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

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 319

[Docket No. 97–060–2]

RIN 0579–AA88

Karnal Bunt Status of the Mexicali Valley of Mexico

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the wheat diseases regulations by recognizing a wheat-growing area within the Mexicali Valley of Mexico as being free from the wheat disease Karnal bunt. Surveys conducted by Mexican plant health authorities in that area of the Mexicali Valley since 1990 have shown the area to be free from Karnal bunt, and Mexican authorities are enforcing restrictions designed to protect the area from the introduction of Karnal bunt. This change will have the effect of removing certain restrictions on the importation into the United States of wheat seed, straw, and other wheat products from the Karnal bunt free area of the Mexicali Valley.

EFFECTIVE DATE: June 8, 1998.

FOR FURTHER INFORMATION CONTACT: Mr. Peter M. Grosser, Senior Import Specialist, Phytosanitary Issues Management Team, PPQ, APHIS, USDA, 4700 River Road Unit 140, Riverdale, MD 20737–1236; (301) 734–6799; fax (301) 734–5786; e-mail: pgrosser@aphis.usda.gov.

SUPPLEMENTARY INFORMATION:

Background

The regulations in ''Subpart—Wheat Diseases'' (7 CFR 319.59 through 319.59–2, referred to below as the regulations) restrict the importation into the United States of certain seeds, plants, and plant products from certain countries or localities in order to prevent the introduction of foreign strains of flag smut and Karnal bunt, two fungal diseases of wheat (*Triticum* spp.). Specific provisions relating to foreign strains of flag smut are located in paragraph (a) of § 319.59–2 of the regulations, and specific provisions concerning Karnal bunt are found in paragraph (b) of that section.

Under § 319.59–2(b) of the regulations, wheat seeds, plants, straw (except straw without heads that has been processed or manufactured into articles such as decorative wall hangings, clothing, or toys), chaff, and products of the milling process other than flour (i.e., bran, thistle sharps, and pollards) are designated as prohibited articles if they are from Afghanistan, India, Iraq, Mexico, or Pakistan, which are countries in which Karnal bunt is considered to exist. Prohibited articles may be imported into the United States only by the U.S. Department of Agriculture for experimental or scientific purposes in accordance with § 319.59–2(c).

On January 27, 1998, we published in the **Federal Register** (63 FR 3844–3848, Docket No. 97–060–1) a proposal to amend the regulations to recognize a wheat-growing area within the Mexicali Valley of Mexico as being free from the wheat disease Karnal bunt. We also proposed to make several other changes in the regulations for the sake of clarity or accuracy.

We solicited comments concerning our proposal rule for 60 days ending March 30, 1998. We received 10 comments by that date. The comments were from farmers, seed companies, a State agriculture agency, and crop improvement, grain promotion, and grain export associations. Three of the commenters supported the proposed rule, while the remaining commenters disagreed with the proposed rule or aspects of its supporting economic analyses. Their comments are discussed below.

Comment: The proposed rule and its establishment of a pest-free area for Karnal bunt should not proceed on the grounds that it perpetuates the idea that Karnal bunt is a pest of quarantine significance. The proposal is at odds with the widening international recognition that Karnal bunt should be considered only as a wheat grading factor and not a quarantine-significant pest.

Response: The position that Karnal bunt is a grading issue rather than a quarantine issue is one that has been discussed in international trade and scientific circles. However, given the present international perception of Karnal bunt as a quarantine issue, we do not believe that it would serve the interests of American agriculture to unilaterally remove our regulatory restrictions through which we seek to prevent the introduction and dissemination of Karnal bunt. Therefore, until such time as our trading partners view the disease as a grading issue, we believe that it will be necessary to continue our Karnal bunt-related regulatory activities and restrictions in order to protect our international agricultural standing.

With that in mind, APHIS and its partners in the North American Plant Protection Organization have asked the United Nations Food and Agriculture Organization (FAO) to coordinate the establishment of guidelines for addressing minor pests such as Karnal bunt that can cause significant trade disruptions due to their status as regulated pests. The FAO has agreed to assume that coordination role and plans to assemble a panel of scientists to begin work on those guidelines in June 1998.

Comment: APHIS cannot justify declaring the Mexicali Valley free from Karnal bunt as long as the Agency continues to regulate adjacent areas of Arizona and California for the same disease. Given that Karnal bunt can spread by natural, as well as artificial means, one cannot expect that the Mexicali Valley could escape inoculation by the disease during the period that contiguous areas became infected.

Response: We believe that it is indeed possible for the Mexicali Valley to be declared free of Karnal bunt while a regulatory program for the same disease remains in place across the border in Arizona and California. While natural spread can certainly occur, it has been shown that the greatest risk of spreading Karnal bunt is through artificial means, especially through the movement of infected seed from one area to another.

If taking measures to prevent the artificial spread of Karnal bunt was an inadequate response to the disease, as

the commenter suggests, then it is logical to assume that the disease would have spread throughout all the agricultural areas of California, Arizona, New Mexico, and Texas and beyond, and not just into the Mexicali Valley. However, APHIS and its State cooperators have been able to confine Karnal bunt to limited pockets of the wheat-producing areas of the southwestern United States by restricting the movement of seed, grain, and regulated articles such as cultivating equipment. Mexico protects the Mexicali Valley's Karnal bunt free status by employing similar regulatory strategies to prevent the artificial spread of Karnal bunt. Additionally, the fact that an international border lies between the regulated areas in the United States and the Mexicali Valley helped prevent the spread of Karnal bunt into the Mexicali Valley by eliminating the influence of factors that played a role in the spread of Karnal bunt through the southwestern United States, such as the unrestricted movement of seed, grain, and cultivating and harvesting equipment.

Comment: The proposed rule appears to be supported by available data, but we are concerned that APHIS would grant Karnal bunt free status to the Mexicali Valley while Mexico refuses to apply the same standards and continues to prohibit the importation of wheat from areas of California that are outside the Karnal bunt regulated areas in that State.

Response: The proposed rule and this final rule deal with the Karnal bunt status of the Mexicali Valley. While we acknowledge that the U.S. Department of Agriculture is working with Mexican plant health authorities to resolve their remaining questions regarding the Karnal bunt status of California, the issue of U.S. wheat exports to Mexico is outside the scope of this rulemaking. In addition, to maintain restrictions in light of the area's demonstrated freedom from Karnal bunt would run counter to our obligations under international trade agreements.

Comment: We are uncertain as to the intensity of the surveys that were conducted to establish the Mexicali Valley's Karnal bunt status. In addition, Karnal bunt may spread into the Mexicali Valley by natural means despite the Mexican regulatory policies designed to exclude the disease. Therefore, to ensure the Mexicali Valley remains free from Karnal bunt, there should be continued testing and review of the program.

Response: There will be continued monitoring and review of the Karnal bunt status of the Mexicali Valley as called for by the commenter. The Mexican plant health regulations establishing the Mexicali Valley as a Karnal bunt free area require the State-level plant protection organizations in Baja California and Sonora (the States in which the free area is located) to cooperate with Mexican Federal plant protection authorities to establish a yearly sampling program. Samples must be collected in the field during the growing season, as well as at grain elevators after harvest, and the samples must be sent to an officially approved laboratory to be examined for spores. We believe that the required sampling and testing program, along with the restriction on the movement into the free area of articles that present a risk of disseminating Karnal bunt, will serve to protect the Karnal bunt free status of the Mexicali Valley. In the event that Karnal bunt is detected in the free area, the Mexican plant health regulations call for the immediate application of phytosanitary measures to respond to the situation, at which point APHIS would suspend imports of wheat from the affected area until the extent of the outbreak is delimited and a determination is made regarding the Karnal bunt status of the Mexicali Valley.

Comment: The prohibition on the importation of wheat grown in the Mexicali Valley should remain in place unless there is ''a long term continuing rigid inspection that could absolutely guarantee'' the wheat's freedom from Karnal bunt.

Response: As noted in the response to the previous comment, there will be a program of continued surveillance and monitoring to ensure that the Mexicali Valley remains free from Karnal bunt. No inspection system, however well designed and thorough, could ever ''absolutely guarantee'' that wheat or any other commodity is free from a pest or disease. To demand an absolute guarantee from Mexico would be to set a zero risk standard that cannot be attained by Mexico, the United States, or any other country that exports agricultural products. If zero tolerance for pest risk were the standard applied to international trade in agricultural commodities, it is quite likely that no country would ever be able to export a fresh agricultural commodity to any other country. There will always be some degree of pest risk associated with the movement of agricultural products; APHIS' goal is to reduce that risk to an insignificant level.

Comment: The economic analysis presented in the proposed rule assumes that the economic impact of the rule would be spread among all the wheat growers across the United States, resulting in, at worst, a loss of about $100 per farm. Because growers in the Mexicali Valley will almost certainly begin producing durum-variety wheat in order to compete in the same markets as growers in the southwestern United States, it is much more likely that the economic impact of the rule will be felt almost exclusively in the southwestern United States, and far more acutely than predicted in the economic analysis.

Response: As the commenter has noted, our examination of potential economic impacts in the proposed rule's economic analysis did not focus on any particular wheat-producing region in the United States. Rather, our economic analysis considered the potential effects that the importation of wheat from the Mexicali Valley could have on the domestic wheat industry as a whole. We took that broader approach because the available U.S. and Mexicali Valley wheat production data did not give us any reason to believe that any particular U.S. wheat-producing region would be disproportionately affected by the proposed entry of Mexicali Valley wheat.

The commenter's assertion that the economic impact of the rule will be felt almost exclusively in the southwestern United States is based on the presumption that growers in the Mexicali Valley will almost certainly begin producing durum-variety wheat in order to compete in the same markets as growers in the southwestern United States. Durum wheat does indeed account for a large share of wheat production in the southwestern United States—in 1996, approximately 42 percent of the wheat produced in Arizona and California was durum wheat, with winter wheat making up the remaining 58 percent. As noted in the proposed rule, the 1994 through 1996 averages for wheat class, production share, and use distribution of Mexicali Valley wheat indicate that durum variety wheat accounted for an average of only 2.23 percent of Mexicali Valley wheat production. Although we acknowledge the possibility that growers in the Mexicali Valley may decide to raise more durum wheat in order to compete with growers in the southwestern United States, we are unaware of any market or other incentives that would propel a large-scale increase in durum production. Therefore, we do not believe that Mexicali Valley growers will increase their durum production from its current level of 2.23 percent to the levels envisioned by the commenter. For that reason, we continue to believe that the economic analysis presented in the

proposed rule adequately met its stated purpose of considering the potential effects on the domestic wheat industry of the importation of wheat from the Mexicali Valley.

Comment: The economic analysis presented in the proposed rule states that the total economic cost of wheat production in the United States averages $155 per acre and compares that to an average total economic cost of $227.60 to $247.50 in Mexico to reach a conclusion that the costs of production in the Mexicali Valley are much higher than in the United States. The actual cost of irrigated production in the southwestern United States—the area that will likely be impacted almost exclusively by the rule—is approximately $350 per acre, roughly $100 higher than Mexicali Valley production costs.

Response: As explained in the response to the previous comment, our economic analysis was based on available data, and not on the assumption that declaring the Mexicali Valley to be free from Karnal bunt would lead growers there to shift their choice of wheat variety almost exclusively to durum. Further, we could not accurately assess the costs of U.S. durum wheat production by looking exclusively at the cost of irrigated production in the southwestern United States. To gain an appreciation for the costs associated with the production of durum variety wheat in the United States, we need to consider the Northern Plains region, where approximately three quarters of U.S.-grown durum wheat is produced, and on the Pacific region, where the remaining quarter of U.S.-grown durum wheat is produced.

The average costs of wheat production in the United States were $154.52, $170.03 and $180.48 per acre in 1994, 1995, and 1996, respectively, but, as the commenter notes, wheat production costs vary by region. The production costs in the Northern Plains region, which includes North Dakota, the largest U.S. producer of durum wheat, were $143.19 per acre/$4.44 per bushel in 1994, $156.66 per acre/$5.74 per bushel in 1995, and $168.37 per acre/$6.26 per bushel in 1996. For those same years, the production costs in the Pacific region, which includes Arizona and California, were $271.07 per acre/$2.93 per bushel, $303.19 per acre/$3.31 per bushel, and $344.78 per acre/$3.65 per bushel, respectively. The production costs cited for the Northern Plains and Pacific regions are the full ownership costs and include the costs of general farm overhead, capital replacement, and land, as well as the costs of variable inputs such as seed, fertilizer, labor, etc. The higher per-acre production costs and lower per-bushel production costs in the Pacific region are attributable in large measure to the greater use of irrigation, and the resulting higher yields, in that region. For 1996, the weighted production cost for all U.S. durum-producing areas was about $211.86 per acre/$4.86 per bushel.

The 1996 average variable input cost for durum wheat production in the United States ranged from $1.95 per bushel in the Pacific region to $3.35 per bushel in the Northern Plains region; the weighted average cost for the two regions was $3.00 per bushel, compared to $2.47 to $3.54 per bushel in the Mexicali Valley.

It is important to note that the production costs cited for the Mexicali Valley in the proposed rule were for variable inputs only and did not include general farm overhead, capital replacement, and land costs, which we were unable to obtain, so the full average cost of production in the Mexicali Valley is actually higher than the figures cited. As a result, growers in the Mexicali Valley would not enjoy the $100 per acre production cost advantage envisioned by the commenter. In the unlikely event that the production share of durum wheat in the Mexicali Valley increased significantly from its current average of 2.23 percent, we consider that the economic impact of the entry of Mexicali Valley growers into direct competition with U.S. growers for the domestic durum wheat market would be minimal.

Therefore, based on the rationale set forth in the proposed rule and in this document, we are adopting the provisions of the proposal as a final rule without change.

Effective Date

This is a substantive rule that relieves restrictions and, pursuant to the provisions of 5 U.S.C. 553, may be made effective less than 30 days after publication in the **Federal Register**. This rule recognizes a wheat-growing area in the Mexicali Valley of Mexico as being free from the wheat disease Karnal bunt. This will eliminate certain restrictions on the importation into the United States of wheat seed, straw, and other wheat products from the Karnal bunt free area of the Mexicali Valley. Therefore, the Administrator of the Animal and Plant Health Inspection Service has determined that this rule should be effective upon publication in the **Federal Register**.

Executive Order 12866 and Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866. The 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.

This rule amends the wheat diseases regulations by recognizing a wheat-growing area within the Mexicali Valley of Mexico as being free from the wheat disease Karnal bunt. This change is based on surveys conducted by Mexican plant health authorities in that area of the Mexicali Valley since 1990 that have shown the area to be free from Karnal bunt, and on the enforcement by Mexican authorities of restrictions designed to protect the area from the introduction of Karnal bunt. This change in the regulations will remove certain restrictions on the importation into the United States of wheat seed, straw, and other wheat products from the Karnal bunt free area of the Mexicali Valley.

This rule primarily affects wheat growers in the United States. There were 292,464 farms growing wheat in the United States in 1992, and 96 percent of those farms would be considered small entities. (According to the standard set by the Small Business Administration for agricultural producers, a producer with less than $0.5 million annually in sales qualifies as a small entity.) We have, therefore, examined the potential economic impact of this rule on small entities, as required by the Regulatory Flexibility Act, and in doing so, have assessed the anticipated costs and benefits of this rule, as required by Executive Order 12866.

The United States produced an average of 2,330 million bushels of wheat per year between 1992 and 1996. Of this amount, hard red winter wheat (grown primarily in Kansas, Oklahoma, and Texas) accounted for about 39 percent of production; hard red spring wheat (grown primarily in North Dakota, Minnesota, and Montana) accounted for about 24 percent of production; soft red winter wheat (grown primarily in Missouri, Illinois, and Ohio) accounted for about 19 percent of production; white wheat (grown primarily in Washington and Oregon) accounted for about 14 percent of production; and durum wheat (grown primarily in North Dakota, Arizona, California, and Montana) accounted for about 4 percent of production.

The United States is a net exporter of wheat, accounting for about 11.4 percent of world wheat production and

approximately 32 percent of world wheat exports. Of the average 2,330 million bushels of wheat produced per year between 1992 and 1996, an average of 51 percent of that wheat was exported from the United States, while wheat imports have accounted for less than 1 percent of the total U.S. wheat supply in recent years.

Mexico produced an average of about 137 million bushels of wheat per year between 1994 and 1996, most of which was grown in the States of Baja California, Guanajuato, Sinaloa, and Sonora. Mexico is a net importer of wheat, having imported in 1996 an amount of wheat equal to about 53 percent of production while exporting less than 4 percent of production; imports made up about 35 percent of Mexico's total wheat supply in 1996.

The Mexicali Valley is located in two of Mexico's leading wheat-producing States, Baja California and Sonora. The Mexicali Valley produced 445,967 metric tons of wheat in 1995; about 53 percent (236,171 metric tons) of that wheat was shipped to markets elsewhere in Mexico. Nearly all of the Mexicali Valley's wheat is sown in October and November and harvested from late May to early July. Table 1 shows the classes of wheat grown in the Mexicali Valley between 1994 and 1996 and the average production share and use distribution of each class.

TABLE 1: WHEAT CLASS, PRODUCTION SHARE, AND USE DISTRIBUTION OF MEXICALI VALLEY WHEAT; 1994–1996 AVERAGES

Wheat class	Production share (percent)	Use distribution (percent)			
		Food	Feed	Seed	Other
Hard Red Winter	61.3	65	25	3.2	6.8
White	36.2	61.5	24.6	2.6	11.3
Durum	2.2	38.5	2.1	58.8	0.6
Soft Red Winter	0.3	33.2	13.9	36	16.9

Between 1994 and 1997, producers in the Mexicali Valley shipped an average of 9 million bushels each year to other markets in Mexico; we have used that amount in Table 2, below, as an estimate of the total amount of wheat potentially available for export to U.S. markets.

Table 2: POTENTIAL IMPACT IN THE UNITED STATES OF THE REDIRECTION OF MEXICALI VALLEY WHEAT TO U.S. MARKETS (PRICE ELASTICITY IS −0.63).

	Percentage of Mexicali Valley-origin wheat shipments diverted from other (domestic or export) markets to the U.S. market				
	20	40	60	80	100
Imports (millions of bushels)	1.8	3.6	5.4	7.2	9
Percent change in price	−0.09	−0.17	−0.27	−.036	−0.45
Percent change in quantity	−0.04	−0.08	−0.13	−0.17	−0.22
Decrease in producer surplus (millions of dollars)	(5.92)	(11.83)	(17.75)	(23.66)	(29.56)
Increase in consumer surplus (millions of dollars)	5.92	11.84	17.77	23.70	29.64
Total surplus (millions of dollars)	0.003	0.0119	0.0268	0.0477	0.0745

Table 2 summarizes the estimated economic impacts, based on a price elasticity of −0.63, in the United States of different levels of wheat exports from the Mexicali Valley and of the estimated producer losses and consumer gains that would result. For example, a 20 percent diversion of Mexicali Valley wheat production from markets in other countries or the domestic Mexican market to the United States would be expected to result in a price decrease of 0.09 percent in the United States. U.S. producers would lose about $5.92 million (which, when distributed among the 292,464 wheat farms noted above, amounts to about $20.25 per farm), while consumers would gain about the same amount, for a net benefit in this scenario of about $3,000. At the other end of the spectrum, a 100 percent diversion of Mexicali Valley wheat production from other markets to the United States would be expected to result in a price decrease of 0.45 percent in the United States. U.S. wheat producers would lose about $29.56 million (or about $101.00 per farm), while consumers would gain about $29.64 million, for a net benefit in this scenario of about $74,500. In all cases, consumer gains slightly outweigh producer losses.

How likely even a 20 percent diversion of Mexicali Valley wheat to the U.S. market will be, however, is unclear. The production area of the Mexicali Valley is closer to markets in the United States than it is to markets in central Mexico, which means that lower transportation costs may encourage Mexicali Valley producers to ship their wheat to the United States. However, the Mexican government is considering a transportation subsidy for growers in northwestern Mexico to offset the transportation advantage that growers in central Mexico have in marketing their crops in Mexico City. Such a subsidy may encourage Mexicali Valley producers to sell their wheat in Mexico.

Prices for Mexicali Valley wheat may well prove to be a determining factor with regard to the level of exports, as the costs of production in the Mexicali Valley are much higher than U.S. production costs. The cost of Mexicali Valley wheat averaged between $2.47 and $3.54 per bushel, with total economic costs (which include fertilizers, irrigation, harvest costs, interest on credit, etc.) ranging between $227.60 to $247.50 per acre. The cost of wheat grown in the United States, on the other hand, averaged $2.47 per bushel, with total economic costs averaging $155 per acre. With its higher production costs and the added cost of transportation across the border into the United States, it may prove difficult for

Mexicali Valley wheat to compete in the U.S. market.

The actual extent of any decrease in wheat prices in the United States resulting from this rule will depend to a great degree upon the size of the price elasticity of demand, the magnitude of the change in supply, and the size of the baseline price. For lower price elasticities, both losses and gains will be higher. We expect that the amount of wheat exported from the Mexicali Valley will not be large and will not, therefore, change wheat production and consumption patterns in the United States. Further, the increase in wheat supplies in the United States from an increase in imports from Mexico will likely be offset to some extent by an increase in exports of wheat from the United States to Mexico. Nevertheless, allowing the importation of wheat from the Mexicali Valley will likely have a net positive impact on the overall economy, since consumer benefits at any level of imports will be slightly higher than producer losses.

The only significant alternative to this rule was to make no changes in the wheat diseases regulations, i.e., to continue to prohibit the importation of wheat and wheat products from Mexico. We rejected that alternative because we believe that Mexico has demonstrated that the wheat-growing areas of the Mexicali Valley are free from Karnal bunt, which means that there is no longer any biological justification for that area of Mexico to be listed with the countries and localities considered to be affected with Karnal bunt. Maintaining a prohibition on the importation of wheat and wheat products from the Mexicali Valley in light of that area's demonstrated freedom from Karnal bunt would run counter to the United States' obligations under international trade agreements and would likely be challenged through the World Trade Organization. Conversely, declaring the wheat-growing areas of the Mexicali Valley free from Karnal bunt will likely have a beneficial effect on international trade in general, and trade between the United States and Mexico in particular, by reaffirming the United States' continuing commitment to using scientifically valid principles as the basis for regulation.

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

Executive Order 12988

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

Paperwork Reduction Act

In accordance with section 3507(d) of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the information collection or recordkeeping requirements included in this final rule have been approved by the Office of Management and Budget (OMB). The assigned OMB control number is 0579–0132.

List of Subjects in 7 CFR Part 319

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

Accordingly, we are amending 7 CFR part 319 as follows:

PART 319—FOREIGN QUARANTINE NOTICES

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

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

§ 319.8–10 [Amended]

2. In Subpart—Foreign Cotton and Covers, § 319.8–10(d) is amended by removing the words ''§ 319.59 (notice of quarantine No. 59 relating to the flag smut disease)'' and adding the words ''§ 319.59–2(a)(2) of this part'' in their place, and footnote 5 and its reference in the text are removed.

§ 319.8–11 [Amended]

3. In Subpart—Foreign Cotton and Covers, § 319.8–11(a), in the introductory text of the paragraph, footnote 6 and its reference in the text are redesignated as footnote 5.

§ 319.8–17 [Amended]

4. In Subpart—Foreign Cotton and Covers, § 319.8–17(d), footnote 7 and its reference in the text are redesignated as footnote 6.

5. The authority citation for ''Subpart—Wheat Diseases'' is removed.

§ 319.59 [Amended]

6. In Subpart—Wheat Diseases, § 319.59 is amended as follows:

a. In paragraph (a), in the first sentence, the reference ''§ 319.59–2(b)'' is removed and the reference ''§ 319.59–2(c)'' is added in its place.

b. In paragraph (a), in the last sentence, the reference ''§ 319.59–2(a)'' is removed and the reference ''§ 319.59–2 (a) and (b)'' is added in its place, and the reference ''§ 319.59–2(b)'' is removed and the reference ''§ 319.59–2(c)'' is added in its place.

c. In paragraph (b), in the first sentence, the words ''abandoned by the importer for destruction'' are removed and the words ''destroyed as deemed necessary by an inspector at the expense of the importer'' are added in their place.

d. In paragraph (b), in the last sentence, the words ''abandoned for destruction by'' are removed and the words ''destroyed as deemed necessary by an inspector at the expense of'' are added in their place.

7. In Subpart—Wheat Diseases, § 319.59–2 is amended as follows:

a. In the introductory text of paragraph (a), the words ''in paragraph (b)'' are removed and the words ''in paragraph (c)'' added in their place.

b. In paragraph (a)(1)(i), the word ''*Triticums*'' is removed and the word ''*Triticum*'' added in its place.

c. Paragraph (a)(2) is revised to read as set forth below.

d. In paragraph (b)(2), the words ''(except for that portion of the Mexicali Valley described in paragraph (b)(3) of this section),'' are added after the word ''Mexico''.

e. A new paragraph (b)(3) is added to read as set forth below.

f. In paragraph (c)(2), the reference ''7 CFR 319.37–14(b)'' is removed and the reference ''§ 319.37–14(b) of this part'' added in its place.

§ 319.59–2 Prohibited articles.

(a) * * *

(2) Afghanistan, Algeria, Armenia, Australia, Azerbaijan, Bangladesh, Belarus, Bulgaria, Chile, China, Cyprus, Egypt, Estonia, Falkland Islands, Georgia, Greece, Guatemala, Hungary, India, Iran, Iraq, Israel, Italy, Japan, Kazakstan, Kyrgyzstan, Latvia, Libya, Lithuania, Moldova, Morocco, Nepal, North Korea, Oman, Pakistan, Portugal, Romania, Russia, Spain, Tajikistan, Tanzania, Tunisia, Turkey, Turkmenistan, South Africa, South Korea, Ukraine, Uzbekistan, and Venezuela.

(b) * * *

(3) The following area of the Mexicali Valley in Mexico has been determined to be free from Karnal bunt: Those portions of the municipality of Mexicali, in the State of Baja California, and the municipality of San Luis Rio Colorado, in the State of Sonora, that are included in the Distrito de Desarrollo Rural (Rural Development District) 002 Rio Colorado.

Except for wheat (*Triticum* spp.) plants, which are prohibited importation under § 319.37–2(a) (see Poaceae) of this part, any articles described in paragraph (b)(1) of this section that are from that designated area may be imported into the United States subject to the following conditions:

(i) The articles are offered for entry at the port of Calexico, CA; and

(ii) The articles offered for entry are made available for examination by an inspector and remain at the port until released, or authorized further movement pending release, by an inspector; and

(iii) The articles are accompanied by a phytosanitary certificate issued by the Mexican national plant protection organization that certifies that the articles are from the area of the Mexicali Valley described in this paragraph and remained within that area prior to and during their movement to the United States.

* * * * *

8. In Subpart—Packing Materials, § 319.69(b)(1) is revised to read as follows:

319.69 Notice of quarantine.

* * * * *

(b) * * *

(1) Cereal straw, hulls, and chaff (such as oats, barley, and rye) from all countries, except rice straw, hulls, and chaff, which are prohibited importation from all countries by paragraph (a)(1) of this section, and except wheat straw, hulls, and chaff, which are restricted importation by § 319.59 of this part from any country or locality listed in § 319.59–2 of this part.

* * * * *

Done in Washington, DC, this 4th day of June, 1998.

Charles P. Schwalbe,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 98–15337 Filed 6–4–98; 3:22 pm]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

7 CFR Part 1412

Amendment to the Production Flexibility Contract Regulations

RIN 0560–AF25

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Final rule.

SUMMARY: The Commodity Credit Corporation (CCC) is issuing its final rule with respect to the amendments to the production flexibility contract regulations published as an interim final rule in the **Federal Register** on October 23, 1997. After considering the comments received from the public, this rule adopts the interim rule as final with changes as indicated. The rule also incorporates a specific change required by the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 1998, which provides that if wild rice is planted on contract acreage, the contract payment shall be reduced in an amount reflecting each contract acre planted to wild rice.

EFFECTIVE DATE: June 8, 1998.

FOR FURTHER INFORMATION CONTACT: Lynn H. Tjeerdsma, Farm Service Agency, United States Department of Agriculture, STOP 0517, 1400 Independence Avenue, SW., Washington, DC 20250–0517, telephone 202–720–6602, Internet address: ltjeerds@wdc.fsa.usda.gov.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This rule has been determined to be not significant and was not reviewed by the Office of Management and Budget (OMB).

Regulatory Flexibility Act

It has been determined that the Regulatory Flexibility Act is not applicable because CCC is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this rule.

Environmental Evaluation

An Environmental Evaluation with respect to the proposed rule has been completed. It has been determined that this action will not have significant adverse effects on environmental factors such as wildlife habitat, water quality, air quality, land use, or appearance. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

Executive Order 12988

This rule has been reviewed in accordance with Executive Order 12988. The provisions of this proposed rule preempt State laws to the extent such laws are inconsistent with the provisions of this rule. The provisions of this rule are not retroactive. Before any judicial action may be brought concerning the provisions of this rule, the administrative remedies must be exhausted.

Executive Order 12372

This program/activity is not subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115 (June 24, 1983).

Paperwork Reduction Act

The amendments to 7 CFR part 1412 set forth in this rule were previously approved under OMB Control Number 0560–0092. An information collection notice was published in the **Federal Register** (62 FR 27216) on May 19, 1997. No comments were received regarding this notice. A revised information collection package has been submitted to OMB.

Executive Order 12612

It has been determined that this rule does not have sufficient Federalism implications to warrant the preparation of a Federalism Assessment. The provisions contained in this rule will not have a substantial direct effect on States or their political subdivisions or on the distribution of power and responsibilities among the various levels of Government.

Unfunded Mandates Reform Act of 1995

This rule contains no Federal mandates under the regulatory provisions of Title II of the Unfunded Mandates Reform Act of 1995 (UMBRA) for State, local, and tribal governments or the private sector. Therefore, this rule is not subject to the requirements of sections 202 and 205 of the UMBRA.

Background

On October 23, 1997, CCC published an interim rule in the **Federal Register** (62 FR 55150) to add a final date for producers to designate payment shares and provide supporting documentation to be eligible to earn contract payments in a fiscal year when payment shares have not been designated in such fiscal year; change the dates by which a producer or owner must inform county committee of changes in interest; add a final date for producers to request advance payments; clarify cash lease provisions; change the provisions for determining whether a lease is a cash lease or a share lease with respect to combination leases; and change the date by which all landowners, tenants, and sharecroppers failing to reach an agreement regarding the division of contract payments for a fiscal year must execute a contract to be eligible to receive the contract payment for that

fiscal year. Following publication of the interim rule, the public was afforded 30 days to submit comments. CCC extended the comment period to December 1, 1997 (62 FR 63441). There were 101 comments received in response to the notice during the comment period that ended on December 1, 1997. The comments were received from 74 producers, 19 commodity groups and eight Members of Congress. Five respondents were opposed to the amendment to § 1412.302(b). One hundred respondents were opposed to, and one respondent was in favor of, the amendment to § 1412.303(a)(4). The comments received and CCC responses are as follows:

Comment: Section 1412.302(b) Respondents were concerned that the timing of the announcement allowed landlords and tenants a minimal amount of time to negotiate leases to be eligible for the December advance payment, and that the deadlines for requesting advance payments were provided in legislation that did not envision USDA eliminating the options through administrative changes. Respondents urged the Department to suspend implementation of the new deadlines relating to advance payments to ensure that the Department's implementation of the Federal Agriculture Improvement and Reform Act of 1996 (1996 Act) is consistent with the intent of Congress.

Response: The 1996 Act specifies that at the option of the owner or producer for fiscal year 1997 and each subsequent year, 50 percent of the annual contract payment shall be made on December 15 or January 15 of the fiscal year. Section 1412.302(b) does not change the statutory deadline for issuing advance payments. This amendment to the regulation was made to ensure that requests for advance payments are received in a timely manner to enable CCC to issue the payments by the statutory deadlines. The provision will not be changed from the interim rule.

Comment: Section 1412.303(a)(4) Respondents were concerned that this provision was announced at an inappropriate time. Respondents were also concerned that the provision would result in higher fixed cash rents, reduced contract payments for tenants, limited crop financing for tenants, increased financial exposure of tenants, renegotiation of rental arrangements, minimal or no savings to the Government, elimination of cash rent flexibility provisions under combination leases, decreased land values because of limited improvements being made to the land resulting in job losses and reduced tax bases in rural communities, and elimination of the planting flexibility provisions in the 1996 Act. Respondents were also concerned that the Department did not explain the basis for the change.

Response: The amendment to § 1412.303(a)(4) relates to combination leases that are partially paid in cash and partially paid in the crop. Prior to the amendment to this section, most combination leases result in a determination that the lease is a share lease unless there is a disaster. Changing this provision provides uniformity in determining whether a lease is a cash or share lease. The substance of § 1412.303(a)(4) will not be changed, but the timing of the implementation of this section has been modified as indicated below so that producers who had made long-term commitments prior to the publication of the interim rule will be unaffected. In addition, § 1412.303(a)(6) has been amended to comport with these changes.

Changes from the interim rule include:

Section 1412.206 Planting Flexibility

This rule incorporates the change required by the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 1998, which provides that if wild rice is planted on contract acreage, the contract payment shall be reduced by an acre for each contract acre planted to wild rice.

Section 1412.303 Sharing of Contract Payments

Combination leases are leases that contain provisions for both a guaranteed amount such as a fixed dollar amount, or quantity and a share of a crop or crop proceeds. Combination leases include those leases that provide for the greater of a guaranteed amount, or share of the crop or crop proceeds. The amendment provides that all combination leases shall be considered share leases for fiscal years 1999 and later fiscal years except for those producers who had made leasing and share-designation decisions prior to the interim rule.

This rule amends § 1412.303:

(1) by adding language that for fiscal year 1999 and subsequent fiscal years, except as provided in (2) where producers had already made leasing and share-designation decisions prior to the interim rule, that a ''combination'' lease shall be considered a share lease if the lease provides for both a guaranteed amount, such as a fixed dollar amount or quantity, and a share of a crop or crop proceeds, including leases which provide for the greater of a guaranteed amount or share of the crop or crop proceeds; and

(2) by adding language that for producers who had already made leasing and share-designation decisions prior to the interim rule that for the years which had been designated and a lease executed, those leases will continue to be considered cash leases.

List of Subjects in 7 CFR Part 1412

Contract acreage, Contract payments, Planting flexibility, Price support programs.

Accordingly, the interim rule amending 7 CFR part 1412, which was published at 62 FR 55150 on October 23, 1997, is adopted as a final rule with the following changes:

PART 1412—PRODUCTION FLEXIBILITY CONTRACTS FOR WHEAT, FEED GRAINS, RICE, AND UPLAND COTTON

1. The authority citation for part 1412 continues to read as follows:

Authority: 7 U.S.C. 7201 *et seq.*; 15 U.S.C. 714b and 714c; and Sec. 734 of Pub. L. 105–86.

2. Section 1412.201 is amended by revising paragraph (c) to read as follows:

§ 1412.201 Production flexibility contract.

* * * * *

(c) All producers sharing in the contract payments on a farm whose payment shares have not been designated for a fiscal year must sign the contract designating payment shares and provide supporting documentation as specified in parts 12, 1400, and 1405 of this title no later than August 1 of the fiscal year to be eligible to earn a contract payment in that fiscal year. If all producers have not signed the contract by this deadline, no producers on the contract will be eligible for a payment for that farm for that fiscal year.

3. Section 1412.206 is amended by revising paragraph (a) to read as follows:

§ 1412.206 Planting flexibility.

(a) For the 1996 through 2002 crop years, any crop may be planted on contract acreage on a farm, except as limited elsewhere in this section. For fiscal year 1998, for each acre a producer plants wild rice on contract acreage, 1 acre will not be used in determining the contract payment. Any crop may be planted on cropland in excess of the contract acreage.

* * * * *

4. Section 1412.207 paragraphs (d)(1) and (d)(2) are revised to read as follows:

§ 1412.207 Succession-in-interest to a production flexibility contract.

* * * * *

(d) * * *

(1) August 1 of the fiscal year in which the change occurs if producers on the contract acreage remain the same, but payment shares change; or

(2) August 1 of the fiscal year in which the change occurs, if a new producer is being added to the contract.

* * * * *

5. Section 1412.302 paragraph (b) is revised to read as follows:

* * * * *

§ 1412.302 Contract payment provisions.

* * * * *

(b) At the option of the producer, for fiscal year 1997 and each subsequent fiscal year, 50 percent of the annual contract payment shall be paid on December 15 or January 15, as requested by the producer. To receive the advance payment the producers on the farm must be in compliance with all requirements of the contract at the time of the advance payment. For fiscal year 1998 and each subsequent fiscal year, all producers sharing in the contract payment on the farm must no later than 15 days prior to the final date to issue the advance payment, sign the contract designating payment shares and provide supporting documentation as specified in parts 12, 1400, and 1405 of this title, if applicable; and request the advance payment. If all producers on the farm have not signed the contract designating payment shares according to this paragraph, then no producers will be eligible for a payment for that farm for that fiscal year.

* * * * *

6. Section 1412.303 is amended by adding paragraph (a)(6) and revising paragraphs (a)(2) and (a)(4) to read as follows:

§ 1412.303 Sharing of contract payments.

(a) * * *

(2) A lease will be considered a cash lease if the lease provides for only a guaranteed sum certain cash payment, or a fixed quantity of the crop (for example, cash, pounds, or bushels per acre).

* * * * *

(4) Beginning on October 1, 1998, for years in which payment shares had not been designated prior to October 23, 1997, a producer's lease, including a lease which provides for the greater of a guaranteed amount or share of the crop or crop proceeds, shall be considered a share lease if the lease provides for both:

(i) A guaranteed amount such as a fixed dollar amount or quantity; and

(ii) A share of the crop proceeds.

* * * * *

(6) A lease that the county committee determined to be a cash lease under § 1412.303 as contained in the 7 CFR, parts 1200 to 1499, edition revised as of January 1, 1997, will be considered a cash lease for the years in which payment shares were designated if, prior to October 23, 1997:

(i) The designation of shares was executed; and

(ii) The county committee was provided a copy of the lease applicable for the designated years.

* * * * *

7. Section 1412.304 paragraph (b) is revised to read as follows:

§ 1412.304 Provisions relating to tenants and sharecroppers.

* * * * *

(b) Notwithstanding the provisions set forth at § 1412.302(c), if the landowners, tenants and sharecroppers on a farm fail to reach an agreement regarding the division of contract payments for a fiscal year, the county committee shall make the payment at a later date if all persons eligible to receive a share of the contract payment have executed a contract not later than August 1 of the applicable fiscal year and subsequently agree to the division of contract payment.

Signed at Washington, DC, on June 1, 1998.

Keith Kelly,

Executive Vice President, Commodity Credit Corporation.

[FR Doc. 98–15000 Filed 6–5–98; 8:45 am]

BILLING CODE 3410–05–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–CE–126–AD; Amendment 39–10566; AD 98–12–10]

RIN 2120–AA64

Airworthiness Directives; Avions Mudry et Cie Model CAP 10B Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes Airworthiness Directive (AD) 93–10–11, which currently requires installing an inspection opening in the wing, repetitively inspecting the upper wing spar cap for cracks, and repairing any cracks on all Avions Mudry et Cie (Avions) Model CAP 10B airplanes. This AD will retain the same actions already required by AD 93–10–11, and will add inspecting, and repairing if necessary, the lower surface of the wing spar. This AD is the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for France. The actions specified by this AD are intended to prevent structural cracks in the wing spar, which could lead to loss of a wing and loss of control of the airplane.

DATES: Effective July 17, 1998.

The incorporation by reference of Avions Mudry & Cie Service Bulletin CAP10B No. 16 (ATA 57–004), dated April 27, 1992, as listed in the regulations, was previously approved by the Director of the Federal Register, as of July 23, 1993 (58 FR 31342, June 2, 1993).

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of July 17, 1998.

ADDRESSES: Service information that applies to this AD may be obtained from Avions Mudry & Cie, (c/o Akrotech), 9 route del'Aviation, Aerodrome, 21121 Darois, France; telephone: (33) 32.43.47.34; facsimile: (33) 32.43.47.90. This information may also be examined at the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 97–CE–126–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

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

SUPPLEMENTARY INFORMATION:

Events Leading to the Issuance of This AD

A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to all Avions Model CAP 10B airplanes was published in the **Federal Register** as a notice of proposed rulemaking (NPRM) on March 26, 1998 (63 FR 14660). The proposed AD would supersede AD 93–10–11, Amendment 39–8592 (58 FR 31342, June 2, 1993) with a new AD that would require installing an inspection opening in the wing, repetitively inspecting the upper and lower wing spars for structural cracking, and if any cracks are found, repairing the cracks in accordance with a repair method provided by the

manufacturer through the FAA. The difference between the actions proposed in the NPRM and AD 93–10–11 is the addition of the inspections and possible repairs of the lower wing spar.

Accomplishment of the proposed action as specified in the NPRM would be in accordance with Avions Mudry & Cie Service Bulletin No. 15, CAP10B–57–003, Revision 1, dated April 3, 1996, and Avions SB CAP 10B No. 16 (ATA 57–004), dated April 27, 1992.

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

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

The FAA's Determination

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

Cost Impact

The FAA estimates that 37 airplanes in the U.S. registry will be affected by this AD, that it will take approximately 5 workhours per airplane to accomplish this action, and that the average labor rate is approximately $60 an hour. Based on these figures, the total cost impact of this AD on U.S. operators is estimated to be $11,100, or $300 per airplane.

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by removing Airworthiness Directive (AD) 93–10–11, Amendment No. 39–8592, and by adding a new AD to read as follows:

98–12–10 Avions Mudry Et Cie: Amendment 39–10566; Docket No. 97–CE–126–AD; Supersedes AD 93–10–11, Amendment 39–8592.

Applicability: Model CAP 10B airplanes, all serial numbers, certificated in any category.

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

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

To prevent structural cracks in the wing spars, which could lead to loss of a wing and loss of control of the airplane, accomplish the following:

(a) For airplanes having a serial number of 263 or lower, within the next 100 hours time-in-service (TIS) after July 23, 1993 (the effective date of AD 93–10–11, Amendment 39–8592), install a permanent inspection opening in each wing in accordance with the Technical Instructions section of Avions Mudry & Cie (Avions) Service Bulletin (SB) CAP 10B No. 16 (ATA 57–004), dated April 27, 1992.

Note 2: The installation specified in paragraph (a) of this AD is incorporated during production for airplanes having a serial number of 264 or higher.

(b) For all serial numbers, within the next 100 hours TIS after the effective date of this AD, or within the next 1,000 hours TIS after the last inspection required in accordance with AD 93–10–11, Amendment 39–8592, whichever occurs later, unless already accomplished, and thereafter at intervals not to exceed 1,000 hours TIS, inspect the upper and lower wing surfaces of both wing spars for cracks in accordance with Avions SB No. 15, CAP10B–57–003, Revision 1, dated April 3, 1996.

(c) If any cracks are found, prior to further flight, repair the cracks with a repair scheme obtained from the manufacturer through the FAA Project Officer at the Small Airplane Directorate, 1201 Walnut, suite 900, Kansas City, Missouri 64106.

Note 3: The compliance times required in this AD take precedence over the compliance times stated in Avions SB No. 15, CAP10B–57–003, Revision 1, dated April 3, 1996.

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

(e) An alternative method of compliance or adjustment of the compliance times that provides an equivalent level of safety may be approved by the Manager, Small Airplane Directorate, 1201 Walnut, suite 900, Kansas City, Missouri 64106.

(1) The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Small Airplane Directorate.

(2) Alternative methods of compliance approved in accordance with AD 93–10–11 are not considered approved as alternative methods of compliance for this AD.

Note 4: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Small Airplane Directorate.

(f) Questions or technical information related to Avions SB No. 15, CAP10B–57–003, Revision 1, dated April 3, 1996, and Avions SB CAP 10B No. 16 (ATA 57–004), dated April 27, 1992, should be directed to Avions Mudry & Cie, B.P. 214, 27300 Bernay, France; telephone: (33) 32 43 47 34; facsimile: (33) 32 43 47 90. This service information may be examined at the FAA, Central Region, Office of the Regional Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

(g) The modification required by this AD shall be done in accordance with Avions Mudry & Cie Service Bulletin CAP 10B No. 16 (ATA 57–004), dated April 27, 992. The inspections required by this AD shall be done in accordance with Avions Mudry & Cie Service Bulletin No. 15, CAP10B–57–003, Revision 1, dated April 3, 1996.

(1) The incorporation by reference of Avions Mudry & Cie Service Bulletin No. 16 (ATA 57–004), dated April 27, 1992, was previously approved by the Director of the Federal Register as of July 23, 1993 (58 FR 31342, June 2, 1993).

(2) The incorporation by reference of Avions Mudry & Cie Service Bulletin No. 15, CAP10B–57–003, Revision 1, dated April 3, 1996, was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

(3) Copies may be obtained from Avions Mudry & Cie, (c/o Akrotech), 9 route del'Aviation, Aerodrome, 21121 Darois, France. Copies may be inspected at the FAA, Central Region, Office of the Regional Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

Note 5: The subject of this AD is addressed in French AD 92–240(A)R1, dated October 22, 1997.

(h) This amendment supersedes AD 93–10–11, Amendment 39–8592.

(i) This amendment becomes effective on July 17, 1998.

Issued in Kansas City, Missouri, on May 29, 1998.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–15085 Filed 6–5–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–CE–141–AD; Amendment 39–10569; AD 98–12–13]

RIN 2120–AA64

Airworthiness Directives; Industrie Aeronautiche e Meccaniche Model Piaggio P–180 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that applies to certain Industrie Aeronautiche e Meccaniche (I.A.M.) Model Piaggio P–180 airplanes. This AD requires modifying the low pitch stop switch support. This AD is the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for Italy. The actions specified by this AD are intended to prevent low pitch stop switch support displacement, which could result in an improper cockpit indication that the propeller is in the Beta range and cause loss of control of the airplane.

DATES: Effective July 18, 1998.

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

ADDRESSES: Service information that applies to this AD may be obtained from Industrie Aeronautiche e Meccaniche Rinaldo Piaggio S.p.A., Via Cibrario, 4 16154 Genoa, Italy. This information may also be examined at the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 97–CE–141–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

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

SUPPLEMENTARY INFORMATION:

Events Leading to the Issuance of This AD

A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to certain I.A.M. Model Piaggio P–180 airplanes was published in the **Federal Register** as a notice of proposed rulemaking (NPRM) on March 2, 1998 (63 FR 10157). The NPRM proposed to require modifying the low pitch stop switch support. Accomplishment of the proposed action as specified in the NPRM would be in accordance with I.A.M. Piaggio Service Bulletin (Mandatory) No. SB–80–0080, dated July 3, 1997.

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

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

The FAA's Determination

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

Cost Impact

The FAA estimates that 5 airplanes in the U.S. registry will be affected by this AD, that it will take approximately 6 workhours per airplane to accomplish this action, and that the average labor rate is approximately $60 an hour. Parts cost approximately $100 per airplane. Based on these figures, the total cost impact of this AD on U.S. operators is estimated to be $2,300, or $460 per airplane.

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

98–12–13 Industrie Aeronautiche E Meccaniche: Amendment 39–10569; Docket No. 97–CE–141–AD.

Applicability: Model Piaggio P–180 airplanes, serial numbers 1001, 1002, 1004, and 1006 through 1033, certificated in any category.

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

Compliance: Required within the next 150 hours time-in-service (TIS) after the effective date of this AD, unless already accomplished.

To prevent low pitch stop switch support displacement, which could result in an improper cockpit indication that the propeller is in the Beta range and cause loss of control of the airplane, accomplish the following:

(a) Modify the low pitch stop switch support in accordance with Industrie Aeronautiche e Meccaniche Piaggio Service Bulletin (Mandatory) No. SB–80–0080, dated July 3, 1997.

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

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

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

(d) Questions or technical information related to I.A.M. Piaggio Service Bulletin (Mandatory) No. SB–80–0080, dated July 3, 1997, should be directed to I.A.M. Rinaldo Piaggio S.p.A., Via Cibrario, 4 16154 Genoa, Italy. This service information may be examined at the FAA, Central Region, Office of the Regional Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

(e) The modification required by this AD shall be done in accordance with I.A.M. Piaggio Service Bulletin (Mandatory) No. SB–80–0080, dated July 3, 1997. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from I.A.M. Rinaldo Piaggio S.p.A., Via Cibrario, 4 16154 Genoa, Italy. Copies may be inspected at the FAA, Central Region, Office of the Regional Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

Note 3: The subject of this AD is addressed in Italian AD 97–217, dated July 28, 1997.

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

Issued in Kansas City, Missouri, on May 29, 1998.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–15083 Filed 6–5–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–CE–146–AD; Amendment 39–10570; AD 98–12–14]

RIN 2120–AA64

Airworthiness Directives; AERMACCHI S.p.A. S.205 Series and Models S.208 and S.208A Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that applies to certain AERMACCHI S.p.A. (AERMACCHI) S.205 series and Models S.208 and S.208A airplanes. This AD requires inspecting the flap cable pulley bracket for correct alignment and correcting any misalignment; inspecting the flap control cable for wear (nicks, cuts, frays, etc.), and replacing the flap control pulley bracket and flap control cable if worn. This AD is the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for Italy. The actions specified by this AD are intended to prevent flap control failure, which could result in loss of control of the airplane.

DATES: Effective July 18, 1998.

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

ADDRESSES: Service information that applies to this AD may be obtained from SIAI Marchetti, Product Support, Via Indipendenza 2, 21018 Sesto Calende (VA), Italy; telephone: +39–331–929117; facsimile: +39–331–922525. This information may also be examined at the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 97–CE–146–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

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

SUPPLEMENTARY INFORMATION:

Events Leading to the Issuance of This AD

A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to certain AERMACCHI S.205 series and Models S.208 and S.208A airplanes was published in the **Federal Register** as a notice of proposed rulemaking (NPRM) on March 13, 1998 (63 FR 12418). The NPRM proposed to require: inspecting the flap control pulley bracket for alignment; correcting any misalignment; inspecting the flap control pulley cable for wear; and, replacing the bracket and cable if worn. Accomplishment of the proposed actions as specified in the NPRM would be in accordance with SIAI Marchetti Service Bulletin No. 205B60, dated July 24, 1995.

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

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

The FAA's Determination

After careful review of all available information related to the subject presented above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed except for minor

editorial corrections. The FAA has determined that these minor corrections will not change the meaning of the AD and will not add any additional burden upon the public than was already proposed.

Cost Impact

The FAA estimates that 70 airplanes in the U.S. registry will be affected by this AD, that it will take approximately 4 workhours per airplane to accomplish this action, and that the average labor rate is approximately $60 an hour. Parts cost approximately $150 per airplane. Based on these figures, the total cost impact of this AD on U.S. operators is estimated to be $27,300, or $390 per airplane.

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

98–12–14 Aermacchi S.P.A.: Amendment 39–10570; Docket No. 97–CE–146–AD.

Applicability: Models S.205–18/F, S.205–18/R, S.205–20/F, S.205–20/R, S.205–22/R, S.208, and S.208A airplanes, all serial numbers, certificated in any category.

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

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

To prevent flap control failure which could result in loss of control of the airplane, accomplish the following:

(a) Inspect the flap cable pulley bracket for correct alignment, and if the flap cable pulley bracket is misaligned, prior to further flight, correct any misalignment of the pulley bracket in accordance with the Instructions section of SIAI Marchetti Service Bulletin No. 205B60, dated July 24, 1995.

(b) Inspect the flap control cable for wear (cuts, nicks, frays, etc.), and if wear is found, prior to further flight, replace the flap control cable and flap cable pulley bracket in accordance with the Instructions section of SIAI Marchetti Service Bulletin No. 205B60, dated July 24, 1995.

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

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

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

(e) Questions or technical information related to SIAI Marchetti Mandatory Service Bulletin No. 205B60, dated July 24, 1995, should be directed to SIAI Marchetti, Product Support, Via Indipendenza 2, 21018 Sesto Calende (VA), Italy; telephone: +39–331–929117; facsimile: +39–331–922525. This service information may be examined at the FAA, Central Region, Office of the Regional Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

(f) The inspections and replacements required by this AD shall be done in accordance with SIAI Marchetti Mandatory Service Bulletin No. 205B60, dated July 24, 1995. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from SIAI Marchetti, Product Support, Via Indipendenza 2, 21018 Sesto Calende (VA), Italy. Copies may be inspected at the FAA, Central Region, Office of the Regional Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

Note 3: The subject of this AD is addressed in Italian AD 95–237, dated August 29, 1995.

(g) This amendment becomes effective on July 18, 1998.

Issued in Kansas City, Missouri, on May 29, 1998.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–15084 Filed 6–5–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–ANE–47–AD; Amendment 39–10565; AD 98–12–09]

RIN 2120–AA64

Airworthiness Directives; AlliedSignal Inc. Model TPE331 Series Turboprop Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to AlliedSignal Inc. Model TPE331 series turboprop engines, that requires removal of suspect fuel manifold assemblies and replacement with serviceable assemblies. This amendment is prompted by an FAA investigation into Hoses Unlimited's repairs of TPE331 fuel manifolds, which were not approved by the FAA. The actions specified by this AD are intended to prevent fuel leakage at the fuel manifold fittings, resulting in fuel spraying on hot turbine components, which could result in an engine fire.

DATES: Effective August 7, 1998.

FOR FURTHER INFORMATION CONTACT: Joseph Costa, Aerospace Engineer,

Federal Aviation Administration, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Blvd., Lakewood, CA 90712–4137; Telephone (562) 627–5246, Fax (562) 627–5210.

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 AlliedSignal Inc. Model TPE331–8, –10, –11 and –12 series turboprop engines with fuel manifold, Part Number (P/N) 3102469–1 or –2, repaired by Hoses Unlimited, Inc. prior to November 11, 1995, was published in the **Federal Register** on January 21, 1998 (63 FR 3056). That action proposed to require removal of suspect fuel manifold assemblies and replacement with serviceable assemblies.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received on the proposal or the FAA's determination of the cost to the public. The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

There are approximately 70 engines of the affected design in the worldwide fleet. The FAA estimates that 50 engines installed on aircraft of U.S. registry will be affected by this AD, that it will take approximately 5 work hours per engine to accomplish the required actions, and that the average labor rate is $60 per work hour. Required parts will cost approximately $1,800 per engine. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $105,000.

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:

98–12–09 AlliedSignal Inc.: Amendment 39–10565. Docket 97–ANE–47–AD.

Applicability: AlliedSignal Inc. (formerly Allied-Signal Aerospace Company, Garrett Engine Division and Garrett Turbine Engine Co.) Model TPE331–8, –10, –11 and –12 series turboprop engines with fuel manifold, Part Number (P/N) 3102469–1 or –2, repaired by Hoses Unlimited, Inc. prior to November 20, 1995. These engines are installed on but not limited to Ayres S2R–G10; Cessna Model 441; Construcciones Aeronauticas, S.A. (CASA) C–212 series; Dornier 228 series; Fairchild SA226 and SA227 series; Jetstream 3101 and 3201 series; Mitsubishi MU–2B series (MU–2 series); and Twin Commander Aircraft Corp. Models 695 and 695A aircraft.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent fuel leakage of the fuel manifold, resulting in fuel spraying on hot turbine components, which could result in an engine fire, accomplish the following:

(a) Check all fuel manifold identification bands for P/Ns 3102469–1 or –2 and the Hoses Unlimited, Inc. name, or review engine and aircraft maintenance records and purchase receipts to establish the origin and repairs on all fuel manifolds. If records indicate that fuel manifolds, P/Ns 3102469–1 or –2, are not installed in an engine or that Hoses Unlimited, Inc. has not been used as a repair facility, no further AD action is required.

(b) Remove from service all fuel manifolds with the Hoses Unlimited, Inc. name and P/Ns 3102469–1 or –2 and replace with a serviceable fuel manifold in accordance with the applicable AlliedSignal engine maintenance manual, at first access to the fuel manifold assembly, at the next engine hot section inspection, or 3 years after the effective date of this AD, whichever occurs first.

(c) For the purposes of this AD, first access to the fuel manifold is defined as any repair, modification, removal, or testing of the fuel manifold assembly or components of the fuel manifold assembly.

(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, Los Angeles Aircraft Certification Office. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles Aircraft Certification Office.

Note 2: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the Los Angeles Aircraft Certification Office.

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

(f) This amendment becomes effective on August 7, 1998.

Issued in Burlington, Massachusetts, on May 29, 1998.

Jay J. Pardee,

Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 98–15089 Filed 6–5–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 916

[SPATS No. KS–015–FOR]

Kansas Abandoned Mine Land Reclamation Plan

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

ACTION: Final rule; approval of amendment.

SUMMARY: OSM is approving a proposed amendment to the Kansas abandoned mine land reclamation plan (hereinafter referred to as the ''Kansas plan'') under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). Kansas proposed revisions and additions to its plan pertaining to project ranking and selection procedures and purchasing and procurement systems. The amendment is intended to revise the Kansas plan to be consistent with the corresponding Federal regulations.

EFFECTIVE DATE: June 8, 1998.

FOR FURTHER INFORMATION CONTACT: Russell W. Frum, Office of Surface Mining, Mid-Continent Regional Coordinating Center, Alton Federal Building, 501 Belle Street, Alton, Illinois 62002. Telephone: (618) 463–6460.

SUPPLEMENTARY INFORMATION:

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

I. Background on the Kansas Plan

On February 1, 1982, the Secretary of the Interior conditionally approved the Kansas plan. Background information on the Kansas plan, including the Secretary's findings, the disposition of comments, and the conditions of approval can be found in the February 1, 1982, **Federal Register** (47 FR 4513). Information on the removal of the conditions of approval can be found in the June 3, 1983, **Federal Register** (48 FR 24874). Subsequent actions concerning amendments to the plan can be found at 30 CFR 916.25.

II. Submission of the Proposed Amendment

By letter dated March 17, 1998 (Administrative Record No. AML–KS–171), Kansas submitted a proposed amendment to its plan pursuant to SMCRA. Kansas submitted the proposed amendment in response to a September 24, 1994, letter (Administrative Record No. AML–KS–169) that OSM sent to Kansas in accordance with 30 CFR 884.15(d).

OSM announced receipt of the proposed amendment in the April 6, 1998, **Federal Register** (63 FR 16728), and in the same document opened the public comment period and provided an opportunity for a public hearing on the adequacy of the proposed amendment. The public comment period closed on May 6, 1998.

During its review of the amendment, OSM identified concerns relating to project selection. OSM notified Kansas of these concerns by telephone on April 10, 1998 (Administrative Record No. AML–KS–171.2). By letter dated April 10, 1998 (Administrative Record No. AML–KS–171.3), Kansas responded to OSM's concerns by submitting revisions to its proposed plan amendment. Kansas proposed additional revisions to State Reclamation Plan Section 884.13(c)(2) Step 3, Project Selection. Because the additional information merely clarified certain provisions of Kansas' proposed amendment, OSM did not reopen the public comment period.

III. Director's Findings

Set forth below, pursuant to SMCRA and the Federal regulations at 30 CFR 884.14 and 884.15, are the Director's findings concerning the proposed amendment.

Revisions not specifically discussed below concern nonsubstantive wording changes, or revised cross-references and paragraph notations to reflect organizational changes resulting from this amendment.

A. State Reclamation Plan Section 884.13(c)(2), Projection Ranking and Selection Procedures

1. Kansas proposed to replace the reference to the ''Kansas Mined Land Conservation and Reclamation Board'' with the ''Kansas Department of Health and Environment, Surface Mining Section,'' throughout this section. The Director is approving this amendment because it only updates the agency name.

2. In its discussion of considerations during the project selection process, Kansas proposed to replace the reference to ''30 CFR 874.14'' with a reference to OSM's AML Program Guidelines published on December 30, 1996, entitled, ''Office of Surface Mining, Abandoned Mine Land Reclamation Program Guidelines.'' The Director is approving the update of this reference.

3. Kansas proposed to revise the process for selecting sites for reclamation from four steps to three steps. The Director is approving this change because it is not inconsistent with the Federal regulation at 30 CFR 884.13(c)(2). Kansas also proposed to change the language to focus ranking of potential projects on ''AML Inventory Problem Areas'' instead of ''sites.'' The term ''sites'' is undefined in State or OSM policies, whereas, the term ''AML Problem Area'' is defined in OSM directive AML–1. Problem areas have distinct geographic boundaries and are recognized in the national inventory. The Director is approving this change because it is consistent with section 403(c) of SMCRA and the Federal regulation at 30 CFR 884.13(c)(2).

4. *Project Selection, Step 1-Identification and Establishment of Reclamation Priority Problem Areas.* Kansas revised this step to reference the five priorities for expenditure of AML funds as described in section 403(a) of SMCRA. The introductory paragraph of Step 1 which references a State process independent of the National AML Inventory is deleted. A new introductory paragraph is added and reads as follows:

> The State program will classify problem areas into five OSM approved priority categories listed in the Office of Surface Mining Abandoned Mine Land Inventory Manual. Site conditions will be utilized by the AML Program Staff in identifying problem areas which fit within these priority categories. The problem areas will be evaluated based on site hazards and conditions. The results of the evaluations of all site hazards and site conditions on a parameter will be numerically scored according to its degree of impact and the score will then be adjusted by a standard weighting factor which reflects the parameter's significance relative to the total problem. The resultant total score for each site will be used to rank problem areas within each priority category. A master list will be maintained by the AML Program staff for use by the SMS in selecting projects for funding. Preference among problem areas competing for available resources will be given to projects meeting higher priority objectives and scoring higher on the Problem Area Ranking Matrix.

The Director is approving this amendment because it is consistent with the Federal regulations at 30 CFR 884.13(c) and section 403(a) of SMCRA.

5. *Project Selection, Step 2-Eligibility Determination.* Kansas proposed to changed the title of this step from ''Elimination of Selected Problem Sites'' to ''Eligibility Determinations'' to more accurately reflect the purpose of this step. Item 3 of Step 2 is removed because it is redundant with the state regulations at K.A.R. 47–16–1. The Director is approving these amendments because they add clarifying language and remove redundant language from the Kansas plan.

6. *Project Selection, Step 3-Project Selection.*

a. At Item 2, Kansas deleted its former Priority IV objective concerning AML problems, which present a potential for research and demonstration projects related to mine reclamation, and renumbered former Priority V and VI as priority IV and V, respectively. Kansas also deleted Item 3(vii) dealing with Research and Demonstration. The Director is approving the revisions

because they render the Kansas plan consistent with section 403(a) of SMCRA.

b. In Item 4, Kansas revised the wording to clarify the importance of selecting reclamation project solutions which minimize maintenance and achieve self-sustaining reclamation. The Director is approving this revision because it more clearly follows the spirit of the December 30, 1996, revised AML Reclamation Program Guidelines at Part B.3.b.(3), and it is consistent with 30 CFR 884.13(c).

c. Item 6 originally addressed the issue of remaining coal resources on the reclamation site. Kansas proposed to revise this item to state that problems, on sites where remining could potentially occur, will be addressed before any remining takes place if the problems seriously imperil public health or safety. The Director is approving this revision because it is not inconsistent with section 403(a) of SMCRA.

d. Kansas added a new item, Item 9, to indicate that reclamation must be cost effective and consistent with the intended post mining land use of the owner. The Director is approving this revision because it is not inconsistent with the Federal regulations at 30 CFR 884.13.

e. Kansas proposed to delete Step 4—Selection of Projects and add a new paragraph to Step 3. The new paragraph states that the final selection process will consider ranking score, cost effectiveness of doing lower priority work, availability of funding, and geographic distribution of projects. The Director is approving these revisions because they are not inconsistent with the Federal Regulations at 30 CFR 884.13.

7. *Accomomplishment Reporting.* Kansas proposed to add a new section entitled, ''Accomplishments Reporting,'' at the end of Section 884.13(c)(2). It states that upon completion of any AML project, the Kansas Surface Mining Section will submit Form OSM–76 or other appropriate form(s) to report the accomplishments achieved through the project. The Director finds that the new paragraph is substantively the same as the Federal regulation at 30 CFR 886.23(b).

B. State Reclamation Plan Section 884.13(d)(3), Purchasing and Procurement Systems

Kansas proposed to add two new paragraphs under the sub-section, ''Other Contract Provisions,'' to read as follows:

All successful Bidders for AML contracts must be eligible per regulation at the time of contract award to receive a permit or conditional permit to conduct surface coal mining operations. Eligibility will be confirmed by consulting the Office of Surface Mining's automated system for identifying and tracking ownership and control links involving permit applicants, permittees, and persons cited in violation notices. This provision will also apply to successful bidders on any non-coal sites eligible for reclamation.

No monies from the AML fund will be expended for reclamation on any non-coal sites designated for remedial action pursuant to the Uranium Mill Tailings Radiation Control Act of 1978, the Comprehensive Environmental Response Compensation and Liability Act of 1980, or other such regulations deemed excludable from funding by the Office of Surface Mining.

The Director is approving these additions because they render the Kansas plan consistent with the Federal regulations at 30 CFR 874.16, 875.16, and 875.20.

IV. Summary and Disposition of Comments

Public Comments

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

Federal Agency Comments

Pursuant to 884.14(a)(2) and 884.15(a), the Director solicited comments on the proposed amendment from various other Federal agencies with an actual or potential interest in the Kansas plan. OSM received comments from the U.S. Department of Agriculture Natural Resources Conservation Service (NRCS) dated April 23, 1998 (Administrative Record No. AML–KS–171.5). The NRCS suggested that AML problem areas that are under contract with NRCS for the Rural Abandoned Mine Program (RAMP), should not be included in Kansas' selection process unless Kansas coordinates with them. The proposed change to Kansas' policy and procedure at Section 884.13(c)(2), Step 2 identify certain AML problem areas that will be eliminated from project selection consideration. One of the two categories to be eliminated is projects where there is ongoing or planned reclamation which would be totally financed by the RAMP or other public or private entity. This provision appears adequate to satisfy the NRCS's concern.

In addition, Kansas' existing policy and procedure at Section 884.13(c)(3) outline the coordination of activities between Kansas and the RAMP. The policy and procedure state that the Kansas AML Program will work closely with the NRCS District Conservationist in each county in identifying problem AML sites and selecting reclamation methods. Furthermore, ''To avoid duplication, all information in a given county pertaining to AML inventories, site evaluation, and proposed and active reclamation projects will be shared with each District Conservationist.'' The Director concludes that the concerns of the NRCS regarding RAMP projects are addressed in both the proposed revisions and in other unchanged portions of the Kansas AML Reclamation Plan.

V. Director's Decision

Based on the above findings, the Director approves the proposed plan amendment as submitted by Kansas on March 17, 1998, and as revised on April 10, 1998.

The Director approves the plan as proposed by Kansas with the provision that it be fully promulgated in identical form to the plan submitted to and reviewed by OSM and the public.

The Federal regulations at 30 CFR Part 916, codifying decisions concerning the Kansas plan, are being amended to implement this decision. This final rule is being made effective immediately to expedite the State plan amendment process and to encourage States to bring their plans into conformity with the Federal standards without undue delay. Consistency of State and Federal standards is required by SMCRA.

VI. Procedural Determinations

Executive Order 12866

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

Executive Order 12988

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 (Civil Justice Reform) and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State and Tribal abandoned mine land reclamation plans and revisions thereof since each such plan is drafted and promulgated by a specific State or Tribe, not by OSM. Decisions on proposed abandoned mine land reclamation plans and revisions thereof submitted by a State of Tribe are based on a determination of whether the submittal meets the requirements of

Title IV of SMCRA (30 U.S.C. 1231–1243) and 30 CFR Part 884.

National Environmental Policy Act

No environmental impact statement is required for this rule since agency decisions on proposed State and Tribal abandoned mine land reclamation plans and revisions thereof are categorically excluded from compliance with the National Environmental Policy Act (42 U.S.C. 4332) by the Manual of the Department of the Interior (516 DM 6, appendix 8, paragraph 8.4B(29)).

Paperwork Reduction Act

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

Regulatory Flexibility Act

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

Unfunded Mandates

OSM has determined and certifies pursuant to the Unfunded Mandates Reform Act (2 U.S.C. 1502 *et seq.*) that this rule will not impose a cost of $100 million or more in any given year on local, state, or tribal governments or private entities.

List of Subjects in 30 CFR Part 916

Intergovernmental relations, Surface mining, Underground mining.

Dated: May 26, 1998.

Brent Wahlquist,

Regional Director, Mid-Continent Regional Coordinating Center.

For the reasons set out in the preamble, 30 CFR Part 916 is amended as set forth below:

PART 916—KANSAS

1. The authority citation for part 916 continues to read as follows:

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

2. Section 916.25 is amended in the table by adding a new entry in chronological order by ''Date of final publication'' to read as follows:

§ 916.25 Approval of Kansas abandoned mine land reclamation plan amendments.

* * * * *

Original amendment submission date	Date of final publication	Citation/description
*	* *	* *
March 17, 1998.	June 8, 1998.	Section 884.13(c)(2) and (d)(3).

[FR Doc. 98–15137 Filed 6–5–98; 8:45 am]

BILLING CODE 4310–05–M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 931

[NM–038–FOR]

New Mexico Regulatory Program

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

ACTION: Final rule; approval of amendment.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement (OSM) is approving a proposed amendment to the New Mexico regulatory program (hereinafter, the ''New Mexico program'') under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). New Mexico proposed to recodify the New Mexico Surface Coal Mining Regulations. The amendment revised the State program to improve operational efficiency and ensure that the New Mexico Surface Coal Mining Regulations were codified according to the New Mexico administrative rules.

EFFECTIVE DATES: June 8, 1998.

FOR FURTHER INFORMATION CONTACT: Willis L. Gainer, Telephone: (505) 248–5096, Internet address: WGAINER@OSMRE.GOV.

SUPPLEMENTARY INFORMATION:

I. Background on the New Mexico Program

On December 31, 1980, the Secretary of the Interior conditionally approved the New Mexico Program. General background information on the New Mexico program, including the Secretary's findings, the disposition of comments, and the conditions of approval of the New Mexico program can be found in the December 31, 1980, **Federal Register** (45 FR 86459). Subsequent actions concerning New Mexico's program and program amendments can be found at 30 CFR 931.11, 931.15, 931.16, and 931.30.

II. Proposed Amendment

By letter dated January 6, 1998, New Mexico submitted a proposed amendment to its program (administrative record No. NM–795) pursuant to SMCRA (30 U.S.C. 1201 *et seq.*). New Mexico submitted the proposed amendment at its own initiative. New Mexico proposed to recodify the New Mexico Surface Coal Mining Regulations.

OSM announced receipt of the proposed amendment in the February 24, 1998, **Federal Register** (63 FR 9165), provided an opportunity for a public hearing or meeting on its substantive adequacy, and invited public comment on its adequacy (administrative record No. NM–798). Because no one requested a public hearing or meeting, none was held. The public comment period ended on March 26, 1998.

III. Director's Findings.

As discussed below, the Director, in accordance with SMCRA and 30 CFR 732.15 and 732.17, finds that the proposed program amendment, submitted by New Mexico on January 6, 1998, is no less effective than the corresponding Federal regulations and no less stringent than SMCRA. Accordingly, the Director approves the proposed amendment.

1. Nonsubstantive Revisions to New Mexico's Rules

New Mexico proposed revisions to the previously-approved New Mexico Surface Coal Mining Regulations that are nonsubstantive in nature and consist of minor editorial, punctuation, grammatical, and recodification changes. Specifically, New Mexico proposed to recodify its regulations from Coal Surface Mining Code Rule 80–1 (CSMC Rule 80–1), sections 1 through 15 and sections 19 through 34, to Title 19 (Natural Resources and Wildlife, Chapter 8, (Coal Mining), Part 2 (Coal Surface Mining) of the New Mexico Administrative Code (19 NMAC 8.2), Subparts 1 through 34. No substantive changes to the text of the regulations were proposed.

Because the proposed revisions to these previously-approved rules are

nonsubstantive in nature, the Director finds that these proposed New Mexico rules are no less effective than the Federal regulations at Title 30 (Mineral Resources), Chapter VII (Office of Surface Mining Reclamation and Enforcement, Department of the Interior), Parts 700 through 887. The Director approves the proposed recodification of New Mexico's rules.

IV. Summary and Disposition of Comments

Following are summaries of all substantive written comments on the proposed amendment that were received by OSM, and OSM's responses to them.

1. Public Comments

OSM invited public comments on the proposed amendment, but none were received.

2. Federal Agency Comments

Pursuant to 30 CFR 732.17(h)(11)(i), OSM solicited comments on the proposed amendment from various Federal agencies with an actual or potential interest in the New Mexico program (administrative record No. NM–797).

The U.S. Army Corps of Engineers responded on March 10, 1998, that the amendment is satisfactory (administrative record No. NM–800).

The Natural Resources Conservation Service responded on March 11, 1998, that it had no comments (administrative record No. 799).

3. Environmental Protection Agency (EPA) Concurrence and Comments

Pursuant to 30 CFR 732.17(h)(11)(ii), OSM is required to solicit the written concurrence of EPA with respect to those provisions of the proposed amendment that relate to air or water quality standards promulgated under the authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or the Clean Air Act (42 U.S.C. 7401 *et seq.*).

None of the revisions that New Mexico proposed to make in its amendment pertain to air or water quality standards. Pursuant to 30 CFR 732.17(h)(11)(i), OSM solicited comments on the proposed amendment from EPA (administrative record No. NM–797). It did not respond to OSM's request.

4. State Historic Preservation Officer (SHPO) and the Advisory Council on Historic Preservation (ACHP)

Pursuant to 30 CFR 732.17(h)(4), OSM solicited comments on the proposed amendment from the SHPO and ACHP (administrative record No. NM–797). Neither SHPO nor ACHP responded to OSM's request.

V. Director's Decision

Based on the above finding, the Director approves New Mexico's proposed amendment as submitted on January 6, 1998.

The Federal regulations at 30 CFR Part 931, codifying decisions concerning the New Mexico program, are being amended to implement this decision. This final rule is being made effective immediately to expedite the State program amendment process and to encourage States to bring their programs into conformity with the Federal standards without undue delay. Consistency of State and Federal standards is required by SMCRA.

VI. Procedural Determinations

1. Executive Order 12866

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

2. Executive Order 12988

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

3. National Environmental Policy Act

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

4. Paperwork Reduction Act

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

5. Regulatory Flexibility Act

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

6. Unfunded Mandates

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

List of Subjects in 30 CFR Part 931

Intergovernmental relations, Surface mining, Underground mining.

Dated: May 21, 1998.

Peter A. Rutledge,

Acting Regional Director, Western Regional Coordinating Center.

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

PART 931—NEW MEXICO

1. The authority citation for part 931 continues to read as follows:

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

2. Section 931.15 is amended in the table by adding a new entry in chronological order by ''Date of Final Publication'' to read as follows:

§ 931.15 Approval of New Mexico regulatory program amendments.

* * * * *

Original amendment submission date	Date of final publication	Citation/description
* * * * *	* * *	* *
January 6, 1998	June 8, 1998	19 NMAC 8.2, Subparts 1 through 34 (recodification).

[FR Doc. 98–15242 Filed 6–5–98; 8:45 am]
BILLING CODE 4310–05–M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 943

[SPATS No. TX–035–FOR]

Texas Regulatory Program

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

ACTION: Final rule; approval of amendment.

SUMMARY: OSM is approving a proposed amendment to the Texas regulatory program (hereinafter referred to as the ''Texas program'') under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The amendment consists of revisions to Texas' regulations pertaining to definitions, prime farmland, small operator assistance, release of performance bond, and backfilling and grading. The amendment is intended to revise the Texas program to be consistent with the corresponding Federal regulations.

EFFECTIVE DATE: June 8, 1998.

FOR FURTHER INFORMATION CONTACT: Michael C. Wolfrom, Director, Tulsa Field Office, Office of Surface Mining Reclamation and Enforcement, 5100 East Skelly Drive, Suite 470, Tulsa, Oklahoma 74135–6548, Telephone: (918) 581–6430.

SUPPLEMENTARY INFORMATION:

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

I. Background on the Texas Program

On February 16, 1980, the Secretary of the Interior conditionally approved the Texas program. Background information on the Texas program, including the Secretary's findings, the disposition of comments, and the conditions of approval can be found in the February 27, 1980 **Federal Register** (45 FR 12998). Subsequent actions concerning the conditions of approval and program amendments can be found at 30 CFR 943.10, 943.15, and 943.16.

II. Submission of the Proposed Amendment

By letter dated December 1, 1997 (Administrative Record No. TX–644), Texas submitted and amendment to its program pursuant to SMCRA. Texas submitted the amendment in response to a June 17, 1997, letter (Administrative Record No. 640) and OSM sent to Texas in accordance with 30 CFR 732.17(c). Texas amended its regulations at Chapter 12 of the Texas Administrative Code (TAC) pertaining to definitions, prime farmland, small operator assistance, release of performance bond, and backfilling and grading.

OSM announced receipt of the proposed amendment in the December 29, 1997, **Federal Register** (62 FR 67598) and in the same document opened the public comment period and provided an opportunity for a public hearing or meeting on the adequacy of the amendment. The public comment period closed on January 28, 1998. Because no one requested a public hearing or meeting, none was held.

During its review of the amendment, OSM identified concerns relating to release of performance bond and backfilling and grading. OSM notified Texas of the concerns by letter dated February 12, 1998 (Administrative Record No. TX–644.06). Texas responded in a letter dated March 6, 1998 (Administrative Record No. TX–644.07, by submitting revisions to its amendment. Based upon the revisions to the proposed program amendment submitted by Texas, OSM reopened the public comment period in the April 29, 1998, **Federal Register** (63 FR 23407). The public comment period closed on May 14, 1998.

III. Director's Findings

Set forth below, pursuant to SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17, are the Director's findings concerning the proposed amendment.

Revisons not specifically discussed below concern nonsubstantive wording changes, or revised cross-references and paragraph nota6tions to reflect organizational changes resulting from this amendment.

A. Revisions to Texas' Regulations That Are Substantively Identical to the Corresponding Provisions of the Federal Regulations

The State regulations listed in the table below contain language that is the same as or similar to the corresponding sections of the Federal regulations. Differences between the State regulations and the Federal regulations are nonsubstantive.

Topic	State regulation	Federal counterpart regulation
Definition of Previously Mined Area	16 TAC 12.3	30 CFR 701.5
Definition of Qualified Laboratory	16 TAC 12.3	30 CFR 701.5
Definition of Thick Overburden	16 TAC 12.3	30 CFR 816.105(a)
Definition of Thin Overburden	16 TAC 12.3	30 CFR 816.104(a)
Prime Farmland	16 TAC 12.201(d)(5)	30 CFR 785.17(e)(5)
Terms and Conditions of the Bond	16 TAC 12.309(1)	30 CFR 800.21(f)
Release of Performance Bond—Application	16 TAC 12.312 (a)(1), (a)(2), (a)(3).	30 CFR 800.40 (a)(1), (a)(2), (a)(3)
Release of Performance Bond—Inspection	16 TAC 12.312 (b)(1), (b)(2).	30 CFR 800.40 (b)(1), (b)(2)
Release of Performance Bond—Criteria and Schedule	16 TAC 12.313 (a), (a)(1), (a)(2), (a)(3), (b), (d), (f).	30 CFR 800.40 (c), (c)(1), (c)(2), (c)(3), (d), (f), (g)
Backfilling and Grading: Thin Overburden	16 TAC 12.387	30 CFR 816.104(b)

Topic	State regulation	Federal counterpart regulation
Backfilling and Grading: Thick Overburden	16 TAC 12.388	30 CFR 816.105(b)

Because the above proposed revisions are identical in meaning to the corresponding Federal regulations, the Director finds that Texas' proposed regulations are no less effective than the Federal regulations.

B. Small Operator Assistance Program (SOAP)

1. 16 TAC 12.237 Eligibility for Assistance

At section 12.237(2), Texas amended the eligibility requirements for participation in its small operator assistance program by increasing the amount of the probable total actual and attributed production allowed for applicants from 100,000 to 300,000 tons. At section 12.237(2) (B) and (C), Texas increased the baseline percentage above which ownership will play a role in determining attributed coal production from 5 to 10 percent.

The Director finds that the proposed revisions are consistent with the requirements of the Federal regulations at 30 CFR 795.6(a)(2), and is approving them.

2. 16 TAC 12.243 Applicant Liability

Texas revised section 12.243(a) to require that a coal operator who has received assistance pursuant to sections 12.236 and 12.240 reimburse the Commission for the cost of the services rendered. Texas revised section 12.243(a)(4) to specify that reimbursement will be required if the Commission finds that the operator's actual and attributed annual production of coal for all locations exceeds 300,000 tons during the 12 months immediately following the date on which the operator is issued the surface coal mining and reclamation permit. Texas revised section 12.243(a)(5) to specify that reimbursement will be required if the permit is sold, transferred, or assigned to another person and the transferee's total actual and attributed production exceeds the 300,000-ton production limit during the 12 months immediately following the date on which the permit was originally issued.

The Director finds that the revisions to section 12.243 make it substantively identical to the Federal regulation at 30 CFR 795.12, and is approving the revisions.

3. 16 TAC 12.236 and 12.240

In the June 17, 1997, letter that was sent to Texas in accordance with 30 CFR 732.17(c), OSM also notified Texas of changes needed to its small operator assistance program regulations pertaining to program services and data requirements. Texas noted in this proposed amendment that it will propose revisions to its regulations at 16 TAC 12.236 (Program Services) and 12.240 (Data Requirements) in a future amendment following appropriate statutory changes. Texas also stated that it currently has no small operator assistance program and has no current or potential operations that may qualify for program assistance. Therefore, it is the Director's understanding that Texas will not implement its small operator assistance program regulations until after it amends its regulations at 16 TAC 12.236 and 12.240.

IV. Summary and Disposition of Comments

Public Comments

OSM solicited public comments on the proposed amendment, but none were received.

Federal Agency Comments

Pursuant to 30 CFR 732.17(h)(11)(i), the Director solicited comments on the proposed amendment from various Federal agencies with an actual or potential interest in the Texas program (Administrative Record No. TX–644.03). By letter dated December 24, 1997, the U.S. Army Corps of Engineers commented that its review found the changes to be satisfactory (Administrative Record No. TX–644.05).

Environmental Protection Agency (EPA).

Pursuant to 30 CFR 732.17(h)(11)(ii), OSM is required to obtain the written concurrence of the EPA with respect to those provisions of the proposed amendment that relate to air or water quality standards promulgated under the authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or the Clean Air Act (42 U.S.C. 7401 *et seq.*). None of the revisions that Texas proposed to make in this amendment pertain to air or water quality standards. Therefore, OSM did not request the EPA's concurrence.

Pursuant to 732.17(h)(11)(i), OSM solicited comments on the amendment from the EPA (Administrative Record No. TX–644.01). The EPA did not respond to OSM's request.

State Historical Preservation Officer (SHPO) and the Advisory Council on Historic Preservation (ACHP)

Pursuant to 30 CFR 732.17(h)(4), OSM is required to solicit comments on proposed amendments which may have an effect on historic properties from the SHPO and ACHP. OSM solicited comments on the proposed amendment from the SHPO and ACHP (Administrative Record No. TX–644.02). Neither the SHPO nor ACHP responded to OSM's request.

V. Director's Decision

Based on the above findings, the Director approves the proposed amendment as submitted by Texas on December 1, 1997, and as revised on March 6, 1998.

The Director approves the regulations proposed by Texas with the provision that they be fully promulgated in identical form to the regulations submitted to and reviewed by OSM and the public.

The Federal regulations at 30 CFR Part 943, codifying decisions concerning the Texas program, are being amended to implement this decision. This final rule is being made effective immediately to expedite the State program amendment process and to encourage States to bring their programs into conformity with the Federal standards without undue delay. Consistency of State and Federal standards is required by SMCRA.

VI. Procedural Determinations

Executive Order 12866

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

Executive Order 12988

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 (Civil Justice Reform) and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under

sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR Parts 730, 731, and 732 have been met.

National Environmental Policy Act

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

Paperwork Reduction Act

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

Regulatory Flexibility Act

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

Unfunded Mandates

OSM has determined and certifies pursuant to the Unfunded Mandates Reform Act (2 U.S.C. 1502 *et seq*.) that this rule will not impose a cost of $100 million or more in any given year on local, state, or tribal governments or private entities.

List of Subjects in 30 CFR Part 943

Intergovernmental relations, Surface mining, Underground mining.

Dated: May 22, 1998.

Brent Wahlquist,

Regional Director, Mid-Continent Regional Coordinating Center.

For the reasons set out in the preamble, 30 CFR part 943 is amended as set forth below:

PART 943—TEXAS

1. The authority citation for Part 943 continues to read as follows:

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

2. Section 943.15 is amended in the table by adding a new entry in chronological order by ''Date of final publication'' to read as follows:

§ 943.15 Approval of Texas regulatory program amendments.

* * * * *

Original amendment submission date	Date of final publication	Citation/description
*	*	*
December 1, 1997	June 8, 1998	16 TAC 12.3; 12.201(d)(5); 12.237(2), (2)(B) and (C); 12.243(a), (a)(4) and (5); 12.309(1); 12.312(a) and (b); 12.313(a), (b), (d), and (f); 12.387; 12.388.

[FR Doc. 98–15241 Filed 6–5–98; 8:45 am]
BILLING CODE 4310–05–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[SIPTRAX NO. PA110–4068a; FRL–6102–9]

Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; Gasoline Volatility Requirements for the Pittsburgh-Beaver Valley Ozone Nonattainment Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is approving a State Implementation Plan (SIP) revision submitted by the Commonwealth of Pennsylvania. This revision amends the gasoline volatility requirement for the Pittsburgh-Beaver Valley nonattainment area. The intended effect of this action is to approve a summertime gasoline Reid vapor pressure (RVP) limit of 7.8 pounds per square inch (psi) for gasoline sold in Allegheny, Armstrong, Beaver, Butler, Fayette, Washington, and Westmoreland counties in Pennsylvania. These seven counties comprise the Pittsburgh-Beaver Valley ozone nonattainment area.

DATES: This final rule will become effective July 23, 1998 without further notification unless the Agency receives relevant adverse comments by July 8, 1998. If adverse comment is received, EPA will publish a timely withdrawal of the rule in the **Federal Register**.

ADDRESSES: Comments may be mailed to David Arnold, Chief, Ozone and Mobile Source Section, Mailcode 3AP21, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107; Pennsylvania Department of Environmental Protection, Bureau of Air Quality, P.O. Box 8468, 400 Market Street, Harrisburg, Pennsylvania 17105.

FOR FURTHER INFORMATION CONTACT: Marcia L. Spink at (215) 566–2104.

SUPPLEMENTARY INFORMATION: On December 3, 1997, the Commonwealth of Pennsylvania submitted a formal revision to its State Implementation Plan (SIP). The SIP revision amends the gasoline volatility requirement for the seven county Pittsburgh-Beaver Valley ozone nonattainment area (the Pittsburgh area). On April 17, 1998 the Commonwealth of Pennsylvania revised its December 3, 1997 SIP revision request by deleting the provisions relating to the use of reformulated gasoline (RFG).

I. Background

In July 1995, EPA determined that the air quality of the Pittsburgh area met the national ambient air quality standard

(NAAQS) for ozone based upon 1991 through 1994 monitoring data. (**Note:** That this determination by EPA did not constitute an agency action to redesignate the Pittsburgh area to attainment.) Therefore, under an EPA policy applicable to ozone areas with three years of violation free data, the requirement for an attainment demonstration and other related requirements were waived for the Pittsburgh area. However, subsequent to EPA's determination, there were a number of exceedances in the 1995 ozone season that resulted in a violation of the ozone NAAQS, and the previously waived requirements, including the need for an attainment demonstration, were reinstated. In response to the violation of the NAAQS in the Pittsburgh area, Pennsylvania Governor Thomas Ridge convened the Southwestern Pennsylvania Stakeholder Working Group to review the problem and recommend additional emission control strategies to reduce ozone precursors and produce the required attainment demonstration.

One of the measures the Southwestern Pennsylvania Stakeholder Working Group (the Stakeholders) recommended as necessary to achieve the ozone standard in the Pittsburgh area was a fuels program for cleaner gasoline. There was much debate during the Stakeholders' deliberations as to whether the Group should recommend the adoption of a lower RVP program or whether the Governor should opt the moderate Pittsburgh ozone nonattainment area into the federal RFG program, which is mandated for ozone nonattainment areas classified as serious or above. (The federal RFG program is mandated, for example, in the Philadelphia-Wilmington-Trenton severe ozone nonattainment area.) The Stakeholders' eventual majority recommendation was for a so-called ''dual fuel rule'' for the Pittsburgh area whereby either low RVP or RFG could be used to provide for market driven considerations. (There was a minority opinion issued by some Stakeholders who felt compelled to represent their constituencies by ''going on record'' that they recommended the federal RFG program.) Under the dual fuel scenario, however, it is important to recognize that any RFG distributed and sold in the Pittsburgh area would not have been required by and enforceable under the federal RFG program. The Pennsylvania Department of Environmental Protection (PADEP), in accordance with the Stakeholders' majority recommendation, proceeded to adopt a dual fuel regulation for the Pittsburgh area, and on December 3, 1997 submitted that regulation to EPA as a SIP revision.

After PADEP adopted the dual fuel regulation and submitted it as a SIP revision, however, the dual fuel regulation became an issue of concern and debate in the Pennsylvania legislature. While concerns were raised over both low RVP gasoline and RFG, there was an understanding that a clean fuels program was an ozone precursor reduction measure that the Stakeholders had recommended as both cost-effective and necessary for timely attainment of the NAAQS for ozone in the Pittsburgh area. Moreover, the attainment demonstration submitted by PADEP to satisfy the reinstated requirement that such a demonstration be submitted for the Pittsburgh area by December 31, 1997, took credit for the reductions predicted to be achieved by the implementation of the clean fuels program. Modeling analyses performed during the Stakeholders process indicated that there was very little difference between low RVP gasoline and RFG as control strategies in terms of their effectiveness in lowering predicted ground level ozone concentrations. In fact, the modeling analyses performed for the actual attainment demonstration assumed the level of emission reductions that would occur if the low RVP program were to be implemented.

In order to move forward with the implementation of a clean gasoline program in the Pittsburgh area in time to realize its public health benefits for the 1998 ozone season, the PADEP informed the legislature that it would amend the dual fuel regulations to remove the RFG provisions and that low RVP gasoline would be the ''complying fuel'' for the Pittsburgh area. On April 17, 1998, Pennsylvania amended its December 3, 1997 SIP revision request to EPA by asking that only the low RVP-related provisions of its regulations be approved into the SIP for the Pittsburgh area.

This low RVP program adds new regulations to the Pennsylvania SIP for the Pittsburgh area. These new regulations apply to the sale of gasoline in the Pittsburgh area between May 1 and September 15 of each calendar year. The regulation imposes a RVP limit of 7.8 pounds per square inch (psi) on all gasoline marketed in Allegheny, Armstrong, Beaver, Butler, Fayette, Washington, and Westmoreland counties. The restrictions on fuel would be effective between May 1 and September 15 of each year beginning in calender year 1998 for all refiners, distributors, resellers, carriers, and wholesalers. The restrictions would be applicable between June 1 and September 15 of each year for all wholesale purchaser consumers and retailers of gasoline.

RVP is a measure of a fuel's volatility and thereby affects the rate at which gasoline evaporates and emits VOCs. The lower a fuel's RVP, the lower the rate of evaporation of the fuel. The RVP of gasoline can be lowered by reducing the amount of its volatile components, such as butane. Lowering RVP of gasoline sold during the summer months can offset the effect of summer temperature upon the evaporation of the fuel, which in turn lowers emissions of VOCs. Because VOCs are a component in the formation of ground-level ozone on sunny, hot summer days, lowering the RVP of gasoline sold in the Pittsburgh area is an effective ozone control strategy because it will reduce the VOC emissions from gasoline marketing and from vehicles.

The EPA first proposed to regulate gasoline RVP in 1987 (52 FR 31274). The EPA's gasoline RVP proposal resulted in a two-phased final regulation which was in large part incorporated into the 1990 Amendments to the CAA in section 211(h). Phase I of the federal regulation took effect in 1990 (54 FR 11868) for the years 1990 and 1991. Phase II of the regulation became effective in 1992 (55 FR 23658). This federal rule divides the continental United States into two control regions, Class B and Class C. Generally speaking, the Class B states are the warmer southern and western states, and Class C states are the cooler northern states. The Phase II federal regulation limits the volatility of gasoline sold during the high ozone season to 9.0 psi for Class C areas and 7.8 psi for Class B ozone non-attainment areas. Pennsylvania is a Class C State, and therefore, required under the Federal rule to meet the 9.0 psi standard. Therefore, in order to approve the Commonwealth's SIP revision, EPA must find under section 211(c)(4)(C) of the CAA that the state's requirement is necessary for the Pittsburgh area to meet the ozone NAAQS.

II. Summary and Approval of SIP Revision

State governments are preempted under section 211(c)(4)(A) of the CAA from prescribing a control respecting a fuel characteristic or component that is not identical to a federal control promulgated under section 211(c)(1) that is applicable to the same characteristic or component. However, under section 211(c)(4)(C) a State can require, through a SIP revision, a more stringent RVP standard for a particular

area if the EPA finds that the more stringent standard is necessary to achieve the NAAQS for ozone and approves the SIP revision. In addition to demonstrating necessity under section 211(c)(4)(C), under section 110 the State must also submit an adequate description of the low RVP program and associated enforcement procedures. If EPA finds that a State has shown necessity and has provided an adequate description of the program, EPA may approve the SIP revision requiring the lower state RVP standard for the selected areas.

A. Approval of Pennsylvania's Preempted State Fuel Control Program

Pennsylvania has submitted to EPA data and analysis to support a finding under section 211(c)(4)(C) that its low RVP requirement is necessary for the Pittsburgh nonattainment area to achieve the ozone NAAQS. The Commonwealth has (1) identified the quantity of reductions of VOCs needed to achieve attainment of the ozone NAAQS; (2) identified all other control measures and the quantity of reductions each would achieve; and (3) shown that even with the implementation of all reasonable and practicable control measures, the additional emissions from the low RVP program are needed for the Pittsburgh area to meet the ozone NAAQS on a timely basis.

Pennsylvania submitted analyses to EPA demonstrating the necessity for the low RVP requirement as part of the attainment demonstration SIP revision it submitted for the Pittsburgh area. The Commonwealth's submission used Urban Airshed Modeling to estimate the quantity of emissions of VOCs necessary to achieve the ozone NAAQS.

Next, the Stakeholders evaluated a broad range of potential control measures to determine whether there are sufficient reasonable and practicable measures available to produce the needed emissions reductions without requiring low RVP gasoline. In addition to assessing the quantity of emission reductions attributable to each control measure, the state also considered the time needed for implementations and cost effectiveness of each measure in evaluating the reasonableness of the other control measures in comparison to the low RVP gasoline requirements. Pennsylvania found that a 7.8 psi RVP requirement would produce an estimated 13.12 tons per day of VOC emissions reductions. Based on the Commonwealth's evaluation, EPA finds that there are not sufficient other reasonable and practicable measures available to produce the quantity of emissions reductions needed to achieve the NAAQS for ozone, and thus a low RVP requirement is necessary.

The EPA concurs with the Commonwealth's analysis and its implicit determination that ''other measures'' (as specified in section 211(c)(4)) need not encompass other state fuel measures including state opt-in to RFG. The EPA believes that the CAA does not require a state to demonstrate that other fuel measures are unreasonable or impracticable, but rather section 211(c)(4) is intended to ensure that a state resorts to a fuel measure only if there are no available, practicable, and reasonable non-fuels measures. Thus, in demonstrating that measures other than requiring low RVP gasoline are unreasonable or impracticable, a state is not required to submit a demonstration that other state fuel requirements or state opt-in to RFG are unreasonable or impracticable. This interpretation resolves the ambiguity of the phrase ''other measures'' and reasonably balances the interests underlying the statutory preemption provision. In addition, the result preserves the state's role, specified in section 101(a)(3) of the CAA as the entity primarily responsible for determining the mix of controls to be used to achieve the required emission reductions. The Commonwealth has already adopted virtually every other available control measure it could practically implement in the Pittsburgh area. The other measures that have been adopted to reduce ozone precursor emissions, (such as enhanced Inspection and Maintenance, Stage II Vapor Recovery, Phase II of the NOx reduction requirements implemented pursuant to the Ozone Transport Region's Memorandum of Understanding, reasonably available control technology on numerous source categories) would not achieve all the reductions needed. A detailed discussion of Pennsylvania's evaluation relative to the emission reduction potential of each of these measures can be found as an attachment to EPA's Technical Support Document (TSD) prepared for this rulemaking. Copies of TSD are available, upon request, from the Regional Office listed in the **ADDRESSES** of this document.

B. Description of Pennsylvania Low RVP Program

The Pennsylvania submittal specifies that the gasoline distributed in Allegheny, Armstrong, Beaver, Butler, Fayette, Washington, and Westmoreland counties at the retail level must meet a RVP standard of 7.8 psi or less per gallon between May 1 and September 1 of each calendar year for all refiners, distributors, resellers, carriers, and wholesalers. The restrictions would be applicable between June 1 and September 15 of each year for all wholesale purchaser consumers and retailers of gasoline. In order for the seven county area to meet the 7.8 psi standard in calendar year 1998, the requirement will be effective for all entities as well as wholesale purchaser consumers and retailers on July 23, 1998. Because the State has satisfied all the program description elements, EPA has determined the Commonwealth's low RVP program for the Pittsburgh area meets all applicable federal requirements for approval as a SIP revision.

To ensure enforcement of the program, each entity in the gasoline dispensing network, beginning with the terminal owner, is required to maintain records of the date, name and address of transferor and transferee, the location and volume of gasoline being sold or transferred, and a statement certifying that the gasoline meets the RVP requirement. The PADEP will conduct enforcement of the program. Sampling will be performed in accordance with the procedures described by EPA in its gasoline volatility regulations in 40 CFR part 80, Appendix D. Gasoline volatility tests will be performed following procedures described by EPA in 40 CFR part 80, Appendix E.

EPA is approving this rule without prior proposal because it anticipates no adverse comments and believes that expedited approval of the low RVP program so it is implemented for the 1998 ozone season is in the best interest of the citizens of the area from a public health perspective. However, in the proposed rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision should EPA receive relevant adverse comments on the notice of proposed rulemaking. This rule will become effective July 23, 1998 without further notice unless the Agency receives relevant adverse comments by July 8, 1998.

Should EPA receive such comments, it will publish a notice informing the public that this rule did not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. EPA will not institute a second comment period on the proposed rule. Parties interested in commenting on this action should do so at this time. If no such comments are received, the public is advised that this rule will become effective on July 23, 1998 and no further action will be taken on the proposed rule.

Final Action

EPA is approving as a revision to the Pennsylvania SIP, the provisions of Pennsylvania's regulations pertaining to low RVP gasoline requirements for the Pittsburgh-Beaver Valley ozone nonattainment area submitted by the Pennsylvania Department of Environmental Protection on December 3, 1997 and April 17, 1998. 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.

III. Administrative Requirements

A. Executive Order 12866

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

B. Regulatory Flexibility

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. This federal action authorizes and approves into the Pennsylvania SIP requirements previously adopted by the state, and imposes no new requirements. Therefore, EPA 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 the private sector, of $100 million or more in any one year. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule. EPA has determined that this final action 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 authorizes and approves into the Pennsylvania SIP requirements previously adopted by the State, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

D. Submission to Congress and the 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 August 7, 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, pertaining to the low RVP gasoline volatility requirements for the Pittsburgh-Beaver Valley ozone nonattainment area, may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

F. Executive Order 13045

Protection of Children from Environmental Health Risks and Safety Risks. Executive Order 13045 (62 FR 19885, April 23, 1997), applies to any rule that is (1) likely to be ''economically significant'' as defined under Executive Order 12866, and (2) the Agency has reason to believe that the environmental health or safety risk addressed by the rule may have a disproportionate effect on children. If a regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This rule is not subject to E.O. 13045, ''Protection of Children from Environmental Health Risks and Safety Risks'' because this is not an ''economically significant'' regulatory action as defined by E.O. 12866, and because it does not involve decisions on environmental health or safety risks that may disproportionately affect children.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: May 15, 1998.

A.R. Morris,

Acting Regional Administrator, Region III.

40 CFR part 52, subpart NN of chapter I, title 40 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 NN—Pennsylvania

2. Section 52.2020 is amended by adding paragraph (c)(131) to read as follows:

§ 52.2020 Identification of plan.

* * * * *

(c) * * *

(131) Revisions to the Pennsylvania Regulations governing gasoline volatility requirements submitted on December 3, 1997 and April 17, 1998 by the Pennsylvania Department of Environmental Protection:

(i) Incorporation by reference.

(A) Letters dated December 3, 1997 and April 17, 1998 from the Pennsylvania Department of Environmental Protection transmitting the low RVP gasoline volatility

requirements for the Pittsburgh-Beaver Valley ozone nonattainment area.

(B) Revisions to 25 Pa Code, Chapters 121, 126, 139 pertaining to Gasoline Volatility Requirements, effective November 1, 1997.

(*1*) Revisions to section 121.1—definitions of compliant fuel, distributor, Importer, Low RVP gasoline, Pittsburgh-Beaver Valley Area, RVP-Reid Vapor Pressure.

(*2*) Addition of sections 126.301(a) through (c), 126.302 except for portions relating to RFG of (a)(6), and 126.303 (a).

(*3*) Addition of paragraphs 139.4(18) and (19) pertaining to sampling procedures for Reid Vapor Pressure and gasoline volatility.

(ii) Additional Material—Remainder of December 3, 1997 State submittal pertaining to the use of low RVP gasoline.

[FR Doc. 98–15023 Filed 6–5–98; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[TN–184–1–(9812)a; TN–199–1–(9813)a; FRL–6104–1]

Approval and Promulgation of Implementation Plans; Tennessee: Approval of Revisions to the Knox County Portion of the Tennessee SIP Regarding Volatile Organic Compounds (VOCs) and Process Particulate Emissions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is approving revisions to section 19.2 and section 46.2.A.34 of the Knox County portion of the Tennessee State Implementation Plan (SIP) which were submitted to EPA through the Tennessee Department of Air Pollution Control (TDAPC), on December 24, 1996 and June 18, 1997. Section 19.2 is revised to include terminology which more clearly defines the subject matter of this section: process particulate emissions. Section 46.2.A.34 is revised to incorporate by reference the definition for volatile organic compounds (VOCs) contained in 40 CFR part 51, subpart F.

DATES: This final rule is effective August 7, 1998 unless adverse or critical comments are received by July 8, 1998. If adverse comment is received, EPA will publish a timely withdrawal of the rule in the **Federal Register**.

ADDRESSES: Written comments on this action should be addressed to Allison Humphris at the Environmental Protection Agency, Region 4 Air Planning Branch, 61 Forsyth Street, SW, Atlanta, Georgia 30303. Copies of documents relative to this action are available for public inspection during normal business hours at the following locations. The interested persons wanting to examine these documents should make an appointment with the appropriate office at least 24 hours before the visiting day. Reference files TN184–01–9812 and TN199–01–9813. The Region 4 office may have additional background documents not available at the other locations.

Air and Radiation Docket and Information Center (Air Docket 6102), U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460, telephone (202) 260–7549. Environmental Protection Agency, Region 4 Air Planning Branch, 61 Forsyth Street, SW, Atlanta, Georgia 30303. Allison Humphris, 404/562–9030. Tennessee Department of Environment and Conservation, Division of Air Pollution Control, L & C Annex, 9th Floor, 401 Church Street, Nashville, Tennessee 37243–1531. 615/532–0554.

Knox County Department of Air Pollution Control, City-County Building, Suite 339, 400 West Main Street, Knoxville, Tennessee, 37902. 423/215–2488

FOR FURTHER INFORMATION CONTACT: Allison Humphris at 404/562–9030.

SUPPLEMENTARY INFORMATION: The EPA is approving revisions to sections 19.2 and 46.2.A.34 of the Knoxville regulations. Section 19.2 is revised to include terminology which more clearly defines the subject matter of this section: process particulate emissions. Section 46.2.A.34 is revised to incorporate by reference the definition for volatile organic compounds (VOCs) contained in 40 CFR part 51, subpart F.

Section 19.2, ''Process Emissions''

This section was revised by changing all references of ''process emissions'' to ''process particulate emissions.'' The change was made for clarity and to be consistent with the language in section 18.2, ''Non-Process Particulate Emissions.''

Section 46.2.A.34, ''Volatile Organic Compound (VOC)''

The definition of ''volatile organic compound'' was revised to incorporate by reference the definition contained in 40 CFR part 51, subpart F. EPA exempted acetone (per 60 FR 31633—June 16, 1995), perchloroethylene (per 61 FR 4588—February 7, 1996), and hydrofluorocarbon (HFC) 43–10mee, hydrochlorofluorocarbon (HCFC) 225ca and cb (all per 61 FR 52848—October 8, 1996) from regulation as VOCs due to the determination that these compounds have negligible photochemical reactivity and do not significantly contribute to the formation of ozone.

Final Action

The Agency has reviewed this request for revision of the Federally-approved State implementation plan for conformance with the provisions of the Clean Air Act amendments enacted on November 15, 1990. The Agency has determined that this action conforms with those requirements. EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision should relevant adverse comments be filed. This rule will be effective August 7, 1998 without further notice unless the Agency receives relevant adverse comments by July 8, 1998. If the EPA receives such comments, then EPA will publish a notice withdrawing the final rule and informing the public that the rule did not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. The EPA will not institute a second comment period on the proposed rule. Any parties interested in commenting on the proposed rule should do so at this time. If no such comments are received, the public is advised that this rule will be effective on August 7, 1998 and no further action will be taken on the proposed rule.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any 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.

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 Regional 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) and 7410(k)(3).

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 requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

D. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. 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 August 7, 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).)

F. Executive Order 13045

Protection of Children from Environmental Health Risks and Safety Risks. Executive Order 13045 (62 FR 19885, April 23, 1997), applies to any rule that is (1) likely to be ''economically significant'' as defined under Executive Order 12866, and (2) the Agency has reason to believe that the environmental health or safety risk addressed by the rule may have a disproportionate effect on children. If a regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This rule is not subject to E.O. 13045, ''Protection of Children from Environmental Health Risks and Safety Risks'' because this is not an ''economically significant'' regulatory action as defined by E.O. 12866, and because it does not involve decisions on environmental health or safety risks that may disproportionately affect children.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Ozone, Particulate matter, Reporting and recordkeeping requirements.

Dated: April 27, 1998.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

Part 52 of chapter I, title 40, *Code of Federal Regulations,* is amended as follows:

PART 52—[AMENDED]

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

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

Subpart RR—Tennessee

2. Section 52.2220, is amended by adding paragraph (c)(161) to read as follows:

§ 52.2220 Identification of plan.

* * * * *

(c) * * *

(161) Revisions to the Knox County portion of the Tennessee state implementation plan submitted to EPA by the State of Tennessee on December 24, 1996 and June 18, 1997, concerning process particulate emissions and volatile organic compounds (VOC) were approved.

(i) Incorporation by reference.

(A) Section 19.2 of the Knox County Air Pollution Control Regulation ''Process Particulate Emissions'' effective December 11, 1996.

(B) Section 46.2.A.34 of the Knox County Air Pollution Control Regulation ''Volatile Organic Compounds'' effective June 11, 1997.

(ii) Other material. None.

[FR Doc. 98–15022 Filed 6–5–98; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[TX95–1–7379a FRL–6104–2]

Approval and Promulgation of Implementation Plan; Texas; Revisions to 30 TAC Chapter 115 for Control of Volatile Organic Emissions From Perchloroethylene Dry Cleaning Systems

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The EPA is approving revisions to the State Implementation Plan (SIP) in order to repeal rules which are no longer required. The requirements of 30 TAC Chapter 115, sections 115.521–115.527 and 115.529 for controlling emissions from perchloroethylene (perc) dry cleaners are being repealed. In a February 7, 1996, **Federal Register** action, for purposes of preparing SIP's to attain the national ambient air quality standards (NAAQS) for ozone under title I of the Clean Air Act (Act), EPA excluded perc from the Federal definition of Volatile Organic Compound (VOC) due to perc's negligible photochemical reactivity. Emissions from perc dry cleaners will continue to be regulated by the perc dry cleaning National Emission Standards for Hazardous Air Pollutants which EPA promulgated on September 22, 1993.

EFFECTIVE DATE: This direct final rule is effective on August 7, 1998 without further notice, unless EPA receives adverse comment by July 8, 1998. If adverse comment is received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule did not take effect.

ADDRESSES: Written comments should be addressed to Mr. Thomas H. Diggs, Chief, Air Planning Section (6PD–L), at the EPA Regional Office listed below. Copies of the documents relevant to this final action are available for public inspection during normal business hours at the following locations. Interested persons wanting to examine these documents should make an appointment with the appropriate office at least two working days in advance.

Environmental Protection Agency, Region 6, Multimedia Planning and Permitting Division, 1445 Ross Avenue, Suite 700, Dallas, TX 75202–2733.

Texas Natural Resource Conservation Commission (TNRCC), Office of Air Quality, 12100 Park 35 Circle, Austin, Texas 78753.

Documents which are incorporated by reference are available for public inspection at the Air and Radiation Docket and Information Center, Environmental Protection Agency, 401 M Street SW., Washington, D.C. 20460.

FOR FURTHER INFORMATION CONTACT: Mr. Ken Boyce, Air Planning Section (6PD–L), Environmental Protection Agency, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202, telephone: (214) 665–7259.

