media from the production of 2,4,6-tribromophenol.	(T)

Industry and EPA hazardous waste No.	Hazardous waste	Hazard code
*	*	*

5. In § 261.33(f) the table is amended by adding in numerical order the following substance to read as follows:

§ 261.33 Discarded commercial chemical products, off-specification species, container residues, and spill residues thereof.

* * * * *

(f) * * *

Hazardous waste No.	Chemical abstracts No.	Substance
*	*	*
U408	118–79–6	2,4,6-Tribromophenol.
*	*	*

6. Appendix VII to Part 261 is amended by adding the following waste stream in alphanumeric order.

Appendix VII to Part 261—Basis for Listing Hazardous Waste

EPA hazardous waste No.	Hazardous constituents for which listed
*	*
K140	2,4,6-Tribromophenol.
*	*

7. Appendix VIII to Part 261 is amended by adding the following hazardous constituent in alphabetical order:

Appendix—VIII to Part 261—Hazardous Constituents

Common name	Chemical abstracts name	Chemical abstracts No.	Hazardous waste No.
*	*	*	*
2,4,6-Tribromophenol	Tribromophenol, 2,4,6–	118–79–6	U408
*	*	*	*

PART 268—LAND DISPOSAL RESTRICTIONS

8. The authority citation for Part 268 continues to read as follows:

Subpart C—Prohibitions on Land Disposal

Authority: 42 U.S.C. 6905, 6912(a), 6921, and 6924.

9. Section 268.33 is added to read as follows:

§ 268.33 Waste-specific prohibitions—organobromine wastes.

(a) Effective November 4, 1998, the waste specified in 40 CFR 261.32 as EPA Hazardous Wastes Numbers K140, and in 40 CFR 261.33 as EPA Hazardous waste number U408 are prohibited from land disposal. In addition, soils and debris contaminated with these wastes, radioactive wastes mixed with these hazardous wastes, and soils and debris contaminated with these radioactive mixed wastes, are prohibited from land disposal.

(b) Between May 4, 1998 and November 4, 1998, the wastes included in the paragraph (a) of this section may be disposed in a landfill or surface impoundment only if such unit is in compliance with the requirements specified in § 268.5(h)(2).

(c) The requirements of paragraphs (a) and (b) of this section do not apply if:

(1) The wastes meet the applicable treatment standards specified in subpart D of this part;

(2) Persons have been granted an exemption from a prohibition pursuant to a petition under § 268.6, with respect to those wastes and units covered by the petition;

(3) The wastes meet the applicable treatment standards established pursuant to a petition granted under § 268.44;

(4) Hazardous debris that has met treatment standards in § 268.40 or in the alternative treatment standards in § 268.45; or

(5) Persons have been granted an extension to the effective date of a prohibition pursuant to § 268.5, with respect to these wastes covered by the extension.

(d) To determine whether a hazardous waste identified in this section exceeds the applicable treatment standards specified in § 268.40, the initial generator must test a sample of the waste extract or the entire waste, depending on whether the treatment standards are expressed as concentrations in the waste extract or the waste, or the generator may use knowledge of the waste. If the waste contains constituents (including underlying hazardous constituents in characteristic wastes that have been diluted to remove the characteristic) in excess of the applicable Universal Treatment Standard levels of § 268.48, the waste is prohibited from land disposal, and all requirements of this part 268 are applicable, except as otherwise specified.

Subpart D—Treatment Standards

10. In § 268.40 the table is amended by adding in alphanumeric order the following new entries. The appropriate footnotes are republished without change.

§ 268.40 Applicability of treatment standards.

* * * * *

TREATMENT STANDARDS FOR HAZARDOUS WASTES

[Note: NA means not applicable]

Waste Code	Waste Description and Treatment/Regulatory Subcategory [1]	Regulated Hazardous Constituent		Wastewaters	Non-wastewaters
		Common Name	CAS [2] number	Concentration in mg/L [3]; or Technology Code [4]	Concentration in mg/kg [5] unless noted as "mg/L TCLP"; or Technology Code
*	* * *	*	*	*	
K140	Floor sweepings, off-specification product, and spent filter media from the production of 2,4,6-tribromophenol.	2,4,6-Tribromophenol	118–79–6	0.35	7.4
*	* * *	*	*	*	
U408	2,4,6-Tribromophenol	2,4,6-Tribromophenol	118–79–6	0.035	7.4
*	* * *	*	*	*	

[1] The waste descriptions provided in this table do not replace waste descriptions in 40 CFR 261. Descriptions of Treatment/Regulatory Subcategories are provided, as needed, to distinguish between applicability of different standards.

[2] CAS means Chemical Abstract Services. When the waste code and/or regulated constituents are described as a combination of a chemical with it's salts and/or esters, the CAS number is given for the parent compound only.

[3] Concentration standards for wastewaters are expressed in mg/l are based on analysis of composite samples.

[4] All treatment standards expressed as a Technology Code or combination of Technology Codes are explained in detail in 40 CFR 268.42 Table 1—Technology Codes and Descriptions of Technology-Based Standards.

[5] Except for Metals (EP or TCLP) and Cyanides (Total and Amenable) the nonwastewater treatment standards expressed as a concentration were established, in part, based upon incineration in units operated in accordance with the technical requirements of 40 CFR Part 264 Subpart O or Part 265 Subpart O, or based upon combustion in fuel substitution units operating in accordance with applicable technical requirements. A facility may comply with these treatment standards according to provisions in 40 CFR 268.40(d). All concentration standards for nonwastewaters are based on analysis of grab samples.

* * * * *

11. In § 268.48(a), the table is amended by adding in alphabetical order the following new entry as follows: The appropriate footnotes are republished without change.

§ 268.48 Universal treatment standards.

(a) * * *

UNIVERSAL TREATMENT STANDARDS

[Note: NA means not applicable]

Regulated constituent/common name	CAS [1] Number	Wastewater standard	Nonwastewater standard
		Concentration in mg/L [2]	Concentration in mg/kg [3] unless noted as "mg/L TCLP"
* * * * *	*		*
2,4,6-Tribromophenol	118–79–6	0.035	7.4
* * * * *	*		*

[1] CAS means Chemical Abstract Services. When the waste code and/or regulated constituents are described as a combination of a chemical with it's salts and/or esters, the CAS number is given for the parent compound only.

[2] Concentration standards for wastewaters are expressed in mg/l are based on analysis of composite samples.

[3] Except for Metals (EP or TCLP) and Cyanides (Total and Amenable) the nonwastewater treatment standards expressed as a concentration were established, in part, based upon incineration in units operated in accordance with the technical requirements of 40 CFR part 264, subpart O or 40 CFR part 265, subpart O, or based upon combustion in fuel substitution units operating in accordance with applicable technical requirements. A facility may comply with these treatment standards according to provisions in 40 CFR 268.40(d). All concentration standards for nonwastewaters are based on analysis of grab samples.

* * * * * *

PART 271—REQUIREMENTS FOR AUTHORIZATION OF STATE HAZARDOUS WASTE PROGRAMS

12. The authority citation for Part 271 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), and 6926.

13. Section 271.1(j) is amended by adding the following entries to Tables 1 and 2 in chronological order by date of publication to read as follows.

§ 271.1 Purpose and scope.

* * * * *

(j) * * *

TABLE 1.—REGULATIONS IMPLEMENTING THE HAZARDOUS AND SOLID WASTE AMENDMENTS OF 1984

Promulgation date	Title of regulation	Federal Register reference	Effective date
* *	* *	* *	* *
May 4, 1998	Listing of Organobromine Production Wastes.	[Insert Federal Register reference page cite from publication date]..	November 4, 1998
* *	* *	* *	* *

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TABLE 2.—SELF-IMPLEMENTING PROVISIONS OF THE SOLID WASTE AMENDMENTS OF 1984

Effective date	Self-implementing provision	RCRA citation	Federal Register reference
* *	* *	* *	* *
August 3, 1998	Prohibition on land disposal of newly listed and identified wastes.	3004(g)(4)(C) and 3004(m)	[Insert date of publication; FR page numbers]
May 4, 2000	Prohibition on land disposal of radioactive waste mixed with the newly listed and identified wastes, including soil and debris.	3004(m) 3004(g)(4)(C) and 3004(m)	Do. Do. Do.
* *	* *	* *	* *

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Part 302—DESIGNATION, REPORTABLE QUANTITIES, AND NOTIFICATION

14. The authority citation for Part 302 continues to read as follows:

Authority: 42 U.S.C. 9602, 9603, and 9604; 33 U.S.C. 1321 and 1361.

15. Section 302.4 is amended by adding the following entries to Table 302.4 and its Appendix A as set forth below. The appropriate footnotes to Table 302.4 are republished without change.

TABLE 302.4.—LIST OF HAZARDOUS SUBSTANCES AND REPORTABLE QUANTITIES

Hazardous substance	CASRN	Regulatory synonyms	Statutory			Final RQ	
			RQ	Code +	RCRA Waste Number	Category	Pounds (Kg)
2,4,6-tribromophenol	118796		100	4	U408	B	100 (45.4)
* *	*	*	*	*	*	*	*
K140 Floor sweepings, off-specification product and spent filter media from the production of 2,4,6-tribromophenol..			1*	4	K140	B	## 100 (45.4)
* *	*	*	*	*	*	*	*

* * * * * * *

4—indicates that the statutory source for designation of this hazardous substance under CERCLA is RCRA Section 3001.

1*—indicates that the 1-pound RQ is a CERCLA statutory RQ.

* * * * * * *

APPENDIX A TO § 302.4—SEQUENTIAL CAS REGISTRY NUMBER LIST OF CERCLA HAZARDOUS SUBSTANCES

CAIRN	Hazardous substance
* * * * * * *	
118796	2,4,6-Tribromophenol
* * * * * * *	

[FR Doc. 98–11259 Filed 5–1–98; 8:45 am]

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federal register

Monday
May 4, 1998

Part III

Department of Transportation

Federal Railroad Administration

49 CFR Parts 223 and 239
Passenger Train Emergency Preparedness; Final Rule

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

49 CFR Parts 223 and 239

[FRA Docket No. PTEP–1, Notice No. 3]

RIN 2130–AA96

Passenger Train Emergency Preparedness

AGENCY: Federal Railroad Administration (FRA), Transportation (DOT).

ACTION: Final rule.

SUMMARY: FRA is issuing minimum Federal safety standards for the preparation, adoption, and implementation of emergency preparedness plans by railroads connected with the operation of passenger trains, including all railroads hosting the operations of rail passenger service. The rule also requires each affected railroad to instruct its employees on the provisions of its plan. Emergency preparedness plans must address such subjects as communication, employee training and qualification, joint operations, tunnel safety, liaison with emergency responders, on-board emergency equipment, and passenger safety information. The plan adopted by each affected railroad will be subject to formal review and approval by FRA.

These emergency preparedness regulations constitute the second phase in a four-phase process that began in 1994. In the first phase, FRA encouraged railroads to examine their programs to determine what improvements could be made, while in the third phase, FRA will review the railroad plans to determine if all emergency preparedness issues have been adequately addressed within the varying contexts of railroad operations. In the fourth phase, FRA will review the implementation and effectiveness of these standards and related voluntary developments, and will address the need for further rulemaking activity.

The final rule does not apply to tourist and historic railroad operations. However, after appropriate consultation with the excursion railroad associations to determine appropriate applicability in light of financial, operational, or other factors unique to such operations, emergency preparedness requirements for these operations may be prescribed by FRA that are different from those affecting other types of passenger operations.

EFFECTIVE DATE: July 6, 1998.

ADDRESSES: Any petition for reconsideration should reference FRA Docket No. PTEP–1, Notice No. 3, and be submitted in triplicate to the Docket Clerk, Office of Chief Counsel, Federal Railroad Administration, 400 Seventh Street, S.W., Mail Stop 10, Washington, D.C. 20590.

FOR FURTHER INFORMATION CONTACT: Mr. Edward R. English, Director, Office of Safety Assurance and Compliance, FRA, 400 Seventh Street, S.W., RRS–10, Mail Stop 25, Washington, D.C. 20590 (telephone number: 202–632–3349), or David H. Kasminoff, Esq., Trial Attorney, Office of Chief Counsel, FRA, 400 Seventh Street, S.W., RCC–12, Mail Stop 10, Washington, D.C. 20590 (telephone: 202–632-3191).

SUPPLEMENTARY INFORMATION:

Background

On February 24, 1997, FRA published in the **Federal Register** a notice of proposed rulemaking (NPRM) to amend part 223, entitled Safety Glazing Standards—Locomotives, Passenger Cars and Cabooses,'' by revising § 223.5 and adding a new paragraph in § 223.9 to require the marking of emergency windows, and to add a new ''Part 239—Passenger Train Emergency Preparedness.'' 62 FR 8330. The proposed part 239 set forth minimum Federal safety standards for the preparation, adoption, and implementation of emergency preparedness plans by railroads connected with passenger train operations, including railroads hosting the operations of rail passenger service. In addition, the NPRM prescribed marking, inspection, maintenance, and repair requirements for all emergency window and door exits intended for egress by passengers or for access by emergency responders.

The overall safety record of conventional intercity and commuter passenger train operations in the United States has been exemplary. However, accidents continue to occur, often as a result of factors beyond the control of the passenger railroad. Further, the rail passenger operating environment in the United States is rapidly changing—technology is advancing, equipment is being designed for ever-higher speeds, and many potential new operators of passenger equipment are appearing. With this more complex operating environment, FRA must become more proactive to ensure that operators of passenger train service, as well as those railroads hosting passenger operations, engage in careful, advance planning to minimize the consequences of emergencies that could occur. Even minor incidents could easily develop into life-threatening events if they are not addressed in a timely and effective manner.

In recent years, passenger train accidents, such as the tragic ''Sunset Limited'' passenger train derailment near Mobile, Alabama in September 1993, have demonstrated the need to improve the way railroads respond in emergency situations. On September 22, 1993, at about 2:45 a.m., barges that were being pushed by the towboat ''Mauvilla'' in dense fog struck and displaced the Big Bayou Canot railroad bridge near Mobile, Alabama. At about 2:53 a.m., National Railroad Passenger Corporation (Amtrak) train no. 2, the ''Sunset Limited,'' en route from Los Angeles, California to Miami, Florida with 220 persons on board, struck the displaced bridge and derailed. The three locomotive units, the baggage and dormitory cars, and two of the six passenger cars fell into the water. The fuel tanks on the locomotive units ruptured, and the locomotive units and the baggage and dormitory cars caught fire. Forty-two passengers and five crewmembers were killed, and 103 passengers were injured. The towboat's four crewmembers were not injured.

In a report on the accident released on September 19, 1994, the National Transportation Safety Board (NTSB) determined that several circumstances hampered emergency response efforts. NTSB Railroad-Marine Accident Report 94/01. In its assessment of emergency response at the accident site, the NTSB noted that the location of the accident was remote (accessible only by rail, water, or air), fog in the area was dense (requiring the use of radar to navigate boats), limited modes of transportation were available for bringing in personnel and equipment, and the magnitude of the accident was great. Nevertheless, the NTSB concluded that, following the delay while emergency responders identified the location of the accident, emergency response activities were efficient and effective. The report did find, however, that Amtrak did not have an effective system in place to apprise passengers of train safety features, passengers were slowed during evacuation by the absence of emergency lighting on the passenger cars, and emergency responders were hindered by their inability to obtain an adequate passenger and crew list from Amtrak until the next day. The NTSB also noted that if the Mobile County Emergency Management Agency had held drills to simulate a train accident, the incident commander might have learned about Amtrak's procedure for accounting for passengers, and CSX Transportation, Inc. (CSX Transportation), the owner of the bridge and trackage, might have

obtained the correct telephone number to contact the U.S. Coast Guard.

Considerable effort has focused on how to mitigate casualties after a train accident occurs. In this regard, even before the occurrence of the tragic accident near Mobile, FRA had tasked DOT's Volpe National Transportation Systems Center (TSC), in Cambridge, Massachusetts, to perform research and to recommend emergency preparedness guidelines for passenger train operators. The results were published at the end of 1993 as a publication entitled ''Recommended Emergency Preparedness Guidelines for Passenger Trains'' (Volpe Report), which is available to the public through the National Technical Information Service, Springfield, VA 22161 (DOT/FRA/ORD–93–24—DOT–VNTSC–FRA–93–23). The publication references safety recommendations of the NTSB, as well as many other publications on the subject of emergency preparedness, and contains recommended guidelines designed to assist passenger train operating systems and emergency response organization management in evaluating and modifying or supplementing their emergency response plans. A copy of the Volpe Report has been placed in the public docket for this rulemaking.

The Volpe Report recommendations address guidelines relating to emergency plans, procedures, and training. In addition, guidelines are presented for passenger train and facility features intended to shorten emergency response time, improve the effectiveness of evacuating passengers, and minimize the effects of an emergency. The publication also lists inter-organizational emergency protocols, which include those of fire departments, emergency medical services (EMS), police departments, public utilities, hospitals, and local, State, regional, and Federal governments.

In an effort to be proactive after the accident near Mobile, FRA mailed the Volpe Report to all intercity passenger and commuter railroads, freight railroads, the United Transportation Union, and the Brotherhood of Locomotive Engineers in March 1994 for their information and guidance. Concurrent with this mailing, FRA invited the railroads to attend an agency-sponsored roundtable meeting in Washington, D.C., on June 9, 1994, to discuss the emergency preparedness issues addressed in the publication. The 23 persons attending the roundtable included representatives from FRA and the following other organizations:

Amtrak,
Long Island Rail Road (LIRR),
MTA Metro-North Railroad (METRO-NORTH),
Northeast Illinois Regional Commuter Railroad Corporation (METRA),
Peninsula Corridor Joint Powers Board (CALTRAIN),
Port Authority Trans-Hudson Corporation (PATH),
Southern California Regional Rail Authority (METROLINK),
Southeastern Pennsylvania Transportation Authority (SEPTA),
Tri-County Commuter Rail Authority (TRI-RAIL),
TSC, and
Virginia Railway Express (VRE).

During the meeting, FRA agreed to assist the passenger railroads in establishing improved working relationships with their host freight railroads. FRA also promised to help the passenger railroads in their emergency response efforts in larger metropolitan areas by contacting emergency response agencies and eliciting more cooperation between them. In addition, FRA stated that it would conduct field visits to several passenger railroads to study their equipment and their emergency response and training programs.

At that same meeting, the passenger railroads agreed to provide stronger supervisory oversight of their emergency response and training programs, and stated that they would offer additional, structured ''hands-on'' training to their train crews concerning the removal of emergency windows and passenger evacuation. They also agreed to develop programs for recurring passenger car inspections, emphasizing checking of emergency equipment such as windows, tools, and fire extinguishers. Further, they agreed to improve their methods of apprising passengers of emergency information, to include seat drops, placards inside each car, and messages in on-board newsletters. While FRA was encouraged that passenger railroads had already begun to incorporate the recommendations of the Volpe Report into their own emergency preparedness procedures and policies, more progress by the entire industry was needed.

As a result of concerns raised about the safety of the operation of rail passenger service, Congress enacted section 215 of the Federal Railroad Safety Authorization Act of 1994, Pub. L. No. 103–440, 108 Stat. 4619, 4623–4624 (November 2, 1994), entitled ''Passenger Car Safety Standards,'' which amended 49 U.S.C. 20133 to read as follows:

§ 20133. Passenger cars

(a) MINIMUM STANDARDS.—The Secretary of Transportation shall prescribe regulations establishing minimum standards for the safety of cars used by railroad carriers to transport passengers. Before prescribing such regulations, the Secretary shall consider—

(1) the crashworthiness of the cars;

(2) interior features (including luggage restraints, seat belts, and exposed surfaces) that may affect passenger safety;

(3) maintenance and inspection of the cars;

(4) emergency response procedures and equipment; and

(5) any operating rules and conditions that directly affect safety not otherwise governed by regulations.

The Secretary may make applicable some or all of the standards established under this subsection to cars existing at the time the regulations are prescribed, as well as to new cars, and the Secretary shall explain in the rulemaking document the basis for making such standards applicable to existing cars.

(b) INITIAL AND FINAL REGULATIONS.—(1) The Secretary shall prescribe initial regulations under subsection (a) within 3 years after the date of enactment of the Federal Railroad Safety Authorization Act of 1994. The initial regulations may exempt equipment used by tourist, historic, scenic, and excursion railroad carriers to transport passengers.

(2) The Secretary shall prescribe final regulations under subsection (a) within 5 years after such date of enactment.

(c) PERSONNEL.—The Secretary may establish within the Department of Transportation 2 additional full-time equivalent positions beyond the number permitted under existing law to assist with the drafting, prescribing, and implementation of regulations under this section.

(d) CONSULTATION.—In prescribing regulations, issuing orders, and making amendments under this section, the Secretary may consult with Amtrak, public authorities operating railroad passenger service, other railroad carriers transporting passengers, organizations of passengers, and organizations of employees. A consultation is not subject to the Federal Advisory Committee Act, (5 U.S.C. App.), but minutes of the consultation shall be placed in the public docket of the regulatory proceeding.

The Secretary of Transportation has delegated these rulemaking responsibilities to the Federal Railroad Administrator. 49 CFR 1.49(m).

FRA is committed to the maximum feasible use of collaborative processes in the development of safety regulations. Consistent with the intent of Congress that FRA consult with the railroad industry, FRA invited various organizations to participate in a passenger train emergency preparedness working group (Working Group) to focus on the issues related thereto and build the framework for the development of a Notice of Proposed Rulemaking (NPRM) and, ultimately, the final rule. FRA held its first Working Group meeting on August 8, 1995. The 33-member Working Group was comprised of

representatives from FRA and the following other organizations:

American Public Transit Association (APTA),
Amtrak,
Association of American Railroads (AAR),
Brotherhood of Locomotive Engineers (BLE),
CALTRAIN,
LIRR,
Maryland Mass Transit Administration (MARC),
Massachusetts Bay Transportation Authority (MBTA),
METRA,
METRO–NORTH,
METROLINK,
National Association of Railroad Passengers (NARP),
NTSB,
New Jersey Transit Rail Operations (NJTR),
Northern Indiana Commuter Transportation District (NICTD),
PATH,
Safe Travel America (STA),
SEPTA,
TRI–RAIL,
TSC,
United Transportation Union (UTU), and
VRE.

Regulations covering comprehensive safety standards for rail passenger equipment—inspection, testing, and maintenance of passenger equipment; equipment design and performance criteria related to passenger and crew survivability in the event of a train accident; and the safe operation of passenger train service—supplementing existing railroad safety standards, are covered by a separate rulemaking and are being addressed by a separate working group. The NPRM on passenger equipment safety standards was published in the **Federal Register** on September 23, 1997. 62 FR 49728. Persons wishing to receive more information regarding this other rulemaking should refer to FRA Docket No. PCSS–1 and contact either Mr. Edward Pritchard, Acting Staff Director, Motive Power and Equipment Division, Office of Safety Assurance and Compliance, FRA, 400 Seventh Street, S.W., RRS–14, Mail Stop 25, Washington, D.C. 20590 (telephone 202–632–3348), or Daniel L. Alpert, Esq., Trial Attorney, Office of Chief Counsel, FRA, 400 Seventh Street, S.W., Washington, D.C. 20590 (telephone 202–632–3186).

Both the proposed rule and final rule on passenger train emergency preparedness were developed by FRA in consultation with the Working Group. The proposal incorporated comments submitted by the Working Group in response to a preliminary draft of the proposed rule text, and all comments submitted in response to the NPRM were provided to members of the Working Group for their consideration in preparation of the final rule. The Working Group then helped FRA develop the final rule based on a consensus process, with facts and analysis flowing from both the Working Group's deliberations and information submitted by all commenters on the NPRM. In accordance with 49 U.S.C. 20133(d), the evolving positions of the Working Group members—as reflected in the minutes of the group meetings and associated documentation, together with data provided by the membership during their deliberations—have been placed in the public docket of this rulemaking.

In announcing the first meeting of the Working Group on August 8, 1995, FRA stated that the purpose of the meeting was to provide an opportunity to collectively focus on evaluating issues related to passenger train emergency preparedness, as well as to develop and formulate plans and programs that would culminate in a final rule. The discussion focused on the key issues of emergency notification, training of railroad employees and emergency responders, suitability of on-board emergency equipment, and the Volpe Report. While FRA did not limit the Working Group's discussions, the agency requested that, at a minimum, the following topics and issues should be considered and addressed during the consultation process for possible inclusion in the rule:

- Types of safety equipment that should be required in each passenger car (*e.g.*, fire extinguishers, saws, hammers, and flashlights) including where the equipment should be located, who should have access to it, and how to avoid pilferage;
- Training for railroad employees on the use of on-board emergency equipment;
- Frequency of inspection of on-board emergency equipment;
- Effective marking of emergency windows on each passenger car;
- Informing passengers about safety procedures and emergency equipment, including locations of exit doors and windows;
- Demonstrations by on-board crewmembers of emergency procedures and exits after major station stops;
- Communication capabilities of on-board crewmembers;
- Requiring on-board crewmembers to be trained to provide cardio-pulmonary resuscitation (CPR) or first aid treatment or both;
- Ensuring that on-board crewmembers have contact telephone numbers for control centers and local authorities;
- Requiring preparation of an emergency preparedness plan, including periodic exercises to test employee knowledge of proper procedures involving passenger illness or injury, stalled trains, evacuation procedures, derailments, collisions, severe weather, and security threats;
- Coordinating applicable portions of emergency preparedness plans between passenger railroads and freight railroads that host these passenger operations;
- Extent to which safety action plans should be regulated in terms of content or format, and whether such plans should be subject to FRA review and approval;
- Training for auxiliary individuals participating in passenger emergencies (*e.g.*, control center employees, on-board service staff, and appropriate supervisory and maintenance personnel);
- Training for emergency responders along passenger corridor routes;
- Accounting for the unique emergency preparedness concerns raised by passenger operations through tunnels, on elevated structures, and in electrified territory;
- Level of training specificity required for each category of employee;
- Requiring passenger railroads to develop and update inter-organizational emergency protocols with local communities, in order to augment safety action plans;
- Providing emergency responders with accurate passenger counts; and
- Emergency lighting in passenger cars (*e.g.*, floor strip lighting, flood lighting, and emergency exit lighting), including standards for testing and reliability.

FRA deliberated at length with members of the Working Group about what the rule would demand of affected railroads, in order to achieve the goal of optimizing their level of preparedness when faced with passenger train emergencies. The consensus was that the final rule needed to be flexible in its requirements to allow each railroad to address the unique characteristics of its individual operation. The Working Group recommended that FRA require each affected railroad to prepare a formal emergency preparedness plan covering broad elements, such as: employee and emergency-responder training; on-board crewmember responsibilities; communication between the train crew and the control center, and between the control center and the emergency responders; delineation of passenger railroad and freight railroad responsibilities in cases of joint operations; and operations in tunnels or over elevated structures.

However, the group urged FRA to afford railroads considerable latitude to design and administer emergency preparedness plans that best address each railroad's specific safety issues and concerns, with each plan then subject to review and approval by FRA.

FRA incorporated the Working Group's recommendations into a draft NPRM, and mailed the draft to the group on December 14, 1995, along with a copy of the minutes of the first meeting of the Working Group. Copies of both documents, and other relevant enclosures, were placed in the public docket for this rulemaking. The 34-member Working Group held its second meeting on February 6–7, 1996, and was comprised of representatives from the same organizations in attendance at the first Working Group meeting. The Working Group reviewed the draft and presented its comments, and a copy of the minutes of the second meeting of the group is also included in the rulemaking docket. The Working Group's comments were then incorporated into the NPRM that was published in the **Federal Register** on February 24, 1997. 62 FR 8330.

While FRA has focused on crafting a rule containing comprehensive requirements in connection with railroads adopting, implementing, and complying with their emergency preparedness plans, many details remained unresolved at the NPRM stage concerning the enforcement obligations that FRA should impose in the final rule. Among the broad range of possibilities, FRA noted that the final rule could impose a ''reasonable care'' standard and focus on achieving substantial compliance, with an emphasis on determining whether each railroad has demonstrated a genuine good faith effort to fulfill each of the elements of its emergency preparedness plan. Under this approach, for example, FRA would verify whether a railroad has established a training program for its employees on the applicable provisions of the emergency preparedness plan, and could impose a civil penalty on the railroad for failing to comply with this basic element of its emergency preparedness plan. However, if FRA concluded that the railroad had properly adopted a training program, but during the occurrence of an actual emergency several employees failed (under the stress of the situation) to fulfill all of their responsibilities under the emergency preparedness plan, FRA would likely not penalize either the railroad or the individuals. Also, if a railroad failed to designate an employee to maintain a current list of emergency telephone numbers, FRA could clearly penalize the railroad for this omission. However, if a railroad's plan properly provided for the maintenance of the list of emergency telephone numbers, but one telephone number on a long list of accurate numbers was found by FRA to be out of date, and thus incorrect, FRA could use its prosecutorial discretion to elect not to impose a civil penalty on the railroad.

As an alternative, FRA noted in the NPRM that the agency could maintain strict oversight by requiring compliance with every individual element of the emergency preparedness plan, and impose a civil penalty in every instance in which a railroad failed to achieve compliance. Accordingly, under this approach, a railroad could be penalized for failing to constantly update its list of emergency telephone numbers, neglecting to distribute applicable portions of its emergency preparedness plan to each and every on-line emergency responder, or operating a train with an incorrect type of on-board emergency equipment. Rather than stressing a determination of the overall level of emergency preparedness achieved by a railroad before an emergency ever occurs, this enforcement philosophy would specifically focus on whether the railroad in fact complied with all of the written emergency plan procedures for implementing each plan element. FRA invited commenters to address the questions of what compliance obligations should exist in the final rule, in the context of requiring railroads to adopt and implement procedures for achieving emergency preparedness, and what enforcement policy should be exercised by the agency regarding those obligations. Commenters were also asked to review the language of the section-by-section analysis and rule text of the proposed rule and to offer suggestions on whether FRA's expectations for compliance with the emergency preparedness plan elements were too rigid, or not strict enough.

Although FRA did not receive many written comments on how the agency should define its enforcement philosophy concerning the final rule, the consensus of the Working Group was that FRA should not penalize a railroad that has displayed its best efforts in achieving compliance and that FRA should focus on evaluating the overall quality of the emergency preparedness plan rather than on finding possible minor deficiencies. The Working Group also stated that FRA should not necessarily measure the success of an emergency preparedness plan based solely upon the outcome of an emergency situation. In this regard, the Working Group noted that even if a railroad meticulously prepares a comprehensive and detailed emergency preparedness plan, the severity level of an emergency and the ''real life'' reactions to a crisis situation by a railroad's employees (even assuming that the railroad properly trained the employees on the applicable plan's provisions in accordance with § 239.101(a)(2)) may prevent a railroad from achieving a favorable result in a specific emergency scenario. Accordingly, the Working Group urged FRA to evaluate a railroad's response to an emergency situation based upon how precisely the railroad adopted and complied with its written emergency preparedness plan, and not necessarily upon the actual results of the plan's implementation.

Consistent with both the Working Group's recommendations and FRA's stated policy in 49 CFR part 209 with respect to deciding whether enforcement action is the best method for addressing noncompliance, representatives of FRA and States participating under 49 CFR part 212 will consider a number of different factors before recommending the assessment of a civil penalty involving the requirements of this rule. These factors include:

- The inherent seriousness of the violation;
- The kind and degree of potential safety hazard presented by the violation under the circumstances;
- Any actual harm to persons or property already caused by the violation;
- The offending person's general level of compliance;
- The offending person's recent history of compliance with the particular rule involved, especially at the particular location involved;
- Whether a remedy other than a civil penalty (ranging from a warning to an emergency order) is appropriate under the circumstances; and
- Other factors relevant in the immediate circumstances.

In drafting the final rule, FRA has incorporated relevant information derived from the investigation of the accident involving Amtrak train 1, the ''Sunset Limited,'' which occurred in Hyder, Arizona on October 9, 1995. In that accident, the initial notification was made by the Amtrak locomotive engineer to the Southern Pacific Transportation Company (SP) train dispatcher's office in Denver, Colorado, which then notified the appropriate local emergency response agencies. The SP yardmaster in Phoenix Yard also dialed 911 after hearing the engineer's

radio transmissions to the train dispatcher.

While the local emergency responders stated that the accident was handled well by all parties involved, the responders noted that they were hampered in reaching the accident site by extremely rough terrain, initially negotiable only by four-wheel drive vehicles until graders and earth movers created a trail for conventional vehicles. The responders were somewhat confused by being provided with only a milepost location instead of a more familiar identifier. The responders were also frustrated by the lack of an accurate passenger count, but Amtrak has stated that once it has satellite cellular telephone capabilities train conductors will report passenger counts to a central telephone number after leaving each station. In addition, the responders indicated that, although the emergency lighting did not function on the overturned passenger cars, passengers were able to disembark through the car doors and emergency windows.

FRA has also included requirements in the final rule relating to emergency egress from passenger trains, based upon information obtained from the investigations of the two more recent train accidents in New Jersey and Maryland. In the first accident, a near head-on collision occurred on February 9, 1996 between NJTR trains 1254 and 1107 at milepost 2.8, on the borderline of Secaucus and Jersey City, New Jersey. Of the 331 passengers and crew on both trains, two crewmembers and one passenger were fatally injured, and an additional 162 passengers reported minor injuries. In the second accident, a near head-on collision occurred on February 16, 1996 between MARC train 286 and Amtrak train 29 on CSX Transportation, at Silver Spring, Maryland, milepost 8.3. The accident resulted in 11 fatalities, involving three crewmembers and eight passengers, and at least 12 non-fatal injuries to passengers of the MARC train.

While many of the questions raised by the New Jersey and Maryland train accidents are currently being addressed by the working group which is considering regulations covering rail passenger equipment safety, the important issue of emergency egress is being addressed by this emergency preparedness rulemaking. Specifically, the Maryland accident raised serious concerns as to whether MARC passengers had sufficient information about the location and operation of emergency exits to enable them to find and use those exits in an emergency or accident. FRA believes that in addition to marking the emergency exits, all commuter and intercity passenger railroads should review their practices for providing this information. On February 20, 1996, FRA issued Emergency Order No. 20 (Notice No. 1), which required prompt action to immediately enhance passenger train operating rules and emergency egress and to develop an interim system safety plan addressing cab car forward and multiple unit (MU) operations. 61 FR 6876, Feb. 22, 1996. In pertinent part, Notice No. 1 of the Emergency Order stated:

> [t]here is a need to ensure that emergency exits are clearly marked and in operable condition on all passenger lines, regardless of the equipment used or train control system. FRA's regulations generally require that all passenger cars be equipped with at least four emergency opening windows, which must be designed to permit rapid and easy removal during a crisis situation. The investigation of the Silver Spring accident has raised some concerns that at least some of the occupants of the MARC train attempted unsuccessfully to exit through the windows. Whether those same people eventually were among those who exited safely, or whether those persons were attempting to open windows that were not emergency windows is not known at this time. However, there is sufficient reason for concern to require that measures be taken to ensure that such windows are readily identifiable and operable when they are needed. Accordingly, the order requires that any emergency windows that are not already legibly marked as such on the inside and outside be so marked, and that a representative sample of all such windows be examined to ensure operability. (FRA Safety Glazing Standards, 49 CFR Part 223, require that each passenger car have a minimum of four emergency window exits ''designed to permit rapid and easy removal during a crisis situation.'')

61 FR 6880, Feb. 22, 1996.

On February 29, 1996, FRA issued Notice No. 2 to Emergency Order No. 20 to refine three aspects of the original order, including providing more detailed guidance on the emergency egress sampling provision. 61 FR 8703, Mar. 5, 1996. In pertinent part, Notice No. 2 of the Emergency Order stated:

> The original order required but did not set parameters for testing a representative sample of emergency exits. The alteration to the emergency egress provisions requires that sampling of emergency window exits be conducted in conformity with either of two alternate methods commonly recognized for such efforts. This modification provides a degree of uniformity industry wide. These methods require sampling meeting a 95 percent confidence level that all emergency window exits operate properly (i.e., the methods do not accept a defect rate of 5 percent). Although the original order would have required testing all exits on a specific series or type of car if one such car had a defective window exit, the amended order permits the use of these commonly accepted sampling techniques to determine how many additional windows in [sic] test. In general, these principles require that the greater the percentage of windows initially found defective, the greater the percentage of windows that will have to be tested.
>
> In addition, FRA has modified the emergency egress portion of the order to clarify that the exterior marking requirement applies to those windows that may be employed for access by emergency responders, which may be windows other than, or in addition to, those designed for emergency egress for passengers. In addition, FRA has modified the interim system safety plan portion of the order to require discussion of the railroad's programs and plans for liaison with and training of emergency responders with respect to emergency access to passengers. The original order required discussion only of methods used to inform passengers of the location and method of emergency exits.

61 FR 8703, Mar. 5, 1996.

On March 12, 1996, in response to the MARC train accident in Silver Spring, Maryland on February 16, 1996, the NTSB issued ''Safety Recommendations'' to both the Maryland Mass Transit Administration (R–96–4 through R–96–6) and FRA (R–96–7). The NTSB was concerned because the emergency quick-release mechanisms for the exterior doors on MARC's Sumitomo rail cars were located in a secured cabinet some distance from the doors that they control, and the emergency controls for each door were not readily accessible and identifiable. The NTSB recommended that emergency quick-release mechanisms for exterior doors on MARC cars be well marked and relocated, so that they are immediately adjacent to the door control and readily accessible for emergency escape. The NTSB also noted that the left and right rear exterior side doors of the first car and the front interior end door and the right front exterior door of the second car were jammed, and observed that none of the car doors had removable windows or pop-out emergency escape panels (kick panels) for use in an emergency.

In addition, the NTSB stated that several train passengers were unaware of the locations of emergency exits, and none knew how to operate them. The NTSB found that the interior emergency window decals were not prominently displayed and that one car had no interior emergency window decals. Also, the exterior emergency decals were often faded or obliterated, and the information on them, when legible, directed emergency responders to another sign at the end of the car for instructions on how to open emergency

exits. The NTSB recommended that all emergency exits be clearly identified, with easily understood operating instructions prominently located on each car's interior, for use by passengers, and on each car's exterior, for use by emergency responders.

Based upon its investigation, the NTSB recommended that FRA:

> Inspect all commuter rail equipment to determine whether it has: (1) easily accessible interior emergency quick-release mechanisms adjacent to exterior passageway doors; (2) removable windows or kick panels in interior and exterior passageway doors; and (3) prominently displayed retroreflective signage marking all interior and exterior emergency exits. If any commuter equipment lacks one or more or these features, take appropriate emergency measures to ensure corrective action until these measures are incorporated into minimum passenger car safety standards. (Class 1, Urgent Action) (R–96–7)

Safety Recommendation R–96–7 at page 3.

On March 26, 1996, FRA convened a joint meeting of the Passenger Train Emergency Preparedness Working Group and the Passenger Equipment Safety Standards Working Group to discuss the NTSB's recommendations and incorporate the Safety Board's findings, as appropriate, into each working group's rulemaking proceeding. Fifty-seven members from 21 different organizations attended the joint meeting. Although some of the recommendations involving structural modifications to rail equipment are being dealt with by the Passenger Equipment Safety Standards Working Group, the remaining NTSB recommendations involving marking, inspection, maintenance, and repair of emergency exits are reflected in § 223.9(d), entitled ''Requirements for new or rebuilt equipment,'' and § 239.17, entitled ''Emergency exits.'' The Section-by-Section Analysis contains a detailed discussion of FRA's new requirements, particularly in light of the two 1996 accidents in New Jersey and Maryland and the NTSB's safety investigations and recommendations.

In a letter to FRA dated June 24, 1996, Donald N. Nelson, President of Metro-North and Chairperson of APTA's Commuter Railroad Committee, announced that commuter railroads nationwide were implementing a series of rail passenger safety initiatives building on the provisions of FRA's Emergency Order No. 20 and the NTSB's Safety Recommendations R–96–4 through R–96–7. In pertinent part, all commuter rail authorities committed to early voluntary implementation of the emergency preparedness requirements proposed in the NPRM, including requiring inspection and testing of all emergency window exits as part of routine car maintenance to ensure correct operation and ease of egress, offering emergency responder training for every jurisdiction within each commuter railroad's service area, and educating passengers on the use of emergency exits on commuter trains. The commuter railroads also indicated that each one will ensure the safety of its operation by adopting a comprehensive system safety plan that:

> (a) Defines the overall safety effort, how it is to be implemented and the staff required to maintain it;
> (b) Establishes the safety interface within the railroad, as well as with its key outside agencies;
> (c) Clearly indicates Senior Management support for implementing the safety plan and the railroad's overall commitment to safety;
> (d) Establishes the safety philosophy of the organization and provides the means for implementation;
> (e) Defines the authority and responsibilities of the safety organization and delineates the safety related authority and responsibilities of other departments; and
> (f) Incorporates safety goals and objectives into the overall corporate strategic plan.

APTA's Commuter Railroad Committee letter at pages 1 and 2.

As part of the ongoing review process within DOT, and subsequent to the Working Group's previous opportunities to review the rule text of the NPRM, FRA implemented changes to the draft proposed regulatory text and preamble. FRA initiated those changes in order to strengthen the rule's requirements and establish more objective criteria for FRA's review of each railroad's emergency preparedness plan. In a letter dated December 27, 1996, FRA sent a copy of the revised proposed regulatory text to members of the Working Group, and requested comments on issues that the members wished to see included in the preamble section of the proposal. FRA requested that all comments be submitted to FRA by the close of business on January 8, 1997. The NPRM was then published in the **Federal Register** on February 24, 1997.

In a letter to the Working Group dated August 8, 1997, FRA noted that it had completed its review of the oral and written comments on the NPRM. As part of the drafting process of the final rule, FRA invited members of the Working Group to attend a meeting on August 28, 1997 to discuss a number of significant issues that had been identified by the commenters and to consider FRA's recommendations. Based upon the helpful participation and cooperation of the Working Group at that meeting, FRA then completed the final rule. A copy of the minutes of the August 28, 1997 Working Group meeting is included in the public docket for this rulemaking, and a detailed discussion of the meeting follows in the ''Discussion of Comments and Conclusions'' portion of this final rule.

Development of the Passenger Safety Program

As discussed above, this final rule is one element of a comprehensive effort to improve the safety of rail passenger service. In addition to this rulemaking, FRA is currently dealing with related issues in several contexts. Recent actions concerning passenger safety needs have included, for instance, Emergency Order No. 20, which addressed, on an interim basis, key issues regarding railroad operating rules, inspection of required emergency window exits, and emergency exit signage and marking.

In the Passenger Equipment Safety Standards Working Group, FRA is examining possible requirements for improved emergency egress features for both retrofit and new construction. Affected railroads have completed the removal of latches requiring special tools for access to manual releases on powered doors. Separately, FRA is reviewing the totality of emergency egress requirements and the issue of their overall adequacy, including the relocation of manual releases to locations immediately adjacent to end vestibule doors. FRA anticipates that these efforts will be advanced through the collaborative rulemaking process. However, if necessary to ensure prompt action, FRA may propose specific requirements based upon its own staff analysis.

In the context of improving railroad communications, FRA's Railroad Safety Advisory Committee (RSAC) established a working group to specifically address communication facilities and procedures, with a strong emphasis on passenger train emergency requirements. The NPRM in this proceeding was published on June 26, 1997, reflecting the consensus recommendations of the RSAC. The final rule will address the need for redundant communications capability on all passenger trains. Although that rulemaking will establish minimum safety requirements with respect to communications equipment, it should be noted that intercity and commuter railroads already make extensive provision for ensuring communication capabilities during emergencies.

FRA is engaged in a four-phase process to address emergency preparedness. In the first phase, in 1994,

FRA distributed the Volpe Report (as described above) and encouraged railroads to examine their existing programs to determine what improvements could be made. The present rulemaking represents the second step in this process, formalizing a planning requirement and identifying certain mandatory elements. The third phase will begin as FRA reviews railroad plans to determine that the issues presented by the Volpe Report and the rule have been adequately addressed within the varying contexts of the commuter authority operations. FRA will conduct a detailed review of each plan. Following preliminary review and final approval of written plan submissions, FRA will determine how the program is being implemented in the field. FRA will also be interested in learning how this effort is being integrated into the overall system safety planning process that commuter authorities have agreed to undertake. FRA is optimistic that this approach will yield positive results, promoting creativity and cross-fertilization of the emergency preparedness planning process through FRA, APTA, and other channels. This give-and-take approach should facilitate standardization of matters involving interface with passengers, while permitting continued adaptation of programs to local needs.

The fourth phase will involve FRA's review, after gaining at least a full year of actual experience under the standards enacted here, of the implementation and effectiveness of the standards and related voluntary developments. In this phase of activity, FRA will work with interested parties to evaluate whether further rulemaking or other action might be necessary to ensure that, for each program element, standards and practices are sufficiently precise and stringent to achieve the desired improvements in emergency preparedness. Further, this review will determine whether experience in working with emergency responders indicates that additional program elements should be addressed.

Discussion of Comments and Conclusions

A total of 15 responses were received by FRA concerning the NPRM. Prior to the two public hearings that were held in Chicago, Illinois and New York, New York, five organizations submitted written comments: American Association of Private Railroad Car Owners, Inc. (AAPRCO); LIRR; METRA; METROLINK; and UTU. At the public hearing held in Chicago on April 4, 1997, six organizations were represented: APTA; Des Plaines, Illinois Fire Department; Office of Emergency Management of DuPage County, Illinois; Illinois Law Enforcement Training Standards Board; METRA; and the Village of Wheeling, Illinois. At the public hearing held in New York City on April 7, 1997, four organizations were represented: APTA; BLE; Omniglow Corporation (Omniglow); and UTU. Ten organizations and one individual submitted post-hearing written comments: AAPRCO; AAR; Amtrak; APTA; CALTRAIN; Littleton, Colorado Fire Department; LIRR; NICTD; NTSB; UTU; and Kieran Darcy.

In a letter to the members of the Working Group dated August 8, 1997, FRA noted that a significant number of issues and concerns had been raised by commenters on the NPRM. In the spirit of continuing the meaningful partnership on development of the emergency preparedness rule, FRA convened a meeting of the Working Group in Washington, D.C. on August 28 1997, in order to discuss the major issues addressed in the comments and at the public hearings and consider changes to the proposal for inclusion in the final rule. Among the issues discussed at this meeting were the: categories of employees required to be ''qualified'' personnel for purposes of carrying out responsibilities under the emergency preparedness plan; types and numbers of emergency simulations required of railroads; elements of passenger information programs; the process of formal review and approval of the emergency preparedness plan by FRA; and adoption of a single emergency preparedness plan for each passenger service operation by the passenger railroad and its host railroad(s). Discussions follow with respect to the primary issues raised by the commenters and/or discussed by the Working Group during the consultative process. In light of the comments received, FRA has reconsidered some of the proposals.

1. *FRA proposed that a minimum of one on-board crewmember on a train be qualified under the plan. Should FRA revise the definition of ''crewmember'' in the final rule to exclude on-board service personnel from the category of on-board staff that a railroad must qualify under the applicable provisions of its emergency preparedness plan? Should FRA increase the minimum number of crewmembers that must be qualified?*

The NPRM defined a ''crewmember'' as ''a person other than a passenger who performs either: (1) On-board functions connected with the movement of the train or (2) On-board service,'' and proposed that ''each passenger train shall have a minimum of one on-board crewmember who is qualified under the applicable emergency preparedness plan's provisions.'' 62 FR at 8356, 8357. FRA acknowledges the safety benefit in having each railroad provide emergency preparedness training to every on-board employee (including employees of contractors), and anticipates that railroads will voluntarily elect to train most, if not all, on-board personnel in emergency response procedures, but FRA recognizes the practical limits of an expansive definition of ''crewmember.''

Among the comments received, APTA noted that the proposed definition of ''crewmember'' is overbroad, and brings in classes of workers such as security forces, service providers, marketing staff, survey takers, and hosts. Certain contract vendors providing services such as food and beverage are neither railroad personnel nor passengers, yet would appear to fall under the proposed definition. Also, some commuter operations lease out a bar or club car, and APTA believes that those personnel should not be included in the definition. The additional training expenses associated with qualifying this category of non-operating railroad employees under the railroad's emergency preparedness plan would not be cost effective. APTA, therefore, requested that the definition of ''crewmember'' be revised to cover only operating personnel. Also, since on-board service personnel typically work for Amtrak in intercity service, APTA stated that the concept should not be applied to commuter railroads.

METROLINK commented that some of its conductors perform the function of fare enforcement conductors, and should be excluded from the definition of ''crewmember.'' In addition, METROLINK noted that since it may contract out food service on some of its intercity trains, these contract workers should also be excluded from coverage in the final rule.

The UTU believed that a passenger train should not be dispatched unless the conductor is the qualified crewmember under the emergency preparedness plan, and noted that in serious accidents, the engineer cannot respond because of personal injury or damage to the locomotive radio system. In addition, the UTU stated that on-board personnel are not qualified on the physical characteristics of the railroad and may be asleep at the time of an accident. If a train has a crewmember who is qualified under the emergency preparedness plan, along with a conductor from a freight railroad who is qualified on the physical characteristics of the railroad, the two individuals

could coordinate emergency efforts. The BLE stated that the training that is developed for the qualified individual responsible for communications must include the engineer in order to reflect a redundancy factor for on-board personnel, and noted that the final rule should not count on-board crewmembers employed as service attendants as qualified crewmembers.

Upon careful consideration of the comments, FRA concludes that rail passenger safety will be enhanced by limiting the definition of ''crewmember'' to exclude on-board railroad and contractor employees who have little knowledge of emergency preparedness issues and railroad operations (e.g., security forces, marketing staff), while simultaneously requiring that all operating employees (and sleeping car and coach attendants on trains operating in intercity service) be qualified under the emergency preparedness plan. In reaching this conclusion, FRA recognizes that individuals who merely sell food and beverages to passengers onboard a passenger train, but are not involved with the train's operation, may be incidental to the railroad's overall plan for emergency preparedness. However, FRA believes that sleeping car and coach attendants on intercity trains can play a very key role in precipitating passenger evacuation during the aftermath of an emergency.

Unlike passengers on commuter trains, who generally remain aboard their trains for short time periods and have minimal direct dealings with crewmembers, passengers traveling in overnight trains have frequent contact with their coach and sleeping car attendants. While commuter trains generally operate through densely populated metropolitan or suburban areas, intercity-passenger trains, by their very nature, face a greater likelihood that if an emergency situation occurs it will happen in a remote area not readily accessible by members of the emergency responder community. The location of the emergency, unclear jurisdictional authority, lack of road access, lack of emergency equipment, or unavailability of knowledgeable and skilled personnel could prevent police, emergency medical technicians, or other emergency response personnel from making a timely response and hamper evacuation. The coach and sleeping car attendants will be aware of the approximate number of passengers on board the intercity train and likely know how many passengers with impaired mobility may be unable to evacuate the train on their own through the emergency window and door exits or who risk injury if they try to do so. Accordingly, since these attendants could prove invaluable in assisting both the passengers and the emergency responders during the initial period after the occurrence of the emergency, FRA concludes that the emergency preparedness plan must provide for proper training of these individuals.

FRA also recognizes that in the aftermath of an emergency the crewmembers will have many important responsibilities, including maintaining contact with the control center, ensuring proper protection of the train, and providing for the safety of the passengers. If the emergency involves a collision or derailment, one or more of the crewmembers may be injured and unable to carry out his or her duties. In an effort to increase the number of crewmembers who will be available to implement the railroad's emergency preparedness plan, the final rule requires that all on-board operating employees be qualified under the applicable provisions of the emergency preparedness plan. See § 239.101(a)(2)(vi). Of course, in the event that a railroad operates a train with the engineer as the only crewmember, then the railroad will be in full compliance provided that the engineer is fully trained and qualified under the plan.

Accordingly, FRA is revising the definition of ''crewmember,'' as it applies for purposes of intercity service, to include both operating employees on board the train (i.e., railroad employees, or employees of contractors to railroads, who have been assigned to perform service subject to the Federal hours of service laws during a tour or duty) and individuals who serve as sleeping car or coach attendants. Instead of permitting an intercity train to operate with a minimum of only one crewmember who is qualified under the railroad's emergency preparedness plan, the final rule requires that all on-board operating employees be trained and qualified under the plan's provisions. However, a narrow exception will exist when a freight train crew serves as the relief crew on a passenger train. In this limited circumstance, the final rule permits the passenger train to operate, provided that at least one on-board operating crewmember from the passenger train is properly trained and qualified under the railroad's plan and available to perform excess service in the event of an emergency situation. See 49 U.S.C. 21102(a) and 21103. For purposes of all other categories of passenger train service, FRA is revising the definition of ''crewmember'' to apply only to operating employees on board the train (i.e., railroad employees, or employees of contractors to railroads, who have been assigned to perform service subject to the Federal hours of service laws during a tour or duty), but exclude persons who provide on-board food or beverage service or security protection. In addition, all of the on-board operating employees (along with sleeping car and coach attendants assigned to intercity service) must be trained and qualified under the plan's provisions.

2. *Should tabletop exercises not count toward the requirement to conduct emergency simulations, and instead should at least one full-scale simulation be required during the time period specified? If so, should the minimum number of activities be adjusted to reflect the increased quality of the simulation program? Should railroads be required to develop training programs for emergency responders and their organizations?*

Although FRA noted in the NPRM that a tabletop exercise is relatively easy to orchestrate, ''as it involves only a meeting room and knowledgeable managers and employees from the passenger train operator and the appropriate responding organizations who voluntarily participate,'' FRA stated that it might include a comprehensive requirement in the final rule involving multiple numbers of full-scale disaster simulations. See 62 FR at 8346. The NPRM set forth a requirement for railroads operating passenger train service to conduct emergency simulations, either full-scale or table exercises, in order to determine their capabilities to execute their emergency preparedness plans. 62 FR at 8257, 8258. The proposal required each commuter or short-haul railroad to conduct enough simulations to include each major line at least once during every two calendar years at least 50 percent of the total number of major lines during any given calendar year. Railroads providing intercity passenger train service were to conduct at least two emergency simulations during each calendar year for each business unit or other major organizational element.

Comments Received

Amtrak stressed that tabletop simulation exercises can accomplish many of the same objectives as full-scale exercises, but at a much lower cost. It noted that the actual emergency response activities required when real accidents occur also provide an ongoing source of preparedness and insight with respect to possible improvements. Amtrak also opined that tabletop simulations, plus actual emergency

response situations that inevitably occur, should be sufficient to accomplish the objectives of evaluating and improving the ability of railroads and emergency responders to function effectively in the event of an accident. Amtrak recommended that if the final rule requires some actual full-scale experiences each year, an actual response, accompanied by an appropriate debriefing and critique, satisfy that requirement.

APTA stated that the simulation requirement should be either deleted or made optional, and noted that commuter railroads agree with the intent of the regulation, but object to a prescriptive approach. APTA observed that simulations, especially full-scale ones, are time consuming, expensive, and benefit a small percentage of employees. It stated that in view of these factors, the requirement to perform simulations at all combined with the requirement to perform simulations on 50 percent of main lines each year, goes beyond what is necessary for emergency preparedness.

APTA also noted that since emergency responders are not required to attend, commuter railroads often hold full-scale training sessions that are poorly attended. It argued that each railroad should be permitted to maintain operational flexibility to determine the best way to involve emergency responders.

The LIRR noted that emergency response agency costs vary and are difficult to uantify, since the majority of fire departments and ambulance crews are volunteers. Since they are volunteers, it may be difficult for the LIRR to get them to attend many drills. However, there are costs for equipment usage (e.g., fuel) and for medical supplies (e.g., bandages and splints). The railroad noted that, including preparation, it takes two full months to plan a full-scale simulation, integrate it with the responding agencies, coordinate and integrate it with the railroad's own transportation people (track time, service disruptions, alternative means of transportation, development of the program and scenario), and then complete the drill. Internally, the LIRR uses tabletop exercises extensively for procedure review and testing. They are used in areas where it is difficult to get track time and run the railroad, and are less effective than practical, experiential drills and training because of the minimal amount of exposure to the emergency responders.

CALTRAIN commented that tabletop exercises should be accorded the same weight and emphasis as actual field drills. Tabletop exercises, with follow-up debrief and critique, are very effective and less administratively burdensome. Certain exercises, such as window removal or after-dark conditions, can be performed as part of a tabletop drill by moving to the nearest rail facility. Subsequent to the Working Group meeting held in Washington, D.C. on August 28, 1997, CALTRAIN recommended that any full activation of the emergency preparedness plan in either an actual accident or other emergency situation count as a simulation, instead of only triggering a 180-day extension of the timeframe in which to perform the full-scale simulation, while if no such activation occurred, then the two-year cycle would apply. Since a ''real'' activation would be fully evaluated and modifications would be made, a ''simulated'' drill would be burdensome and redundant. Also, while CALTRAIN makes reasonable efforts to contact and invite area agencies, attendance is not mandatory. It argued that the final rule should discuss ''best efforts to contact, train, and participate'' in drills, since response agencies have budgetary and other issues with which to contend that affects their ability to participate in emergency drills on any given day.

METRA commented that it has 13 major lines, and would have to hold 6.5 simulations each year under the proposal. It noted that the participants would also have to be trained before each simulation, and under proposed 49 CFR 239.105, debriefing and critique sessions would be held afterward. METRA assumes that responder preplanning requires three weeks, the actual simulation takes two to four weeks to plan and coordinate, and the critique is performed a week after the simulation and compiled and acted upon the following week, for a total of 58.5 weeks spent performing 6.5 simulations. Under the proposal, METRA contends that it would have to conduct more than five simulations per year due to its system size and number of major routes. Even if the personnel and budget could be found to plan and conduct this level of simulation every year, METRA believes that it is questionable that the region's emergency responders could participate at this level.

METRA states that the Illinois Law Enforcement and Standards Board has certified METRA's program for training all law enforcement personnel throughout Illinois, and requests that a ''Train the Trainer'' program be added to the final rule as a means of ensuring a qualified response to passenger train emergencies. METRA's concern is that many of the fire departments overlap to such an extent, that by performing the set number of route simulations in the proposal, some of the departments could be involved in three or more simulations per year. Because of liability and publicity concerns, most fire departments would elect to be fully involved, but too many simulations may dilute the aggressiveness of the emergency responders. METRA suggested that the number of required simulations should be reduced in the final rule to only two per year, and that videotaping of emergency simulations could be used in the preparation of training for future simulations.

In its comments, the NTSB expressed concern that a railroad could comply with the rule by only performing tabletop exercises each time it conducts an emergency simulation. The NTSB stated that a tabletop simulation exercise is not equal to a comprehensive full-scale exercise, since only a full-scale exercise involving personnel and equipment can demonstrate an organization's capability and readiness to respond to a disaster. It also noted that full-scale exercises best afford a railroad the ability to assess the effectiveness of its emergency response plan and to identify the resources necessary to support its plan in an actual emergency, as well as to uncover specific problems, and that emergency response personnel can only become familiar with railroad equipment by participating in full-scale search-and-rescue scenarios.

The Office of Emergency Management of DuPage County, Illinois commented that a simulation is a much better means of training emergency responders to respond to a significant emergency than a classroom alone. However, DuPage County has three METRA lines running through it (and a fourth in planning), and would have to perform two simulations annually in addition to meeting other Federal emergency planning requirements. The commenter noted that although a tabletop exercise is a great way to discuss policy and talk about what will likely happen, until a person actually goes into the field and stands next to the rail car or has to move injured persons off the second level of a rail car, it is impossible to know how one really does it.

The Des Plaines, Illinois Fire Department believes that its employees get more knowledge through individual training at the departmental level than they can from mass casualty situations or large-scale incidents, and notes that individual training ensures that all personnel go through the hours of classes and go out on a train to touch

it, open its doors, and take a window out. Employees can also attempt to extricate a dummy from the train. In a large-scale drill, personnel are assigned to sectors, and depending on the sector to which they are assigned, will obtain the knowledge of just that one piece of the mass casualty situation, and will not receive the broad spectrum.

The UTU commented that the railroads should concentrate on case histories more than large-scale drills. It stated that large-scale drills are expensive and time consuming, tie up the railroad, and do not provide much learning opportunity.

In light of the written comments and testimony at the two public hearings from members of the emergency response community, FRA has reconsidered its proposal and is eliminating the provision for performing a tabletop exercise in lieu of a full-scale exercise, but scaling back the simulation requirement to involve only one meaningful full-scale simulation (performed either annually or every two years depending on the size of the railroad). A railroad that is considered larger, i.e., its operation includes either at least 150 route miles or 200 million passenger miles annually, must conduct at least one full-scale simulation annually, regardless of the number of major lines or business organizational elements on its operation. Each railroad operating passenger train service is also required to develop a training program available to all on-line emergency responders who could reasonably be expected to respond during an emergency situation, with an emphasis upon access to railroad equipment, location of railroad facilities, and communications interface. The training program will provide information to emergency responders who may lack the opportunity to participate in an actual simulation. The railroads could either offer the training directly or make the training information and materials available to State training institutes, firefighter organizations (e.g., National Fire Protection Association), or State police academies.

The consensus of the commenters was that it takes each railroad months to plan a full-scale simulation, to conduct the drill, and to complete the debriefing and critique session. Although some full-scale simulation training is essential, many of the commenters (including members of local fire departments) stated that emergency responders also need ''hands-on'' training for railroad equipment, which is better effected through ''hands-on'' classroom training. Classroom training permits a railroad to run a number of evolutions, allows many groups of individuals to have access to the equipment to achieve equipment familiarization, and enables emergency responders to practice lifting the rail equipment. While disaster simulations key on one incident (e.g., a hazardous materials incident or a train collision and a resulting fire), a classroom scenario can cover many different types of incidents. One commenter noted that if it had to spend a disproportionate amount of its time conducting numerous simulations, it would be forced to scale back its current program for training members of the emergency responder community.