SUPPLEMENTARY INFORMATION:

I. Background

The EPA's purpose in promulgation of the general definition of VOC (40 CFR 51.100(s)) is for use in the preparation of SIP's designed to achieve and maintain the NAAQS for ozone. That definition of VOC lists several compounds which are considered to have negligible photochemical reactivity and, therefore, are exempt from the VOC definition. Based on the criteria used to judge the reactivity of compounds for this list, EPA determined that perc should be added to the list of compounds as not contributing substantially to the formation of ground level ozone. On February 7, 1996, in 61 FR 4588, EPA excluded perc as a VOC. The result of this action is that States are not allowed to continue to take credit for perc reductions in ozone non-attainment planning.

EPA will not enforce measures controlling perc as part of a federally-approved ozone SIP. The recently promulgated NESHAP increases public health protection above levels achieved by the formerly applicable Control Techniques Guideline (CTG). The exclusion of perc from the definition of VOC means that for purposes of ozone control, the perc dry cleaning CTG no longer has the legal status of a CTG. As a result of the change in status of the perc CTG, states are no longer required to have rules based upon the CTG. The State's Chapter 115 rule for perc was based on the CTG and is therefore no longer required. States may still use the CTG as a source of technical information for developing rules to control toxic materials. While the rules are no longer necessary for ozone control, EPA is regulating perc as a hazardous air pollutant under section 112 of the 1990 amendments to the Federal Clean Air Act. Maintaining the SIP rules for perc would be largely duplicative of these requirements. In addition, any existing dry cleaners currently complying with the Chapter 115 perc dry cleaning rules are likely to continue using their add-on controls due to the value of the recovered perc. Therefore, the Chapter 115 perc dry cleaning rules can be repealed.

II. Final action

This action approves a revision to TNRCC Regulation V (30 TAC Chapter 115) which removes regulations concerning perc dry cleaning systems from the Texas SIP submitted by the Governor of Texas on November 12, 1997.

The EPA is publishing this rule without a prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision should relevant adverse comments be filed. This direct final rule is effective on August 7, 1998 without further notice, unless EPA receives adverse comment by July 8, 1998. If adverse comment is received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule did not take effect.

If EPA receives such comments, then EPA will publish a document withdrawing the final rule and informing the public that the rule did not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. The EPA will not institute a second comment period on the proposed rule. Only parties interested in commenting on the proposed rule should do so at this time. If no such comments are received, the public is advised that this rule will be effective on August 7, 1998 and no further action will be taken on the proposed rule.

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

III. Administrative Requirements

A. Executive Order (E.O.) 12866

The Office of Management and Budget 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. *See* 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.

The SIP approvals under section 110 and subchapter I, part D of the 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, I certify 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 Act, preparation of a flexibility analysis would constitute Federal inquiry into the economic reasonableness of State action. The Act forbids EPA to base its actions concerning SIPs on such grounds. *See Union Electric Co.* v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

C. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995, 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 the 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.

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

D. Submission to Congress and the Comptroller General

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

E. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks

This final rule is not subject to E.O. 13045, entitled ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because this is not an economically significant regulatory action as defined by E.O. 12866. The environmental risks or safety risks addressed by this action do not have a disproportionate effect on children.

F. Petitions for Judicial Review

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by August 7, 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 will not postpone the effectiveness of such rule action. This action may not be challenged later in proceedings to enforce its requirements. *See* section 307(b)(2).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Ozone, Reporting and recordkeeping requirements, and Volatile organic compounds.

Dated: May 12, 1998.

Jerry Clifford,

Deputy Regional Administrator, Region 6.

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

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

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

Subpart SS—Texas

2. Section 52.2270 is amended by adding paragraph (c)(110) to read as follows:

§ 52.2270 Identification of plan.

* * * * *

(c) * * *

(110) Revision to the Texas State Implementation Plan adopted by the Texas Natural Resource Conservation Commission (TNRCC) on October 15, 1997, and submitted by the Governor on November 12, 1997, repealing the Perchloroethylene Dry Cleaning Systems regulations from the Texas SIP.

(i) Incorporation by reference.

TNRCC Order Docket No. 97–0534–RUL issued October 21, 1997, repealing Perchloroethylene Dry Cleaning Systems regulations (Sections 115.521 to 115.529) from 30 TAC Chapter 115.

(ii) Additional materials.

(A) letter from the Governor of Texas dated November 12, 1997, submitting amendments to 30 TAC Chapter 115 for approval as a revision to the SIP.

[FR Doc. 98–15018 Filed 6–5–98; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Part 420

[HCFA–6144–FC]

RIN 0938–AH86

Medicare Program; Incentive Programs-Fraud and Abuse

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Final rule with comment period.

SUMMARY: This final rule with comment period establishes a program for payment to individuals who provide information on Medicare fraud and abuse or other sanctionable activities. This final rule implements section 203(b) of the Health Insurance Portability and Accountability Act of 1996.

DATES: *Effective date:* This final rule is effective July 8, 1998. *Comment period:* Comments will be considered if we receive them at the appropriate address, as provided below, no later than 5 p.m. on August 7. 1998.

ADDRESSES: Mail written comments (1 original and 3 copies) to the following address: Health Care Financing Administration, Department of Health and Human Services, Attention: HCFA–6144–FC, P.O. Box 26688, Baltimore, MD 21207–0488.

If you prefer, you may deliver your written comments (1 original and 3 copies) to one of the following addresses:

Room 309–G, Hubert H. Humphrey Building, 7500 Independence Avenue, SW., Washington, DC 20201, or

Room C5–09–26, 7500 Security Boulevard, Baltimore, MD 21244–1850.

FOR FURTHER INFORMATION CONTACT: Delilah Schmitt, (410) 786–4300.

SUPPLEMENTARY INFORMATION: Comments may also be submitted electronically to

the following e-mail address: hcfa6144fc@hcfa.gov. E-mail comments must include the full name and address of the sender and must be submitted to the referenced address to be considered. All comments must be incorporated in the e-mail message because we may not be able to access attachments. Electronically submitted comments will be available for public inspection at the Independence Avenue address below.

Because of staffing and resource limitations, we cannot accept comments by facsimile (FAX) transmission. In commenting, please refer to file code HCFA–6144–FC. Comments received timely will be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document, in Room 309–G of the Department's offices at 200 Independence Avenue, SW., Washington, DC, on Monday through Friday of each week from 8:30 a.m. to 5 p.m. (phone: (202) 690–7890).

I. Rewards for Information Relating to Medicare Fraud and Abuse

A. Background

Section 203(b)(1) of the Health Insurance Portability and Accountability Act of 1996 (Public Law 104–191) instructs the Secretary to establish a program to encourage individuals to report information on individuals and entities that are engaged in or have engaged in acts or omissions that constitute grounds for the imposition of a sanction under section 1128, 1128A, or 1128B of the Social Security Act (the Act) or who have otherwise engaged in sanctionable fraud and abuse against the Medicare program under title XVIII of the Act. By increasing the incentives for concerned citizens to report evidence of suspected fraudulent behavior, Congress hopes to protect beneficiaries and the Medicare Trust Funds.

Section 203(b)(2) of Public Law 104–191 authorizes the Secretary to pay a reward to individuals who provide information under the program established under section 203(b)(1) if the information leads to the recovery of at least $100 (excluding penalties under section 1128B of the Act) by the Secretary or the Attorney General of the United States. Public Law 104–191 requires the reward to come from the amounts collected. The Statute also addresses a suggestion program. We are still analyzing the most effective methods for implementing this requirement and will address it in subsequent rulemaking.

B. Provisions of this Final Rule

This rule adds a new Subpart E, consisting of §§ 420.400 through 420.405, to 42 CFR part 420 (''Program Integrity: Medicare). New Subpart E includes provisions to implement section 203(b) of Public Law 104–191 and is entitled as ''Rewards for Information Relating to Medicare Fraud and Abuse''.

Section § 420.400 sets forth the statutory basis and scope of Subpart E.

Section § 420.405 sets forth our policies regarding, and procedures for, rewarding individuals for furnishing information relating to Medicare fraud and abuse. The statute contains no provisions limiting or restricting our discretion in determining the rewards to be granted under the program established under section 203(b). Therefore, in paragraph (a) of § 420.405, we specify that when HCFA exercises its discretion in determining that someone is eligible for a reward and the reward amount, the reward will be granted and the individual notified according to the procedures in § 420.405(d). Further, we specify that we may make a monetary reward only for information that leads to a minimum recovery of $100 of Medicare funds from individuals and entities that are engaging in, or have engaged in, acts or omissions that constitute grounds for the imposition of a sanction under section 1128, section 1128A, or section 1128B of the Act or that have otherwise engaged in fraud and abuse against the Medicare program under title XVIII of the Act and for which there is a sanction provided under law. This provision, which is specifically mandated in the authorizing statute, ensures that a reward is paid only if Medicare funds are recovered because of the commission of certain specifically sanctionable offenses. These include the defrauding of the Medicare program or the offering of or solicitation of kickbacks for services payable by Medicare. Individuals who furnish information concerning actions or omissions for which there are no sanctions at law are not eligible to receive a reward under this program even if the information leads to the recovery of Medicare payments.

Finally, in order to ensure that the program does not duplicate other Government incentive programs, we also specify, in paragraph (a), that we may pay rewards only in instances in which a reward is not otherwise provided at law. That is, if the information furnished qualifies the participant for a reward under another Government program, the individual is not entitled to a reward under this program.

Paragraph (b) of § 420.405 specifies the information that would be required in order for a participant to be eligible to receive a reward. Section 203(b)(1) of Public Law 104–191 requires that the reward program discourage the submission of information that is frivolous or otherwise not relevant or material to the imposition of a sanction. Such information will not be considered by the Secretary. Therefore, we have developed criteria to ensure that only individuals who provide information that directly contributes to the recovery of Medicare funds from a fraudulent provider or supplier are considered for a reward. Those criteria are discussed below.

Paragraph (b)(1) of § 420.405 specifies that, in order for an individual to qualify for a reward, the information furnished by that individual must relate to a specific situation, individual, or entity, and must specify the time period of the alleged activities. This provision is intended to discourage individuals from furnishing information of a general nature and to ensure that information submitted be of assistance in the investigation of a specific sanctionable offense. To be of assistance in the development of an investigation, information must relate to specific actions by a specific individual or entity. Any information that is too general in nature (for example, ''Medicare should look into home health agencies in Smith County'') is of little or no use in targeting scarce investigation resources and does not show that the individual has any specific knowledge of wrongdoing on the part of a certain individual or entity. An example of the kind of information that would meet the requirements of this provision would be that a particular home health agency is billing Medicare for visits not actually furnished.

Paragraph (b)(2) of § 420.405 specifies that we do not give a reward for the submission of information relating to sanctionable activities already known or suspected by the Government, its contractors, or State or local law enforcement agencies. Accordingly, information relating to an individual or entity that, at the time the information is provided, is already the subject of a review or investigation by us, our contractors, or the Office of Inspector General (OIG), the Department of Justice, the Federal Bureau of Investigation, or any other Federal, State, or local law enforcement agency would not serve as the ''basis for the collection'' and could not be compensated. Paragraph (c) of § 420.405

sets forth the criteria that an individual must meet in order to be eligible for a reward. Paragraph (c)(1) provides that any person, other than one excluded under paragraph (c)(2), is eligible to receive a reward under the reward program if he or she submits the information in the prescribed manner (discussed later in this preamble). Accordingly, Medicare beneficiaries, Medicare providers, and any other individuals may be eligible to receive awards under this reward program.

Paragraph (c)(2) specifies who is ineligible to receive a reward under the reward program. Specifically, paragraph (c)(2)(i) provides that an individual who was or is an immediate family member of an officer or employee of the Department of Health and Human Services (HHS) or its contractors, the Social Security Administration, a State Medicaid agency, the OIG, or the Department of Justice, the Federal Bureau of Investigation, or any other Federal, State, or local law enforcement agency at the time he or she came into possession of or reported information leading to a recovery of Medicare funds is not eligible to receive a reward. Paragraph (c)(2)(ii) specifies that any other Federal or State employee or contractor or HHS grantee is not eligible for a reward if he or she acquired the submitted information in the course of his or her official duties.

The purpose of the exclusion is to prevent Government employees, contractors, or grantees from personally profiting from information gained while doing public business. These individuals may, in the course of performing their official duties, obtain information relating to sanctionable offenses by individuals or entities providing services under the Medicare program. As a responsibility of their position, however, these individuals are obligated to take the necessary steps to ensure that this information is reported to the appropriate authorities. This exclusion also applies to former employees of the specified organizations if the information in question was obtained during their employment. Similarly, any other Federal, State, or local government employee or contractor or HHS grantee is excluded from receiving a reward under this reward program if the information was obtained in the course of his or her official duties. As with the previous exclusion, this exclusion is intended to prevent individuals from personally profiting from information gained in the course of conducting public business.

Paragraph (c)(2)(iii) excludes any individual who illegally obtained the information he or she submitted from receiving a reward under this program. Paragraph (c)(2)(iv) excludes any participants in the alleged sanctionable offense with respect to which payment would be made from receiving a reward under this program. These exclusions are intended to prevent those who have violated the law from profiting from their actions at the expense of this program.

Paragraph (d) of § 420.405 sets forth reward notification procedures. Paragraph (d)(1) specifies that, as a general rule, we notify an individual of his or her eligibility to receive a reward, by letter sent to the individual's last known address. Paragraph (d)(1) further specifies that the notification is sent after Medicare funds have been recovered and a participant has been determined eligible to receive a reward. We add that it is the individual's responsibility to provide all relevant information and to ensure that the reward program is notified of any changes in that information.

Paragraph (d)(2) provides that an individual has up to 1 year from the date on the notification letter to claim his or her reward. This paragraph also specifies that no interest is paid on rewards that are not immediately claimed.

Paragraph (d)(2) also specifies that, if the participant has become incapacitated or died, an executor, administrator, or other legal representative may claim the reward on behalf of the participant or participant's estate. In order to protect participants from being defrauded by individuals falsely claiming to be their legal representatives, we add that the claimant must submit certified copies of letters testamentary, letters of administration, or other similar evidence to show his or her authority to claim the reward. Here, again, we specify that the reward must be claimed within 1 year from the date on which we mailed notification to the participant.

We have set these 1-year limitations to minimize the administrative burden associated with the reward program. We believe 1 year is a reasonable period of time during which an individual may claim his or her reward. In addition, the 1-year limitation protects the Government from the administrative and fiscal burden that would be associated with maintaining claims for a longer or indefinite period. Rewards not claimed within 1 year from the date of the notification letter will not be awarded.

In paragraph (e) of § 420.405, we establish the limits on rewards and set forth the processes by which we determine whether we will pay a reward and, if a reward is to be paid, the amount of the reward. Paragraph (e)(1) specifies that, in determining whether we will pay a reward, and the amount of the reward, we take into consideration all relevant factors, including the significance of the information furnished in relation to the ultimate resolution of the case and the recovery of Medicare funds.

To give participants a realistic expectation of potential reward amounts, we establish general guidelines for the calculation of the amount of any reward and a maximum potential reward amount. Since the primary goal of this program is to preserve and protect the Medicare Trust Funds, and because the funds used for rewards under the program will come from recovered trust fund monies, it would be inappropriate to grant excessive or overly-generous rewards. Therefore, § 420.405(e)(2) specifies that the amount of a reward represents what we consider to be adequate compensation in the particular case, not to exceed 10 percent of the overpayments recovered in the case, or $1,000, whichever is less. We believe this approach provides adequate compensation and notification to those individuals who provide important information on sanctionable activities, while also establishing an objective limit on Trust Fund disbursements.

We anticipate that some commenters will object to this limit as being too low. In response, we point out that persons with information on individuals or entities purportedly defrauding the Medicare program also have the option of initiating a ''qui tam'' action against the fraudulent individual or entity in cooperation with the Government. (A qui tam action is an action brought by a private individual, under a statute that establishes a penalty for the commission or omission of a certain act that is recoverable in a civil action. In a qui tam action, an individual brings the civil action on behalf of him or herself and the Government, State, or other entity. Part of any collected penalty goes to the person who brings the civil action.)

We determine reward amounts on a case by case basis. Section 420.405(e)(3) specifies that, if more than one participant provides information that leads to the recovery of Medicare funds, we allocate the overall reward (not to exceed 10 percent of the overpayments recovered in that case or $1,000, whichever is less) among the total number of participants. Again, this provision is intended to protect the

Medicare Trust Funds to the greatest possible extent.

In accordance with section 203(b)(2) of Public Law 104–191, § 420.405(e)(4) specifies that rewards are based solely on recovered Medicare payments and not on amounts collected as penalties or fines. Section 420.405(e)(5) specifies that rewards are awarded only after all overpayments, fines, and penalties have been collected. It is important for participants to understand that the investigation, development, and prosecution or settlement of a fraud case is a complicated and lengthy process. Given the material and human resource constraints, it is not unusual for 3 to 5 years to elapse before fraudulently-obtained Medicare funds are recovered and any applicable fines or penalties collected. This means that, on average, a participant who provides information that leads to a Medicare recovery from an individual or entity that committed a sanctionable offense would have to wait several years before receiving a reward under this program.

Section 420.405(e)(6) specifies that no person may make any offer or promise or otherwise bind us or HHS with respect to the payment of any reward or the amount of the reward.

Paragraph (f) of § 420.405 describes the procedure individuals must follow when submitting information in order to be eligible to receive a reward under this program. Paragraph (f)(1) provides that an individual may submit information to us on individuals and/or entities allegedly engaging in, or that have allegedly engaged in, fraud and abuse against the Medicare program by calling the Office of Inspector General or the Medicare intermediary or carrier that has jurisdiction over the suspected fraudulent provider or supplier.

Paragraph (f)(2) of § 420.405 adds that an individual interested in receiving a reward must provide his or her name, address, telephone number, and any other requested identifying information so that he or she may be contacted, if necessary, for additional information and, when applicable, for the payment of a reward upon resolution of the case. An individual may elect to furnish information to the Office of the Inspector General, or to the intermediary or carrier anonymously. However, if an individual elects to do so, he or she would not be eligible to receive a reward under this program.

Section 420.405(g) specifies that we do not disclose the participant's identity to any persons except as required by law. Finally, § 420.405(h) specifies that, if, after an award had been accepted, the awardee is determined ineligible to receive a reward under this program, the Government is not liable for the reward and the awardee must refund all monies received. This provision is intended to protect the Government from paying rewards to individuals it later finds were not eligible to participate in the program. For example, the Government would recover a reward granted to a participant who was later found to have participated in the sanctionable offense with respect to which payment was made.

II. Response to Comments

Because of the large number of items of correspondence we normally receive on **Federal Register** documents published for comment, we are not able to acknowledge or respond to them individually. We will consider all comments we receive by the date and time specified in the **DATES** section of this preamble, and, if we proceed with a subsequent document, we will respond to the comments in the preamble to that document.

III. Regulatory Impact Analysis

A. Introduction

We have examined the impact of this rule as required by Executive Order 12866 and the Regulatory Flexibility Act (RFA) (Public Law 96–354). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). The RFA requires agencies to analyze options for regulatory relief of small businesses. For purposes of the RFA, small entities include small businesses, nonprofit organizations, and governmental agencies. Most hospitals and most other providers and suppliers are small entities, either by nonprofit status or by having revenues of $5 million or less annually. Individuals are not considered to be small entities.

Section 1102(b) of the Social Security Act requires us to prepare a regulatory impact analysis for any rule that may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 603 of the RFA. For purposes of section 1102(b), we define a small rural hospital as a hospital that is located outside a Metropolitan Statistical Area and has fewer than 50 beds.

B. Summary of This Rule

This rule establishes a payment system as a means of encouraging individuals to report instances of suspected fraud and abuse or other sanctionable activities under the Medicare program. The rule delineates program parameters, information requirements, eligibility criteria, establishes an upper limit for payments, defines proportionate distribution in cases of multiple informants, and outlines the process and time limitations for obtaining a reward.

C. Discussion of Impact

This rule is expected to affect beneficiaries, their personal representatives, providers, physicians, other suppliers, and managed care plans. (We have separate authority to impose intermediate sanctions against managed care plans participating in the Medicare program. The law also permits the Office of Inspector General to impose civil money penalties on the health maintenance organization or competitive medical plan as set forth in 42 CFR part 1003.) Taxpayers and the trust fund could also be impacted by this rule.

Beneficiaries as a group are expected to be impacted by this regulation in a variety of ways. First, beneficiaries are often the first to recognize and question provider practices. This regulation encourages these individuals to share such information with the agency by (1) providing a clearly defined process for submitting information to the appropriate source and (2) offering a monetary incentive to support the effort. Secondly, this group would benefit from fraud reduction through greater confidence in the program and its continued financial viability. Some beneficiaries may or may not be motivated by a reward system to report fraudulent provider activity because of a perceived potential for breaching the provider/patient relationship.

Notwithstanding some minimal hesitancy in reporting fraud, beneficiaries are already one of our strongest allies in quickly detecting and providing us with a great many leads about instances of fraud and abuse in the Medicare program. Beneficiaries are asked to review the Explanation of Medicare Benefits form, which lists services and charges and is sent to each beneficiary when a service is furnished, and report any discrepancies concerning those services to the Medicare contractor serving their area. Medicare contractors estimate that of the 130,000 calls they receive yearly concerning potential fraud and abuse, 94,000 are from beneficiaries, many of whom call to question the propriety of claims made on their behalf. We estimate that there will be a 5 or 10 percent increase in the

volume of calls received as a result of this monetary reward incentive program. We support this activity by regularly advising beneficiaries and their representatives about opportunities to preserve trust fund dollars and how they can help combat fraud and abuse.

Fraud, waste, and abuse in medical care encompass a wide range of practices, limited only by the scope of human imagination. To the fraudulent provider of health care services, fee-for-service reimbursement provides the opportunity for: (1) Billing for services not provided; (2) billing for a more expensive service than was actually provided; (3) providing and billing for unnecessary services; (4) paying kickbacks for referrals, including self-referrals; and (5) duplicate billing. Two fraudulent schemes involving falsifying records and overcharging include ''upcoding'' and ''unbundling.'' Upcoding involves switching primary and secondary diagnoses to substitute more costly procedures and services than were actually administered to the patient. Unbundling involves improperly separately billing for procedures that should be billed for under one code.

Under managed care, fraudulent and abusive practices may include: (1) Enrolling beneficiaries without their active consent; (2) engaging in deceptive marketing practices to entice enrollment; (3) denying medically necessary services; and (4) failure to disclose appeal rights.

We believe the exact amount of improper billing and health care fraud are difficult to quantify because of their hidden nature. However, a Government Accounting Office (GAO) report on Medicare (GAO/HR–91–10, February 1997) suggests that by reducing unnecessary or inappropriate payments, the Federal Government would realize large savings and help dampen the growth in Medicare costs. In this report, the GAO states that estimates of the costs of fraud and abuse, ranging from 3 to 10 percent, have been cited for health expenditures nationwide, ''so applying this range to Medicare suggests that such losses in fiscal year 1996 could range from $6 billion to as much as $20 billion.'' Program savings would be offset by the amount of incentives awarded under this rule. The total amount of awards made in any year is unknown but is expected to be nominal.

Overall, we expect that providers and suppliers will benefit qualitatively from this rule. Not only do many providers and suppliers perceive that their reputations are tarnished by the few dishonest providers and suppliers that take advantage of the Medicare program, but some providers may have ideas that could minimize the impact of this adverse behavior. The media often focus on the most egregious cases of Medicare fraud and abuse, leaving the public with the misperception that physicians and other health care practitioners routinely make improper claims. This rule encourages individuals to report instances of suspected fraud and abuse. As the number of dishonest providers and suppliers and improper claims diminishes, ethical providers and suppliers will benefit.

This rule could be considered to have a negative impact on any provider or supplier that routinely submits questionable claims and those that have been receiving inappropriate payments, including managed care plans. Since one objective of this rule is to eliminate improper payments, we will not analyze the effect the rule may have on unscrupulous providers or suppliers. We do not believe that this rule will reduce a provider's or supplier's legitimate income from Medicare.

The reporting of instances of suspected fraud and abuse or other sanctionable activities is not expected to impose a paperwork burden on individuals participating in this award program. Beneficiaries and other participating entities are expected to rely upon existing record collection, record keeping, review and reporting processes similar to those already in use.

D. Conclusion

We conclude that money would be saved, and the solvency of the Trust Funds extended as a result of this rule. The growing complexity of the Medicare program easily lends itself to objective critiques by those who are most affected by the myriad of Medicare statutes, provisions, and guidelines. In addition, the dynamic nature of fraud and abuse, as illustrated by the fact that wrongdoers continue to find ways to evade safeguards, supports the need for constant vigilance and increasingly sophisticated ways to protect against ''gaming'' of the system.

Based on the above analysis, we have determined, and certify, that this rule will not have a significant economic impact on a substantial number of small entities. We also have determined, and certify, that this rule will not have a significant impact on the operations of a substantial number of small rural hospitals. In accordance with the provisions of Executive Order 12866, this rule was not reviewed by the Office of Management and Budget.

E. Waiver of Proposed Rulemaking

We ordinarily publish a notice of proposed rulemaking in the **Federal Register** and invite public comment on the proposed rule. The notice of proposed rulemaking includes a reference to the legal authority under which the rule is proposed, and the terms and substances of the proposed rule or a description of the subjects and issues involved. This procedure can be waived, however, if an agency finds good cause that a notice-and-comment procedure is impracticable, unnecessary, or contrary to the public interest and incorporates a statement of the finding and its reasons in the rule issued.

Publishing this rule expeditiously to supplement activities that identify and curtail fraud and abuse activities that reduce the monetary drain on the Medicare trust fund is in the public interest. Specifically, we anticipate that the implementation of this rule will encourage individuals to report potentially fraudulent and abusive activities and we anticipate that such reports will facilitate expeditious recovery of money owed to the Medicare trust funds. Further delaying implementation of this program in order to give the public an opportunity to comment would deprive individuals of the financial incentives that Congress intended to provide to individuals who come forward with relevant information. Additional delay following the publication of a proposed rule may cause some individuals to withhold information necessary to support the Government's efforts until final rules are effective. Because the delay may make it more difficult to successfully complete investigation of those cases, waiving notice and comment clearly is within the public interest.

Therefore, we find good cause to waive the notice of proposed rulemaking and to issue this final rule with comment period. We are providing a 60-day comment period for public comment.

List of Subjects in 42 CFR Part 420

Fraud, Health facilities, Health professions, Incentive programs, Medicare.

For the reasons set forth in the preamble, 42 CFR part 420 is amended as set forth below:

PART 420—PROGRAM INTEGRITY: MEDICARE

1. The authority citation for part 420 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh).

2. A new subpart E is added to part 420 to read as follows:

Subpart E—Rewards for Information Relating to Medicare Fraud and Abuse

Sec.
420.400 Basis and scope.
420.405 Rewards for information relating to Medicare fraud and abuse.

Subpart E—Rewards for Information Relating to Medicare Fraud and Abuse

§ 420.400 Basis and scope.

This subpart implements section 203 (b) of Public Law 104–191, which requires the establishment of a program to encourage individuals to report suspected cases of fraud and abuse. Sections 203 (b) of Public Law 104–191 also provides the authority for HCFA to reward individuals for reporting fraud and abuse. This subpart sets forth procedures for rewarding individuals.

§ 420.405 Rewards for information relating to Medicare fraud and abuse.

(a) *General rule.* HCFA pays a monetary reward for information that leads to the recovery of at least $100 of Medicare funds from individuals and entities that are engaging in, or have engaged in, acts or omissions that constitute grounds for the imposition of a sanction under section 1128, section 1128A, or section 1128B of the Act or that have otherwise engaged in sanctionable fraud and abuse against the Medicare program. The determination of whether an individual meets the criteria for an award, and the amount of the award, is at the discretion of HCFA. HCFA pays rewards only if a reward is not otherwise provided for by law. When HCFA applies the criteria specified in paragraphs (b), (c), and (e) of this section to determine the eligibility and the amount of the reward, it notifies the recipient as specified in paragraph (d) of this section.

(b) *Information eligible for reward.* (1) In order for an individual to be eligible to receive a reward, the information he or she supplied must relate to the activities of a specific individual or entity and must specify the time period of the alleged activities.

(2) HCFA does not give a reward for information relating to an individual or entity that, at the time the information is provided, is already the subject of a review or investigation by HCFA or its contractors, or the OIG, the Department of Justice, the Federal Bureau of Investigation, or any other Federal, State, or local law enforcement agency.

(c) *Persons eligible to receive a reward*—(1) *General rule.* Any person (other than one excluded under paragraph (c)(2) of this section) is eligible to receive a reward under this section if the person submits the information in the manner set forth in paragraph (f) of this section.

(2) *Excluded individuals.* (i) An individual who was, or is an immediate family member of, an officer or employee of HHS or its contractors, the SSA, the OIG, a State Medicaid Agency, or the Department of Justice, the Federal Bureau of Investigation, or any other Federal, State, or local law enforcement agency at the time he or she came into possession of, or divulged, information leading to a recovery of Medicare funds is not eligible to receive a reward under this section.

(ii) Any other Federal or State employee or contractor or an HHS grantee is not eligible for a reward under this section if the information submitted came to his or her knowledge in the course of his or her official duties.

(iii) An individual who illegally obtained the information he or she submitted is excluded from receiving a reward under this section.

(iv) An individual who participated in the sanctionable offense with respect to which payment would be made is excluded from receiving a reward under this section.

(d) *Notification of eligibility*—(1) *General rule.* After all Medicare funds have been recovered and HCFA has determined a participant eligible to receive a reward under the provisions of this section, it notifies the informant of his or her eligibility, by mail, at the most recent address supplied by the individual. It is the individual's responsibility to ensure that the reward program has been notified of any change in his or her address or other relevant personal information (for example, change of name, phone number).

(2) *Special circumstances.* (i) If the individual has relocated to an unknown address, the individual or his or her legal representative may claim the reward by contacting HCFA within 1 year from the date on which HCFA first attempted to notify the individual about a reward. HCFA does not consider the individual or his or her legal representative eligible for a reward more than 1 year after the date on which it first attempted to give notice. HCFA does not pay interest on rewards that are not immediately claimed.

(ii) If the individual has become incapacitated or has died, an executor, administrator, or other legal representative may claim the reward on behalf of the individual or the individual's estate. The claimant must submit certified copies of the letters testamentary, letters of administration, or other similar evidence to show his or her authority to claim the reward. The claim must be filed within 1 year from the date on which HCFA first gave or attempted to give notice of the reward.

(e) *Amount and payment of reward.* (1) In determining whether it will pay a reward and, if so, the amount of the reward, HCFA takes into account all relevant factors, including the significance of the information furnished in relation to the ultimate resolution of the case and the recovery of Medicare funds.

(2) The amount of a reward represents what HCFA considers to be adequate compensation in the particular case, not to exceed 10 percent of the overpayments recovered in the case or $1,000, whichever is less.

(3) If more than one person is eligible to receive a reward in a particular case, HCFA allocates the total reward amount (not to exceed 10 percent of the overpayments recovered in that case or $1,000, whichever is less) among the participants.

(4) HCFA bases rewards only on recovered Medicare payments and not on amounts collected as penalties or fines.

(5) HCFA makes payments as promptly as the circumstances of the case permit, but not until it has collected all Medicare overpayments, fines, and penalties.

(6) No person may make any offer or promise or otherwise bind HCFA or HHS with respect to the payment of any reward under this section or the amount of the reward.

(f) *Submission of information.* (1) An individual may submit information on persons or entities engaging in, or that have engaged in, fraud and abuse against the Medicare program to the Office of the Inspector General, or to the Medicare intermediary or carrier that has jurisdiction over the suspected fraudulent provider or supplier.

(2) A participant interested in receiving a reward must provide his or her name, address, telephone number, and any other requested identifying information so that he or she may be contacted, if necessary, for additional information and, when applicable, for the payment of a reward upon resolution of the case.

(g) *Confidentiality.* HCFA does not reveal a participant's identity to any person, except as required by law.

(h) *Finding of ineligibility after reward is accepted.* If, after a reward is accepted, HCFA finds that the awardee was ineligible to receive the reward, the

Government is not liable for the reward and the awardee must refund all monies received.

(Catalog of Federal Domestic Assistance Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: April 4, 1998.

Nancy-Ann Min DeParle,

Administrator, Health Care Financing Administration.

Dated: June 2, 1998.

Donna E. Shalala,

Secretary.

[FR Doc. 98–15155 Filed 6–3–98; 1:19 pm]

BILLING CODE 4120–01–P

Proposed Rules

Federal Register
Vol. 63, No. 109
Monday, June 8, 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

Grain Inspection, Packers and Stockyards Administration

9 CFR Part 205

RIN 0580–AA63

Clear Title—Protection for Purchasers of Farm Products

AGENCY: Grain Inspection, Packers and Stockyards Administration, USDA.

ACTION: Proposed rule.

SUMMARY: This document amends regulations relating to the establishment and management of statewide central filing systems as they pertain specifically to the filing of ''effective financing statements'' for ''farm products'', as defined in section 1324 of the Food Security Act of 1985 (7 U.S.C. 1631), to allow a continuation of an effective financing statement to be filed without the signature of the debtor provided State law authorizes such a filing. This proposal responds to comments received when the regulations were previously amended by a final rule published on April 1, 1997 (62 FR 15363) that brought the regulations into conformity with statutory amendments found in Sections 662 and 663 of the Federal Agriculture Improvement and Reform Act of 1996.

DATES: Comments must be submitted on or before August 7, 1998.

ADDRESSES: To help ensure that comments are considered, send them to: Economic/ Statistical Support, Packers and Stockyards Programs, Grain Inspection, Packers and Stockyards Administration, STOP 3647, Room 3052, South Building, 1400 Independence Avenue SW, Washington, D.C. 20250–3647. Comments may also be sent via fax at (202) 690–1266 or via e-mail at GGrinnell@usda.gov. Please state that your comments refer to the clear title regulations. Comments received may be inspected at the above address during regular office hours, except holidays.

FOR FURTHER INFORMATION CONTACT: Gerald E. Grinnell, Director, Economic/ Statistical Support, Grain Inspection, Packers and Stockyards Administration, (202) 720–7455. Kimberly D. Hart, Esquire, Trade Practices Division, Office of the General Counsel, (202) 720–8160.

SUPPLEMENTARY INFORMATION:

Background

Section 1324 of the Food Security Act of 1985 (7 U.S.C. 1631) (the Act) provides that certain persons may be subject to a security interest in a farm product created by the seller under certain circumstances in which a lender files an ''effective financing statement'' with the ''system operator'' in a State that has a certified central filing system as defined by the Act. The Act requires the Secretary of Agriculture to prescribe regulations ''to aid States in the implementation and management of a central filing system.'' Final regulations were published on August 18, 1986 (51 FR 29450).

The Secretary's authority and responsibility under the Act is limited to certification of the State central filing systems and to prescribing regulations to aid in the implementation and management of certified central filing systems. The Act does not give the Secretary the authority or responsibility for such matters as direct notification by secured parties, sales of and payment for products, procedures for payment or procedures for personal liability protection. Those matters are governed by State law.

Prior to the 1996 amendment of the Act, lenders could not file effective financing statements or amendments to those statements electronically with State certified central filing systems because such statements were required to bear the signature of the debtor, which could not be transmitted electronically. Commercial lenders also expressed concern and confusion due to the vagueness of the provisions for effective financing and continuation statements contained in the Act and the inconsistency between the Act and the Uniform Commercial Code.

Section 662 of the Federal Agriculture Improvement and Reform Act of 1996 (Pub. L. 104–127) (hereinafter the ''FAIR Act'') amended the Act to allow lenders to file ''effective financing statements'' by electronic transmission without the necessity of obtaining the signature of the debtor provided State law authorizes such a filing.

The Department published interim and final rules in the **Federal Register** to implement the FAIR Act amendments (61 FR 54727 and 62 FR 15363, respectively). The rule allows electronic filing of amendments to effective financing statements without the signature of the debtor. Comments received in response to the rule encouraged the Department to further amend the regulations to allow the filing of paper continuation statements without the signature of the debtor as well. Section 205.209(d) of the regulations (9 CFR 205.209(d)) currently provides that continuation statements are to be treated in the same manner as amendments to effective financing statements. Therefore, the rule implementing the 1996 FAIR Act amendments allows continuation statements to be filed electronically, without the signature of the debtor as well. However, because the purpose of that rule was to bring the regulations into conformity with the 1996 amendment (which addressed electronic filings), the final rule did not address the commentors' request to eliminate the signature requirement for paper continuation statements.

This proposed rule would remove the requirement from the regulations that a filing of a continuation to an effective financing statement bear the signature of the debtor. Section 1324 of the Food Security Act of 1985 does not require that continuation statements be signed. The proposed rule would make it easier for lenders to file continuation statements because lenders would no longer be required to obtain the signature of the debtor. The proposed rule would also simplify the filing of lien notices by bringing the regulations for central filing systems into conformity with Article 9 of the Uniform Commercial Code, which covers non-farm products.

Executive Order 12866

This rule has been determined to be nonsignificant for the purpose of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

Executive Order 12988

This proposal has been reviewed under Executive Order 12988, Civil Justice Reform. This action is not

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

Regulatory Flexibility Act and Information Collection

The Administrator, Grain Inspection, Packers and Stockyards Administration (GIPSA) has determined that this action will not have a significant economic impact on a substantial number of small entities, as defined in the Regulatory Flexibility Act (5 U.S.C. 601). Few small entities would be affected. The proposed rule would remove the requirement from the regulations that a filing of a continuation to an effective financing statement contain the signature of the debtor. The proposed rule would make it easier for lenders, few of which are small entities, to file continuation statements because lenders would no longer be required to obtain the signature of the debtor. Lenders would have the option of filing effective financing continuation statements electronically or in paper form, either without the signature of the debtor. Furthermore, the proposed rule would also simplify the filing of lien notices by bringing the regulations for central filing systems into conformity with Article 9 of the Uniform Commercial Code, which covers non-farm products. The Administrator has determined that this rule will not have a significant economic impact on a substantial number of small entities.

In compliance with the Paperwork Reduction Act (44 U.S.C. 35), the information collection and recordkeeping requirements for 9 CFR part 205 have previously been approved by the Office of Management and Budget under control number 0580–0016.

List of Subjects in 9 CFR Part 205

Agriculture, Central filing system.

For reasons set out in the preamble, the Grain Inspection, Packers and Stockyards Administration proposes to amend 9 CFR part 205 as set forth below.

PART 205—CLEAR TITLE—PROTECTION FOR PURCHASERS OF FARM PRODUCTS

1. The authority citation for Part 205 is revised to read as follows:

Authority: 7 U.S.C. 1631 and 7 CFR 2.22, 2.81.

2. Section 205.209 is amended by revising paragraph (d) to read as follows:

§ 205.209 Amendment or continuation of EFS.

* * * * *

(d) An effective financing statement remains effective for a period of 5 years from the date of filing and may be continued in increments of 5-year periods beyond the initial 5-year filing period by refiling an effective financing statement or by filing a continuation statement within 6 months before expiration of the effective financing statement. A continuation statement may be filed electronically or as a paper document, and need not contain the signature of the debtor.

Dated: June 1, 1998.

James R. Baker,

Administrator, Grain Inspection, Packers and Stockyards Administration.

[FR Doc. 98–15112 Filed 6–5–98; 8:45 am]

BILLING CODE 3410–EN–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–CE–17–AD]

RIN 2120–AA64

Airworthiness Directives; Raytheon Aircraft Company 200 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to adopt a new airworthiness directive (AD) that would apply to Raytheon Aircraft Company (Raytheon) 200 series airplanes. The proposed AD would require revising the FAA-approved Airplane Flight Manual (AFM) to specify procedures that would prohibit flight in severe icing conditions (as determined by certain visual cues), limit or prohibit the use of various flight control devices while in severe icing conditions, and provide the flight crew with recognition cues for, and procedures for exiting from, severe icing conditions. The proposed AD is prompted by the results of a review of the requirements for certification of these airplanes in icing conditions, new information on the icing environment, and icing data provided currently to the flight crew. The actions specified by the proposed AD are intended to minimize the potential hazards associated with operating these airplanes in severe icing conditions by providing more clearly defined procedures and limitations associated with such conditions.

DATES: Comments must be received on or before July 17, 1998.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 98–CE–17–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

This information also may be examined at the Rules Docket at the address above.

FOR FURTHER INFORMATION CONTACT: Mr. John P. Dow, Sr., Aerospace Engineer, Small Airplane Directorate, Aircraft Certification Service, 1201 Walnut, suite 900, Kansas City, Missouri 64106, telephone: (816) 426–6932, facsimile: (816) 426–2169.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. 98–CE–17–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 98–CE–17–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Discussion

In October 1994, a transport category airplane was involved in an accident in which severe icing conditions (believed to be composed of freezing drizzle or supercooled large droplets (SLD)) were reported in the area. Loss of control of the airplane may have occurred because ice accretion on the upper surface of the wing aft of the area protected by the ice protection system caused airflow separation, which resulted in the ailerons being forced to a right-wing-down control position. There also is concern that the autopilot, which was engaged, may have masked the unusual control forces generated by the ice accumulation. These conditions, if not corrected, could result in a roll upset from which the flight crew may be unable to recover.

The atmospheric conditions (freezing drizzle or SLD conditions) that may have contributed to the accident are outside the icing envelope specified in Appendix C of part 25 of the Federal Aviation Regulations (14 CFR part 25) for certification of the airplane. Such icing conditions are not defined in Appendix C, and the FAA has not required that airplanes be shown to be capable of operating safely in those icing conditions.

The FAA finds that flight crews are not currently provided with adequate information necessary to determine when the airplane is operating in icing conditions for which the airplane is not certificated or what action to take when such conditions are encountered. Therefore, the FAA has determined that flight crews must be provided with such information and must be made aware of certain visual cues that may indicate the airplane is operating in atmospheric conditions that are outside the icing envelope.

Since such information is not available to flight crews, and no airplane is certificated for operation in severe icing conditions, such as freezing drizzle or SLD conditions, the FAA finds that the potentially unsafe condition (described previously as control difficulties following operation of the airplane in icing conditions outside the icing envelope) is not limited to airplanes having the same type design as that of the accident airplane.

The FAA recognizes that the flight crew of any airplane that is certificated for flight in icing conditions may not have adequate information concerning icing conditions outside the icing envelope. However, in 1996, the FAA found that the specified unsafe condition must be addressed as a higher priority on airplanes equipped with unpowered roll control systems and pneumatic de-icing boots. These airplanes were addressed first because the flight crew of an airplane having an unpowered roll control system must rely solely on physical strength to counteract roll control anomalies, whereas a roll control anomaly that occurs on an airplane having a powered roll control system need not be offset directly by the flight crew. The FAA also placed a priority on airplanes that are used in regularly scheduled passenger service. The FAA issued the following airworthiness directives (AD's) that addressed airplanes that met these criteria. These AD's identified visual cues for recognizing severe icing conditions, procedures for exiting these conditions, and prohibitions on the use of various flight control devices. These AD's consisted of the following airplane models.

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96–CE–01–AD	de Havilland DHC–6 Series	61 FR 2175.
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96–CE–04–AD	Dornier 228 Series	61 FR 2172.
96–CE–05–AD	Cessna 208/208B	61 FR 2178.
96–CE–06–AD	Fairchild Aircraft SA226/SA227 Series	61 FR 2189.
96–CE–07–AD	Jetstream 3101/3201	61 FR 2186.
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96–NM–14–AD	Jetstream 4101	61 FR 2142.
96–NM–15–AD	British Aerospace HS 748 Series	61 FR 2139.
96–NM–16–AD	Saab SF340A/SAAB 340B/SAAB 2000 Series	61 FR 2169.
96–NM–17–AD	CASA C–212/CN–235 Series	61 FR 2166.
96–NM–18–AD	Dornier 328–100 Series	61 FR 2157.
96–NM–19–AD	EMBRAER EMB–120 Series	61 FR 2163.
96–NM–20–AD	de Havilland DHC–7/DHC–8 Series	61 FR 2154.
96–NM–21–AD	Fokker F27 Mark 100/200/300/400/500/600/700/050 Series	61 FR 2160.
96–NM–22–AD	Short Brothers SD3–30/SD3–60/SD3–SHERPA Series	61 FR 2151.
95–NM–146–AD	Aerospatiale ATR–42/ATR–72 Series	61 FR 2147.

Since issuance of those AD's, the FAA has determined that similar AD's should be issued for similarly equipped airplanes that are not used in regularly scheduled passenger service. Like the AD's written in 1996, the rules described below also provide visual cues for recognizing severe icing conditions, procedures for exiting these conditions, and prohibitions on the use of various flight control devices. These AD's apply to part 25 and certain part 23 airplanes that are equipped with unpowered aileron controls and pneumatic de-icing boots. The part 23 AD's address airplanes certificated in normal and utility categories (not used in agricultural operations) that are used in part 135 on-demand and air-taxi operation, and other airplanes regularly exposed to icing conditions. These rules affect the following airplanes.

Airplane models	Docket number
Aerospace Technologies of Australia Models N22B and N24A	97–CE–49–AD
Harbin Aircraft Mfg. Corporation Model Y12 IV	97–CE–50–AD
Partenavia Costruzioni Aeronauticas, S.p.A. Models P68, AP68TP 300, AP68TP 600	97–CE–51–AD
Pilatus Aircraft Ltd. Models PC–12 and PC–12/45	97–CE–53–AD
Pilatus Britten-Norman Ltd. Models BN–2A, BN–2B, and BN–2T	97–CE–54–AD

Airplane models	Docket number
SOCATA—Groupe Aerospatiale Model TBM–700	97–CE–55–AD
Aerostar Aircraft Corporation Models PA–60–600, –601, –601P, –602P, and –700P	97–CE–56–AD
Raytheon Aircraft Company (formerly known as Beech Aircraft Corporation) Models E55, E55A, 58, 58A, 58P, 58PA, 58TC, 58TCA, 60 series, 65–B80 series, 65–B–90 series, 90 series, F90 series, 100 series, 300 series, and B300 series.	97–CE–58–AD
Raytheon Aircraft Company (formerly known as Beech Aircraft Corporation) Model 2000	97–CE–59–AD
The New Piper Aircraft, Inc. Models PA–46–310P and PA–46–350P	97–CE–60–AD
The New Piper Aircraft, Inc. Models PA–23, PA–23–160, PA–23–235, A–23–250, PA–E23–250, PA–30, PA–39, PA–40, PA–31, PA–31–300, PA–31–325, PA–31–350, PA–34–200, PA–34–200T, PA–34–220T, PA–42, PA–42–720, PA–42–1000.	97–CE–61–AD
Cessna Aircraft Company Models P210N, T210N, P210R, and 337 series	97–CE–62–AD
Cessna Aircraft Company Models T303, 310R, T310R, 335, 340A, 402B, 402C, 404, F406, 414, 414A, 421B, 421C, 425, and 441.	97–CE–63–AD
SIAI-Marchetti S.r.l. (Augusta) Models SF600 and SF600A	97–CE–64–AD
Cessna Aircraft Company Models 500, 501, 550, 551, and 560 series	97–NM–170–AD
Sabreliner Corporation Models 40, 60, 70, and 80 series	97–NM–171–AD
Gulfstream Aerospace Model G–159 series	97–NM–172–AD
McDonnell Douglas Models DC–3 and DC–4 series	97–NM–173–AD
Mitsubishi Heavy Industries Model YS–11 and YS–11A series	97–NM–174–AD
Frakes Aviation Model G–73 (Mallard) and G–73T series	97–NM–175–AD
Fairchild Models F27 and FH227 series	97–NM–176–AD
Lockheed Models L–14 and L–18 series airplanes	97–NM–177–AD

The FAA's Determination

Following examination of all relevant information, the FAA has determined that certain limitations and procedures should be included in the FAA-approved Airplane Flight Manual (AFM) for the affected airplanes as follows:

- All Raytheon 200 series airplanes must be prohibited from flight in severe icing conditions (as determined by certain visual cues), and
- Flight crews must be provided with information that would minimize the potential hazards associated with operating the airplane in severe icing conditions.

The FAA has determined that such limitations and procedures currently are not defined adequately in the AFM for these airplanes.

Explanation of the Provisions of the Proposed AD

Since an unsafe condition has been identified in which an unrecoverable roll upset may occur, as a result of exposure to severe icing conditions that are outside the icing limits for which the airplanes were certificated, the proposed AD would require revising the Limitations Section of the FAA-approved AFM to specify procedures that would:

- require flight crews to immediately request priority handling from Air Traffic Control to exit severe icing conditions (as determined by certain visual cues);
- prohibit use of the autopilot when ice is formed aft of the protected surfaces of the wing, or when an unusual lateral trim condition exists; and
- require that all icing wing inspection lights be operative prior to flight into known or forecast icing conditions at night.

This proposed AD would also require revising the Normal Procedures Section of the FAA-approved AFM to specify procedures that would:

- limit the use of the flaps and prohibit the use of the autopilot when ice is observed forming aft of the protected surfaces of the wing, or if unusual lateral trim requirements or autopilot trim warnings are encountered; and
- provide the flight crew with recognition cues for, and procedures for exiting from, severe icing conditions.

Cost Impact

The FAA estimates that 1,600 airplanes in the U.S. registry would be affected by the proposed AD, that it would take approximately 1 workhour per airplane to accomplish the proposed action, and that the average labor rate is approximately $60 an hour. Since an owner/operator who holds at least a private pilot's certificate as authorized by sections 43.7 and 43.9 of the Federal Aviation Regulations (14 CFR 43.7 and 43.9) can accomplish this action, the only cost impact upon the public is the time it will take the affected airplane owners/operators to incorporate this AFM revision.

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

In addition, the FAA recognizes that the proposed action may impose operational costs. However, these costs are incalculable because the frequency of occurrence of the specified conditions and the associated additional flight time cannot be determined. Nevertheless, because of the severity of the unsafe condition, the FAA has determined that continued operational safety necessitates the imposition of the costs.

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Raytheon Aircraft Company: Docket No. 98–CE–17–AD.

Applicability: The following model airplanes, (all serial numbers), certificated in any category.

Models

200 (A100–1 (U–21J)), 200C, 200CT, 200T, A200 (C–12A) or (C–12C), A200C (UC–12B), A200CT (C–12D) or (FWC–12D) or (RC–12D) or (C–12F) or (RC–12G) or (RC–12H) or (RC–12K), or (RC–12P) B200, B200C (C–12F) or (UC–12F) or (UC–12M), or (C–12R), B200CT, and B200T

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 already accomplished.

To minimize the potential hazards associated with operating the airplane in severe icing conditions by providing more clearly defined procedures and limitations associated with such conditions, accomplish the following:

(a) Within 30 days after the effective date of this AD, accomplish the requirements of paragraphs (a)(1) and (a)(2) of this AD.

Note 2: Operators should initiate action to notify and ensure that flight crewmembers are apprised of this change.

(1) Revise the FAA-approved Airplane Flight Manual (AFM) by incorporating the following into the Limitations Section of the AFM. This may be accomplished by inserting a copy of this AD in the AFM.

''WARNING

Severe icing may result from environmental conditions outside of those for which the airplane is certificated. Flight in freezing rain, freezing drizzle, or mixed icing conditions (supercooled liquid water and ice crystals) may result in ice build-up on protected surfaces exceeding the capability of the ice protection system, or may result in ice forming aft of the protected surfaces. This ice may not be shed using the ice protection systems, and may seriously degrade the performance and controllability of the airplane.

• During flight, severe icing conditions that exceed those for which the airplane is certificated shall be determined by the following visual cues. If one or more of these visual cues exists, immediately request priority handling from Air Traffic Control to facilitate a route or an altitude change to exit the icing conditions.

—Unusually extensive ice accumulation on the airframe and windshield in areas not normally observed to collect ice.

—Accumulation of ice on the upper surface of the wing, aft of the protected area.

—Accumulation of ice on the engine nacelles and propeller spinners farther aft than normally observed.

• Since the autopilot, when installed and operating, may mask tactile cues that indicate adverse changes in handling characteristics, use of the autopilot is prohibited when any of the visual cues specified above exist, or when unusual lateral trim requirements or autopilot trim warnings are encountered while the airplane is in icing conditions.

• All wing icing inspection lights must be operative prior to flight into known or forecast icing conditions at night. [**Note:** This supersedes any relief provided by the Master Minimum Equipment List (MMEL).]''

(2) Revise the FAA-approved AFM by incorporating the following into the Normal Procedures Section of the AFM. This may be accomplished by inserting a copy of this AD in the AFM.

''THE FOLLOWING WEATHER CONDITIONS MAY BE CONDUCIVE TO SEVERE IN-FLIGHT ICING:

• Visible rain at temperatures below 0 degrees Celsius ambient air temperature.

• Droplets that splash or splatter on impact at temperatures below 0 degrees Celsius ambient air temperature.

PROCEDURES FOR EXITING THE SEVERE ICING ENVIRONMENT:

These procedures are applicable to all flight phases from takeoff to landing. Monitor the ambient air temperature. While severe icing may form at temperatures as cold as −18 degrees Celsius, increased vigilance is warranted at temperatures around freezing with visible moisture present. If the visual cues specified in the Limitations Section of the AFM for identifying severe icing conditions are observed, accomplish the following:

• Immediately request priority handling from Air Traffic Control to facilitate a route or an altitude change to exit the severe icing conditions in order to avoid extended exposure to flight conditions more severe than those for which the airplane has been certificated.

• Avoid abrupt and excessive maneuvering that may exacerbate control difficulties.

• Do not engage the autopilot.

• If the autopilot is engaged, hold the control wheel firmly and disengage the autopilot.

• If an unusual roll response or uncommanded roll control movement is observed, reduce the angle-of-attack.

• Do not extend flaps when holding in icing conditions. Operation with flaps extended can result in a reduced wing angle-of-attack, with the possibility of ice forming on the upper surface further aft on the wing than normal, possibly aft of the protected area.

• If the flaps are extended, do not retract them until the airframe is clear of ice.

• Report these weather conditions to Air Traffic Control.''

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

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

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

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

(e) All persons affected by this directive may examine information related to this AD at the FAA, Central Region, Office of the Regional Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Issued in Kansas City, Missouri, on May 29, 1998.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–15082 Filed 6–5–98; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–CE–19–AD]

RIN 2120–AA64

Airworthiness Directives; Cessna Aircraft Company Model T210R Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to adopt a new airworthiness directive (AD) that would apply to Cessna Aircraft Company (Cessna) Model T210R airplanes. The proposed AD would require revising the FAA-approved Airplane Flight Manual (AFM) to specify procedures that would prohibit flight in severe icing conditions (as determined by certain visual cues), limit or prohibit the use of various flight control devices while in severe icing conditions, and provide the flight crew with recognition cues for, and procedures for exiting from, severe icing conditions. The proposed AD is prompted by the results of a review of the requirements for certification of these airplanes in icing conditions, new information on the icing environment, and icing data provided currently to the flight crew. The actions specified by the proposed AD are intended to minimize the potential hazards associated with operating these airplanes in severe icing conditions by providing more clearly defined procedures and limitations associated with such conditions.

DATES: Comments must be received on or before July 17, 1998.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 98–CE–19–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

FOR FURTHER INFORMATION CONTACT: Mr. John P. Dow, Sr., Aerospace Engineer, Small Airplane Directorate, Aircraft Certification Service, 1201 Walnut, suite 900, Kansas City, Missouri 64106, telephone: (816) 426–6932, facsimile: (816) 426–2169.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. 98–CE–19–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 98–CE–19–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Discussion

In October 1994, a transport category airplane was involved in an accident in which severe icing conditions (believed to be composed of freezing drizzle or supercooled large droplets (SLD)) were reported in the area. Loss of control of the airplane may have occurred because ice accretion on the upper surface of the wing aft of the area protected by the ice protection system caused airflow separation, which resulted in the ailerons being forced to a right-wing-down control position. There also is concern that the autopilot, which was engaged, may have masked the unusual control forces generated by the ice accumulation. These conditions, if not corrected, could result in a roll upset from which the flight crew may be unable to recover.

The atmospheric conditions (freezing drizzle or SLD conditions) that may have contributed to the accident are outside the icing envelope specified in Appendix C of part 25 of the Federal Aviation Regulations (14 CFR part 25) for certification of the airplane. Such icing conditions are not defined in Appendix C, and the FAA has not required that airplanes be shown to be capable of operating safely in those icing conditions.

The FAA finds that flight crews are not currently provided with adequate information necessary to determine when the airplane is operating in icing conditions for which the airplane is not certificated or what action to take when such conditions are encountered. Therefore, the FAA has determined that flight crews must be provided with such information and must be made aware of certain visual cues that may indicate the airplane is operating in atmospheric conditions that are outside the icing envelope.

Since such information is not available to flight crews, and no airplane is certificated for operation in severe icing conditions, such as freezing drizzle or SLD conditions, the FAA finds that the potentially unsafe condition (described previously as control difficulties following operation of the airplane in icing conditions outside the icing envelope) is not limited to airplanes having the same type design as that of the accident airplane.

The FAA recognizes that the flight crew of any airplane that is certificated for flight in icing conditions may not have adequate information concerning icing conditions outside the icing envelope. However, in 1996, the FAA found that the specified unsafe condition must be addressed as a higher priority on airplanes equipped with unpowered roll control systems and pneumatic de-icing boots. These airplanes were addressed first because the flight crew of an airplane having an unpowered roll control system must rely solely on physical strength to counteract roll control anomalies, whereas a roll control anomaly that occurs on an airplane having a powered roll control system need not be offset directly by the flight crew. The FAA also placed a priority on airplanes that are used in regularly scheduled passenger service. The FAA issued the following airworthiness directives (AD's) that addressed airplanes that met these criteria. These AD's identified visual cues for recognizing severe icing conditions, procedures for exiting these conditions, and prohibitions on the use of various flight control devices. These

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96–NM–20–AD	de Havilland DHC–7/DHC–8 Series	61 FR 2154
96–NM–21–AD	Fokker F27 Mark 100/200/ 300/400/500/600/700/050 Series	61 FR 2160
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Since issuance of those AD's, the FAA has determined that similar AD's should be issued for similarly equipped airplanes that are not used in regularly scheduled passenger service. Like the AD's written in 1996, these rules described below also provide visual cues for recognizing severe icing conditions, procedures for exiting these conditions, and prohibitions on the use of various flight control devices. These rules apply to part 25 and certain part 23 airplanes that are equipped with unpowered aileron controls and pneumatic de-icing boots. The part 23 AD's address airplanes certificated in normal and utility categories (not used in agricultural operations) that are used in part 135 on-demand and air-taxi operation, and other airplanes regularly exposed to icing conditions. These rules affect the following airplanes.

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The New Piper Aircraft, Inc., Models PA–46 –310P and PA–46–350P	97–CE–60–AD
The New Piper Aircraft, Inc., Models PA–23, PA–23–160, PA–23–235, A–23–250, PA–E23–250, PA–30, PA–39, PA–40, PA–31, PA–31–300, PA–31–325, PA–31–350, PA–34–200, PA–34–200T, PA–34–220T, PA–42, PA–42–720, PA–42–1000.	97–CE–61–AD
Cessna Aircraft Company, Models P210N, T210N, P210R, and 337 series	97–CE–62–AD
Cessna Aircraft Company, Models T303, 310R, T310R, 335, 340A, 402B, 402C, 404, F406, 414, 414A, 421B, 421C, 425, and 441.	97–CE–63–AD
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Mitsubishi Heavy Industries, Model YS–11 and YS–11A series	97–NM–174–AD
Frakes Aviation Model G–73 (Mallard) and G–73T series	97–NM–175–AD
Fairchild Models F27 and FH227 series	97–NM–176–AD
Lockheed Models L–14 and L–18 series airplanes	97–NM–177–AD

The FAA's Determination

Following examination of all relevant information, the FAA has determined that certain limitations and procedures should be included in the FAA-approved Airplane Flight Manual (AFM) for the affected airplanes as follows:

- All Cessna Models T210R airplanes must be prohibited from flight in severe icing conditions (as determined by certain visual cues), and
- Flight crews must be provided with information that would minimize the potential hazards associated with operating the airplane in severe icing conditions.

The FAA has determined that such limitations and procedures currently are

not defined adequately in the AFM for these airplanes.

Explanation of the Provisions of the Proposed AD

Since an unsafe condition has been identified in which an unrecoverable roll upset may occur, as a result of exposure to severe icing conditions that are outside the icing limits for which the airplanes were certificated, the proposed AD would require revising the Limitations Section of the FAA-approved AFM to specify procedures that would:

- Require flight crews to immediately request priority handling from Air Traffic Control to exit severe icing conditions (as determined by certain visual cues);
- Prohibit use of the autopilot when ice is formed aft of the protected surfaces of the wing, or when an unusual lateral trim condition exists; and
- Require that all icing wing inspection lights be operative prior to flight into known or forecast icing conditions at night.

This proposed AD would also require revising the Normal Procedures Section of the FAA-approved AFM to specify procedures that would:

- Limit the use of the flaps and prohibit the use of the autopilot when ice is observed forming aft of the protected surfaces of the wing, or if unusual lateral trim requirements or autopilot trim warnings are encountered; and
- Provide the flight crew with recognition cues for, and procedures for exiting from, severe icing conditions.

Cost Impact

The FAA estimates that 50 airplanes in the U.S. registry would be affected by the proposed AD, that it would take approximately 1 workhour per airplane to accomplish the proposed action, and that the average labor rate is approximately $60 an hour. Since an owner/operator who holds at least a private pilot's certificate as authorized by sections 43.7 and 43.11 of the Federal Aviation Regulations (14 CFR 47.7 and 43.11) can accomplish the proposed action, the only cost impact upon the public is the time it would take the affected airplane owners/operators to incorporate the proposed AFM revisions.

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

In addition, the FAA recognizes that the proposed action may impose operational costs. However, these costs are incalculable because the frequency of occurrence of the specified conditions and the associated additional flight time cannot be determined. Nevertheless, because of the severity of the unsafe condition, the FAA has determined that continued operational safety necessitates the imposition of the costs.

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Cessna Aircraft Company: Docket No. 98–CE–19–AD.

Applicability: Model T210R airplanes (all serial numbers), certificated in any category.

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

Compliance: Required as indicated, unless already accomplished.

To minimize the potential hazards associated with operating the airplane in severe icing conditions by providing more clearly defined procedures and limitations associated with such conditions, accomplish the following:

(a) Within 30 days after the effective date of this AD, accomplish the requirements of paragraphs (a)(1) and (a)(2) of this AD.

Note 2: Operators should initiate action to notify and ensure that flight crewmembers are apprised of this change.

(1) Revise the FAA-approved Airplane Flight Manual (AFM) by incorporating the following into the Limitations Section of the AFM. This may be accomplished by inserting a copy of this AD in the AFM.

''WARNING

Severe icing may result from environmental conditions outside of those for which the airplane is certificated. Flight in freezing rain, freezing drizzle, or mixed icing conditions (supercooled liquid water and ice crystals) may result in ice build-up on protected surfaces exceeding the capability of the ice protection system, or may result in ice forming aft of the protected surfaces. This ice may not be shed using the ice protection systems, and may seriously degrade the performance and controllability of the airplane.

- During flight, severe icing conditions that exceed those for which the airplane is certificated shall be determined by the following visual cues. If one or more of these visual cues exists, immediately request priority handling from Air Traffic Control to facilitate a route or an altitude change to exit the icing conditions.

—Unusually extensive ice accumulation on the airframe and windshield in areas not normally observed to collect ice.

—Accumulation of ice on the lower surface of the wing aft of the protected area.

- Since the autopilot, when installed and operating, may mask tactile cues that indicate

adverse changes in handling characteristics, use of the autopilot is prohibited when any of the visual cues specified above exist, or when unusual lateral trim requirements or autopilot trim warnings are encountered while the airplane is in icing conditions.

• All wing icing inspection lights must be operative prior to flight into known or forecast icing conditions at night. [NOTE: This supersedes any relief provided by the Master Minimum Equipment List (MMEL).]''

(2) Revise the FAA-approved AFM by incorporating the following into the Normal Procedures Section of the AFM. This may be accomplished by inserting a copy of this AD in the AFM.

''THE FOLLOWING WEATHER CONDITIONS MAY BE CONDUCIVE TO SEVERE IN-FLIGHT ICING

• Visible rain at temperatures below 0 degrees Celsius ambient air temperature.

• Droplets that splash or splatter on impact at temperatures below 0 degrees Celsius ambient air temperature.

PROCEDURES FOR EXITING THE SEVERE ICING ENVIRONMENT

These procedures are applicable to all flight phases from takeoff to landing. Monitor the ambient air temperature. While severe icing may form at temperatures as cold as −18 degrees Celsius, increased vigilance is warranted at temperatures around freezing with visible moisture present. If the visual cues specified in the Limitations Section of the AFM for identifying severe icing conditions are observed, accomplish the following:

• Immediately request priority handling from Air Traffic Control to facilitate a route or an altitude change to exit the severe icing conditions in order to avoid extended exposure to flight conditions more severe than those for which the airplane has been certificated.

• Avoid abrupt and excessive maneuvering that may exacerbate control difficulties.

• Do not engage the autopilot.

• If the autopilot is engaged, hold the control wheel firmly and disengage the autopilot.

• If an unusual roll response or uncommanded roll control movement is observed, reduce the angle-of-attack.

• Do not extend flaps when holding in icing conditions. Operation with flaps extended can result in a reduced wing angle-of-attack, with the possibility of ice forming on the lower surface further aft on the wing than normal, possibly aft of the protected area.

• If the flaps are extended, do not retract them until the airframe is clear of ice.

• Report these weather conditions to Air Traffic Control.''

(b) Incorporating the AFM revisions, as required by this AD, may be performed by the owner/operator holding at least a private pilot certificate as authorized by section 43.7 of the Federal Aviation Regulations (14 CFR 43.7), and must be entered into the aircraft records showing compliance with this AD in accordance with section 43.11 of the Federal Aviation Regulations (14 CFR 43.11).

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

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

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

(e) All persons affected by this directive may examine information related to this AD at the FAA, Central Region, Office of the Assistant Chief Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Issued in Kansas City, Missouri, on May 29, 1998.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–15081 Filed 6–5–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–ANE–23–AD]

RIN 2120–AA64

Airworthiness Directives; Allison Engine Company 250–B and 250–C Series Turboshaft Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Allison Engine Company 250–B and 250–C series turboshaft engines. This proposal would require replacing existing beryllium copper main fuel control (MFC) bellows assemblies with Inconel 718 stainless steel welded MFC bellows assemblies. This proposal is prompted by reports of leaking MFC bellows assemblies resulting in an uncommanded minimum fuel flow condition, loss of engine fuel flow control and subsequent forced landing. The actions specified by the proposed AD are intended to prevent MFC bellows assembly leakage, which can result in an uncommanded minimum fuel flow condition and subsequent loss of engine fuel flow control.

DATES: Comments must be received by August 7, 1998.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 98–ANE–23–AD, 12 New England Executive Park, Burlington, MA 01803–5299. Comments may also be sent via the Internet using the following address: ''9-ad-engineprop@faa.dot.gov''. Comments sent via the Internet must contain the docket number in the subject line. Comments may be inspected at this location between 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Allison Engine Company, P.O. Box 420, Speed Code U–15, Indianapolis, IN 46206–0420, telephone (317) 230–6674. This information may be examined at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA.

FOR FURTHER INFORMATION CONTACT: John Tallarovic, Aerospace Engineer, Chicago Aircraft Certification Office, FAA, Small Airplane Directorate, 2350 E. Devon Avenue, Room 323, Des Plaines, IL 60018; telephone (847) 294–8180, fax (847) 294–7834.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

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

Commenters wishing the FAA to acknowledge receipt of their comments

submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 98–ANE–23–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 98–ANE–23–AD, 12 New England Executive Park, Burlington, MA 01803–5299.

Discussion

The Federal Aviation Administration (FAA) has received reports of inflight engine shutdowns due to main fuel control (MFC) beryllium copper bellows assembly leakage on Allison Engine Company engines. This same design is used on Allison Engine Company 250–B15, 250–B17, 250–B17F, 250–C18, 250–C20, 250–C20R, 250–C28, and 250–C30 series turboshaft engines. The investigation revealed that the MFC bellows assemblies leaked due to corrosion. This AD requires the replacement of existing beryllium copper MFC bellows assemblies with Inconel 718 stainless steel welded MFC bellows assemblies, a material that is less susceptible to corrosion. The compliance schedule balanced the need to remove the highest risk bellows assemblies first with the ability to manufacture replacement parts at the required rate. This condition, if not corrected, could result in MFC bellows assembly leakage, which can result in an uncommanded minimum fuel flow condition and subsequent loss of engine fuel flow control.

The FAA has reviewed and approved the technical contents of Allison Commercial Engine Bulletins (CEBs) No. CEB–A–282 (250–C18 series), No. CEB–A–1329 (250–C20 series), No. CEB–A–73–2053 (250–C28 series), No. CEB–A–73–3068 (250–C30 series), No. CEB–A–73–4029 (250–C20R series), No. TP CEB–A–158 (250–B15G series), No. TP CEB–A–1286 (250–B17 series), and TP CEB–A–73–2014 (250–B17F series), all Revision 2, all dated April 15, 1998, that describe procedures for replacing existing beryllium copper MFC bellows assemblies with Inconel 718 stainless steel welded MFC bellows assemblies.

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require replacing the existing beryllium copper MFC bellows assemblies at the next repair or overhaul of the MFC bellows assembly, or, since corrosion was a factor, by the calendar end-dates specified, whichever occurs first. The actions would be required to be accomplished in accordance with the CEBs described previously.

The FAA estimates that 2,500 engines installed on aircraft of U.S. registry would be affected by this proposed AD, that it would take no additional work hours per engine to accomplish the proposed actions at regularly scheduled overhaul, and required parts would cost approximately $1,495 per engine. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $3,737,500.

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Allison Engine Company: Docket No. 98–ANE–23–AD.

Applicability: Allison Engine Company 250–B15, 250–B17, 250–B17F, 250–C18, 250–C20, 250–C20R, 250–C28, and 250–C30 series turboshaft engines, installed on but not limited to Bell Models 206, 230, 406; Enstrom Model TH28/480; and Boeing Models 500, 520N, 530F rotorcraft.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent main fuel control (MFC) bellows assembly leakage, which can result in an uncommanded minimum fuel flow condition and subsequent loss of engine fuel flow control, accomplish the following:

(a) Replace existing beryllium copper MFC bellows assemblies, part numbers (P/Ns) 2523722, 2539647, 2540539, 2540767, and 2542526, with Inconel 718 stainless steel welded MFC bellows assemblies, P/N 2543598, in accordance with the applicable Allison Commercial Engine Bulletins (CEBs) referenced in paragraph (b) of this AD, at the earlier of the following:

(1) The next time after the effective date of this AD the MFC is being repaired or overhauled; or

(2) The following populations of MFCs, as applicable

(i) All MFCs listed by P/Ns in Tables 1 and 2 of the Allison CEBs referenced in paragraph (b) of this AD by March 31, 1999; or

(ii) All MFCs listed by P/Ns in Table 3 of the Allison CEBs referenced in paragraph (b) of this AD by August 31, 1999.

(iii) All MFCs listed by P/Ns in Tables 4 and 5 of the Allison CEBs referenced in paragraph (b) of this AD by October 31, 1999.

(b) Perform the replacement of MFC bellows assemblies required by paragraph (a) of this AD in accordance with the applicable Allison CEB from among the following:

(1) CEB–A–282 Revision 2, dated April 15, 1998 (250–C18 series), or

(2) CEB–A–1329 Revision 2, dated April 15, 1998(250–C20 series), or

(3) CEB–A–73–2053 Revision 2, dated April 15, 1998(250–C28 series), or

(4) CEB–A–73–3068 Revision 2, dated April 15, 1998(250–C30 series), or,

(5) CEB–A–73–4029 Revision 2, dated April 15, 1998(250–C20R series), or

(6) TP (Turboprop) CEB–A–158 Revision 2, dated April 15, 1998 (250–B15G series), or

(7) TP CEB–A–1286 Revision 2, dated April 15, 1998 (250–B17 series), or

(8) TP CEB–A–73–2014 Revision 2, dated April 15, 1998 (250–B17F series).

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

Note 2: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the Chicago Aircraft Certification Office.

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

Issued in Burlington, Massachusetts, on May 29, 1998.

Jay J. Pardee,

Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 98–15087 Filed 6–5–98; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–NM–134–AD]

RIN 2120–AA64

Airworthiness Directives; Bombardier Model CL–600–2B19 (Regional Jet Series 100) Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Bombardier Model CL–600–2B19 (Regional Jet Series 100) airplanes. This proposal would require repetitive inspections of the inboard and outboard flap actuators to measure the rotational freedom of the actuator ball screw adjacent to the actuator housing, and replacement of the flap actuators with new or serviceable actuators, if necessary. This proposal is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by the proposed AD are intended to prevent premature wear of the internal gears on the flap actuators, which could result in complete disconnection of the actuator gear set and a mechanical jam of the flap system. This condition could cause structural damage and/or significant twist of a flap panel, which could lead to reduced controllability of the airplane.

DATES: Comments must be received by July 8, 1998.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 98–NM–134–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Bombardier, Inc., Canadair, Aerospace Group, P.O. Box 6087, Station Centre-ville, Montreal, Quebec H3C 3G9, Canada. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Engine and Propeller Directorate, New York Aircraft Certification Office, 10 Fifth Street, Third Floor, Valley Stream, New York.

FOR FURTHER INFORMATION CONTACT: Anthony E. Gallo, Aerospace Engineer, Systems and Flight Test Branch, ANE–172, FAA, Engine and Propeller Directorate, New York Aircraft Certification Office, 10 Fifth Street, Third Floor, Valley Stream, New York 11581; telephone (516) 256–7510; fax (516) 568–2716.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 98–NM–134–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 98–NM–134–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

Transport Canada Aviation (TCA), which is the airworthiness authority for Canada, notified the FAA that an unsafe condition may exist on certain Bombardier Model CL–600–2B19 (Regional Jet Series 100) airplanes. TCA advises that there have been several in-service reports of premature wear of the internal gears on the inboard and outboard flap actuators on airplanes returned from service. Such deterioration could result in complete disconnection of the actuator gear set and a mechanical jam of the flap system, which could cause structural damage and/or significant twist of a flap panel, and result in reduced controllability of the airplane.

Explanation of Relevant Service Information

EEMCO has issued Service Bulletin 852D100–27–03, Revision A, dated February 27, 1997, including Appendices 1 and 2. This service bulletin describes procedures for repetitive inspections of the inboard and outboard flap actuators to measure the rotational freedom of the actuator ball screw adjacent to the actuator housing to determine the allowable intervals for backlash measurement; and replacement of the flap actuators with new or serviceable actuators, if necessary. Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition. TCA classified this service bulletin as mandatory and issued Canadian airworthiness directive CF–97–05, dated May 5, 1997, in order to assure the continued airworthiness of these airplanes in Canada.

Bombardier has issued Canadair Regional Jet Alert Service Bulletin S.B. A601R–27–069, Revision B, dated March 13, 1997, as an additional source of service information for accomplishment of the inspection and measurement procedures described in the EEMCO service bulletin.

FAA's Conclusions

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

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require accomplishment of the actions specified in the service bulletins described previously.

Cost Impact

The FAA estimates that 81 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 2 work hours per airplane to accomplish the proposed inspection, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $9,720, or $120 per airplane, per inspection cycle.

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

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Bombardier, Inc. (Formerly Canadair): Docket 98–NM–134–AD.

Applicability: Model CL–600–2B19 (Regional Jet Series 100) airplanes, serial numbers 7003 through 7999 inclusive; certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent premature wear of the internal gears on the flap actuators, which could result in complete disconnection of the actuator gear set, a mechanical jam of the flap system, significant twist of a flap panel leading to structural damage, and consequent reduced controllability of the airplane; accomplish the following:

(a) Prior to the accumulation of 1,000 total flight cycles, or within 400 flight cycles after the effective date of this AD, whichever occurs later: Inspect the inboard and outboard flap actuators to measure the rotational freedom of the actuator ball screw adjacent to the actuator housing to determine the allowable intervals for backlash measurement, in accordance with EEMCO Service Bulletin 852D100–27–03, Revision A, dated February 27, 1997, including Appendices 1 and 2. Repeat the inspections thereafter at the earliest applicable interval specified in Section 3.A., ''Inspection Interval Criteria,'' Table I or Table II of the Accomplishment Instructions of the service bulletin, as applicable.

(b) If, during any inspection required by paragraph (a) of this AD, the measured backlash exceeds the allowable limit specified in Section 3.B., ''Removal Criteria,'' and Table I or Table II of the Accomplishment Instructions of the service bulletin, as applicable: Prior to further flight, replace the actuator with a new or serviceable actuator, in accordance with the times and procedures specified in EEMCO Service Bulletin 852D100–27–03, Revision A, dated February 27, 1997, including Appendices 1 and 2. Thereafter, repeat the inspections in accordance with paragraph (a) of this AD.

Note 2: Canadair Regional Jet Alert Service Bulletin S.B. A601R–27–069, Revision B, dated March 13, 1997, is an additional source of service information for accomplishment of the inspection and measurement procedures described in the EEMCO service bulletin.

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

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

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

Note 4: The subject of this AD is addressed in Canadian airworthiness directive CF–97–05, dated May 5, 1997.

Issued in Renton, Washington, on June 2, 1998.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–15136 Filed 6–5–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–NM–160–AD]

RIN 2120–AA64

Airworthiness Directives; Construcciones Aeronauticas, S.A. (CASA) Model CN–235 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to all CASA Model CN–235 series airplanes. This proposal would require repetitive high frequency eddy current (HFEC) inspections of the flap transmission shafts to detect cracking, and repetitive functional tests (checks) to verify proper operation of the flap braking sub-system; and corrective actions, if necessary. This proposal is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by the proposed AD are intended to detect and correct cracking in the flap transmission shafts, and to correct a malfunctioning flap braking sub-system, which could result in the inability to move the flaps, or in an asymmetric flap condition, and consequent reduced controllability of the airplane.

DATES: Comments must be received by July 8, 1998.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 98–NM–160–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Construcciones Aeronauticas, S.A., Getafe, Madrid, Spain. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

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

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 98–NM–160–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 98–NM–160–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Dirección General de Aviación (DGAC), which is the airworthiness authority for Spain, notified the FAA that an unsafe condition may exist on all CASA Model CN–235 series airplanes. The DGAC advises that, on three Model CN–235 series airplanes that had accumulated a high number of landings, cracks were detected around the heads of the rivets on the ends of the flap transmission shafts. These cracks start at the rivet hole and grow radially. The cracks are attributed to fatigue, which could have resulted from a malfunctioning flap braking sub-system, and consequent high loads on the transmission shafts. Such cracking, if not corrected, could result in the inability to move the flaps, or in an asymmetric flap condition, and consequent reduced controllability of the airplane.

Explanation of Relevant Service Information

The manufacturer has issued CASA Maintenance Instructions COM 235–113, Revision 02, dated June 16, 1997, including Annex I, dated June 16, 1997, and Annex II, dated July 1, 1997. The maintenance instructions describe procedures for repetitive high frequency eddy current (HFEC) inspections of the flap transmission shafts to detect cracking; replacement of any cracked shaft with a new or serviceable shaft; repetitive functional tests (checks) of the flap braking sub-system to verify proper operation; and replacement of any discrepant brake with a new or serviceable brake. Accomplishment of the actions specified in the maintenance instructions is intended to adequately address the identified unsafe condition. The DGAC classified these maintenance instructions as mandatory and issued Spanish airworthiness directive 11/96, Revision 1, dated June 19, 1997, in order to assure the continued airworthiness of these airplanes in Spain.

FAA's Conclusions

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

Explanation of Requirements of Proposed Rule

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

Differences Between the Proposed Rule and the Related Service Information

This proposed AD would require compliance in terms of landings accumulated on the airplane, whereas the Spanish airworthiness directive requires compliance based on the number of landings accumulated on

individual flap transmission shafts. The FAA does not consider it practicable for U.S. operators to accomplish an inspection program that necessitates tracking the landings accumulated on individual flap transmission shaft components due to the difficulty of such tracking.

Operators should further note that, unlike the procedures described in the maintenance instructions, this proposed AD would not permit further flight if cracks are detected in the flap transmission shaft. The FAA has determined that, because of the safety implications and consequences associated with such cracking, any subject flap transmission shaft that is found to be cracked must be repaired or modified prior to further flight.

Cost Impact

The FAA estimates that 2 airplanes of U.S. registry would be affected by this proposed AD, and that it would take approximately 30 work hours per airplane to accomplish the proposed inspection and functional test, at an average labor rate of $60 per work hour. Based on these figures, the cost impact proposed by this AD on U.S. operators is estimated to be $3,600, or $1,800 per airplane, per cycle.

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

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Construcciones Aeronauticas, S.A. (CASA): Docket 98–NM–160–AD.

Applicability: All CASA Model CN–235 series airplanes, certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

To detect and correct cracking in the flap transmission shafts, and to correct a malfunctioning flap braking sub-system, which could result in the inability to move the flaps, or in an asymmetric flap condition, and consequent reduced controllability of the airplane; accomplish the following:

(a) Prior to the accumulation of 6,000 total landings, or within 30 days after the effective date of this AD, whichever occurs later, perform a high frequency eddy current (HFEC) inspection of the flap transmission shafts to detect cracking, in accordance with Annex I, dated June 16, 1997, of CASA Maintenance Instructions COM 235–113, Revision 02, dated June 16, 1997.

(1) If no cracking is detected, repeat the HFEC inspection thereafter at intervals not to exceed 2,000 landings.

(2) If any cracking is detected, prior to further flight, replace the cracked shaft with a new or serviceable shaft, in accordance with the maintenance instructions; and repeat the HFEC inspection thereafter at intervals not to exceed 2,000 landings.

(b) Prior to the accumulation of 6,000 total landings, or within 30 days after the effective date of this AD, whichever occurs later, perform a functional test (check) to verify proper operation of the flap braking sub-system, in accordance with Annex II, dated July 1, 1997, of CASA Maintenance Instructions COM 235–113, Revision 02, dated June 16, 1997.

(1) If no malfunction is detected, repeat the functional test thereafter at intervals not to exceed 300 landings.

(2) If any malfunction is detected, prior to further flight, replace any discrepant component with a new or serviceable component in accordance with the maintenance instructions; and repeat the functional test to verify proper operation of the flap braking sub-system; thereafter, repeat the functional test thereafter at intervals not to exceed 300 landings.

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

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

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

Note 3: The subject of this AD is addressed in Spanish airworthiness directive 11/96, Revision 1, dated June 19, 1997.

Issued in Renton, Washington, on June 2, 1998.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–15135 Filed 6–5–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 16 and 99

[Docket No. 98N–0222]

Dissemination of Information on Unapproved/New Uses for Marketed Drugs, Biologics, and Devices

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is proposing to issue new regulations pertaining to the dissemination of information on unapproved uses (also referred to as ''new uses'' and ''off-label uses'') for marketed drugs, including biologics, and devices. The proposal, which would implement the dissemination provisions of the Food and Drug Administration Modernization Act of 1997 (FDAMA), would describe the new use information that a manufacturer may disseminate and describe the content of and establish procedures for a manufacturer's submissions to FDA before it may begin disseminating information on the new use. The proposal also would describe how manufacturers seeking to disseminate new use information must agree to submit a supplement for that use within a specified period of time, unless a supplemental application already has been submitted or FDA has exempted the manufacturer from the requirement to submit a supplement. The proposal also would provide for requests to extend the time period for submitting a supplement for a new use, and it would describe how a manufacturer can seek an exemption from the requirement to submit a supplement. Additionally, the proposal would discuss FDA actions in response to manufacturers' submissions, corrective actions that FDA may take, and recordkeeping and reporting requirements.

DATES: Written comments by July 23, 1998.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857. Submit written comments on the information collection requirements to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), New Executive Office Bldg., 725 17th St. NW., Washington, DC 20503, Attn: Desk Officer for FDA.

FOR FURTHER INFORMATION CONTACT:

Regarding general questions: Margaret M. Dotzel, Office of Policy (HF–22), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–5321.

Regarding biological products and devices regulated by the Center for Biologics Evaluation and Research: Toni M. Stifano, Center for Biologics Evaluation and Research (HFM–200), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852, 301–827–3028.

Regarding human drug products: Laurie B. Burke, Center for Drug Evaluation and Research (HFD–40), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–2828.

Regarding medical devices: Byron L. Tart, Center for Devices and Radiological Health (HFZ–302), Food and Drug Administration, 2098 Gaither Rd., Rockville, MD 20850, 301–594–4639.

SUPPLEMENTARY INFORMATION:

I. Introduction/Summary of Legislation

On November 21, 1997, the President signed into law FDAMA (Pub. L. 105–115). Section 401 of FDAMA amended the Federal Food, Drug, and Cosmetic Act (the act) to permit drug, biologic, and device manufacturers to disseminate certain written information concerning the safety, effectiveness, or benefits of a use that is not described in the product's approved labeling to health care practitioners, pharmacy benefit managers, health insurance issuers, group health plans, and Federal and State government agencies, provided that:

1. The information is about a drug or device that is being legally marketed;

2. The information is not derived from another manufacturer's clinical research, unless that other manufacturer has given its permission for the dissemination;

3. Sixty days prior to the dissemination, the manufacturer submits to FDA a copy of the information to be disseminated and any other clinical trial information that the manufacturer has relating to the safety or effectiveness of the new use, any reports of clinical experience that pertain to the safety of the new use, and a summary of such information;

4. The information is not false or misleading and does not pose a significant risk to public health;

5. The information is in the form of unabridged reprints or copies of peer reviewed articles about scientifically sound clinical investigations published in scientific or medical journals or in the form of unabridged reference publications that include information about scientifically sound clinical investigations;

6. The manufacturer includes with such information a prominently displayed statement disclosing: That the use is not approved or cleared by FDA; if applicable, that the information is being disseminated at the manufacturer's expense; if applicable, the names of any authors of the information who are employees of or consultants to the manufacturer or have received compensation or have a significant financial interest in the manufacturer; if applicable, a statement that there are products or treatments that have been approved or cleared for the use that is the subject of the information; and the identification of any person that has provided funding for the study related to the new use for which such information is being disseminated;

7. The manufacturer includes the official labeling and a bibliography of other articles from scientific reference publications or journals relating to the new use;

8. If FDA determines that the information fails to provide data, analyses, or other written matter that is objective and balanced, the manufacturer includes additional objective and scientifically sound information that pertains to the safety or effectiveness of the new use and/or an objective statement prepared by FDA that bears on the safety or effectiveness of the new use; and

9. The manufacturer has: (a) Submitted a supplemental application for the new use; (b) completed the studies needed for a supplemental application for the new use and certified that such studies are completed and that a supplemental application will be submitted within 6 months of the initial dissemination; (c) provided a proposed protocol and schedule for conducting the studies needed for a supplemental application for the new use, which FDA has found to be adequate and reasonable (respectively) and certified that such application will be submitted no later than 36 months after the initial dissemination; or (d) received an exemption from the requirement to file a supplemental application on the grounds that conducting the studies needed for a supplemental application would be unethical or economically prohibitive.

Under the new law, if FDA fails to act on a request for an exemption within 60 days, the exemption is deemed approved, and a manufacturer who meets all other requirements may begin to disseminate the written information. FDA may, however, subsequently terminate the deemed approval and order a manufacturer to cease dissemination. FDA can also order the manufacturer to take corrective action if the new use would pose a significant risk to public health.

Manufacturers have an ongoing responsibility to provide FDA with additional information about the new uses that are the subject of dissemination under these provisions, and, if this information indicates that the new use may not be effective or may

present a significant risk to public health, FDA may order the cessation of the dissemination about the new use. FDA may also order cessation of dissemination if the manufacturer fails to comply with any requirement for dissemination, including the requirements relating to the completion of studies and/or the submission of a supplemental application.

Every 6 months, manufacturers that disseminate information under these provisions are required to prepare and submit to FDA lists of the titles of articles and reference publications that have been disseminated during the previous 6-month period and the categories of providers who have received the materials. In addition, manufacturers must keep records that can be used by the manufacturer or FDA to take corrective action. Such records may, at FDA's discretion, identify either the recipient of the information or the categories of such recipients. Manufacturers that have committed to doing the studies needed for submission of a supplement on a new use must also submit periodic reports to FDA that describe the status of the studies.

The dissemination of information in accordance with new section 551 of the act (21 U.S.C. 360aaa) is not construed as evidence of a new intended use of the drug or device, and it is not considered to be labeling, adulteration, or misbranding. This rule of construction applies, however, only to the dissemination of information in compliance with the statutory requirements. Moreover, disseminating information in violation of the requirements of section 551 of the act is prohibited.

Section 401(c) of FDAMA directs FDA to issue regulations to implement the new statutory provisions within 1 year of enactment (by November 21, 1998). Accordingly, the agency must solicit public comment on this proposal, consider the comments submitted, and prepare and publish a final implementing regulation by November 21, 1998. In light of this limited timeframe, the Commissioner finds good cause under 21 CFR 10.40(b)(2) for providing a shortened comment period of 45 days.

Section 401(d) of FDAMA provides that the new provisions will take effect 1 year after the date of enactment (November 21, 1998) or upon FDA's issuance of final regulations, whichever is sooner. According to section 401(e) of FDAMA, the provisions will sunset on September 30, 2006, or 7 years after the date on which the agency issues its regulations, whichever is later.

II. Description of the Proposed Rule

The proposed rule would create a new part 99 entitled ''Dissemination of Information on Unapproved/New Uses for Marketed Drugs, Biologics, and Devices.''

A. Subpart A—General Information

Proposed subpart A would consist of two provisions. Proposed § 99.1 would describe the scope of part 99. Proposed § 99.1(a)(1) would explain that the part applies to the dissemination of information on human drugs, including biologics, and devices where the information to be disseminated concerns the safety, effectiveness, or benefit of a use that is not included in the approved labeling for an approved drug or device or in the statement of intended use for a cleared device. Proposed § 99.1(a)(2) would provide that the information is to be disseminated to a health care practitioner, pharmacy benefit manager, health insurance issuer, group health plan, or Federal or State government agency. This description of the rule's scope would be consistent with section 551(a) of the act.

Proposed § 99.3 would define various terms, such as ''group health plan'' (proposed § 99.3(c)), ''health care practitioner'' (proposed § 99.3(d)), ''new use'' (proposed § 99.3(g)), and ''scientific or medical journal'' (proposed § 99.3(i)). In most cases, the definitions paraphrase or repeat the statutory definitions at section 556 of the act (21 U.S.C. 360aaa–5). However, proposed § 99.3(f) would elaborate on the statutory definition of ''manufacturer'' to include sponsors of marketed drugs or devices. FDA is proposing to elaborate in this manner so that sponsors of a drug or device who received marketing approval for the product, but do not actually manufacture the product, would be able to disseminate information under this part.

The proposed rule would track the statutory definition of ''new use'' to mean a use that is not included in the approved labeling of an approved drug or device or a use that is not included in the statement of intended use for a cleared device. A new use is one that would require approval or clearance of a supplemental application in order for it to be included in the product labeling. ''New uses'' that would require approval of a supplemental application to add the use to the labeling of an approved drug or to the labeling of an approved or cleared device and that, therefore, would be covered by this part include, but are not limited to: A completely different indication; modification of an existing indication to include a new dose, a new dosing schedule, a new route of administration, a different duration of usage, a new age group (e.g., unique safety or effectiveness in the elderly), another patient subgroup not explicitly identified in the current labeling, a different stage of the disease, a different intended outcome (e.g., long-term survival benefit, improved quality of life, disease amelioration), effectiveness for a sign or symptom of the disease not in the current labeling; and comparative claims to other agents for treatment of the same condition. This illustrative listing is consistent with the statutory intent that clearly links the new use discussed in the materials to be disseminated to the sponsor's submission of a supplemental application in order to add the use to the product labeling.

The proposed rule would also define ''clinical investigation'' and ''supplemental application,'' which are not defined in the statute. A clinical investigation would be defined as an investigation in humans that is prospectively planned to test a specific clinical hypothesis. The conduct of a clinical investigation according to a preplanned protocol generally is a fundamental aspect of hypothesis testing.

The proposal would define a ''supplemental application'' to mean a supplemental new drug application (NDA) for human drugs or a supplement to an approved license application for biologics. A supplement to an NDA could be a supplement to an application submitted under section 505(b)(1) of the act (21 U.S.C. 355(b)(1)) or section 505(b)(2) of the act. For devices, proposed § 99.3(j)(3) would define a ''supplemental application'' as a new 510(k) submission, if the device is the subject of a cleared 510(k) submission, or a supplement to an approved premarket approval application (PMA), if the device is the subject of an approved PMA. FDA is proposing to include new 510(k) submissions as ''supplemental applications'' because there are no ''supplements'' for a new use to a 510(k) submission, instead, a new use is the subject of a new 510(k) submission. There are instances when a new use for a 510(k) device would require the submission of a PMA, but this would not be the equivalent of a ''supplement'' and thus, has not been included in the definition. Manufacturers that would be required to submit a PMA for a new use of a device cleared under section 510(k) of the act (21 U.S.C. 360(k)) would not be eligible

to disseminate materials under the provisions of section 551 of the act.

B. Subpart B—Information to be Disseminated

Proposed subpart B would describe the types of information that manufacturers may disseminate under part 99; the information that manufacturers must disseminate if they choose to disseminate written information about the safety, effectiveness, or benefit of new uses; and the persons who may receive the information about new uses.

Proposed § 99.101 would discuss the types of information concerning the safety, effectiveness, or benefit of a new use that a manufacturer may disseminate. In brief, the proposal would require that the written information to be disseminated:

1. Concern a drug or device that has been approved, licensed, or cleared for marketing by FDA;

2. Be in the form of an unabridged copy of a peer-reviewed scientific or medical journal article or reprint, or an unabridged reference publication that pertains to a clinical investigation involving the drug or device and that is considered scientifically sound by experts who are qualified to evaluate the product's safety or effectiveness;

3. Not pose a significant risk to the public health;

4. Not be false or misleading; and

5. Not be derived from clinical research conducted by another manufacturer, unless the manufacturer disseminating the information has permission to make the dissemination.

Under the proposal, FDA could consider the information to be misleading if, among other things, the information includes only favorable publications or excludes articles, reference publications, or other information concerning risks and adverse effects that are or may be associated with the new use. This element is intended to help ensure that manufacturers disseminate balanced and objective information. FDA also could consider the information to be false or misleading if the study design, conduct, data, or analyses do not reasonably support the conclusion reached by the authors. In addition, the information would be considered misleading if the clinical study utilized a study endpoint that is not reasonably well-established as indicative of clinical benefit.

As set forth in the statute and FDA's proposal, the information that can be disseminated under part 99 must be in the form of a reprint or copy of a journal article or a reference publication. Although the requirements set forth in the statute are easily applied to journal articles, they are not as easily applied to reference publications. For example, the definition of a reference publication indicates that the publication may not focus on a particular drug or device of the manufacturer that disseminates the information under section 551 of the act and may not have a primary focus on new uses of drugs or devices that are marketed or under investigation by a manufacturer supporting the dissemination of information. This is not altogether consistent with the purpose of section 401 of FDAMA, which is to permit the dissemination of information about a clinical investigation concerning a specific new use if certain criteria are met. In addition, although journal articles typically include a detailed description and discussion of clinical investigations, reference publications often just refer generally to the results of such investigations. Because the statute requires the information being disseminated to be about a clinical investigation, it seems unlikely that many reference publications will meet the requirements for dissemination under this provision. Finally, the statute requires that a manufacturer submit (or commit to submit) a supplement for each new use discussed in the information to be disseminated. This could be construed to mean that a manufacturer that disseminates a reference publication that discusses many new uses would be required, under the statute, to submit (or commit to submit) a supplement for each of the many new uses mentioned.

Despite these issues, FDA believes that the statutory provisions can be interpreted and applied to conform with the text and spirit of the legislation. Although the statute does not allow a reference publication, as a whole, to focus on the disseminating manufacturer's products or new uses, it does not prohibit a manufacturer from citing a particular use or uses in a publication that does not have such a focus if the manufacturer complies with the requirements set forth in section 401 of FDAMA. This will, therefore, allow manufacturers to use reference publications in the same manner as they would use journal articles, i.e., to disseminate information about a specific new use. Although a manufacturer must submit (or commit to submit) a supplemental application for the new use that it has cited in the reference publication, the manufacturer would not have to submit (or commit to submit) a supplement for each new use mentioned in the publication. Nevertheless, because reference publications rarely include detailed discussions of clinical investigations, FDA recognizes that the majority of such publications would probably not meet the requirements of section 401 of FDAMA and this proposed implementing regulation. FDA, therefore, plans to develop draft guidance and solicit public comment on reference publications that do not fall within the scope of part 99.

Proposed § 99.101 would also explain that the determination of whether a clinical investigation is considered to be scientifically sound rests on whether the design, conduct, data, and analysis of the investigation described or discussed in a reprint or copy of an article or in a reference publication reasonably support the conclusions reached by the authors. A clinical investigation described or discussed in an article or reference publication must include a description of the study design and conduct, data presentation and analysis, summary of results, and conclusions pertaining to the new use. In order to provide a basis for determining whether the conclusions are reasonably supported and the findings represent evidence of safety and effectiveness of the new use, the article or reference publication should provide, where applicable, evidence that the investigation:

1. Was prospectively planned. Types of prospectively planned investigations include: A clinical trial in which subjects are enrolled and assigned to treatment according to a protocol; a meta-analysis of published clinical investigations in which there is a planned strategy for the inclusion of published articles and for the integrated analysis of their results; or a well-documented prospective case series that utilizes a predetermined strategy for the inclusion of cases. Ordinarily, such a case series would be considered to be a scientifically sound clinical investigation for the purposes of dissemination only in those circumstances where the disease under study had high and predictable mortality and/or morbidity and was not expected to improve spontaneously;

2. Enrolled an appropriately defined and diagnosed patient population for the specific clinical condition of interest;

3. Accounted for all patients enrolled, including all patients who discontinued therapy prematurely. An analysis that is based on only a portion of all study subjects enrolled should provide information on how this population was derived;

4. Utilized clinically meaningful endpoints or utilized surrogate endpoints that are reasonably likely to predict safety and effectiveness. These endpoints should have been assessed using well-established instruments, and using appropriate measurement frequencies;

5. Used a well-described treatment regimen with a clear description of dose, schedule, duration, and route of administration;

6. Used an appropriate control group or made reference to an appropriate historical control;

7. Collected and reported adequate information on adverse experiences, and the need for dose reductions and treatment interruptions due to toxicity; and

8. Was analyzed in a scientifically appropriate manner. In circumstances where response to therapy is expected to differ between patient subgroups, results should be reported accordingly. A clinical investigation presented in a format that does not represent a reasonably comprehensive presentation of the study design, conduct, data, analyses, and conclusions, for example, letters to the editor, review abstracts, abstracts of a publication, or other incomplete reports, would not qualify for dissemination under this provision. Such reports do not provide sufficient information to determine the adequacy of the study design and cannot be critically judged by the reader.

Proposed § 99.101 would further explain what is meant by the term ''unabridged,'' i.e., the reprint, article, or reference text must retain the same appearance, form, format, content, or configuration as the original article or publication. It cannot be accompanied by information that is promotional in nature. Because a reference text might include a discussion of many new uses and a manufacturer might want to disseminate it under part 99 for the purpose of providing information on one particular discussion in the book, proposed § 99.101(b)(2) would permit the manufacturer to cite a particular discussion about a new use in a reference publication in the information that is required to be attached to the reference publication under proposed § 99.103.

Proposed § 99.103(a) would, consistent with section 551(b) and (c) of the act, describe the information that must accompany the journal article or reference publication. Specifically it would require:

1.A prominently displayed statement that discloses that the information being disseminated is about a use that has not been approved or cleared by FDA and is being disseminated under section 551 *et seq.* of the act; if applicable, that the manufacturer is disseminating such information at its own expense, the names of authors who are employees or consultants to, or have received compensation from the manufacturer or who have a significant financial interest in the manufacturer, and a statement that there are products or treatments approved/cleared for the new use; and the identification of any person that has provided funding for the study that is the basis of the information for which such information is being disseminated;

2. The official labeling for the product;

3. A bibliography of other articles (that concern reports of clinical investigations) both supporting and not supporting the new use;

4. Any additional information required by FDA, including objective and scientifically sound information pertaining to the safety or effectiveness of the new use that FDA determines is necessary to provide objectivity and balance, including information that the manufacturer has submitted to FDA or, where appropriate, a summary of such information, and any other information that can be made publicly available; and an objective statement prepared by FDA, based on data or other scientifically sound information bearing on the safety or effectiveness of the new use of the product.

Proposed § 99.103(c) would describe what is meant by a ''prominently displayed'' statement by setting forth criteria that are consistent with the agency's regulations on prescription drug advertising (21 CFR 202.1(e)(7)(viii)) and labeling (21 CFR 201.10(g)(2)). Factors to be considered in determining whether a statement is prominently displayed may include, but are not limited to, type size, font, layout, contrast, graphic design, headlines, spacing, and any other technique to achieve emphasis or notice. In addition, proposed § 99.103(c) would require such statements to be outlined, boxed, highlighted, or otherwise graphically designed and presented on the front of the disseminated information in a manner that achieves emphasis or notice and is distinct from the other information being disseminated.

For purposes of proposed § 99.103(a)(1)(iii), an author would have a significant financial interest in a manufacturer when there is a relationship that may give rise to actual or perceived conflicts of interest. The concept of relationships that may give rise to conflicts of interest has specific and well understood application to medical and scientific discourse (e.g., in the publication and peer review process). When there is a question as to whether a relationship is significant, it should be disclosed. For further guidance and direction on the disclosure of significant financial interests, manufacturers should refer to FDA's final rule on Financial Disclosure by Clinical Investigators (63 FR 5233, February 2, 1998).

The official labeling that would be required by proposed § 99.103(a)(2) would for drugs constitute the current package insert. Because devices do not always include a package insert in the same form and manner as drugs, the agency would expect device manufacturers to provide the same information that is generally found in package inserts, namely: (1) The name of the device, including its trade or proprietary name; (2) the manufacturer's name, address, and telephone number; (3) a statement of intended use, including a general description of the diseases or conditions that the device is intended to diagnose, treat, cure, or mitigate; (4) a description of the patient population for which the device is intended; (5) a description of indications that have been approved or cleared by FDA; (6) a description of any limitations or conditions that have been placed on the sale, distribution, or use of the device; and (7) all warnings, contraindications, side effects, and precautions associated with the use of the device. The agency expects that this information will be found in the information that manufacturers distribute with their legally marketed devices.

The bibliography that would be required by proposed § 99.103(a)(3) should appear in the same format used by Index Medicus and should include all authors, the full title of the article, and complete source information.

Proposed § 99.103(a)(1)(i) would require the statement that the use has not been approved or cleared by FDA and is being disseminated under section 551 *et seq.* of the act to be permanently attached to the front of each reprint or copy of an article or reference publication. Proposed § 99.103(a)(4) would require any additional information required by FDA also to be attached to the front of the disseminated information. Under proposed § 99.103(b), all other statements or information would have to be attached to the article or reference publication.

Proposed § 99.105 would identify who may receive information disseminated under this part. Possible recipients would include health care practitioners, pharmacy benefit managers, health insurance issuers,

group health plans, or Federal or State government agencies. This is consistent with section 551(a) of the act and is important because it is essential that this information be provided only to persons who have the education, training, and experience to interpret its meaning and relevance.

C. Subpart C—Manufacturer's Submissions, Requests, and Applications

Proposed subpart C would describe what must be included in the different types of submissions that manufacturers would send to FDA in order to be able to disseminate information under part 99.

Proposed § 99.201 would provide that 60 days before disseminating information on a new use, a manufacturer must submit to FDA:

1. A copy of all the information to be disseminated (i.e., including all attachments) in the form in which the manufacturer plans to disseminate it. This will enable FDA to see how the information will be presented to its intended audience and to determine whether the information is objective and balanced, and meets all of the requirements of this part;

2. All other clinical trial information that the manufacturer has relating to the safety or effectiveness of the new use, any reports of clinical experience pertinent to the safety of the new use, and a summary of such information. For purposes of this section, clinical trial information would include, but would not be limited to, published papers and abstracts, even if not intended for dissemination, and unpublished manuscripts, abstracts, and data analyses from completed or ongoing investigations. The information and reports required under this paragraph would include case studies, retrospective reviews, epidemiological studies, adverse event reports, and any other material concerning adverse effects or risks reported for or associated with the new use. If the manufacturer has no knowledge of or has no such information, it would include a statement to that effect;

3. An explanation of the search strategy for the bibliography that must be included with the disseminated information. The search strategy must include the data bases and criteria used to generate the bibliography and the time period covered by the bibliography; and

4. If a supplement for the new use has not been submitted, a certification that the manufacturer will submit a supplement or an application for an exemption from the requirement to submit a supplement. If a supplement for the new use has been submitted, the manufacturer would include a cross-reference to that supplemental application.

When the certification provides that the studies have been completed, the submission would include the protocols for the studies or would cross reference and provide the relevant information on any protocols that are already in FDA's files as part of an investigational new drug application (IND) or an investigational device exemption (IDE). The certification would state that the manufacturer will submit a supplemental application within 6 months from the date of initial dissemination of information.

When the certification is that studies will be conducted, proposed protocols and a schedule must be submitted. The proposal would require that the protocols submitted comply with all applicable requirements in 21 CFR parts 312 and 812, which relate to investigational new drug applications and investigational device exemptions. This means that the protocols must be sent to the appropriate review divisions within the Center for Drug Evaluation and Research, the Center for Biologics Evaluation and Research, or the Center for Devices and Radiological Health. The protocols will be reviewed as an original IND or IDE or an amendment to an existing IND or IDE. The schedule would include the expected dates for principal study events (e.g., initiation and completion of patient enrollment, completion of data collection, completion of data analysis, and submission of a supplemental application). The certification would state that the manufacturer will exercise due diligence to complete the clinical studies needed to submit a supplemental application for the new use and will submit such application to FDA no later than 36 months after the date of the initial dissemination of information.

Proposed § 99.201(b) would describe who should sign a submission and certification statement or application for an exemption. In general, an authorized official would sign the submission and certification statement or application for an exemption. For foreign manufacturers, proposed § 99.201(b) would require the signature, name, and address of an authorized official residing or maintaining a place of business in the United States.

Proposed § 99.201(c) would provide that manufacturers must submit three copies of the submission (including the certification statement or application for an exemption) to FDA and would provide the appropriate addresses for such submissions. The outside of the shipping container of the submission would identify the documents as ''Submission for the Dissemination of Information on an Unapproved/New Use.''

Proposed § 99.201(d) would provide that the 60-day period begins to run when FDA receives a complete submission. The submission would be considered complete if FDA determines that it is sufficiently complete to permit a substantive review.

Section 554 of the act (21 U.S.C. 360aaa–3) anticipates that there will be times when the 36-month period for filing a supplemental application for a new use based on new studies will not be enough time. It provides, therefore, that FDA may, on its own initiative at the time of initial dissemination, give the manufacturer more than 36 months, or that FDA may, upon a manufacturer's request after such studies have begun, extend the 36-month period by up to 24 months. Proposed § 99.203 would set forth the procedures that a manufacturer must follow to request an extension of time for submitting a supplemental application. In its request, the manufacturer would: (1) Identify the product and new use; (2) describe the study or studies that cannot be completed on time; (3) explain why the study or studies cannot be completed; (4) describe the current status of the incomplete study or studies; (5) summarize the work conducted, including the dates on which principal events concerning the study or studies occurred; and (6) estimate the additional time needed to complete the study or studies and submit a supplemental application. The manufacturer would submit three copies of the request to the same address identified for the initial submission.

When Congress passed these provisions of the act, it recognized that there may be rare circumstances in which it would be appropriate to exempt a manufacturer that seeks to disseminate information about a new use from the requirement to submit a supplement for that new use. The act sets forth two very narrow exemptions: (1) When, for reasons defined by the agency, it would be economically prohibitive to incur the costs necessary for the submission of a supplement, and (2) when, for reasons defined by the agency, it would be unethical to conduct the studies necessary for the supplemental application.

In making a determination that it would be economically prohibitive to conduct the needed studies, section 554 of the act directs FDA to consider (in

addition to any other considerations the agency finds appropriate): (1) The lack of the availability under law of any period during which the manufacturer would have exclusive marketing rights with respect to the new use, and (2) the size of the population expected to benefit from approval of the supplemental application. In making a determination that it would be unethical to conduct the needed studies, the act directs FDA to consider (in addition to any other considerations the agency finds appropriate) whether the new use involved is the standard of medical care for a health condition.

Proposed § 99.205 would set forth what a manufacturer must submit when seeking an exemption from the requirement to file a supplemental application relating to a new use. It would require the manufacturer to include an explanation as to why an exemption is sought and include materials demonstrating that it would be economically prohibitive or unethical to conduct the studies needed to submit a supplemental application.

To obtain either exemption, a manufacturer must first explain why existing data, including data from the scientifically sound study described in the information to be disseminated, are not adequate to support approval of the new use. This is a critical element of the request because submitting the existing data in a supplement, which may require some attempt to retrieve old records, is almost never unethical and would almost never be economically prohibitive. The manufacturer should make every effort, therefore, to determine whether existing data would be adequate, and should include reference to discussions with the agency concerning the adequacy of existing data.

If the manufacturer is seeking an exemption on the grounds that it would be economically prohibitive to conduct the study or studies needed for approval of the use, it must also show, at a minimum, that the estimated cost of the necessary studies would exceed the estimated total revenue from the product minus the cost of goods sold and marketing and administrative expenses attributable to the product, and that there are not less expensive ways to obtain the needed information.

Proposed § 99.205(b)(1) would set forth the type of evidence that the manufacturer must include to meet the requirements for an economically prohibitive exemption. These would include:

1. A description of the current and projected U.S. patient population for the product and an estimate of the current and projected economic benefit to the manufacturer from the use of the drug or device in this population. The estimate would assume that the total potential market for the drug or device is equal to the prevalence of all of the diseases or conditions that the drug or device will be used to treat and involve the following considerations:

(a) The estimated market share for the drug or device during any exclusive market period, a summary of the exclusive market period for the product, and an explanation of the basis for the estimate;

(b) a projection of and justification for the price at which the drug or device will be sold; and

(c) comparisons with sales of similarly situated drugs or devices, where available.