FRA agrees with the commenters that the financial and logistical costs of conducting full-scale simulations are significantly higher than those for tabletop simulations, including the opportunity costs of lost revenue and the need to take railroad track and equipment out of service during the simulation. FRA also acknowledges that during ''hands-on'' classroom training a greater number of individuals receive direct access to railroad equipment than occurs during a large-scale drill. FRA encourages each railroad to voluntarily conduct tabletop exercises to identify the emergency response capabilities of its personnel in terms of their knowledge of procedures and equipment. However, FRA has decided that the safety objectives of this rulemaking are best served by requiring railroads to conduct at least a minimal number of comprehensive, full-scale simulations to determine whether a railroad is adequately prepared for the likely variety of emergency scenarios that could occur on its lines.

In reaching its decision to focus on a smaller number of larger scale simulations, FRA also acknowledged that under regulations established by the Federal Emergency Assistance Agency (FEMA), States are eligible to receive financial assistance for disaster preparedness under the Disaster Preparedness Improvement Grant Program. See 44 CFR Part 300. Under this program, States can receive FEMA money for training and to test and exercise procedures for their efforts in disaster response. While emergency responder organizations can receive funds to participate in railroad accident exercises and simulations, many of these same responder groups must also budget their limited time and resources in preparing for all other types of potential disasters that could strike their communities, e.g., airplane crashes, floods, and earthquakes. FRA recognized that if the final rule required railroads to conduct significant numbers of full-scale simulations, and they received full participation from the emergency responder community, the limited funds available from FEMA might prove inadequate to meet the overall disaster-preparedness needs of the States and local jurisdictions.

Intercity operations present special challenges. Amtrak noted that full-scale simulations cause significant burdens, and argued that the final rule should permit tabletop simulations in lieu of full-scale ones. As an operator of seven different commuter services in this country, Amtrak noted that it would be involved in a great number of simulations on commuter lines, as well as its intercity service, and stated that full-scale emergency exercises involve weeks of preparation, commitment of physical resources, and expenditure of funds for actual implementation of the exercise. Track and equipment would be out of service during the placement, conduct, and removal of equipment from the drill site. Significant disruption of normal operations on a rail line could occur in connection with conducting a simulation. Passengers and shippers could be inconvenienced and equipment utilization adversely affected.

3. *What elements should be included in passenger information programs? Should surveys be required in the final rule?*

The NPRM required each railroad to conspicuously and legibly post emergency instructions inside all passenger cars (e.g., on car bulkhead signs, seatback decals, or seat cards) and use one or more additional methods to provide safety awareness information (i.e., on-board announcements, laminated wallet cards, ticket envelopes, timetables, station signs or video monitors, public service announcements, or seat drops). 62 FR at 8357. The proposal also expected each railroad to survey representative samples of passengers at least annually to determine the effectiveness of its passenger awareness program activities, and to improve its program, as appropriate based on the information developed. 62 FR at 8357.

APTA commented that while commuter railroads should be required to develop and use passenger emergency awareness programs, the features of the programs should be left to each commuter railroad's discretion. It stated that the final rule should be based on performance, not the command-and-control approach in the proposal. APTA also argued that the prescription favoring certain types of signage should be removed from the final rule, and the safety awareness requirement changed

to merely list examples of possible methods of disseminating safety awareness information. APTA noted that each commuter railroad has its own unique approach to developing and using tools to make passengers aware of emergency instructions inside passenger cars, and should retain flexibility to find the right mix of passenger communication techniques. APTA contended that unless the passenger information requirement allows a railroad latitude to use innovative means or new technology to deliver safety information, a railroad would have to apply for a waiver to develop or use the new program or technology, thus delaying its introduction.

The LIRR also commented on the issue of passenger awareness program activities. The railroad suggested that safety awareness information could be printed on a pocket-sized card in order to remind customers of the basics of what to do in the event of an emergency situation. FRA notes that § 239.101(a)(7)(ii), as proposed, already permits a railroad to disseminate information to passengers on ''laminated wallet cards.'' 62 FR at 8357.

FRA agrees with the two commenters that requiring railroads to choose among only the seven listed additional methods of providing safety awareness information to their customers is too restrictive, and could discourage railroads from being innovative. FRA fully expects most railroads to use either on-board service announcements, laminated wallet cards, ticket envelopes, timetables, station signs or video monitors, public service announcements, or seat drops as the second means of ensuring the effectiveness of their passenger safety awareness programs. However, FRA encourages the use of alternate but equally effective approaches, especially if validated by information deduced from the debriefing and critique sessions held after passenger train emergency situations or simulations.

FRA is not, however, revising the requirement that railroads post emergency instructions inside all passenger cars. In the event of an emergency, passengers may experience panic and momentarily forget any information that may have been conveyed by the crew before the train's departure (e.g., through an on-board announcement). FRA believes that an important part of the successful implementation of this rule depends on railroads posting convenient and conspicuous reminders to their passengers of the important safety procedures to follow in the event of an emergency. Such a requirement will also provide a measure of consistency, benefiting passengers who use more than one service provider.

Upon review of the comments on the passenger survey requirement, FRA concludes that the financial cost to each passenger railroad of developing and conducting a survey capable of reaching a statistically significant cross-section of its customer population in order to periodically update and improve its passenger safety awareness information greatly exceeds any potential benefit. Accordingly, FRA is deleting this requirement from the final rule.

In proposing the survey requirement, FRA presumed that railroads would merely include additional questions on customer satisfaction surveys currently used to assess passenger comfort and assist railroads in timetable planning. FRA assumed that the additional costs to the railroad industry would therefore be minimal. However, three railroads and APTA commented on FRA's proposal, convincing FRA that unless the rule required each railroad to employ a rigorous and scientific survey methodology, most oral and written surveys would likely be completed only by those passengers who are either regular riders already familiar with emergency procedures or dissatisfied riders who have complaints about train service. Without such a financially burdensome requirement, the survey results would be of little or no value to the railroads in verifying passenger awareness of the location(s) on the passenger car of safety information or knowledge of safety procedures to be followed in the event of an emergency. Accordingly, since any changes made by the railroads to their passenger awareness programs might be predicated upon inaccurate or incomplete information, FRA believes that a survey requirement would likely not benefit passenger safety.

Consistent with FRA's conclusion, APTA commented that although passenger surveys may be useful in determining passenger safety awareness, there is no guarantee that they will be useful in fact. APTA stated that since completion of the survey is voluntary on the part of the public, the survey would not provide any real knowledge to the railroad of passenger awareness of emergency preparedness.

APTA also disagreed with FRA's estimate that the survey requirement would entail no additional cost to each railroad, noting that DOT recently estimated that on-board transit surveys cost $12 per completed survey (DOT–97–08, as reported in the Urban Transportation Monitor). Based upon 360 million passenger trips daily and a sample size of one percent, APTA concluded that the total cost to survey commuter rail passengers would be $21,600,000 ($360/2 \times .01 \times \$12.00$). Although APTA realized that the cost might be smaller, depending on the number of surveys done and number of questions asked, it stressed that the final cost would be more than incidental.

Amtrak commented that the survey requirement is unnecessary and undesirable, and could undermine the public's opinion of the safety of train travel. It noted that no other transportation mode is required to conduct surveys of passengers' levels of knowledge of safety information or procedures. Instead of performing mandatory surveys, Amtrak recommended that railroads focus on providing passengers with the information necessary for them to function in the event of an emergency, as is currently done in the airline industry. Amtrak shared APTA's concern that since public participation in the survey is voluntary, railroads would have serious concerns about the objectivity and validity of the results obtained.

NICTD opposed the use of passenger surveys to determine knowledge or compliance and stated that despite the rule's flexibility in the methodology of surveys, surveys would not in and of themselves measurably contribute to overall passenger education concerning emergency situations. NICTD stated that the education and ongoing training of train crews concerning emergency situations is more productive and cost effective, since train crews are ultimately responsible for dealing with passengers in these situations.

NICTD also questioned the cost/benefit factor of having employees orally survey passengers aboard trains or at train stops, arguing that the use of written surveys distributed to passengers boarding trains, or provided as seat drops, would not guarantee completion of the forms. Further, NICTD stressed that the requirement to survey a ''representative sample of passengers'' each calendar year cannot be assured by the survey process, whether the survey is done orally or in writing. Oral surveys may be viewed by passengers as annoying, who will then refuse to cooperate, and written surveys will likely be completed only by those passengers who are inclined to respond.

The LIRR commented that it performs at least one customer-satisfaction survey per year, at a cost of $155,000 per survey, and on a case-by-case basis performs targeted surveys to assist in a decision-making process. The LIRR's Market Development area input shows

that the response rate should be at least 45 percent to allow for valid projection of the sample findings to the whole population. However, the LIRR's normal response rate of mail-back surveys that it has conducted in the past, without incentives, is only 15 percent.

4. *Should FRA modify the requirement that the agency conduct a formal review and approval of each railroad's emergency preparedness plan within 180 days of receipt of the plan from the railroad?*

The NPRM stated that within 180 days of receipt of each initial emergency preparedness plan, and within 60 days in the case of a railroad commencing or hosting passenger operations after the initial deadline for plan submissions, FRA would conduct a formal review of the plan. 62 FR at 8358. FRA would then notify the railroad of the results of the review, whether the plan had been approved by FRA, and if not approved, the specific points in which the plan was deficient. 62 FR at 8358. If the plan was not approved by FRA, the railroad was required to amend its plan to correct all deficiencies (and provide FRA with a corrected copy) not later than 30 days following receipt of FRA's written notice of disapproval. 62 FR at 8358.

APTA commented that FRA should remove the time limit for approval of the emergency preparedness plan, and return to the original consensus recommendation of the Working Group that there be no deadlines. APTA stated that it doubted that FRA would be able to turn around the plans to the commuter rail systems within the specified timeframe, and recommended that FRA should adopt a consultative approach to emergency preparedness instead of the approach included in the NPRM.

In response to APTA's concerns, FRA is adopting a bifurcated approach to approval of the emergency preparedness plan in the final rule. The final rule specifies that within 90 days of receipt of each initial plan, and within 45 days in the case of a railroad commencing operations after the initial deadline for plan submissions, FRA will conduct a limited, preliminary review to determine if the required elements of the emergency preparedness rule are sufficiently addressed and discussed in the railroad's emergency preparedness plan submission. For example, this initial review will determine if the railroad has included a section in its plan on liaison relationships with on-line emergency responders, but will not yet involve field verification by FRA safety inspectors that the railroad is in fact inviting these responders to attend training programs on access to railroad equipment. After this initial review, as appropriate, FRA will then grant or deny conditional approval of the plan in writing. Within 18 months of receipt of each emergency preparedness plan, and within 180 days in the case of a railroad commencing operations after the initial deadlines for plan submissions, FRA will then complete a comprehensive review, consisting of ongoing dialogues with rail management and labor union representatives and field analysis and verification of the railroad's implementation of the plan's provisions, followed by final approval or denial.

The bifurcated approach to approval of the emergency preparedness plan will permit FRA to quickly review each plan for procedural compliance and immediately determine if the railroad has at least considered all required plan elements. However, FRA will then have a much longer timeframe in which to evaluate the plan's substantive sufficiency and the railroad's actual implementation. Without this change in the final rule, FRA would have had to choose between delaying many railroads from adopting their emergency preparedness plans or accepting some railroad plan submissions on good faith with little more than a cursory review. Either option would compromise the safety of railroad passengers and train crews in the event of a passenger train emergency situation.

5. *Should the final rule require a joint submission of one emergency preparedness plan by each railroad that provides or operates passenger train service and (as applicable) each railroad that hosts such service?*

In the section of the NPRM addressing joint operations, FRA stated that each freight railroad hosting passenger train service would be required to have an emergency preparedness plan addressing its specific responsibilities, and each railroad operating passenger train service over the line of a freight railroad would be required to coordinate the applicable portions of its emergency preparedness plan with the corresponding portions of the freight railroad's plan. 62 FR 8357. The purpose for the requirement was to ensure an optimal level of emergency preparedness on the part of every railroad involved in the operation of a particular passenger train service. In the section of the NPRM addressing the filing of the emergency preparedness plan, each affected railroad would be required to file its plan with FRA within 180 days of the effective date of the rule, or at least 90 days before commencing passenger operations, whichever is later. 62 FR at 8358.

It has become apparent to FRA during the course of the comment period that there is a reluctance on the part of both freight and passenger railroads to accept full responsibility for the requisite implementation of all of the elements of an emergency preparedness plan. FRA is concerned that the consensus of the commenters is that each entity expects the other entity to be held accountable by FRA in the event that an emergency situation occurs and the provisions of the plan are improperly executed. In order to ensure that all railroads involved in a particular rail passenger service operation understand each one's crucial role in planning for emergency preparedness, instead of merely requiring coordination of applicable portions of multiple emergency preparedness plans, the Working Group recognized the need to include a joint submission requirement in the final rule.

CALTRAIN commented that under the proposal, passenger or commuter railroads are responsible for the relationships with host or tenant freight railroads. While CALTRAIN stated its intent to work closely with such railroads, it noted that it has no authority over the freight railroads and declined responsibility for their actions or omissions. CALTRAIN suggested that FRA focus on evidence of a ''good faith effort,'' since CALTRAIN cannot mandate actions and cannot enforce the conduct of external agencies. This commenter urged FRA to use its enforcement powers.

APTA agreed with FRA that the language in an early version of the proposal that was shared with the Working Group, which placed the entire responsibility for the joint operation on the host freight railroad, did not properly account for the responsibilities of both parties. Since the NPRM reversed that scenario, APTA recommends that FRA either delete or redraft § 239.103(a)(3) to assign a measure of responsibility to the host freight railroad. APTA argued that although the NPRM required coordination, it does not provide a mechanism to ensure cooperation by the freight railroad to coordinate emergency efforts. If a freight railroad refuses or is unwilling to cooperate, a commuter railroad lacks recourse. The commuter railroad could still be fined for not coordinating with an unwilling freight railroad. Consistent with APTA's observations, the LIRR commented that the final rule needs terminology that recognizes that there is some joint responsibility between all of the involved parties to a passenger operation.

In its comments, the AAR acknowledged that while freight railroads neither provide nor operate rail passenger service themselves, and are not subject to most of the rule's requirements, freight railroads still have certain emergency preparedness responsibilities. The AAR recommended that FRA not revise the proposed language of § 239.101(a)(3), since it is in a freight railroad's interest to coordinate with a passenger railroad to ensure emergency preparedness. The AAR rejected APTA's concern about freight railroads refusing to cooperate with the passenger railroads, arguing that APTA, or any other interested party, presented no data or evidence to indicate that passenger railroads have experienced problems from freight railroads refusing to coordinate emergency responses. The AAR believed that FRA would never fine a passenger railroad that demonstrates that it attempted to comply with the regulation, but was unable to coordinate with a freight railroad due to the freight railroad's refusal to cooperate.

Based upon careful consideration of the comments, FRA is requiring communication and coordination between all railroads affected by this rule involved in each passenger operation, by mandating the submission by the passenger railroad of one emergency preparedness plan that is jointly prepared. Accordingly, if a State or public authority provides commuter rail passenger train service by contracting with another railroad to actually operate the service, and the passenger operation is in turn hosted by a freight railroad, all three entities are required to work together and file one emergency preparedness plan for the operation setting forth each railroad's procedures and responsibilities under the plan. If for example, a passenger operation will fulfill none of the requirements of emergency planning, with the host railroad having all of the responsibilities under the plan, this fact must be clearly stated in the plan.

In the event of noncompliance by any or all of the entities involved in the implementation of the plan, FRA reserves the right to initiate appropriate enforcement action against all parties participating in the plan. Of course, FRA will intervene to assist any railroad that is having difficulty crafting a joint emergency preparedness plan, and help mediate a solution. While FRA might not initially seek an injunction to prevent a passenger train operation from operating due to a host railroad's failure to cooperate, FRA could initiate civil penalty action against the host railroad for its failure to comply with the requirements of part 239.

The portion of the emergency preparedness plan addressing the host railroad's responsibilities shall, at a minimum, include procedures for notifying emergency responder organizations and discuss the railroad's general capabilities for rendering assistance to an involved passenger railroad during an emergency situation. The host railroad must also address any physical and operating characteristics of its rail lines that may affect the safety of the rail passenger operations, e.g., evacuation of passengers from a train stalled in a tunnel or on an elevated structure.

Section-by-Section Analysis

As a number of the issues and provisions have been discussed and addressed in detail in the preceding discussions, this section-by-section analysis will explain the provisions of the final rule and changes from the NPRM by briefly highlighting the rationales or referring to the prior discussion. The discussions and conclusions contained above should be considered in conjunction with the analysis contained below. Each comment received has been fully considered by FRA in preparing this final rule.

FRA amends part 223 of title 49, Code of Federal Regulations by adding six new definitions and requiring railroads operating passenger train service to clearly mark emergency windows. FRA also adds part 239 to title 49, Code of Federal Regulations specifically devoted to prescribing minimum Federal safety standards concerning the preparation, adoption, and implementation of emergency preparedness plans by railroads connected with the operation of passenger trains.

1. Definitions: Section 223.5

Section 223.5 is reorganized and definitions of four important terms employed in the passenger train emergency preparedness regulations are added. The four new defined terms are ''emergency responder,'' ''passenger train service,'' ''person,'' and ''railroad.'' For ease of reference, FRA defines the term ''railroad'' so as to include the statutory (49 U.S.C. 20102) definitions of both ''railroad'' and ''railroad carrier'' and to clarify that those who provide railroad transportation directly or through an operating contractor are railroad carriers. Thus, the term ''railroad'' is clearly intended to include commuter authorities as well as rapid transit authorities whose operations are in an urban area and are connected with the general railroad system of transportation. These terms are intended to have the same meaning as in part 239 of this chapter. However, FRA does not intend for its definition of ''railroad'' in either this part or part 239 of this chapter to have any bearing on how the term is used for purposes of the regulatory activities of the Surface Transportation Board.

2. Requirements for New or Rebuilt Equipment: Section 223.9

FRA received no comments regarding proposed paragraph (d), and the paragraph is adopted as proposed. In accordance with the requirements of 49 CFR 223.9(c) and 223.15(c), all passenger cars must be equipped with at least four emergency windows, which must be designed to permit rapid and easy removal during a crisis situation. Section 223.9(d) requires that all windows intended by a railroad to be used during an emergency situation be properly marked inside and outside, and that the railroad post clear and understandable instructions for their use at or near the designated locations.

Section 223.9(d)(1) requires that the emergency windows be conspicuously and legibly marked on the inside of the car with luminescent material. FRA realizes that during an emergency a main power supply to the passenger cars may become inoperative and that crewmembers with portable flashlights may be unavailable. Since lack of clear identification or lighting could make it difficult for passengers to find the emergency exits, the rule requires luminescent material on all emergency windows to assist and speed passenger egress from the train during an emergency. The marking of the emergency windows must be conspicuous enough so that a reasonable person, even while enduring the stress and potential panic of an emergency evacuation, can determine where the closest and most accessible emergency route out of the car is located. In addition, while this subsection does not prescribe a particular brand, type, or color of luminescent paint or material that a railroad must use to identify a window exit, FRA intends each railroad to select a material durable enough to withstand the daily effects of passenger traffic, such as the contact that occurs as passengers enter and leave the cars.

METROLINK, in commenting on the proposed rule, noted that the last line of § 223.9(d) requires ''each railroad [to] post clear and legible operating instructions at or near such exits,'' stated that it assumes that the referenced instructions relate to the

doors rather than the windows. Contrary to METROLINK's assumption, the instructions required by this paragraph are for operating the emergency window exits. The requirements for posting operating instructions at or near emergency door exits are contained in § 239.107 of this chapter.

Section 223.9(d)(2) requires that the emergency windows intended for emergency access by emergency responders for extrication of passengers be marked with retroreflective material. Since FRA recognizes that not every window will be equipped for emergency access, railroads are required to choose a retroreflective, unique and easily recognizable symbol that will readily attract the attention of emergency responders. The final rule does not require a specific size or shape for the symbol, but FRA intends the railroad's emergency preparedness plan developed pursuant to § 239.101 of this chapter to contain a provision explaining emergency responder access (along with passenger car egress), consistent with the evacuation strategy formulated jointly by the passenger train operator and the emergency responder organizations, in accordance with the emergency responder liaison provision set forth in § 239.101(a)(5) of this chapter. Of course, while the final rule does not require emergency responders to participate in evacuation planning or strategy with the railroads, the railroads must offer liaison training and assistance.

The final rule allows a marking that could consist of a symbol or words (such as ''RESCUE ACCESS''). Although FRA stated in the proposed rule that it reserved the right to be more prescriptive in the final rule based upon a uniform pattern, and noted that FRA was working to identify an appropriate marking that might be capable of universal recognition, FRA has decided to retain the flexibility set forth in the proposal. However, if during the fourth phase of FRA's comprehensive effort to address passenger safety issues FRA determines that a uniform pattern or symbol is required, FRA may modify the marking requirements of § 223.9(d)(2) during a future rulemaking action.

The final rule also requires railroads to post clear and understandable instructions at designated locations describing how to operate the emergency windows. This paragraph does not mandate that railroads use specific words or phrases to guide the passengers and emergency responders. Instead, each railroad should evaluate the operational characteristics of its emergency windows, and select key words or diagrams that adequately inform the individuals who must use them. While railroads are encouraged to post comprehensive instructions, FRA also realizes that during an emergency situation every additional moment devoted to reading and understanding access or egress information places lives at risk. In addition, FRA expects passengers and emergency responders to be already familiar with the location and operation of the railroad's emergency windows as a result of emergency responder liaison activities and passenger awareness programs conducted in accordance with §§ 239.101(a)(5) and (a)(7).

3. Appendix B to 49 CFR Part 223

FRA is revising Appendix B to 49 C.F.R. part 223—Schedule of Civil Penalties, to include penalties for violations of the provisions of § 223.9(d) to be included in the final rule. Commenters were invited in the NPRM to submit suggestions to FRA describing the types of actions or omissions that would subject a person to the assessment of a civil penalty, and were also invited to recommend what penalties may be appropriate, based upon the relative seriousness of each type of violation. FRA did not receive any public comments nor did the Working Group present any recommendations to the agency on this topic. Accordingly, FRA has amended the penalty schedule based on its own analysis of the inherent seriousness of violating the marking requirements for emergency windows of part 223. The penalty schedule also changes the maximum penalty that FRA is authorized to assess for violations of the provisions of this part. The maximum penalty is raised from $20,000 to $22,000 for any violation where circumstances warrant. This change is intended to comply with the provisions of the Federal Civil Penalties Inflation Adjustment Act of 1990, Pub. L. 101–410, 104 Stat. 890, 28 U.S.C. 2461 note, as amended by the Debt Collection Improvement Act of 1996, Pub. L. 104–134, 110 Stat. 1321–373 (April 26, 1996), which requires Federal agencies to adjust civil monetary penalties to counter inflation's effect of diminishing the impact of these penalties. The inflation adjustment is to be calculated by increasing the maximum civil monetary penalty by the percentage that the Consumer Price Index for the month of June 1995 exceeds the Consumer Price Index for the month of June of the last calendar year in which the amount of the penalty was last set or adjusted. The initial adjustment, however, may not exceed 10 percent. The resulting $22,000 maximum penalty was determined by applying the criteria set forth in sections 4 and 5 of the statute to the maximum penalty otherwise provided for in the Federal railroad safety laws.

4. Purpose and Scope: Section 239.1

FRA did not receive any comments, and this section is adopted as proposed. Section 239.1(a) states that the purpose of this part is to reduce the magnitude of casualties in railroad operations by ensuring that railroads involved in passenger train operations can effectively and efficiently manage emergencies. Paragraph (b) states that these regulations provide minimum standards for the subjects addressed, and the affected railroads may adopt more stringent requirements, so long as they are not inconsistent with this part. FRA does not in any way intend that the subject matter of 49 CFR part 239, Passenger Train Emergency Preparedness, be read to impose burdens or requirements on emergency responders who either participate with railroads in emergency simulations involving the operation of passenger train service or respond to actual emergency situations, or on any other person who may be involved with the aftermath of a passenger train emergency not specified in proposed § 239.3 concerning applicability. Accordingly, FRA does not intend to restrict a State from adopting a law, rule, regulation, order, or standard affecting emergency responders unless it is inconsistent with 49 U.S.C. 20106.

5. Application: Section 239.3

As a general matter, FRA will apply this rule to all railroads that operate passenger train service on the general railroad system of transportation, provide commuter or other short-haul passenger train service in a metropolitan or suburban area, or host the operations of such passenger train service. A public authority that indirectly provides passenger train service by contracting out the actual operation to another railroad or independent contractor will be regulated by FRA as a railroad under the provisions of the final rule. Although the public authority will ultimately be responsible for the development and implementation of an emergency preparedness plan (along with all related recordkeeping requirements), the railroad or other independent contractor that operates the authority's passenger train service will be expected to fulfill all of the responsibilities under this part with respect to emergency preparedness planning, including implementation.

FRA has revised paragraph (a)(3) to state that all railroads hosting the operation of passenger train service are covered by the final rule. While FRA recognizes that the majority of host relationships are entered into by freight railroads, there are a number of instances where passenger operations (e.g., Amtrak) host other passenger operations over their trackage. Accordingly, the final rule has been revised to reflect this fact.

Paragraph (b)(1) of both the NPRM and final rule indicate that the rule does not apply to rapid transit operations in an urban area that are not connected with the general railroad system of transportation, and this paragraph is intended merely to clarify the circumstances under which rapid transit operations are subject to FRA jurisdiction under this part.

In a final rule published in the **Federal Register** on December 27, 1995, the Federal Transit Administration (FTA) announced that it would begin requiring states to oversee the safety of rail fixed guideways systems not regulated by FRA. 60 FR 67034; see 49 U.S.C. 5530, 49 CFR part 659. Under its statutory scheme, FTA does not directly enforce safety statutes or regulations against rail fixed guideway systems, nor does FTA have safety inspectors who enter upon the regulated properties to perform inspections. In accordance with FTA's statutory authority and the above rulemaking, FTA does not interpret what constitutes commuter rail or rapid transit, but instead regulates whatever rail fixed guideway systems that FRA does not.

As set forth in Appendix A to part 209 of this chapter, with the exception of self-contained urban rapid transit systems, FRA's statutory jurisdiction extends to all entities that can be construed as railroads by virtue of their providing non-highway ground transportation over rails or electromagnetic guideways, and will extend to future railroads using other technologies not yet in use. For policy reasons, FRA does not exercise jurisdiction under all of its regulations to the full extent permitted by statute. Based on its knowledge of where the safety problems were occurring at the time of its regulatory action and its assessment of the practical limitations on its role, FRA has, in each regulatory context, decided that the best option was to regulate something less than the total universe of railroads.

In light of the above, FRA may elect to limit the exercise of its jurisdiction over these entities for policy reasons. FRA currently withholds the exercise of its jurisdiction over rapid transit operations where conventional and light rail operations are separated in time (night/day hour specifications). In making this policy determination, FRA anticipates working with the FTA on a joint policy statement that will be published in the **Federal Register** and discuss the types of rapid transit systems covered by this rule that will be subject to FRA's jurisdiction and which ones will instead be subject to state safety oversight under FTA's jurisdiction. As part of this joint policy analysis by FRA and FTA, our two agencies will seek to coordinate more explicitly the requirements of FRA regulations and State safety oversight programs.

The final rule is structured to apply to intercity and commuter service (as well as rapid transit operations that operate over the general railroad system of transportation), not tourist operations. At a later time, FRA may propose application of the rule, or some portion thereof, to tourist, scenic, historic, and excursion railroads. FRA's regulatory authority permits it to tailor the applicability sections of its various regulations so as to expand or contract the populations of railroads covered by a particular set of regulations. FRA has had jurisdiction over all railroads since the Federal Railroad Safety Act of 1970 was enacted.

In considering the issue of requiring emergency preparedness planning by tourist and historic railroad operators in the context of this rulemaking, FRA has not yet had the opportunity to fully consult with those railroads and their associations to determine appropriate applicability in light of financial, operational, or other factors that may be unique to such railroad operations. After appropriate consultation with the excursion railroad associations takes place, emergency preparedness requirements for these operations may be prescribed by FRA that are different from those affecting other types of passenger train operations. These requirements may be more or less onerous, or simply different in detail, depending in part on the information gathered during FRA's consultation process.

The Federal Railroad Safety Authorization Act of 1994 instructed FRA to examine the unique circumstances of tourist railroads when establishing safety regulations. The Act, which amended 49 U.S.C. 20103, stated that:

> In prescribing regulations that pertain to railroad safety that affect tourist, historic, scenic, or excursion railroad carriers, the Secretary of Transportation shall take into consideration any financial, operational, or other factors that may be unique to such railroad carriers. The Secretary shall submit a report to Congress not later than September 30, 1995, on actions taken under this subsection.

Pub. L. No. 103–440, § 217, 108 Stat. 4619, 4624 (November 2, 1994). In addition, section 215 of that Act specifically permits FRA to exempt equipment used by tourist, historic, scenic, and excursion railroads to transport passengers from the initial regulations that were scheduled to be prescribed by November 2, 1997. 49 U.S.C. 20133(b)(1). In its report to Congress entitled ''Regulatory Actions Affecting Tourist Railroads,'' FRA responded to the direction in the statutory provision and also provided additional information related to tourist railroad safety for consideration of the Congress. FRA will address the emergency preparedness concerns for these unique types of operations at a later date in a separate rulemaking proceeding. To facilitate resolution of this issue, and a significant number of related issues, the Railroad Safety Advisory Committee (RSAC) has established a Tourist and Historic Railroads Working Group. As a matter of cost efficiency, the Working Group may elect to cover emergency preparedness planning for tourist railroads as part of a package of tourist-specific safety proposals during a multi-day consultation on several rulemaking dockets. FRA would then issue a Notice of Proposed Rulemaking addressing issues in several dockets that pertain to these smaller passenger operations.

In § 239.3(b)(2), FRA states that the requirements of this part will not apply to the operation of private passenger train cars, including business or office cars and circus trains. While FRA believes that a private passenger car operation should be held to the same basic level of emergency preparedness planning as other passenger train operations, FRA is taking into account the financial burden that would be imposed by requiring private passenger car owners and operators to conform to the requirements of this part. Private passenger cars are often hauled by host railroads such as Amtrak and commuter railroads, and these hosts often impose their own safety requirements on the operation of the private passenger cars. Pursuant to this part, the host railroads will already be required to have emergency preparedness plans in place to protect the safety of their own passengers; the private car passengers will presumably benefit from these plans even without the rule directly covering private car owners or operators. In the case of non-revenue

passengers, including employees and guests of railroads that are transported in business and office cars, as well as passengers traveling on circus trains, the railroads will provide for their safety in accordance with existing safety operating procedures and protocols relating to normal freight train operations.

6. Preemptive Effect: Section 239.5

FRA did not receive any comments, and this section is adopted as proposed. Section 239.5 informs the public as to FRA's views regarding the preemptive effect of the final rule. While the presence or absence of such a section does not in itself affect the preemptive effect of this part, it informs the public concerning the statutory provision which governs the preemptive effect of these rules. Section 20106 of title 49 of the United States Code provides that all regulations prescribed by the Secretary relating to railroad safety preempt any State law, regulation, or order covering the same subject matter, except a provision necessary to eliminate or reduce an essentially local safety hazard that is not incompatible with a Federal law, regulation, or order and that does not unreasonably burden interstate commerce. With the exception of a provision directed at an essentially local safety hazard, 49 U.S.C. 20106 preempts any State regulatory agency rule covering the same subject matter as these regulations proposed today.

Of course, the subject matter of these regulations covers only the preparation, adoption, and implementation of emergency preparedness plans for passenger train operations. Although the subject matter includes a requirement in § 239.101(a)(5) that railroads establish liaison relationships with their on-line emergency responders by developing and making available a training program emphasizing access to railroad equipment, location of railroad facilities, and communications interface, FRA is not requiring emergency responders to participate in these liaison activities. Accordingly, since FRA is only regulating the content of the training opportunities that railroads must offer to the responder community, States are in no way preempted from regulating any other training requirements or other activities of the non-railroad emergency responders who arrive at the scene of an emergency after a railroad's emergency preparedness plan has been activated consistent with part 239.

Further, FRA acknowledges that there may be special local interests concerning types and/or quantities of on-board emergency equipment that might need accommodating, particularly in cases of public authorities operating passenger train service within only one territory. Although national uniformity to the extent practicable of laws, regulations, and orders related to railroad safety is important, FRA does not want to decrease the level of emergency preparedness already in place on a passenger railroad.

7. Definitions: Section 239.7

This section contains an extensive set of definitions to introduce the regulations. FRA intends these definitions to clarify the meaning of important terms as they are used in the text of the final rule. The definitions are carefully worded in an attempt to minimize the potential for misinterpretation of the final rule. Several of the definitions introduce new concepts which require further discussion.

For a detailed discussion of FRA's decision to revise the definition of ''crewmember,'' see the preceding ''Discussion of Comments and Conclusions'' portion of this document under heading of item number 1. The definition of ''crewmember'' is primarily intended to cover persons who either perform on-board functions connected with the movement of a train and are subject to the Federal hours of service laws during a tour of duty (*e.g.,* a locomotive engineer, conductor) or provide on-board service in a sleeping car or coach assigned to intercity service, other than food, beverage, or security service (*e.g.,* an Amtrak sleeping car attendant), a deadheading employee can be covered by the definition as well. Accordingly, such an employee could count as a ''qualified'' employee under § 239.101(a)(2)(vi) of this part for purposes of meeting a passenger railroad's minimum on-board staffing requirements for its emergency preparedness plan when a freight train crew has relieved that passenger railroad's expired crew. During a passenger train emergency situation, off-duty employees are expected to assume their appropriate roles under the railroad's emergency preparedness plan and assist the passengers.

In commenting on the proposal, METROLINK indicated that on some trains it has conductors who perform the function of fare enforcement, and recommended that FRA exclude these individuals from the definition of ''crewmember.'' METROLINK also requested that FRA exclude contract food workers from the definition of ''crewmember.'' In accordance with FRA's revised definition of ''crewmember,'' these categories of employees are now excluded from coverage.

The term ''control center'' envisions not only the traditional railroad concept of a train dispatcher's office, but also railroad offices that are identified as ''control centers'' but only monitor railroad operations, and modern system operations centers such as those of CSX Transportation in Jacksonville, Florida and the Burlington Northern Santa Fe Corporation in Ft. Worth, Texas. The term does not include a location on a railroad with responsibility for the security of railroad property, personnel, or passengers.

It is very likely that control center personnel are located at facilities which are remote from the right-of-way. These facilities should consist of the necessary command, control, and communications equipment to maintain normal train operations, to control electric traction, and to maintain communications throughout the passenger train system. In addition to these functions, the control center should help coordinate responses to emergencies by using equipment such as radio communications systems, direct ''hotline'' telephones, wayside power removal controls, and ventilation controls under the direction of emergency responders, according to the protocols and procedures of the emergency preparedness plan.

Typical emergency scenarios encompassed by the term ''emergency'' or ''emergency situation'' involving a significant threat to the safety or health of one or more persons requiring immediate action may include one or more of the following: illness or injury; a stalled train in a tunnel or on a bridge; collision with a person, including suicides; collision or derailment; fire; collision or derailment with a fire; collision or derailment with water immersion; severe weather conditions; natural disasters; and security situations (*e.g.,* bombings, bomb threats, hijacking, civil disorders, and other acts of terrorism). The definition of ''emergency'' or ''emergency situation'' has been changed in the final rule to include examples of some of the more common scenarios that would require a railroad to activate its emergency preparedness plan. However, regardless of whether a particular emergency illustration is specifically listed in the definition, FRA expects a railroad to activate its emergency preparedness plan anytime an unexpected event related to the operation of its passenger train service involves a significant threat to the safety or health of one or more persons requiring immediate action.

The NPRM defined ''emergency responder'' as ''a qualified member of a police or fire department, or other organization involved with public safety, who responds to a passenger train emergency.'' 62 FR at 8356. In its comments, APTA requested that FRA delete the word ''qualified'' because it implies that someone on the railroad will determine an emergency responder's qualifications. APTA stated that at an accident scene, a commuter railroad lacks the practical capability to determine an emergency responder's qualifications, and on-board personnel do not have the time to determine qualifications. The LIRR noted that emergency responder qualifications are dictated by police and fire departments, not the railroads.

In including the word ''qualified'' in the proposed definition of ''emergency responder,'' FRA never intended to place a burden on the railroads to determine the professional qualifications of emergency responders. It was assumed that the railroads would cooperate fully with any individual sent by an organization involved with public safety in response to a passenger train emergency, based solely upon that organization's own determination of its employee's qualifications. However, in response to the concerns of the two commenters, FRA has deleted the word ''qualified'' from the definition of ''emergency responder,'' and also revised the definition to clarify that a member of an emergency responder organization may coordinate as well as directly provide emergency services.

The AAR commented that the definition of ''joint operations'' is open to various interpretations, and suggested that FRA revise the definition in the final rule to state that ''joint operations means rail operations conducted by more than one railroad, except as necessary for the purpose of interchange.'' FRA agrees with this recommendation, and never intended for the final rule to apply to joint operations in instances when the sole purpose for using the trackage is interchange. Accordingly, the definition of ''joint operations'' in the final rule has been revised to exclude interchange situations.

The term ''qualified,'' as used in the rule, means employees who are trained under an applicable emergency preparedness plan's components and implies no provision or requirement for Federal certification of persons who perform those functions.

The definition of ''railroad'' is based upon 49 U.S.C. 20102(1) and (2), and encompasses any person providing railroad transportation directly or indirectly, including a commuter rail authority that provides railroad transportation by contracting out the operation of the railroad to another person, as well as any form of nonhighway ground transportation that runs on rails or electromagnetic guideways, but excludes urban rapid transit not connected to the general system.

The terms explained here are not exhaustive of the definitions included in § 239.7 of this part. This introduction merely provides a sampling of the most important concepts of the final rule. Many other terms are defined and explained in the section-by-section analysis when analyzing the actual final rule text to which they apply.

8. Responsibility for Compliance: Section 239.9

FRA did not receive any comments, and this section is adopted as proposed. Section 239.9 clarifies FRA's position that the requirements contained in the final rules are applicable to any ''person,'' including a contractor, that performs any function required by the final rule. Although all sections of the final rule address the duties of a railroad, FRA intends that any person who performs any action required by this part on behalf of a railroad is required to perform that action in the same manner as required of a railroad or be subject to FRA enforcement action. For example, if an independent contractor is hired by a railroad to maintain its records of inspection, maintenance, and repair of emergency window and door exits, pursuant to § 239.107, the contractor is required to perform those duties in the same manner as required by a railroad.

9. Penalties: Section 239.11

Section 239.11 identifies the penalties that FRA may impose upon any person, including a railroad or an independent contractor providing goods or services to a railroad, that violates any requirement of this part. These penalties are authorized by 49 U.S.C. 21301, 21304, and 21311, formerly contained in § 209 of the Federal Railroad Safety Act of 1970 (Safety Act) (49 U.S.C. 20101–20117, 20131, 20133–20141, 20143, 21301, 21302, 21304, 21311, 24902, and 24905, and §§ 4(b)(1), (i), and (t) of Pub. L. 103–272, formerly codified at 45 U.S.C. 421, 431 *et seq.*). The penalty provision parallels penalty provisions included in numerous other regulations issued by FRA under authority of the provisions of law formerly contained in the Safety Act. Essentially, any person who violates any requirement of this part or causes the violation of any such requirement will be subject to a civil penalty of at least $500 and not more than $11,000 per violation. Civil penalties may be assessed against individuals only for willful violations, and where a grossly negligent violation or a pattern of repeated violations creates an imminent hazard of death or injury to persons, or causes death or injury, a penalty not to exceed $22,000 per violation may be assessed. In addition, each day a violation continues will constitute a separate offense. Finally, a person may be subject to criminal penalties for knowingly and willfully falsifying reports required by these regulations. FRA believes that the inclusion of penalty provisions for failure to comply with the regulations is important in ensuring that compliance is achieved not only in terms of developing and implementing emergency preparedness plans, but also to better determine if railroads are planning ahead to minimize the consequences of emergencies that could occur.

The penalty schedule also implements the maximum penalty that FRA is authorized to assess for violations of the provisions of this part. The maximum penalty reflects an increase from $10,000 to $11,000 for violations and an increase from $20,000 to $22,000 for willful violations. This change is intended to comply with the provisions of the Federal Civil Penalties Inflation Adjustment Act of 1990, Pub. L. 101–410, 104 Stat. 890, 28 U.S.C. 2461 note, as amended by § 31001(s)(1) of the Debt Collection Improvement Act of 1996, Pub. L. 104–134, 110 Stat. 1321–373 (April 26, 1996), which requires Federal agencies to adjust civil monetary penalties to counter inflation's effect of diminishing the impact of these penalties. The inflation adjustment is to be calculated by increasing the maximum civil monetary penalty by the percentage that the Consumer Price Index for the month of June 1995 exceeds the Consumer Price Index for the month of June of the last calendar year in which the amount of the penalty was last set or adjusted. The initial adjustment, however, may not exceed 10 percent. The resulting $11,000 and $22,000 maximum penalties were determined by applying the criteria set forth in sections 4 and 5 of the statute to the maximum penalties otherwise provided for in the Federal railroad safety laws.

Although the penalty provision broadly provides that any person who violates or causes the violation of any requirement of 49 CFR part 239 is subject to a civil penalty, members of the Working Group were concerned

about the possibilities of theft of its on-board emergency equipment and/or vandalism of its passenger cars, and wanted FRA's permission to post warnings to members of the general public that committing such acts could subject them to Federal penalties. FRA encourages railroads to notify their passengers (and any potential vandal or trespasser) that in addition to any Federal or state criminal statutes that exist to prohibit vandalism, theft, trespassing, or tampering involving railroad equipment, property, or operations, FRA may impose a civil penalty upon any individual who willfully causes a railroad to be in violation of any requirement of this part. Take for example, a railroad that supplies each of its passenger cars with one fire extinguisher and one pry bar, and provides each of its on-board crewmembers with one flashlight. By equipping its train with all of these items, the railroad would be in full compliance with the minimum requirements of paragraph 239.101(a)(6)(i) of this part. Accordingly, if unbeknownst to the railroad, a vandal pilfers a pry bar from one of the passenger cars while the train is in service FRA can impose a civil penalty upon that individual for causing the railroad to be in violation of 49 CFR part 239. FRA recommends that in addition to posting written warnings on and in passenger cars, railroads use on-board announcements to remind their passengers of the serious consequences that can result from placing the railroad in violation of the important safety requirements of this part.

The final rule includes a schedule of civil penalties in an Appendix A to 49 CFR part 239, to be used in connection with this part. Commenters were invited to submit suggestions to FRA describing the types of actions or omissions under each regulatory section that would subject a person to the assessment of a civil penalty. Commenters were also invited to recommend what penalties may be appropriate, based upon the relative seriousness of each type of violation. FRA did not receive any public comments nor did the Working Group present any recommendations to the agency on this topic. Accordingly, FRA has drafted the penalty schedule based on its own analysis of the inherent seriousness of violating the requirements of part 239 of this chapter.

10. Waivers: Section 239.13

Section 239.13 identifies FRA's ability to grant waivers of compliance with the requirements of this rule. Requests for such waivers can be filed by any interested party. In reviewing the request, FRA would conduct a factual investigation to determine whether there was a basis to deviate from the general criteria without compromising or risking a diminution of rail safety.

11. Information Collection: Section 239.15

FRA is adding this section to note that it is inserting the OMB approval number for the information collection requirements of this rule for part 239, since OMB has completed its review and granted approval. This section also identifies the sections of part 239 that contain information collection requirements.

12. Emergency preparedness plan: Section 239.101

In drafting the final rule, FRA recognized that the specific operations of each individual passenger train system must be considered in the development and implementation of effective emergency preparedness programs. Factors which should be considered include system sizes and route locations, types of passenger cars and motive power units, types of right-of-way structures and wayside facilities, and numbers of passengers carried, as well as internal railroad organizations and outside emergency response resources. Under the final rule, each railroad subject to the regulation is required to establish an emergency preparedness plan designed to safely manage emergencies and minimize subsequent trauma and injury to passengers and on-board railroad personnel. The plan must reflect the railroad's policies, plans, and readiness procedures for addressing emergencies. The railroad is expected to employ its best efforts, under the circumstances of the emergency situation, to execute the provisions of its plan.

In their development of emergency preparedness plans, FRA encourages railroads to integrate, as practicable, the recommended guidelines contained in the Volpe Report. The report provides a comprehensive degree of specificity. While the final rule does not require the special level of detail reflected in the Volpe Report, FRA advocates that railroads voluntarily incorporate such elements and items as appropriate into the development of their own emergency preparedness plans, and reject recommendations only after judicious consideration.

While FRA stresses that each railroad should retain latitude in developing an emergency preparedness plan appropriate for its operations, the plan must provide a comprehensive overview, make clear and positive statements to railroad employees, and contain implementation details concerning the roles, responsibilities, and expectations for employee participation. The plan does not have to be one single document with each section applying to every railroad that is a party to the plan or to every affected railroad employee and location; instead, the plan may consist of multiple documents, with a separate section of the plan detailing the specific responsibilities for each job category or function or railroad or all. In instances where a railroad hosts the operations of a passenger railroad, both railroads have to address issues of emergency preparedness. The rule requires the host railroad to jointly develop the applicable portions of an emergency preparedness plan with the operating passenger railroad, uniquely dealing with the passenger operations not otherwise addressed. A detailed discussion of the requirement to jointly adopt a single emergency preparedness plan for the passenger service is included in the preceding ''Discussion of Comments and Conclusions'' portion of this document under item number 5.

The majority of passenger train operational difficulties are handled effectively and do not become emergencies. Since in many instances a train crew can immediately take action to resolve a problem and potential emergency without evacuating the train, existing emergency preparedness policies deemphasize immediate evacuation from trains located between stations unless passengers and crews are in immediate danger. Accordingly, in most situations, after notifying the control center that a problem exists and receiving permission, the train crew will move the train to the nearest station or safe location (e.g., outside a tunnel) before taking further action. If the train crew is unable to resolve the situation, railroad personnel or outside emergency responders may be sent to the emergency scene to provide mechanical aid, alternate transportation, or medical assistance.

The effectiveness of a railroad's overall response under its emergency preparedness plan will be greatly influenced by the type of emergency with which the train crew is presented (e.g., injury or illness, stalled train, suicide or accidental collision with a person, derailment or collision, smoke or fire, severe weather conditions or natural disasters, and vandalism or sabotage). The response will also be affected by the characteristics and type of train involved and the functional status of electrical and mechanical systems, including lighting, ventilation,

and public address systems. In addition, the operational environment (e.g., a train is located in a tunnel, on an elevated structure, or in electrified territory), and the type of right-of-way structure or wayside facility must be addressed, as appropriate, in each railroad's emergency preparedness plan.

The emergency preparedness plan must establish a chain of command which assigns functions and responsibilities to appropriate passenger railroad operating personnel, while recognizing the authority and responsibilities of emergency responders. Coordination is important to the ability of all parties to respond appropriately to an emergency, regardless of its size and location. Documentation, including applicable portions of the emergency preparedness plan, protocols, and procedures within rulebooks, manuals, and guidelines for control center employees and on-board personnel, provides the basic framework for coordination between all internal parties responding to an emergency. This internal documentation must address at least the following issues:

- Delineation of functions and responsibilities during emergencies for passenger railroad operating personnel, including control center personnel;
- Telephone numbers of railroad personnel and emergency responders who need to be notified;
- Criteria for determining whether an emergency exists and requires assistance from emergency responders;
- Procedures for determining the specific type, location, and severity of the emergency, and thus which response is appropriate;
- Procedures for notifying emergency responders; and
- Procedures and decision-making criteria for transferring incident responsibility from the passenger railroad operator to emergency responders.

Section 239.101 sets forth the general requirement that railroads shall develop and comply with their own emergency preparedness plans and written procedures to implement their own plans for addressing issues of emergency preparedness, that meet Federal minimum standards. Section 239.101(a) requires all railroads covered by part 239 to develop and implement written procedures to fulfill each applicable provision of this section. Depending on the nature of a railroad's operations, as well as on whether its operations involve a host railroad, different elements of this section may be fulfilled by more than one entity. While FRA requires all elements of this section to be addressed for each passenger train operation, the rule does not mandate that every element be addressed separately by each affected entity who is one of multiple parties to a single emergency preparedness plan. Accordingly, if a passenger train service operator relies on a freight railroad host to notify outside emergency responders after an emergency occurs, FRA would permit the freight railroad to set out its responsibility to address this element in its portion of the emergency preparedness plan. Provided that both entities properly coordinate their portions of the emergency preparedness plan (and include cross-reference citations to each other's sections of the plan), the passenger train service operator's portion of the plan could omit a particular item and still be in compliance with the final rule.

The final rule does not require that the public authority and the operating railroad or independent contractor each actively participate in performing duties in accordance with the joint filing with FRA of the emergency preparedness plan if the operating railroad or independent contractor is the only party performing a function under the regulation. However, each party's responsibility for compliance with this part must be clearly spelled out in the emergency preparedness plan that is filed with FRA for approval covering the entire passenger train service operation. After approval of the plan, FRA may hold the public authority or the other entity or both responsible for compliance with this part.

Based upon review of the comments and consultations with the Working Group, FRA is establishing the parameters for emergency preparedness plans in general, but will defer to the expertise of each individual railroad to adopt a suitable emergency preparedness plan for its railroad, in accordance with these parameters. As previously noted, the emergency preparedness plan may consist of multiple documents, with a separate document detailing the responsibilities of each category of employee under the railroad's plan. Each railroad is also encouraged to review the suggestions provided in the Volpe Report before developing its portion of the emergency preparedness plan in accordance with the requirements set forth in this section. In developing the plan, railroads are reminded that the goal of the final rule is to maximize the safety of passengers, railroad personnel, emergency response personnel, property, and the general public that come in contact with the railroad by providing for immediate notification of outside law enforcement officials and emergency responders. Railroads should not instruct their on-board employees to substitute as professional emergency responders and delay notification of appropriate railroad and outside officials.

Communication

Section 239.101(a)(1) sets forth the requirement that the passenger train crewmembers must communicate immediately and effectively with each other, as well as with the control center and the passengers. Typically, in an emergency situation the final rule anticipates that an on-board train crewmember will immediately contact the control center via a dependable on-board radio or an alternate means of communication (e.g., wayside railroad telephone, public telephone, private residence telephone, or cellular telephone) to advise appropriate railroad officials of the nature of the emergency and the type of assistance required. After this initial notification to the control center occurs, the passengers shall be informed of the emergency and provided directions. As appropriate, all passengers must be accounted for (particularly in sleeping compartments) so as to expedite evacuation, if necessary, and to avoid needless effort to search for ''missing'' persons, however, a passenger manifest is not required.

In its comments, METROLINK stated that the train crewmember should notify the passengers after consultation with the control center and the control center officer, unless the train must be evacuated immediately. The LIRR requested in its comments that FRA revise § 239.101(a)(1) in the final rule to require an on-board crewmember to remove all occupants of the train from imminent danger as a first step after he or she quickly and accurately assesses the passenger train emergency situation. The LIRR recommended that FRA adopt a performance-based standard, so instead of the rule requiring each railroad to provide specific levels of information to its passengers, the rule should permit general levels of information. The measure of success would be based upon whether the railroad successfully handled the emergency by ensuring the timely evacuation of its passengers.

APTA commented that crewmembers on commuter railroads need to have flexibility in what they tell passengers about an emergency situation, and noted that the proposal was ambiguous about the level of detailed information that must be provided. APTA also argued that since the proposal appeared to require crewmembers to tell all

passengers about the emergency, it could worsen an emergency situation by leading to inappropriate statements to passengers. APTA stressed that commuter railroad crewmembers are professionals, and should be empowered to use discretion in determining the appropriate information to tell passengers during and after an emergency.

FRA recognizes that each emergency situation is unique, and may require rapid decisionmaking and varied approaches by on-board crewmembers on how best to ensure the safety of the passengers. In response to APTA's concerns, proposed § 239.101(a)(1)(i) has been modified in the final rule by adding the words ''as appropriate'' in order to provide discretion to the on-board crewmembers as to when and how to inform the passengers about the nature of the emergency and the types of countermeasures that are in progress. FRA also replaced the words ''the train crewmember'' with the words ''an on-board crewmember'' in order to clarify that the crewmember who first notifies the control center does not necessarily have to be the same crewmember who communicates with the passengers. This change reflects the fact that generally it is the locomotive engineer who contacts the control center and the train conductor who keeps the passengers apprised of pertinent developments.

It is FRA's expectation that railroads will properly train their employees to perform the requisite life-saving functions after an emergency (e.g., relocation of passengers from a smoke-filled car to a safer section of the train or evacuation of the passengers from a derailed car), in conjunction with their responsibilities to assess the nature of the emergency and notify the control center as soon as practicable thereafter. Accordingly, while FRA may conclude in the course of investigating a specific train incident or accident that a particular employee's egregious mishandling of an emergency situation warrants individual enforcement action or enforcement action against the railroad, or both, the flexibility of the final rule is consistent with FRA's reluctance to strictly impose a precise order or manner in which on-board crewmembers must execute their individual responsibilities under the railroad's emergency preparedness plan. However, in the course of reviewing and approving emergency preparedness plans under § 239.201, FRA expects to see the railroads incorporating specific recommended practices as guidance to their employees concerning how they must respond to the various types of emergency situations most likely to occur during passenger operations, such as on-board fires, downed electrical power sources, or passenger injuries from a derailment.

Although the final rule does not require a railroad to use a specific means of communication, FRA expects the railroad to select a method that is effective and capable of reaching pertinent railroad control centers and on-board locations in order to comply with the notification requirement of this subsection. FRA further expects that railroads will voluntarily build redundancy into their emergency preparedness plans by outfitting their crewmembers with an immediately available backup means of communication, in the event that primary communications systems are either damaged during the emergency or otherwise rendered inoperative. For example, a cellular telephone could be made available for use by on-board crewmembers to contact the control center in the event the locomotive radio is inoperative. Also, on-board crewmembers could still maintain proper communication with the passengers, in the event that regular or emergency power was unavailable to operate the train's public address system, by using portable megaphones.

Although FRA had asked for comments on whether the final rule should expand the notification language of § 239.101(a)(1) to mandate a specific primary means of communication, and whether the final rule should also require each affected railroad to equip its passenger trains with a secondary means of communication in the event that the primary means is unavailable, no written comments were received on this issue. While the language of the final rule on this issue remains unchanged from the proposal, FRA expects the issue to be fully resolved in the context of the forthcoming revision of the Radio Standards and Procedures (49 CFR part 220). That rulemaking was tasked to the RSAC on April 1, 1996, and the NPRM was published in the **Federal Register** on June 26, 1997. 62 FR 34544. Among the proposals set forth in proposed § 220.9 of that NPRM, is a requirement that ''each occupied controlling locomotive in a train shall have a working radio, and each train shall also have communications redundancy.'' 62 FR at 34549, 34550, 34556. Persons wishing to receive more information regarding the NPRM on Railroad Communications should contact Mr. Gene Cox or Mr. Dennis Yachechak, Operating Practices Specialists, Office of Safety, FRA, 400 Seventh Street, S.W., Washington, D.C. 20590 (telephone numbers: 202–632–3504 (Cox); 202–632–3370 (Yachechak)), or Ms. Patricia V. Sun, Trial Attorney, Office of Chief Counsel, FRA, 400 Seventh Street, S.W., Washington, D.C. 20590 (telephone number: 202–632–3183).

While the final rule does not require that both ends of a train contain communication devices for use by a crewmember other than the engineer to directly contact the control center, FRA received comments from the UTU at the August 28 and September 2, 1997 Working Group meetings about the need for enhanced means of communications on trains, especially trains operating in intercity service. FRA is aware of devices, such as tone generators, that can enhance the communication capabilities of the radios already carried by each conductor and used to communicate with the engineer. If railroads voluntarily equip their trains with these devices in order to go beyond the minimum requirements of the final rule, then conductors may be able to directly communicate with the control center in the event that the engineer's radio communications equipment malfunctions or is damaged, or the engineer is incapacitated during the emergency situation. However, FRA recognizes that while portable radios can be placed on trains in a similar manner to equipping locomotives with mobile radios, portable radios may not be able to transmit to the control center due to distance, lower wattage, and smaller antennas. In the case of commuter railroads operating in push/pull service there will already be two mobile radios onboard, one at each end of the train.

It is FRA's understanding that many railroads publish an emergency toll-free telephone number in the employee timetable which connects with the control center office. Amtrak , while operating its intercity trains on a host railroad, will necessarily have access to those telephone numbers while on the host's property. Amtrak also has a nationwide toll-free telephone number which connects the caller (including private citizens) to the national Amtrak police desk in Washington, DC, which is manned around the clock. The final rule does not require that notification to the control center occur within a precisely measured number of minutes, rather it uses the words ''as soon as practicable'' in order to give railroads maximum flexibility. FRA expects that in the totality of the circumstances of the emergency situation, the train crewmembers will exercise their best judgment using the railroad's own emergency preparedness plan procedures.

Under current practice, Amtrak's notification of the emergency responders will vary slightly depending on whether or not the passenger train emergency occurs in Amtrak-dispatched territory. In territory where trains are dispatched by Amtrak, either the control center will directly notify the emergency responder or the control center will notify Amtrak police, who will then, as appropriate, notify pertinent emergency responders, State and federal agencies, and Amtrak supervisors. In territory where trains are not dispatched by Amtrak, the host railroad control center will directly notify the appropriate emergency responders, government agencies, and host railroad supervisors. Which emergency responders and agencies are notified depends on the nature of the emergency. Most control centers have emergency telephone numbers already in their computer systems, usually listed alphabetically by city, with hard copy backups.

In its comments, APTA requested that FRA modify § 239.101(a)(1)(ii) to increase the rule's flexibility concerning notifications by the control center to emergency responders, and permit the emergency preparedness plan to discuss the means by which the contacts will occur. APTA noted that not all commuter railroads have control centers in each emergency responder jurisdiction, and the control center in one State may control territory that passes into another State. There is no direct link, therefore, between the dispatcher and the emergency responders, and the railroad's police department is generally responsible for making these contacts.

In response to APTA's concerns, FRA is aware that because each railroad's operations are somewhat unique, the appropriate persons and organizations who must be notified will vary based upon the railroad's individual operating characteristics and the actual type of emergency that occurs. Accordingly, paragraph (a)(1)(ii) does not specify which emergency responder organizations (e.g., fire departments, helicopter rescue groups) or which categories of appropriate railroad officials that the control center must contact. Because the paragraph is already worded to provide maximize flexibility to railroads in designating the emergency contacts, FRA has not modified this paragraph in response to APTA's concerns.

FRA encourages each affected railroad to consider any reasonable method of notification when it drafts its emergency preparedness plan, so long as the notifications by the control center personnel occur promptly, whether by direct or indirect means. In this regard, FRA encourages railroads to consider the comments of Eric Sondeen of the Littleton, Colorado Fire Department, in drafting the section of their emergency preparedness plans that addresses communication. Among his comments, Mr. Sondeen recommended that railroads provide, on an annual basis, emergency dispatch center telephone numbers to all rail corridor emergency response agencies, including secondary telephone numbers. Mr. Sondeen also suggested that railroad crew timetables contain 24-hour civilian emergency response agency telephone numbers for contingency cellular telephone contacts by crewmembers.

METROLINK commented that each railroad should designate an employee function or position to be responsible for maintaining current emergency telephone numbers, rather than an individual employee. In response to this comment, FRA notes that paragraph (a)(1)(ii) does not specify which control center employees may be designated by the railroad to maintain the list of emergency telephone numbers. FRA concludes that the paragraph, as written, already permits a railroad great flexibility to select any relevant specific individual or general job category to maintain the lists, provided that the designation is properly set forth in the railroad's emergency preparedness plan submission. Accordingly, this paragraph is adopted as proposed. In addition, the term ''adjacent'' is not defined (e.g., a distance measurement from the passenger train experiencing the emergency to adjacent rail modes) for purposes of determining which other rail modes must be notified. Instead, consistent with the Working Group's request that the final rule provide each affected railroad with flexibility to implement the rule's provisions, this subsection requires that the emergency preparedness plan state how the railroad will achieve the appropriate notifications.

Although the final rule does not require railroad control center personnel to notify operators of pipelines and electric power companies that a passenger train emergency has occurred, FRA recognizes that pipelines and power lines can pose potentially serious hazards to rail passengers. On September 30, 1993, Amtrak Train No. 88, while being hosted on track owned by CSX Transportation, collided near Intercession City, Florida with a vehicle owned by Rountree Transport and Rigging, Inc. (NTSB Highway Accident Report (HAR) 95/01.) A natural gas pipeline was located in close proximity to the location of the passenger train accident, but no one notified the owner of the pipeline operation. Fortunately, an off-duty employee of the pipeline company viewed coverage of the accident on television approximately one hour after the accident, and notified the pipeline owner. Although CSX Transportation's emergency procedures manual stated that the first priority for its Operations Center dispatchers following an accident is to promptly notify appropriate local emergency response agencies when an emergency situation exists, CSX Transportation emergency procedures did not define the derailment of a train in an area occupied by a pipeline as an emergency condition. Among the NTSB's conclusions was that ''Osceola County emergency responders failed to determine and assess the risks posed by potentially hazardous pipelines at the accident site.'' NTSB/HAR 95/01 at page 50. The NTSB also noted in a footnote that one week before the collision an Osceola County fireman had attended a training session on pipeline emergency response actions that was sponsored by the pipeline company, but had not briefed others at the fire station about his training before the time of the accident. NTSB/HAR 95/01 at page 28, footnote 16.

Since the NPRM did not propose that railroads should be required to notify operators of pipelines and electric power companies when a passenger train accident occurs nearby, and FRA did not seek public comment on this issue, the final rule does not impose this additional notification requirement. However, based upon the many important safety issues that must be considered when a rail accident occurs, and in accord with the NTSB's findings concerning the accident that occurred near Intercession City, Florida in 1993, FRA encourages both railroads and members of the emergency responder community to voluntarily incorporate relevant information about pipelines and power line locations into their emergency preparedness planning. In addition, as part of the four-phase process of addressing emergency preparedness, FRA will review the implementation and effectiveness of paragraph (a)(1) and related voluntary developments, and evaluate whether further rulemaking activity or action is appropriate.