2. A description of the additional studies that the manufacturer believes are necessary to support the submission of a supplemental application for the new use and an estimate of the projected costs for such studies; and

3. An attestation by a responsible individual of the manufacturer verifying that the estimates included with the submission are accurate and were prepared in accordance with generally accepted accounting procedures. The data underlying and supporting the estimates shall be made available to FDA upon request.

FDA considered requiring a report of an independent certified public accountant made in accordance with the Statement on Standards for Attestation established by the American Institute of Certified Public Accountants with respect to the estimates submitted under this section. FDA is soliciting comment on whether such a report should be required in lieu of or as an alternative to the attestation that would be required by the proposal.

Although Congress made it very clear that exemptions from the requirement to submit a supplement are to be rare, it left it up to the agency to determine when it would grant these exemptions. This was a particularly difficult task for the ''economically prohibitive'' exemption because it is difficult to assess cost and income projections. The agency is proposing to compare the cost of the studies needed for a supplement with the total revenue of the product minus the cost of goods sold, and marketing and administrative expenses attributable to the product. FDA is not focusing only on sales from the new use because the agency does not believe that it would be ''prohibitive'' if the sales from the new use did not cover the cost of the studies. In such a situation, it might not be economically wise to conduct the studies, but it would not rise to the level of being prohibitive. The agency considered whether it should also require that the cost of conducting the studies needed for the supplement substantially exceed revenues and be unusually great compared to the typical costs of developing products for similar uses. Given the uncertainty about cost and revenue streams, it is possible that these measures would better define what is economically prohibitive. Although FDA decided not to include these requirements in the proposal, they are still under consideration and, therefore, the agency invites comment on whether they are useful in the determination of what is economically prohibitive. FDA also is seeking comment on other possible ways to define economically prohibitive.

If the manufacturer is seeking an exemption on the grounds that it would be unethical to conduct a needed study or studies, proposed § 99.205(b)(2) would require the manufacturer also to show that, notwithstanding the insufficiency of existing data to support the submission of a supplemental application for the new use, the data are persuasive to the extent that withholding the drug in the course of conducting a controlled study would pose an unreasonable risk of harm to human subjects. For purposes of determining what is unethical under this part, an unreasonable risk of harm would ordinarily arise only in situations in which the intended use of the drug or device appears to affect mortality or irreversible morbidity. Evidence suggesting that the drug or device is the standard of care for the intended use can add weight to an argument that conduct of a needed study or studies would be unethical. To support its conclusion that the conduct of a needed study or studies would be unethical, the manufacturer would need to provide evidence that it had explored various alternative study designs (e.g., active control studies, studies in different populations, studies where the product is added to existing treatment), discussed these alternatives with the agency, and determined that there were no options that were both ethical and capable of generating data adequate to support approval. Specifically, the proposal would require the manufacturer to provide:

1. An explanation of why, notwithstanding the insufficiency of available data to support the submission of a supplemental application for the new use, the data are persuasive to the extent that withholding the drug or device in a controlled study (e.g., by

providing no therapy, a placebo, an alternative therapy, or an alternative dose) would pose an unreasonable risk of harm to human subjects. For purposes of determining what is unethical under this part, an unreasonable risk of harm would ordinarily arise only when the new use appears to affect mortality or irreversible morbidity; and

2. A discussion of the possibility of conducting studies in different populations or of modified design (e.g., adding the new therapy to existing treatments or using an alternative dose if monotherapy studies could not be conducted).

In assessing the appropriateness of conducting studies to support the new use, the manufacturer may provide evidence that the new use represents standard medical treatment or therapy. Evidence that the new use represents standard medical therapy can be one element of an argument that studies cannot ethically be conducted, but the persuasiveness of available data is equally important. Evidence that the new use represents standard medical therapy might be obtained from a number of different sources. Some possible considerations might include:

(1) Whether the new use meets the requirements of section 1861(t)(2)(B) of the Social Security Act, which defines ''medically accepted indications'' with respect to the use of a drug;

(2) whether a medical specialty society that is represented in or recognized by the Council of Medical Specialty Societies (or is a subspecialty of such society) or is recognized by the American Osteopathic Association has found that the new use is consistent with sound medical practice;

(3) whether the new use is described in a recommendation or medical practice guideline of a Federal health agency, including the National Institutes of Health, the Agency for Health Care Policy and Research, and the Centers for Disease Control and Prevention of the Department of Health and Human Services; and

(4) whether the new use is described in a current compendia such as the United States Pharmacopoeia Dispensing Information, the American Medical Association Drug Evaluations, or the American Hospital Formulary Service.

While these sources would not be definitive evidence of standard medical treatment or therapy, they may provide evidence of it in certain circumstances.

FDA has struggled to develop an approach to these exemptions that strikes the proper balance. It should be emphasized that Congressional intent was clear in expecting exemptions to be rare. Congress emphasized the importance of having safe and effective uses of drugs and devices reflected in labeling. The agency believes that it has struck the proper balance, but it invites comment on the exemption criteria it has developed.

D. Subpart D—FDA Action on Submissions, Requests, and Applications

Proposed subpart D would describe FDA's actions in response to a submission, a request for an extension of the time period to conduct studies, and an application for an exemption from the requirement to conduct clinical studies and to submit a supplemental application.

Proposed § 99.301(a) would provide that within 60 days of receiving a submission, FDA may:

1. Determine that the manufacturer does not comply with the requirements under this part (e.g., the new use poses a significant risk to public health or the clinical investigation described in the publication is not scientifically sound) and thus, cannot disseminate information about the new use;

2. Request additional information or documents to assist in determining whether the information to be disseminated complies with the requirements under this part;

3. Determine that the information fails to provide data, analyses, or other written matter that is objective and balanced. In this case, FDA would provide the manufacturer notice and an opportunity for a meeting, may require the manufacturer to disseminate additional information that is objective and scientifically sound, pertains to the safety or effectiveness of the new use, and is necessary to provide objectivity and balance, and may require the manufacturer to disseminate an objective statement prepared by FDA that is based on data or other scientifically sound information available to the agency; and

4. Require a manufacturer to maintain records that will identify individual recipients of the information that is to be disseminated.

This last provision is tied to the statutory requirement that manufacturers keep records of the recipients of the disseminated materials so that the manufacturer or FDA can take appropriate corrective action, e.g., so that the manufacturer or FDA can notify recipients if it is later determined that the new use that is the subject of the dissemination may not be effective or may present a significant risk to public health. Section 553 of the act (21 U.S.C. 360aaa–2) provides that such records, at the agency's discretion, may identify recipients of the information or the categories of such recipients. Although keeping records that identify the individual recipients of the information might best ensure that the people who have seen and relied on the information will learn of problems or risks associated with the use, FDA recognizes that it may not be necessary to keep such specific records if the manufacturer is willing to take steps to ensure that the individual recipients will see any materials that might correct any misperceptions. Under proposed § 99.501, FDA would generally permit the manufacturer to decide whether to keep individual records or to keep more general records and take more conspicuous corrective action. However, there may be instances when it would be in the best interest of public health if the manufacturer kept the names of the individual recipients. In these cases, proposed § 99.301(a)(4) would provide that FDA will generally notify the manufacturer in advance, i.e., within the 60-day period for review of the submission, that such records must be kept.

Proposed § 99.301(b) would set forth FDA actions in response to a manufacturer's submission when the manufacturer is committing to submit a supplement for completed studies or is agreeing to conduct the necessary studies and then submit a supplement. If the manufacturer has planned studies and submits proposed protocols (either as a new IND or IDE or as an amendment to an existing IND or IDE) and a schedule for completing such studies, FDA will, within 60 days, review the manufacturer's proposed protocol and schedule for completing such studies to determine whether the protocols are adequate and the schedule for completing the studies is reasonable for purposes of disseminating the new use information. The manufacturer cannot disseminate the new use information until FDA determines that the proposed protocol is adequate and the proposed schedule is reasonable. If the manufacturer has completed studies that it believes would be an adequate basis for the submission of a supplemental application for the new use, FDA will, under the proposal, conduct a preliminary review of the study reports to determine whether the studies are potentially adequate to support the filing of a supplemental application for the new use. If FDA determines that they are inadequate to support the filing of a supplemental application for the new use or are not

complete, FDA will notify the manufacturer and the manufacturer shall not disseminate the new use information under this subpart.

Proposed § 99.303 would describe FDA's ability to allow a manufacturer more than 36 months to submit a supplemental application on its own initiative, based on the review of the protocols(s) and planned schedule, or to grant a manufacturer's request to extend the 36-month period (for up to 24 months). Proposed § 99.303(a) would describe FDA's ability to determine, on its own initiative, that a manufacturer needs more than 36 months to complete the studies needed for submission of a supplemental application and to submit such application. Proposed § 99.303(b) and (c) would describe FDA's ability, after such studies have begun, to grant an extension of the time to submit a supplement by up to 24 months. FDA can grant such an extension if the manufacturer makes a request for an extension in writing and FDA determines that the manufacturer has acted with due diligence to conduct the studies needed for the submission of a supplemental application for a new use and to submit such a supplemental application, but still needs more time. In this context, ''due diligence'' refers to a manufacturer's good faith effort to develop the data necessary to support a supplemental application for the new use and to pursue approval of an application based on those data in a timely manner. In its consideration of a request to extend the time for completing studies, the agency will look at all relevant factors and will focus on the manufacturer's efforts to meet the milestones identified in the schedule submitted with the manufacturer's certification to complete required studies (i.e., completion of patient enrollment in clinical studies, completion of data collection, completion of data analysis, and submission of a supplemental application). If a manufacturer has failed to meet identified milestones despite reasonable efforts to do so and, in the agency's judgment, an extension of time to complete the studies will enable a manufacturer to complete development of the necessary data and submit a supplemental application, the agency may grant an extension of the time to complete studies and submit the supplemental application.

If FDA extends the time period for completing the studies and submitting a supplemental application or grants a manufacturer's request for an extension, the manufacturer shall submit a new certification under § 99.201(a)(4)(ii)(B) that sets forth the timeframe within which clinical studies will be completed and a supplemental application will be submitted to FDA.

Proposed § 99.305 would describe FDA action on an application for an exemption from the requirement to submit a supplemental application. FDA may grant an application for an exemption if it determines that it would be economically prohibitive for the manufacturer to conduct the studies needed for a supplemental application or it would be unethical to conduct clinical studies needed to approve the new use.

FDA may find that it would be economically prohibitive if, at a minimum, existing data characterizing the product's safety and effectiveness, including data from the study described in the information to be disseminated, are not adequate to support the submission of a supplemental application for the new use and the estimated cost of the studies needed to support the submission of a supplemental application for the new use would exceed the estimated total revenue from the product minus the cost of goods sold and the marketing and administrative expenses attributable to the product and that there are not less expensive ways to obtain the needed information. FDA may find that it would be unethical to conduct the clinical studies needed to support the submission of a supplemental application for the new use when existing data characterizing the product's safety and effectiveness, including data from the study described in the information to be disseminated, are not adequate to support the submission of a supplemental application for the new use and there is sufficiently persuasive evidence that withholding the drug or device in a controlled study would pose an unreasonable risk of harm to human subjects and no studies in different populations or of modified design can be utilized. In determining whether it would be unethical to conduct clinical studies, the agency will consider, in addition to the persuasiveness of available evidence, whether the new use of the drug or device is broadly accepted as current standard medical treatment or therapy.

The evidence and factors that FDA will consider in granting an exemption were discussed previously. The agency reiterates, however, that these exemptions cannot and will not be liberally granted. Congress was trying to balance the need to get potentially important information on new uses to physicians with the need to get these new uses studied, approved, and in the labeling. If FDA were to liberally grant exemptions from the requirement to submit a supplemental application, the exemptions would undermine Congress's intent to ensure, through the review and approval of supplemental applications, that the drug or device is safe and effective for the new use.

Proposed § 99.305(a)(1) would acknowledge that FDA must act on an application for an exemption within 60 days of receipt or it will be deemed approved. However, under proposed § 99.305(a)(2), FDA may, at any time, terminate such deemed approval if it determines that the requirements for granting an exemption have not been met.

E. Subpart E—Corrective Actions and Cessation of Dissemination

Proposed subpart E would discuss various actions FDA could take or require a manufacturer to take after a manufacturer has begun disseminating information on a new use.

Proposed § 99.401 would pertain to corrective actions and orders to cease dissemination of information. These corrective actions and orders to cease dissemination of information could apply under three different situations, which are set forth in paragraphs (a), (b), and (c). Under proposed § 99.401(a), if FDA receives data after a manufacturer has begun disseminating information on a new use and the agency determines that the new use may not be effective or may present a significant risk to public health, FDA would consult the manufacturer and, after such consultation, take appropriate action to protect the public health. These actions might include ordering the manufacturer to cease disseminating information on the new use and to take appropriate corrective action. Appropriate corrective action might include, among other things, issuing ''Dear Doctor'' letters, publishing corrective advertising, including warning labels on the product, or including warnings or otherwise revising the product labeling.

Proposed § 99.401(b) would address FDA actions in response to information disseminated by a manufacturer. If the agency determined that the disseminated information did not comply with the regulations, proposed § 99.401(b) would give FDA two options: (1) If the manufacturer's noncompliance constituted a minor violation, provide the manufacturer an opportunity to bring itself into compliance; or (2) if the manufacturer's noncompliance does not constitute a minor violation, order the manufacturer to cease dissemination and to take

corrective action, such as issuing ''Dear Doctor'' letters, publishing corrective advertising, including warning labels on the product, or including warnings or otherwise revising the product labeling. These orders would be issued only after FDA provided notice of its intent to issue an order to cease dissemination and provided an opportunity for a meeting to the manufacturer. However, an opportunity for a meeting would not be required if the manufacturer's noncompliance was failure to submit a supplemental application within 6 months as certified in the initial submission.

Proposed § 99.401(c) would describe when FDA may order a manufacturer to cease disseminating information and/or take corrective action based on the manufacturer's supplemental application for the new use. These orders would be issued when: (1) FDA determines that a supplemental application for a new use does not contain adequate information for approval of the new use; (2) the manufacturer has certified that it will submit a supplemental application within 6 months or within 36 months and has not done so; (3) the manufacturer has certified that it will submit a supplemental application within 36 months and FDA, after an informal hearing, determines that the manufacturer is not acting with due diligence to initiate or complete the studies needed to support the submission of the supplemental application; or (4) the manufacturer has certified that it will submit a supplemental application within 36 months and it has discontinued or terminated the studies needed to support such supplemental application. The latter provision is intended to deter a manufacturer from certifying that it will complete the studies needed to submit a supplement so that it can begin disseminating information even though it has no intention of completing such studies and submitting a supplement.

The agency's determination of what corrective action would be appropriate will be based on a number of factors, including the seriousness of any violation of this part, whether there is evidence of abuse of this part, and the potential risk to the public health. For example, consistent with past agency practice, FDA generally would require warnings on the product or in the approved product labeling only when there are serious public health concerns.

Proposed § 99.401(e) provides that a manufacturer must immediately (on its own) cease disseminating information under this part if it falls out of compliance with the requirements set forth in this part.

As set forth in proposed § 99.305, if FDA fails to act within 60 days on an application for an exemption from the requirement to file a supplemental application, such request shall be deemed approved. Proposed § 99.403 would provide, however, that FDA may, at any time, terminate the deemed approval of an application for an exemption if FDA determines that the manufacturer has failed to meet the requirements for granting an exemption, i.e., the manufacturer has failed to show that it would be economically prohibitive or unethical to conduct the studies needed to submit a supplemental application. If FDA terminates such approval, it may order the manufacturer, within 60 days, to cease disseminating the information about the new use and, if the new use would pose a significant risk to public health, FDA could order the manufacturer to take corrective action. FDA must notify a manufacturer if it terminates a deemed approval of an application for an exemption.

Under proposed § 99.403(d), FDA may, at any time, terminate the approval of an application for an exemption from the requirement to file a supplemental application for a new use if, after consulting with the manufacturer that was granted such exemption, FDA determines that the manufacturer no longer meets the requirements for an exemption on the basis that it is economically prohibitive or unethical to conduct the studies needed to submit a supplemental application for the new use. If FDA terminates an approval of an application for an exemption under § 99.403(d), proposed § 99.403(e) would require such manufacturer within 60 days of being notified by FDA that its exemption approval has been terminated, to file a supplemental application for the new use that is the subject of the information being disseminated under the exemption, certify, under § 99.201(a)(4)(i) or (a)(4)(ii) that it will file a supplemental application for the new use, or cease disseminating information on the new use. FDA may require a manufacturer that ceases the dissemination of information on the new use to undertake corrective action.

Proposed § 99.405 would provide that the dissemination of information about a new use could constitute labeling, evidence of a new intended use, adulteration or misbranding of the product if such dissemination fails to comply with the requirements in section 551 of the act and the requirements of this part. A manufacturer who fails to act with due diligence to submit a supplement or to begin or complete the clinical studies needed to submit a supplement would be deemed to be not in compliance with the requirements of this part.

F. Subpart F—Recordkeeping and Reports

Subpart F would describe the recordkeeping and reporting requirements of a manufacturer that disseminates information under this part.

Proposed § 99.501(a) would require a manufacturer that disseminates information under this part to maintain records sufficient to allow it to take corrective action that is required by FDA. Under the proposal, such records must either identify, by name, those persons receiving the disseminated information or identify, by category, the recipients of the disseminated information. However, manufacturers who choose to identify the recipient by category must be willing to ensure that any corrective action FDA requires will be sufficiently conspicuous so as to reach the individuals who have received the information about the new use. Moreover, if FDA determines that, because of the nature of the information being disseminated or the seriousness of the new use, it is essential to keep records that identify the name of the persons receiving the disseminated information, it can require a manufacturer to keep such records.

Proposed § 99.501(a) would also require manufacturers that disseminate information under this part to maintain an identical copy of any information disseminated under this part and, upon submission of a supplemental application to FDA, to notify the appropriate office, identified in proposed § 99.201, which is responsible for overseeing the implementation of this part.

Proposed § 99.501(b) would require manufacturers that disseminate information under this part to, on a semiannual basis, provide FDA:

1. A list of articles and reference publications disseminated under this part during the 6-month period preceding the date on which the list is provided;

2. A list identifying the categories of health care practitioners, pharmacy benefit managers, health insurance issuers, group health plans, or Federal of State government agencies that received the articles and reference publications in the 6-month period described above; such list must identify which category received a particular article or reference publication;

3. A notice and summary of any additional clinical research or other data relating to the safety or effectiveness of the new use, and if the manufacturer possesses such clinical research or data, a copy of the research or data. Such other data may include, but is not limited to, new articles, reference publications, and summaries of adverse events that are or may be associated with the new use; and

4. If the manufacturer is conducting studies needed for submission of a supplemental application, reports that describe the studies' current status (i.e., progress on patient enrollment, any significant problems that could affect the manufacturer's ability to complete the studies, and expected completion dates). If the manufacturer discontinues or terminates a study before completing it, it would, as part of this semiannual report, notify FDA of the discontinuation or termination of the study and state the reasons for such discontinuation or termination.

Proposed § 99.501(c) would require manufacturers to maintain a copy of all information, lists, records, and reports required or disseminated under this part for a period of 3 years after it has ceased dissemination of the new use information that triggered such requirements and make such documents available to FDA for inspection and copying.

G. Conforming Amendments

The proposal would make a conforming amendment to part 16. Part 16 describes the procedures for regulatory hearings before FDA. Section 16.1 lists the statutory and regulatory actions that may be the subject of a part 16 hearing. The proposal would amend § 16.1(a)(2) to add the due diligence determinations under proposed § 99.401(c) to the list of regulatory actions that may be the subject of a part 16 hearing.

III. Analysis of Impacts

FDA has examined the impacts of the proposed rule under Executive Order 12866 and the Regulatory Flexibility Act (5 U.S.C. 601–612). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages). Under the Regulatory Flexibility Act, unless an agency certifies that a rule will not have a significant impact on small entities, the agency must analyze regulatory options that would minimize the impact of the rule on small entities. Title II of the Unfunded Mandates Reform Act (Pub. L. 104–114) (in section 202) requires that agencies prepare an assessment of anticipated costs and benefits before proposing any rule that may result in an expenditure in any 1 year by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more (adjusted annually for inflation).

The agency has reviewed this proposed rule and has determined that it is consistent with the regulatory philosophy and principles identified in Executive Order 12866, and these two statutes. Although this proposal is not an economically significant regulatory action, it is still a significant regulatory action as defined by the Executive Order due to the novel policy issues it raises. With respect to the Regulatory Flexibility Act, the agency certifies that the rule will not have a significant effect on a substantial number of small entities. Because the proposed rule does not impose any mandates on State, local, or tribal governments, or the private sector that will result in a 1-year expenditure of $100 million or more, FDA is not required to perform a cost-benefit analysis under the Unfunded Mandates Reform Act.

The proposed rule implements section 401 of FDAMA by describing the new use information that a manufacturer may disseminate and setting forth the procedures that manufacturers must follow before disseminating information on the new use. FDA has long recognized that in certain circumstances, new (off-label) uses of approved products are appropriate, rational, and accepted medical practice. There are important off-label uses of approved products. The benefits of the rule will derive from the public health gains associated with the earlier dissemination of objective, balanced, accurate information about such important new uses. In addition, the proposed rule may actually stimulate new studies or the collection of evidence about these new uses.

The costs of the rule are modest. Firms typically conduct clinical studies in support of supplemental applications for new uses only where the firm believes that the added revenues associated with the new use would exceed the cost of the supporting studies. Because this rule will accelerate the receipt of these revenues, it is possible that some new use supplemental applications that would not have been economically justified in the absence of this rule will now be submitted. FDA cannot estimate the number or cost of the additional clinical studies that would accompany these applications, but emphasizes that they would be undertaken voluntarily by the affected firms in the expectation that they would raise company profitability.

Manufacturers that choose not to disseminate new use information will incur no costs. Firms choosing to disseminate new use information will experience added paperwork costs for each submission to the agency, but gain sales revenues from the information dissemination. FDA cannot make a precise estimate of the number of submissions that will be filed each year, but as explained in section IV of this document, the agency preliminarily forecasts that it will receive approximately 300 submissions from manufacturers for disseminating new use information. FDA also estimates that the paperwork associated with these submissions might total over 33,000 hours, at an average labor cost of $35 per hour. Thus, the total cost of the added paperwork is estimated to cost industry approximately $1.2 million per year.

The proposed rule, however, will not have an adverse impact on any manufacturer. Firms will compare the expected sales revenue from the new dissemination activity to the associated paperwork cost and disseminate the new information only if it increases their profitability. As noted previously, firms choosing not to disseminate the new use information will face no increased costs due to this rule. Firms choosing to disseminate the new use information will do so only if the expected increased sales revenues exceed the associated regulatory costs. Because no firm will experience a reduced net income, the proposed rule will not have a significant adverse effect on a substantial number of small entities and no further analysis is required under the Regulatory Flexibility Act.

IV. Paperwork Reduction Act of 1995

This proposed rule contains information collection requirements that are subject to public comment and review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). A description of these provisions is given below in this section of the document with an estimate of the annual reporting and recordkeeping burden. Included in the estimate is the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing each collection of information.

FDA invites comments on: (1) Whether the proposed collection of

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

Title: Dissemination of Treatment Information on Unapproved Uses for Marketed Drugs, Biologics, and Devices.

Description: The proposed rule implements sections 551 through 557 of the act (21 U.S.C. 360aaa-360aaa-6) as amended by FDAMA, which requires a manufacturer that intends to disseminate certain treatment information on unapproved uses for a marketed drug, biologic, or device to submit that information to FDA. The proposed rule sets forth the criteria and procedures for making such submissions. Under the proposed rule, a submission would include a certification that the manufacturer has completed clinical studies necessary to submit a supplemental application to FDA for the new use and will submit the supplemental application within 6 months after its initial dissemination of information. If the manufacturer has planned, but not completed, such studies, the submission would include proposed protocols and a schedule for conducting the studies, as well as a certification that the manufacturer will complete the clinical studies and submit a supplemental application no later than 36 months after its initial dissemination of information. The proposal would also permit manufacturers to request extensions of the time period for completing a study and submitting a supplemental application and to request an exemption from the requirement to submit a supplemental application. The proposal would prescribe the timeframe within which the manufacturer shall maintain records that would enable it to take corrective action. The proposal would require the manufacturer to submit lists pertaining to the disseminated articles and reference publications and the categories of persons (or individuals) receiving the information and to submit a notice and summary of any additional research or data (and a copy of the data) relating to the product's safety or effectiveness for the new use. The proposal would require the manufacturer to maintain a copy of the information, lists, records, and reports for 3 years after it has ceased dissemination of the information and to make the documents available to FDA for inspection and copying.

Description of Respondents: All manufacturers (persons and businesses, including small businesses) of drugs, biologics, and device products.

The estimated burden associated with the information collection requirements for this proposed rule is 2,907 hours.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

21 CFR Section	No. of Respondents	Number of Responses per Respondent	Total Annual Responses	Hours per Response	Total Hours
99.201(a)93)	172	1.7	297	1	297
99.201(a)(4)(i)(A)	57	1.7	98	1	98
99.201(a)(4)(ii)(a)	57	1.7	98	10	980
99.201(a)(5)	57	1.7	98	1	98
99.20(c)	172	1.7	297	0.5	148.5
99.203(b)	1	1.7	1	10	10
99.203(c)	1	1.7	1	0.5	0.5
99.205(b)	2	1.7	3	125	375
99.301(a)(2)	2	1.7	3	1	3
99.501(b)(2)	172	3.4	594	1	594
99.501(b)(4)	2	1.7	3	2	6
Total					2,610

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

TABLE 2.—ESTIMATED ANNUAL RECORDKEEPING BURDEN[1]

21 CFR Section	No. of Recordkeepers	Annual Frequency per Recordkeeping	Total Annual Records	Hours per Recordkeeper	Total Hours
99.501(a)(2)	172	1.7	297	1	297

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

The above estimates reflect the reporting or recordkeeping burden that would be attributable solely to the rule. FDA derived these estimates from existing data on submissions made under supplemental applications and other submissions to the agency, as well as information from industry sources regarding similar or related reporting and recordkeeping burdens.

The agency has submitted the information collection requirements of this proposed rule to OMB for review. Interested persons are requested to send comments regarding information collection by July 8, 1998, to the Office of Information and Regulatory Affairs, OMB (address above).

V. Environmental Impact

The agency has determined, under 21 CFR 25.30(h) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

VI. Request for Comments

Interested persons may, on or before July 23, 1998, submit to the Dockets Management Branch (address above) written comments regarding this proposal. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects

21 CFR Part 16

Administrative practice and procedure.

21 CFR Part 99

Administrative practice and procedure, Biologics, Devices, Drugs, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, it is proposed that 21 CFR chapter I be amended to read as follows:

PART 16—REGULATORY HEARING BEFORE THE FOOD AND DRUG ADMINISTRATION

1. The authority citation for 21 CFR part 16 is revised to read as follows:

Authority: 21 U.S.C. 141–149, 321–394, 467f, 679, 821, 1034; 42 U.S.C. 201–262, 263b, 364; 15 U.S.C. 1451–1461; 28 U.S.C. 2112.

2. Section 16.1 is amended in paragraph (b)(2) by numerically adding an entry for § 99.401(c) to read as follows:

§ 16.1 Scope.

* * * * *

(b) * * *

(2) Regulatory provisions:

* * * * *

§ 99.401(c), relating to a due diligence determination concerning the conduct of studies necessary for a supplemental application for a new use of a drug or device.

* * * * *

3. Part 99 is added to read as follows:

PART 99—DISSEMINATION OF INFORMATION ON UNAPPROVED/NEW USES FOR MARKETED DRUGS, BIOLOGICS, AND DEVICES

Subpart A—General Information

Sec.

99.1 Scope.
99.3 Definitions.

Subpart B—Information To Be Disseminated

99.101 Information that may be disseminated.
99.103 Mandatory statements and information.
99.105 Recipients of information.

Subpart C—Manufacturer's Submissions, Requests, and Applications

99.201 Manufacturer's submission to the agency.
99.203 Request to extend the time for completing planned studies.
99.205 Application for exemption from the requirement to file a supplemental application.

Subpart D—FDA Action on Submissions, Requests, and Applications

99.301 Agency action on a submission.
99.303 Extension of time for completing planned studies.
99.305 Exemption from the requirement to file a supplemental application.

Subpart E—Corrective Actions and Cessation of Dissemination

99.401 Corrective actions and cessation of dissemination of information.
99.403 Termination of approvals of applications for exemption.
99.405 Applicability of labeling, adulteration, and misbranding authority.

Subpart F—Recordkeeping and Reports

99.501 Recordkeeping and reports.

Authority: 21 U.S.C. 321, 331, 351, 352, 355, 360, 360c, 360e, 360aa–360aaa-6, 371, and 374; 42 U.S.C. 262.

Subpart A—General Information

§ 99.1 Scope.

(a) This part applies to the dissemination of information on human drugs, including biologics, and devices where the information to be disseminated:

(1) Concerns the safety, effectiveness, or benefit of a use that is not included in the approved labeling for a drug or device approved by the Food and Drug Administration for marketing or in the statement of intended use for a device cleared by the Food and Drug Administration for marketing; and

(2) Will be disseminated to a health care practitioner, pharmacy benefit manager, health insurance issuer, group health plan, or Federal or State government agency.

(b) This part does not apply to a manufacturer's dissemination of information that responds to a health care practitioner's unsolicited request.

§ 99.3 Definitions.

(a) *Agency* or *FDA* means the Food and Drug Administration.

(b) For purposes of this part, a *clinical investigation* is an investigation in humans that is prospectively planned to test a specific clinical hypothesis.

(c) *Group health plan* means an employee welfare benefit plan (as defined in section 3(1) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1002(1))) to the extent that the plan provides medical care (as defined in paragraphs (c)(1) through (c)(3) of this section and including items and services paid for as medical care) to employees or their dependents (as defined under the terms of the plan) directly or through insurance, reimbursement, or otherwise. For purposes of this part, the term *medical care* means:

(1) Amounts paid for the diagnosis, cure, mitigation, treatment, or prevention of disease, or amounts paid for the purpose of affecting any structure or function of the body;

(2) Amounts paid for transportation primarily for and essential to medical care referred to in paragraph (c)(1) of this section; and

(3) Amounts paid for insurance covering medical care referred to in paragraphs (c)(1) and (c)(2) of this section.

(d) *Health care practitioner* means a physician or other individual who is a health care provider and licensed under State law to prescribe drugs or devices.

(e) *Health insurance issuer* means an insurance company, insurance service, or insurance organization (including a health maintenance organization, as defined in paragraph (e)(2) of this section) which is licensed to engage in the business of insurance in a State and which is subject to State law which regulates insurance (within the meaning of section 514(b)(2) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1144(b)(2))).

(1) Such term does not include a group health plan.

(2) For purposes of this part, the term *health maintenance organization* means:

(i) A Federally qualified health maintenance organization (as defined in section 1301(a) of the Public Health Service Act (42 U.S.C. 300e(a)));

(ii) An organization recognized under State law as a health maintenance organization; or

(iii) A similar organization regulated under State law for solvency in the same manner and to the same extent as such a health maintenance organization.

(f) *Manufacturer* means a person who manufactures a drug or device or who is licensed by such person to distribute or market the drug or device. For purposes of this part, the term may also include the sponsor of the approved, licensed, or cleared drug or device.

(g) *New use* means a use that is not included in the approved labeling of an

approved drug or device, or a use that is not included in the statement of intended use for a cleared device.

(h) A *reference publication* is a publication that:

(1) Has not been written, edited, excerpted, or published specifically for, or at the request of, a drug or device manufacturer;

(2) Has not been edited or significantly influenced by such a manufacturer;

(3) Is not solely distributed through such a manufacturer, but is generally available in bookstores or other distribution channels where medical textbooks are sold;

(4) Does not focus on any particular drug or device of a manufacturer that disseminates information under this part and does not have a primary focus on new uses of drugs or devices that are marketed or are under investigation by a manufacturer supporting the dissemination of information; and

(5) Does not present materials that are false or misleading.

(i) *Scientific or medical journal* means a scientific or medical publication:

(1) That is published by an organization that has an editorial board, that uses experts who have demonstrated expertise in the subject of an article under review by the organization and who are independent of the organization, to review and objectively select, reject, or provide comments about proposed articles, and that has a publicly stated policy, to which the organization adheres, of full disclosure of any conflict of interest or biases for all authors or contributors involved with the journal or organization;

(2) Whose articles are peer-reviewed and published in accordance with the regular peer-review procedures of the organization;

(3) That is generally recognized to be of national scope and reputation;

(4) That is indexed in the Index Medicus of the National Library of Medicine of the National Institutes of Health; and

(5) That is not in the form of a special supplement that has been funded in whole or in part by one or more manufacturers.

(j) *Supplemental application* means:

(1) For drugs, a supplement to support a new use to an approved new drug application;

(2) For biologics, a supplement to an approved license application;

(3) For devices that are the subject of a cleared 510(k) submission, a new 510(k) submission to support a new use or, for devices that are the subject of an approved premarket approval application, a supplement to support a new use to an approved premarket approval application.

Subpart B—Information To Be Disseminated

§ 99.101 Information that may be disseminated.

(a) A manufacturer may disseminate written information concerning the safety, effectiveness, or benefit of a use not described in the approved labeling for an approved drug or device or in the statement of intended use for a cleared device, provided that the manufacturer complies with all other relevant requirements under this part. Such information shall:

(1) Be about a drug or device that has been approved, licensed, or cleared for marketing by FDA;

(2) Be in the form of:

(i) An unabridged reprint or copy of an article, peer-reviewed by experts qualified by scientific training or experience to evaluate the safety or effectiveness of the drug or device involved, which was published in a scientific or medical journal. In addition, the article must be about a clinical investigation with respect to the drug or device and must be considered to be scientifically sound by the experts described above; or

(ii) An unabridged reference publication that includes information about a clinical investigation with respect to the drug or device, which experts qualified by scientific training or experience to evaluate the safety or effectiveness of the drug or device that is the subject of the clinical investigation would consider to be scientifically sound;

(3) Not pose a significant risk to the public health;

(4) Not be false or misleading. FDA may consider information disseminated under this part to be false or misleading if, among other things, the information includes only favorable publications or excludes articles, reference publications, or other information concerning risks and adverse effects that are or may be associated with the new use; and

(5) Not be derived from clinical research conducted by another manufacturer unless the manufacturer disseminating the information has the permission of such other manufacturer to make the dissemination.

(b) For purposes of this part:

(1) The determination of whether a clinical investigation is considered to be ''scientifically sound'' will rest on whether the design, conduct, data, and analysis of the investigation described or discussed in a reprint or copy of an article or in a reference publication reasonably support the conclusions reached by the authors. Accordingly, a clinical investigation described or discussed in a reprint or copy of an article or in a reference publication must include a description of the study design and conduct, data presentation and analysis, summary of results, and conclusions pertaining to the new use. A clinical investigation presented in a format that does not represent a reasonably comprehensive presentation of the study design, conduct, data, analyses, and conclusions (e.g., letters to the editor, review abstracts, or abstracts of publications) does not qualify for dissemination under this part; and

(2) A reprint or copy of an article or reference publication is ''unabridged' only if it retains the same appearance, form, format, content or configuration as the original article or publication. Such reprint, copy of an article, or reference publication shall not be disseminated with any information that is promotional in nature. A manufacturer may cite a particular discussion about a new use in a reference publication in the explanatory or other information attached to or otherwise accompanying the reference publication under § 99.103.

§ 99.103 Mandatory statements and information.

(a) Any information disseminated under this part shall include:

(1) A prominently displayed statement disclosing:

(i) For a drug, ''This information concerns a use that has not been approved by the Food and Drug Administration and is being disseminated under section 551 *et seq.* of the Federal Food, Drug, and Cosmetic Act.'' For devices, the statement shall read, ''This information concerns a use that has not been approved or cleared by the Food and Drug Administration and is being disseminated under section 551 *et seq.* of the Federal Food, Drug, and Cosmetic Act.'' If the information to be disseminated includes both approved and unapproved uses or cleared and uncleared uses, the manufacturer shall modify the statement to identify the unapproved or uncleared new use. The manufacturer shall permanently affix the statement to the front of each reprint or copy of an article from a scientific or medical journal and to the front of each reference publication disseminated under this part;

(ii) If applicable, the information is being disseminated at the expense of the manufacturer;

(iii) If applicable, the names of any authors of the information who are

employees of, or consultants to, or have received compensation from the manufacturer, or who have a significant financial interest in the manufacturer;

(iv) If applicable, a statement that there are products or treatments that have been approved or cleared for the use that is the subject of the information being disseminated; and

(v) The identification of any person that has provided funding for the conduct of a study relating to the new use of a drug or device for which such information is being disseminated; and

(2) The official labeling for the drug or device;

(3) A bibliography of other articles (that concern reports of clinical investigations both supporting and not supporting the new use) from a scientific reference publication or scientific or medical journal that have been previously published about the new use of the drug or device covered by the information that is being disseminated, unless the disseminated information already includes such a bibliography; and

(4) Any additional information required by FDA. Such information, which shall be attached to the front of the disseminated information, may consist of:

(i) Objective and scientifically sound information pertaining to the safety or effectiveness of the new use of the drug or device and which FDA determines is necessary to provide objectivity and balance. This may include information that the manufacturer has submitted to FDA or, where appropriate, a summary of such information and any other information that can be made publicly available; and

(ii) An objective statement prepared by FDA, based on data or other scientifically sound information, bearing on the safety or effectiveness of the new use of the drug or device.

(b) Except as provided in paragraphs (a)(1)(i) and (a)(4) of this section, the statements, bibliography, and other information required by this section shall be attached to such disseminated information.

(c) For purposes of this section, factors to be considered in determining whether a statement is ''prominently displayed'' may include, but are not limited to, type size, font, layout, contrast, graphic design, headlines, spacing, and any other technique to achieve emphasis or notice. The required statements shall be outlined, boxed, highlighted, or otherwise graphically designed and presented in a manner that achieves emphasis or notice and is distinct from the other information being disseminated.

§ 99.105 Recipients of information.

A manufacturer disseminating information on a new use under this part may only disseminate that information to a health care practitioner; a pharmacy benefit manager; a health insurance issuer; a group health plan; or a Federal or State government agency.

Subpart C—Manufacturer's Submissions, Requests, and Applications

§ 99.201 Manufacturer's submission to the agency.

(a) Sixty days before disseminating any written information concerning the safety, effectiveness, or benefit of a new use for a drug or device, a manufacturer shall submit to the agency:

(1) An identical copy of the information to be disseminated, including any information (e.g., the bibliography) and statements required under § 99.103;

(2) Any other clinical trial information which the manufacturer has relating to the safety or effectiveness of the new use, any reports of clinical experience pertinent to the safety of the new use, and a summary of such information. For purposes of this part, clinical trial information includes, but is not limited to, published papers and abstracts, even if not intended for dissemination, and unpublished manuscripts, abstracts, and data analyses from completed or ongoing investigations. The information and reports required under this paragraph shall include case studies, retrospective reviews, epidemiological studies, adverse event reports, and any other material concerning adverse effects or risks reported for or associated with the new use. If the manufacturer has no knowledge of clinical trial information relating to the safety or effectiveness of the new use or reports of clinical experience pertaining to the safety of the new use, the manufacturer shall provide a statement to that effect;

(3) An explanation of the manufacturer's search strategy in selecting the articles for the bibliography (e.g., the databases and criteria used to generate the bibliography and the time period covered by the bibliography); and

(4) If the manufacturer has not submitted a supplemental application for the new use, one of the following:

(i) If the manufacturer has completed studies needed for the submission of a supplemental application for the new use:

(A) A copy of the protocol for each completed study or, if such protocol was submitted to an investigational new drug application or an investigational device exemption, the number(s) for the investigational new drug application or investigational device exemption covering the new use, the date of submission of the protocol(s), the protocol number(s), and the date of any amendments to the protocol(s); and

(B) A certification stating that, ''On behalf of [insert manufacturer's name], I certify that [insert manufacturer's name] has completed the studies needed for the submission of a supplemental application for [insert new use] and will submit a supplemental application for such new use to the Food and Drug Administration no later than [insert date no later than 6 months from date of the initial dissemination of information under this part];'' or

(ii) If the manufacturer has planned studies that will be needed for the submission of a supplemental application for the new use:

(A) The proposed protocols and schedule for conducting the studies needed for the submission of a supplemental application for the new use. The protocols shall comply with all applicable requirements in parts 312 of this chapter (investigational new drug applications) and 812 of this chapter (investigational device exemptions). The schedule shall include the projected dates on which the manufacturer expects the principal study events to occur (e.g., initiation and completion of patient enrollment, completion of data collection, completion of data analysis, and submission of the supplemental application); and

(B) A certification stating that, ''On behalf of [insert manufacturer's name], I certify that [insert manufacturer's name] will exercise due diligence to complete the clinical studies necessary to submit a supplemental application for [insert new use] and will submit a supplemental application for such new use to the Food and Drug Administration no later than [insert date no later than 36 months from date of the initial dissemination of information under this part];'' or

(iii) An application for exemption from the requirement of a supplemental application; or

(5) If the manufacturer has submitted a supplemental application for the new use, a cross-reference to that supplemental application.

(b) The manufacturer's attorney, agent, or other authorized official shall sign the submission and certification statement or application for exemption. If the manufacturer does not have a place of business in the United States, the submission and certification statement or application for exemption shall contain the signature, name, and address of the manufacturer's attorney,

agent, or other authorized official who resides or maintains a place of business in the United States.

(c) The manufacturer shall send three copies of the submission and certification statement or application for exemption to FDA. The outside of the shipping container shall be marked as ''Submission for the Dissemination of Information on an Unapproved/New Use.'' The manufacturer shall send the submission and certification statement or application for exemption to the appropriate FDA component listed below:

(1) For biological products and devices regulated by the Center for Biologics Evaluation and Research, the Advertising and Promotional Labeling Staff (HFM–202), Center for Biologics Evaluation and Research, Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852;

(2) For human drug products, the Division of Drug Marketing, Advertising, and Communications (HFD–40), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857; or

(3) For medical devices, the Promotion and Advertising Policy Staff (HFZ–302), Office of Compliance, Center for Devices and Radiological Health, Food and Drug Administration, 2098 Gaither Rd., Rockville, MD 20850.

(d) The 60-day period shall begin when FDA receives a complete submission, including, where applicable, a certification statement or application for exemption. For purposes of this part, a submission shall be considered to be complete if FDA determines that it is sufficiently complete to permit a substantive review.

§ 99.203 Request to extend the time for completing planned studies.

(a) A manufacturer who has certified that it will complete the studies necessary to submit a supplemental application for a new use within 36 months from the date of initial dissemination of information under this part, but later finds that it will be unable to complete such studies and submit a supplemental application within that time period may request an extension of time from FDA.

(b) The manufacturer, in its request for extension, shall identify the product, the new use, and shall:

(1) Describe the study or studies that cannot be completed on time and explain why the study or studies cannot be completed on time;

(2) Describe the current status of the incomplete study or studies and summarize the work conducted, including the dates on which principal events concerning the study or studies occurred; and

(3) Estimate the additional time needed to complete the studies and submit a supplemental application. The requested extension shall not exceed an additional 24 months.

(c) The manufacturer shall send three copies of the request for extension to the same FDA office that received the manufacturer's initial submission and certification statement. The outside of the envelope shall be marked as ''Request for Time Extension—Dissemination of Information on an Unapproved Use.''

§ 99.205 Application for exemption from the requirement to file a supplemental application.

(a) In certain circumstances, described in paragraph (b) of this section, a manufacturer may submit an application for an exemption from the requirement to submit a supplemental application for a new use for purposes of disseminating information on that use.

(b) The manufacturer's application for an exemption shall identify the basis for the proposed exemption and shall include materials demonstrating that it would be economically prohibitive or that it would be unethical to conduct the studies necessary to submit a supplemental application for the new use.

(1) If the basis for the manufacturer's application for exemption is that it would be economically prohibitive to incur the costs necessary to submit a supplemental application for a new use, the manufacturer shall, at a minimum, provide evidence:

(i) Explaining why existing data characterizing the safety and effectiveness of the drug or device, including data from the study described in the information to be disseminated, are not adequate to support the submission of a supplemental application for the new use. Such evidence shall include an analysis of all data relevant to the safety and effectiveness of the use, a summary of those data, and any documentation resulting from prior discussions with the agency concerning the adequacy of the existing data; and

(ii) Demonstrating that the estimated cost of the studies needed for the approval of the new use would exceed the estimated total revenue from the drug or device less the cost of goods sold, and marketing, and administrative expenses attributable to the product and that there are not less expensive ways to obtain the needed information. Such evidence shall include:

(A) A description of the current and projected U.S. patient population for the product and an estimate of the current and projected economic benefit to the manufacturer from its use. Such estimate shall assume that the total potential market for the drug or device is equal to the prevalence of the disease(s) or condition(s) that the drug or device will be used to treat and involve the following considerations:

(*1*) The estimated market share for the drug or device during any exclusive market period, a summary of any exclusive market period for the product, and an explanation of the basis for the estimate;

(*2*) A projection of and justification for the price at which the drug or device will be sold; and

(*3*) Comparisons with sales of similarly situated drugs or devices, where available.

(B) A description of the additional studies that the manufacturer believes are necessary to support the submission of a supplemental application for the new use, including documentation from prior discussions, if any, with the agency concerning the studies that would be needed, and an estimate of the projected costs for such studies;

(C) An attestation by a responsible individual of the manufacturer verifying that the estimates included with the submission are accurate and were prepared in accordance with generally accepted accounting procedures. The data underlying and supporting the estimates shall be made available to FDA upon request.

(2) If the basis for the manufacturer's application for exemption is that it would be unethical to conduct the studies necessary for the supplemental application for a new use, the manufacturer shall provide evidence:

(i) Explaining why existing data characterizing the safety and effectiveness of the drug or device, including data from the study described in the information to be disseminated, are not adequate to support the submission of a supplemental application for the new use. Such evidence shall include an analysis of all data relevant to the safety and effectiveness of the new use, a summary of those data, and any documentation resulting from prior discussions with the agency concerning the adequacy of the existing data; and

(ii) Explaining why it would be unethical to conduct the further studies that would be necessary for the approval of the new use. Such evidence shall establish that, notwithstanding the

insufficiency of available data to support the submission of a supplemental application for the new use, the data are persuasive to the extent that withholding the drug or device in a controlled study (e.g., by providing no therapy, a placebo, an alternative therapy, or an alternative dose) would pose an unreasonable risk of harm to human subjects. For purposes of determining what is unethical under this part an unreasonable risk of harm would ordinarily arise only when the new use appears to affect mortality or irreversible morbidity. In assessing the appropriateness of conducting studies to support the new use, the manufacturer may provide evidence showing that the new use is broadly accepted as current standard medical treatment or therapy. The manufacturer shall also address the possibility of conducting studies in different populations or of modified design (e.g., adding the new therapy to existing treatments or using an alternative dose if monotherapy studies could not be conducted).

Subpart D—FDA Action on Submissions, Requests, and Applications

§ 99.301 Agency action on a submission.

(a) *Submissions.* Within 60 days after receiving a submission under this part, FDA may:

(1) Determine that the manufacturer does not comply with the requirements under this part and that, as a result, the manufacturer shall not disseminate any information under this part;

(2) Request additional information or documents to assist the agency in determining whether the information to be disseminated complies with the requirements under this part. This may include, but is not limited to, copies of articles listed by the manufacturer in its bibliography;

(3) Determine that the information submitted regarding a new use fails to provide data, analyses, or other written matter that is objective and balanced. If FDA makes such a determination, the agency:

(i) Shall provide to the manufacturer notice and an opportunity for a meeting regarding the agency's determination;

(ii) May require the manufacturer to disseminate additional information, including information which the manufacturer has submitted to FDA or, where appropriate, a summary of such information or any other information that can be made publicly available, which, in the agency's opinion:

(A) Is objective and scientifically sound;

(B) Pertains to the safety or effectiveness of the new use; and

(C) Is necessary to provide objectivity and balance; and

(iii) May require the manufacturer to disseminate an objective statement prepared by FDA that is based on data or other scientifically sound information available to the agency and bears on the safety or effectiveness of the drug or device for the new use; and

(4) Require the manufacturer to maintain records that will identify individual recipients of the information that is to be disseminated.

(b) *Protocols/Studies.* Within 60 days after receiving a submission under this part, FDA shall:

(1) If the manufacturer has planned studies that will be needed for the submission of a supplemental application for the new use, review the manufacturer's proposed protocols and schedule for completing such studies and determine whether the proposed protocols are adequate and whether the proposed schedule for completing the studies is reasonable. FDA shall notify the manufacturer if it determines that the proposed protocols are adequate and the proposed schedule for completing the studies is reasonable. Until such notification, the manufacturer shall not disseminate any information under this part; or

(2) If the manufacturer has completed studies that the manufacturer believes would be an adequate basis for the submission of a supplemental application for the new use, conduct a preliminary review of the completed study reports to determine whether they are potentially adequate to support the filing of a supplemental application for the new use. FDA shall notify the manufacturer if it determines that the completed studies are inadequate, based on a preliminary review, to support the filing of a supplemental application for the new use or are not complete. Upon such notification, the manufacturer shall not disseminate any information under this part.

§ 99.303 Extension of time for completing planned studies.

(a) Upon review of a drug or device manufacturer's proposed protocol and schedule for conducting studies needed for the submission of a supplemental application for a new use, FDA may determine that such studies cannot be completed and submitted within 36 months. The agency may exercise its discretion in extending the time period for completing the studies and submitting a supplemental application.

(b) The manufacturer may, in writing, request that FDA extend the time period for conducting studies needed for the submission of a supplemental application for a new use and submitting a supplemental application to FDA. FDA may grant or deny the request or, after consulting the manufacturer, grant an extension different from that requested by the manufacturer. Extensions under this paragraph shall not exceed 24 months.

(c) FDA may grant a manufacturer's request for an extension if FDA determines that the manufacturer has acted with due diligence to conduct the studies needed for the submission of a supplemental application for a new use and to submit such a supplemental application to FDA in a timely manner and that, despite such actions, the manufacturer needs additional time to complete the studies and submit the supplemental application.

(d) If FDA extends the time period for completing the studies and submitting a supplemental application under paragraph (a) of this section or grants a manufacturer's request for an extension under paragraph (c) of this section, the manufacturer shall submit a new certification under § 99.201(a)(4)(ii)(B) that sets forth the timeframe within which clinical studies will be completed and a supplemental application will be submitted to FDA.

§ 99.305 Exemption from the requirement to file a supplemental application.

(a) Within 60 days after receipt of an application for an exemption from the requirement of a supplemental application, FDA shall approve or deny the application.

(1) If FDA does not act on the application for an exemption within the 60-day period, the application for an exemption shall be deemed to be approved.

(2) If an application for an exemption is deemed to be approved, FDA may, at any time, terminate such approval if it determines that the requirements for granting an exemption have not been met. FDA shall notify the manufacturer if the approval is terminated.

(b) In reviewing an application for an exemption, FDA shall consider the materials submitted by the manufacturer and may consider any other appropriate information, including, but not limited to, any pending or previously approved applications for exemption submitted by the manufacturer.

(c) FDA may grant an application for an exemption if FDA determines that:

(1) It would be economically prohibitive for the manufacturer to incur the costs necessary to submit a supplemental application for a new use, which at a minimum requires:

(i) That existing data characterizing the safety and effectiveness of the drug

or device, including data from the study described in the information to be disseminated are not adequate to support the submission of a supplemental application for the new use; and

(ii) That the estimated cost of the studies needed to support the submission of a supplemental application for the new use exceed the estimated total revenue from the drug or device less the cost of goods sold and marketing and administrative expenses attributable to the product and there are not less expensive ways to obtain the needed information; or

(2) It would be unethical to conduct clinical studies needed to support the submission of a supplemental application for the new use because:

(i) Existing data characterizing the safety and effectiveness of the drug or device, including data from the study described in the information to be disseminated are not adequate to support the submission of a supplemental application for the new use; and

(ii) Although available evidence would not support the submission of a supplemental application for the new use, the data are persuasive to the extent that withholding the drug or device in a controlled study would pose an unreasonable risk of harm to human subjects and no studies in different populations or of modified design can be utilized. In determining whether it would be unethical to conduct clinical studies, the agency shall consider, in addition to the persuasiveness of available evidence of effectiveness, whether the new use of the drug or device is broadly accepted as current standard medical treatment or therapy.

Subpart E—Corrective Actions and Cessation of Dissemination

§ 99.401 Corrective actions and cessation of dissemination of information.

(a) *FDA actions based on post dissemination data.* If FDA receives data after a manufacturer has begun disseminating information on a new use and, based on that data, determines that the new use that is the subject of information disseminated under this part may not be effective or may present a significant risk to public health, FDA shall consult the manufacturer and, after such consultation, take appropriate action to protect the public health. Such action may include ordering the manufacturer to cease disseminating information on the new use and to take appropriate corrective action.

(b) *FDA actions based on information disseminated by a manufacturer.* If FDA determines that a manufacturer is disseminating information that does not comply with the requirements under this part, FDA may:

(1) Provide to the manufacturer an opportunity to bring itself into compliance with the requirements under this part if the manufacturer's noncompliance constitutes a minor violation of these requirements; or

(2) Order the manufacturer to cease dissemination of information and to take corrective action. FDA shall issue such an order only after it has:

(i) Provided notice to the manufacturer regarding FDA's intent to issue an order to cease dissemination; and

(ii) Provided to the manufacturer an opportunity for a meeting. FDA shall not provide an opportunity for a meeting if the manufacturer certified that it will submit a supplemental application for the new use within 6 months of initial dissemination and the noncompliance involves a failure to submit such supplemental application.

(c) *FDA actions based on a manufacturer's supplemental application.* FDA may order a manufacturer to cease disseminating information under this part and to take corrective action if:

(1) In the case of a manufacturer that has submitted a supplemental application for the new use, FDA determines that the supplemental application does not contain adequate information for approval of the new use;

(2) In the case of a manufacturer that has certified that it will submit a supplemental application for the new use within 6 months, the manufacturer has not, within the 6-month period, submitted a supplemental application for the new use;

(3) In the case of a manufacturer that has certified that it will submit a supplemental application for the new use within 36 months or within such time as FDA has determined to be appropriate under § 99.303(a) or (c), such manufacturer has not submitted the supplemental application within the certified time or, FDA, after an informal hearing, has determined that the manufacturer is not acting with due diligence to initiate or complete the studies necessary to support a supplemental application for the new use; or

(4) In the case of a manufacturer that has certified that it will submit a supplemental application for the new use within 36 months or within such time as FDA has determined to be appropriate under § 99.303(a) or (c), the manufacturer has discontinued or terminated the clinical studies that would be necessary to support a supplemental application for a new use.

(d) *Effective date of orders to cease dissemination.* An order to cease dissemination of information shall be effective upon date of issuance by FDA, unless otherwise stated in such order.

(e) *Cessation of dissemination by a noncomplying manufacturer.* A manufacturer that begins to disseminate information in compliance with this part, but subsequently fails to comply with this part, shall immediately cease disseminating information under this part. A manufacturer that discontinues, terminates, or fails to conduct with due diligence clinical studies that it certified it would complete under § 99.201(a)(4)(ii) shall be deemed not in compliance with this part. A manufacturer shall notify FDA if it ceases dissemination under this paragraph.

§ 99.403 Termination of approvals of applications for exemption.

(a) FDA may, at any time, terminate the approval of an application for an exemption from the requirement to file a supplemental application if:

(1) The application for an exemption had been deemed to be approved because the agency had not acted on the application within 60 days after its receipt by FDA;

(2) The manufacturer is disseminating written information on the new use; and

(3) FDA determines that it would be economically or ethically possible for the manufacturer to conduct the clinical studies needed to submit a supplemental application for the new use.

(b) If FDA terminates a deemed approval of an application for an exemption under paragraph (a) of this section, FDA also may:

(1) Order the manufacturer to cease disseminating information; and

(2) Order the manufacturer to take action to correct the information that has been disseminated if FDA determines that the new use described in the disseminated information would pose a significant risk to public health.

(c) FDA shall notify the manufacturer if it terminates the deemed approval of an application for an exemption under paragraph (a) of this section. If FDA also issues an order to cease dissemination of information, the manufacturer shall comply with the order no later than 60 days after its receipt.

(d) FDA may, at any time, terminate the approval of an application for an exemption from the requirement to file a supplemental application for a new use if, after consulting with the manufacturer that was granted such

exemption, FDA determines that the manufacturer no longer meets the requirements for an exemption on the basis that it is economically prohibitive or unethical to conduct the studies needed to submit a supplemental application for the new use.

(e) If FDA terminates an approval of an application for an exemption under paragraph (d) of this section, the manufacturer must, within 60 days of being notified by FDA that its exemption approval has been terminated, file a supplemental application for the new use that is the subject of the information being disseminated under the exemption, certify, under § 99.201(a)(4)(i) or (a)(4)(ii) that it will file a supplemental application for the new use, or cease disseminating information on the new use. FDA may require a manufacturer that ceases the dissemination of information on the new use to undertake corrective action.

§ 99.405 Applicability of labeling, adulteration, and misbranding authority.

The dissemination of information relating to a new use for a drug or device may constitute labeling, evidence of a new intended use, adulteration, or misbranding of the drug or device if such dissemination fails to comply with section 551 of the Federal Food, Drug, and Cosmetic Act (the act) and the requirements of this part. A manufacturer's failure to exercise due diligence in submitting the clinical studies that are necessary for the approval of a new use that is the subject of information disseminated under this part or in beginning or completing such clinical studies shall be deemed a failure to comply with section 551 of the act and the requirements of this part.

Subpart F—Recordkeeping and Reports

§ 99.501 Recordkeeping and reports.

(a) A manufacturer disseminating information under this part shall:

(1) Maintain records sufficient to allow the manufacturer to take corrective action as required by FDA. The manufacturer shall make such records available to FDA, upon request, for inspection and copying. Such records shall either:

(i) Identify, by name, those persons receiving the disseminated information; or

(ii) Identify, by category, the recipients of the disseminated information, unless FDA requires the manufacturer to retain records identifying individual recipients of the disseminated information. Manufacturers whose records identify recipients by category only shall:

(A) Identify subcategories of recipients where appropriate (e.g., oncologists, pediatricians, obstetricians, etc.); and

(B) Ensure that any corrective action to be taken will be sufficiently conspicuous to individuals within that category of recipients;

(2) Maintain an identical copy of the information disseminated under this part; and

(3) Upon the submission of a supplemental application to FDA, notify the appropriate office identified in § 99.201(c) of this part.

(b) A manufacturer disseminating information on a new use for a drug or device shall, on a semiannual basis, submit to the FDA office identified in § 99.201(c) of this part:

(1) A list containing the titles of articles and reference publications relating to the new use of drugs or devices that the manufacturer disseminated to a health care practitioner, pharmacy benefit manager, health insurance issuer, group health plan, or Federal or State government agency. The list shall cover articles and reference publications disseminated in the 6-month period preceding the date on which the manufacturer provides the list to FDA;

(2) A list identifying the categories of health care practitioners, pharmacy benefit managers, health insurance issuers, group health plans, or Federal or State government agencies that received the articles and reference publications in the 6-month period described in paragraph (b)(1) of this section. The list shall also identify which category of recipients received a particular article or reference publication;

(3) A notice and summary of any additional clinical research or other data relating to the safety or effectiveness of the new use, and, if the manufacturer possesses such clinical research or other data, a copy of the research or data. Such other data may include, but is not limited to, new articles published in scientific or medical journals, reference publications, and summaries of adverse effects that are or may be associated with the new use;

(4) If the manufacturer is conducting studies necessary for the submission of a supplemental application, periodic progress reports on these studies. Such reports shall describe the studies' current status (i.e., progress on patient enrollment, any significant problems that could affect the manufacturer's ability to complete the studies, and expected completion dates). If the manufacturer discontinues or terminates a study before completing it, the manufacturer shall, as part of the next periodic progress report, state the reasons for such discontinuation or termination; and

(5) If the manufacturer was granted an exemption from the requirement to submit a supplemental application for the new use, any new or additional information that relates to whether the manufacturer continues to meet the requirements for such exemption. This information may include, but is not limited to, new or additional information regarding revenues from the product that is the subject of the dissemination and new or additional information regarding the persuasiveness of the data on the new use, including information regarding whether the new use is broadly accepted as current standard medical treatment or therapy.

(c) A manufacturer shall maintain a copy of all information, lists, records, and reports required or disseminated under this part for 3 years after it has ceased dissemination of such information and make such documents available to FDA for inspection and copying.

Dated: May 29, 1998.

Michael A. Friedman,

Lead Deputy Commissioner for the Food and Drug Administration.

Donna E. Shalala,

Secretary of Health and Human Services.

[FR Doc. 98–14918 Filed 6–4–98; 4:30 pm]

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DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 286

[DoD 5400.7–R]

RIN 0790–AG58

DoD Freedom of Information Act Program Regulation

AGENCY: Office of the Secretary, Department of Defense (DoD).

ACTION: Proposed rule.

SUMMARY: This proposed rule conforms to the requirements of the Electronic Freedom of Information Act Amendments of 1996. This proposed revision reflects substantial and administrative changes since May 1997, as a result of DoD reorganization. The proposal also provides guidance to DoD on implementation of this amended law.

DATES: Comments must be received by August 7, 1998.

ADDRESSES: Forward comments to OSD/WHS, Room 2C757, 1155 Defense Pentagon, Washington, DC 20301–1155

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

SUPPLEMENTARY INFORMATION:

Executive Order 12866, ''Regulatory Planning and Review''

It has been determined that 32 CFR part 286 is not a significant regulatory action. The rule does not:

(1) Have an annual effect to the economy of $100 million or more or adversely affect in a material way the economy; a section of the economy; productivity; competition; jobs; the environment; public health or safety; or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another Agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligations of recipients thereof; or

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

Pub. L. 96–354, ''Regulatory Flexibility Act'' (5 U.S.C. 601)

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

Pub. L. 96–511, ''Paperwork Reduction Act'' (44 U.S.C. Chapter 35)

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

List of Subjects in 32 CFR Part 286

Freedom of information.

Accordingly, 32 CFR part 286 is proposed to be revised to read as follows:

PART 286—DOD FREEDOM OF INFORMATION ACT PROGRAM REGULATION

Subpart A—General Provisions

Sec.
286.1 Purpose and applicability.
286.2 DoD public information.
286.3 Definitions.
286.4 Policy.

Subpart B—FOIA Reading Rooms

286.7 Requirements.
286.8 Indexes.

Subpart C—Exemptions

286.11 General provisions.
286.12 Exemptions.

Subpart D—For Official Use Only

286.15 General provisions.
286.16 Markings.
286.17 Dissemination and transmission.
286.18 Safeguarding FOUO information.
286.19 Termination, disposal and unauthorized disclosure.

Subpart E—Release and Processing Procedures

286.22 General provisions.
286.23 Initial determinations.
286.24 Appeals.
286.25 Judicial actions.

Subpart F—Fee Schedule

286.28 General provisions.
286.29 Collection of fees and fee rates.
286.30 Collection of fees and fee rates for technical data.

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286.33 Reports control.

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286.36 Responsibility and purpose.
Appendix A to Part 286—Combatant Commands—Processing Procedures for FOIA Appeals
Appendix B to Part 286—Addressing FOIA Requests
Appendix C to Part 286—DD Form 2086, ''Record of Freedom of Information (FOI) Processing Cost''
Appendix D to Part 286—DD Form 2086–1, ''Record of Freedom of Information (FOI) Processing Cost for Technical Data''
Appendix E to Part 286—DD Form 2564, ''Annual Report Freedom of Information Act''
Appendix F to Part 286—DoD Freedom of Information Act Program Components

Authority: 5 U.S.C. 552.

Subpart A—General Provisions

§ 286.1 Purpose and applicability.

(a) *Purpose.* This part provides policies and procedures for the DoD implementation of the Freedom of Information Act, as amended (5 U.S.C. 552), and DoD Directive 5400.7,[1] and promotes uniformity in the DoD Freedom of Information Act (FOIA) Program.

(b) *Applicability.* This part applies to the Office of the Secretary of Defense (OSD), the Military Departments, the Chairman of the Joint Chiefs of Staff, the Combatant Commands, the Inspector General of the Department of Defense (IG DoD), the Defense Agencies, and the DoD Field Activities (hereafter referred to collectively as ''the DoD Components''). This part takes precedence over all DoD Component publications that supplement and implement the DoD FOIA Program. A list of DOD Components is at appendix F to this part.

[1] Copies may be viewed via internet at http://web7.whs.osd.mil/corres.htm.

§ 286.2 DoD public information.

(a) *Public information.* (1) The public has a right to information concerning the activities of its Government. DoD policy is to conduct its activities in an open manner and provide the public with a maximum amount of accurate and timely information concerning its activities, consistent always with the legitimate public and private interests of the American people. A record requested by a member of the public who follows rules established by proper authority in the Department of Defense shall not be withheld in whole or in part unless the record is exempt from mandatory partial or total disclosure under the FOIA. As a matter of policy, DoD Components shall make discretionary disclosures of exempt records or information whenever disclosure would not foreseeably harm an interest protected by a FOIA exemption, but this policy does not create any right enforceable in court. In order that the public may have timely information concerning DoD activities, records requested through public information channels by news media representatives that would not be withheld if requested under the FOIA should be released upon request. Prompt responses to requests for information from news media representatives should be encouraged to eliminate the need for these requesters to invoke the provisions of the FOIA and thereby assist in providing timely information to the public. Similarly, requests from other members of the public for information that would not be withheld under the FOIA should continue to be honored through appropriate means without requiring the requester to invoke the FOIA.

(2) Within the OSD, the Assistant Secretary of Defense for Command, Control, Communications, and Intelligence, as Chief Information Officer, in conjunction with the Director, Administration and Managment is responsible for ensuring preparation of reference material or a guide for requesting records or information from the Department of Defense, subject to the nine exemptions of the FOIA. This publication shall also include an index of all major information systems, and a description of major information and record locator systems, as defined by the Office of the Assistant Secretary of Defense for

Command, Control, Communications, and Intelligence. DoD FOIA Components shall coordinate with the appropriate office(s) to insure that this is also accomplished within their department or organization.

(3) DoD Components shall also prepare, in addition to normal FOIA regulations, a handbook for the use of the public in obtaining information from their organization. This 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. Each DoD Component should explain the types of records that can be obtained through FOIA requests, why some records cannot, by law, be made available, and how the DoD Component determines whether the record can be released. The handbook should also explain how to make a FOIA request, how long the requester can expect to wait for a reply, and explain the right of appeal. The handbook should supplement other information locator systems, such as the Government Information Locator Service (GILS), and explain how a requester can obtain more information about those systems. The handbook should be available on paper and through electronic means and contain the following additional information, complete with electronic links to the below elements; the location of reading room(s) within the Component and the types and categories of information available, the location of Component's World Wide Web page, a reference to the Component's FOIA regulation and how to obtain a copy, a reference to the Component's FOIA annual report and how to obtain a copy and the location of the Component's GILS page. Also, the DoD Components' Freedom of Information Act Annual Reports should refer to the handbook and how to obtain it.

(b) *Control system.* A request for records that invokes the FOIA shall enter a formal control system designed to ensure accountability and compliance with the FOIA. Any request for DoD records that either explicitly or implicitly cites the FOIA shall be processed under the provisions of this part, unless otherwise required by § 286.4(m).

§ 286.3 Definitions.

As used in this part, the following terms and meanings shall be applicable:

Administrative appeal. A request by a member of the general public, made under the FOIA, asking the appellate authority of a DoD Component to reverse a decision to withhold all or part of a requested record; to deny a fee category claim by a requester; to deny a request for waiver or reduction of fees; to deny a request to review an initial fee estimate; to deny a request for expedited processing due to demonstrated compelling need under § 286.4(d)(3); and confirm that no records were located during the initial search. Requesters also may appeal the failure to receive a response determination within the statutory time limits; and any determination that the requester believes is adverse in nature.

Agency record. (1) The products of data compilation, such as all books, papers, maps, and photographs, machine readable materials, inclusive of those in electronic form or format, or other documentary materials, regardless of physical form or characteristics, made or received by an agency of the United States Government under Federal law in connection with the transaction of public business and in Department of Defense possession and control at the time the FOIA request is made. Care should be taken not to exclude records from being considered agency records, unless they fall within one of the categories in paragraph (2) of this definition.

(2) The following are not included within the definition of the word ''record'':

(i) Objects or articles, such as structures, furniture, vehicles and equipment, whatever their historical value, or value as evidence.

(ii) Anything that is not a tangible or documentary record, such as an individual's memory or oral communication.

(iii) Personal records of an individual not subject to agency creation or retention requirements, created and maintained primarily for the convenience of an agency employee, and not distributed to other agency employees for their official use. Personal papers fall into three categories: those created before entering Government service; private materials brought into, created, or received in the office that were not created or received in the course of transacting Government business; and work-related personal papers that are not used in the transaction of Government business.

(3) A record must exist and be in the possession and control of the Department of Defense at the time of the request to be considered subject to this part and the FOIA. There is no obligation to create, compile, or obtain a record to satisfy a FOIA request. See § 286.5(g)(2) on creating a record in the electronic environment.

(4) Hard copy or electronic records, that are subject to FOIA requests under 5 U.S.C. 552(a)(3), and that are available to the public through an established distribution system, or through the Federal Register, the National Technical Information Service, or the Internet, normally need not be processed under the provisions of the FOIA. If a request is received for such information, DoD Components shall provide the requester with guidance, inclusive of any written notice to the public, on how to obtain the information. However, if the requester insists that the request be processed under the FOIA, then the request shall be processed under the FOIA. If there is any doubt as to whether the request must be processed, contact the Directorate for Freedom of Information and Security Review.

Appellate authority. The Head of the DoD Component or the Component head's designee having jurisdiction for this purpose over the record, or any of the other adverse determinations outlined in definitions ''Administrative appeal'' and ''initial denial authority'' .

DoD Component. An element of the Department of Defense, as defined in § 286.1(b), authorized to receive and act independently on FOIA requests. (See appendix F of this part.) A DoD Component has its own initial denial authority (IDA), appellate authority, and *legal* counsel.

Electronic record. Records (including e-mail) that are created, stored, and retrievable by electronic means.

Federal Agency. As defined by 5 U.S.C. 552(f)(1), a Federal agency is any executive department, military department, Government corporation, Government controlled corporation, or other establishment in the executive branch of the Government (including the Executive Office of the President), or any independent regulatory agency.

FOIA request. A written request for DoD records that adequately describes the record(s) sought, made by any person, including a member of the public (U.S. or foreign citizen), an organization, or a business, but not including a Federal Agency or a fugitive from the law, that either explicitly or implicitly invokes the FOIA, DoD Directive 5400.7, this part, or DoD Component supplementing regulations or instructions. Requesters should also address fees in their request. Written requests may be received by postal service or other commercial delivery means, by facsimile, or electronically. Requests received electronically should have a postal mailing address included since it may not be practical to provide a substantive response electronically. The request is considered perfected when the above conditions have been met and the request arrives at the FOIA

office of the Component in possession of the records.

Initial denial authority (IDA). An official who has been granted authority by the head of a DoD Component to withhold records requested under the FOIA for one or more of the nine categories of records exempt from mandatory disclosure. IDA's may also deny a fee category claim by a requester; deny a request for expedited processing due to demonstrated compelling need under § 286.4(d)(3); deny a request for a waiver or reduction of fees; review a fee estimate; and confirm that no records were located in response to a request.

Public interest. The interest in obtaining official information that sheds light on an agency's performance of its statutory duties because the information falls within the statutory purpose of the FOIA to inform citizens about what their Government is doing. That statutory purpose, however, is not fostered by disclosure of information about private citizens accumulated in various governmental files that reveals nothing about an agency's or official's own conduct.

§ 286.4 Policy.

(a) *Compliance with the FOIA.* DoD personnel are expected to comply with the FOIA, this part, and DoD FOIA policy in both letter and spirit. This strict adherence is necessary to provide uniformity in the implementation of the DoD FOIA Program and to create conditions that will promote public trust.

(b) *Openness with the public.* The Department of Defense shall conduct its activities in an open manner consistent with the need for security and adherence to other requirements of law and regulation. Records not exempt from disclosure under the Act shall, upon request, be made readily accessible to the public in accordance with rules promulgated by competent authority, whether or not the Act is invoked.

(c) *Avoidance of procedural obstacles.* DoD Components shall ensure that procedural matters do not unnecessarily impede a requester from obtaining DoD records promptly. Components shall provide assistance to requesters to help them understand and comply with procedures established by this part and any supplemental regulations published by the DoD Components.

(d) *Prompt action on requests.* (1) Generally, when a member of the public complies with the procedures established in this part and DoD Component regulations or instructions for obtaining DoD records, and after the request is received by the official designated to respond, DoD Components shall endeavor to provide a final response determination within the statutory 20 working days. If a significant number of requests, or the complexity of the requests prevent a final response determination within the statutory time period, DoD Components shall advise the requester of this fact, and explain how the request will be responded to within its multitrack processing system (see § 286.5(d)(2)). A final response determination is notification to the requester that the records are released, or will be released on a certain date, or the records are denied under the appropriate FOIA exemption, or the records cannot be provided for one or more of the other reasons in § 286.23(b). Interim responses acknowledging receipt of the request, negotiations with the requester concerning the scope of the request, the response timeframe, and fee agreements are encouraged; however, such actions do not constitute a final response determination pursuant to the FOIA. If a request fails to meet minimum requirements as set forth in § 286.3 definition of ''FOIA request'', Components shall apprise the requester how to perfect the request. The statutory 20 working day time limit applies upon receipt of a perfected FOIA request as outlined in § 286.3 definition of ''FOIA request''.

(2) *Multitrack processing.* When a Component has a significant number of pending requests that prevents a response determination being made within 20 working days, the requests shall be processed in a multitrack processing system, based on the date of receipt, the amount of work and time involved in processing the requests, and whether the request qualifies for expedited processing as described in paragraph (d)(3) of this section. DoD Components may establish as many processing queues as they wish; however, at a minimum, three processing tracks shall be established, all based on a first-in-first-out concept, and rank ordered by the date of receipt of the request. One track shall be a processing queue for simple requests, one track for complex requests, and one track shall be a processing queue for expedited processing as described in paragraph (d)(3) of this section. Determinations as to whether a request is simple or complex shall be made by each DoD Component. DoD Components shall provide a requester whose request does not qualify for the fastest queue (except for expedited processing as described in paragraph (d)(3) of this section), an opportunity to limit in writing by hard copy, facsimile, or electronically, the scope of the request in order to qualify for the fastest queue. This multitrack processing system does not obviate Components' responsibility to exercise due diligence in processing requests in the most expeditious manner possible.

(3) *Expedited processing.* A separate queue shall be established for requests meeting the test for expedited processing. Expedited processing shall be granted to a requester after the requester requests such and demonstrates a compelling need for the information. Notice of the determination as to whether to grant expedited processing in response to a requester's compelling need shall be provided to the requester within 10 calendar days after receipt of the request in the DoD Component's office that will determine whether to grant expedited processing. Once the DoD Component has determined to grant expedited processing, the request shall be processed as soon as practicable. Actions by DoD Components to initially deny or affirm the initial denial on appeal of a request for expedited processing, and failure to respond in a timely manner shall be subject to judicial review.

(i) Compelling need means that the failure to obtain the records on an expedited basis could reasonably be expected to pose an imminent threat to the life or physical safety of an individual.

(ii) Compelling need also means that the information is urgently needed by an individual primarily engaged in disseminating information in order to inform the public concerning actual or alleged Federal Government activity. An individual primarily engaged in disseminating information means a person whose primary activity involves publishing or otherwise disseminating information to the public. Representatives of the news media (see § 286.28(e)(7)(i)) would normally qualify as individuals primarily engaged in disseminating information. Other persons must demonstrate that their primary activity involves publishing or otherwise disseminating information to the public.

(A) Urgently needed means 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. However, information of historical interest only, or information sought for litigation or commercial activities would not qualify, nor would a news media publication or broadcast deadline

unrelated to the news breaking nature of the information.

(B) [Reserved]

(iii) A demonstration of compelling need by a requester shall be made by a statement certified by the requester to be true and correct to the best of their knowledge. This statement must accompany the request in order to be considered and responded to within the 10 calendar days required for decisions on expedited access.

(iv) *Other reasons for expedited processing.* Other reasons that merit expedited processing by DoD Components are an imminent loss of substantial due process rights and humanitarian need. A demonstration of imminent loss of substantial due process rights shall be made by a statement certified by the requester to be true and correct to the best of his or her knowledge. Humanitarian need means that disclosing the information will promote the welfare and interests of mankind. A demonstration of humanitarian need shall be also made by a statement certified by the requester to be true and correct to the best of his or her knowledge. Both statements mentioned above must accompany the request in order to be considered and responded to within the 10 calendar days required for decisions on expedited access. Once the decision has been made to expedite the request for either of these reasons, the request may be processed in the expedited processing queue behind those requests qualifying for compelling need.

(v) These same procedures also apply to requests for expedited processing of administrative appeals.

(e) *Use of exemptions.* It is DoD policy to make records publicly available, unless the record qualifies for exemption under one or more of the nine exemptions. It is DoD policy that DoD Components shall make discretionary releases whenever possible; however, a discretionary release is normally not appropriate for records clearly exempt under exemptions 1, 3, 4, 6, 7 (C) and 7(F) (see subpart C of this part). Exemptions 2, 5, and 7(A)(B)(D) and (E) (see subpart C of this part) are discretionary in nature, and DoD Components are encouraged to exercise discretionary releases whenever possible. Exemptions 4, 6 and 7(C) cannot be claimed when the requester is the submitter of the information.

(f) *Public domain.* Nonexempt records released under the authority of this part are considered to be in the public domain. Such records may also be made available in Components' reading rooms in paper form, as well as electronically, to facilitate public access. Discretionary releases to FOIA requesters constitute a waiver of the FOIA exemption that may otherwise apply. Disclosure to a properly constituted advisory committee, to Congress, or to other Federal Agencies does not waive the exemption. (See § 286.22 (d)) Exempt records disclosed without authorization by the appropriate DoD official do not lose their exempt status. Also, while authority may exist to disclose records to individuals in their official capacity, the provisions of this part apply if the same individual seeks the records in a private or personal capacity.

(g) *Creating a record.* (1) A record must exist and be in the possession and control of the Department of Defense at the time of the search to be considered subject to this part and the FOIA. There is no obligation to create, compile, or obtain a record to satisfy a FOIA request. A DoD Component, however, may compile a new record when so doing would result in a more useful response to the requester, or be less burdensome to the agency than providing existing records, and the requester does not object. Cost of creating or compiling such a record may not be charged to the requester unless the fee for creating the record is equal to or less than the fee which would be charged for providing the existing record. Fee assessments shall be in accordance with subpart F of this part.

(2) About electronic data, the issue of whether records are actually created or merely extracted from an existing database is not always readily apparent. Consequently, when responding to FOIA requests for electronic data where creation of a record, programming, or particular format are questionable, Components should apply a standard of reasonableness. In other words, if the capability exists to respond to the request, and the effort would be a business as usual approach, then the request should be processed. However, the request need not be processed where the capability to respond does not exist without a significant expenditure of resources, thus not being a normal business as usual approach. As used in this sense, a significant expenditure of resources in both time and manpower, that would cause a significant interference with the operation of the Components' automated information system would not be a business as usual approach.

(h) *Description of requested record.* (1) Identification of the record desired is the responsibility of the requester. The requester must provide a description of the desired record, that enables the Government to locate the record with a reasonable amount of effort. In order to assist DoD Components in conducting more timely searches, requesters should endeavor to provide as much identifying information as possible. When a DoD Component receives a request that does not reasonably describe the requested record, it shall notify the requester of the defect in writing. The requester should be asked to provide the type of information outlined in paragraph (h)(2) of this section. DoD Components are not obligated to act on the request until the requester responds to the specificity letter. When practicable, DoD Components shall offer assistance to the requester in identifying the records sought and in reformulating the request to reduce the burden on the agency in complying with the Act.

(2) The following guidelines are provided to deal with generalized requests and are based on the principle of reasonable effort (Descriptive information about a record may be divided into two broad categories.):

(i) Category I is file-related and includes information such as type of record (for example, memorandum), title, index citation, subject area, date the record was created, and originator.

(ii) Category II is event-related and includes the circumstances that resulted in the record being created or the date and circumstances surrounding the event the record covers.

(3) Generally, a record is not reasonably described unless the description contains sufficient Category I information to permit the conduct of an organized, non random search based on the DoD Component's filing arrangements and existing retrieval systems, or unless the record contains sufficient Category II information to permit inference of the Category I elements needed to conduct such a search.

(4) The following guidelines deal with requests for personal records: Ordinarily, when personal identifiers are provided only in connection with a request for records concerning the requester, only records in a Privacy Act system of records that can be retrieved by personal identifiers need be searched. However, if a DoD Component has reason to believe that records on the requester may exist in a record system other than a Privacy Act system, the DoD Component shall search that system under the provisions of the FOIA. In either case, DoD Components may request a reasonable description of the records desired before searching for such records under the provisions of the FOIA and the Privacy Act. If the record is required to be released under the FOIA, does not bar its disclosure. See

paragraph (m) of this section for the relationship between the FOIA and the Privacy Act.

(5) The previous guidelines notwithstanding, the decision of the DoD Component concerning reasonableness of description must be based on knowledge of its files. If the description enables DoD Component personnel to locate the record with reasonable effort, the description is adequate. The fact that a FOIA request is broad or burdensome in its magnitude does not, in and of itself, entitle a DoD Component to deny the request on the ground that it does not reasonably describe the records sought. The key factor is the ability of the DoD Component's staff to reasonably ascertain and locate which records are being requested.

(i) *Referrals.* (1) The DoD FOIA referral policy is based upon the concept of the originator of a record making a release determination on its information. If a DoD Component receives a request for records originated by another DoD Component, it should contact the DoD Component to determine if it also received the request, and if not, obtain concurrence from the other DoD Component to refer the request. In either situation, the requester shall be advised of the action taken, unless exempt information would be revealed. While referrals to originators of information result in obtaining the best possible decision on release of the information, the policy does not relieve DoD Components from the responsibility of making a release decision on a record should the requester object to referral of the request and the record. Should this situation occur, DoD Components should coordinate with the originator of the information prior to making a release determination. A request received by a DoD Component having no records responsive to a request shall be referred routinely to another DoD Component, if the other DoD Component has reason to believe it has the requested record. Prior to notifying a requester of a referral to another DoD Component, the DoD Component receiving the initial request shall consult with the other DoD Component to determine if that DoD Component's association with the material is exempt. If the association is exempt, the DoD Component receiving the initial request will protect the association and any exempt information without revealing the identity of the protected DoD Component. The protected DoD Component shall be responsible for submitting the justifications required in any litigation. Any DoD Component receiving a request that has been misaddressed shall refer the request to the proper address and advise the requester. DoD Components making referrals of requests or records shall include with the referral, a point of contact by name, a telephone number, and an e-mail address.

(2) A DoD Component shall refer for response directly to the requester, a FOIA request for a record that it holds to another DoD Component or agency outside the DoD, if the record originated in the other DoD Component or outside agency. Whenever a record or a portion of a record is referred to another DoD Component or to a Government Agency outside of the DoD for a release determination and direct response, the requester shall be informed of the referral, unless it has been determined that notification would reveal exempt information. Referred records shall only be identified to the extent consistent with security requirements.

(3) A DoD Component may refer a request for a record that it originated to another DoD Component or agency when the other DoD Component or agency has a valid interest in the record, or the record was created for the use of the other DoD Component or agency. In such situations, provide the record and a release recommendation on the record with the referral action. Ensure you include a point of contact with the telephone number. An example of such a situation is a request for audit reports prepared by the Defense Contract Audit Agency. These advisory reports are prepared for the use of contracting officers and their release to the audited contractor shall be at the discretion of the contracting officer. A FOIA request shall be referred to the appropriate DoD Component and the requester shall be notified of the referral, unless exempt information would be revealed. Another example is a record originated by a DoD Component or agency that involves foreign relations, and could affect a DoD Component or organization in a host foreign country. Such a request and any responsive records may be referred to the affected DoD Component or organization for consultation prior to a final release determination within the Department of Defense. See also § 286.22(e).

(4) Within the Department of Defense, a DoD Component shall ordinarily refer a FOIA request and a copy of the record it holds, but that was originated by another DoD Component or that contains substantial information obtained from another DoD Component, to that Component for direct response, after direct coordination and obtaining concurrence from the Component. The requester then shall be notified of such referral. DoD Components shall not, in any case, release or deny such records without prior consultation with the other DoD Component, except as provided in § 286.22(e).

(5) DoD Components that receive referred requests shall answer them in accordance with the time limits established by the FOIA, this part, and their multitrack processing queues, based upon the date of initial receipt of the request at the referring component or agency.

(6) Agencies outside the Department of Defense that are subject to the FOIA.

(i) A DoD Component may refer a FOIA request for any record that originated in an agency outside the Department of Defense or that is based on information obtained from an outside agency to the agency for direct response to the requester after coordination with the outside agency, if that agency is subject to FOIA. Otherwise, the DoD Component must respond to the request.

(ii) A DoD Component shall refer to the agency that provided the record any FOIA request for investigative, intelligence, or any other type of records that are on loan to the Department of Defense for a specific purpose, if the records are restricted from further release and so marked. However, if for investigative or intelligence purposes, the outside agency desires anonymity, a DoD Component may only respond directly to the requester after coordination with the outside agency.

(7) DoD Components that receive requests for records of the National Security Council (NSC), the White House, or the White House Military Office (WHMO) shall process the requests. DoD records in which the NSC or White House has a concurrent reviewing interest, and NSC, White House, or WHMO records discovered in DoD Components' files shall be forwarded to the Directorate for Freedom of Information and Security Review (DFOISR). The DFOISR shall coordinate with the NSC, White House, or WHMO and return the records to the originating agency after coordination.

(8) To the extent referrals are consistent with the policies expressed by this section, referrals between offices of the same DoD Component are authorized.

(9) On occasion, the Department of Defense receives FOIA requests for General Accounting Office (GAO) records containing DoD information. Even though the GAO is outside the Executive Branch, and not subject to the FOIA, all FOIA requests for GAO documents containing DoD information received either from the public, or on

referral from the GAO, shall be processed under the provisions of the FOIA.

(j) *Authentication.* Records provided under this part shall be authenticated with an appropriate seal, whenever necessary, to fulfill an official Government or other legal function. This service, however, is in addition to that required under the FOIA and is not included in the FOIA fee schedule. DoD Components may charge for the service at a rate of $5.20 for each authentication.

(k) *Combatant Commands.* (1) The Combatant Commands are placed under the jurisdiction of the OSD, instead of the administering Military Department or the Chairman of the Joint Chiefs of Staff, only for the purpose of administering the DoD FOIA Program. This policy represents an exception to the policies directed in DoD Directive 5100.3[2]; it authorizes and requires the Combatant Commands to process FOIA requests in accordance with DoD Directive 5400.7 and this part. The Combatant Commands shall forward directly to the Director, Freedom of Information and Security Review all correspondence associated with the appeal of an initial denial for records under the provisions of the FOIA. Procedures to effect this administrative requirement are outlined in appendix A of this part.

(2) Combatant Commands shall maintain an electronic reading room for FOIA-processed 5 U.S.C. 552(a)(2)(D) records in accordance with subpart B of this part. Records qualifying for this means of public access also shall be maintained in hard copy for public access at Combatant Commands' respective locations.

(l) *Records management.* FOIA records shall be maintained and disposed of in accordance with the National Archives and Records Administration General Records Schedule, and DoD Component records schedules.

(m) *Relationship between the FOIA and the Privacy Act (PA).* Not all requesters are knowledgeable of the appropriate statutory authority to cite when requesting records. In some instances, they may cite neither Act, but will imply one or both Acts. For these reasons, the following guidelines are provided to ensure that requesters receive the greatest amount of access rights under both Acts:

(1) If the record is required to be released under the FOIA, the Privacy Act does not bar its disclosure. Unlike the FOIA, the Privacy Act applies only to U.S. citizens and aliens admitted for permanent residence.

(2) Requesters who seek records about themselves contained in a Privacy Act system of records and who cite or imply only the Privacy Act, will have their requests processed under the provisions of both the Privacy Act and the FOIA. If the Privacy Act system of records is exempt from the provisions of 5 U.S.C. 552a(d)(1), the requester shall be so advised with the appropriate Privacy Act exemption, and then further advised that the information was therefore reviewed for release under the FOIA.

(3) Requesters who seek records about themselves that are not contained in a Privacy Act system of records and who cite or imply the Privacy Act will have their requests processed under the provisions of the FOIA, since the Privacy Act does not apply to these records.

(4) Requesters who seek records about themselves that are contained in a Privacy Act system of records and who cite or imply the FOIA or both Acts will have their requests processed under the provisions of both the Privacy Act and the FOIA. If the Privacy Act system of records is exempt from the provisions of 5 U.S.C. 552a(d)(1), the requester shall be so advised with the appropriate Privacy Act exemption, and then further advised that the information was therefore reviewed for release under the FOIA.

(5) Requesters who seek access to agency records that are not part of a Privacy Act system of records, and who cite or imply the Privacy Act and FOIA, will have their requests processed under the FOIA since the Privacy Act does not apply to these records.

(6) Requesters who seek access to agency records and who cite or imply the FOIA will have their requests processed under the FOIA.

(7) Requesters shall be advised in final responses which Act was used.

(n) *Non-responsive information in responsive records.* DoD Components shall interpret FOIA requests liberally when determining which records are responsive to the requests, and may release non-responsive information. However, should DoD Components desire to withhold non-responsive information, the following steps shall be accomplished:

(1) Consult with the requester, and ask if the requester views the information as responsive, and if not, seek the requester's concurrence to deletion of non-responsive information without a FOIA exemption. Reflect this concurrence in the response letter.

(2) If the responsive record is unclassified, and the requester does not agree to deletion of non-responsive information without a FOIA exemption, release all non-responsive and responsive information which is not exempt. For non-responsive information that is exempt, notify the requester that even if the information were determined responsive, it would likely be exempt under (state appropriate exemption(s)). Advise the requester of the right to request this information under a separate FOIA request. The separate request shall be placed in the same location within the processing queue as the original request.

(3) If the responsive record is classified, and the requester does not agree to deletion of non-responsive information without a FOIA exemption, release all unclassified responsive and non-responsive information which is not exempt. If the non-responsive information is exempt, follow the procedures in paragraph (n)(2) of this section. The classified, non-responsive information need not be reviewed for declassification at this point. Advise the requester that even if the classified information were determined responsive, it would likely be exempt under 5 U.S.C. 552(b)(1), and other exemptions if appropriate. Advise the requester of the right to request this information under a separate FOIA request. The separate request shall be placed in the same location within the processing queue as the original request.

(o) *Honoring form or format requests.* DoD Components shall provide the record in any form or format requested by the requester if the record is readily reproducible in that form or format. DoD Components shall make reasonable efforts to maintain their records in forms or formats that are reproducible. In responding to requests for records, DoD Components shall make reasonable efforts to search for records in electronic form or format, except when such efforts would significantly interfere with the operation of the DoD Components' automated information system. Such determinations shall be made on a case by case basis. See also paragraph (g)(2) of this section.

Subpart B—FOIA Reading Rooms

§ 286.7 Requirements.

(a) *Reading room.* Each DoD Component shall provide an appropriate facility or facilities where the public may inspect and copy or have copied the records described in paragraph (b) of this section and § 286.8(a). In addition to the records described in paragraph (b) of this section and § 286.8(a), DoD Components may elect to place other records in their reading room, and also

[2] See footnote 1 to § 286.1(a).

make them electronically available to the public. DoD Components may share reading room facilities if the public is not unduly inconvenienced, and also may establish decentralized reading rooms. When appropriate, the cost of copying may be imposed on the person requesting the material in accordance with the provisions of subpart F of this part.

(b) *Record availability.* The FOIA requires that records described in 5 U.S.C. 552(a)(2) (A), (B), (C), and (D) created on or after November 1, 1996, shall be made available electronically by November 1, 1997, as well as in hard copy in the FOIA reading room for inspection and copying, unless such records are published and copies are offered for sale. Personal privacy information, that if disclosed to a third party requester, would result in an invasion of the first party's personal privacy, and contractor submitted information, that if disclosed to a competing contractor, would result in competitive harm to the submitting contractor shall be deleted from all 5 U.S.C. 552(a)(2) records made available to the general public. In every case, justification for the deletion must be fully explained in writing, and the extent of such deletion shall be indicated on the record which is made publicly available, unless such indication would harm an interest protected by an exemption under which the deletion was made. If technically feasible, the extent of the deletion in electronic records or any other form of record shall be indicated at the place in the record where the deletion was made. However, a DoD Component may publish in the **Federal Register** a description of the basis upon which it will delete identifying details of particular types of records to avoid clearly unwarranted invasions of privacy, or competitive harm to business submitters. In appropriate cases, the DoD Component may refer to this description rather than write a separate justification for each deletion. 5 U.S.C. 552(a)(2) (A), (B), (C), and (D) records are:

(1) *(a)(2)(A) records.* Final opinions, including concurring and dissenting opinions, and orders made in the adjudication of cases, as defined in 5 U.S.C. 551 (reference (f)), that may be cited, used, or relied upon as precedents in future adjudications.

(2) *(a)(2)(B) records.* Statements of policy and interpretations that have been adopted by the agency and are not published in the **Federal Register**.

(3) *(a)(2)(C) records.* Administrative staff manuals and instructions, or portions thereof, that establish DoD policy or interpretations of policy that affect a member of the public. This provision does not apply to instructions for employees on tactics and techniques to be used in performing their duties, or to instructions relating only to the internal management of the DoD Component. Examples of manuals and instructions not normally made available are:

(i) Those issued for audit, investigation, and inspection purposes, or those that prescribe operational tactics, standards of performance, or criteria for defense, prosecution, or settlement of cases.

(ii) Operations and maintenance manuals and technical information concerning munitions, equipment, systems, and intelligence activities.

(4) *(a)(2)(D) records.* Those 5 U.S.C. 552(a)(3) records, which because of the nature of the subject matter, have become or are likely to become the subject of subsequent requests for substantially the same records. These records are referred to as FOIA-processed (a)(2) records.

(i) DoD Components shall decide on a case by case basis whether records fall into this category, based on the following factors:

(A) Previous experience of the DoD Component with similar records.

(B) Particular circumstances of the records involved, including their nature and the type of information contained in them.

(C) The identity and number of requesters and whether there is widespread press, historic, or commercial interest in the records.

(ii) This provision is intended for 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. DoD Components may remove the records from this access medium when the appropriate officials determine that access is no longer necessary.

(iii) Should a requester submit a FOIA request for FOIA-processed (a)(2) records, and insist that the request be processed, DoD Components shall process the FOIA request. However, DoD Components have no obligation to process a FOIA request for 5 U.S.C. 552(a)(2)(A), (B), and (C) records because these records are required to be made public and not FOIA-processed under paragraph (a)(3) of the FOIA.

§ 286.8 Indexes.

(a) *''(a) (2)'' materials.* (1) Each DoD Component shall maintain in each facility prescribed in § 286.7(a), an index of materials described in § 286.7(b) that are issued, adopted, or promulgated, after July 4, 1967. No ''(a)(2)'' materials issued, promulgated, or adopted after July 4, 1967, that are not indexed and either made available or published may be relied upon, used or cited as precedent against any individual unless such individual has actual and-timely notice of the contents of such materials. Such materials issued, promulgated, or adopted before July 4, 1967, need not be indexed, but must be made available upon request if not exempted under this part.

(2) Each DoD Component shall promptly publish quarterly or more frequently, and distribute, by sale or otherwise, copies of each index of ''(a)(2)'' materials or supplements thereto unless it publishes in the **Federal Register** an order containing a determination that publication is unnecessary and impracticable. A copy of each index or supplement not published shall be provided to a requester at a cost not to exceed the direct cost of duplication as set forth in subpart F of this part.

(3) Each index of ''(a)(2)'' materials or supplement thereto shall be arranged topical or by descriptive words rather than by case name or numbering system so that members of the public can readily locate material. Case name and numbering arrangements, however, may also be included for DoD Component convenience.

(4) A general index of FOIA-processed (a)(2) records referred to in § 286.7(b)(4), shall be made available to the public, both in hard copy and electronically by December 31, 1999.

(b) *Other materials.* (1) Any available index of DoD Component material published in the **Federal Register**, such as material required to be published by Section 552(a)(1) of the FOIA, shall be made available in DoD Component FOIA reading rooms, and electronically to the public.

(2) Although not required to be made available in response to FOIA requests or made available in FOIA Reading Rooms, ''(a)(1)'' materials shall, when feasible, be made available to the public in FOIA reading rooms for inspection and copying, and by electronic means. Examples of ''(a)(1)'' materials are: descriptions of an agency's central and field organization, and to the extent they affect the public, rules of procedures, descriptions of forms available, instruction as to the scope and contents of papers, reports, or examinations, and any amendment, revision, or report of the aforementioned.

Subpart C—Exemptions

§ 286.11 General provisions.

Records that meet the exemption criteria of the FOIA may be withheld from public disclosure and need not be published in the **Federal Register**, made available in a library reading room, or provided in response to a FOIA request.

§ 286.12 Exemptions.

The following types of records may be withheld in whole or in part from public disclosure under the FOIA, unless otherwise prescribed by law: (A discretionary release of a record (see also § 286.4(e)) to one requester shall prevent the withholding of the same record under a FOIA exemption if the record is subsequently requested by someone else. However, a FOIA exemption may be invoked to withhold information that is similar or related that has been the subject of a discretionary release. In applying exemptions, the identity of the requester and the purpose for which the record is sought are irrelevant with the exception that an exemption may not be invoked where the particular interest to be protected is the requester's interest.)

(a) *Number 1 (5 U.S.C. 552(b)(1)).* Those properly and currently classified in the interest of national defense or foreign policy, as specifically authorized under the criteria established by Executive Order and implemented by regulations, such as DoD 5200.1–R.[3] Although material is not classified at the time of the FOIA request, a classification review may be undertaken to determine whether the information should be classified. The procedures in DoD 5200.1–R apply. If the information qualifies as exemption 1 information, there is no discretion regarding its release. In addition, this exemption shall be invoked when the following situations are apparent:

(1) The fact of the existence or nonexistence of a record would itself reveal classified information. In this situation, Components shall neither confirm nor deny the existence or nonexistence of the record being requested. A ''refusal to confirm or deny'' response must be used consistently, not only when a record exists, but also when a record does not exist. Otherwise, the pattern of using a ''no record'' response when a record does not exist, and a ''refusal to confirm or deny'' when a record does exist will itself disclose national security information.

(2) Compilations of items of information that are individually unclassified may be classified if the compiled information reveals additional association or relationship that meets the standard for classification under an existing executive order for classification and DoD 5200.1–R, and is not otherwise revealed in the individual items of information.

(b) *Number 2 (5 U.S.C. 552 (b)(2)).* Those related solely to the internal personnel rules and practices of the Department of Defense or any of its Components. This exemption is entirely discretionary. This exemption has two profiles, high (b)(2) and low (b)(2). Paragraph (b)(2) of this section contains a brief discussion on the low (b)(2) profile; however, that discussion is for information purposes only. When only a minimum Government interest would be affected (administrative burden), there is a great potential for discretionary disclosure of the information. Consequently, DoD Components shall not invoke the low (b)(2) profile.

(1) Records qualifying under high (b)(2) are those containing or constituting statutes, rules, regulations, orders, manuals, directives, instructions, and security classification guides, the release of which would allow circumvention of these records thereby substantially hindering the effective performance of a significant function of the Department of Defense. Examples include:

(i) Those operating rules, guidelines, and manuals for DoD investigators, inspectors, auditors, or examiners that must remain privileged in order for the DoD Component to fulfill a legal requirement.

(ii) Personnel and other administrative matters, such as examination questions and answers used in training courses or in the determination of the qualifications of candidates for employment, entrance on duty, advancement, or promotion.

(iii) Computer software, the release of which would allow circumvention of a statute or DoD rules, regulations, orders, manuals, directives, or instructions. In this situation, the use of the software must be closely examined to ensure a circumvention possibility exists.

(2) Records qualifying under the low (b)(2) profile are those that are trivial and housekeeping in nature for which there is no legitimate public interest or benefit to be gained by release, and it would constitute an administrative burden to process the request in order to disclose the records. Examples include rules of personnel's use of parking facilities or regulation of lunch hours, statements of policy as to sick leave, and administrative data such as file numbers, mail routing stamps, initials, data processing notations, brief references to previous communications, and other like administrative markings. DoD Components shall not invoke the low (b)(2) profile.

(c) *Number 3 (5 U.S.C. 552 (b)(3)).* Those concerning matters that a statute specifically exempts from disclosure by terms that permit no discretion on the issue, or in accordance with criteria established by that statute for withholding or referring to particular types of matters to be withheld. The Directorate for Freedom of Information and Security Review maintains a list of (b)(3) statutes used within the Department of Defense, and provides updated lists of these statutes to DoD Components on a periodic basis. A few examples of such statutes are:

(1) *Patent Secrecy, 35 U.S.C. 181–188.* Any records containing information relating to inventions that are the subject of patent applications on which Patent Secrecy Orders have been issued.

(2) Restricted Data and Formerly Restricted Data, 42 U.S.C. 2162.

(3) Communication Intelligence, 18 U.S.C. 798.

(4) Authority to withhold from public disclosure certain technical data, 10 U.S.C. 130 and DoD Directive 5230.25.[4]

(5) Confidentiality of medical quality assurance records: Qualified Immunity for Participants, 10 U.S.C. 1102f.

(6) Physical protection of special nuclear material: Limitation on Dissemination of Unclassified Information, 10 U.S.C. 128.

(7) Protection of intelligence sources and methods, 50 U.S.C. 403–3(c)(5).

(8) Protection of contractor submitted proposals, 10 U.S.C. 2305(g).

(9) Procurement integrity, 41 U.S.C. 423.

(d) *Number 4 (5 U.S.C. 552 (b)(4)).* Those containing trade secrets or commercial or financial information that a DoD Component receives from a person or organization outside the Government with the understanding that the information or record will be retained on a privileged or confidential basis in accordance with the customary handling of such records. Records within the exemption must contain trade secrets, or commercial or financial records, the disclosure of which is likely to cause substantial harm to the competitive position of the source providing the information; impair the Government's ability to obtain necessary information in the future; or impair some other legitimate Government

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

[4] See footnote 1 to § 286.1(a).

interest. Commercial or financial information submitted on a voluntary basis, absent any exercised authority prescribing criteria for submission is protected without any requirement to show competitive harm (see paragraph (d)(8) of this section). If the information qualifies as exemption 4 information, there is no discretion in its release. Examples include:

(1) Commercial or financial information received in confidence in connection with loans, bids, contracts, or proposals set forth in or incorporated by reference in a contract entered into between the DoD Component and the offeror that submitted the proposal, as well as other information received in confidence or privileged, such as trade secrets, inventions, discoveries, or other proprietary data. See also § 286.23(h)(2). Additionally, when the provisions of 10 U.S.C. 2305(g) and 41 U.S.C. 423 are met, certain proprietary and source selection information may be withheld under exemption 3.

Statistical data and commercial or financial information concerning contract performance, income, profits, losses, and expenditures, if offered and received in confidence from a contractor or potential contractor.

(3) Personal statements given in the course of inspections, investigations, or audits, when such statements are received in confidence from the individual and retained in confidence because they reveal trade secrets or commercial or financial information normally considered confidential or privileged.

(4) Financial data provided in confidence by private employers in connection with locality wage surveys that are used to fix and adjust pay schedules applicable to the prevailing wage rate of employees within the Department of Defense.

(5) Scientific and manufacturing processes or developments concerning technical or scientific data or other information submitted with an application for a research grant, or with a report while research is in progress.

(6) Technical or scientific data developed by a contractor or subcontractor exclusively at private expense, and technical or scientific data developed in part with Federal funds and in part at private expense, wherein the contractor or subcontractor has retained legitimate proprietary interests in such data in accordance with 10 U.S.C. 2320–2321 and DoD Federal Acquisition Regulation Supplement (DFARS), Chapter 2 of 48 CFR, part 227, subpart 227.71–227.72. Technical data developed exclusively with Federal funds may be withheld under Exemption Number 3 if it meets the criteria of 10 U.S.C. 130 and DoD Directive 5230.25 (see paragraph (c)(7) of this section).

(7) Computer software which is copyrighted under the Copyright Act of 1976 (17 U.S.C. 106), the disclosure of which would have an adverse impact on the potential market value of a copyrighted work.

(8) Proprietary information submitted strictly on a voluntary basis, absent any exercised authority prescribing criteria for submission. Examples of exercised authorities prescribing criteria for submission are statutes, Executive Orders, regulations, invitations for bids, requests for proposals, and contracts. Submission of information under these authorities is not voluntary. (See also § 286.23(h)(3))

(e) *Number 5 (5 U.S.C. 552 (b)(5)).* Those containing information considered privileged in litigation, primarily under the deliberative process privilege. Except as provided in paragraphs (e)(2) through (e)(5) of this section, internal advice, recommendations, and subjective evaluations, as contrasted with factual matters, that are reflected in deliberative records pertaining to the decision-making process of an agency, whether within or among agencies (as defined in 5 U.S.C. 552(e)), or within or among DoD Components. In order to meet the test of this exemption, the record must be both deliberative in nature, as well as part of a decision-making process. Merely being an internal record is insufficient basis for withholding under this exemption. Also potentially exempted are records pertaining to the attorney-client privilege and the attorney work-product privilege. This exemption is entirely discretionary.

(1) Examples of the deliberative process include:

(i) The non factual portions of staff papers, to include after-action reports, lessons learned, and situation reports containing staff evaluations, advice, opinions, or suggestions.

(ii) Advice, suggestions, or evaluations prepared on behalf of the Department of Defense by individual consultants or by boards, committees, councils, groups, panels, conferences, commissions, task forces, or other similar groups that are formed for the purpose of obtaining advice and recommendations.

(iii) Those non factual portions of evaluations by DoD Component personnel of contractors and their products.

(iv) Information of a speculative, tentative, or evaluative nature or such matters as proposed plans to procure, lease or otherwise acquire and dispose of materials, real estate, facilities or functions, when such information would provide undue or unfair competitive advantage to private personal interests or would impede legitimate government functions.

(v) Trade secret or other confidential research development, or commercial information owned by the Government, where premature release is likely to affect the Government's negotiating position or other commercial interest.

(vi) Records that are exchanged among agency personnel and within and among DoD Components or Agencies as part of the preparation for anticipated administrative proceeding by an Agency or litigation before any Federal, State, or military court, as well as records that qualify for the attorney-client privilege.

(vii) Those portions of official reports of inspection, reports of the Inspector Generals, audits, investigations, or surveys pertaining to safety, security, or the internal management, administration, or operation of one or more DoD Components, when these records have traditionally been treated by the courts as privileged against disclosure in litigation.

(viii) Planning, programming, and budgetary information that is involved in the defense planning and resource allocation process.

(2) If any such intra- or inter-agency record or reasonably segregable portion of such record hypothetically would be made available routinely through the discovery process in the course of litigation with the Agency, then it should not be withheld under the FOIA. If, however, the information hypothetically would not be released at all, or would only be released in a particular case during civil discovery where a party's particularized showing of need might override a privilege, then the record may be withheld. Discovery is the formal process by which litigants obtain information from each other for use in the litigation. Consult with legal counsel to determine whether exemption 5 material would be routinely made available through the discovery process.

(3) Intra- or inter-agency memoranda or letters that are factual, or those reasonably segregable portions that are factual, are routinely made available through discovery, and shall be made available to a requester, unless the factual material is otherwise exempt from release, inextricably intertwined with the exempt information, so fragmented as to be uninformative, or so redundant of information already available to the requester as to provide no new substantive information.

(4) A direction or order from a superior to a subordinate, though contained in an internal communication, generally cannot be withheld from a requester if it constitutes policy guidance or a decision, as distinguished from a discussion of preliminary matters or a request for information or advice that would compromise the decision-making process.

(5) An internal communication concerning a decision that subsequently has been made a matter of public record must be made available to a requester when the rationale for the decision is expressly adopted or incorporated by reference in the record containing the decision.

(f) *Number 6 (5 U.S.C. 552(b)(6)).* Information in personnel and medical files, as well as similar personal information in other files, that, if disclosed to a requester, other than the person about whom the information is about, would result in a clearly unwarranted invasion of personal privacy. Release of information about an individual contained in a Privacy Act System of records that would constitute a clearly unwarranted invasion of privacy is prohibited, and could subject the releaser to civil and criminal penalties. If the information qualifies as exemption 6 information, there is no discretion in its release.

(1) Examples of other files containing personal information similar to that contained in personnel and medical files include:

(i) Those compiled to evaluate or adjudicate the suitability of candidates for civilian employment or membership in the Armed Forces, and the eligibility of individuals (civilian, military, or contractor employees) for security clearances, or for access to particularly sensitive classified information.

(ii) Files containing reports, records, and other material pertaining to personnel matters in which administrative action, including disciplinary action, may be taken.

(2) Home addresses are normally not releasable without the consent of the individuals concerned. This includes lists of home addressees and military quarters' addressees without the occupant's name. In addition, the names and duty addresses (postal and/or e-mail) of DoD military and civilian personnel who are assigned to units that are sensitive, routinely deployable, or stationed in foreign territories can constitute a clearly unwarranted invasion of personal privacy.