Initial Training

Section 239.101(a)(2) requires that the emergency preparedness plan provide for initial training, and then periodic training at least once every two years thereafter, of all railroad employees who

have responsibilities under the plan, and that the training address the role of each affected employee. Adequate training is integral to any safety program. This subsection recognizes that the successful implementation of an emergency preparedness plan depends upon the knowledge of the on-board and control center personnel about the system route characteristics, passenger cars and motive power units, and emergency plans, protocols, procedures, and on-board emergency equipment. An employee who has not been trained to react properly during an emergency situation may present a significant risk to railroad personnel and passengers. On-board employees must receive ''hands-on'' instruction concerning the location, function, and operation of on-board emergency equipment, stressing the following:

- Opening emergency window, roof, and door exits, with an emphasis on operating them during adverse conditions such as when a rail car is overturned;
- Use of emergency tools and fire extinguishers;
- Use of portable lighting when the main power source is unavailable on a passenger train; and
- Use of megaphones and public address systems (if they are provided by the railroad for communication purposes).

At the Working Group meeting held on August 28, 1997, some members questioned what FRA meant in paragraph (a)(2)(i)(E) by the phrase ''hands-on instruction.'' Some members of the group thought that it meant every employee being trained must actually open an emergency window and an emergency door exit on a passenger car, while others thought that a railroad would be in full compliance if only one employee were required to perform the ''hands-on'' exercise while hundreds of others received their training merely by observing. In addition, one member commented that since an emergency window used for demonstration purposes is costly to repair and requires taking the passenger car temporarily out of service to replace the rubber stripping, the final rule should permit employees to receive their ''hands-on'' training by watching a video presentation.

FRA recognizes the unique characteristics of the various railroad properties, and is reluctant to inhibit flexibility and creativity by imposing rigorous specifications in the rule text itself on how every railroad should perform ''hands-on'' training. However, FRA expects each railroad's emergency preparedness plan to address the means by which it proposes to train all of its on-board employees on the specific elements of: rail equipment familiarization; situational awareness; passenger evacuation; coordination of functions; and ''hands-on'' instruction. In this regard, FRA will not approve a plan that provides for ''hands-on'' training exclusively by allowing employees to watch a video, since watching a two-dimensional image of someone else demonstrating a means of emergency escape or using a piece of emergency equipment can be ineffectual. But, if a railroad wishes to use a video as an instructive tool in combination with a scale model of an emergency window (mock-up) containing a rubber pull strip, and the emergency preparedness plan provides for small groups of employees taking turns handling window glazing and practicing emergency escape using the mock-up, FRA would find this approach acceptable.

The final rule also requires appropriate training of control center personnel who effect the implementation of a railroad's emergency response plan. FRA expects the railroad to provide training only for the requisite control center employees designated under the plan to convey the nature and extent of a passenger train's emergency to the emergency responder organizations. Accordingly, FRA is not requiring training of other control center employees who perform merely incidental functions, e.g., a clerical or other office employee who receives a telephone call from a stalled train.

During the NPRM stage of this proceeding, FRA primarily envisioned the need for each railroad to provide appropriate training to its control center personnel on their duties after a passenger train emergency has already occurred (e.g., notifying outside emergency responders about a derailment). However, in light of a recent accident near Savannah, Georgia, FRA has revised the final rule to clarify that control center personnel may have important emergency-preparedness responsibilities even before a life-endangering situation turns into a passenger train emergency. Specifically, on October 9, 1997, an Amtrak train operating on track owned by CSX Transportation in Garden City, Georgia collided with a truck hauling a ''lowboy'' trailer (which has unusually low clearance between its underside and the ground) at a grade crossing. The truck had become stuck on the crossing. Prior to the collision, local police contacted CSX Transportation police, who alerted the CSX Transportation dispatching center in Jacksonville, Florida. The information concerning the stuck trailer reached the dispatcher of a nearby parallel line in the area, who saw no imminent risk because of an absence of rail traffic on this line. Unfortunately, the information did not reach the dispatcher of the line on which the lowboy trailer was actually stuck. Because the crew of the Amtrak train was not notified of the trailer's presence by the dispatcher and was not able to stop the train in time once it became visible, the Amtrak train collided with the trailer.

While the investigation of the accident is still in its early stages, the best information currently available supports certain preliminary conclusions. Information concerning the presence of the truck on the crossing was conveyed to CSX Transportation prior to the collision, but either the information was not sufficiently descriptive of the location of the incident or the information was not conveyed to the appropriate dispatcher, or both. In order to prevent the recurrence of such accidents, FRA and CSX Transportation agreed that CSX Transportation would require: continued emphasis on education of truckers; restricted speeds in zones where a highway-rail crossing collision may be imminent; precise identification of highway-rail crossings and immediate notification of hazards; a safety briefing for its dispatchers and supervisors on the scenario of the accident of October 9, 1997; and operational testing of its dispatchers and supervisors concerning avoidance of any possible collisions while the precise location of an obstruction or other hazard at a rail-highway crossing is being determined.

Consistent with the above discussion, FRA has revised the rule text to require that control center personnel receive territorial familiarization. FRA is aware that the railroad industry has a variety of methods available in order to accomplish this objective. These methods include, but are not limited to; review of trackage charts and operating timetables; familiarization train rides by train dispatchers through the territories in which they dispatch; and viewing of videotapes containing narration that describes the physical characteristics of the territory. FRA also expects each railroad's emergency preparedness plan to provide for a high degree of coordination and interface during all internal communications between personnel within the control center, particularly whenever a potential or actual emergency situation exists.

Initial Training Schedule

FRA recognizes that even after a railroad receives conditional approval of its emergency preparedness plan under § 239.201, the initial training of individual employees on their responsibilities under the emergency preparedness plan cannot occur immediately. Accordingly, new subparagraphs (iii) and (iv) have been substituted in § 239.101(a)(2) in order to establish an implementation schedule for this initial training. While each railroad will be held responsible by FRA for all other applicable provisions of its emergency preparedness plan that it can fully comply with immediately after the date of conditional approval (e.g., equipping each passenger car with one fire extinguisher in accordance with § 239.101(a)(6)(i)(A) or conducting a debriefing and critique session after a passenger train emergency simulation under § 239.105, the initial training can be spread out over a longer time period. In addition, during this implementation phase, the on-board staffing requirements of subparagraph (vi) of § 239.101(a)(2) will not apply.

During the Working Group meeting held on August 28, 1997, FRA did not receive any specific recommendations from members of the group on a precise implementation timetable for inclusion in the final rule. However, the Working Group agreed that the final rule needed to reflect the fact that railroads could not provide emergency preparedness training to every employee on the same day, and that the railroads would instead modify their other ongoing training programs to fulfill this new requirement. Upon careful consideration of this issue, FRA recognizes that smaller railroads (i.e, those whose operations include less than 150 route miles and less than 200 million passenger miles annually) generally operate less frequent service and employ fewer individuals in less hierarchical environments than do larger railroads and providers of intercity passenger service, and will therefore have an easier time providing emergency preparedness training from a logistical standpoint than will those larger service providers.

FRA anticipates that these smaller entities will also be able to offer this training to informal groups of employees without the need for carefully planned and organized training sessions. In addition, under the terms of the final rule, intercity service providers also have the added requirement to conduct training for persons performing on-board functions in a sleeping car or coach car (other than food, beverage, or security service). Accordingly, the final rule provides larger railroads and intercity railroads with more time in which to fully train their employees than it does smaller railroads in order to recognize the more complex organizational structure of these larger companies.

In the case of a railroad providing commuter or other short-haul passenger train service and whose operations include less than 150 route miles and less than 200 million passenger miles annually, the final rule permits the training to be completed up to 21 months after the effective date of the rule, which will be approximately one year after FRA grants conditional approval to the railroad. In the case of a railroad providing commuter or other short-haul passenger train service and whose operations include 150 or more route miles and 200 million or more passenger miles annually, or a railroad providing intercity passenger service (regardless of the number of route miles or passenger miles), the final rule permits the training to be completed up to 33 months after the effective date of the rule, which will be approximately two years after FRA grants conditional approval to the railroad. In addition, while each freight railroad hosting any category of passenger train service receives up to 21 months after the effective date of the final rule to train its employees, the implementation schedule for a passenger railroad hosting such service (e.g., Amtrak hosting the operations of NJTR in the state of New Jersey) is governed by subparagraphs (A)—(C) of § 239.101(a)(2)(iii), based upon either route miles and passenger miles or whether that host railroad provides intercity service. Accordingly, under a scenario of Amtrak hosting the operations of NJTR, Amtrak would receive up to 33 months in which to train its employees on their hosting responsibilities under the joint emergency preparedness plan covering the NJTR passenger operation.

In accordance with the implementation schedule, a railroad beginning passenger operations after the effective date of the final rule has either 90 or 180 days after beginning service, depending on the size or type of its operation, to train its employees on their responsibilities under the emergency preparedness plan. Any new employees who are hired by a railroad to perform either on-board or control center functions after the date on which the railroad receives conditional approval under § 239.201(b)(1), must receive their initial training within 90 days after commencing employment. During this 90-day time period, these employees would be permitted to function as crewmembers even though they had not yet become qualified under the emergency preparedness plan to perform the functions for which they will be responsible.

Periodic Training

The final rule affords the passenger railroad operator a time period of up to two years to provide each session of ''periodic'' training after the operator provides initial training in the emergency preparedness plan's provisions to its employees. The periodic training requirement is intended to inform railroad personnel of changes in procedures and equipment and ensure that their skills remain at a level that enables them to effectively execute their responsibilities under the emergency preparedness plan. In addition, the recurrent training will reinforce segments of the emergency preparedness plan for individuals who have not performed properly.

FRA concludes that the unique operating characteristics of all the different railroads subject to the final rule, as well as the financial costs involved with providing training, would make it impractical to include a calendar year or other more restrictive or specific requirement for periodic training in the final rule. As FRA recognized in drafting the NPRM, while the final rule places an upper limit of the term ''periodic'' at two years, anytime the provisions of an emergency preparedness plan are invoked during an actual emergency, that railroad receives an additional opportunity to evaluate the level of knowledge of its affected employees. However, since the final rule does not permit any level of activation of the railroad's emergency preparedness plan to count toward the training requirement, the railroad cannot count the event toward the periodic training requirement for those involved employees. However, FRA recognizes that affected railroad employees who receive ''real life'' training will still benefit from the experience, particularly whenever all five of the requirements of § 239.101(a)(2)(i) are addressed during the emergency and the employees also participate in the debriefing and critique session.

In the NPRM, FRA requested comments from railroads on the costs of implementing the on-board personnel training requirements of the rule. Specifically, FRA wanted to determine the extent of the current training that railroads already provide to their on-board employees (including emergency

preparedness training) as part of regular operating rules training programs. Comments were also requested concerning the estimated dollar amount of the incremental additional costs connected with modifying existing training programs to comply with this proposal. FRA was interested in ascertaining whether the training requirements would merely add *de minimis* costs to each railroad's existing training program or if compliance would entail moderate or significant additional costs.

The majority of the organizations that submitted comments on § 239.101(a)(2) recommended that FRA modify the requirement for employee training and qualification by permitting each railroad to provide periodic training at least once every three years, instead of at least once every two years. In this regard, Amtrak recommended that the periodic training requirement be changed to at least once every three years, to coincide with Amtrak's interval for refresher training on first aid. Although Amtrak stated that three years would provide sufficient frequency, it did not provide a reason. Amtrak also noted that railroads will provide their employees with interim updates when major changes to their emergency response programs occur.

APTA offered no comment on the frequency of periodic training for on-board personnel, but recommended a training cycle of three years for control center personnel. Consistent with the requirements of 49 CFR part 240 (Qualification and Certification of Locomotive Engineers), APTA stated that a three-year training cycle better fits the training programs of all commuter railroads, especially the larger ones. APTA also argued that a three-year training cycle would permit better scheduling of funding outlays for this important training activity.

CALTRAIN commented that a three-year cycle of formal training is preferable, since existing training drills regularly provide much of the required materials. CALTRAIN also stated that since formal training may require reassignment, a three-year training cycle better allows for budgeting and personnel reassignments during austere fiscal times.

The LIRR stated that a three-year qualification period for emergency preparedness training would meet the criteria set forth in the rule. However, the LIRR offered no supporting data for this assertion.

Rationale for Requiring Two-year Interval

In rejecting the request of various commenters to raise the time interval between periodic training cycles for on-board and control center employees to three years, FRA carefully considered both financial cost issues and the safety ramifications of weakening an integral element of emergency preparedness. Based upon FRA's analysis, the agency recognizes that railroads providing and hosting passenger train service will experience cost increases by being required to train their employees at least once every two years. However, FRA concludes that the effective and efficient management of passenger train emergencies begins with properly trained and knowledgeable railroad employees onboard the trains and in the control centers capable of quickly obtaining the assistance of emergency responders and ensuring the safety of the passengers. FRA believes that in order to maximize a railroad's level of emergency preparedness, frequent refresher training is essential, and any periodic requirement longer than at least once every two years increases the probability that a certain number of employees would become unfamiliar with their crucial emergency preparedness roles.

As discussed in the analysis of § 239.103, FRA requires railroads operating passenger train service to conduct full-scale emergency simulations to evaluate their overall emergency response capabilities and ensure that emergency preparedness plans, procedures, and equipment address the particular needs of various types of passengers. Emergency simulations can help railroads achieve these goals through careful selection of the time and location of the simulation and participation by personnel from the railroads, outside emergency responder organizations, and ''volunteer passengers.'' In addition to classroom training, simulations provide employees with a practical and realistic understanding of rules, procedures, trains, and right-of-way structures/wayside facilities as they relate to emergency response. FRA expects that the employee training provided in accordance with § 239.101(a)(2) will include instruction on the importance of full-scale emergency simulations in achieving successful implementation of the emergency preparedness plan.

First-Aid and CPR Training

Although § 239.101(a)(6)(ii) has been added to require railroads providing intercity service to equip each train with at least one first-aid kit (see the section-by-section analysis of this issue under the ''On-board emergency equipment'' heading for a detailed discussion of this requirement), the final rule does not require on-board personnel to receive training in first-aid or in CPR. Although FRA initially considered including these items as training requirements in the rule, or at least mandating that railroads offer employees the opportunity to receive this training, the consensus of the Working Group during the drafting of the NPRM was that both first-aid and CPR training should be excluded from the rule. The Working Group stressed that the goal of the rule is to ensure that emergency responders arrive promptly at the scene of an emergency, not to train on-board personnel to act as emergency responders. The Working Group also stated that even if FRA requires a railroad to offer first-aid and CPR training, no railroad can literally force an on-board crewmember to assist an ailing passenger. Further, trains with heavier passenger loadings are likely to have on board one or more medical professionals whose skills will be more extensive, and better practiced, than those of a crewmember whose primary and recurring duties do not include medical emergencies.

During the Working Group meeting on February 7, 1996, Amtrak stated that it is spending between $2.5 to $3 million by fiscal year 1998 to train the chiefs of on-board service and to provide for at least one employee on every train being trained to administer first-aid and perform CPR. Under the Amtrak plan, employees will not be required to use this training, merely to receive it. Despite the extent of Amtrak's commitment to voluntarily providing extensive first-aid and CPR training, Amtrak did not want these items required in the final rule. Another member of the Working Group, METROLINK, stated that it has served approximately eight million passengers in three years of operation, and has never had a passenger require CPR. METROLINK also noted that commuter railroads generally operate in populated areas, with professional emergency responders in most cases only minutes away. The LIRR stated that it offers CPR training to newly hired employees and shows a refresher film to employees every five years, but acknowledged that it cannot force employees to administer CPR. The railroad also noted that it would never want the engineer to leave the controls of the locomotive during an emergency. NJTR indicated that its train crews already have many duties to

perform during an emergency and that first-aid and CPR should be performed by emergency medical services personnel.

FRA invited commenters to submit their views on whether the final rule should include the issues of first-aid and CPR training. FRA noted that one option was to mandate that railroads offer their employees first-aid and CPR training, without requiring employees to actually use this training during an emergency. Under this scenario, a railroad employee who offered no assistance during an emergency, because he or she feared coming into contact with an injured or ill passenger's bodily fluids, would not violate these regulations. (The experience of the American Red Cross is that volunteers who receive first-aid and CPR training, and appropriate equipment, are motivated to provide needed assistance when the time comes.) The second option was to require not only that railroads train their employees in first-aid and CPR, but also mandate that employees use this training during an emergency.

The UTU commented that the final rule should make CPR training and first-aid training mandatory on a biannual basis, and require anyone who is properly trained and given proper equipment to offer assistance in an emergency. The UTU argued that each car should contain a first-aid kit and that each train should contain a doctor's kit in case a doctor is on board a train during an emergency situation. The UTU indicated that conductors on MARC trains receive a thorough emergency training program that includes CPR and first-aid training, and recommended that one conductor or assistant conductor be trained in emergency procedures for every 50 passengers on board a train. The UTU also noted that there would not be a delay in calling for help if the call is made quickly and the first-aid or CPR is then started. The UTU stated that employees who have not been trained with CPR will not be able to identify serious medical emergencies that truly require intervention by properly trained and equipped emergency personnel. Finally, the UTU expressed its doubt about METROLINK's assertion that none of its 8 million riders over the last three years had required CPR, and wondered about METROLINK's documentation for this statement.

CALTRAIN commented that employer-provided CPR training should be excluded from the final rule, due to potential liability issues. The Littleton, Colorado Fire Department stated that the final rule should require railroads to provide rail emergency and first-aid training to crewmembers on board both Amtrak and privately-operated passenger trains, as well as for the operating crews of all freight trains. Finally, the BLE noted that it was not opposed to a qualified person having skills in first-aid and CPR, but stated that although the engineer would benefit tremendously from first-aid training and CPR training, the engineer should remain on the locomotive and not be the principal person providing that response.

At the Working Group meeting held on August 28, 1997, the issue of requiring first-aid and CPR training was once again fully discussed. Although the UTU representative continued to recommend that FRA mandate that railroads provide this training and require its use in the event of an emergency situation, the preponderant recommendation to FRA from the railroad commenters (i.e., that this training remain optional) was unchanged from the NPRM stage of this proceeding. In making the decision to exclude first-aid and CPR training for railroad employees from the minimum requirements of emergency preparedness planning, FRA recognizes that the main objective of this rule is to ensure the prompt arrival of professional emergency responders at the scene if an emergency, not risk potential delays by encouraging on-board crewmembers to perform heroic efforts that may assist one individual passenger at the expense of the safety of the entire train. In addition, FRA is confident that since many members of the general public (including railroad employees) voluntarily obtain first-aid and CPR training, it is likely that someone knowledgeable will be aboard the train and available to assist in the event that medical professionals are delayed in responding to the emergency. However, FRA will continue to evaluate this issue through program review.

Passenger Manifests

The final rule also does not require railroads to record the number of passengers riding on their trains at any given time or to record how many people get on and off at each train stop. Although lack of an exact passenger manifest may delay emergency responders in determining when every passenger has been removed from a derailed or disabled train, the frequency with which many passenger trains pick up and discharge passengers would create logistical difficulties for a train operator. A train crew can usually provide a good estimate to emergency responders, so that they can respond with the necessary personnel and equipment. Moreover, it is doubtful that emergency responders would simply trust an exact passenger count provided by a train crew and cease looking for additional survivors of an emergency. Commenters were invited in the NPRM to offer proposals for training on-board crewmembers to track the exact number of passengers present on a train at any given moment, and to include suggestions on cost-efficient technology for achieving this goal. Since no comments were received, FRA has not included any passenger manifest-requirement in the final rule.

Testing

The term ''accurately measure'' is used in § 239.101(a)(2)(v)(A) relative to employee qualification in a broad sense to mean that the test will show to the railroad whether the employee has sufficient understanding of the emergency preparedness plan subject area for which he or she is responsible, and whether the employee can perform the duties required under the plan in a safe and effective manner. Proficiency must be demonstrated by successful completion of a written examination, but in addition may be illustrated by an interactive training program using a computer, a practical demonstration of understanding and ability, or an appropriate combination of these in accordance with this section.

This section permits railroads discretion to design the tests that will be employed (which for most railroads will entail some modification of their existing ''book of rules'' examination to include new subject areas), provided that the design addresses all relevant elements of the emergency preparedness plan. This section does not specify things like the number of questions to be asked or the passing score to be obtained. It does, however, contain the requirement that the test not be conducted with open reference books unless use of such materials is part of a test objective. This section also requires that the test be in writing. In deciding to require a written test, FRA is aware that the test-taking skills of some individuals may be deficient and that some persons may have literacy problems. However, FRA believes that minimum reading and comprehension skills are needed to assure proper execution of an emergency preparedness plan.

On-Board Staffing

Section 239.101(a)(2)(vi) has been revised and renumbered from the NPRM to require, as a general rule, that all on-board crewmembers be qualified to

perform the functions for which they are responsible under the applicable provisions of the railroad's emergency preparedness plan. For example, in the year 2002 (a date beyond the deadline for the completion of initial training under § 239.101(a)(2)(iii) by all existing railroads providing intercity passenger service), a train on an intercity railroad is scheduled to travel from Washington, D.C. to Atlanta, Georgia with a four-person operating crew fully trained under the applicable provisions of the railroad's emergency preparedness plan. However, the train crew also includes someone assigned to perform service as an attendant in a sleeping car (and not as a new railroad employee for purposes of § 239.101(a)(2)(iv)) who is not yet qualified under the plan's provisions to perform assigned functions. Although this train already has a fully trained and qualified crew operating the train, the intercity railroad would still not be in full compliance with the final rule since the crew includes one on-board crewmember who is not qualified under the emergency preparedness plan. (See the preceding ''Discussion of Comments and Conclusions'' portion of this document under the heading of item number 1 for a detailed discussion of FRA's decision to revise the definition of ''crewmember'' in § 239.7 and increase the on-board staffing requirements.) The one exception to the general rule, as set forth in subparagraph (B), applies if, for example, a fully-trained passenger train crew turns over the operation of its train to a freight railroad train crew that is not qualified under the passenger railroad's emergency preparedness plan. Provided that the passenger train is operated by the freight crew with at least one on-board crewmember of the passenger train present who is qualified under the passenger railroad's emergency preparedness plan and available to perform excess service under the Federal hours of service laws in the event of a passenger train emergency, there would be no violation of the final rule.

Joint Operations

Section 239.101(a)(3) has been revised from the NPRM, and now contains the requirement that each freight or passenger railroad hosting passenger train service shall communicate with that service's provider or operator or both and coordinate applicable portions of the one jointly-adopted emergency preparedness plan for that passenger service. One significant difference to the language of paragraph (a)(3) from the NPRM stage, is that the final rule prohibits a host railroad from utilizing a separate emergency preparedness plan in order to address its emergency preparedness responsibilities involving the service being hosted. (See the preceding ''Discussion of Comments and Conclusions'' portion of this document under the heading of item number 5 for a detailed discussion of the requirement that a joint emergency preparedness plan be submitted for each passenger train operation by all railroads involved with providing, operating, or hosting such passenger service.) The final rule also recognizes that while hosts of passenger train service are generally freight railroads, passenger railroads (e.g., Amtrak) may also serve as hosts.

The host railroads must prepare sections of the emergency preparedness plans addressing instances when they host the operations of rail passenger service over their lines. Even though freight railroads may neither provide nor operate rail passenger service themselves, and therefore not be subject to most requirements of the proposed rule, these railroads still have certain significant emergency preparedness responsibilities. The emergency preparedness plan sections addressing hosting by both freight and passenger railroads must, at a minimum, include procedures for making emergency responder notifications, and discuss general capabilities for rendering assistance to the involved hosted passenger railroads during emergency situations. The hosting railroads must address any physical and operating characteristics of their rail lines that may affect the safety of the hosted rail passenger operations, e.g., evacuating passengers from a train stalled in a tunnel or on an elevated structure.

FRA expects a railroad that operates rail passenger service over the line of another railroad to review all of the requirements imposed by the final rule with the host railroad, and coordinate their respective roles in implementing a coherent response to an emergency situation. While FRA presumes that the host railroad will bear primary responsibility for ensuring the emergency preparedness of any railroad permitted to operate intercity passenger or commuter trains over its line, the final rule does not restrict the host railroad and the operating railroad from assigning responsibility for compliance with this part via a private contractual arrangement. FRA is including the coordination requirement to ensure that all railroads involved in a particular rail passenger service operation understand each other's crucial role in planning for emergency preparedness.

Tunnels

Section 239.101(a)(4)(i) addresses FRA's requirements for compliance with this part by railroads with operations that include tunnels of considerable length, where immediate passenger egress is not feasible. Since FRA did not receive any comments on this issue, paragraph (a)(4) is adopted as proposed.

In order to limit the number of structures covered by this paragraph to the longer ones that could be expected to present more impediments to the safe and orderly withdrawal of passengers from a disabled train, tunnels of less than 1,000 feet are excluded. This limitation is reasonable, considering that intercity passenger trains seldom consist of less than four cars and often have many more cars than this, implying a minimum total train length of 400 or more feet. Most likely, a train of this or greater length will have either the head or rear end close to or outside of a tunnel portal should an unplanned stop occur in a tunnel less than 1,000 feet long.

Over the years, passenger train emergencies have occurred in tunnels where existing emergency procedures and tunnel characteristics, such as lighting and communication capabilities, were determined to be inadequate. In order to better evaluate tunnel safety issues related to emergency preparedness, FRA requested additional information from the railroad industry. The results were summarized in a report entitled ''Tunnel Safety Analysis'' (Tunnel Report), which was published by FRA in February 1990. A copy of the report was also made available to the rail passenger railroads for their information and guidance, and has been placed in the docket for this rulemaking. FRA encourages all railroads required to address tunnel safety in their emergency preparedness plans to consult the Tunnel Report for guidance. FRA is also aware that many State and local jurisdictions already impose site-specific regulations to address tunnel safety, and that most railroads with operations involving tunnels have long-standing internal emergency tunnel procedures.

Other Operating Considerations

FRA also did not receive any comments on § 239.101(a)(4)(ii), and has adopted paragraph (a)(4)(ii) as proposed. The paragraph requires that railroads operating on elevated structures, over drawbridges, and in electrified territory, incorporate emergency preparedness procedures into their plans to address these unique physical characteristics. For example, in an emergency in

electrified territory, the control center must be responsible for issuing instructions to deenergize the electrical power. Also, the train crew and emergency responders must know how, when, and when not to remove on-board power from the train, including traction power, train-lined (head-end) power to individual cars, and battery-source power. The prudent approach for everyone connected with a passenger train emergency, especially those individuals who have not received training in power isolation procedures, is to always assume that the electrical power is in the ''on'' position.

Also, railroad operations over bridges and trestles that cross over wetlands, lakes, rivers, or other bodies of water or over ravines (particularly those in isolated areas with no nearby roads) pose particular access problems for emergency responders. Helicopters or boats may provide the only logical approach to these locations.

Parallel Operations

Section 239.101(a)(4)(iii) recognizes that the emergency preparedness plans of certain freight and passenger railroads will need to address the unique safety concerns posed by adjacent rail modes of transportation. In commenting on paragraph (a)(4)(iii) as proposed, APTA stated that the final rule should not place the entire responsibility for the parallel operation on the passenger railroad, and should properly account for the shared responsibilities of both the passenger operation and the hosting freight railroad. Although coordination is required under the proposal, APTA argued that the NPRM did not provide a method to ensure cooperation with the freight railroad to coordinate emergency efforts. APTA noted that if a freight railroad refuses to cooperate, a commuter railroad lacks recourse, and could still face assessment of civil penalties for failing to coordinate with an unwilling freight railroad host. APTA requested that the final rule delete the words ''provide for coordination'' and replace them with the words ''shall seek to coordinate.'' APTA also indicated that the proposal did not take into account light and rapid transit rail operations that often run parallel to commuter operations.

In response to APTA's concerns, the final rule has been revised to include a requirement that all railroads that are parties to a passenger train operation's emergency preparedness plan must initiate reasonable and prudent actions to coordinate emergency efforts when adjacent rail modes of transportation run parallel to any of these railroads. By adding the words ''reasonable'' and ''prudent,'' FRA recognizes that coordination efforts may not always be successful if one of the railroad parties to the arrangement is unwilling to cooperate. While FRA will not penalize railroads that make good faith efforts to establish appropriate working relationships with adjacent rail modes of transportation, FRA expects each railroad to demonstrate that it made the necessary coordination attempts. In addition, upon notification and request, FRA will intervene to assist any railroad that is having difficulty coordinating emergency efforts, and help mediate a solution.

In response to APTA's comment that the proposal did not address light and rapid transit rail operations running parallel to commuter operations, FRA notes that the term ''rail modes of transportation'' is intended to cover all types of transit operations by rail or magnetic guideways running parallel to passenger railroad operations and their hosts. Accordingly, no change to the final rule was necessary.

In accordance with the requirements of this paragraph, employees of a host freight railroad to which this part applies, who have knowledge of or observe an emergency in a common corridor, e.g., fire, derailment, or intrusion by rapid transit rail equipment or motor vehicles, must be required by the emergency preparedness plan for the passenger operation to immediately convey that knowledge or information to the control center. The control center must attempt to determine the exact location of the incident, any condition that would affect safe passage by affected trains or road vehicles, and whether hazardous materials are involved, and then initiate appropriate responsive action. Under the terms of this revised paragraph, coordination of emergency efforts is required regardless of whether the host railroad is a freight railroad or another passenger operation.

Liaison With Emergency Responders

Many emergencies require response from outside emergency responder organizations in addition to the railroad. Proper coordination of roles between all of the organizations that may respond to an emergency is essential to ensure timely and effective response, since the number of passengers carried and the railroad operating environment may be quite different according to the type of service and routes. Paragraph 229.101(a)(5) recognizes that the successful implementation of any emergency preparedness plan depends upon the affected railroads maintaining current working relationships with the emergency responder organizations, so that each party can learn of the full preparedness capabilities that the other can offer during an emergency. In this regard, each railroad's emergency preparedness plan must provide for distribution to emergency responders of railroad equipment diagrams and manuals, right-of-way maps, information on physical characteristics such as tunnels, bridges, and electrified territory, and other related materials. In order to continually reinforce the familiarization of the emergency responder organizations with the railroads' protocols, procedures, operations, and equipment, the final rule requires railroads to periodically distribute applicable portions of the plan to emergency responders at least once every three years, even if no changes have been implemented. Further, since the knowledge and ability to carry out procedures and use emergency equipment are essential to the success of emergency response actions, the final rule requires the railroads to promptly notify emergency responders whenever material alterations to the plan occur (e.g., revisions to emergency exit information, pertinent changes in system route characteristics or railroad equipment operated on the system, or updates to names and telephone numbers of relevant contact officials on the railroad).

FRA wants to ensure that the emergency responders will receive the maximum amount of available information about a railroad's operations in advance of an emergency, and hopes that emergency responders will voluntarily study the material distributed and participate in emergency simulations. However, the final rule only requires that affected railroads make the operations information available to emergency responders, and that the responders merely be invited to participate in emergency simulations. FRA has no authority to penalize an emergency responder organization if it chooses to ignore the distributed information or refuses to attend simulations with the railroad. Likewise, the final rule does not hold a railroad accountable for an emergency responder organization's unwillingness to enter into a liaison relationship, provided that the railroad employed its best efforts to make the liaison opportunities known and available to the responders.

In addition to the requirement to periodically distribute applicable portions of the emergency preparedness plan to emergency responders (which has been moved from paragraph (a)(5)(i)

in the NPRM to paragraph (a)(5)(iii) in the final rule), FRA has added a new requirement as paragraph (a)(5)(i) mandating that each affected railroad develop and make available a training program for all on-line emergency responders who might be called upon to respond to an emergency. As set forth in the preceding ''Discussion of Comments and Conclusions'' portion of this document under the heading of item number 2, in conjunction with FRA's decision to scale back the simulation requirement of § 239.103 to involve only one meaningful full-scale simulation (performed either annually or every two years depending on the size of the railroad), FRA has added the training program provision in order to maximize the opportunity of the emergency responder community to obtain familiarity with railroad equipment, location of railroad facilities, and communications interface.

In paragraph (a)(5)(ii) of the final rule (which has been revised and renumbered from paragraph (a)(5)(iii) of the NPRM) FRA requires railroads to invite emergency responders to participate in emergency simulations. Since § 239.103 has been revised in the final rule to prohibit a railroad from counting a tabletop exercise toward the simulation requirement, any railroad electing to voluntarily conduct a tabletop exercise is not required by paragraph (a)(5)(ii) to invite members of the emergency responder community to attend. However, a railroad must employ its best efforts to invite all appropriate emergency responders to attend all of its full-scale simulations. Moreover, FRA expects each railroad to extend invitations to all full-scale simulations even if the railroad does not intend to count a particular simulation toward the minimum number required by § 239.103(b).

FRA recognizes that not every potential outside emergency responder will have the opportunity to attend a full-scale simulation or otherwise obtain realistic exposure to the unique emergency response challenges posed by railroad emergencies. In addition, even assuming that every affected railroad diligently distributes the pertinent portions of its current and updated emergency preparedness plan to appropriate members of the emergency responder community, descriptive information set forth in written materials is no substitute for formal training that includes meaningful hands-on experience with railroad equipment and an opportunity to ask questions of a live instructor.

In commenting on § 239.101(a)(5), APTA stated that all commuter railroads already attempt to share information with appropriate local emergency responders, and that this determination is based upon such factors as railroad operations and emergency responder capabilities. APTA argued that the proposed rule eliminates that discretion and flexibility and places a tremendous burden on commuter railroads to affirmatively seek out every emergency responder organization, whether or not that entity is a logical choice. APTA noted, for example, that paragraph (a)(5)(iii) of the proposed rule (which has been redesignated as paragraph (a)(5)(ii) in the final rule) would require MARC to invite the Washington, D.C. fire department to every simulation conducted on both of its main lines, even though the simulation is intended to benefit emergency responders in West Virginia. Instead, APTA indicated that MARC should be able to group emergency responders by region.

In addition, APTA requested clarification in the final rule of the requirement in § 239.101(a)(5)(ii) of the NPRM to maintain ''an awareness of each emergency responders' capabilities.'' APTA asked whether this requirement included the type of equipment, hazardous material capabilities, ambulance service, emergency medical technicians, and size of fire and police departments. Since each emergency responder determines the level and type of response to provide during an emergency, which may or may not reflect the limits of its capabilities, APTA also questioned how maintaining this information will benefit the railroad.

In its comments, METRA questioned how it could be expected to become aware of, much less maintain an awareness of, the capabilities of each emergency responder throughout six of the most densely populated counties in the country. METRA suggested that to maintain an awareness it could establish a program through its liaison, as mandated in the regulation, that any community involved with METRA's service would have to tell METRA if it upgraded or downgraded its facilities or equipment. A railroad should know if one community has a type of equipment needed for a rescue, for example, but need not know the internal workings of the community facilities.

A member of the public commented that there needs to be better coordination between emergency response teams and railroad operators. Although not all railroad accidents can be prevented, the commenter stated that coordination with emergency responders can save the lives of passengers experiencing health difficulties while riding trains, such as heart attacks.

CALTRAIN stated that while it works closely with local on-line emergency responders, it believes that rail properties are unable to know the detailed capabilities of each agency. CALTRAIN indicated that it relies on responders to summon the appropriate help, based in part upon the information provided to them by the railroad.

NICTD commented that it had already conducted two simulation drills with emergency responders during calendar year 1996. NICTD stated that it was already in the process of developing a training program with manuals on emergency evacuation of passengers from equipment for all emergency responder organizations servicing NICTD.

The Des Plaines, Illinois Fire Department stated that emergency telephone numbers are of paramount importance so that the fire department can establish contact and stop the trains so that responders can go down the rail lines in both directions. This commenter also noted that receipt of hands-on training is important.

The LIRR commented that members of the emergency responder community do not need the railroads to show them how to put out fires or splint fractures. Instead, the railroads need to train the responders on railroad equipment.

The UTU stated that it is important that emergency plans be updated and be distributed to the host railroads and emergency responders. The UTU believed that doing so would shorten response time, and make emergency responders more familiar with the railroad's physical characteristics and equipment.

In its comments, METROLINK stated that it operates through the jurisdictions of 33 different fire districts, over 50 ambulance companies, and 45 police agencies. METROLINK argued that it should not be a railroad's function to maintain an awareness of the capabilities of each emergency responder, and noted that it lacks the technical ability to know or understand when a ''significant change'' occurs in a responder's capability. METROLINK also noted that the proposed rule imposed no reciprocal responsibility on local emergency responders to notify railroads when their capabilities change. METROLINK contended that the emergency responders should be responsible for establishing mutual aid with other local agencies when situations outside their capacity arise.

Based upon the comments received, FRA concludes that it would be

impractical to require railroads to directly monitor the emergency preparedness and response capabilities of all of its on-line emergency responders, and has deleted the ''maintaining-awareness'' requirement of paragraph (a)(5)(ii) of the NPRM from the final rule. FRA recognizes that since the rule imposes no burden on emergency responders to advise railroads of their staffing capabilities or their inventories of specialized rescue equipment, the railroads would be hindered in their ability to immediately determine the most appropriate emergency response organizations to request assistance from after a passenger train emergency situation develops. Moreover, FRA expects that the central location of the emergency response contact (e.g., the 911 emergency operations center) will be fully aware of the capabilities of the nearest and/or best-equipped emergency responders, thereby being able to send the most appropriate responders to the location of a passenger train emergency. Accordingly, if a train derails and falls from a bridge into a river, FRA would expect the emergency responder organization that is contacted to summon a rescue company trained in water rescues if one is available.

In commenting on the proposal, Amtrak stated that while it agreed that it is reasonable to expect that the emergency preparedness plan information should be made available to any affected emergency responder, the final rule should permit railroads to fulfill this requirement by providing the information to entities that perform centralized functions of collecting information and disseminating it to emergency service providers, when and as needed. Amtrak recommended that the final rule not designate acceptable information repositories, but rather provide latitude for railroads to communicate effectively with local emergency responders through centralized communication entities rather than individually. Amtrak stressed that since its nationwide route system interfaces with over 15,000 emergency response agencies, it would not be feasible to keep all of them supplied with written instructions. Even if the final rule permitted electronic transmission of plan information, Amtrak urged that direct communication between individual railroads and each emergency responder organization not be required.

Subsequent to the public hearings, Amtrak submitted additional comments to FRA on July 1, 1997 concerning distribution of emergency preparedness plans to emergency responders. Amtrak stated that it agreed that applicable portions of the emergency preparedness plan should be readily available to any affected emergency responder, but believed that the regulations should not require direct communication between each individual emergency response agency and the railroad. Entities that perform centralized functions of information collection can disseminate this information to emergency responders as needed. Amtrak noted that these entities include the National Fire Protection Association (NFPA), the International Association of Police Chiefs (IAPC), the International Association of Fire Chiefs (IAFC), organizations for emergency medical services and emergency management agencies, and national trade magazines. These organizations could provide an effective conduit through which railroads can communicate with the emergency response agencies in the local communities to advise them of the availability of emergency plans.

FRA is aware of the great number of jurisdictions that intercity trains operate through, and that it is neither simple nor inexpensive for passenger train operators to provide material and familiarization to every outside emergency response organization within all individual communities along each route. Some commuter train operators have developed booklets and videotapes to illustrate equipment and describe entry and evacuation procedures for its trains and certain right-of-way facilities. However, FRA recognizes, based on Amtrak's statements made at both the pre-NPRM Working Group meetings and in its written comments, that because Amtrak operates through thousands of jurisdictions with thousands of potential emergency responder organizations located throughout the United States, it would have difficulty complying with this paragraph.

While FRA considers the establishment of liaison relationships between railroads involved with rail passenger operations and emergency responders crucial to achieving the goals of the proposed rule, the agency is also fully aware of the unique circumstances of Amtrak's operations. FRA had invited public comments on how Amtrak could best comply with the emergency responder liaison requirement, as set forth in the proposed rule. FRA asked whether the final rule should establish a different standard for railroads that operate in territories with large numbers of potential emergency responders to contact, and requested that any commenter proposing two or more sets of standards should also suggest what numerical or mileage criteria should be used to distinguish the railroads, and state how these differing standards would still ensure adequate levels of safety and emergency preparedness. Regrettably, the only commenter addressing this issue was Amtrak, and its comments dated July 1, 1997 are summarized above.

On September 2, 1997, six FRA representatives convened a meeting with seven members of Amtrak's management team at Amtrak's offices in Washington, D.C. to discuss issues relating to the final rule on Radio Communications as well as to emergency preparedness. A representative from the UTU was also in attendance. Minutes of that meeting have been placed in the public dockets of both rulemakings.

In pertinent part, FRA challenged Amtrak to provide information to FRA on how the railroad would ensure that the training materials and emergency preparedness plan information would reach the literally thousands of emergency responder organizations who might potentially respond to an emergency occurring along Amtrak's many routes. FRA recognizes that smaller commuter operations will be capable of training the limited number of potential emergency responders along their routes on their railroad equipment, but that Amtrak lacks the financial resources and personnel to directly contact thousands of organizations. At the conclusion of this meeting, FRA requested that Amtrak submit a proposal to FRA on how it expects to achieve compliance with the requirements of this paragraph.

In a letter dated October 27, 1997, Amtrak stated that it operates intercity passenger trains on a route system of more than 20,000 miles and reiterated that as many as 20,000 organizations provide emergency response services in the territories through which its trains operate. While Amtrak noted that it was not feasible to directly deal with all of these agencies, it acknowledged the importance of communication concerning Amtrak's emergency response plans, both before and during an emergency situation. To accomplish this objective, Amtrak proposed a process for advising these local entities of the availabilities of Amtrak's plans, distributing copies of these plans promptly when requested, and providing opportunities for dialogue concerning these plans. Amtrak also stressed that the process must provide an independent check to determine whether the emergency service responders are aware of the availability of Amtrak's materials and how they can

communicate with Amtrak about them during an emergency.

Amtrak stated that the wide dispersal of its operations is markedly different from those of commuter services, which are localized in relatively discrete urban areas. Amtrak encouraged FRA to develop a different standard for distribution of Amtrak's materials from that set forth in paragraph (a)(5)(i). In this regard, Amtrak recommended that this paragraph provide for consultation between Amtrak and FRA concerning the effectiveness of initial communication efforts and appropriate modifications for adoption over time.

Amtrak indicated that its emergency preparedness plan will be able via the Internet to emergency response agencies, as well as through printed documents. Amtrak will develop specific procedures to ensure reasonable security of the information so that it is not distributed without some reasonable assurance of the status and responsibility of the receiving party. Notice of future material changes in the emergency preparedness plan will be provided specifically to any parties that have previously indicated an interest in Amtrak's emergency response plans. Under Amtrak's proposal, emergency response agencies that have not contacted Amtrak would, upon accessing Amtrak's emergency response plans, not be alerted to changes. Amtrak believes that such specific notice would be unnecessary because these agencies had no specific prior understanding. However, agencies that had prior knowledge would be alerted to changes in facts or procedures as they occur.

Amtrak also stated that it will establish a dedicated toll-free telephone number, in operation 24 hours per day, that will deal only with actual emergencies and provide information concerning its emergency preparedness plan. General requests for information will be responded to on the next business day.

In order to alert local agencies to the availability of Amtrak's emergency preparedness plan, Amtrak requested inclusion of its contact telephone number in DOT's publication entitled ''North American Emergency Response Guidebook'' (ERG). Amtrak noted that the ERG is in the hands of virtually every emergency response agency in the United States, including fire and rescue, emergency medical services, law enforcement, and emergency management. Amtrak contended that just as CHEMTREC and CHEM-TEL are listed in the ERG, the Amtrak emergency preparedness and response toll-free telephone numbers should be included so that local agencies will know how to obtain information to familiarize themselves with Amtrak's operations on a proactive basis and where to turn during an emergency situation. Amtrak will also obtain paid advertising and other publicity through articles in trade publications for fire and rescue, emergency medical services, law enforcement, and similar agencies outlining emergency procedures and providing the railroad's contact telephone number. Another resource that Amtrak noted it uses in major metropolitan centers on the Northeast Corridor and other parts of the United States is Operation Respond. Operation Respond distributes software outlining floor plans and schematics of emergency procedures for Amtrak rolling stock and overhead views of the Northeast Corridor right-of-way.

To ensure the effectiveness of the types of efforts it has outlined, Amtrak believes that it should implement a specific sampling technique with which it could determine whether emergency agencies selected at random are aware of how to contact Amtrak in the event of an emergency, and obtain the type of information needed to promptly and effectively respond. Amtrak proposed conducting this sampling on an annual basis. Amtrak stated that the sampling could determine the degree to which agencies are aware of how to obtain such information and the type of actions that Amtrak may need to take in order to improve the awareness of agencies in general concerning the availability of information about Amtrak's emergency preparedness plan. However, Amtrak stressed that inclusion in the ERG is the most critical component of any effort to provide a focal point for contacting Amtrak.

FRA has carefully reviewed the contents of Amtrak's letter dated October 27, 1997, and is fully cognizant of Amtrak's desire that FRA reasonably regulate the need to effectively communicate with local emergency responder organizations concerning Amtrak's emergency preparedness plan without imposing an undue burden on the railroad. Because of the large number of emergency responders dispersed throughout Amtrak's territories of operation, FRA concludes that it is vitally important that Amtrak and the host freight railroads enter into close coordination and keep up-to-date instructions on how emergency response information is to be reported to emergency responders. In order for any railroad to successfully fulfill the requirements of this paragraph, positive communication links must exist between the railroad, its hosts (if applicable), and the emergency responder community. In this regard, the maintenance of accurate emergency telephone numbers for use by control centers in making emergency notifications in accordance with paragraph (a)(1)(ii) is even more crucial on a railroad the size of Amtrak.

FRA expects that in making its training program information and materials available to national or state training institutes, firefighter organizations, or police academies, as well as when it distributes applicable portions of its emergency preparedness plan, Amtrak will contact individuals in these organizations at the lowest possible levels that are feasible. FRA concludes that merely mailing this information to the main address for organization will be ineffective at achieving the local outreach efforts to the emergency responder community required by this final rule. While FRA acknowledges that for the rule to fully succeed Amtrak must have the assistance of these organizations starting at the highest levels, Amtrak may not delegate the responsibility for communication with local personnel to the top officials of these entities. FRA expects Amtrak to employ its best efforts to reach, whether directly or through the assistance of the hierarchy of national and state emergency response organizations, the local emergency responders along its rail lines who could reasonably be called upon to respond to an emergency situation.

In working with Amtrak as part of the review and approval process of § 239.201, FRA will fully consider all appropriate ideas and suggestions from the railroad on how it proposes to achieve the necessary liaison relationships with its on-line responders. While FRA will not impose unreasonable expectations on Amtrak, FRA will not permit Amtrak to ignore the vast number of potential emergency responder organizations with which the railroad must establish at least a minimal liaison contact.

Finally, in response to Amtrak's request to include its contact telephone number in DOT's ERG, FRA notes that the ERG is a guidebook published by the Research and Special Programs Administration (RSPA) (a modal administration within DOT) for firefighters, police and other emergency services personnel who may be the first to arrive during the initial phase of a transportation incident involving hazardous materials or dangerous goods. Although the ERG is not intended for use in a transportation incident involving only a passenger train, absent the additional involvement of hazardous

materials or dangerous goods, its wide distribution makes it an effective vehicle for reaching the emergency responder community. Accordingly, at FRA's request, RSPA has agreed to include this information in the next version of the ERG.

On-Board Emergency Equipment

The requirements of § 239.101(a)(6)(i) remain unchanged from the proposal: each railroad's emergency preparedness plan shall indicate the types of emergency equipment placed on board each passenger train and the location of such equipment on each passenger car. Although the final rule requires a minimum of only one fire extinguisher and one pry bar per passenger car, and one flashlight per on-board crewmember, FRA strongly encourages each railroad to voluntarily supplement this list of on-board emergency equipment. Further, FRA recognizes that there may be special local interests that might need to be accommodated, particularly in cases of public authorities operating passenger train service within only one territory. While national uniformity to the extent practicable of laws, regulations, and orders related to railroad safety is important, FRA does not wish to decrease the level of emergency preparedness already in place on a passenger railroad.

In reaching the decision to retain the same on-board emergency equipment requirements as proposed in the NPRM, FRA considered three sets of comments. The first commenter, APTA, said that since the use of metal pry bars by non-railroad personnel on electrified territory may create a significant safety hazard, the final rule should prohibit public access to them. APTA also noted that theft, tampering, and destruction of on-board emergency equipment are big problems for commuter railroads, and asked that the rule impose a Federal penalty for theft, vandalism, or tampering with emergency equipment, similar to penalties imposed by the Federal Aviation Administration for tampering with smoke detectors on airplanes. The second commenter, a private citizen, commented that in light of the number of possible unpreventable health emergencies that can occur on a train, the types of on-board emergency equipment should be expanded. He believed that this equipment, along with better emergency training of railroad employees, can save many lives.

The third commenter, the LIRR, indicated that while it supports the idea of having one fire extinguisher per passenger car, the LIRR's diesel fleet does not have any fire extinguishers at the present time, except on locomotives. The LIRR stated, however, that its entire diesel passenger coach fleet is scheduled to be replaced beginning in 1997. The LIRR noted that the Electric MU fleet operates in married pairs; the M1 fleet (758 total) was built between 1968–1972 and has one fire extinguisher per married pair, while the M3 fleet (174 total) was built in 1985–86 and has a fire extinguisher opposite each operating cab in every car. The modification of 758 M1 cars will require funding and time. The age of the M1 car fleet is reaching its useful life, and LIRR stated that it is beginning preparation of a capital investment to replace the M1 portion of the electric fleet. LIRR asked for relief for both the diesel and M1 fleet.

Regarding the issue of pry bars, the LIRR noted that it operates in an area 100 miles long with 11 branches, with 181 fire departments throughout Long Island, New York. The LIRR stated that the average response time of emergency responders is only approximately 10 minutes, and indicated that the responders are trained on LIRR equipment and have state-of-the-art rescue equipment. The LIRR believed that retrofitting of all LIRR equipment would not provide a higher level of safety than what is already provided by the responders, and thought that pry bars would be difficult to keep or maintain on railroad equipment open to the public. If LIRR is subject to the pry bar requirement, the railroad stated that it will seek relief through the waiver process.

In order to assist the agency in determining whether to revise the requirements of § 239.101(a)(6)(i), FRA asked for comment about whether special circumstances exist in local jurisdictions throughout the country on a categorical basis, requiring railroads to meet more stringent requirements than the minimum quantities of on-board emergency equipment set forth in the proposed rule. Specifically, FRA invited comments on what types and quantities of on-board emergency equipment railroads are currently required to carry pursuant to laws in the local jurisdictions in which they operate, and was curious as to the reasons for these more stringent requirements. Depending on the comments received, FRA noted that it might adopt the minimums set forth in the text of the proposed rule or decide to broaden the coverage of paragraph (a)(6)(i) by specifying additional types or quantities, or both, of on-board emergency equipment that some or all railroads must carry on each passenger car. FRA's decision to adopt paragraph (a)(6)(i) as proposed is based largely upon the fact that FRA received little public comment on this issue.

FRA recognizes that since the focus of this rule is to ensure that emergency responders arrive promptly at the scene of an accident, rather than to train on-board personnel to act as emergency responders, the rule must not impose onerous, irrelevant, or duplicative emergency equipment requirements on railroads. FRA is aware that emergency responder units will generally arrive at the scene of a passenger train emergency fully equipped with pry bars, pick axes, fire fighting equipment, and other assorted specialized rescue items. However, in deciding to mandate in the final rule that railroads must carry fire extinguishers, pry bars, and flashlights on board trains, FRA concluded that certain emergency situations can prove so life-threatening and time-sensitive that train crews and passengers must take immediate action to maximize the likelihood of survival.

Certainly, in the event of a small fire taking place on board a passenger train, the availability of a working fire extinguisher in each passenger car could prevent a minor problem from turning into a tragic event before emergency responders are able to respond to the emergency. Also, a fire may start in a small area or limited location on a train, where crewmembers or passengers might be capable of containing the fire (e.g., a smoldering cigarette on a passenger coach seat), thereby avoiding the need to involve outside emergency responders at all. While FRA recognizes that firefighters carry all sorts of rescue equipment, including pry bars, sometimes the threat from an emergency is so immediate and severe that there is no opportunity to wait for emergency responders to arrive and rescue people. Accordingly, the availability of a pry bar in each passenger car will enable crewmembers and passengers to exit the train through an emergency window exit in the event that the rubber stripping cannot be removed accordingly to plan and circumstances do not permit awaiting the arrival of emergency responders. Also, for example, a pry bar can be useful in prying open an end door on a passenger car that is lying on its side after a derailment. Finally, since emergencies can happen at night in isolated locations, a flashlight is an important tool for guiding passengers safely off the train during an evacuation and minimizing the likelihood of people tripping in the dark, unfamiliar landscape. In addition, flashlights can prove invaluable in the event that a train's primary and backup electrical

systems fail during the course of an emergency situation.

FRA recognizes that some railroads will have unique problems associated with meeting the minimum requirements of this paragraph, either due to certain atypical aspects of their operations, concerns about theft or vandalism, or compliance with laws in the local jurisdictions in which they currently operate. While FRA expects each railroad to make every effort to incorporate these minimum requirements into its emergency preparedness plan, FRA acknowledges that situations may arise where requiring strict adherence to the requirements of this paragraph may prevent or impede rail passenger transportation that is in the public interest. As a result, FRA intends that the emergency planning approach allow railroads to develop approaches to providing safe rail passenger transportation that do not meet all of the on-board emergency equipment standards, but compensate by providing alternatives that afford equivalent levels of safety. Accordingly, any railroad that believes it cannot or should not have to comply with the specific requirements of paragraph (a)(6)(i), may submit a waiver request to FRA in accordance with 49 CFR part 211. While submission of such a request does not guarantee it will be granted, every waiver request will be duly considered.

This paragraph does not require railroads to instruct their passengers about either the location or use of the on-board emergency equipment. As anticipated in the NPRM, FRA has crafted a final rule that avoids micromanagement of the provisions of a railroad's emergency preparedness plan. FRA recognizes that passengers might benefit from receiving routine instructions about the location and operation of on-board emergency equipment during each train trip, in the event that the crewmembers are injured or otherwise unable to access the equipment before the outside emergency responders arrive. However, FRA is also aware from its consultations with the Working Group that pilferage of on-board emergency equipment is a serious problem on many passenger railroads, and that specifically focusing the attention of passengers on where the equipment is located would only exacerbate the problem. Clearly, the equipment can only help both crewmembers and passengers during an emergency if it is available for proper use. Also, members of the Working Group stressed that regular riders on intercity or commuter operations are probably already familiar with the on-board emergency equipment by virtue of their frequent presence on the train, and would not benefit from any additional required information.

First-aid Kits on Intercity Passenger Trains

FRA has added as a new requirement to the final rule in paragraph 239.101(a)(6)(ii) concerning first-aid kits on intercity passenger trains. In commenting on the NPRM, the UTU requested that all passenger trains be equipped with a first-aid kit as an emergency tool, and urged that the kit contain personal protection equipment for the trained personnel who will be rendering first aid and CPR. At the very least, the UTU stated that the kit should contain rubber gloves, and the plastic gloves and the mouth shields for CPR. At the working group meeting held in Washington, D.C. on August 28, 1997, many of the members agreed that while commuter trains may operate in densely populated areas that are close to emergency medical services, intercity trains often operate through sparsely populated remote regions of the United States that have limited road access for use by emergency responders. Accordingly, to recognize the unique operational challenges presented by the operation of intercity service, FRA believes that crewmembers onboard each of these trains must have access to at least one first-aid kit that contains the necessary supplies to clean and dress a minor wound until professional responders can arrive at the scene.

Since FRA does not intend for the first-aid kit to substitute for appropriate medical attention from a physician or hospital, the final rule limits the minimum required contents of the first-aid kit to only gauze pads, bandages, wound cleaning agent, scissors, tweezers, adhesive tape, and latex gloves. Since proper use of these items should be self evident to both members of a train crew and the traveling public, the final rule does not impose any specific requirement on railroads to train their employees on the use of first-aid kits. Of course, FRA does not intend to discourage railroads from voluntarily incorporating such training into its emergency preparedness program.

In response to APTA's concern about theft, tampering, and vandalism of on-board emergency equipment by both railroad passengers and other members of the public, FRA has included language in the section-by-section analysis of § 239.11 to remind the general public that FRA may impose a civil penalty upon any individual who willfully causes a railroad to be in violation of any requirement of this part. Take for example, a railroad that supplies each of its passenger cars with one fire extinguisher and one pry bar, and provides each of its on-board crewmembers with one flashlight. By equipping its train with all of these items, the railroad would then be in full compliance with the minimum requirements of § 239.101(a)(6)(i). Accordingly, if, unbeknownst to the railroad, a vandal pilfers a fire extinguisher from one of the passenger cars while the train is in service FRA can impose a civil penalty upon that vandal for causing the railroad to be in violation of 49 CFR part 239.

For purposes of enforcement by FRA of § 239.101(a)(6)(i) and (ii), the phrase ''in service'' means a passenger car that is in passenger service, i.e., the passenger car is carrying, or available to carry, fare-paying passengers. A passenger car is not in service if it is: being hauled for repairs and is not carrying passengers; in a repair shop or on a repair track; on a storage track and is not carrying passengers; or is moving without passengers in deadhead status. FRA will impose a civil penalty for passenger equipment that is missing on-Board emergency equipment or first-aid kits (in the case of railroads providing intercity passenger train service) only if the railroad had actual knowledge of the facts giving rise to the violation, or a reasonable person acting in the circumstances and exercising reasonable care would have had that knowledge. Accordingly, since FRA is not employing a strict liability standard in enforcing § 239.101(a)(6), FRA would ordinarily not impose a civil penalty on the railroad for the actions of a vandal. However, once the railroad personally discovers or is otherwise notified that a piece of emergency equipment or a first-aid kit is missing, FRA expects the railroad to replace the missing item before the passenger car (or train, as appropriate) is again placed in service on a subsequent calendar day. In this regard, FRA will expect each railroad to ensure its compliance with § 239.101(a)(6) by performing whatever daily interior mechanical inspection requirements that eventually result from the rulemaking on passenger equipment safety standards. See proposed § 238.305 of this chapter. 62 FR 49772, 49773, and 49808.

On-board Emergency Lighting

The rulemaking on passenger equipment safety standards will address the issue of permanent emergency lighting on passenger rail cars. Whatever requirements eventually appear in the new set of regulations at 49 CFR part 238, § 239.101(a)(6)(iii) states that

auxiliary portable lighting must be available for assistance in an emergency and should be routinely maintained and replaced as necessary. Section 239.101(a)(6)(ii) has been renumbered in the final rule due to addition of the requirement for first-aid kits on intercity passenger trains. Further, the final rule specifies the duration times for both brilliant illumination and continuous or intermittent illumination after the onset of an emergency situation. The final rule does not require that every rail passenger car have such lighting, but the train itself must carry enough portable lighting to facilitate orderly passenger evacuation.

In its comments on this issue at the NPRM stage of this proceeding, METROLINK stated that FRA needed to define the clause ''auxiliary portable lighting must be accessible,'' and questioned whether a flashlight is an acceptable form of such lighting. FRA intends for a handheld flashlight, such as a ''D'' cell flashlight, to be one of the means of satisfying the auxiliary portable lighting requirement; the final rule text has been expanded to include a handheld flashlight as an example of an auxiliary portable lighting source. Further, FRA considers auxiliary portable lighting as accessible when the lighting sources are reasonably available for use by a train's crew and its passengers within several minutes of the onset of the emergency. Since every emergency situation is unique, FRA cannot expect a railroad to determine in advance precise locations for locating the auxiliary portable lighting so that every passenger and crewmember on the train is always within immediate reach of the lighting. Accordingly, FRA expects each railroad to act reasonably and make its best educated guess, based upon its types of rail equipment and the nature of its operations, on where to place auxiliary lighting so that it will likely be accessible after the onset of an emergency.

Omniglow commented that chemiluminescence is the production of light from a non-heat generating chemical reaction, and utilizes a fluorescent molecule, a key intermediate, and a catalyst. Omniglow stated that the key chemical components are separated by a specially designed capsule contained within a larger, translucent plastic form, and that when light is desired, the outer plastic container is manipulated by the consumer, breaking the inner ampule, which allows the ingredients to mix and produce light. After arguing that each rail passenger car should be equipped with portable lighting capable of fostering passenger evacuation, and noting that FRA will permit a handled flashlight, such as a flashlight with a ''D'' cell, to be one of the means of satisfying the auxiliary portable lighting requirement, Omniglow stated that its 15'' high intensity lightstick would satisfy this requirement. In this regard, Omniglow observed that its lightstick is a high-intensity, non-explosive, non-hazardous, weatherproof light source, with a four year shelf life.

FRA will not endorse the product of a specific company by determining whether a railroad's use of that product will enable it to comply with the emergency lighting requirements of this paragraph. The only issue before FRA in evaluating whether a source of auxiliary portable lighting satisfies a railroad's emergency planning need is whether the lighting is both accessible during an emergency and provides the requisite levels and time intervals of illumination, as specified in paragraph 239.101(a)(6)(iii)(A) and (B). If a railroad can satisfy the regulatory parameters of this paragraph by using Omniglow's lightsticks, FRA will take no exception to the product's use.

Safety-Awareness Programs for Passengers

Finally, paragraph 239.101(a)(7) requires railroads to make passengers aware of emergency procedures to follow before an emergency situation develops, thus enabling them to respond properly during the emergency. All passenger awareness efforts must emphasize that passengers must follow the directions of the train crew during an emergency. If passengers are on a disabled train, but are not injured or facing imminent danger, they could safely await the arrival of trained emergency responders with appropriate evacuation equipment. However, in a serious emergency involving smoke or fire, passengers may have to evacuate the train before emergency responders arrive. Thus, operators of rail passenger service should take steps to increase passenger awareness about basic evacuation procedures. Since passengers could inadvertently jeopardize their own safety, it is appropriate for them to take the initiative only if the crewmembers are incapacitated.