(i) Privacy interest. A privacy interest may exist in personal information even though the information has been disclosed at some place and time. If personal information is not freely available from sources other than the Federal Government, a privacy interest exists in its nondisclosure. The fact that the Federal Government expended funds to prepare, index and maintain records on personal information, and the fact that a requester invokes FOIA to obtain these records indicates the information is not freely available.

(ii) Names and duty addresses published in telephone directories, organizational charts, rosters and similar materials for personnel assigned to units that are sensitive, routinely deployable, or stationed in foreign territories are withholdable under this exemption.

(iii) This exemption shall not be used in an attempt to protect the privacy of a deceased person, but it may be used to protect the privacy of the deceased person's family if disclosure would rekindle grief, anguish, pain, embarrassment, or even disruption of peace of mind of surviving family members. In such situations, balance the surviving family members' privacy against the public's right to know to determine if disclosure is in the public interest. Additionally, the deceased's social security number should be withheld since it is used by the next of kin to receive benefits. Disclosures may be made to the immediate next of kin as defined in DoD Directive 5154.24.[5]

(iv) When the subject of an investigative report is the requester of the record and the report is contained in a Privacy Act system of records, it may only be denied to the requester if withholding is both authorized by DoD 5400.11–R,[6] and by exemption 6 of the FOIA.

(v) A clearly unwarranted invasion of the privacy of third parties identified in a personnel, medical or similar record constitutes a basis for deleting those reasonably segregable portions of that record. When withholding third party personal information from the subject of the record and the record is contained in a Privacy Act system of records, consult with legal counsel.

(vi) This exemption also applies when the fact of the existence or nonexistence of a responsive record would itself reveal personally private information, and the public interest in disclosure is not sufficient to outweigh the privacy interest. In this situation, DoD Components shall neither confirm nor deny the existence or nonexistence of the record being requested. This is a Glomar response, and exemption 6 must be cited in the response. Additionally, in order to insure personal privacy is not violated during referrals, DoD Components shall coordinate with other DoD Components or Federal Agencies before referring a record that is exempt under the Glomar concept.

(A) A ''refusal to confirm or deny'' response must be used consistently, not only when a record exists, but also when a record does not exist. Otherwise, the pattern of using a ''no records'' response when a record does not exist and a ''refusal to confirm or deny'' when a record does exist will itself disclose personally private information.

(B) Refusal to confirm or deny should not be used when:

(*1*) The person whose personal privacy is in jeopardy has provided the requester a waiver of his or her privacy rights;

(*2*) The person initiated or directly participated in an investigation that lead to the creation of an agency record seeks access to that record; or

(*3*) The person whose personal privacy is in jeopardy is deceased, the Agency is aware of that fact, and disclosure would not invade the privacy of the deceased's family. See paragraph (e)(2)(iii) of this section.

(g) *Number 7 (5 U.S.C. 552 (b)(7)).* Records or information compiled for law enforcement purposes; i.e., civil, criminal, or military law, including the implementation of Executive Orders or regulations issued pursuant to law. This exemption may be invoked to prevent disclosure of documents not originally created for, but later gathered for law enforcement purposes. With the exception of parts (C) and (F) (see paragraph (g)(1)(iii) of this section) of this exemption, this exemption is discretionary. If information qualifies as exemption (7)(C) or (7)(F) (see paragraph (g)(1)(iii) of this section) information, there is no discretion in its release.

(1) This exemption applies, however, only to the extent that production of such law enforcement records or information could result in the following:

(i) Could reasonably be expected to interfere with enforcement proceedings (5 U.S.C. 552(b)(7)(A)).

(ii) Would deprive a person of the right to a fair trial or to an impartial adjudication (5 U.S.C. 552(b)(7)(B)).

(iii) Could reasonably be expected to constitute an unwarranted invasion of personal privacy of a living person, including surviving family members of an individual identified in such a record (5 U.S.C. 552(b)(7)(C)).

(A) This exemption also applies when the fact of the existence or nonexistence

[5] See footnote 1 to § 286.1(a).

[6] See footnote 1 to § 286.1(a).

of a responsive record would itself reveal personally private information, and the public interest in disclosure is not sufficient to outweigh the privacy interest. In this situation, Components shall neither confirm nor deny the existence or nonexistence of the record being requested. This is a Glomar response, and exemption (7)(C) must be cited in the response. Additionally, in order to insure personal privacy is not violated during referrals, DoD Components shall coordinate with other DoD Components or Federal Agencies before referring a record that is exempt under the Glomar concept.

(B) A ''refusal to confirm or deny'' response must be used consistently, not only when a record exists, but also when a record does not exist. Otherwise, the pattern of using a ''no records'' response when a record does not exist and a ''refusal to confirm or deny'' when a record does exist will itself disclose personally private information.

(C) Refusal to confirm or deny should not be used when:

(*1*) The person whose personal privacy is in jeopardy has provided the requester with a waiver of his or her privacy rights; or

(*2*) The person whose personal privacy is in jeopardy is deceased, and the Agency is aware of that fact.

(D) Could reasonably be expected to disclose the identity of a confidential source, including a source within the Department of Defense; a State, local, or foreign agency or authority; or any private institution that furnishes the information on a confidential basis; and could disclose information furnished from a confidential source and obtained by a criminal law enforcement authority in a criminal investigation or by an agency conducting a lawful national security intelligence investigation (5 U.S.C. 552(b)(7)(D)).

(E) Would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law (5 U.S.C. 552(b)(7)(E)).

(F) Could reasonably be expected to endanger the life or physical safety of any individual (5 U.S.C. 552(b)(7)(F)).

(2) Some examples of exemption 7 are:

(i) Statements of witnesses and other material developed during the course of the investigation and all materials prepared in connection with related Government litigation or adjudicative proceedings.

(ii) The identity of firms or individuals being investigated for alleged irregularities involving contracting with the Department of Defense when no indictment has been obtained nor any civil action filed against them by the United States.

(iii) Information obtained in confidence, expressed or implied, in the course of a criminal investigation by a criminal law enforcement agency or office within a DoD Component, or a lawful national security intelligence investigation conducted by an authorized agency or office within a DoD Component. National security intelligence investigations include background security investigations and those investigations conducted for the purpose of obtaining affirmative or counterintelligence information.

(3) The right of individual litigants to investigative records currently available by law (such as, the Jencks Act, 18 U.S.C. 3500) is not diminished.

(4) When the subject of an investigative report is the requester of the record and the report is contained in a Privacy Act system of records, it may only be denied to the requester if withholding is both authorized by DoD 5400.11–R, and by exemption seven of the FOIA.

(5) *Exclusions.* Excluded from exemption 7 are the following two situations applicable to the Department of Defense (Components considering invoking an exclusion should first consult with the Department of Justice, Office of Information and Privacy.):

(i) Whenever a request is made that involves access to records or information compiled for law enforcement purposes, and the investigation or proceeding involves a possible violation of criminal law where there is reason to believe that the subject of the investigation or proceeding is unaware of its pendency, and the disclosure of the existence of the records could reasonably be expected to interfere with enforcement proceedings, Components may, during only such times as that circumstance continues, treat the records or information as not subject to the FOIA. In such situation, the response to the requester will state that no records were found.

(ii) Whenever informant records maintained by a criminal law enforcement organization within a DoD Component under the informant's name or personal identifier are requested by a third party using the informant's name or personal identifier, the Component may treat the records as not subject to the FOIA, unless the informant's status as an informant has been officially confirmed. If it is determined that the records are not subject to 5 U.S.C. 552(b)(7), the response to the requester will state that no records were found.

(h) *Number 8 (5 U.S.C. 552 (b)(8)).* Those contained in or related to examination, operation or condition reports prepared by, on behalf of, or for the use of any agency responsible for the regulation or supervision of financial institutions.

(i) *Number 9 (5 U.S.C. 552 (b)(9)).* Those containing geological and geophysical information and data (including maps) concerning wells.

Subpart D—For Official Use Only

§ 286.15 General provisions.

(a) *General.* Information that has not been given a security classification pursuant to the criteria of an Executive Order, but which may be withheld from the public for one or more of the reasons cited in FOIA exemptions 2 through 9 (see subpart C of this part) shall be considered as being for official use only. No other material shall be considered or marked ''For Official Use Only'' (FOUO), and FOUO is not authorized as an anemic form of classification to protect national security interests. Additional information on FOUO and other controlled, unclassified information may be found in DoD 5200.1–R.

(b) *Prior FOUO application.* The prior application of FOUO markings is not a conclusive basis for withholding a record that is requested under the FOIA. When such a record is requested, the information in it shall be evaluated to determine whether, under current circumstances, FOIA exemptions apply in withholding the record or portions of it. If any exemptions apply, the record may nonetheless be released as a discretionary matter when it is determined that no governmental interest will be jeopardized by its release.

(c) *Historical papers.* Records such as notes, working papers, and drafts retained as historical evidence of DoD Component actions enjoy no special status apart from the exemptions under the FOIA.

(d) *Time to mark records.* The marking of records at the time of their creation provides notice of FOUO content and facilitates review when a record is requested under the FOIA. Records requested under the FOIA that do not bear such markings shall not be assumed to be releasable without examination for the presence of information that requires continued protection and qualifies as exempt from public release.

(e) *Distribution statement.* Information in a technical document that requires a distribution statement pursuant to DoD Directive 5230.24 [7] shall bear that statement and may be marked FOUO, as appropriate.

§ 286.16 Markings.

(a) *Location of markings.* (1) An unclassified document containing FOUO information shall be marked ''For Official Use Only'' at the bottom on the outside of the front cover (if any), on each page containing FOUO information, and on the outside of the back cover (if any).

(2) Within a classified document, an individual page that contains both FOUO and classified information shall be marked at the top and bottom with the highest security classification of information appearing on the page. Individual paragraphs shall be marked at the appropriate classification level, as well as unclassified or FOUO, as appropriate.

(3) Within a classified document, an individual page that contains FOUO information but no classified information shall be marked ''For Official Use Only'' at the top and bottom of the page.

(4) Other records, such as photographs, films, tapes, or slides, shall be marked ''For Official Use Only'' or ''FOUO'' in a manner that ensures that a recipient or viewer is aware of the status of the information therein.

(5) FOUO material transmitted outside the Department of Defense requires application of an expanded marking to explain the significance of the FOUO marking. This may be accomplished by typing or stamping the following statement on the record prior to transfer:

This document contains information EXEMPT FROM MANDATORY DISCLOSURE under the FOIA. Exemption(s) _____ applies/apply.

(b) [Reserved]

§ 286.17 Dissemination and transmission.

(a) *Release and transmission procedures.* Until FOUO status is terminated, the release and transmission instructions that follow apply:

(1) FOUO information may be disseminated within DoD Components and between officials of DoD Components and DoD contractors, consultants, and grantees to conduct official business for the Department of Defense. Recipients shall be made aware of the status of such information, and transmission shall be by means that preclude unauthorized public disclosure. Transmittal documents shall call attention to the presence of FOUO attachments.

(2) DoD holders of FOUO information are authorized to convey such information to officials in other Departments and Agencies of the Executive and Judicial Branches to fulfill a government function, except to the extent prohibited by the Privacy Act. Records thus transmitted shall be marked ''For Official Use Only,'' and the recipient shall be advised that the information may qualify for exemption from public disclosure, pursuant to the FOIA, and that special handling instructions do or do not apply.

(3) Release of FOUO information to Members of Congress is governed by DoD Directive 5400.4.[8] Release to the GAO is governed by DoD Directive 7650.1.[9] Records released to the Congress or GAO should be reviewed to determine whether the information warrants FOUO status. If not, prior FOUO markings shall be removed or effaced. If withholding criteria are met, the records shall be marked FOUO and the recipient provided an explanation for such exemption and marking. Alternatively, the recipient may be requested, without marking the record, to protect against its public disclosure for reasons that are explained.

(b) *Transporting FOUO information.* Records containing FOUO information shall be transported in a manner that prevents disclosure of the contents. When not commingled with classified information, FOUO information may be sent via first-class mail or parcel post. Bulky shipments, such as distributions of FOUO Directives or testing materials, that otherwise qualify under postal regulations, may be sent by fourth-class mail.

(c) *Electronically and facsimile transmitted messages.* Each part of electronically and facsimile transmitted messages containing FOUO information shall be marked appropriately. Unclassified messages containing FOUO information shall contain the abbreviation ''FOUO'' before the beginning of the text. Such messages and facsimiles shall be transmitted in accordance with communications security procedures whenever practicable.

§ 286.18 Safeguarding FOUO information.

(a) *During duty hours.* During normal working hours, records determined to be FOUO shall be placed in an out-of-sight location if the work area is accessible to non-government personnel.

(b) *During nonduty hours.* At the close of business, FOUO records shall be stored so as to prevent unauthorized access. Filing such material with other unclassified records in unlocked files or desks, etc., is adequate when normal U.S. Government or Government-contractor internal building security is provided during nonduty hours. When such internal security control is not exercised, locked buildings or rooms normally provide adequate after-hours protection. If such protection is not considered adequate, FOUO material shall be stored in locked receptacles such as file cabinets, desks, or bookcases. FOUO records that are subject to the provisions of the National Security Act of 1959 shall meet the safeguards outlined for that group of records.

§ 286.19 Termination, disposal and unauthorized disclosure.

(a) *Termination.* The originator or other competent authority; e.g., initial denial and appellate authorities, shall terminate ''For Official Use Only'' markings or status when circumstances indicate that the information no longer requires protection from public disclosure. When FOUO status is terminated, all known holders shall be notified, to the extent practical. Upon notification, holders shall efface or remove the ''For Official Use Only'' markings, but records in file or storage need not be retrieved solely for that purpose.

(b) *Disposal.* (1) Nonrecord copies of FOUO materials may be destroyed by tearing each copy into pieces to prevent reconstructing, and placing them in regular trash containers. When local circumstances or experience indicates that this destruction method is not sufficiently protective of FOUO information, local authorities may direct other methods but must give due consideration to the additional expense balanced against the degree of sensitivity of the type of FOUO information contained in the records.

(2) Record copies of FOUO documents shall be disposed of in accordance with the disposal standards established under 44 U.S.C. 3301–3314, as implemented by DoD Component instructions concerning records disposal.

(c) *Unauthorized disclosure.* The unauthorized disclosure of FOUO records does not constitute an unauthorized disclosure of DoD information classified for security purposes. Appropriate administrative action shall be taken, however, to fix

[7] See footnote 1 to § 286.1(a).

[8] See footnote 1 to § 286.1(a).

[9] See footnote 1 to § 286.1(a).

responsibility for unauthorized disclosure whenever feasible, and appropriate disciplinary action shall be taken against those responsible. Unauthorized disclosure of FOUO information that is protected by the Privacy Act may also result in civil and criminal sanctions against responsible persons. The DoD Component that originated the FOUO information shall be informed of its unauthorized disclosure.

Subpart E—Release and Processing Procedures

§ 286.22 General provisions.

(a) *Public information.* (1) Since the policy of the Department of Defense is to make the maximum amount of information available to the public consistent with its other responsibilities, written requests for a DoD record made under the provisions of 5 U.S.C. 552 (a)(3) of the FOIA may be denied only when:

(i) Disclosure would result in a foreseeable harm to an interest protected by a FOIA exemption, and the record is subject to one or more of the exemptions of the FOIA.

(ii) The record has not been described well enough to enable the DoD Component to locate it with a reasonable amount of effort by an employee familiar with the files.

(iii) The requester has failed to comply with the procedural requirements, including the written agreement to pay or payment of any required fee imposed by the instructions of the DoD Component concerned. When personally identifiable information in a record is requested by the subject of the record or his attorney, notarization of the request, or a statement certifying under the penalty of perjury that their identity is true and correct may be required. Additionally, written consent of the subject of the record is required for disclosure from a Privacy Act System of records, even to the subject's attorney.

(2) Individuals seeking DoD information should address their FOIA requests to one of the addresses listed in appendix B of this part.

(b) *Requests from private parties.* The provisions of the FOIA are reserved for persons with private interests as opposed to U.S. Federal Agencies seeking official information. Requests from private persons will be made in writing, and should clearly show all other addressees within the Federal Government to which the request was also sent. This procedure will reduce processing time requirements, and ensure better inter-and intra-agency coordination. However, if the requester does not show all other addressees to which the request was also sent, DoD Components shall still process the request. DoD Components should encourage requesters to send requests by mail, facsimile, or by electronic means. Disclosure of records to individuals under the FOIA is considered public release of information, except as provided for in § 286.4(f) and § 286.12.

(c) *Requests from Government Officials.* Requests from officials of State or local Governments for DoD Component records shall be considered the same as any other requester. Requests from members of Congress not seeking records on behalf of a Congressional Committee, Subcommittee, either House sitting as a whole, or made on behalf of their constituents shall be considered the same as any other requester (see also § 286.4 (f) and paragraph (d) of this section). Requests from officials of foreign governments shall be considered the same as any other requester. Requests from officials of foreign governments that do not invoke the FOIA shall be referred to appropriate foreign disclosure channels and the requester so notified.

(d) *Privileged release outside of the FOIA to U.S. government official.* (1) Records exempt from release to the public under the FOIA may be disclosed in accordance with DoD Component regulations to agencies of the Federal Government, whether legislative, executive, or administrative, as follows:

(i) In response to a request of a Committee or Subcommittee of Congress, or to either House sitting as a whole in accordance with DoD Directive 5400.4;

(ii) To other Federal Agencies, both executive and administrative, as determined by the head of a DoD Component or designee;

(iii) In response to an order of a Federal court, DoD Components shall release information along with a description of the restrictions on its release to the public.

(2) DoD Components shall inform officials receiving records under the provisions of this paragraph that those records are exempt from public release under the FOIA. DoD Components also shall advise officials of any special handling instructions. Classified information is subject to the provisions of DoD 5200.1–R, and information contained in Privacy Act systems of records is subject to DoD 5400.11–R.

(e) *Consultation with affected DoD Component.* (1) When a DoD Component receives a FOIA request for a record in which an affected DoD organization (including a Combatant Command) has a clear and substantial interest in the subject matter, consultation with that affected DoD organization is required. As an example, where a DoD Component receives a request for records related to DoD operations in a foreign country, the cognizant Combatant Command for the area involved in the request shall be consulted before a release is made. Consultations may be telephonic, electronic, or in hard copy.

(2) The affected DoD Component shall review the circumstances of the request for host-nation relations, and provide, where appropriate, FOIA processing assistance to the responding DoD Component regarding release of information. Responding DoD Components shall provide copies of responsive records to the affected DoD Component when requested by the affected DoD Component. The affected DoD Component shall receive a courtesy copy of all releases in such circumstances.

(3) Nothing in the above paragraphs shall impede the processing of the FOIA request initially received by a DoD Component.

§ 286.23 Initial determinations.

(a) *Initial denial authority.* (1) Components shall limit the number of IDAs appointed. In designating its IDAs, a DoD Component shall balance the goals of centralization of authority to promote uniform decisions and decentralization to facilitate responding to each request within the time limitations of the FOIA.

(2) The initial determination whether to make a record available upon request may be made by any suitable official designated by the DoD Component in published regulations. The presence of the marking ''For Official Use Only'' does not relieve the designated official of the responsibility to review the requested record for the purpose of determining whether an exemption under the FOIA is applicable.

(3) The officials designated by DoD Components to make initial determinations should consult with public affairs officers (PAOs) to become familiar with subject matter that is considered to be newsworthy, and advise PAOs of all requests from news media representatives. In addition, the officials should inform PAOs in advance when they intend to withhold or partially withhold a record, if it appears that the withholding action may be challenged in the media.

(b) *Reasons for not releasing a record.* The following are reasons for not

complying with a request for a record under 5 U.S.C. 552(a)(3):

(1) *No records.* A search of files failed to identify responsive records.

(2) *Referrals.* The request is transferred to another DoD Component, or to another Federal Agency.

(3) *Request withdrawn.* The request is withdrawn by the requester.

(4) *Fee-related reason.* The requester is unwilling to pay fees associated with a request; the requester is past due in the payment of fees from a previous FOIA request; or the requester disagrees with the fee estimate.

(5) *Records not reasonably described.* A record has not been described with sufficient particularity to enable the DoD Component to locate it by conducting a reasonable search.

(6) *Not a proper FOIA request for some other reason.* The requester has failed unreasonably to comply with procedural requirements, other than fee-related, imposed by this part or DoD Component supplementing regulations.

(7) *Not an agency record.* The information requested is not a record within the meaning of the FOIA and this part.

(8) *Duplicate request.* The request is a duplicate request (e.g., a requester asks for the same information more than once). This includes identical requests received via different means (e.g., electronic mail, facsimile, mail, courier) at the same or different times.

(9) *Other (specify).* Any other reason a requester does not comply with published rules other than those outlined in paragraphs (b)(1) through (b)(8) of this section.

(10) *Partial or total denial.* The record is denied in whole or in part in accordance with procedures set forth in the FOIA.

(c) *Denial tests.* To deny a requested record that is in the possession and control of a DoD Component, it must be determined that disclosure of the record would result in a foreseeable harm to an interest protected by a FOIA exemption, and the record is exempt under one or more of the exemptions of the FOIA. An outline of the FOIA's exemptions is contained in subpart C of this part.

(d) *Reasonably segregable portions.* Although portions of some records may be denied, the remaining reasonably segregable portions must be released to the requester when it reasonably can be assumed that a skillful and knowledgeable person could not reconstruct the excised information. Unless indicating the extent of the deletion would harm an interest protected by an exemption, the amount of deleted information shall be indicated on the released portion of paper records by use of brackets or darkened areas indicating removal of information. In no case shall the deleted areas be left ''white'' without the use of brackets to show the bounds of deleted information. 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 such deletion was made, unless including the indication would harm an interest protected by the exemption under which the deletion is made. This may be done by use of brackets, shaded areas, or some other identifiable technique that will clearly show the limits of the deleted information. When a record is denied in whole, the response advising the requester of that determination will specifically state that it is not reasonable to segregate portions of the record for release.

(e) *Response to requester.* (1) Whenever possible, initial determinations to release or deny a record normally shall be made and the decision reported to the requester within 20 working days after receipt of the request by the official designated to respond. When a DoD Component has a significant number of pending requests which prevent a response determination within the 20 working day period, the requester shall be so notified in an interim response, and advised whether their request qualifies for the fast track or slow track within the DoD Components' multitrack processing system. Requesters who do not meet the criteria for fast track processing shall be given the opportunity to limit the scope of their request in order to qualify for fast track processing. See also § 286.4(d)(2), for greater detail on multitrack processing and compelling need meriting expedited processing.

(2) When a decision is made to release a record, a copy should be made available promptly to the requester once he has complied with preliminary procedural requirements.

(3) When a request for a record is denied in whole or in part, the official designated to respond shall inform the requester in writing of the name and title or position of the official who made the determination, and shall explain to the requester the basis for the determination in sufficient detail to permit the requester to make a decision concerning appeal. The requester specifically shall be informed of the exemptions on which the denial is based, inclusive of a brief statement describing what the exemption(s) cover. When the initial denial is based in whole or in part on a security classification, the explanation should include a summary of the applicable Executive Order criteria for classification, as well as an explanation, to the extent reasonably feasible, of how those criteria apply to the particular record in question. The requester shall also be advised of the opportunity and procedures for appealing an unfavorable determination to a higher final authority within the DoD Component.

(4) The final response to the requester should contain information concerning the fee status of the request, consistent with the provisions of subpart F of this part. When a requester is assessed fees for processing a request, the requester's fee category shall be specified in the response letter. Components also shall provide the requester with a complete cost breakdown (e.g., 15 pages of office reproduction at $0.15 per page; 5 minutes of computer search time at $43.50 per minute, 2 hours of professional level search at $25 per hour, etc.) in the response letter.

(5) The explanation of the substantive basis for a denial shall include specific citation of the statutory exemption applied under provisions of this part; e.g., 5 U.S.C. 552(b)(1). Merely referring to a classification; to a ''For Official Use Only'' marking on the requested record; or to this part or a DoD Component's part does not constitute a proper citation or explanation of the basis for invoking an exemption.

(6) When the time for response becomes an issue, the official responsible for replying shall acknowledge to the requester the date of the receipt of the request.

(7) When denying a request for records, in whole or in part, a DoD Component shall 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. This estimate should be in number of pages or in some other reasonable form of estimation, unless the volume is otherwise indicated through deletions on records disclosed in part.

(8) When denying a request for records in accordance with a statute qualifying as a FOIA exemption 3 statute, DoD Components shall, in addition to stating the particular statute relied upon to deny the information, also state whether a court has upheld the decision to withhold the information under the particular statute, and a concise description of the scope of the information being withheld.

(f) *Extension of time.* (1) In unusual circumstances, when additional time is

needed to respond to the initial request, the DoD Component shall acknowledge the request in writing within the 20 day period, describe the 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 paragraphs (f)(2) through (f)(6) of this section.

(2) With respect to a request for which a written notice has extended the time limits by 10 additional working days, and the Component determines that it cannot make a response determination within that additional 10 working day period, the requester shall be notified and provided an opportunity to limit the scope of the request so that it may be processed within the extended time limit, or an opportunity to arrange an alternative time frame for processing the request or a modified request. Refusal by the requester to reasonably modify the request or arrange for an alternative time frame shall be considered a factor in determining whether exceptional circumstances exist with respect to DoD Components' request backlogs. Exceptional circumstances do not include a delay that results from predictable component backlogs, unless the DoD Component demonstrates reasonable progress in reducing its backlog.

(3) Unusual circumstances that may justify delay are:

(i) The need to search for and collect the requested records from other facilities that are separate from the office determined responsible for a release or denial decision on the requested information.

(ii) The need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records which are requested in a single request.

(iii) The need for consultation, which shall be conducted with all practicable speed, with other agencies having a substantial interest in the determination of the request, or among two or more DoD Components having a substantial subject-matter interest in the request.

(4) DoD Components may aggregate certain requests by the same requester, or by a group of requesters acting in concert, if the DoD Component reasonably believes that such requests actually constitute a single request, which would otherwise satisfy the unusual circumstances set forth in paragraph (f)(3) of this section, and the requests involve clearly related matters. Multiple requests involving unrelated matters shall not be aggregated. If the requests are aggregated under these conditions, the requester or requesters shall be so notified.

(5) In cases where the statutory time limits cannot be met and no informal extension of time has been agreed to, the inability to process any part of the request within the specified time should be explained to the requester with a request that he agree to await a substantive response by an anticipated date. It should be made clear that any such agreement does not prejudice the right of the requester to appeal the initial decision after it is made. DoD Components are reminded that the requester still retains the right to treat this delay as a defacto denial with full administrative remedies.

(6) As an alternative to the taking of formal extensions of time as described in § 286.23(f), the negotiation by the cognizant FOIA coordinating office of informal extensions in time with requesters is encouraged where appropriate.

(g) *Misdirected requests.* Misdirected requests shall be forwarded promptly to the DoD Component or other Federal Agency with the responsibility for the records requested. The period allowed for responding to the request misdirected by the requester shall not begin until the request is received by the DoD Component that manages the records requested.

(h) *Records of non-U.S. government source.* (1) When a request is received for a record that falls under exemption 4 (see § 286.12 (d)), that was obtained from a non-U.S. Government source, or for a record containing information clearly identified as having been provided by a non-U.S. Government source, the source of the record or information (also known as ''the submitter'' for matters pertaining to proprietary data under 5 U.S.C. 552) Exemption (b)(4)) (§ 286.12(d), this part and E. O. 12600 (3 CFR, 1987 Comp., p.235)) shall be notified promptly of that request and afforded reasonable time (e.g., 30 calendar days) to present any objections concerning the release, unless it is clear that there can be no valid basis for objection. This practice is required for those FOIA requests for data not deemed clearly exempt from disclosure under exemption (b)(4) of 5 U.S.C. 552. If, for example, the record or information was provided with actual or presumptive knowledge of the non-U.S. Government source and established that it would be made available to the public upon request, there is no obligation to notify the source. Any objections shall be evaluated. The final decision to disclose information claimed to be exempt under exemption (b)(4) shall be made by an official equivalent in rank to the official who would make the decision to withhold that information under the FOIA. When a substantial issue has been raised, the DoD Component may seek additional information from the source of the information and afford the source and requester reasonable opportunities to present their arguments on the legal and substantive issues involved prior to making an agency determination. When the source advises it will seek a restraining order or take court action to prevent release of the record or information, the requester shall be notified, and action on the request normally shall not be taken until after the outcome of that court action is known. When the requester brings court action to compel disclosure, the submitter shall be promptly notified of this action.

(2) If the submitted information is a proposal in response to a solicitation for a competitive proposal, and the proposal is in the possession and control of DoD, and meets the requirements of 10 U.S.C. 2305(g), the proposal shall not be disclosed, and no submitter notification and subsequent analysis is required. The proposal shall be withheld from public disclosure pursuant to 10 U.S.C. 2305(g) and exemption (b)(3) of 5 U.S.C. 552. This statute does not apply to bids, unsolicited proposals, or any proposal that is set forth or incorporated by reference in a contract between a DoD Component and the offeror that submitted the proposal. In such situations, normal submitter notice shall be conducted in accordance with paragraph (h)(1) of this section, except for sealed bids that are opened and read to the public. The term proposal means information contained in or originating from any proposal, including a technical, management, or cost proposal submitted by an offeror in response to solicitation for a competitive proposal, but does not include an offeror's name or total price or unit prices when set forth in a record other than the proposal itself. Submitter notice, and analysis as appropriate, are required for exemption (b)(4) matters that are not specifically incorporated in 10 U.S.C. 2305(g).

(3) If the record or information was submitted on a strictly voluntary basis, absent any exercised authority that prescribes criteria for submission, and after consultation with the submitter, it is absolutely clear that the record or information would customarily not be released to the public, the submitter need not be notified. Examples of exercised authorities prescribing criteria for submission are statutes, Executive Orders, regulations, invitations for bids,

requests for proposals, and contracts. Records or information submitted under these authorities are not voluntary in nature. When it is not clear whether the information was submitted on a voluntary basis, absent any exercised authority, and whether it would customarily be released to the public by the submitter, notify the submitter and ask that it describe its treatment of the information, and render an objective evaluation. If the decision is made to release the information over the objection of the submitter, notify the submitter and afford the necessary time to allow the submitter to seek a restraining order, or take court action to prevent release of the record or information.

(4) The coordination provisions of this paragraph also apply to any non-U.S. Government record in the possession and control of the DoD from multi-national organizations, such as the North Atlantic Treaty Organization (NATO), United Nations Commands, the North American Aerospace Defense Command (NORAD), the Inter-American Defense Board, or foreign governments. Coordination with foreign governments under the provisions of this paragraph may be made through Department of State, or the specific foreign embassy.

(i) *File of initial denials.* Copies of all initial denials shall be maintained by each DoD Component in a form suitable for rapid retrieval, periodic statistical compilation, and management evaluation. Records denied at the initial stage shall be maintained for a period of six years to meet the statute of limitations requirement.

(j) *Special mail services.* Components are authorized to use registered mail, certified mail, certificates of mailing and return receipts. However, their use should be limited to instances where it appears advisable to establish proof of dispatch or receipt of FOIA correspondence. The requester shall be notified that they are responsible for the full costs of special services.

(k) *Receipt accounts.* The Treasurer of the United States has established two accounts for FOIA receipts, and all money orders or checks remitting FOIA fees should be made payable to the U.S. Treasurer. These accounts, which are described in paragraphs (k)(1) and (k)(2) of this section, shall be used for depositing all FOIA receipts, except receipts for industrially funded and non appropriated funded activities. Components are reminded that the below account numbers must be preceded by the appropriate disbursing office two digit prefix. Industrially funded and non appropriated funded activity FOIA receipts shall be deposited to the applicable fund.

(1) *Receipt account 3210 sale of publications and reproductions, Freedom of Information Act.* This account shall be used when depositing funds received from providing existing publications and forms that meet the Receipt Account Series description found in Federal Account Symbols and Titles.

(2) *Receipt account 3210 fees and other charges for services, Freedom of Information Act.* This account is used to deposit search fees, fees for duplicating and reviewing (in the case of commercial requesters) records to satisfy requests that could not be filled with existing publications or forms.

§ 286.24 Appeals.

(a) *General.* If the official designated by the DoD Component to make initial determinations on requests for records declines to provide a record because the official considers it exempt under one or more of the exemptions of the FOIA, that decision may be appealed by the requester, in writing, to a designated appellate authority. The appeal should be accompanied by a copy of the letter denying the initial request. Such appeals should contain the basis for disagreement with the initial refusal. Appeal procedures also apply to the disapproval of a fee category claim by a requester, disapproval of a request for waiver or reduction of fees, disputes regarding fee estimates, review on an expedited basis a determination not to grant expedited access to agency records, for no record determinations when the requester considers such responses adverse in nature, not providing a response determination to a FOIA request within the statutory time limits, or any determination found to be adverse in nature by the requester. Appeals of Office of the Secretary of Defense and Chairman of the Joint Chiefs of Staff determinations may be sent to the address in appendix B of this part. If a request is merely misaddressed, and the receiving DoD Component simply advises the requester of such and refers the request to the appropriate DoD Component, this shall not be considered a no record determination.

(b) *Time of receipt.* A FOIA appeal has been received by a DoD Component when it reaches the office of an appellate authority having jurisdiction. Misdirected appeals should be referred expeditiously to the proper appellate authority.

(c) *Time limits.* (1) The requester shall be advised to file an appeal so that it is postmarked no later than 60 calendar days after the date of the initial denial letter. If no appeal is received, or if the appeal is postmarked after the conclusion of this 60-day period, the case may be considered closed. In cases where the requester is provided several incremental determinations for a single request, the time for the appeal shall not begin until the date of the final response. Records that are denied shall be retained for a period of six years to meet the statute of limitations requirement.

(2) Final determinations on appeals normally shall be made within 20 working days after receipt. When a DoD Component has a significant number of appeals preventing a response determination within 20 working days, the appeals shall be processed in a multitrack processing system, based at a minimum, on the three processing tracks established for initial requests. See § 286.4(d). All of the provisions of § 286.4(d) apply also to appeals of initial determinations, to include establishing additional processing queues as needed.

(d) *Delay in responding to an appeal.* (1) If additional time is needed due to the unusual circumstances described in § 286.23(f), the final decision may be delayed for the number of working days (not to exceed 10), that were not used as additional time for responding to the initial request.

(2) If a determination cannot be made and the requester notified within 20 working days, the appellate authority shall acknowledge to the requester, in writing, the date of receipt of the appeal, the circumstances surrounding the delay, and the anticipated date for substantive response. Requesters shall be advised that, if the delay exceeds the statutory extension provision or is for reasons other than the unusual circumstances identified in § 286.23(f), they may consider their administrative remedies exhausted. They may, however, without prejudicing their right of judicial remedy, await a substantive response. The DoD Component shall continue to process the case expeditiously.

(e) *Response to the requester.* (1) When an appellate authority makes a final determination to release all or a portion of records withheld by an IDA, a written response and a copy of the records so released should be forwarded promptly to the requester after compliance with any preliminary procedural requirements, such as payment of fees.

(2) Final refusal of an appeal must be made in writing by the appellate authority or by a designated representative. The response, at a minimum, shall include the following:

(i) The basis for the refusal shall be explained to the requester in writing, both with regard to the applicable statutory exemption or exemptions invoked under provisions of the FOIA, and with respect to other appeal matters as set forth in § 286.24(a).

(ii) When the final refusal is based in whole or in part on a security classification, the explanation shall include a determination that the record meets the cited criteria and rationale of the governing Executive Order, and that this determination is based on a declassification review, with the explanation of how that review confirmed the continuing validity of the security classification.

(iii) The final denial shall include the name and title or position of the official responsible for the denial.

(iv) In the case of appeals for total denial of records, the response shall advise the requester that the information being denied does not contain meaningful portions that are reasonably segregable.

(v) When the denial is based upon an exemption 3 statute (see subpart C of this part), the response, in addition to citing the statute relied upon to deny the information, shall state whether a court has upheld the decision to withhold the information under the statute, and shall contain a concise description of the scope of the information withheld.

(vi) The response shall advise the requester of the right to judicial review.

(f) *Consultation.* (1) Final refusal involving issues not previously resolved or that the DoD Component knows to be inconsistent with rulings of other DoD Components ordinarily should not be made before consultation with the DoD Office of the General Counsel.

(2) Tentative decisions to deny records that raise new or significant legal issues of potential significance to other Agencies of the Government shall be provided to the DoD Office of the General Counsel.

§ 286.25 Judicial actions.

(a) *General.* (1) This section states current legal and procedural rules for the convenience of the reader. The statements of rules do not create rights or remedies not otherwise available, nor do they bind the Department of Defense to particular judicial interpretations or procedures.

(2) A requester may seek an order from a U.S. District Court to compel release of a record after administrative remedies have been exhausted; i.e., when refused a record by the head of a Component or an appellate designee or when the DoD Component has failed to respond within the time limits prescribed by the FOIA and in this part.

(b) *Jurisdiction.* The requester may bring suit in the U.S. District Court in the district in which the requester resides or is the requesters place of business, in the district in which the record is located, or in the District of Columbia.

(c) *Burden of proof.* The burden of proof is on the DoD Component to justify its refusal to provide a record. The court shall evaluate the case de novo (anew) and may elect to examine any requested record in camera (in private) to determine whether the denial was justified.

(d) *Actions by the court.* (1) When a DoD Component has failed to make a determination within the statutory time limits but can demonstrate due diligence in exceptional circumstances, to include negotiating with the requester to modify the scope of their request, the court may retain jurisdiction and allow the Component additional time to complete its review of the records.

(2) If the court determines that the requester's complaint is substantially correct, it may require the United States to pay reasonable attorney fees and other litigation costs.

(3) When the court orders the release of denied records, it may also issue a written finding that the circumstances surrounding the withholding raise questions whether DoD Component personnel acted arbitrarily and capriciously. In these cases, the special counsel of the Merit System Protection Board shall conduct an investigation to determine whether or not disciplinary action is warranted. The DoD Component is obligated to take the action recommended by the special counsel.

(4) The court may punish the responsible official for contempt when a DoD Component fails to comply with the court order to produce records that it determines have been withheld improperly.

(e) *Non-United States government source information.* A requester may bring suit in a U.S. District Court to compel the release of records obtained from a non-government source or records based on information obtained from a non-government source. Such source shall be notified promptly of the court action. When the source advises that it is seeking court action to prevent release, the DoD Component shall defer answering or otherwise pleading to the complainant as long as permitted by the Court or until a decision is rendered in the court action of the source, whichever is sooner.

(f) *FOIA litigation.* Personnel responsible for processing FOIA requests at the DoD Component level shall be aware of litigation under the FOIA. Such information will provide management insights into the use of the nine exemptions by Component personnel. Whenever a complaint under the FOIA is filed in a U.S. District Court, the DoD Component named in the complaint shall forward a copy of the complaint by any means to the Director, Freedom of Information and Security Review with an information copy to the DoD Office of the General Counsel, ATTN: Office of Legal Counsel.

Subpart F—Fee Schedule

§ 286.28 General provisions.

(a) *Authorities.* The Freedom of Information Act , as amended; the Paperwork Reduction Act (44 U.S.C. Chapter 35), as amended; the Privacy Act of 1974, as amended; the Budget and Accounting Act of 1921 and the Budget and Accounting Procedures Act, as amended (see 31 U.S.C.); and 10 U.S.C. 2328.

(b) *Application.* (1) The fees described in this subpart apply to FOIA requests, and conform to the Office of Management and Budget Uniform Freedom of Information Act Fee Schedule and Guidelines. They reflect direct costs for search, review (in the case of commercial requesters); and duplication of documents, collection of which is permitted by the FOIA. They are neither intended to imply that fees must be charged in connection with providing information to the public in the routine course of business, nor are they meant as a substitute for any other schedule of fees, such as DoD 7000.14–R,[10] which does not supersede the collection of fees under the FOIA. Nothing in this subchapter shall supersede fees chargeable under a statute specifically providing for setting the level of fees for particular types of records. A ''statute specifically providing for setting the level of fees for particular types of records'' (5 U.S.C. 552 (a)(4)(a)(vi)) means any statute that enables a Government Agency such as the Government Printing Office (GPO) or the National Technical Information Service (NTIS), to set and collect fees. Components should ensure that when documents that would be responsive to a request are maintained for distribution by agencies operating statutory-based fee schedule programs such as the GPO or NTIS, they inform requesters of the

[10] See footnote 3 to § 286.12(a).

steps necessary to obtain records from those sources.

(2) The *term direct costs* means those expenditures a Component actually makes in searching for, reviewing (in the case of commercial requesters), and duplicating documents to respond to an FOIA request. Direct costs include, for example, the salary of the employee performing the work (the basic rate of pay for the employee plus 16 percent of that rate to cover benefits), and the costs of operating duplicating machinery. These factors have been included in the fee rates prescribed at § 286.29. Not included in direct costs are overhead expenses such as costs of space, heating or lighting the facility in which the records are stored.

(3) The *term search* includes all time spent looking, both manually and electronically, for material that is responsive to a request. Search also includes a page-by-page or line-by-line identification (if necessary) of material in the record to determine if it, or portions thereof are responsive to the request. Components should ensure that searches are done in the most efficient and least expensive manner so as to minimize costs for both the Component and the requester. For example, Components should not engage in line-by-line searches when duplicating an entire document known to contain responsive information would prove to be the less expensive and quicker method of complying with the request. Time spent reviewing documents in order to determine whether to apply one or more of the statutory exemptions is not search time, but review time. See paragraph (b)(5) of this section for the definition of review, and paragraph (c)(5) of this section and § 286.29(b) for information pertaining to computer searches.

(i) When requested, and when there is reason to believe that some records will be located, Components shall conduct partial searches. A partial search is defined as any search conducted until the requester's hourly and/or fee threshold is met, even if responsive documents are not located. In the case of news media, educational and noncommercial scientific requesters, an hourly threshold must be specified by the requester before the Component begins searching. However, if, by a Component's role or mission, the conduct of a partial search would harm an interest protected by a FOIA exemption, the Component shall not conduct a partial search.

(ii) [Reserved]

(4) The *term duplication* refers to the process of making a copy of a document in response to an FOIA request. Such copies can take the form of paper copy, microfiche, audiovisual, or machine readable documentation (e.g., magnetic tape or disc), among others. Every effort will be made to ensure that the copy provided is in a form that is reasonably useable, the requester shall be notified that the copy provided is the best available and that the Agency's master copy shall be made available for review upon appointment. For duplication of computer tapes and audiovisual, the actual cost, including the operator's time, shall be charged. In practice, if a Component estimates that assessable duplication charges are likely to exceed $25.00, it shall notify the requester of the estimate, unless the requester has indicated in advance his or her willingness to pay fees as high as those anticipated. Such a notice shall offer a requester the opportunity to confer with Component personnel with the object of reformulating the request to meet his or her needs at a lower cost.

(5) The *term review* refers to the process of examining documents located in response to an FOIA request to determine whether one or more of the statutory exemptions permit withholding. It also includes processing the documents for disclosure, such as excising them for release. Review does not include the time spent resolving general legal or policy issues regarding the application of exemptions. It should be noted that charges for commercial requesters may be assessed only for the initial review. Components may not charge for reviews required at the administrative appeal level of an exemption already applied. However, records or portions of records withheld in full under an exemption that is subsequently determined not to apply may be reviewed again to determine the applicability of other exemptions not previously considered. The costs for such a subsequent review would be properly assessable.

(c) *Fee restrictions.* (1) No fees may be charged by any DoD Component if the costs of routine collection and processing of the fee are likely to equal or exceed the amount of the fee. With the exception of requesters seeking documents for a commercial use, Components shall provide the first two hours of search time, and the first one hundred pages of duplication without charge. For example, for a request (other than one from a commercial requester) that involved two hours and ten minutes of search time, and resulted in one hundred and five pages of documents, a Component would determine the cost of only ten minutes of search time, and only five pages of reproduction. If this processing cost was equal to, or less than, the cost to the Component for billing the requester and processing the fee collected, no charges would result.

(2) Requesters receiving the first two hours of search and the first one hundred pages of duplication without charge are entitled to such only once per request. Consequently, if a Component, after completing its portion of a request, finds it necessary to refer the request to a subordinate office, another DoD Component, or another Federal Agency to action their portion of the request, the referring Component shall inform the recipient of the referral of the expended amount of search time and duplication cost to date.

(3) The elements to be considered in determining the ''cost of collecting a fee'' are the administrative costs to the Component of receiving and recording a remittance, and processing the fee for deposit in the Department of Treasury's special account. The cost to the Department of Treasury to handle such remittance is negligible and shall not be considered in Components' determinations.

(4) For the purposes of these restrictions, the word ''pages'' refers to paper copies of a standard size, which will normally be ''8½×11'' or ''11×14''. Thus, requesters would not be entitled to 100 microfiche or 100 computer disks, for example. A microfiche containing the equivalent of 100 pages or 100 pages of computer printout however, might meet the terms of the restriction.

(5) In the case of computer searches, the first two free hours will be determined against the salary scale of the individual operating the computer for the purposes of the search. As an example, when the direct costs of the computer central processing unit, input-output devices, and memory capacity equal $24.00 (two hours of equivalent search at the clerical level), amounts of computer costs in excess of that amount are chargeable as computer search time. In the event the direct operating cost of the hardware configuration cannot be determined, computer search shall be based on the salary scale of the operator executing the computer search. See § 286.29 for further details regarding fees for computer searches.

(d) *Fee waivers.* (1) Documents shall be furnished without charge, or at a charge reduced below fees assessed to the categories of requesters in paragraph (e) of this section when the Component determines that waiver or reduction of the fees is in the public interest because furnishing the information is likely to contribute significantly to public understanding of the operations or

activities of the Department of Defense and is not primarily in the commercial interest of the requester.

(2) When assessable costs for a FOIA request total $15.00 or less, fees shall be waived automatically for all requesters, regardless of category.

(3) Decisions to waive or reduce fees that exceed the automatic waiver threshold shall be made on a case-by-case basis, consistent with the following factors:

(i) Disclosure of the information ''is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the Government.''

(A) *The subject of the request.* Components should analyze whether the subject matter of the request involves issues that will significantly contribute to the public understanding of the operations or activities of the Department of Defense. Requests for records in the possession of the Department of Defense which were originated by non-government organizations and are sought for their intrinsic content, rather than informative value, will likely not contribute to public understanding of the operations or activities of the Department of Defense. An example of such records might be press clippings, magazine articles, or records forwarding a particular opinion or concern from a member of the public regarding a DoD activity. Similarly, disclosures of records of considerable age may or may not bear directly on the current activities of the Department of Defense; however, the age of a particular record shall not be the sole criteria for denying relative significance under this factor. It is possible to envisage an informative issue concerning the current activities of the Department of Defense, based upon historical documentation. Requests of this nature must be closely reviewed consistent with the requester's stated purpose for desiring the records and the potential for public understanding of the operations and activities of the Department of Defense.

(B) *The informative value of the information to be disclosed.* This factor requires a close analysis of the substantive contents of a record, or portion of the record, to determine whether disclosure is meaningful, and shall inform the public on the operations or activities of the Department of Defense. While the subject of a request may contain information that concerns operations or activities of the Department of Defense, it may not always hold great potential for contributing to a meaningful understanding of these operations or activities. An example of such would be a previously released record that has been heavily redacted, the balance of which may contain only random words, fragmented sentences, or paragraph headings. A determination as to whether a record in this situation will contribute to the public understanding of the operations or activities of the Department of Defense must be approached with caution, and carefully weighed against the arguments offered by the requester. Another example is information already known to be in the public domain. Disclosure of duplicative, or nearly identical information already existing in the public domain may add no meaningful new information concerning the operations and activities of the Department of Defense.

(C) *The contribution to an understanding of the subject by the general public likely to result from disclosure.* The key element in determining the applicability of this factor is whether disclosure will inform, or have the potential to inform the public, rather than simply the individual requester or small segment of interested persons. The identity of the requester is essential in this situation in order to determine whether such requester has the capability and intention to disseminate the information to the public. Mere assertions of plans to author a book, researching a particular subject, doing doctoral dissertation work, or indigence are insufficient without demonstrating the capacity to further disclose the information in a manner that will be informative to the general public. Requesters should be asked to describe their qualifications, the nature of their research, the purpose of the requested information, and their intended means of dissemination to the public.

(D) *The significance of the contribution to public understanding.* In applying this factor, Components must differentiate the relative significance or impact of the disclosure against the current level of public knowledge, or understanding which exists before the disclosure. In other words, will disclosure on a current subject of wide public interest be unique in contributing previously unknown facts, thereby enhancing public knowledge, or will it basically duplicate what is already known by the general public? A decision regarding significance requires objective judgment, rather than subjective determination, and must be applied carefully to determine whether disclosure will likely lead to a significant public understanding of the issue. Components shall not make value judgments as to whether the information is important enough to be made public.

(ii) Disclosure of the information ''is not primarily in the commercial interest of the requester.''

(A) *The existence and magnitude of a commercial interest.* If the request is determined to be of a commercial interest, Components should address the magnitude of that interest to determine if the requester's commercial interest is primary, as opposed to any secondary personal or non-commercial interest. In addition to profit-making organizations, individual persons or other organizations may have a commercial interest in obtaining certain records. Where it is difficult to determine whether the requester is of a commercial nature, Components may draw inference from the requester's identity and circumstances of the request. In such situations, the provisions of paragraph (e) of this section, apply. Components are reminded that in order to apply the commercial standards of the FOIA, the requester's commercial benefit must clearly override any personal or non-profit interest.

(B) *The primary interest in disclosure.* Once a requester's commercial interest has been determined, Components should then determine if the disclosure would be primarily in that interest. This requires a balancing test between the commercial interest of the request against any public benefit to be derived as a result of that disclosure. Where the public interest is served above and beyond that of the requester's commercial interest, a waiver or reduction of fees would be appropriate. Conversely, even if a significant public interest exists, and the relative commercial interest of the requester is determined to be greater than the public interest, then a waiver or reduction of fees would be inappropriate. As examples, news media organizations have a commercial interest as business organizations; however, their inherent role of disseminating news to the general public can ordinarily be presumed to be of a primary interest. Therefore, any commercial interest becomes secondary to the primary interest in serving the public. Similarly, scholars writing books or engaged in other forms of academic research, may recognize a commercial benefit, either directly, or indirectly (through the institution they represent); however, normally such pursuits are primarily undertaken for educational purposes, and the application of a fee charge would be inappropriate. Conversely, data brokers or others who merely compile government information for

marketing can normally be presumed to have an interest primarily of a commercial nature.

(4) Components are reminded that the factors and examples used in this section are not all inclusive. Each fee decision must be considered on a case-by-case basis and upon the merits of the information provided in each request. When the element of doubt as to whether to charge or waive the fee cannot be clearly resolved, Components should rule in favor of the requester.

(5) In addition, the following additional circumstances describe situations where waiver or reduction of fees are most likely to be warranted:

(i) A record is voluntarily created to prevent an otherwise burdensome effort to provide voluminous amounts of available records, including additional information not requested.

(ii) A previous denial of records is reversed in total, or in part, and the assessable costs are not substantial (e.g. $15.00–$30.00).

(e) *Fee assessment.* (1) Fees may not be used to discourage requesters, and to this end, FOIA fees are limited to standard charges for direct document search, review (in the case of commercial requesters) and duplication.

(2) In order to be as responsive as possible to FOIA requests while minimizing unwarranted costs to the taxpayer, Components shall adhere to the following procedures:

(i) Analyze each request to determine the category of the requester. If the Component determination regarding the category of the requester is different than that claimed by the requester, the Component shall:

(A) Notify the requester to provide additional justification to warrant the category claimed, and that a search for responsive records will not be initiated until agreement has been attained relative to the category of the requester. Absent further category justification from the requester, and within a reasonable period of time (i.e., 30 calendar days), the Component shall render a final category determination, and notify the requester of such determination, to include normal administrative appeal rights of the determination.

(B) Advise the requester that, notwithstanding any appeal, a search for responsive records will not be initiated until the requester indicates a willingness to pay assessable costs appropriate for the category determined by the Component.

(ii) Requesters should submit a fee declaration appropriate for the following categories:

(A) *Commercial.* Requesters should indicate a willingness to pay all search, review and duplication costs.

(B) *Educational or noncommercial scientific institution or news media.* Requesters should indicate a willingness to pay duplication charges in excess of 100 pages if more than 100 pages of records are desired.

(C) *All others.* Requesters should indicate a willingness to pay assessable search and duplication costs if more than two hours of search effort or 100 pages of records are desired.

(iii) If the previous conditions are not met, then the request need not be processed and the requester shall be so informed.

(iv) In the situations described by paragraphs (e)(2)(i) and (e)(2)(ii) of this section, Components must be prepared to provide an estimate of assessable fees if desired by the requester. While it is recognized that search situations will vary among Components, and that an estimate is often difficult to obtain prior to an actual search, requesters who desire estimates are entitled to such before committing to a willingness to pay. Should Components' actual costs exceed the amount of the estimate or the amount agreed to by the requester, the amount in excess of the estimate or the requester's agreed amount shall not be charged without the requester's agreement.

(v) No DoD Component may require advance payment of any fee; i.e., payment before work is commenced or continued on a request, unless the requester has previously failed to pay fees in a timely fashion, or the agency has determined that the fee will exceed $250.00. As used in this sense, a timely fashion is 30 calendar days from the date of billing (the fees have been assessed in writing) by the Component.

(vi) Where a Component estimates or determines that allowable charges that a requester may be required to pay are likely to exceed $250.00, the Component shall notify the requester of the likely cost and obtain satisfactory assurance of full payment where the requester has a history of prompt payments, or require an advance payment of an amount up to the full estimated charges in the case of requesters with no history of payment.

(vii) Where a requester has previously failed to pay a fee charged in a timely fashion (i.e., within 30 calendar days from the date of the billing), the Component may require the requester to pay the full amount owed, plus any applicable interest, or demonstrate that he or she has paid the fee, and to make an advance payment of the full amount of the estimated fee before the Component begins to process a new or pending request from the requester. Interest will be at the rate prescribed in 31 U.S.C. 3717 and confirmed with respective Finance and Accounting Offices.

(viii) After all work is completed on a request, and the documents are ready for release, Components may request payment before forwarding the documents, particularly for those requesters who have no payment history, or for those requesters who have failed previously to pay a fee in a timely fashion (i.e., within 30 calendar days from the date of the billing). In the case of the latter, the previsions of paragraph (e)(2)(vii) of this section apply.

(ix) When Components act under paragraphs (e)(2)(i) through (e)(2)(vii) of this section, the administrative time limits of the FOIA will begin only after the Component has received a willingness to pay fees and satisfaction as to category determination, or fee payments (if appropriate).

(x) Components may charge for time spent searching for records, even if that search fails to locate records responsive to the request. Components may also charge search and review (in the case of commercial requesters) time if records located are determined to be exempt from disclosure. In practice, if the Component estimates that search charges are likely to exceed $25.00, it shall notify the requester of the estimated amount of fees, unless the requester has indicated in advance his or her willingness to pay fees as high as those anticipated. Such a notice shall offer the requester the opportunity to confer with Component personnel with the object of reformulating the request to meet his or her needs at a lower cost.

(3) *Commercial requesters.* Fees shall be limited to reasonable standard charges for document search, review and duplication when records are requested for commercial use. Requesters must reasonably describe the records sought. (See § 286.4(h))

(i) The term *commercial use* request refers to a request from, or on behalf of one who seeks information for a use or purpose that furthers the commercial, trade, or profit interest of the requester or the person on whose behalf the request is made. In determining whether a requester properly belongs in this category, Components must determine the use to which a requester will put the documents requested. Moreover, where a Component has reasonable cause to doubt the use to which a requester will put the records sought, or where that use is not clear from the request itself, Components should seek additional

clarification before assigning the request to a specific category.

(ii) When Components receive a request for documents for commercial use, they should assess charges which recover the full direct costs of searching for, reviewing for release, and duplicating the records sought. Commercial requesters (unlike other requesters) are not entitled to two hours of free search time, nor 100 free pages of reproduction of documents. Moreover, commercial requesters are not normally entitled to a waiver or reduction of fees based upon an assertion that disclosure would be in the public interest. However, because use is the exclusive determining criteria, it is possible to envision a commercial enterprise making a request that is not for commercial use. It is also possible that a non-profit organization could make a request that is for commercial use. Such situations must be addressed on a case-by-case basis.

(4) *Educational institution requesters.* Fees shall be limited to only reasonable standard charges for document duplication (excluding charges for the first 100 pages) when the request is made by an educational institution whose purpose is scholarly research. Requesters must reasonably describe the records sought (see § 286.4(h)). The term *educational institution* refers to a pre-school, a public or private elementary or secondary school, an institution of graduate high education, an institution of undergraduate higher education, an institution of professional education, and an institution of vocational education, which operates a program or programs of scholarly research. Fees shall be waived or reduced in the public interest if the criteria of paragraph (d) of this section, have been met.

(5) *Non-commercial scientific institution requesters.* Fees shall be limited to only reasonable standard charges for document duplication (excluding charges for the first 100 pages) when the request is made by a non-commercial scientific institution whose purpose is scientific research. Requesters must reasonably describe the records sought (see § 286.4(h)). The term *non-commercial scientific institution* refers to an institution that is not operated on a ''commercial'' basis as defined in paragraph (e)(3) of this section and that is operated solely for the purpose of conducting scientific research, the results of which are not intended to promote any particular product or industry. Fees shall be waived or reduced in the public interest if the criteria of paragraph (d) of this section, have been met.

(6) Components shall provide documents to requesters in paragraphs (e)(4) and (e)(5) of this section, for the cost of duplication alone, excluding charges for the first 100 pages. To be eligible for inclusion in these categories, requesters must show that the request is being made under the auspices of a qualifying institution and that the records are not sought for commercial use, but in furtherance of scholarly (from an educational institution) or scientific (from a non-commercial scientific institution) research.

(7) Representatives of the news media. Fees shall be limited to only reasonable standard charges for document duplication (excluding charges for the first 100 pages) when the request is made by a representative of the news media. Requesters must reasonably describe the records sought (see § 286.4(h)). Fees shall be waived or reduced if the criteria of paragraph (d) of this section, have been met.

(i) The term *representative of the news media* refers to any person actively gathering news for an entity that is organized and operated to publish or broadcast news to the public. The term ''news'' means information that is about current events or that would be of current interest to the public. Examples of news media entities include television or radio stations broadcasting to the public at large, and publishers of periodicals (but only in those instances when they can qualify as disseminators of ''news'') who make their products available for purchase or subscription by the general public. These examples are not meant to be all-inclusive. Moreover, as traditional methods of news delivery evolve (e.g., electronic dissemination of newspapers through telecommunications services), such alternative media would be included in this category. In the case of ''freelance'' journalists, they may be regarded as working for a news organization if they can demonstrate a solid basis for expecting publication though that organization, even through not actually employed by it. A publication contract would be the clearest proof, but Components may also look to the past publication record of a requester in making this determination.

(ii) To be eligible for inclusion in this category, a requester must meet the criteria in paragraph (e)(7)(i) of this section, and his or her request must not be made for commercial use. A request for records supporting the news dissemination function of the requester shall not be considered to be a request that is for a commercial use. For example, a document request by a newspaper for records relating to the investigation of a defendant in a current criminal trial of public interest could be presumed to be a request from an entity eligible for inclusion in this category, and entitled to records at the cost of reproduction alone (excluding charges for the first 100 pages).

(iii) ''Representative of the news media'' does not include private libraries, private repositories of Government records, or middlemen, such as information vendors or data brokers.

(8) *All other requesters.* Components shall charge requesters who do not fit into any of the categories described in paragraphs (e)(3), (e)(4), (e)(5), or (e)(7) of this section, fees which recover the full direct cost of searching for and duplicating records, except that the first two hours of search time and the first 100 pages of duplication shall be furnished without charge. Requesters must reasonably describe the records sought (see § 286.4(h)). Requests from subjects about themselves will continue to be treated under the fee provisions of the Privacy Act of 1974, which permit fees only for duplication. Components are reminded that this category of requester may also be eligible for a waiver or reduction of fees if disclosure of the information is in the public interest as defined under paragraph (d)(1) of this section. (See also paragraph (e)(3)(ii) of this section)

(f) *Aggregating requests.* Except for requests that are for a commercial use, a Component may not charge for the first two hours of search time or for the first 100 pages of reproduction. However, a requester may not file multiple requests at the same time, each seeking portions of a document or documents, solely in order to avoid payment of fees. When a Component reasonably believes that a requester or, on rare occasions, a group of requesters acting in concert, is attempting to break a request down into a series of requests for the purpose of avoiding the assessment of fees, the Agency may aggregate any such requests and charge accordingly. One element to be considered in determining whether a belief would be reasonable is the time period in which the requests have occurred. For example, it would be reasonable to presume that multiple requests of this type made within a 30-day period had been made to avoid fees. For requests made over a longer period however, such a presumption becomes harder to sustain and Components should have a solid basis for determining that aggregation is warranted in such cases. Components are cautioned that before aggregating requests from more than one requester,

they must have a concrete basis on which to conclude that the requesters are acting in concert and are acting specifically to avoid payment of fees. In no case may Components aggregate multiple requests on unrelated subjects from one requester.

(g) *Effect of the Debt Collection Act of 1982 (5 U.S.C. 5515 note).* The Debt Collection Act of 1982 (5 U.S.C. 5515 note) provides for a minimum annual rate of interest to be charged on overdue debts owed the Federal Government. Components may levy this interest penalty for any fees that remain outstanding 30 calendar days from the date of billing (the first demand notice) to the requester of the amount owed. The interest rate shall be as prescribed in 31 U.S.C. 3717. Components should verify the current interest rate with respective Finance and Accounting Offices. After one demand letter has been sent, and 30 calendar days have lapsed with no payment, Components may submit the debt to respective Finance and Accounting Offices for collection pursuant to 5 U.S.C. 5515 note.

(h) *Computation of fees.* The fee schedule in this subpart shall be used to compute the search, review (in the case of commercial requesters) and duplication costs associated with processing a given FOIA request. Costs shall be computed on time actually spent. Neither time-based nor dollar-based minimum charges for search, review and duplication are authorized. The appropriate fee category of the requester shall be applied before computing fees.

(i) *Refunds.* In the event that a Component discovers that it has overcharged a requester or a requester has overpaid, the Component shall promptly have a refund check issued to the requester.

§ 286.29 Collection of fees and fee rates.

(a) *Collection of fees.* Collection of fees will be made at the time of providing the documents to the requester or recipient when the requester specifically states that the costs involved shall be acceptable or acceptable up to a specified limit that covers the anticipated costs. Collection of fees may not be made in advance unless the requester has failed to pay previously assessed fees within 30 calendar days from the date of the billing by the DoD Component, or the Component has determined that the fee will be in excess of $250 (see § 286.28(e)).

(b) *Search time.*—(1) *Manual search.*

Type	Grade	Hourly rate (dollars)
Clerical	E9/GS8 and below	12
Professional.	O1–O6/GS9–GS15	25
Executive ..	O7/GS16/ES1 and above.	45

(2) *Computer search.* Fee assessments for computer search consists of two parts; individual time (hereafter referred to as human time), and machine time.

(i) *Human time.* Human time is all the time spent by humans performing the necessary tasks to prepare the job for a machine to execute the run command. If execution of a run requires monitoring by a human, that human time may be also assessed as computer search. The terms ''programmer/operator'' shall not be limited to the traditional programmers or operators. Rather, the terms shall be interpreted in their broadest sense to incorporate any human involved in performing the computer job (e.g. technician, administrative support, operator, programmer, database administrator, or action officer).

(ii) *Machine time.* Machine time involves only direct costs of the Central Processing Unit (CPU), input/output devices, and memory capacity used in the actual computer configuration. Only this CPU rate shall be charged. No other machine related costs shall be charged. In situations where the capability does not exist to calculate CPU time, no machine costs can be passed on to the requester. When CPU calculations are not available, only human time costs shall be assessed to requesters. Should DoD Components lease computers, the services charged by the lessor shall not be passed to the requester under the FOIA.

(c) *Duplication.*

Type	Cost per page (cents)
Pre-Printed material.	02
Office copy	15
Microfiche	25
Computer copies(tapes, discs or printouts).	Actual cost of duplicating the tape, disc or printout (includes operator's time and cost of the medium).

(d) *Review time (in the case of commercial requesters).*

Type	Grade	Hourly rate (dollars)
Clerical	E9/GS8 and below	12
Professional.	O1–O6/GS9–GS15	25
Executive ..	O7/GS16/ES1 and above.	45

(e) *Audiovisual documentary materials.* Search costs are computed as for any other record. Duplication cost is the actual direct cost of reproducing the material, including the wage of the person doing the work. Audiovisual materials provided to a requester need not be in reproducible format or quality.

(f) *Other records.* Direct search and duplication cost for any record not described in this section shall be computed in the manner described for audiovisual documentary material.

(g) *Costs for special services.* Complying with requests for special services is at the discretion of the Components. Neither the FOIA, nor its fee structure cover these kinds of services. Therefore, Components may recover the costs of special services requested by the requester after agreement has been obtained in writing from the requester to pay for one or more of the following services:

(1) Certifying that records are true copies.

(2) Sending records by special methods such as express mail, etc.

§ 286.30 Collection of fees and fee rates for technical data.

(a) *Fees for technical data.* Technical data, other than technical data that discloses critical technology with military or space application, if required to be released under the FOIA, shall be released after the person requesting such technical data pays all reasonable costs attributed to search, duplication and review of the records to be released. Technical data, as used in this section, means recorded information, regardless of the form or method of the recording of a scientific or technical nature (including computer software documentation). This term does not include computer software, or data incidental to contract administration, such as financial and/or management information. DoD Components shall retain the amounts received by such a release, and it shall be merged with and available for the same purpose and the same time period as the appropriation from which the costs were incurred in complying with request. All reasonable costs as used in this sense are the full costs to the Federal Government of rendering the service, or fair market value of the service, whichever is

higher. Fair market value shall be determined in accordance with commercial rates in the local geographical area. In the absence of a known market value, charges shall be based on recovery of full costs to the Federal Government. The full costs shall include all direct and indirect costs to conduct the search and to duplicate the records responsive to the request. This cost is to be differentiated from the direct costs allowable under § 286.29 for other types of information released under the FOIA.

(b) *Waiver.* Components shall waive the payment of costs required in paragraph (a) of this section, which are greater than the costs that would be required for release of this same information under § 286.29 if:

(1) The request is made by a citizen of the United States or a United States corporation, and such citizen or corporation certifies that the technical data requested is required to enable it to submit an offer, or determine whether it is capable of submitting an offer to provide the product to which the technical data relates to the United States or a contractor with the United States. However, Components may require the citizen or corporation to pay a deposit in an amount equal to not more than the cost of complying with the request, which will be refunded upon submission of an offer by the citizen or corporation;

(2) The release of technical data is requested in order to comply with the terms of an international agreement; or

(3) The Component determines in accordance with § 286.28(d)(1), that such a waiver is in the interest of the United States.

(c) *Fee rates*—(1) *Search time*—(i) *Manual search; clerical.*

Type	Grade	Hourly rate (dollars)
Clerical	E9/GS8 and below.	13.25
(Minimum charge)		8.30

(ii) *Manual search; professional and executive* (To be established at actual hourly rate prior to search. A minimum charge will be established at ½ Minimum Charge).

(2) Computer search is based on the total cost of the central processing unit, input-output devices, and memory capacity of the actual computer configuration. The wage (based upon the scale in (c)(1)(i) of this section) for the computer operator and/or programmer determining how to conduct, and subsequently executing the search will be recorded as part of the computer search. See § 286.29(b)(2) for further details regarding computer search.

(3) *Duplication.*

Type	Cost
Aerial photograph, maps, specifications, permits, charts, blueprints, and other technical engineering documents	$2.50
Engineering data (microfilm):	
i. Aperture cards	
A. Silver duplicate negative, per card	.75
When key punched and verified, per card	.85
B. Diazo duplicate negative, per card	.65
When key punched and verified, per card	.75
ii. 35mm roll film, per frame	.50
iii. 16mm roll film, per frame	.45
iv. Paper prints (engineering drawings), each	1.50
v. Paper reprints of microfilm indices, each	.10

(4) *Review time.*—(i) *Clerical.*

Type	Grade	Hourly rate ($)
Clerical	E9/GS8 and below	13.25
(Minimum Charge)		8.30

(ii) *Professional and executive* (To be established at actual hourly rate prior to review. A minimum charge will be established at an hourly rate).

(d) *Other technical data records.* Charges for any additional services not specifically provided in paragraph (c) of this section, consistent with Volume 11A of DoD 7000.14–R, shall be made by Components at the following rates:

(1) Minimum charge for office copy (up to six images)	$3.50
(2) Each additional image	.10
(3) Each typewritten page	3.50
(4) Certification and validation with seal, each	5.20
(5) Hand-drawn plots and sketches, each hour or fraction thereof	12.00

Subpart G—Reports

§ 286.33 Reports control.

(a) *General.* (1) The Annual Freedom of Information Act Report is mandated by the statute and reported on a fiscal year basis. Due to the magnitude of the requested statistics and the need to ensure accuracy of reporting, DoD Components shall track this data as requests are processed. This will also facilitate a quick and accurate compilation of statistics. DoD Components shall forward their report to the Directorate for Freedom of Information and Security Review no later than November 30 following the fiscal year's close. It may be submitted electronically and via hard copy accompanied by a computer diskette. In turn, DoD will produce a consolidated report for submission to the Attorney General, and ensure that a copy of the DoD consolidated report is placed on the Internet for public access.

(2) Existing DoD standards and registered data elements are to be

utilized to the greatest extent possible in accordance with the provisions of DoD Manual 8320.1–M.[11]

(3) The reporting requirement outlined in this subpart will be assigned Report Control Symbol DD–DA&M(A)1365.

(b) *Annual report content.* The current edition of DD Form 2564 will be used to submit component input. Instructions for completion follow:

(1) *Item 1: Initial request determinations.*—(i) *Total requests processed.* Enter the total number of initial FOIA requests responded to (completed) during the fiscal year.

Note: Since more than one action frequently is taken on a completed case, Total Actions (see paragraph (b)(1)(vi) of this section) the sum of paragraph (b)(1)(ii) through (b)(1)(v) of this section, can exceed total requests processed (See appendix E of this part for form layout).

(ii) *Granted in full.* Enter the total number of initial FOIA requests responded to that were granted in full during the fiscal year. (This may include requests granted by your office, yet still requiring action by another office.)

(iii) *Denied in part.* Enter the total number of initial FOIA requests responded to and denied in part based on one or more of the FOIA exemptions. (Do not report ''Other Reason Responses'' as a partial denial here, unless a FOIA exemption is used also.)

(iv) *Denied in full.* Enter the total number of initial FOIA requests responded to and denied in full based on one or more of the FOIA exemptions. (Do not report ''Other Reason Responses'' as denials here, unless a FOIA exemption is used also.)

(v) *''Other reason'' responses.* Enter the total number of initial FOIA requests in which you were unable to provide all or part of the requested information based on an ''Other Reason'' response. Paragraph (b)(2)(ii) of this section explains the nine possible ''Other Reasons.''

(vi) *Total actions.* Enter the total number of FOIA actions taken during the fiscal year. This number will be the sum of paragraph (b)(1)(ii) through (b)(1)(v) of this section.

Note: Total Actions must be equal to or greater than the number of Total Requests Processed (paragraph (b)(1)(i) of this section).

(2) *Item 2: Initial request exemptions and other reasons.*—(i) *Exemptions invoked on Initial requests determinations.* Enter the number of times an exemption was claimed for each request that was denied in full or in part. Since more than one exemption may be claimed when responding to a single request, this number will be equal to or greater than the sum of paragraphs (b)(1)(iii) and (b)(1)(iv) of this section. Note that the (b)(7) exemption is reported by categories identified in paragraphs (b)(2)(i)(A) through (b)(2)(i)(F) of this section:

(A) Interfere with enforcement;
(B) Fair trial right;
(C) Invasion of privacy;
(D) Protect confidential source;
(E) Disclose techniques; and
(F) Endanger life or safety.

(ii) *''Other reasons'' cited on initial determinations.* Identify the ''other reason'' response cited when responding to a FOIA request and enter the number of times each was claimed.

(A) *No records.* Enter the number of times a search of files failed to identify records responsive to subject request.

(B) *Referrals.* Enter the number of times a request was referred to another DoD Component or Federal Agency for action.

(C) *Request withdrawn.* Enter the number of times a request and/or appeal was withdrawn by a requester. (For appeals, report number in Item 4b on the report form (see appendix E of this part).)

(D) *Fee-related reason.* Requester is unwilling to pay the fees associated with a request; the requester is past due in the payment of fees from a previous FOIA request; or the requester disagrees with a fee estimate.

(E) *Records not reasonably described.* Enter the number of times a FOIA request could not be acted upon since the record had not been described with sufficient particularity to enable the DoD Component to locate it by conducting a reasonable search.

(F) *Not a proper FOIA request for some other reason.* Enter the number of times the requester has failed unreasonably to comply with procedural requirements, other than fee-related (described in paragraph (b)(2)(ii)(D) of this section), imposed by this part or a DoD Component's supplementing regulation.

(G) *Not an agency record.* Enter the number of times a requester was provided a response indicating the requested information was not a record within the meaning of the FOIA and this part.

(H) *Duplicate request.* Record number of duplicate requests closed for that reason (e.g., request for the same information by the same requester). This includes identical requests received via different means (e.g., electronic mail, facsimile, mail, courier) at the same or different times.

(I) *Other (specify).* Any other reason a requester does not comply with published rules, other than those reasons outlined in the previous paragraphs.

(J) *Total.* Enter the sum of paragraphs (b)(2)(ii)(A) through (b)(2)(ii)(I) of this section, in the block provided on the form. This number will be equal to or greater than paragraph (b)(1)(v) of this section since more than one reason may be claimed for each ''other reason'' response.

(iii) *(b)(3) statutes invoked on initial determinations.* Identify the number of times you have used a specific statute to support each (b)(3) exemption. List the statutes used to support each (b)(3) exemption; the number of instances in which the statute was cited; note whether or not the statute has been upheld in a court hearing; and provide a concise description of the material withheld in each individual case by the statute's use. Ensure you cite the specific sections of the acts invoked. The total number of instances reported will be equal to or greater than the total number of (b)(3) exemptions listed in Item 2a on the report form.

(3) *Item 3: Appeal determinations*—(i) *Total appeal responses.* Enter the total number of FOIA appeals responded to (completed) during the fiscal year.

(ii) *Granted in full.* Enter the total number of FOIA appeals responded to and granted in full during the year.

(iii) *Denied in part.* Enter the total number of FOIA appeals responded to and denied in part based on one or more of the FOIA exemptions. (Do not report ''Other Reason Responses'' as a partial denial here, unless a FOIA exemption is used also.)

(iv) *Denied in full.* Enter the total number of FOIA appeals responded to and denied in full based on one or more of the FOIA exemptions. (Do not report ''other reason responses'' as denials here, unless a FOIA exemption is used also.)

(v) *''Other reason'' responses.* Enter the total number of FOIA appeals in which you were unable to provide the requested information based on an ''other reason'' response (as outlined in ''other reasons'' in paragraph (b)(2)(ii) of this section).

(vi) *Total actions.* Enter the total number of FOIA appeal actions taken during the fiscal year. This number will be the sum of paragraphs (b)(3)(ii) through (b)(3)(v), and should be equal to or greater than the number of total appeal responses, paragraph (b)(3)(i) of this section.

(4) *Item 4: Appeal exemptions and other reasons*—(i) *Exemptions invoked on appeal determinations.* Enter the number of times an exemption was claimed for each appeal that was denied

[11] See footnote 3 to § 286.12(a).

in full or in part. Since more than one exemption may be claimed when responding to a single request, this number will be equal to or greater than the sum of paragraphs (b)(3)(iii) and (b)(3)(iv) of this section.

(ii) *''Other reasons'' cited on appeal determinations.* Identify the ''other reason'' response cited when responding to a FOIA appeal and enter the number of times each was claimed. See paragraph (b)(2)(ii) of this section for description of ''other reasons.'' This number can be equal to or possibly greater than the number in paragraph (b)(3)(v) of this section since more than one reason may be claimed for each ''other reason'' response.

(iii) *(b)(3) statutes invoked on appeal determinations.* Identify the number of times you have used a specific statute to support each (b)(3) exemption identified in item 4a on the report form (Appendix E of this part). List the statutes used to support each (b)(3) exemption; the number of instances in which the statute was cited; note whether or not the statute has been upheld in a court hearing; and provide a concise description of the material withheld in each individual case by the statute's use. Ensure you cite the specific sections of the statute invoked. The total number of instances reported will be equal to or greater than the total number of (b)(3) exemptions listed in Item 4a on the report form.

(5) *Item 5: Number and median age of initial cases pending.* (i) Total Initial Cases Pending:

(A) *As of beginning report period:* Midnight, 2400 hours, September 30 of the Preceding Year –OR– 0001 hours, October 1 at the beginning of the report period.

(B) *As of end report period:* Midnight, 2400 hours, at the close of the reporting period.

(ii) *Median age of initial requests pending:* Report the median age in days (includes holidays and weekends) of initial requests pending.

(A) *As of beginning report period:* Midnight, 2400 hours, September 30 of the Preceding Year –OR– 0001 hours, 1 October at the beginning of the report period.

(B) *As Of end report period:* Midnight, 2400 hours, at the close of the reporting period.

(iii) *Examples of median calculation.* (A) If given five cases aged 10, 25, 35, 65, and 100 days from date of receipt as of the previous September 30th, the total requests pending is five (5). The median age (days) of open requests is the middle, not average value, in this set of numbers (10, 25, 35, 65, and 100), 35 (the middle value in the set).

(B) If given six pending cases, aged 10, 20, 30, 50, 120, and 200 days from date of receipt, as of the previous September 30th, the total requests pending is six (6). The median age (days) of open requests 40 days (the mean [average] of the two middle numbers in the set, in this case the average of middle values 30 and 50).

(iv) *Accuracy of calculations.* Agencies are responsible for the accuracy of their calculations. As backup, it is highly recommended that you record the raw data (entire sample used) to perform calculations in this section. This will enable you to recalculate median (and mean values if you desire) as necessary. Further, if you have the raw data from your subordinate elements, you can determine your department's/agency's median.

(v) *Average.* If a component believes that ''average'' (mean) processing time is a better measure of their performance, then they should report ''averages'' (means) as well as their median values (e.g., with data reflected and plainly labeled on plain bond as an attachment to the report). However, ''average'' (mean) values will not be included in the consolidated DoD report unless all components report it.

(6) *Item 6: Number of initial requests received during the fiscal year.* Enter the total number of initial FOIA requests received during the reporting period (fiscal year being reported).

(7) *Item 7: Types of requests processed and median age.* Information is reported for three types of initial requests completed during the reporting period: Simple; Complex; and Expedited Processing. The following items of information are reported for these requests.

(i) *Total number of initial requests.* Enter the total number of initial requests processed [completed] during the reporting period (fiscal year) by type (Simple, Complex and Expedited Processing) in the appropriate row on the form.

(ii) *Median age (days).* Enter the median number of days [calendar days including holidays and weekends] required to process each type of case (Simple, Complex and Expedited Processing) during the period in the appropriate row on the form.

(iii) *Example.* Given seven initial requests, multitrack—simple completed during the fiscal year, aged 10, 25, 35, 65, 79, 90 and 400 days when completed. The total number of requests completed was seven (7). The median age (days) of completed requests is 65, the middle value in the set.

(8) *Item 8: Fees collected from the public.* Enter the total amount of fees collected from the public during the fiscal year. This includes search, review and reproduction costs only.

(9) *Item 9: FOIA program costs*—(i) *Number of full time staff:* Enter the number of personnel your agency had dedicated to working FOIA full time during the fiscal year. This will be expressed in work-years (manyears). For example: ''5.1, 3.2, 1.0, 6.5, et al.'' A sample calculation follows:

Employee	Number months worked	Work-years	Note
SMITH, Jane	6	.5	Hired full time at middle of fiscal year.
PUBLIC, John Q.	4	.34	Dedicated to full time FOIA processing last quarter of fiscal year.
BROWN, Tom	12	1.0	Worked FOIA full time all fiscal year.
Total	22	1.84	

(ii) *Number of part time staff.* Enter the number of personnel your agency had dedicated to working FOIA part time during the fiscal year. This will be expressed in work-years (manyears). For example: ''5.1, 3.2, 1.0, 6.5, et al.'' A sample calculation follows:

Employee	Number hours worked	Work-years	Note
PUBLIC, John Q.	200	.1	Amount of time devoted to part time FOIA processing before becoming full time FOIA processor in previous example.
WHITE, Sally	400	.2	Processed FOIA's part time while working as paralegal in General Counsel's Office.
PETERS, Ron	1,000	.5	Part time employee dedicated to FOIA processing.
Total	1,600/2,000 hours (hours worked in a year) equals 0.8 work-years.		

(iii) *Estimated litigation Cost:* Report your best estimate of litigation costs for the FY.

(iv) *Total program cost:* Report the total cost of FOIA program operation within your agency. Include your litigation costs in this total.

(v) *Note:* While you do not have to report detailed cost information as in the past, you should be able to explain the technique by which you derived your agency's total cost figures if the need arises.

(10) *Item 10: Authentication*: The official that approves the agency's report submission to DoD will sign and date; enter typed name and duty title; and provide the both the agency's name and phone number for questions about the report.

(c) *Electronic publication.* The consolidated DoD Annual FOIA Program Report is the official annual FOIA report within DoD, and is available to the public in either paper or electronic format.

Subpart H—Education and Training

§ 286.36 Responsibility and purpose.

(a) *Responsibility.* The Head of each DoD Component is responsible for the establishment of educational and training programs on the provisions and requirements of this part. The educational programs should be targeted toward all members of the DoD Component, developing a general understanding and appreciation of the DoD FOIA Program; whereas, the training programs should be focused toward those personnel who are involved in the day-to-day processing of FOIA requests, and should provide a thorough understanding of the procedures outlined in this part.

(b) *Purpose.* The purpose of the educational and training programs is to promote a positive attitude among DoD personnel and raise the level of understanding and appreciation of the DoD FOIA Program, thereby improving the interaction with members of the public and improving the public trust in the DoD.

(c) *Scope and principles.* Each Component shall design its FOIA educational and training programs to fit the particular requirements of personnel dependent upon their degree of involvement in the implementation of this part. The program should be designed to accomplish the following objectives:

(1) Familiarize personnel with the requirements of the FOIA and its implementation by this part.

(2) Instruct personnel, who act in FOIA matters, concerning the provisions of this part, advising them of the legal hazards involved and the strict prohibition against arbitrary and capricious withholding of information.

(3) Provide for the procedural and legal guidance and instruction, as may be required, in the discharge of the responsibilities of initial denial and appellate authorities.

(4) Advise personnel of the penalties for noncompliance with the FOIA.

(d) *Implementation.* To ensure uniformity of interpretation, all major educational and training programs concerning the implementation of this part should be coordinated with the Director, Freedom of Information and Security Review.

(e) *Uniformity of legal interpretation.* In accordance with DoD Directive 5400.7 the DoD Office of the General Counsel shall ensure uniformity in the legal position and interpretation of the DoD FOIA Program.

Appendix A to Part 286—Combatant Commands—Processing Procedures for FOIA Appeals

AP1.1. *General.*

AP1.1.1. In accordance with DoD Directive 5400.7 [1] and this part, the Combatant Commands are placed under the jurisdiction of the Office of the Secretary of Defense, instead of the administering Military Department, only for the purpose of administering the Freedom of Information Act (FOIA) Program. This policy represents an exception to the policies in DoD Directive 5100.3 [2]

AP1.1.2. The policy change in paragraph AP1.1.1. of this appendix, authorizes and requires the Combatant Commands to process FOIA requests in accordance with DoD Directive 5400.7 and DoD Instruction 5400.10 [3] and to forward directly to the Director, Freedom of Information and Security Review, all correspondence associated with the appeal of an initial denial for information under the provisions of the FOIA.

AP1.2. *Responsibilities of commands.* Combatant Commanders in Chief shall:

AP1.2.1. Designate the officials authorized to deny initial FOIA requests for records.

AP1.2.2. Designate an office as the point-of-contact for FOIA matters.

AP1.2.3. Refer FOIA cases to the Director, Freedom of Information and Security Review, for review and evaluation when the issues raised are of unusual significance, precedent setting, or otherwise require special attention or guidance.

AP1.2.4. Consult with other OSD and DoD Components that may have a significant interest in the requested record prior to a final determination. Coordination with Agencies outside of the Department of Defense, if required, is authorized.

AP1.2.5. Coordinate proposed denials of records with the appropriate Combatant Command's Office of the Staff Judge Advocate.

AP1.2.6. Answer any request for a record within 20 working days of receipt. The requester shall be notified that his request has been granted or denied. In unusual circumstances, such notification may state that additional time, not to exceed 10 working days, is required to make a determination.

AP1.2.7. Provide to the Director, Freedom of Information and Security Review when the request for a record is denied in whole or in part, a copy of the response to the requester or his representative, and any internal memoranda that provide background information or rationale for the denial.

AP1.2.8. State in the response that the decision to deny the release of the requested information, in whole or in part, may be appealed to the Director, Administration & Management, Directorate for Freedom of Information and Security Review, Room 2C757, 1155 Defense Pentagon, Washington, DC 20301–1155.

AP1.2.9. Upon request, submit to Director, Administration and Management a copy of the records that were denied. The Director, Administration and Management shall make such requests when adjudicating appeals.

[1] Copies may be viewed via internet at http://web7.whs.osd.mil/corres.htm.

[2] See footnote 1 to paragraph AP1.1. of this appendix.

[3] See footnote 1 to paragraph AP1.1. of this appendix.

AP1.3. *Fees for FOIA requests.* The fees charged for requested records shall be in accordance with subpart F of this part.

AP1.4. *Communications.* Excellent communication capabilities currently exist between the Director, Freedom of Information and Security Review and the Freedom of Information Act Offices of the Combatant Commands. This communication capability shall be used for FOIA cases that are time sensitive.

AP1.5. *Information requirements.*

AP1.5.1. The Combatant Commands shall submit to the Director, Freedom of Information and Security Review, an annual report. The instructions for the report are outlined in subpart G of this part.

AP1.5.2. The annual reporting requirement contained in this part shall be submitted in duplicate to the Director, Freedom of Information and Security Review not later than each November 30. This reporting requirement has been assigned Report Control Symbol DD–PA(A) 1365 in accordance with DoD 8910.1–M. [4]

Appendix B to Part 286—Addressing FOIA Requests

AP2.1. *General.*

AP2.1.1. The Department of Defense includes the Office of the Secretary of Defense, the Chairman of the Joint Chiefs of Staff, the Military Departments, the Combatant Commands, the Inspector General, the Defense Agencies, and the DoD Field Activities.

AP2.1.2. The Department of Defense does not have a central repository for DoD records. FOIA requests, therefore, should be addressed to the DoD Component that has custody of the record desired. In answering inquiries regarding FOIA requests, DoD personnel shall assist requesters in determining the correct DoD Component to address their requests. If there is uncertainty as to the ownership of the record desired, the requester shall be referred to the DoD Component that is most likely to have the record.

AP2.2. *Listing of DoD component addresses for FOIA requests.*

AP2.2.1. *Office of the Secretary of Defense and the Chairman of the Joint Chiefs of Staff.* Send all requests for records from the below listed offices to: Directorate for Freedom of Information and Security Review, Room 2C757, 1155 Defense Pentagon, Washington, DC 20301–1155.

Executive Secretariat
Under Secretary of Defense (Policy)
- Assistant Secretary of Defense (International Security Affairs)
- Assistant Secretary of Defense (International Security Policy)
- Assistant Secretary of Defense (Special Operations & Low Intensity Conflict)
- Assistant Secretary of Defense (Strategy & Requirements)
- Deputy to the Under Secretary of Defense (Policy Support)
- Director of Net Assessment
- Defense Security Assistance Agency
- Defense Technology Security Administration

Under Secretary of Defense (Acquisition & Technology)
- Deputy Under Secretary of Defense (Logistics)
- Deputy Under Secretary of Defense (Advanced Technology)
- Deputy Under Secretary of Defense (Acquisition Reform)
- Deputy Under Secretary of Defense (Environmental Security)
- Deputy Under Secretary of Defense (Space)
- Deputy Under Secretary of Defense (International & Commercial Programs)
- Deputy Under Secretary of Defense (Industrial Affairs & Installations)
- Assistant to the Secretary of Defense (Nuclear, Chemical & Biological Defense Programs)
- Director, Defense Research & Engineering
- Director, Small & Disadvantaged Business Utilization
- Director, Defense Procurement
- Director, Test Systems Engineering & Evaluation
- Director, Strategic & Tactical Systems
- Director, Administration and Management
- Defense Evaluation Support Activity
- DoD Radiation Experiments Command Center
- On-Site Inspection Agency

Under Secretary of Defense (Comptroller)
Director, Program Analysis and Evaluation
Under Secretary of Defense (Personnel & Readiness)
- Assistant Secretary of Defense (Health Affairs)
- Assistant Secretary of Defense (Legislative Affairs)
- Assistant Secretary of Defense (Public Affairs)
- Assistant Secretary of Defense (Command, Control, Communications & Intelligence)
- Assistant Secretary of Defense (Reserve Affairs)

General Counsel, Department of Defense
Director, Operational Test and Evaluation
Assistant to the Secretary of Defense (Intelligence Oversight)
Special Assistant for Gulf War Illness
Defense Advanced Research Projects Agency
Ballistic Missile Defense Organization
Defense Systems Management College
National Defense University
Armed Forces Staff College
Department of Defense Dependents Schools
Uniformed Services University of the Health Sciences
Armed Forces Radiology Research Institute
Washington Headquarters Services

AP2.2.2. *Department of the Army.* Army records may be requested from those Army officials who are listed in 32 CFR 518. Send requests to the Freedom of Information and Privacy Acts Office, SAIS–IA–R/FP, Suite 201, 1725 Jefferson Davis Hwy, Arlington, VA 22202–4102, for records of the Headquarters, U.S. Army, or if there is uncertainty as to which Army activity may have the records.

AP2.2.3. *Department of the Navy.* Navy and Marine Corps records may be requested from any Navy or Marine Corps activity by addressing a letter to the Commanding Officer and clearly indicating that it is a FOIA request. Send requests to Chief of Naval Operations, N09B30, 2000 Navy, Pentagon, Washington, DC 20350–2000, for records of the Headquarters, Department of the Navy, and to Commandant of the Marine Corps, (ARAD), Headquarters U.S. Marine Corps, 2 Navy Annex, Washington, DC 20380–1775, for records of the U.S. Marine Corps, or if there is uncertainty as to which Navy or Marine activities may have the records.

AP2.2.4. *Department of the Air Force.* Air Force records may be requested from the Commander of any Air Force installation, major command, or field operating agency (ATTN: FOIA Office). For Air Force records of Headquarters, United States Air Force, or if there is uncertainty as to which Air Force activity may have the records, send requests to Department of the Air Force, 11CS/SCSR(FOIA), 1000 Air Force, Pentagon, Washington, DC 20330–1000.

AP2.2.5. *Defense Contract Audit Agency (DCAA).* DCAA records may be requested from any of its regional offices or from its Headquarters. Requesters should send FOIA requests to the Defense Contract Audit Agency, ATTN: CMR, 8725 John J. Kingman Road, Suite 2135, Fort Belvoir, VA 22060–6219, for records of its headquarters or if there is uncertainty as to which DCAA region may have the records sought.

AP2.2.6. *Defense Information Systems Agency (DISA).* DISA records may be requested from any DISA field activity or from its Headquarters. Requesters should send FOIA requests to Defense Information Systems Agency, Regulatory/General Counsel, 701 South Courthouse Road, Arlington, VA 22204–2199.

AP2.2.7. *Defense Intelligence Agency (DIA).* FOIA requests for DIA records may be addressed to Defense Intelligence Agency, ATTN: SVI–1, Washington, DC 20340–5100.

AP2.2.8. *Defense Security Service (DSS).* All FOIA requests for DSS records should be sent to the Defense Security Service, Office of FOIA and Privacy V0020, 1340 Braddock Place, Alexandria, VA 22314–1651.

AP2.2.9. *Defense Logistics Agency (DLA).* DLA records may be requested from its headquarters or from any of its field activities. Requesters should send FOIA requests to Defense Logistics Agency, ATTN: CAAR, 8725 John J. Kingman Road, Suite 2533, Ft. Belvoir, VA 22060–6221.

AP2.2.10. *National Imagery and Mapping Agency (NIMA).* FOIA requests for NIMA records may be sent to the National Imagery and Mapping Agency, General Counsel's Office, GCM, Mail Stop D–10, 4600 Sangamore Road, Bethesda, MD 20816–5003.

AP2.2.11. *Defense Special Weapons Agency (DSWA).* FOIA requests for DSWA records may be sent to the Defense Special Weapons Agency, Public Affairs Office, Room 113, 6801 Telegraph Road, Alexandria, VA 22310–3398.

AP2.2.12. *National Security Agency (NSA).* FOIA requests for NSA records may be sent to the National Security Agency/Central Security Service, FOIA/PA Services, N5P5, 9800 Savage Road, Suite 6248, Fort George G. Meade, MD 20755–6248.

AP2.2.13. *Inspector General of the Department of Defense (IG, DoD).* FOIA

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

requests for IG, DoD records may be sent to the Inspector General of the Department of Defense, Chief FOIA/PA Office, 400 Army Navy Drive, Room 405, Arlington, VA 22202–2884.

AP2.2.14. *Defense Finance and Accounting Service (DFAS).* DFAS records may be requested from any of its regional offices or from its Headquarters. Requesters should send FOIA requests to Defense Finance and Accounting Service, Directorate for External Services, Crystal Mall 3, Room 416, Arlington, VA 22240–5291, for records of its Headquarters, or if there is uncertainty as to which DFAS region may have the records sought.

AP2.2.15. *National Reconnaissance Office (NRO).* FOIA requests for NRO records may be sent to the National Reconnaissance Office, Information Access and Release Center, Attn: FOIA Officer, 14675 Lee Road, Chantilly, VA 20151–1715.

AP2.3. *Other Addresses.* Although the below organizations are OSD and Chairman of the Joint Chiefs of Staff Components for the purposes of the FOIA, requests may be sent directly to the addresses indicated.

AP2.3.1. *DoD TRICARE Support Office.* Director, TRICARE Support Office, Fitzsimmons USAG Building 611, Aurora, CO 80045–6900.

AP2.3.2. *Chairman, Armed Services Board of Contract Appeals (ASBCA).* Chairman, Armed Services Board of Contract Appeals, Skyline Six Rm 703, 5109 Leesburg Pike, Falls Church, VA 22041–3208.

AP2.3.3. *U.S. Central Command.* Commander-in-Chief, U.S. Central Command, CCJ1/AG, MacDill Air Force Base, FL 33608–7001.

AP2.3.4. *U.S. European Command.* Commander-in-Chief, Headquarters, U.S. European Command/ECJ1–AA(FOIA) Unit 30400 Box 1000, APO AE 09128–4209.

AP2.3.5. *U.S. Southern Command.* Commander-in-Chief, U.S. Southern Command, SCJ1–A, 3511 NW 91st Avenue, Miami, FL 33172–1217.

AP2.3.6. *U.S. Pacific Command.* Commander-in-Chief, U.S. Pacific Command, USPACOM FOIA Coordinator (J042), Administrative Support Division, Joint Secretariat, Box 28, Camp H. M. Smith, HI 96861–5025.

AP2.3.7. *U.S. Special Operations Command.* Commander-in-Chief, U.S. Special Operations Command, Chief, Command Information Management Branch, ATTN: SOJ6–SI, 7701 Tampa Point Blvd., MacDill Air Force Base, FL 33621–5323.

AP2.3.8. *U.S. Atlantic Command.* Commander-in-Chief, U.S. Atlantic Command, Code J02P, Norfolk, VA 23511–5100.

AP2.3.9. *U.S. Space Command.* Commander-in-Chief, U.S. Space Command, Command Records Manager/FOIA/PA Officer, 150 Vandenberg Street, Suite 1105, Peterson Air Force Base, CO 80914–5400.

AP2.3.10. *U.S. Transportation Command.* Commander-in-Chief, U.S. Transportation Command, ATTN: TCIM–F, 508 Scott Drive, Scott Air Force Base, IL 62225–5357.

AP2.3.11. *U.S. Strategic Command.* Commander-in-Chief, U.S. Strategic Command, Attn: J0734, 901 SAC Blvd., Suite 1E5, Offutt Air Force Base, NE 68113–6073.

AP2.4. *National Guard Bureau.* FOIA requests for National Guard Bureau records may be sent to the Chief, National Guard Bureau, ATTN: NGB–ADM, Room 2C363, 2500 Army Pentagon, Washington, DC 20310–2500.

AP2.5. *Miscellaneous.* If there is uncertainty as to which DoD Component may have the DoD record sought, the requester may address a Freedom of Information request to the Directorate for Freedom of Information and Security Review, Room 2C757, 1155 Defense Pentagon, Washington, DC 20301–1155.

BILLING CODE 5000–04–P

Appendix C to Part 286–DD—Form 2086, "Record of Freedom of Information (FOI) Processing Cost"

RECORD OF FREEDOM OF INFORMATION (FOI) PROCESSING COST

Please read instructions on back before completing form.

REPORT CONTROL SYMBOL

1. REQUEST NUMBER	2. TYPE OF REQUEST *(X one)*		3. DATE COMPLETED *(YYYYMMDD)*
	a. INITIAL	b. APPEAL	

	TOTAL HOURS (1)	HOURLY RATE (2)		COST (3)
4. CLERICAL HOURS *(E-9/GS-8 and below)*				
a. SEARCH		X $12.00	=	*
b. REVIEW/EXCISING				**
c. CORRESPONDENCE AND FORMS PREPARATION				
d. OTHER ACTIVITY				
5. PROFESSIONAL HOURS *(0-1 - 0-6/GS-9 - GS-15)*	TOTAL HOURS (1)	HOURLY RATE (2)		COST (3)
a. SEARCH		X $25.00	=	*
b. REVIEW/EXCISING				**
c. COORDINATION/APPROVAL/DENIAL				
d. OTHER ACTIVITY				
6. EXECUTIVE HOURS *(0-7 - GS-16/ES 1 and above)*	TOTAL HOURS (1)	HOURLY RATE (2)		COST (3)
a. SEARCH		X $45.00	=	*
b. REVIEW/EXCISING				**
c. COORDINATION/APPROVAL/DENIAL				
7. COMPUTER SEARCH	TOTAL HOURS (1)	HOURLY RATE (2)		COST (3)
a. MACHINE HOURS				*
b. PROGRAMMER/OPERATOR TIME		X	=	
(1) Clerical		$12.00		*
(2) Professional		$25.00		*
8. OFFICE COPY REPRODUCTION	NUMBER (1)	RATE (2)		COST (3)
a. PAGES REPRODUCED		X .15	=	*
9. MICROFICHE REPRODUCTION	NUMBER (1)	RATE (2)		COST (3)
a. MICROFICHE REPRODUCED		X .25	=	*
10. PRINTED RECORDS	TOTAL PAGES (1)	RATE (2)		COST (3)
a. FORMS		X .02	=	*
b. PUBLICATIONS				*
c. REPORTS				*
11. COMPUTER COPY	NUMBER (1)	ACTUAL COST (2)		COST (3)
a. TAPE		X	=	*
b. PRINTOUT				*
12. AUDIOVISUAL MATERIALS	NUMBER (1)	ACTUAL COST (2)		COST (3)
a. MATERIALS REPRODUCED		X	=	*

13. FOR FOI OFFICE USE ONLY

a. SEARCH FEES PAID		f. TOTAL COLLECTABLE COSTS			
b. REVIEW FEES PAID		g. TOTAL PROCESSING COSTS			
c. COPY FEES PAID		h. TOTAL CHARGED			
d. TOTAL PAID		i. FEES WAIVED/REDUCED *(X one)*		Yes	No
e. DATE PAID *(YYYYMMDD)*					

** Chargeable to all requesters after application of all waiver criteria.*
*** Chargeable only to commercial requesters.*

DD FORM 2086, JUL 1997 (EG) PREVIOUS EDITION MAY BE USED UNTIL SUPPLY IS EXHAUSTED. Designed using Perform Pro, WHS/DIOR, Jul 97

INSTRUCTIONS FOR COMPLETING DD FORM 2086

This form is used to record costs associated with the processing of a Freedom of Information request.

1. REQUEST NUMBER - First two digits will express Calendar Year followed by dash (-) and Component's request number, i.e., 97-001.

2. TYPE OF REQUEST - Mark the appropriate block to indicate initial request or appeal of a denial.

3. DATE COMPLETED - Enter year, month and day, i.e., 19970621.

4. CLERICAL HOURS - For each applicable activity category, enter time expended to the nearest 15 minutes in the total hours column. The activity categories are:

Search - Time spent in locating from the files the requested information.

Review/Excising - Time spent in reviewing the document content and determining if the entire document must retain its classification or segments could be excised thereby permitting the remainder of the document to be declassified. In reviews for other than classification, FOI exemptions 2 through 9 should be considered.

Correspondence and Forms Preparation - Time spent in preparing the necessary correspondence and forms to answer the request.

Other Activity - Time spent in activity other than above, such as duplicating documents, hand carrying documents to other locations, restoring files, etc.

- Multiply the time in the total hours column of each category by the hourly rate and enter the cost figures for each category.

5. PROFESSIONAL HOURS - For each applicable activity category, enter time expended to the nearest 15 minutes in the total hours column. The activity categories are:

Search/Review/Excising, and Other Activity - See explanation above.

Coordination/Approval/Denial - Time spent coordinating the staff action with interested offices or agencies and obtaining the approval for the release or denial of the requested information.

- Multiply the time in the total hours column of each category by the hourly rate and enter the cost figures for each category.

6. EXECUTIVE HOURS - For each applicable activity category, enter the time expended to the nearest 15 minutes in the total hours column. The activity categories are:

Search/Review/Excising - See explanation above.

Coordination/Approval/Denial - See explanation above.

- Multiply the time in the total hours column of each category by the hourly rate and enter the cost figures for each category.

7. COMPUTER SEARCH - When the amount of government- owned (not leased) computer processing machine time required to complete a search is known, and accurate cost information for operation on an hourly basis is available, enter the time used and the hourly rate. Then, calculate the total cost which is fully chargeable to the requester.

- Programmer and operator costs are calculated using the same method as in Items 4 and 5. This cost is also fully chargeable to requesters as computer search time.

8. OFFICE COPY REPRODUCTION - Enter the number of pages reproduced.

- Multiply by the rate per copy and enter cost figures.

9. MICROFICHE REPRODUCTION - Enter the number of microfiche copies reproduced.

- Multiply by the rate per copy and enter cost figures.

10. PRINTED RECORDS - Enter total pages in each category. The categories are:

Forms *(Include any type of printed forms)*

Publications *(Include any type of bound document, such as directives, regulations, studies, etc.)*

Reports *(Include any type of memorandum, staff action paper, etc.)*

- Multiply the total number of pages in each category by the rate per page and enter cost figures.

11. COMPUTER COPY - Enter the total number of tapes and/or printouts.

- Multiply by the actual cost per tape or printout and enter cost figures.

12. AUDIOVISUAL MATERIALS - Duplication cost is the actual cost of reproducing the material, including the wages of the person doing the work.

13. FOR FOI OFFICE USE ONLY -

Search Fees Paid - Enter total search fees paid by the requester.

Review Fees Paid - Enter total review fees paid by the requester.

Copy Fees Paid - Enter the total of copy fees paid by the requester.

Total Paid - Add search fees paid and copy fees paid. Enter total in the total paid block.

Date Paid - Enter year, month, and day, i.e., 19971024, the fee payment was received.

Total Collectable Costs - Add the blocks in the cost column marked with an asterisk and enter total in the total collectable cost block. Apply the appropriate waiver for the category of requester prior to inserting the final figure. Further discussion of chargeable fees is contained in Chapter VI of DoD Regulation 5400.7-R.

Total Processing Costs - Add all blocks in the cost column and enter total in the total processing cost block. The total processing cost in most cases will exceed the total collectable cost.

Total Charged - Enter the total amount that the requester was charged, taking into account the fee waiver threshold and fee waiver policy.

Fees Waived/Reduced - Indicate if the cost of processing the request was waived or reduced by placing an "X" in the "Yes" block or the "No" block.

DD FORM 2086 (BACK), JUL 1997

Appendix D to Part 286—DD Form 2086–1, "Record of Freedom of Information (FOI) Processing Cost for Technical Data"

RECORD OF FREEDOM OF INFORMATION (FOI) PROCESSING COST FOR TECHNICAL DATA
Please read instructions on back before completing form.

REPORT CONTROL SYMBOL

1. REQUEST NUMBER	2. TYPE OF REQUEST *(X one)*		3. DATE COMPLETED *(YYYYMMDD)*
	a. INITIAL	b. APPEAL	

	TOTAL HOURS (1)		HOURLY RATE (2)		COST (3)
4. CLERICAL HOURS *(E-9/GS-8 and below)*					
a. SEARCH		X	$13.25	=	*
b. REVIEW/EXCISING		X	$13.25	=	*
c. CORRESPONDENCE AND FORMS PREPARATION		X	$13.25	=	
d. OTHER ACTIVITY		X	$13.25	=	
e. MINIMUM CHARGE			$ 8.30		
5. PROFESSIONAL HOURS *(O-1 - O-6/GS-9 - GS/GM-15)*	TOTAL HOURS (1)		HOURLY RATE (2)		COST (3)
a. SEARCH		X	ACTUAL HOURLY RATE	=	*
b. REVIEW/EXCISING		X	ACTUAL HOURLY RATE	=	*
c. COORDINATION/APPROVAL/DENIAL		X	ACTUAL HOURLY RATE	=	
d. OTHER ACTIVITY		X	ACTUAL HOURLY RATE	=	
e. MINIMUM CHARGE			1/2 HOURLY RATE		
6. EXECUTIVE HOURS *(O-7/GM-16/ES 1 and above)*	TOTAL HOURS (1)		HOURLY RATE (2)		COST (3)
a. SEARCH		X	ACTUAL HOURLY RATE	=	*
b. REVIEW/EXCISING		X	ACTUAL HOURLY RATE	=	*
c. COORDINATION/APPROVAL/DENIAL		X	ACTUAL HOURLY RATE	=	
d. MINIMUM CHARGE			1/2 HOURLY RATE		
7. COMPUTER SEARCH	TOTAL HOURS (1)		HOURLY RATE (2)		COST (3)
a. MACHINE HOURS		X		=	*
b. PROGRAMMER/OPERATOR TIME					
- Clerical			$13.25 OR MINIMUM		*
- Professional			ACTUAL OR MINIMUM		*
8. REPRODUCTION	NUMBER (1)		RATE (2)		COST (3)
a. AERIAL PHOTOGRAPHS, SPECIFICATIONS, PERMITS, CHARTS, BLUEPRINTS, AND OTHER TECHNICAL DOCUMENTS			$ 2.50		*
b. ENGINEERING DATA *(Microfilm)*					
- Aperture cards					
-- Silver duplicate negative, per card		X	.75	=	*
-- When keypunched and verified, per card		X	.85	=	*
-- Diazo duplicate negative, per card		X	.65	=	*
-- When keypunched and verified, per card		X	.75	=	*
- 35 mm roll film, per frame		X	.50	=	*
- 16 mm roll film, per frame		X	.45	=	*
- Paper prints *(engineering drawings)*, each		X	1.50	=	*
- Paper reprints of microfilm indices, each		X	.10	=	*
c. AUDIOVISUAL MATERIALS *(Insert actual cost in block (2))*					*
d. OTHER TECHNICAL DATA RECORDS Charges for any additional services not specifically provided above shall be made by components at the following rates:					
- Minimum charge for office copy *(up to six images)*			$ 3.50		*
- Each additional image		X	.10	=	*
- Each typewritten page		X	3.50	=	*
- Certification and validation with seal, each		X	5.20	=	*
- Hand-drawn plots and sketches, each hour or fraction thereof		X	12.00	=	*

** Chargeable to all requesters.*

9. FOR FOI OFFICE USE ONLY			
a. SEARCH FEES PAID		f. TOTAL COLLECTABLE COSTS	
b. REVIEW FEES PAID		g. TOTAL PROCESSING COSTS	
c. COPY FEES PAID		h. TOTAL CHARGED	
d. TOTAL PAID		i. FEES WAIVED/REDUCED *(X one)*	YES / NO
e. DATE PAID *(YYYYMMDD)*			

DD FORM 2086-1, JUL 1997 (EG) PREVIOUS EDITION MAY BE USED UNTIL SUPPLY IS EXHAUSTED. Designed using Perform Pro, WHS/DIOR, Jul 97

INSTRUCTIONS FOR COMPLETING DD FORM 2086-1

This form is used to record costs associated with the processing of a Freedom of Information request for technical data.

1. REQUEST NUMBER - First two digits will express Calendar Year followed by dash (-) and Component's request number, i.e., 87-001.

2. TYPE OF REQUEST - Mark the appropriate block to indicate initial request or appeal of a denial.

3. DATE COMPLETED - Enter year, month and day, i.e., 19970621.

4. CLERICAL HOURS - For each applicable activity category, enter time expended to the nearest 15 minutes in the total hours column. The activity categories are:

Search - Time spent in locating from the files the requested information.

Review/Excising - Time spent reviewing the document content and determining if the entire document must retain its classification or segments could be excised thereby permitting the remainder of the document to be declassified. In reviews for other than classification, FOI exemptions 2 through 9 should be considered.

Correspondence and Forms Preparation - Time spent in preparing the necessary correspondence and forms to answer the request.

Other Activity - Time spent in activity other than above, such as duplicating documents, hand carrying documents to other locations, restoring files, etc.

- Multiply the time in the total hours column of each category by the hourly rate and enter the cost figures for each category. Both search and review costs are chargeable to the requester.

5. PROFESSIONAL HOURS - For each applicable activity category, enter time expended to the nearest 15 minutes in the total hours column. The activity categories are:

Search/Review/Excising, and Other Activity - See explanation above.

Coordination/Approval/Denial - Time spent coordinating the staff action with interested offices or agencies and obtaining the approval for the release or denial of the requested information.

- Multiply the time in the total hours column of each category by the hourly rate and enter the cost figures for each category. Both search and review costs are chargeable to the requester.

6. EXECUTIVE HOURS - For each applicable activity category, enter the time expended to the nearest 15 minutes in the total hours column. The activity categories are:

Search/Review/Excising - See explanation above.

Coordination/Approval/Denial - See explanation above.

- Multiply the time in the total hours column in each category by the hourly rate and enter the cost figures for each category. Review costs are chargeable to the requester.

7. COMPUTER SEARCH - When the amount of government-owned (not leased) computer processing machine time is known, and accurate cost information for operation on an hourly basis is available, enter the time used and the hourly rate. Then, calculate the total cost which is fully chargeable to the requester.

- Programmer and operator costs are calculated using the same method as in Items 4 and 5. This cost is also fully chargeable to requesters as computer search time.

8. REPRODUCTION - Enter the number of pages or items reproduced.

- Multiply by the rate per copy and enter cost figures. The entire cost is chargeable to the requester. Reproduction cost for audiovisual material is the actual cost of reproducing the material, including the wage of the person doing the work.

9. FOR FOI OFFICE USE ONLY -

Search Fees Paid - Enter total search fees paid by the requester.

Review Fees Paid - Enter total review fees paid by the requester.

Copy Fees Paid - Enter the total of copy fees paid by the requester.

Total Paid - Add search fees paid and copy fees paid. Enter total in the total paid block.

Date Paid - Enter year, month, and day, i.e., 19971024, the fee payment was received.

Total Collectable Costs - Add the blocks in the cost column marked with an asterisk and enter total in the total collectable cost block. Only search, reproduction and printed records are chargeable to the requester. Further discussion of collectable costs is contained in Chapter VI, Section 3, DoD Regulation 5400.7-R.

Total Processing Costs - Add all blocks in the cost column and enter total in the total processing cost block. The total processing cost in most cases will exceed the total collectable cost.

Total Charged - Enter the total amount that the requester was charged, taking into account the fee waiver threshold and fee waiver policy.

Fees Waived/Reduced - Indicate if the cost of processing the request was waived or reduced by placing an "X" in the "YES" block or an "X" in the "NO" block.

DD FORM 2086-1 (BACK), JUL 1997

Appendix E to Part 286—DD Form 2564, "Annual Report Freedom of Information Act"

ANNUAL REPORT
FREEDOM OF INFORMATION ACT

REPORT CONTROL SYMBOL

1. INITIAL REQUEST DETERMINATIONS

a. TOTAL REQUESTS	b. GRANTED IN FULL	c. DENIED IN PART	d. DENIED IN FULL	e. "OTHER REASONS"	f. TOTAL ACTIONS

2a. EXEMPTIONS INVOKED ON INITIAL REQUEST DETERMINATIONS

(b) (1)	(b) (2)	(b) (3)	(b) (4)	(b) (5)	(b) (6)

(b) (7)(A)	(b) (7)(B)	(b) (7)(C)	(b) (7)(D)	(b) (7)(E)	(b) (7)(F)	(b) (8)	(b) (9)

2b. "OTHER REASONS" CITED ON INITIAL DETERMINATIONS

1	2	3	4	5	6	7	8	9	TOTAL

2c. STATUTES CITED ON INITIAL REQUEST (b)(3) EXEMPTIONS

(1)(b)(3) STATUTE CLAIMED	NUMBER OF INSTANCES	COURT UPHELD? *(Yes or No)*	CONCISE DESCRIPTION OF MATERIAL WITHHELD

DRAFT

3. APPEAL DETERMINATIONS

a. TOTAL REQUESTS	b. GRANTED IN FULL	c. DENIED IN PART	d. DENIED IN FULL	e. "OTHER REASONS"	f. TOTAL ACTIONS

DD FORM 2564, 980206 DRAFT PREVIOUS EDITION IS OBSOLETE. Designed using Perform Pro, WHS/DIOR

4a. EXEMPTIONS INVOKED ON APPEAL DETERMINATIONS							
(b) (1)	(b) (2)	(b) (3)	(b) (4)	(b) (5)	(b) (6)		
(b) (7)(A)	(b) (7)(B)	(b) (7)(C)	(b) (7)(D)	(b) (7)(E)	(b) (7)(F)	(b) (8)	(b) (9)

4b. "OTHER REASONS" CITED ON APPEAL DETERMINATIONS									
1	2	3	4	5	6	7	8	9	TOTAL

4c. STATUTES CITED ON APPEAL (b)(3) EXEMPTIONS			
(1)(b)(3) STATUTE CLAIMED	NUMBER OF INSTANCES	COURT UPHELD? *(Yes or No)*	CONCISE DESCRIPTION OF MATERIAL WITHHELD

5. NUMBER AND MEDIAN AGE OF INITIAL CASES PENDING	(1) AS OF BEGINNING REPORT PERIOD	(2) AS OF END REPORT PERIOD
a. TOTAL INITIAL REQUESTS PENDING *(open)*		
b. MEDIAN AGE *(in days)* OF OPEN INITIAL REQUESTS		

DRAFT

6. TOTAL NUMBER OF INITIAL REQUESTS RECEIVED DURING THE FISCAL YEAR	

7. TYPES OF INITIAL REQUESTS PROCESSED AND MEDIAN AGE	TOTAL NUMBER OF CASES	MEDIAN AGE *(Days)*
a. SIMPLE		
b. COMPLEX		
c. EXPEDITED PROCESSING		

8. TOTAL AMOUNT COLLECTED FROM THE PUBLIC	$

9. PROGRAM COST	
a. NUMBER OF FULL TIME STAFF	
b. NUMBER OF PART TIME STAFF	
c. ESTIMATED LITIGATION COST	$
d. TOTAL PROGRAM COST	$

10. AUTHENTICATION		
a. SIGNATURE *(Approving Official)*		
b. TYPED NAME *(Last, First, Middle Initial)*	c. DUTY TITLE	
d. AGENCY NAME	e. TELEPHONE NUMBER *(Include Area Code)*	

DD FORM 2564 (BACK), 980206 DRAFT

Appendix F to Part 286—DoD Freedom of Information Act Program Components

Office of the Secretary of Defense/Chairman of the Joint Chiefs of Staff/Combatant Commands, Defense Agencies, and the DoD Field Activities
Department of the Army
Department of the Navy
Department of the Air Force
Defense Information Systems Agency
Defense Contract Audit Agency
Defense Intelligence Agency
Defense Security Service
Defense Logistics Agency
National Imagery and Mapping Agency
Defense Special Weapons Agency
National Security Agency
Office of the Inspector General, Department of Defense
Defense Finance and Accounting Service
National Reconnaissance Office

Dated: May 22, 1998.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 98–14180 Filed 6–5–98; 8:45 am]

BILLING CODE 5000–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[SIPTRAX NO. PA110–4068b; FRL–6102–8]

Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; Gasoline Volatility Requirements for the Pittsburgh—Beaver Valley Ozone Nonattainment Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to approve the State Implementation Plan (SIP) revision submitted by the State of Pennsylvania for the purpose of establishing low Reid vapor pressure (RVP) gasoline volatility requirements for the Pittsburgh-Beaver Valley ozone nonattainment area. In the Final Rules section of this **Federal Register**, EPA is approving the State's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial SIP revision and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule and the technical support document. If no relevant adverse comments are received in response to this proposed rule by the deadline for comments, no further activity is contemplated in relation to this proposed rule. If EPA receives relevant adverse comments, it will publish a notice informing the public that the direct final rule did not take effect and EPA will address all public comments received in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time.

DATES: Comments must be received in writing by July 8, 1998.

ADDRESSES: Written comments on this action should be addressed to David Arnold, Branch Chief, Ozone and Mobile Source Section, Mailcode 3AP21, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107; Pennsylvania Department of Environmental Resources Bureau of Air Quality Control, P.O. Box 8468, 400 Market Street, Harrisburg, Pennsylvania 17105.

FOR FURTHER INFORMATION CONTACT: Marcia L. Spink at (215) 566–2104.

SUPPLEMENTARY INFORMATION: See the information provided in the Direct Final Rule action pertaining to Gasoline Volatility Requirements for the Pittsburgh-Beaver Valley Ozone Nonattainment Area with the same title, which is located in the Rules and Regulations Section of this **Federal Register**.

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

Dated: May 15, 1998.

A.R. Morris,

Acting Regional Administrator, Region III.

[FR Doc. 98–15024 Filed 6–5–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[TN–184–1–(9812)b; TN–199–1–(9813)b; FRL–6103–9]

Approval and Promulgation of Implementation Plans Tennessee: Approval of Revisions to the Knox County Portion of the Tennessee SIP Regarding Volatile Organic Compounds (VOCs) and Process Particulate Emissions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve revisions to section 19.2 and section 46.2.A.34 of the Knox County portion of the Tennessee State Implementation Plan (SIP) which were submitted to EPA through the Tennessee Department of Air Pollution Control (TDAPC), on December 24, 1996 and June 18, 1997. Section 19.2 is revised to include terminology which more clearly defines the subject matter of this section: process particulate emissions. Section 46.2.A.34 is revised to incorporate by reference the definition for volatile organic compounds (VOCs) contained in 40 CFR part 51, subpart F.

In the final rules section of this **Federal Register**, the EPA is approving the Knox County portion of the Tennessee State Implementation Plan (SIP) as a direct final rule without prior proposal because the EPA views this as a noncontroversial revision amendment and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this proposed rule, no further activity is contemplated in relation to this proposed rule. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period on this document. Any parties interested in commenting on this document should do so at this time.

DATES: To be considered, comments must be received by July 8, 1998.

ADDRESSES: Written comments on this action should be addressed to Allison Humphris at the Environmental Protection Agency, Region 4 Air Planning Branch, 61 Forsyth Street, SW, Atlanta, Georgia 30303. Copies of documents relative to this action are available for public inspection during normal business hours at the following locations. The interested persons wanting to examine these documents should make an appointment with the appropriate office at least 24 hours before the visiting day. Reference files TN184–01–9812 and TN199–01–9813. The Region 4 office may have additional background documents not available at the other locations.

Air and Radiation Docket and Information Center (Air Docket 6102), U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460, telephone (202) 260–7549.

Environmental Protection Agency, Region 4 Air Planning Branch, 61 Forsyth Street, SW, Atlanta, Georgia

30303. Allison Humphris, 404/562–9030.

Tennessee Department of Environment and Conservation, Division of Air Pollution Control, L & C Annex, 9th Floor, 401 Church Street, Nashville, Tennessee 37243–1531. 615/532–0554.

Knox County Department of Air Pollution Control, City-County Building, Suite 339, 400 West Main Street, Knoxville, Tennessee, 37902. 423/215–2488

FOR FURTHER INFORMATION CONTACT: Allison Humphris at 404/562–9030.

SUPPLEMENTARY INFORMATION: For additional information, see the direct final rule which is published in the rules section of this **Federal Register**.

Dated: April 27, 1998.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

[FR Doc. 98–15021 Filed 6–5–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[TX–95–1–7379b; FRL–6104–3]

Approval and Promulgation of Implementation Plan; Texas; Removal of Perchloroethylene Dry Cleaning Systems Rules

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This action proposes to approve a revision to Texas Natural Resource Conservation Commission Regulation V (30 TAC Chapter 115) which removes regulations concerning Perchloroethylene Dry Cleaning Systems from the Texas State Implementation Plan (SIP) submitted by the Governor of Texas on November 12, 1997. In the Rules and Regulations section of this **Federal Register**, EPA is approving the State's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial revision and anticipates no adverse comments. The rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this proposed rule, no further activity is contemplated in relation to this rule. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received during the 30-day comment period set forth below will be addressed in a subsequent final rule based on this proposed rule. Any parties interested in commenting on this action should do so at this time.

DATES: Comments on this proposed rule must be received in writing by July 6, 1998.

ADDRESSES: Written comments on this action should be addressed to Mr. Thomas H. Diggs, Chief, Air Planning Section, at the EPA Region 6 office listed below. Copies of documents relevant to this action are available for public inspection during normal business hours at the following locations. Anyone wanting to examine these documents should make an appointment with the appropriate office at least two working days in advance.

Environmental Protection Agency, Region 6, Air Planning Section (6PD–L), 1445 Ross Avenue, Dallas, Texas 75202–2733.

Texas Natural Resource Conservation Commission, Office of Air Quality, 12124 Park 35 Circle, Austin, Texas 78753.

FOR FURTHER INFORMATION CONTACT: Mr. Kenneth Boyce of the EPA Region 6 Air Planning Section at (214) 665–7259 at the address above.

SUPPLEMENTARY INFORMATION: For additional information, see the direct final rule which is published in the Rules and Regulations section of this **Federal Register**.

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

Dated: May 12, 1998.

Jerry Clifford,

Deputy Regional Administrator, Region 6.

[FR Doc. 98–15019 Filed 6–5–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 72 and 75

[FRL–6109–1]

RIN 2060–AG46

Acid Rain Program; Continuous Emission Monitoring Rule Revisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; correction.

SUMMARY: The incorrect date of July 20, 1998 for the end of the comment period was inadvertently published in the May 21, 1998 notice of proposed rulemaking to revise the Acid Rain Program Continuous Emission Monitoring Rule (63 FR 28032). Today's action changes the date for the end of the comment period from July 20, 1998 to July 6, 1998.

DATES: *Comments.* The date for comments is corrected to read as follows: ''All public comments must be received on or before July 6, 1998.''

ADDRESSES: *Comments.* Comments must be mailed (in duplicate if possible) to: EPA Air Docket (6102), Attention: Docket No. A–97–35, Room M–1500, Waterside Mall, 401 M Street, SW, Washington, DC 20460.

Docket. Docket No. A–97–35, containing supporting information used to develop the proposal is available for public inspection and copying from 8:00 a.m. to 5:30 p.m., Monday through Friday, excluding legal holidays, at EPA's Air Docket Section at the above address.

FOR FURTHER INFORMATION CONTACT: Jennifer Macedonia, Acid Rain Division (6204J), U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460, telephone number (202) 564–9123 or the Acid Rain Hotline at (202) 564–9620. Electronic copies of this notice can be accessed through the Acid Rain Division website at http://www.epa.gov/acidrain.

Dated: June 2, 1998.

Richard D. Wilson,

Acting Assistant Administrator.

[FR Doc. 98–15178 Filed 6–5–98; 8:45 am]

BILLING CODE 6560–50–P

Notices

Federal Register
Vol. 63, No. 109
Monday, June 8, 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

Grain Inspection, Packers and Stockyards Administration

Designation Amendment for Kansas To Provide Official Services in the Denver (CO) Area

AGENCY: Grain Inspection, Packers and Stockyards Administration (GIPSA), USDA.

ACTION: Notice.

SUMMARY: Kansas Grain Inspection Service, Inc's. (Kansas), designation has been amended to include Colorado, and parts of Nebraska and Wyoming.

DATE: Effective on June 1, 1998.

ADDRESSES: USDA, GIPSA, Janet M. Hart, Chief, Review Branch, Compliance Division, STOP 3604, 1400 Independence Ave. S.W., Washington, DC 20250–3604.

FOR FURTHER INFORMATION CONTACT: Janet M. Hart, telephone 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 July 21, 1997, **Federal Register** (62 FR 38971), GIPSA announced the designation of Kansas to provide official inspection services under the Act, effective September 1, 1997, and ending August 31, 2000. Subsequently, Kansas asked GIPSA to amend their designation to include official services in Colorado and in parts of Nebraska and Wyoming, due to the purchase of the formerly designated corporation, Denver Grain Inspection. Section 7A(c)(2) of the Act authorizes GIPSA's Administrator to designate authority to perform official services within a specified geographic area, if such agency is qualified under Section 7(f)(1)(A) of the Act. GIPSA evaluated all available information regarding the designation criteria in Section 7(f)(1)(A) of the Act, and determined that Kansas is qualified. GIPSA is announcing the change in Kansas' assigned geographic area, and that Kansas is the officially designated service provider in Colorado, and in parts of Nebraska and Wyoming. The Kansas designation now includes the following geographic area, in the States of Colorado, Kansas, Nebraska, and Wyoming:

The entire State of Colorado.

The entire State of Kansas.

In Nebraska:

Bounded on the North by the northern Scotts Bluff County line; the northern Morrill County line east to Highway 385;

Bounded on the East by Highway 385 south to the northern Cheyenne County line; the northern and eastern Cheyenne County lines; the northern and eastern Deuel County lines;

Bounded on the South by the southern Deuel, Cheyenne, and Kimball County lines; and

Bounded on the West by the western Kimball, Banner, and Scotts Bluff County lines.

In Wyoming:

Goshen, Laramie, and Platte Counties.

Kansas' assigned geographic area does not include the following grain elevators inside Kansas' area which have been and will continue to be serviced by the following official agency: Hastings Grain Inspection, Inc.: Farmers Coop, and Big Springs Elevator, both in Big Springs, Deuel County, Nebraska.

Effective June 1, 1998, and terminating August 31, 2000 (the end of Kansas' designation to provide official inspection services), Kansas' present geographic area is amended to include Colorado, and parts of Nebraska and Wyoming. Official services may be obtained by contacting Kansas at 913–296–3451.

Authority: Pub. L. 94–582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*).

Dated: June 2, 1998.

Neil E. Porter,

Director, Compliance Division.

[FR Doc. 98–15111 Filed 6–5–98; 8:45 am]

BILLING CODE 3410–EN–P

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

Bear Creek Watershed, Winneshiek and Allamakee Counties, IA and Houston and Fillmore Counties, MN

AGENCY: Natural Resources Conservation Service, Agriculture.

ACTION: Notice of a Finding of No Significant Impact.

SUMMARY: Pursuant to Section 102(2)(c) of the National Environmental Policy Act of 1969; the Council of Environmental Quality Regulations (40 CFR Part 1500); and the Natural Resources Conservation Service Regulations (7 CFR Part 650); the Natural Resources Conservation Service, U.S. Department of Agriculture, Gives notice that an environmental impact statement is not being prepared for the Bear Creek Watershed, Winneshiek and Allamakee Counties,, Iowa and Houston and Fillmore Counties, Minnesota.

FOR FURTHER INFORMATION CONTACT: Leroy Brown, State conservationist, Natural Resources Conservation Service, 210 Walnut Street, Suite 693, Des Moines, Iowa, 50309–2180, telephone 515/284–4260.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Leroy Brown, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

The project purposes are flood control and watershed protection. The planned works of improvement included 52 floodwater retarding dams, land treatment and accelerated technical assistance for land treatment.

The Notice of a Finding Of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various Federal, State, and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address. Basic data developed during the environmental assessment are on file and may be reviewed by contacting Leroy Brown.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the **Federal Register**.

Dennis J. Pate,

State Conservationist.

[FR Doc. 98–15080 Filed 6–5–98; 8:45 am]

BILLING CODE 3410–16–M

DEPARTMENT OF COMMERCE

Office of the Secretary

United States Department of Commerce Complaint of Employment Discrimination; and United States Department of Commerce Complaint of Employment Discrimination for the Decennial Census; Proposed Information Collection

ACTION: Proposed collection; comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3506 (c) (2) (A)).

DATES: Written comments must be submitted on or before August 7, 1998.

ADDRESSES: Direct all written comments to Linda Engelmeir, Departmental Clearance Officer, Department of Commerce, Room 5327, 14th and Constitution Avenue, NW, Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Ms. Kathy Hawker, Department of Commerce, 14th and Constitution Avenue, NW, room H 7840, Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

I. Abstract

This notice covers two forms used by the Department of Commerce in collecting information regarding complaints of discrimination. The first form will be used by permanent employees and applicants for employment at the Department of Commerce. The second form is already in use under an OMB emergency approval. It will be used solely by temporary employees and applicants for temporary employment with the Bureau of the Census during its Decennial operations. Both forms will be used for filing formal complaint of discrimination. Further, both forms allow us to gather reliable data and aids in determining whether the complaint meets all procedural and jurisdictional requirements for acceptance. This determination needs to be done in a timely and efficient manner in order to meet the regulatory time frames established by the Equal Employment Opportunities Commission (EEOC). The forms also provide complainants with an easy to use form that asks for all of the basic information needed in a formal EEO complaint.

II. Method of Collection

Written submission.

III. Data

OMB Number(s): 0690–0015.

Form Number(s): CD–498A and CD 498.

Type of Review: Regular submission, with change.

Affected Public: Permanent employees and applicants for employment with the Department of Commerce. Temporary employees and applicants for employment with the Bureau of the Census for the Decennial Census.

Estimated Number of Respondents: 300 per year for the Departmental Complaint Form and 400 per year for the Decennial Census Form.

Estimated Time Per Response: Both forms take approximately 30 minutes to complete.

Estimated Total Annual Burden Hours: 350 hours (150 hours for the Departmental Complaint Form and 200 hours for the Decennial Census Form.

Estimated Total Annual Cost: $0 (no capital expenditures are required).

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they will also become a matter of public record.

Dated: June 2, 1998.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 98–15070 Filed 6–5–98; 8:45 am]

BILLING CODE 3510–BP–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce (DOC) has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Patent and Trademark Office (PTO).

Title: Trademark Processing.

Agency Form Numbers: PTO Forms 1478, 1478(a), 4.8, 4.9, 1553, 1581, 205/209, 4.13a, and 4–17a (existing paper forms and electronic forms).

OMB Approval Number: 0651–0009.

Type of Request: Revision of a currently approved collection.

Burden: 110,427 hours.

Number of Respondents: 343,698.

Avg. Hours Per Response: The time to respond ranges from 10 to 45 minutes. The existing paper forms take from 15 to 45 minutes, while the electronic forms take from 12 to 18 minutes.

Needs and Uses: This collection of information is required by the Trademark Act, 15 U.S.C. 1051, *et. seq.*, which provides for the Federal registration of trademarks, service marks, collective trademarks and service marks, collective membership marks, and certification marks. Any individual or business owning a valid trademark or service mark, who use or intend to use their marks in commerce regulable by the U.S. Congress, may apply to by federally register its mark. The mark will remain on the register for ten years; however, the registration can be canceled by the Patent and Trademark Office (PTO) if the owner does not file an affidavit attesting to the continued use (or excusable non-use) of the mark in commerce between the fifth and sixth years following the issuance of the registration. The registration may be renewed for periods of ten years.

The PTO administers the Trademark Act pursuant to 37 CFR part 2, which contains the rules that implement the Trademark Act. These rules mandate that each register entry contain the mark; the goods and/or services that the mark is used in connection with; identifying ownership information; dates of use; and certain other

information. The PTO also requires that similar information be provided in applications for registration. The register and pending application information may be accessed by the public to determine availability of a mark. By accessing the PTO's information, potential trademark owners may reduce the possibility of initiating use of a mark previously adopted by another.

Registration is not required to obtain rights in a mark; however, registration provides certain benefits, such as access to the Federal court system and nationwide constructive notice of the Registrant's rights. Entities who elect to seek registration are not required to use the forms in this collection. The forms are provided as a convenience to the public, and serve as guidance on what information is legally mandated, should an individual or business seek registration.

The PTO uses this information to determine the eligibility of each mark for registration and to maintain a public search library where copies of the registration certificates for marks can be searched. The PTO also provides the information to the Patent and Trademark Depository Libraries (PTDLs) that also maintain the information for use by the public.

The information is a matter of public record, and is used by the public for a variety of private business purposes related to establishing and reinforcing trademark rights. This information is important to the public, since both common law trademark owners and Federal trademark registrants must actively protect their own rights.

Affected Public: Businesses or other for-profit, individuals or households, not-for-profit institutions, farms, federal government, and state, local, or tribal governments.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain a benefit.

OMB Desk Officer: Maya A. Bernstein, (202) 395–3785.

Copies of the above information collection proposal can be obtained by calling or writing Linda Engelmeier, DOC Forms Clearance Officer, (202) 482–3272, Department of Commerce, Room 5327, 14th and Constitution Avenue, NW, Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication to Maya A. Bernstein, OMB Desk Officer, Room 10236, New Executive Office Building, 725 17th Street, N.W., Washington, D.C. 20503.

Dated: June 2, 1998.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 98–15126 Filed 6–5–98; 8:45 am]

BILLING CODE 3510–16–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 979]

Grant of Authority; Establishment of a Foreign-Trade Zone Kodiak Island, Alaska

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

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

Whereas, Kodiak Island Borough (the Grantee), an Alaskan municipal corporation, has made application to the Board (FTZ Docket 50–95, 60 FR 47547, 9/13/95), requesting the establishment of a foreign-trade zone at sites on Kodiak Island, Alaska, adjacent to the Kodiak Customs port of entry;

Whereas, notice inviting public comment has been given in the **Federal Register**; and,

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

Now, therefore, the Board hereby grants to the Grantee the privilege of establishing a foreign-trade zone, designated on the records of the Board as Foreign-Trade Zone No. 232, at the sites described in the application, subject to the Act and the Board's regulations, including Section 400.28, and subject to the standard 2,000-acre activation limit.

Signed at Washington, DC, this 26th day of May 1998.

Foreign-Trade Zones Board.

William M. Daley,

Secretary of Commerce, Chairman and Executive Officer.

[FR Doc. 98–15181 Filed 6–5–98; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 982]

Expansion of Foreign-Trade Zone 168; Dallas/Fort Worth, Texas, Area

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

Whereas, an application from the Dallas/Fort Worth Maquila Trade Development Corporation, grantee of Foreign-Trade Zone No. 168, for authority to expand its general-purpose zone to include two sites in Gainesville (Cooke County), Texas, adjacent to the Dallas/Fort Worth Customs port of entry, was filed by the Foreign-Trade Zones (FTZ) Board on June 27, 1997 (Docket 56–97, 62 FR 36487, 7/8/97);

Whereas, notice inviting public comment was given in the **Federal Register** and the application has been processed pursuant to the FTZ Act and the Board's regulations; and,

Whereas, the Board has found that the requirements of the Act and the regulations are satisfied, and that the proposal is in the public interest;

Now, therefore, the Board hereby orders:

The grantee is authorized to expand its zone as requested in the application, subject to the Act and the Board's regulations, including Section 400.28.

Signed at Washington, DC, this 28th day of May 1998.

Richard Moreland,

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

[FR Doc. 98–15180 Filed 6–5–98; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–423–809, C–475–823, C–580–832, and C–791–806]

Notice of Postponement of Time Limit for Countervailing Duty Investigations: Stainless Steel Plate in Coils From Belgium, Italy, the Republic of Korea, and the Republic of South Africa

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

EFFECTIVE DATE: June 8, 1998.

FOR FURTHER INFORMATION CONTACT: Zak Smith (Belgium), at (202) 482–1279; Cynthia Thirumalai (Italy), at (202) 482–4087; Christopher Cassel (the Republic of Korea), at (202) 482–4847; and Dana Mermelstein (the Republic of South Africa), at (202) 482–0984, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230.

Postponement

On April 20, 1998, the Department of Commerce (the Department) initiated countervailing duty investigations of stainless steel plate in coils from Belgium, Italy, the Republic of Korea, and the Republic of South Africa. On May 27, 1998, in accordance with section 351.205(e) of the Department's regulations, petitioners made a timely request that the Department postpone its preliminary determinations. As we find no compelling reasons to deny this request, we are postponing the preliminary determinations in these investigations to no later than August 28, 1998, pursuant to section 703(c)(1)(A) of the Tariff Act of 1930, as amended.

This notice is published pursuant to section 703(c)(2) of the Act.

Dated: June 1, 1998.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 98–15182 Filed 6–5–98; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 060198A]

Groundfish of the Gulf of Alaska

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

ACTION: Notice of receipt of an experimental fishing permit.

SUMMARY: This notice announces receipt of an application from John Gauvin, Groundfish Forum, Inc., for an Experimental Fishing Permit (EFP). If awarded, this permit would be used to develop a device for flatfish trawls that may lower halibut bycatch rates without significantly lowering catch rates of target flatfish species. It is intended to promote the objectives of the Fishery Management Plan (FMP) for Groundfish of the Gulf of Alaska.

ADDRESSES: Copies of the EFP application are available by writing to Steven Pennoyer, Administrator, Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802, Attn: Lori Gravel.

FOR FURTHER INFORMATION CONTACT: Susan Salveson, 907–586–7228.

SUPPLEMENTARY INFORMATION: The FMP and its implementing regulations at 50 CFR part 679.6 authorize issuance of EFPs to allow fishing that would otherwise be prohibited. Procedures for issuing EFPs are contained in the implementing regulations. NMFS received a permit request from the applicant on May 15, 1997, that, if approved, would be used to develop a device for flatfish trawls that may lower halibut bycatch rates without significantly lowering catch rates of target flatfish species.

In accordance with regulations, NMFS has determined that the proposal warrants further consideration and has initiated consultation with the North Pacific Fishery Management Council (Council) by forwarding the application to the Council. The Council will consider the EFP application during its June 10–15, 1998, meeting which will be held at the Grand Aleutian Hotel, Dutch Harbor, Alaska. The applicant has been invited to appear in support of the application if the applicant desires.

A copy of the application is available for review from the NMFS Regional Administrator (see **ADDRESSES**).

Authority: 16 U.S.C. 1801 *et seq.*

Dated: June 2, 1998.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 98–15159 Filed 6–5–98; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

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: Interested persons are invited to submit comments on or before August 7, 1998.

ADDRESSES: Written comments and requests for copies of the proposed information collection requests should be addressed to Patrick J. Sherrill, Department of Education, 600 Independence Avenue, S.W., Room 5624, Regional Office Building 3, Washington, D.C. 20202–4651.

FOR FURTHER INFORMATION CONTACT: Patrick J. Sherrill (202) 708–8196. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Acting Deputy Chief Information Officer, Office of the Chief Information Officer, publishes this notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment at the address specified above. Copies of the requests are available from Patrick J. Sherrill at the address specified above.

The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner, (3) is the estimate of burden accurate; (4) how might the

Department enhance the quality, utility, and clarity of the information to be collected, and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: June 2, 1998.

Hazel Fiers,

Acting Deputy Chief Information Officer, Office of the Chief Information Officer.

Office of Elementary and Secondary Education

Type of Review: New.
Title: Annual Report of Title I Allocation to Local Educational Agencies (LEAs).
Frequency: Annually.
Affected Public: State, local or Tribal Gov't; SEAs or LEAs.
Reporting and Recordkeeping Hour Burden:
Responses: 52.
Burden Hours: 416.
Abstract: An annual survey will be conducted to collect data on Title I allocations to local educational agencies in order for the Department of Education to establish a prior year base on which to determine ''hold-harmless'' guarantees for each LEA when computing Title I, Part A allocations in accordance with the authorizing statute.

[FR Doc. 98–15121 Filed 6–5–98; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Office of Elementary and Secondary Education; Intent To Repay to the State of New Mexico Department of Education Funds Recovered as a Result of Two Final Audit Determinations

AGENCY: Department of Education.

ACTION: Notice of intent to award grantback funds.

SUMMARY: Under section 459 of the General Education Provisions Act (GEPA), 20 U.S.C. 1234h, the U.S. Department of Education (Department) intends to repay to the State of New Mexico Department of Education, the State educational agency (SEA), an amount equal to 75 percent of the principal amount of funds returned to the Department as the result of final audit determinations. The Department's recovery of funds followed the SEA's issuance of a final letter of determination dated April 10, 1996 to Roswell Independent School District (RISD) requiring the return of $62,957.83, which was subsequently sent to the Department on June 11, 1996. This notice describes the SEA's plan, submitted on behalf of RISD, the local educational agency (LEA), for the use of the repaid funds and the terms and conditions under which the Department intends to make those funds available. The notice invites comments on the proposed grantback.

DATES: All Comments must be received on or before July 8, 1998.

ADDRESSES: All written comments should be addressed to Mary Jean LeTendre, Director, Compensatory Education Programs, Office of Elementary and Secondary Education, U.S. Department of Education, 600 Independence Avenue, SW, Portals Building, Room 4400, Washington, D.C. 20202–6132. Comments may also be sent through the Internet to: comments@ed.gov.

FOR FURTHER INFORMATION CONTACT: S. Colene Nelson, U.S. Department of Education, 600 Independence Avenue, SW, Portals Building, Room 4400, Washington, D.C. 20202–6132. Telephone: (202) 260–0979. 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. Internet address: Colene__Nelson@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:

A. Background

The Department has recovered $62,957.83 from the New Mexico SEA in satisfaction of claims arising from an audit of Roswell Independent School District (LEA) covering fiscal years (FY) 1993 and 1994.

The claims involved the LEA's administration of Chapter 1 of Title I of the Elementary and Secondary Education Act of 1965, as amended in 1988, a program providing financial assistance to State and local educational agencies to address the special educational needs of educationally deprived children in areas with high concentrations of children from low-income families (Chapter 1). Specifically, the audit determinations, made by an independent auditor acting under the Single Audit Act of 1984 and upheld by the SEA, found that for FY 1993, $30,769.72 representing partial salaries of six associates at Washington Avenue Elementary was allocated to the Chapter 1 program. However, the LEA did not maintain appropriate time distribution records to support the allocation. Also, for the following FY 1994, $32,188.11 representing partial salaries of six associates at Washington Avenue Elementary was allocated to the Chapter 1 program. In this instance, only the August and September time distribution reports were available. The auditors found that no additional time and attendance reports were maintained during the year demonstrating the actual time that staff spent on Chapter 1 activities. In the absence of appropriate support documentation to substantiate the salaries and wages chargeable to the Chapter 1 program, as required by Office of Management and Budget Circular A–87, ''Cost Principles for State and Local Governments,'' the SEA required the LEA to reimburse the Federal Government in the amount of $62,957.83 for both audited years.

B. Authority for Awarding a Grantback

Section 459(a) of GEPA, 20 U.S.C. 1234h, provides that whenever the Secretary has recovered program funds following a final audit determination, the Secretary may consider those funds to be additional funds available for the program and may arrange to repay to the SEA or LEA affected by that determination an amount not to exceed 75 percent of the recovered funds. The Secretary may enter into this grantback arrangement if the Secretary determines that the—

(1) Practices or procedures of the SEA or LEA that resulted in the audit determination have been corrected, and the SEA or LEA is, in all other respects, in compliance with the requirements of the applicable program, provided that the SEA or LEA was notified of any noncompliance with such requirements and given a reasonable period of time to remedy that noncompliance;

(2) SEA has submitted to the Secretary a plan for the use of the funds to be awarded under the grantback arrangement that meets the requirements of the program, and, to the extent possible, benefits the population that was affected by the failure to comply or by the misexpenditures that resulted in the audit exception; and

(3) Use of funds to be awarded under the grantback arrangement in accordance with the SEA's plan would serve to achieve the purposes of the program under which the funds were originally granted.

C. Plan for Use of Funds Awarded Under a Grantback Arrangement

Pursuant to section 459(a)(2) of GEPA, the SEA has applied for a grantback of $47,218—75 percent of the principal

amount recovered by the Department—and has submitted a plan on behalf of the LEA for use of the grantback funds to meet the special educational needs of educationally deprived children in programs administered under Title I, Part A, of ESEA, successor to Chapter 1.

According to the plan, the LEA will use the grantback funds under Title I to provide summer enrichment programs for educationally deprived children at three sites, in June and July 1998. Program services to be provided are as follows:

(1) *Washington Avenue Elementary*—Approximately 120 students would receive instruction in reading, math, and writing. Students would also receive 30 minutes of computer instruction, fitness activities, and music instruction. Services at this site would run from June 8, 1998 to July 7, 1998 with an estimated budget of $29,210.

(2) *Berrendo Elementary*—Approximately 60 to 70 students would receive instruction in reading with a focus on phonics instruction as well as literature. Also, math skills would be reinforced and students would receive computer assisted instruction. Services at this site would run from June 22, 1998 to July 17, 1998 with an estimated budget of $15,678.

(3) *Del Norte Elementary*—Approximately 60 students would receive instruction in reading. Students needing assistance in math would receive help on an as needed basis. Services at this site would run from June 8, 1998 to July 3, 1998 with an estimated budget of $11,705.

The total estimated cost of the LEA's summer enrichment program is $56,593. The additional funds ($9,375) would come from the LEA's current Title I allocation for 1997–98.

D. The Assistant Secretary's Determination

The Assistant Secretary has carefully reviewed the plan submitted by the SEA. Based upon that review, the Assistant Secretary has determined that the conditions under section 459 of GEPA have been met. These determinations are based upon the best information available to the Assistant Secretary at the present time. If this information is not accurate or complete, the Assistant Secretary may take appropriate administrative action. In finding that the conditions of section 459 of GEPA have been met, the Assistant Secretary makes no determination concerning any pending audit recommendations or final audit determinations.

E. Notice of the Assistant Secretary's Intent To Enter Into a Grantback Arrangement

Section 459(d) of GEPA requires that, at least 30 days before entering into an arrangement to award funds under a grantback, the Department must publish in the **Federal Register** a notice of intent to do so, and the terms and conditions under which payment will be made.

In accordance with section 459(d) of GEPA, notice is hereby given that the Assistant Secretary intends to make funds available to the SEA under a grantback arrangement. The grantback award would be in the amount of $47,218.

F. Terms and Conditions Under Which Payments Under a Grantback Arrangement Would Be Made

The SEA and LEA agree to comply with the following terms and conditions under which payment under a grantback arrangement would be made:

(1) The funds awarded under the grantback must be spent in accordance with—

(a) All applicable statutory and regulatory requirements;

(b) The plan that the SEA submitted and any amendments to that plan that are approved in advance by the Assistant Secretary; and

(c) The budget that was submitted with the plan and any amendments to the budget that are approved in advance by the Assistant Secretary.

(2) All funds received under the grantback arrangement must be obligated in accordance with the SEA's plan but, in no event, after September 30, 1999 as required under 459(c) of GEPA.

(3) The SEA, on behalf of the LEA, will, not later than December 31, 1998, submit a report to the Assistant Secretary that—

(a) Indicates that the funds awarded under the grantback have been spent in accordance with the proposed plan and approved budget; and

(b) Describes the results and effectiveness of the project for which the funds were spent.

(4) Separate accounting records must be maintained documenting the expenditures of funds awarded under the grantback arrangement.

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.htn
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.

(Catalog of Federal Domestic Assistance Number 84.010, Title I, Improving Basic Programs Operated by Local Education Agencies)

Dated: May 21, 1998.

Gerald N. Tirozzi,

Assistant Secretary for Elementary and Secondary Education.

[FR Doc. 98–15068 Filed 6–5–98; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Department of Energy, Los Alamos National Laboratory

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Public Law 92–463, 86 Stat. 770) notice is hereby given of the following Advisory Committee meeting: Environmental Management Site-Specific Advisory Board (EM SSAB), Los Alamos National Laboratory.

DATES: Thursday, June 25, 1998: 6:00 p.m.–9:00 p.m., 6:30 p.m. to 7:00 p.m. (public comment session).

ADDRESS: Cities of Gold Casino Hotel, Pojoaque, New Mexico.

FOR FURTHER INFORMATION CONTACT: Ms. Ann DuBois, Northern New Mexico Citizens' Advisory Board, Los Alamos National Laboratory, 528 35th Street, Los Alamos, New Mexico 87544, (505) 665–5048.

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Advisory Board is to make recommendations to DOE and its regulators in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda

6:00 p.m. Call to Order by DOE
6:00 p.m. Welcome by Chair, Roll Call, Approval of Agenda and Minutes
6:30 p.m. Public Comments
7:00 p.m. Break
7:15 p.m. Board Business
9:00 p.m. Adjourn

Public Participation: The meeting is open to the public. The public may file

written statements with the Committee, either before or after the meeting. A sign-up sheet will also be available at the door of the meeting room to indicate a request to address the Board. Individuals who wish to make oral presentations, other than during the public comment period, should contact Ms. Ann DuBois at (505) 665–5048 five (5) business days prior to the meeting to request that the Board consider the item for inclusion at this or a future meeting. The Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business.

Minutes: The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585 between 9:00 a.m. and 4 p.m., Monday-Friday, except Federal holidays. Minutes will also be available by writing to Mr. Mat Johansen, Deputy Designated Federal Officer, Department of Energy, Los Alamos Area Office, 528 35th Street, Los Alamos, NM 87185–5400.

Issued at Washington, DC on June 3, 1998.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 98–15152 Filed 6–5–98; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[IC98–01F–001 FERC Form No. 1–F]

Information Collection Submitted for Review and Request for Comments

June 2, 1998.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Notice of submission for review by the Office of Management and Budget (OMB) and request for comments.

SUMMARY: The Federal Energy Regulatory Commission (Commission) has submitted the energy information collection listed in this notice to the Office of Management and Budget (OMB) for review under provisions of Section 3507 of the Paperwork Reduction Act of 1995 (Pub. L. No. 104–13). Any interested person may file comments on the collection of information directly with OMB and should address a copy of those comments to the Commission as explained below. The Commission received no comments in response to the earlier **Federal Register** notice of February 17, 1998 (63 FR 7778) and has made this notation in its submission to OMB.

DATES: Comments regarding this collection of information are best assured of having their full effect if received within 30 days of this notification.

ADDRESSES: Address comments to Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Federal Energy Regulatory Commission, Desk Officer, 726 Jackson Place, N.W. Washington, D.C. 20503. A copy of the Comments should also be sent to Federal Energy Regulatory Commission, Office of the Chief Information Officer, Attention: Mr. Michael Miller, 888 First Street N.E., Washington, D.C. 20426.

FOR FURTHER INFORMATION CONTACT: Michael Miller may be reached by telephone at (202) 208–1415, by fax at (202) 273–0873, and by e-mail at michael.miller@ferc.fed.us.

SUPPLEMENTARY INFORMATION:

Description

The energy information collection submitted to OMB for review contains:

1. Collection of Information: FERC Form 1–F ''Annual Report for NonMajor Public Utilities, Licensees and Others''

2. Sponsor: Federal Energy Regulatory Commission

3. Control No.: OMB No. 1902–0029. The Commission is now requesting that OMB approve a three-year extension of the current expiration date, with no changes to the existing collection. There is a decrease in the reporting burden due to a decline in the number of entities that submit this annual report. This is a mandatory information collection requirement.

4. Necessity of Collection of Information: Submission of the information is necessary to enable the Commission to carry out its responsibilities in implementing the provisions of the Federal Power Act (FPA). Under the FPA the Commission may prescribe a system of accounts for jurisdictional companies, and after notice and hearing, may determine the accounts in which particular outlays and receipts will be entered, charged or credited. The FERC Form 1–F is designed to collect financial information from privately owned electric utilities and licensees who have generation, transmission, distribution and sales of electric energy, however produced throughout the United States and its possessions, subject to the Commission's jurisdiction.

5. Respondent Description: The respondent universe currently comprises on average, 7 companies subject to the Commission's jurisdiction.

6. Estimated Burden: 224 total burden hours, 7 respondents, 1 response annually, 32 hours per response (average).

7. Estimated Cost Burden to Respondents: 224 hours ÷ 2,088 hours per year × $109,889 per year = $11,789, average cost per respondent = $1,684.

Statutory Authority: Sections 4, 301, 304 of the Federal Power Act (FPA), 16 U.S.C. 797a–825.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–15090 Filed 6–5–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–230–000]

ANR Pipeline Company; Notice of Proposed Changes in FERC Gas Tariff

June 2, 1998.

Take notice that on May 29, 1998, ANR Pipeline Company (ANR) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets proposed to become effective June 1, 1998:

Thirty-Second Revised Sheet No. 8
Thirty-Second Revised Sheet No. 9
Thirty-First Revised Sheet No. 13
Thirty-Seventh Revised Sheet No. 18

ANR states that the above-referenced tariff sheets are being filed to implement recovery of approximately $2.8 million of above-market costs that are associated with its obligations to Dakota Gasification Company (Dakota). ANR proposes a reservation surcharge applicable to its Part 284 firm transportation customers to collect ninety percent (90%) of the Dakota costs, and an adjustment to the maximum base tariff rates of Rate Schedule ITS and overrun rates applicable to Rate Schedule FTS–2, so as to recover the remaining ten percent (10%). ANR advises that this filing also includes the annual restatement of the Eligible MDQ used to design the reservation surcharge. ANR also advises that the proposed changes would decrease current quarterly Above-Market Dakota Cost recoveries from $3.2 million to $2.8 million.

Any person desiring to be heard or to protest this filing should file a motion to intervene or a protest with the

Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings.

Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–15100 Filed 6–5–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–228–000]

ANR Pipeline Company; Notice of Proposed Changes in FERC Gas Tariff

June 2, 1998.

Take notice that on May 29, 1998, ANR Pipeline Company (ANR) tendered for filing, as part of its FERC Gas Tariff Second Revised Volume No. 1, the following tariff sheet proposed to become effective June 1, 1998:

Thirty-Eighth Revised Sheet No. 18

ANR states that the above-referenced tariff sheet is being filed by ANR to reflect the impact of the annual update of the Eligible MDQ that is used to calculate its currently effective Gas Supply Realignment (GSR) and Pricing Differential (PD) Reservation Surcharges, as required by and consistent with ANR's transition cost recovery mechanism set forth in its tariff. ANR advises that the Eligible MDQ has increased by approximately three percent, thereby reducing the level of the PD surcharge. The GSR surcharge, however, did not change as a result of the eligible MDQ increase.

Any person desiring the be heard or to protest this filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–15102 Filed 6–5–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. TM98–5–32–000]

Colorado Interstate Gas Company; Notice of Tariff Filing

June 2, 1998.

Take notice that, on May 29, 1998, Colorado Interstate Gas Company (CIG) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, Eighth Revised Sheet No. 11A reflecting a decrease in its fuel reimbursement percentage for Lost, Unaccounted-For and Other Fuel Gas from 0.79% to 0.70% effective July 1, 1998.

CIG states that copies of this filing have been served on CIG's jurisdictional customers and public bodies.

Any person desiring to be heard or to protest this filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–15094 Filed 6–5–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98–569–000]

Columbia Gas Transmission Corporation; Notice of Application

June 2, 1998.

Take notice that on May 22, 1998, Columbia Gas Transmission Corporation (Columbia), 12801 Fair Lakes Parkway, Fairfax, Virginia 22030–0146, filed in Docket No. CP98–569–000, an application pursuant to Section 7(b) of the Natural Gas Act and Part 157 of the Commission's Regulations for an order permitting and approving the abandonment by sale to Norse Pipeline, LLC, (Norse) of certain certificated natural gas facilities, designated as the Project Penny facilities, located in the states of New York and Pennsylvania, as more fully set forth in the application, which is on file with the Commission and open for public inspection.

Specifically, Columbia proposes to abandon by sale the Project Penny System which includes approximately 336 miles of 4, 6, 8, 10 and 12-inch diameter pipeline, seven compressor stations, and other appurtenant facilities. Also, Columbia will sell to Norse approximately 4.53 miles of non-jurisdictional gathering lines and appurtenances. Columbia states that the Project Penny facilities will be sold for a negotiated amount of $21,800,000.

Columbia states that as a result of Order Nos. 436 and 636, it has experienced a shift from primarily a merchant function to that of transporter. As a result, Columbia says it is taking steps to redefine its pipeline system. Columbia further states that the Project Penny facilities are not an integral part of its transmission system and that the long-term needs of its customers are best served through a divestiture of the non-core facilities.

Columbia relates that it does not propose the abandonment of service to customers other than the firm and interruptible customers currently served directly from the Project Penny facilities. Columbia relates that Norse has agreed to assume Columbia's service obligation to both.

Concurrently with this application, Norse filed a Petition for Declaratory Order Disclaiming Jurisdiction Over Gathering Facilities in Docket No. CP98–568–000. Columbia states that Norse owns no facilities under the jurisdiction of the Commission, but does own, through a Norse affiliate, discrete gathering facilities located in Chautauqua County, New York.

Columbia asserts Norse is not an affiliate of Columbia.

Any person desiring to be heard or to make any protest with reference to said application should on or before June 23, 1998, file with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party in any proceeding herein must file a motion to intervene in accordance with the Commission's rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application, if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Columbia to appear or to be represented at the hearing.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–15091 Filed 6–5–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–231–000]

Columbia Gas Transmission Corporation; Notice of Proposed Changes in FERC Gas Tariff

June 2, 1998.

Take notice that on May 29, 1998, Columbia Gas Transmission Corporation (Columbia) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets to become effective July 1, 1998.

Original Sheet No. 99Q
Original Sheet No. 99R

Purusant to the prior agreements of the parties following Columbia's first filing to recover Accrued-But-Not-Paid Gas Costs, this filing should be sub-docketed under the RP96–140 docket number.

Columbia states that the instant filing is being submitted pursuant to Article VII, Section C, Accrued-But-Not-Paid Gas Costs, of the ''Customer Settlement'' in Docket No. GP94–02, et al., approved by the Commission on June 15, 1995 (71 FERC ¶ 61,337 (1995)). The Customer Settlement became effective on November 28, 1995, when the Bankruptcy Court's November 1, 1995 order approving Columbia's Plan of Reorganization became final. Under the terms of Article VII, Section C, Columbia is entitled to recover amounts for Accrued-But-Not-Paid Gas Costs. As directed by Article VII, Section C, the tariff sheets contained herein are being filed in accordance with Section 39 of the General Terms and Conditions of the Tariff, to direct bill the Accrued-But-Not-Paid Gas Costs that have been paid subsequent to November 28, 1995.

Columbia states that the instant filing reflects Accrued-But-Not-Paid Gas Costs in the amount of $382,636.45 plus applicable FERC interest of $7,421.23. This is Columbia's eighth filing pursuant to Article VII, Section C, and Columbia reserves the right to make the appropriate additional filings pursuant to that provision. The allocation factors on Appendix F of the Customer Settlement were used as prescribed by Article VII, Section C.

Columbia states that copies of its filing have been mailed to all parties on the Commission's service list in Docket No. RP96–140 and RP96–140–002, and to each of Columbia's firm customers, interruptible customers, and affected state commissions.

Any person desiring to be heard or to protest this filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–15099 Filed 6–5–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. TM98–9–23–000]

Eastern Shore Natural Gas Company; Notice of Proposed Changes in FERC Gas Tariff

June 2, 1998.

Take notice that on May 29, 1998, Eastern Shore Natural Gas Company (Eastern Shore) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following revised tariff sheets, with a proposed effective date of July 1, 1998:

First Revised Sheet No. 4
First Revised Sheet No. 5
First Revised Sheet No. 6

Eastern Shore states that it submitted this filing pursuant to the provisions of Section 31, Fuel Retention Adjustment, of the General Terms and Conditions (GT & C) of its Tariff. First Revised Sheet Nos. 4, 5, and 6, respectively, set forth Eastern Shore's Fuel Retention Percentage (FRP), as revised by this filing and proposed to be effective July 1, 1998. Eastern Shore states that Section 31 of the GT & C permits Eastern Shore to file with the Commission revised tariff sheets containing a re-determined FRP for the affected transportation rate schedules. Such FRP is designed to reimburse Eastern Shore for the cost of its Gas Required for Operations (GRO) which consists of (a) gas used for compressor fuel and (b) gas otherwise used, lost or unaccounted for, in its operations. Eastern Shore's states that its new FRP is .30% and was determined by computing the GRO quantities attributable to system wide operations for the affected transportation rate schedules using the twelve (12) month period ending April, 1998 and then dividing such result by the transportation quantities received by Eastern Shore for the corresponding twelve (12) month period.

Eastern Shore further states that Section 31 also requires Eastern Shore to determine for each month the difference, positive or negative, between (a) total GRO quantities actually

incurred and (b) the total quantities retained from all Buyers for transportation service in accordance with the applicable FRP. For every such month the foregoing difference is multiplied by the applicable monthly GRO Index Price. The resulting product is recorded in a Deferred GRO Account and interest is computed on the balance in the manner prescribed in Section 154.305(h) of the Commission's regulations. The actual Deferred GRO Account balance at the end of each twelve (12) month period ending March 31 is incorporated in Eastern Shore's Refund of ''Cash Out'' Revenues in Excess of Costs as contained in Section 35 of the GT & C of Eastern Shore's Tariff.

Lastly, Eastern Shore states that copies of its filing is available for inspection at its office at 417 Bank Lane, Dover, Delaware; and has been mailed to all firm customers, interruptible customers, and affected state commissions.

Any person desiring to be heard or to protest this filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–15093 Filed 6–5–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. GT98–45–000]

El Paso Natural Gas Company; Notice of Proposed Changes in FERC Gas Tariff

June 2, 1998.

Take notice that on May 27, 1998, El Paso Natural Gas Company (El Paso) tendered for filing two firm Transportation Service Agreements (TSAs) between El Paso and Pemex Gas y Petroquimica Basica (Pemex) and Eighth Revised Sheet No. 1 to its FERC Gas Tariff, Second Revised Volume No. 1–A.

El Paso states that it is submitting the TSAs for Commission approval since the TSAs contain payment provisions which differ from El Paso's Volume No. 1–A General Terms and Conditions. The tariff sheet, which references the TSAs, is proposed to become effective on June 26, 1998.

Any person desiring to be heard or to protest this filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington D.C. 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not service to make protestants parties to the proceedings. Any person wishing to became a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–15109 Filed 6–5–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–235–000]

Gas Research Institute; Notice of Annual Application

June 2, 1998.

Take notice that on May 22, 1998, Gas Research Institute (GRI) filed an application requesting advance approval of its 1999–2003 Five-Year Research, Development and Demonstration (RD&D) Plan and 1999 RD&D Program, and the funding of its RD&D activities for 1999, pursuant to the Natural Gas Act, Section 154.401(b) of the Commission's Regulations, and the Order Approving Settlement issued by the Commission on April 29, 1998 [83 FERC ¶ 61,093 (1998)]. GRI's application seeks to collect funds to supports its 1999 RD&D Program through jurisdictional rates and charges during the twelve months ending December 31, 1999.

In its application, GRI proposes to incur contract obligations of $132 million in 1999, which GRI states is consistent with the April 29 Order. This amount comprises $114.5 in RD&D obligations and $17.5 million in Administrative and General (operating) obligations. GRI states that $77.1 of the 1999 contract obligations will be for Core Projects and $54.9 for Non-Core Projects.

Also consistent with the Commission's April 29 Order Approving Settlement, GRI proposes to fund the 1999 RD&D program by the use of the following surcharges: (1) a demand/reservation surcharge of 23 cents per Dth per month for ''high load factor customers''; (2) a demand/reservation surcharge of 14.2 cents per Dth per month for ''low load factor customers''; (3) a volumetric commodity/usage surcharge of .75 cents; and (4) a special ''small customer'' surcharge of 1.8 cents per Dth.

In addition, GRI plans to make a series of one-time charges against its cash balance in 1998 and 1999 to fund expenses associated with its required transition to a fully voluntary funding system. GRI estimates these charges to be $2.7 million in 1998 and $1.2 million in 1999.

The Commission Staff will analyze GRI's application and prepare a Commission Staff Report. This Staff Report will be served on all parties and filed with the Commission as a public document by August 7, 1998. Comments on the Staff Report by all parties, except GRI, must be filed with the Commission on or before August 21, 1998. GRI's reply comments must be filed on or before August 28, 1998.

Any person desiring to be heard or to protest GRI's application, except for GRI members and state regulatory commissions, who are automatically permitted to participate in the instant proceedings as intervenors, should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and procedure, 18 CFR 385.214 and 385.211. All protests, motions to intervene and comments should be filed on or before June 16, 1998. All comments and protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to this proceeding. Any person wishing to become a party, other than a GRI member or a state regulatory commission, must file a motion to intervene. Copies of this application are on file with the

Commission and are available for public inspection.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–15145 Filed 6–5–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–232–000]

National Fuel Gas Supply Corporation; Notice of Proposed Changes in FERC Gas Tariff

June 2, 1998.

Take notice that on May 29, 1998, National Fuel Gas Supply Corporation (National) tendered for filing as part of its FERC Gas Tariff, Fourth Revised Volume No. 1, Fifth Revised Sheet No. 8, with a proposed effective date of July 1, 1998.

National states that this filing reflects the quarterly adjustment to the reservation component of the EFT rate pursuant to the Transportation and Storage Cost Adjustment (TSCA) provision set forth in Section 23 of the General Terms and Conditions of National's FERC Gas Tariff.

In addition, National states that the filing reflects National's agreement to buyout the final two years of transportation service under Tennessee Gas Pipeline Company (Tennessee) Contract No. 7394. The buyout agreement with Tennessee terminates the Contract two years early, effective at the end of October 1998. The buyout will save National's EFT customers approximately $750,000.00.

Any person desiring to be heard or to protest this filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–15098 Filed 6–5–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–38–003]

Natural Gas Pipeline Company of America; Notice of Refund Report

June 2, 1998.

Take notice that on May 18, 1998, Natural Gas Pipeline Company of America (Natural) filed a report to comply with Ordering Paragraph (E) and Appendix E of the Federal Energy Regulatory Commission's September 10, 1997, ''Order Denying Petitions for Adjustment and Establishing Procedures for the Payment of Refunds'' issued in Public Service Co. of Colorado and Cheyenne Light, Fuel and Power Co., Docket Nos. RP97–369–000, et al.

Natural states that its May 18 refund report deals with the Kansas *ad valorem* taxes associated with Natural's gas purchases for the period of October 3, 1983, through June 28, 1988. Natural states it has identified two producers who owe $239.666. Natural has placed all producer refund payments in escrow pending the outcome of Natural's motion for waiver of the refund flowthrough requirements filed in Docket No. RP98–38–000.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed on or before June 9, 1998. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–15105 Filed 6–5–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–431–002]

Natural Gas Pipeline Company of America; Notice of Technical Conference

June 2, 1998.

Take notice that a technical conference in the above-captioned proceeding will be held on Tuesday, June 16, 1998, beginning at 1:00 p.m. and continuing, if necessary, through Wednesday June 17, 1998, in a room to be designated at the offices of the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426.

Any party that will need audio visual equipment at the conference should contact Kenneth Niehaus at (202) 208–0398 on or before Tuesday, June 9, 1998.

All interested parties and Staff are permitted to attend.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–15106 Filed 6–5–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98–568–000]

Norse Pipeline, LLC; Notice of Petition For Declaratory Order

June 2, 1998.

Take notice that on May 22, 1998, Norse Pipeline, LLC (Norse), 2500 Tanglewilde, Suite 250, Houston, Texas 77063, filed in Docket No. CP98–568–000, a petition, pursuant to Section 1(b) of the Natural Gas Act (15 U.S.C. 717(b)) and Rule 207(a)(2) of the Commission's Regulations, for a declaratory order disclaiming jurisdiction over certain facilities to be acquired from Columbia Gas Transmission Corporation (Columbia), designated as the Project Penny facilities, located in the States of New York and Pennsylvania, as more fully set forth in the petition, which is on file with the Commission and open for public inspection.

Concurrently with this application, Columbia, in Docket No. CP98–569–000, filed an application to abandon, by sale, certain facilities known as the Project Penny facilities. Norse states that Norse and Columbia entered into an April 9, 1998, agreement under which Columbia will sell and Norse will acquire certain assets and facilities located in

Cattaraugus and Chautauqua counties, New York, and Crawford, Erie, and Warren counties, Pennsylvania for $21,800,000. Norse relates the facilities include 336 miles of pipeline and seven compression facilities.

Norse requests the Commission to declare the pipeline and compressor facilities to be acquired from Columbia as exempt gathering facilities under Section 1(b) of the NGA.

Any person desiring to be heard or to make any protest with reference to said application should on or before June 23, 1998, file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party in any proceeding herein must file a motion to intervene in accordance with the Commission's rules.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–15092 Filed 6–5–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98–541–000]

Northern Lights, Inc.; Notice of Application

June 2, 1998.

Take notice that on May 13, 1998, Northern Lights, Inc. (Applicant), 1423 Dover Highway, Sandpoint, Idaho, 83864, filed in Docket No. CP98–541–000 an abbreviated application pursuant to Sections 7(f) of the Natural Gas Act, as amended, for permission and approval to grant a service area determination, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant states that it is an electric distribution cooperative currently operating in the states of Idaho and Montana. Applicant further states that upon receipt of the requisite federal, state, and local authorizations, Applicant proposes to construct natural gas local distribution service and commence providing natural gas local distribution service in several small rural communities located in northwestern Idaho and northeastern Washington state. Applicant requests a service area determination encompassing the Sagle unincorporated area, and the cities Priest River and Old Town and surrounding environs, located in Bonner County, Idaho, and the cities of Newport and Usk and surrounding environs, located in Pend Oreille County, Washington. Applicant asserts that no sales for resale will be contemplated.

Applicant also requests that the Commission determine that Applicant qualifies as a local distribution company in the area proposed as a Section 7(f) service area for purposes of Section 311 of the Natural Gas Policy Act. Applicant further requests that the Commission grant Applicant a waiver of certain reporting and accounting requirements otherwise applicable to Applicant as a natural gas company.

Any person desiring to be heard or to make any protest with reference to said application should on or before June 9, 1998, file with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding.

Any person wishing to become a party to the proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission on this application if no petition to intervene is filed within the time required herein, and if the Commission on its own review of the matter finds that the abandonment is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provide for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–15110 Filed 6–5–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–233–000]

Northern Natural Gas Company; Notice of Proposed Changes in FERC Gas Tariff

June 2, 1998.

Take notice that on May 29, 1998, Northern Natural Gas Company (Northern), tendered for filing changes in its FERC Gas Tariff, Fifth Revised Volume No. 1.

Northern states that the filing revises the current Stranded Account No. 858 Surcharge which is designed to recover costs incurred by Northern related to its contracts with third-party pipelines. Therefore, Northern has filed 1 Revised Substitute 43 Sheet Nos. 50 and 51 and the 1 Revised Substitute 40 Revised Sheet No. 53 to be effective July 1, 1998.

Northern states that copies of this filing were served upon the Company's customers and interested state commissions.

Any person desiring to be heard or to protest this filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–15097 Filed 6–5–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–40–004]

Panhandle Eastern Pipe Line Company; Notice of Refund Report

June 2, 1998.

Take notice that on May 18, 1998, Panhandle Eastern Pipe Line Company (Panhandle) tendered for filing its Refund Report pursuant to the Commission's Order Denying Petitions For Adjustment and Establishing Procedures for the Payment of Refunds for Kansas Ad Valorem Taxes dated September 10, 1997 (September 10, 1997 Order).

On April 8, 1998, Panhandle states that it refunded to its jurisdictional customers their allocated share of the refunds of Kansas Ad Valorem taxes received from Panhandle's producer suppliers.

Panhandle submits the following information pursuant to Ordering Paragraph (E) of the September 10, 1997 Order:

(1) Appendix A—Summary of the Kansas Ad Valorem tax refund amounts due from the producer suppliers, amounts received and amounts which remain unpaid by producer suppliers as of March 31, 1998.

(2) Appendix B—Workpapers supporting the refund made on April 8, 1998.

Panhandle states that a copy of this information is being sent to each of Panhandle's affected customers and respective State Regulatory Commissions.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed on or before June 9, 1998. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–15104 Filed 6–5–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. TM98–3–86–000]

PG&E Gas Transmission, Northwest Corporation; Notice of Compliance Filing

June 2, 1998.

Take notice that on May 29, 1998, PG&E Gas Transmission, Northwest Corporation (PG&E GT–NW) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1–A: Twentieth Revised Sheet No. 5. PG&E GT–NW requests that the above-referenced tariff sheet become effective July 1, 1998.

PG&E GT–NW asserts that the purpose of this filing is to comply with Paragraph 37 of the terms and conditions of First Revised Volume No. 1–A of its FERC Gas Tariff, Adjustment for Fuel, Line Loss and Other Unaccounted For Gas Percentages. These tariff changes reflect that PG&E GT–NW's fuel and line loss surcharge percentage will remain at 0.0007% per Dth per pipeline-mile for the six-month period beginning July 1, 1998. Also included, as required by Paragraph 37, are workpapers showing the derivation of the current fuel and line loss percentage in effect for each month the fuel tracking mechanism has been in effect.

PG&E GT–NW further states that a copy of this filing has been served on PG&E GT–NW's jurisdictional customers and interested state regulatory agencies.

Any person desiring to be heard or to protest this filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–15095 Filed 6–5–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2000–010]

Power Authority of the State of New York; Notice of Schedule of Meetings To Discuss Settlement for Relicensing of the St. Lawrence-FDR Power Project

June 2, 1998.

The establishment of the Cooperative Consultation Process (CCP) Team and the Scoping Process for relicensing of the St. Lawrence-FDR Power Project was identified in the NOTICE OF MEMORANDUM OF UNDERSTANDING, FORMATION OF COOPERATIVE CONSULTATION PROCESS TEAM, AND INITIATION OF SCOPING PROCESS ASSOCIATED WITH RELICENSING THE ST. LAWRENCE–FDR POWER PROJECT issued May 2, 1996, and found in the **Federal Register** dated May 8, 1996, Volume 61, No. 90, on page 20813.

The following is a list of the future CCP Team meetings that are presently scheduled for continued discussion of settlement negotiations. The meetings will be conducted at the New York Power Authority's (NYPA) Robert Moses Powerhouse, at 10:00 a.m., located in Massena, New York.

The CCP Team will meet:

July 14 and 15, 1998,
August 25–27, 1998,
September 23–25, 1998,
October 27–29, 1998,
November 18 and 19, 1998, and
December 16 and 17, 1998.

In addition, the Ecological Subcommittee of the CCP Team will meet on June 23, 1998 and July 16, 1998.

If you would like more information about the CCP Team and the relicensing process, as well as the subcommittees, please contact any one of the following individuals:

Mr. Thomas R. Tatham, New York Power Authority, (212) 468–6747, (212) 468–6272 (fax), EMAIL:Ytathat@IP3GATE.USA.COM

Mr. Bill Little, Esq., New York State Dept. of Environmental Conservation, (518) 457–0986, (518) 457–3978 (fax), EMAIL:WGLittle@DEC.State.NY.US

Dr. Jennifer Hill, Ms. Patti Leppert-Slack, Federal Energy Regulatory Commission, (202) 219–2797 (Jennifer), (202) 219–2767 (Patti), (202) 219–0125 (fax), EMAIL:Jennifer.Hill@FERC.FED.US, EMAIL: Patricia.LeppertSlack@FERC.FED.US

Further information about NYPA and the St. Lawrence-FDR Power Project can

be obtained through the Internet at http://www.stl.nypa.gov/index.html. Information about the Federal Energy Regulatory Commission can be obtained at http://www.ferc.fed.us.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–15108 Filed 6–5–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. TM98–2–8–000]

South Georgia Natural Gas Company; Notice of Proposed Changes to FERC Gas Tariff

June 2, 1998.

Take notice that on May 29, 1998, South Georgia Natural Gas Company (South Georgia) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following revised tariff sheets, to be effective July 1, 1998:

Eleventh Revised Sheet No. 5
Tenth Revised Sheet No. 6

South Georgia states that the instant filing is submitted pursuant to Section 19.2 of the General Terms and Conditions of its Tariff to adjust its fuel retention percentage (FRP) for all transportation services on its system effective July 1, 1998. The derivation of the revised FRP is based on South Georgia's gas required for operations (GRO) for the twelve-month period ending April 30, 1998, adjusted for the balance accumulated in the Deferred GRO Account at the end of said period, divided by the transportation volumes received during the same twelve-month period. Based on this calculation, the revised FRP is 2.24% which is an increase from the currently effective FRP of 1.70%.

Any person desiring to be heard or to protest this filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–15096 Filed 6–5–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–227–000]

Southern Natural Gas Company; Notice of Cost Recovery Filing

June 2, 1998.

Take notice that on May 29, 1998, Southern Natural Gas Company (Southern) tendered for filing as part of its FERC Gas Tariff, Seventh Revised Volume No. 1, the following tariff sheets with the proposed effective date of July 1, 1998.

Tariff Sheets

Thirty-Ninth Revised Sheet No. 14
Twenty-Fourth Revised Sheet No. 14a
Sixtieth Revised Sheet No. 15
Thirtieth Revised Sheet No. 15a
Thirty-Ninth Revised Sheet No. 16
Twenty-Fourth Revised Sheet No. 16a
Sixtieth Revised Sheet No. 17
Thirtieth Revised Sheet No. 17a

Southern sets forth in the filing its revised demand surcharges for the recovery of Order No. 636 transition costs associated with Southern LNG Inc. from the period February 1, 1998 through April 30, 1998. These costs have arisen as a direct result of restructuring under Order No. 636. Copies of the filing were served upon Southern's customers and interested state commissions.

Any person desiring to be heard or to protest this filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–15103 Filed 6–5–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–229–000]

Williston Basin Interstate Pipeline Company; Notice of Compliance Filing

June 2, 1998.

Take notice that on May 29, 1998, Williston Basin Interstate Pipeline Company (Williston Basin), tendered for filing its Annual Take-or-Pay Reconciliation Filing pursuant to Section 37 of the General Terms and Conditions of its FERC Gas Tariff, Second Revised Volume No. 1. More specifically, Williston Basin filed the following tariff sheet:

Second Revised Volume No. 1
Fifth Revised Sheet No. 321

Williston Basin has requested that the Commission accept this filing to become effective July 1, 1998.

Williston Basin states that the revised tariff sheet is being filed to reflect recalculated fixed monthly surcharge to be effective during the period July 1, 1998 through September 30, 1998 pursuant to the procedures contained in Section 37 of the General Terms and Conditions of Williston Basin's FERC Gas Tariff, Second Revised Volume No. 1.

Any person desiring to be heard or to protest this filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–15101 Filed 6–5–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 11546–000 Minnesota]

City of Thief River Falls; Notice of Availability of Final Environmental Assessment

June 2, 1998.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission's) regulations, 18 CFR Part 380 (Order No. 486, 52 FR 47897), the Office of Hydropower Licensing has reviewed the application for an original minor license for the proposed Thief River Falls, Municipal Power Dam Hydroelectric Project located on the Red Lake River in the City of Thief River Falls, Pennington County, Minnesota, and has prepared a Final Environmental Assessment (FEA) for the proposed project.

Copies of the FEA are available for review in the Public Reference Branch of the Commission's offices at 888 First Street, NE., Washington, DC 20426.

For further information, please contact Monte J. TerHaar at (202) 219–2768.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–15107 Filed 6–5–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Sunshine Act Meeting

June 3, 1998.

The following notice of meeting is published pursuant to section 3(a) of the Government in the Sunshine Act (Pub. L. No. 94–409), 5 U.S.C. 552B:

AGENCY HOLDING MEETING: Federal Energy Regulatory Commission.

DATE AND TIME: June 10, 1998 10:00 a.m.

PLACE: Room 2C 888 First Street, N.E., Washington, D.C. 20426.

STATUS: Open.

MATTERS TO BE CONSIDERED: Agenda.

* Note—Items listed on the agenda may be deleted without further notice.

CONTACT PERSON FOR MORE INFORMATION: David P. Boergers, Acting Secretary, Telephone, (202) 208–0400. For a recording listing items stricken from or added to the meeting, call (202) 208–1627.

This is a list of matters to be considered by the Commission. It does not include a listing of all papers relevant to the items on the agenda; however, all public documents may be examined in the reference and information center.

CONSENT AGENDA—HYDRO, 700TH MEETING—JUNE 10, 1998, REGULAR MEETING (10:00 a.m.)

CAH–1.
DOCKET# EL95–35, 002, KOOTENAI ELECTRIC COOPERATIVE, INC. ET AL. V. PUBLIC UTILITY DISTRICT NO. 2 OF GRANT COUNTY, WASHINGTON

CAH–2.
DOCKET# P–1855, 019, NEW ENGLAND POWER COMPANY AND USGEN NEW ENGLAND, INC.
OTHER#S P–1892, 009, NEW ENGLAND POWER COMPANY AND USGEN NEW ENGLAND, INC.
P–1904, 028, NEW ENGLAND POWER COMPANY AND USGEN NEW ENGLAND, INC.
P–2077, 011, NEW ENGLAND POWER COMPANY AND USGEN NEW ENGLAND, INC.
P–2323, 052, NEW ENGLAND POWER COMPANY AND USGEN NEW ENGLAND, INC.
P–2669, 012 NEW ENGLAND POWER COMPANY AND USGEN NEW ENGLAND, INC.

CAH–3.
DOCKET# P–2325, 022, CENTRAL MAINE POWER COMPANY
OTHER#S P–2329, 019, CENTRAL MAINE POWER COMPANY
P–2552, 025, CENTRAL MAINE POWER COMPANY
P–2671, 007, KENNEBEC WATER POWER COMPANY

CAH–4.
DOCKET# P–2536, 018, CONSOLIDATED PAPERS, INC.

CAH–5
DOCKET# HB65–88–1, 004, FARMINGTON RIVER POWER COMPANY

CAH–6.
DOCKET# P–5, 039, MONTANA POWER COMPANY

CAH–7. OMITTED

CAH–8.
DOCKET# P–2389, 032, EDWARDS MANUFACTURING COMPANY, INC. AND CITY OF AUGUSTA, MAINE
OTHER#S P–2322, 027, CENTRAL MAINE POWER COMPANY
P–2325, 030, CENTRAL MAINE POWER COMPANY
P–2552, 034, CENTRAL MAINE POWER COMPANY
P–2574, 026, MERIMIL LIMITED PARTNERSHIP
P–2611, 035, UAH-HYDRO KENNEBEC LIMITED PARNTERSHIPS
P–5073, 056, BENTON FALLS ASSOCIATES

CAH–9. OMITTED

Consent Agenda—Electric

CAE–1.
DOCKET# ER98–1776, 000, WESTERN RESOURCES, INC.
OTHER#S ER98–2107, 000, OKLAHOMA GAS AND ELECTRIC

CAE–2.
DOCKET# ER98–2603, 000, SOUTHWOOD 2000, INC.

CAE–3.
DOCKET# ER98–2537, 000, LONG BEACH GENERATION, LLC
OTHER#S ER97–2355, 000, SOUTHERN CALIFORNIA EDISON COMPANY
ER98–441, 000, SOUTHERN CALIFORNIA EDISON COMPANY
ER98–2550, 000, EL SEGUNDO POWER, LLC

CAE–4.
DOCKET# ER98–2498, 000, COBISA-PERSON LIMITED

CAE–5.
DOCKET# ER98–2640, 000, NORTHERN STATES POWER COMPANY (MINNESOTA) NORTHERN STATES POWER COMPANY (WISCONSIN)

CAE–6.
DOCKET# ER98–2647, 000, CALIFORNIA INDEPENDENT SYSTEM OPERATOR CORPORATION
OTHER#S ER98–2648, 000, CALIFORNIA INDEPENDENT SYSTEM OPERATOR CORPORATION
ER98–2650, 000, CALIFORNIA INDEPENDENT SYSTEM OPERATOR CORPORATION

CAE–7.
OMITTED

CAE–8.
DOCKET# ER94–734, 000, NEW CHARLESTON POWER I, L.P.
OTHER#S ER94–734, 001, NEW CHARLESTON POWER I, L.P.
ER94–734, 003, NEW CHARLESTON POWER I, L.P.

CAE–9.
DOCKET# ER95–1775, 000, TAMPA ELECTRIC COMPANY
OTHER#S OA96–116, 000, TAMPA ELECTRIC COMPANY
OA96–116, 001, TAMPA ELECTRIC COMPANY

CAE–10.
DOCKET# ER96–1208, 000, INTERSTATE POWER COMPANY

CAE–11.
DOCKET# OA96–200, 004, EL PASO ELECTRIC COMPANY

CAE–12.
DOCKET# EC98–1, 001, NEW

ENGLAND POWER COMPANY, NARRAGANSETT ELECTRIC COMPANY, ALLENERGY MARKETING COMPANY, L.L.C. AND USGEN NEW ENGLAND, INC.
OTHER#S ER98–6, 001, NEW ENGLAND POWER COMPANY, NARRAGANSETT ELECTRIC COMPANY, ALLENERGY MARKETING COMPANY, L.L.C. AND USGEN NEW ENGLAND, INC.

CAE–13.
OMITTED

CAE–14.
DOCKET# NJ98–3, 000, SALT RIVER PROJECT AGRICULTURAL IMPROVEMENT AND POWER DISTRICT

CAE–15.
DOCKET# ER96–2367, 001, COMMONWEALTH EDISON COMPANY AND COMMONWEALTH EDISON COMPANY OF INDIANA, INC.

CAE–16.
OMITTED

Consent Agenda—Gas and Oil

CAG–1.
DOCKET# RP98–206, 000, ATLANTA GAS LIGHT COMPANY

CAG–2.
DOCKET# RP98–215, 000, NATURAL GAS PIPELINE COMPANY OF AMERICA

CAG–3.
DOCKET# RP98–218, 000, COLORADO INTERSTATE GAS COMPANY

CAG–4.
DOCKET# PR98–3, 000, SOUTHEASTERN NATURAL GAS COMPANY
OTHER#S PR98–3, 001, SOUTHEASTERN NATURAL GAS COMPANY

CAG–5.
DOCKET# RP97–71, 008, TRANSCONTINENTAL GAS PIPE LINE CORPORATION
OTHER#S RP97–71, 009, TRANSCONTINENTAL GAS PIPE LINE CORPORATION
RP97–312, 003, TRANSCONTINENTAL GAS PIPE LINE CORPORATION

CAG–6.
DOCKET# RP97–287, 010, EL PASO NATURAL GAS COMPANY
OTHER#S RP97–287, 014, EL PASO NATURAL GAS COMPANY

CAG–7.
OMITTED

CAG–8.
DOCKET# RP93–206, 020, NORTHERN NATURAL GAS COMPANY
OTHER#S RP96–347, 012, NORTHERN NATURAL GAS COMPANY

CAG–9.
DOCKET# OR98–3, 000, OXY USA, INC. V. AMERADA HESS PIPELINE CORPORATION, ARCO TRANSPORTATION ALASKA, INC., BP PIPELINES (ALASKA) INC., ET AL.

CAG–10.
DOCKET# MG98–9, 000, WARREN TRANSPORTATION, INC.

CAG–11.
DOCKET# MG98–7, 000, MIDCOAST INTERSTATE TRANSMISSION, INC.

CAG–12.
OMITTED

CAG–13.
DOCKET# CP98–121, 000, TENNESSEE GAS PIPELINE COMPANY

CAG–14.
DOCKET# CP98–220, 000, TENNESSEE GAS PIPELINE COMPANY

CAG–15.
DOCKET# CP96–15, 000, TEXAS EASTERN TRANSMISSION CORPORATION

CAG–16.
DOCKET# CP98–271, 000, KN WATTENBERG TRANSMISSION LIMITED LIABILITY COMPANY V. PUBLIC SERVICE COMPANY OF COLORADO, ET AL.

CAG–17.
OMITTED

CAG–18.
DOCKET# CP98–249, 001, FLORIDA GAS TRANSMISSION COMPANY

HYDRO AGENDA

H–1.
RESERVED

ELECTRIC AGENDA

E–1.
RESERVED

OIL AND GAS AGENDA

I. PIPELINE RATE MATTERS

PR–1.
RESERVED

II. PIPELINE CERTIFICATE MATTERS

PC–1. RESERVED

David P. Boergers,
Acting Secretary.

[FR Doc. 98–15275 Filed 6–4–98; 11:36 am]
BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6108–5]

Agency Information Collection Activities: Submission for OMB Review; Comment Request; Secondary Lead Smelters MACT

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: MACT, Subpart X—Secondary Lead Smelters (OMB # 2060–0296, expiration 6/30/98). The ICR describes the nature of the information collection and its expected burden and cost; where appropriate, it includes the actual data collection instrument.

DATES: Comments must be submitted on or before July 8, 1998.

FOR FURTHER INFORMATION CONTACT: For a copy of the ICR, call 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/icr.htm, and refer to EPA ICR No. 1686.03.

SUPPLEMENTARY INFORMATION: *Title:* MACT Subpart X—Secondary Lead Smelters (OMB Control No. 2060–0296; EPA ICR No. 1686.03) expiring 6/30/98. This is a request for extension of a currently approved collection.

Abstract: The EPA is required under section 112(d) of the 1990 Clean Air Act, to regulate emissions of 189 hazardous air pollutants (HAPs). Secondary lead smelters have been identified by the EPA as significant emitters of several chemicals identified as HAPs, including but not limited to lead compounds, arsenic compounds, and 1,3-butadiene. In the Administrator's judgment, such emissions cause or contribute significantly to air pollution that may reasonably be anticipated to endanger public health. Chronic exposure to lead compounds results in adverse effects on the blood, central nervous system, blood pressure, kidneys, and vitamin D metabolism. Children are particularly sensitive and exposure can also result in reduced cognitive development and reduced growth. Lead compounds can be persistent in the environment and have the potential to accumulate in food chains. Chronic inhalation exposure to arsenic compounds is strongly

associated with lung cancer, while organic HAP emissions from secondary lead smelting may lead to increases in cardiovascular disease, as well as developmental and reproductive effects.

In order to reduce HAP emissions from secondary lead smelting, the EPA developed the National Emission Standards for Hazardous Air Pollutants (NESHAP) for Secondary Lead Smelters, which were proposed on June 9, 1994 (59 FR 29750) and promulgated on June 23, 1995 (60 FR 32587). In response to industry petitions to reconsider, the final rule was amended on June 13, 1997 (62 FR 32209). Entities potentially affected by this rule are owners or operators of secondary lead smelters that operate furnaces to reduce scrap lead metal and lead compounds to elemental lead. The rule applies to secondary lead smelters that use blast, reverberatory, rotary, or electric smelting furnaces to recover lead metal from scrap lead, primarily from used lead-acid automotive-type batteries. The rule provides protection to the public by requiring all secondary lead smelters to meet emission standards reflecting the application of the maximum achievable control technology (MACT). This information is being collected to assure compliance with 40 CFR part 63, subpart X.

Owners or operators of the affected facilities described must make one-time-only notifications including: notification of any physical or operational change to an existing facility which may increase the regulated pollutant emission rate, notification of the initial performance test, including information necessary to determine the conditions of the performance test, and performance test measurements and results. All reports are sent to the delegated State or local authority. In the event that there is no such delegated authority, the reports are sent directly to the EPA Regional Office. Owners or operators must maintain records of initial and subsequent compliance tests for lead compounds, and identify the date, time, cause and corrective actions taken for all bag leak detection alarms. Records of continuous monitoring devices, including parametric monitoring, must be maintained and reported semi-annually. Owners or operators are also required to maintain records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility, or any period during which the monitoring system is inoperative. Any owner or operator subject to the provisions of this part shall maintain a file of these measurements, and retain the records for at least five years following the date of such measurements and records. At a minimum, records of the previous two years must be maintained on site.

Industry and EPA records indicate that 23 sources are subject to the standard, and no additional sources are expected to become subject to the standard over the next 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 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 December 2, 1997 (62 FR 63711). No comments were received.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 334 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: Owners/Operators of secondary lead smelters.

Estimated Number of Respondents: 23.

Frequency of Response: daily records/semi-annual reports.

Estimated Total Annual Hour Burden: 16,033 hours.

Estimated Total Annualized Cost Burden: $150,000.

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. 1686.03 and OMB Control No. 2060–0296 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: June 1, 1998.

Joseph Retzer,

Director, Regulatory Information Division.

[FR Doc. 98–15171 Filed 6–5–98; 8:45 am]

BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

[SWH–FRL–6108–8]

Paper Products Recovered Materials Advisory Notice II

AGENCY: Environmental Protection Agency.

ACTION: Notice of availability of document.

SUMMARY: EPA is providing notice of the availability of the Paper Products Recovered Materials Advisory Notice II (Paper RMAN II), which revises EPA's 1996 recommendations for purchasing specified printing and writing papers containing postconsumer fiber. Under section 6002 of the Resource Conservation and Recovery Act, which establishes a buy-recycled program for federal agencies, EPA designates items that are or can be made with recovered materials and provides recommendations for government procurement of these items. Under Executive Order 12873, Federal executive agencies are required to purchase specified printing and writing papers containing 30% postconsumer fiber beginning on December 31, 1998. Paper RMAN II incorporates this 30% postconsumer fiber content level. This action will promote paper recycling by using government purchasing to expand and maintain markets for recovered paper.

EFFECTIVE DATE: December 31, 1998.

ADDRESSES: Supporting materials are available for viewing in the RCRA Information Center (RIC), located in Crystal Gateway I, 1235 Jefferson Davis Highway, First Floor, Arlington, Virginia. The Docket Identification Number is F–98–PPRA–FFFFF. The RIC is open from 9:00 am to 4:00 pm, Monday through Friday, excluding federal holidays. To review docket materials, it is recommended that the public make an appointment by calling (703) 603–9230. The public may copy a maximum of 100 pages from any

regulatory docket at no charge. Additional copies cost $0.15 per page. The supporting materials are also available electronically. See section III of the ''Supplementary Information'' section for information on accessing the materials electronically.

FOR FURTHER INFORMATION CONTACT: For general information, please contact the RCRA Hotline at (800) 424–9346, TDD (800) 553–7672 (hearing impaired) or, in the Washington, DC area at (703) 412–9810 or TDD (703) 412–3323.

For more detailed information regarding the recommendations in today's notice, contact Terry Grist of the Office of Solid Waste at (703) 308–7257 or at U.S. Environmental Protection Agency (5306W), 401 M Street, S.W., Washington, DC 20460.

SUPPLEMENTARY INFORMATION:

Preamble Outline

I. Authority
II. Revisions to Purchasing Recommendations
III. Supporting Materials and Accessing Internet
IV. Use of EPA's Recommendations
Paper Products Recovered Materials Advisory Notice II

I. Authority

The Paper Products Recovered Materials Advisory Notice II (Paper RMAN II) is published under authority of sections 2002(a) and 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended, 42 U.S.C. 6912(a) and 6962, and Executive Order 12873, ''Federal Acquisition, Recycling, and Waste Prevention'' (58 FR 54911, October 22, 1993).

II. Revisions to Purchasing Recommendations

A. Summary of the Revised Content Level Recommendations

Today, the U.S. Environmental Protection Agency (EPA) is publishing Paper RMAN II, which contains revised recommendations for procuring agencies to use when purchasing specified printing and writing papers in accordance with section 6002 of the Resource Conservation and Recovery Act of 1976 (RCRA) and Executive Order 12873.

Section 504 of Executive Order 12873 (58 FR 54916, October 22, 1993), as amended by Executive Order 12995 (61 FR 13645, March 28, 1996) requires Federal executive agencies to purchase specified uncoated printing and writing papers containing postconsumer fiber. The Executive Order established a 20% postconsumer content level for these papers beginning December 31, 1994. The level increases to 30% postconsumer fiber beginning December 31, 1998. The specified printing and writing papers are high speed copier paper, offset paper, forms bond, computer printout paper, carbonless paper, file folders, white wove envelopes, writing and office paper, book paper, cotton fiber paper, and text and cover paper. EPA incorporated the 20% postconsumer content level into its recommendations for printing and writing papers in the 1996 Paper RMAN. See Tables A–1a, A–1b, and A–1c (61 FR 26991, May 29, 1996).

Today, EPA is revising Tables A–1a, A–1b, and A–1c of the Paper RMAN to incorporate the 30% postconsumer content level. EPA is basing its recommendations, in part, on its determination, discussed below, that printing and writing papers with 30% postconsumer fiber are or will be available for purchasing by procuring agencies by December 31, 1998. This revision will maintain the consistency between EPA's recommendations and the Executive Order requirements. While Federal executive agencies are not required to purchase paper products containing 30% postconsumer fiber until December 31, 1998, EPA recommends that agencies begin now to determine their paper performance needs, research product availability, and conduct any needed product testing.

In the 1996 Paper RMAN, EPA used slightly different terminology than that used in the Executive Order to reflect the way in which terms are currently used by paper mills, vendors, and procuring agencies. The revised Table A–1a uses this same terminology.

B. Product Availability

EPA researched current availability of the specified printing and writing papers containing 30% postconsumer fiber. EPA found that paper companies either are or plan to manufacture most of the specified printing and writing papers with a 30% postconsumer fiber content. Most of the paper products will be offered for sale to government agencies, and most will be available from the vendors as stock items, rather than as special order items. In the case of three products—tablets, file folders, and papeteries—initial availability of the product containing 30% postconsumer fiber may be limited. Additional information on sources for each paper product can be found in EPA's report entitled, ''Availability of Uncoated Printing and Writing Papers Containing 30 Percent Postconsumer Fiber.'' See section III below for obtaining copies of this report or for accessing the report on the internet.

There may be instances in which a paper product containing 30% postconsumer fiber is unavailable or only available at an unreasonable price. In these instances, procuring agencies should purchase paper products containing the highest levels of postconsumer fiber available, consistent with the RCRA section 6002 requirement that procuring agencies purchase paper products containing postconsumer fiber to the maximum extent practicable.

III. Supporting Materials and Accessing Internet

EPA's research report, ''Availability of Uncoated Printing and Writing Papers Containing 30 Percent Postconsumer Fiber,'' is available in the RCRA Information Center (RIC) and on the Internet. The address and telephone number of the RIC are provided in **ADDRESSES** above.

Follow these instructions to access the information electronically:

WWW: http://www.epa.gov/epaoswer/non-hw/procure.htm
FTP: ftp.epa/gov
Login: anonymous
Password: your Internet address
Files are located in /pub/epaoswer.

IV. Use of EPA's Recommendations

EPA encourages state and local agencies to use the recommendations in today's Paper RMAN II when purchasing paper and paper products. EPA also encourages private sector purchasers to use the information provided by EPA when purchasing paper and paper products. EPA recommends that purchasers establish their minimum content standards at the highest percentages available to them that achieve their price and performance objectives, even if these standards are higher or lower than EPA's recommendations. If a product is not available at a competitive price containing 30% postconsumer fiber, purchasers should set their standards at the highest levels available to them that meet their price and performance objectives. In this way, EPA's recommendations will encourage both public and private sector purchasers to purchase paper products containing the highest levels of postconsumer fiber practicable.

EPA cautions persons using EPA's recommendations to use them only for the *specific items* for which they were intended. It is not appropriate to analogize from one type of printing and writing paper to another without first researching the use of postconsumer fiber in the other item. The two items could have different performance

requirements necessitating different levels of postconsumer fiber.

Dated: June 1, 1998.

Timothy Fields, Jr.,

Acting Assistant Administrator, Office of Solid Waste and Emergency Response.

Paper Products Recovered Materials Advisory Notice II

This Paper Products Recovered Materials Advisory Notice II (Paper RMAN II) revises EPA's 1996 recommendations to procuring agencies for purchasing paper and paper products in compliance with section 6002 of the Resource Conservation and Recovery Act of 1976 (RCRA). These recommendations replace Tables A–1a, A–1b, and A–1c found in EPA's 1996 Paper RMAN (61 FR 26991, May 29, 1996). The remainder of EPA's 1996 recommendations are unchanged.

Part A—Paper and Paper Products (Revised)

Section A–1—Printing and Writing Papers (Revised)

Preference Program: EPA recommends that procuring agencies establish minimum content standards expressed as a percentage of recovered fiber, including a percentage of postconsumer fiber. EPA recommends that procuring agencies base their minimum content standards for uncoated and coated printing and writing papers based on the content levels shown in Tables A–1a, A–1b, and A–1c, respectively. EPA's revised recommendations are indicated in **Bold** type. EPA further recommends that if a paper product containing 30% postconsumer fiber is not reasonably available, then procuring agencies establish the highest postconsumer fiber content levels available.

Percentages are based on the fiber weight of the product. The content levels in the tables should be read as X% recovered fiber, including Y% postconsumer fiber and *not* as X% recovered fiber plus Y% postconsumer fiber. Where the content level is the same in both columns (e.g., 30% in both the recovered fiber and postconsumer fiber columns), this means that EPA is recommending that agencies establish identical content levels for both postconsumer and recovered fiber.

TABLE A–1A.—RECOMMENDED RECOVERED FIBER CONTENT LEVELS FOR UNCOATED PRINTING AND WRITING PAPERS

Item	Recovered fiber (%)	Postconsumer fiber (%)
Reprographic Paper (e.g., mimeo and duplicator paper, high-speed copier paper, and bond paper*)	**30**	**30**
Offset Paper (e.g., offset printing paper*, book paper*, bond paper*)	**30**	**30**
Tablet Paper (e.g., office paper such as note pads, stationery* and other writing* papers)	**30**	**30**
Forms Bond (e.g., forms, computer printout paper, ledger*)	**30**	**30**
Envelope Paper:		
Wove	**30**	**30**
Kraft White and colored (including manila)	10—20	10—20
Unbleached	10	10
Cotton Fiber Paper (e.g., cotton fiber papers, ledger*, stationery* and matching envelopes, and other writing* papers)	**30**	**30**
Text & Cover Paper (e.g., cover stock, book paper*, stationery* and matching envelopes, and other writing* paper)	**30**	**30**
Supercalendered	10	10
Machine finish groundwood	10	10
Papeteries	**30**	**30**
Check Safety Paper	10	10

*These items can be made from a variety of printing and writing papers, depending on the performance characteristics of the item. Some of the papers are a commodity-type and some are specialty papers. EPA recommends that procuring agencies determine the performance characteristics required of the paper prior to establishing minimum content standards. For example, bond, ledger, or stationery made from cotton fiber paper or a text & cover paper have different characteristics than similar items made from commodity papers.

TABLE A–1B.—RECOMMENDED RECOVERED FIBER CONTENT LEVELS FOR COATED PRINTING AND WRITING PAPERS

Item	Recovered fiber (%)	Postconsumer fiber (%)
Coated Printing Paper	10	10
Carbonless	**30**	**30**

TABLE A–1C.—RECOMMENDED RECOVERED FIBER CONTENT LEVELS FOR BRISTOLS

Item	Recovered fiber (%)	Postconsumer fiber (%)
File Folders (manila and colored)	**30**	**30**
Dyed Filing Products	20—50	20
Cards (index, postal, and other, including index sheets)	50	20
Pressboard Report Covers and Binders	50	20
Tags and Tickets	20—50	20

[FR Doc. 98–15175 Filed 6–5–98; 8:45 am]
BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

[SWH–FRL–6108–7]

Recovered Materials Advisory Notice I Update

AGENCY: Environmental Protection Agency.

ACTION: Notice of availability of document.

SUMMARY: The U.S. Environmental Protection Agency (EPA) today is providing notice of the issuance of an update to its May 1, 1995 Recovered Materials Advisory Notice I (RMAN I). The update to RMAN I (RMAN I Update) provides guidance to procuring agencies for purchasing certain items containing recovered materials. Under section 6002 of the Resource Conservation and Recovery Act of 1976, EPA designates items that are or can be made with recovered materials and provides recommendations for the procurement of these items. In 1989, EPA designated building insulation products and in 1995, EPA designated polyester carpet for use in low- and medium-wear applications. EPA's recommendations for purchasing these items were published in the 1995 RMAN I. Today's RMAN I Update contains a new reference to GSA's carpet schedule and a recommendation for the recovered materials content level for plastic batt building insulation. EPA's 1995 recommendations for purchasing other types of building insulation remain unchanged.

FOR FURTHER INFORMATION CONTACT: For general information contact the RCRA Hotline at (800) 424–9346 or TDD (800) 553–7672 (hearing impaired). In the Washington, DC metropolitan area, call (703) 412–9810 or TDD (703) 412–3323. For technical information on individual item recommendations, contact Terry Grist at (703) 308–7257.

SUPPLEMENTARY INFORMATION:

I. Authority

The Recovered Materials Advisory Notice I Update (RMAN I Update) is issued under the authority of sections 2002(a) and 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976 (RCRA), as amended; 42 U.S.C. 6912(a) and 2962; and section 502 of Executive Order 12873 (58 FR 54911, October 20, 1993).

II. Background

Section 6002 of RCRA establishes a Federal buy-recycled program. RCRA section 6002(e) requires EPA to (1) designate items that are or can be made with recovered materials and (2) prepare guidelines to assist procuring agencies in complying with affirmative procurement requirements set forth in paragraphs (c), (d), and (i) of section 6002. Once EPA has designated items, section 6002 requires that any procuring agency using appropriated Federal funds to procure those items must purchase them composed of the highest percentage of recovered materials practicable. For the purposes of RCRA section 6002, procuring agencies include the following: (1) any Federal agency; (2) any State or local agencies using appropriated Federal funds for a procurement, or (3) any contractors with these agencies (with respect to work performed under the contract). The requirements of RCRA section 6002 apply to such procuring agencies only when procuring designated items where the price of the item exceeds $10,000 or the quantity of the item purchased in the previous year exceeded $10,000.

Executive Order 12873 (the Executive Order) (58 FR 54911, October 22, 1993) directs EPA to designate items in a Comprehensive Procurement Guideline (CPG) and publish guidance that contains EPA's recommended recovered content levels for the designated items in the RMANs. The Executive Order further directs EPA to update the CPG annually and the RMANs periodically to reflect changes in market conditions. EPA codifies the CPG designations in the Code of Federal Regulations (CFR), but, because the recommendations are guidance, the RMANs are not codified in the CFR. This process enables EPA to revise its recommendations in response to changes in a product's availability or recovered materials content so as to provide timely assistance to procuring agencies in fulfilling their responsibilities under section 6002.

EPA issued CPG I on May 1, 1995 (60 FR 21370) designating 19 new items, including polyester carpet, and published RMAN I for the designated items on the same day (60 FR 21386). These notices also consolidated the guidelines previously issued for five items designated between 1983 and 1989, including building insulation products. At the time the 1995 RMAN I was published, the U.S. General Services Administration (GSA) offered polyester carpet containing recovered materials through the New Item Introductory Schedule (NIIS). RMAN I referenced that schedule. Since then, GSA has added polyester carpet containing recovered materials to its carpet schedule, and this item is no longer available through the NIIS. Accordingly, today's RMAN I Update references the current GSA carpet schedule.

Additionally, the RMAN I Update contains an addition to the 1995 recommendations for building insulation products—recovered materials content levels for plastic non-woven batt building insulation. EPA recently learned that this type of insulation is now available containing recovered materials. EPA's 1995 recommendations for other types of building insulation products remain unchanged.

III. Accessing Internet

EPA's Comprehensive Procurement Guidelines and eco-purchasing web pages contain fact sheets about each product category in which EPA has designated recycled content products, lists of manufacturers and vendors of these products, copies of the Comprehensive Procurement Guidelines and related RMANs, and technical background documents.

Follow these instructions to access the information electronically:

WWW: http://www.epa.gov/epaoswer/non-hw/procure.htm.
FTP: ftp.epa.gov
Login: anonymous
Password: your Internet address
Files are located in /pub/epaoswer.

IV. Use of EPA's Recommendations

EPA encourages state and local agencies to use the recommendations in today's RMAN I Update when purchasing plastic batt building insulation or polyester carpet containing recovered materials. EPA also encourages private sector purchasers to use the information provided by EPA when purchasing these items. EPA recommends that purchasers establish their minimum content standards at the highest percentages available to them that achieve their price and performance objectives, even if these standards are higher or lower than EPA's recommendations. If a product is not available at a competitive price containing the recommended recovered material content levels, purchasers should set their standards at the highest levels available to them that meet their price and performance objectives. In this way, EPA's recommendations will encourage both public and private sector purchasers to purchase the designated items containing the highest levels of recovered material practicable.

EPA cautions persons using EPA's recommendations to use them only for the *specific items* for which they were intended. It is not appropriate to analogize from one type of insulation or carpet to another without first researching the use of recovered materials in the other items. The two items could have different performance requirements necessitating different levels of recovered materials.

Dated: June 1, 1998.

Timothy Fields, Jr.,

Acting Assistant Administrator, Office of Solid Waste and Emergency Response.

Recovered Materials Advisory Notice I Update

Following are updates to EPA's recommendations to procuring agencies for purchasing polyester carpet and building insulation products containing recovered materials, in compliance with section 6002 of the Resource Conservation and Recovery Act (RCRA). These recommendations are intended to be used in conjunction with RMAN I (60 FR 21386, May 1, 1995). The remainder of the RMAN I recommendations for these items remains unchanged. Refer to RMAN I or the Code of Federal Regulations at 40 CFR part 247 for definitions, general recommendations for affirmative procurement programs, and additional recommendations for purchasing these items containing recovered materials.

Part C.—Construction Products (Revised)

Section C–1. Building Insulation (Revised)

Note: EPA recommended purchasing practices, including recovered materials content levels, for thermal building insulation products in RMAN I. EPA is revising those recommendations by adding a recovered materials content level for plastic batt building insulation. Procuring agencies should substitute the revised Table C–1 shown below for the recommendations found in section C–1 of the 1995 RMAN I. EPA's revised recommendations are indicated in **Bold** type.

Preference Program: EPA recommends that, based on the recovered materials content levels shown in Table C–1 (Revised), procuring agencies establish minimum content standards for use in purchasing building insulation products.

TABLE C–1. (REVISED)—RECOMMENDED RECOVERED MATERIALS CONTENT LEVELS FOR BUILDING INSULATION

Insulation material	Recovered material	Total recovered materials (%)
Cellulose loose-fill and spray-on	Postconsumer paper	75
Fiberglass	Glass cullet	20–25
Perlite composite board	Postconsumer paper	23
Phenolic rigid foam	Recovered materials	5
Plastic, non-woven batt	**Recovered and/or postconsumer plastics**	**100**
Plastic foam-in-place, polyisocyanurate/polyurethane	Recovered materials	5
Plastic rigid foam, polyisocyanurate/polyurethane	Recovered materials	9
Plastic foam, glass fiber reinforced polyisocyanurate/polyurethane.	Recovered materials	6
Rock wool	Slag	75

Note: The recommended recovered materials content levels are based on the weight (not volume) of materials in the insulating core only.

Section C–4. Carpet (Revised)

Note: EPA recommended purchasing practices, including specifications, for polyester carpet in RMAN I. EPA is revising these recommendations to add a reference to the General Services Administration's carpet schedule and the current contract for polyester carpet containing recovered materials. All of EPA's other purchasing recommendations for polyester carpet, found in the 1995 RMAN I, remain unchanged.

Preference Program: EPA recommends that Federal procuring agencies use GSA's contract GS–27F–5069–C under Schedule 72, part I, section A, when purchasing polyester carpet containing recovered materials.

[FR Doc. 98–15176 Filed 6–5–98; 8:45 am]

BILLING CODE 6560–50–U

FEDERAL COMMUNICATIONS COMMISSION

[DA 98–1052]

Pleading for Further Modification of Two Average Schedules Formula Proposed by NECA

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: This Public Notice invites interested parties to comment on the National Exchange Carrier Association's (NECA) proposed further modifications of Common Line and Universal Service Fund Average Schedules.

DATES: Comments are to be filed on or before June 10, 1998.

ADDRESSES: Federal Communications Commission, 1919 M Street, NW, Washington, DC 20054.

FOR FURTHER INFORMATION CONTACT: George Williams, Accounting Safeguards Division, Common Carrier Bureau, (202) 418–0867.

SUPPLEMENTARY INFORMATION: The Accounting Safeguards Division of the Federal Communications Commission will be considering this action. Interested parties may file comments on the petition on or before June 10, 1998, with the Secretary, Federal Communications Commission, 1919 M Street, NW, Room 222, Washington, DC 20554. Comments should reference AAD 98–20. An original and nine (9) copies of each pleading should be sent to the Secretary, Federal Communications Commission, 1919 M Street, NW, Room 222, Washington, DC 20554. A copy of the pleading should also be sent to George Williams, Reporting Management and Analysis Branch, Accounting Safeguard Division, Common Carrier Bureau, and to the Commission's contractor for public service record duplication: International Transcription Service (ITS), 1231 20th Street, NW, Washington, DC 20036. Copies of the petition may be obtained from the Accounting Safeguards Division's public reference room, Room 812, 2000 L Street, NW, Washington, DC

Copies are also available from ITS at (202) 857–3800.

Federal Communications Commission.

Kenneth P. Moran,

Chief, Accounting Safeguards Division, Common Carrier Bureau.

[FR Doc. 98–15276 Filed 6–5–98; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL COMMUNICATIONS COMMISSION

[DA 98–1037 and CC Docket No. 90–571]

Notice of Telecommunications Relay Services (TRS) Certification

Released: June 2, 1998.

Notice is hereby given that the applications for certification of state Telecommunication Relay Services (TRS) programs of the states listed below have been granted, subject to the condition described below, pursuant to Title IV of the Americans with Disabilities Act of 1990, 47 U.S.C. 225(f)(2), and section 64.605(b) of the Commission's rules, 47 CFR 64.605(b). The Commission will provide further Public Notice of the certification of the remaining applications for certification once review of those states' applications has been completed. On the basis of the states applications, the Commission has determined that:

(1) The TRS program of the listed states meet or exceed all operational, technical, and functional minimum standards contained in section 64.604 of the Commission's rules, 47 CFR 64.604;

(2) The TRS programs of the listed states make available adequate procedures and remedies for enforcing the requirements of the state program; and,

(3) The TRS programs of the listed states in no way conflict with federal law.

The Commission also has determined that, where applicable, the intrastate funding mechanisms of the listed states are labeled in a manner that promotes national understanding of TRS and does not offend the public, consistent with section 64.605(d) of the Commission's rules, 47 CFR 64.605(d).

On May 14, 1998, the Commission adopted a Notice of Proposed Rulemaking that proposes ways to enhance the quality of existing telecommunications relay services (TRS) and expand those services for better use by individuals with speech disabilities. See Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities, CC Docket No. 98–67, FCC 98–90 (rel. May 20, 1998). Because the Commission may adopt changes to the rules governing relay programs, including state relay programs, the certification granted herein is conditioned on a demonstration of compliance with any new rules ultimately adopted by the Commission. The Commission will provide guidance to the states on demonstrating compliance with such rule changes.

This certification, as conditioned herein, shall remain in effect for a five year period, beginning July 26, 1998, and ending July 25, 2003, pursuant to 47 CFR 64.605(c). One year prior to the expiration of this certification, July 25, 2002, the states may apply for renewal of their TRS program certifications by filing documentation in accordance with the Commission's rules, pursuant to 47 CFR 64.605(a) and (b).

Copies of certification letters are available for public inspection at the Commission's Common Carrier Bureau, Network Services Division, Room 235, 2000 M Street, NW, Washington, DC, Monday through Thursday, 8:30 AM to 3:00 PM (closed 12:30 to 1:30 PM), and the FCC Reference Center, Room 239, 1919 M Street, NW, Washington, DC, daily, from 9:00 AM to 4:30 PM.

Second Group of States Approved for Certification

File No.: TRS–97–01.
Applicant: Florida Public Service Commission.
State of: Florida.

File No.: TRS–97–04.
Applicant: Michigan Public Service Commission.
State of: Michigan.

File No.: TRS–97–09.
Applicant: Illinois Commerce Commission.
State of: Illinois.

File No.: TRS–97–15.
Applicant: Mississippi Public Service Commission.
State of: Mississippi.

File No.: TRS–97–17.
Applicant: Utah Department of Commerce, Division of Public Utilities.
State of: Utah.

File No.: TRS–97–27.
Applicant: Kansas Corporation Commission.
State of: Kansas.

File No.: TRS–97–36.
Applicant: Alaska Public Utilities Commission.
State of: Alaska.

File No.: TRS–97–37.
Applicant: New Mexico Commission for the Deaf and Hard of Hearing.
State of: New Mexico.

File No.: TRS–97–39.
Applicant: Public Utilities Commission of Ohio.
State of: Ohio.

File No.: TRS–97–45.
Applicant: Minnesota Department of Public Service.
State of: Minnesota.

File No.: TRS–97–50.
Applicant: New Hampshire Public Utilities Commission.
State of: New Hampshire.

File No.: TRS–97–51.
Applicant: Rhode Island Division of Public Utilities and Carriers.
State of: Rhode Island.

File No.: TRS–97–52.
Applicant: Arkansas Deaf and Hearing Impaired.
State of: Arkansas.

For further information contact: Al McCloud, (202) 418–2499, amccloud@fcc.gov: Helene Nankin, (202) 418–1466, hnankin@fcc.gov; or Kris Monteith, (202) 418–1098, kmonteit@fcc.gov, (TTY, 202–418–0484), at the Network Services Division, Common Carrier Bureau, Federal Communications Commission.

Federal Communications Commission.

Geraldine Matise,

Chief, Network Services Division, Common Carrier Bureau.

[FR Doc. 98–15146 Filed 6–5–98; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[CC Docket No. 92–237; DA 98–1044]

Next Meeting of the North American Numbering Council

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: On June 2, 1998, the Commission released a public notice announcing the June 23 and June 24, 1998, meeting and agenda of the North American Numbering Council (NANC). The intended effect of this action is to make the public aware of the NANC's next meeting and its Agenda.

FOR FURTHER INFORMATION CONTACT: Linda Simms, Administrative Assistant of the NANC, at (202) 418–2330 or via the Internet at lsimms@fcc.gov. The address is: Network Services Division, Common Carrier Bureau, Federal Communications Commission, 2000 M Street, NW, Suite 235, Washington, DC 20554. The fax number is: (202) 418–2345. The TTY number is: (202) 418–0484.

SUPPLEMENTARY INFORMATION: *Released:* June 2, 1998.

The next meeting of the North American Numbering Council (NANC) will be held on Tuesday, June 23, from 8:30 a.m., until 5:00 p.m., and on Wednesday, June 24, 1998, from 8:30 a.m., until 12 noon. The meeting will be held at the Federal Communications Commission, 1919 M Street, N.W., Room 856, Washington, D.C.

This meeting will be open to members of the general public. The FCC will attempt to accommodate as many people as possible. Admittance, however will be limited to the seating available. The public may submit written statements to the NANC, which must be received two business days before the meeting. In addition, oral statements at the meeting by parties or entities not represented on the NANC will be permitted to the extent time permits. Such statements will be limited to five minutes in length by any one party or entity, and requests to make an oral statement must be received two business days before each meeting. Requests to make an oral statement or provide written comments to the NANC should be sent to Linda Simms at the address under **FOR FURTHER INFORMATION CONTACT,** stated above.