Passenger railroads must educate passengers about their role in cooperating in emergencies by conspicuously and legibly posting emergency instructions inside each passenger car, and by utilizing at least one or more additional methods, including those designated in this paragraph, to provide safety awareness information. The suggested methods include distributing pamphlets, posting information in stations on signs or on video monitors, and the review of procedures by crewmembers via public address announcements. However, as set forth in the preceding ''Discussion of Comments and Conclusions'' portion of this document under the heading of item number 3, FRA also encourages railroads to pursue alternative innovative means of conveying passenger safety information. All brochures and signage must emphasize that passengers must follow the directions of the train crew during an emergency.

Although paragraph 239.101(a)(7)(ii)(A) permits a railroad to fulfill the secondary passenger education requirement of the final rule by making on-board announcements, FRA does not specify the frequency with which these announcements should be made during a train run. FRA believes that, with regard to intercity service, announcements are appropriate after at least each major passenger pick-up point, and commenters were invited in the NPRM to suggest ways of providing safety information to all new riders without becoming repetitious to the remaining passengers. Since no public comments were received on this specific issue, FRA has elected to permit broad flexibility to railroads in determining the appropriate frequency of on-board announcements in the event that they select this secondary method to disseminate information to passengers. In addition, while the final rule requires railroads to utilize only one additional method to distribute safety awareness information to the traveling public, FRA encourages railroads to employ as many of the options as possible based on operating and budgetary considerations.

Despite FRA's encouragement of the use of innovative techniques, the information in the various sources of passenger safety awareness information must be consistent in content and sufficient for first-time users of the railroad, but not so overwhelming as to arouse undue concern. All information must be printed or spoken in English, but railroads serving large non-English speaking communities should consider providing information in other languages as well. Materials for persons who are visually impaired should be printed in large type format and in braille. Finally, for persons with other types of disabilities, appropriate passenger awareness materials should provide information about evacuation policies and procedures and other emergency actions, to the extent practicable.

Passenger awareness education should include information that may permit passengers to accomplish the following:

- Recognize and immediately report potential emergencies to crewmembers;
- Recognize hazards;
- Recognize and know how and when to operate appropriate emergency-related features and equipment, such as fire extinguishers, train doors, and emergency exits; and
- Recognize the potential special needs of fellow passengers during an emergency, such as children, the elderly, and disabled persons.

FRA had asked for public comment on whether the final rule should include fixed timeframes in which railroads must provide their passengers with additional methods of safety awareness information, and urged commenters to supply scientific or sociological data and/or cost estimates in support of their suggested time intervals. The general recommendation of the commenters was that the final rule should leave the features of the awareness programs to each railroad's discretion, and that the key component of this requirement should be flexibility so that railroads can utilize the right mix of passenger communication techniques.

Based upon FRA's consideration of this issue, instead of specifying fixed maximum time intervals between utilizing the additional forms of program activity, FRA will allow the railroads to determine the optimal frequency that best serves their passengers and their operations. FRA expects that as the traveling public grows more accustomed to reading and understanding the emergency instructions posted inside all passenger cars on bulkhead signs, seatback decals, or seat cards the need for redundant reminders (e.g., on-board announcements, ticket envelope safety information, or public service announcements), especially at frequent time intervals, will greatly diminish. Moreover, depending on the additional method selected, different time intervals may be appropriate. For example, while it may be suitable for a railroad to distribute safety awareness information on a seat drop every three months, the railroad may conclude that it should arrange for public service announcements on a weekly basis.

Passenger Surveys

Paragraph 239.101(a)(7)(iii) of the NPRM would have required railroads to perform surveys of their passengers in order to learn how successful the passenger awareness program activities are in apprising passengers of the procedures that must be followed during an emergency. As set forth in the preceding ''Discussion of Comments and Conclusions'' portion of this document under the heading of item number 3, the survey requirement and its accompanying recordkeeping burden have been deleted from the final rule.

13. Passenger Train Emergency Simulations: Section 239.103

Section 239.103 recognizes that one of the most effective training techniques is a simulation of specific emergency scenarios. Simulations may vary from a small-scale drill or tabletop exercise for just one train crew or control center operator, to a full-scale emergency exercise involving several levels of railroad management that includes the voluntary participation of fire departments, ambulance and emergency medical service units, local police, sheriff and state police organizations, local emergency auxiliary groups, and state and federal regulatory agencies. While simulations are primarily designed to demonstrate that railroad employees can quickly and efficiently manage an emergency situation to ensure that emergency responders arrive quickly, simulations are also intended to determine whether train crews are properly trained to get passengers out of an imperiled train.

As FRA noted in the NPRM, the tabletop exercise is the simplest to stage, as it involves only a meeting room and knowledgeable managers and employees from the passenger train operator and the appropriate responding organizations who voluntarily participate. For an imaginary emergency, the actions to be taken by the appropriate personnel are described; the time, equipment, and personnel necessary are estimated; and potential problems are predicted. Conflicts of functional areas, lack of equipment, procedural weaknesses or omissions, communication difficulties, and confusing terminology are among the problems which can be identified.

Passenger train operators can drill their train crews, other on-board personnel, supervisors, and control center operators on emergency operating procedures by posing a hypothetical emergency for employees to resolve without dispatching emergency responders to the scene. A drill could also involve the voluntary participation of personnel of a particular response organization, e.g., a fire department. The same type of problems as indicated for the tabletop exercise can be identified, and the actual response capabilities of personnel in terms of their knowledge of procedures and equipment can be evaluated.

FRA recognizes that full-scale emergency exercises require weeks of carefully organized plans involving all participating organizations and involve the expenditure of funds for both the training and the actual full-scale exercise. Recording or videotaping the scenes and conversations in key areas of the exercise itself can serve as valuable classroom training for later years. A full-scale exercise is the total application of the resources of the passenger railroad operator and the voluntarily participating emergency response organizations. Such an exercise can reveal the degree of familiarity of both the passenger train system and emergency response organization personnel with train operations, the physical layout of trains, right-of-way structures and wayside facilities, emergency exits, and emergency equipment. Thus, shortcomings in the emergency preparedness plan and specific response protocols and procedures, as well as equipment, can be identified and corrected.

In the NPRM, FRA questioned whether tabletop exercises should be afforded the same weight in the final rule as full-scale simulations for purposes of demonstrating the readiness of a railroad to successfully react to a passenger train emergency. FRA also stated that the final rule might require that each railroad conduct a minimum number of its simulations as full-scale exercises. In this regard, FRA was skeptical as to whether a tabletop exercise could equal the comprehensiveness of a full-scale exercise and be a highly effective means of determining whether a railroad is adequately prepared for the likely variety of emergency scenarios that could occur on its lines, as well as an important training tool for the train crews, control center employees, and members of the emergency responder community who elect to participate. In contemplating during the NPRM stage of this proceeding whether to strengthen the emergency simulation requirement, FRA was aware that realistic full-scale simulations that enable all participants to practice using the on-board emergency equipment and emergency exits (and encourage the emergency responders to become personally familiar with passenger equipment and applicable railroad operations) could prove invaluable in helping railroads and the emergency responder community to manage real emergencies in ways that tabletop exercises cannot. However, FRA was also aware that the financial and logistical costs of

conducting full-scale simulations are undoubtedly higher, including the need to close railroad tracks during the hours of the simulation, opportunity costs for the railroads due to lost use of the passenger equipment that is employed in the simulations, unavailability of firefighting and rescue equipment for other emergencies while the simulations are being conducted, and salary costs for many or all of the simulation participants.

In order to best determine whether the final rule should require full-scale emergency simulations in conjunction with tabletop exercises, or perhaps in place of such exercises, FRA noted that it would carefully weigh the expected costs and potential benefits of all available options. FRA sought public comment on the perceived effectiveness of both full-scale emergency simulations and tabletop exercises, including a discussion of whether tabletop exercises can achieve the equivalent level of emergency preparedness as full-scale simulations. FRA was particularly interested in receiving comments from the emergency responder community, especially from those members who have participated in either emergency simulations or actual emergency situations with railroads.

Based upon FRA's review of the public comments and our careful consideration of the significant issues concerning emergency simulations, FRA has modified § 239.103 to require that all of the simulations that a railroad must perform are done full scale. While FRA still encourages railroads to supplement their emergency preparedness planning by voluntarily conducting tabletop exercises in addition to full-scale emergency simulations, FRA concludes that the safety objectives of emergency-preparedness planning are best served by railroads conducting at least a minimal number of comprehensive, full-scale exercises. FRA believes that the combination of full-scale simulations and the requirement contained in § 239.101(a)(5) for each railroad to develop a training program available to all on-line emergency responders who could reasonably be expected to respond during a passenger train emergency situation, enable railroads to best prepare for the likely varieties of emergency scenarios that could occur on their lines. A detailed discussion of the change in the simulation requirement from the NPRM stage of this proceeding, as well as a general discussion of the new requirement that railroads develop training programs for emergency responders and their organizations, is included in the preceding ''Discussion of Comments and Conclusions'' portion of this document under item number 2.

To achieve a maximum level of effectiveness, full-scale drills and exercises should reinforce classroom training in emergency response and passenger evacuation for the passenger train operator personnel and the emergency response units who voluntarily participate. Procedures should also be included to teach personnel to identify the emergency and distinguish its unique demands, and to follow through with the appropriate responses. In addition, the full-scale drills and exercises should be planned to minimize hazards which could create an actual emergency or cause injuries and to provide a mechanism for simultaneous testing and reinforcement of emergency operating procedures for specific types of emergencies and evacuation procedures. Moreover, the full-scale drills and exercises should test the communication capabilities and coordination of the passenger operator with the emergency responders, as well as the operability and effectiveness of emergency equipment.

Paragraph (b) has been modified to require each railroad that provides commuter or other short-haul passenger train service to conduct a full-scale emergency simulation at least once during every two calendar years, provided that its operations include less than 150 route miles and less than 200 million passenger miles annually. For larger commuter or other short-haul passenger operations, i.e., those whose operations include at least 150 route miles or at least 200 million passenger miles annually, a full-scale simulation is required at least once during each calendar year. For all intercity passenger operations, regardless of the number of route miles or passenger miles, a full-scale simulation is required at least once during each calendar year. The final rules does not distinguish on the basis of major lines for purposes of permitting railroads to select locations for their emergency simulations. However, in crafting the final rule to limit the number of required simulations, FRA recognizes that full-scale simulations carry higher financial and logistical costs than do tabletop exercises, and that railroads will reach a greater representative sample of the emergency responder community by offering training programs in accordance with § 239.101(a)(5) to responders who may lack opportunities to partake in actual simulations.

Since FRA has determined that a train crew on a commuter or other short-haul operation will usually operate a train along the same line for an extended period of time, and that emergency responder organization personnel tend to be line-specific in terms of their familiarity with a railroad's operations, it is crucial that each affected railroad provide adequate opportunities along all of its major lines for its employees and the responder community to obtain emergency response information and training opportunities. While FRA anticipates that each commuter or short-haul railroad will conduct full-scale emergency simulations as frequently as possible on its entire system, the final rule supplements the revised simulation requirement with the comprehensive liaison requirements of § 239.101(a)(5) so that each railroad can best reach the most heavily traveled portions of its system while conserving limited resources. In this regard, FRA recognizes that while emergency responder organizations tend to be densely located along the major lines of commuter and short-haul railroad operations, it is not necessary for each railroad to run full-scale simulations on all of its major lines according to a fixed timetable, provided that the railroad maintains proper liaison relationships with the affected responders.

In addition to the final rule setting forth the requirement for each affected railroad to perform its full-scale emergency simulations without regard to whether the railroad specifically includes all of its major lines, FRA also does not expect the railroad to require all of its employees who are trained under the emergency preparedness plan to attend the simulations. Moreover, FRA does not expect each railroad to invite all potential emergency responders to participate who are located along the portion of the railroad subject to the simulation. While FRA hopes that over the long term all railroad employees involved in the operation of passenger train service, as well as all applicable members of the emergency responder community, will have the opportunity to participate in this valuable training exercise and enhance their individual emergency preparedness skills, the simulations are also intended to identify shortcomings in each railroad's emergency preparedness plan and specific response protocols and procedures. The railroad must discuss the identified weaknesses and overall effectiveness of the emergency preparedness plan with the simulation participants at the debriefing and critique session held under § 239.105, and then initiate any appropriate improvements and/or amendments to the plan. As part of this

review process, the railroad is also expected to revise its employee training program under § 239.101(a)(2) and modify its liaison relationships with members of the emergency responder community established under § 239.101(a)(5), based upon the identified shortcomings of the railroad's emergency-preparedness planning. Accordingly, while the final rule does not mandate that affected railroads conduct numerous simulations along all of its major lines so as to include every possible participant, FRA concludes that the lessons learned from the mandatory debriefing and critique sessions and the interactions that occur within the required liaison relationships will have far reaching benefits.

In order to ensure that each affected railroad evaluates its overall emergency response capabilities through careful selection of the appropriate scenarios and locations on its lines for the emergency simulations, the final rule requires each railroad to organize simulations that will adequately test the performance of the railroad's program over time under the variety of emergency situations that could reasonably be expected to occur on the operation. For example, a railroad operating in territory that includes underground tunnels will need to conduct simulations to test the railroad's ability to ensure employee and passenger safety during an emergency situation occurring in this unique environment. Adequate lighting and sources of air in tunnels and underwater tubes are critical for successful passenger evacuation during emergencies. Further, emergency responders depend on sufficient lighting for visibility during fire suppression and rescue operations. If the railroad intends to evacuate passengers by using cross passages and/or fire doors leading to the opposite track area, or a separate center passageway between the adjacent track areas, the simulation should include practice in the requisite evacuation protocols and procedures.

In the case of a railroad providing intercity passenger service involving a number of lines operated over long distances, such as the coast-to-coast service provided by Amtrak, the need for the railroad to carefully plan its simulations and concurrently examine the effectiveness of its emergency preparedness plan under a variety of scenarios becomes crucial. Many of Amtrak's lines run for hundreds of miles through remote locations that could include risks from tunnel mishaps, natural disasters (e.g., fires, floods, and earthquakes), hazardous material leaks, and/or acts of terrorism. Further, because of the length of time required to travel these lines, the same train will be operated by more than one crew and may involve operation over the line of a freight railroad. Since Amtrak's lines traverse numerous populated communities throughout the United States, an emergency situation could require the assistance of any number of potentially thousands of emergency responders from these locations.

While FRA is not requiring operators of intercity service to conduct additional emergency simulations along its lines in order to reach a greater proportion of employees and members of the emergency response community, we do expect such railroads to plan simulations that sufficiently test the elements of their emergency preparedness plan under the variety of circumstances that could occur in intercity service. Although FRA recognizes that the length and diversity of Amtrak's operations limit the potential benefits from resources spent on conducting emergency simulations, the final rule requires Amtrak to conduct a minimum of only one full-scale emergency simulation per calendar year on any selected portion of its entire system, without regard to whether the simulation takes place on a particular business unit or other major organizational element. Although FRA considered imposing more rigorous requirements in the final rule on Amtrak (and other operators of intercity service) in order to ensure the requisite level of emergency preparedness, FRA will instead rely upon the thoroughness of the liaison activities and programs initiated by Amtrak in accordance with § 239.101(a)(5).

A detailed discussion of FRA's liaison-relationship expectations for Amtrak is included in the preceding ''Section-by-Section Analysis'' portion of this document under § 239.101(a)(5). That discussion section outlines Amtrak's September 2, 1997 meeting with FRA, during which the participants discussed the issue of developing a program for distributing Amtrak's emergency preparedness plan to emergency service providers located in areas through which Amtrak operates, and also summarizes Amtrak's written submission to FRA dated October 27, 1997 addressing the same topic.

By considering each of the emergency scenarios that could possibly occur on the different segments of the railroad (e.g., simulations of a derailment at a remote location where emergency responder assistance is not immediately available, an on-board fire inside a tunnel or on a bridge, a derailment involving a freight train carrying a hazardous materials spill, etc.), Amtrak can carefully design a program to fulfill its overall emergency response needs. By combining optimal use of the required minimum number of emergency simulations with a comprehensive training program offered to emergency responders as part of the liaison relationship, FRA concludes that a passenger railroad as diverse as Amtrak (which operates coast-to-coast service under a wide variety of operating conditions through the jurisdictions of numerous emergency responders) can best achieve the emergency preparedness goals of this rule throughout its entire system without expending a disproportionate amount of its limited resources.

Since FRA has decided to scale back the simulation requirement to involve only one meaningful full-scale simulation (performed either annually or every two years depending on the size of the railroad), FRA believes it is imperative that all railroads be required to study and evaluate their emergency response capabilities in controlled settings enabling them to carefully plan their full-scale emergency scenarios. Accordingly, FRA has modified the final rule to prohibit a railroad from counting either a tabletop exercise or the activation of its emergency preparedness plan during an actual emergency situation toward the simulation requirement.

However, since FRA recognizes that full-scale emergency exercises require extensive planning and commitment of human resources, the final rule permits a railroad to postpone a scheduled full-scale simulation for up to 180 days beyond the applicable calendar year completion date if the railroad has activated its emergency response plan after a major emergency. The postponement period permits the railroad to properly deal with the aftermath of an actual major emergency, defined in paragraph (d) to cover an unexpected event related to passenger operations that results in serious injury or death to one or more persons combined with reportable property damage, without the added stress or logistical burden of immediately conducting a simulation. During this postponement, FRA expects the railroad to measure the effectiveness of its emergency preparedness plan in conjunction with the debriefing and critique session held pursuant to § 239.105, and then improve or amend its plan, or both, as appropriate, in accordance with the information developed. Paragraph (c) also requires

the railroad to modify the rescheduled simulation, if appropriate, based upon the lessons learned from its response to the actual emergency.

Although paragraph (c) allows a limited exception under which a railroad may postpone a scheduled full-scale simulation, the calendar timetable remains the same. Take, for example, a commuter railroad whose operations include 250 million passenger miles annually and has a full-scale emergency simulation scheduled for December 1 of calendar year 2001, but has a major emergency situation occur on November 15. In accordance with the terms of § 239.103(b)(2), the railroad is required to conduct a minimum of one full-scale emergency simulation during calendar year 2001 and another one during calendar year 2002. Although, § 239.103(c) permits the railroad the option of postponing its full-scale simulation for calendar year 2001 from December 1, 2001 until June 29, 2002, the deadline for the full-scale simulation for calendar year 2002 (assuming that the postpone exception of paragraph (c) does not become an issue during calendar year 2002) remains at December 31, 2002.

14. Debriefing and Critique: Section 239.105

Section 239.105 recognizes the value of conducting a formal evaluation process after the occurrence of either an actual emergency situation or a full-scale emergency simulation exercise to determine what lessons can be learned. To increase the effectiveness of the evaluation of an emergency simulation, railroad personnel should be designated as evaluators to provide a perspective on how well the emergency preparedness plan and procedures were carried out. Although not required by the final rule, railroads are also encouraged to invite outside emergency response organizations and other outside observers to participate as evaluators. Evaluators should be given copies of the railroad's emergency preparedness plan before the simulation is conducted, and a preliminary meeting should be held to familiarize the evaluators with the drill or exercise and assign functional areas of concern for evaluation (*e.g.*, communications, evacuation times). Depending on the elaborateness of the simulation, evaluators may also choose to use video cameras to record the sequence of events, actions of personnel, and use of emergency equipment.

FRA did not propose a specific deadline in the NPRM by which each railroad must conduct its debriefing and critique session after each passenger train emergency situation or full-scale simulation. In addition, FRA did not receive any public comments or recommendations from members of the Working Group on an appropriate timeframe. In order to encourage railroads to conduct the required debriefing and critique sessions in a timely and reasonable period of time, thereby maximizing the railroad's emergency-preparedness benefits from the experience, FRA has revised the final rule to require that these sessions be held no later than 60 days after the emergency situation or simulation takes place. Of course, while FRA is providing a maximum timeframe of 60 days, FRA expects that, in the majority of cases, railroads will hold these valuable sessions within only 30 days of the emergency situation or simulation.

The purpose of a debriefing and critique session is to review with railroad personnel the reports of evaluators, to present comments or observations from other persons, and to assess the need for any remedial action, either to correct deficiencies or to generally improve the effectiveness of the emergency operations and procedures. In addition, the debriefing and critique session provides an excellent opportunity for the railroad to determine the effectiveness of its passenger awareness program activities. For example, if an emergency situation requires passengers to evacuate the train, the session should determine if everyone onboard correctly followed the safety instructions of the crewmembers and was aware of the emergency window and door exit locations and their means of operation.

Persons responsible for conducting the sessions should be instructed by the railroad to ask questions that will test emergency preparedness procedures, assess training, and evaluate equipment. After a simulation, these persons shall debrief all participants (including simulated victims, if any) who can offer valuable insights and thus help the railroad to revise its procedures. The debriefing session should help to determine what emergency preparedness or response procedures could not be used because of the special circumstances of either the train or the passengers, and whether coordination between the railroad and the emergency responders requires improvement.

The above method of conducting post-simulation debriefing and critique sessions should also be used by railroads to evaluate reactions to actual emergencies. Weaknesses in emergency preparedness procedures and equipment and areas for improving training should be identified, and the railroad shall amend its emergency preparedness plan in accordance with § 239.201. All persons involved shall be debriefed.

Although FRA did not receive any substantive comments on the need to conduct debriefing and critique sessions in order to accomplish the stated goal of improving the effectiveness of emergency preparedness plans, some commenters did request that FRA explicitly state in the rule text the circumstances under which the requirement to conduct a debriefing and critique session would be triggered. In this regard, Amtrak commented that debriefing and critique sessions can be useful in determining the effectiveness of emergency response procedures and in developing improvements, but represent substantial undertakings by railroad personnel (possibly including both an operating and host railroad) and representatives of emergency response agencies. Amtrak recommended that FRA not require full debriefing and critique sessions after accidents where no threat to passengers on the train requiring a possible evacuation or other similar major response existed. Where there was such a threat, Amtrak suggested that FRA require a full debriefing and critique session only after situations during which the Incident Command System (ICS), or an equivalent multi-jurisdictional emergency response system, was activated. Amtrak noted that the ICS was originally developed by the National Fire Academy, and had been endorsed by FEMA, EPA, and DOT. When such systems are activated, the participation and resources of numerous local emergency response agencies and the railroad must be coordinated; this coordination is the most meaningful test of an emergency response plan's effectiveness.

Amtrak stated that for situations when the ICS was not activated, a smaller-scale debriefing and critique session might be appropriate. Amtrak acknowledged that the proposal did not require a debriefing and critique session after each grade crossing or trespasser accident, but requested that this exception be stated explicitly in the rule text. Amtrak also requested that the rule text exclude a debriefing and critique session when there is no risk to persons on the train that would require the type of evacuation or other emergency response contemplated by the regulations. Amtrak opined that there is little benefit to performing post-accident evaluations when there was no risk to persons on the train that required a prompt, coordinated response involving both railroads and emergency

responders. Since Amtrak is involved in approximately one grade crossing or trespasser incident every other day, a requirement to conduct a debriefing and critique session after such occurrences would be burdensome.

CALTRAIN commented that the debriefing requirement fails to establish the threshold or norms that trigger a debriefing and critique session. CALTRAIN argued that this decision should be made by railroad management, with the exception of simulation drills and tabletop exercises, which typically conclude with a debriefing and critique.

APTA commented that under the proposal, a commuter railroad must conduct a debriefing after every passenger train emergency. APTA suggested that FRA revise the rule to add a threshold before the debriefing requirement is triggered, and recommended that the requirement be triggered only when a major emergency affects five or more passengers. As proposed, APTA argued that the provision would be costly to comply with and annoy passengers, without any corresponding benefit to rail safety. For example, a passenger heart attack would trigger the debriefing requirement. In addition, APTA noted that the opportunity for passenger fraud is much greater, since a passenger being debriefed may attempt to collect money from the railroad for a nonexistent injury.

Although METROLINK did not address the issue of establishing a threshold level in the final rule that would trigger the debriefing and critique requirement, it did comment before issuance of the NPRM that if a commuter railroad did a tabletop exercise or simulation, it could not follow the criteria of the proposal for a debriefing. During a table exercise or simulation, a railroad does not usually notify the emergency responders via the normal means of communication, does not respond via normal emergency conditions (code three with lights and sirens), and does not involve real passengers in the simulation. As noted in FRA's preceding ''Discussion of Comments and Conclusions'' portion of this document (item number 2), as well as in the sectional analysis of § 239.103, the final rule prohibits a railroad from counting a tabletop exercise toward the simulation requirement of the final rule. Accordingly, METROLINK's concern is no longer relevant.

A substituted paragraph (b) has been added to § 239.105 to set forth the limited circumstances under which a debriefing and critique session is not required after a railroad has activated its emergency preparedness plan. Upon review of the comments, FRA recognizes the potentially significant commitment of resources that such a session can involve, and does not wish to impose this obligation on railroads unless the evaluation process would focus on ways to improve the effectiveness of the emergency preparedness plan in ways that would benefit passengers on board the train. Since emergency situations involving significant threats to the safety or health of train passengers that require immediate attention may entail a variety of unique fact patterns, the railroad employees and passengers involved in the invaluable debriefing and critique exercise can help individuals involved in future incidents benefit from a prompt and coordinated response from the railroad and the emergency responder community. However, because collisions of the type set forth in paragraph (b) occur with greater regularity and involve more predictable fact patterns (e.g., a motor vehicle at a gated crossing circumvents a lowered gate arm and is hit by a passenger train, with no one on the train suffering an injury), debriefing and critique sessions after these incidents would quickly become repetitive in nature. Accordingly, FRA would burden the railroads, yet achieve only a marginal benefit to rail safety.

In accordance with the above change in the final rule, while the term ''emergency or emergency situation'' is defined in § 239.7 of this part to include a collision with a person, including suicides, FRA does expect a railroad to conduct a debriefing and critique session after every grade crossing accident. Although the railroad would still be expected to invoke its emergency preparedness plan in the event of any grade crossing accident, the goal of this final rule is to ensure that railroads effectively and efficiently manage passenger train emergencies. Accordingly, FRA does not intend for the debriefing and critique requirements of this section to apply when an emergency situation involves only a motorist or pedestrian who has been injured or killed, but does not affect the passengers onboard the train. Of course, if a grade crossing accident leads to an evacuation of the passenger train (e.g., a gasoline truck collides with the side of a passenger train, and diesel fuel begins to leak from the locomotive, creating the risk of a fire or an explosion), then a railroad must conduct a post-accident debriefing and critique session. In addition, a railroad cannot count its activation of the emergency preparedness plan under these circumstances, or any other circumstances, for purposes of satisfying the emergency simulation requirements of § 239.103.

While a significant derailment with one or more injured passengers or a fire on a passenger train would undoubtedly involve significant threats to passenger safety, and therefore require a debriefing and critique session, the proposed rule left open the question of what other types of emergency situations would trigger the requirements of this section. The NPRM sought public comment on what sorts of situations, or ''significant threats,'' FRA should include in the final rule under the definition of ''emergency'' or ''emergency situation'' set forth in § 239.7. Although no comments were received, FRA has revised the definition of ''emergency'' or ''emergency situation'' in § 239.7 to include: derailments; a fatality at a grade crossing; a passenger or employee fatality, or an illness or injury to one or more crewmembers or passengers requiring admission to a hospital; an evacuation of a passenger train; and a security situation (e.g., a bomb threat).

The final rule does not prescribe an FRA form or other substantive questionnaire to be used at the debriefing and critique sessions, or set forth specific questions to be asked after a full-scale simulation or actual emergency. Paragraph (c) simply requires the railroad to determine, by whatever means it selects, the effectiveness of its emergency preparedness plan; specifically, the functional capabilities of the on-board communications equipment, the timeliness of the required emergency notifications, and the overall efficiency of the emergency responders and the emergency egress of the passengers. Although the requirements of paragraph (c) were included in the NPRM as paragraph (b), the requirements remain essentially unchanged under its new designation, except for some minor stylistic changes.

In the NPRM, FRA had invited comments on whether the final rule should specify additional types of issues that must be addressed by railroads at debriefing and critique sessions (in addition to the five issues required to be addressed in paragraph (c)), or whether each railroad should retain some flexibility to develop its own approach to conducting these sessions. FRA did not receive any comments on this issue. Upon further deliberation, FRA concludes that if a railroad rigorously analyzes its emergency response scenario in accordance with the five required subparagraphs to paragraph (c),

and corrects all relevant deficiencies identified by the debrief and critique session, there is no need to impose any additional requirements in the final rule. Nevertheless, still FRA encourages railroads to voluntarily discuss any or all of the following questions at their debriefing and critique sessions:

- Did on-board personnel try to initiate a radio call immediately?
- How long did it take for on-board personnel to reach and inform the control center of the emergency situation?
- What was the method of notification to the control center? Was the method an on-board radio or a wayside radio (if equipped)?
- Was there adequate radio communication equipment? Was it used properly? Did it work properly?
- Did on-board personnel know the proper emergency telephone number to call from the wayside telephone?
- Did on-board personnel identify him/herself to the control center by name and location?
- Did on-board personnel report the number (approximate or actual, as appropriate) and status of the passengers?
- Did on-board personnel make audible, appropriate announcements to passengers? How many minutes elapsed after the simulation or emergency began before the first announcement was made?
- Did on-board personnel properly operate the fire extinguishers?
- Did on-board personnel request deenergization of the third rail or catenary power?
- Did on-board personnel request the halting of train movements?
- How long did it take for the first emergency response unit to arrive at the emergency scene?
- How long did it take to completely evacuate the train or right-of-way structure or wayside facility or extinguish a fire (real or simulated), or both?

Of course, during the course of FRA's review of the implementation and effectiveness of the debriefing and critique requirement in the final rule, FRA will analyze whether this requirement, as written, achieves the desired improvements in emergency preparedness. This review will determine whether the experiences of railroad employees, railroad passengers, and members of the emergency response community indicate that FRA should require railroads to consider any or all of the above questions during their debriefing and critique sessions. Based on FRA's evaluation, the agency may initiate further rulemaking activity or other appropriate action to ensure that this element of emergency preparedness planning is sufficiently addressed.

In order to achieve the goals of this section, and to comply with the debriefing and critique recordkeeping requirement of paragraph (d), evaluators should be provided with critique sheets, to be collected and used in the debriefing and critique sessions conducted by the railroads. At a minimum, whatever documentation the railroad selects to comply with paragraph (d) shall contain the date(s) and location(s) of the simulation and the debriefing and critique session, and should include the names of all participants at each session. Under the final rule, the critique sheets, or equivalent records, must be maintained by the railroad at its system and applicable division headquarters for two calendar years after the end of the calendar year to which they apply, and be made available for FRA and State inspection and copying during normal business hours. Although the requirements of paragraph (d) were set forth in the NPRM as paragraph (c), the requirements remain essentially unchanged under its new designation. One notable distinction is that while the NPRM was silent as to how long the debriefing and critique records needed to be retained, the final rule imposes a retention period of two years. A second distinction is that while the NPRM was silent on what specific information the records of the debriefing and critique sessions needed to include, the final rule states that each record must include the: date and location of the passenger train emergency situation or full-scale simulation; date and location of the debriefing and critique session; and names of all participants in the debriefing and critique session.

15. Emergency Exits: Section 239.107

In the course of normal passenger train operations, persons enter and exit passenger cars at a station platform through doors on the side of the train. However, when a disabled train cannot be moved to the nearest station, alternative evacuation methods must be employed. Emergency access to and egress from a passenger car may be achieved through outside doors, end doors, and windows. In some emergencies, such as when a fire is confined to a single passenger car, persons may be moved through the end door(s) to an adjacent car. In other emergencies, transfer of all the passengers from the disabled train may be required.

Not all passenger cars have vestibule side doors on both ends, and in some equipment, operation of these doors has required considerable effort, including hand tools. If a power loss occurs, crewmembers may be unable to open either or both of the car vestibule side doors from the normal key control station in the car. If side-door emergency controls permit opening of only one sliding door, it could prove difficult to move certain individuals through it. Also, if the vestibule side doors cannot be opened immediately from either the inside or the outside, persons may panic and could be injured as others attempt to leave the car.

As FRA noted in the NPRM stage of this proceeding, commuter railroads have agreed to FRA's request that arrangements requiring hand tools (coins and pencils) be retrofitted. The issue of relocation of manual releases is being addressed in the rulemaking on Passenger Equipment Safety Standards (FRA Docket No. PCSS–1), and the Passenger Equipment Safety Standards Working Group will be evaluating other improvements in door design and operation. Section 239.107(a) requires that all doors intended by a railroad to be used during an emergency situation be properly marked inside and outside, and that the railroad post clear and understandable instructions for their use at the designated locations. However, in contrast to the broad definition of ''passenger car'' contained in part 223 of this chapter, the text of the final rule has been revised to reflect the fact that the marking requirements for emergency door exits on passenger cars do not apply to self-propelled passenger cars designed to carry baggage, mail, or express.

Section 239.107(a)(1) requires that the emergency egress exits be conspicuously and legibly marked on the inside of the car with luminescent material or be properly lighted. FRA realizes that during an emergency the main power supply to the passenger cars may become inoperative and that crewmembers with portable flashlights may be unavailable. Since lack of clear identification or lighting could make it difficult for passengers to find the emergency door exits, the final rule requires luminescent material on all emergency egress door exits (or secondary auxiliary lighting near these exits) to assist and speed passenger egress from the train during an emergency. The marking of the emergency door exits must be conspicuous enough so that a reasonable person, even while enduring the stress and potential panic of an emergency evacuation, can determine where the closest and most accessible emergency route out of the car is

located. In addition, while this section does not prescribe a particular brand, type, or color of luminescent paint or material that a railroad must use to identify an exit, FRA intends each railroad to select a material durable enough to withstand the daily effects of passenger traffic, such as the contact that occurs as passengers enter and leave the cars.

Section 239.107(a)(2) requires that the emergency door exits intended for emergency access by emergency responders for extrication of passengers be marked with retroreflective material, so that the emergency responders can easily distinguish them from the nonaccessible doors simply by shining their flashlights or other portable lighting on the marking or symbol selected by the railroad. Again, while this section does not prescribe that a railroad use a particular brand, type, or color of retroreflective material to identify an access location, FRA intends each railroad to select a material durable enough to withstand the daily effects of weather and passenger contact, and capable of resisting, to the extent possible, the effects of heat and fire. If all doors are equally operable from the exterior, no designation would be useful, nor would any be required. In the separate rulemaking on passenger equipment safety standards, FRA is addressing appropriate requirements for periodic maintenance and replacement of the emergency door exit markings.

The final rule requires railroads to post clear and understandable instructions at designated locations describing how to operate the emergency door exits. This section does not mandate that railroads use specific words or phrases to guide the passengers and emergency responders. Instead, each railroad should evaluate the operational characteristics of its emergency door exits, and select key words or diagrams that adequately inform the individuals who must use them. While railroads are encouraged to post comprehensive instructions, FRA also realizes that during an emergency situation every additional moment devoted to reading and understanding access or egress information places lives at risk. In addition, FRA would already expect passengers and emergency responders to be familiar with the location and operation of the railroad's emergency door exits as a result of emergency responder liaison activities and passenger awareness programs conducted in accordance with proposed § 239.101(a)(5) and (a)(7).

In deciding to require that railroads must mark all door exits intended for emergency access and post access instructions, FRA carefully considered concerns expressed by members of the Working Group that this requirement would enable vandals to gain easy or casual entry into passenger cars left overnight in rail yards, particularly adolescents who might otherwise not know how to operate specialized door mechanisms. In addition to FRA's desire to avoid unnecessary expenses to railroads for repairing vandalized or damaged rail equipment, FRA does not wish to see on-board emergency equipment disappear from unattended trains due to the acts of individuals who learned how to gain illegal access to the equipment courtesy of a Federal regulation. FRA also recognizes that under § 239.101(a)(5), railroads are required to develop training programs available to all on-line emergency responders who could reasonably be expected to respond to an emergency situation, with an emphasis upon access to railroad equipment, location of railroad facilities, and communications interface, and that such comprehensive training information may lessen the need for railroads to place markings on every emergency door or post detailed access instructions. However, FRA realizes that not every potential emergency responder will choose to participate in the training program, and that not everyone who participated will recall all of the imparted information on access to the equipment while in the midst of responding to a major railroad accident or incident. FRA is confident that railroads will find ways of protecting their unattended equipment through appropriate security measures, and the agency will not risk loss of human life from delays in emergency responder rescue efforts merely because of the possibility that financial losses from vandalism will increase. Accordingly, the comprehensive marking and operating instruction requirements proposed in the NPRM remain unchanged.

Paragraph (b) requires each railroad operating passenger train service to properly consider the nature and characteristics of its operations and passenger equipment to plan for routine and scheduled inspection, maintenance, and repair of all windows and door exits intended for either emergency egress or rescue access by emergency responders. In the case of emergency window exits, the inspection, maintenance, and repair activities must be performed consistent with the requirements of part 223 of this chapter. While the final rule does not require railroads to perform these tasks in accordance with a specific timetable or methodology, except with respect to the periodic sampling requirement for emergency window exits discussed below, FRA expects each railroad to develop and implement procedures for achieving the goals of this paragraph. Visual inspections must be performed periodically to verify that no emergency exit has a broken release mechanism or other overt sign that would render it unable to function in an emergency. Maintenance, including lubrication or scheduled replacement of depreciated parts or mechanisms, must be performed in accordance with standard industry practice and/or manufacturer recommendations. All emergency exits that are found during the course of an inspection or maintenance cycle to be broken, disabled, or otherwise incapable of performing their intended safety function must be repaired before the railroad may return the car to passenger service.

For purposes of enforcement by FRA of § 239.107, the phrase ''in service'' means a passenger car that is in passenger service, i.e., the passenger car is carrying, or available to carry, fare-paying passengers. A passenger car is not in service if it is: being hauled for repairs and is not carrying passengers; in a repair shop or on a repair track; on a storage track and is not carrying passengers; or has been delivered in interchange but has not been accepted by the receiving railroad. FRA will impose a civil penalty for passenger equipment that is missing an emergency-exit marking or has an inoperable emergency exit only if the railroad had actual knowledge of the facts giving rise to the violation, or a reasonable person acting in the circumstances and exercising reasonable care would have had that knowledge. Accordingly, since FRA is not employing a strict liability standard in enforcing § 239.107, FRA would ordinarily not impose a civil penalty on the railroad for the actions of a vandal. However, once the railroad personally discovers or is otherwise notified that a marking is missing or an emergency exit is inoperative, FRA expects the railroad to replace the missing marking or repair the inoperative exit before the passenger car (or train, as appropriate) is again placed in service on a subsequent calendar day. In this regard, FRA will expect each railroad to ensure its compliance with § 239.107(b) by performing whatever daily exterior and interior mechanical inspection requirements that eventually result from the rulemaking on passenger equipment safety standards. See proposed §§ 238.303 and 238.305 of this chapter.

Carrying forward requirements currently contained in FRA's Emergency

Order No. 20, the final rule also requires each railroad to periodically test a representative sample of emergency window exits on its passenger cars to verify their proper operation. The sampling of these emergency window exits must be conducted in conformity with either of two commonly recognized alternate methods, which will provide a degree of uniformity industry wide. Both methods require sampling meeting a 95-percent confidence level that all emergency window exits operate properly (i.e., the methods do not accept a defect rate of 5 percent). Rather than require railroads to test all window exits on a specific type or series of car if one car has a defective window exit, the final rule permits the railroads to use commonly accepted sampling techniques to determine how many additional windows to test. In general, these principles require that the greater the percentage of window exits that a railroad finds defective, the greater the percentage of windows that the railroad will have to test. Specifically, sampling must be conducted to meet a 95-percent confidence level that no defective units remain in the universe and be in accord with either Military Standard MIL–STD–105(D) Sampling for Attributes or American National Standards Institute ANSI–ASQC Z1.4–1993 Sampling Procedures for Inspections by Attributes. Defective units must be repaired before the passenger car is returned to service.

The final specifies that a railroad must test a representative sample of emergency window exits on its cars at least once during every 180 days to verify their proper operation. Although commenters were encouraged to address this issue by indicating whether the sampling should occur on an annual basis, or on a less frequent basis, no comments were received. Accordingly, the level of frequency remains unchanged from the NPRM stage of this proceeding.

The inspection, maintenance, and repair records concerning emergency window and door exits must be retained at the system headquarters for the railroad and at the division headquarters for each division where the inspections, maintenance, or repairs are performed (i.e., the records availability must be division specific). The records must be retained for two calendar years after the end of the year to which they relate. The records can consist of multiple documents, and may contain separate sections covering inspection, maintenance, and repair or separate sections covering different types of passenger equipment. Additionally, railroads must make these inspection, maintenance, and repair records available to duly authorized representatives of FRA and States participating under part 212 of this chapter for inspection and copying (e.g., photocopying or handwritten notetaking) during normal business hours.

METROLINK commented that in order to avoid the unnecessary burden of maintaining duplicate records, the rule should require railroads to store all of the maintenance records for the emergency window and door exits at the site of the inspections. In METROLINK's case, that site would be the applicable division headquarters, which is no more than 15 miles from its system headquarters. METROLINK also noted that paragraph 239.107(c) does not indicate for how long the inspection records must be retained, and recommended that since the current rule calls for major service inspections to be retained for 180 days (or until the next inspection is performed) the final rule should establish a similar timeframe.

In response to METROLINK's comment concerning the lack of a timeframe for the retention of inspection records, FRA has revised the final rule to require a two-year retention period for each railroad's records of inspection, maintenance, and repair of its emergency window and door exits. Despite METROLINK's preference for a shorter timeframe, FRA concludes that two years is necessary to allow FRA an adequate opportunity to perform meaning compliance audits and determine if a railroad's overall pattern of compliance with this section is sufficient. In addition, while FRA recognizes the additional expense of retaining copies of inspection records at both the system and divisional levels, this dual approach enables FRA's regional inspection forces to perform division-specific inspections, while also permitting FRA to study the compliance of a railroad's entire system. However, as METROLINK illustrates by describing its own operational characteristics, at least one member of the railroad population has only one central maintenance facility which solely performs all of the inspection, maintenance, and repair of its entire fleet of passenger cars. Under this limited scenario, FRA agrees that it would be redundant to require a railroad to maintain duplicate sets of records at both its system and divisional offices. Accordingly, the single central maintenance facility would be an acceptable repository for all of the inspection, maintenance, and repair records for such a railroad.

FRA has added paragraph (d) to the final rule to authorize railroads to retain their records of inspection, maintenance, and repair of emergency window and door exits by electronic recordkeeping, subject to the conditions set forth in this provision. This provision provides an alternative for railroads retaining certain information, as required in paragraph (c). FRA realizes that requiring railroads to retain the information in paper form would impose additional administrative and storage costs, and that computer storage of these documents would also enable railroads to immediately update any amendments to their operational testing programs.

Each participating railroad must have the essential components of a computer system, i.e., a desktop computer and either a facsimile machine or a printer connected to retrieve and produce records for immediate review. The material retrieved in hard copy form must contain relevant information organized in usable format to render the data completely understandable. The documents must be made available for FRA or participating State inspectors during normal business hours, which FRA interprets as the times and days of the week when railroads conduct their regular business transactions. Nevertheless, FRA reserves the right to review and examine the documents prepared in accordance with the Passenger Train Emergency Preparedness regulations at any reasonable time if situations warrant.

Additionally, each railroad must provide adequate security measures to limit employee access to its electronic data processing system and must prescribe who can create, modify, or delete data from the database. Although FRA does not identify the management job position capable of instituting changes in the database, each railroad must indicate the source authorized to make such changes. Each railroad must also designate who will be authorized to authenticate the hard copies produced from the electronic format. In short, each railroad electing to retain its records electronically must ensure the integrity of the information and prevent possible tampering with data, enabling FRA to fully execute its enforcement responsibilities.

16. Emergency Preparedness Plan; Filing and Approval: Section 239.201

Section 239.201 specifies the process for review and approval by FRA of each passenger railroad's jointly-adopted emergency preparedness plan. The intent of the review and approval is to be constructive, rather than restrictive.

It is anticipated that the passenger railroads, in conjunction with the railroads hosting these operations (when applicable), will develop and implement varied plans based upon the special circumstances involving their individual operations. Under the final rule, FRA requires that each affected railroad summarize its internal discussions and deliberative processes to explain how the railroad's unique and individual operating characteristics determined how each issue for the passenger train operation was finally addressed in the emergency preparedness plan. Specifically, FRA expects each railroad to participate, as appropriate, in preparing a review of the analysis that led to each element of the emergency preparedness plan that the passenger operation submits to FRA for approval, including a consideration of the expected monetary costs and anticipated safety benefits associated with each section of the plan.

In its comments, METROLINK stated that the term ''analysis'' in the phrase ''shall include a summary of the railroad's analysis supporting each plan element and describing how each condition on the railroad's property is addressed in the plan'' is vague and lacking in direction. METROLINK then asked whether FRA expects to receive a cost benefit analysis, systems approach, or safety value analysis. In addition, METROLINK questioned whether the term ''condition on the railroad's property'' concerns elements of the plan such as earthquakes, wind, and power outages.

In response to METROLINK's comments, FRA notes that the word ''analysis'' means that FRA expects each railroad to identify all vulnerabilities that exist on its property in terms of potential risks to rail safety and emergency preparedness planning. In the context of identifying the known risks, each railroad should undertake a systems approach in order to explain how it will mitigate the level of each risk to an acceptable level. FRA does not consider earthquakes, wind, or power outages, in and of themselves, to be ''conditions on the railroad's property.'' However, if a railroad requires electrical power to operate, and its operations run across a trestle without walkways, then the emergency preparedness plan must address how the railroad will mitigate the risk connected with one of its trains becoming stranded on a trestle during a power outage.

FRA will conduct a review of each plan so that there can be an open discussion of the plan's provisions from which all concerned parties can benefit. However, in order to ensure compliance with minimum plan requirements FRA will first conduct a preliminary review of each plan in accordance with revised paragraph (b)(1), and then conduct a comprehensive and detailed review of each plan in accordance with revised paragraph (b)(2) prior to final approval and implementation. A detailed discussion of the issue of preliminary and final review of emergency preparedness plans is included in the preceding ''Discussion of Comments and Conclusions'' portion of this document under item number 4.

FRA expects to involve members of the Passenger Train Emergency Preparedness Working Group in developing benchmark criteria for plan approvals to simplify plan development and approval. It is anticipated that this criteria will address program elements that include the following:

- Specific course content for training programs of on-board personnel, control center personnel, and other key employees;
- Minimum requirements for full-scale emergency exercises, including frequency and content of drills with emergency responders and simulations to determine rapidity of emergency evacuations under varying scenarios;
- Specific means for providing emergency safety information to passengers, similar to on-board briefings provided in commercial aviation;
- Detailed requirements for tunnel safety, including lighting and equipment; and
- Additional attention to emergency equipment, by recommending types and numbers of various kinds of equipment that may be useful under varying operating scenarios.

FRA will also review all plan amendments prior to their going into effect. FRA had requested comments on whether there are any categories of plan amendments that should be permitted to go into effect immediately, prior to review and approval, because they constitute improvements for which implementation delay should be avoided. Since FRA did not receive any comments on this issue, the final rule requires that all proposed plan amendments be submitted for review before the railroad may revise its emergency preparedness plan. Within 45 days of receipt of a railroad's proposed amendment to its plan, FRA will review the proposal and notify the railroad's primary contact person of the results of the review and identify any deficiencies found. If FRA discovers a deficiency, the railroad must correct it before the amendment may go into effect.

All persons, such as contractors, who perform any action on behalf of a railroad are required to conform to the emergency preparedness plans in effect on the railroads upon which they are working. Persons whose employees are working under a railroad's approved emergency preparedness plan need not submit a separate plan to FRA for review and approval. For example, if a passenger railroad hires an outside independent contractor to conduct an emergency simulation pursuant to § 239.103, the contractor must perform this task in accordance with the passenger operation's plan. However, if a freight railroad train crew operates a passenger train for a commuter rail authority, the freight railroad must coordinate the applicable portions of the emergency preparedness plan with the commuter rail authority. While an assignment of responsibility for compliance made under § 239.101(a)(3) must be clearly stated in the plan, the assignor shall not be relieved of responsibility for compliance with this part.

Although the final rule has been revised to state that the final review process will include ongoing dialogues with rail management and labor representatives, the rule does not specifically require the direct involvement of railroad employees or their representatives in the process of designing the emergency preparedness plan. In this regard, FRA notes that the responsibility for having a plan that conforms with this rule lies with the employer. However, it should be noted that the success of an emergency preparedness plan requires the willing cooperation of all persons whose duties or personal safety are affected by the plan.

17. Retention of Emergency Preparedness Plan: Section 239.203

Although FRA did not receive any comments, this section has been modified to reflect the new requirement in § 239.201 that each passenger railroad jointly adopt a single emergency preparedness plan with all railroads hosting its passenger service (if applicable). The single emergency preparedness plan prepared by the passenger railroad and all of its applicable host railroads, as well as all subsequent amendments to the single plan, must be retained at the system headquarters for each railroad and at the division headquarters for each division on each affected railroad where the plan is in effect (i.e., the records availability must be division specific). The emergency preparedness plan may consist of multiple documents or

booklets and may contain separate sections covering the varying job functions and plan responsibilities of on-board and control center personnel. Additionally, railroads must make the emergency preparedness plan records available to duly authorized FRA representatives for inspection and copying (e.g., photocopying or handwritten notetaking) during normal business hours.

18. Operational (Efficiency) Tests: Section 239.301

Section 239.301 contains the requirement that railroads monitor the routine performance of employees who have individual responsibilities under the emergency preparedness plan to verify that the employee can perform the duties required under the plan in a safe and effective manner. It permits the railroad to test proficiency by requiring the employee to complete a written or oral examination, an interactive training program using a computer, a practical demonstration of understanding and ability, or an appropriate combination of these in accordance with this section. This testing may also involve check rides and control center visits, along with unannounced, covert observation of the employees.

This section requires a railroad to keep a record of the date, time, place, and result of each operational (efficiency) test that was performed in accordance with its emergency preparedness plan. Each record must identify the railroad officer administering the test of each employee. Accordingly, by identifying the specific data points that each record must provide, this section will promote the examination of relevant information from captured data sources, enabling FRA to better determine the effectiveness of a railroad's emergency preparedness plan. A written or electronic records of each operational (efficiency) test must be kept for one calendar year after the end of the year in which the test was conducted, and must be made available for inspection and copying by FRA and participating States during normal business hours.

FRA received only one comment concerning the requirements of this section. APTA expressed a general concern that a commuter railroad operating over a host railroad may not be able to convince the freight railroad's dispatcher to provide track time for efficiency tests, especially on busy freight corridors. APTA offered to work with FRA to help in the implementation of this section.

FRA recognizes both the operational complexities and logistical realities of commuter railroads sharing trackage rights with freight railroads on the general railroad system of transportation. While FRA remains confident that dispatchers on host railroads will fully cooperate with commuter operations and provide them with safe and adequate opportunities to perform on-the-job verifications to evaluate individual employee performance under the emergency preparedness plan, the rule does permit a railroad to utilize formal examinations, interactive computer programs, and practical demonstrations to measure the success of its training program. Nevertheless, FRA will intervene as appropriate to ensure the successful and effective implementation of each railroad's emergency preparedness plan.

19. Electronic Recordkeeping: Section 239.303

FRA did not receive any comments on this section, which is adopted as proposed. Section 239.303 authorizes railroads to retain their operational (efficiency) test records by electronic recordkeeping, subject to the conditions set forth in this provision. This provision provides an alternative for railroads retaining certain information, as required in § 239.301. FRA realizes that requiring railroads to retain the information in paper form would impose additional administrative and storage costs, and that computer storage of these documents would also enable railroads to immediately update any amendments to their operational testing programs.

Each participating railroad must have the essential components of a computer system, i.e., a desktop computer and either a facsimile machine or a printer connected to retrieve and produce records for immediate review. The material retrieved in hard copy form must contain relevant information organized in usable format to render the data completely understandable. The documents must be made available for FRA or participating State inspectors during normal business hours, which FRA interprets as the times and days of the week when railroads conduct their regular business transactions. Nevertheless, FRA reserves the right to review and examine the documents prepared in accordance with the Passenger Train Emergency Preparedness regulations at any reasonable time if situations warrant.

Additionally, each railroad must provide adequate security measures to limit employee access to its electronic data processing system and must prescribe who can create, modify, or delete data from the database. Although FRA does not identify the management job position capable of instituting changes in the database, each railroad must indicate the source authorized to make such changes. Each railroad must also designate who will be authorized to authenticate the hard copies produced from the electronic format. In short, each railroad electing to retain its records electronically must ensure the integrity of the information and prevent possible tampering with data, enabling FRA to fully execute its enforcement responsibilities.

Regulatory Impact

Executive Order 12866 and DOT Regulatory Policies and Procedures

This final rule has been evaluated in accordance with existing policies and procedures. Due to considerable public interest in the subject matter of the rule, the rule is considered to be significant under both Executive Order 12866 and DOT policies and procedures (44 FR 11034; February 26, 1979). FRA has prepared and placed in the docket a regulatory analysis addressing the economic impact of the rule. It may be inspected and photocopied at the Office of Chief Counsel, FRA, Seventh Floor, 1120 Vermont Avenue, N.W., in Washington, D.C. Photocopies may also be obtained by submitting a written request to the FRA Docket Clerk at Office of Chief Counsel, Federal Railroad Administration, Mail Stop 10, 400 Seventh Street, S.W., Washington, D.C. 20590.

As part of the benefit-cost analysis, FRA has assessed quantitative measurements of costs and benefits expected from the adoption of the rule. The Net Present Value (NPV) of the total 20-year costs which the industry is expected to incur is $6.3 million. Following is a breakdown of the costs by requirement.

Section	Requirement	Cost
239.101,201,203	Emergency Prep. Plan	$199,085
	Control Center Notification	969–1,569
	Training:	

Section	Requirement	Cost
	—Onboard Personnel Training	1,400,684
	—Control Center Personnel Training	134,014
	—Initial Program Development	51,822
	Joint Operations	22,954
	Parallel Operations	1,526–1,865
	Emergency Responder Liaison:	
	—Training Program	423,096
	—Provide EPP—Commuter	11,646
	—Provide EPP—Amtrak	403,365
	Onboard Emergency Equipment:	
	—One Fire Extinguisher/Car	147,801
	—One Pry Bar/Car	66,571
	—Instruction on Pry Bar Use	279,576
	Passenger Safety Awareness:	
	—Permanent Onboard Posting	64,597
239.103, 105	Pass Train Emergency Simulations	231,172
239.107	Emergency Exits:	
	—Marking—Interior	447,571
	—Marking—Exterior	1,336,679
	—Inspection/Record keep.	397,091
239.301	Operational Efficiency Tests	683,909
Total		6,304,128–6,305,067

The history of passenger train accidents shows that the potential for injury and loss of life arising from a single incident can be significant. In the last 11 years there have been seven passenger train accidents which resulted in a significant loss of life. FRA believes that the value (as a result of these requirements) of averting three or more fatalities, or an economic-equivalent number of permanently disabling injuries among rail passengers over the next twenty years will exceed the cost to rail carriers of implementing these rules.

While FRA cannot determine whether the monetary value of the benefits to railroads affected by this rule will exceed the estimated costs of implementing the rule, the agency believes it is reasonable to expect that the economic benefit from saving at least three lives as a result of implementing these standards will exceed the costs of implementing this rule.

Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) requires an assessment of the impacts of proposed rules on small entities. FRA has conducted a regulatory flexibility assessment of this final rule's impact on small entities, and the assessment has been placed in the public docket for this rulemaking; FRA certifies that the final rule will not have a substantial impact on a significant number of small entities. This final rule affects intercity and commuter passenger railroads, as well as rapid transit operations that operate over the general railroad system of transportation. Commuter railroads and rapid transit systems are part of larger transit organizations that receive Federal funds. The American Public Transit Association (APTA) represents the interests of commuter railroads and rapid transit systems in regulatory matters. Further, the final standards were developed by FRA in consultation with a Working Group that included representatives from Amtrak, individual commuter railroads, and APTA.

Entities impacted by the final rule are governmental jurisdictions or transit authorities, none of which are small for purposes of the United States Small Business Administration (i.e., no entity operates in a locality with a population of under 50,000 people). No small commuter railroads or rapid transit systems will be affected disproportionately. The level of costs incurred by each organization should vary in proportion to the organization's size. For instance, railroads with fewer employees and fewer passenger cars will have lower costs associated with both employee efficiency testing and emergency exit inspections.

Small passenger rail operations such as tourist, scenic, excursion, and historic railroads are excepted from the final rule. The final rule does not affect small entities.

A joint FRA/industry working group formed by the RSAC is currently developing recommendations regarding the applicability of FRA regulations, including this one, to tourist, scenic, historic, and excursion railroads. After appropriate consultation with the excursion railroad associations takes place, emergency preparedness requirements for these operations may be proposed by FRA that are different from those affecting other types of passenger train operations. These requirements may be more or less onerous, or simply different in detail, depending in part on the information gathered during FRA's consultation process.

Paperwork Reduction Act

The rule contains information collection requirements. FRA has submitted these information collection requirements to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d) *et seq.*). FRA has endeavored to keep the burden associated with the final rule as simple and minimal as possible. FRA is not authorized to impose a penalty on persons for violating information collection requirements which do not display a current OMB control number. The sections that contain the new and/or revised information collection requirements and the estimated time to fulfill each requirement are as follows:

CFR section	Respondent universe	Total annual responses	Average time per response	Total annual burden hours	Total annual burden cost
223.9d/239.107:					
A. Emergency egress.	18 RRs	1,950 new decals	4 minutes	664 hours	$19,920
		4,575 replace decals	7 minutes.		
		1,300 new decals	4 minutes.		
B. Emergency access.	18 RRs	6,320 replace decals	7 minutes	824 hours	24,720
239.107(b)	18 RRs	3,600 tests	20 minutes (18 minutes to perform test and 2 minutes for recordkeeping).	1,200 hours	36,000
239.101/239.201	18 RRs	18 plans	158 hours	2,844 hours	115,416
	18 RRs	18 amendments	1.6 hours	29 hours	986
239.101(1)(I)	18 RRs	N/A	Usual and customary procedure—No new paperwork.	N/A	N/A
239.101(1)(ii)	18 RRs	N/A	Usual and customary procedure—No new paperwork.	N/A	N/A
239.101(1)(ii)	5 RRs	5 updates of records	1 hour	5 hours	140
239.101(a)(3)	29 RR Pairs	29 negotiations	16 hours	464 hours	22,040
239.101(a)(7)(ii)	5 RRs	1,300 passenger cars	5 minutes per bulkhead card	108 hours	3,240
		5 safety messages	1 hour per RR to develop safety message.	5 hours	170
239.105	18 RRs	5 sessions	27 hours per session	33 hours	924
239.301/239.303	18 RRs	11,075 tests	8 minutes per test	135 hours	6,255
239.101(a)(5)	17 RRs	18 responses to distribute info to emergency responders.	6 hours per mailing	102 hours	9,588
	1 RR		100 hours per mailing	180 hours	
	1 RR (Amtrak)	1 response to distribute info to emergency responders.	100 hours	100 hours	2,800
	16 RRs	16 updates of emergency responder records.	30 minutes per updated	8 hours	224
	1 RR (Amtrak)	1 update of emergency responder records.	5 hours hours per mailing	5 hours	140

All estimates include the time for reviewing instructions; searching existing data sources; gathering or maintaining the needed data; and reviewing the information. For information or a copy of the information collection request submitted to OMB, please contact Ms. Brenda Moscoso at 202–632–3335. The final rule responds to public comments on the information collection requirements contained in the NPRM. The requirements in this final rule have been approved by OMB under OMB control number 2130–0545.

Environmental Impact

FRA has evaluated this final rule in accordance with its procedures for ensuring full consideration of the environmental impact of FRA actions, as required by the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*), other environmental statutes, Executive Orders, and DOT Order 5610.1c. This final rule meets the criteria that establish this as a non-major action for environmental purposes.

Federalism Implications

This final rule has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. The fundamental policy decision providing that Federal regulations should govern aspects of service provided by municipal and public benefit corporations (or agencies) of State governments is embodied in the statute quoted above. FRA has made every effort to provide reasonable flexibility to State-level decision making and has included commuter authorities as full partners in development of this proposed rule.

Compliance With the Unfunded Mandates Reform Act of 1995

Pursuant to the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) each federal agency ''shall, unless otherwise prohibited by law, assess the effects of Federal Regulatory actions on State, local, and tribal governments, and the private sector (other than to the extent that such regulations incorporate requirements specifically set forth in law).'' Sec. 201. Section 202 of the Act further requires that ''before promulgating any general notice of proposed rulemaking that is likely to result in promulgation of any rule that includes any Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $ 100,000,000 or more (adjusted annually for inflation) in any 1 year, and before promulgating any final rule for which a general notice of proposed rulemaking was published, the agency shall prepare a written statement * * *'' detailing the effect on State, local and tribal governments and the private sector. The final rules issued today will not result in the expenditure, in the aggregate, of $100,000,000 or more in any one year, and thus preparation of a statement was not required.

List of Subjects in 49 CFR Part 223

Glass and glass products, Penalties, Railroad safety, Reporting and recordkeeping requirements.

List of Subjects in 49 CFR Part 239

Passenger train emergency preparedness, Penalties, Railroad safety, Reporting and recordkeeping requirements.

The Final Rule

In consideration of the foregoing, chapter II, subtitle B, of title 49, Code of Federal Regulations is amended as follows:

1. The authority citation for part 223 is revised to read as follows:

Authority: 49 U.S.C. 20102–20103, 20105–20114, 20133, 20701, 21301–21302, and 21304; Sec. 215, Pub. L. No. 103–440, 108 Stat. 4623–4624 (49 U.S.C. 20133); and 49 CFR 1.49(c), (g), (m).