Proposed Agenda

The proposed agenda for the June 23–24, 1998, meeting is as follows:

1. Approval of meeting minutes.

2. Local Number Portability Administration (LNPA) Working Group Report. Discussion on target architecture development requirements regarding efficient data representation (EDR), port on demand (POD) and preport (PP).

3. N11 Ad Hoc Working Group Report and Recommendation. Responsibilities under First Report and Order and Further Notice of Proposed Rulemaking, In the Matter of Use of N11 Codes and Other Abbreviated Dialing Arrangements, CC Docket 92–105, FCC 97–51.

4. Numbering Resource Optimization Working Group Report.

5. Industry Numbering Committee Report.

6. Cost Recovery Working Group Report.

7. COCUS and Proposed Line Number Utilization Survey. Discussion of mandatory participation requirement.

8. Discussion of administration of 1000s block number pooling.

9. Other Business.

Federal Communications Commission.

Geraldine A. Matise,

Chief, Network Services Division, Common Carrier Bureau.

[FR Doc. 98–15147 Filed 6–5–98; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act. Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than July 2, 1998.

A. Federal Reserve Bank of Richmond (A. Linwood Gill III, Assistant Vice President) 701 East Byrd Street, Richmond, Virginia 23261-4528:

1. Peoples Bancorporation, Inc., Easley, South Carolina; to acquire 100 percent of the voting shares of Bank of Anderson, National Association, Anderson, South Carolina (in organization).

B. Federal Reserve Bank of Atlanta (Lois Berthaume, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303-2713:

1. SNB Bancshares, Inc., Macon, Georgia; to merge with Crossroads Bancshares, Inc., Perry, Georgia, and thereby indirectly acquire Crossroads Bank of Georgia, Perry, Georgia.

Board of Governors of the Federal Reserve System, June 3, 1998.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 98–15163 Filed 6–5–98; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y, (12 CFR Part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than June 23, 1998.

A. Federal Reserve Bank of Atlanta (Lois Berthaume, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303-2713:

1. Republic Bancshares, Inc., St. Petersburg, Florida; to acquire Lochaven Federal Savings and Loan Association, Winter Park, Florida, and thereby engage in operating a savings association, pursuant to § 225.28(b)(4)(ii) of Regulation Y.

Board of Governors of the Federal Reserve System, June 3, 1998.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 98–15164 Filed 6–5–98; 8:45 am]

BILLING CODE 6210–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 98079]

State Grants to Support the Evaluation of 5 A Day Nutrition Programs

Introduction

The Centers for Disease Control and Prevention (CDC), in partnership with the National Cancer Institute (NCI), announces the availability of fiscal year (FY) 1998 funds for grants to support the evaluation of State and community 5 A Day nutrition intervention programs. This announcement addresses one required component, which is the ''5 A Day Evaluation'' for supporting the evaluation of 5 A Day for Better Health nutrition intervention programs. CDC is committed to achieving the health promotion and disease prevention objectives of Healthy People 2000, a national activity to reduce morbidity and mortality and improve the quality of life. This announcement is related specifically to the priority area of Nutrition. (For ordering a copy of Healthy People 2000 see the Section, ''Where to Obtain Additional Information.'')

Authority

This program is authorized under section 317(k)(2)(42 U.S.C. 247b(k)(2)) of the Public Health Service Act, as amended.

Smoke-Free Workplace

CDC encourages all grant recipients to provide a smoke-free workplace and promote the nonuse of all tobacco products, and Pub. L. 103–227, the Pro-Children Act of 1994, prohibits smoking in certain facilities that receive Federal funds in which education, library, day care, health care, and early childhood development services are provided to children.

Eligible Applicants

Eligible applicants are the official public health agencies of States or their bona fide agents. This includes the District of Columbia, American Samoa, the Commonwealth of Puerto Rico, the Virgin Islands, the Federated States of Micronesia, Guam, the Northern Mariana Islands, the Republic of the Marshall Islands, the Republic of Palau, and federally recognized Indian tribal governments, that have established, clearly-defined, measurable, long-range 5 A Day for Better Health projects in a specific community channel.

Availability of Funds

Approximately $450,000 is available in FY 1998 to fund approximately 6 awards. It is expected that the average award will be $75,000 ranging from $55,000 to $90,000 for a 5 A Day for Better Health project in a specific community channel, preferably focusing on interventions in minority-based population subgroups (i.e. American Indian, Asian, Pacific Islander, African American, Hispanic, elderly, low socioeconomic status, or the very young). It is expected that the awards will begin on or about September 30, 1998, and will be made for a 12-month budget period within a project period of one year. Funding estimates may vary and are subject to change. Awards under this announcement will not be sufficient to fully support an applicant's proposed activities, but are meant to be used in conjunction with other resources—whether direct funding or in-kind contributions—that the applicant may have available.

Restrictions On Lobbying

Applicants should be aware of restrictions on the use of Department of Health and Human Services (HHS) funds for lobbying of Federal or State legislative bodies. Under the provisions of 31 U.S.C. section 1352 (which has been in effect since December 23, 1989), recipients (and their sub-tier contractors) are prohibited from using appropriated Federal funds (other than profits from Federal contract) for lobbying Congress or any Federal agency in connection with the award of a particular contract, grants cooperative agreement, or loan. This includes grants/cooperative agreements that, in whole or in part, involve conferences for which Federal funds cannot be used directly or indirectly to encourage participants to lobby or to instruct participants on how to lobby. In addition, the FY 1998 Department of Labor, Health and Human Services, and Education, and Related Agencies Appropriations Act (Pub. L. 105–78) states in Section 503(a) and (b) no part of any appropriation contained in this Act shall be used, other than for normal and recognized executive-legislative relations, for publicity or propaganda purposes, for the preparation, distribution, or use of any kit, pamphlet, booklet, publication, radio, television, or video presentation designed to support or defeat legislation pending before the Congress or any State legislature, except in presentation to the Congress or any State legislative body itself. No part of any appropriation contained in this Act shall be used to pay the salary or expenses of any grant or contract recipient, or agent acting for such recipient, related to any activity designed to influence legislation or appropriations pending before the Congress or any State legislature.

Background

The Surgeon General's Report on Nutrition and Health in 1988 noted that two-thirds of all deaths are due to diseases associated with diet. The report also says that the three most important personal habits that influence health are smoking, alcohol consumption, and diet. For the two out of three adults who do not drink alcohol excessively or smoke, the single most important personal choice influencing long-term health is what they eat. Improving dietary intake and physical activity levels of minority populations (American Indian, Asian, Pacific Islander, African American, Hispanic, elderly, low socioeconomic status, or the very young) could substantially extend productive lives and reduce the human and financial costs of chronic disease, disability, and premature death within population subgroups that suffer a disproportionate cancer burden.

Using effective nutrition education strategies to reach under served minority populations in order to initiate successful behavior change are critical since healthy eating practices are more likely to be obtained with well-developed, culturally-sensitive, linguistically appropriate intervention methods that are effective in reaching the targeted audience and assist in transforming the local environment. Modifications in the environment help promote, support, and institutionalize healthy eating practices, and as this transformation occurs in various channels, community norms will be transformed also. Culturally sensitive and linguistically appropriate interventions combined with environmental support can promote lifelong healthy eating practices. The Healthy People 2000 national objectives include an objective intended to reduce the current high burden of chronic disease and premature death: increase fruit and vegetable intake (from 2.5 to 5 servings per day). To date, progress is slow achieving this objective through culturally specific, linguistically appropriate interventions and environmental community approaches, especially among minorities and economically disadvantaged Americans who are at increased risk for many chronic diseases. The 5 A Day for Better Health Program is a nationwide effort, lead by the National Cancer Institute (NCI), to achieve the Healthy People

2000 objective for five or more servings per day of fruits and vegetables. The CDC is collaborating with NCI to support the activities of State health departments in the implementation and evaluation of the State 5 A Day activities.

Purpose

These awards will support State efforts to evaluate 5 A Day nutrition intervention programs. Emphasis will be placed on:

(1) Evaluation of a community intervention's impact on knowledge, attitude, awareness and behavioral change in minority-based population groups (such as elderly, young children or low-income groups, and ethnic groups such as, but not exclusive to, American Indians, Asians, Pacific Islanders, African Americans or Hispanics) which have low fruit and vegetable intakes or have a disproportionately greater risk for cancer;

(2) Testing the effects of culturally sensitive and linguistically appropriate strategies within a community intervention designed to increase the consumption of fruits and vegetables in minority population subgroups and promote other related lifestyle behaviors which are recognized covariates that influence fruit and vegetable consumption; or

(3) Evaluation of communication channels (radio, tv, print media) which target the specific minority population subgroups identified as part of 5 A Day-based community intervention campaigns.

Program Requirements

Applicants should propose an evaluation plan for a clearly defined, established, long-range effort in one or more specific community channels in accordance with the following definitions:

A. Clearly Defined

Intervention objectives are clearly stated; activities necessary to accomplish objectives are described, to include who is responsible for each activity and when they will be accomplished; and work is done within a specific channel with a defined targeted audience.

B. Established

The applicant is licensed with NCI and has developed an ongoing 5 A Day Program. Evaluating pretested or piloted interventions is desirable.

C. Evaluation Plan

Clear, measurable evaluation objectives and expected outcomes are defined with appropriate statistical power. Use of current theoretical frameworks to guide the evaluation study is desirable. A combination of process and impact objectives is also desirable, with outcome objectives where feasible. In designing the study, consideration should be given to the number of individuals or groups needed to detect realistic changes in post-intervention outcome measures when compared with pre-intervention measures. Sample sizes should give adequate power (80 percent) to detect these changes. If the appropriate design expertise does not exist within the State health department, inclusion of an organization with the necessary design expertise on the project team, such as a university affiliate, is recommended.

D. Long Range

The program is not just a single activity at one point in time, but a sustained effort involving appropriate behavior change strategies. Programs including environmental approaches, such as administrative changes, are encouraged.

Technical Reporting Requirements

An original and two copies of a final progress report and financial status report are required no later than 90 days after the end of the budget/project period. Final financial and performance reports are required no later than 90 days after the end of the budget/project period. All reports are submitted to the Grants Management Branch, Procurement and Grants Office, CDC.

The progress reports must include the following for each program, function, or activity involved: (1) A comparison of the actual accomplishments to the goals established for the period; (2) the reasons for slippage if established goals were not met; and (3) other pertinent information including, when appropriate, analysis and explanation of unexpectedly high costs for performance.

Application Content

Applications must be developed in accordance with Form PHS–5161–1 (Revised May 1996, OMB Number 0937–0189), information contained in this program announcement, and instructions provided in this section.

A 10-page narrative, excluding the budget and attachments, is required and must contain the following information:

A. Background

Provide a brief but clear description of a current long-range project in one or more specific community channels including project goals and objectives, target group, methodology of intervention, and length of time of the current project.

B. Program Plan

Provide a realistic, time phased, and specific work plan including evaluation goals, objectives, methods, and outcomes to be achieved during the 12-month period; and a clear plan to evaluate the current long-range effort in a particular channel or channels and assess the impact of those activities with measures of process and outcomes related to the targeted audience. Examples of potential evaluation projects might include but are not limited to the following:

a. Evaluation of the process and impact of instituting a community neighborhood 5 A Day project targeting for example minority, elderly, youth, or low-income groups and its effect on perceived barriers, attitudes, beliefs, dietary behaviors and fruit and vegetable consumption.

b. Evaluation of innovative measurement techniques appropriate for targeted minority audiences and their perceptions/response to the current 5 A Day Program recommendations of 5 to 9 servings of fruits and vegetables daily.

c. Evaluate the impact of a 5 A Day media and/or education campaign on knowledge, attitudes, and behaviors of targeted minority community members, with a focus on issues of awareness translating to action/behavioral stages of change and changes in fruit and vegetable consumption. (e.g. food assistance program like Women Infant Children (WIC) or other community-based program combined with a media intervention).

d. Evaluate an intervention that promotes healthy dietary choices (5 A Day) and physical activity in a defined community setting with a focus on the effect of affiliated environmental change(s) on behavior.

C. Capacity

Document the expertise of the evaluation team by including the curriculum vitae (limited to 1 page attachment per person) for key members of the team. If sufficient evaluation expertise is not available in the State health department, States are strongly encouraged to work with an academic institution in the design, data collection, and analysis activities for this evaluation. For interventions involving

administrative changes, describe the infrastructure that is or will be in place to support the administrative change once made in the defined setting.

D. Human Subjects

Documentation that human subject assurances are met, either through copies of approved protocols or notation of the institutional review committee that will review the project, particularly if the intervention targets children or pregnant women. Should human subjects review be required, the proposed work plan should incorporate time lines for such development and review activities.

E. Budget

Provide a detailed budget and line-item justification that is consistent with the stated objectives, purpose, and planned activities of the project. (Not to be counted as part of the 10 page narrative.)

An original and two copies of the application are required. Pages should be numbered, and an index to the application and appendix must be included. The original and each copy of the application must be submitted unstapled and unbound. All materials must be typewritten, single-spaced, with unreduced type on 8½″ by 11″ paper, with at least 1″ margins, headers and footers, and printed on one side only. Materials that should be part of the basic plan will not be accepted if placed in the appendix. Appendix material should not exceed 25 pages. Please do not include reports (or portions thereof), journal articles, mass media articles, or presentations of national statistical data.

Evaluation Criteria (100 Points)

Applications will be reviewed and evaluated according to the following criteria:

A. Background: (25 Points)

The degree to which the applicant clearly describes a long-range, clearly defined, measurable project, including a description of the intervention targeted population, method, and community channel(s).

B. Program Plan: (45 Points)

The adequacy of the applicant's plan to carry out the evaluation within the 12-month time period, including the specific objectives, methods, and measures to be used in the evaluation.

C. Capacity: (30 Points)

The capabilities of the personnel (including consultants where appropriate) to carry out the evaluation.

D. Human Subjects: (Not Weighted)

Whether or not exempt from the Department of Health and Human Services (HHS) regulations, are procedures adequate for the protection of human subjects? Recommendations on the adequacy of protections include: (1) Protections appear adequate and there are no comments to make or concerns to raise, (2) protections appear adequate, but there are comments regarding the protocol, (3) protections appear inadequate and there are concerns related to human subjects, or (4) disapproval of the application is recommended because the research risks are sufficiently serious and protection against the risks are inadequate as to make the entire application unacceptable.

E. Budget: (Not Weighted)

The extent to which the applicant provides a detailed budget and line-item justification that is consistent with the evaluation plan.

Executive Order 12372 Review

Applications are subject to Intergovernmental Review of Federal Programs as governed by Executive Order (E.O.) 12372. E.O. 12372 sets up a system for State and local government review of proposed Federal assistance applications. Applicants (other than Federally recognized Indian tribal Governments) should contact their State Single Point of Contact (SPOC) as early as possible to alert them to the prospective applications and receive any necessary instructions on the State process. For proposed projects serving more than one State, the applicant is advised to contact the SPOC of each affected State. A current list of SPOCs is included in the application kit. If SPOCs have any State process recommendations on applications submitted to CDC, they should send them to Sharron P. Orum, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., Room 314, Mailstop E–18, Atlanta, Georgia 30305, no later than 30 days after the application deadline. The Program Announcement Number and Program Title should be referenced on the document. The granting agency does not guarantee to ''accommodate or explain'' State process recommendations it receives after that date. Indian tribes are strongly encouraged to request tribal government review of the proposed application. If tribal governments have any tribal process recommendations on applications submitted to CDC, they should forward them to Sharron P. Orum, Grants Management Office, Grants Management Branch, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., Room 314, Mailstop E–18, Atlanta, Georgia 30305. This should be done no later than 30 days after the application deadline. The granting agency does not guarantee to ''accommodate or explain'' for tribal process recommendations it receives after that date.

Public Health System Reporting Requirements

This program is not subject to the Public Health System Reporting Requirements.

Catalog of Federal Domestic Assistance Number

The Catalog of Federal Domestic Assistance Number is 93.283.

Other Requirements

Paperwork Reduction Act

Projects that involve the collection of information from 10 or more individuals and funded by the cooperative agreement will be subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act.

Human Subjects

If the proposed project involves research on human subjects, the applicant must comply with the Department of Health and Human Services Regulations, 45 CFR part 46, regarding the protection of human subjects. Assurance must be provided to demonstrate that the project will be subject to initial and continuing review by an appropriate institutional review committee. In addition to other applicable committees, Indian Health Service (IHS) institutional review committees also must review the project if any component of IHS will be involved or will support the research. If any American Indian community is involved, its tribal government must also approve that portion of the project applicable to it. The applicant will be responsible for providing assurance in accordance with the appropriate guidelines and form provided in the application kit. Should human subjects review be required, the proposed work plan should incorporate time lines for such development and review activities.

Women, Racial and Ethnic Minorities

It is the policy of the CDC to ensure that women and racial and ethnic groups will be included in CDC-supported research projects involving

human subjects, whenever feasible and appropriate. Racial and ethnic groups are those defined in OMB Directive No. 15 and include American Indian or Alaskan Native, Asian, Black or African American, Native Hawaiian or Other Pacific Islander, and Hispanic or Latino. Applicants shall ensure that women and racial and ethnic minority populations are appropriately represented in applications for research involving human subjects. Where clear and compelling rationale exist that inclusion is not feasible, this situation must be explained as part of the application. In conducting the review of applications for scientific merit, review groups will evaluate proposed plans for inclusion of minorities and both sexes as part of the scientific assessment and assigned score. This policy does not apply to research studies when the investigator cannot control the race, ethnicity and/or sex of subjects. Further guidance to this policy is contained in the **Federal Register**, Vol. 60, No. 179, Friday, September 15, 1995, pages 47947–47951.

Application Submission and Deadline

The original and two copies of the application PHS Form 5161–1 (Revised 5/96, OMB Number 0937–0189) must be submitted to Sharron P. Orum, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers For Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., Room 314, Mailstop E–18, Atlanta, GA 30305, on or before July 1, 1998.

1. *Deadline:* Applications shall be considered as meeting the deadline if they are either:

(a) Received on or before the deadline date; or

(b) Sent on or before the deadline date and received in time for submission to the objective review group. (Applicants must request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks shall not be accepted as proof of timely mailing.)

2. *Late Applications:* Applications that do not meet the criteria in 1.(a) or 1.(b) above are considered late applications. Late applications will not be considered and will be returned to the applicant.

Where To Obtain Additional Information

To receive additional written information, call (888) 472–6874. You will be asked to leave your name, address, and telephone number. Please refer to Announcement 98079. You will receive a complete program description, information on application procedures, and application forms. If you have questions after reviewing the contents of all the documents, business management technical assistance may be obtained from Sheryl L. Heard, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., Room 314, Mail Stop E–18, Atlanta, GA 30305, telephone (404) 842–6802; electronic mail at slh3@cdc.gov.

Programmatic technical assistance may be obtained from Sarah Kuester, MS, RD, Division of Nutrition and Physical Activity, National Center for Chronic Disease Prevention and Health Promotion, Centers for Disease Control and Prevention (CDC), 4770 Buford Highway, NE., Mail Stop K–26, Atlanta, GA 30341–3724, telephone (770) 488–6019, fax (770) 488–6000, or Internet or CDC WONDER electronic mail at sak2@cdc.gov.

You may obtain this announcement from CDC's homepage at http://www.cdc.gov.

Please refer to Program Announcement 98079 when requesting information and submitting an application.

Potential applicants may obtain a copy of Healthy People 2000 (Full Report; Stock No. 017–001–00474–0) or Healthy People 2000 (Summary Report; Stock No. 017–001–00473–1) referenced in the ''Introduction'' through the Superintendent of Documents, Government Printing Office, Washington, DC 20402–9325, telephone (202) 512–1800.

Dated: June 1, 1998.

John L. Williams,

Director, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 98–15122 Filed 6–5–98; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 98D–0362]

Draft Guidance for Industry on Stability Testing of Drug Substances and Drug Products; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a draft guidance for industry entitled ''Stability Testing of Drug Substances and Drug Products.'' The draft guidance provides recommendations regarding the stability studies that should be performed to support new drug applications, abbreviated new drug applications, investigational new drug applications, biologics license applications, product license applications, and supplements to these applications.

DATES: Written comments on the draft guidance may be submitted by September 9, 1998. General comments on agency guidance documents are welcome at any time.

ADDRESSES: Copies of this draft guidance are available on the Internet at http://www.fda.gov/cder/guidance/index.htm or http://www.fda.gov/cber/guidelines.htm. Submit written requests for single copies of the draft guidance entitled ''Stability Testing of Drug Substances and Drug Products'' to the Drug Information Branch (HFD–210), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, or to the Office of Communication, Training, and Manufacturers Assistance (HFM–40), Center for Biologics Evaluation and Research, Food and Drug Administration, 1401 Rockville Pike, Rockville MD 20852–1448. Send one self-addressed adhesive label to assist the office in processing your request. Submit written comments on the draft guidance to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857. Requests and comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT:

Kenneth J. Furnkranz, Center for Drug Evaluation and Research (HFD–625), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855–2737, 301–827–5848, or

Rebecca A. Devine, Center for Biologics Evaluation and Research (HFM–10), 1401 Rockville Pike, Rockville, MD 20852, 301–827–0373.

SUPPLEMENTARY INFORMATION: FDA is announcing the availability of a draft guidance for industry entitled ''Stability Testing of Drug Substances and Drug Products.'' The draft guidance provides recommendations regarding the stability studies that should be performed by pharmaceutical applicants to support applications submitted to the Center for

Drug Evaluation and Research (CDER) and the Center for Biologics Evaluation and Research (CBER).

The draft guidance for industry entitled ''Stability Testing of Drug Substances and Drug Products'' revises, updates, and is intended to supersede the guidance entitled ''Submitting Documentation for the Stability of Human Drugs and Biologics'' (February 1987). This draft guidance relies on and incorporates the ICH Q1A guidance ''Stability Testing of New Drug Substances and Products'' (59 FR 48754, September 22, 1994) and its annexes.

This draft guidance represents the agency's current thinking on stability testing of human drugs and biologics regulated by CDER and CBER. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirement of the applicable statute, regulations, or both.

Interested persons may, on or before September 9, 1998, submit written comments on the draft guidance to the Dockets Management Branch (address above). Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. The draft guidance and received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Dated: June 2, 1998.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 98–15148 Filed 6–5–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Receipt of Application for the Proposed Issuance of a Permit To Allow Incidental Take of an Endangered Species at the Los Osos Center, LLC, Proposed Commercial Development Project, in Los Osos, California

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of document availability; request for comments.

SUMMARY: This notice advises the public that Los Osos Center, LLC (Applicant), has applied for an incidental take permit from the Fish and Wildlife Service pursuant to Section 10(a)(1)(B) of the Endangered Species Act of 1973 (Act), as amended. The Applicant is requesting the Service issue a 5-year permit to allow the incidental take of the federally listed as endangered Morro shoulderband snail (*Helminthoglypta walkeriana*) associated with a proposed 5.5-acre commercial development project in the community of Los Osos, San Luis Obispo County, California. The permit application includes a Habitat Conservation Plan and an Implementation Agreement, both of which are available for pubic review and comment. The Service also announces the availability of an Environmental Assessment for the proposed issuance of the incidental take permit. All comments received will become part of the administrative record and may be released to the public.

DATES: Written comments on the permit application and Environmental Assessment should be received on or before July 8, 1998.

ADDRESSES: Comments regarding the application or the Environmental Assessment, or requests for these documents, should be addressed to Diane Noda, Field Supervisor, Fish and Wildlife Service, 2493 Portola Road, Suite B, Ventura, California 93003; facsimile (805) 644–3958.

FOR FURTHER INFORMATION CONTACT: Kate Symonds, Fish and Wildlife Biologist, at the above address or telephone (805) 644–1766.

SUPPLEMENTARY INFORMATION:

Document Availability

Individuals wishing copies of the documents for review should immediately contact the office listed above. Documents also will be available for inspection, by appointment, during normal business hours at the above address.

Background

Under Section 9 of the Act and its implementing regulations, ''taking'' of threatened and endangered species is prohibited. However, the Service, under limited circumstances, may issue permits to take threatened or endangered wildlife species if such taking is incidental to, and not the purpose of, otherwise lawful activities. Regulations governing permits for threatened and endangered species are found at 50 CFR part 13 and 50 CFR 17.22 and 17.32.

The incidental taking would occur as the result of the Applicant's proposed commercial development project, which would result in the permanent loss of 0.5 acres of Morro shoulderband snail habitat within the 5.5-acre project site. The permit application includes a Habitat Conservation Plan (Plan) and the Implementation Agreement which defines the responsibilities of all of the parties under the Plan. The Plan addresses impacts to the Morro shoulderband snail that are associated with the proposed commercial development project and provides for implementation of measures to minimize and mitigate adverse impacts to the Morro shoulderband snail.

The Applicant will pay a mitigation compensation fee to the Service's land acquisition and management designee to be used for the acquisition and management in perpetuity of 0.5 acres of high-quality offsite Morro shoulderband snail habitat, as part of a larger habitat acquisition program in Los Osos. The 0.5-acre land acquisition will compensate for the permanent loss of 0.5 acres of snail habitat that will result from project implementation and will benefit the long-term conservation of the snail.

The Plan and the Environmental Assessment consider three alternatives to the proposed commercial development project: the No-Development Project Alternative, the Reduced Intensity Alternative, and the Alternate Site Alternative.

Under the No-Development Project Alternative, no commercial development project would be conducted. The Service would not issue a Section 10(a)(1)(B) permit because there would be no take of Morro shoulderband snails. This alternative would not adversely affect biological resources occurring on this site; therefore, impacts would be less than those of the proposed project. This alternative assumes the continuation of the existing conditions (i.e., undeveloped area). However, the No-Development Project Alternative would not substantially benefit the Morro shoulderband snail. Non-native plants would continue to occupy the project site and human disturbances would likely continue. Under this alternative, no contribution to the acquisition, preservation, and management of high-quality offsite Morro shoulderband snail habitat would occur.

The Reduced Intensity Alternative involves proceeding with a commercial development on the proposed 5.5-acre project site, but with a smaller construction configuration so as to avoid physical disturbance to the areas of Morro shoulderband snail habitat within the project site. This alternative would involve not developing approximately 1.5 acres within the 5.5-acre parcel. A Reduced Intensity Alternative would not benefit the Morro shoulderband snail because it would

further isolate the habitat. Under this alternative, no contribution to the acquisition, preservation, and management of high-quality offsite Morro shoulderband snail habitat would occur.

The Alternate Site Alternative involves the use of a site for a commercial development project that does not support any listed species; therefore, the project would not result in the incidental take of a listed species. This alternative is considered to be unfeasible from a business and commercial standpoint given market, development, and private contractual constraints. Although this alternative would result in no impact at the proposed project site, it would not substantially benefit the Morro shoulderband snail. The project site contains marginal snail habitat, including non-native plants. Human disturbances to the project site would likely continue. Under this alternative, no contribution to the acquisition, preservation, and management of high-quality offsite Morro shoulderband snail habitat would occur.

This notice is provided pursuant to Section 10(c) of the Act and Service regulations for implementing the National Environmental Policy Act of 1969 (40 CFR 1506.6). The Service will evaluate the application, its associated documents, and submitted comments to determine whether the application meets the requirements of law. If the Service determines that the requirements are met, a permit will be issued for the incidental take of the Morro shoulderband snail. A final decision on permit issuance will be made no sooner than 30 days from the date of this notice.

Dated: June 1, 1998.

Thomas Dwyer,

Acting Regional Director, Region 1, Portland, Oregon.

[FR Doc. 98–15069 Filed 6–5–98; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Availability of a Revised Application for an Incidental Take Permit and Revised Environmental Assessment for Obyan Beach Resort Associates, Saipan, Commonwealth of the Northern Mariana Islands and the Commonwealth of the Northern Mariana Islands Department of Lands and Natural Resources

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability.

SUMMARY: This notice advises the public that the Obyan Beach Resort Associates and the Commonwealth of the Northern Mariana Islands (Commonwealth) Department of Lands and Natural Resources (Applicants) have applied to the Fish and Wildlife Service for an incidental take permit (PRT–824821) pursuant to section 10(a)(1)(B) of the Endangered Species Act of 1973, as amended (Act). The application package includes a Habitat Conservation Plan (Plan), Implementation Agreement, and the Saipan Upland Mitigation Bank Agreement (Agreement). The Service also announces the availability of an Environmental Assessment for the proposed issuance of the incidental take permit. The proposed permit would authorize the incidental take of the federally listed endangered nightingale reed-warbler (*Acrocephalus luscinia*) and Micronesian megapode (*Megapodius laperouse*), and/or their habitat during the construction of a proposed 36-hole golf course and resort. Green sea turtles (*Chelonia mydas*) may nest at the beach near the project site, but outside of the project boundaries, and are not expected to be impacted by the project. The permit would be in effect for 50 years.

The Plan, Implementation Agreement and Environmental Assessment were circulated for public review in February, 1997, in accordance with the Act and the National Environmental Policy Act (62 FR 7794). The original permit application proposed establishment of a mitigation bank on Saipan to compensate for impacts to nightingale reed-warblers. Since that time, the proposed Saipan Upland Mitigation Bank (Mitigation Bank) has been developed, and a Mitigation Bank Agreement has been prepared. This Agreement is now included in the permit application. Other than development of the Mitigation Bank and associated Agreement, no major revisions have been made to the permit application and Environmental Assessment. This notice advises the public that the revised Plan, Implementation Agreement and Environmental Assessment, and the Agreement are available for review and comment. All comments received, including names and addresses, will become part of the administrative record and may be made available to the public. This notice is provided pursuant to section 10(c) of the Act and National Environmental Policy Act regulations (40 CFR 1506.6).

DATES: Written comments on the permit application and Environmental Assessment should be received on or before June 23, 1998.

ADDRESSES: Comments regarding the permit application, Plan, Agreement, or Environmental Assessment, or requests for these documents, should be addressed to Brooks Harper, Field Supervisor, Fish and Wildlife Service, P.O. Box 50088, Honolulu, Hawaii 96850; Fax (808) 541–3470. Please refer to permit number PRT–824821 when submitting comments.

FOR FURTHER INFORMATION CONTACT: Brooks Harper or Gina Shultz, Pacific Islands Fish and Wildlife Office, telephone (808) 541–3441.

SUPPLEMENTARY INFORMATION: Section 9 of the Act prohibits the ''taking'' of a species listed as threatened or endangered. However, the Service, under limited circumstances, may issue permits to take listed species incidental to, and not the purpose of, otherwise lawful activities. Regulations governing permits for threatened species are promulgated in 50 CFR 17.32; regulations governing permits for endangered species are promulgated in 50 CFR 17.22.

Background

The Applicants propose to construct a 36-hole golf course and resort on the southeastern part of Saipan, Commonwealth of the Northern Mariana Islands. The Applicants seek coverage for impacts to 814 acres that contain nightingale reed-warbler and Micronesian megapode habitat. To compensate for project impacts, the Applicants will: (1) Minimize on-site impacts and maintain habitat on-site for 10 pairs of nightingale reed-warblers, and (2) develop a Mitigation Bank and purchase 24 nightingale reed-warbler credits from the Mitigation Bank. Purchase of 24 credits from the Mitigation Bank will result in the permanent protection of 24 existing nightingale reed-warbler territories and permanent protection and enhancement of habitat to establish an additional 24 territories. Other measures are specified in the Plan to minimize potential for take during construction activities.

The Environmental Assessment considers the environmental consequences of three alternatives. Alternative 3, the proposed action, consists of the issuance of an incidental take permit, development of the Mitigation Bank, and implementation of the Plan and its implementation Agreement. This alternative is preferred because: (1) It satisfies the purpose and needs of the Service and Applicants; (2) impacts are minimized during construction; and (3) incidental take is

mitigated by the development of a Mitigation Bank, the purchase of 24 nightingale reed-warbler credits from the Mitigation Bank, and other measures specified in the Plan. Alternative 2 entails developing the project as originally permitted by the local government. The impacts to nightingale reed-warblers on site would be greater under this alternative and the protection of 24 nightingale reed-warbler territories and protection and enhancement of an additional 24 nightingale reed-warbler territories would not occur. Under alternative 1, the no action alternative, the Service would not issue an incidental take permit. The area leased would likely revert back to the Commonwealth government. None of the existing nightingale reed-warblers would be lost, at least immediately. After the land reverted back to the Commonwealth, it would then be available for other uses. These uses could have greater impacts to nightingale reed-warblers as a result of subdivision and the subsequent habitat fragmentation. Under the no action alternative, the 24 existing territories would not be preserved in the Mitigation Bank, and habitat protection and enhancement for the establishment of 24 additional territories would not occur.

Dated: June 2, 1998.

Thomas J. Dwyer,

Acting Regional Director, Region 1, Portland, Oregon.

[FR Doc. 98–15132 Filed 6–5–98; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Announcement of Meetings of the Klamath River Basin Fisheries Task Force on June 24, June 25, and June 26, 1998

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of meeting.

SUMMARY: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C. App. I), this notice announces a meeting of the Klamath River Basin Fisheries Task Force, established under the authority of the Klamath River Basin Fishery Resources Restoration Act (16 U.S.C. 460ss *et seq.*). The meeting is open to the public.

DATES: The Klamath River Basin Fisheries Task Force (TF) will meet from 8:00 a.m. to 5:00 p.m. on Wednesday, June 24, 1998, from 8:00 a.m. to 12:00 noon on Thursday, June 25, 1998, and from 8:00 a.m. to 3:00 p.m. on Friday, June 26, 1998.

PLACE: The meeting will be held in the Klamath Lake Room at the Shiloh Inn, 2500 Almond Street, Klamath Falls, Oregon.

FOR FURTHER INFORMATION CONTACT: Dr. Ronald A. Iverson, Project Leader, U.S. Fish and Wildlife Service, P.O. Box 1006 (1215 South Main), Yreka, California 96097–1006, telephone (530) 842–5763.

SUPPLEMENTARY INFORMATION: The principal agenda items at this meeting will be: (1) The Mid-program review of the Klamath Restoration Program; (2) a status report on the 1998 Klamath Project annual operations plan; (3) the development of the Task Force Fiscal Year 1999 workplan; (4) a report and decision on scoping for the Klamath River Basin Instream Flow Incremental Methodology (IFIM) flow study; (5) a report from the National Marine Fisheries Service on recovery actions for coho and steelhead and the relation to the Klamath Fishery Management Council, Task Force, and Tribal Trust responsibilities; (6) a decision on proceeding with the Upper Basin Amendment and related assignments; and (7) a report on the status of efforts to pursue additional funding for the Klamath Restoration Program.

For background information on the TF, please refer to the notice of their initial meeting that appeared in the **Federal Register** on July 8, 1987 (52 FR 25639).

Dated: June 1, 1998.

Thomas J. Dwyer,

Acting Regional Director.

[FR Doc. 98–15131 Filed 6–5–98; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WO220–1020–01–241A; OMB Approval Number 1004–0051]

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposed collection of information listed below has been submitted to the Office of Management and Budget (OMB) for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). On March 4, 1998, BLM published a notice in the **Federal Register** (63 FR 10649) requesting comment on this proposed collection. The comment period ended on May 8, 1998. BLM received no (0) comments from the public in response to that notice. Copies of the proposed collection of information and related forms and explanatory material may be obtained by contacting the BLM clearance officer at the telephone number listed below.

The Office of Management and Budget is required to respond to this request within 60 days but may respond after 30 days. For maximum consideration, your comments and suggestions on the requirement should be made directly to the Office of Management and Budget, Interior Department Desk Officer (1004–0151), Office of information and Regulatory Affairs, Washington, D.C., 20503, telephone (202) 395–7340. Please provide a copy of your comments to the Bureau Clearance Officer (WO–630), 1849 C St. N.W., Mail Stop 204 LS, Washington D.C. 20420.

Nature of Comments: We specifically request your comments on the following:

1. Whether the collection of information is necessary for proper functioning of the BLM, including whether the information will have practical utility;

2. The accuracy of BLM's estimate of the burden of collecting information, including the validation of the methodology and assumptions used;

3. The quality, utility and clarity of the information to be collected; and

4. How to minimize the burden of collecting the information on those who are to respond, including the use of appropriate automated electronic, mechanical and other forms of information technology.

Title: 43 CFR 4130.3–2(d), Actual Grazing Use Report.

OMB approval number: 1004–0051.

Abstract: The Bureau of Land Management is proposing to renew the approval of an information collection or an existing rule at 43 CFR 4130.3–2(d). This form is used by grazing permittees or lessees to provide information on the actual amount of livestock grazing use made on the public lands within a specified time to the Bureau of Land Management for billing purposes and program monitoring.

Bureau Form Number: Form 4130–5.

Frequency: Annually reporting as required.

Description of respondents: Respondents are holders of grazing permits or leases on the public lands administered by the Bureau of Land Management.

Estimated completion time: 25 minutes.

Annual responses: 15,000.

Annual burden hours: 6,250.

Collection Clearance Officer: Carole Smith, (202) 452–0367.

Dated: May 27, 1998.

Carole Smith,

Bureau of Land Management, Information and Clearance Officer.

[FR Doc. 98–15160 Filed 6–5–98; 8:45 am]

BILLING CODE 4310–84–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AZ–910–0777–61–241A]

State of Arizona Resource Advisory Council Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Arizona Resource Advisory Council Meeting, notice of meeting.

SUMMARY: This notice announces a meeting of the Arizona Resource Advisory Council. The meeting will be held July 9, 1998, beginning at 8:30 a.m. in the New Mexico Room at the BLM National Training Center, 9828 North 31st Avenue, Phoenix, Arizona. The agenda items to be covered at the one-day business meeting include review of previous meeting minutes; BLM State Director's Update on legislation, regulations and other statewide issues; BLM Presentation on the Yarnell Mine Draft EIS, and Updates on the Wild Horse and Burro Strategy, Southwest Strategy, Fire Planing; Proposed Field Office Rangeland Resource Teams; and Reports by the Standards and Guidelines, Recreation and Public Relations Working Groups; Reports from BLM Field Office Managers; Reports from RAC members; and Discussion on future meetings. A public comment period will take place at 11:30 a.m. on July 9, 1998, for any interested publics who wish to address the Council.

FOR FURTHER INFORMATION CONTACT: Deborah E. Stevens, Bureau of Land Management, Arizona State Office, 222 North Central Avenue, Phoenix, Arizona 85044–2203, (602) 417–9215.

Denise P. Meridith,

State Director.

[FR Doc. 98–15125 Filed 6–5–98; 8:45 am]

BILLING CODE 4310–32–M

DEPARTMENT OF THE INTERIOR

National Park Service

Concession Contract Negotiations; Bighorn Canyon National Recreation Area

AGENCY: National Park Service, Interior.

ACTION: Public notice.

SUMMARY: Public notice is hereby given that the National Park Service proposes to award a concession permit authorizing continued operation of the Ok-A-Beh Marina to provide services including boat fuel sales, boat slip rentals, boat rentals, limited food service, and limited merchandise sales for the public within Bighorn Canyon National Recreation Area for a period of five (5) years from January 1, 1999, through December 31, 2003.

EFFECTIVE DATE: Offers will be accepted for sixty (60) days under the terms described in the Prospectus. The sixty (60) day application period will begin with the release of the Prospectus, which will occur on or before July 8, 1998. The actual release date of the Prospectus shall be the date of publication in the ''Commerce Business Daily''.

ADDRESSES: Interested parties should contact the Superintendent, Bighorn Canyon National Recreation Area, P.O. Box 485, Fort Smith, Montana 59035, or call Theo Hugs at (406) 666–2412, to obtain a copy of the Prospectus describing the requirements of the proposed concession permit.

SUPPLEMENTARY INFORMATION: This permit renewal has been determined to be categorically excluded from the procedural provisions of the National Environmental Policy Act and no environmental document will be prepared.

The existing concessioner, LuCon Corporation, has performed their obligations to the satisfaction of the Secretary under the existing permit which expires by limitation of time on December 31, 1998. Therefore pursuant to the provisions of the Concessions Policy Act (79 Stat. 969; 16 U.S.C. 20d), the concessioner is entitled to be given preference in the renewal of the permit and in the award of a new permit, providing that the existing concessioner submits a responsive offer (a timely offer which meets the terms and conditions of the Prospectus). This means that the permit will be awarded to the party submitting the best offer, provided that if the best offer was not submitted by the existing concessioner, then the existing concessioner will be afforded the opportunity to match the best offer. If the existing concessioner agrees to match the best offer, then the permit will be awarded to the existing concessioner.

If the existing concessioner does not submit a responsive offer, the right of preference in renewal shall be considered to have been waived, and the permit will then be awarded to the party that has submitted the best responsive offer.

The Secretary will consider and evaluate all offers received as a result of this notice. Any offer, including that of the existing concessioner, must be received by the Superintendent, Bighorn Canyon National Recreation Area, P.O. Box 485, Fort Smith, Montana 59035, not later than sixty (60) days following release of the Prospectus to be considered and evaluated.

Dated: May 20, 1998.

John Crowley,

Acting Director, Intermountain Region.

[FR Doc. 98–15129 Filed 6–5–98; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

Intent To Issue a Prospectus For Operation of Accommodations, Facilities, and Services Within Grand Canyon National Park

SUMMARY: The National Park Service will be releasing a concession Prospectus authorizing continued operation of accommodations, facilities, and services for the visiting public at three developed areas (Hermit's Rest, Grand Canyon Village, and Desert View) along the South Rim, and at Phantom Ranch near the Colorado River at the bottom of the inner canyon of Grand Canyon National Park. The operations consist primarily of overnight accommodations, food and beverage services, livery services, and gift/souvenir sales. The operation is year-round with the peak season during the summer months. The new contract will be for twenty (20) years beginning January 1, 1999.

EFFECTIVE DATE: Offers will be accepted for ONE HUNDRED AND TWENTY (120) days under the terms described in the Prospectus. The ONE HUNDRED AND TWENTY (120) day application period will begin with the release of the Prospectus, which will occur on or before July 9, 1998. The actual release date of the Prospectus shall be the date of publication in the ''Commerce Business Daily''.

SUPPLEMENTARY INFORMATION: This contract renewal has been determined to be categorically excluded from the procedural provisions of the National Environmental Policy Act and no environmental document will be prepared.

The existing concessioner has performed its obligation to the satisfaction of the Secretary under an existing contract, which expires by

limitation of time on December 31, 1997. Therefore, pursuant to the provisions of Section 5 of the Act of October 9, 1965 (79 Stat. 969; 16 U.S.C. 20), the concessioner is entitled to be given preference in the renewal of the contract and in the award of a new contract, providing that the existing concessioner submits a responsive offer (a timely offer which meets the terms and conditions of the Prospectus). This means that the contract will be awarded to the party submitting the best offer, provided that if the best offer was not submitted by the existing concessioner, then the existing concessioner will be afforded the opportunity to match the best offer. If the existing concessioner agrees to match the best offer, then the contract will be awarded to the existing concessioner.

If the existing concessioner does not submit a responsive offer, the right of preference in renewal shall be considered to have been waived, and the contract will then be awarded to the party that has submitted the best responsive offer.

The Secretary will consider and evaluate all offers received as a result of this notice. Any offer, including that of the existing concessioner, must be received by the Regional Director, Intermountain Region, P.O. Box 25287, Denver, Colorado 80225–0287 (street address: 12795 West Alameda Parkway, Lakewood, Colorado 80228); not later than NINETY (90) days following release of the Prospectus to be considered and evaluated.

ADDRESSES: The cost for purchasing a Prospectus is $25.00 by mail or $20.00, if you pick it up at the below address. Parties interested in obtaining a copy should make a check (NO CASH IS ACCEPTED) payable to ''National Park Service'' at the following address: National Park Service, Intermountain Region—Denver Support Office, Office of Concessions Management, 12795 W. Alameda Parkway, P.O. Box 25287, Denver, Colorado 80225–0287; Attn: Kathy Fleming. The front of the envelope should be marked ''Attention: Office of Concession Program Management—Mailroom Do Not Open''. Please include a mailing address indicating where to send the Prospectus in your request. Inquiries may be directed to Ms. Kathy Fleming, Office of Concession Program Management at (303) 969–2665.

Dated: May 26, 1998.

Ronald E. Everhart,

Acting Director, Intermountain Region.

[FR Doc. 98–15128 Filed 6–5–98; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Intention To Issue Concession Contracts and Concession Permits; Southeast Region

SUMMARY: Pursuant to the Act of October 9, 1965, (79 Stat. 969; 16 U.S.C. 20 *et seq.*), notice is hereby given that the National Park Service intends to issue new concession contracts and permits within various areas of the Southeast Region for a period of approximately 2 years. This short contracting term is necessary to allow the continuation of public services during completion of planning activities for the various park areas covered by this notice. The proposed term for the individual authorizations may be lessened should planning issues be resolved, and the renewal processes result in the award of new authorizations. The current concessioners have performed their obligations to the satisfaction of the Secretary of the Interior and retain their right of preference under this administrative action. This preferential right of renewal means that a short term contract or permit will be awarded to the party submitting the best offer, provided that if the best offer was not submitted by the existing concessioner, then the existing concessioner will be afforded the opportunity to match the best offer. If the existing concessioner agrees to match the best offer, then the short-term contract or permit will be awarded to the existing concessioner.

SUPPLEMENTARY INFORMATION: The concession contracts and permits involved in this action would have expired by limitation of time but were extended by the National Park Service to provide time for planning of the concession activities. Until the planning processes are completed, and the future direction for concession services in the park areas is determined, it is not in the best interest of the National Park Service to enter into long term authorizations. For this reason, it is the intention of the National Park Service to issue short term contracts and permits, complete the planning processes, and then conduct public contracting processes for selection of concessioner for a more extended period.

Due to the limited term of the proposed contracts and permits, the requirement for any successor to purchase possessory interest in those concessions which have that right via contract, and the preferential right of renewal under law, the National Park Service is not encouraging the submission of offers by anyone other than the existing concessioners; however, as required by law, the National Park Service will consider and evaluate any offer received in response to this notice.

The following are to be issued new concession authorizations pursuant to this notice:

Big South Fork National River and Recreation Area

CP–BISO001–87 LeConte Lodge Limited Partnership (lodging)
CP–BISO003–88 Sandra L. Storey (horse stables)

Biscayne National Park

CP–BISC002–87 Biscayne National Underwater Park, Inc. (excursion boat)

Buck Island Reef National Monument

CC–BUIS001–89 Southern Seas, Inc. (excursion boat)
CC–BUIS006–89 Teroro, Inc. (excursion boat)
CP–BUIS008–89 Llewellyn Westerman (excursion boat)
CP–BUIS014–89 Francis J. Waters (excursion boat)
CC–BUIS015–89 Milemark, Inc. (excursion boat)
CP–BUIS019–89 Clyde, Inc. (excursion boat)

Cape Hatteras National Seashore

CC–CAHA001–85 Avon Thornton Limited Partnership (fishing pier)
CC–CAHA002–88 Cape Hatteras Fishing Pier, Inc. (fishing pier)
CC–CAHA004–87 Oregon Inlet Fishing Center, Inc. (charter fishing)

Cape Lookout National Seashore

CC–CALO003–87 Morris Marina, Kabin Kamps and Ferry Services, Inc. (fish camp)
CP–CALO005–88 Alger G. Willis Fishing Camps, Inc. (fish camp)

Chattahoochee River National Recreation Area

CC–CHAT001–87 Chattahoochee Outdoor Center, Inc. (bus service)

Fort Frederica National Monument

CP–FOFR001–92 Fort Frederica Association (convenience items)

Great Smoky Mountains National Park

CC–GRSM001–89 Cades Cove Campground Store, Inc. (campstore)
CC–GRSM003–88 Robert N. Shular (firewood)
CP–GRSM004–89 Cades Cove Riding Stables, Inc. (horse rides)
CP–GRSM005–88 Cherokee Boys Club, Inc. (firewood)
CP–GRSM006–87 McCarter's Riding Stables, Inc. (horse rides)

CP–GRSM010–90 Great Smoky Mountains Natural History Association (convenience items)

Gulf Islands National Seashore

CC–GUIS001–82 Dudley Food & Beverage, Inc. (campstore)

Natchez Trace Parkway

CC–NATR001–88 Little Mountain Services Center, Inc. (automotive fuel)
CP–NATR015–89 Craftsmens Guild of Mississippi (handcrafts)

Virgin Islands National Park

CC–VIIS001–71 Caneel Bay, Inc. (campground)
CP–VIIS007–86 Maho Bay, Inc. (watersports)
CP–VIIS008–86 Caneel Bay, Inc. (watersports)

Wright Brothers National Memorial

CP–WRBR001–89 Kitty Hawk Aero Tours, Inc. (air tours)

Information regarding this notice can be sought from Mr. E. Lee Davis, Acting Senior Concessions Analyst, Southeast Region, National Park Service, 100 Alabama Street, S. W., Atlanta, GA 30303, or by calling (404) 562–3112.

W. Thomas Brown,

Acting Regional Director.

[FR Doc. 98–15130 Filed 6–5–98; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

Maine Acadian Culture Preservation Commission Notice of Meeting

Notice is hereby given in accordance with the Federal Advisory Committee Act (PL 92–463) that the Maine Acadian Culture Preservation Commission will meet on Friday, June 12, 1998. The meeting will convene at 7:00 PM at the University of Maine, Cyr Hall, Room 205, on Pleasant Street, Fort Kent, Aroostook County, Maine.

The Maine Acadian Culture Preservation Commission was appointed by the Secretary of the Interior pursuant to the Maine Acadian Culture Preservation Act (PL 101–543). The purpose of the Commission is to advise the National Park Service with respect to the implementation of an interpretive program of Acadian culture in the state of Maine, and the proceedings of a joint meeting with the Maine Acadian Heritage Council. The agenda for this meeting is as follows:

1. Review of April 10, 1998 summary report.
2. Speaker: Maurice Basque of Moncton, New Brunswick, Canada on ''New Research Directions on Acadian Culture''.
3. Report of the National Park Service Project Staff.
4. Opportunity for public comment.
5. Proposed agenda, place, and date of the next Commission Meeting.

The meeting is open to the public. Further information concerning Commission meetings may be obtained from the Superintendent, Acadia National Park. Interested persons may make oral/written presentations to the Commission or file written statements. Such requests should be made at least seven days prior to the meeting to: Superintendent, Acadia National Park, P.O. Box 177, Bar Harbor, ME 04609–0177; telephone (207) 288–5472.

Dated: May 27, 1998.

Len Bobinchock,

Acting Superintendent, Acadia National Park.

[FR Doc. 98–15127 Filed 6–5–98; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Intent to Repatriate Cultural Items from Arizona in the Possession of the Arizona State Museum, Tucson, AZ

AGENCY: National Park Service

ACTION: Notice

Notice is hereby given under the Native American Graves Protection and Repatriation Act, 43 CFR 10.10 (a)(3), of the intent to repatriate cultural items from Arizona in the possession of the Arizona State Museum, Tucson, AZ which meets the definition of ''objects of cultural patrimony'' under Section 2 of the Act.

The cultural items consist of four wooden ceremonial standards, four wooden ceremonial hoops, and ceremonial bundle.

Prior to 1943, these cultural items were removed from a crevice in rocks on the San Carlos Apache Reservation without permission by person(s) unknown. In 1943, these cultural items were donated to the Kinishba Museum by Mr. Sam Duvall. In 1969, these cultural items were transferred to the Arizona State Museum.

Consultation with representatives of the San Carlos Apache Tribe has indicated that these cultural items were removed from tribal lands without permission of the San Carlos Apache Tribe. Further, representatives of the San Carlos Apache Tribe state that these are items which have ongoing traditional and cultural importance central to the culture itself and could not have been conveyed or alienated by any individual.

Officials of the Arizona State Museum have determined that, pursuant to 43 CFR 10.2 (d)(4), these nine cultural items have ongoing historical, traditional, and cultural importance central to the tribe itself, and could not have been alienated, appropriated, or conveyed by any individual. Officials of the Arizona State Museum have also determined that, pursuant to 43 CFR 10.2 (e), there is a relationship of shared group identity which can be reasonably traced between these items and the San Carlos Apache Tribe of the San Carlos Reservation.

This notice has been sent to officials of the San Carlos Apache Tribe of the San Carlos Reservation, the Yavapai-Apache Nation of the Camp Verde Indian Reservation, the Fort McDowell Mohave-Apache Indian Community of the Fort McDowell Indian Reservation, the Tonto Apache Tribe, and the White Mountain Apache Tribe of the Fort Apache Reservation. Representatives of any other Indian tribe that believes itself to be culturally affiliated with these objects should contact Dr. Gwinn Vivian, Acting Repatriation Coordinator, Arizona State Museum, University of Arizona, Tucson, AZ 85721; telephone: (520) 621–4500 before July 8, 1998. Repatriation of these objects to the San Carlos Apache Tribe of the San Carlos Reservation may begin after that date if no additional claimants come forward.

Dated: June 2, 1998.

Francis P. McManamon,

Departmental Consulting Archeologist, Manager, Archeology and Ethnography Program.

[FR Doc. 98–15150 Filed 6–5–98; 8:45 am]

BILLING CODE 4310–70–F

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337–TA–395]

Notice of Commission Decision to Extend Target Date for Completion of Investigation

In the Matter of Certain EPROM, EEPROM, Flash Memory, and Flash Microcontroller Semiconductor Devices, and Products Containing Same.

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to extend

the target date for completion of the above-captioned investigation from June 29, 1998, to July 2, 1998, to accommodate a revised briefing schedule.

FOR FURTHER INFORMATION CONTACT: John A. Wasleff, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202–205–3094.

SUPPLEMENTARY INFORMATION: This investigation was instituted on March 18, 1997, based on a complaint filed by Atmel Corporation. 62 FR 13706. The respondents named in the investigation are Sanyo Electric Co., Ltd., Winbond Electronics Corporation and Winbond Electronics North America Corporation, and Macronix International Co., Ltd. Silicon Storage Technology, Inc. was permitted to intervene. At issue are claim 1 of U.S. Letters Patent 4,511,811, claim 1 of U.S. Letters Patent 4,673,829, and claims 1–9 of U.S. Letters Patent 4,451,903.

On May 6, 1998, the Commission determined to review portions of the presiding administrative law judge's final initial determination and requested the parties to brief certain questions to aid the Commission's review. 63 Fed. Reg. 25867. The Commission directed the parties to file their main briefs responding to the Commission's notice of review by May 20, 1998, and their reply briefs by May 28, 1998.

On May 18, 1998, a motion of respondent Winbond to extend the filing deadline for main briefs to May 26, 1998, and the filing deadline for reply briefs to June 2, 1998, was granted. The extensions applied to all parties. The target date for completion of the investigation was subsequently extended to June 29, 1998.

On May 28, 1998, a motion of complainant Atmel Corporation to extend the filing deadline for its reply brief was granted in part. All parties were required to file their reply briefs by June 5, 1998.

This action is taken under the authority of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) and section 210.51 of the Commission's Rules of Practice and Procedure (19 C.F.R. 210.51).

Copies of the public version of the administrative law judge's final initial determination and all other nonconfidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street S.W., Washington, D.C. 20436, telephone 202–205–2000. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810. General information concerning the Commission may also be obtained by accessing its Internet server (http://www.usitc.gov).

Issued: June 2, 1998.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 98–15161 Filed 6–5–98; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Emergency Review; Comment Request

June 3, 1998.

The Department of Labor has submitted an information collection request (ICR), utilizing emergency review procedures, to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). OMB approval has been requested by June 30, 1998. A copy of this ICR with applicable documentation, may be obtained by calling the Department of Labor, Departmental Clearance Officer, Todd R. Owen, (202) 219–5095, Ex. 143.

ADDRESSES: Comments and questions about this ICR should be forwarded to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for the Occupational Safety and Health Administration, Office of Management and Budget, Room 10235, Washington, D.C. 20503 ((202) 395–7316).

The Office of Management and Budget is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarification 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 means for submission of responses.

Agency: Occupational Safety and Health Administration.

Title: Survey on Payment Patters for Occupational Personal Protective Equipment.

OMB Number: 1218–0NEW.

Frequency: Nonrecurring.

Affected Public: Business or other for-profit; Not-for-profit institutions; State, Local or Tribal Governments.

Number of Respondents: 6,582.

Estimated Time per Respondent: 6 minutes.

Total Burden Hours: 1,105.

Total Burden Cost (capital/startup): $0.

Total Burden Cost (operating/maintaining): $0.

Description: The Occupational Safety and Health Administration is proposing a change to the language of the existing Personal Protective Equipment (PPE) standard, 29 CFR 1910.132. This action is intended to clarify the Agency's longstanding intent that employers are required to pay for most items of PPE. In order to ensure the Agency has sufficient information on this matter, the Agency is planning on conducting a short survey of employers to inquire about their use of PPE and who pays for it currently. Some data from the survey will also be used to support the assigned protection factor portion of its respiratory protection rulemaking (29 CFR 1910.134), as well as its fall protection rulemaking (Subpart M).

Todd R. Owen,

Departmental Clearance Officer.

[FR Doc. 98–15162 Filed 6–5–98; 8:45 am]

BILLING CODE 4510–26–M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. ICR–98–14]

Annual Inspection Record of Cranes or Derricks Used in Construction

AGENCY: Occupational Safety and Health Administration, Labor.

ACTION: Notice of proposed information collection request; opportunity for public comment.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and information collection burdens, is conducting a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on both current and proposed collections of information in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3506 (c)(2)(A)). This program

helps to ensure that reporting burden (time and financial resources) is minimized, collection materials are clearly understood, impact of collection requirements on respondents can be accurately assessed, and requested data can be provided in the desired format. Currently, the Occupational Safety and Health Administration (OSHA) is soliciting comments concerning the proposed extension of the information collection requirements contained in 29 CFR 1926.550(a)(6). That standard requires that written records be kept and maintained of the dates and results of all annual inspections of cranes and derricks used in construction. These inspections must be made by a competent person, or by a government or private agency recognized by the U.S. Department of Labor.

The Agency is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of OSHA's responsibilities, including whether the information will have practical utility;
- Evaluate the accuracy of the Agency's estimates of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology (for example, permitting electronic submissions of responses).

DATES: Written Comments must be submitted on or before August 7, 1998.

ADDRESSES: Comments are to be submitted to the Docket Office, Docket ICR–98–14, U.S. Department of Labor, Room N–2625, 200 Constitution Avenue, NW., Washington, DC 20210, (202) 219–7894. Written comments limited to 10 pages or less may be transmitted by facsimile to (202) 219–5046.

FOR FURTHER INFORMATION CONTACT: Mr. Laurence Davey, Directorate of Construction, Occupational Safety and Health Administration, U.S. Department of Labor, Room N3621, 200 Constitution Avenue, NW., Washington, DC 20210, (202) 219–7207. Copies of the referenced certification record requests are available for inspection and copying in the Docket Office and will be mailed immediately to persons who request copies by telephoning Mr. Davey at (202) 219–7207 or Barbara Bielaski at (202) 219–8076. For electronic copies of the information collection request, contact OSHA's Web Page on Internet at http://www.osha-slc.gov (click on Information Collection Requests).

SUPPLEMENTARY INFORMATION:

Background

The Occupational Safety and Health Administration (OSHA) currently has approval from the Office of Management and Budget (OMB) for the information collection requirements contained in 29 CFR 1926.550(a)(6). That approval will expire on September 30, 1998, unless OSHA applies for an extension of the OMB approvals. This notice initiates the process for OSHA to request an extension of the current OMB approval.

Paragraph (a)(6) of § 1926.550 requires employers to perform a thorough, annual inspection of cranes and derricks used in construction, and to record and maintain the dates and the results of the inspections. These inspections shall be made by a competent person, or by a government or private agency recognized by the U.S. Department of Labor.

Current Action

This notice requests public comment on OSHA's burden hour estimates prior to OSHA seeking OMB approval of the information collection requirements in 29 CFR 1926.550(a)(6).

Type of Review: Extension of existing approval.

Agency: Occupational Safety and Health Administration, U.S. Department of Labor.

Title: Annual Inspection Record of Cranes or Derricks Used in Construction.

OMB Number: 1218–0113.

Agency Number: Docket No. ICR–98–14.

Frequency: Annual.

Affected Public: Business or other for-profit.

Number of Respondents: 32,900.

Estimated Time Per Respondent: 3.5 hours.

Total Burden Hours: 115,167.

Comments submitted in response to this notice will be summarized and included in the request for Office of Management and Budget approval of the information collection (record) request; they will also become a matter of public record.

Signed this 2nd day of June 1998.

Charles N. Jeffress,

Assistant Secretary of Labor.

[FR Doc. 98–15168 Filed 6–5–98; 8:45 am]

BILLING CODE 4510–26–P

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

Sunshine Act Meeting

June 3, 1998.

TIME AND DATE: 10:00 a.m., Tuesday, June 16, 1998.

PLACE: Room 6005, 6th Floor, 1730 K Street, N.W., Washington, D.C.

STATUS: Open.

MATTERS TO BE CONSIDERED: The Commission will consider and act upon the following:

1. *Secretary of Labor* v. *Consolidation Coal Co.*, Docket No. WEVA 94–57. (Issues include whether the judge correctly determined that a violation of 30 CFR § 75.1101–23(a) by Consolidation Coal Company was not significant and substantial.)

TIME AND DATE: 2:00 p.m., Tuesday, June 16, 1998.

PLACE: Room 6005, 6th Floor, 1730 K Street, N.W., Washington, D.C.

STATUS: Open.

MATTERS TO BE CONSIDERED: The Commission will consider and act upon the following:

1. *Secretary of Labor o.b.o. Hannah* v. *Consolidation Coal Co.*, Docket No. LAKE 94–704–D. (Issues include whether the judge erred in concluding that Consol's unlawful suspension of three miners constituted three separate violations of section 105(c) of the Mine Act, and thus warranted the assessment of the three separate civil penalties.)

Any person attending an open meeting who requires special accessibility features and/or auxiliary aids, such as sign language interpreters, must inform the Commission in advance of those needs. Subject to 29 CFR § 2706.150(a)(3) and § 2706.160(d).

CONTACT PERSON FOR MORE INFO: Jean Ellen, (202) 653–5629/(202) 708–9300 for TDD Relay/1–800–877–8339 for toll free.

Jean H. Ellen,

Chief Docket Clerk.

[FR Doc. 98–15366 Filed 6–4–98; 3:54 pm]

BILLING CODE 6735–01–M

THE NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Meetings of Humanities Panel

AGENCY: The National Endowment for the Humanities.

ACTION: Notice of meeting.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Public Law 92–463, as amended), notice is hereby given that the following

meeting of the Humanities Panel will be held at the Old Post Office, 1100 Pennsylvania Avenue, N.W., Washington, D.C. 20506.

FOR FURTHER INFORMATION CONTACT:

Nancy E. Weiss, Advisory Committee Management Officer, National Endowment for the Humanities, Washington, D.C. 20506; telephone (202) 606–8322. Hearing-impaired individuals are advised that information on this matter may be obtained by contacting the Endowment's TDD on (202) 606–8282.

SUPPLEMENTARY INFORMATION: The proposed meeting are for the purpose of panel review, discussion, evaluation and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by the grant applicants. Because the proposed meeting will consider information that is likely to disclose trade secrets and commercial or financial information obtained from a person and privileged or confidential and/or information of a personal nature the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, pursuant to authority granted me by the Chairman's Delegation of Authority to Close Advisory Committee meetings, dated July 19, 1993, I have determined that these meetings will be closed to the public pursuant to subsections (c)(4), and (6) of section 552b of Title 5, United States Code.

1. *Date:* June 29, 1998.

Time: 8:30 a.m. to 5:00 p.m.

Room: 415.

Program: This meeting will review applications for History Museums, Historical Societies & Historic Sites, submitted to the Division of Challenge Grants for projects at the May 1, 1998 deadline.

Nancy E. Weiss,

Advisory Committee Management Officer.

[FR Doc. 98–15071 Filed 6–5–98; 8:45 am]

BILLING CODE 7536–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Civil and Mechanical Systems; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name: Special Emphasis Panel in Civil and Mechanical Systems.

Date and Name: Monday & Tuesday, June 29 & 30, 1998, 8:30 a.m. to 5 p.m.

Place: Room 340, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

Type of Meeting: Closed.

Contact Persons: Dr. Priscilla P. Nelson, Program Director, Construction/ Geotechnical/Structures Program Cluster. National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230. Telephone: (703) 306–1361.

Purpose of Meeting: To provide advice and recommendations concerning unsolicited proposals submitted to NSF for financial support.

Agenda: To review and evaluate 1998 IIA Unsolicited proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c)(4) and (6) of the Government in the Sunshine Act.

Dated: June 2, 1998.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 98–15119 Filed 6–5–98; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Electrical and Communications Systems; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Electrical and Communications Systems (1196).

Date & Time: June 25–26, 1998; 8:30 a.m. to 5 p.m.

Place: National Science Foundation, 4201 Wilson Boulevard, Room 675, Arlington, VA.

Type of meeting: Closed.

Contact Person: Dr. Rajinder Khosla, Program Director, Physical Foundation of Enabling Technologies, Division of Electrical and Communications Systems, NSF, 4201 Wilson Blvd., Arlington, VA 22230 703/306–1339.

Purpose of meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate Physical Foundation of Enabling Technologies proposals as part of the selection process for awards.

Reason for closing: The proposals being reviewed include information of a proprietary or confidential nature including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c)(4) and (b) of the Government in the Sunshine Act.

Dated: June 2, 1998.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 98–15120 Filed 6–5–98; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

Application for a License To Import Radioactive Waste

Pursuant to 10 CFR 110.70(c) ''Public notice of receipt of an application'', please take notice that the Nuclear Regulatory Commission has received the following application for an import license. Copies of the application are on file in the Nuclear Regulatory Commission's Public Document Room located at 2120 L Street, N.W., Washington, D.C.

A request for a hearing or petition for leave to intervene may be filed within 30 days after publication of this notice in the **Federal Register**. Any request for hearing or petition for leave to intervene shall be served by the requestor or petitioner upon the applicant, the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington D.C. 20555; the Secretary, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555; and the Executive Secretary, U.S. Department of State, Washington, D.C. 20520.

The information concerning the application follows.

NRC IMPORT LICENSE APPLICATION

Name of applicant, date of application, date received, application No.	Description of material			Country of origin
	Material type	Total quantity	End use	
GTS Duratek, April 19, 1998, April 21, 1998, IW007.	Contaminated Condenser tubes and tubes sheets.	612,356 kgs ...	Decontamination and recycling	Taiwan.

Dated this 2nd day of June 1998 at Rockville, Maryland.

For the Nuclear Regulatory Commission.

Ronald D. Hauber,

Director, Division of Nonproliferation, Exports and Multilateral Relations, Office of International Programs.

[FR Doc. 98–15138 Filed 6–5–98; 8:45 am]

BILLING CODE 7590–01–U

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–245, 50–336, and 50–423]

Northeast Utilities (Millstone Nuclear Power Station, Units 1, 2, and 3); Issuance of Director's Decision Under 10 CFR 2.206

Notice is hereby given that the Director, Office of Nuclear Reactor Regulation, has issued a Director's Decision with regard to a Petition dated February 2, 1998, filed by Ms. Deborah Katz, Ms. Rosemary Bassilakis, and Mr. Paul Gunter on behalf of the Citizens Awareness Network (CAN) and the Nuclear Information and Resource Service (NIRS) (Petitioners). The Petition pertains to the Millstone Nuclear Power Station, Units 1, 2, and 3.

The Petitioners requested that the NRC immediately: (1) revoke Northeast Utilities' (NU's, the licensee's) license to operate Millstone Units 1, 2, and 3 as the result of ongoing intimidation and harassment of its workforce by NU management; (2) revoke NU's license to operate Millstone Units 1, 2, and 3 as the result of persistent licensee defiance of NRC regulations and directives to create a ''questioning attitude'' for its workers to challenge management on nuclear safety issues without fear of harassment, intimidation, or reprisals by NU; and (3) refer the Nuclear Oversight Department's Focus 98 List and the reported NU management attempt to destroy the list to the Department of Justice for investigation of a potential coverup.

As the bases for these assertions, the Petition states that an NU document (Nuclear Oversight Department's Focus 98 List, dated January 11, 1998) directs the group to address areas needing improvement by focusing on the ''inability to ''isolate'' cynics from the group culture'' and ''pockets of negativism.'' The Petition further states that the list demonstrates the sustained and unrelenting policy of NU's senior management to undermine a safety-conscious workplace at Millstone, and that despite 2 years of increased regulatory scrutiny of the managerial mistreatment of its workers and the corporation's mismanagement of its employees' safety concerns program, a ''chilled atmosphere'' remains intact and entrenched.

As a basis for the Petitioners' request for a Department of Justice investigation, the Petition makes the following statement: ''Since it has been reported that NU management employees attempted to destroy the list, NRC has a duty to refer this apparent deliberate attempt to evade the otherwise lawful exercise of authority by NRC to the Department of Justice for complete investigation. This alleged attempt to cover up wrong doing by NRC's licensee is a potential obstruction of justice that should be fully and fairly investigated.''

The Director of the Office of Nuclear Reactor Regulation has denied the Petition. The reasons for this denial are explained in the ''Director's Decision Pursuant to 10 CFR 2.206'' (DD–98–04), the complete text of which follows this notice and 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 rooms located at the Learning Resources Center, Three Rivers Community-Technical College, New London Turnpike, Norwich, Connecticut, and at the Waterford Library, 49 Rope Ferry Road, Waterford, Connecticut.

A copy of the Director's Decision will be filed with the Secretary of the Commission for the Commission's review in accordance with 10 CFR 2.206(c) of the Commission's regulations. As provided for by this regulation, the Decision will constitute the final action of the Commission 25 days after the date of issuance unless the Commission, on its own motion, institutes a review of the Decision in that time.

Dated at Rockville, Maryland, this 1st day of June 1998.

For the Nuclear Regulatory Commission.

Samuel J. Collins,

Director, Office of Nuclear Reactor Regulation.

Director's Decision Pursuant to 10 CFR 2.206

[DD–98–04]

I. Introduction

On February 2, 1998, Ms. Deborah Katz, Ms. Rosemary Bassilakis, and Mr. Paul Gunter filed a Petition, pursuant to Section 2.206 of Title 10 of the *Code of Federal Regulations* (10 CFR 2.206), on behalf of the Citizens Awareness Network (CAN) and the Nuclear Information and Resource Service (NIRS) (Petitioners).

The Petitioners requested that the NRC take the following immediate actions: (1) revoke Northeast Utilities' (NU's or the licensee's) license to operate Millstone Units 1, 2, and 3 as the result of ongoing intimidation and harassment of its workforce by NU management; (2) revoke NU's license to operate Millstone Units 1, 2, and 3 as the result of persistent licensee defiance of NRC regulations and directives to create a ''questioning attitude'' for its workers to challenge management on nuclear safety issues without fear of harassment, intimidation, or reprisals by NU; and (3) refer the Nuclear Oversight Focus 98 List and the reported NU management attempt to destroy the list to the Department of Justice for investigation of a potential coverup.

As bases for the Petitioners' assertions, the Petition states that an NU document (Nuclear Oversight Department's Focus 98 List, dated January 11, 1998) directs the Nuclear Oversight group to address areas needing improvement by focusing on the ''inability to 'isolate' cynics from the group culture'' and ''pockets of negativism.'' The Petition further states that the list demonstrates the sustained and unrelenting policy of NU's senior management to undermine a safety-conscious workplace at Millstone, and that despite 2 years of increased regulatory scrutiny of the managerial mistreatment of its workers and the corporation's mismanagement of its

employees' safety concerns program, a ''chilled atmosphere'' remains intact and entrenched.

As a basis for the Petitioners' request for a Department of Justice investigation, the Petition states that ''[s]ince it has been reported that NU management employees attempted to destroy the list, NRC has a duty to refer this apparent deliberate attempt to evade the otherwise lawful exercise of authority by NRC to the Department of Justice for complete investigation. This alleged attempt to cover up wrong doing by NRC's licensee is a potential obstruction of justice that should be fully and fairly investigated.''

On March 11, 1998, the NRC acknowledged receipt of the Petition and informed the Petitioners that the Petition had been assigned to the Office of Nuclear Reactor Regulation to prepare a response and that action would be taken within a reasonable time regarding the specific concerns raised in the Petition. The Petitioners were also informed that their request for immediate action to revoke the operating license and refer the incident to the Department of Justice was denied because, due to the three Millstone units being shut down, protection of public health and safety did not warrant immediate action. The Petitioners were also informed that the NRC would consider the licensee's response to the staff's February 10, 1998, request for information concerning the incident before the Commission allows restart of any Millstone unit. To this extent, the Petitioners' request for immediate action was partially granted.

II. Discussion

The NRC staff has completed its evaluation of the Petitioners' requests. The following discussion is based on information provided by the licensee and information independently obtained by the NRC staff. The Petitioners' first two requests are similar in nature and are addressed in Section II.A. The third request is addressed in Section II.B.

A. Request To Revoke the Operating License for Millstone Units 1, 2, and 3

The Petitioners based this request on their assertion of ongoing intimidation and harassment of the workforce by NU management and persistent licensee defiance of NRC regulations and directives to create a ''questioning attitude'' for its workers to challenge management on nuclear safety issues without fear of harassment, intimidation, or reprisals. As support for their assertions, the Petitioners referred to the wording in a document prepared by NU's Nuclear Oversight Department titled ''Focus 98: Director/VP View of Nuclear Oversight (1/11/98).'' The document listed seven ''Positive Qualities of Nuclear Oversight'' and seven ''Areas Needing Improvement.'' Within ''Areas Needing Improvement'' was a category entitled ''Current SCWE [safety-conscious work environment] and issues.'' One of the six areas listed in this category was ''inability to ''isolate'' cynics from group culture.''

On January 29, 1998, the U.S. Nuclear Regulatory Commission (NRC) became aware of the Nuclear Oversight Department's Focus 98 document. The NRC was concerned that language contained in the document was not consistent with encouraging a questioning attitude necessary for fostering a safety-conscious work environment. As a result, the NRC required the licensee, in a February 10, 1998, letter, to describe in writing, under oath or affirmation (1) the circumstances surrounding the creation and distribution of the document and whether the events constitute a violation of 10 CFR 50.7; (2) how this document came into existence, in light of NU's efforts to create a safety-conscious work environment, and NU's assessment of the document's effect on the willingness of employees to raise concerns with the Company; and (3) any remedial actions needed to prevent recurrence.

NU responded to the NRC's request in March 12, March 26, and April 24, 1998, letters. NU's March 12, 1998, response included reference to an NU-directed investigation into the circumstances surrounding the creation and distribution of the Focus 98 document. The March 12, 1998, response also contained a redacted copy of a survey conducted in February 1998 by consultants Nilsson and Associates to determine whether the events that the Petitioners complained about negatively impacted the Millstone workforce and had created any reluctance to raise safety issues at the Millstone facility. The investigation report was transmitted to the NRC by the March 26, 1998, letter. The April 24, 1998, letter provided additional information regarding the collection of the Focus 98 document. In its submittals, NU described two Nuclear Oversight Department meetings relevant to the development of the Focus 98 document, its use, and its distribution.

The first meeting was held on January 11, 1998, and involved the Vice President—Nuclear Oversight, his three Directors, the Executive Assistant to the Vice President, and a consultant to the Vice President. The meeting was held to prepare for an upcoming Nuclear Oversight management team-building session and explore the strengths and weaknesses of the Nuclear Oversight organization for discussion at that meeting. Each of the six participants brought to the meeting approximately three strengths and three weaknesses that each considered applicable to Nuclear Oversight, and it was from these inputs that the Focus 98 document list of ''Positive Qualities of Nuclear Oversight'' and ''Areas Needing Improvement'' was developed. The inputs from the meeting participants were recorded and grouped, and the licensee's consultant used this information to prepare the one-page Focus 98 document. Prior to the January 21, 1998, team-building session, the Focus 98 document had been distributed to the January 11, 1998, meeting participants for review and had generated no comments. NU concluded from its investigation, including interviews with each of the meeting participants, that the participants did not intend for the wording to convey the notion that Nuclear Oversight management should seek to isolate individuals who have raised concerns in the past, nor did management intend to send the signal that it views people who raise concerns as ''cynics'' or bad influences on the organization. NU concluded that the phrases in the document ''isolation of 'cynics,'' ' ''too much negative energy (personnel issues),'' and ''pockets of negativism'' were poorly chosen words that were intended to convey the belief that the Nuclear Oversight organization recognizes that there are people who have ill feelings toward NU and who are seeking to impose their views on others who may disagree, and that this imposition was affecting the organization. NU pointed out in its submittal that the document was intended to generate discussion and did not represent policy or direction of Nuclear Oversight management.

The second meeting was held on January 21, 1998, and involved Nuclear Oversight management ranging from first-line supervisors to the Vice President—Nuclear Oversight. The purpose of the meeting was Nuclear Oversight team building and one topic on the agenda was a discussion of the organization's strengths and weaknesses. The Focus 98 document was distributed when the organization's strengths and weaknesses were to be discussed. NU states that soon after the Focus 98 document was distributed, several managers/supervisors objected to the included phrase ''inability to

'isolate' cynics from group culture.'' NU further states that the Vice President and Directors were initially surprised by the reaction, and ultimately agreed that the words had been poorly chosen and were not reflective of management's position.

On the basis of its investigation, NU concluded that the circumstances of the creation of the Focus 98 document indicated that no one in management intended to encourage any form of discrimination against anyone engaging in protected activity. NU also responded that no action took place because of the document's existence and, thus, no person who had engaged in protected activity suffered any adverse employment action.

The NRC staff reviewed NU's responses to the NRC's February 10, 1998, letter, including the investigation report, and separately interviewed eight people involved in the preparation, use, and distribution of the Focus 98 document. The staff determined that the Focus 98 document had been developed as material for establishing talking points for a then-upcoming January 21, 1998, management team-building session. The staff also determined that points listed in the Focus 98 document under ''Areas Needing Improvement'' were intended by those participating in the January 11, 1998, meeting to convey potential organizational weaknesses as points for discussion, and not to represent current or future management policy. The staff also found that the Focus 98 document had been developed informally, with no formal review and approval process, for use as a handout at an upcoming Nuclear Oversight Department team-building session.

The NRC staff's reviews, including interviews with NU staff involved in the incident, confirmed that the general purpose of the Nuclear Oversight management team meeting on January 21, 1998, was to improve Nuclear Oversight organizational interactions. Furthermore, the NRC staff found that the Focus 98 document was intended to facilitate the discussion of one of many topic areas to be covered at the all-day meeting. The NRC staff's inquiries confirmed that Nuclear Oversight management was surprised by the immediate reaction and concern of the January 21, 1998, meeting participants regarding certain language in the Focus 98 document, and that following a discussion of the wording, management recognized the unintended implication of the words. After reviewing the available information, the NRC staff concludes that the wording at issue used in the Focus 98 document was no more than poorly selected terminology intended to convey a perceived Nuclear Oversight organizational weakness.

In its March 12, 1998, response, NU stated that once it became apparent that non-supervisory employees in the Nuclear Oversight Department, who had not attended either the January 11 or January 21, 1998, meetings, knew about the troubling language in the Focus 98 document, NU took several actions to mitigate and assess the potential consequences to ensure that the release of the Focus 98 document and surrounding circumstances did not cause a chilling effect on the organization. On January 29, 1998, the Vice President—Nuclear Oversight held an all-hands meeting with members of his organization at which he apologized for the language in the document and assured the organization that he and the Directors were not trying to discourage anyone from voicing concerns. That same day, the President and Chief Executive Officer of Millstone and the Vice President—Nuclear Oversight met with the Millstone leadership team and described the circumstances surrounding the document. On January 30, 1998, NU issued a site-wide communication discussing the two meetings in detail. NU also assessed the effect of the document on the workforce through investigations and surveys. NU directed the consulting firm Nilsson and Associates to conduct an in-depth assessment of the document's effect on Nuclear Oversight Department employees and on employees who interact with the Nuclear Oversight Department. The assessment found that none of the 56 people interviewed indicated that the document has made them reluctant to raise concerns.

The Petitioners also refer generally, as a basis for their request, to ongoing NU intimidation and harassment of its workforce and persistent licensee defiance of NRC regulations and directives to create a safety-conscious work environment. NU performance in these areas has been extensively assessed. An NRC Order issued on October 24, 1996, required NU to take specific actions to resolve problems in its processes for handling employee safety concerns at the Millstone station. As required by the Order, NU developed and implemented a comprehensive plan for reviewing and dispositioning safety issues raised by its employees, and for ensuring that employees who raise safety concerns can raise them without fear of retaliation. NU's plan included elements to (1) improve the operation of its Employee Concerns Program organization; (2) enhance management and employee training related to establishing and maintaining a safety-conscious work environment; (3) form an Employee Concerns Oversight Panel; and (4) identify and respond to organizational safety-conscious work environment challenges. NU began implementing the plan in February 1997, and substantially completed implementation by January 1998. As required by the Order, NU also submitted for NRC approval a proposed independent third-party oversight program organization to oversee implementation of its comprehensive plan. Little Harbor Consultants Inc. (LHC) was approved by the NRC as the third-party oversight organization and has been performing that function since April 1997.

LHC's assessments of NU's programs to improve the safety-conscious work environment at Millstone station have noted significant improvements in the past year. Based on information gained from interviews with NU staff, program reviews, and assessment of licensee responses to emerging personnel issues, LHC concluded at an April 7, 1998, meeting with NRC and NU that programs have improved and are at an acceptable level. As reported in an LHC quarterly report for the first 3 months of 1998, transmitted to the NRC on April 22, 1998, LHC's interviews with 298 NU employees, conducted in February 1998, showed an improved work environment. LHC concluded from the results of these interviews that at Millstone improvements have been made regarding the willingness of the workforce to raise concerns, the confidence of the workforce that safety concerns will be handled properly, the existence of a questioning attitude, and the lack of any chilling effect.

The NRC has monitored and assessed LHC's oversight activities and independently assessed NU's actions to upgrade its Employee Concerns Program and improve the safety-conscious work environment at the Millstone station. The NRC's April 21, 1998, letter to John Beck, President, LHC, documents the NRC staff's evaluation of LHC's oversight of NU's programs for handling employee concerns. The staff found that LHC's oversight activities have been thorough and complete and that LHC has effectively carried out its oversight activities. The NRC's April 20, 1998, letter to NU forwarded the results of the NRC staff's evaluation of the Employee Concerns Program and safety-conscious work environment at the Millstone station. The NRC staff's assessment of these NU programs found that they were improved and functioning effectively.

Based on the above, the Petitioners' request that the NRC revoke Millstone's operating licenses for workforce

intimidation and actions to prevent the establishment of a ''questioning attitude'' with regard to employees voicing safety concerns is denied.

B. Request for Investigation of NU Attempt To Destroy Focus 98 Document

The Petitioners also request that the NRC refer the Focus 98 document and NU's attempt to destroy the document to the Department of Justice for investigation of a potential coverup. The Petitioners base this request on reports that NU management attempted to destroy the document. The Petitioners consider the NRC to have a duty to refer this apparently deliberate attempt to evade the otherwise lawful exercise of authority by the NRC to the Department of Justice for a complete investigation.

In its March 12, 1998, letter to the NRC, NU states that participants at the January 21, 1998, management team meeting agreed that the words in the document were poorly chosen and, at the suggestion of a consultant who was facilitating the meeting, the participants agreed that the Focus 98 document should not be distributed further because of the deficient wording. NU states that most meeting participants dropped off their copy of the document with the consultant when the meeting was over at the end of the day, and others left it on tables in the room before they left. NU stated that no one attempted to ensure that all the Focus 98 documents were returned, counted the returned documents to determine if some had not been turned in, or ordered the participants to turn in the documents.

The NRC staff reviewed NU's responses to the NRC's February 10, 1998, letter, including NU's investigation report, and conducted separate interviews of individuals involved with the distribution and collection of the Focus 98 document. Information from interviews conducted by the staff confirmed that meeting participants generally concluded that certain wording in the Focus 98 document was inappropriate and susceptible to misinterpretation. Also, the staff's information was consistent with NU's report that there was general agreement by meeting participants to leave the document at the meeting. The staff concludes that NU's actions to address the Focus 98 document were not inappropriate. Therefore, the Petitioners' request to refer the Focus 98 document and its recall and destruction to the Department of Justice is denied.

III. Conclusion

The NRC staff has determined, for the reasons provided in the above discussion, that the incident involving preparation and distribution of the Focus 98 document does not represent action by NU to discriminate against persons in the Nuclear Oversight Department. Although wording in the document may have been inappropriate, the process for preparation of the document, the informal nature of the document, and the use of the document as discussion points on organizational strengths and weaknesses, all indicate that the language in question in the document involved a matter of poor word choice. The NRC staff also has determined that efforts to collect the Focus 98 document after its distribution at the end of the January 21, 1998, Nuclear Oversight Department team-building session were not inappropriate, and that NU, given the nature and use of the document, had no regulatory obligation to provide it to the NRC or inform the NRC of its existence. As discussed previously, the NRC was concerned that a document prepared for use at an NU organizational function could contain such inappropriate language, even if unintended. The NRC was further concerned that the document could have a ''chilling effect'' on the NU workforce. The NRC's February 10, 1998, letter to NU required NU to respond to these NRC concerns. Based on the NRC staff's review of NU's response and the NRC's own independent assessment of the event, the NRC staff is satisfied with the actions taken by the licensee to assess the chilling effect of the incident and to prevent recurrence. Accordingly, the Petitioners' requests for revocation of NU's license to operate Millstone Units 1, 2, and 3 for reasons associated with development of the Focus 98 document are denied. The Petitioners' request that the NRC refer the matter of the document's collection and destruction to the Department of Justice for investigation is also denied.

As provided for in 10 CFR 2.206(c), a copy of this Director's Decision will be filed with the Secretary of the Commission for the Commission's review. This Decision will constitute the final action of the Commission 25 days after issuance unless the Commission, on its own motion, institutes review of the Decision in that time.

Dated at Rockville, Maryland, this 1st day of June 1998.

For the Nuclear Regulatory Commission.

Samuel J. Collins,

Director, Office of Nuclear Reactor Regulation.

[FR Doc. 98–15139 Filed 6–5–98; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF PERSONNEL MANAGEMENT

Submission For OMB Review; Comment Request For Reclearance of an Information Collection: OPM Form 2809

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Public Law 104–13, May 22, 1995), this notice announces that the Office of Personnel Management (OPM) intends to submit to the Office of Management and Budget a request for reclearance of an information collection. OPM Form 2809, Health Benefits Registration Form, is used by annuitants and former spouses to elect, cancel, or change health benefits enrollment during periods other than open season.

Comments are particularly invited on: Whether this information is necessary for the proper performance of functions of the Office of Personnel Management, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

Approximately 34,800 OPM Form 2809s are completed annually. We estimate it takes approximately 45 minutes to complete the form. The annual burden is 26,100 hours.

For copies of this proposal, contact Jim Farron on (202) 418–3208, or E-mail to jmfarron@opm.gov

DATES: Comments on this proposal should be received on or before August 7, 1998.

ADDRESS: Send or deliver comments to— Lorraine E. Dettman, Chief, Operations Support Division, Retirement and Insurance Service, U.S. Office of Personnel Management, 1900 E Street, NW, Room 3349, Washington, DC 20415.

FOR INFORMATION REGARDING ADMINISTRATIVE COORDINATION— CONTACT: Mary Beth Smith-Toomey, Budget & Administrative Services Division, (202) 606–0623.

U.S. Office of Personnel Management.

Janice R. Lachance,

Director.

[FR Doc. 98–15118 Filed 6–5–98; 8:45 am]

BILLING CODE 6325–01–P

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC–23233; File No. 812–11100]

Investors Mark Series Fund, Inc., et al.; Notice of Application

June 1, 1998.

AGENCY: Securities and Exchange Commission (the ''Commission'').

ACTION: Notice of Application for an order pursuant to Section 6(c) of the Investment Company Act of 1940 (''1940 Act'').

SUMMARY OF APPLICATION: Applicants seek an order pursuant to Section 6(c) of the 1940 Act for exemptions from the provisions of Sections 9(a), 13(a), 15(a) and 15(b) of the 1940 Act and Rules 6e–2(b)(15) and 6e–3(T)(b)(15) thereunder to the extent necessary to permit shares of any current or future series of the Investors Mark Series Fund, Inc. (the ''Fund'') and shares of any other investment company that is designed to fund variable insurance products and for which Investors Mark Advisors, LLC (the ''Adviser''), or any of its affiliates, may serve now or in the future, as investment adviser, administrator, manager, principal underwriter or sponsor (the Fund and such other investment companies referred to collectively as the ''Insurance Products Funds'') to be offered and sold to, and held by variable annuity and variable life insurance separate accounts of both affiliated and unaffiliated life insurance companies (''Participating Insurance Companies''), qualified pension and retirement plans outside of the separate account context (''Qualified Plans'' or ''Plans''), and the Adviser or any of its affiliates.

APPLICANTS: Investors Mark Series Fund, Inc. and Investors Mark Advisors, LLC.

FILING DATE: The application was filed on April 3, 1998.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing on this application by writing to the Secretary of the Commission and serving Applicants with a copy of the request, in person or by mail. Hearing requests must be received by the Commission by 5:30 p.m. on June 26, 1998, and should be accompanied by proof of service on the Applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the requester's interest, the reason for the request and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Secretary of the Commission.

ADDRESS: Secretary, U.S. Securities and Exchange Commission: 450 Fifth Street, N.W., Washington, D.C. 20549. Applicants, c/o Blazzard, Grodd & Hasenauer, P.C., 943 Post Road East, Westport, Connecticut 06880, Attention: Raymond A. O'Hara III, Esq.

FOR FURTHER INFORMATION CONTACT: Susan M. Olson, Attorney, or Kevin M. Kirchoff, Branch Chief, Office of Insurance Products, Division of Investment Management, at (202) 942–0670.

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application is available for a fee from the Public Reference Branch of the Commission, 450 Fifth Street, N.W., Washington, D.C. 20549 (202–942–8090).

Applicants' Representations

1. The Adviser, a Delaware limited liability company, is registered as an investment adviser under the Investment Advisers Act of 1940 and serves as the investment adviser for the Fund.

2. The Fund, an open-end management investment company, is a Maryland corporation. The Fund consists of ten series, nine of which are currently offered. The Fund may in the future issue shares of additional series.

3. Shares of the Fund are offered to separate accounts of Participating Insurance Companies to serve as investment vehicles for variable annuity and variable life insurance contracts (including single premium, scheduled premium, modified single premium and flexible premium contracts) (collectively, ''Variable Contracts''). These separate accounts either will be registered as investment companies under the 1940 Act or will be exempt from such registration.

4. The Participating Insurance Companies will establish their own separate accounts and design their own Variable Contracts. Each Participating Insurance Company will have the legal obligation of satisfying all applicable requirements under the federal securities laws. The role of the Insurance Products Funds will be limited to that of offering their shares to separate accounts of Participating Insurance Companies and to Qualified Plans and fulfilling the conditions set forth in the application and described later in this notice. Each Participating Insurance Company will enter into a fund participation agreement with the Insurance Products Fund in which the Participating Insurance Company invests.

Applicants' Legal Analysis

1. Applicants request that the Commission issue an order under Section 6(c) of the 1940 Act granting exemptions from Sections 9(a), 13(a), 15(a) and 15(b) thereof and Rules 6e–2(b)(15) and 6e–3(T)(b)(15) thereunder, to the extent necessary to permit shares of the Insurance Products Funds to be offered and sold to, and held by: (a) variable annuity and variable life insurance separate accounts of the same life insurance company or of any affiliated life insurance company (''mixed funding''); (b) separate accounts of unaffiliated life insurance companies (including both variable annuity and variable life separate accounts) (''shared funding''); (c) qualified pension and retirement plans outside the separate account context; and (d) the Adviser or any of its affiliates (representing seed money investments in the Insurance Products Funds).

2. In connection with the funding of scheduled premium variable life insurance contracts issued through a separate account registered under the 1940 Act as a unit investment trust, Rule 6e–2(b)(15) provides partial exemptions from Section 9(a), 13(a), 15(a) and 15(b) of the 1940 Act. These exemptions are available only where all of the assets of the separate account consist of the shares of one or more registered management investment companies which offer their shares exclusively to variable life insurance separate accounts of the life insurer or any affiliated life insurance company. Therefore, the relief granted by Rule 6e–2(b)(15) is not available if the scheduled premium variable life insurance separate account owns shares of a management investment company that also offers its shares to a variable annuity separate account of the same insurance company or an affiliated insurance company. The relief granted by Rule 6e–2(b)(15) is not available if the scheduled premium variable life insurance separate account owns shares of an underlying management investment company that also offers its shares to a variable annuity account of the same insurance company or an affiliated insurance company or to separate accounts funding variable contracts of one or more unaffiliated life insurance companies. The relief granted by Rule 6e–2(b)(15) also is not available if the shares of the Insurance Products Funds also are sold to Qualified Plans.

3. In connection with the funding of flexible premium variable life insurance

contracts issued through a separate account registered under the 1940 Act as a unit investment trust, Rule 6e–3(T)(b)(15) provides partial exemptions from Sections 9(a), 13(a), and 15(a) and 15(b) of the 1940 Act. These exemptions are available only where all of the assets of the separate account consist of the shares of one or more registered management investment companies which offer their shares exclusively to separate accounts of the life insurer, or of any affiliated life insurance company, offering either scheduled premium variable life insurance contracts or flexible premium variable life insurance contracts, or both; or which also offer their shares to variable annuity separate accounts of the life insurer or of an affiliated life insurance company. Therefore, the exemptions provided by Rule 6e–3(T)(b)(15) are available if the underlying fund is engaged in mixed funding, but are not available if the fund is engaged in shared funding or if the fund sell its shares to Qualified Plans.

4. Applicants state that the current tax law permits the Insurance Products Funds to increase their asset base through the sale of shares to Plans. Section 817(h) of the Internal Revenue Code of 1986, as amended (the ''Code''), imposes certain diversification standards on the underlying assets of Variable Contracts. The Code provides that such contracts shall not be treated as an annuity contract or life insurance contract for any period (and any subsequent period) during which the investments are not adequately diversified in accordance with regulations prescribed by the Treasury Department. Treasury regulations provide that, to meet the diversification requirements, all of the beneficial interests in an investment company must be held by the segregated asset accounts of one or more insurance companies. The regulations do contain exceptions to this requirement, however, one of which permits shares of an investment company to be held by the trustee of a qualified pension or retirement plan without adversely affecting the ability of shares in the same investment company also to be held by the separate accounts of insurance companies in connection with their variable annuity and variable life contracts (Treas. Reg. § 1.817.–5(f)(3)(iii)).

5. Applicants state that the promulgation of Rules 6e–2 and 6e–3(T) preceded the issuance of these Treasury regulations. Applicants assert that, given the then current tax law, the sale of shares of the same underlying fund to separate accounts and to Plans could not have been envisioned at the time of the adoption of Rules 6e–2(b)(15) and 6e–3(T)(b)(15).

6. Applicants request relief for a class or classes of persons and transactions consisting of Participating Insurance Companies and their scheduled premium variable life insurance separate accounts and flexible premium variable life insurance separate accounts (and, to the extent necessary, any investment adviser, principal underwriter and depositor of such separate accounts) investing in any of the Insurance Products Funds.

7. Section 6(c) authorizes the Commission to grant exemptions from the provisions of the 1940 Act, and rules thereunder, if and to the extent that an exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act. Applicants assert that the requested exemptions are appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

Disqualification

8. Section 9(a)(3) of the 1940 Act provides that it is unlawful for any company to act as investment adviser to or principal underwriter of any registered open-end investment company if an affiliated person of that company is subject to a disqualification enumerated in Sections 9(a) (1) or (2). Rules 6e–2(b)(15) (i) and (ii), and 6e–3(T)(b)(15) (i) and (ii) provide partial exemptions from Section 9(a) under certain circumstances, subject to the limitations on mixed and shared funding. These exemptions limit the application of eligibility restrictions to affiliated individuals or companies that directly participate in the management or administration of the underlying investment company.

9. Applicants state that the relief from Section 9(a) provided by Rules 6e–2(b)(15) and 6e–3(T)(b)(15), in effect, limits the amount of monitoring necessary to ensure compliance with Section 9 to that which is appropriate in light of the policy and purposes of Section 9. Applicants assert that it is not necessary for the protection of investors or the purposes fairly intended by the policy and provisions of the 1940 Act to apply the provisions of Section 9(a) to the many individuals who do not directly participate in the administration or management of the Insurance Products Funds, who are employed by the various unaffiliated insurance companies (or affiliated companies of Participating Insurance Companies) that may utilize the Insurance Products Funds as the funding medium for Variable Contracts. Applicants do not expect the Participating Insurance Companies to play any role in the management or administration of the Insurance Products Funds. Applicants assert, therefore, that applying the restrictions of Section 9(a) to individuals employed by Participating Insurance Companies serves no regulatory purpose.

10. Applicants state that the relief requested should not be affected by the proposed sale of Insurance Products Funds to Qualified Plans because the Plans are not investment companies and will not be deemed affiliates solely by virtue of their shareholdings.

Pass-Through Voting

11. Applicants submit that rule 6e–2(b)(15)(iii) and 6e–3(T)(b)(15)(iii) assume the existence of a ''pass-through voting'' requirement with respect to management investment company shares held by a separate account. Applicants state that Rule 6e–2(b)(15)(iii) and Rule 6e–3(T)(b)(15)(iii) provide exemptions from the pass-through voting requirements is limited situations, assuming the limitations on mixed and shared funding imposed by the 1940 Act and the rules thereunder are observed. More specifically, Rules 6e–2(b)(15)(iii)(A) and 6e–3(T)(b)(15)(iii)(A) provide that the insurance company may disregard the voting instructions of its contract owners in connection with the voting of shares of an underlying investment company if such instructions would require such shares to be voted to cause an underlying investment company to make, or refrain from making, certain investments which would result in changes in the sub classification or investment objectives of such company, or to approve or disapprove any contract between an investment company and its investment adviser, when required to do so by an insurance regulatory authority. In addition, Rules 6e–2(b)(15)(iii)(B) and 6e–3(T)(b)(15)(iii)(B) provide that an insurance company may disregard contract owners' voting instructions with regard to changes initiated by the contract owners in the investment company's investment policies, principal underwriter or investment adviser, provided that disregarding such voting instructions is based on specific good faith determinations.

12. Shares of the Insurance Products Funds sold to Qualified Plans will be held by the trustees of such Plans as required by Section 403(a) of the Employee Retirement Income Security Act of 1974 (''ERISA''). Section 403(a)

also provides that the trustees must have exclusive authority and discretion to manage and control the Plan with two exceptions: (a) when the Qualified Plan expressly provides that the trustees are subject to the direction of a named fiduciary who is not a trustee, in which case the trustees are subject to proper directions made in accordance with the terms of the Plan and not contrary to ERISA; and (b) when the authority to manage, acquire or dispose of assets of the Qualified Plan is delegated to one or more investment managers pursuant to Section 402(c)(3) of ERISA. Unless one of the two exceptions stated in Section 403(a) applies, the Qualified Plan trustees have exclusive authority and responsibility for voting proxies. Where a named fiduciary appoints an investment manager, the investment manager has the responsibility to vote the shares held unless the right to vote such shares is reserved to the trustees or the named fiduciary. The Qualified Plans may have their trustees or other fiduciaries exercise voting rights attributable to investment securities held by the Qualified Plans in their discretion. Where a Qualified Plan does not provide Qualified Plan participants with the right to give voting instructions, Applicants state that they do not see any potential for irreconcilable material conflicts of interest between or among Variable Contract holders and Plan participants with respect to voting of the respective Insurance Products Fund's shares. Accordingly, Applicants note that, unlike the case with insurance company separate accounts, the issue of the resolution of material irreconcilable conflicts with respect to voting is not present with respect to Qualified Plans since the Plans are not entitled to pass-through voting privileges. Even if a Qualified Plan were to hold a controlling interest in an Insurance Products Fund, the Applicants do not believe that such control would disadvantage other investors in such Insurance Products Fund to any greater extent than is the case when any institutional shareholder holds a majority of the voting securities of any open-end management investment company. In this regard, the Applicants submit that investment in an Insurance Products Fund by a Qualified Plan will not create any of the voting complications occasioned by mixed funding or shared funding.

13. Applicants state that some of the Qualified Plans may provide for the trustee(s), an investment adviser(s) or another named fiduciary to exercise voting rights in accordance with instructions from Qualified Plan participants. Applicants state that, in such cases, the purchase of shares by such Qualified Plans does not present any complications not otherwise occasioned by mixed or shared funding.

Conflicts of Interest

14. Applicants state that no increased conflict of interest would be presented by the granting of the requested relief. Applicants submit that share funding does not present any issues that do not already exist where a single insurance company is licensed to do business in several states. In this regard, Applicants note that when different Participating Insurance Companies are domiciled in different states, it is possible that the state insurance regulatory body in a state in which one Participating Insurance Company is domiciled could require action that is inconsistent with the requirements of other insurance regulators in one or more other states in which other Participating Insurance Companies are domiciled. The possibility, however, is no different or greater than exists when a single insurer and its affiliates offer their insurance products in several states, as is currently permitted.

15. Applicants state that affiliation does not reduce the potential, if any exists, for differences in state regulatory requirements. In any event, the conditions set forth in the application and later in this notice (which are adapted from the conditions included in Rule 6e–3(T)(b)(15)) are designed to safeguard against any adverse effects that differences among state regulatory requirements may produce. If a particular state insurance regulator's decision conflicts with the majority of other state regulators, the affected insurer may be required to withdraw its separate account's investment in the relevant Insurance Products Funds.

16. Applicants also assert that affiliation does not eliminate the potential, if any exists, for divergent judgments as to when a Participating Insurance Company could disregard Variable Contract owner voting instructions. The potential for disagreement is limited by the requirements that disregarding voting instructions be reasonable and based on specified good faith determinations. However, if the Participating Insurance Company's decision to disregard Variable Contract owner voting instructions represents a minority position or would preclude a majority vote approving a particular change, such Participating Insurance Company may be required, at the election of the relevant Insurance Products Fund, to withdraw its separate account's investment in that Insurance Products Fund and no charge or penalty will be imposed upon the Variable Contract owners as a result of such withdrawal.

17. Applicants submit that there is no reason why the investment policies of an Insurance Products Fund with mixed funding would or should be materially different from what those policies would or should be if such Insurance Products Fund or series thereof funded only variable annuity or variable life insurance contracts. In this regard, Applicants note that a fund's adviser is legally obligated to manage the fund in accordance with the fund's investment objectives, policies and restrictions as well as any guidelines established by the fund's Board. Applicants submit that no one investment strategy can be identified as appropriate to a particular insurance product or to a Plan. Each pool of variable annuity and variable life insurance contract owners is composed of individuals of diverse financial status, age, insurance and investment goals. A fund supporting even one type of insurance product must accommodate these diverse factors in order to attract and retain purchasers. Applicants submit that permitting mixed and shared funding will provide economic support for the continuation of the Insurance Products Funds. In addition, permitting mixed and shared funding also will facilitate the establishment of additional series of Insurance Products Funds serving diverse goals.

18. As noted above, Section 817(h) of the Code imposes certain diversification standards on the underlying assets of variable annuity contracts and variable life insurance contracts held in the portfolios of management investment companies. Treasury Regulation § 1.817–5(f)(3)(iii), which established diversification requirements for such portfolios, specifically permits, among other things, ''qualified pension or retirement plans'' and insurance company separate accounts to share the same underlying investment company. Therefore, Applicants assert that neither the Code, nor the Treasury regulations, nor the revenue rulings thereunder present any inherent conflicts of interest if the Qualified Plans, variable annuity separate accounts, and variable life insurance separate accounts all invest in the same management investment company.

19. While there are differences in the manner in which distributions are taxed for variable annuity contracts, variable life insurance contracts and Plans, Applicants state that the tax consequences do not raise any conflicts

of interest. When distributions are to be made, and the separate account of the Participating Insurance Company or Qualified Plan cannot net purchase payments to make the distributions, the separate account or Qualified Plan will redeem shares of the Insurance Products Funds at their respective net asset values. The Qualified Plan will then make distributions in accordance with the terms of the Plan and the Participating Insurance Company will make distributions in accordance with the terms of the Variable Contract.

20. Applicants submit that the ability of the Insurance Products Funds to sell their respective shares directly to Qualified Plans does not create a ''senior security,'' as such term is defined under Section 18(g) of the 1940 Act, with respect to any Variable Contract owner as opposed to a participant under a Qualified Plan. As noted above, regardless of the rights and benefits of participants under the Qualified Plans, or Variable Contract owners under their Variable Contracts, the Qualified Plans and the separate accounts of Participating Insurance Companies have rights only with respect to their respective shares of the Insurance Products Funds. They can redeem such shares at their net asset value. No shareholder of any of the Insurance Products Funds has any preference over any other shareholder with respect to distribution of assets or payments of dividends.

21. Applicants assert that there are no conflicts between the Variable Contract owners and the Plan participants with respect to state insurance commissioners' veto powers over investment objectives. The basic premise of shareholder voting is that not all shareholders may agree with a particular proposal. While time-consuming, complex transactions may be undertaken to accomplish redemptions and transfers by separate accounts, trustees of Qualified Plans can quickly redeem shares from Insurance Products Funds and reinvest in other funding vehicles without the same regulatory impediments or, as in the case with most Qualified Plans, even hold cash or other liquid assets pending suitable alternative investment. Applicants maintain that even if there should arise issues where the interests of Variable Contract owners and the interests of participants in Plans are in conflict, the issues can be almost immediately resolved because the trustees of the Plans can, on their own, redeem shares out of the Insurance Products Funds.

22. Applicants submit that mixed and shared funding should provide benefits to Variable Contract owners by eliminating a significant portion of the costs of establishing and administering separate funds. Participating Insurance Companies will benefit not only from the investment and administrative expertise of the Adviser and the subadvisers, but also from the cost efficiencies and investment flexibility afforded by a larger pool of assets. Mixed and shared funding also would permit a greater amount of assets available for investment by the Insurance Products Funds, thereby promoting economies of scale, by permitting increased safety through greater diversification and by making the addition of new series more feasible. Therefore, making the Insurance Products Funds available for mixed and shared funding will encourage more insurance companies to offer Variable Contracts, and this should result in increased competition with respect to both Variable Contract design and pricing, which can be expected to result in more product variation and lower charges.

23. Applicants assert that there is no significant legal impediment to permitting mixed and shared funding. Separate accounts organized as unit investment trusts historically have been employed to accumulate shares of mutual funds which have not been affiliated with the depositor or sponsor of the separate account. Applicants do not believe that mixed and shared funding, and sales to Qualified Plans, will have any adverse federal income tax consequences.

Applicants' Conditions

Applicants have consented to the following conditions:

1. A majority of each Insurance Products Fund's Board of Trustees or Directors (each, a ''Board'') shall consist of persons who are not ''interested persons'' thereof, as defined by Section 2(a)(19) of the 1940 Act and the rules thereunder and as modified by any applicable orders of the Commission, except that if this condition is not met by reason of the death, disqualification, or bona fide resignation of any Board member, then the operation of this condition shall be suspended: (a) for a period of 45 days, if the vacancy or vacancies may be filled by the Board; (b) for a period of 60 days, if a vote of shareholders is required to fill the vacancy or vacancies; or (c) for such longer period as the Commission may prescribe by order upon application.

2. Each Insurance Products Fund's Board will monitor the fund for the existence of any material irreconcilable conflict between and among the interests of the Variable Contract owners of all separate accounts and of Plan participants and Qualified Plans investing in the Insurance Products Funds, and determine what action, if any, should be taken in response to such conflicts. A material irreconcilable conflict may arise for a variety of reasons, including:

(a) an action by any state insurance regulatory authority;

(b) a change in applicable federal or state insurance, tax, or securities laws or regulations, or a public ruling, private letter ruling, no-action or interpretive letter, or any similar action by insurance, tax, or securities regulatory authorities;

(c) an administrative or judicial decision in any relevant proceeding;

(d) the manner in which the investments of the funds are being managed;

(e) a difference in voting instructions given by variable annuity contract owners, variable life insurance contract owners and trustees of the Plans;

(f) a decision by a Participating Insurance Company to disregard the voting instructions of Variable Contract owners; or

(g) if applicable, a decision by a Qualified Plan to disregard the voting instructions of Plan participants.

3. The Adviser (or any other investment adviser of an Insurance Products Fund), any Participating Insurance Company and any Qualified Plan that executes a fund participation agreement upon becoming an owner of 10% or more of the assets of an Insurance Products Fund (collectively, ''Participants'') will report any potential or existing conflicts to the Board of any relevant Insurance Products Fund. Participants will be obligated to assist the appropriate Board in carrying out its responsibilities under these conditions by providing the Board with all information reasonably necessary for the Board to consider any issues raised. This responsibility includes, but is not limited to, an obligation by each Participating Insurance Company to inform the Board whenever Variable Contract owner voting instructions are disregarded and, if pass-through voting is applicable, an obligation by each Qualified Plan to inform the Board whenever it has determined to disregard Plan participant voting instructions.

The responsibility to report such information and conflicts and to assist the Boards will be contractual obligations of all Participating Insurance Companies and Qualified Plans investing in the Insurance Products Funds under their respective agreements governing participation in

the Insurance Products Funds, and such agreements shall provide that these responsibilities will be carried out with a view only to the interests of Variable Contract owners and, if applicable, Plan participants.