2. By revising § 223.5 to read as follows:

§ 223.5 Definitions.

As used in this part—

Administrator means the Administrator of the Federal Railroad Administration or the Administrator's delegate.

Caboose means a car in a freight train intended to provide transportation for crewmembers.

Certified glazing means a glazing material that has been certified by the manufacturer as having met the testing requirements set forth in Appendix A of this part and that has been installed in such a manner that it will perform its intended function.

Designated service means exclusive operation of a locomotive under the following conditions:

(1) The locomotive is not used as an independent unit or the controlling unit is a consist of locomotives except when moving for the purpose of servicing or repair within a single yard area;

(2) The locomotive is not occupied by operating or deadhead crews outside a single yard area; and

(3) The locomotive is stenciled ''Designated Service—DO NOT OCCUPY''.

Emergency responder means a member of a police or fire department, or other organization involved with public safety charged with providing or coordinating emergency services, who responds to a passenger train emergency.

Emergency window means that segment of a side facing glazing location which has been designed to permit rapid and easy removal during a crisis situation.

End facing glazing location means any location where a line perpendicular to the plane of the glazing material makes a horizontal angle of 50 degrees or less with the centerline of the locomotive, caboose or passenger car. Any location which, due to curvature of the glazing material, can meet the criteria for either a front facing location or a side facing location shall be considered a front facing location.

FRA means the Federal Railroad Administration.

Locomotive means a self-propelled unit of equipment designed primarily for moving other equipment. It does not include self-propelled passenger cars.

Locomotive cab means that portion of the superstructure designed to be occupied by the crew while operating the locomotive.

Passenger car means a unit of rail rolling equipment intended to provide transportation for members of the general public and includes self-propelled cars designed to carry baggage, mail, express or passengers. This term includes a passenger coach, cab car, and an MU locomotive. This term does not include a private car.

Passenger train service means the transportation of persons (other than employees, contractors, or persons riding equipment to observe or monitor railroad operations) in intercity passenger service or commuter or other short-haul passenger service in a metropolitan or suburban area.

Person means:

(1) Any form of non-highway ground transportation that runs on rails or electromagnetic guideways, including—

(i) Commuter or other short-haul rail passenger service in a metropolitan or suburban area and commuter railroad service that was operated by the Consolidated Rail Corporation on January 1, 1979, and

(ii) High speed ground transportation systems that connect metropolitan areas, without regard to whether those systems use new technologies not associated with traditional railroads, but does not include rapid transit operations in an urban area that are not connected to the general railroad system of transportation and

(2)A person that provides railroad transportation, whether directly or by contracting out operation of the railroad to another person.

Railroad means:

(1) Any form of non-highway ground transportation that runs on rails or electromagnetic guideways, including

(i) Commuter or other short-haul rail passenger service in a metropolitan or suburban area and commuter railroad service that was operated by the Consolidated Rail Corporation on January 1, 1979, and

(ii) High speed ground transportation systems that connect metropolitan areas, without regard to whether those systems use new technologies not associated with traditional railroads, but does not include rapid transit operations in an urban area that are not connected to the general railroad system of transportation and

(2) A person that provides railroad transportation, whether directly or by contracting out operation of the railroad to another person.

Rebuilt locomotive, caboose or passenger car means a locomotive, caboose or passenger car that has undergone overhaul which has been identified by the railroad as a capital expense under Surface Transportation Board accounting standards.

Side facing glazing location means any location where a line perpendicular to the plane of the glazing material makes an angle of more than 50 degrees with the centerline of the locomotive, caboose or passenger car.

Windshield means the combination of individual units of glazing material of the locomotive, passenger car, or caboose that are positioned in an end facing glazing location.

Yard is a system of auxiliary tracks used exclusively for the classification of passenger or freight cars according to commodity or destination; assembling of cars for train movement; storage of cars; or repair of equipment.

Yard caboose means a caboose that is used exclusively in a single yard area.

Yard locomotive means a locomotive that is operated only to perform switching functions within a single yard area.

3. In § 223.9, paragraph (d) is added to read as follows:

§ 223.9 Requirements for new or rebuilt equipment.

* * * * *

(d) *Marking.* Each railroad providing passenger train service shall ensure that for each passenger car, except for self-propelled cars designed to carry baggage, mail, or express:

(1) Each emergency window is conspicuously and legibly marked with luminescent material on the inside of each car to facilitate passenger egress. Each such railroad shall post clear and legible operating instructions at or near each such exit.

(2) Each window intended for emergency access by emergency responders for extrication of passengers is marked with a retroreflective, unique, and easily recognizable symbol or other clear marking. Each such railroad shall post clear and understandable window-access instructions either at each such window or at each end of the car.

4. By revising appendix B to part 223 to read as follows:

Appendix B to Part 223—Schedule of Civil Penalties [1]

Section	Violation	Willful violation
223.9 New or rebuilt Equipment:		
(a) Locomotives	$2,500	$5,000
(b) Cabooses	2,500	5,000
(c) Passenger cars	2,500	5,000
(d) (1), (d)(2):.		
(i) Window not marked or instructions not posted	2,500	5,000
(ii) Window improperly marked or instructions improperly posted	1,000	2,000
223.11(c) Existing locomotives	2,500	5,000
(d) Repair of window	1,000	2,000
223.13(c) Existing cabooses	2,500	5,000
(d) Repair of window	1,000	2,000
223.15(c) Existing passenger cars	2,500	5,000
(d) Repair of window	1,000	2,000
223.17 Identification of units	1,000	1,500

5. Part 239 is added to read as follows:

Part 239—PASSENGER TRAIN EMERGENCY PREPAREDNESS

Subpart A—General

Sec.
239.1 Purpose and scope.
239.3 Application.
239.5 Preemptive effect.
239.7 Definitions.
239.9 Responsibility for compliance.
239.11 Penalties.
239.13 Waivers.
239.15 Information collection.

Subpart B—Specific Requirements

239.101 Emergency preparedness plan.
239.103 Passenger train emergency simulations.
239.105 Debriefing and critique.
239.107 Emergency exits.

Subpart C—Review, Approval, and Retention of Emergency Preparedness Plans

239.201 Emergency preparedness plan; filing and approval.
239.203 Retention of emergency preparedness plan.

Subpart D—Operational (Efficiency) Tests; Inspection of Records and Recordkeeping

239.301 Operational (efficiency) tests.
239.303 Electronic recordkeeping.

Appendix A to Part 239—Schedule of Civil Penalties

Authority: 49 U.S.C. 20102–20103, 20105–20114, 20133, 21301, 21304, and 21311; 49 U.S.C. 20133; 28 U.S.C. 2461 note; and 49 CFR 1.49(c), (g), (m).

Subpart A—General

§ 239.1 Purpose and scope.

(a) The purpose of this part is to reduce the magnitude and severity of casualties in railroad operations by ensuring that railroads involved in passenger train operations can effectively and efficiently manage passenger train emergencies.

(b) This part prescribes minimum Federal safety standards for the preparation, adoption, and implementation of emergency preparedness plans by railroads connected with the operation of passenger trains, and requires each affected railroad to instruct its employees on the provisions of its plan. This part does not restrict railroads from adopting and enforcing additional or more stringent requirements not inconsistent with this part.

§ 239.3 Application.

(a) Except as provided in paragraph (b) of this section, this part applies to all:

(1) Railroads that operate intercity or commuter passenger train service on standard gage track which is part of the general railroad system of transportation;

(2) Railroads that provide commuter or other short-haul rail passenger train service in a metropolitan or suburban area (as described by 49 U.S.C. 20102(1)), including public authorities operating passenger train service; and

(3) Passenger or freight railroads hosting the operation of passenger train service described in paragraph (a)(1) or (a)(2) of this section.

(b) This part does *not* apply to:

(1) Rapid transit operations in an urban area that are not connected with the general railroad system of transportation;

(2) Operation of private cars, including business/office cars and circus trains; or

(3) Tourist, scenic, historic, or excursion operations, whether on or off the general railroad system.

§ 239.5 Preemptive effect.

Under 49 U.S.C. 20106 (formerly section 205 of the Federal Railroad Safety Act of 1970 (45 U.S.C. 434)), issuance of this part preempts any State law, rule, regulation, order, or standard covering the same subject matter, except a provision necessary to eliminate or reduce an essentially local safety hazard, that is not incompatible with Federal law or regulation and does not unreasonably burden interstate commerce.

§ 239.7 Definitions.

As used in this part—

Adjacent rail modes of transportation means other railroads, trolleys, light rail, heavy transit, and other vehicles operating on rails or electromagnetic guideways which are expressly identified in a railroad's emergency preparedness plan.

Administrator means the Administrator of the Federal Railroad Administration or the Administrator's delegate.

Control center means a central location on a railroad with responsibility for directing the safe movement of trains.

Crewmember means a person, other than a passenger, who is assigned to perform either:

(1) On-board functions connected with the movement of the train (i.e., an employee of a railroad, or of a contractor to a railroad, who is assigned to perform service subject to the Federal hours of service laws during a tour of duty) or

(2) On-board functions in a sleeping car or coach assigned to intercity service, other than food, beverage, or security service.

Division headquarters means the location designated by the railroad where a high-level operating manager (e.g., a superintendent, division manager, or equivalent), who has jurisdiction over a portion of the railroad, has an office.

Emergency or emergency situation means an unexpected event related to the operation of passenger train service

[1] A penalty may be assessed against an individual only for a willful violation. The Administrator reserves the right to assess a penalty of up to $22,000 for any violation where circumstances warrant. See 49 U.S.C. 21301, 21304, and 49 CFR part 209, appendix A. Further designations, not found in the CFR citation for certain provisions are FRA Office of Chief Counsel computer codes added as a suffix to the CFR citation and used to expedite imposition of civil penalties for violations. FRA reserves the right, should litigation become necessary, to substitute in its complaint the CFR citation in place of the combined designation cited in the penalty demand letter.

involving a significant threat to the safety or health of one or more persons requiring immediate action, including:

(1) A derailment;

(2) A fatality at a grade crossing;

(3) A passenger or employee fatality, or a serious illness or injury to one or more passengers or crewmembers requiring admission to a hospital;

(4) An evacuation of a passenger train; and

(5) A security situation (e.g., a bomb threat).

Emergency preparedness plan means one or more documents focusing on preparedness and response in dealing with a passenger train emergency.

Emergency responder means a member of a police or fire department, or other organization involved with public safety charged with providing or coordinating emergency services, who responds to a passenger train emergency.

Emergency window means that segment of a side facing glazing location which has been designed to permit rapid and easy removal in an emergency situation.

FRA means the Federal Railroad Administration.

Joint operations means rail operations conducted by more than one railroad on the same track, except as necessary for the purpose of interchange, regardless of whether such operations are the result of:

(1) Contractual arrangements between the railroads;

(2) Order of a governmental agency or a court of law; or

(3) Any other legally binding directive.

Passenger train service means the transportation of persons (other than employees, contractors, or persons riding equipment to observe or monitor railroad operations) by railroad in intercity passenger service or commuter or other short-haul passenger service in a metropolitan or suburban area.

Person includes all categories of entities covered under 1 U.S.C. 1, including, but not limited to, a railroad; any manager, supervisor, official, or other employee or agent of a railroad; any owner, manufacturer, lessor, or lessee of railroad equipment, track, or facilities; any passenger; any trespasser or nontrespasser; any independent contractor providing goods or services to a railroad; any volunteer providing goods or services to a railroad; and any employee of such owner, manufacturer, lessor, lessee, or independent contractor.

Private car means a rail passenger car used to transport non-revenue passengers on an occasional contractual basis, and includes business or office cars and circus trains.

Qualified means a status attained by an employee who has successfully completed any required training for, has demonstrated proficiency in, and has been authorized by the employer to perform the duties of a particular position or function involving emergency preparedness.

Railroad means:

(1) Any form of non-highway ground transportation that runs on rails or electromagnetic guideways, including—

(i) Commuter or other short-haul rail passenger service in a metropolitan or suburban area and commuter railroad service that was operated by the Consolidated Rail Corporation on January 1, 1979, and

(ii) High speed ground transportation systems that connect metropolitan areas, without regard to whether those systems use new technologies not associated with traditional railroads, but does not include rapid transit operations in an urban area that are not connected to the general railroad system of transportation and

(2) A person that provides railroad transportation, whether directly or by contracting out operation of the railroad to another person.

Railroad officer means any supervisory employee of a railroad.

System headquarters means the location designated by the railroad as the general office for the railroad system.

§ 239.9 Responsibility for compliance.

Although the requirements of this part are stated in terms of the duty of a railroad, when any person, including a contractor to a railroad, performs any function required by this part, that person (whether or not a railroad) shall perform that function in accordance with this part.

§ 239.11 Penalties.

Any person who violates any requirement of this part or causes the violation of any such requirement is subject to a civil penalty of at least $500 and not more than $11,000 per violation, except that: Penalties may be assessed against individuals only for willful violations, and, where a grossly negligent violation or a pattern of repeated violations has created an imminent hazard of death or injury to persons, or has caused death or injury, a penalty not to exceed $22,000 per violation may be assessed. Each day a violation continues shall constitute a separate offense. Any person who knowingly and willfully falsifies a record or report required by this part may be subject to criminal penalties under 49 U.S.C. 21311 (formerly codified in 45 U.S.C. 438(e)). Appendix A contains a schedule of civil penalty amounts used in connection with this part.

§ 239.13 Waivers.

(a) Any person subject to a requirement of this part may petition the Administrator for a waiver of compliance with such requirement. The filing of such a petition does not affect that person's responsibility for compliance with that requirement while the petition is being considered.

(b) Each petition for waiver must be filed in the manner and contain the information required by part 211 of this chapter.

(c) If the Administrator finds that a waiver of compliance is in the public interest and is consistent with railroad safety, the Administrator may grant the waiver subject to any conditions the Administrator deems necessary.

§ 239.15 Information collection.

(a) The information collection requirements of this part have been reviewed by the Office of Management and Budget pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d) *et seq.*), and have been assigned OMB control number 2130–0545.

(b) The information collection requirements are found in the following sections: §§ 239.101, 239.103, 239.105, 239.107, 239.201, 239.203, 239.301, and 239.303.

Subpart B—Specific Requirements

§ 239.101 Emergency preparedness plan.

(a) Each railroad to which this part applies shall adopt and comply with a written emergency preparedness plan approved by FRA under the procedures of § 239.201. The plan shall include the following elements and procedures for implementing each plan element.

(1) *Communication.* (i) *Initial and on-board notification.* An on-board crewmember shall quickly and accurately assess the passenger train emergency situation and then notify the control center as soon as practicable by the quickest available means. As appropriate, an on-board crewmember shall inform the passengers about the nature of the emergency and indicate what corrective countermeasures are in progress.

(ii) *Notifications by control center.* The control center shall promptly notify outside emergency responders, adjacent rail modes of transportation, and appropriate railroad officials that a passenger train emergency has occurred.

Each railroad shall designate an employee responsible for maintaining current emergency telephone numbers for use in making such notifications.

(2) *Employee training and qualification.* (i) *On-board personnel.* The railroad's emergency preparedness plan shall address individual employee responsibilities and provide for initial training, as well as periodic training at least once every two calendar years thereafter, on the applicable plan provisions. As a minimum, the initial and periodic training shall include:

(A) Rail equipment familiarization;

(B) Situational awareness;

(C) Passenger evacuation;

(D) Coordination of functions; and

(E) ''Hands-on'' instruction concerning the location, function, and operation of on-board emergency equipment.

(ii) *Control center personnel.* The railroad's emergency preparedness plan shall require initial training of responsible control center personnel, as well as periodic training at least once every two calendar years thereafter, on appropriate courses of action for each potential emergency situation. As a minimum, the initial and periodic training shall include:

(A) Dispatch territory familiarization; and

(B) Protocols governing internal communications between appropriate control center personnel whenever an imminent potential emergency situation exists.

(iii) *Initial training schedule for current employees.* The railroad's emergency preparedness plan shall provide for the completion of initial training of all on-board and control center employees who are employed by the railroad on the date that the plan is conditionally approved under § 239.201(b)(1), in accordance with the following schedule:

(A) For each railroad that provides commuter or other short-haul passenger train service and whose operations include less than 150 route miles and less than 200 million passenger miles annually, not more than one year after January 29, 1999, or not more than 90 days after commencing passenger operations, whichever is later.

(B) For each railroad that provides commuter or other short-haul passenger train service and whose operations include at least 150 route miles or at least 200 million passenger miles annually, not more than two years after January 29, 1999, or not more than 180 days after commencing passenger operations, whichever is later.

(C) For each railroad that provides intercity passenger train service, regardless of the number of route miles or passenger miles, not more than two years after January 29, 1999, or not more than 180 days after commencing passenger operations, whichever is later.

(D) For each freight railroad that hosts passenger train service, regardless of the number of route miles or passenger miles of that service, not more than one year after January 29, 1999, or not more than 90 days after the hosting begins, whichever is later.

(iv) *Initial training schedule for new employees.* The railroad's emergency preparedness plan shall provide for the completion of initial training of all on-board and control center employees who are hired by the railroad after the date on which the plan is conditionally approved under § 239.201(b)(1). Each employee shall receive initial training within 90 days after the employee's initial date of service.

(v) *Testing of on-board and control center personnel.* A railroad shall have procedures for testing a person being evaluated for qualification under the emergency preparedness plan. The types of testing selected by the railroad shall be:

(A) Designed to accurately measure an individual employee's knowledge of his or her responsibilities under the plan;

(B) Objective in nature;

(C) Administered in written form; and

(D) Conducted without reference by the person being tested to open reference books or other materials, except to the degree the person is being tested on his or her ability to use such reference books or materials.

(vi) *On-board staffing.* (A) Except as provided in paragraph (a)(2)(vi)(B), all crewmembers on board a passenger train shall be qualified to perform the functions for which they are responsible under the provisions of the applicable emergency preparedness plan.

(B) A freight train crew relieving an expired passenger train crew en route is not required to be qualified under the emergency preparedness plan, provided that at least one member of the expired passenger train crew remains on board and is available to perform excess service under the Federal hours of service laws in the event of an emergency.

(3) *Joint operations.* (i) Each railroad hosting passenger train service shall address its specific responsibilities consistent with this part.

(ii) In order to achieve an optimum level of emergency preparedness, each railroad hosting passenger train service shall communicate with each railroad that provides or operates such service and coordinate applicable portions of the emergency preparedness plan. All of the railroads involved in hosting, providing, and operating a passenger train service operation shall jointly adopt one emergency preparedness plan that addresses each entity's specific responsibilities consistent with this part. Nothing in this paragraph shall restrict the ability of the railroads to provide for an appropriate assignment of responsibility for compliance with this part among those railroads through a joint operating agreement or other binding contract. However, the assignor shall not be relieved of responsibility for compliance with this part.

(4) *Special circumstances.* (i) *Tunnels.* When applicable, the railroad's emergency preparedness plan shall reflect readiness procedures designed to ensure passenger safety in an emergency situation occurring in a tunnel of 1,000 feet or more in length. The railroad's emergency preparedness plan shall address, as a minimum, availability of emergency lighting, access to emergency evacuation exits, benchwall readiness, ladders for detraining, effective radio or other communication between on-board crewmembers and the control center, and options for assistance from other trains.

(ii) *Other operating considerations.* When applicable, the railroad's emergency preparedness plan shall address passenger train emergency procedures involving operations on elevated structures, including drawbridges, and in electrified territory.

(iii) *Parallel operations.* When applicable, the railroad's emergency preparedness plan shall require reasonable and prudent action to coordinate emergency efforts where adjacent rail modes of transportation run parallel to either the passenger railroad or the railroad hosting passenger operations.

(5) *Liaison with emergency responders.* Each railroad to which this part applies shall establish and maintain a working relationship with the on-line emergency responders by, as a minimum:

(i) Developing and making available a training program for all on-line emergency responders who could reasonably be expected to respond during an emergency situation. The training program shall include an emphasis on access to railroad equipment, location of railroad facilities, and communications interface, and provide information to emergency responders who may not have the opportunity to participate in an emergency simulation. Each affected railroad shall either offer the training directly or provide the program information and materials to state

training institutes, firefighter organizations, or police academies;

(ii) Inviting emergency responders to participate in emergency simulations; and

(iii) Distributing applicable portions of its current emergency preparedness plan at least once every three years, or whenever the railroad materially changes its plan in a manner that could reasonably be expected to affect the railroad's interface with the on-line emergency responders, whichever occurs earlier, including documentation concerning the railroad's equipment and the physical characteristics of its line, necessary maps, and the position titles and telephone numbers of relevant railroad officers to contact.

(6) *On-board emergency equipment.* (i) *General.* Each railroad's emergency preparedness plan shall state the types of emergency equipment to be kept on board and indicate their location(s) on each passenger car that is in service. Effective May 4, 1999, or not more than 120 days after commencing passenger operations, whichever is later, this equipment shall include, at a minimum:

(A) One fire extinguisher per passenger car;

(B) One pry bar per passenger car; and

(C) One flashlight per on-board crewmember.

(ii) Effective May 4, 1999, or not more than 120 days after commencing passenger operations, whichever is later, each railroad that provides intercity passenger train service shall also equip each passenger train that is in service with at least one first-aid kit accessible to crewmembers that contains, at a minimum:

(A) Two small gauze pads (at least 4x4 inches);

(B) Two large gauze pads (at least 8x10 inches);

(C) Two adhesive bandages;

(D) Two triangular bandages;

(E) One package of gauge roller bandage that is at least two inches wide;

(F) Wound cleaning agent, such as sealed moistened towelettes;

(G) One pair of scissors;

(H) One set of tweezers;

(I) One roll of adhesive tape;

(J) Two pairs of latex gloves; and

(K) One resuscitation mask.

(iii) *On-board emergency lighting.* Consistent with the requirements of part 238 of this chapter, auxiliary portable lighting (e.g., a handheld flashlight) must be accessible and provide, at a minimum:

(A) Brilliant illumination during the first 15 minutes after the onset of an emergency situation; and

(B) Continuous or intermittent illumination during the next 60 minutes after the onset of an emergency situation.

(iv) *Maintenance.* Each railroad's emergency preparedness plan shall provide for scheduled maintenance and replacement of first-aid kits, on-board emergency equipment, and on-board emergency lighting.

(7) *Passenger safety information.* (i) *General.* Each railroad's emergency preparedness plan shall provide for passenger awareness of emergency procedures, to enable passengers to respond properly during an emergency.

(ii) *Passenger awareness program activities.* Each railroad shall conspicuously and legibly post emergency instructions inside all passenger cars (e.g., on car bulkhead signs, seatback decals, or seat cards) and shall utilize one or more additional methods to provide safety awareness information including, but not limited to, one of the following:

(A) On-board announcements;

(B) Laminated wallet cards;

(C) Ticket envelopes;

(D) Timetables;

(E) Station signs or video monitors;

(F) Public service announcements; or

(G) Seat drops.

(b) [Reserved]

§ 239.103 Passenger train emergency simulations.

(a) *General.* Each railroad operating passenger train service shall conduct full-scale emergency simulations, in order to determine its capability to execute the emergency preparedness plan under the variety of scenarios that could reasonably be expected to occur on its operation, and ensure coordination with all emergency responders who voluntarily agree to participate in the emergency simulations.

(b) *Frequency of the emergency simulations.* Except as provided in paragraph (c) of this section:

(1) Each railroad that provides commuter or other short-haul passenger train service and whose operations include less than 150 route miles and less than 200 million passenger miles annually, shall conduct a minimum of one full-scale emergency simulation during every two calendar years.

(2) Each railroad that provides commuter or other short-haul passenger train service and whose operations include at least 150 route miles or at least 200 million passenger miles annually, shall conduct a minimum of one full-scale emergency simulation during each calendar year.

(3) Each railroad that provides intercity passenger train service, shall conduct a minimum of one full-scale emergency simulation during each calendar year, regardless of the number of route miles or passenger miles.

(c) *Actual emergency situations.* Neither a tabletop exercise nor the activation of its emergency preparedness plan during an actual emergency situation may be credited toward the minimum number of full-scale emergency simulations required under paragraph (b) of this section. However, a railroad that has activated its emergency preparedness plan in response to a major emergency may elect to postpone a scheduled full-scale simulation for up to 180 calendar days beyond the applicable calendar year completion date in order to evaluate the effectiveness of its plan during that major emergency and, as appropriate, modify the rescheduled simulation.

(d) *Definition.* As used in this section, *major emergency* means an unexpected event related to the operation of passenger train service that results in serious injury or death to one or more persons and property damage greater than the current reporting threshold of part 225 of this chapter to railroad on-track equipment, signals, tracks, track structures, or roadbeds, including labor costs and the costs for acquiring new equipment and material.

§ 239.105 Debriefing and critique.

(a) *General.* Except as provided in paragraph (b) of this section, each railroad operating passenger train service shall conduct a debriefing and critique session after each passenger train emergency situation or full-scale simulation to determine the effectiveness of its emergency preparedness plan, and shall improve or amend its plan, or both, as appropriate, in accordance with the information developed. The debriefing and critique session shall be conducted within 60 days of the date of the passenger train emergency situation or full-scale simulation.

(b) *Exceptions.* (1) No debriefing and critique session shall be required in the case of an emergency situation involving only a collision between passenger railroad rolling stock and: a pedestrian; a trespasser; or a motor vehicle or other highway conveyance at a highway-rail grade crossing, provided that the collision does not result in: a passenger or employee fatality, or an injury to one or more crewmembers or passengers requiring admission to a hospital; or the evacuation of a passenger train. (2) For purposes of this section, *highway-rail grade crossing* means a location where a public highway, road, street, or private roadway, including associated

sidewalks and pathways, crosses one or more railroad tracks at grade, and *trespasser* means a person who is on that part of railroad property used in railroad operation and whose presence is prohibited, forbidden, or unlawful.

(c) *Purpose of debriefing and critique.* The debriefing and critique session shall be designed to determine, at a minimum:

(1) Whether the on-board communications equipment functioned properly;

(2) How much time elapsed between the occurrence of the emergency situation or full-scale simulation and notification to the emergency responders involved;

(3) Whether the control center promptly initiated the required notifications;

(4) How quickly and effectively the emergency responders responded after notification; and

(5) How efficiently the passengers exited from the car through the emergency exits.

(d) *Records.* (1) Each railroad shall maintain records of its debriefing and critique sessions at its system headquarters and applicable division headquarters for two calendar years after the end of the calendar year to which they relate, including the following information:

(i) Date and location of the passenger train emergency situation or full-scale simulation;

(ii) Date and location of the debriefing and critique session; and

(iii) Names of all participants in the debriefing and critique session.

(2) These records shall be made available to representatives of FRA and States participating under part 212 of this chapter for inspection and copying during normal business hours.

§ 239.107 Emergency exits.

For additional requirements related to emergency window exits, see part 223 of this chapter.

(a) *Marking.* Each railroad operating passenger train service shall determine for each passenger car that is in service, except for self-propelled cars designed to carry baggage, mail, or express:

(1) That all door exits intended for emergency egress are either lighted or conspicuously and legibly marked with luminescent material on the inside of the car and that clear and understandable instructions are posted at or near such exits.

(2) That all door exits intended for emergency access by emergency responders for extrication of passengers are marked with retroreflective material and that clear and understandable instructions are posted at each such door.

(b) *Inspection, maintenance, and repair.* Consistent with the requirements of part 223 of this chapter, each railroad operating passenger train service shall:

(1) Provide for scheduled inspection, maintenance, and repair of emergency window and door exits;

(2) Test a representative sample of emergency window exits on its cars at least once every 180 days to verify that they are operating properly; and

(3) Repair each inoperative emergency window and door exit on a car before returning the car to service.

(c) *Records.* Each railroad operating passenger service shall maintain records of its inspection, maintenance, and repair of emergency window and door exits at its system headquarters and applicable division headquarters for two calendar years after the end of the calendar year to which they relate. These records shall be made available to representatives of FRA and States participating under part 212 of this chapter for inspection and copying during normal business hours.

(d) *Electronic recordkeeping.* Each railroad to which this part applies is authorized to retain by electronic recordkeeping the information prescribed in paragraph (b) of this section, provided that all of the following conditions are met:

(1) The railroad adequately limits and controls accessibility to such information retained in its database system and identifies those individuals who have such access;

(2) The railroad has a terminal at the system headquarters and at each division headquarters;

(3) Each such terminal has a desk-top computer (*i.e.,* monitor, central processing unit, and keyboard) and either a facsimile machine or a printer connected to the computer to retrieve and produce information in a usable format for immediate review by representatives of FRA and States participating under part 212 of this chapter;

(4) The railroad has a designated representative who is authorized to authenticate retrieved information from the electronic system as true and accurate copies of the electronically kept records; and

(5) The railroad provides representatives of FRA and States participating under part 212 of this chapter with immediate access to these records for inspection and copying during normal business hours and provides printouts of such records upon request.

Subpart C—Review, Approval, and Retention of Emergency Preparedness Plans

§ 239.201 Emergency preparedness plan; filing and approval.

(a) *Filing.* Each passenger railroad to which this part applies and all railroads hosting its passenger train service (if applicable) shall jointly adopt a single emergency preparedness plan for that service and the passenger railroad shall file one copy of that plan with the Associate Administrator for Safety, Federal Railroad Administration, Mail Stop 25, 400 Seventh Street, S.W., Washington, D.C. 20590, not more than 180 days after May 4, 1998, or not less than 45 days prior to commencing passenger operations, whichever is later. The emergency preparedness plan shall include the name, title, address, and telephone number of the primary person on each affected railroad to be contacted with regard to review of the plan, and shall include a summary of each railroad's analysis supporting each plan element and describing how every condition on the railroad's property that is likely to affect emergency response is addressed in the plan. Each subsequent amendment to a railroad's emergency preparedness plan shall be filed with FRA by the passenger railroad not less than 60 days prior to the proposed effective date.

(b) *Approval.* (1) *Preliminary review.* (i) Within 90 days of receipt of each proposed emergency preparedness plan, and within 45 days of receipt of each plan for passenger operations to be commenced after the initial deadline for plan submissions, FRA will conduct a preliminary review of the proposed plan to determine if the elements prescribed in § 239.101 are sufficiently addressed and discussed in the railroad's plan submission. FRA will then notify the primary contact person of each affected railroad in writing of the results of the review, whether the proposed plan has been conditionally approved by FRA, and if not conditionally approved, the specific points in which the plan is deficient.

(ii) If a proposed emergency preparedness plan is not conditionally approved by FRA, the affected railroad or railroads shall amend the proposed plan to correct all deficiencies identified by FRA (and provide FRA with a corrected copy) not later than 30 days following receipt of FRA's written notice that the proposed plan was not conditionally approved.

(2) *Final review.* (i) Within 18 months of receipt of each proposed plan, and within 180 days of receipt of each proposed plan for passenger operations

to be commenced after the initial deadline for plan submissions, FRA will conduct a comprehensive review of the conditionally approved plan to evaluate implementation of the elements included. This review will include ongoing dialogues with rail management and labor representatives, and field analysis and verification. FRA will then notify the primary contact person of each affected railroad in writing of the results of the review, whether the conditionally approved plan has been finally approved by FRA, and if not approved, the specific points in which the plan is deficient.

(ii) If an emergency preparedness plan of a railroad or railroads is not finally approved by FRA, the affected railroad or railroads shall amend the plan to correct all deficiencies (and provide FRA with a corrected copy) not later than 30 days following receipt of FRA's written notice that the plan was not finally approved.

(3) *Review of amendments.* (i) FRA will review each proposed plan amendment within 45 days of receipt. FRA will then notify the primary contact person of each affected railroad of the results of the review, whether the proposed amendment has been approved by FRA, and if not approved, the specific points in which the proposed amendment is deficient.

(ii) If the amendment is not approved, the railroad shall correct any deficiencies identified by FRA and file the corrected amendment prior to implementing the amendment.

(4) *Reopened review.* Following initial approval of a plan, or amendment, FRA may reopen consideration of the plan, or amendment, for cause stated.

§ 239.203 Retention of emergency preparedness plan.

Each passenger railroad to which this part applies, and all railroads hosting its passenger train service (if applicable), shall each retain one copy of the emergency preparedness plan required by § 239.201 and one copy of each subsequent amendment to that plan at the system and division headquarters of each, and shall make such records available to representatives of FRA and States participating under part 212 of this chapter for inspection and copying during normal business hours.

Subpart D—Operational (Efficiency) Tests; Inspection of Records and Recordkeeping

§ 239.301 Operational (efficiency) tests.

(a) Each railroad to which this part applies shall periodically conduct operational (efficiency) tests of its on-board and control center employees to determine the extent of compliance with its emergency preparedness plan.

(b) Each railroad to which this part applies shall maintain a written record of the date, time, place, and result of each operational (efficiency) test that was performed in accordance with paragraph (a) of this section. Each record shall also specify the name of the railroad officer who administered the test, the name of each employee tested, and sufficient information to identify the relevant facts relied on for evaluation purposes.

(c) Each record required by paragraph (a) of this section shall be retained at the system headquarters of the railroad and at the division headquarters for the division where the test was conducted for one calendar year after the end of the calendar year to which the test relates. Each such record shall be made available to representatives of FRA and States participating under part 212 of this chapter for inspection and copying during normal business hours.

§ 239.303 Electronic recordkeeping.

Each railroad to which this part applies is authorized to retain by electronic recordkeeping the information prescribed in § 239.301, provided that all of the following conditions are met:

(a) The railroad adequately limits and controls accessibility to such information retained in its database system and identifies those individuals who have such access;

(b) The railroad has a terminal at the system headquarters and at each division headquarters;

(c) Each such terminal has a desk-top computer (*i.e.*, monitor, central processing unit, and keyboard) and either a facsimile machine or a printer connected to the computer to retrieve and produce information in a usable format for immediate review by representatives of FRA and States participating under part 212 of this chapter;

(d) The railroad has a designated representative who is authorized to authenticate retrieved information from the electronic system as true and accurate copies of the electronically kept records; and

(e) The railroad provides representatives of FRA and States participating under part 212 of this chapter with immediate access to these records for inspection and copying during normal business hours and provides printouts of such records upon request.

Appendix A to Part 239—Schedule of Civil Penalties [1]

Section	Violation	Willful violation
Subpart B—Specific Requirements:		
239.101(a) Failure of a railroad to adopt a written emergency preparedness plan	$7,500	$11,000
(a)(1) Failure of the plan to provide for:		
(i) Initial or on-board notifications by an on-board crewmember	2,500	5,000
(ii) Notification of outside emergency responders by control center	2,500	5,000
(a)(2) Failure of the plan to provide for:		
(i) Initial or periodic training of on-board personnel	2,500	5,000
(ii) Initial or periodic training of control center personnel	2,500	5,000
(iii) Completion of initial training of all on-board and control center personnel by the specified date	2,500	5,000
(iv) Completion of initial training of all newly hired on-board and control center personnel by the specified date	2,500	5,000
(v) Adequate procedures to evaluate and test on-board and control center personnel for qualification under the emergency preparedness plan	2,500	5,000
(vi) Adequate on-board staffing	2,500	5,000

[1] A penalty may be assessed against an individual only for a willful violation. The Administrator reserves the right to assess a penalty of up to $22,000 for any violation where circumstances warrant. See 49 U.S.C. 21301, 21304, and 49 CFR part 209, appendix A. Further designations, not found in the CFR citation for certain provisions, are FRA Office of Chief Counsel computer codes added as a suffix to the CFR citation and used to expedite imposition of civil penalties for violations. FRA reserves the right, should litigation become necessary, to substitute in its complaint the CFR citation in place of the combined designation cited in the penalty demand letter.

Section	Violation	Willful violation
(a)(3) Failure of a host railroad involved in joint operations to coordinate applicable portions of the emergency preparedness plan with the railroad or railroads providing or operating a passenger train service operation	3,000	6,000
(a)(4) Failure of the plan to address:		
(i) Readiness procedures for emergencies in tunnels	2,500	5,000
(ii) Readiness procedures for emergencies on an elevated structure or in electrified territory	2,500	5,000
(iii) Coordination efforts involving adjacent rail modes of transportation	2,500	5,000
(a)(5) Failure of the plan to address relationships with on-line emergency responders by providing for:		
(i) The development and availability of training programs	3,000	6,000
(ii) Invitations to emergency responders to participate in emergency simulations	3,000	6,000
(iii) Distribution of applicable portions of the current emergency preparedness plan	3,000	6,000
(a)(6) Failure of the plan to provide for, or the railroad to include on board each train and maintain and replace:		
(i) Emergency equipment	2,500	5,000
(ii) First-aid kits	2,500	5,000
(iii) Emergency lighting	2,500	5,000
(a)(7) Failure of the plan to provide for emergency instructions inside each passenger car or to include additional safety awareness information	3,500	7,000
239.103 Failure to conduct a required full-scale simulation in accordance with the frequency schedule	5,000	7,500
239.105 Debriefing and critique		
(a) Failure to conduct a debriefing and critique session after an emergency or full-scale simulation	4,000	7,500
(d)(1) Failure to maintain a record	2,500	5,000
(i) Failure to include date or location of the emergency or simulation	1,000	2,000
(ii) Failure to include date or location of the debriefing and critique session	1,000	2,000
(iii) Failure to include names of participants in the debriefing and critique session	1,000	2,000
(d)(2) Failure to make record available	1,000	2,000
239.107 Emergency exits		
(a)(1), (a)(2):		
(i) Door not marked or instructions not posted	2,500	5,000
(ii) Door improperly marked or instructions 1,000-2,000-improperly posted	2,500	5,000
(b)(1) Failure to provide for scheduled inspection, maintenance, and repair of emergency windows and doors	5,000	7,500
(b)(2):		
(i) Failure to test a representative sample of emergency windows	3,000	6,000
(ii) Emergency windows tested too infrequently	1,500	3,000
(b)(3) Failure to repair an inoperative emergency window or door exit	3,500	7,000
(c):		
(i) Failure to maintain a record	2,500	5,000
(ii) Failure to make record available	1,000	2,000
(d)(1) Insufficient limits or controls on accessibility to records	2,500	5,000
(d)(2) Missing terminal	1,000	2,000
(d)(3) Inability of railroad to produce information in a usable format for immediate review	1,000	2,000
(d)(4) Failure by railroad to designate an authorized representative	1,000	2,000
(d)(5) Failure to make record available	1,000	2,000
Subpart C—Review, Approval, and Retention of Emergency Preparedness Plans:		
239.201 Filing and approval		
(a):		
(i) Failure of a railroad to file a written emergency preparedness plan	5,000	7,500
(ii) Failure to designate a primary person to contact for plan review	1,000	2,000
(iii) Failure of a railroad to file an amendment to its plan	2,500	5,000
(b)(1), (b)(2):		
(i) Failure of a railroad to correct a plan deficiency	2,500	5,000
(ii) Failure to provide FRA with a corrected copy of the plan	1,000	2,000
(b)(3):		
(i) Failure of a railroad to correct an amendment deficiency	2,500	5,000
(ii) Failure to file a corrected plan amendment with FRA	1,000	1,000
239.203 Retention of emergency preparedness plan		
(1) Failure to retain a copy of the plan or an amendment to the plan	2,500	5,000
(2) Failure to make record available	1,000	2,000
Subpart D—Operational (efficiency) tests; Inspection of Records and Recordkeeping:		
239.301 Operational (efficiency) tests		
(a) Testing Program	5,000	7,500
(b)(1) Failure to maintain a record	2,500	5,000
(b)(2) Record improperly completed	1,000	1,000
(c)(1) Failure to retain a copy of the record	2,500	5,000
(c)(2) Failure to make record available	1,000	2,000
239.303 Electronic recordkeeping		
(a) Insufficient limits or controls on accessibility to records	2,500	5,000
(b) Missing terminal	1,000	2,000
(c) Inability of railroad to produce information in a usable format for immediate review	1,000	2,000
(d) Failure by railroad to designate an authorized representative	1,000	2,000
(e) Failure to make record available	1,000	2,000

Issued in Washington, D.C., on April 14, 1998.

Jolene M. Molitoris,

Federal Railroad Administrator.

[FR Doc. 98–11393 Filed 4–29–98; 8:45 am]

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Federal Register

Monday
May 4, 1998

Part IV

Department of Agriculture

Food and Nutrition Service

7 CFR Parts 210 and 220

National School Lunch Program and School Breakfast Program: Additional Menu Planning Alternatives; Proposed Rule

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Parts 210 and 220

RIN 0584–AC38

National School Lunch Program and School Breakfast Program: Additional Menu Planning Alternatives

AGENCY: Food and Nutrition Service, USDA.

ACTION: Proposed rule.

SUMMARY: The National School Lunch Act requires that schools that are participating in the National School Lunch or School Breakfast Programs claim reimbursements only for lunches or breakfasts which meet the nutrition standards of the National School Lunch Act, including compliance with the Dietary Guidelines for Americans. The Healthy Meals for Children Act expanded the number of menu planning alternatives available to school food authorities participating in the National School Lunch and School Breakfast Programs. In accordance with that legislation, this proposed rulemaking would reinstate the menu planning system in effect for School Year 1994–95 (the traditional meal pattern) as one of the menu planning alternatives available to local school food authorities. In addition, this proposal would permit school food authorities to use ''any reasonable approach'' to plan menus to meet the nutrition standards. The Department is also proposing to clarify and simplify several State agency monitoring responsibilities associated with the implementation of the nutrition standards of the National School Lunch Act.

DATES: To be assured of consideration, comments must be postmarked or e-mail comments dated on or before November 2, 1998.

ADDRESSES: Comments must sent to: Mr. Robert M. Eadie, Chief, Policy and Program Development Branch, Child Nutrition Division, Food and Nutrition Service, USDA, 3101 Park Center Drive, Alexandria, Virginia, 22302 or via the Internet at CNDProposal@FCS.USDA.GOV. All written submissions will be available for public inspection in Room 1007, 3101 Park Center Drive, Alexandria, Virginia during regular business hours (8:30 a.m. to 5:30 p.m.), Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Robert M. Eadie at the above address or by telephone at 703–305–2620.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This proposed rule has been determined to be significant and is subject to review by the Office of Management and Budget under Executive Order 12866.

Public Law 104–4

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, the Food and Nutrition Service generally 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 to 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 proposed rule contains no Federal mandates (under 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 proposed rule is not subject to the requirements of sections 202 and 205 of the UMRA. However, a Regulatory Cost/Benefit Assessment is provided in the Appendix to this preamble.

Regulatory Flexibility Act

This proposed rule has been reviewed with regard to the requirements of the Regulatory Flexibility Act (5 U.S.C. 601 through 612). The Under Secretary for Food, Nutrition and Consumer Services has certified that this rule will not have a significant economic impact on a substantial number of small entities. The Department of Agriculture (the Department or USDA) does not anticipate any adverse fiscal impact on local schools as the proposal would expand the number of options available to plan menus for school meals.

Executive Order 12372

The National School Lunch Program and the School Breakfast Program are listed in the Catalog of Federal Domestic Assistance under Nos. 10.555 and 10.553, respectively, and are subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials. (7 CFR Part 3015, Subpart V and final rule-related notice at 48 FR 29112, June 24, 1983.)

Executive Order 12988

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. This proposed 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 proposed rule is not intended to have retroactive effect unless so specified in the **EFFECTIVE DATE** section of this preamble. Prior to any judicial challenge to the provisions of this proposed rule or the application of the provisions, all applicable administrative procedures must be exhausted. In the National School Lunch Program and School Breakfast Program, the administrative procedures are set forth under the following regulations: (1) School food authority appeals of State agency findings as a result of an administrative review must follow State agency hearing procedures as established pursuant to 7 CFR 210.18(q); (2) school food authority appeals of Food and Nutrition Service (FNS) findings as a result of an administrative review must follow FNS hearing procedures as established pursuant to 7 CFR 210.30(d)(3); and (3) State agency appeals of State Administrative Expense fund sanctions (7 CFR 235.11(b)) must follow the FNS Administrative Review Process as established pursuant to 7 CFR 235.11(f).

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995, 44 U.S.C. 3507, this notice invites the general public and other public agencies to comment on the information collection.

Written comments must be received on or before July 6, 1998.

Comments concerning the information collection aspects of this proposed rule should be sent to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Room 3208, New Executive Office Building, Washington, DC. 20503, Attention : Laura Oliven, Desk Officer for FNS. A copy of these comments may also be sent to Mr. Eadie at the address listed in the **ADDRESSES** section of this preamble. Commenters are asked to separate their information collection requirements comments from their comments on the remainder of this proposed rule.

OMB is required to make a decision concerning the collection of information contained in this proposed regulation

between 30 and 60 days after the publication of this document in the **Federal Register**. Therefore, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication. This does not affect the deadline for the public to comment to the Department on the proposed regulation.

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 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 of other forms of information technology.

The title, description, and respondent description of the information collections are shown below with an estimate of the annual recordkeeping burdens. Included in the estimate is the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Title: 7 CFR Part 210, National School Lunch Program.

OMB Number: 0584–0006.

Expiration Date: October 31, 1999.

Type of Request: Revision of currently approved collection.

Abstract: The National School Lunch Act requires that schools that are participating in the school lunch program claim reimbursements only for lunches under the program which meet the nutrition standards of the Act, including compliance with the Dietary Guidelines for Americans. The Healthy Meals for Children Act expanded the number of menu planning alternatives available to school food authorities participating in the NSLP. In accordance with that legislation, this proposed rulemaking would reinstate the menu planning system in effect for school year 1994–95 (the traditional meal pattern) as one of the menu planning alternatives available to local school food authorities. In addition, this proposal would permit school food authorities to use ''any reasonable approach'' to meet the requirements.

In accordance with the Paperwork Reduction Act of 1995, the Department is providing the public with the opportunity to provide comments on the information collection requirements of the proposed rule as noted below:

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Estimated Annual Recordkeeping Burden:

	Section	Annual Number of Respondents	Annual Frequency	Average Burden per Response	Annual Burden Hours
State agency establishes guidelines and approves school food authorities menu planning alternatives:					
Total Existing	7 CFR 210.10(l)	0	0	0	0
Total Proposed	7 CFR 210.10(l)	58	1	1	58
State agency modifies menu planning alternatives or develops menu planning alternatives:					
Total Existing	7 CFR 210.10(l)	0	0	0	0
Total Proposed	7 CFR 210.10(l)	5	1	20	100
School food authorities adopt menu planning alternatives:					
Total Existing	7 CFR 210.10(l)	0	0	0	0
Total Proposed	7 CFR 210.10(l)	2,500	1	10.5	26,250
School food authorities modify menu planning alternatives or develop menu planning alternatives and submit them to the State agency for approval:					
Total Existing	7 CFR 210.10 (l)	0	0	0	0
Total Proposed	7 CFR 210.10(l)	100	1	20	2,000
Total Recordkeeping Burden:					
Total Existing	0				
Total Proposed	+28,408				
Change	+ 28,408				

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Background

On June 13, 1995, USDA published a final rule (60 FR 31188) updating the nutrition standards for the National School Lunch Program (NSLP) and School Breakfast Program (SBP). That rulemaking was the foundation of the Department's School Meals Initiative for Healthy Children, an integrated, comprehensive plan for promoting the health of the Nation's school children by updating the nutrition standards for school meals and by providing State agencies and local food service operators with the technical assistance to meet these standards. In addition to announcing a fundamental change in the direction of the school meals programs, the rulemaking implemented section 106(b) of Public Law 103–448, the Healthy Meals for Healthy Americans Act of 1994, which was enacted on November 2, 1994. That provision amended section 9(f) of the National School Lunch Act (NSLA) (42 U.S.C. 1758(f)) to require that school meals meet the Dietary Guidelines for Americans (hereinafter referred to as the Dietary Guidelines) by School Year 1996/1997, unless an implementation waiver of up to two years was approved by the State agency. The rule also established specific minimum standards for key nutrients (protein, calcium, iron, Vitamin A and Vitamin C), and calories which school meals must meet. (As discussed later, these standards are now also included in section 9(f) of the NSLA.)

To assist schools with implementation of the updated nutrition standards, the School Meals Initiative (SMI) rule provided three menu planning alternatives: Nutrient Standard Menu Planning (NSMP), Assisted Nutrient Standard Menu Planning (ANSMP) and a food-based menu planning alternative. After publication of the final SMI rule, Public Law 104–149, the Healthy Meals for Children Act, was enacted on May 29, 1996. It expanded the number of menu planning alternatives which school food authorities have available to them by including the menu planning system that was in effect for School Year 1994–95, as a permanent option as well as ''any reasonable approach, within guidelines established by the Secretary * * *.''

Before a proposed rule to implement Public Law 104–149 could be published, Public Law 104–193, the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, was enacted on August 22, 1996. This law further amended section 9(f)(1)(B) of the NSLA to mandate that school lunches and breakfasts provide, over a week, one-third and one-fourth, respectively, of the Recommended Dietary Allowances (RDA) established by the Food and Nutrition Board of the National Research Council of the National Academy of Sciences. Because these requirements are already included in the regulations establishing the new specific nutrition standards for school lunches and breakfasts (§ 210.10(b) and § 220.8(a), respectively), this proposal would only add the appropriate RDA requirements for the traditional meal pattern.

Menu Planning Systems

The sole menu planning system that was in effect for School Year 1994–95 was a meal pattern (the ''traditional'' meal pattern) which stipulated the food components (meat/meat alternate, fruits/vegetables, bread/bread alternate, and milk) and the minimum quantities of those components that had to be offered to children of specific age/grade groups. This meal pattern was virtually unchanged since the establishment of the NSLP in 1946 and, until the June 13, 1995, rulemaking, was the only menu planning system available to school food authorities.

In order to provide flexibility as well as the tools that school food authorities would need to meet modern nutrition standards for children, the Department developed new menu planning alternatives designed to facilitate compliance with the Dietary Guidelines and the other nutrition-related requirements of section 9(f) of the NSLA. NSMP and ANSMP provide menu planners with more flexible approaches by eliminating the strict component and quantity requirements. Also, NSMP and ANSMP provide actual nutrient information, including fat and saturated fat levels, to menu planners on an on-going basis. In addition, after the initial proposal in 1994, the Department developed the enhanced food-based menu planning option which increased the minimum number of servings over a week's time for the fruits/vegetables and grains/breads components in order to maintain calorie levels while keeping the percentages of calories from fat and saturated fat to 30 percent and less than 10 percent, respectively, as required. School food authorities were given the option of choosing which of these menu planning alternatives best suited their particular circumstances.

The Department developed these menu planning alternatives with the Dietary Guidelines nutrition standards of the NSLA as the fundamental element. The Department continues to believe that the enhanced food-based, NSMP and ANSMP alternatives best support compliance with the Dietary Guidelines. However, the Department acknowledges that some school food authorities are progressing toward meeting the Dietary Guidelines under the traditional meal pattern. Therefore, the Department has concluded that, with increased emphasis on vegetables, fruits and grain products and with appropriate modifications to preparation techniques and product specifications, the traditional meal pattern may support all of the nutrition standards required by the NSLA. In recognition of this potential, the President signed Public Law 104–149 which amended section 9(f) of the NSLA to authorize the traditional meal pattern as a permanent menu planning alternative as well as any other reasonable approaches to menu planning under guidelines established by the Secretary.

The remainder of this preamble discusses the proposed implementation of the recent statutory amendments. This proposal also clarifies monitoring procedures for assessing compliance with the Dietary Guidelines and the other nutrition standards for all menu planning alternatives.

The 1994–95 Meal Pattern (The Traditional Meal Pattern)

This proposal would reinstate the menu planning system in effect for School Year 1994–1995 as a permanent alternative for planning school menus under the NSLP and SBP. The SMI final rulemaking did not allow continued use of the traditional meal pattern after June 30, 1998, the latest date that school food authorities could be authorized to delay compliance with the Dietary Guidelines. Therefore, the provisions for the traditional meal pattern for the NSLP were moved to a separate section (§ 210.10a) so that schools could continue using the traditional meal pattern until the newer menu planning alternatives had been fully implemented. Similarly, the traditional meal pattern for the SBP was redesignated as § 220.8a.

Now that Public Law 104–149 has reinstated the traditional meal pattern as a permanent, food-based menu planning alternative, this proposal would incorporate it into paragraphs (d) and (k) of § 210.10 and into paragraphs (c) and (g) of § 220.8 where the requirements for the food-based menu planning alternative established by the June 13, 1995, final rule are set forth. Sections 210.10a and 220.8a would be removed. Please note that, due to the statutory amendment made after publication of the final rule, the

traditional menu planning approach will remain in effect after the July 1, 1998, implementation deadline in § 210.10 (o) and § 220.8(m). To distinguish between the two food-based systems, the meal pattern in effect for School Year 1994/1995 would be formally renamed the ''traditional food-based menu planning alternative.'' The food-based menu planning alternative established in the June 13, 1995, rulemaking would be renamed the ''enhanced food-based menu planning alternative.''

RDA for the Traditional Food-Based Menu Planning Alternative

One proposed revision to § 210.10(d) of the NSLP regulations would add a chart indicating the amounts of calories and required nutrients that equal one-third of the RDA for key nutrients and calories for the age/grade groups of the traditional food-based menu planning alternative. A similar chart showing one-fourth of the RDA for key nutrients and calories for breakfasts would be added to § 220.8(c). These additional charts are necessary as the traditional food-based menu planning alternative follows different age/grade groupings than used for the NSMP, ANSMP, and enhanced food-based menu planning alternatives.

The Department recognizes the importance of offering meals that provide a proportionate share of the nutritional needs of the nation's schoolchildren, and that determination of whether those needs are being met must be based on the most accurate data available. To this end, the Department has calculated the RDA for each age group using computer software specifically designed for this purpose. In creating the enhanced food-based menu planning alternative, the Department developed age/grade groupings that were averaged to more precisely meet the calorie and nutrient levels at each age or stage of development. Uniform groupings, based as closely as possible on the actual nutritional needs of the various ages, for the two food-based systems would be preferable. However, section 9(f)(4)(A)(i) of the NSLA requires the availability of the traditional meal pattern as it existed in the 1994–1995 school year. The Department, therefore, does not want to add complexity to the traditional approach by proposing to make more precise age/grade groupings apply to both food-based menu planning alternatives. While this means menu planners using the traditional meal pattern may continue to meet a single set of quantity requirements for all children in the school, regardless of their age or grade, the Department is concerned that this practice could undermine the nutrition goals of the programs, since the food service would not be as responsive to respond to the varying needs of children of different ages. The Department recognizes the need to provide the traditional approach without additional requirements but is also concerned with the need to meet the appropriate nutrition standards. Therefore, interested parties in the food service, nutrition and scientific communities may wish to comment on the appropriateness of allowing a single age/grade grouping and the associated nutrition standards.

''Any Reasonable Approach''

Public Law 104–149 amended section 9(f)(4) of the NSLA to permit school food authorities to use ''any reasonable approach'' to menu planning not specifically delineated in section 9(f) (3) and (4) of the NSLA. The law makes it clear, however, that ''reasonable approaches'' must meet guidelines established by the Secretary. In developing appropriate guidelines, the Department believes there will be two distinct classes of proposed alternative approaches. First, some proposed alternatives will consist of relatively minor modifications to one or another of the four existing menu planning systems. For this type of suggested alternative, the Department is proposing to allow State agencies to establish a general policy allowing school food authorities to adopt such approaches without prior Departmental approval. The second class of alternatives will involve unique proposals that depart significantly from existing systems. The Department is proposing to redesignate § 210.10(l) through (o) as § 210.10(m) through (p) and to add a new § 210.10(l) to establish basic requirements for authorizing both classes of alternate menu planning approaches. For the SBP, § 220.8(h) through (m) would be redesignated as § 220.8(i) through (n) and § 220.8(h) would provide for alternate menu planning approaches.

Minor ''Pre-Approved'' Modifications

The first proposed class of alternate approaches is specific, minor modifications to provisions of the existing menu planning alternatives and would be added at § 210.10(l)(1) and § 220.8(h)(1). While the State agency may require prior approval or may establish additional guidelines for their adoption, these modifications would be considered ''pre-approved'' in that State agencies may allow their use without any additional review. Of course, as part of their general oversight responsibilities under the NSLA, State agencies must ensure that the school food authority's operations, including these ''pre-approved'' options, are consistent with the NSLP and SBP regulatory standards, even if State agencies do not require pre-approval. The modifications are: a weekly meat/meat alternate standard (for the NSLP only) and flexible age/grade groupings for the food-based menu planning alternatives (for both the NSLP and SBP). While only two modifications are proposed, the Department solicits suggestions on similar variations that could be included under this category of other approaches.

The Department was also asked to consider extending a policy currently applicable only to lunches planned under the enhanced food-based menu planning approach to the traditional food-based menu planning approach. This policy, at § 210.10(k)(2), allows menu planners to credit up to one grain-based dessert daily towards the weekly grain/bread requirements. This policy was established to provide additional flexibility for menu planners as the number of required grain/bread items increased substantially over the number required for the traditional food-based menu planning approach. For example, for grades 7–12, the traditional food-based alternative required eight servings (but recommended 10) while 15 servings are required for the enhanced food-based approach.

The Department gave this suggestion serious consideration. However, crediting up to one grain-based dessert daily as a serving of grains/breads for the traditional food-based menu planning alternative is too significant a proportion of the total number of required grain/bread items. A child selecting a grains-based dessert on a daily basis would have the majority of their grains/breads component over the week met through the consumption of dessert. Given this concern, the Department is not proposing to extend this policy to the traditional food-based menu planning approach. However, the Department would appreciate comments on this issue.

1. Weekly Meat/Meat Alternate Quantity Standard

Some food service directors have indicated that it is not always practical to offer the full daily minimum portion of the meat/meat alternate component required for the NSLP under the food-based menu planning alternatives. For example, a serving of less than the required four tablespoons of peanut butter or two ounces of cheese in a sandwich may produce a more

appealing entree while the full amount required can lead to waste. To address this situation, those school food service directors have suggested that schools using either of the food-based menu planning systems be allowed the flexibility to vary the quantity of meat/meat alternate on a daily basis as long as the total amount served over the course of the school week equals the minimum daily quantity multiplied by the number of serving days in the week. For example, the amount of meat/meat alternate served on a given day could be only one ounce or the equivalent provided that the full 10 ounces (for grades 4–12) or equivalent of meat/meat alternate were available over a five day week. This alternative would enable meal planners using a food-based alternative much of the same flexibility enjoyed by their counterparts using NSMP while still ensuring that minimum quantities of essential foods were offered to children over a week's time.

After considering this suggestion, the Department agrees that it could provide additional flexibility without compromising the nutritional integrity of the meals served over the course of the school week. However, the Department does not believe that the school food authority's ability to vary the quantity of this component should be completely unrestricted. Therefore, the Department is proposing to require that a minimum of one ounce or its equivalent of meat/meat alternate be offered daily. This proposal would ensure that the amount of meat/meat alternate offered to the student will be reasonably consistent each day while still providing menu planners with enhanced flexibility. The Department emphasizes that the option to vary the size of the meat component would not apply to those situations in which the minimum quantity requirement is one ounce or less.

The Department is not proposing to extend this option to the meat/meat alternate-grains/breads component of school breakfasts because flexibility is already provided under the food-based menu planning alternatives. However, comments are requested on whether extending the weekly meat/meat alternate to the SBP would be useful and appropriate.

In proposing this option, the Department recognizes that there will be complexities with its implementation, especially in schools that offer multiple entree choices, since children may not select items over the week that equal the full weekly meal component requirement. Therefore, comments are particularly requested on these and other potential difficulties as well as any suggestions on ways to ensure that the nutritional integrity of the meal service is not compromised. The modification for the meat/meat alternate component is proposed at § 210.10(l)(1)(i).

2. Flexible Age-Grade Groupings for Food-Based Alternatives

Children enrolled in a given school may span different age/grade groupings for purposes of the nutrient and calorie level requirements and corresponding portion sizes for components under the food-based menu planning alternatives. Under the NSMP and ANSMP menu planning alternatives, if only one age or grade is outside the established nutrient and calorie level requirements for the majority of children, schools are permitted, under § 210.10(i)(1)(ii) and § 220.8(e)(1)(ii), to use the nutrition standards for that majority. In the interests of consistency and flexibility, the Department is proposing to extend this option to the food-based alternatives as well.

Under the proposal, schools using the enhanced food-based alternatives would be permitted to plan menus using the minimum quantity requirements applicable to the majority of children *provided* that no more than one age or grade falls outside the requirements for the majority of children. For example, if a school following the enhanced food-based menu planning alternative serves children in grades 6, 7 and 8, the school may, if it chooses, plan menus meeting the nutrient levels and quantities for grades 7 through 12 in lieu of varying the menus and portion sizes for the children in grade 6. This option would eliminate the need to meet two sets of nutrient and calorie levels as well as portion requirements when only a limited number of children are affected. The Department notes that this option will generally be applicable to schools using the enhanced food-based alternative since it is not needed for the traditional food-based menu planning alternative because of the broader range of the groups and because schools may use the portion sizes for the grades 4–12 group when the school has a large number of grades. However, under the proposal, this option could be adopted by schools using either food-based menu planning alternative. This proposed change would be found at § 210.10(l)(1)(ii) for the lunch program and at § 220.8(h)(1) for the breakfast program.

The Department believes that school food authorities should plan menus and offer meals that best meet the nutrient and calorie levels for each age or grade group of all of the children. The age/grade groupings are geared to best meet the recommended levels of calories and other nutrients for a particular period in a child's development. However, the Department also recognizes that allowing the proposed option for schools using the food-based alternatives provides increased flexibility.

Major Changes or New Alternatives

The second class of alternate approaches concerns major changes to one of the existing menu planning systems and may be developed by either school food authorities or State agencies. Within this second class, the regulations, as proposed, would require that any major change or new alternative developed by a school food authority be subject to State agency review and approval. State agency approval is critical because major variations developed and used only by a school food authority need to be carefully assessed to gauge potential impact on the delivery of meals to children, both nutritionally and fiscally. Further, school food authority-level approaches would not have the benefit of the State agency's expertise when forming their approach. State agency-developed alternatives would be subject to Departmental review and approval unless there was an on-going State agency/school food authority partnership and enough school food authorities intending to adopt the alternate approach to warrant the significant involvement of the State agency.