4. If a majority of an Insurance Products Fund's Board members, or a majority of the disinterested Board members, determine that a material irreconcilable conflict exists, the relevant Participating Insurance Companies and Qualified Plans, at their expense and to the extent reasonable practicable (as determined by a majority of the disinterested Board members), shall take whatever steps are necessary to remedy or eliminate the material irreconcilable conflict. Such steps could include: (a) Withdrawing the assets allocable to some or all of the separate accounts from the Insurance Products Fund or any of its series and reinvesting such assets in a different investment medium, which may include another series of the Insurance Products Fund or another Insurance Products Fund; (b) in the case of Participating Insurance Companies, submitting the question as to whether such segregation should be implemented to a vote of all affected Variable Contract owners and, as appropriate, segregating the assets of any appropriate group (i.e., variable annuity or variable life insurance contract owners of one or more Participating Insurance Companies) that votes in favor of such segregation, or offering to the affected Variable Contract owners the option of making such a change; and (c) establishing a new registered management investment company or managed separate account. If a material irreconcilable conflict arises because of a decision by a Participating Insurance Company to disregard Variable Contract owner voting instructions, and this decision represents a minority position or would preclude a majority vote, the Participating Insurance Company may be required, at the election of the Insurance Products Fund, to withdraw its separate account's investment in such fund, and no charge or penalty will be imposed as a result of such withdrawal. If a material irreconcilable conflict arises because of a Qualified Plan's decision to disregard Plan participant voting instructions, if applicable, and that decision represents a minority position or would preclude a majority vote, the Qualified Plan may be required, at the election of the Insurance Products Fund, to withdraw its investment in such fund, and no charge or penalty will be imposed as a result of such withdrawal. The responsibility to take remedial action in the event of a Board determination of a material irreconcilable conflict and to bear the cost of such remedial action shall be a contractual obligation of all Participating Insurance Companies and Qualified Plans under their agreements governing participation in the Insurance Products Funds and these responsibilities shall be carried out with a view only to the interests of the Variable Contract owners and, as applicable, Plan participants. For purposes of Condition 4, a majority of the disinterested members of the applicable Board shall determine whether or not any proposed action adequately remedies any material irreconcilable conflict, but in no event will an Insurance Products Fund or the Adviser (or any other investment adviser of the Insurance Products Funds) be required to establish a new funding medium for any Variable Contract. No Participating Insurance Company shall be required by Condition 4 to establish a new funding medium for any Variable Contract if a majority of Variable Contract owners materially affected by the material irreconcilable conflict vote to decline such offer. No Qualified Plan shall be required by Condition 4 to establish a new funding medium for such Qualified Plan if: (a) A majority of Plan participants materially and adversely affected by the material irreconcilable conflict vote to decline such offer; or (b) pursuant to governing plan documents and applicable law, the Plan makes such decision without Plan participant vote.

5. Participants will be informed promptly in writing of a Board's determination of the existence of an irreconcilable material conflict and its implications.

6. Participating Insurance Companies will provide pass-through voting privileges to all Variable Contract owners so long as the Commission continues to interpret the 1940 Act as requiring pass-through voting privileges for Variable Contract owners. Accordingly, such Participating Insurance Companies, where applicable, will vote shares of the Insurance Products Fund held in their separate accounts in a manner consistent with voting instructions timely received from Variable Contract owners. In addition, each Participating Insurance Company will vote shares of the Insurance Products Fund held in its separate accounts for which it has not received timely voting instructions from contract owners, as well as shares it owns, in the same proportions as those shares for which it has received voting instructions. Participating Insurance Companies will be responsible for assuring that each of their separate accounts investing in an Insurance Products Fund calculates voting privileges in a manner consistent with all other Participating Insurance Companies. The obligation to vote an Insurance Products Fund's shares and calculate voting privileges in a manner consistent with all other separate accounts investing in the Insurance Products Fund will be a contractual obligation of all Participating Insurance Companies under the agreements governing participation in the Insurance Products Fund. Each Plan will vote as required by applicable law and governing Plan documents.

7. As long as the Commission continues to interpret the Act as requiring pass-through voting privileges for Variable Contract owners, the Adviser (or any of its affiliates) will vote is shares of any series of any Insurance Products Fund in the same proportion as all Variable Contract owners having voting rights with respect to that series; provided, however, that the Adviser (or any of its affiliates) shall vote its shares in such other manner as may be required by the Commission or its staff.

8. All reports of potential or existing conflicts received by a Board, and all Board action with regard to: (a) determining the existence of a conflict; (b) notifying Participants of a conflict; and (c) determining whether any proposed action adequately remedies a conflict, will be properly recorded in the minutes of the meetings of the appropriate Board or other appropriate records. Such minutes or other records shall be made available to the Commission upon request.

9. Each Insurance Products Fund will notify all Participating Insurance Companies that separate account prospectus disclosure regarding potential risks of mixed and shared funding may be appropriate. Each Insurance Products Fund shall disclose in its prospectus that: (a) its shares may be offered to insurance company separate accounts that fund both variable annuity and variable life insurance contracts, and to Qualified Plans; (b) differences in tax treatment or other considerations may cause the interests of various Variable Contract owners participating in the Insurance Products Fund and the interests of Qualified Plans investing in the Insurance Products Fund to conflict; and (c) the Board will monitor the Insurance Products Fund for any material conflicts and determine what action, if any, should be taken.

10. Each Insurance Products Fund will comply with all provisions of the

1940 Act requiring voting by shareholders (for these purposes, the persons having a voting interest in the shares of the Insurance Products Funds). In particular, each such Insurance Products Fund either will provide for annual shareholder meetings (except insofar as the Commission may interpret Section 16 of the 1940 Act not to require such meetings) or comply with Section 16(c) of the 1940 Act (although none of the Insurance Products Funds shall be one of the trusts described in Section 16(c) of the 1940 Act), as well as with Section 16(a) of the 1940 Act and, if and when applicable, Section 16(b) of the 1940 Act. Further, each Insurance Products Fund will act in accordance with the Commission's interpretation of the requirements of Section 16(a) with respect to periodic elections of Board members and with whatever rules the Commission may promulgate with respect thereto.

11. If and to the extent that Rule 6e–2 or Rule 6e–3(T) under the 1940 Act is amended, or Rule 6e–3 under the 1940 Act is adopted, to provide exemptive relief from any provision of the 1940 Act, or the rules promulgated thereunder, with respect to mixed or shared funding, on terms and conditions materially different from any exemptions granted in the order requested in the application, then the Insurance Products Funds and/or the Participants, as appropriate, shall take such steps as may be necessary to comply with Rule 6e–2 or Rule 6e–3(T), as amended, or proposed Rule 6e–3 as adopted, to the extent such Rules are applicable.

12. The Participants, at least annually, shall submit to each Board such reports, materials or data as each Board may reasonably request so that such Boards may fully carry out the obligations imposed upon them by the conditions stated in the application. Such reports, materials and data shall be submitted more frequently if deemed appropriate by the Boards. The obligations of the Participants to provide these reports, materials and data upon reasonable request of a Board shall be a contractual obligation of all Participants under the agreements governing their participation in the Insurance Products Funds.

13. If a Qualified Plan or Plan participant shareholder should become a owner of 10% or more of the assets of an Insurance Products Fund, such Plan will execute a participation agreement with such fund which includes the conditions set forth herein to the extent applicable. A Qualified Plan or Plan participant will execute an application containing an acknowledgment of this condition upon such Plan's initial purchase of the shares of any Insurance Products Fund.

Conclusion

For the reasons summarized above, Applicants assert that the requested exemptions are appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–15077 Filed 6–5–98; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC—23232; 812–10926]

Janus Investment Fund, et al.; Notice of Application

June 1, 1998.

AGENCY: Securities and Exchange Commission (''SEC'').

ACTION: Notice of application for an order under the Investment Company Act of 1940 (the ''Act'') under Section 12(d)(1)(J) of the Act for an exemption from Sections 12(d)(1)(A) and (B) of the Act, under Sections 6(c) and 17(b) of the Act for an exemption from Sections 17(a) of the Act, and under Section 17(d) of the Act and Rule 17d–1 under the Act to permit certain joint transactions.

SUMMARY OF APPLICATION: The requested order would supersede an existing order to permit certain registered management investment companies to invest excess cash in affiliated money market funds in excess of the limits of sections 12(d)(1)(A) and (B) of the Act.

APPLICANTS: Janus Investment Fund and Janus Aspen Series (each a ''Trust''), Janus Capital Corporation (''Janus Capital''), and any other registered management investment companies advised by Janus Capital or an entity controlling, controlled by, or under common control with Janus Capital (''Future Funds'').[1]

FILING DATES: The application was filed on July 2, 1997, and amended on December 31, 1997, and on April 27, 1998.

[1] All existing investment companies that currently intend to rely on the order have been named as applicants, and any other existing or future registered management investment companies that subsequently rely on the order will comply with the terms and conditions in the application.

HEARING OR NOTIFICATION OF HEARING: An order granting the requested relief will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on June 25, 1998, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, N.W., Washington, DC 20549. Applicants, Janus Capital Corporation, 100 Fillmore Street, Denver, CO 80206–4923.

FOR FURTHER INFORMATION CONTACT: Lisa McCrea, Attorney Adviser, (202) 942–0562 or Nadya B. Roytblat, Assistant Director, at (202) 942–0564 (Office of Investment Company Regulation, Division of Investment Management).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch, 450 5th Street, N.W., Washington, DC, 20549 (tel. 202–942–8090).

Applicants' Representations

1. Janus Investment Fund and Janus Aspen Series are open-end management investment companies registered under the Act. Janus Investment Fund and Janus Aspen series currently offer nineteen and twelve series (together with Future Funds the ''Funds''), respectively, three and one of which, respectively, are subject to the requirements of rule 2a–7 under the Act (''Money Market Funds''). Janus Capital serves as investment adviser to each Fund, and is registered as an investment adviser under the investment Advisers Act of 1940.

2. The Funds have cash reserves that have not been invested in portfolio securities (''Uninvested Cash''), including dividend payments, interest received on portfolio securities, unsettled securities transactions, strategic reserves, matured investments, proceeds from liquidation of portfolio securities, or new investor capital. An existing order permits the Funds (''Investing Funds'') to invest their Uninvested Cash in the Money Market Funds so long as each Fund's aggregate

investment in the Money Market Funds does not exceed the greater of 5% of the Investing Fund's total net assets or $2.5 million (the ''Cash Sweep Order'').[2]

3. Applicants request an order that would supersede the Cash Sweep Order to permit the Investing Funds to use Uninvested Cash to purchase shares of the Money Market Funds, and the Money Market Funds to sell shares to and redeem shares from an Investing Fund, so long as an Investing Fund's aggregate investment in the Money Market Funds does not exceed 25% of the Investing Fund's total assets at any time. The Funds, including the Money Market Funds, also may participate in an interfund lending and borrowing facility.

4. Applicants believe that increasing the Funds' ability to invest Uninvested Cash in Money Market Funds will maximize the benefits to the Investing Funds sought under the Cash Sweep Order. These benefits include reduced transaction costs, increased liquidity, greater returns on Uninvested Cash, and further diversification. Applicants state that the proposed transactions would be consistent with the investment restrictions and policies disclosed in the Funds' registration statements.

Applicants' Legal Analysis

1. Section 12(d)(1)(A) of the Act provides that no registered investment company may acquire securities of another investment company if the securities represent more than 3% of the acquired company's outstanding voting stock, more than 5% of the acquiring company's total assets, or if the securities, together with the securities of other acquired investment companies, represent more than 10% of the acquiring company's total assets. Section 12(d)(1)(B) of the Act provides that no registered open-end investment company may sell its securities to another investment company if the sale will cause the acquiring company to own more than 3% of the acquired company's voting stock, or if the sale will cause more than 10% of the acquired company's voting stock to be owned by investment companies.

2. Section 12(d)(1)(J) of the Act provides that the SEC may exempt any persons or transactions from any provision of section 12(d)(1) if the exemption is consistent with the public interest and the protection of investors.

3. Applicants' request would permit the Investing Funds to use Uninvested Cash to acquire shares of Money Market Funds in excess of the percentage limitations in section 12(d)(1)(A), so long as no Investing Fund will have more than an aggregate of 25% of its total assets invested in all Money Market Funds at any time. Applicants' request also would permit Money Market Funds to sell their securities to Investing Funds in excess of the percentage limitations set out in section 12(d)(1)(B). Applicants represent that no Money Market Fund will acquire securities of any other investment company in excess of the limitations in section 12(d)(1)(A), except as permitted by the SEC order permitting the Funds to participate in an interfund lending and borrowing facility (''Interfund Lending Order'').[3]

4. Applicants submit that the proposed transactions do not involve the perceived abuses that section 12(d)(1) was intended to prevent. Applicants submit that the proposed transactions will not result in inappropriate layering of fees because no sales charge, contingent deferred sales charge, distribution fee under rule 12b–1 under the Act, or service fee will be charged in connection with the purchase of Money Market Fund shares with Uninvested Cash. Applicants state that Janus Capital currently intends to credit to the Investing Fund, or waive, the investment advisory fees that it earns as a result of the Investing Fund's investment in the Money Market Funds.

5. Section 17(a) of the Act makes it unlawful for any affiliated person of a registered investment company, acting as principal, to sell or purchase any security to or from the company. Section 2(a)(3) of the Act defines an affiliated person of an investment company to include any investment adviser of the investment company and any person controlling, controlled by, or under common control with, the investment adviser. Applicants state that under section 2(a)(3) of the Act, the Funds may be deemed to be under common control, and thus affiliated persons of one another. As a result, section 17(a) would prohibit the sale of shares of a Money Market Fund to an Investing Fund and the redemption of the shares from the Investing Fund.

6. Section 17(b) of the Act authorizes the SEC to exempt a transaction from section 17(a) if the terms of the proposed transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person concerned, and the proposed transaction is consistent with the policy of each investment company concerned and the general purposes of the Act.

7. Section 6(c) of the Act permits the SEC to exempt any person, security, or transaction from any provision of the Act, if and to the extent that the exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

8. Applicants submit that the request for relief satisfies the standards of section 17(b) and 6(c). Applicants state that the proposed transactions are reasonable and fair and would not involve overreaching because the Investing Funds would retain their ability to invest their Uninvested cash directly in money market instruments in accordance with their investment objectives and policies, if a higher return can be obtained or for any other reason. Applicants also assert that each Money Market Fund may discontinue selling its shares to any of the Investing Funds if the board of trustees of the Money Market Fund determines that the sale would adversely affect the Money Market Fund's portfolio management and operations. Applicants also note that shares of the Money Market Funds will be purchased and redeemed by the Investing Funds at net asset value, which is the same consideration paid and received for these shares by any other shareholder.

9. Section 17(d) of the Act and rule 17d–1 under the Act prohibit an affiliated person of a registered investment company, acting as principal, from participating in any joint arrangement with the investment company unless the SEC has issued an order authorizing the arrangement. Applicants state that each Investing Fund, by purchasing shares of the Money Market Funds, Janus Capital, by managing the assets of the Investing Fund invested in the Money Market Funds, and each Money Market Fund, by selling shares to each Investing Fund, could be deemed to be participants in a joint arrangement.

10. In determining whether to grant an exemption under rule 17d–1, the SEC considers whether the investment company's participation in the joint enterprise is consistent with the provisions, policies, and purposes of the Act, and the extent to which that participation is on a basis different from, or less advantageous than, that of other participants. Applicants assert that the investment by the Investing Funds in shares of the Money Market

[2] *Janus Investment Fund, et al.*, Investment Company Act Release Nos. 21042 (May 4, 1995) (notice) and 21103 (May 31, 1995) (order).

[3] *Janus Investment Fund, et al.*, Investment Company Act Release Nos. 22922 (Dec. 2, 1997) (notice) and 22983 (Dec. 30, 1997) (order) (''Interfund Lending Order'').

Funds would be on the same basis and consistent with the purposes of the Act.

Applicants' Conditions

Applicants agree that the order granting the requested relief will be subject to the following conditions:

1. Shares of the Money Market Funds sold to and redeemed from the Investing Funds will not be subject to a sales load, redemption fee, distribution fee under a plan adopted in accordance with rule 12b–1, or service fee (as defined in section 2830(b)(9) of the NASD Rules of Conduct).

2. If Janus Capital collects from the Money Market Funds a fee for acting as investment adviser with respect to assets invested by the Investing Funds, before the next meeting of the board of trustees of an Investing Fund (''Board'') that invests in the Money Market Funds is held for the purpose of voting upon an investment advisory contract of the Investing Fund under section 15 of the Act, Janus Capital will provide the Board with specific information regarding the approximate cost to Janus Capital for, or the portion of the investment advisory fee under, the existing investment advisory agreement attributable to managing the assets of the Investing Fund that can be invested in such Money Market Funds. Before approving any investment advisory contract under section 15 of the Act, the Board of the Investing Fund, including a majority of the trustees who are not ''interested persons'' as defined in section 2(a)(19) of the Act, shall consider to what extent, if any, the investment advisory fees charged to the Investing Fund by Janus Capital should be reduced to account for the investment advisory fees indirectly paid by the Investing Fund because of the investment advisory fee paid by the Money Market Fund to Janus Capital. The minute books of the Investing Fund will record fully the Board's consideration in approving the investment advisory contract, including the consideration relating to fees referred to above.

3. Each of the Investing Funds will invest Uninvested Cash in, and hold shares of, the Money Market Funds only to the extent that the Investing Fund's aggregate investment in the Money Market Funds does not exceed 25% of the Investing Fund's total assets. For purposes of this limitation, each Investing Fund will be treated as a separate investment company.

4. Investment in shares of the Money Market Funds will be in accordance with each Investing Fund's investment restrictions and policies as set forth in its prospectus and statement of additional information.

5. No Money Market Fund shall acquire securities of any other investment company in excess of the limits contained in section 12(d)(1)(A) of the Act, except as permitted by the Interfund Lending Order.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–15076 Filed 6–5–98; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

Issuer Delisting; Notice of Application To Withdraw From Listing and Registration; (The Parts Source, Inc., Common Stock, $.001 Par Value) File No. 1–14308

June 1, 1998.

The Parts Source, Inc. (''Company'') has filed an application with the Securities and Exchange Commission (''Commission''), pursuant to Section 12(d) of the Securities Exchange Act of 1934 (''Act'') and Rule 12d2–2(d) promulgated thereunder, to withdraw the above specified security (''Security'') from listing and registration on the Boston Stock Exchange, Inc. (''BSE'' or ''Exchange'').

The reasons cited in the application for withdrawing the Security from listing and registration include the following:

The Security has been listed for trading on the BSE and the Nasdaq Stock Market (''Nasdaq'') pursuant to a Registration Statement on Form 8–A which became effective April 8, 1996.

The Company has complied with the BSE rules by filing with the Exchange a certified copy of a resolution adopted by the Company's Board of Directors authorizing the withdrawal of the Security from listing and registration on the BSE and by setting forth in detail to the Exchange the reasons and facts supporting the withdrawal.

In making the decision to withdraw its Security from listing and registration on the BSE, the Company considered primarily the direct and indirect costs and expenses attendant on maintaining the listing of its Security on the BSE. The Company does not see any particular advantage in the dual trading of its Security.

By letter dated May 12, 1998, the BSE informed the Company that it had no objection to the withdrawal of the Company's Security from listing and registration on the BSE.

By reason of Section 12(g) of the Act and the rules and regulations thereunder, the Company shall continue to be obligated to file reports with the Commission under Section 13 of the Act.

Any interested person may, on or before June 22, 1998, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549, facts bearing upon whether the application has been made in accordance with the rules of the Exchange and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 98–15074 Filed 6–5–98; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–23234; File No. 812–11010]

Security Life of Denver Insurance Company, et al.; Notice of Application

June 1, 1998.

AGENCY: Securities and Exchange Commission (the ''Commission'').

ACTION: Notice of Application for an order pursuant to Sections 17(b) and 26(b) of the Investment Company Act of 1940 (''1940 Act'').

SUMMARY OF APPLICATION: Applicants seek an order approving the substitution of shares of the Limited Maturity Bond Portfolio (''Limited Maturity Bond Portfolio'') of Neuberger & Berman Advisers Management Trust (the ''Trust'') for shares of the Government Income Portfolio (''Government Income Portfolio'') of the Trust (Limited Maturity Bond Portfolio and Government Income Portfolio, the ''Portfolios''). Thereafter, the Limited Maturity Bond Portfolio together with certain other series of the Trust, as well as other investment options will continue to serve as the eligible funding vehicles under group and individual flexible premium deferred combination variable annuity contracts and individual flexible premium variable universal life insurance policies (collectively, ''Contracts'') offered by

Security life of Denver Insurance Company (''Security Life'') and other forms of variable annuity contracts and variable life insurance that are or may in the future be issued by Security Life.

APPLICANTS: Security Life of Denver Insurance Company and its Separate Account A1 (''Account. 1'') and Separate Account L1 (''Account 2'').

FILING DATE: The application was filed on February 17, 1998, and amended and restated on May 11, 1998.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing regarding this application by writing to the Secretary of the Commission and serving Applicants with a copy of the request, in person or by mail. Hearing requests must be received by the Commission by 5:30 p.m. June 26, 1998, and should be accompanied by proof of service on the Applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the requester's interest, the reason for the request and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Secretary of the Commission.

ADDRESSES: Secretary, Securities and Exchange Commission: 450 Fifth Street, NW, Washington, DC 20549. Applicants: c/o Security Life of Denver Insurance Company, 1290 Broadway, Denver, Colorado 80203–5699. Copies to: Diane E. Ambler, Esq., Mayer, Brown & Platt, 2000 Pennsylvania Avenue NW, Washington, DC 20006–1882 and Jeffrey S. Puretz, Esq., Dechert Price & Rhoads, 1775 I Street, NW, Washington, DC 20006–2401.

FOR FURTHER INFORMATION CONTACT: Susan M. Olson, Attorney or Kevin M. Kirchoff, Branch Chief, Office of Insurance Products, Division of Investment Management, at 202–942–0670.

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application is available for a fee from the Public Reference Branch of the Commission, 450 Fifth Street, NW, Washington, DC 20005 (tel. (202) 942–8090).

Applicant's Representations

1. Security life is a stock life insurance organized under the laws of the State of Colorado in 1982. Security Life is wholly owned, indirect subsidiary of ING Group, N.V. which has headquarters in Amsterdam, Netherlands.

2. Account 1 is a segregated asset account of Security Life that was established by Security Life on November 3, 1993, pursuant to the provisions of the insurance laws of the State of Colorado. Account 1 was registered on December 3, 1993, as a unit investment trust with the Commission under the 1940 Act. Account 1 is currently divided into 21 divisions, one of which invests in shares of the Government Income Portfolio. Account 1 serves as the funding medium for flexible premium deferred combination variable annuity contracts issued and administered by Security Life.

3. Account 2 is a segregated asset account of Security Life that was established by Security Life on November 3, 1993, pursuant to the provisions of the insurance laws of the State of Colorado. Account 2 was registered on January 14, 1994, as a unit investment trust with the Commission under the 1940 Act. Account 2 is currently divided into 19 divisions, one of which invests in shares of the Government Income Portfolio. Account 2 serves as the funding medium for individual flexible premium variable universal life insurance policies issued and administered by Security Life.

4. The Contracts are flexible premium deferred combination variable annuity contracts and individual flexible premium variable universal life insurance policies. The Contracts provide for the allocation of premiums to divisions of Account 1 or Account 2 (the ''Separate Accounts''), which invest in shares of the Government Income Portfolio.

Other divisions of the Separate Accounts, which invest in shares of other series of the Trust, including the Limited Maturity Bond Portfolio, as well as other underlying investments options, are also available under the Contracts.

5. The Trust field its initial registration statement on Form N–1A under the Securities Act of 1933 (the ''1933 Act'') and the 1940 Act of December 22, 1983. The Trust is a Delaware business trust registered as a series type open-end management investment company. The Trust is a ''feeder'' fund in a ''master-feeder'' structure and each series of the Trust currently invests all of its net ingestible assets ina corresponding series of Advisers Managers Trust, the ''master'' fund. The Trust currently consists of eight operational series, including the Portfolios. Shares of the Trust are offered to life insurance companies for allocation to separate accounts funding variable annuity contracts and variable life insurance policies. Each series of the Trust and Advisers Managers Trust is managed in compliance with Subchapter M and Section 817(h) of the Internal Revenue Code of 1986, as amended. Shares of one series of the Trust are also offered directly to qualified pension and retirement plans. The Government Income Portfolio commenced investment operations on March 22, 1994.

6. Nueberger&Berman Management Inc. (''NBMI'') serves as investment manager to the underlying series of Advisers Managers Trust corresponding to each series of the Trust, and serve as administrator to each series of the Trust. NBMI also serves as distributor of the shares of each series of the Trust, without remuneration from the Trust. NBMI is a registered broker-dealer under the Securities Exchange Act of 1934, as amended (the ''1934 Act'') and a member of the National Association of Securities Dealer, Inc. (''NASD'').

7. Neuberger&Berman, LLC is subadviser to the series of Advisers Managers Trust and furnishes NBMI with investment recommendations and research information without added cost to Advisers Managers Trust or the Trust. Neuberger&Berman, ILC is a registered broker-dealer under the 1934 Act, a member of the NASD, and a member firm of the New York Stock Exchange, Inc. and other principal exchanges. Neuberger&Berman, LLC acts as the principal broker in the purchase and sale of portfolio securities and the sale of covered call options for the series of Advisers Managers Trust. All of the voting stock of NBMI is owned by individuals who are principal of Neuberger&Berman, LLC.

8. Security Life on its own behalf and on behalf of Account 1 and Account 2 proposes to effect a substitution of shares of the Limited Maturity Bond Portfolio for all shares of the Government Income Portfolio attributable to the Contracts (the ''Substitution''). Security Life will pay all expenses and transaction costs of the Substitution, including any applicable brokerage commissions. NBMI has agreed to reimburse Security Life for its expenses in connection with the Substitution. Applicants represent that Security Life intends to, soon after the filing with the Commission of the application that is the subject of this notice, supplement the prospectuses for the Contracts to provide owners of the Contracts (''Owners'') with information concerning the proposed Substitution. Unless previously sent, Security Life states that copies of the prospectus for the Limited Maturity Bond Portfolio will be sent to Owners with the Contract

prospectuses. In addition, Security Life states that the supplement will be accompanied by a written notice of the Substitution (the ''Notice'') stating that the shares of the Government Income Portfolio have been proposed to be eliminated and that shares of the Limited Maturity Bond Portfolio have been proposed to be substituted.

9. Security Life states that the Government Income Portfolio has not generated the interest of Owners that was anticipated at the time of its creation and that at all times since inception the asset level of the Government Income Portfolio has been relatively small. Security Life states that the portfolio's assets have not increased to a level to make it a viable investment alternative. In contrast, the Limited Maturity Bond Portfolio has reached an asset level consistent with viability and the achievement of economies of scale. Security Life states that it is currently the only investor in the shares of the Government Income Portfolio and that, subsequent to the proposed Substitution, it is anticipated that the Government Income Portfolio and its corresponding series of Advisers Managers Trust will cease investment operations. Net assets for the years ending December 31, 1995, 1996 and 1997 for the Portfolios were as follows:

NET ASSETS

[In millions]

Portfolio	December 31, 1997	December 31, 1996	December 31, 1995
Government Income	$2.6	$3.5	$2.2
Limited Maturity Bond	251.1	256.9	238.9

10. Security Life states that the current level of assets of the Government Income Portfolio does not allow for cost-efficient operations and has resulted in high expense ratios. Security Life states that the Portfolio has not generated a sufficient level of assets to justify the high expense ratios or the portion of its expenses that NBMI reimburses. NBMI voluntarily limits certain expenses of the Government Income Portfolio through reimbursement, including the Portfolio's pro rata share of its underlying master series' operating expenses. Security Life states that the amount of expenses reimbursed to the Government Income Portfolio is significant and that the expenses of the Government Income Portfolio as a percentage of average net assets, both before and after the voluntary limitation, are higher than the expenses of the Limited Maturity Bond Portfolio. Moreover, Security Life notes that NBMI limits the Government Income Portfolio's expenses voluntarily, and is under no obligation to continue to do so. Because the expenses of the Limited Maturity Bond Portfolio are much lower than the expenses of the Government Income Portfolio, Security Life states that Owners will not be exposed to higher expenses following the Substitution and may benefit from lower expense ratios.

The table below summarizes the expense ratios of the Portfolios:

ANNUAL EXPENSES*

[As a percentage of average net assets]

Total expenses	Fiscal year ended December 31		
	1997	1996	1995
Government Income	1.02% (after reimbursement) 2.88% (before reimbursement).	1.02% (after reimbursement) 2.95% (before reimbursement).	1.05% (after reimbursement) 4.21% (before reimbursement).
Limited Maturity Bond	0.77%	0.78%	0.71%.

*These expense figures include the Portfolios' pro rata share of the expenses of their underlying master series.

Security Life states that the annual costs incurred by the Government Income Portfolio are too great for a fund that is too small to be a viable mutual fund portfolio and for which no current distribution efforts are anticipated that might result in the Portfolio's growth.

Applicants' believe that it is not in the public interest for NBMI to continue subsidizing the Government Income Portfolio's operating expenses, and assert that investment in the Limited Maturity Bond Portfolio would better suit the needs of Owners.

11. Applicants state that the investment objective of the Government Income Portfolio is to achieve a high level of current income and total return, consistent with safety to principal. Applicants state that the investment objective of the Limited Maturity Bond Portfolio is to achieve highest current income consistent with low risk to principal and liquidity, and secondarily, total return. Both Portfolios share the primary objective of high current income. Applicants state that the Portfolios also have a similar investment strategy of investing assets in debt securities and that generally, both Portfolios are intended to provide investors with current income and safety of principal. Applicants state that the Portfolios seek safety of principal through different approaches, one through investment primarily in U.S. Government securities, and the other through investment primarily in securities of limited duration. However, Applicants submit that both approaches are intended to address credit risk. In addition, applicants state that the Portfolios are included in the same investment company classification by the Investment Company Institute. Accordingly, Security Life has concluded that the Portfolios are sufficiently similar to be appropriate for substitution.

12. Security Life has also considered the investment performance of the Portfolios, which it believes has been generally similar. The total returns for the fiscal years ended December 31, 1997, 1996 and 1995, and the period since inception of the Government

Income Portfolio through December 31, 1997, are as follows:

TOTAL RETURN

Portfolio	Year ended Dec. 31, 1997 (percent)	Year ended Dec. 31, 1996 (percent)	Year ended Dec. 31, 1995 (percent)	Since Mar. 22, 1994* (percent)
Government Income	+9.51	+1.32	+11.76	+6.28
Limited Maturity Bond	+6.74	+4.31	+10.94	+5.85

*Date of commencement of the Government Income Portfolio through December 31, 1997.

13. Security Life will schedule the Substitution to occur as soon as practicble after the exemptive relief Applicants seek is obtained. Within five days after the Substitution, Security Life states that Owners will be sent confirmation of the Substitution.

14. Security Life states that Owners will be advised in the Notice that, for a period from the date of mailing of the Notice until 30 days after the date of the Substitution, Owners may transfer all assets (as substituted if after the date of the Substitution) to any other available division of the Separate Account funding their Contracts, without limitations and without charge (the ''Free Transfer Period''). Security Life states that transfers made in connection with the proposed Substitution during the Free Transfer Period will not count toward the limit on the number of free transfers permitted under the Contracts in a Contract year.

15. Security Life states that following the Substitution, Owners will be afforded the same contract rights with regard to amounts invested under the Contracts as they currently have. Immediately following the Substitution, Security Life plans to treat, as a single division the current division invested in shares of the Government Income Portfolio and the continuing division invested in shares of the Limited Maturity Bond Portfolio in each of Account 1 and Account 2. Security Life will reflect this treatment in disclosure documents for the Contracts and Separate Accounts, the financial statements of the Separate Accounts, and the Form N–SAR annual report filed by the Separate Accounts.

16. Security Life will submit for cash redemption all the shares of Government Income Portfolio it currently holds on behalf of the Separate Accounts at the close of business on the date selected for the Substitution. All shares of Government Income Portfolio held by the Separate Accounts are attributable to Owners. Security Life on behalf of the Separate Accounts will simultaneously place a purchase order with the Limited Maturity Bond Portfolio so that the purchase will be for the exact amount of the redemption proceeds. Security Life states that, at all times, monies attributable to owners currently invested in Government Income Portfolio will be fully invested. Security Life states that the full set asset value of and number of redeemed shares held by the Separate Accounts will be reflected in the Owners' accumulation unit values following the Substitution. Security Life states that it will assume all transaction costs and expenses relating to the Substitution, including any direct and indirect costs of liquidating the assets of the Government Income Portfolio, so that the full net asset value of redeemed shares of the Government Income Portfolio will be reflected in the Owner's accumulation units following the Substitution. NBMI has agreed to reimburse Security Life for these expenses.

Applicants' Legal Analysis and Conclusions

1. Section 26(b) of the 1940 Act provides that ''[i]t shall be unlawful for any depositor or trustee of a registered unit investment trust holding the security of a single issuer to substitute another security for such security unless the Commission shall have approved such substitution. The Commission shall issue an order approving such substitution if the evidence establishes that it is consistent with the protection of investors and the purposes fairly intended by the policy and provisions of this title.'' The legislative history makes clear that the purpose of Section 26(b) is to protect the expectation of investors in a unit investment trust that the unit investment trust will accumulate the shares of a particular issuer and to prevent unscrutinized substitutions which might, in effect, force shareholders dissatisfied with the substituted security to redeem their shares, thereby possibly incurring either a loss of the sales load deducted from initial purchase payments, an additional sales load upon reinvestment of the redemption proceeds, or both. Section 26(b) affords this protection to investors by preventing a depositor or trustee of a unit investment trust holding the shares of one issuer from substituting for those shares the shares of another issuer, unless the Commission approves that substitution.

2. Applicants represent that the proposed Substitution is consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act. Applicants state that the purposes, terms and conditions of the Substitution are consistent with the principles and purposes of Section 26(b) and do not entail any of the abuses that Section 26(b) is designed to prevent. Applicants submit that the Substitution is an appropriate solution to the limited Owner investment in the Government Income Portfolio, which is currently, and in the future may be expected to be, of insufficient size to promote consistent investment performance or to reduce operating expenses.

3. Applicants state that the Substitution will not result in the type of costly forced redemption that Section 26(b) was intended to guard against and is consistent with the protection of investors and the purposes fairly intended by the 1940 Act for the following reasons:

(a) the Substitution is of shares of the Limited Maturity Bond Portfolio, the investment objective, policies, and restrictions of which are sufficiently similar to the objective, policies, and restrictions of the Government Income Portfolio so as to be an appropriate investment vehicle in light of the Owners' objectives and risk expectations;

(b) the expenses of the Limited Maturity Bond Portfolio are much lower than the expenses of the Government Income Portfolio and therefore Owners will not be exposed to higher expenses following the Substitution and in fact may benefit from lower expense ratios;

(c) the Substitution is expected to confer certain modest economic benefits to Owners by virtue of the larger asset size of the Limited Maturity Bond Portfolio and the investment performance of the Portfolios has generally been similar;

(d) if an Owner so requests, during the Free Transfer Period, assets will be reallocated for investment to another investment option available under their Contract;

(e) the Substitution will, in all cases, be at net asset value of the respective shares, in conformity with Section 22(c) and the 1940 Act and rule 22c–1 thereunder, without the imposition of any transfer or similar charge;

(f) Security Life will assume the expenses and transaction costs, including among others, legal and accounting fees and any brokerage commissions, relating to the Substitution in a manner that attributes all transaction costs to Security Life, although NBMI has agreed to reimburse Security Life for its expenses in connection with the Substitution.

(g) the Substitution in no way will change the amount of any Owner's Contract value or the dollar value of his or her investment in such Contract and in no way will alter the annuity benefits to Owners or the contractual obligations of Security Life;

(h) the Substitution in no way will alter the tax benefits to Owners under their Contracts;

(i) Owners may choose simply to withdraw amounts credited to them following the Substitution under the conditions that currently exist;

(j) Owners affected by the Substitution will be sent confirmation of the Substitution within five days following the date of Substitution;

(k) the Commission will have issued an order approving the Substitution under Section 26(b) of the 1940 Act;

(l) the Commission will have issued an order exempting the transaction in connection with the Substitution to the extent necessary from the provisions of Section 17(a) of the 1940 Act;

(m) the supplements to the prospectuses for the Contracts describing the Substitution will have been filed with the Commission;

(n) each Owner will have been sent a copy of the effective prospectus for the Limited Maturity Bond Portfolio and amendments to the applicable Contract prospectuses;

(o) Applicants will have satisfied themselves that the Contracts involved allow the Substitution of underlying investment options, and that the Substitution can be consummated under applicable insurance laws and under the Contracts;

(p) Applicants will have complied with any regulatory requirements they believe necessary to complete the Substitution in each jurisdiction where the Contracts are qualified for sale; and

(q) Applicants will have sent to Owners soon after the filing of the application that is the subject of this notice, the Notice describing the terms of the Substitution and Owners' rights in connection with it.

4. Security Life, on the basis of the facts and circumstances described herein, has determined that it is in the best interests of Owners to substitute shares of the Limited Maturity Bond Portfolio for shares of the Government Income Portfolio. Both Portfolios are existing series of the Trust. The investment manager (with respect to the corresponding series of Advisers Managers Trust), distributor, and independent accountants are the same for the Portfolios.

5. Section 26(b) of the 1940 Act, in pertinent part, provides that the Commission shall issue an order approving substitutions of securities if the evidence establishes that it is consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act. Applicants submit that their request for approval meets the standards set out in Section 26(b) and should, therefore, be granted. Accordingly, Applicants request an order of the Commission approving the Substitution pursuant to Section 26(b).

6. Section 17(a)(1) of the 1940 Act prohibits any affiliated person of a registered investment company, or an affiliated person of an affiliated person, from selling any security or other property to such registered investment company. Section 17(a)(2) of the 1940 Act prohibits any of the persons described above, from purchasing any security or other property from such registered investment company. Immediately following the Substitution, Security Life plans to treat as a single division of each Separate Account the division currently invested in shares of the Government Income Portfolio and the continuing division currently invested in shares of the Limited Maturity Bond Portfolio. Applicants state that divisions of a registered separate account may be treated as separate investment companies in connection with substitution transactions. If Security Life combines the divisions of the Separate Accounts following the substitution, Security Life states that it could be said to be transferring unit values between divisions which could be construed to involve purchase and sale transactions between divisions that are affiliated persons. After the Substitution, with respect to each Separate Account, the division currently investing in shares of the Government Income Portfolio could be said to be selling shares of the Limited Maturity Bond Portfolio to the continuing division currently investing in shares of the Limited Maturity Bond Portfolio, in return for units of that division. Conversely, it could be said that the division currently investing in shares of the Limited Maturity Bond Portfolio was purchasing shares of the Limited Maturity Bond Portfolio from the division currently investing in shares of the Government Income Portfolio. Applicants state that the sale and purchase transactions between divisions could be said to come within the scope of Sections 17(a)(1) and 17(a)(2) of the 1940 Act, respectively. Therefore, Applicants state that the Substitution may require an exemption from Section 17(a) of the 1940 Act, pursuant to Section 17(b) of the 1940 Act.

7. Section 17(b) of the 1940 Act provides that the Commission may grant an order exempting transactions prohibited by Section 17(a) of the 1940 Act from that section upon application if evidence establishes that: (a) the terms of the proposed transaction, including the consideration to be paid or received, are reasonable and fair and do not involve over-reaching on the part of any person concerned, (b) the proposed transaction is consistent with the investment policy of each registered investment company concerned, as recited in its registration statement and reports filed under the 1940 Act; and (c) the proposed transaction is consistent with the general purposes of the 1940 Act.

8. Applicants represent that the terms of the proposed Substitution are reasonable and fair, including the consideration to be paid and received; do not involve over-reaching; are consistent with the policies of the Separate Accounts; and are consistent with the general purposes of the 1940 Act.

9. Applicants submit that the Substitution is reasonable and fair. Applicants state that it is expected that existing Owners that have allocated contributions to the divisions of the Separate Accounts investing in shares of the Government Income Portfolio will benefit from the Substitution, and will not bear the costs of the Substitution. The transactions effecting the Substitution will be effected in conformity with Section 22(c) of the 1940 Act and Rule 22c–1 thereunder. Owner interests after the combination of the divisions, in practical economic terms, will not differ in any measurable way from such interests immediately prior to the Substitution. In each case, Applicants state that the consideration to be received and paid is, therefore, reasonable and fair. Security Life believes that the Substitution will not give rise to any taxable income for Owners.

10. Applicants state that the investment objectives of the Portfolios are sufficiently similar so as to continue to be an appropriate investment vehicle consistent with the investment policies of the applicable divisions of the Separate Accounts. In this regard, Applicants state that the Substitution is consistent with Commission precedent pursuant to Section 17.

11. Applicants state that the transactions that may be deemed to be within the scope of Section 17(a) have been the subject of Commission review in the context of reorganizations of separate accounts from management separate accounts to unit investment separate accounts and the transfer of assets to an underlying fund. Applicants state that the terms and conditions of the transfer of assets entailed in the Substitution are consistent with such precedent and the precedent under Section 26(b).

Section 17(b) of the 1940 Act provides that the Commission may grant an order exempting transactions prohibited by Section 17(a) from that section upon application, subject to certain conditions. Applicants request an order of the Commission pursuant to Section 17(b) from the provisions of Section 17(a) in connection with any aspect of the Substitution that may be deemed prohibited by Section 17(a). Applicants represent that the Substitution meets all of the requirements of Section 17(b) of the 1940 Act and that an order should be granted exempting the Substitution from the provisions of Section 17(a) to the extent requested.

Conclusion

For the reasons summarized above, Applicants submit that the proposed Substitution is consistent with the protection of investors and the purposes fairly intended by the policy and the provisions of the 1940 Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–15075 Filed 6–5–98; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 23237; 812–10930]

Stagecoach Funds, Inc., et al.; Notice of Application

June 2, 1998.

AGENCY: Securities and Exchange Commission (''SEC'').

ACTION: Notice of application for exemption under the Investment Company Act of 1940 (''Act'').

SUMMARY OF THE APPLICATION: Applicants seek an order that would permit certain registered open-end management investment companies to utilize their uninvested cash to purchase shares of affiliated money market funds.

APPLICANTS: Stagecoach Funds, Inc., on behalf of its series Asset Allocation Fund, Arizona Tax-Free Fund, Balanced Fund, California Tax-Free Bond Fund, California Tax-Free Income Fund, California Tax-Free Money Market Mutual Fund, California Tax-Free Money Market Trust, Corporate Bond Fund, Diversified Equity Income Fund, Equity Index Fund, Equity Value Fund, Government Money Market Mutual Fund, Growth Fund, Index Allocation Fund, Intermediate Bond Fund, International Equity Fund, Money Market Mutual Fund, Money Market Trust, National Tax-Free Fund, National Tax-Free Money Market Trust, National Tax-Free Money Market Mutual Fund, Oregon Tax-Free Fund, Overland Express Sweep Fund, Prime Money Market Mutual Fund, Short-Intermediate U.S. Government Income Fund, Short-Term Municipal Income Fund, Short-Term Government Corporate Income Fund, Small Cap Fund, Strategic Growth Fund, Strategic Income Fund, Treasury Money Market Mutual Fund, U.S. Government Allocation Fund, U.S. Government Income Fund, and Variable Rate Government Fund (each series, a ''Stagecoach Fund,'' and collectively, the ''Stagecoach Funds''); Life & Annuity Trust, on behalf of its series Asset Allocation Fund, Equity Value Fund, Growth Fund, Money Market Fund, Strategic Growth Fund, and U.S. Government Allocation Fund (each series, a ''LAT Fund,'' and collectively, the ''LAT Funds''); Wells Fargo Bank, National Association and any entity controlling, controlled by, or under common control with Wells Fargo Bank, National Association that in the future may serve as an investment adviser to the Funds (as defined below) (collectively, ''Wells Fargo''); and each registered investment company or series to be organized in the future and advised by, or to be advised in the future by, Wells Fargo (together with the Stagecoach Funds and LAT Funds, each a ''Fund,'' and collectively, the ''Funds'').

FILING DATES: The application was filed on December 23, 1997 and amended on May 13, 1998.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on June 29, 1998, and should be accompanied by proof of service on applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicants, 525 Market Street, 19th Floor, San Francisco, CA 94105.

FOR FURTHER INFORMATION CONTACT: Michael W. Mundt, Staff Attorney, at (202) 942–0578, or Mary Kay Frech, Branch Chief, at (202) 942–0564 (Office of Investment Company Regulation, Division of Investment Management).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch, 450 Fifth Street, N.W., Washington, D.C. 20549, (202) 942–8090.

Applicant's Representations

1. Stagecoach Funds, Inc. (''Stagecoach'') is an open-end management investment company registered under the Act and organized as a Maryland corporation. Stagecoach currently offers thirty-four separate Stagecoach Funds. Life & Annuity Trust (''LAT'') is an open-end management investment company registered under the Act and organized as a Delaware business trust. LAT currently offers six LAT Funds. Ten of the Stagecoach Funds and one LAT Fund are money market funds subject to rule 2a–7 under the Act (together with any future money market portfolio of Stagecoach or LAT or any future money market portfolio advised by Wells Fargo, each a ''Money Market Fund,'' and collectively, the ''Money Market Funds''). The remaining Stagecoach Funds and LAT Funds are variable net asset value funds (together with any future variable net asset value portfolio of Stagecoach or LAT or any future variable net asset portfolio advised by Wells Fargo, each a ''Non-Money Market Fund,'' and collectively, the ''Non-Money Market Funds'').

2. Wells Fargo is the investment adviser for all of the Stagecoach Funds and LAT Funds and, as a national banking association, is exempt from registration under the Investment Advisers Act of 1940 (''Advisers Act''). Barclays Global Fund Advisors (''BGFA'') is a registered investment adviser under the Advisers Act that serves as investment sub-adviser to four Stagecoach Funds and two LAT Funds.

Stephens Inc., a broker-dealer registered under the Securities Exchange Act of 1934, serves as principal underwriter for each series, and Wells Fargo and Stephens Inc. provide administrative services for each series. An affiliate of BGFA serves as custodian for the Funds that BGFA sub-advises, and Wells Fargo serves as custodian to all of the other Funds.

3. Each of the Non-Money Market Funds has, or may be expected to have, cash reserves that have not been invested in portfolio securities (''Uninvested Cash'') in an account at its custodian that either may be invested directly in individual short-term money market instruments or may not otherwise be invested in any portfolio securities. Uninvested cash may result from a variety of sources, including dividends or interest received on portfolio securities, unsettled securities transactions, reserves held for investment strategy purposes, maturity of investments, liquidation of investment securities to meet anticipated redemptions and dividend payments, or new monies received from investors.

4. Applicants seek an order that would permit each of the Non-Money Market Funds to utilize the Uninvested Cash to purchase shares of one or more of the Money Market Funds (each Fund purchasing shares of the Money Market Funds, an ''Investing Fund,'' and collectively, ''Investing Funds''), and that would permit the Money Market Funds to sell their shares to, and redeem shares from, the Investing Funds. The requested relief would apply to Stagecoach Funds and LAT Funds (and each of their series and each subsequently created series) and other registered open-end management investment companies or series that become advised by Wells Fargo.[1] Applicants believe that the proposed transactions would allow Investing Funds to reduce transaction costs, create more liquidity, enjoy greater returns on the Uninvested Cash, and further diversify their holdings.

Applicants' Legal Analysis

A. Section 12(d)(1)

1. Section 12(d)(1)(A) of the Act prohibits any registered investment company (the ''acquiring company'') or any company or companies controlled by the acquiring company from purchasing any security issued by any other investment company (the ''acquired company'') if the acquiring company or companies it controls would own in the aggregate more than 3% of the outstanding voting stock of the acquired company, if the purchased securities would constitute more than 5% of the acquiring company's total assets, or if the securities, together with the securities of other acquired investment companies, would represent more than 10% of the acquiring company's total assets. Section 12(d)(1)(B) provides that no acquired company may sell its securities to another investment company if the sale would cause the acquiring company to own more than 3% of the acquired company's voting stock, or if the sale would cause more than 10% of the acquired company's voting stock to be owned by investment companies.

2. Applicants request an order to permit an Investing Fund to invest up to 25% of its total net assets in shares of the Money Market Funds. Under the proposal, each Money Market Fund would also be permitted to sell its shares to an Investing Fund in excess of the limits in section 12(d)(1)(B).

3. Section 12(d)(1)(J) of the Act provides that the SEC may exempt persons or transactions from any provision of section 12(d)(1) if and to the extent that such exemption is consistent with the public interest and the protection of investors.

4. Applicants believe that none of the concerns underlying section 12(d)(1) is presented by the proposed transactions and that the proposed transactions meet the section 12(d)(1)(J) standards for relief. Applicants note that the perceived abuses that section 12(d)(1) sought to address include undue influence by an acquiring fund over the management of an acquired fund, layering of fees, and complex fund structures. Applicants submit that because the Money Market Funds contain a highly liquid portfolio, none of the Money Market Funds will be subject to undue influence from an Investing Fund resulting from the threat of a large-scale redemption. Applicants state that the Investing Funds will vote their shares in the same proportion as the Money Market Funds' other shareholders. Applicants argue that there will be no layering of fees because the shares of the Money Market Funds will be sold to and redeemed from the Investing Funds without sales load or redemption fee, and to the extent that any distribution, service, or advisory fees are charged in connection with the investment in Money Market Funds, Wells Fargo and any sub-advisers will waive their advisory fees for each Investing Fund in an amount that offsets the amount of the fees.

B. Section 17(a)

1. Section 17(a) of the Act generally prohibits sales or purchases of securities between a registered investment company and any affiliated person of that company. Section 2(a)(3) of the Act defines ''affiliated person'' to include persons under common control. Section 2(a)(9) of the Act defines ''control'' to mean the power to exercise a controlling influence over the management or policies of a company. Because Stagecoash and LAT have a common set of individuals serving as directors/trustees and a common investment adviser, each Fund may be deemed to be under common control with the other Stagecoach Funds and LAT Funds. Accordingly, the sale of shares of the Money Market Funds to the Investing Funds, and the redemption of such shares from the Investing Funds, may be prohibited under section 17(a).

2. Section 17(b) of the Act permits the SEC to grant an order permitting a transaction otherwise prohibited by section 17(a) if it finds that the terms of the proposed transaction are fair and reasonable and do not involve overreaching on the part of any person concerned, the proposed transaction is consistent with the policy of each investment company concerned, and the proposed transaction is consistent with the general purposes of the Act. Section 6(c) of the Act permits the SEC to exempt a series of transactions if such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policies of the Act.

3. Applicants believe that the terms of the transactions meet the standards of sections 6(c) and 17(b). Applicants state that the shares of the Money Market Funds will be purchased and redeemed at their net asset value, which is the same consideration paid and received for the shares by any other shareholder. Applicants assert that the purchase of shares of the Money Market Funds by the Investing Funds will be effected in accordance with each Investing Fund's investment policies and that the proposed transactions are consistent with the general purposes of the Act.

C. Section 17(d) and Rule 17d–1

1. Section 17(d) of the Act and rule 17d–1 under the Act prohibit affiliated persons from participating in joint arrangements with a registered investment company unless authorized by the SEC. In passing on applications for such orders, rule 17d–1 provides

[1] Each Fund that intends to rely on the order has been named as an applicant. Any other existing Fund and any future Fund that may rely on the order in the future will do so only in accordance with the terms and conditions of the application.

that the SEC will consider whether the participation of the investment company is consistent with the provisions, policies, and purposes of the Act, and the extent to which the participation is on a basis different from or less advantageous than that of the other participants. Applicants state that each Investing Fund, Wells Fargo, and each Money Market Fund could be deemed to be participants in a joint enterprise or other joint arrangement.

2. Applicants believe that the proposed transactions meet the standards for relief under rule 17d–1. Applicants state that the investment by the Investing Funds in shares of the Money Market Funds would be on the same basis as any other shareholder. Applicants further believe that the proposed transactions would be beneficial to each of the participants and that there is no basis on which to believe that any participant would benefit to a greater extent than any other. Applicants note that Wells Fargo and any sub-advisers will not receive any increased investment advisory fees under the proposed transactions, though they may experience reduced clerical costs.

Applicants' Conditions

Applciants agree that the order granting the requested relief will be subject to the following conditions:

1. Shares of the Money Market Funds sold to and redeemed from the Investing Funds will not be subject to a sales load or redemption fee. Nor will such shares be subject to a distribution fee under a plan adopted in accordance with rule 12b–1 under the Act, or a service fee (as defined in Rule 2830(b)(9) of the Conduct Rules of the National Association of Securities Dealers), or if such shares are subject to any such a distribution fee or service fee, Wells Fargo will waive its advisory fee for each Investing Fund in an amount that offsets the amount of such distribution and/or service fees incurred by the Investing Fund.

2. Wells Fargo will waive its advisory fee for each Investing Fund in an amount that offsets the amount of the advisory fees of a Money Market Fund incurred by the Investing Fund.

3. Each Investing Fund will invest Uninvested Cash in, and hold shares of, the Money Market Funds only to the extent that the Investing Fund's aggregate investment in the Money Market Funds does not exceed 25% of the Investing Fund's total net assets. For purposes of this limitation, each Investing Fund or series thereof will be treated as a separate investment company.

4. Investment in shares of the Money Market Funds will be in accordance with each Investing Fund's respective investment restrictions, if any, and will be consistent with each Investing Fund's policies as set forth in its prospectus and statement of additional information.

5. Each Investing Fund, each Money Market Fund, and any future fund that may rely on the order shall be advised by Wells Fargo, or a person controlling, controlled by, or under common control with Wells Fargo.

6. No Money Market Fund shall acquire securities of any other investment company in excess of the limits contained in section 12(d)(1)(A) of the Act.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–15153 Filed 6–5–98; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 23238; 812–11018]

Wilmington Trust Company, et al.; Notice of Application

June 2, 1998.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice of application for exemption under sections 6(c) and 17(b) of the Investment Company Act of 1940 (the ''Act'') from section 17(a) of the Act.

SUMMARY OF APPLICATION: Applicants request an order to permit certain collective investment funds to transfer their assets to certain portfolios of registered open-end management companies in exchange for shares of the portfolios.

APPLICANTS: Wilmington Trust Company (''WTC''); Wilmington Trust Corporation (''Wilmington Trust''); The Rodney Square Strategic Equity Fund (''Strategic Equity Fund''); and the Rodney Square Fixed Income Fund (''Strategic Fixed-Income Fund,'' and collectively with the Strategic Equity Fund, the ''Funds'').

FILING DATES: The application was filed on February 20, 1998. Applicants have agreed to file an amendment during the notice period, the substance of which is reflected in this notice.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on June 24, 1998, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, Security and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Applicants, 1100 N. Market Street, Wilmington, Delaware 19890–0001.

FOR FURTHER INFORMATION CONTACT: Lawrence W. Pisto, Senior Counsel, at (202) 942–0527, or George J. Zornada, Branch Chief at (202) 942–0564, Office of Investment Company Regulation, Division of Investment Management.

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the Commission's Public Reference Branch, 450 Fifth Street, NW., Washington, DC 20549 (tel. (202) 942–8090).

Applicants' Representations

1. WTC, a Delaware state-chartered bank, is a wholly-owned subsidiary of Wilmington Trust, a bank holding company. WTC serves as custodian and investment manager and/or trustee for numerous employee benefit plans qualified under section 401 of the Internal Revenue Code of 1986, as amended. The assets of some of these employee benefit plans are invested in collective investment funds (''CIFs'') sponsored by WTC and for which WTC acts as trustee. Each CIF includes assets of retirement benefit plans for employees of entities unaffiliated with WTC (''Other Plans'') as well as assets of retirement benefit plans for employees of WTC and its affiliates (''Affiliated Plans'') (Other Plans and Affiliated Plans are collectively referred to as the ''Plans''). Assets of Affiliated Plans represent 24% to 41% of the assets of each CIF.

2. Both the Strategic Equity Fund and the Strategic Fund-Income Fund are Massachusetts business trusts registered under the Act as open-end management investment companies and may offer several portfolios (''Portfolios''). Each Fund is offered and sold without a sales load, redemption fee, asset-based distribution fee or shareholder servicing

fee. The Strategic Equity Fund currently consists of one Portfolio, the Large Cap Growth Equity Portfolio. The Strategic Fixed-Income Fund currently consists of two Portfolios, the Diversified Income Portfolio and the Municipal Income Portfolio. WTC is the investment adviser for each of the Portfolios and will serve as the investment adviser for each new Portfolio.[1]

3. WTC is terminating the CIFs and intends to transfer in-kind the Plans' assets in the CIFs to each of the existing and certain newly created Portfolios (the ''Conversion''). In the Conversion the Funds will accept a transfer of securities from one or more CIFs with substantially similar investment objectives in exchange for Portfolio shares having a total net asset value equal to the market value of the transferred securities (the ''Proposed Transactions''). The Proposed Transactions will be as follows:

CIF	Corresponding portfolio
Growth Stock Fund.	Large Cap Growth Equity Portfolio.
Value Stock Fund.	Large Cap Value Equity Portfolio (New).
Small Cap Stock Fund.	Small Cap Equity Portfolio (New).
International Stock Fund.	International Equity Portfolio (New).
Intermediate Bond Fund.	Diversified Income Portfolio.[2]
Bond Fund	Intermediate Bond Portfolio (New).

[2] At or about the time of the Conversion, the name of the Diversified Income Portfolio will be changed to ''Short-Intermediate Bond Portfolio.''

Applicants state that the Conversion is expected to occur on June 26, 1998.

4. The CIF assets to be transferred to the Portfolios will be valued in accordance with the provisions of rule 17a–7(b) under the Act. The Fund shares received by the CIFs then will be distributed, *pro rata*, to all Plans whose interests were converted as of the date of the transfer.

5. Applicants request relief to effect the Proposed Transactions. Applicants also request relief for any other registered open-end management investment company that may be advised by WTC or an entity controlling, controlled by, or under common control with WTC, and any other CIF sponsored by WTC in which employee benefit plans established and maintained for the benefit of employees of WTC or its affiliates own five percent or more of the assets that in the future may convert into the registered open-end investment company (''Future Transactions''). Applicants state that they will rely on the requested relief for Future Transactions only in accordance with the terms and conditions contained in this application.

Applicant' Legal Analysis

1. Section 17(a) of the Act, in relevant part, prohibits an affiliated person of a registered investment company, or an affiliated person of such person, acting as principal, from selling to or purchasing from such investment company any security or other property. Section 2(a)(3) of the Act, in relevant part, defines ''affiliated person'' to include: (a) any person directly or indirectly owning, controlling, or holding with the power to vote, five percent or more of the outstanding voting securities of such other person; (b) any person directly or indirectly controlling, controlled by, or under common control with, such other person; and (c) if such other person is an investment company, any investment adviser thereof. Because the CIFs may be viewed as acting as principals in the Proposed Transactions and because CIFs and the Funds may be viewed as being under the common control of WTC within the meaning of section 2(a)(3)(C) of the Act, the Proposed Transactions may be subject to the prohibitions contained in section 17(a).

2. Rule 17a–7 under the Act exempts certain purchase and sale transactions otherwise prohibited by section 17(a) if an affiliation exists solely by reason of having a common investment adviser, common directors, and/or common officers, provided, among other requirements, that the transaction involves a cash payment against prompt delivery of the security. Rule 17a–7 is not available for the Conversion because WTC and Wilmington Trust may be deemed to have direct or indirect beneficial interest (either as sponsor of an Affiliated Plan or because WTC's employees or its affiliates' employees are participants in the Affiliated Plans) in the CIFs in excess of give percent of the assets of the CIFs, which creates an affiliation ''not solely by reason of'' having common investment adviser, common directors, and/or common officers. In addition, the Conversion will be effected as an in-kind transfer, rather than in cash.

3. Rule 17a–8 under the Act exempts certain mergers, consolidations, and sales of assets of registered investment companies from the provisions of section 17(a) of the Act if an affiliation exists solely be reason of having a common investment adviser, common directors, and/or common officers, provided, among other requirements, that the board of directors of each investment company makes certain determinations. Rule 17a–8 is not available for the Conversion because the CIFs are not registered investment companies and because the CIFs and the Funds have affiliations other than those covered by the rule.

4. Section 17(b) of the Act provides that the Commission shall exempt a proposed transaction from section 17(a) if evidence establishes that: (a) the terms of the proposed transaction are reasonable and fair and do not involve overreaching; (b) the proposed transaction is consistent with the policy of the registered investment company involved; and (c) the proposed transaction is consistent with the general purposes of the Act.

5. Section 6(c) provides that the Commission may exempt any person or transaction from any provision of the Act or any rule thereunder to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

6. Applicants seek an order under sections 6(c) and 17(b) of the Act to permit the Proposed Transactions and Future Transactions. Applicants submit that the proposed transactions satisfy the standards for relief under sections 6(c) and 17(b). Applicants assert that the terms of the Proposed Transactions are reasonable and fair and do not involve overreaching on the part of any applicant; the investment objectives, policies, and restrictions of the CIFs are compatible with and substantially similar to the applicable Funds' investment objectives, policies, and restrictions; and the Proposed Transactions and the requested exemption are in the public interest, consistent with the protection of investors and the purposes fairly intended by the policies and provisions of the Act.

7. Applicants agree to comply with 17a–7 and 17a–8 to the extent possible. Applicants state that the Proposed Transactions are in accordance with procedures previously adopted by the Funds' board of trustees sthe ''Boards'') pursuant to rule 17a–7(e), and the provisions of rule 17a–7(b), (c), (d), and (f) will be satisfied. The Proposed Transactions will take place as in-kind transfers from the CIFs to the Funds, rather than cash transactions as required

[1] As a ''bank'' within the meaning of section 202(a)(2) of the Investment Advisers Act of 1940 (the ''Advisers Act''), WTC is excluded from the definition of an investment adviser in section 202(a)(11) of the Advisers Act and, accordingly, is exempt from the registration requirements of section 203 of the Advisers Act.

by rule 17a–7(a). Applicants assert that if the Proposed Transactions were effected in cash, the CIFs and the Plans would have to bear unnecessary expense and inconvenience in transferring assets to the Funds. In addition, in order for the Conversion to take place, the Boards, including a majority of the disinterested members, shall have determined that the participation of each Portfolio in the Proposed Transactions is in the best interests of that Portfolio and that the interests of existing shareholders of the Portfolio will not be diluted as a result of the Conversion. Such findings and the basis on which they were made will be fully recorded by the Funds.

8. Applicants also state that the Plans are all employee benefit plans subject to the Employment Retirement Income Security Act of 1974 (''ERISA''). Section 406(a) of ERISA prohibits certain types of transactions between a plan and ''parties in interest'' (such as a plan fiduciary, a service provider, or an employer whose employees are covered by the plan). Because WTC is a fiduciary of the Affiliated Plans and the adviser to the Portfolios, the Conversion would be prohibited by section 406 of ERISA. WTC plans to submit an application for an exemption to the Department of Labor (''DOL''). To comply with the anticipated requirements for the exemption, the Conversions will be approved by each Affiliated Plan's employee benefit review committee (the ''Committee''), which serves as a fiduciary for the Plan. In addition, if required by the DOL, the Conversion will be reviewed and approved by a fiduciary independent of WTC, Wilmington trust and their affiliates (an ''Independent Fiduciary''), who will be retained solely for the purpose of determining the fairness to the Affiliated Plans of the Proposed Transactions.

Applicants' Conditions

Applicants agree that any order granting the requested relief will be subject to the following conditions:

1. The Proposed Transactions will comply with the terms of Rule 17a–7(b)–(f).

2. The Proposed Transactions will not occur unless and until: (a) the Boards (including a majority of their disinterested members) and the Committee and any Independent Fiduciary for the Affiliated Plans required by the DOL find that the Proposed Transactions are in the best interests of the Portfolios and the Plans, respectively; and (b) the Boards (including a majority of the disinterested members) find that the interests of the existing shareholders of the Portfolios will not be diluted as a result of the Proposed Transactions. These determinations and the basis upon which they are made will be recorded fully in the records of the Funds and the Affiliated Plans, respectively.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–15154 Filed 6–5–98; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94–409, that the Securities and Exchange Commission will hold the following open meeting during the week of June 8, 1998.

An open meeting will be held on Friday, June 12, 1998, at 11 a.m.

The subject matter of the open meeting scheduled for Friday, June 12, 1998, at 11 a.m., will be:

Consideration of whether to propose for pubic comment an amendment to rule 102(e) of the Commission's Rules of Practice clarifying the Commission's standard for determining when accountants engage in ''improper professional conduct.'' For further information, please contact, Michael J. Kigin, Associate Chief Accountant, Office of Chief Accountant at (202) 942–4400.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact:

The Office of the Secretary at (202) 942–7070.

Dated: June 4, 1998.

Jonathan G. Katz,

Secretary.

[FR Doc. 98–15362 Filed 6–4–98; 3:52 pm]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–40050; File No. SR–NASD–98–37]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to SelectNet Fees

June 1, 1998.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on May 14, 1998, the National Association of Securities Dealers, Inc. (''NASD'' or ''Association'') through its wholly owned subsidiary, the Nasdaq Stock Market, Inc. (''Nasdaq'') filed with the Securities and Exchange Commission (''Commission'' or ''SEC'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NASD. 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

Nasdaq is herewith filing a proposed rule change to extend, through August 31, 1998, the fees currently charged under NASD Rule 7010(1) for the execution of transactions in SelectNet. Under the proposed extension, SelectNet fees would continue to be assessed in the following manner: (1) $1.00 will be charged for each SelectNet order entered and directed to one particular market participant that is subsequently executed in whole or in part; (2) no fee will be charged to a member who receives and executes a directed SlectNet order; (3) the existing $2.50 fee will remain in effect for both sides of executed SelectNet orders that result from broadcast messages; and (4) a $.025 fee will remain in effect for any member who cancels a SelectNet order. If no further action is taken, SelectNet fees will revert to their original $2.50 per-side level on September 1, 1998.

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 NASD included statements concerning the purpose of and basis for the proposed rule change. The text of these statements may be examined at places specified in Item IV below. The self-

[1] 15 U.S.C. 78s(b)(1).

regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

Nasdaq is proposing to extend its current SelectNet fees. The reasons for Nasdaq's prevailing SelectNet fee structure were fully explained in its original fee structure proposal filed with the Commission in February of this year.[2] Since then, SelectNet usage has continued at significantly elevated levels, averaging over 100,000 daily executions in both February and March of 1998. As such, Nasdaq believes that an extension of these reduced fees, through August 31, 1998, is warranted. Under the proposed extension, SelectNet fees would continue to be assessed in the following manner: (1) $1.00 will be charged for each SelectNet order entered and directed to one particular market participant that is subsequently executed in whole or in part; (2) no fee will be charged to a member who receives and executes a directed SelectNet order; (3) the existing $2.50 fee will remain in effect for both sides of executed SelectNet orders that result from broadcast messages; and (4) a $0.25 fee will remain in effect for any member who cancels a SelectNet order. Nasdaq will continue to monitor and review SelectNet activity to determine if future changes to its SelectNet fee structure are appropriate. If no further action is taken, SelectNet fees will revert to their original $2.50 per-side level on September 1, 1998.

For the reason set forth above, Nasdaq believes that the proposed rule change is consistent with Section 15A(b)(5) of the Act,[3] which requires that the rules of the NASD provide for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system which the NASD operates or controls.

B. Self-Regulatory Organization's Statement on Burden on Competition

The NASD believes that the proposed rule change will not result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Comments were neither solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

This filing applies to the assessment of SelectNet fees to NASD members, and thus the proposed rule change is effective immediately upon filing pursuant to Section 19(b)(3)(A)(ii) of the Act and subparagraph (e)(2) of Rule 19b–4 thereunder [4] because the proposal is establishing or changing a due, fee or other charge. At any time within 60 days of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.[5]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposal is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to the File No. SR–NASD–98–37 and should be submitted by June 29, 1998.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[6]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–15078 Filed 6–5–98; 8:45 am]

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[2] Securities and Exchange Act Release No. 39641 (February 10, 1998), 63 FR 8241 (February 18, 1998). Nasdaq's current reduced fee structure was approved for a 90-day trial period, commencing the day that proposal was published in the **Federal Register** and would lapse on May 18, 1998, if not extended by this filing.

[3] 15 U.S.C. 78o–3(b)(5).

[4] 15 U.S.C. 78s(b)(3)(A) and 17 CFR 240.19b–4(e)(2).

[5] In reviewing the proposal, the Commission has considered the proposal's impact on efficiency, competition, and capital formation. *see* 15 U.S.C. 78c(f).

[6] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–40048; File No. SR–NASD–98–35]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change of Proposed Rule Change by National Association of Securities Dealers., Inc, Concerning Books and Records Requirements

May 29, 1998.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 [2] thereunder, notice is hereby given that on May 14, 1998, the National Association of Securities Dealers, Inc. (''NASD'' or ''Assocation''), filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items, I, II, and III below, which Items have been prepared by NASD Regulation, Inc. (''NASD Regulation'').[3] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons and to grant accelerated approval of the proposed rule change.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

NASD Regulation is proposing to amend Rule 3110 (the ''Books and Records Rule'') of the Conduct Rules of the NASD to: (1) amend the definition of ''institutional account'' to include the accounts of investment advisers that under the National Securities Markets Improvements Act of 1996 [4] and new rules adopted by the SEC, are now

[1] 15 U.S.C. 78s(b)(1) (1994).

[2] 17 CFR 240.19b–4 (1997).

[3] This proposal rule change replaces proposed rule change File No. SR–NASD–98–30 which has been withdrawn. Letter from John M. Ramsay, Vice President and Deputy General Counsel, NASD Regulation, to Katherine A. England, Assistant Director, Division of Market Regulation, SEC, dated May 7, 1998. The proposed rule change was originally filed on May 7, 1998, but required a technical amendment to clarify the effective date. Letter from John M. Ransay, Vice President and Deputy General Counsel, NASD Regulation to Katherine A. England, Assistant Director, Division of Market Regulation, SEC, dated May 14, 1998.

[4] Pub. L. No. 104–290, 110 Stat. 3416 (1996).

required to register with the states; and (2) exclude certain customer accounts from the requirement to obtain certain tax and employment information from the customer. Below is the text of the proposed rule change. Proposed new language is italicized; proposed deletions are bracketed.

3100. BOOKS AND RECORDS, AND FINANCIAL CONDITION

3110. Books and Records

(a) Requirements

Each member shall keep and preserve books, accounts, records, memoranda, and correspondence in conformity with all applicable laws, rules, regulations and statements of policy promulgated thereunder and with the Rules of this statements of policy promulgated thereunder and with the Rules of this Association.

* * * * *

(c) Customer Account Information

Each member shall maintain accounts opened after January 1, 1991 as follows:

(1) for each account, each member shall maintain the following information:

(A) customer's name and residence;

(B) whether customer is of legal age;

(C) signature of the registered representative introducing the account and signature of the member or partner, officer, or manager who accepts the account; and

(D) if the customer is a corporation, partnership, or other legal entity, the names of any persons authorized to transact business on behalf of the entity;

(2) for each account, other than an institutional account, and accounts in which investments are limited to transactions in [money market funds] *open-end investment company shares that are not recommended by the member or its associated persons,* each member shall also make reasonable efforts to obtain, prior to the settlement of the initial transaction in the account, the following information to the extent it is applicable to the account:

(A) customer's tax identification or Social Security number;

(B) occupation of customer and name and address of employer; and

(C) whether customer is an associated person of another member;

(3) for discretionary accounts, in addition to compliance with subparagraphs (1) and (2) above, and Rule 2510(b) of these Rules, the member shall:

(A) obtain the signature of each person authorized to exercise discretion in the account;

(B) record the date such discretion is granted; and

(C) in connection with exempted securities other than municipals, record the age or approximate age of the customer; and

(4) for purposes of this Rule and Rule 2310 the term ''institutional account'' shall mean the account of:

(A) a bank, savings and loan association, insurance company, or registered investment company;

(B) an investment adviser registered *either with the Securities and Exchange* Commission under Section 203 of the Investment Advisers Act of 1940 *or with a state securities commission (or any agency or office performing like functions);* or

(C) any other entity (whether a natural person, corporation, partnership, trust or otherwise) with total assets of at least $50 million.

* * * * *

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 NASD 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. NASD Regulation 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. Background

The Books and Records Rule requires members to obtain certain information for all accounts. In addition, the Rule requires that for accounts other than institutional accounts and accounts limited to money market funds members must make reasonable attempts to obtain: (i) a customer's tax identification or social security number; (ii) a customer's occupation and the name and address of the employer; and (iii) information about whether the customer is an associated person of another member (''Retail Customer Information''). An ''institutional account'' is defined in the Rule to include the account of an investment adviser registered with the SEC.

a. *Accounts of Registered Investment Advisers.* The National Securities Markets Improvement Act of 1996 [5] and new rules recently adopted by the SEC under the Investment Advisers Act of 1940 (''Advisers Act'') [6] allocate regulatory oversight of investment advisers between the SEC and the states. Under the new rules, investment advisers to registered investment companies and investment advisers with assets under management of at least $25 million generally will register exclusively with the SEC. Most other investment advisers will register exclusively with the states.

The Books and Records Rule provides that for purposes of both the Books and Records Rule and NASD Conduct Rule 2310 (''Suitability Rule''), the term ''institutional account'' includes the account of an investment adviser registered with the SEC.

Consequently, advisory accounts that were considered to be ''institutional accounts'' when the Retail Customer Information provision in the Books and Records Rule was adopted now are technically excluded from the definition because they have migrated to state regulation.

b. *Accounts Limited to Mutual Fund Shares.* At its meeting on February 23, 1998, the Investment Companies Committee, a standing committee of the NASD Regulation Board of Directors, considered a proposal by the NASD Regulation staff to amend the Books and Records Rule to exclude directly marketed mutual funds from the obligation to obtain Retail Customer Information. The Committee concurred with the NASD Regulation staff's conclusion that the requirement to obtain Retail Customer Information is burdensome and largely unnecessary as it applies to members who distribute directly marketed mutual funds and other unsolicited accounts that are limited to mutual fund shares and for which no recommendations are made. A primary purpose of obtaining Retail Customer Information is to help a member evaluate the suitability of a recommendation. Consequently, the same regulatory requirement does not apply with respect to accounts that are limited to mutual funds and for which no recommendations are made. Members would continue to be required to make reasonable efforts to obtain Retail Customer Information for retail accounts that are not subject to these limitations. At its meeting on March 19, 1998, the NASD Regulation Board of Directors approved proposed changes to amend NASD Conduct Rule 3110 and authorized the filing of the proposed rule change with the SEC.

[5] Pub. L. 104–290, 110 Stat. 3416 (1996).

[6] 15 U.S.C. 80b (1994).

2. Purpose

a. *Institutional Account Definition.* The Books and Records Rule requires members to maintain certain information for all retail and institutional customer accounts. For retail accounts that are not limited to money market funds, members also must make reasonable efforts to obtain Retail Customer Information. Members do not have to seek this information with respect to their institutional accounts.

Similarly, the Suitability Rule requires members to make reasonable efforts to obtain certain information, such as the customer's financial status and investment objectives, from *retail* customers prior to the execution of a transaction. IM–2310–3 describes members' suitability obligation in making recommendations to *institutional* customers. The primary considerations under IM–2310–3 include the customer's capability to evaluate risk independently and the extent to which individual judgment is exercised when making investment decisions.

The proposed rule change would continue to treat the state-regulated advisory accounts as ''institutional accounts'' for purposes of the Books and Records Rule and the Suitability Rule. The proposed rule change also would amend the Books and Records Rule to take into account the bifurcation of investment advisers regulation between the SEC and the states by changing the definition of ''institutional account'' to include both investment advisers required to register with the SEC and those required to register with the states.

b. *Accounts Limited to Transactions in Mutual Fund Shares.* The requirement in the Books and Records Rule to obtain customer employment information was designed to assist members in making suitable recommendations. This information is unnecessary for those accounts that are limited to mutual fund transactions that are not recommended by the member or its associated persons. With regard to the requirement in the Books and Records Rule to obtain a customer's tax identification or social security number, the tax laws already impose obligations on funds to obtain this information.[7] Finally, the requirement to determine whether a customer is an associated person of another member also is unnecessary because NASD Conduct Rule 3050, which provides the obligations of executing members when the member knows that a person associated with an employing member has an interest in an account, expressly excludes accounts that are limited to transactions in mutual fund shares.

Of course members would be free to request Retail Customer Information from their customers to meet any other regulatory obligations that may exist.

3. Basis

NASD Regulations believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act, which require, among other things, that the Association's rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market, and, in general, to protect investors and the public interest. NASD Regulation believes the proposed amendments to the Books and Records Rule that eliminate requirements to obtain Retail Customer Information for institutional accounts and accounts that are limited to mutual fund shares and for which no recommendations are made are consistent with these principles.

B. Self-Regulatory Organization's Statement on Burden on Competition

The NASD believes that the proposed rule change will not result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

NASD Regulation has requested that the Commission find good cause pursuant to Section 19(b)(2) for approving the proposed rule change prior to the 30th day after publication in the **Federal Register**.

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.[8] Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of this filing will also be available for inspection and copying at the NASD. All submissions should refer to File No. SR–NASD–98–35 and should be submitted June 29, 1998.

V. Commission's Findings and Order Granting Accelerated Approval of the Proposed Rule Change

The Commission finds that the proposed rule change is consistent with the requirements of Section 15A(b)(6) of the Act and the rules and regulations thereunder which require, among other things, that the Association's rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market, and, in general, to protect investors and the public interest. The Commission believes that the proposed rule change is consistent with the Act in that the proposed rule change protects investors and the public interest by preserving the current operation of the Books and Records Rule with respect to institutional accounts registered with the states. The proposed rule change also facilitates transactions in securities by eliminating requirements to obtain Retail Customer Information for institutional accounts and accounts that are limited to mutual fund shares for which no recommendations are made.

The Commission also finds good cause for approving the proposed rule change prior to the 30th day after publication of notice of filing thereof to ensure that the proposed rule change appropriately preserves the current operation of the Books and Records Rule and the Suitability Rule with respect to institutional accounts. The Commission believes, therefore, that granting accelerated approval of the proposed

[7] If a customer refuses to provide tax identification, IRS rules require a fund to withhold 31% of all redemptions or distributions.

[8] In reviewing this proposal, the Commission has considered the proposed rule change's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

rule change is appropriate and consistent with the Act.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change, SR–NASD–97–35 be, and hereby is, approved on an accelerated basis.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[9]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–15079 Filed 6–5–98; 8:45 am]

BILLING CODE 8010–01–M

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3082]

State of Kentucky; (Amendment #2)

In accordance with a notice from the Federal Emergency Management Agency dated May 13, 1998, the above-numbered Declaration is hereby amended to include Pike County in the State of Kentucky as a disaster area due to damages caused by severe storms, tornadoes, and flooding beginning on April 16, 1998 and continuing through May 10, 1998.

In addition, applications for economic injury loans from small businesses located in the following contiguous counties may be filed until the specified date at the previously designated location: McDowell and Mingo Counties in West Virginia, and Buchanon, Dickenson, and Wise Counties in Virginia. Any counties contiguous to the above-name primary county and not listed herein have been previously declared.

All other information remains the same, i.e., the deadline for filing applications for physical damage is June 28, 1998 and for economic injury the termination date is January 29, 1999.

The economic injury number for West Virginia is 987600 and for Virginia the economic injury number is 987700.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: May 21, 1998.

Bernard Kulik,

Associate Administrator for Disaster Assistance.

[FR Doc. 98–15170 Filed 6–5–98; 8:45 am]

BILLING CODE 8025–01–U

[9] 17 CFR 200.30–3(a)(12) (1997).

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3078]

State of Tennessee; (Amendment #3)

In accordance with a notice from the Federal Emergency Management Agency dated May 18, 1998, the above-numbered Declaration is hereby amended to establish the incident period for this disaster as beginning on April 16, 1998 and continuing through May 18, 1998.

All other information remains the same, i.e., the deadline for filing applications for physical damage is June 19, 1998 and for economic injury the termination date is January 20, 1999.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: May 21, 1998.

Bernard Kulik,

Associate Administrator for Disaster Assistance.

[FR Doc. 98–15169 Filed 6–5–98; 8:45 am]

BILLING CODE 8025–01–U

DEPARTMENT OF TRANSPORTATION

Aviation Proceedings, Agreements Filed During the Week Ending May 29, 1998

The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C. Sections 412 and 414. Answers may be filed within 21 days of date of filing.

Docket Number: OST–98–3889.

Date Filed: May 28, 1998.

Parties: Members of the International Air Transport Association.

Subject: PTC12 Telex Mail Vote 942, Zimbabwe-US/Canada/Mexico fare adjustment, r1-First/Intermediate fares, r2-Normal economy/special fares, Intended effective date: July 1, 1998.

Docket Number: OST–98–3890.

Date Filed: May 28, 1998.

Parties: Members of the International Air Transport Association.

Subject: COMP Telex Mail Vote 941 Reso 010L, Zimbabwe fares—(excluding US/Canada/Mexico), Intended effective date: July 1, 1998.

Dorothy W. Walker.

Federal Register Liaison.

[FR Doc. 98–15151 Filed 6–5–98; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

[USCG–1998–3897]

Merchant Marine Personnel Advisory Committee; Vacancies

AGENCY: Coast Guard, DOT.

ACTION: Request for applications.

SUMMARY: The Coast Guard seeks applications for appointment to membership on the Merchant Marine Personnel Advisory Committee (MERPAC). MERPAC provides advice and makes recommendations to the Coast Guard on matters related to the training, qualification, licensing, certification, and fitness of seamen serving in the U.S. merchant marine.

DATES: Applications must reach the Coast Guard on or before August 1, 1998.

ADDRESSES: You may request an application form by writing to Commandant (G–MSO–1), U.S. Coast Guard, 2100 Second Street, SW., Washington, DC 20593–0001; by calling 202–267–0229; or by faxing 202–267–4570. Submit application forms to the same address. This notice is available on the Internet at http://dms.dot.gov.

FOR FURTHER INFORMATION CONTACT: For questions on this notice, contact Commander Steven J. Boyle, Executive Director of MERPAC, or Mr. Mark C. Gould, Assistant to the Executive Director, telephone 202–267–6890, fax 202–267–4570. For questions on this docket, contact Carol Kelly, Coast Guard Dockets Team Leader, or Paulette Twine, Chief, Documentary Services Division, U.S. Department of Transportation, 202–366–9329.

SUPPLEMENTARY INFORMATION: MERPAC is chartered under the Federal Advisory Committee Act, 5 U.S.C. App. 2. It provides advice and makes recommendations to the Assistant Commandant for Marine Safety and Environmental Protection, on merchant marine personnel issues such as implementation of the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, 1978, types of marine simulation utilized in lieu of sea service for marine licenses, and regional examination center activities.

MERPAC meets at least twice a year, once at Coast Guard Headquarters, Washington, DC, and once elsewhere in the country. Its subcommittees and working groups may also meet to consider specific problems as required.

The Coast Guard will consider applications for six positions that expire

on January 31, 1999. Applicants with one or more of the following backgrounds are needed to fill the positions:

(a) Licensed Deck Officer.

(b) Shipping Company employed in ship operation management.

(c) Licensed Engineering Officer.

(d) Pilot.

(e) Able Bodied Seaman.

(f) Marine Educator associated with a maritime academy.

Each member serves for a term of 3 years. No member may hold more than two consecutive 3-year terms. MERPAC members serve without compensation from the Federal Government; however, travel reimbursement and per diem will be provided.

In support of the policy of the Department of Transportation on gender and ethnic diversity, the Coast Guard encourages applications from qualified women and members of minority groups.

Applicants selected may be required to complete a Confidential Financial Disclosure Report (OGE Form 450). Neither the report nor the information it contains may be released to the public, except under an order issued by a Federal court or as otherwise provided under the Privacy Act (5 U.S.C. 552a).

Dated: May 28, 1998.

Joseph J. Angelo,

Director of Standards, Marine Safety and Environmental Protection.

[FR Doc. 98–15141 Filed 6–5–98; 8:45 am]

BILLING CODE 4910–15–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

[USCG–1998–3917]

Year 2000 (Y2K) Problems in the Maritime Industry

AGENCY: Coast Guard, DOT.

ACTION: Notice; solicitation of comments.

SUMMARY: ''Y2K'' is the acronym for ''Year 2000'' and the problems which may occur in computer software and equipment with computer chips before, on or after January 1, 2000. The effects on equipment could be disastrous. Consequently, the Coast Guard has arranged to serve as a clearing house for any lessons learned or problems identified with this issue as it relates to the maritime industry.

DATES: This docket will remain open until January 1, 2002.

ADDRESSES: You may mail comments to the Docket Management Facility, [USCG–1998–3917], U.S. Department of Transportation, Room PL–401, 400 Seventh Street SW., Washington, DC 20590–0001, or deliver them to room PL–401, located on the Plaza Level of the Nassif Building at the same address between 10 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is (202) 366–9329.

The Docket Management Facility maintains the public docket for this notice. Comments will become part of this docket and will be available for inspection or copying at room PL–401, located on the Plaza Level of the Nassif Building at the above address between 9:30 a.m. and 2 p.m., Monday through Friday, except Federal holidays. You may also access this docket on the Internet at http://dms.dot.gov.

FOR FURTHER INFORMATION CONTACT: For questions concerning the issues discussed in this notice contact John Schonacher at the National Maritime Center, (703) 235–0018. For questions concerning the Docket Management Service contact Paulette Twine, Chief, Documentary Services Division, U.S. Department of Transportation, telephone (202) 366–9329.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard encourages interested person to participate in discussions regarding the Y2K problem by submitting written data, views, or arguments. Persons submitting comments should include their names and addresses, identifying this notice and the specific section of this notice to which each comment applies, and give the reason for each comment. Please submit all comments and attachments in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. Persons wanting acknowledgment of receipt of comments should enclose stamped, self-addressed postcards or envelopes.

Background and Purpose

''Y2K'' is the acronym for ''Year 2000'' and the problems which may occur in computer software and equipment with computer chips at the onset of the year 2000. This phenomenon is also referred to as the ''Millennium Bug.'' Either term may be used to describe the potential failure of software and electronic devices prior to, on, or after January 1, 2000.

The potential exists because of the widespread industry practice of using two digits, not four, to represent the year in computer databases, software applications, and hardware chips to store or calculate dates. Many systems will cease ''00'' in the year 2000 because they will treat the year as 1900 instead. The results may be disastrous. For example, envision the scenario of a generator or main engine which automatically shuts down because the automated control system believes it has not received maintenance for 97 years instead of 3 years.

The Y2K problem is not confined to large mainframe computer systems. Personal computers and electronics embedded with microprocessors are also at risk. ''Smart Devices'' on board ships, ranging from simple items such as timers, to more sophisticated systems like electronic cargo handling systems, radar systems, and GPS, could be affected and are at risk from this threat.

This problem is not limited to U.S. and foreign flag ships, but also affects port facilities of every kind. In addition to shipboard systems with embedded microprocessors or date sensitive lines of codes, the effects of Y2K on related shoreside systems should be considered. These include, but are not limited to crane, cargo systems, servicing equipment, firefighting and scheduling equipment.

The insidious nature of this problem is compounded by the fact that identical devices, performing well today, may act very differently in the year 2000. This potentially drastic difference in performance is due to the fact that they each may use a very slightly different chip. For this reason, experts recommend that any ''smart'' system or electronic device be checked out.

A recent survey found that only one in six of the corporations surveyed have begun implementing a Y2K fix. Many executives apparently do not understand the magnitude of the problem or the complexity and costs involved with fixing it. Corporations and government agencies will reportedly spend over $200 billion, by even conservative estimates, to fix the Y2K problem.

In addition to the Coast Guard's Marine Safety Y2K website, the International Chamber of Shipping has a site at http://www.ship2000.com. This site provides a comprehensive look at Y2K issues in the maritime industry, and contains links to other maritime Y2K sites.

Due to the potentially significant impact of this problem, the Coast Guard has arranged to serve as a clearing house for any lessons learned or problems identified with this issue as it relates to the maritime industry. The comment period will be open until January 1, 2002, since we anticipate that problems may still occur at least two years after

the turn of the century. Submitters are encouraged to provide additional comments as new problems and solutions are found.

We would also like to determine the level of support for Y2K maritime conferences in various cities. In February, 1998, the Coast Guard co-sponsored a Y2K Maritime Issues Conference with the New York Maritime Association Port of NY/NJ. This widely attended information-sharing conference drew representation from a large cross-section of industry. Since the Y2K problem will affect all sectors of industry, future similar conferences may be beneficial to stakeholders. The Coast Guard may be interested in cosponsoring such events in the future.

We would specifically like comments in the following areas:

(1) Identification of Y2K problems.

(2) Solutions to and lessons learned about Y2K problems.

(3) Resources available to address Y2K issues.

(4) Your interest in attending Y2K maritime conferences in Washington, DC and other cities.

All comments, which will be maintained on the Docket Management System, can be accessed at http://dms.dot.gov. Also, the Coast Guard's Marine Safety Y2K Web Site at: http://www.uscg.mil/hq/g-m/nmc/y2k.htm can be accessed to obtain information on comments received.

Dated: June 2, 1998.

Joseph J. Angelo,

Director of Standards, Marine Safety and Environmental Protection.

[FR Doc. 98–15179 Filed 6–5–98; 8:45 am]

BILLING CODE 4910–15–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Texarkana Regional Airport, Texarkana, AR

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Texarkana Regional Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

DATES: Comments must be received on or before July 8, 1998.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate copies to the FAA at the following address: Mr. Ben Guttery, Federal Aviation Administration, Southwest Region, Airports Division, Planning and Programming Branch, ASW–610D, Fort Worth, Texas 76193–0610.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Robert L. McDaniel, Airport Director, at the following address: Mr. Robert L. McDaniel, Airport Director, Texarkana Regional Airport Authority, 201 Airport Drive, Texarkana, AR–TX 71854.

Air carriers and foreign air carriers may submit copies of the written comments previously provided to the Airport under § 158.23 of Part 158.

FOR FURTHER INFORMATION CONTACT: Mr. Ben Guttery, Federal Aviation Administration, Southwest Region, Airports Division, Planning and Programming Branch, ASW–610D, Fort Worth, Texas 76193–0610, (817) 222–5614.

The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Texarkana Regional Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

On May 29, 1998, the FAA determined that the application to impose and use the revenue from a PFC submitted by the Airport was substantially complete within the requirements of § 158.25 of Part 158. The FAA will approve or disapprove the application, in whole or in part, no later than September 25, 1998.

The following is a brief overview of the application:

Level of the proposed PFC: $3.00.

Proposed charge effective date: December 1, 1998.

Proposed charge expiration date: May 1, 2003.

Total estimated PFC revenue: $412,532.00.

PFC application number: 98–02–C–00–TXK.

Brief description of proposed project(s):

Projects to Impose and Use PFC's

Safety Area Improvements, North Apron Expansion, Runway 4/22 Overlay, Security/Perimeter Fencing, and PFC Application Costs.

Proposed class or classes of air carriers to be exempted from collecting PFC's:

None.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT** and at the FAA regional Airports office located at: Federal Aviation Administration, Southwest Region, Airports Division, Planning and Programming Branch, ASW–610D, 2601 Meacham Blvd., Fort Worth, Texas 76137–4298.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at Texarkana Regional Airport.

Issued in Fort Worth, Texas on May 29, 1998.

Naomi L. Saunders,

Manager, Airports Division.

[FR Doc. 98–15143 Filed 6–5–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0096]

Agency Information Collection Activities Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C., 3501 *et seq.*), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, has submitted the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before July 8, 1998.

FOR FURTHER INFORMATION OR A COPY OF THE SUBMISSION CONTACT: Ron Taylor, Information Management Service (045A4), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420, (202) 273–8015 or FAX (202) 273–5981. Please refer to ''OMB Control No. 2900–0096.''

SUPPLEMENTARY INFORMATION:

Title: Loan and Cash Surrender Values, VA Form 29–5772.

OMB Control Number: 2900–0096.

Type of Review: Extension of a currently approved collection.

Abstract: VA Form 29–5772 is used by the insured to request a loan or cash surrender value on his/her Government life insurance. VA uses the information to initiate the processing of the insured's request.

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 **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on December 31, 1997 at page 68357.

Affected Public: Individuals or households.

Estimated Annual Burden: 5,250 hours.

Estimated Average Burden Per Respondent: 10 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 31,500.

Send comments and recommendations concerning any aspect of the information collection to VA's OMB Desk Officer, Allison Eydt, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–4650. Please refer to ''OMB Control No. 2900–0096'' in any correspondence.

Dated: March 31, 1998.

By direction of the Sectretary.

Donald L. Neilson,

Director, Information Management Service.

[FR Doc. 98–15113 Filed 6–5–98; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0093]

Agency Information Collection Activities Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C., 3501 *et seq.*), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, has submitted the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATE: Comments must be submitted on or before July 8, 1998.

FOR FURTHER INFORMATION OR A COPY OF THE SUBMISSION CONTACT: Ron Taylor, Information Management Service (045A4), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420, (202) 273–8015 or FAX (202) 273–5981. Please refer to ''OMB Control No. 2900–0093.''

SUPPLEMENTARY INFORMATION:

Title: Request for Organizational Data from Builder, VA Form Letter 26–312.

OMB Control Number: 2900–0093.

Type of Review: Extension of a currently approved collection.

Abstract: VA will refuse to appraise properties if it is determined that any party or parties involved, or financially interested in the construction of a unit, have participated in the construction of units sold to veterans which involved substantial deficiencies in construction or a failure or indicated inability to discharge contractual obligations to the veteran who contracted for the construction of the unit. The form letter is completed by builders and sponsors to identify individuals who have controlling, proprietary, or financial interest in their company. The information is used by VA to determine eligibility for participation in the Loan Guaranty Program.

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 **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on January 29, 1998 at page 4524.

Affected Public: Business or other for-profit.

Estimated Annual Burden: 4,000 hours.

Estimated Average Burden Per Respondent: 30 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 8,000.

Send comments and recommendations concerning any aspect of the information collection to VA's OMB Desk Officer, Allison Eydt, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–4650. Please refer to ''OMB Control No. 2900–0093'' in any correspondence.

Dated: March 31, 1998.

By direction of the Secretary.

Donald L. Neilson,

Director, Information Management Service.

[FR Doc. 98–15114 Filed 6–5–98; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0525]

Agency Information Collection Activities Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C., 3501 *et seq.*), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, has submitted the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATE: Comments must be submitted on or before July 8, 1998.

FOR FURTHER INFORMATION OR A COPY OF THE SUBMISSION CONTACT: Ron Taylor, Information Management Service (045A4), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420, (202) 273–8015 or FAX (202) 273–5981. Please refer to ''OMB Control No. 2900–0525.''

SUPPLEMENTARY INFORMATION:

Title: VA MATIC, VA Form 29–0165.

OMB Control Number: 2900–0525.

Type of Review: Extension of a currently approved collection.

Abstract: The form is used to change the account number and/or bank from which a VA MATIC deduction was previously authorized. The information is used by VBA to process the veteran's request.

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 **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on January 29, 1998 at page 4525.

Affected Public: Individuals or households.

Estimated Annual Burden: 1,250 hours.

Estimated Average Burden Per Respondent: 15 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 5,000.

Send comments and recommendations concerning any aspect of the information collection to VA's OMB Desk Officer, Allison Eydt, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–4650. Please refer to ''OMB Control No. 2900–0525'' in any correspondence.

Dated: March 31, 1998.

By direction of the Secretary.

Donald L. Neilson,

Director, Information Management Service.

[FR Doc. 98–15115 Filed 6–5–98; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

Summary of Precedent Opinions of the General Counsel

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Department of Veterans Affairs (VA) is publishing a summary of legal interpretations issued by the Department's General Counsel involving veterans' benefits under laws administered by VA. These interpretations are considered precedential by VA and will be followed by VA officials and employees in future claim matters. The summary is published to provide the public, and, in particular, veterans' benefit claimants and their representatives, with notice of VA's interpretation regarding the legal matter at issue.

FOR FURTHER INFORMATION CONTACT: Jane L. Lehman, Chief, Law Library, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 273–6558.

SUPPLEMENTARY INFORMATION: VA regulations at 38 CFR 2.6(e)(9) and 14.507 authorize the Department's General Counsel to issue written legal opinions having precedential effect in adjudications and appeals involving veterans' benefits under laws administered by VA. The General Counsel's interpretations on legal matters, contained in such opinions, are conclusive as to all VA officials and employees not only in the matter at issue but also in future adjudications and appeals, in the absence of a change in controlling statute or regulation or a superseding written legal opinion of the General Counsel.

VA publishes summaries of such opinions in order to provide the public with notice of those interpretations of the General Counsel that must be followed in future benefit matters and to assist veterans' benefit claimants and their representatives in the prosecution of benefit claims. The full text of such opinions, with personal identifiers deleted, may be obtained by contacting the VA official named above.

VAOPGCPREC 35–97

Question Presented

Does the failure of the Department of Veterans Affairs (VA) to render a timely decision regarding entitlement to service-connected burial benefits following a veteran's death in 1977 provide a basis for awarding dependency and indemnity compensation (DIC) retroactive to the date of death?

Held

The failure of the Department of Veterans Affairs to render a timely decision regarding entitlement to service-connected burial benefits following a veteran's death may not provide a basis for awarding retroactive payment of dependency and indemnity compensation (DIC) in a manner inconsistent with the express requirements of 38 U.S.C. § 5110, except insofar as the Secretary may order such benefits pursuant to his equitable-relief authority under 38 U.S.C. § 503(a). Pursuant to 38 U.S.C. § 5110(a) and (d)(1), an award of DIC may be made effective from the month of death only if the claimant filed an application for DIC within one year after the date of death, or filed an informal claim for DIC within such period, followed by a timely formal application for DIC which may, under 38 C.F.R. § 3.155(a), be deemed to have been filed within one year after the date of death.

Effective Date: December 9, 1997.

VAOPGCPREC 36–97

Questions Presented

a. Whether Diagnostic Code (DC) 5293, intervertebral disc syndrome (IDS), is based upon loss of range of motion, and therefore whether 38 C.F.R. §§ 4.40 and 4.45 are applicable in determining the extent of a veteran's disability due to IDS.

b. Whether 38 C.F.R. §§ 4.40 and 4.45 must be considered where a veteran receives less than the maximum schedular rating under DC 5293, but that rating corresponds to the maximum schedular rating under another diagnostic code pertaining to limitation of motion.

c. Whether 38 C.F.R. § 3.321(b) must be considered when a veteran receives less than the maximum rating under DC 5293, irrespective of whether 38 C.F.R. §§ 4.40 and 4.45 must be applied in such a case.

Held

1. Diagnostic Code (DC) 5293, intervertebral disc syndrome (IDS), involves loss of range of motion because the nerve defects and resulting pain associated with injury to the sciatic nerve may cause limitation of motion of the cervical, thoracic, or lumbar vertebrae. Therefore, pursuant to *Johnson* v. *Brown*, Vet. App. 7 (1996), 38 C.F.R. §§ 4.40 and 4.45 must be considered when a disability is evaluated under this diagnostic code.

2. When a veteran has received less than the maximum evaluation under DC 5293 based upon symptomatology which includes limitation of motion, consideration must be given to the extent of the disability under 38 C.F.R. §§ 4.40 and 4.45, even though the rating corresponds to the maximum rating under another diagnostic code pertaining to limitation motion.

3. The BVA must address entitlement to an extraschedular rating under 38 CFR 3.321(b)(1) if there is evidence of ''exceptional or unusual'' circumstances indicating that the rating schedule, including 38 CFR 4.40, 4.45, and 4.71a, may be inadequate to compensate for the average impairment of earning capacity due to IDS, regardless of the fact that a veteran may have received the maximum schedular rating under a diagnostic code based upon limitation of motion.

Effective Date: December 12, 1997.

VAOPGCPREC 37–97

Question Presented

Are attorney fees payable in cases in which the decision of the Board of Veterans' Appeals was on the issue of whether a claimant had submitted new and material evidence sufficient to reopen a claim?

Held

In a case where BVA has denied reopening of a claim for service connection based on failure to submit new and material evidence and that determination is reversed by CVA and service connection is ultimately allowed, attorney fees may be paid. In a claim where BVA has determined that new and material evidence has been submitted and has remanded the claim to the AOJ, attorney fees may not be paid because a final decision within the meaning of 38 U.S.C. 5904(c)(1) is lacking.

Effective Date: December 16, 1997.

VAOPGCPREC 38–97

Question Presented

Can the misapplication of, or failure to apply, a statutory or regulatory evidentiary presumption in a prior final decision constitute new and material evidence for purposes of reopening a previously denied claim pursuant to 38 U.S.C. 5108?

Held

The misapplication of, or failure to apply, a statutory or regulatory evidentiary presumption in a prior final decision cannot, in itself, constitute ''new and material evidence'' within the meaning of 38 U.S.C. 5108 for purposes of reopening a claim.

Effective Date: December 17, 1997.

VAOPGCPREC 39–97

Question Presented

Are reparations paid to a veteran's spouse, a victim of Nazi persecution, by the Federal Republic of Germany (FRG) countable as income for purposes of Department of Veterans Affairs (VA) pension programs and parents' dependency and indemnity compensation (DIC)?

Held

Reparations paid by the Federal Republic of Germany to individuals who were victims of Nazi persecution are not countable as income or net worth for purposes of determining eligibility for section 306, old law, and improved pension, and parents' dependency and indemnity compensation.

Date: December 22, 1997.

VAOPGCPREC 40–97

Question Presented

a. Do the amendments to 38 U.S.C. 1151 made by section 422(a) of Pub. L. No. 104–204 apply in claims filed before October 1, 1996, which are still pending on October 1, 1997?

b. Do those amendments apply in claims filed on or after October 1, 1996, but before October 1, 1997, which are still pending on the latter date?

Held

All claims for benefits under 38 U.S.C. 1151, which governs benefits for persons disabled by treatment or vocational rehabilitation, filed before October 1, 1997, must be adjudicated under the provisions of section 1151 as they existed prior to that date.

Effective Date: December 31, 1997.

VAOPGCPREC 1–98

Question Presented

Does 38 U.S.C. 7111, which Pub. L. No. 105–111 added to title 38, apply to claims pending on the date Pub. L. No. 105–111 was enacted?

Held

Section 7111 of title 38, United States Code, as added by Pub. L. No. 105–111, under which a claimant is entitled to a Board of Veterans Appeals decision on the merits on a request for revision of a prior Board decision on the grounds of clear and unmistakable error, applies to claims pending on the date Pub. L. No. 105–111 was enacted.

Effective Date: January 13, 1998.

VAOPGCPREC 2–98

Questions Presented

a. For claims filed after October 31, 1990, based on service connection of disability or death resulting from a veteran's own alcohol or drug abuse, does section 8052 of the Omnibus Budget Reconciliation Act of 1990 preclude entitlement to the following benefits:

(1) Dependents' educational assistance under 38 U.S.C. ch. 35?

(2) Burial benefits?

(3) Accrued benefits?

(4) Surviving spouses' loan guaranty benefits under 38 C.F.R. § 3.805?

(5) The special allowance under 38 U.S.C. § 1312?

(6) Medical care under the Department of Veterans Affairs Civilian Health and Medical Program (CHAMPVA)?

b. If, based on a claim filed on or before October 31, 1990, service connection has been established for a disability that resulted from a veteran's own alcohol or drug abuse, what effect does section 8052 of the Omnibus Budget Reconciliation Act of 1990 have on a claim for an increased rating filed after October 31, 1990?

Held

a. With respect to claims filed after October 31, 1990, 38 U.S.C. § 105(a), as amended by section 8052(a)(1) of the Omnibus Budget Reconciliation Act of 1990 and implemented by 38 C.F.R. 3.1(m), precludes, for purposes of all VA benefits, a finding that an injury or disease that was a result of a person's own alcohol or drug abuse was incurred or aggravated in line of duty. Thus, for purposes of all VA benefits, eligibility for which requires a service-connected disability or death, section 105(a) precludes service connection of a disability resulting from alcohol or drug abuse on the basis of the disability's incurrence or aggravation in service or of a death resulting from such a disability. However, for purposes of all such VA benefits other than disability compensation, the amendments made by section 8052 do not preclude eligibility based on a disability, or death resulting from such a disability, secondarily service connected under 38 C.F.R. § 3.310(a) as proximately due to or the result of a service-connected disease or injury.

b. Claims for increase filed after October 31, 1990, are subject to the amendments made by section 8052(a) of the Omnibus Budget Reconciliation Act of 1990. If, based on a claim filed on or before October 31, 1990, service connection has been established for a disability that resulted from a veteran's own alcohol or drug abuse, 38 U.S.C. §§ 1110 and 1131, as amended by section 8052(a), prohibit the payment of any increase in compensation for that disability, based on a claim for increase filed after October 31, 1990, including, for example, a claim for an increased rating or a claim for increase based on acquisition of a dependent. Sections 1110 and 1131 do not, however, prohibit continuation or reduction, in accordance with the facts, of an award of compensation for the disability established on the basis of a claim filed on or before that date. Further, sections 1110 and 1131 do not prohibit payment of an increase in compensation, such as a cost-of-living adjustment; that would become effective without the filing of a claim.

Effective Date: February 10, 1998

VAOPGCPREC 3–98

Question Presented

Whether a person who is between 18 and 23 years of age and is pursuing a high school education in a home-school program is pursuing a course of instruction at an educational institution for purposes of 38 U.S.C. § 101(4)(A)(iii).

Held

A home-school program does not constitute an institution within the meaning of 38 U.S.C. § 101(4)(A)(iii) and 104(a) because the program terminates when the child completes his or her course of instruction or withdraws, does not have an ongoing enrollment, and is operated for the sole purpose of serving the needs of a particular student. Therefore, a person who is between 18 and 23 years of age and is being educated in a home-school program is not a child for purposes of 38 U.S.C. § 101(4)(A)(iii) because he or she is not pursuing a course of instruction at an

educational institution. Effective Date: March 19, 1998.

VAOPGCPREC 4–98

Question Presented

Does 38 U.S.C. § 2305 have any application in claims for burial benefits involving veterans who served in the organized military forces of the Commonwealth of the Philippines while such forces were in the service of the United States Armed Forces during World War II?

Held

The saving provision currently codified at 38 U.S.C. § 2305 preserved potential eligibility for burial benefits under chapter 23 of title 28, United States Code, for individuals who could have qualified for those benefits under ''the laws in effect on December 31, 1957.'' The statute governing benefits eligibility based upon service in the Philippine Commonwealth Army in World War II that was in effect on that date did not confer potential eligibility for burial benefits for individuals with such service. Consequently, section 2305 has no application in claims for burial benefits based on service in the Philippine Commonwealth Army during World War II. Effective Date: April 1, 1998

VAOPGCPREC 5–98

Questions Presented

a. What is the proper disposition of funds derived from Department of Veterans Affairs (VA) benefits and held by a legal custodian, when a beneficiary dies intestate but with known heirs?

b. Does VA have a legal duty to supervise estate assets derived from VA benefits and in the hands of a legal custodian, after the death of the beneficiary?

c. Does VA have authority to distribute a deceased beneficiary's estate assets, derived from VA benefit payments, and, if so, how should the distribution be made?

Held

When a veteran or other VA beneficiary dies without a will but with known heirs, VA-derived funds held by a legal custodian should be distributed by an appropriate estate administrator in accordance with applicable state law governing intestate succession. VA is not authorized to recover such funds and distribute them to the beneficiary's heirs. Generally, VA is authorized to supervise the estate only to the extent necessary to assure that the fiduciary fulfilled his or her responsibilities to the beneficiary and to assure preservation of assets which may be reclaimed by the Government pursuant to 38 U.S.C. § 5502(e).

Effective Date: April 2, 1998.

VAOPGCPREC 6–98

Question Presented

If a veteran both challenges the validity of a debt assessed by the Department of Veterans Affairs (VA) and, in the alternative seeks waiver of such debt, must VA first fully adjudicate the debt validity issue, and the veteran exhaust all appeals on that issue, before waiver may be considered?

Held

When a veteran both challenges the validity of a debt and seeks waiver of the debt, the Regional Office must first fully review the debt's validity and, if the office believes the debt to be valid, prepare a written decision fully justifying the validity of the debt. At that point, the veteran's request for waiver should be referred to the Committee on Waivers and Compromises. If waiver is denied, the veteran must be informed of his or her right to appeal both decisions to the Board of Veterans Appeals.

Effective Date: April 24, 1998

VAOPGCPREC 7–98

Questions Presented:

a. Where eligibility under the Restored Entitlement Program for Survivors (REPS) is based on service connection established under a Department of Veterans Affairs (VA) regulation establishing a presumption of service connection for a disease, is the effective date of the award of REPS benefits limited by the effective date of the regulation establishing the presumption?

b. If, pursuant to the *Nehmer* stipulation, an award of dependency and indemnity compensation (DIC) is made effective prior to the effective date of the VA regulation establishing presumptive service connection for the cause of death, is the effective date of an award of REPS benefits also governed by the *Nehmer* stipulation?

Held

In the case of a member or former member of the Armed Forces who died on active duty prior to August 13, 1981, or who died from a service-connected disability which was incurred or aggravated in service before such date, the Department of Veterans Affairs (VA) is authorized, under Pub. L. No. 97–377, § 156, 96 Stat. 1830, 1920 (1982), and 38 C.F.R. § 3.812, to award benefits under the Restored Entitlement Program for Survivors (REPS) to the member or former member's surviving spouse or child for all periods in which such spouse or child meet the eligibility requirements for such benefits. If a claimant meets the statutory requirements governing eligibility for REPS benefits, the fact that service connection for a former member's death has been established pursuant to regulatory presumptions of service connection which became effective subsequent to the initial period of eligibility does not limit VA's authority to award REPS benefits retroactive for all periods of eligibility.

Effective Date: May 4, 1998.

John H. Thompson,

Acting General Counsel.