Written Submissions

The Department is proposing that any alternate approach developed by either a school food authority or State agency be committed to writing prior to its implementation. The written description must outline the intended procedures as well as indicate how the required elements for alternate approaches (as proposed under § 210.10(l)(3) and § 220.8(h)(3) for the lunch and breakfast programs, respectively) will be met. For those approaches subject to prior review, a written submission is needed to ensure a comprehensive review. For those approaches not subject to prior review, a written description needs to be available for monitoring purposes. The Department is not, however, proposing any specific format or requiring a formal plan, other than proposing that the intended procedures and the required elements be addressed in writing for any proposed alternative approach. This

provision is proposed at § 210.10(l)(2) and § 220.8(h)(2).

State Agency-Developed Systems: Approval Procedures

Some State agencies have developed or intend to develop their own menu planning alternatives for use by their school food authorities. State agency-developed alternatives could involve either extensive modifications to one of the existing menu planning alternatives or development of an altogether new alternative. As mentioned above, the Department is proposing different approval procedures for State agency-developed approaches depending on whether there is on-going, operational support from the State agency.

For the purpose of approval, the first type of a State-agency developed alternate approach is one that the State agency develops and then makes available to its school food authorities without on-going support and assistance. Because the State agency will not have any on-going operational role in such approaches, the Department believes independent review is essential prior to implementation of an alternate approach by any school food authority. This review would ensure that the changes or the new alternative adequately meets program requirements and goals. Therefore, the Department is proposing to require State agencies to submit this type of alternate approach to the Food and Nutrition Service (FNS) for review and approval before implementation. The approval procedures are proposed at § 210.10(l)(2) and § 220.8(h)(2), respectively, for the lunch and breakfast programs.

The second type of alternate approach would also involve either extensive modifications to one of the existing menu planning alternatives or development of an altogether new alternative. The Department is proposing that these approaches not be subject to approval by FNS when the State agency is an active and on-going partner with the school food authorities, if there are a sufficient number of school food authorities adopting it to warrant the State agency's commitment of resources necessary to its successful operation and the State agency issues an announcement notifying the public of the alternate approach. With the State agency's active involvement, there is oversight as well as the ability to promptly adjust the policies and procedures of the approach to ensure efficient and effective operation and compliance with all applicable requirements. The Department is proposing that these approaches must be adopted by at least five school food authorities within the State. The proposed requirement for a public announcement allows for review of the State agency's approach by any concerned parents, students, program administrators, etc. In addition to the public announcement, the Department considered requiring that State agencies hold public hearings (in accordance with established State procedures) on these types of alternative approaches. The Department would appreciate comments on whether public hearings, in addition to the public announcement, are a more effective way to notify the public and whether the benefits of conducting a hearing outweigh the costs to the State agency.

This type of State agency-developed alternate approach is intended to allow innovative, large-scale State agency-sponsored menu planning systems to operate without prior approval. An example of a large-scale system that extensively modifies current regulatory requirements (specifically the weighting component and software requirements for NSMP) is the Shaping Health as Partners in Education (SHAPE) program, which has been successfully operated in California for several years. Because the SHAPE program is already operational, the requirement for issuing a public announcement is not applicable.

The Department emphasizes that the different approval requirements for the State agency-developed alternate approaches are based on the differing degrees of State agency involvement. When the State agency is acting as a partner and is routinely assisting school food authorities and providing technical assistance, it can, if needed, quickly determine if implementation at the local level is not successful or if the system itself needs to be modified to meet the required elements such as compliance with the nutrition standards. In the other situations, there is no continuous State agency presence. Instead, the State agency simply makes the system available to local school food authorities as another option from which they may chose and would only be able judge its effectiveness under normal review procedures. Therefore, the Department is proposing, at § 210.10(l)(2)(iii) and § 220.8(h)(2)(iii), that any State-agency developed system is not subject to prior FNS approval if five or more school food authorities adopt the approach, if the State agency maintains on-going oversight including making adjustments to the approach's policies and procedures, as needed, to ensure compliance with the nutritional and other meal service requirements, and if the State agency makes a public announcement concerning the alternate menu planning approach prior to its implementation by any school food authority. Please keep in mind, though, that all alternate approaches would be subject to the proposed minimum requirements discussed below.

Required Elements for Alternate Approaches

In devising the guidelines for reasonable approaches other than the proposed ''pre-approved'' modifications, the Department balanced the necessity to foster innovation and flexibility with the equally compelling need to maintain program accountability administratively, fiscally and nutritionally. The basic consideration is that every menu planning alternative, regardless of the source or the level of approval, must meet all statutory requirements. Also, the Department is proposing to include a limited number of guidelines that are based on discretionary regulatory procedures that the Department feels are essential to effective and efficient program management unless the alternate approach is one of the distinct situations with on-going State involvement (the second type discussed above). With this extra involvement and oversight by the State agency, school food authorities would be provided additional flexibility.

Offering Fluid Milk

Section 9(a)(2) of the NSLA (42 U.S.C. 1758(a)(2)) requires that school food authorities offer fluid milk to children participating in the NSLP. Section 4(e)(1)(A) of the Child Nutrition Act of 1966 (CNA), (42 U.S.C. 1773 (e)(2)), requires that a combination of foods be served in the SBP and that breakfasts ''* * * meet minimum nutritional requirements prescribed by the Secretary * * *'' The provision of fluid milk is one of the minimum nutritional requirements established for the SBP under § 220.8(h). Therefore, any alternate menu planning approach must also offer fluid milk for both the NSLP and SBP. The provisions requiring milk to be offered in the school programs for any alternate approach are proposed at § 210.10(l)(3)(i) and § 220.8(h)(3)(i), for the NSLP and SBP, respectively.

Offer Versus Serve (OVS)

Section 9(a)(3) of the NSLA (42 U.S. C. 1758(a)(3)) requires that schools implement OVS in the NSLP for senior high school children; at local option, school food authorities may adopt OVS in the lunch program for lower grades as well. Under section 4(e)(2) of the CNA (42 U.S. C. 1773 (e)(2)), local

school food authorities may also implement OVS for the SBP. OVS encourages children to make selections that they prefer, thus helping to reduce plate waste. Because of the statutory mandate, any menu planning alternative designed by an school food authority or State agency for use in the NSLP must include OVS for senior high school children. OVS will continue to be optional at the discretion of school food authorities in the SBP.

While OVS would continue to be required for senior high school students, school food authorities and State agencies would be permitted by this rulemaking to propose alternatives to the OVS approaches currently permitted in the regulations. Such approaches must be based on the existing regulatory OVS structures as much as possible. For example, OVS for alternate food-based systems must be patterned on the OVS requirements in § 210.10(k)(6) and § 220.8(g)(3), while those for alternate NSMP approaches must be based on the requirements of § 210.10(i)(2)(ii) and § 220.8(e)(2)(ii).

If the existing OVS procedures in § 210.10(k)(6)/§ 220.8(g)(3) or § 210.10(i)(2)(ii)/§ 220.8(e)(2)(ii) are not followed, the description of the alternate approach must indicate what age/grade groups are included, how plate waste would be reduced and how the meal, as taken, will provide a reasonable level of nutrients and calories. As discussed in more detail below, any modifications to the existing OVS procedures must include the number and type of items (and, if applicable, the quantities for the items) that constitute a reimbursable meal. These provisions on OVS in alternate menu planning approaches are proposed at § 210.10(l)(3)(ii) and § 220.8(h)(3)(vi) for the lunch and breakfast programs, respectively.

Nutrition Standards

As discussed earlier, the NSLA requires school lunches to approximate, over a week's time, one-third of the RDA needed by growing children of different ages. School breakfasts must provide one-fourth of the RDA. In addition, the menus must comply with the recommendations of the Dietary Guidelines. These requirements cannot be modified.

Therefore, any alternate menu planning approach must ensure that these standards, as implemented in § 210.10(b)(1)–(b)(4) for the NSLP and § 220.8(a)(1)–(a)(4) for the SBP, would be met or exceeded for the age/grade groups to be served. In addition, the alternate approach must indicate how the proposal is designed to meet these standards. The requirements are proposed at § 210.10(l)(3)(iii) and § 220.8(h)(3)(ii).

Competitive Foods

For both the NSLP and SBP, Section 10(a) of the CNA (42 U.S.C. 1779(a)), requires regulations ''* * * relating to the service of food * * * in competition with the [school meals] programs * * *.'' To implement this provision, § 210.11(b) and § 220.12(a) prohibit the sale of foods of ''minimal nutritional value'' in the cafeteria area during the service of meals. Appendix B to each of these parts lists the foods considered to be foods of minimal nutritional value. Any alternate approach may not alter this statutory provision and the implementing regulations. This restriction is proposed at § 210.10(l)(3)(iv) and § 220.8(h)(3)(iii) for the lunch and breakfast programs, respectively.

Crediting Foods Under Food-Based Type Approaches

Paragraphs (k)(3)–(k)(5) and (m) of § 210.10; § 220.8(g)(2) and (i); and the Appendices to Parts 210 and 220 provide the basic crediting policies for food items offered in the school meals programs for food-based menu planning alternatives. These crediting policies are expanded upon in FNS instructions and guidance. This proposal would require that any alternate food-based menu planning approaches follow the existing food crediting policies for school meals. The Department's standards for crediting food items are designed to maintain the nutritional integrity of school meals by ensuring that foods used to satisfy quantity and component requirements provide a sufficient amount of the component or its equivalent to count toward meeting the meal requirements.

To be credited, foods must be both present in the minimum required quantities and identifiable as at least one of the required food components of the meal pattern (meat/meat alternate, fruits/vegetables, grains/breads and fluid milk). These foods may be served as single food items or as combinations in recipes or in commercially processed foods. To assist in the identification of the definition of the basic foods, the Department relies on government and industry standards of identity and/or specifications. These standards are essential to ensuring that the individual meal merits Federal reimbursement and that the meal service, over time, complies with the programs' nutrition standards. Therefore, the Department is proposing at § 210.10(l)(3)(v) and § 220.8(h)(3)(v) that the minimum quantities established to credit food items as components under the food-based menu planning systems be adhered to in any food-based menu planning alternate approach.

Identification of a Reimbursable Meal

The concept of a reimbursable meal is essential to program integrity. Sections 210.10 and 220.8 of the regulations establish definitions of a reimbursable meal for the four menu planning alternatives currently recognized by the NSLA. Under the traditional meal pattern and the enhanced food-based menu planning system for lunches, the school food authority must offer minimum quantities of a meat/meat alternate, a grain/bread item, two separate fruits/vegetables and fluid milk as a beverage. This requirement is found at § 210.10(k). Under NSMP and ANSMP, the school must offer an entree, fluid milk and at least one additional menu item for lunches. This requirement is found at § 210.10(i)(2)(i) for the NSLP. The parallel requirements for the SBP are at § 220.8 (e) and (g).

This proposal would require that any alternate approach comply with the current requirements for reimbursable meals to the extent possible. When the existing procedures are not followed, the proposed alternate approach must detail what constitutes a reimbursable meal, including the number and type of item (and if applicable, the quantities for each item) and how a reimbursable meal is to be identified at the point of service by the children, the cashiers, and any reviewers. The proposals appear at § 210.10(l)(3)(vi) and § 220.8(h)(3)(v), respectively, for the school lunch and breakfast programs.

Monitoring Compliance

Section 210.18 of the regulations establishes methods for determining if school food authorities are meeting the administrative requirements for the school meals programs while § 210.19 provides for reviewing compliance with the nutrition standards. In determining the essential elements for any alternate approach, the Department believes that these monitoring aspects must be incorporated so that the State agency can determine if reimbursable meals are being offered, accepted, and properly counted and if the meal service is in compliance with all of the nutrition and administrative standards.

The Department expects that, in most cases, alternate approaches can be monitored within the existing criteria for both coordinated review effort (CRE) and nutrition reviews. As discussed below, some aspects of Performance Standard 2 in § 210.18 must be modified

to take into account the flexibility for alternate approaches. However, the Department does not believe that the procedures for conducting CRE reviews will need to be revised in order to accommodate alternate approaches. Therefore, this rule would require, in § 210.10(l)(vii) and § 220.8(h)(3)(vi), that the alternate approach be subject to CRE reviews under the current procedures provided in § 210.18.

However, in some cases, the proposed alternate approach may not lend itself to the established nutrition review methods. Therefore, to allow the State agency to ensure that an alternate approach can be reviewed adequately for compliance with the nutrition standards, any alternate approach must include either an explanation of how the alternate approach could be monitored within the existing criteria in § 210.19 or a comprehensive nutrition monitoring plan that the State agency could follow. As part of this plan, the alternate approach must include a description of the records it will maintain to document compliance with administrative and nutrition requirements. This provision is proposed at § 210.10(l)(3)(vii) and § 220.8(h)(3)(vi) for both the administrative and nutrition review aspects. Conforming amendments are also proposed to § 210.19(a) and are discussed in greater detail later in this preamble.

Weighted Averages for NSMP/ANSMP

Sections 210.10(i)(5) and 220.8(e)(5) require school food authorities using NSMP or ANSMP to conduct nutrition analyses by weighting all foods planned as part of the reimbursable meal service. This weighting is done according to the frequency with which each food is actually offered. The purpose of weighting is to assist in ensuring that meals actually offered to children meet the nutrition standards. The Department acknowledges that weighted averages are not the only way to ensure compliance with the nutrition standards. In fact, in order to make the transition to the updated menu planning methods easier and to ensure that every avenue for promoting sound nutrition is explored, the Department has authorized temporary waivers of this regulatory requirement. The waivers allow the Department the opportunity to evaluate weighted and unweighted averages to determine their accuracy in indicating determinations of compliance with the nutrition standards. The Department believes that this temporary postponement through a State agency waiver is the appropriate way to ease implementation and to permit further evaluation of this requirement. As part of this evaluation process, the Department is particularly interested in receiving comments on the use of a weighted nutrient analysis versus nonweighted approaches. Comments from operators using nutrient analysis and their experiences with weighting would be especially helpful. The Department would also like comments from State agency reviewers and their experiences with weighting when evaluating meal services.

However, until the Department determines that alternatives to weighted averages adequately ensure that meals comply with the nutrition standards, weighted averages continue to be required for NSMP systems other than those for which a waiver has been granted. Accordingly, the Department is proposing to require compliance with the weighting requirements for alternate NSMP-type approaches. However, the Department is proposing to provide added flexibility in those instances in which the State agency has developed the alternate approach and is a partner with at least five school food authorities and maintains on-going oversight of the operation and evaluation. The level and consistency of the State agency's involvement coupled with a more rapid response to problems in order to make needed adjustments allows for further innovation. These provisions are proposed at § 210.10(l)(3)(viii) and § 220.8(h)(3)(vi).

Approved Software for NSMP and ANSMP

Sections 210.10(i)(4) and 220.8(e)(4) require menu planners using NSMP or ANSMP to conduct or to have their analyses conducted using software that incorporates the National Nutrient Database for Child Nutrition Programs and is approved by FNS. The software must meet the minimum requirements established by FNS such as having the capability to perform all functions required after the basic data has been entered, including calculating weighted averages, and the optional combining of the analyses of the NSLP and SBP. The Department is aware that there are many nutrition software packages available; however, many of these are for individuals or for clinical settings such as hospitals. The software approved by FNS is designed to meet the needs of school food service professionals and fulfills two essential criteria—the ability to perform all the requirements of the regulations and the achievement of uniform results. The Department also notes that the number and variety of software packages approved to date ensures that school food authorities have extensive flexibility in choosing a package that best meets their individual needs. Therefore, this proposal would require, at § 210.10(l)(3)(viii) and § 220.8(h)(3)(vii), that any alternate approach use approved software.

Again, however, the Department is proposing to allow modification of the required specifications for software for any alternate approach under the same limited circumstances allowing for modification of weighted analysis. In those situations in which the State agency developed the alternate approach and remains an active partner and five or more school food authorities adopt the alternate approach, the Department is proposing, at § 210.10(l)(3)(viii) and § 220.8(h)(3)(vii), to permit the use of software which does not meet the regulatory requirements. While this means that the software would not need to incorporate the National Nutrient Database nor would it be required to have prior FNS approval, the alternate approach would still need to meet all the nutrition standards. Again, the Department believes that the on-going State agency oversight provides sufficient assurance that any software will provide appropriate nutrient analysis and, to the extent that deficiencies are identified, that they will be rapidly addressed.

The Department also wishes to emphasize that weighted analyses and standard software packages do not, in and of themselves, determine the kinds and amounts of foods provided. Rather, they are fundamentals in the internal monitoring system which enables schools, school food authorities, and State agencies to measure the success of the food service in complying with the nutrition standards. Consequently, modification of these requirements, without substantial care and involvement by the State agency, may undermine the accuracy of the nutrition analysis and compromise the ability of menu planners to make necessary adjustments. This is the basis for the Department's decision to not apply the weighting and software specification requirements to those situations in which there will be substantial State agency involvement and oversight.

Monitoring Requirements for Compliance With the Nutrition Standards

The Department is proposing to clarify some aspects of the nutrition monitoring requirements in order to ensure appropriate State agency oversight of all menu planning alternatives. In addition, some conforming amendments are proposed due to the reinstatement of the

traditional food-based menu planning alternative and the availability of alternate approaches.

Monitoring Procedures for the Traditional System and for Alternate Approaches

The current monitoring provisions for the food-based and nutrient standard menu planning alternatives are found at § 210.18 and § 210.19. As discussed earlier, any alternate approach must be capable of being monitored under § 210.18. In addition, if the alternate approach cannot be monitored under § 210.19, there must be a description of alternate monitoring procedures to ensure compliance with the fiscal, administrative and nutrition standards.

This proposed rule would amend § 210.18 and § 210.19 to make clear that the existing monitoring requirements apply to the traditional food-based menu planning alternative as well as to the enhanced food-based and nutrient standard menu planning systems. In addition, technical amendments are made to modify the terminology in § 210.18 and § 210.19 related to Performance Standard 2 which establishes review criteria to assure that the lunches served by schools are reimbursable. In other words, any school lunch must contain whatever meal elements that are required for reimbursable lunches under each of the menu planning alternatives. In order to clarify that all the various menu planning approaches are subject to Performance Standard 2, technical amendments are proposed to § 210.18(b)(2)(ii), (g)(2), and (i)(3)(ii) and to § 210.19(c)(6)(i) to reference the various terms used to stipulate the elements in a reimbursable meal.

Finally, § 210.19 would be amended to make clear that the nutrition review procedures for food-based and nutrient standard alternate approaches are the same as those for food-based and nutrient standard menu planning systems, respectively, except for those alternate approaches that do not lend themselves to existing nutrition review procedures. In those cases, the nutrition review procedures are those review procedures developed under § 210.10(l).

Adjustments to Review Periods

The Department is proposing to adjust the review period for nutrition reviews. Currently, paragraphs (a)(1)(i) and (ii) of § 210.19 stipulate that the State agency is to review the school's nutrition analysis or conduct an independent analysis for the last completed week prior to the review. The intent of this provision was to ensure that the analysis reflected the current state of the meal service. However, some State agencies have noted that, under CRE, as detailed in § 210.18, State agencies select the month prior to the month of the review as the sample period. Consequently, State agencies which would elect to conduct nutrition reviews concurrently with CRE reviews will likely need to look at two different review periods during the same visit. Therefore, in the interests of efficiency, this proposal would permit reviewers to conduct the assessment of compliance with nutrition standards for any week of the current school year prior to the month of the review. However, the week selected must continue to represent the current state of the meal service. The State agency could select, for example, a week for the nutrition review that was in the same month in which a CRE was scheduled. The Department believes that this proposed provision will still allow State agencies to determine whether the program is in compliance with the nutrition standards and, if necessary, prescribe appropriate steps for improvements by requiring review of a relatively current period that is typical of the on-going meal service. This change is proposed at § 210.19(a)(1)(i).

Extent of Reviews

Another proposal would amend § 210.19(a) to clarify that, during the review cycle, State agencies must review at least one school for each type of menu planning alternative used by the school food authority. For example, if eight schools in a school food authority use the traditional meal pattern, three use the enhanced food-based system and five use NSMP, the State would select at least one school from each category. The Department recognizes that, in some cases, this requirement would result in more schools being visited for nutrition compliance than are required to be reviewed under CRE. The Department believes, however, that this coverage is essential to ensure that the school food authority is following all alternatives correctly. For example, a school food authority may be achieving great success with the enhanced food-based system but may not be conducting NSMP properly. The only way for the State agency to identify this problem, provide appropriate technical assistance and require corrective action is to examine the school food authority's experience with all alternatives in use. This amended is proposed at § 210.19(a)(1).

The proposal would also clarify that State agencies are required to perform the necessary nutrition review on only the lunch program unless the school food authority uses a particular menu planning alternative only for the breakfast program. For example, if all of the schools in a school food authority use either NSMP or the enhanced food-based system for lunch, and at least some of the schools use the traditional food-based menu planning alternative for breakfast, the State agency would need to conduct two lunch reviews (one of a school using NSMP and one of a school using the enhanced food-based system) and one review of a breakfast program which uses the traditional meal pattern. However, if all three of these alternatives are used for the lunch program in the school food authority, no review of the breakfast program would be needed. The Department cautions, however, that if the lunch review indicates that the school food authority needs technical assistance and/or corrective action, the State agency may wish to review a breakfast program as well to determine if the school food authority needs to take specific corrective action for that program as well. In these cases, the review of the breakfast program could be done either at the time of the initial lunch review or as part of any follow-up needed to further evaluate the results of technical assistance or corrective action.

Conforming Review Cycles

Finally, the Department is proposing a minor technical amendment to § 210.19(a)(1)(i) to make the cycle for nutrition reviews consistent with the cycle for administrative reviews under CRE. The SMI rule established a five-year cycle for reviews of nutrition compliance and intended that cycle to run concurrently with the CRE cycle so that those States electing to conduct nutrition reviews at the same time as administrative reviews could do so efficiently. The regulation currently stipulates that the first five-year cycle would begin on July 1, 1996, unless the State agency authorized a temporary waiver of compliance with the nutrition standards, in which case the first year of the cycle could begin as late as July 1, 1998. Consequently, the first five-year cycle would end as early as June 30, 2001 or as late as June 30, 2003, depending upon actual implementation. The current CRE cycle ends on June 30, 1998, however, and the next cycle will end on June 30, 2003. Therefore, the two review cycles would be out of sequence for State agencies which implement the regulations before School Year 1998/1999.

While State agencies are not required to conduct nutrition reviews at the same time as administrative reviews, the Department proposes to make the two

review cycles coincide so that State agencies may avail themselves of this option efficiently. To achieve this goal, therefore, the Department is proposing to establish an initial cycle of seven years for nutrition reviews, from July 1, 1996 through June 30, 2003. Thereafter, review cycles would be five years in length. This expanded cycle would allow State agencies more flexibility during the implementation phase to complete reviews and provide schools with necessary assistance.

The Department notes that the extended time frame for completing nutrition reviews increases the need for State agencies to identify school food authorities that may have menu planning difficulties in order to schedule visits to them as early as possible in the cycle. The Department also would like State agencies to comment on any increased potential for noncompliance that might result from this extension and whether or not the Department should consider establishing intermediate review goals within the cycle.

Updating the Dietary Guidelines and Other Technical Changes

Section 9(f)(1)(A) of the NSLA requires that schools offer meals consistent with the goals of the ''most recent Dietary Guidelines for Americans.'' The June 13, 1995, SMI rulemaking incorporated the 1990 edition of the Dietary Guidelines as program requirements because they were, at that time, the latest official version. The Department indicated, however, that later editions would be incorporated to reflect any revisions to the recommendations. In December 1995, the Department, in partnership with the Department of Health and Human Services, issued the 1995 edition. While there were no substantive differences between the 1995 edition and the 1990 edition, there were some minor language revisions. Therefore, the Department is taking this opportunity to propose amending § 210.10(b)(3) and § 220.8(a)(3) to incorporate the minor wording changes of the 1995 guidelines, and to change references to the 1990 guidelines to 1995.

The 1995 Dietary Guidelines also include the suggestion that the diets of children between the ages of two and five should be gradually altered so that, by age five, they receive no more than 30 percent of their calories from fat. Since the Dietary Guidelines do not treat this suggestion as a formal recommendation, the Department is not incorporating it into § 210.10(b)(3) or § 220.8(a)(3), where the Dietary Guidelines' recommendations are enumerated. However, a footnote containing this information would be added to the charts in § 210.10(c)(1), § 210.10(c)(2), § 210.10(d), § 220.8(b)(1), § 220.8(b)(2) and § 220.8(c)(1). The Department is also aware that the RDA are in the process of being reviewed and that an update is scheduled to be released in 1999. At that time, the Department will propose any needed revisions to the key nutrient and calorie levels.

The name of the database used in the nutrient analysis software has been changed from the ''National Nutrient Database for the Child Nutrition Programs'' to the ''Child Nutrition Database.'' This proposal would, therefore, update the references to the database in § 210.10(i) and § 220.8(e).

It was brought to the Department's attention that there was a misstatement in the preamble of the final regulation published on June 13, 1995. The regulation, Child Nutrition Programs: School Meal Initiatives for Healthy Children, was published in the **Federal Register** at 60 FR 31188. The erroneous statement at 60 FR 31203 was:

> * * * program regulations (§ 210.11(a) and § 220.12(a)) prohibit the sale of certain foods of minimal nutritional value in the food service area between the start of school and the last lunch period of the day.

The correct policy is contained in § 210.11(b) for the NSLP. The correct policy is:

> Such rules or regulations [established by State agencies or school food authorities] shall prohibit the sale of foods of minimal nutritional value, as listed appendix B of this part, in the food service areas *during the lunch periods*.
>
> (Emphasis added)

This policy may found for the SBP at § 220.12(a).

Although the statement in the preamble was incorrect, the actual regulatory language contained in § 210.11 (b) was correct. The Department regrets any confusion this error may have caused.

Appendix to Preamble—Regulatory Cost/ Benefit Assessment

1. Title: National School Lunch Program and School Breakfast Program: Additional Menu Planning Alternatives.

2. Background:

a. Need for Action: Public Law 104–149, the Healthy Meals for Children Act, amended the National School Lunch Act by expanding the number of alternatives available to plan menus for the school meals programs. Section 9(f) of the National School Lunch Act was amended to allow schools to continue using the meal planning system in effect in School Year 1994–95 as well as the other meal planning alternatives already available. In addition, the Act was amended to allow schools to use ''* * * any reasonable approach, within guidelines established by the Secretary * * *''.

The menu planning system in effect in School Year 1994–95 was the ''traditional pattern'' which has been in use for many years, and which requires four components (meat/meat alternate, breads/grains, fruits/ vegetables and milk) and five items. Because this alternative was to be deleted from the regulations at the end of the implementation period (July 1, 1998), this proposal would reinstate this alternative permanently. In addition, this proposal would establish the guidelines for ''any reasonable approach'' to ensure that schools continue to serve reimbursable meals and provide proper accountability for Federal reimbursement while still having the flexibility to design a menu planning alternative that meets their particular needs.

Before the Department issued a proposal to implement Public Law 104–149, Public Law 104–193, the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 was enacted on August 22, 1996. This law further amended the National School Lunch Act to mandate that school lunches provide, over a week, one-third of the Recommended Dietary Allowances (RDA) and that school breakfasts provide one-fourth of the RDA. These requirements are, however, already included in the school programs' regulations.

b. Affected parties: The entities affected by this proposal are State agencies, school food authorities, the nation's school children, and the Food and Nutrition Service.

c. Promotes the President's Priorities: This proposal would promote the President's commitment to flexibility for program administrators while continuing to support the objectives of providing meals to the nation's school children that meet the Dietary Guidelines for Americans and other established nutrition standards.

3. Statutory Authority: Public Law 104–149.

4. Cost-Benefit Assessment of Economic and Other Effects:

Reinstatement of the Traditional Meal Pattern

Background: The proposed regulation would reinstate the meal pattern in effect in School Year 1994–1995 as one menu planning alternative. The meal pattern would be incorporated into the section of the regulation establishing the food-based menu planning alternatives and would be entitled the ''traditional food-based menu planning alternative.'' The food-based alternative implemented in the June 5, 1995, final rule would be renamed ''the enhanced food-based menu planning alternative.'' The provision would provide a table with the minimum levels of nutrients (calories, protein, calcium, iron, Vitamin A, and Vitamin C) for the age/ grade groups of the meal pattern. Further, the provision makes minor conforming amendments to allow for monitoring compliance with the nutrition standards for this additional menu planning alternative.

Effects of Reinstating the Traditional Meal Pattern

Benefits: The provision permanently reinstating the meal pattern in effect during

School Year 1994–1995 will allow schools to use a meal pattern with which they are familiar. Extensive experience with the traditional meal pattern has allowed schools to successfully develop menus that meet program requirements and are popular with students. The reinstatement of the traditional meal pattern provides schools with an additional menu planning option and even greater flexibility in meeting the nutritional needs of students.

The rule extends nutrition monitoring provisions pertaining to reviews of the enhanced food-based menu planning option to reviews of schools using the traditional meal pattern. School lunches are required to provide, over a week's time, one-third of the RDA for key nutrients (protein, calcium, iron, vitamin A and vitamin C) and calories needed by growing children of different ages. School breakfasts are required to provide, over a week's time, one-fourth of the RDA for key nutrients (protein, calcium, iron, vitamin A and vitamin C) and calories needed by growing children. In addition, schools should be making progress towards providing meals which comply with the Dietary Guidelines, including the recommendations that no more than 30 percent of calories come from fat and that saturated fat be limited to less than 10 percent of calories. The extension of this provision to the traditional food-based meal planning systems will ensure that children in schools using this system will receive meals of comparable nutritional quality as children in schools using the enhanced food-based menu plan. This provision does not require any additional burden of school food authorities as regulations require any menu planning system to provide comparable levels of RDAs for key nutrients and comply with the Dietary Guidelines.

Costs: The 1993 USDA School Nutrition Dietary Assessment Study (SNDA) assessed the nutritional quality of lunches served under the traditional meal pattern. SNDA found that the amount of nutrients in the average school lunch provided under the traditional meal pattern exceeded the standard of one-third of the daily RDA for the age groups at the elementary, middle, and high school level for most nutrients. However, the average percentage of food energy from total fat offered in school lunches was 38 percent, compared with the Dietary Guideline goal of not more than 30 percent; the percentage from saturated fat was 15 percent, compared with the Dietary Guideline of less than 10 percent.[1] In addition, the Continuing Survey of Food Intake by Individuals (CSFII), 1989–91 found that school-age children have average daily intakes of 33.7 to 34.7 percent of calories from fat, and 12.6 to 13.3 percent of calories from saturated fat depending on age-sex group.

The SNDA and CSFII findings heightened awareness of the need to improve the nutritional quality of school meals. In response the Department initiated the School Meals Initiative for Healthy Children, the first program-wide reform of the school meals program since its establishment in 1946. Since the introduction of the School Meals Initiative the Department has provided training and technical assistance designed to assist school food service personnel in implementing the Dietary Guidelines. FNS has sponsored training on the preparation of healthier meals; provided recipes which are lower in fat and sodium; and issued grants to assist State agencies in establishing statewide training systems to assist local agencies in implementing the Dietary Guidelines. The Department has also increased efforts to provide lower fat commodities to local school districts.

Even with increased efforts by the Department, State agencies and school food authorities to provide schools with the knowledge and skills necessary to successfully implement the Dietary Guidelines, the possibility still exists that it might prove difficult for some schools using the traditional food-based meal pattern to comply with the recommendations. In these instances, it may be necessary for the school food authority or the State agency to provide further training of the school food service personnel to enable them to successfully develop meal patterns which comply with the Dietary Guidelines.

The State agency will be responsible for monitoring progress towards meeting the Dietary Guidelines and nutrition standards and for making adjustments in procedures that schools follow in order to ensure effective progress toward eventual compliance with the updated nutritional requirements. Should a number of schools using the traditional food-based menu pattern encounter difficulty in meeting the Dietary Guidelines, the State agency will need to cooperate with the school food authority in designing corrective action to rectify the deficiencies. Additionally, the State agency will need to monitor the execution of corrective action taken by the school food authority to ensure that progress is being made towards meeting the Dietary Guidelines.

Since most State agencies used the1996–1997 school year to train staff to conduct the nutrient analyses, the number of analyses that were actually completed was fewer than expected. As a result, there is no data available on the number of school food authorities that fail to meet the nutrient standards and need to take corrective action.

Any Reasonable Approach to Meal Planning

Benefits: Public Law 104–149 permits school food authorities to use ''any reasonable approach'' to menu planning not specifically delineated in the regulations. The law makes it clear, however, that approval of other ''reasonable approaches'' must be in accordance with guidelines established by the Secretary. In developing appropriate guidelines, the Department considers that there are two classes of additional reasonable approaches. The first class of reasonable approaches consists of alternatives which are essentially relatively minor modifications to one or another of the existing menu planning systems. The second class of alternatives would involve unique proposals that depart significantly from the existing systems.

Minor Modifications

The Department believes that minor modifications to existing meal planning systems do not pose significant questions about nutritional content or program integrity. Therefore, to reduce unnecessary paperwork, the Department is proposing to authorize State agencies to permit their school food authorities to choose any of the following adaptations without applying to the State agency for approval. The decision to authorize any or all of these modifications rests entirely with the State agency. State agencies may establish a general policy allowing school food authorities to adopt any or all of these approaches without prior approval or chose to review requests from school food authorities. The preapproved approaches are:

1. Weekly Meat/Meat Alternate Quantity Standard: Schools using one of the food-based menu planning systems would be allowed the flexibility to vary the quantity of the meat/meat alternate on a daily basis as long as the total amount served over the course of the school week equals the minimum daily quantity multiplied by the number of serving days in the week. Schools would still be required to serve a minimum of one ounce of meat/meat alternate daily.

2. Flexible Age-Grade Groupings for Food-Based Systems: Under the analysis-based menu planning options, if only one age or grade in a school is outside the established RDA and calorie requirements for the majority of students, schools are permitted to use the nutrition standards for that majority. In the interests of consistency and flexibility, the Department is proposing to extend this option to the food-based systems as well.

Innovative Approaches

The second class of other reasonable approaches involves innovative systems that are not currently established in program regulations and guidance. These innovative menu planning systems could be developed by school food authorities for use in their schools, or developed by State agencies and made available to their school food authorities. The Department envisions two approaches that State agencies could take in developing menu planning systems. It would be possible for a State to develop a unique menu planning system and then refrain from being involved in the operation or evaluation of the system. In these cases, the system would have to be submitted to the Department for approval before implementation. The second scenario involves systems developed by the State, used by multiple school food authorities (at least five) within the State, and the State agency remains an active partner in the operation and evaluation of the system on an ongoing basis and issues an announcement notifying the public of the alternate menu planning approach. In this case, the State would not be required to submit the system to the Department for approval prior to implementation.

Any meal planning system proposed by a school food authority or a State agency

[1] Burghardt, JC, A. Gordon, N. Chapman, P. Gleason, T. Fraker (1993). The School Nutrition Dietary Assessment Study: School Food Service, Meals, and Dietary Intakes. October 1993.

would have to be assessed for its potential impact on the delivery of meals to children, both nutritionally and fiscally. To achieve these goals, the Department is proposing to establish a framework and criteria for consideration and approval of such requests. Any approach developed by a State agency or a school food authority would need to ensure that the following areas, which are critical to the proper and efficient operation of the program, be satisfied:

1. Identification of Reimbursable Meals: The definition of a reimbursable meal is essential to program integrity. The four menu planning systems specifically recognized by the statute have specific requirements for a reimbursable lunch or breakfast. In keeping with these principles, the school food authority would need to outline, in any proposed menu planning alternative, what constitutes a reimbursable meal; how these will be identified by the students in the line and by food service staff at the point of service; and how reviewers will be able to document compliance. Likewise, the State agency must determine that the reimbursable meal will offer sufficient nutrition on a daily basis to justify Federal reimbursement.

2. Provide for Offer versus Serve: When developing a menu planning alternative, school food authorities must provide for offer versus serve (OVS), as appropriate. Section 9(a)(4) of the NSLA requires that schools implement OVS in the NSLP for senior high students; at local option, school food authorities may adopt OVS in the lunch program for lower grades as well. Local school food authorities may also implement OVS for the SBP. The purpose of OVS is to encourage students to make selections that they prefer, thus helping to reduce plate waste. Therefore, because of the statutory mandate, any menu planning approach proposed by an school food authority or State agency must include OVS for senior high students at a minimum.

3. Compliance with Nutrition Standards: By law, school lunches are required to provide, over a week's time, one-third of the RDA for key nutrients and one-third of the calories needed by growing children of different ages. In addition, the meals must comply with the recommendations of the Dietary Guidelines. School breakfasts must provide one-fourth of the RDA and calorie needs and also must comply with the Dietary Guidelines. Under no circumstances can these requirements be modified. Therefore, any request to employ an alternate menu planning approach would need to demonstrate, to the satisfaction of the State agency, that the menus would continue to meet or exceed these standards. Furthermore, because the RDA can vary by age and/or grade group, the school food authority would need to specify which age/grade groups will be served and indicate what the appropriate RDA and calorie levels are for each age/grade group.

4. Ability to Monitor: Any alternate approach must be capable of being monitored by the State agency to determine that reimbursable meals are being offered, accepted, and properly counted and that the meal service is in compliance with all of the nutrition standards.

While the Department wishes to provide school food authorities with maximum flexibility to develop alternate menu planning approaches, this proposed rule would prohibit State agencies from approving modifications to the existing four menu planning options beyond those discussed above as automatic options. The Department considers that certain requirements governing these options must remain intact except for limited exceptions for special State-wide systems. Consequently, the following operational components of the established menu planning systems may not be modified except as discussed below:

1. Weighted Averages for NSMP/ANSMP: The regulations require schools employing NSMP or ANSMP to conduct their analyses by weighting all foods planned as part of the reimbursable meal service according to the amount of each food actually intended to be produced, based on production records or experience. However, in order to make the transition to updated menu planning methods as smooth as possible and to ensure that every avenue for promoting sound nutrition while minimizing burden is explored, the Department authorized a delay in implementing this regulatory requirement for all schools adopting NSMP until the Department has the opportunity to evaluate the ability of weighted and unweighted averages to provide accurate determinations of compliance with the nutrition standards.

2. Use of Approved Software for NSMP and ANSMP: The regulations also require menu planners electing to use NSMP or ANSMP to conduct or to have their analyses conducted using software approved by the Department. The Department is aware that there are many nutrition software packages available; however, many of these are for individuals or for clinical settings such as hospitals. The software approved by USDA is designed to meet the needs of school food service professionals and fulfills essential school-based needs.

3. Crediting Requirements for Food-Based Alternatives: This proposed rule would prohibit State agencies from disregarding any of the Department's crediting policies for schools electing to use a food-based menu planning system. The Department's standards for crediting food items are designed to maintain the nutritional integrity of school meals by ensuring that foods used to satisfy quantity and component requirements provide a sufficient amount of the component or its equivalent to count toward meeting the meal requirements, standards of identity and/or specifications.

4. Foods of Minimal Nutritional Value: The Department also wishes to emphasize that States may not, under any circumstances, approve the sale of foods of minimal nutritional value as defined in program regulations.

However, the Department is also proposing that, in certain limited situations, menu planning systems, supported by the knowledge and resources of a State agency, can operate with modifications beyond those available to school food authorities while maintaining the necessary control over the nutritional content of their meals. Therefore, this proposal would authorize modification in some menu planning systems of the provisions on weighted nutrient analysis and approved software, provided that: these systems are operated under policies and procedures developed or adopted by a State agency; the State agency remains an active participant in the operation and evaluation of the project on an ongoing basis; and the system is used by multiple school food authorities (at least five) within the State and the State agency issues a public announcement concerning the alternative menu planning approach.

Effects of Implementing ''Any Reasonable Means''

Benefits: The provision permitting the use of ''any reasonable approach'' to menu planning will provide school food authorities with even greater flexibility in developing a menu service which meets the needs and preferences of local children. The rule contains a provision allowing school food authorities to make minor modifications to existing meal planning systems. The rule also contains provisions which allow school food authorities or States to make extensive modifications to existing menu planning systems or to develop innovative systems that are not currently established in program regulations and guidance.

The rule proposes that certain minor modifications by a school food authority to one or another of the existing meal systems would be allowed, at the discretion of the State agency, without prior approval. An example of the additional flexibility to be gained by individual schools is the ability to vary the amount of meat/meat alternate served on daily basis. This provision provides schools with an option that allows them to produce a more appealing entree or to reduce the amount of plate waste while still meeting the minimum weekly serving requirement of a meat/meat alternate.

A school food authority desiring to make more than minor modifications would be permitted to develop a proposal which differs significantly from the existing meal planning systems. The authority to develop their own menu planning systems will allow school food authorities to take into consideration any unique local food preferences or dietary needs when planning such systems.

The provisions of this rule allow State agencies to develop their own menu planning alternatives and make them available to local school food authorities. State agencies will have the opportunity to develop, in consultation with school food authorities within their State, a menu planning system designed to meet the specific needs of the children of their State rather than one designed for the tastes and needs of the national student population.

The rule allows such a menu planning system to use alternate weighting procedures and software while continuing to operate within normal regulatory authority, provided that the system is used by at least five school food authorities within the State, the State agency remains an active participant in the

operation and evaluation of the system on an ongoing basis and notifies the public about their alternative menu planning approach. This provision would provide State agencies with increased flexibility in the selection of software used to conduct the nutrient analyses.

Costs: While it is entirely possible that local menu planners may devise systems which produce nutritious meals which are appealing to children, these innovative systems are, by their very nature, untested and subject to unforeseen consequences. Any unique meal planning system will be required to serve meals which provide the same level of key nutrients as any of the prescribed meal patterns. It is possible that a locally developed system might have difficulty complying with the recommendations. In these instances, school food authorities and States might find it necessary to provide additional training and technical assistance to those schools failing to meet the nutrition requirements. However, it is also reasonable to expect that innovation may result in lower costs methods being devised. In either case, the nutrient standards remain the same; and the anticipated impacts on agriculture and the children's health are verifiable.

As noted previously, the percentage of total calories from fat consumed by school aged children in the late 1980's and early 1990's was above what was recommended by the Dietary Guidelines for Americans. Because States will conduct reviews once every five years, several years may pass before problems in meeting the nutritional guidelines will be detected. If schools fail to meet the nutrient standards using innovative systems, it is possible that the nutritional quality of some school meals may be deficient for a period of up to five years. However, FNS has anecdotal evidence that school food authorities have made improvements in their ability to meet the Dietary Guidelines.

As with the traditional meal pattern, the State agency will still be responsible for monitoring the progress these locally developed systems make toward complying with the Dietary Guidelines and nutrition standards. Should any such system or systems fail to comply with these standards, the State agency would need to work with the school food authorities to devise corrective action that would ensure that the menu planning systems would make progress towards, and eventually comply with, the Dietary Guidelines. If locally developed systems prove to have difficulty meeting the required nutritional requirements, the State agency would be faced with an increased monitoring burden without a concomitant reduction in any other monitoring burdens.

At this time it is impossible to determine the additional burden that will be required of State agencies as a result of school food authorities developing their own menu planning systems and failing to meet the nutrition standards. As stated earlier, the 1996–1997 school year is the first one in which States have been required to conduct the nutrient analyses so no data is available as to the number of schools failing to meet the standards. Additionally, FNS has no indications as to how many local agencies might choose to develop their own menu planning systems. It is also impossible to determine the additional nutritional risk placed on children in schools that have difficulty meeting the Dietary Guidelines. However, because there is a certain amount of uncertainty regarding the ability of schools to meet the nutritional requirements under innovative systems, FNS acknowledges that nutritional risk exists.

Miscellaneous Monitoring Provisions

Background: The Department is also proposing a number of amendments to the requirements for nutrition monitoring designed to ensure appropriate State agency oversight of all menu planning alternatives and to clarify some existing provisions.

First, the nutrition monitoring provisions pertaining to reviews of the enhanced food-based menu planning option would be extended to reviews of schools using the traditional meal pattern and other reasonable approaches. As part of these reviews, the State agency must conduct a nutrient analysis using the regulatory procedures schools follow for NSMP.

Second, the Department is proposing to redefine the review period for nutrition reviews which is currently the last completed week prior to the review in order to expedite concurrent reviews of the nutrition standards and reviews for compliance with serving reimbursable meals and free/reduced price application requirements as conducted under coordinated review effort (CRE) reviews. The proposal would permit reviewers to conduct the nutrition review for any week prior to the month of review as is allowed in other reviews.

A third proposed provision would clarify that State agencies must conduct at least one review of every menu planning option employed by the school food authority. The proposal also clarifies that State agencies would be required to review only the lunch program unless the school food authority uses a particular menu planning option for breakfast but not for lunch, in which case at least one school's breakfast program would need to be reviewed.

A fourth proposed change would require State agencies to ensure that there are appropriate methods for monitoring compliance with the nutrition standards in schools using approved reasonable approaches. At a minimum, nutrition monitoring in these schools would be required to include a nutrient analysis by the State agency using software approved for NSMP.

Finally, the Department is proposing a minor technical amendment to make the cycle for nutrition reviews consistent with the cycle for administrative reviews under CRE. The cycle for conducting nutrition standard reviews was intended to run concurrently with the CRE cycle so that those States electing to conduct nutrition reviews at the same time as administrative reviews could do so efficiently. While State agencies are not required to conduct nutrition reviews at the same time as administrative reviews, the Department intended to make the two review cycles coincide so that State agencies could avail themselves of this option efficiently. To achieve this goal, therefore, the Department is proposing to establish an initial cycle for nutrition reviews as seven years, from July 1, 1996 through June 30, 2003. Thereafter, review cycles would be five years in length. This expanded cycle would allow State agencies more flexibility during the implementation phase to complete reviews and provide schools with necessary assistance.

Effects of Miscellaneous Monitoring Provisions

Benefits: The rule contains minor provisions which provide State agencies with greater flexibility in scheduling of nutrition reviews. The rule allows States to conduct the nutrient analysis based on one week in the month prior to the month of review. Current regulations require that the week chosen for analysis be the last completed week prior to review. Allowing the State agency to choose a week in any month prior to the month of review allows the States to coordinate their nutrition review with the CRE administrative reviews.

The rule proposes to alter the nutrition review cycles so that States wishing to conduct their nutrition reviews at the same time as their CRE administrative reviews will be able to do so. The June 13, 1995 final rule established a five-year cycle for reviews of nutrition compliance. The regulation stipulated that the first five-year cycle could begin as early as July 1, 1996 or as late as July 1, 1998. As a result, the first cycle could end as soon as June 30, 2001, or as late as June 30, 2003, depending upon implementation. The current CRE cycle ends on June 30, 1998 and the following cycle will end June 30, 2003. So that the two cycles might coincide, the rule proposes to establish an initial cycle for nutrition reviews of seven years, from July 1, 1996 to June 30, 2003. The expanded cycle would allow State agencies more flexibility during the implementation phase to complete reviews and provide schools with necessary assistance.

Costs: When the June 13, 1995 final rule established reviews of nutrition compliance, the Department did not anticipate that the traditional meal pattern would continue to be an option after June 30, 1998, so no provision was made requiring a nutrient analysis for schools using this meal pattern. The proposed rule extends nutrition monitoring provisions pertaining to reviews of the enhanced food-based menu planning option to reviews of schools using the traditional meal pattern. The requirement that a nutritional analysis be conducted on schools using the traditional meal plan does not place any additional burden on State agencies.

The rule requires that State agencies must conduct at least one review of every menu planning option employed by the school food authority. This requirement could result in more schools being reviewed for nutrition compliance than would be required to be reviewed under CRE. For each school it takes one staff person approximately one and a half days to complete a CRE review. This would come at the approximate cost of $216 for

each additional school.[2]. The Department believes this coverage is necessary to ensure that the school food authority is employing all menu planning systems correctly. The only way for the State agency to identify problems and provide technical assistance is to examine the school food authorities experience with all systems. It is impossible to determine how many more schools State agencies will have to review for nutrition compliance than would be required for CRE as the Department has no data on how many school food authorities use multiple menu planning systems.

Other Effects of the Proposed Regulation

Effects of Rule on NSLP Participation

The provisions of this rule may have a small effect on participation in the National School Lunch Program. The provisions of this rule may have the effect of making meals more appealing which may increase participation. Implementation of the rule is not expected to increase meal prices or decrease meal acceptability. The rule allows schools to continue to use the current meal pattern. Additionally, school food authorities and States are now able to develop menu plans that they feel would be even more appealing to their student population than the menu plans prescribed by the Department.

Effects of Rule on Program Costs

The provisions in this proposed rule will provide increased flexibility to State or local program operators but have no budgetary impact.

Effects on Small Entities

This proposal will not have significant economic impact on a substantial number of small entities. This proposal does not add any new requirements and there are no required additional costs. School food authorities and schools may experience some positive effects from this proposed rule as noted previously.

Summary of the Effects of the Proposed Rule

The proposed rule provides school food authorities and State agencies with increased choices and flexibility in selecting a menu planning system by permanently reinstating the meal pattern in effect during the 1994–1995 school year and providing guidelines for approval of other reasonable approach alternatives that schools may develop.

The proposed rule contains minor monitoring provisions. It extends monitoring provisions pertaining to reviews of the enhanced food-based menu planning option to reviews of schools using the traditional meal pattern. It provides State agencies with greater flexibility in selection of the week to be reviewed for nutrient compliance. Further, the proposed rule alters the nutrition review cycle so that it coincides with the CRE administrative review cycle. This will allow State agencies to more easily conduct nutrient reviews at the same time as administrative reviews.

The proposed rule is not expected to have any impact on program participation, nor is the rule expected to have any budgetary impact. The rule will not have a significant economic impact on a substantial number of small entities.

5. Public Comments: This proposal will provide a 180-day comment period.

List of Subjects

7 CFR Part 210

Commodity School Program, Food assistance programs, Grant programs—education, Grant programs—health, Infants and children, Nutrition, Reporting and recordkeeping requirements, School breakfast and lunch programs, Surplus agricultural commodities.

7 CFR Part 220

Food assistance programs, Grant programs—education, Grant programs—health, Infants and children, Nutrition, Reporting and recordkeeping requirements, School breakfast and lunch programs.

Accordingly, 7 CFR Parts 210 and 220 are proposed to be amended as follows:

PART 210—NATIONAL SCHOOL LUNCH PROGRAM

1. The authority citation for 7 CFR Part 210 continues to read as follows:

Authority: 42 U.S.C. 1751–1760, 1779.

§ 210.2 [Amended]

2. In § 210.2:

a. the definition of ''*Food component*'' is amended by removing the words ''or one of the four food groups which compose the reimbursable school lunch, i.e., meat or meat alternate, milk, bread or bread alternate, and vegetable/fruit under § 210.10a'';

b. the definition of ''*Food item*'' is amended by removing the words ''or one of the five required foods that compose the reimbursable school lunch, i.e., meat or meat alternate, milk, bread or bread alternate, and two (2) servings of vegetables, fruits, or a combination of both for the purposes of § 210.10a''; and

c. the definition of ''*Lunch*'' is amended by removing the words ''§ 210.10(k)(2) or the school lunch pattern for specified age/grade groups of children as designated in § 210.10a'' and adding in their place the words ''§ 210.10(k)(1) or § 210.10(k)(2), whichever is applicable''.

§ 210.4 [Amended]

3. In § 210.4, paragraph (b)(3) introductory text is amended by removing the words ''§ 210.10(n)(1) or § 210.10a(j)(1), whichever is applicable'' and adding in their place a reference to ''§ 210.10 (o)(1)''.

§ 210.7 [Amended]

4. In § 210.7:

a. paragraph (c)(1)(v) is amended by removing the words ''or § 210.10a(b), whichever is applicable,''; and

b. paragraph (d) is amended by removing the words ''§ 210.10(n)(1) or § 210.10a(j)(1), whichever is applicable'' and adding in their place a reference to ''§ 210.10(o)(1)''.

§ 210.9 [Amended]

5. In § 210.9:

a. paragraph (b)(5) is amended by removing the words ''or 210.10a, whichever is applicable'';

b. paragraph (c) introductory text is amended by removing the words ''§ 210.10(n)(1) or § 210.10a(j)(1), whichever is applicable'' and adding in their place a reference to ''§ 210.10(o)(1)''; and

c. paragraph (c)(1) is amended by removing the words ''or § 210.10a, whichever is applicable''.

6. In § 210.10:

a. paragraph (a)(1) is amended by revising the first sentence and by adding a new sentence at the end of the paragraph;

b. the second sentence of paragraph (a)(3) is amended by removing the word ''or'' and adding in its place a comma and by adding the words ''or those developed under paragraph (l)'' after the reference to ''paragraph (i)(1)''; the third sentence of paragraph (a)(3) is amended by removing the third occurrence of the word ''or'' and adding in its place a comma, and adding the words ''or those developed under paragraph (l)'' after the reference to ''paragraph (i)(1)'';

c. paragraph (b)(1) is amended by making the word ''paragraph'' plural, by removing the second occurrence of the word ''or'' and adding in its place a comma and by adding the words ''or (l)'' after the reference to ''(i)(1)'';

d. paragraph (b)(2) is amended by removing the second occurrence of the word ''or'' and adding in its place a comma, and by adding the words ''or (l)'' after the reference to ''(i)(1)'';

[2] Cost calculated assuming 12 hours to review each school at a wage rate of $18 an hour.

e. paragraph (b)(3) is revised;

f. paragraph (b)(4) introductory text is amended by removing the reference to ''1990'' and adding in its place a reference to ''1995'';

g. the first sentence of paragraph (b)(5) is revised;

h. the table in paragraph (c)(1) is revised;

i. the table in paragraph (c)(2) is revised;

j. paragraph (d) is revised;

k. the heading of paragraph (i)(4) and paragraph (i)(9) are amended by removing the words ''National Nutrient Database'' and adding in their place the words ''Child Nutrition Database'';

l. paragraphs (i)(4) and (i)(8) are amended by removing the words ''National Nutrient Database for the Child Nutrition Programs'' wherever they appear and by adding the words ''Child Nutrition Database'' in their place;

m. the heading of paragraph (k) is revised and introductory text is added;

n. paragraph (k)(1) is revised;

o. the heading of paragraph (k)(2) and the introductory text before the chart are revised;

p. the first two sentences of paragraph (k)(4) are redesignated as paragraph (k)(4)(i) and the last sentence of paragraph (k)(4) is redesignated as paragraph (k)(4)(ii) and is revised;

q. paragraph (k)(5) is amended by adding a new paragraph (k)(5)(iii);

r. paragraph (k)(5)(ii) is amended by adding two new sentences between the second and third sentences;

s. paragraphs (l) through (o) are redesignated as paragraphs (m) through (p), respectively, and a new paragraph (l) is added;

t. newly redesignated paragraph (o)(3)(iv) is amended by removing the reference to ''(n)(3)'' and adding in its place a reference to ''(o)(3)''; and

u. in newly redesignated paragraph (p), the reference to ''1990'' is removed and a reference to ''1995'' is added in its place.

The additions and revisions read as follows:

§ 210.10 Nutrition standards for lunches and menu planning methods.

(a) *General requirements for school lunches.* (1) In order to qualify for reimbursement, all lunches served to children age 2 and older, as offered by participating schools, shall, at a minimum, meet the nutrition standards provided in paragraph (b) of this section and the appropriate levels of calories and nutrients provided in: paragraph (c) or paragraph (i)(1) of this section for nutrient standard menu planning and assisted nutrient standard menu planning; paragraph (d)(1) of this section for the traditional food-based menu planning alternative; paragraph (d)(2) of this section for the enhanced food-based menu planning alternative; or as developed in accordance with the provisions in paragraph (l) of this section for other menu planning alternatives, whichever is applicable. * * * In addition, those school food authorities that use menu planning approaches as allowed under paragraph (l) of this section shall ensure that sufficient quantities of food are planned and produced to meet the provisions in paragraph (b) of this section and any minimum standards for food/menu items and quantities.

* * * * *

(b) *Nutrition standards for reimbursable lunches.* * * *

(3) The applicable recommendations of the 1995 Dietary Guidelines for Americans which are:

(i) Eat a variety of foods;

(ii) Limit total fat to 30 percent of calories;

(iii) Limit saturated fat to less than 10 percent of calories;

(iv) Choose a diet low in cholesterol;

(v) Choose a diet with plenty of grain products, vegetables, and fruits;

(vi) Choose a diet moderate in salt and sodium; and

(vii) Choose a diet moderate in sugars.

* * * * *

(5) School food authorities have several alternatives for menu planning in order to meet the nutrition standards of this paragraph and the applicable nutrient and calorie levels: nutrient standard menu planning as provided for in paragraph (i) of this section; assisted nutrient standard menu planning as provided for in paragraph (j) of this section; traditional food-based menu planning as provided for in paragraph (d)(1) of this section; enhanced food-based menu planning as provided for in paragraph (d)(2) of this section; or other menu planning approaches as provided for in paragraph (l) of this section.

* * *

(c) *Nutrient levels for school lunches/nutrient analysis.*

(1) * * *

MINIMUM REQUIREMENTS FOR NUTRIENT LEVELS FOR SCHOOL LUNCHES—NUTRIENT ANALYSIS ALTERNATIVES (SCHOOL WEEK AVERAGES)

Nutrients and energy allowances	Minimum requirements			Optional
	Preschool	Grades K–6	Grades 7–12	Grades K–3
Energy allowances (calories)	517	664	825	633
Total fat (as a percentage of actual total food energy	(1)	(2)	(2)	(2)
Total saturated fat (as a percentage of actual total food energy)	(1)	(3)	(3)	(3)
RDA for protein (g)	7	10	16	9
RDA for calcium (mg)	267	286	400	267
RDA for Iron (mg)	3.3	3.5	4.5	3.3
RDA for Vitamin A (RE)	150	224	300	200
RDA for Vitamin C (mg)	14	15	18	15

[1] The dietary guidelines recommend that after 2 years of age ''* * * children should gradually adopt a diet that, by about 5 years of age, contains no more than 30 percent of calories from fat.''

[2] Not to exceed 30 percent over a school week.

[3] Less than 10 percent over a school week.

(2) * * *

OPTIONAL NUTRIENT LEVELS FOR SCHOOL LUNCHES—NUTRIENT ANALYSIS ALTERNATIVES (SCHOOL WEEK AVERAGES)

Nutrients and energy allowances	Ages 3–6	Ages 7–10	Ages 11–13	Ages 14 and above
Energy allowances (calories)	558	667	783	846

OPTIONAL NUTRIENT LEVELS FOR SCHOOL LUNCHES—NUTRIENT ANALYSIS ALTERNATIVES (SCHOOL WEEK AVERAGES)—Continued

Nutrients and energy allowances	Ages 3–6	Ages 7–10	Ages 11–13	Ages 14 and above
Total fat (as a percentage of actual total food energy)	(1, 2)	(2)	(2)	(2)
Total saturated fat (as a percentage of actual total food energy)	(1, 3)	(3)	(3)	(3)
RDA for protein (g)	7.3	9.3	15.0	16.7
RDA for calcium (mg)	267	267	400	400
RDA for iron (mg)	3.3	3.3	4.5	4.5
RDA for Vitamin A (RE)	158	233	300	300
Vitamin C (mg)	14.6	15.0	16.7	19.2

[1] The dietary guidelines recommend that after 2 years of age ''* * * children should gradually adopt a diet that, by about 5 years of age, contains no more than 30 percent of calories from fat.''
[2] Not to exceed 30 percent over a school week.
[3] Less than 10 percent over a school week.

(d) *Minimum nutrient levels for school lunches/food-based menu planning alternatives.*

(1) *Traditional food-based menu planning alternative.* For the purposes of the traditional food-based menu planning alternative, as provided for in paragraph (k)(1) of this section, the following chart provides the minimum levels, by grade group, for calorie and nutrient levels for school lunches offered over a school week:

MINIMUM REQUIREMENTS FOR NUTRIENT LEVELS FOR SCHOOL LUNCHES—ENHANCED FOOD-BASED ALTERNATIVE (SCHOOL WEEK AVERAGES)

Nutrients and energy allowances	Minimum requirements		Optional	
	Preschool	Grades K–6	Grades 7–12	Grades K–3
Energy allowances (calories)	517	664	825	633
Total fat (as a percentage of (actual total food energy)	(1)	(2)	(2)	(2)
Total saturated fat (as a percentage of actual total food energy)	(1)	(3)	(3)	(3)
RDA for protein (g)	7	10	16	9
RDA for calcium (mg)	267	286	400	267
RDA for Iron (mg)	3.3	3.5	4.5	3.3
RDA for Vitamin A (RE)	150	224	300	200
RDA for Vitamin C (mg)	14	15	18	15

[1] The dietary guidelines recommend that after 2 years of age ''* * * children should gradually adopt a diet that, by about 5 years of age, contains no more than 30 percent of calories from fat.''
[2] Not to exceed 30 percent over a school week.
[3] Less than 10 percent over a school year.

* * * * *

(k) *Food-based menu planning alternatives.* School food authorities may choose to plan menus using either the traditional or enhanced food-based menu planning alternatives. Under these alternatives, specific food components shall be offered as provided in either paragraphs (k)(1) or (k)(2) of this section, whichever is applicable, and in paragraphs (k)(3) through (k)(5) of this section, as appropriate.

(1) *Minimum quantities-traditional food-based menu planning alternative.* (i) At a minimum, school food authorities choosing to plan menus using the traditional food-based menu planning alternative shall offer all five required food items in the quantities provided in the following chart:

TRADITIONAL FOOD-BASED MENU PLANNING ALTERNATIVE

Food components and food items	Minimum quantities				Recommended quantities
	Group 1, ages 1-2 preschool	Group II, ages 3-4 preschool	Group III, ages 5-8 K-3	Group IV, ages 9 and older grades 4-12	Group V, 12 years and older grades 7-12
Milk (as a beverage)	6 fl. oz.	6 fl. oz.	8 fl. Oz.	8 fl. oz.	8 fl. oz.
Meat or Meat Alternate (quantity of the edible portion as served):					
Lean meat, poultry, or fish	1 oz.	1½ oz.	1½ oz.	2 oz.	3 oz.
Cheese	1 oz.	1½ oz.	1½ oz.	2 oz.	3 oz.
Large egg	½	¾	¾	1	1½.
Cooked dry beans or peas	¼ cup	⅜ cup	⅜ cup	½ cup	¾ cup.
Peanut butter or other nut or seed butters.	2 Tbs	3 Tbs	3 Tbs	4 Tbs	6 Tbs.
The following may be used to meet no more than 50% of the requirement and must be used in combination with any of the above:					

TRADITIONAL FOOD-BASED MENU PLANNING ALTERNATIVE—Continued

Food components and food items	Minimum quantities				Recommended quantities
	Group 1, ages 1-2 preschool	Group II, ages 3-4 preschool	Group III, ages 5-8 K-3	Group IV, ages 9 and older grades 4-12	Group V, 12 years and older grades 7-12
Peanuts, soynuts, tree nuts, or seeds, as listed in program guidance, or an equivalent quantity of any combination of the above meat/meat alternate (1 oz. of nuts/seeds=1 oz. of cooked lean meat, poultry, or fish).	½ oz.=50%	¾oz.=50%	¾oz.=50%	1 oz.=50%	1½ oz.-50%.
Yogurt, plain or flavored, unsweetened or sweetened.	4 oz. or ½ cup	6 oz. or ¾ cup	6 oz. or ¾ cup	8 oz. or 1 cup	12 oz. or 1½ cup.
Vegetable or Fruit: 2 or more servings of vegetables, fruits or both.	½ cup	½ cup	½ cup	¾ cup	¾ cup
Grains/Breads: (Servings per week): Must be enriched or whole grain or made from flour which may include bran and/or germ. A serving is a slice of bread or an equivalent serving of biscuits, rolls, etc., or ½ cup of cooked rice, macaroni, noodles, other pasta products or cereal grains.	5 per week—minimum of ½ day.	8 per week—minimum of 1 per day.	8 per week—minimum of 1 per day.	8 per week—minimum of 1 per day.	10 per week—minimum of 1 per day.

(ii) Schools able to provide the appropriate quantities of food to children of each age/grade group should do so. Schools that cannot serve children of each age or grade level shall provide all school age children Group IV portions as specified in the table presented in this paragraph. Schools serving lunches to children of more than one age or grade level shall plan and produce sufficient quantities of food to provide Groups I–IV no less than the amounts specified for those children in the table presented in this paragraph, and sufficient quantities of food to provide Group V no less than the specified amounts for Group IV. It is recommended that such schools plan and produce sufficient quantities of food to provide Group V children the larger amounts specified in the table. Schools that provide increased portion sizes for Group V may comply with children's requests for smaller portion sizes of the food items; however, schools shall plan and produce sufficient quantities of food to at least provide the serving sizes required for Group IV.

(2) *Minimum quantities-enhanced food-based menu planning alternative.* At a minimum, school food authorities choosing to plan menus using the enhanced food-based menu planning alternative shall offer all five required food items in the quantities provided in the following chart:

* * * * *

(4) *Vegetables and fruits.* * * *

(ii) Under the enhanced food-based menu planning alternative, the requirement for this component is based on minimum daily servings *plus* an additional one-half cup in any combination over a five day period for children in kindergarten through grade six.

(5) *Grains/breads.* * * *

(ii) * * * Schools serving lunch 6 or 7 days per week should increase the weekly quantity by approximately 20 percent (1/5) for each additional day. When schools operate less than 5 days per week, they may decrease the weekly quantity by approximately 20 percent (1/5) for each day less than five.* * *

(iii) Under the traditional food-based menu planning alternative, schools shall serve daily at least one-half serving of bread or bread alternate to children in Group I and at least one serving to children in Groups II-V. Schools which serve lunch at least 5 days a week shall serve a total of at least five servings of bread or bread alternate to children in Group I and eight servings per week to children in Groups II-V.

* * * * *

(l) *Other menu planning alternatives.*

(1) *Modifications.* School food authorities may adopt any or all of the following menu planning alternatives. State agencies may require prior approval for adopting the alternatives, may establish guidelines for their adoption, or may permit their adoption without prior approval.

(i) Under the traditional or enhanced food-based menu planning alternatives provided for in paragraph (k) of this section, the meat/meat alternate component may be provided as a weekly total with a one ounce (or its equivalent for certain meat alternates) minimum daily amount, except that this provision does not apply if the minimum serving of meat/meat alternate is less than one ounce; or

(ii) Under the traditional or enhanced food-based menu planning alternatives, if only one age or grade is outside the established levels, schools may use the levels for the majority of children for both portions and the Recommended Dietary Allowances and lunchtime energy allowances.

(2) *Major changes or new alternatives: use and approval.* Subject to the applicable requirements of paragraph (*l*)(3) of this section, school food authorities or State agencies may modify one of the menu planning alternatives established in paragraphs (i) through (k) of this section or may develop their own menu planning approach. Any such alternate menu planning approaches shall be in writing for review and monitoring purposes, as applicable. No formal plan is required; the written

alternate approach may be in the form of guidance, protocol, or the like. The alternate approach shall address how the provisions in paragraph (*l*)(3) shall be met.

(i) Any school food authority-developed menu planning approach must have prior State agency review and approval.

(ii) Except as noted in paragraph (*l*)(2)(iii), any State agency-developed menu planning approach must have prior FNS approval.

(iii) Any State agency-developed menu planning approach is not subject to FNS review if:

(A) Five or more school food authorities within the State use the approach;

(B) The State agency maintains on-going oversight of the operation and evaluation of the alternative menu planning approach including making adjustments to the approach's policies and procedures, as necessary, to ensure compliance with the applicable provisions in paragraph (*l*)(3) of this section as needed; and

(C) The State agency issues an announcement notifying the public concerning the alternate menu planning approach prior to the implementation of the approach by any school food authority; such announcement shall be issued in a manner consistent with State procedures for public notification.

(3) *Major changes or new alternatives: required elements.* The following requirements shall be met by any alternate menu planning approach:

(i) The service of fluid milk, as provided in paragraph (m) of this section;

(ii) Offer versus serve for senior high students. To the extent possible, the offer versus serve procedures for an alternate approach shall follow the procedures in paragraphs (i)(2)(ii) and (k)(6) of this section, as appropriate. Any alternate approach which deviates from the provisions in paragraphs (i)(2)(ii) or (k)(6) of this section shall, at a minimum, indicate what age/grade groups are included in offer versus serve and establish the number and type of items, (and, if applicable, the quantities for the items) that constitute a reimbursable meal under offer versus serve. In addition, the alternate offer versus serve procedures shall include an explanation of how such procedures will reduce plate waste and provide a reasonable level of calories and nutrients for the meal as taken;

(iii) The nutrition standards in paragraphs (b)(1) through (b)(4) of this section. Any alternate approach shall indicate the age/grade groups to be served and how such approach is designed to meet these requirements for those age/grade groups;

(iv) The requirements for competitive foods in § 210.11 and Appendix B to this part.

(v) For alternate food-based menu planning approaches, the requirements for crediting food items and products provided for in paragraphs (k)(3) through (k)(5) and paragraph (m) of this section, in the appendices to this part, and in instructions and guidance issued by FNS;

(vi) Identification of a reimbursable meal at the point of service. To the extent possible, the procedures provided in paragraph (i)(2)(i) of this section for nutrient standard or assisted nutrient standard menu planning alternatives or for food-based menu planning alternatives provided in paragraph (k) of this section shall be followed. In addition, any instructions or guidance issued by FNS that further defines the elements of a reimbursable meal shall be followed when using the existing regulatory provisions. Any alternate approach that deviates from the provisions in paragraph (i)(2)(i) or paragraph (k) of this section shall indicate what constitutes a reimbursable meal, including the number and type of items (and, if applicable, the quantities for the items) which comprise the meal, and how a reimbursable meal is to be identified at the point of service.

(vii) An explanation of how the alternate approach can be monitored under the applicable provisions of § 210.18 and § 210.19, including a description of the records that will be maintained to document compliance with the program's administrative and nutrition requirements. However, to the extent that the procedures under § 210.19 are inappropriate for monitoring the alternate approach, the alternate approach shall include a description of review procedures which will enable the State agency to assess compliance with the nutrition standards in paragraphs (b)(1) through (b)(4) of this section; and

(viii) the requirements for weighted analysis and for approved software for nutrient standard menu planning as required by paragraphs (i)(4) and (i)(5) of this section unless a State agency-developed approach meets the criteria in paragraph (*l*)(2)(iii) of this section.

* * * * *

§ 210.10a [Removed]

7. Section 210.10a is removed.

§ 210.15 [Amended]

8. In § 210.15:

a. paragraph (b)(2) is amended by removing the words ''menu records as required under § 210.10a and production and''; and

b. paragraph (b)(3) is amended by removing the words ''or § 210.10a(b), whichever is applicable''.

§ 210.16 [Amended]

9. In § 210.16, paragraph (b)(1) is amended by removing the words ''or § 210.10a, whichever is applicable,'' wherever they appear.

§ 210.18 [Amended]

10. In § 210.18:

a. paragraph (b)(2)(ii) is revised;

b. the heading of paragraph (g)(2) introductory text is amended by removing the words ''food items/components as required by Program regulations'' and adding in their place the words ''meal elements (food items/components, menu items or other items, as applicable) as required under § 210.10'';

c. Paragraph (g)(2)(i) is amended by removing the words ''required food items/components'' and adding in their place the words ''meal elements (food items/components, menu items or other items, as applicable) as required under § 210.10'';

d. Paragraph (g)(2)(ii) is amended by removing the words ''the required number of food items/components'' and adding in their place the words ''the number of meal elements (food items/components, menu items or other items, as applicable) as required under § 210.10'';

e. Paragraph (g)(2)(iii) is amended by removing the words ''required food items/components'' and adding in their place the words ''meal elements (food items/components, menu items or other items, as applicable) as required under § 210.10'';

f. paragraph (h)(2) is amended by removing the words ''food items/components in the quantities required under § 210.10 or § 210.10a, in whichever is applicable'' and adding in their place the words ''meal elements (food items/components, menu items or other items, as applicable) as required under § 210.10''; and

g. paragraph (i)(3)(ii) is amended by removing the words ''required food items/components'' and adding in their place the words ''meal elements (food items/components, menu items or other items, as applicable) as required under § 210.10''.

The revision reads as follows:

§ 210.18. Administrative reviews.

* * * * *

(b) *Definitions.* * * *

(2) * * *

(ii) Performance Standard 2—Meal Elements. Lunches claimed for

reimbursement within the school food authority contain meal elements (food items/components, menu items or other items, as applicable) as required under § 210.10.

* * * * *

11. In § 210.19:

a. the first sentence of paragraph (a)(1) introductory text is amended by removing the reference to ''§ 210.10(o)'' and by adding in its place a reference to ''§ 210.10(p)'', and by removing the words ''or (d),'' and adding in their place the words '', (d), or (i)(1) or the procedures developed under § 210.10(*l*),'';

b. the second sentence of paragraph (a)(1) introductory text is amended by removing the words ''At a minimum, these evaluations shall be conducted once every 5 years and'' and adding in their place the words ''These evaluations'';

c. paragraph (a)(1) introductory text is further amended by adding five sentences at the end;

d. paragraphs (a)(1)(i), (a)(1)(ii), (a)(1)(iii), and (a)(1)(iv) are redesignated as paragraphs (a)(1)(ii), (a)(1)(iii), (a)(1)(v), and (a)(1)(vi), respectively, and new paragraphs (a)(1)(i) and (a)(1)(iv) are added;

e. the first sentence of newly redesignated paragraph (a)(1)(ii) is revised;

f. newly redesignated paragraph (a)(1)(iii) introductory text is revised;

g. paragraph (a)(3) is amended by removing the words ''or § 210.10a, whichever is applicable,''; and

h. paragraph (c)(6)(i) is amended by removing the words ''food item required under the meal pattern in § 210.10a or the food-based menu planning alternative in § 210.10(k), whichever is applicable'' and adding in their place the words ''meal element (food item/component, menu item or other items, as applicable) as required under § 210.10''.

The additions and revisions read as follows:

§ 210.19 Additional responsibilities.

(a) *General Program management.* * * *

(1) *Compliance with nutrition standards.** * * At a minimum, the State agency shall review at least one school for each type of menu planning alternative used in the school food authority. Review activity may be confined to the National School Lunch Program unless a menu planning alternative is used exclusively in the School Breakfast Program. The review must examine compliance with the nutrition standards in § 210.10(b) and § 210.10(c), (d), (i)(1), or (l), and § 220.10 (a), (c), (e)(1), or (h), as appropriate. State agencies are encouraged to review the School Breakfast Program as well if the school food authority requires technical assistance from the State agency to meet the nutrition standards or if corrective action is needed. Such review shall determine compliance with the appropriate requirements in § 220.8 and may be done at the time of the initial review or as part of a follow-up to assess compliance with the nutrition standards.

(i) At a minimum, State agencies shall conduct evaluations of compliance with the nutrition standards in § 210.10(b) and § 210.10(c), (d), (i)(1), or (l), as appropriate, at least once during each 5-year review cycle provided that each school food authority is evaluated at least once every 6 years, except that the first cycle shall begin July 1, 1996, and shall end on June 30, 2003. The compliance evaluation for the nutrition standards shall be conducted on the menu for any week of the current school year prior to the month in which such evaluation is conducted. The week selected must continue to represent the current menu planning system.

(ii) For school food authorities choosing the nutrient standard or assisted nutrient standard menu planning alternatives provided in § 210.10(i), § 210.10(j), or § 220.8(e), or § 220.8(f), or developed under the procedures in § 210.10(l) or § 220.8(h), the State agency shall assess the nutrient analysis to determine if the school food authority is properly applying the methodology in § 220.8(e), or § 220.8(f), or developed under the procedures in § 210.10(l) or § 220.8(h), as appropriate.* * *

(iii) For school food authorities choosing the food-based menu planning alternatives provided in § 210.10(k) or § 220.8(g) or developed under the procedures in § 210.10(l) or § 220.8(h), the State agency shall determine if the nutrition standards set forth in § 210.10(b) and § 210.10(d) are met. The State agency shall conduct a nutrient analysis in accordance with the procedures in § 210.10(i) or § 220.8(e), as appropriate, except that the State agency may:

* * * * *

(iv) For school food authorities following an alternate approach as provided under § 210.10(l) or § 220.8(h) that does not allow for use of the monitoring procedures in paragraphs (a)(1)(ii) or (a)(1)(iii), the State agency shall monitor compliance following the procedures developed in accordance with § 210.10(l) or § 220.8(h), whichever is appropriate.

* * * * *

Appendix A—Amended

12. In Appendix A to Part 210—Alternate Foods for Meals:

a. under Enriched Macaroni Products with Fortified Protein, paragraph 1.(a) is amended by removing the words ''or § 210.10a, whichever is applicable,'';

b. under Vegetable Protein Products, paragraph 1. introductory text is amended by removing the words ''or § 210.10a, whichever is applicable'';

c. under Vegetable Protein Products, paragraph 1.(d) is amended by removing the words ''or § 210.10a, whichever is applicable'';

d. under Vegetable Protein Products, paragraph 1.(e) is amended by removing the words ''or § 210.10a, whichever is applicable'';

e. under Vegetable Protein Products, paragraph 3. is amended by removing the words ''or § 210.10a, whichever is applicable''.

Appendix C—Amended

13. In Appendix C to Part 210-Child Nutrition Labeling Program:

a. paragraph 2.(a) is amended by removing the words ''or § 210.10a, whichever is applicable'';

b. paragraph 3.(c)(2) is amended by removing the words ''or § 210.10a, whichever is applicable'' and by removing the words ''or § 220.8a, whichever is applicable'';

c. paragraph 6. introductory text is amended by removing the words ''or § 210.10a, whichever is applicable'' and by removing the words ''or § 220.8a, whichever is applicable''.

PART 220—SCHOOL BREAKFAST PROGRAM

1. The authority citation continues to read as follows:

Authority: 42 U.S.C. 1773, 1779, unless otherwise noted.

§ 220.2 [Amended]

2. In § 220.2:

a. paragraph (b) is amended by removing the words ''or § 220.8a, whichever is applicable,''; and

b. paragraph (t) is amended by removing the words ''or § 220.8, whichever is applicable,''.

§ 220.7 [Amended]

3. In § 220.7, paragraph (e)(2) is amended by removing the words ''or § 220.8a, whichever is applicable,''.

4. In § 220.8:

a. paragraph (a)(1) is amended by removing the second occurrence of the

word ''or'' and adding in its place a comma and by adding the words '', or (h)'' after the reference to ''(e)(1)'';

b. paragraph (a)(2) is amended by removing the second occurrence of the word ''or'' and adding in its place the words ''or (h)'' after the reference to ''(e)(1)'';

c. paragraph (a)(3) is revised;

d. paragraph (a)(4) is amended by removing the reference to ''1990'' and adding in its place a reference to ''1995'';

e. the first sentence of paragraph (a)(5) is revised;

f. the first sentence of paragraph (a)(6) is amended by removing the word ''or'' and adding in its place a comma and by adding the words ''or those developed under paragraph (h)'' after the reference to ''paragraph (e)(1)'' and the second sentence of paragraph (a)(6) is amended by removing the third occurrence of the word ''or'' and adding in its place a comma and by adding the words ''or those developed under paragraph (h)'' after the reference to ''paragraph (e)(1)'';

g. the table in paragraph (b)(1) is revised;

h. the table in paragraph (b)(2) is revised;

i. paragraph (c) is revised;

j. the heading of paragraph (e)(4) and paragraph (e)(9) are amended by removing the words ''National Nutrient Database'' and adding in their place the words ''Child Nutrition Database'';

k. paragraphs (e)(4) and (e)(8) are amended by removing the words ''National Nutrient Database for the Child Nutrition Programs'' wherever they appear and by adding the words ''Child Nutrition Database'' in their place;

l. the heading of paragraph (g) is revised and introductory text is added;

m. the introductory text of paragraph (g)(1) is amended by removing the words ''in the table in paragraph (g)(2) of this section'' and adding in their place the words ''either in the table in paragraph (g)(2) or (g)(3) of this section, whichever is applicable'';

n. paragraph (g)(2) is revised;

o. paragraphs (h) through (m) are redesignated as paragraphs (i) through (n), respectively, and a new paragraph (h) is added; and

p. in newly redesignated paragraph (n), the reference to ''1990'' is removed and a reference to ''1995'' is added in its place.

The additions and revisions are as follows:

§ 220.8 Nutrition standards for breakfast and menu planning alternatives.

(a) *Nutrition standards for breakfasts for children age 2 and over.* * * *

(3) The applicable recommendations of the 1995 Dietary Guidelines for Americans which are: eat a variety of foods; limit total fat to 30 percent of calories; limit saturated fat to less than 10 percent of calories; choose a diet low in cholesterol; choose a diet with plenty of grain products, vegetables, and fruits; choose a diet moderate in salt and sodium; and choose a diet moderate in sugars.

* * * * *

(5) School food authorities have several alternatives for menu planning in order to meet the requirements of this paragraph including the appropriate nutrient and calorie levels: nutrient standard menu planning as provided for in paragraph (e) of this section; assisted nutrient standard menu planning as provided for in paragraph (f) of this section; traditional food-based menu planning as provided for in paragraph (g)(1) of this section; enhanced food-based menu planning as provided for in paragraph (g)(2) of this section; or other menu planning approaches as provided for in paragraph (h) of this section.

* * *

* * * * *

(b) *Nutrient levels/nutrient analysis.* (1) * * *

MINIMUM REQUIREMENTS FOR NUTRIENT LEVELS FOR SCHOOL BREAKFASTS—NUTRIENT ANALYSIS ALTERNATIVES (SCHOOL WEEK AVERAGES)

Nutrients and energy allowances	Minimum requirements		Optional
	Preschool	Grades K–12	Grades 7–12
Energy allowances (calories)	388	554	618
Total fat (as a percentage of actual total food energy	(1)	(2)	(2)
Total saturated fat (as a percentage of actual total food energy)	(1)	(3)	(3)
RDA for protein (g)	5	10	12
RDA for calcium (mg)	200	257	300
RDA for iron (mg)	2.5	3.0	3.4
RDA for Vitamin A (RE)	113	197	225
RDA for Vitamin C (mg)	11	13	14

1 The dietary guidelines recommend that after 2 years of age ''* * * children should gradually adopt a diet that, by about 5 years of age, contains no more than 30 percent of calories from fat.''

2 Not to exceed 30 percent over a school week.

3 Less than 10 percent over a school week.

(2) * * *

OPTIONAL NUTRIENT LEVELS FOR SCHOOL BREAKFASTS—NUTRIENT ANALYSIS ALTERNATIVES (SCHOOL WEEK AVERAGES)

Nutrients and energy allowances	Ages 3–6	Ages 7–10	Ages 11–13	Ages 14 and above
Energy allowances (calories)	419	500	588	625
Total fat (as a percentage of actual total food energy	(1, 2)	(2)	(2)	(2)
Total saturated fat (as a percentage of actual total food energy)	(1, 3)	(3)	(3)	(3)
RDA for protein (g)	5.50	7.00	11.25	12.50
RDA for calcium (mg)	200	200	300	300
RDA for iron (mg)	2.5	2.5	3.4	3.4
RDA for Vitamin A (RE)	119	175	225	225

OPTIONAL NUTRIENT LEVELS FOR SCHOOL BREAKFASTS—NUTRIENT ANALYSIS ALTERNATIVES (SCHOOL WEEK AVERAGES)—Continued

Nutrients and energy allowances	Ages 3–6	Ages 7–10	Ages 11–13	Ages 14 and above
Vitamin C (mg)	11.00	11.25	12.50	14.40

[1] The dietary guidelines recommend that after 2 years of age ''* * * children should gradually adopt a diet that, by about 5 years of age, contains no more than 30 percent of calories from fat.''
[2] Not to exceed 30 percent over a school week.
[3] Less than 10 percent over a school week.

(c) *Minimum nutrient levels for school breakfasts/food-based menu planning alternatives.* (1) *Traditional food-based menu planning alternative.* For the purposes of the traditional food-based menu planning alternative, as provided for in paragraph (g)(2) of this section, the following chart provides the minimum levels, by grade group, for calorie and nutrient levels for school breakfasts offered over a school week:

MINIMUM REQUIREMENTS FOR NUTRIENT LEVELS FOR SCHOOL BREAKFASTS—TRADITIONAL FOOD-BASED ALTERNATIVE (SCHOOL WEEK AVERAGES)

Nutrients and energy allowances	Age 2	Ages 3, 4, 5	Grades K–12
Energy allowances (calories)	325	388	554
Total fat (as a percentage of actual total food energy	(1)	(1)	(2)
Total saturated fat (as a percentage of actual total food energy)	(1)	(1)	(3)
RDA for protein (g)	4	5	10
RDA for calcium (mg)	200	200	257
RDA for iron (mg)	2.5	2.5	3.0
RDA for Vitamin A (RE)	100	113	197
RDA for Vitamin C (mg)	10	11	13

[1] The dietary guidelines recommend that after 2 years of age ''* * * children should gradually adopt a diet that, by about 5 years of age, contains no more than 30 percent of calories from fat.''
[2] Not to exceed 30 percent over a school week.
[3] Less than 10 percent over a school week.

(2) *Enhanced food-based menu planning alternative.* For the purposes of the enhanced food-based menu planning alternative, as provided for in paragraph (g)(1) of this section, the following chart provides the minimum levels, by grade group, for calorie and nutrient levels for school breakfasts offered over a school week:

MINIMUM REQUIREMENTS FOR NUTRIENT LEVELS FOR SCHOOL BREAKFAST—ENHANCED FOOD-BASED ALTERNATIVE (SCHOOL WEEK AVERAGES)

Nutrients and energy allowances	Required for		Option for
	Preschool	Grades K–12	Grades 7–12
Energy allowances (calories)	388	554	618
Total fat (as a percentage of actual total food energy)	(1, 2)	(2)	(2)
Total saturated fat (as a percentage of actual total food energy)	(1, 3)	(3)	(3)
RDA for protein (g)	5	10	12
RDA for calcium (mg)	200	257	300
RDA for iron (mg)	2.5	3.0	3.4
RDA for Vitamin A (RE)	113	197	225
Vitamin C (mg)	11	13	14

[1] The dietary guidelines recommend that after 2 years of age ''* * * children should gradually adopt a diet that, by about 5 years of age, contains no more than 30 percent of calories from fat.''
[2] Not to exceed 30 percent over a school week.
[3] Less than 10 percent over a school week.

* * * * *

(g) *Food-based menu planning alternatives.* School food authorities may choose to plan menus using either the traditional or enhanced food-based menu planning alternatives. Under these alternatives, specific food components shall be offered as provided in either paragraphs (g)(1) or (g)(2) of this section, whichever is applicable, and in paragraphs (g)(3) and (g)(4) of this section, as appropriate.

* * * * *

(2) *Minimum quantities-food-based menu planning alternatives.* (i) At a minimum, schools using the traditional food-based menu planning alternative shall serve breakfasts in the quantities provided in the following chart:

MINIMUM REQUIREMENTS—TRADITIONAL FOOD-BASED MENU PLANNING ALTERNATIVE

Meal component	Ages 1–2	Ages 3, 4, and 5	Grades K–12
Milk (Fluid) (As a beverage, on cereal or both)	4 fl. oz	6 fl. oz	8 fl. oz.
Juice/Fruit/Vegetable: Fruit and/or vegetable; or full-strength fruit juice or vegetable juice.	¼ cup	½ cup	½ cup.

MINIMUM REQUIREMENTS—TRADITIONAL FOOD-BASED MENU PLANNING ALTERNATIVE—Continued

Meal component	Ages 1–2	Ages 3, 4, and 5	Grades K–12
Select One Serving From Each of the Following Components or Two From One Component:			
Grains/Breads: one of the following or an equivalent combination:			
Whole-grain or enriched bread	½ slice	½ slice	1 slice.
Whole-grain or enriched biscuit, roll, muffin, etc	½ serving	½ serving	1 serving.
Whole-grain, enriched or fortified cereal	¼ cup or ⅓ oz.	⅓ cup or ½ oz.	¾ cup or 1 oz.
Meat or Meat Alternates:			
Meat/poulty or fish	½. oz	½. oz	1 oz.
Cheese	½. oz	½. oz	1 oz.
Egg (large)	½	½	½.
Peanut butter or other nut or seed butters	1 Tbsp.	1 Tbsp.	2 Tbsp.
Cooked dry beans and peas	2 Tbsp.	2 Tbsp.	4 Tbsp.
Nuts and/or seeds (as listed in program guidance).[1]	½. oz	½. oz	1 oz.
Yogurt, plain or flavored, unsweetened or sweetened	2 oz. or ¼ cup	2 oz. or ¼ cup	4 oz. or ½ cup.

[1] No more than 1 ounce of nuts and/or seeds may be served in any one meal.

(ii) At a minimum, schools using the enhanced food-based menu planning alternative shall serve breakfasts in the quantities provided in the following chart:

MINIMUM REQUIREMENTS—ENHANCED FOOD-BASED MENU PLANNING ALTERNATIVE

Meal Component	Required for		Operation for	
	Ages 1–2	Preschool	Grades K–12	Grades 7–12
Milk (Fluid) (As a beverage, on cereal or both).	4 fl. oz	6 fl. oz	8 fl. oz	8 fl. oz.
Juice/Fruit/Vegetable: Fruit and/or vegetable; or full-strenth fruit juice or vegetable juice.	¼ cup	½ cup	½ cup	½ cup.
Select One Serving From Each of the Following Components or Two From One Component:				
Grain/Breads: one of the following or an equivalent combination:				
Whole-grain or enriched bread	½ slice	½ slice	1 slice	1 slice.
Whole-grain or enriched biscuit, roll, muffin, etc.	½ serving	½ serving	1 serving	1 serving.
Whole-grain, enriched or fortfied cereal	¼ cup or ⅓ oz	⅓ cup or ½ oz	¾ cup of 1 oz	¾ cup or 1 oz. Plus an additional serving of one of the Grains/Breads above.
Meat or Meat Alternates:				
Meat/poulty or fish	½ oz	½ oz	1 oz	1 oz.
Chesse	½ oz	½ oz	1 oz	1 oz.
Egg (large)	½	½	½	½.
Peanut butter or other nut or sed butters	1 Tbs	1 Tbs	2 Tbs	2 Tbs.
Cooked dry beans and peas	2 Tbs	2 Tbs	4 Tbs	4 Tbs.
Nuts and/or seeds (as listed in program guidance) [1].	½ oz	½ oz	1 oz	1 oz.
Yogrut, plain or flavored, unsweetened or sweetened.	2 oz. or ¼ cup	2 oz. or ¼ cup	4 oz. or ½ cup	4 oz. or ½ cup.

[1] No more than 1 ounce of nuts and/or seeds may be served in any one meal.

* * * * *

(h) *Other menu planning alternatives.*

(1) *Modification.* Under the traditional or enhanced food-based menu planning alternatives, school food authorities may, if only one age or grade is outside the established levels, use the levels for the majority of children for both portions and the Recommended Dietary Allowances and breakfast energy allowances. State agencies may require prior approval for adopting this alternative, may establish guidelines for its adoption, or may permit its adoption without prior approval.

(2) *Major changes or new alternatives: use and approval.* Subject to the requirements of paragraphs (h)(3) of this section, school food authorities or State agencies may modify one of the menu planning alternatives established in paragraphs (e) through (g) of this section or may develop their own menu planning approach. Any such alternate menu planning approaches shall be in writing for review and monitoring purposes, as applicable. No formal plan is required; the written alternate approach may be in the form of guidance, protocol, or the like. The alternate approach shall address how the provisions in paragraph (h)(3) shall be met.

(i) Any school food authority developed menu planning approach

shall have prior State agency review and approval.

(ii) Except as noted in paragraph (h)(2)(iii), any State agency-developed menu planning alternative shall have prior FNS approval.

(iii) Any State agency developed alternative is not subject to FNS review if:

(A) Five or more school food authorities within the State use the approach;

(B) The State agency maintains on-going oversight of the operation and evaluation of the alternative menu planning approach including making adjustments to the approach's policies and procedures, as necessary, to ensure compliance with the applicable provisions in paragraph (h)(3) of this section as needed; and

(C) The State agency issues an announcement notifying the public concerning the alternate menu planning approach prior to the implementation of the approach by any school food authority; such announcement shall be issued in a manner consistent with State procedures for public notification.

(3) *Major changes or new alternatives: required elements*. The following requirements shall be met by any alternate menu planning approach:

(i) Service of fluid milk, as provided in paragraph (h)(1) of this section;

(ii) The nutrition standards in paragraphs (a)(1) through (a)(4) of this section. Any alternate approach shall indicate the age/grade groups to be served and how such approach is designed to meet these requirements for those age/grade groups.

(iii) The requirements for competitive foods in § 220.12 and appendix B to this part;

(iv) For alternate food-based menu planning approaches, the requirements for crediting food items and products provided for in paragraphs (g)(2) and (i) of this section, in the appendices to this part, in § 210.10(k)(3) through (k)(5), § 210.10 (m) and in the instructions and guidance issued by FNS;

(v) Identification of a reimbursable meal at the point of service. To the extent possible, the procedures provided in paragraph (e)(2)(i) of this section for nutrient standard or assisted nutrient standard-type menu planning approaches or in paragraph (g) of this section for food-based-type menu planning approaches shall be followed. In addition, any instructions or guidance issued by FNS that further defines the elements of a reimbursable meal shall be followed when using the existing regulatory provisions. Any alternate approach that deviates from the provisions in paragraph (e)(2)(i) or paragraph (g) of this section shall indicate what constitutes a reimbursable meal, including the number and type of items (and, if applicable, the quantities for these items) which comprise the meal, and how a reimbursable meal is to be identified at the point of service. Further, if the alternate approach provides for offer versus serve as allowed under paragraph (e)(2)(ii) of this section for nutrient standard or assisted nutrient standard-type menu planning approaches or in paragraph (g)(3) of this section for food-based-type menu planning approaches, the alternate approach shall follow those provisions to the extent possible. Any alternate approach that deviates from the provisions in paragraph (e)(2)(ii) or (g)(3) of this section shall, at a minimum, indicate what age/grade groups are included in offer versus serve and establish the number and type of items (and, if applicable, the quantities for the items) that constitute a reimbursable meal under offer versus serve. In addition, the alternate offer versus serve procedures shall include an explanation of how such procedures will reduce plate waste and provide a reasonable level of calories and nutrients for the meal *as taken;*

(vi) An explanation of how the alternate approach can be monitored under the applicable provisions of § 210.18 and § 210.19, including a description of the records that will be maintained to document compliance with the program's administrative and nutrition requirements. However, to the extent that the procedures under § 210.19 are inappropriate for monitoring the alternate approach, the alternate approach shall include a description of review procedures which will enable the State agency to assess compliance with the nutrition standards in paragraphs (a)(1) through (a)(4) of this section; and

(vii) The requirements for weighted analysis and for approved software for nutrient standard menu planning as required by paragraphs (e)(4) and (e)(5) of this section unless a State agency developed approach meets the criteria in paragraph (h)(2)(iii) of this section.

* * * * *

§ 220.8a [Removed]

5. Section 220.8a is removed.

§ 220.9 [Amended]

6. In § 220.9, paragraph (a) is amended by removing the words ''or § 220.8a, whichever is applicable,''.

§ 220.14 [Amended]

7. In § 220.14, paragraph (h) is amended by removing the words ''or § 220.8a(a)(1), (b)(2), and (b)(3), whichever is applicable''.

Appendix A Amended

8. In Appendix A to Part 220—Alternate Foods for Meals, paragraph 1.(a) is amended by removing the words ''or 220.8a, whichever is applicable''.

Appendix C Amended

9. In Appendix C to Part 220—Child Nutrition (CN) Labeling Program:

a. paragraph 2.(a) is amended by removing the words ''or 210.10a, whichever is applicable'';

b. paragraph 3.(c)(2) is amended by removing the words ''or 210.10a, whichever is applicable'' and is further amended by removing the words ''or 220.8a, whichever is applicable''; and

c. paragraph 6. is amended by removing the words ''or 210.10a, whichever is applicable'' and is further amended by removing the words ''or 220.8a, whichever is applicable''.

* * * * *

Dated: April 27, 1998.

Shirley R. Watkins,

Under Secretary for Food, Nutrition and Consumer Services.

[FR Doc. 98–11654 Filed 5–1–98; 8:45 am]

BILLING CODE 3410–30–U

Federal Register

Monday
May 4, 1998

Part V

Department of Health and Human Services

National Institutes of Health

Recombinant DNA Advisory Committee Meeting; Notice

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Recombinant DNA Advisory Committee; Notice of Meeting

Pursuant to Public Law 92–463, notice is hereby given of a meeting of the Recombinant DNA Advisory Committee on June 18–19, 1998. The meeting will be held at the National Institutes of Health, Building 31C, 6th Floor, Conference Room 10, 9000 Rockville Pike, Bethesda, Maryland 20892, starting on June 18, 1998, at approximately 9 a.m., and will recess at approximately 5 p.m. The meeting will reconvene on June 19, 1998, at approximately 9:00 a.m. and will adjourn at approximately 5:00 p.m. The meeting will be open to the public. Agenda items will include: (1) Discussions of recently submitted human gene transfer protocols, (2) discussions of novel gene therapy issues, (3) data management activities related to human gene transfer clinical trials, (4) discussions related to the NIH Guidelines for Research Involving Recombinant DNA Molecules (59 FR 34496), and (5) other matters to be considered by the Committee. Attendance by the public will be limited to space available.

Debra W. Knorr, Acting Director, Office of Recombinant DNA Activities, National Institutes of Health, MSC 7010, 6000 Executive Boulevard, Suite 302, Bethesda, Maryland 20892–7010, Phone (301) 496–9838, FAX (301) 496–9839, will provide summaries of the meeting and a roster of committee members upon request. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact Ms. Knorr in advance of the meeting.

OMB's ''Mandatory Information Requirements for Federal Assistance Program Announcements'' (45 FR 39592, June 11, 1980) requires a statement concerning the official government programs contained in the Catalog of Federal Domestic Assistance. Normally NIH lists in its announcements the number and title of affected individual programs for the guidance of the public. Because the guidance in this notice covers virtually every NIH and Federal research program in which DNA recombinant molecule techniques could be used, it has been determined not to be cost effective or in the public interest to attempt to list these programs. Such a list would likely require several additional pages. In addition, NIH could not be certain that every Federal program would be included as many Federal agencies, as well as private organizations, both national and international, have elected to follow the NIH Guidelines. In lieu of the individual program listing, NIH invites readers to direct questions to the information address above about whether individual programs listed in the Catalog of Federal Domestic Assistance are affected.

Dated: April 24, 1998.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 98–11674 Filed 5–1–98; 8:45 am]

BILLING CODE 4140–01–M

Federal Register

Monday
May 4, 1998

Part VI

Department of Education

List of Correspondence; Office of Special Education and Rehabilitative Services; Notice

DEPARTMENT OF EDUCATION

List of Correspondence—Office of Special Education and Rehabilitative Services

AGENCY: Department of Education.

ACTION: List of Correspondence from June 4, 1997 through September 30, 1997.

SUMMARY: The Secretary is publishing the following list pursuant to section 607(d) of the Individuals with Disabilities Education Act (IDEA). Under section 607(d) of IDEA, the Secretary is required, on a quarterly basis, to publish in the **Federal Register** ''a list of correspondence from the Department of Education received by individuals during the previous quarter that describes the interpretations of the Department of Education of this Act or the regulations implemented pursuant to this Act.''

FOR FURTHER INFORMATION CONTACT: JoLeta Reynolds or Rhonda Weiss. Telephone: (202) 205–5507. Individuals who use a telecommunications device for the deaf (TDD) may call (202) 205–5465 or the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8:00 a.m. and 8:00 p.m., Eastern time, Monday through Friday, except Federal holidays.

Individuals with disabilities may obtain a copy of this notice in an alternate format (e.g., Braille, large print, audiotape, or computer diskette) on request to Katie Mincey, Director of the Alternate Formats Center. Telephone: (202) 205–8113.

SUPPLEMENTARY INFORMATION: The following list identifies correspondence from the Department issued between June 4, 1997, the effective date of the Individuals with Disabilities Education Act Amendments of 1997, Public Law 105–17 (IDEA Amendments of 1997), and September 30, 1997.

Included on the list are those letters that contain interpretations of the requirements of IDEA and its implementing regulations, as well as letters that the Department believes will assist the public in understanding the requirements of the law and its regulations. The date and topic addressed by a letter are identified, and summary information is also provided, as appropriate. To protect the privacy interests of the individual or individuals involved, personally identifiable information has been deleted, as appropriate.

Part A—General Provisions

Section 602 Definitions

Topic Addressed: Educating Children With Particular Disabilities

- Letter dated July 15, 1997 to an individual, (personally identifiable information redacted), regarding students with deafness and hearing impairments.
- Letter dated July 21, 1997 to an individual, (personally identifiable information redacted), regarding requirements for evaluating students suspected of having Attention Deficit Disorder (ADD) and for serving eligible students with ADD.
- Letter dated September 23, 1997 to an individual, (personally identifiable information redacted), regarding a student who has cancer and has been unable to attend school.

Section 607 Requirements For Prescribing Regulations

Topic Addressed: Scope of Department's Responsibility To Disseminate Reports Developed Pursuant to Section 607(d) of IDEA

- Letter dated August 12, 1997 to Jed Oliver, Austin, Texas.

Part B—Assistance for Education of All Children With Disabilities

Section 612 State Eligibility

Topic Addressed: Free Appropriate Public Education for Eligible Youth With Disabilities Incarcerated in Adult Prisons

- Letter dated June 30, 1997 to Thomas M. Maddock, California Department of Corrections.
- Letter dated September 4, 1997 to State of California Governor Pete Wilson, regarding responsibilities of all States to serve this population.
- Letter dated September 12, 1997 to Mr. Jack E. Shook, Illinois State Board of Education, concerning a State's responsibility to resolve a complaint filed under Part B of IDEA on behalf of an incarcerated youth with a disability.

Topic Addressed: Interagency Coordination and Role of State Medicaid Agency: Confidentiality Rights

- Letter dated July 22, 1997 to John T. Benson, Superintendent, Wisconsin Department of Public Instruction.

Topic Addressed: Personnel Standards

- Letter dated June 9, 1997 to Mr. Joseph Fisher, Assistant Commissioner, Tennessee Department of Education, regarding the applicability of the public participation provisions of IDEA–97 to a proposal that modifies information contained in a prior year's Part B State plan.
- Letter dated August 18, 1997 to Kimberly K. McClanahan, Austin, Texas, regarding State licensure for school psychologists.

Topic Addressed: Participation of Children With Disabilities in State and District-Wide Assessments

- Dear Colleague letter dated September 29, 1997, from Judith E. Heumann, Assistant Secretary for the Office of Special Education and Rehabilitative Services, and Norma V. Cantu, Assistant Secretary for the Office for Civil Rights.

Section 614 Evaluations, Eligibility Determinations, Individualized Education Programs, and Educational Placements

Topic Addressed: Evaluations

- Letter dated September 9, 1997 to Dr. Dennis Clarkson, East Helena, Montana, regarding criteria for administration of standardized tests.

Section 615 Procedural Safeguards

Topic Addressed: Independent Educational Evaluations

- Letter dated September 9, 1997 to Jerri Katzerman and Kathleen Ross, Phoenix, Arizona, regarding disclosure to school district of the results of an independent educational evaluation without parental consent.

Topic Addressed: Authority of Due Process Hearing Officers and State-Level Review Officers

- Letter dated June 11, 1997 to Mike Armstrong, Director, Division of Exceptional Children's Services, Kentucky Department of Education, regarding the authority of due process hearing officers and State-level review officers to impose financial penalties and sanctions, to issue an order against the State educational agency (SEA) even if the SEA is not a party to the hearing, and to determine what placement constitutes a child's current educational placement when agreement cannot be reached.
- Letter dated June 11, 1997 to Mr. Richard Steinke, former Director of Special Education, Maryland Department of Education, and
- Letter dated June 11, 1997 to an individual (personally identifiable information redacted), regarding the authority of due process hearing officers to compel the attendance of witnesses.

Topic Addressed: Pendency Placement

- Letter dated July 1, 1997 to Mr. Howard Klebanoff, Fairfield, Connecticut, regarding whether a school district is required to maintain a placement developed for a two-year-old child with a disability under the Part H program during the pendency of a due process hearing conducted under Part B of IDEA.

Topic Addressed: Suspensions of up To Ten School Days

- Letter dated July 15, 1997 to U.S. Congressman Robert C. Scott and Letter dated September 4, 1997 to U.S. Senator William Frist.

Electronic Access to This Document:

Anyone may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or portable document format (pdf) on the World Wide Web at either of the following sites:

http://ocfo.ed.gov/fedreg.htm
http://www.ed.gov/news.html

To use the pdf you must have the Adobe Acrobat Reader Program with Search, which is available free at either of the previous sites. If you have questions about using the pdf, call the U.S. Government Printing Office toll free at 1–888–293–6498.

Anyone may also view these documents in text copy only on an electronic bulletin board of the Department. Telephone: (202) 219–1511 or, toll free, 1–800–222–4922. The documents are located under Option G—Files/Announcements, Bulletins, and Press Releases.

Note: The official version of a document is the document published in the **Federal Register**.

Dated: April 28, 1998.

(Catalog of Federal Domestic Assistance Number 84.027, Assistance to States for Education of Children with Disabilities)

Judith E. Heumann,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 98–11708 Filed 5–1–98; 8:45 am]

BILLING CODE 4000–01–P

federal register

Monday
May 4, 1998

Part VII

Department of Education

National Institute on Disability and Rehabilitation Research; Notice of Proposed Funding Priorities for Fiscal Years 1998–1999 for Rehabilitation Research and Training Centers

DEPARTMENT OF EDUCATION

National Institute on Disability and Rehabilitation Research; Notice of Proposed Funding Priorities for Fiscal Years 1998–1999 for Rehabilitation Research and Training Centers

SUMMARY: The Secretary proposes funding priorities for two Rehabilitation Research and Training Centers (RRTCs) under the National Institute on Disability and Rehabilitation Research (NIDRR) for fiscal years 1998–1999. The Secretary takes this action to focus research attention on areas of national need. These priorities are intended to improve rehabilitation services and outcomes for individuals with disabilities.

DATES: Comments must be received on or before June 3, 1998.

ADDRESSES: All comments concerning these proposed priorities should be addressed to Donna Nangle, U.S. Department of Education, 600 Maryland Avenue, S.W., room 3418, Switzer Building, Washington, D.C. 20202–2645. Comments may also be sent through the Internet: comments@ed.gov

You must include the term ''Mental Retardation-RRTC's'' in the subject line of your electronic message.

FOR FURTHER INFORMATION CONTACT: Donna Nangle. Telephone: (202) 205–5880. Individuals who use a telecommunications device for the deaf (TDD) may call the TDD number at (202) 205–2742. Internet: Donna__Nangle@ed.gov

Individuals with disabilities may obtain this document in an alternate format (e.g., Braille, large print, audiotape, or computer diskette) on request to the contact person listed in the preceding paragraph.

SUPPLEMENTARY INFORMATION: This notice contains proposed priorities under the Disability and Rehabilitation Research Projects and Centers Program for two RRTCs related to: aging with mental retardation and disability statistics.

These proposed priorities support the National Education Goal that calls for every adult American to possess the skills necessary to compete in a global economy.

The authority for the Secretary to establish research priorities by reserving funds to support particular research activities is contained in sections 202(g) and 204 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 761a(g) and 762).

The Secretary will announce the final priorities in a notice in the **Federal Register**. The final priorities will be determined by responses to this notice, available funds, and other considerations of the Department. Funding of a particular project depends on the final priority, the availability of funds, and the quality of the applications received. The publication of these proposed priorities does not preclude the Secretary from proposing additional priorities, nor does it limit the Secretary to funding only these priorities, subject to meeting applicable rulemaking requirements.

Note: This notice of proposed priorities does not solicit applications. A notice inviting applications under this competition will be published in the **Federal Register** concurrent with or following the publication of the notice of final priorities.

Rehabilitation Research and Training Centers

The authority for RRTCs is contained in section 204(b)(2) of the Rehabilitation Act of 1973, as amended (29 U.S.C. 760–762). Under this program, the Secretary makes awards to public and private organizations, including institutions of higher education and Indian tribes or tribal organizations, for coordinated research and training activities. These entities must be of sufficient size, scope, and quality to effectively carry out the activities of the Center in an efficient manner consistent with appropriate State and Federal laws. They must demonstrate the ability to carry out the training activities either directly or through another entity that can provide that training.

The Secretary may make awards for up to 60 months through grants or cooperative agreements. The purpose of the awards is for planning and conducting research, training, demonstrations, and related activities leading to the development of methods, procedures, and devices that will benefit individuals with disabilities, especially those with the most severe disabilities.

Description of Rehabilitation Research and Training Centers

RRTCs are operated in collaboration with institutions of higher education or providers of rehabilitation services or other appropriate services. RRTCs serve as centers of national excellence and national or regional resources for providers and individuals with disabilities and the parents, family members, guardians, advocates or authorized representatives of the individuals.

RRTCs conduct coordinated, integrated, and advanced programs of research in rehabilitation targeted toward the production of new knowledge to improve rehabilitation methodology and service delivery systems, to alleviate or stabilize disabling conditions, and to promote maximum social and economic independence of individuals with disabilities.

RRTCs provide training, including graduate, pre-service, and in-service training, to assist individuals to more effectively provide rehabilitation services. They also provide training including graduate, pre-service, and in-service training, for rehabilitation research personnel.

RRTCs serve as informational and technical assistance resources to providers, individuals with disabilities, and the parents, family members, guardians, advocates, or authorized representatives of these individuals through conferences, workshops, public education programs, in-service training programs and similar activities.

RRTCs disseminate materials in alternate formats to ensure that they are accessible to individuals with a range of disabling conditions.

NIDRR encourages all Centers to involve individuals with disabilities and individuals from minority backgrounds as recipients of research training, as well as clinical training.

The Department is particularly interested in ensuring that the expenditure of public funds is justified by the execution of intended activities and the advancement of knowledge and, thus, has built this accountability into the selection criteria. Not later than three years after the establishment of any RRTC, NIDRR will conduct one or more reviews of the activities and achievements of the Center. In accordance with the provisions of 34 CFR 75.253(a), continued funding depends at all times on satisfactory performance and accomplishment.

Proposed General RRTC Requirements

The Secretary proposes that the following requirements apply to these RRTCs pursuant to these absolute priorities unless noted otherwise. An applicant's proposal to fulfill these proposed requirements will be assessed using applicable selection criteria in the peer review process. The Secretary is interested in receiving comments on these proposed requirements:

The RRTC must provide: (1) Applied research experience; (2) training on research methodology; and (3) training to persons with disabilities and their families, service providers, and other appropriate parties in accessible formats on knowledge gained from the Center's research activities.

The RRTC must develop and disseminate informational materials based on knowledge gained from the Center's research activities, and disseminate the materials to persons with disabilities, their representatives, service providers, and other interested parties.

The RRTC must involve individuals with disabilities and, if appropriate, their representatives, in planning and implementing its research, training, and dissemination activities, and in evaluating the Center.

The RRTC must conduct a state-of-the-science conference and publish a comprehensive report on the final outcomes of the conference. The report must be published in the fourth year of the grant.

Priorities

Under 34 CFR 75.105(c)(3), the Secretary proposes to give an absolute preference to applications that meet the following priorities. The Secretary proposes to fund under this competition only applications that meet one of these absolute priorities.

Proposed Priority 1: Aging With Mental Retardation

Background

There are an estimated 550,000 adults 40 years and older with mental retardation (McNeil, J., ''Special Report on Mental Retardation and Mental Illness,'' Bureau of the Census, Survey of Income and Program Participation, 1997). This population has aging-related health and social care needs specific to their condition (McCarthy, J. and Mullan, E., ''The Elderly with a Learning Disability (Mental Retardation): An Overview,'' *International Psychogeriatrics,* 8 (3), pgs. 489–501, 1996).

Current research has begun to identify secondary conditions that are causally related to aging with mental retardation. For instance, there is evidence that persons aging with mental retardation and a lifelong history of certain medications (e.g., psychotropic, anti-seizure) have a higher risk of developing secondary conditions such as osteoporosis or tardive dyskinesia (Adlin, M., ''Health Care Issues,'' *Older Adults with Developmental Disabilities: Optimizing Choice and Change,* Baltimore, Paul H. Brookes Pub. Co., pgs. 49–60, 1993). Persons with Downs Syndrome have a higher prevalence of Alzheimer's disease at an earlier age than the general population (Janicki, M., ''Practice Guidelines for the Clinical Assessment and Care Management of Alzheimer's Disease and Other Dementias Among Adults with Intellectual Disability,'' *Journal of Intellectual Disability Research,* 40, pgs. 374–382, 1996). In addition, persons aging with mental retardation experience aging-related conditions like hypertension, osteoarthritis, heart disease, obesity, and high cholesterol levels. Treating such conditions in persons aging with mental retardation is complicated by difficulty in communicating about nutrition, exercise, and prescribed treatment protocols (Edgerton, R. ''Some People Know How to Be Old,'' *Life Course Perspectives on Adulthood and Old Age,* American Association on Mental Retardation Monograph Series, pgs. 53–66, 1994) and by poor health maintenance practices (Edgerton, R. et al., ''Health Care for Aging People with Mental Retardation,'' *Mental Retardation,* 32 (2), pgs. 146–150, April, 1994).

The health status and needs of older women with mental retardation have received little research attention and merit special consideration. We have limited information on the availability of screening for breast or cervical cancers, onset and reactions to menopause, and treatment for osteoporosis in menopausal and post-menopausal women, or the general health status of women with mental retardation as they age (Murphy, L., *Aging with Developmental Disabilities: Women's Health Issues,* Texas ARC, 1997).

Approximately 80 percent of adults with mental retardation live at home, often with their families of origin, and many are known to the service system (Seltzer, M., ''Aging Parents with Co-Resident Adult Children: The Impact of Lifelong Caregiving,'' *Life Course Perspectives on Adulthood and Old Age,* American Association on Mental Retardation, pgs. 3–18, 1994). A major issue facing older family caregivers is planning for the future of their children aging with mental retardation. A shortage of alternative living arrangements and the aging of family members contribute to this concern (Heller, T., ''Support Systems, Well-being, and Placement Decision-making Among Older Parents and Their Adult Children with Developmental Disabilities,'' *Older Adults with Developmental Disabilities; Optimizing Choice and Change,* pgs. 107–122, 1993). For many families, planning for the future financial needs of their members with mental retardation is a particular concern.

There has been little research examining family caregiving throughout the life of the person aging with mental retardation, particularly analysis of sibling roles in the caregiving process. Cross-sectional studies have suggested that older family caregivers perceive less personal burden than do younger caregivers (Hayden, M., ''Support, Problem-Solving/Coping Ability, and Personal Burden of Younger and Older Caregivers of Adults with Mental Retardation,'' *Mental Retardation,* 35, pgs. 364–372, 1997). With increasing age, there appears to be greater acceptance of the family member and greater reciprocity in caregiving as the child with mental retardation takes on caregiving roles with aging parents (Heller, T., ''Adults with Mental Retardation as Supports to their Parents: Effects on Parental Caregiving Appraisal,'' *Mental Retardation,* 35, pgs. 338–346, 1997).

For adults living in residential settings, family involvement has been low. However, such involvement has many benefits for the adult including increasing social interaction, oversight of residential conditions, provision of recreational opportunities, assistance with financial planning activities (Feinstein, C., ''A Survey of Family Satisfaction with Regional Treatment Centers and Community Services to Persons with Mental Retardation in Minnesota,'' Philadelphia: Conroy and Feinstein Associates, 1988). Older adults with mental retardation have lower rates of family involvement than younger adults (Hill, B., *Living in the Community: A Comparative Study of Foster Homes and Small Group Homes for People with Mental Retardation,* Minneapolis: University of Minnesota, Center for Residential and Community Services, 1989).

Approximately 40 percent of working age persons with mental retardation work outside the home (McNeil, J., ''Current Population Reports: Americans With Disabilities,'' U.S. Census Bureau, P70–61, 1997). Research indicates that as persons with mental retardation grow older, they experience new work-related problems because of functional decline and changing job requirements. Furthermore, many individuals with mental retardation and their employers are unaware of the resources and services available to help them solve these problems (Parent, W., ''Social Integration in the Workplace; An Analysis of the Interaction Activities of Workers with Mental Retardation and their Co-workers,'' *Education and Training in Mental Retardation,* 27, pgs. 28–37, 1992).

Many individuals aging with mental retardation have limited access to assistive technology that might help them cope with aging-related functional

limitations such as decreased mobility. Assistive technology has generally been underutilized by persons with mental retardation of all ages because few devices successfully incorporate accommodations that assist persons with cognitive impairments in their use (Wehmeyer, M., ''The Use of Assistive Technology by People with Mental Retardation and Barriers to This Outcome: A Pilot Study,'' *Technology and Disability,* 4, pgs. 195–204, 1995). Also, staff and families often are insufficiently aware of assistive technology solutions or of options for its funding.

Information on health care utilization rates and educational and employment status of persons with mental retardation is not readily available. Although a number of Federal agencies, some States, and private research institutions collect mental retardation data, too often these data are unanalyzed. Secondary analysis of existing data on mental retardation would help identify research questions and gaps in service for persons with mental retardation and their families.

Proposed Priority 1

The Secretary proposes to establish an RRTC on Aging with Mental Retardation to assist individuals aging with mental retardation and their families to prevent secondary conditions, maintain general overall health, plan for the future, and maximize independence. The RRTC shall:

(1) Identify, develop, and evaluate programs that promote health, including early recognition and treatment of secondary conditions, with special emphasis on the needs of women aging with mental retardation;

(2) Investigate determinants of the role played by the family of origin in providing care for persons aging with mental retardation, with special emphasis on adults in residential settings and the role of siblings in the caregiving process;

(3) Identify, develop, and evaluate techniques that assist individuals with mental retardation and their families plan for future needs, including future financial needs;

(4) Analyze and disseminate information from national data sets and public health surveillance data on adults with mental retardation to identify health care utilization, educational, and employment patterns;

(5) Identify, develop, and evaluate accommodations that help maintain employment;

(6) Identify best practices in the use of assistive technology or universal design to compensate for physical and psychological consequences of aging with mental retardation.

In carrying out these purposes, the RRTC must:

- Coordinate with other relevant research and demonstration activities sponsored by the National Center on Medical Rehabilitation Research at the National Institutes of Health, the National Institute on Mental Health, the National Institute on Aging, the Rehabilitation Services Administration, the Department of Veteran Affairs, the Social Security Administration, the Health Care Financing Administration, and the Rehabilitation Research Training Centers on Managed Care and Personal Assistance Services.

Proposed Priority 2

Background

A number of Federal, State, and private agencies collect information on persons with disabilities. While some of this information is analyzed, significant amounts of unanalyzed data are generated. The National Health Interview Survey, the Survey of Income and Program Participation, the California Work and Health Survey, other surveys, population data, information on program participation, data on institutions, and market research profiles provide many indicators about the lives of persons with disabilities. Policy makers, program directors, and others need information on the incidence, prevalence and distribution of disabilities, as well as the integration of persons with disabilities into society. Likewise, reliable information on use of services such as long-term care, transportation, vocational rehabilitation and personal care assistance is extremely valuable to individuals with disabilities and their organizations, planners, researchers and policy makers.

The 1994–95 National Health Interview Survey on Disability (NHIS–D) conducted by the National Center for Health Statistics was developed, in part, to meet the demands for data from numerous agencies (Verbrugee, L.M., ''The Disability Supplement to the 1994–95 National Health Interview Survey,'' for the National Center for Health Statistics). The 1994–95 NHIS–D offers an excellent opportunity to analyze many variables related to persons with disabilities. Researchers can use the NHIS–D to determine access to health care and personal services, use of assistive technologies, and community participation, among other key descriptors.

The major Federal agencies that routinely collect information on disability publish only a small fraction of statistical information derived from that data. Most agency data collections are driven by statutory requirements and agencies report statistics about receipt of program services and subsets of eligible individuals. These constraints limit the usefulness of the data that are collected. Easier access to a full range of data on disability for policy makers and others may be assured, in part, by providing a central resource for disability statistics and information and an organized and comprehensive system for the collection, analysis, and synthesis of the data. A disability statistics center can use existing data to conduct meta-analyses focused on problems such as employment, use of health care and social services, household situations, family composition, and educational levels.

Researchers, policy makers and others have begun to work within the framework of the ''New Paradigm of Disability,'' a contextual model of disability that recognizes the role of the built environment and of social and cultural factors in the disablement-enablement process. Most national surveys fail to measure the role of environmental factors in the operational definitions of disability used, tending to focus solely on health problems as the locus of disability. (Kirchner, C., ''Looking Under the Streetlamp: Inappropriate Use of Measures Just Because They Are There'' *Journal of Disability Policy Studies,* 7:77–90. 1996). The Americans with Disabilities Act (ADA) emphasizes barrier removal, accessibility, and reasonable accommodations. Barriers may be physical or may involve programmatic exclusions and other social obstacles. Despite increasing recognition that data systems must be enhanced to meet newly developing information needs, such as those suggested by the New Paradigm of Disability and the ADA, there is a lack of environmental measures that have been tested for accuracy and reliability. This has been an impediment to the development of survey and census measures of disability at the national and State levels.

New survey measures must be developed to accurately and reliably depict disability in the context of individual health and environmental factors. The resulting questions must take into account the interaction between the individual and the environment and examine the effects of that interaction on the ability to carry

out daily activities and normative social roles. This includes examination of the immediate living arrangements of the person's household and the larger community environment. Architectural accessibility features, assistive technologies, transportation, and other accommodations and supports must be addressed.

With increased global interest in disability, researchers must be aware of new developments in the World Health Organization sponsored International Committee on Impairments, Disabilities, and Handicaps, and consider international data sets for purposes of comparison with U.S. data and, as appropriate, to generate hypotheses to be tested against U.S. data.

Given these needs and opportunities in the promotion and use of disability statistics, a Center that can identify major sources and perform secondary analyses of existing data, including meta-analyses on important topics, will be a cornerstone of a future disability data initiative. The Center can also contribute to the future of disability research through the development, testing, and dissemination of data collection items that address the New Paradigm of Disability.

Proposed Priority 2

The Secretary proposes to establish an RRTC to improve collection and analysis of disability statistics to guide development of disability policies. The RRTC shall:

(1) Conduct secondary analyses of critical and relevant data sets, including estimates of the incidence, prevalence, and distribution of various disabilities, and disseminate analytical reports;

(2) Develop new measures, designed for inclusion in general population surveys, addressing the effect of physical, policy, and social environments on persons with disabilities; and disseminate these to survey designers, researchers, and statistical agencies;

(3) Conduct meta-analyses on key variables such as, but not limited to, employment, income and health status, using a range of relevant existing data sets on disability; and analyze the policy implications based upon the results of these analyses;

(4) Identify major gaps in demographic and program data on the disabled population and develop strategies for addressing those gaps; and

(5) Serve as a resource to researchers, consumers and consumer groups, planners, and policy makers for statistical information on disability and develop and implement a marketing plan to support dissemination of that information.

In carrying out the purposes of the priority, the RRTC must coordinate with relevant activities sponsored by the Centers for Disease Control and Prevention, the Office of the Assistant Secretary for Planning and Evaluation in the Department of Health and Human Services, the Bureau of the Census, the Department of Labor, and the National Institutes of Health.

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Invitation to Comment

Interested persons are invited to submit comments and recommendations regarding these proposed priorities. All comments submitted in response to this notice will be available for public inspection, during and after the comment period, in Room 3424, Switzer Building, 330 C Street S.W., Washington, D.C., between the hours of 9:00 a.m. and 4:30 p.m., Monday through Friday of each week except Federal holidays.

Applicable Program Regulations: 34 CFR Parts 350 and 353.

Program Authority: 29 U.S.C. 760–762.

(Catalog of Federal Domestic Assistance Numbers 84.133B, Rehabilitation Research and Training Centers)

Dated: April 28, 1998.

Judith E. Heumann,

Assistant Secretary for Special Education and Rehabilitative Services.

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Part VIII

Department of Education

Office of Special Education and Office of Rehabilitative Services; Notice of Final Priorities and Notice Inviting Applications for New Awards for Fiscal Year 1998; Notice

DEPARTMENT OF EDUCATION

Office of Special Education and Rehabilitative Services; Notice of Final Priorities

SUMMARY: The Secretary announces final priorities for two programs administered by the Office of Special Education and Rehabilitative Services (OSERS) under the Individuals with Disabilities Education Act (IDEA), as amended. The Secretary may use these priorities to support grants in Fiscal Year 1998 and subsequent years. The Secretary takes this action to focus Federal assistance on identified needs to improve results for children with disabilities. These final priorities are intended to ensure wide and effective use of program funds.

EFFECTIVE DATE: These priorities take effect on June 3, 1998.

FOR FURTHER INFORMATION CONTACT: The Department address and telephone number to contact for information on each final priority is listed under the appropriate priority.

SUPPLEMENTARY INFORMATION: This notice contains three final priorities under two Special Education programs authorized by the Individuals with Disabilities Education Act: Technical Assistance and Dissemination to Improve Services and Results for Children with Disabilities (two proposed priorities); and Research and Innovation to Improve Services and Results for Children with Disabilities (one proposed priority).

On February 19, 1998, the Secretary published a notice of proposed priorities for these programs in the **Federal Register** (63 FR 8530).

These final priorities support the National Education Goals by improving understanding of how to enable children and youth with disabilities to reach higher levels of academic achievement.

The publication of these priorities does not preclude the Secretary from proposing additional priorities, nor does it limit the Secretary to funding only these priorities, subject to meeting applicable rulemaking requirements. Funding of particular projects depends on the availability of funds, and the quality of the applications received.

Note: This notice of final priorities does not solicit applications. A notice inviting applications under these competitions is published in a separate notice in this issue of the **Federal Register**.

Analysis of Comments and Changes

In response to the Secretary's invitation in the notice of proposed priorities, six parties submitted comments. An analysis of the comments and of the changes in the proposed priorities follows. Technical and other minor changes—as well as suggested changes the Secretary is not legally authorized to make under the applicable statutory authority—are not addressed.

Priority 1—Center for Positive Behavioral Interventions and Supports

Comment: One commenter recommended that the priority use the exact, broad, language of IDEA, i.e. ''strategies, including positive behavioral interventions and supports'', rather than the term ''positive behavioral support'', which the commenter believed would narrow the scope of interventions, strategies and supports that can be studied by the Center.

Discussion: It is the Secretary's intent to support a broad view of possible interventions. The language in the priority has been changed to be consistent with this intent.

Changes: The priority has been revised to refer to positive behavioral interventions and supports throughout.

Comment: One commenter suggested that the State policies, which the Center must evaluate, should include policies that support family involvement in the provision of services.

Discussion: The Secretary agrees with the commenter that family participation in the development and implementation of behavioral supports is important. The proposed priority would not have precluded projects from addressing this issue. Paragraph (a) purposely does not delineate the specific areas of State and local policy on school-wide positive behavioral supports and interventions that the Center must address. Applicants have the discretion to identify and evaluate the critical areas.

Changes: None.

Comment: One commenter suggested that the coordinated network under paragraph (b) be broadened to include, ''related services and other mental health professionals'', to ensure that the priority did not exclude contributions made to the mental health of children by school psychologists, school social workers, and other related services personnel.

Discussion: The term mental health professional as used in the proposed priority was not intended to exclude related services personnel who provide mental health services. The Secretary agrees that referring to ''related services professionals'' as part of the coordinated network would add further clarity.

Changes: The proposed priority has been revised to include related services professionals under paragraph (b).

Comment: One commenter suggested that the list of agencies with which the Center may conduct outreach activities under paragraph (b) include Child Mental Health Services and Maternal and Child Health at the Department of Health and Human Services since both programs fund demonstration projects and sponsor school health clinics.

Discussion: The priority lists some of the relevant agencies and federally supported technical assistance and information agencies and projects with which the Center may conduct outreach activities. While the list is not meant to be exhaustive, and applicants may identify additional collaborative agencies, the Secretary agrees that the two agencies identified by the commenter should be included among those listed in the priority.

Changes: The proposed priority has been revised to include OHS'' Child Mental Health Services, and Maternal and Child Health.

Comment: One commenter recommended that information exchanges under paragraph (c) involve an array or menu of methods for reporting positive behavioral interventions, strategies, and supports.

Discussion: It is the Secretary's intent to provide for a range of methods for exchanging information. While the proposed priority did not preclude such a range, the Secretary agrees that an array of methods should be required.

Changes: Paragraph (c) of the proposed priority has been revised to require that informational exchanges include an array of methods for sharing information.

Comment: One commenter recommended that the information dissemination efforts described in paragraph (e) include steps toward implementation, methods to sustain efforts, and mechanisms for ensuring increased replication and effective dissemination.

Discussion: The priority is intended to promote awareness of the value of school-wide positive behavioral supports and interventions and to build the necessary knowledge base, momentum, and resource network to encourage their widespread application. To the extent the Center acquires information regarding replication of supports and interventions, it may share that information with the field. However, requiring the Center to develop guidelines for replication are beyond the work scope of the priority. Implementation, on the other hand, will be conducted by the coordinated network under paragraph (b).

Changes: None.

Comment: One commenter suggested that the blueprint described in paragraph (f) include underlying components necessary to institute an effective program.

Discussion: Paragraph (f) is intended to support the development of a blueprint that the Secretary may use to provide future technical assistance to LEAs and SEAs in implementing positive behavioral interventions and support programs. The components of the blueprint are left to the discretion and expertise of the Center.

Changes: The priority has been modified to clarify that the blueprint developed under paragraph (f) shall be submitted to the Secretary for purposes of providing future technical assistance on positive behavioral interventions and supports.

Comment: One commenter suggested that the focus of the results-based evaluation under paragraph (h) be clarified.

Discussion: The Secretary agrees that the proposed priority did not sufficiently identify the focus of the results-based evaluation and has clarified the language.

Changes: Paragraph (h) has been revised to clarify that the results-based evaluation must be supported by evaluation data gathered from the project of the technical assistance provided under paragraphs (b), (c), (d), and (e) of the proposed priority.

Priority 2—National Center on Dispute Resolution

Comment: One commenter suggested that the priority include additional clarification regarding expectations associated with specific tasks, especially those with fiscal implications.

Discussion: The Secretary prefers to afford applicants the discretion to determine how best to accomplish the activities specified in the priority, including how (or if) to budget for certain tasks. Moreover, the Secretary believes it would be inappropriate to specify additional estimated costs in the priority.

Change: None.

Priority—Directed Research Projects

Focus 1—Beacons of Excellence

Comment: One commenter suggested that Focus 1—Beacons of Excellence under the proposed Directed Research Projects priority be changed to make explicit that the prime criterion for a beacon school is student performance measured in a valid and reliable manner.

Discussion: The priority as proposed required that projects ''identify and study schools or programs achieving exemplary results for students with disabilities.'' The commenter's suggested change may strengthen the emphasis on student results that are measured in a rigorous manner.

Changes: The priority has been changed to require that schools or programs be identified on the basis of valid and reliable measures of student results.

Focus 2—The Sustainability of Promising Innovations

Comment: One commenter suggested that Focus 2 be broadened to include research documenting the effectiveness of applying assistive technology to help students benefit from their educational experience.

Discussion: The Secretary agrees with the commenter that research documenting the extent to which assistive technology benefits students with disabilities is important, however, Focus 2 is primarily interested in issues of sustainability of innovations that hold positive results for children with disabilities within a school restructuring/reform context. OSEP supports research related to assistive technology under the Special Education—Technology and Media Services for Individuals with Disabilities program. The closing date for applications under that program for the fiscal year 1998 competition for the Steppingstones of Technology Innovations for Students with Disabilities priority, is May 8, 1998.

Changes: None.

Focus 6—Synthesize and Communicate a Professional Knowledge Base: Contributions to Research and Practice

Comment: One commenter suggested that the syntheses areas included in paragraphs (a)-(f) be rewritten to address the ''Method and effects of interventions on * * *'', so that the syntheses projects will not only identify and synthesize positive outcomes, but will also identify and synthesize those ''things'' which lead to positive outcomes. The commenter further suggested that the project assess what the field currently knows regarding self-determination and develop an agenda of future research questions.

Discussion: The Secretary believes that the concerns of the commenter are taken into account when rigorous research methods are applied in the design and execution of the meta-analysis for the synthesis project. With regard to the commenter's suggestion that the project assess what the field currently knows regarding self-determination and develop an agenda of future research questions, the Secretary emphasizes that it is the purpose of the synthesis project to assess what is known from research and report the findings. However, it is not the intent of this priority to develop an agenda of future research questions.

Change: None.

Focus 8—Educating Children with Disabilities in Inclusive Settings

Comment: One commenter suggested that assistive technology be listed as a systems change strategy worthy of investigation under Focus 8.

Discussion: The Secretary agrees with the commenter that assistive technology is a strategy worthy of investigation under this priority. As Focus 8 is written, there is nothing that precludes an applicant from using assistive technology as a strategy to promote access and inclusion of students with disabilities in regular classrooms.

Change: None.

Special Education—Technical Assistance and Dissemination To Improve Services and Results For Children With Disabilities

Purpose of Program

The purpose of this program is to provide technical assistance and information through such mechanisms as institutes, regional resource centers, clearinghouses, and programs that support States and local entities in building capacity, to improve early intervention, educational, and transitional services and results for children with disabilities and their families, and to address systemic-change goals and priorities.

Priorities

Under 34 CFR 75.105(c)(3), the Secretary gives an absolute preference to applications that meet one of the following priorities. The Secretary will fund under these competitions only applications that meet one of these absolute priorities:

Absolute Priority 1—Center for Positive Behavioral Interventions and Supports

Background

Problem behaviors are one of the most common reasons children with disabilities are excluded from school, community, and work. Research on positive behavioral interventions and supports is rapidly developing and demonstrates how school-wide approaches to these interventions and supports can enable students with disabilities who exhibit problem behaviors to achieve independence and become participants and contributing

members in school, community, and work.

Despite this growing body of knowledge, however, awareness of the value of these approaches and their use in the educational environment remains limited. There is clearly a need to develop a greater awareness on the part of educators and others of the important contribution that positive behavioral interventions and supports can make in achieving successful results for children with disabilities who exhibit challenging problem behaviors and for improving the overall climate of schools.

Part B of IDEA includes provisions intended to guide and assist schools in cases in which the behavior of a child with a disability impedes learning. For example, the Act specifies that teams developing individualized education programs (IEPs) consider, when appropriate, positive behavioral interventions and supports and other strategies to address behavior problems. The following priority is intended to assist schools in designing and implementing effective school-wide positive behavioral intervention and support programs by creating a greater awareness of these research-based approaches, including identifying effective State and local policies which support the approaches, and by building the necessary knowledge base, momentum, and resource network to encourage their widespread application.

Priority

The Secretary establishes an absolute priority for the purpose of supporting a Center for Positive Behavioral Interventions and Supports that builds awareness and motivation for schools to design and implement school-wide support for children with disabilities who exhibit challenging problem behaviors. The Center must, at a minimum:

(a) Evaluate the state of policy and practice regarding school-wide positive behavioral interventions and supports, including relevant State and local policies and guidelines, and financing and cross-agency coordination strategies for supporting behavioral intervention and support services. Develop and apply criteria for identifying exemplary programs of school-wide positive behavioral interventions and supports. Identify and publicize schools implementing such programs.

(b) Establish a coordinated network of researchers, educators, parents, related services, and mental health professionals, and policy makers who will serve as resources to schools and each other in designing and implementing school-wide positive behavioral intervention and support programs. Conduct outreach activities with relevant federally supported technical assistance and information activities and projects (e.g., the National Institute of Disability and Rehabilitation Research programs, the Federal Resource Center, Regional Resource Centers, the Office of Educational Research and Improvement (OERI), the Office of Elementary and Secondary Education's Safe and Drug Free Schools program, the Department of Justice's Office of Juvenile Justice and Delinquency Prevention, the Department of Health and Human Services' Child Mental Health Services and Maternal and Child Health programs), State and local organizations, and other relevant organizations and projects to promote public awareness of positive behavioral intervention and support practices and the availability of information, supports, and services.

(c) Provide for information exchanges between researchers and practitioners who direct exemplary behavioral intervention and support programs and educators who seek to design and implement effective school-wide programs. Information must be exchanged through an array of methods, including, but not limited to, two regional forums during each of the first four years of the project, and a national forum in the fifth year. The forums must be designed to expand the coordinated network, develop awareness of research-based practices, and create a dialogue about school-wide positive behavioral intervention and support programs. The forums must include examples and descriptions of exemplary school-wide programs and effective State and local policies, and may include other appropriate activities such as visits to exemplary sites.

(d) Provide information to the national information center for children with disabilities. Collaborate with the national information center for children with disabilities on the development and dissemination of materials on positive behavioral interventions and supports. Establish linkages with the national information center for children with disabilities to ensure timely and accurate dissemination of information to customers.

(e) Organize, synthesize, and report information to teachers, administrators, parents, and other interested parties regarding research, policy, and practice advances on positive behavioral interventions and supports. Develop and disseminate products that are easy to use and accessible (e.g., print and electronic formats). Respond to written and telephone inquiries with research-based information.

(f) Develop, and submit to the Secretary, a blueprint for providing further technical assistance to local educational agencies (LEAs) and State educational agencies (SEAs), which includes alternative designs of effective school-wide positive behavioral intervention and support programs and alternative approaches to delivering technical assistance in their implementation. Identify barriers to assisting school districts across the country in developing and implementing school-wide positive behavioral interventions and support programs and develop strategies for overcoming these barriers.

(g) Budget for two trips annually to Washington, D.C., for: (1) A two-day Research to Practice Division Project Directors' meeting; and (2) a meeting to collaborate with the Research to Practice Division project officer and the other related projects, and to share information and discuss findings and methods of dissemination.

(h) Conduct, every two years, a results-based evaluation supported by evaluation data gathered from the project of the technical assistance provided under activities (b), (c), (d), and (e). Such an evaluation must be conducted by a review team consisting of three experts approved by the Secretary, and must measure elements such as—

(1) The type of technical assistance provided and the perception of its quality by the target audience;

(2) The changes that occurred as a result of the technical assistance provided; and

(3) The review team will examine the progress that the Center has made with respect to the objectives in its application.

The services of the review team, including a two-day site visit to the Center is to be performed during the last half of the Center's second and fourth years and may be included in that year's evaluation required under 34 CFR 75.590. Costs associated with the services to be performed by the review team must also be included in the Center's budget for years two and four. These costs are estimated to be approximately $4,000 for each evaluation cycle.

Under this priority, the Secretary will make one award for cooperative agreements with a project period of up to 60 months subject to the requirements of 34 CFR 75.253(a) for continuation awards. In determining whether to continue the center for the fourth and fifth years of the project

period, the Secretary, in addition to the requirements of 34 CFR 75.253(a), will consider—

(a) The timeliness and effectiveness with which all requirements of the negotiated cooperative agreement have been or are being met by the Center; and

(b) The degree to which the Center's design and methodology demonstrates the potential for advancing significant new knowledge.

Absolute Priority 2—National Center on Dispute Resolution

Background

Disputes within the education community affect systemic change and results for children with disabilities. An alternative dispute resolution process such as mediation is less costly to schools and families, can help to minimize adverse effects on a child's progress in school, and is more apt to foster positive relationships between families and educators than would litigation. Technical assistance that focuses primarily on alternative dispute resolution procedures would assist State educational agencies (SEAs), local educational agencies (LEAs), and families to resolve their differences in a less adversarial and more responsive manner than through standard due process hearing procedures, while enabling State and local entities to achieve systemic change and promoting improved early intervention, educational, and transitional results for children with disabilities. This priority would support a national center to provide technical assistance to SEAs, LEAs, and families on resolving their differences. The center would provide technical assistance on mediation and other effective dispute resolution procedures that do not impede parental rights under IDEA or otherwise conflict with the statute. As such, the center would provide technical assistance as needed in order to facilitate the effective use of due process procedures. The chief aim of the center, however, would be to provide needed technical assistance to enable parties to effectively resolve their disputes through more expedient and less confrontational means, including mediation.

Priority

The Secretary establishes an absolute priority to support a national technical assistance center on dispute resolution procedures, including mediation. The center must—

(a) Provide technical assistance on dispute resolution procedures (with an emphasis on procedures other than due process hearings) to all States, outlying areas, and the freely associated States (to the extent such States participate in Parts B or C of IDEA), and the Bureau of Indian Affairs. At a minimum, the center must—

(1) Conduct annual needs assessments;

(2) Develop technical assistance agreements with each entity; and

(3) Provide technical assistance, training, and on-going consultation based on the technical assistance agreements (including technical assistance, training, and on-going consultation at the local level, as appropriate).

(b) Coordinate with the existing technical assistance to parent project to provide technical assistance to all parent training and information centers and community parent resource centers on dispute resolution procedures;

(c) Develop informational exchanges about dispute resolution procedures between the center and other technical assistance and information dissemination systems;

(d) Establish an advisory group of persons with complementary expertise on dispute resolution procedures to advise the center on its technical assistance activities;

(e) Collect information on the use and effectiveness of mediation and other dispute resolution procedures. The effectiveness of any such procedure would be based on the degree to which all parties feel satisfied with the result and agree that an efficient and expeditious process has been followed;

(f) Identify, and disseminate information on, best practices in dispute resolution;

(g) Maintain an information data base that includes: (1) State practices on dispute resolution, including information on mediator training and the implementation of the mediation requirements in Parts B and C of IDEA; and (2) research, literature, and products about dispute resolution procedures.

(h) Examine the effectiveness of State efforts regarding mediation and other dispute resolution proceedings. Analyze information on the number of due process hearings, mediation sessions, and other dispute resolution proceedings conducted and on the outcome of each such hearing, session, or proceeding;

(i) Collaborate with the national information center on children with disabilities regarding the dissemination of information to respond to information needs. Establish linkages with the national information center on children with disabilities to ensure timely and accurate dissemination of information to customers;

(j) Serve as a clearinghouse for information on dispute resolution procedures;

(k) Conduct an annual forum each year of the project that identifies the unique features of dispute resolution procedures, the strengths of the procedures, and the potential for adopting the procedures. At least one forum must address the specific needs of underrepresented and underserved populations; another must address dispute resolution procedures (including mediator training issues) in the context of general education reform;

(l) Evaluate the impact of the center's technical assistance system and its components relative to the—

(1) Assessed needs of States and jurisdictions;

(2) Needs of parents; and

(3) Linkages with other technical assistance and information dissemination systems; and

(m) Budget for two trips annually to Washington, D.C., for: (1) a two-day Research to Practice Division Project Directors' meeting; and (2) a meeting to collaborate with the Research to Practice Division project officer and the other related projects to share information, and to discuss findings and methods of dissemination.

(n) Conduct, every two years, a results-based evaluation of the technical assistance provided. Such an evaluation must be conducted by a review team consisting of three experts approved by the Secretary and must measure elements such as—

(1) The type of technical assistance provided and the perception of its quality by the target audience; and

(2) The changes that occurred as a result of the technical assistance provided; and

(3) The progress that the center has made with respect to the objectives in its application.

The services of the review team, including a two-day site visit to the center, are to be performed during the last half of the center's second year and may be included in that year's evaluation required under 34 CFR 75.590. Costs associated with the services to be performed by the review team must also be included in the center's budget for year two. These costs are estimated to be approximately $4,000.

Under this priority, the Secretary will make one award for a cooperative agreement with a project period of up to 60 months subject to the requirements of 34 CFR 75.253(a) for continuation awards. In determining whether to

continue the center for the fourth and fifth years of the project period, the Secretary, in addition to the requirements of 34 CFR 75.253(a), will consider—

(a) The timeliness and effectiveness with which all requirements of the negotiated cooperative agreement have been or are being met by the center.

(b) The degree to which the center's design and methodology demonstrates the potential for advancing significant new knowledge.

FOR FURTHER INFORMATION CONTACT: For further information on the priorities under the Technical Assistance and Dissemination to Improve Services and Results for Children with Disabilities Program contact the U.S. Department of Education, 600 Independence Avenue, SW., room 3527, Switzer Building, Washington, DC 20202–2641. Telephone: (202) 205–8038. FAX: (202) 205–8105. Internet: Debra__Sturdivant@ed.gov

Individuals who use a telecommunications device for the deaf (TDD) may call the TDD number: (202) 205–8953.

Program Authority: Section 685 of IDEA.

Special Education—Research and Innovation To Improve Services and Results For Children With Disabilities

Purpose of Program

To produce, and advance the use of, knowledge to: (1) Improve services provided under IDEA, including the practices of professionals and others involved in providing those services to children with disabilities; and (2) improve educational and early intervention results for infants, toddlers, and children with disabilities.

Priority

Under 34 CFR 75.105(c)(3), the Secretary gives an absolute preference to applications that meet the following priority. The Secretary will fund under this competition only applications that meet this absolute priority.

Absolute Priority—Directed Research Projects

This priority provides support for projects that advance and improve the knowledge base and improve the practice of professionals, parents, and others providing early intervention, special education, and related services, including professionals who work with children with disabilities in regular education environments and natural environments, to provide those children effective instruction and interventions that enable them to learn and develop successfully. Under this priority, projects must support innovation, development, exchange of information, and use of advancements in knowledge and practice designed to contribute to the improvement of early intervention, instruction, and learning of infants, toddlers, and children with disabilities.

A research project must address one of the following focus areas, and the Secretary intends to award at least one project in each focus area:

Focus 1—Beacons of Excellence

Research projects supported under Focus 1 must identify and study schools or programs achieving exemplary results for students with disabilities in the context of efforts to achieve exemplary results for all students. Projects must develop and apply procedures and criteria to identify these schools or programs on the basis of valid and reliable measures of student results. Projects must also identify factors contributing to exemplary learning or developmental results, and examine how those factors and other factors relate to achieving exemplary learning or developmental results for children with disabilities. Projects may focus on early intervention, preschool, elementary, or secondary levels, or a combination of levels. Following the second year of the project, the Secretary may fund an optional six-month period for additional dissemination activities.

Focus 2—The Sustainability of Promising Innovations

A growing body of practice-based research and model demonstration work in schools, local districts, and early intervention programs, including projects supported by the Office of Special Education Programs (OSEP), has focused on meeting the needs of, and improving results for, children with disabilities in schools, districts, or early intervention programs involved in reform and restructuring initiatives. Some of this work is yielding promising positive results for children with disabilities. However, little is known about the extent to which the innovations developed and implemented in these efforts are sustained in project sites beyond the term of time-limited external support and assistance.

Focus 2 supports projects to study the implementation of practices that have been found to be effective in meeting the needs of children with disabilities by reform and restructuring initiatives in local and district schools, or early intervention programs. The study must address: (a) The extent to which practices that have been shown to be effective have been sustained beyond the existence of the projects; and (b) factors that influence the level of sustainability. Factors to be studied may include, but are not limited to: (a) The nature of the innovations and the extent to which the innovations have undergone adaptation or alteration over time; (b) the type and extent of support strategies employed during initial implementation stages and over time; (c) planned and unplanned changes in agency, school organizational or structural contexts, or both; (d) the level of penetration of the innovation; (e) the actual or perceived, or both, cost and benefit for participants; (f) constancy of site leadership, staff, and policy requirements; (g) the extent of consonance or dissonance between critical features of the innovations and existing (and emerging) school and district or agency practices and policies; and (h) resource access and allocation. Projects must provide comprehensive descriptions of the targeted effective practices to be studied, and evidence of positive results for children with disabilities. In addition, projects must dedicate the bulk of support requested to research on the issues of sustainability including the ability to sustain the project results beyond the life of the project. The Secretary particularly encourages an in-depth case study research design where the site or sites to be studied is the case (unit of analysis).

Focus 3—Research on Improving Reading Comprehension Results for Children with Learning Disabilities

In recent years, research has advanced our understanding of how skilled readers comprehend and instructional strategies that support children with learning disabilities to comprehend text. Comprehension is not merely a text-based process where meaning resides in the text and the role of the reader is to get the meaning. Meaning comes from both the text and the reader. Many children with learning disabilities need an instructional program that: (a) Teaches them how to access prior knowledge (e.g., strategies such as story grammar elements, semantic mapping, or think aloud sheets); (b) motivates and supports persistence on a task (e.g., including expressions of a student's own thoughts when reading and writing, questioning the expert or inquiry, or using technology or grouping practices); and (c) teaches them cognitive and metacognitive strategies for reading with understanding, including how to monitor one's own progress (e.g., summarizing, generating questions, mnemonics, or imagery).

Therefore, becoming a skilled reader is not automatic. Teachers need to teach reading comprehension, and, in particular, children with learning disabilities need effective instructional approaches.

Under Focus 3, a research project must pursue a systematic program of applied research that focuses on one or more issues related to improving reading comprehension results of children with learning disabilities related to reading. These issues include, but are not limited to:

(a) The extent to which children with learning disabilities need differential strategies to comprehend narrative and expository text;

(b) The types of effective comprehension instruction for children with learning disabilities in grades K–2, 3–5, and 6–8 inclusive; the components of particularly effective programs for children with learning disabilities; the basal materials, supplemental materials, and instructional strategies used by teachers; and how families support the instructional program;

(c) The types of effective questioning strategies used by teachers, peers, and experts affecting comprehension; and

(d) The kind of contexts that promote critical analysis and evaluation for comprehension and learning, and the grouping practices, instructional strategies, and curricula that promote comprehension and problem solving.

Focus 4—Studying Models That Bridge the Gap Between Research and Practice

Educational research most often includes the following phases: (1) Planning and preparation; (2) information gathering; (3) analysis and interpretation; (4) reporting and dissemination; and (5) use of findings. In traditional research models, the researcher is solely or primarily responsible for all phases but the last. Using research findings is seen as a job for the practitioner. However, it has been observed that research knowledge rarely translates directly into practice.

In recent years, a variety of promising models have been developed to bridge the gap between research and practice by altering the roles of researchers and practitioners for one or more phases of the research. In some models (e.g., interactive research and development, practitioner-researcher, partnership research) researchers and practitioners collaborate in all phases of the research process. Some of these models include parents on their site-based research teams. In other models, practitioners, working individually (e.g., practitioner-research linkers), in groups (e.g., practitioner study groups), or in pairs (e.g., peer coaching) interpret extant research to understand how to integrate research into practice. In some models, teachers conduct research (e.g., action research, or collegial experimentation). To date there have been few systematic examinations of the effectiveness of the various models to improve practice in special education or early intervention.

Under Focus 4, research projects must implement and examine a model or models for using research knowledge to improve educational practice and results for children with disabilities.

In studying a model or models, projects must apply methodologies with the capacity to determine the effectiveness of the model or models as implemented in practice settings. The projects must identify the knowledge utilization model or models to be studied, specify the components of the knowledge utilization model or models selected or created, the supports and policies necessary to support the model or models, both alterable and unalterable factors affecting practice improvement, and the effect of the model or models to improve organizational culture, practitioner attitudes and practices, and child results. In judging effectiveness, the projects must address improvements for researchers, practitioners, and children with disabilities.

The projects must report their findings in a manner which can serve as a ''blueprint'' so that practitioners in other school districts or agencies can implement the model using research knowledge to improve practice in special education or early intervention.

Focus 5—Inclusion of Students With Disabilities in Large-Scale Assessment Programs

IDEA includes a number of provisions to ensure the participation of students with disabilities in general State and district-wide assessment programs. Students with disabilities must participate in large-scale assessment programs if they are to benefit from the educational accountability and reforms that are linked to these assessments. While much information has been gained from prior efforts to include disabled students in assessments such as the National Assessment of Educational Progress, applied research is needed to build on this base of information in order to provide technical and implementation information to guide the effective inclusion of students with disabilities in large-scale assessment programs.

Focus 5 supports projects that pursue systematic programs of applied research to determine how State and local educational programs can best meet one or more of the following requirements:

(a) Including students with disabilities in either general State or district-wide assessment programs or both;

(b) Developing and using appropriate accommodations for students with disabilities on general State or district-wide assessments, or both;

(c) Developing and using alternate assessments for students with disabilities who cannot participate in State and district-wide assessment programs;

(d) Reporting on the participation or performance or both of students with disabilities in either general assessment programs, or on alternate assessments, or both; and

(e) Making decisions during the development of individualized education programs concerning individual modifications in the administration of State or district-wide assessments, or individual participation in alternate assessments.

Focus 6—Synthesize and Communicate a Professional Knowledge Base: Contributions to Research and Practice

Traditionally researchers have communicated their findings from individual research projects and systematic lines of research through journal publications and conference presentations. These findings are communicated to other researchers and engage researchers in dialogues. These dialogues contribute to innovation and development in special education and early intervention. In recent years the OSEP has sought to expand these traditional approaches. While continuing to support innovation and development, OSEP has established a goal to foster the use of a professional knowledge base by professionals who serve children with disabilities and parents who are involved in the education and development of their children with disabilities.

Focus 6 supports projects that synthesize and communicate an extant professional knowledge base on curricular, instructional, early intervention, or organizational strategies and approaches that would contribute to professional practice as a means for achieving better results for children with disabilities. In past years, the Department has supported syntheses on positive behavioral supports of children who exhibit challenging behaviors, grouping practices in reading, differences between children with learning disabilities and low achieving students, instructional approaches for special education students who speak English as a second language,

generalization strategies for using augmentative communication devices, interventions for children with learning disabilities, and effects of setting on social and academic outcomes. Building upon these previous efforts, the Secretary intends to support and fund a limited number of new syntheses in other areas such as—

(a) Effects of self-determination and self-advocacy interventions on children with disabilities;

(b) Effects of interventions on children with disabilities that promote generalization of academic or developmental skills;

(c) Effects of teacher or practitioner efficacy on children with disabilities' achievement or development;

(d) Effects of technology for improving literacy results for children with disabilities;

(e) Effects of school-wide approaches for improving reading results of children with disabilities; or

(f) Effects of school-wide approaches for improving math results of children with disabilities.

Under Focus 6, a synthesis project must—

(a) Identify the topical focus and the relevant and irrelevant concepts under review, and pose hypotheses around which the synthesis would be conducted;

(b) Identify and implement rigorous social science methods for synthesizing the professional knowledge base (e.g., integrative reviews (Cooper, 1982), best-evidence synthesis (Slavin, 1989), meta-analysis (Glass, 1977), multi-vocal approach (Ogawa & Malen, 1991), and National Institute of Mental Health consensus development program (Huberman, 1977));

(c) Develop hypotheses with input from potential consumers of the synthesis to enhance the usability and validity of project efforts. Consumers include researchers, technical assistance providers, policy makers, educators, other relevant practitioners, individuals with disabilities, and parents;

(d) Develop linkage of synthesis with technical assistance providers and disseminators and prepare products for use by practitioners, technical assistance providers, and disseminators;

(e) Implement procedures for locating and organizing the extant literature and ensure that these procedures address and guard against potential threats to the integrity, including generalization of findings;

(f) Establish criteria and procedures for judging the appropriateness of studies;

(g) Meet with the Office of Special Education Programs to review the project's topical focus and methodological approach for conducting the synthesis prior to the start of its synthesis;

(h) Analyze and interpret the professional knowledge base, including identification of general trends in the literature, points of consensus and conflict among the findings, and areas of evidence where the literature base is lacking. The interpretation of the literature base must address the contributions of the findings for improving the practice of professionals serving children with disabilities; and

(i) Submit a draft report in the 21st month of the project and, based on peer reviews, revise and submit a final report of the synthesis in the 24th month. During the second year of the project, the Secretary may fund an optional six-month period for additional dissemination activities.

Focus 7—Improving the Delivery of Special Education and Related Services or Early Intervention Services to Children who are English Language Learners

Appropriate instruction and intervention for children with disabilities who are limited in their English language proficiency can be achieved in a variety of ways. Ultimately, the responsibility for assuring that the English language learner is receiving appropriate access to the curriculum or intervention rests with the school district or agency in its provision of necessary training and ongoing support to the teachers or practitioners. Providing native speakers of the child's language in the classroom or intervention program, including parents, may not be sufficient to assure delivery of appropriate education or interventions. Limitations of resources and availability of qualified bilingual personnel to provide special education, related services, or early intervention services throughout the Nation suggest that other approaches should be investigated that will enhance the availability and assurance of the provision of meaningful education.

Under Focus 7 projects must pursue a systematic program of applied research that focuses on one or more areas related to improved approaches to the delivery of special education and related services or early intervention services to children who are English language learners. These areas may include, for example—

(a) Examination of early reading practices (K–3) for children with learning and behavior issues who are limited in their English proficiency;

(b) Improvement of reading comprehension in content area instruction in grades 4–8;

(c) Examination of alternatives in the delivery of services to children with disabilities who are English language learners (e.g., is placement optimal in regular classes or programs with support from special education resources or is the child better served in placements with other children with similar disabilities with support from bilingual resources?);

(d) The role cultural issues play in the provision of services (e.g., how do the perceptions of families regarding disabilities and services affect delivery of services?);

(e) The preferred strategies to support the transition from bilingual to mainstream English speaking classes or programs (e.g., what teaching or intervention strategies are most effective?);

(f) Examination of specific instructional approaches that promote problem solving and comprehension in reading, science, math, and social studies;

(g) Examination of instructional or intervention approaches for growth in English language learning for these children;

(h) Factors that improve the effectiveness of cooperative learning and classwide peer tutoring for English language learners;

(i) The techniques that improve the transfer of proven practices to practitioner; and

(j) The qualitative differences that exist in implementation of proven practices with practitioner and children who are English language learners who are located in inner-city schools or served through inner-city agencies (e.g., what is the involvement of families?).

Focus 8—Educating Children With Disabilities in Inclusive Settings

Focus 8 supports research projects to (a) identify new or improved systems change strategies that provide all children with disabilities, including children with severe disabilities, effective access to the general curriculum in regular classrooms as well as to nonsegregated extracurricular activities, and (b) describe how these school inclusion efforts as identified in (a) are aligned with systemic reform and school improvement strategies for all students.

Each project will identify, describe, and examine: (1) The efficacy and linkages of existing systemic reform and school inclusion strategies; (2) how school systems provide administrative and other supports in general education

settings to meet the needs of students with disabilities and other diverse learners; (3) how standards established for all children and authentic assessment practices are implemented for students with disabilities, and (4) social support strategies, including peer mediated strategies, that promote positive interactions among students with disabilities and their same-aged peers to foster cohesive school and classroom communities.

To be considered for funding under Focus 8, a research project must—

(a) Identify specific interventions or strategies to be investigated;

(b) Design the research activities in a manner that is likely to improve services for all students in inclusive classrooms, including students with severe disabilities;

(c) Conduct the research in schools pursuing systemic education reform and school inclusion; and

(d) Use methodological procedures designed to produce findings useful to program implementers and policy makers regarding the impact and interaction effects of systemic reform and school inclusion strategies in State and local contexts and demonstrate the benefits to students including the reciprocal benefits of inclusive schooling for all students.

Program Authority: Section 672 of IDEA.

Requirements for All Directed Research Projects:

In addition to addressing one of the above mentioned focus areas, projects must—

(a) Apply rigorous research methods (qualitative or quantitative, or both) to identify approaches contributing to improved results for children with disabilities;

(b) Provide a conceptual framework, based on extant research and theory to serve as a basis for the issues to be studied, the research design, and the target population;

(c) Prepare dissemination materials for both researcher and practitioner audiences and develop linkages with U.S. Department of Education dissemination and technical assistance providers, in particular those supported under the Individuals with Disabilities Education Act, to communicate research findings and distribute products; and

(d) Budget for two trips annually to Washington, D.C., for: (1) a two-day Research to Practice Division Project Directors' meeting; and (2) another meeting to collaborate with the Research to Practice Division project officer and the other projects funded under this priority, and to share information and discuss findings and methods of dissemination.

FOR FURTHER INFORMATION CONTACT: For further information on the priority under the Research and Innovation to Improve Services and Results for Children with Disabilities Program contact the U.S. Department of Education, 600 Independence Avenue, SW., room 3527, Switzer Building, Washington, DC 20202–4641. Telephone: (202) 205–8038. FAX: (202) 205–8105. Internet: Debra __ Sturdivant@ed.gov

Individuals who use a telecommunications device for the deaf (TDD) may call the TDD number: (202) 205–8953. Individuals with disabilities may obtain a copy of this notice in an alternate format (e.g. Braille, large print, audiotape, or computer diskette) by calling (202) 205–8113.

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Note: The official version of a document is the document published in the **Federal Register**.

Intergovernmental Review

The programs (except for the Research and Innovation Projects) included in this notice are subject to the requirements of Executive Order 12372 and the regulations in 34 CFR Part 79. The objective of the Executive Order is to foster an intergovernmental partnership and a strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal assistance.

In accordance with the order, this document is intended to provide early notification of the Department's specific plans and actions for this program.

Dated: April 28, 1998.

(Catalog of Federal Domestic Assistance Numbers: Research and Innovation to Improve Services and Results for Children with Disabilities, 84.324; and Technical Assistance and Dissemination to Improve Services and Results for Children with Disabilities, 84.326)

Judith E. Heumann,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 98–11720 Filed 5–1–98; 8:45 am]

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DEPARTMENT OF EDUCATION

Office of Special Education and Rehabilitative Services; Notice Inviting Applications for New Awards for Fiscal Year 1998

SUMMARY: This notice provides closing dates and other information regarding the transmittal of applications for fiscal year 1998 competitions under two programs authorized by the Individuals with Disabilities Education Act (IDEA), as amended. This notice supports the National Education Goals by improving understanding of how to enable children and youth with disabilities to reach higher levels of academic achievement.

Note: The Department of Education is not bound by any estimates in this notice.

Special Education—Technical Assistance and Dissemination to Improve Services and Results for Children With Disabilities [CFDA No. 84.326]

Purpose of Program

The purpose of this program is to provide technical assistance and information through such mechanisms as institutes, regional resource centers, clearinghouses, and programs that support States and local entities in building capacity, to improve early intervention, educational, and transitional services and results for children with disabilities and their families, and to address systemic-change goals and priorities.

Eligible Applicants: State and local educational agencies; institutions of higher education; other public agencies; private nonprofit organizations; outlying areas; freely associated States; Indian tribes or tribal organizations; and for-profit organizations.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 76, 77, 79, 80, 81, 82, 85, and 86; and (b) the selection criteria included in regulations for these programs in 34 CFR 320.30.

Note: The regulations in 34 CFR part 86 apply to institutions of higher education only.

Absolute Priority 1—Center for Positive Behavioral Interventions and Supports (84.326S)

The priority for the Center for Positive Behavioral Interventions and Supports in the notice of final priority for this program, published elsewhere in this issue of the **Federal Register**, applies to this competition.

Applications Available: May 12, 1998.

Deadline for Transmittal of Applications: July 2, 1998.

Deadline for Intergovernmental Review: August 31, 1998.

Estimated Number of Awards: 1.

Maximum Award: The Secretary rejects and does not consider an application that proposes a budget exceeding $650,000 for any single budget period of 12 months. The Secretary may change the maximum amount through a notice published in the **Federal Register**.

Page Limits: Part III of the application, the application narrative, is where an applicant addresses the selection criteria that are used by reviewers in evaluating an application. An applicant must limit Part III to the equivalent of no more than 70 double-spaced pages using the following standards: (1) A ''page'' is 8½″ × 11″ (on one side only) with one-inch margins (top, bottom, and sides); and (2) all text in the application narrative, including titles, headings, footnotes, quotations, references, and captions, as well as all text in charts, tables, figures, and graphs, must be double-spaced (no more than 3 lines per vertical inch). If using a proportional computer font, use no smaller than a 12-point font, and an average character density no greater than 18 characters per inch. If using a nonproportional font or a typewriter, do not use more than 12 characters to the inch.

The page limit does not apply to Part I—the cover sheet; Part II—the budget section (including the narrative budget justification); Part IV—the assurances and certifications; or the one-page abstract, resumes, bibliography, and letters of support. However, all of the application narrative must be included in Part III. If an application narrative uses a smaller print size, spacing, or margin that would make the narrative exceed the equivalent of the page limit, the application will not be considered for funding.

Project Period: Up to 60 months.

Absolute Priority 2—National Center on Dispute Resolution (84.326D)

The priority for the National Center on Dispute Resolution in the notice of final priority for this program, published elsewhere in this issue of the **Federal Register**, applies to this competition.

Applications Available: May 12, 1998.

Deadline for Transmittal of Applications: July 2, 1998.

Deadline for Intergovernmental Review: August 31, 1998.

Estimated Number of Awards: 1.

Maximum Award: The Secretary rejects and does not consider an application that proposes a budget exceeding $500,000 for any single budget period of 12 months. The Secretary may change the maximum amount through a notice published in the **Federal Register**.

Page Limits: Part III of the application, the application narrative, is where an applicant addresses the selection criteria that are used by reviewers in evaluating an application. An applicant must limit Part III to the equivalent of no more than 70 double-spaced pages using the following standards: (1) A ''page'' is 8½″ x 11″ (on one side only) with one-inch margins (top, bottom, and sides); and (2) all text in the application narrative, including titles, headings, footnotes, quotations, references, and captions, as well as all text in charts, tables, figures, and graphs, must be double-spaced (no more than 3 lines per vertical inch). If using a proportional computer font, use no smaller than a 12-point font, and an average character density no greater than 18 characters per inch. If using a nonproportional font or a typewriter, do not use more than 12 characters to the inch.

The page limit does not apply to Part I—the cover sheet; Part II—the budget section (including the narrative budget justification); Part IV—the assurances and certifications; or the one-page abstract, resumes, bibliography, and letters of support. However, all of the application narrative must be included in Part III. If an application narrative uses a smaller print size, spacing, or margin that would make the narrative exceed the equivalent of the page limit, the application will not be considered for funding.

Project Period: Up to 60 months.

Program Authority: Section 685 of IDEA.

Special Education—Research and Innovation To Improve Services and Results for Children With Disabilities [CFDA No. 84.324]

Purpose of Program: To produce, and advance the use of, knowledge to: (1) improve services provided under IDEA, including the practices of professionals and others involved in providing those services to children with disabilities; and (2) improve educational and early intervention results for infants, toddlers, and children with disabilities.

Eligible Applicants: State and local educational agencies; institutions of higher education; other public agencies; private nonprofit organizations; outlying areas; freely associated States; Indian tribes or tribal organizations; and for-profit organizations.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Parts 74, 75, 77, 79, 80, 81, 82, 85, and 86; and (b) The regulations for this program in 34 CFR Part 324.

Note: The regulations in 34 CFR Part 86 apply to institutions of higher education only.

Absolute Priority: Directed Research Projects (84.324D). The priority for Directed Research Projects in the notice of final priority for this program, published elsewhere in this issue of the **Federal Register**, applies to this competition.

Under this Directed Research Projects priority, a research project must address one of the eight focus areas. Following is the pertinent information for each focus area:

Applications Available: May 12, 1998.

Deadline for Transmittal of Applications: June 19, 1998.

Deadline for Intergovernmental Review: August 20, 1998.

Focus 1—Beacons of Excellence

Estimated Number of Awards: 3.

Project Period: Up to 36 months. Following the second year of the project, the Secretary may fund an optional six-month period for additional dissemination activities.

Focus 2—The Sustainability of Promising Innovations

Estimated Number of Awards: 3.

Project Period: Up to 48 months.

Focus 3—Research on Improving Reading Comprehension Results for Children with Learning Disabilities

Estimated Number of Awards: 3.

Project Period: Up to 36 months.

Focus 4—Studying Models That Bridge the Gap Between Research and Practice

Estimated Number of Awards: 3.

Project Period: Up to 48 months.

Focus 5—Inclusion of Students with Disabilities in Large-Scale Assessment Programs

Estimated Number of Awards: 3.

Project Period: Up to 36 months.

Focus 6—Synthesize and Communicate a Professional Knowledge

Base: Contributions to Research to Practice.

Estimated Number of Awards: 3.

Project Period: Up to 24 months. During the second year of the project, the Secretary may fund an optional six-month period for additional dissemination activities.

Focus 7—Improving the Delivery of Special Education and Related Services or Early Intervention Services to Children Who Are English Language Learners

Estimated Number of Awards: 3.

Project Period: Up to 36 months.

Focus 8—Educating Children with Disabilities in Inclusive Settings

Estimated Number of Awards: 3.

Project Period: Up to 36 months.

Maximum Award for All Focus Areas: The Secretary rejects and does not consider an application that proposes a budget exceeding $200,000 for any single budget period of 12 months. This maximum award applies to any application for any Focus area. The Secretary may change the maximum amount through a notice published in the **Federal Register**.

Page Limits for All Focus Areas: Part III of the application, the application narrative, is where an applicant addresses the selection criteria that are used by reviewers in evaluating an application. An applicant must limit Part III to the equivalent of no more than 50 double-spaced pages using the following standards: (1) A ''page'' is 8'' x 11'' (on one side only) with one-inch margins (top, bottom, and sides); and (2) all text in the application narrative, including titles, headings, footnotes, quotations, references, and captions, as well as all text in charts, tables, figures, and graphs, must be double-spaced (no more than 3 lines per vertical inch). If using a proportional computer font, use no smaller than a 12-point font, and an average character density no greater than 18 characters per inch. If using a nonproportional font or a typewriter, do not use more than 12 characters to the inch.

The page limit does not apply to Part I—the cover sheet; Part II—the budget section (including the narrative budget justification); Part IV—the assurances and certifications; or the one-page abstract, resumes, bibliography, and letters of support. However, all of the application narrative must be included in Part III. If an application narrative uses a smaller print size, spacing, or margin that would make the narrative exceed the equivalent of the page limit, the application will not be considered for funding.

Program Authority: Section 672 of IDEA.

For Application Information Contact: For the priorities under the Special Education—Technical Assistance and Dissemination to Improve Services and Results for Children with Disabilities and the Special Education—Research and Innovation to Improve Results for Children with Disabilities, contact the U.S. Department of Education, 600 Independence Avenue, S.W., room 3527, Switzer Building, Washington, D.C. 20202–2734. Telephone: (202) 205-8038. FAX: (202) 205–8105. Internet: Debra__Sturdivant@ed.gov

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Note: The official version of a document is the document published in the **Federal Register**.

Dated: April 28, 1998.

(Catalog of Federal Domestic Assistance Numbers: Special Education—Research and Innovation to Improve Services and Results for Children with Disabilities, 84.324; and Special Education—Technical Assistance and Dissemination to Improve Services and Results for Children with Disabilities, 84.326)

Judith E. Heumann,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 98–11721 Filed 5–1–98; 8:45 am]

BILLING CODE 4000–01–P

Federal Register

Monday
May 4, 1998

Part IX

Department of Housing and Urban Development

24 CFR Part 203

Authority To Reduce FHA Mortgage Insurance Premium (MIP) for Mortgages on Single Family Properties in Central Cities; Proposed Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 203

[Docket No. FR–4284–P–01]

RIN 2502–AH07

Authority To Reduce FHA Mortgage Insurance Premium for Mortgages on Single Family Properties in Central Cities

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

ACTION: Proposed rule.

SUMMARY: This proposed rule provides express authority for a reduced FHA single family mortgage insurance premium (MIP) for properties located in central cities. The purpose of this rule is to help increase the homeownership rate in areas of the country where the homeownership rate is low.

DATES: Comment due date: July 6, 1998.

ADDRESSES: Interested persons are invited to submit comments regarding this proposed rule to the Regulations Division, Office of the General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410. Communications should refer to the above docket number and title. Facsimile (FAX) comments are not acceptable. A copy of each comment submitted will be available for public inspection and copying during regular business hours (7:30 a.m. to 5:30 p.m.) eastern time at the above address.

FOR FURTHER INFORMATION CONTACT: John J. Coonts, Director, Office of Insured Single Family Housing, Room 9266, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410, telephone (voice) (202) 708–3046. (This is not a toll-free number.) Hearing-impaired or speech-impaired individuals may access the voice telephone listed by calling the Federal Information Relay Service during working hours at 1–800–877–8339.

SUPPLEMENTARY INFORMATION: Three times during President Clinton's administration, FHA has reduced the up-front mortgage insurance premium (MIP) for single family mortgages below the level permitted by statute. In 1994 (through Mortgagee Letter 94–14), FHA reduced the MIP from the then-applicable statutory maximum of 3.0% to 2.25%. FHA further reduced the up-front MIP for first-time homebuyers who have received homeownership counseling to 2.00 (Mortgagee Letter 96–48) and from 2.00 to 1.75% (Mortgagee Letter 97–37). These measures were designed to boost the Nation's homeownership rate, particularly among those who are most likely to have difficulty paying closing costs, without adversely affecting the actuarial soundness of the Mutual Mortgage Insurance Fund. The homeownership rate for 1997 was 65.7 percent, the highest annual rate in American history, due in part to these and other measures adopted as part of the National Homeownership Strategy of the National Partners in Homeownership initiated by HUD.

The homeownership rate in cities, however, continues to lag far behind the rate in suburbs—49.8 % compared to 72.1% as of June 1997. President Clinton addressed this problem in his June 23, 1997 remarks to the United States Conference of Mayors in which he announced an Urban Homestead initiative to help Americans become homeowners in cities. In announcing one part of the initiative, President Clinton stated:

> But you and I know not enough homes are in our cities. In the last 4 years, we've reduced FHA mortgage premiums three times, to lower the average closing cost on a new home by $1,200. That's made a lot of difference to a lot of young people, and I'm proud of that. Today, we're going to cut the premium another $200 for people if they buy homes in our central cities. This will bring the total reduction, since we took office, of closing costs to those families to $1,400.[1]

In this rule, FHA proposes to carry out the President's pledge of an additional $200 estimated savings for a typical central city homebuyer by authorizing a reduced premium—for those who would otherwise qualify for the 1.75% premium—of 1.50% for homeowners in a central city. The rule would not establish a specific MIP level for central cities, but would generally permit FHA to establish an MIP level for a central city property that would be up to 25 basis points lower than the MIP that would otherwise be due. The rule would define a central city as any city or county that meets the definition of ''metropolitan city'' or ''urban county'' for purposes of HUD's Community Development Block Grant (CDBG) program; i.e., any CDBG entitlement grantee.

This definition is deliberately broad to ensure that all areas that may experience a lower homeownership rate due to urban location will benefit from a reduction in MIP level. Because the definition is based on well-established boundaries for existing governmental jurisdictions that are already used for a major HUD program, the definition will avoid the confusion that might arise if new lines were drawn solely for MIP purposes. The definition proposed in the rule is clear and concise and—unlike some other possible approaches that were considered—lends itself to effective computer tracking that will enable FHA to study and evaluate the effect of the MIP reduction.

FHA has concluded that the proposed definition of central cities will permit FHA to reduce the upfront MIP to 1.50% for a first-time homebuyer who has received pre-purchase counseling, while also permitting FHA to maintain the Mutual Mortgage Insurance Fund on an actuarially sound basis and in excess of the statutory capital requirement.

Findings and Certifications

Regulatory Flexibility Act

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed and approved this proposed rule, and in so doing certifies that this rule will not have a significant economic impact on a substantial number of small entities. In this rule, FHA proposes to carry out the President's pledge of an additional $200 estimated savings for a typical central city homebuyer by authorizing a reduced premium—for those who would otherwise qualify for the 1.75% premium—of 1.50% for homeowners in a central city. The rule will have no adverse or disproportionate economic impact on small entities. Small entities are specifically invited, however, to comment on whether this rule will significantly affect them, and persons are invited to submit comments according to the instructions in the **DATE** and **ADDRESSES** sections in the preamble of this proposed rule.

Environmental Impact

This proposed rule is exempt from environmental review requirements under 24 CFR 50.19(c)(6). That exemption applies to various rate and cost determinations and related administrative or fiscal requirements or procedures which do not constitute a development decision that affects the physical condition of specific project areas or building sites. The sole impact of the proposed rule would be to permit a reduced MIP level for homes in central cities.

Executive Order 12612, Federalism

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, Federalism, has determined that this rule will not have

[1] Weekly Compilation of Presidential Documents, Vol. 33, No. 26, page 938, at page 944.

substantial direct effects on States or their political subdivisions, or the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government. No programmatic or policy changes will result from this rule that would affect the relationship between the Federal Government and State and local governments.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4; approved March 22, 1995) (UMRA) establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments, and on the private sector. This rule does not impose any Federal mandates on any State, local, or tribal governments, or on the private sector, within the meaning of the UMRA.

Catalog

The Catalog of Federal Domestic Assistance number for the basic FHA single family mortgage insurance program is 14.117.

List of Subjects in 24 CFR Part 203

Hawaiian Natives, Home improvement, Indians—lands, Loan programs—housing and community development, Mortgage insurance, Reporting and recordkeeping requirements, Solar energy.

Accordingly, the Department proposes to amend 24 CFR part 203 as follows:

PART 203—SINGLE FAMILY MORTGAGE INSURANCE

1. The authority citation for 24 CFR part 203 continues to read as follows:

Authority: 12 U.S.C. 1709, 1710, 1715b and 1715u; 42 U.S.C. 3535(d).

2. Section 203.284 is amended by adding a new paragraph (i) to read as follows:

§ 203.284 Calculation of up-front and annual MIP on or after July 1, 1991.

* * * * *

(i) *Central cities.* If the mortgage is on property in a central city, the Secretary may establish the percentage used to calculate up-front MIP level at a rate that is up to 25 basis points lower than the rate used to calculate MIP for a comparable mortgage on property that is not in a central city. For purposes of this section, ''central city'' means any city or county that is included in the definitions of ''metropolitan city'' or ''urban county'' in sections 102(4) and 102(6) of the Housing and Community Development Act of 1974, 42 U.S.C. 5302(4) and 5302(6).

3. Section 203.285(c) is revised to read as follows:

§ 203.285 Fifteen-year mortgages: Calculation of up-front and annual MIP on or after December 26, 1992.

* * * * *

(c) *Applicability of certain provisions.* The provisions of §§ 203.261. 203.262, 203.264, 203.265, 203.266, 203.267, 203.268, 203.269, 203.280, 203.282, 203.284(c), 203.284(g) and 203.284(i) are applicable to mortgages subject to premiums under this section.

* * * * *

Dated: March 27, 1998.

Art Agnos,

Acting General Deputy Assistant Secretary for Housing-Deputy Federal Housing Commissioner.

[FR Doc. 98–11792 Filed 5–1–98; 8:45 am]

BILLING CODE 4210–27–P

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The text of laws is not published in the **Federal Register** but may be ordered in ''slip law'' (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO Access at http://www.access.gpo.gov/su_docs/. Some laws may not yet be available.

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To provide for the conveyance of the reversionary interest of the United States in certain lands to the Clint Independent School District and the Fabens Independent School District. (Apr. 24, 1998; 112 Stat. 46)

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Aviation Medical Assistance Act of 1998 (Apr. 24, 1998; 112 Stat. 47)

H.R. 3226/P.L. 105–171

To authorize the Secretary of Agriculture to convey certain lands and improvements in the State of Virginia, and for other purposes. (Apr. 24, 1998; 112 Stat. 50)

S. 493/P.L. 105–172

Wireless Telephone Protection Act (Apr. 24, 1998; 112 Stat. 53)

S. 1178/P.L. 105–173

To amend the Immigration and Nationality Act to modify and extend the visa waiver pilot program, and to provide for the collection of data with respect to the number of nonimmigrants who remain in the United States after the expiration of the period of stay authorized by the Attorney General. (Apr. 27, 1998; 112 Stat. 56)

Last List April 23, 1998

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An asterisk (*) precedes each entry that has been issued since last week and which is now available for sale at the Government Printing Office.

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Title	Stock Number	Price	Revision Date
1, 2 (2 Reserved)	(869–034–00001–1)	5.00	[6] Jan. 1, 1998
3 (1996 Compilation and Parts 100 and 101)	(869–032–00002–6)	20.00	[1] Jan. 1, 1997
4	(869–034–00003–7)	7.00	[6] Jan. 1, 1998
5 Parts:			
1–699	(869–034–00004–5)	35.00	Jan. 1, 1998
700–1199	(869–034–00005–3)	26.00	Jan. 1, 1998
1200–End, 6 (6 Reserved)	(869–034–00006–1)	39.00	Jan. 1, 1998
7 Parts:			
1–26	(869–034–00007–0)	24.00	Jan. 1, 1998
*27–52	(869–034–00008–8)	30.00	Jan. 1, 1998
53–209	(869–034–00009–6)	20.00	Jan. 1, 1998
210–299	(869–034–00010–0)	44.00	Jan. 1, 1998
300–399	(869–034–00011–8)	24.00	Jan. 1, 1998
400–699	(869–034–00012–6)	33.00	Jan. 1, 1998
700–899	(869–032–00013–1)	31.00	Jan. 1, 1997
900–999	(869–034–00014–2)	39.00	Jan. 1, 1998
*1000–1199	(869–034–00015–1)	44.00	Jan. 1, 1998
*1200–1499	(869–034–00016–9)	34.00	Jan. 1, 1998
1500–1899	(869–032–00017–4)	53.00	Jan. 1, 1997
1900–1939	(869–034–00018–5)	18.00	Jan. 1, 1998
1940–1949	(869–034–00019–3)	33.00	Jan. 1, 1998
1950–1999	(869–034–00020–7)	40.00	Jan. 1, 1998
2000–End	(869–034–00021–5)	24.00	Jan. 1, 1998
8	(869–034–00022–3)	33.00	Jan. 1, 1998
9 Parts:			
1–199	(869–032–00023–9)	39.00	Jan. 1, 1997
200–End	(869–034–00024–0)	33.00	Jan. 1, 1998
10 Parts:			
*0–50	(869–034–00025–8)	39.00	Jan. 1, 1998
51–199	(869–034–00026–6)	32.00	Jan. 1, 1998
200–499	(869–032–00027–1)	30.00	Jan. 1, 1997
*500–End	(869–034–00028–2)	43.00	Jan. 1, 1998
11	(869–034–00029–1)	19.00	Jan. 1, 1998
12 Parts:			
1–199	(869–034–00030–4)	17.00	Jan. 1, 1998
200–219	(869–034–00031–2)	21.00	Jan. 1, 1998
220–299	(869–032–00032–8)	34.00	Jan. 1, 1997
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500–599	(869–034–00034–7)	24.00	Jan. 1, 1998
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13	(869–034–00036–3)	23.00	Jan. 1, 1998
14 Parts:			
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*800–End	(869–034–00044–4)	23.00	Jan. 1, 1998
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*0–999	(869–034–00045–2)	30.00	Jan. 1, 1998
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141–199	(869–032–00054–9)	30.00	Apr. 1, 1997
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20 Parts:			
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170–199	(869–032–00061–1)	28.00	Apr. 1, 1997
200–299	(869–032–00062–0)	9.00	Apr. 1, 1997
300–499	(869–032–00063–8)	50.00	Apr. 1, 1997
500–599	(869–032–00064–6)	28.00	Apr. 1, 1997
600–799	(869–032–00065–4)	9.00	Apr. 1, 1997
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300–End	(869–032–00069–7)	31.00	Apr. 1, 1997
23	(869–032–00070–1)	26.00	Apr. 1, 1997
24 Parts:			
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200–499	(869–032–00072–7)	29.00	Apr. 1, 1997
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700–1699	(869–032–00074–3)	42.00	Apr.1, 1997
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27 Parts:			
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28 Parts:			
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29 Parts:			
0–99	(869–032–00100–5)	27.00	July 1, 1997
100–499	(869–032–00101–4)	12.00	July 1, 1997
500–899	(869–032–00102–2)	41.00	July 1, 1997
900–1899	(869–032–00103–1)	21.00	July 1, 1997
1900–1910 (§§ 1900 to 1910.999)	(869–032–00104–9)	43.00	July 1, 1997
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1927–End	(869–032–00108–1)	40.00	July 1, 1997
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200–699	(869–032–00110–3)	28.00	July 1, 1997
700–End	(869–032–00111–1)	32.00	July 1, 1997
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0–199	(869–032–00112–0)	20.00	July 1, 1997
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1–190	(869–032–00114–6)	42.00	July 1, 1997
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630–699	(869–032–00117–1)	22.00	July 1, 1997
700–799	(869–032–00118–9)	28.00	July 1, 1997
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125–199	(869–032–00121–9)	36.00	July 1, 1997
200–End	(869–032–00122–7)	31.00	July 1, 1997
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200–299	(869–032–00128–6)	21.00	July 1, 1997
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50–51	(869–032–00135–9)	23.00	July 1, 1997
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60	(869–032–00139–1)	52.00	July 1, 1997
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150–189	(869–032–00147–2)	32.00	July 1, 1997
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266–299	(869–032–00150–2)	24.00	July 1, 1997
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70–89	(869–032–00172–3)	11.00	Oct. 1, 1997
90–139	(869–032–00173–1)	27.00	Oct. 1, 1997
140–155	(869–032–00174–0)	15.00	Oct. 1, 1997
156–165	(869–032–00175–8)	20.00	Oct. 1, 1997
166–199	(869–032–00176–6)	26.00	Oct. 1, 1997
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47 Parts:			
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CFR Index and Findings Aids	(869–032–00047–6)	45.00	Jan. 1, 1997

Title	Stock Number	Price	Revision Date
Complete 1998 CFR set		951.00	1998
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Subscription (mailed as issued)		247.00	1998
Individual copies		1.00	1998
Complete set (one-time mailing)		247.00	1997
Complete set (one-time mailing)		264.00	1996

[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.