[FR Doc. 98–15116 Filed 6–5–98; 8:45 am]

BILLING CODE 8320–01–M

DEPARTMENT OF VETERANS AFFAIRS

The Enhanced-Use Development of the VAMC Sioux Falls, SD

AGENCY: Department of Veterans Affairs.

ACTION: Notice of designation.

SUMMARY: The Secretary of the Department of Veterans Affairs is designating the Sioux Falls, SD, Department of Veterans Affairs Medical Center (VAMC) for an Enhanced-Use development. The Department intends to enter into a long-term lease of real property with the Children's Care Hospital and School (CCH&S). The CCH&S will construct and maintain a parking area on the site, and will, as consideration for the lease, provide specified facilities and services to the Department at no cost.

FOR FURTHER INFORMATION CONTACT:

Jacob Gallun, Asset and Enterprise Development Office (189), Veterans Health Administration, Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC, 20420, (202) 565–4307.

SUPPLEMENTARY INFORMATION: 38 U.S.C. Sec. 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 least 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: May 27, 1998.

Togo D. West, Jr.,

Secretary.

[FR Doc. 98–15117 Filed 6–5–98; 8:45 am]

BILLING CODE 8320–01–M

Corrections

Federal Register
Vol. 63, No. 109
Monday, June 8, 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.

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 268

[EPA–F–98–2P4F–FFFFF; FRL–6010–5]

RIN 2050 AE05

Land Disposal Restrictions Phase IV: Final Rule Promulgating Treatment Standards for Metal Wastes and Mineral Processing Wastes; Mineral Processing Secondary Materials and Bevill Exclusion Issues; Treatment Standards for Hazardous Soils, and Exclusion of Recycled Wood Preserving Wastewaters

Correction

In rule document 98–12575 beginning on page 28556 in the issue of Tuesday, May 26, 1998, make the following correction:

Table 1 to Appendix VII [Corrected]

On page 28751, in the third column, in amendatory instruction 19., in the fourth line from the bottom, after ''and'' insert ''adding''.

BILLING CODE 1505-01-D

SOCIAL SECURITY ADMINISTRATION

[Social Security Acquiescence Ruling 98-4(6)]

Drummond v. Commissioner of Social Security; Effect of Prior Findings on Adjudication of a Subsequent Disability Claim Arising Under the Same Title of the Social Security Act–Titles II and XVI of the Social Security Act

Correction

In notice document 98–14265 beginning on page 29771 in the issue of Monday, June 1, 1998, make the following correction:

On page 29771, in the third column, in the 12th and 13th lines, ''*(Insert the* **Federal Register** *publication date)*'' should read ''June 1, 1998''.

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

49 CFR Parts 375 and 377

[Docket No. FHWA-97-2979]

RIN 2125-AE30

Transportation of Household Goods; Consumer Protection Regulations

Correction

In proposed rule document 98–12582, beginning on page 27126, in the issue of Friday, May 15, 1998, make the following correction:

On page 27129, in the table for Part 375—Transportation of Household Goods in Interstate Commerce, the entry for Liability Consideration under Subpart B should read as follows:

PART 375.—TRANSPORTATION OF HOUSEHOLD GOODS IN INTERSTATE COMMERCE

Proposed section	Old section	Title of proposed section
* * * * *		
SUBPART B—BEFORE OFFERING SERVICES TO CUSTOMERS		
Liability Considerations		
375.201	375.12	What is my normal liability for loss and damage when I accept goods from an individual shipper?
375.203	375.12	What actions of an individual shipper may limit or reduce my normal liability?
* * * * *		

BILLING CODE 1505-01-D

Monday
June 8, 1998

Part II

Environmental Protection Agency

40 CFR Parts 355 and 370

Emergency Planning and Community Right-to-Know Programs; Amendments to Hazardous Chemical Reporting Thresholds, Streamlining Requirements; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 355 and 370

[FR–6103–7]

RIN 2050–AE17

Emergency Planning and Community Right-to-Know Programs; Amendments to Hazardous Chemical Reporting Thresholds, Streamlining Requirements

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing modifications to 40 CFR parts 355 and 370, which are the regulations implementing sections 302, 303, 304, 311 and 312 of the Emergency Planning and Community Right-To-Know Act (EPCRA). These rules cover requirements for emergency planning and release notification, and hazardous chemical community right-to-know reporting under EPCRA. The proposed changes are intended to reduce reporting burdens, while preserving the important public health and safety benefits of the hazardous chemical reporting requirements. EPA is proposing to raise the reporting thresholds for gasoline and diesel fuel in underground tanks at retail gas stations, and to set new reporting thresholds for some additional hazardous chemicals, under sections 311 and 312. EPA is also proposing to make clarifying changes to the mixture requirements under sections 311 and 312. In addition, EPA is publishing draft guidance as part of the preamble of this document to provide States and local governments with more discretion in implementing the federal requirements—this guidance would not be binding and does not involve any regulatory changes, as discussed further in this preamble. EPA believes the elimination of unnecessary reporting will help focus emergency prevention and planning on more significant hazards. EPA is also proposing to rewrite 40 CFR parts 355 and 370 to make them easier to understand and to use. (However, the rewrite is not intended to make any substantive revision to the existing rules; substantive changes are limited to the revisions specifically proposed in this document.) Improving the clarity of regulatory requirements will make the rules easier to understand and improve compliance.

DATES: Comments must be submitted in writing and must be received at the address specified below on or before September 8, 1998.

ADDRESSES: Please reference Docket Number 300RR–IF1. *By Mail:* Mail original and three copies of comments (no facsimiles or tapes) to Docket Coordinator, Headquarters; U.S. EPA; CERCLA Docket Office; (Mail Code 5201G); 401 M Street, SW; Washington, DC 20460; 703/603–9232.

By Federal Express: Send original and three copies of comments (no facsimiles or tapes) to Docket Coordinator, Headquarters; U.S. EPA; CERCLA Docket Office; 1235 Jefferson Davis Highway; Crystal Gateway #1, First Floor; Arlington, VA 22202.

By E-Mail: Comments in ASCII format only may be mailed directly to SUPERFUND.DOCKET@EPAMAIL.EPA.GOV. E-mailed comments must be followed-up by an original and three copies sent by mail or Federal Express. Don't submit confidential business information through e-mail.

The docket, which is the administrative record for parts 355 and 370, is available for inspection between the hours of 9 a.m. and 4 p.m., Monday through Friday, excluding Federal holidays. You can make an appointment to review the docket by calling 703/603–9232. You may copy a maximum of 266 pages from any regulatory docket at no cost. If the number of pages copied exceeds 266, however, you will be charged an administrative fee of $25 and a charge of $0.15 per page for each page after 266. The docket will mail copies of materials to you if you are outside of the Washington, DC metropolitan area.

FOR FURTHER INFORMATION CONTACT: Meg Victor or John Ferris, Chemical Emergency Preparedness and Prevention Office, MC 5104, U.S. EPA, 401 M Street SW, Washington, DC 20460, 202/260–1379 or 202/260–4043. Also contact the RCRA/UST, Superfund, and EPCRA Hotline (the Hotline) at 800/424–9346 (in the Washington, DC metropolitan area, contact 703/412–9810). The Telecommunications Device for the Deaf (TDD) Hotline number is 800/535–7672 (in the Washington, DC metropolitan area, 703/412–3323). You may wish to visit the Chemical Emergency Preparedness and Prevention Office (CEPPO) Internet site, at www.epa.gov/ceppo.

SUPPLEMENTARY INFORMATION: The contents of the **SUPPLEMENTARY INFORMATION** section of today's preamble are listed in the following outline:

I. Who is Affected by This Rule?
II. What is the Statutory Authority for This Rule?
III. What is the Background of This Rulemaking?
IV. What Regulatory Changes is EPA Proposing in This Rule?
A. Principal Regulatory Changes
1. Higher Threshold Levels for Gasoline and Diesel Fuel at Retail Gas Stations When Stored in Tanks Entirely Underground and in Compliance With Underground Storage Tank Regulations
2. Relief From Routine Reporting for Substances With Minimal Hazards and Minimal Risks Under EPCRA Sections 311 and 312
3. Relief From Routine Reporting for Sand, Gravel and Rock Salt Under EPCRA Sections 311 and 312
B. Other Regulatory Changes
1. Reporting of Mixtures Under EPCRA Sections 311 and 312
2. Tier I and Tier II Inventory Forms and Instructions
3. Penalties for Noncompliance
4. Facility Identifier as a Tier I and Tier II Information Requirement
5. Additional Changes to the Parts 355 and 370 Regulations
6. Definitions
V. What Draft Guidance is EPA Publishing in This Preamble?
A. Increased Flexibility for States and Local Governments With Respect to Reporting Under EPCRA Sections 311 and 312
1. UST Forms to Fulfill the Requirements for Tier I Information Under EPCRA Section 312
2. Partnership Programs for Joint Access to Information and Streamlined Submission of EPCRA Sections 311 and 312 Reporting
3. Electronic Submittal for EPCRA Sections 311 and 312 Reporting
4. Incorporation of Previous Submissions Into EPCRA Section 312 Reporting
B. Electronic Access to Facilities' Databases of MSDSs
C. Interpretation of the Hazardous Chemical Exemption for Solids Under EPCRA Section 311(e)(2)
D. EPCRA Section 312 Reporting to Fulfill Reporting Requirements Under Section 311
E. Emergency Planning Notification
F. Emergency Release Notification
VI. What Else is Different About This Rule?
A. Plain English Format
B. Conversion Table
VII. Where are SERCs and LEPCs Listed?
VIII. Regulatory Analyses
A. Executive Order No. 12866
B. Regulatory Flexibility Act
C. Paperwork Reduction Act
D. Unfunded Mandates Reform Act
E. Environmental Justice
F. National Technology Transfer and Advancement Act
G. Executive Order No. 13045

I. Who Is Affected by This Rule?

Three general categories of entities are affected by this rule. These three categories are industry, Federal government, and State and local governments. Numerous entities within each general category are regulated by

this rule. Regulated categories and entities include:

Category	Regulated entities
Industry	Retail gasoline service stations, Chemical storage and processing.
Federal Government	Executive Order 12856 requires all Federal agencies to comply with EPCRA.
State and Local Governments	State Emergency Response Commissions (SERCs) and Local Emergency Planning Committees (LEPCs) receive the information provided under EPCRA sections 302, 304, 311 and 312. LEPCs receive information provided under EPCRA section 303. Fire departments receive the information provided under EPCRA sections 311 and 312. State/local government facilities handling chemicals may be subject to this regulation.

This table is not intended to be exhaustive, but rather to provide a guide for readers regulated by this action. To determine whether or not your facility is regulated by this action, you should carefully examine the sections in today's proposed rule explaining who must comply with the rule. If you have questions regarding the applicability of this action to a particular entity, consult one of the persons listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

II. What Is the Statutory Authority for This Rule?

This proposed rule is issued under the Emergency Planning and Community Right-To-Know Act of 1986 (EPCRA), which was enacted by Title III of the Superfund Amendments and Reauthorization Act of 1986, (Pub. L. 99–499). EPCRA established a program to encourage state and local planning and preparedness for releases of extremely hazardous substances, and to provide the public, local governments, fire departments and other emergency officials with information concerning chemical releases and the potential chemical risks in their communities.

III. What Is the Background of This Rulemaking?

In 1986, EPCRA created requirements regarding planning and preparedness for chemical emergencies, and public access to information concerning potential chemical hazards. EPA established implementing regulations at 40 CFR parts 355 and 370. Today EPA is proposing modifications to several of the regulations that implement the emergency planning, emergency release notification, and the hazardous chemical community right-to-know portions of the EPCRA program (this rulemaking does not effect the implementation of EPCRA section 313, 40 CFR part 372, in any way). The proposed revisions are intended to reduce costs to individuals, businesses and other levels of government, while continuing to achieve EPCRA's environmental goals. These changes are proposed as part of EPA's ongoing efforts to streamline regulatory requirements. In addition, EPA is proposing draft guidance that does not involve regulatory revisions but explores flexible options to meet the existing regulations. EPA also is proposing to rewrite the emergency planning and hazardous chemical community right-to-know portions of the EPCRA regulations in plain English, in order to reduce regulatory burdens and improve compliance. Only the regulatory revisions specifically discussed in part IV below involve substantive changes to the existing rule. The rewrite of the existing regulations in plain English is intended merely to restate the existing regulations in a format that makes them easier to understand.

In 1990, section 112(r) of the amended Clean Air Act (CAA) established requirements regarding the prevention and detection of accidental releases of hazardous chemicals. The Risk Management Program (RMP) established under those requirements, codified at 40 CFR part 68, is an extension of the planning and preparedness programs established under EPCRA. A specific facility may be subject to the RMP requirements under CAA section 112(r) as well as the planning and preparedness programs under EPCRA. EPA has considered the relationship between these programs while developing today's proposed rule.

IV. What Regulatory Changes Is EPA Proposing in This Rule?

EPA seeks public comment on the specific regulatory revisions addressed below. However, EPA is not reconsidering and is not seeking public input on any other aspects of the existing regulations that are not subject to substantive revision.

A. Principal Regulatory Changes

In today's proposed rulemaking, EPA is exploring innovative ways to improve the efficiency of the reporting requirements under sections 311 and 312 of EPCRA, and provide regulatory relief, while continuing to protect public health and the environment. This action is proposed as part of EPA's ongoing efforts at regulatory reinvention. EPA based the following proposed changes to the regulatory requirements on input from various stakeholders including States and local emergency planning committees (LEPCs), and on the experience gained through implementing the EPCRA program at the Federal, State and local levels over the past ten years.

The proposed regulatory changes are discussed below:

1. Higher Threshold Levels for Gasoline and Diesel Fuel at Retail Gas Stations When Stored in Tanks Entirely Underground and in Compliance With Underground Storage Tank Regulations

The reporting requirements under sections 311 and 312 of EPCRA are intended to enhance communities' and emergency response officials' awareness of chemical hazards, and to facilitate the development of State and local emergency response plans, thereby aiding communities and emergency response officials in preparing for and responding to emergencies safely and effectively. EPA would like to achieve a sound balance between the amount of information generated for the public under sections 311 and 312, and the value of that information. In an effort to streamline reporting requirements, EPA assessed the usefulness and benefit of the information reported under sections 311 and 312 for various industries. EPA considered the input from stakeholders in making this evaluation.

As described in more detail below, EPA is proposing to establish higher reporting thresholds for gasoline and diesel fuel stored underground at retail gas stations. Both sections 311(b) and 312(b) of EPCRA give EPA general authority to establish threshold quantities for hazardous chemicals below which reporting is not required. Both statutory provisions also state that, in EPA's discretion, the thresholds may be based on classes of chemicals or categories of facilities. Thus, under the

statute, EPA's authority to establish thresholds includes but is not limited to thresholds that are based on classes of chemicals or categories of facilities. Congress broadly empowered EPA to establish thresholds so that EPA could ''provide for the development of a manageable program.'' H.R. Rep. No. 962, 99th Cong., 2d Sess. 1986 (Conf. Rpt.) reprinted in Senate Comm. on Environment and Public Works, 101st Cong., 2d Sess., A Legislative History of the Superfund Amendments and Reauthorization Act of 1986 (Pub. L. 99–499), vol. 6 at 5104 (hereinafter ''Conference Report''). The legislative history also calls for EPA, in establishing thresholds under section 312(b), to ''consider the degree to which the hazardous chemical, if released at the facility, would endanger the health of individuals in the community, including emergency response personnel.'' Conference Report at 5104–5105.

EPA believes that gasoline and diesel fuel, when stored entirely underground at retail gas stations, and in compliance with the Underground Storage Tank (UST) regulations under 40 CFR part 280, present a unique situation for which separate reporting thresholds under EPCRA sections 311 and 312 are warranted. Factors contributing to the uniqueness of this situation, and which EPA considered in establishing the higher reporting thresholds, include the following.

(1) Community Right-to-Know

The public and local emergency officials are generally familiar with the location of retail gas stations, are aware that these facilities have gasoline and diesel fuel, and can typically discern the general storage location of the gasoline and diesel fuel at the facility. In fact, retail gas stations prominently advertise the presence of gasoline and diesel fuel at their facilities, encourage the public to come on site, and often permit the public to dispense the gasoline and diesel fuel themselves. For example, the public can readily determine the location of a retail gasoline station by looking in the telephone books. Because the primary business of retail gasoline stations includes the sale of gasoline and diesel fuel, the public can be certain that a facility stores these substances without the need for reporting under sections 311 and 312 of EPCRA. Thus, the community's right-to-know about the presence of gasoline and diesel fuel at retail gas stations is largely satisfied without routine reporting.

(2) Public Knowledge of Hazards

The public and local emergency officials generally are aware of the hazards associated with gasoline and diesel fuel, so the community's right-to-know about the hazards of those substances is also addressed independent of routine reporting.

(3) Storage Entirely Underground

Retail gas stations typically store gasoline and diesel fuel in tanks that are entirely underground, which generally mitigates the risk of catastrophic release.

(4) Subject to UST Regulations

Underground storage tanks are regulated under the Resource Conservation and Recovery Act (RCRA), so a comprehensive regulatory program is in place that establishes standards for the safe performance and operation of USTs. Additionally, retail gas stations provide notification of their gasoline and diesel fuel under the UST program.

EPA believes that each of these four factors alone wouldn't necessarily warrant separate reporting thresholds, but that in combination these factors present a unique situation for gasoline and diesel fuel in this industry category. Considering these factors together, EPA believes that excluding retail gas stations from the requirement to report material safety data sheets (MSDSs) and annual Tier I information for gasoline and diesel fuel (when held in typical amounts in tanks that are entirely underground, and in compliance with the UST regulations) will promote a more manageable EPCRA program while still protecting the public health and safety of individuals in the community and emergency response officials. EPA acknowledges that gasoline and diesel fuel are flammable and toxic, and that they have the potential to pose a hazard to the community including emergency responders. However, for the reasons stated above, EPA believes that these substances need not be routinely reported under EPCRA when stored in tanks entirely underground in typical amounts and in compliance with the UST regulations, at retail gas stations.

Consequently, in today's rule EPA is proposing to raise the reporting threshold with respect to sections 311 and 312 of EPCRA, for gasoline and diesel fuel when stored entirely underground and in compliance with the UST regulations, at retail gas stations in typical amounts. EPA's intent is to establish new thresholds corresponding to amounts just higher than the typical total amounts of gasoline and diesel fuel held at retail gas stations, so that facilities with typical capacities would be relieved from reporting. EPA's intent is to set the thresholds at the upper bound of the amounts typically stored at retail gas stations, so that facilities with greater than typical capacities would not be relieved from routine reporting. EPA believes that the public and emergency officials would generally be aware of the quantity stored at typical gas stations, but might not be aware of the amount stored at facilities with above normal inventories.

The reporting thresholds that EPA is proposing are 75,000 gallons for all grades of gasoline combined, and 100,000 gallons for diesel fuel, when held in tanks that are entirely underground and in compliance with the UST regulations, at retail gas stations. EPA based these proposed thresholds on information provided by the Service Station Dealers of America, the Society of Independent Gas Marketers of America, and the Petroleum Equipment Institute. A discussion of the basis for these proposed thresholds is found in a technical memo that you can review at the CERCLA Docket Office, in docket number 300RR–IF1 (for the address of the docket office, see the **ADDRESSES** section in this preamble). For the minority of retail gas stations where gasoline or diesel fuel are not stored entirely underground, the existing reporting threshold of 10,000 pounds would still apply. When gasoline and diesel fuel are not stored entirely underground, the risk of catastrophic release is not mitigated as it generally is when these substances are stored entirely underground. Also, when not stored in underground storage tanks, these substances aren't regulated under the RCRA UST program.

The reporting thresholds that EPA is proposing today are intended to provide relief from reporting gasoline and diesel fuel stored at the great majority of retail gas stations, including truck stops. Retail gas stations with unusually large inventories of gasoline or diesel fuel would still be required to report. EPA is not intending to relieve gasoline and diesel fuel from reporting when stored at facilities other than retail gas stations, or when stored above ground at retail gas stations, or when stored in amounts in excess of an amount typically found at retail gas stations.

Under this proposal, retail gas stations using underground tank systems that do not comply with EPA's UST regulations under 40 CFR part 280 (53 FR 37082) would be subject to the current threshold of 10,000 pounds for gasoline and diesel fuel. Part 280 includes requirements for UST system design,

construction, installation, operation, release detection, release reporting, corrective action and financial responsibility. As of December 23, 1998, part 280 will also require all UST systems to meet certain requirements for corrosion protection and spill and overfill prevention. Gasoline and diesel fuel stored in underground tank systems that are not in compliance with the UST regulations would not be eligible for the higher threshold proposed today, because the Agency believes that they continue to pose a significant risk of release, contamination of soil and ground water, seepage of vapors into underground areas, and even fire and explosions. The Agency believes that the large majority of retail facilities will be subject to the higher thresholds in today's proposed rule, because they meet the current UST system requirements and will meet those in effect as of December 23, 1998.

The proposed thresholds are presented in gallons, instead of pounds like the existing reporting thresholds under current 40 CFR part 370. The existing reporting thresholds apply to solids, liquids and gases, therefore the reporting threshold is in pounds in order to provide a consistent measure for all three phases. However, because gasoline and diesel fuel are liquids, EPA believes that facilities measure their stock of gasoline and diesel fuel in gallons, not in pounds. In addition, the densities of gasoline and diesel fuel vary with temperature, grade, and time of year, so volume is a more reasonable measure for establishing threshold quantities for these substances. EPA requests public comment on setting the proposed thresholds in gallons instead of pounds, and whether this would create confusion because the other thresholds under part 370 are in pounds.

EPA also seeks public comment on its rationale for proposing to raise the reporting thresholds for gasoline and diesel fuel stored entirely underground, and in compliance with the UST regulations, at retail gas stations. Additionally, EPA requests comments on the suitability of the proposed thresholds. As noted, EPA's intent is to establish thresholds corresponding to amounts just higher than the typical total amounts of gasoline and diesel fuel held at retail gas stations. EPA seeks comment on whether this approach is appropriate for this rule, and whether the proposed amounts accurately reflect this approach.

While this proposed regulatory change is intended to generally provide relief from reporting MSDSs under EPCRA section 311 and annual Tier I inventory information under EPCRA section 312, public access to MSDSs and Tier II inventory information regarding gasoline and diesel fuel of any quantity would be preserved in specific circumstances because the threshold for reporting in response to a request for information (by State or local officials) would remain zero. Section 370.21(d) of the existing rule requires that MSDSs be provided upon request of the LEPC, and section 370.25(c) requires that Tier II information be provided upon request of the SERC, LEPC, or fire department with jurisdiction over a facility. Section 370.20(b)(3) in the existing rule provides that the minimum reporting threshold for reporting in response to a request is zero. In other words, a facility with gasoline or diesel fuel of any quantity would continue to be required to provide this information upon request. However, under EPCRA section 312(e)(3)(C), and section 370.61(a) of today's proposed regulations, if a person submits a request to a SERC or LEPC for Tier II information regarding a hazardous chemical that a facility doesn't store in excess of 10,000 pounds, and the SERC or LEPC does not have the Tier II information in its possession, then the person making the request must indicate the general need for the information; the SERC or LEPC, as the case may be, has discretion in deciding whether to request that information from the facility. In today's proposed rule the zero reporting threshold for reporting in response to requests for an MSDS or Tier II information is retained, and is found in proposed section 370.10(b). In addition, States and local governments always may choose to establish lower thresholds under State or local law.

The terms ''gasoline'' and ''diesel fuel'' have been used without definition in today's proposed rulemaking, because EPA believes that the meanings of these terms are understood by the general public. It is EPA's intention to raise the reporting thresholds under sections 311 and 312 of EPCRA for gasoline and diesel fuel, but not for any other hydrocarbon mixtures (e.g., aviation fuel). Comments are requested concerning whether EPA should define gasoline and diesel fuel, in order to clarify that other types of hydrocarbon mixtures aren't subject to the higher thresholds. EPA also seeks suggestions for technical definitions of gasoline and diesel fuel.

The proposed regulatory text reflecting the establishment of higher thresholds for gasoline and diesel fuel when stored entirely underground at retail gas stations is located in section 370.10(a)(2) of today's rulemaking. Within that proposed section, the term ''retail gas station'' has been defined as a retail gasoline facility principally engaged in selling gasoline to the public, and convenience stores engaged in selling gasoline to the public, for purposes of 40 CFR part 370 regulations implementing EPCRA sections 311 and 312.

EPA proposes to raise the reporting threshold for gasoline and diesel fuel at retail gas stations when held in tanks that are *entirely underground*. EPA has chosen to use the phrase ''entirely underground'' instead of ''underground storage tank'' (UST) to establish applicability of the proposed thresholds because, under RCRA, UST has a specific meaning that includes tanks with a significant portion of their volume above ground. USTs include tanks, the volume of which (including the volume of underground pipes connected thereto) is 10 percent or more beneath the surface of the ground. In today's proposal, EPA intends the proposed reporting thresholds to apply only to storage in tanks that are entirely underground, which generally mitigates the risk of catastrophic release.

EPA has had discussions with various stakeholders regarding the establishment of a higher reporting threshold for gasoline at retail gas stations. During those discussions, some State and local entities expressed a desire to continue to receive information on gasoline at retail gas stations, and a concern that they would not be able to get the information if it were not required under Federal regulations. EPA would like to know if these concerns are widespread among State and local governments. In addition, EPA seeks comments from SERCs, LEPCs and fire departments on whether the information on gasoline and diesel fuel at retail gas stations received under sections 311 and 312 is useful to them, and if so, how it is used. Some State entities have also expressed concern that raising the reporting threshold for gasoline and diesel fuel at retail gas stations may trigger other industries to request higher thresholds. As discussed above, EPA believes that gasoline and diesel fuel, when stored entirely underground and in compliance with the UST regulations, at retail gas stations, present a unique situation for which a higher reporting threshold is warranted.

EPA understands that some States generate funds for support of their EPCRA programs through fees collected from facilities that comply with section 312. Such States may oppose raising the thresholds for gasoline and diesel fuel, as proposed in today's rulemaking,

because of the potential for loss of revenue. EPCRA does not provide for annual Federal funds for State implementation of the EPCRA program. However, some Federal funds are available through EPA grants, or through other Federal agencies, to support emergency planning and community right-to-know programs (e.g., Hazardous Materials Emergency Preparedness Grants administered through the Department of Transportation). In addition, States that want to retain a fee system that includes retail gasoline stations could choose to establish lower thresholds for gasoline and diesel fuel under State law. EPA currently believes that routine reporting of gasoline and diesel fuel at retail gas stations, when stored entirely underground and in compliance with the UST regulations, is not necessary nationwide. The Agency further believes that the generation of fees is not sufficient justification for requiring such reporting, and will not consider State fee generation in its decision on whether or not to raise the reporting threshold for gasoline and diesel fuel at retail gas stations.

EPA is soliciting comments on these proposed regulatory changes, and on EPA's rationale for the changes. The idea of relieving retail gas stations from routinely reporting gasoline and diesel fuel under EPCRA sections 311 and 312 came from the suggestions of stakeholders, including the U.S. Small Business Administration (SBA). EPA would like to know whether there is general support among stakeholders and the public regarding this issue. EPA has included a June 18, 1995 letter from the Chief Counsel for Advocacy at SBA, related letters, and a contractor report prepared for the Office of Advocacy that discusses various regulatory alternatives for providing paperwork relief to retail gas stations, in the CERCLA Docket Office (Docket No. 300RR–IF–1).

EPA also seeks comment on whether or not it would be useful to provide a specific industry classification code (or codes) to help describe the universe of facilities to which the proposed higher threshold for gasoline and diesel fuel would apply. In addition, EPA seeks comments regarding whether it would be more helpful to provide a Standard Industrial Classification (SIC) code, or a North American Industry Classification System (NAICS) code, or both types of codes. NAICS is a new economic classification system that replaces the 1987 SIC system. On April 9, 1997, the Office of Management and Budget published a document in the **Federal Register** (62 FR 17288) regarding the replacement of the 1987 SIC by the 1997 NAICS.

EPA believes that it can best serve the public by requiring a manageable quantity of reporting data, which can be supplemented by requests for additional information and the imposition of lower State or local thresholds when appropriate. EPA's objective is to find a sound balance between the amount of information collected, and the public benefit served by the information. In developing this proposal, EPA considered whether any chemicals or facilities, in addition to gasoline and diesel fuel at retail gas stations, should be relieved of routine reporting under sections 311 and 312 of EPCRA. EPA applied the same four factors discussed earlier in this section to other chemicals and facilities. For example, EPA applied the four factors to propane retailers and determined that these entities do not meet the factors necessary to warrant higher thresholds:

- *Propane*—EPA considered whether the reporting threshold for propane at propane retailers should be raised in a similar manner as for gasoline and diesel fuel at retail gas stations. From the perspective of community right-to-know (factor 1), the Agency believes the public and emergency officials are less familiar with the locations of propane retailers, and with propane itself and the associated hazards (factor 2), than the public and emergency officials are with gasoline and diesel fuel. EPA believes that propane is not generally stored entirely underground (factor 3), and also is not regulated by the UST program under RCRA (factor 4). Based on the application of the four factors to propane retailers, EPA believes that raising the reporting threshold under sections 311 and 312 for propane at propane retailers would not be protective of public health and the environment, and would not be consistent with the fundamental purposes of EPCRA.

EPA found that several other types of facilities presented situations similar to retail gasoline stations. At this time, however, the Agency does not believe the following facilities meet the community right-to-know criteria (factor 1) for inclusion into this higher reporting threshold because the public and emergency officials are generally less familiar with the location of these facilities, and may not know whether and where any particular facility stores gasoline and diesel fuel. Based on this belief, EPA is not proposing to raise the reporting threshold for the following entities. However, the Agency is requesting comment on whether communities nationwide are in fact aware of the location of these facilities and whether they store gasoline and diesel fuel, and whether or not it would be appropriate to raise the threshold for the following types of facilities.

- *Motor pools, van and bus lines, rental car facilities and other vehicle fleets*—EPA considered whether the proposed higher reporting thresholds for gasoline and diesel fuel should apply to other facilities that store gasoline or diesel fuel, such as motor pools, van and bus lines, rental car facilities and other vehicle fleets. These types of facilities don't retail gasoline or diesel fuel, and not all of them have gasoline and diesel fuel. The public and local emergency officials may not be aware of the presence of gasoline or diesel fuel at these types of facilities and may not readily recognize these facilities as potentially containing hazardous chemicals (factor 1). As with retail gasoline stations, however, the public and emergency officials are generally aware of the hazards of gasoline and diesel (factor 2). Also, these types of facilities generally store the chemicals entirely underground (factor 3) and the underground tanks are subject to UST (factor 4). Nonetheless, these facilities do not distribute gasoline and diesel fuel in a retail manner, the public may not have access to these facilities, and the public is less likely to know the location of these chemicals at these facilities. Because EPA does not currently believe that these facilities meet factor 1, EPA is not proposing to raise the reporting thresholds for gasoline and diesel fuel at motor pools, van and bus lines, rental car facilities and other vehicle fleets at this time.
- *Marinas*—EPA also applied the factors to determine whether the proposed higher reporting thresholds for gasoline and diesel fuel should apply to marinas. Unlike retail gasoline stations, not all marinas have gasoline. Therefore, as with the other types of facilities discussed above, the public and local emergency officials may not be aware of the presence of gasoline or diesel fuel at these types of facilities or as readily recognize them as potentially containing hazardous chemicals (factor 1). However, like gas stations, marinas that store gasoline generally retail it to boat owners at pumps accessible to the public. As with retail gasoline stations, the public and emergency officials are generally aware of the hazards of gasoline and diesel fuel (factor 2). Also, like retail gasoline stations, marinas can store the gasoline and diesel fuel underground (factor 3) and would be subject to UST regulations (factor 4). The Agency however, is not proposing to raise the reporting threshold for

gasoline and diesel fuel when stored at marinas, at this time. Because the public and emergency officials may not be aware of whether or not a marina stores gasoline, the Agency believes continued reporting is warranted.

EPA will consider all comments received regarding alternate reporting thresholds for marinas, motor pools, van and bus lines, and rental car facilities. EPA believes that public comment could reveal that the public and emergency officials nationwide are aware of the presence and location of gasoline and diesel at some or all of these types of facilities, as at retail gas stations. If the public comments are conclusive that such types of facilities meet the community right-to-know criteria (factor 1), EPA may decide to add these facilities to the final rule or issue a supplementary notice with additional information and opportunity for public comment before making a final decision.

Should EPA find, based on public comment, that the public and emergency officials are aware of the presence of gasoline and diesel fuel at these other facilities discussed here, and decide to raise reporting thresholds for such facilities, the Agency would list the specific types of facilities in the regulation, with appropriate threshold levels. If EPA were to raise the reporting thresholds for such facilities, the threshold levels would be based upon the quantities of gasoline and diesel fuel that are routinely stored at these facilities, so that facilities with typical capacities would be relieved from reporting. EPA believes that the public and emergency officials would not be aware of the amount stored at facilities with above normal inventories, even if they were aware of the presence of gasoline and diesel fuel at such facilities. EPA seeks data that would assist it to determine the quantities routinely stored at such facilities, and also on whether quantities routinely stored would be the appropriate standards for use in establishing alternate thresholds. Were EPA to set an alternative threshold for such facilities for reporting of MSDSs under EPCRA section 311 and annual Tier I information under EPCRA section 312, EPA would still preserve public access to MSDSs and Tier II information in specific circumstances by retaining a reporting threshold of zero for response to a request for information by state or local officials, just as it is currently proposing to do for retail gas stations.

2. Relief From Routine Reporting Requirements for Substances With Minimal Hazards and Minimal Risks Under EPCRA Sections 311 and 312

A substance is subject to reporting under EPCRA sections 311 and 312 if OSHA's hazard communication standard, codified at 29 CFR 1910.1200, requires the owner or operator of a facility to prepare or have available an MSDS for that substance. See EPCRA sections 311(a)(1) and 312(a)(1). OSHA's hazard communication standard is designed to promote worker safety and health; the requirements of that standard are applicable to any hazardous chemical that is known to be present in the workplace in such a manner that employees may be exposed under normal conditions of use or in a foreseeable emergency. The definition of hazardous chemical under OSHA's hazard communication standard is very broad, and includes any chemical which is a physical hazard or a health hazard (29 CFR 1910.1200(c)).

EPA believes that certain substances that may present a physical or health risk to employees in the workplace, and are therefore considered to be hazardous chemicals and subject to OSHA's hazard communication standard, may have minimal inherent hazards and may not, depending upon the circumstances, present a significant risk to the health of individuals in the community, to emergency responders on-site, or to the environment. Such substances, although important under OSHA, are not generally of regulatory significance under EPCRA sections 311 and 312. The reporting requirements under sections 311 and 312 are intended to enhance communities' and emergency response officials' awareness of chemical hazards, to facilitate the development of State and local emergency response plans, and to aid communities and emergency response officials in preparing for and responding to emergencies safely and effectively. Although hazardous chemical reporting under EPCRA sections 311 and 312 is not intended to duplicate the role that OSHA's hazard communication standard has of protecting worker safety, it is intended to extend the worker safety protection provided under OSHA to emergency response officials. As described below, EPA proposes to provide reporting relief for substances that are not of regulatory significance under EPCRA, using the Agency's authority to establish reporting thresholds. Under this proposal, relief from routine reporting means that facilities would not need to report MSDS and inventory information, except for reporting in response to requests for information (the requirements for reporting in response to requests are discussed further below). EPA intends to accomplish relief from routine reporting by establishing infinite threshold levels for these substances.

The current threshold levels for reporting under EPCRA sections 311 and 312 are 500 pounds (or the threshold planning quantity (TPQ), whichever is lower) for extremely hazardous substances (EHSs), and 10,000 pounds for other hazardous chemicals. In the preamble to the proposed rule to set these threshold levels, EPA stated that the Agency ''would have liked to establish risk-based reporting thresholds that take into consideration the hazards posed by the chemicals, the potential for a significant release, and the potential exposure of surrounding populations'' (54 FR 12994, March 29, 1989). However, because of the tens of thousands of hazardous chemicals covered under sections 311 and 312, ''a chemical-specific approach simply was not feasible.'' In today's proposed rule, EPA is reconsidering this approach for chemicals that are OSHA hazardous chemicals because of the way they are used in the workplace (and their potential for worker exposure) but have minimal inherent hazards and present minimal physical or health risks to individuals in the community and emergency response personnel on-site, and present minimal risks to the environment. EPA is seeking public comment on potential approaches to raise the reporting threshold or otherwise reduce the reporting burden for these chemicals that have minimal inherent hazards and pose minimal risks under the EPCRA sections 311 and 312 program.

EPCRA empowers EPA to establish reporting thresholds under sections 311 and 312 of EPCRA. Both sections 311(b) and 312(b) of EPCRA give EPA broad authority to establish threshold quantities for hazardous chemicals below which reporting is not required. Both statutory provisions also state that, in EPA's discretion, the thresholds may be based on classes of chemicals or categories of facilities. Thus, under the statute EPA's authority to establish thresholds includes, but is not limited to, thresholds that are based on classes of chemicals or categories of facilities. As noted previously, Congress broadly empowered EPA to establish thresholds so that EPA could ''provide for the development of a manageable program.'' Conference Report at 5104. The legislative history also calls for EPA, in establishing thresholds under section 312(b) to ''consider the degree to which the hazardous chemical, if released at

the facility, would endanger the health of individuals in the community, including emergency response personnel.'' Conference Report at 5104–5105.

EPA is proposing to establish an infinite threshold level for the class of chemicals with minimal inherent hazards, and presenting minimal risks, under the EPCRA sections 311 and 312 program (an infinite threshold level means a threshold level so great that, no matter what amount is present at a facility, the amount present is less than the threshold level). At the same time, the Agency believes that the local community is best situated to make judgments about the level of risk presented in site-specific circumstances. Thus, EPA is proposing to establish specific criteria governing the class of substances that may qualify for an infinite threshold. With this approach, EPA is endeavoring to promote decision-making about information routinely reported under EPCRA sections 311 and 312, based on community specific concerns. EPA seeks public comment on this proposal, and also requests other suggestions for ways to bridge community-based judgments about the level of risk presented by substances in specific circumstances, with EPA's authority to establish thresholds.

EPA proposes the establishment of an infinite threshold level for the class of chemicals with minimal inherent hazards and presenting minimal risks under the EPCRA sections 311 and 312 program. The criteria for determining whether a substance may, under certain circumstances, be included within this class of chemicals would govern whether individual substances are assigned an infinite threshold level and therefore not subject to routine reporting under EPCRA sections 311 and 312. EPA proposes to relieve this class of substances from routine reporting under EPCRA sections 311 and 312 in only those cases where the specific conditions warrant such relief.

The proposed threshold is as follows. A hazardous chemical would be deemed to have a minimal hazard and present a minimal risk under the EPCRA sections 311 and 312 program, and the owner or operator would be relieved from the routine reporting requirements under these provisions, if the chemical meets each of the following criteria:

(1) The chemical has a minimal inherent hazard and presents a minimal physical or health risk, to individuals in the community beyond the site or sites on which the facility is located, and to emergency responders on-site, under normal conditions of production, use, or storage, or in a foreseeable emergency.

(2) The chemical has a minimal inherent hazard and presents a minimal risk, to the environment beyond the site or sites on which the facility containing the chemical is located.

(3) The SERC, the LEPC and the fire department with jurisdiction over the facility have been notified of the facility's assessment regarding a chemical that has a minimal inherent hazard and presents a minimal risk. (The proposed requirements for notification are discussed further below.)

In today's proposed regulation, paragraph 370.10(a)(2)(v) provides that, for any chemical meeting the specific criteria for minimal inherent hazards and minimal risks under proposed section 370.11, the threshold level is infinite. Proposed section 370.11 provides the criteria that must be met for a hazardous chemical to qualify for the proposed infinite threshold level, including the proposed requirements for notification to the SERC, the LEPC and the fire department.

It is important to note that, under today's proposed rule, the following substances do not qualify for the infinite threshold level: substances that are listed as Extremely Hazardous Substances (EHSs) under EPCRA section 302 (40 CFR part 355); regulated substances under the Clean Air Act (CAA) Risk Management Program (RMP) (40 CFR part 68); hazardous substances under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA) (40 CFR part 302); toxic chemicals under the toxic chemical release reporting requirements of EPCRA section 313 (40 CFR part 372). See proposed paragraph 370.11(a). Substances that are covered under these other programs are regulated because of the significant hazards they present; so such substances could not meet the proposed criteria for minimal hazards. EPA seeks public comment on these or any other lists of regulated substances that should be categorically excluded from the proposed class of chemicals with minimal inherent hazards and presenting minimal risks, under the EPCRA sections 311 and 312 program.

The application of the proposed infinite threshold depends on the conditions of a particular substance at a particular facility. The level of risk associated with a substance depends on a variety of chemical and facility-specific factors, including the identity of the substance involved and the nature of the facility. A substance may meet the proposed criteria for an infinite threshold at a particular facility, due to the relevant circumstances at that facility, but may not meet the criteria at a different facility.

The infinite threshold level proposed today could only apply to substances that have a minimal inherent hazard. EPA doesn't intend the proposed threshold to apply to any substance that, because of its inherent hazards, could present a significant risk to emergency responders at a facility (or to the surrounding community or environment) in the event of a release. Examples of substances which might be covered by the proposed infinite threshold may include substances that are OSHA hazardous chemicals solely because of an irritation hazard only to employees regularly exposed in the workplace, but for which there is no other acute health hazard.

Implementation of the proposed infinite threshold would be optional—any facility owner or operator would have a choice whether to make an assessment regarding a hazardous chemical present at their facility. Upon making an assessment that a hazardous chemical met the criteria for the infinite threshold level, a facility owner or operator would notify the SERC, the LEPC and the local fire department of such assessment, the name of the chemical, and any conditions relevant to the assessment. Any facility owner or operator may choose not to make use of the proposed threshold for any hazardous chemicals at their facility, in which case they would continue to routinely report all covered hazardous chemicals present at their facility above threshold levels.

EPA is considering several options regarding the notification requirements associated with this relief from routine reporting requirements. In weighing each option, EPA will need to consider the requirements associated with each notification option, any burden to government entities and industry associated with each option, and the government entities' ability to ensure that they continue to receive information that they believe is necessary. While the proposed regulatory text includes only one of these options, based on this document and opportunity for public comment, EPA may, in the final rulemaking action, choose to promulgate any combination of the proposed options discussed below. EPA seeks comments on all of the notification options discussed below.

In today's document, EPA proposes that any facility owner or operator that makes an assessment that a specific substance meets the infinite threshold

criteria notify the SERC, the LEPC, and the local fire department with jurisdiction over the facility (see proposed section 370.11(b)(1)). The SERC, the LEPC or the local fire department may request additional information on the basis of the assessment or otherwise question the assessment. The required notification must include the name of the chemical for which an assessment has been made and any conditions relevant to that assessment. EPA recommends, but does not require, this notification be in writing. If a facility owner or operator makes an assessment, but fails to follow the required notification procedures, the substance in question would not qualify for the proposed infinite threshold—such a substance would continue to be subject to routine reporting. The notification need only be made once (not annually), provided that there are no changes in the conditions of that substance at the facility that might affect whether the substance continues to meet the proposed criteria. Requirements for re-notification due to a change in conditions are discussed further below.

In the paragraph above, EPA has stated that the notification of a facility's assessment regarding a hazardous chemical would not have to be in writing. Another option would be to require that such notification be in writing. EPA could also require, as part of the notification, that the facility provide a brief description of why a chemical meets the criteria for minimal hazard/minimal risk chemicals. EPA requests comment on the contents of the notification, as well as on whether or not EPA should require the notification be in writing.

The proposed notification requirement imposes a minimal burden to qualify for relief from routine reporting. This option does not require EPA, the SERC, the LEPC or the fire department to review the facility's assessment. However, EPA, the SERC, the LEPC or the fire department may evaluate the assessment and may contact the facility to discuss the assessment at any time. In addition, EPA and these three other governmental entities may bring enforcement and/or civil actions if a facility uses the infinite threshold for a hazardous chemical that does not meet the proposed criteria.

Another option would include requiring a notice of acceptance from the SERC, the LEPC and local fire department before a facility could apply the proposed infinite threshold level. In this case, the infinite threshold would apply only for reporting to an entity that has accepted the assessment. Therefore, if a facility owner or operator does not receive notice of acceptance from the SERC, the LEPC or the fire department, the facility's assessment has effectively been rejected, and the infinite threshold level does not apply to the hazardous chemical in question (for purposes of reporting to any entity that has not accepted the determination). If a SERC, LEPC, or fire department did not notify a facility that its assessment regarding a specific substance had been accepted, but the facility owner or operator failed to report the substance as required under sections 311 and 312 and the implementing regulations (that is, they failed to comply with the routine reporting requirements and did their reporting as if that substance was subject to an infinite threshold level), such a facility could be subject to an enforcement action.

SERCs, LEPCs and local fire departments each evaluate, and set priorities for, emergency planning and hazardous chemical community right-to-know under EPCRA sections 311 and 312, and may have their own information needs. Thus, one entity may agree with the facility owner or operator that the threshold properly applies, and another entity may disagree. Because each SERC, LEPC or local fire department would have discretion concerning the acceptance or rejection of facilities' assessments regarding specific OSHA hazardous chemicals, a particular quantity of a specific substance might be reportable at one facility, and not reportable at another facility.

In addition, the SERC, the LEPC or the local fire department might choose to accept the facility's assessment, but only under specific conditions. Thus, the facility owner or operator, the SERC, the LEPC, or the local fire department might each establish conditions under which a specific substance is covered by the proposed infinite threshold. Some examples of conditions on the use of the proposed infinite threshold could include: type of storage vessel, or whether stored aboveground or underground.

Another option would be to allow the SERC, the LEPC, and the local fire department to reject the facility's assessment. In this case, the SERC, the LEPC, or the fire department would notify the facility only if its assessment had not been accepted. The substance in question would not be covered by the proposed infinite threshold for purposes of reporting to that specific entity that rejected the assessment.

An additional option would require the facility to maintain the records that served as the basis for the assessment. Under this option, the facility would not have to notify the SERC, the LEPC and the local fire department of its assessment. The facility, however, would need to be able to produce the assessment records upon request.

The Agency is seeking comments on all of these notification options. In the final rulemaking action, the Agency may promulgate any option or combination of options proposed above.

A hazardous chemical would no longer qualify for the proposed infinite threshold level if a change occurred that could affect whether the chemical continued to meet the specific criteria under proposed section 370.11. Such a substance would instead be subject to the usual hazardous chemical reporting threshold (generally 10,000 pounds), and would be routinely reported in accordance with EPCRA sections 311 and 312 and the implementing regulations. If the facility owner or operator made an assessment that, under the changed conditions, the substance met the specific criteria for minimal hazards and minimal risks, it would be necessary to repeat the proposed notification procedures (see proposed section 370.11(b)(3)). Until the notification requirements were met, the chemical would need be routinely reported, based on the applicable threshold level (generally 10,000 pounds).

While EPA intends, in this proposal, to provide relief from reporting material safety data sheets (MSDSs) under EPCRA section 311 and annual Tier I inventory information under EPCRA section 312, public access to MSDSs and Tier II inventory information regarding substances fitting the proposed criteria would be preserved in specific circumstances because the threshold for reporting in response to a request for information (by a State or local official) would remain zero. In other words, EPA is not proposing any changes to the existing requirements under EPCRA regarding public access to hazardous chemical information. These requirements are discussed in detail in part IV.A.1. of this document. In addition, State and local governments always may choose to establish lower thresholds under State or local law, if appropriate.

EPA requests comments concerning the proposed infinite threshold described here. EPA also requests comments regarding whether the specific criteria proposed will achieve the goal of establishing a class of substances that can be relieved from routine reporting burdens without significant risk to the community including emergency response

personnel, and seeks suggestions regarding additional or different criteria to achieve that goal.

EPA seeks comments on a number of issues regarding the implementation and administration of the proposed threshold described here. The one-time notification described above (with re-notification if warranted by changes in conditions) is, in EPA's view, a less burdensome requirement than the annual submission of information—EPA requests public comment on whether such a notification would, in fact, be less burdensome than annual reporting. EPA would also like to know if SERCs, LEPCs and local fire departments would be concerned that the burden placed on them to review and respond to such notifications would be significant. EPA also seeks comment on imposing conditions on the use of the proposed infinite threshold level. Additionally, EPA is interested in public comment on whether there are any concerns over the inconsistencies that may develop in reporting, since a specific substance might be reportable at one facility, and not be reportable at another facility, under this proposal.

In today's rulemaking, EPA is proposing the above approach to provide relief for facilities from routinely reporting substances that have minimal hazards, and present minimal risks to the community and to emergency response personnel, and present minimal risks to the environment. EPA is also exploring an alternative approach to achieve that goal, and is seeking feedback on that alternative approach. Under the alternative approach, any substance which was determined to have minimal hazards and present minimal risks, using the proposed criteria described above, would be put into a newly created subset of OSHA hazardous chemicals that would be called Type 2 hazardous chemicals under EPCRA. Type 2 hazardous chemicals would be subject to the same reporting thresholds (generally 10,000 pounds), and reporting deadlines, as all hazardous chemicals that are reportable under EPCRA sections 311 and 312, but the information requirements under section 312 would be reduced. Under section 312 and the implementing regulations, the maximum amount and average daily amount of hazardous chemicals are to be reported in ranges. For Type 2 hazardous chemicals, the reporting ranges would be much broader than the usual ranges. The ranges would be so broad that, each year, the range reported for a Type 2 hazardous chemical would not likely change. In addition, a facility owner or operator would be able to incorporate by reference information previously reported on a Type 2 hazardous chemical, in the manner described in part V.A.4 of this document. In other words, if the information regarding a Type 2 hazardous chemical did not change from year to year, it would not be necessary to report any new information for that specific hazardous chemical. It would, however, be necessary to report that the information submitted the prior year for that hazardous chemical was incorporated by reference into the current report. A detailed discussion on the concept of incorporation by reference, including issues and concerns, is found in part V.A.4 of this preamble. In order to report a Type 2 hazardous chemical, a facility owner or operator would need to provide notice to the SERC, the LEPC and the local fire department of their assessment that a hazardous chemical was of Type 2. The notice requirement might be satisfied by providing a brief explanation, when submitting inventory information under section 312, of the minimal inherent hazards associated with a specific substance, and of the conditions under which that substance presents minimal risks. EPA will review the public comments received regarding this alternative approach, and may consider publishing a supplemental proposal if this approach is feasible.

In today's document, EPA seeks to relieve facilities from routine reporting of substances that are not generally relevant for the hazardous chemical community right-to-know and emergency planning purposes of EPCRA sections 311 and 312, but that are considered hazardous chemicals under OSHA because of the way they are used in the workplace. While EPA's goal is to relieve facilities from routine reporting of information that is not useful to the community, EPA does not intend to compromise communities' right-to-know. EPA intends, in this proposal, to achieve this goal in a manner that is reasonable and also consistent with the requirements under the EPCRA statute. EPA seeks public comments on the feasibility of the various alternatives discussed here, and also seeks suggestions on any other ways that this goal may be achieved.

3. Relief From Routine Reporting for Sand, Gravel and Rock Salt Under EPCRA Sections 311 and 312

As discussed above, a substance is subject to EPCRA sections 311 and 312 if OSHA's hazard communication standard, codified at 29 CFR 1910.1200, requires the owner or operator of a facility to prepare or have available an MSDS for that substance. OSHA's hazard communication standard is designed to protect worker safety, and the requirements of that section are applicable to any hazardous chemical that is known to be present in the workplace in such a manner that employees may be exposed under normal conditions of use or in a foreseeable emergency. The definition of hazardous chemical under OSHA is very broad. EPA believes that certain substances that may present a physical or health hazard to employees in the workplace (and are therefore considered to be hazardous chemicals and subject to OSHA's hazard communication standard) have minimal inherent hazards, and present minimal environmental risks and minimal physical or health risks to the community or to emergency responders on-site; therefore these substances are not generally of regulatory significance under EPCRA sections 311 and 312. Also, as discussed in the previous part of the document, sections 311(b) and 312(b) of EPCRA allow EPA to establish threshold quantities for hazardous chemicals below which no facility needs to report (except in response to a request for information).

EPA believes that sand, gravel and rock salt, which may be considered hazardous chemicals under OSHA's hazard communication standard, have minimal inherent hazards and generally would not have the potential to present significant risks to the community or to emergency responders on-site, regardless of site-specific circumstances, and are therefore not of regulatory significance under EPCRA sections 311 and 312. Specifically, EPA believes that sand, gravel and rock salt meet the following two criteria:

(1) Sand, gravel and rock salt have a minimal inherent hazard and present a minimal physical or health risk, to individuals in the community beyond the site or sites on which the facility is located, and to emergency responders on-site, under normal conditions of production, use, or storage, or in a foreseeable emergency.

(2) Sand, gravel and rock salt have a minimal inherent hazard and present minimal risks, to the environment beyond the site or sites on which the facility containing the chemical is located.

The threshold for reporting hazardous chemicals under EPCRA sections 311 and 312 is currently 10,000 pounds for the majority of substances. In today's rulemaking, EPA is proposing to establish an infinite threshold level for sand, gravel and rock salt. An infinite threshold level means that, regardless of

the amount of sand, gravel or rock salt present at a facility at any one time, the amount would not trigger routine reporting under sections 311 and 312. Section 370.10(a)(2)(iv) in today's proposed rule contains the proposed infinite threshold level for sand, gravel and rock salt.

Setting this infinite threshold level would not create an exemption from reporting, however, because reporting would still be required in response to a request. While EPA intends, in this proposal, to provide relief from reporting material safety data sheets (MSDSs) under EPCRA section 311 and annual Tier I inventory information under EPCRA section 312, public access to MSDSs and Tier II inventory information regarding sand, gravel and rock salt would be preserved in specific circumstances because the threshold for reporting in response to a request for information (by a State or local official) would remain zero. In other words, EPA is not proposing any changes to the existing requirements under EPCRA regarding public access to hazardous chemical information. The existing requirements are discussed in detail in part IV.A.1. of this preamble, above. In addition, States and local governments always may choose to establish lower thresholds under State or local law, if appropriate.

A substance such as gravel or sand may be subject to OSHA's hazard communication standard because, for example, of the hazard posed by respirable dust. EPA understands that such dust may present a health hazard to employees who are regularly exposed to it in the workplace. However, EPA believes such dust would not pose an acute hazard to emergency responders or to the surrounding community, so it is not of regulatory significance under EPCRA sections 311 and 312. EPA would like to achieve a sound balance between the amount of information generated under sections 311 and 312, and the value of that information. EPA believes that, although sand, gravel and rock salt may fit OSHA's broad criteria for hazardous chemicals, they are not generally relevant for the hazardous chemical community right-to-know and emergency planning purposes of EPCRA.

EPA is interested in public comments addressing its belief that sand, gravel and rock salt warrant infinite threshold levels to exclude these substances from routine reporting under EPCRA sections 311 and 312. EPA seeks public input on any emergency situations in which any of these three substances threatened the health or safety of emergency response officials or the surrounding community. Additionally, EPA requests public input regarding any other specific hazardous chemicals that may also generally not warrant routine reporting under sections 311 and 312.

While EPA is proposing to generally relieve sand, gravel and rock salt from being routinely reported under EPCRA sections 311 and 312, EPA is also proposing in today's document to relieve other hazardous chemicals from routine reporting in specific cases where the conditions warrant such relief (see part IV.A.2 of this document, which is headed ''Relief From Routine Reporting Requirements for Substances With Minimal Hazards and Minimal Risks Under EPCRA sections 311 and 312''). EPA seeks public comment on whether sand, gravel and rock salt should, in fact, be absolutely excluded from routine reporting as discussed here, or whether these three substances should be treated on a case-by-case basis, in the manner described in part IV.A.2 of this document.

B. Other Regulatory Changes

1. Reporting of Mixtures Under EPCRA Sections 311 and 312

In today's document, EPA is rewriting in plain English format the current regulation for applying threshold quantities to mixtures and reporting mixtures under EPCRA sections 311 and 312, and reorganizing the regulation to improve understanding of the requirements (a detailed discussion on plain English format is provided in part VI.A. of this document). In the preamble discussion below, EPA also generally explains the mixture requirements. Although the proposed regulation has been rewritten and reorganized, the only substantive changes proposed today to the existing mixture regulations are the four specific regulatory revisions explained below. EPA seeks public comment on those particular proposed regulatory revisions. EPA is not re-opening for public comment any other provisions of the mixtures regulation contained in today's document, as the regulation is a restatement of the existing regulation in plain English format. However, EPA will consider public comment on the limited issue of whether EPA, in restating and reorganizing the existing regulatory requirements, has inadvertently changed the meaning.

A facility is subject to sections 311 and 312 of EPCRA if the facility must prepare or have available an MSDS for a hazardous chemical under the Occupational Safety and Health Act (OSHA) and regulations issued under that Act. The OSHA regulations allow that MSDSs may provide hazard information on a mixture that contains hazardous chemicals, or provide hazard information on the individual hazardous chemical components of that mixture. For this reason, facilities subject to EPCRA sections 311 and 312 might have MSDSs for mixtures, or for individual hazardous chemical components of mixtures. Therefore, the reporting requirements under sections 311 and 312 permit the choice of reporting a mixture as the mixture itself or by its hazardous chemical components.

EPCRA sections 311(a)(3) and 312(a)(3) contain the statutory provisions for reporting on mixtures containing hazardous chemicals. These provisions state that for a mixture of hazardous chemicals, a facility may meet the reporting requirements of section 311 of EPCRA by submitting an MSDS (or a list) for the mixture itself, or for each hazardous chemical component in the mixture. Similarly, a facility may meet the reporting requirements of section 312 by providing inventory information for the mixture itself, or for each hazardous chemical component of the mixture. If an MSDS (or listing) and inventory form are submitted for a hazardous chemical which is a component of a mixture (instead of for the mixture itself), and if more than one mixture at a facility contains the same hazardous chemical, only one MSDS (or one listing) and one entry on the inventory form is necessary for that hazardous chemical.

In the current regulation, section 370.28 contains the requirements for applying the reporting threshold to mixtures containing hazardous chemicals, and for reporting such mixtures, under EPCRA sections 311 and 312. Section 370.14 in today's proposed regulation provides the requirements for mixtures containing hazardous chemicals. The regulatory language in proposed section 370.14 generally reiterates the current regulation. However, four regulatory revisions are proposed, and are discussed below.

In today's document, EPA proposes to present some of the more complex aspects of the mixture requirements in table format (see proposed section 370.14(b)). With the four exceptions identified below, EPA is merely restating the existing regulatory requirements in an improved format and is not re-opening the underlying regulations for public comment (although EPA will consider public comment on the narrow issue of whether it has accurately rewritten the existing regulations). A detailed

comparison between the current regulation (existing section 370.28) and the proposed regulation (proposed section 370.14) follows:

- Section 370.28(a) in the current regulation provides that the owner or operator of a facility may meet the requirements for MSDS and Tier I information reporting for mixtures containing hazardous chemicals by either (1) reporting with respect to each component in the mixture that is a hazardous chemical, or (2) reporting with respect to the mixture itself. In today's proposed regulation, section 370.14(a) and the table in section 370.14(b) repeat this basic reporting option, without substantive revision.
- Section 370.28(a) in the existing regulation also provides that, where practicable, the reporting of mixtures by a facility be consistent for inventory reporting and MSDS reporting. The requirement for consistent reporting is provided, without substantive change, in proposed section 370.14(d) and is also reflected in the reporting requirements in the proposed table at section 370.14(b). (The requirements for consistent reporting are discussed below.)
- Section 370.28(b)(1) in the current regulation provides the requirements for calculating the quantity of a hazardous chemical component present in a mixture, and proposed section 370.14(c) repeats those requirements without substantive change.
- Section 370.28(b)(2) in the existing regulation provides that, if the reporting is on the mixture itself, the total quantity of the mixture shall be reported. This is the first provision where EPA is proposing a substantive regulatory revision for public comment. Proposed section 370.14(a)(2) and the table in proposed section 370.14(b) in today's regulation provide the requirements for reporting mixtures. Those proposed sections do not include reference to reporting ''the total quantity of the mixture,'' but instead cross-reference the EPCRA sections 311 and 312 information requirements for reporting elsewhere within the proposed regulation. The table in proposed section 370.14(b) directs the reader to proposed sections 370.30 and 370.40, which provide the information requirements. EPA therefore believes it is not necessary to retain the current regulatory language in section 370.28(b)(2) and requests public comment on the proposed deletion of this provision.
- Section 370.28(c)(1) in the existing regulation provides EPA's requirements for applying threshold quantities to hazardous chemicals that are EHSs, when they are components in mixtures. That section provides that all quantities of an EHS present at a facility be added together to determine if the reporting threshold has been equaled or exceeded— including the quantity present as a component in all mixtures and all other quantities of the EHS at the facility. In today's proposed regulation, the requirement to add together all quantities of an EHS present at the facility when applying the reporting threshold is provided in the table in proposed section 370.14(b) without substantive revision. However, one limited substantive change is proposed to that requirement—language has been added to clarify that, when determining the total quantity of an EHS present at a facility, the quantity present in a mixture must be included even if that particular mixture is also being applied as a whole toward the threshold level for that mixture. This is the second substantive regulatory revision that EPA is proposing to the mixture regulations. EPA requests public comment on the substance of this clarification.
- Section 370.28(c)(2) in the existing regulation provides that, when reporting an EHS that is a component of a mixture, the owner or operator of a facility has the basic option to report either with respect to each component in the mixture that is a hazardous chemical, or with respect to the mixture itself. As noted, this option is provided (for all hazardous chemicals including EHSs) without substantive revision in proposed section 370.14(a) and the table in proposed section 370.14(b).
- Note that section 370.21(b) in the existing regulation (which provides that facility owners or operators have the option to submit a list of hazardous chemicals instead of submitting MSDSs), also contains a provision on reporting of mixtures. Proposed section 370.30(a)(2), which contains the same provision that owners or operators have the option to submit a list instead of MSDSs, does not contain any provisions on reporting of mixtures because in today's proposed rule the requirements for reporting mixtures are consolidated in proposed section 370.14.
- In today's regulation, the table in proposed section 370.14(b) specifies EPA's requirements for applying the threshold quantity to a hazardous chemical component in a mixture, when the hazardous chemical is *not* an EHS. Proposed section 370.14(b) provides that the owner or operator of a facility may choose to either (1) determine the total quantity of a (non-EHS) hazardous chemical component present throughout the facility, by adding together the quantity present as a component in all mixtures and all other quantities of that hazardous chemical (including the quantity present in a mixture even if that particular mixture is also being applied as a whole toward the threshold level for that mixture), or (2) determine the total quantity of the mixture itself present throughout the facility. EPA proposes today to adopt regulatory revisions to clarify these requirements for applying threshold quantities for mixtures containing non-EHS hazardous chemicals, and requests comments on the substance of this proposed regulatory revision. This is the third substantive regulatory revision that EPA is proposing to the mixture requirements today. This proposal is discussed further below.
- EPA is also proposing to add regulatory language to specify requirements for determining if a threshold amount of a non-EHS hazardous chemical is present, when that chemical is present both by itself and as a component in mixture(s). Proposed section 370.14(e) provides that, if a non-EHS hazardous chemical is present at a facility both by itself and as a component in mixture(s), the facility must determine the total amount present to apply the threshold level. To calculate this quantity, you must add together all quantities of the hazardous chemical present at the facility, including the quantity present in all mixtures. EPA proposes today to adopt this regulatory revision, and requests comments on the substance of the revision. This is the fourth substantive regulatory revision that EPA is proposing to the mixture regulations today. This proposal is discussed further below.

As discussed above, EPA is proposing regulatory revisions to clarify the requirements for applying threshold quantities to mixtures containing hazardous chemical components that are *not* EHSs, by adding regulatory language in proposed section 370.14(b) that provides the choice of either (1) determining the total quantity of a hazardous chemical component present, or (2) determining the total quantity of the mixture itself. Whenever you must apply a threshold to the total quantity of a non-EHS hazardous chemical present at any one time, this proposed revision clarifies that you can calculate either the total quantity of the hazardous chemical component, or the total quantity of the mixture (considering the mixture itself as the ''hazardous chemical''). Both of these options to determine the quantity of a hazardous chemical will result in a reasonably accurate reflection of the total quantity of a non-EHS hazardous

chemical present at a facility at any one time—which is the amount to which the threshold levels should be compared. The two options for applying threshold quantities to mixtures containing non-EHS hazardous chemical components are explained below:

Option (1) In this case, the total quantity of a non-EHS hazardous chemical component is determined. To establish whether the reporting threshold for that hazardous chemical component has been exceeded, calculate the total quantity of that hazardous chemical present throughout the facility at any one time, including as a component in *all* mixtures (even in a mixture that will be separately applied toward the threshold level for that mixture), and all other quantities present. See Conference Report at 5105. Section 370.14(c) in today's proposed regulation provides instructions for determining the quantity of a non-EHS hazardous chemical component present in a mixture. Compare the total quantity of that hazardous chemical to the hazardous chemical reporting threshold (the reporting threshold for all non-EHS hazardous chemicals is currently 10,000 pounds—today EPA is proposing to change the thresholds for certain circumstances, as discussed elsewhere in this preamble).

Option (2) In this case, the total quantity of the mixture itself is determined. To establish whether the reporting threshold for that mixture has been exceeded, calculate the total quantity of that particular mixture present throughout the facility at any one time. Compare the total quantity of that mixture to the hazardous chemical reporting threshold.

As discussed above, EPA is also proposing regulatory revisions to clearly establish that, if a particular non-EHS hazardous chemical is present *both* by itself *and* as a component in mixture(s) at your facility, you must determine the total quantity of the hazardous chemical to see if it meets or exceeds the threshold. To determine the total quantity of a hazardous chemical present, you must add together all quantities of the hazardous chemical, including the quantity present in all mixtures (even in a particular mixture that is being applied separately toward the threshold level for that mixture). For example, in the case of a manufacturer that produces or obtains benzene and formulates 200 mixtures with the benzene, the threshold level would apply to the total quantity of benzene at the facility, where some benzene is still in bulk storage and some has been formulated into mixtures. EPA understands that there has been confusion in the past about EPA's requirements for applying threshold quantities when a non-EHS hazardous chemical is present both by itself and as a component in mixture(s). This regulatory revision clearly establishes a method of calculating the quantity that will result in an accurate reflection of the total quantity present at any one time—which is the amount to which the threshold levels should be compared. Applying the threshold to a non-EHS hazardous chemical component by itself without considering its presence in mixtures will not completely reflect the amount of the hazardous chemical present. Because you must already apply the threshold to the hazardous chemical itself (when the hazardous chemical is present both by itself and in mixtures), you can only do so accurately by adding together all quantities of that hazardous chemical present.

EPA has required that, where practicable, reporting for mixtures be done consistently for both sections 311 and 312 of EPCRA (this requirement is in section 370.28(a)(2) in the existing regulation). In today's proposed regulation, section 370.14(d) similarly states, without substantive revisions, that for each specific mixture, reporting must be done consistently for both sections 311 and 312, ''* * * unless impracticable.'' In other words, if a facility reports a specific mixture as a whole under section 311, the facility is also required to report that mixture as a whole under section 312, unless the facility can show that it is impracticable to do so. Similarly, if a facility reports a specific mixture by its hazardous chemical components under section 311, the facility is also required to report that mixture by its hazardous chemical components under section 312, unless the facility can show that it is impracticable to do so.

EPA's intention is to be reasonable in establishing reporting requirements. Consistent with the existing regulation, the phrase ''unless impracticable'' has been included to account for specific cases where the owner or operator of a regulated facility can demonstrate that it wouldn't be practicable to report consistently under sections 311 and 312. EPA believes that in all but a few unique cases, consistent reporting for sections 311 and 312 is practicable. It is important for the MSDS information to correspond with the inventory information to ensure consistency in the qualitative and quantitative information received about the hazards of covered chemicals. The MSDS information and inventory information are intended to be used together to determine the chemical hazards present at a facility—the MSDS provides information on the hazards associated with the types of chemicals that are reported with the inventory information. See Conference Report at 5105.

As discussed above, EPCRA sections 311(a)(3) and 312(a)(3) provide that, when reporting mixtures containing hazardous chemicals, facility owners or operators have a choice to report in reference to the mixture itself, or in reference to each hazardous chemical component of the mixture. EPA, of course, recognizes this basic choice for reporting mixtures. However, EPA recommends that whichever way a facility owner or operator chooses to report for one mixture, the same choice should be made for every mixture at the facility. In other words, if a facility reports a specific mixture as a whole under sections 311 and 312, then EPA suggests that each mixture at the facility be reported as a whole under sections 311 and 312. Similarly, if a facility reports a specific mixture by its hazardous chemical components, then EPA suggests that each mixture at the facility be reported by its hazardous chemical components. EPA encourages consistent reporting throughout a facility because of various programmatic reasons. Consistent reporting throughout a facility facilitates the calculations necessary for reporting, improves the clarity of the reported information consistent with the emergency planning and response purposes of EPCRA, and reduces duplicative reporting. However, EPA understands that it may not always be reasonable to report consistently throughout a facility and recognizes that the owner or operator of the facility has discretion to determine whether to report based on the mixture or the hazardous chemical components of the mixture.

While the plain English format proposed today is intended to improve the public's understanding of EPA's regulations, it is not intended to change the substantive requirements in EPA's existing regulations. As discussed in detail above, EPA has proposed four specific substantive regulatory revisions regarding mixtures including (1) the removal of reference to reporting ''the total quantity of the mixture'' from the section containing the mixture requirements (see existing section 370.28(b)(2) and proposed section 370.14); (2) the additional language in proposed section 370.14(b) to make the clarification that, when determining the total quantity of an EHS present at a facility, the quantity present in a mixture must be included even if that particular mixture is also being applied as a whole toward the threshold level for that mixture; (3) the additional language in proposed section 370.14(b) to clarify how to apply threshold levels

for mixtures containing hazardous chemical components that are *not* EHSs; and (4) the additional language in proposed section 370.14(e) to clearly establish how to determine the total quantity of a hazardous chemical present, when the chemical is present both by itself and as a component in mixture(s).

EPA requests public comment on the specific substantive proposed regulatory revisions in today's document. EPA also seeks public comment on the plain English format in which the proposed regulation is written, but only on the limited issue of whether any unintended substantive changes have been made to the mixture requirements as a result of re-writing and reorganizing the regulation. Except for the four specific substantive regulatory revisions listed above, EPA is not intending any other substantive changes to the mixture requirements under sections 311 and 312 today. The mixture requirements have been in effect for several years, and EPA is not re-opening for public comment any other substantive aspects of those requirements in this document. EPA is seeking public comments on ways to improve the plain English format to make the mixture requirements clearer and less confusing without changing the substantive requirements. EPA similarly requests public comment on the adequacy and usefulness of the table in proposed section 370.14(b), as well as suggestions for improving the table's clarity.

2. Tier I and Tier II Inventory Forms and Instructions

In today's rulemaking, EPA is proposing to remove the Tier I and Tier II inventory forms from the body of the regulation. Section 312(g) of EPCRA requires the EPA to publish a ''uniform format for inventory forms.'' However, the forms are not required by the statute to be published in regulations. Removing the forms from the regulation would shorten and simplify the regulations, and allow EPA to change the forms more easily to reflect new information and experience. (Note that any change to the forms would still require Office of Management and Budget (OMB) approval under the Paperwork Reduction Act, including public notice and comment when required.) EPA would continue to publish the uniform Tier I and Tier II forms, which would be readily available on the CEPPO Internet site (www.epa.gov/ceppo), or by contacting the National Center for Environmental Publications and Information (NCEPI) at 800/490–9198. The Tier II form is currently available on the CEPPO Internet site.

EPA is proposing today to remove both the forms and corresponding instructions from the regulation. The Tier I form and instructions are in section 370.40 in the existing regulation, and the Tier II form and instructions are currently in section 370.41. Neither the forms themselves, nor the instructions, are included in today's proposed rule. However, EPA will continue to make the forms and instructions available to the public, as indicated above.

At the same time, EPA's proposed rule would continue to contain a narrative description of the Tier I and Tier II informational requirements. Specifically, sections 370.41 and 370.42 in the proposed rule set forth the required Tier I and Tier II information, respectively.

Today EPA is proposing two changes to the Tier I and Tier II information requirements. The first proposed change is to require facilities to report a Facility Identification Number with their Tier I (or Tier II) information. The Facility Identification Number is part of a standardized facility identification scheme the Agency is currently undertaking, and is discussed further in part IV.B.4. of this document. The second proposed change to the information requirements is to require facilities to report the NAICS code for their facility instead of the SIC code, as currently required. Replacement of the SIC codes by the NAICS codes is discussed below. The Tier I and Tier II information requirements in today's proposed rule are the same as the existing information requirements, with the exception of these two proposed changes. EPA is not seeking public comment on any other aspect of the existing information requirements.

The facility identification portions of the existing Tier I and Tier II forms require reporting of the primary SIC code for the facility. However, the SIC system is currently being replaced by the NAICS system, which is a new economic classification system that has been developed to provide common industry definitions for Canada, Mexico, and the United States. OMB published a document in the **Federal Register** regarding the replacement of the 1987 SIC by the 1997 NAICS, on April 9, 1997. In today's proposed rule, the sections that list the Tier I and Tier II information requirements (proposed sections 370.41 and 370.42, respectively) require the NAICS code instead of the SIC code.

EPA seeks comment on requiring facilities to report the NAICS code instead of the SIC code. In particular, EPA seeks comment on whether it is premature or otherwise inappropriate to adopt NAICS codes at this time, and whether EPA should therefore retain usage of the SIC codes for the time being. EPA also invites comment on whether it would be sensible to allow reporting of either the SIC code or the NAICS code (and an indication of which code was being reported), or to require reporting of both codes, during a period of transition from use of the SIC to the NAICS. EPA understands that different agencies may begin using the NAICS codes for regulatory purposes at different times. If EPA transitions to using the NAICS codes in today's proposed rule, this change may not be consistent with the timing of some other agencies' use of the new codes. EPA seeks comment on the appropriate time to transition to the NAICS codes for purposes of the reporting requirements under today's proposed rule. EPA also seeks public input on making a corresponding change to use NAICS codes instead of SIC codes on the Tier I and Tier II forms themselves.

In addition to setting forth the uniform inventory forms and instructions, existing sections 370.40 and 370.41 reiterate many of the reporting requirements that are codified in other sections in the regulation. EPA doesn't believe it is necessary for these requirements to be stated twice within the same regulation, and the proposed Tier I and Tier II information sections (sections 370.41 and 370.42) don't reiterate requirements codified elsewhere in the regulation. EPA requests public comments on this proposed change.

The Tier I and Tier II instructions, which are in existing sections 370.40 and 370.41, contain some general explanatory information about the reporting requirements and some examples and suggestions to ease compliance. This instructional information is not included in the body of the proposed regulation, but would still be included with the forms and instructions that are readily available to the public. While EPA is proposing to remove this instructional information from the proposed regulation, the Tier I and Tier II information requirements in today's proposed rule are the same as the existing Tier I and Tier II information requirements (except for the two specific proposed changes described above). EPA requests public comments regarding removal of this instructional information.

Hazardous chemicals are classified into five hazard categories for purposes of reporting under EPCRA sections 311 and 312. These five categories are a

consolidation of the 23 hazard categories defined under OSHA, at 29 CFR 1910.1200. Sections 370.40 and 370.41 in the existing rule, which contain the Tier I and Tier II inventory forms and instructions, each contain a chart that compares EPA's hazard categories under EPCRA with OSHA's hazard categories. Although today's proposed rule does not include the Tier I and Tier II forms and instructions, the five EPCRA hazard categories are defined in proposed section 355.62 and the corresponding OSHA hazard categories are identified for each EPCRA hazard category.

Section 370.41 in the existing regulation, which contains the Tier II form and instructions, also sets forth the requirements pertaining to trade secret information and confidential location information for specific chemicals. These requirements aren't found elsewhere in the existing regulation. Section 370.64 in today's proposed rule contains the trade secret requirements and the requirements for confidential location information.

The instructions for the Tier II form (currently found in section 370.41) indicate the requirement to report the ''chemical name or common name'' for each chemical being reported. Section 370.42 in today's proposed rule, which contains the Tier II information requirements, indicates the requirement to report the ''chemical name or common name of the chemical *as provided on the material safety data sheet*.'' EPA isn't proposing any change to this requirement, but rather reiterating the full requirement, consistent with the statutory language in EPCRA section 312(d)(2)(A).

The Tier I and Tier II forms that EPA publishes aren't the only formats that are acceptable for inventory reporting under the EPCRA program. The existing regulations (40 CFR 370.40 and 370.41) provide that the facility owner or operator may submit a State or local form that contains the identical content of the published uniform federal format (the Tier I or Tier II information). Such State or local forms are adequate for section 312 reporting of Tier I and Tier II information, provided the entities to whom the forms must be submitted receive the information by the reporting deadline. The proposed regulations specify the requirements for Tier I and II information (see proposed sections 370.41 and 370.42) and similarly provide that State or local formats for reporting may be used so long as they contain the required information. See proposed section 370.40(b). Many States have developed their own format for reporting, which often contains additional requirements beyond what is required by the Tier I or Tier II forms. Electronic inventory forms are available from various sources, including the CEPPO homepage and some States.

EPA believes that it is appropriate for the Tier I and Tier II forms to be published and readily available, but not to be published in the regulations. EPA is interested in comments concerning the removal of these forms from the body of the regulation, and suggestions about how the forms can be made readily available. EPA is especially interested in comments on whether the public actually uses the Code of Federal Regulations (CFR) as a source of the Tier I or Tier II forms, in which case it might be helpful to retain the forms and instructions in the regulations.

3. Penalties for Noncompliance

Sections 355.50 and 370.5 in the existing rules describe potential penalties for noncompliance with EPCRA's emergency release notification requirements and hazardous chemical reporting requirements, respectively. The Tier I and Tier II form instructions also describe potential penalties for noncompliance with the hazardous chemical reporting requirements. In today's rulemaking, EPA is proposing to remove these provisions from the body of the regulations because it is not necessary to repeat them in the regulations. The potential penalties for all EPCRA violations are established in the statute itself, which is self-implementing. The absence of the penalty discussions in the rule won't change any requirements with respect to enforcement. EPA seeks comment on whether this is a useful change to streamline the regulations.

4. Facility Identifier as a Tier I and Tier II Information Requirement

EPA is currently undertaking an agency-wide initiative to streamline and consolidate the Agency's collection and maintenance of environmental data. EPA, in cooperation with States, is seeking to establish information management procedures for the identification of facilities that are subject to Federal environmental reporting and permitting requirements. This initiative is intended to improve EPA's management and use of such information, as well as to provide improved public access to such information, by creating links between major data sources. This initiative is known as the Facility Identification Initiative. Through this initiative, EPA intends to establish a standardized facility identification scheme, including a unique Facility Identification Number, for facilities that submit environmental data to EPA under various regulatory programs. EPA would then be able to establish links among records of environmental data relative to a specific facility, and also establish means for the public to access the Agency's data via computer telecommunications and other means. The aim is to enable facility-related environmental information in multiple databases to be easily linked. EPA, in cooperation with the States, is currently developing a non-regulatory process for assigning the Facility Identification Numbers. For the latest information regarding the Facility Identifiers Initiative, please see the memorandum ''Announcing the Facility Identification Interim Data Standard'' in the CERCLA Docket Office, in docket number 300RR–IF1 (for the address of the docket office, see the **ADDRESSES** section of this preamble).

In today's document, EPA is seeking public comment on whether or not to require facilities to report their Facility Identification Number when reporting under EPCRA section 312, if such number has been assigned under another State or Federal environmental program. This document does not contain proposed regulatory language establishing the Facility Identifier Number as part of the Tier I and Tier II information requirements. However, EPA wants to ensure that the public understands that based on this document and opportunity for public comment, EPA may, in the final rulemaking action on this proposal, revise the regulatory requirements for Tier I and Tier II information by adding regulatory language that requires submission of the Facility Identification Number. See existing sections 370.40 and 370.41, and proposed sections 370.41 and 370.42, for Tier I and Tier II information requirements generally. The Tier I and Tier II information regulations would also be revised to provide that only those facilities that are subject to other State and Federal environmental programs, and have been assigned a Facility Identification Number by their State or EPA, would need to submit such Number with their Tier I and Tier II information. The public is hereby informed that EPA may also take final action to include the Facility Identification Number as part of the Tier I and Tier II information requirements, separate from the final action on other aspects of this proposal. This could occur, for example, if EPA determines that the status of the Facility Identifiers Initiative warrants either more expeditious or later regulatory action. Finally, EPA could also

conclude, based on the public input from this document or other considerations, that it will not add Facility Identification Number to the Tier I and Tier II information requirements. All three of these outcomes may occur without providing opportunity for public comment beyond that provided in this document.

Information reported under EPCRA section 312 is submitted to SERCs, LEPCs and local fire departments; it is not reported directly to EPA. However, the Facility Identifiers Initiative is a cooperative data management effort between EPA and the States. States participating in the initiative would include the Facility Identification Numbers in their records, which may eventually be linked to EPA data. Although EPA does not maintain EPCRA section 312 data, EPA may be able to provide data users with links to State data systems. Having the Facility Identification Number present in the data that the SERCs, LEPCs and local fire departments receive from a facility under EPCRA section 312 may allow Federal, State and local governments as well as the public to coordinate that data with other State and Federal data maintained about the same facility. Persons viewing the Tier I or Tier II information for a facility would then know whether the facility is subject to other environmental laws in addition to EPCRA, and would have a link to find additional information about that facility.

EPA seeks comment on whether it would be useful to require that facilities provide their Facility Identification Number, if assigned, when reporting Tier I or Tier II information under EPCRA section 312. EPA would like to know if SERCs, LEPCs, local fire departments and the public would benefit by the Identification Numbers being reported under section 312.

5. Additional Changes to the Parts 355 and 370 Regulations

In today's rule EPA is proposing some changes to the regulations at 40 CFR parts 355 and 370 that are intended to make the rules clearer and easier to use. While rewriting these regulations, EPA took the opportunity to ''clean-up'' the rules—by clarifying requirements, codifying policy, and in some cases restating statutory language. The proposed regulatory revisions are as follows:

• SERC and LEPC instead of commission and committee. In today's proposed rule, SERC and LEPC are used to abbreviate State emergency response commission and local emergency response committee, respectively. Commission and committee (rather than SERC and LEPC) have been used as abbreviations in the existing rule, but EPA believes that the public is generally more familiar with the terms SERC and LEPC. The definitions for key words used in parts 355 and 370, which are found in section 355.62 in today's proposed rule, reflect the use of the terms SERC and LEPC instead of commission and committee.

• Quantity of an extremely hazardous substance in a mixture. Instructions for calculating the quantity of an extremely hazardous substance (EHS) present in a mixture, for purposes of emergency planning, are in section 355.30(e)(1) of the existing regulation. The terms ''mixture'' and ''solution'' are both used in these instructions. In the proposed regulation the term ''solution'' has been removed because ''mixture'' includes ''solution,'' so it is redundant to use both terms. The term ''mass'' in the existing instructions is replaced by ''weight'' in the proposed instructions. For the purposes of this regulation the two terms are synonymous, and ''weight'' is a more familiar term to the general public. Further, in order to improve the understanding of these instructions, an example is provided in the proposed instructions, which are in section 355.13 of today's proposed rule.

• Extremely hazardous substances in solid form. Instructions for determining which threshold planning quantity (TPQ) to use for extremely hazardous substances (EHSs) in solid form are in section 355.30(e)(2)(i) of the existing regulation. In that section solids are described as ''existing in'' or ''being handled in'' various forms. In the proposed rule, the phrases ''exists in'' and ''is handled in'' have been replaced by ''is in.'' This is simpler and easier to understand, but doesn't affect the requirements in any way. These instructions are in section 355.15 of today's proposed rule.

• Facility emergency coordinator.

—Section 355.30(c) in the existing regulation requires the owner or operator of a facility to notify the LEPC (or the Governor if there is no LEPC) of the facility emergency coordinator. In today's proposed rule, section 355.20 requires this notification be made to the SERC if there is no LEPC, or to the Governor if there is no SERC. EPA believes that most States have functioning SERCs now, and this notification should be given to the SERC rather than the Governor, if there is no LEPC.

—The existing rule requires that this notification be made on or before September 17, 1987, or 30 days after establishment of an LEPC, whichever is earlier. The notification deadlines in the existing rule correspond to the statutory deadlines found in EPCRA section 303(d)(1). Neither the statute nor the current regulation establish a deadline for providing this notice in the case of a facility that later becomes subject to the emergency planning requirements (that is, an EHS first becomes present at the facility in excess of its TPQ, or the EHS list is revised and an EHS on the revised list is present at the facility in excess of its TPQ). EPCRA section 302(c) does, however, require that, within 60 days after becoming subject to the emergency planning requirements, a facility provide notice that it is subject to such requirements. EPA believes that notice of the facility emergency coordinator is an integral part of the emergency planning notification requirements, and should therefore be provided at the same time as the emergency planning notice. Accordingly, section 355.20 in today's proposed rule requires that notice of the facility emergency coordinator be provided by September 17, 1987, or within 30 days of establishment of the LEPC (in accordance with the statutory deadlines at EPCRA section 303(d)(1)), or within 60 days after a facility becomes subject to EPCRA's emergency planning requirements (consistent with EPCRA section 302(c)). In today's proposed rule, the deadlines for a facility to provide notice of its facility emergency coordinator are consistent with the deadlines for a facility to provide notice that it is subject to the emergency planning requirements (see proposed section 355.20). (The deadlines for notification that a facility is subject to the emergency planning requirements are discussed further below.) Proposed section 355.20 presents a summary, in table format, of the information that is required under EPCRA's emergency planning requirements; including types of information to be reported, required recipients of information, and deadlines for reporting. The proposed table is intended to present the requirements in a clear, easy to understand format.

• Emergency planning notification.

—Section 355.30(b) in the existing regulation requires notification to the SERC that a facility is subject to the emergency planning requirements under EPCRA. In today's proposed rule, section 355.20 requires this notification be provided to both the SERC and the LEPC. This is consistent

with section 302(c) of EPCRA, which provides for owners or operators to notify the SERC and LEPC when their facility becomes subject to the emergency planning requirements.

—Section 355.30(b) in the existing regulation requires that notification be provided on or before May 17, 1987 or within 60 days after a facility first becomes subject to the requirements. The notification deadlines in the existing regulation correspond to the statutory deadlines at EPCRA section 302(c). Section 355.20 in today's proposed rule requires that emergency planning notification be provided by May 17, 1987 or within 60 days after a facility first becomes subject to the requirements (in accordance with the statutory deadlines at EPCRA section 302(c)) or within 30 days after establishment of an LEPC. EPA is proposing to add ''within 30 days after establishment of an LEPC'' in section 355.20 of today's proposed rule to provide for consistency with the statutory requirement at EPCRA section 303(d)(1) to provide notice of the facility emergency coordinator within 30 days of establishment of an LEPC. EPA believes that notification that a facility is subject to EPCRA's emergency planning requirements, and notification of a facility's emergency coordinator, which are the two basic components of emergency planning notification, should be provided according to consistent reporting deadlines. EPA does not believe that it is reasonable to require a facility to provide notice of the facility emergency coordinator in advance of the deadline for providing notice that they are, in fact, subject to EPCRA's emergency planning requirements. (The deadlines for providing notification of the facility emergency coordinator are discussed in detail above.) EPA seeks, in today's document, to provide for consistency between these two basic components of EPCRA's emergency planning requirements.

• Changes relevant to emergency planning. Section 355.30(d) in the current regulation requires that facility owners or operators inform the LEPC of any changes occurring at the facility which may be relevant to emergency planning. The table in proposed section 355.20 in today's rule contains this same requirement, and also indicates that the information be provided promptly—EPA is proposing to add ''promptly'' to be consistent with EPCRA section 303(d)(2).

• Format for notifications. In today's proposed rule, EPA has added sections that discuss the format to be used for emergency planning and emergency release notification (sections 355.21 and 355.41, respectively). EPA is not intending to change the existing requirements for format of notifications, or to impose new requirements. Sections 355.21 and 355.41 are intended simply to clarify the existing requirements. Although the current regulation does not state the required format for emergency planning notification, it long has been EPA policy to recommend that the emergency planning notification be made in writing. In the preamble to the final rule establishing the emergency planning requirements (52 FR 13379, April 22, 1987), EPA stated that, ''Any facility where an extremely hazardous substance is present in an amount in excess of the threshold planning quantity is required to notify the State commission * * * *Such notification should be in writing* * * *'' (emphasis added). Proposed section 355.21 in today's rule is intended to reflect EPA's policy of recommending (but not requiring) written emergency planning notification.

• 24-hour time period for release. The emergency release notification requirements in the existing regulation, found in section 355.40, don't indicate over what time period a release of a reportable quantity must occur to trigger emergency release notification requirements. Under EPCRA section 304(a), releases are reportable if they occur in a manner that requires, or would require, notification under CERCLA section 103(a). Thus, EPA's interpretation has been that the 24-hour policy applicable under CERCLA also applies under EPCRA. This interpretation, which long has been EPA policy, is being codified in today's proposed rule. Accordingly, section 355.33 in this proposed rule indicates that the ''release of a reportable quantity * * * within any 24-hour period'' triggers emergency release notification requirements.

• Releases during transportation. The emergency release notification requirements that apply to release of a substance during transportation (or storage incident to transportation) are in section 355.40(b)(4)(ii) in the existing regulation. The term ''transportation-related release'' is used in that section, and is also defined there. Section 304(b)(1) of EPCRA, which provides the statutory requirements for releases during transportation or storage incident to transportation, doesn't use the term ''transportation-related release.'' In today's proposed rule, the requirements for releases during transportation or storage incident to transportation are in section 355.42(b). In that section the term ''transportation-related release,'' and its definition, have been removed because EPA believes that the use of that term adds to the confusion about these requirements. In addition, the language of that section has been modified to generally track the statutory language in EPCRA 304(b)(1). EPA requests comments as to whether additional guidance should be provided concerning notification of releases during transportation (or storage incident to transportation). EPA also requests suggestions as to what type of additional guidance would be helpful.

• Releases that are continuous. A release that is continuous and stable in quantity and rate, under the definitions in 40 CFR 302.8(b), qualifies for reduced reporting requirements under EPCRA. The requirements for reporting continuous releases are in section 355.40(a)(2)(iii) in the current regulation, and in section 355.32 in today's proposed regulation. Continuous releases are subject to four specific reporting requirements. These requirements have been reorganized in today's proposed rule, to clarify that each of the four notifications must be made to the community emergency coordinator for the LEPC for any area likely to be affected by the release and to the SERC of any State likely to be affected by the release (in addition to the notifications required under 40 CFR 302.8). The Agency stated that these four notifications are to be made to the SERC and the LEPC (in addition to the NRC) in the final rule establishing the requirements for reporting continuous releases of hazardous substances published on July 24, 1990 (55 FR 30179).

• State or local format for reporting inventory information.

—One of the purposes of today's proposal is to insure that SERCs and LEPCs have flexibility with respect to the manner in which information is reported under EPCRA sections 311 and 312. Sections 370.40 and 370.41 in EPA's existing rule allow for flexibility by providing that a State or local form may be used for reporting inventory information, as long as the State or local form contains identical content to the uniform federal forms (Tier I of Tier II forms). To further clarify this flexibility, EPA proposes today to revise those provisions such that the use of a State or local *format* is allowed (see proposed section 370.40). These proposed revisions would clearly encompass submittal of inventory information in any number

or potential manners, including electronic submittal, so long as all information required under the statute and its implementing regulations were provided.

—Section 370.43 in today's proposed rule provides weight range codes, and codes for storage types and conditions, that are used when reporting Tier I and Tier II information (the same codes are in sections 370.40 and 370.41 in the current regulation). These codes must be used when reporting inventory information using the federal Tier I and Tier II forms. However, when State or local formats are used for reporting Tier I and Tier II information (as discussed above), EPA allows the use of State or local codes for weight ranges and storage types and conditions. State or local codes may be used for reporting weight ranges, provided that the weight ranges are no broader than those in proposed section 370.43. State or local codes may be used for reporting storage types and conditions, provided that the codes specify the same or more detailed information as that specified in proposed section 370.43. Paragraph (d) in proposed section 370.43 has been added to clarify this flexibility regarding the use of EPA's codes. For example, a State or local government might choose to specify ranges in gallons instead of in pounds—such ranges may be used when reporting amounts, provided that weight ranges corresponding to the given ranges in gallons are not broader than the ranges in proposed section 370.43 (and provided that a format other than the federal Tier I or Tier II forms are used).

• SERC or LEPC response to a request for Tier II information within 45 days. Section 370.61 in today's proposed rule states that ''A SERC or LEPC must respond to a request for Tier II information * * * within 45 days of receiving such a request.'' This requirement isn't found in the existing regulation. However, this requirement is specified under EPCRA section 312(e)(3)(D), and EPA is proposing to codify the statutory requirement at this time for clarity. Codifying this requirement will not create any new substantive requirement, since it was already provided by the statute.

EPA requests public comment on all aspects of the proposed regulatory revisions described above.

6. Definitions

In today's proposed rulemaking, the definitions for parts 355 and 370 (that currently are found in sections 355.20 and 370.2, respectively) have been combined into one section and placed at the end of part 355. See proposed section 355.62. This was done because parts 355 and 370 are closely related and are published together, and the defined words used in both parts are generally the same.

Placing the consolidated definitions section at the end of part 355 relieves the reader of having to read through all of the definitions before seeing how they are used in the text. A short statement at the beginning of each part in today's proposed rule tells the reader where to find the definitions. Words that are defined in the consolidated definitions section are printed with the initial letter capitalized the first time they are used in each part, to highlight them. EPA is seeking comments concerning whether or not these changes improve the readability of the rule.

Some minor revisions to the contents of the definitions are proposed in today's rulemaking. EPA intends these changes to make the definitions clearer and easier to use. Some of these changes were necessary to consolidate the two existing definitions sections into one section. EPA requests public comment on the proposed changes to the definitions, which are as follows:

• *Act.* The term ''act'' is defined in the existing definition section for part 355 as ''the Superfund Amendments and Reauthorization Act of 1986.'' This definition has been removed from the proposed definitions section, which applies to both parts 355 and 370. The Emergency Planning and Community-To-Know Act (EPCRA), the Occupational Safety and Health Act (OSHA), the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), and the Clean Air Act (CAA) are each referenced in today's proposed rule. The term ''act'' is not used in today's rule without the name of the ''act'' it is referencing, so it is unnecessary to give it a specific meaning.

• *SERC and LEPC.* As discussed above, the terms ''commission'' and ''committee'' have been replaced with ''SERC'' and ''LEPC,'' respectively, throughout today's proposed rule. Accordingly, the terms ''commission'' and ''committee'' have been replaced with ''SERC'' and ''LEPC'' in the proposed definitions section, which is section 355.62 in today's rule. No changes are proposed to the definitions themselves in today's rule, the terms ''commission'' and ''committee'' have simply been replaced by ''SERC'' and ''LEPC.''

• *EPCRA and OSHA.* Definitions of ''EPCRA'' and ''OSHA'' have been added in the consolidated definitions section proposed in today's rulemaking. These acronyms frequently are used throughout the rule. Placing them in the definitions section should make it easier for the reader to find their meanings.

• *Facility.* The term ''facility'' is defined in both parts 355 and 370 in the existing rule. The two definitions are identical, except that in part 370 the definition of ''facility'' includes ''all natural structures in which chemicals are purposefully placed or removed through human means such that it functions as a containment structure for human use.'' EPA intends for the definition of ''facility'' under part 355 to be identical to the definition under part 370 (see 55 FR 30634, July 26, 1990; and 54 FR 12999, March 29, 1989). This is being clarified in today's proposed rulemaking by including ''all natural structures in which chemicals are purposefully placed or removed through human means such that it functions as a containment structure for human use'' in the definition of ''facility'' under the consolidated definitions section (see proposed section 355.62).

• *Hazardous substances.* The term ''CERCLA hazardous substance'' is defined in the existing definitions for part 355, but not in the definitions for part 370. This term is defined in the proposed combined definitions section. The terms have been reorganized such that ''CERCLA hazardous substance'' and ''extremely hazardous substance'' appear together under the heading ''hazardous substances.'' EPA believes that putting the definitions of the two terms together under a common heading will help clarify the difference between these closely related terms. In addition, these terms now appear immediately after the definition of ''hazardous chemical,'' which is the third category of substances regulated by today's rulemaking. Placing together the definitions of each of the categories of substances that this rule regulates should help the reader to compare and understand their meanings.

• *Hazardous chemical.* No change is proposed to the meaning of the term ''hazardous chemical.'' However, two organizational changes are proposed that should improve the clarity of the definition. The first is that the list of exceptions to the term has been reformatted. The second involves the definition of the phrase ''present in the same form and concentration as a product packaged for distribution and use by the general public,'' which is used within the definition of ''hazardous chemical'' (in the list of

exceptions to the term). This phrase is defined in the existing definitions section for part 370, in a separate paragraph from the definition of ''hazardous chemical.'' In the consolidated definitions section in today's rulemaking (proposed section 355.62), the definition of this phrase has been relocated to appear within the definition of ''hazardous chemical.'' The list of exceptions to the definition of ''hazardous chemical'' is reiterated in section 370.13 in today's proposed rule, and the definition of ''present in the same form and concentration as a product packaged for distribution and use by the general public'' is placed within that list.

- *Inventory form*. The Tier I and Tier II ''inventory forms'' have been removed from the regulation, as discussed above. The definition of ''inventory form'' has been modified to reflect that, under the proposed rule, the Tier I and Tier II forms no longer are set forth in part 370.
- *Mixture*. In the existing rule, the term ''mixture'' is defined in part 355 but not in part 370, although the term is used in both parts. In today's proposed rulemaking, ''mixture'' is defined in the consolidated definitions section. For the purposes of part 355, the proposed meaning of ''mixture'' is the same as the existing meaning, except that the existing definition includes the term ''compounds'' and the proposed definition does not. EPA believes that this term shouldn't be included—in a ''compound'' the various constituents don't retain their individual identities, so a ''compound'' shouldn't be treated as a mixture for the purposes of part 355. For the purposes of part 370, the proposed definition of ''mixture'' is ''mixture'' as defined under 29 CFR 1910.1200(c). Applicability for the part 370 requirements is based on OSHA's hazard communication standard (29 CFR 1910.1200), and today EPA is proposing this regulatory revision to clarify the Agency's policy that the definition of ''mixture'' at 29 CFR 1910.1200(c) applies to 40 CFR part 370.
- *Reportable quantity*. In section 355.20 in the current regulation, ''reportable quantity'' means, ''for any CERCLA hazardous substance, the reportable quantity established in Table 302.4 of 40 CFR part 302, for such substance, for any other substance, the reportable quantity is one pound.'' In section 355.62 in today's proposed rule, however, ''reportable quantity'' is defined as, ''for any CERCLA hazardous substance, the reportable quantity established in Table 302.4 of 40 CFR part 302, for such substance. For any extremely hazardous substance, reportable quantity means the reportable quantity established in appendices A and B of this part, for such substance. Unless and until superseded by regulations establishing a reportable quantity for newly listed EHSs or CERCLA hazardous substances, a weight of 1 pound shall be the reportable quantity.'' EPA seeks to make clear that the phrase ''any other substance'' in the current definition refers only to EHSs (that are not also CERCLA hazardous substances). ''Reportable quantities'' currently have been established by EPA for all EHSs, so the proposed definition directs the reader to appendices A and B of part 355, where the ''reportable quantities'' are published. The language, ''Unless and until superseded by regulations establishing a reportable quantity for newly listed EHSs or CERCLA hazardous substances, a weight of 1 pound shall be the reportable quantity'' has been added to clarify that the statutory default reportable quantity is one pound for EHSs and CERCLA hazardous substances (see EPCRA section 304(a) and CERCLA section 102(b), respectively).
- *Threshold planning quantity*. The definition of ''threshold planning quantity (TPQ)'' has been changed to make it clear where in the existing regulations the TPQs are found, in order to avoid any confusion that may arise due to the consolidation of the definitions for parts 355 and 370.
- *Tribe*. The term ''Tribe'' was placed together with the definition of ''Indian Tribe,'' because these terms have the same meaning in the regulation and the term ''Tribe'' isn't defined in the existing rule.

V. What Draft Guidance Is EPA Publishing in This Preamble?

The discussion below addresses a number of issues for which EPA is considering providing guidance, to facilitate understanding and flexibility in complying with the existing regulatory requirements. Although the draft guidance explored below does not involve any revision to the existing regulatory requirements, EPA seeks public comment in developing this guidance.

A. Increased Flexibility for States and Local Governments With Respect to Reporting Under EPCRA Sections 311 and 312

In order to streamline compliance with the existing regulatory requirements, EPA is developing guidance discussing certain reporting options that SERCs, LEPCs and fire departments may wish to consider in implementing EPCRA sections 311 and 312. This effort is part of the President's program for reinventing government and reforming regulatory policy. Several different options under sections 311 and 312 are discussed below. EPA does not believe any of these options would entail regulatory changes. EPA's intention is to generate discussion of different options at this time. While EPA's objective is to identify opportunities for flexibility in implementing EPCRA sections 311 and 312, SERCs, LEPCs, fire departments, and facility owners and operators would not have to follow any of the draft options. Further, SERCs and LEPCs could implement the options discussed in section A(1), (2), (3) and (4) regardless of whether EPA issues final guidance, provided the implementation of the option meets the statutory and regulatory requirements.

Numerous stakeholders have asked EPA to provide greater flexibility with respect to reporting under section 312 of EPCRA, in order to facilitate their use of the reporting information. EPA agrees that enhanced flexibility would allow SERCs and LEPCs greater discretion in implementing the EPCRA program; however, an increase in flexibility may compromise the existing national consistency within the EPCRA program. Also, if the EPCRA programs become less consistent nationally, Federal guidance may become obsolete. This could increase the burden on State and local entities to provide guidance to their regulated community. EPA is also concerned that increased State and local flexibility may compromise Federal, State and local compliance efforts. EPA is presenting several options that would clarify State and local flexibility with respect to reporting under sections 311 and 312, and is seeking public comment on those options. EPA is especially interested in comments from SERCs, LEPCs and local fire departments, and will consider all public comments in developing this guidance under the EPCRA program.

Section 311 of EPCRA requires facilities to submit MSDSs (or a list of hazardous chemicals subject to the requirements) to the SERC, the LEPC, and the fire department with jurisdiction over the facility. Likewise, section 312 requires facilities to submit an emergency and hazardous chemical inventory form (containing at a minimum the Tier I information) by March 1 of every year to the same three entities. Sections 370.40 and 370.41 in the existing rule allow facilities to use State and local forms instead of the federal forms, provided the State or local form contains the information required by the statute and its implementing regulations. In today's

proposed rule, section 370.40 similarly provides that a State or local format may be used if the State or local format contains at least the Tier I information.

Throughout the implementation of EPCRA, States have suggested alternatives to the federal reporting format. EPA has considered these suggestions, and is presenting suggested alternatives below for public comment. Every SERC, LEPC and fire department would have the choice of adopting any, or none, of the alternatives explored below—EPA would not require the adoption of any of these options. EPA would like to provide flexibility in implementing EPCRA sections 311 and 312, provided that the statutory and regulatory standards regarding information reported (at a minimum the Tier I information), recipients of information (the SERC, the LEPC, and local fire department), and timing of submission (March 1 annually under section 312, and within 3 months after becoming subject under section 311), are met. EPA believes it is important for the SERC, the LEPC, and the local fire department to have the information provided under sections 311 and 312 and the implementing regulations, at the required time. Each entity has a unique use and need for this information. EPA seeks comments on the following alternatives for reporting under sections 311 and 312 of EPCRA.

1. UST Forms to Fulfill the Requirements for Tier I Information Under EPCRA Section 312

EPA is aware that many facilities that are subject to the underground storage tank (UST) regulations under section 9002 of RCRA are also subject to the reporting requirements under EPCRA sections 311 and 312. Some, but not all, of the reporting information that is currently required under section 312 of EPCRA and under the Federal UST program, is duplicative. In keeping with EPA's efforts to provide flexibility with respect to meeting the reporting requirements, EPA is considering developing guidance which would clarify that States, if they so choose, have the option to allow the UST form required under RCRA to be used to comply with the reporting requirements under section 312 of EPCRA, provided that all of the statutory and regulatory reporting requirements under section 312 are met. The statutory and regulatory reporting requirements are discussed in detail below.

EPCRA section 312 requires submission of an inventory form containing, at a minimum, Tier I information, and also requires that the EPA publish a uniform format for inventory forms. However, neither the statute nor the implementing regulations require that the uniform federal format be used for submission of information under section 312. Sections 370.40 and 370.41 in the existing rule provide that a State or local form that includes content identical to that of the Tier I or Tier II forms, respectively, may be used instead of the Tier I or Tier II forms. It long has been EPA policy that alternative State and local formats are acceptable for reporting under section 312. Today, EPA is proposing to remove the forms themselves from the regulation, as discussed above, in part IV.B.2. of this document.

Some States have suggested to EPA that the UST form and submittal procedures under their State UST programs are similar to the EPCRA section 312 reporting requirements, and have asked for guidance on whether their State UST form could fulfill the requirements under EPCRA section 312. By clarifying the conditions under which a single form (or forms) would fulfill the reporting requirements under a UST program and under EPCRA section 312 and its implementing regulations, EPA intends to provide States with flexibility in implementing the EPCRA program and also seeks to reduce the reporting burden on regulated facilities, while preserving the goals of the two programs. The issue of using UST forms to substitute for the Tier I information was also addressed in a December 27, 1988 **Federal Register** Request for Comments (53 FR 52273).

In order for the UST form to address section 312 of EPCRA, all of the statutory and regulatory reporting requirements under section 312 must be met. The statute and regulations contain requirements for the information reported, the recipients of the information, and the timing of the submission. A comparison of those requirements with the Federal UST program follows:

- Information Reported: Tier I information is the minimum information required under EPCRA section 312 and the implementing regulations. In addition, Tier II information must be reported upon request. Note that some States or LEPCs require more than the minimum data that EPA requires. In order for the UST form to meet the routine reporting requirements under EPCRA section 312, it must contain at least the information required for the Tier I information.
- Recipients of Information: EPCRA section 312 requires that the reporting information be submitted to the SERC, the LEPC, and the fire department with jurisdiction over the facility. The UST program under RCRA requires that the UST forms be submitted to a State agency. However, that State agency is not necessarily the SERC. If the UST forms are to meet section 312 of EPCRA, then the SERC, the LEPC, and the fire department must all receive the information.
- Timing of Reporting: Under EPCRA section 312 and the implementing regulations, the owner or operator of a regulated facility must submit the required Tier I reporting information by March 1 of the first year after the facility first becomes subject to reporting, and by March 1 of each year afterwards (see EPCRA section 312(a)(2), and 40 CFR 370.20(b)(2) and 370.25(a)). In addition, the owner or operator of a regulated facility must submit Tier II information within 30 days of the receipt of such a request from the SERC, the LEPC, or the fire department having jurisdiction over the facility (see EPCRA section 312(e)(1) and 40 CFR 370.25(c)). In contrast, the UST program requires a one-time notification, not an annual notification. If the UST forms are to meet section 312 of EPCRA, then they must contain Tier I information and must be submitted annually by March 1, as required under EPCRA. Additionally, the owner or operator would continue to be subject to the requirement to submit Tier II information upon request.

The reporting requirements under the Federal UST program differ from reporting requirements under EPCRA section 312 in terms of content, recipients, and timing of submission. In order for the UST form to fulfill the reporting requirements under EPCRA section 312, all of the requirements for content, recipients and timing described above must be met. If a facility submits its UST form in such a manner that each of these requirements is met, EPA would consider that facility to be in compliance with section 312 of EPCRA.

If an UST form is submitted to fulfill EPCRA section 312 requirements, under the conditions examined here, it might be advisable to indicate on that form that it is being submitted for EPCRA section 312, so that the receiving entity will know why the UST form was submitted. In addition, it is conceivable that a facility may submit UST forms, as well as other inventory forms, together in one section 312 submission. In such a case, it may be advisable to indicate on both sets of forms the total number of pages in the submission, and that some of the information is reported on UST forms and some on other inventory forms, to avoid any confusion for the receiving entity.

EPA requests comments on the draft guidance provided above, and on any

other issues or concerns regarding the use of UST forms to fulfill reporting requirements under EPCRA section 312.

2. Partnership Programs for Joint Access to Information and Streamlined Submission of EPCRA Sections 311 and 312 Reporting

Sections 311(a)(1) and 312(a)(1) of EPCRA require the owner or operator of covered facilities to submit an MSDS (or list of hazardous chemicals) and Tier I inventory information. There are two key requirements associated with the reporting of this information. First, the information must be submitted to the following three entities: the SERC, the appropriate LEPC, and the fire department with jurisdiction over the facility. Second, there are specific compliance deadlines governing submission of the information to the three entities. The basic requirement to submit the EPCRA sections 311 and 312 information to the SERC, the LEPC and fire department by specific deadlines is implemented in 40 CFR sections 370.21 and 370.25 of the existing regulations, and is proposed in today's document at sections 370.32, 370.33, 370.40, 370.44 and 370.45 without substantive revision.

EPA is interested in exploring how the statutory and regulatory requirements to submit the MSDS and Tier I information to all three entities, by the required deadlines, could be streamlined to reduce the reporting burden on regulated facilities. Specifically, EPA is exploring the conditions under which the SERC, LEPCs and fire departments could establish partnerships for joint receipt of EPCRA information. Under such partnerships, a submission timely reported under EPCRA sections 311 or 312 to a central database that the SERC, the LEPC and fire department have unrestricted access to, could jointly be received by all three entities. In other words, timely submission to the joint database could constitute timely submission to all three entities in accordance with the statute and regulations. In the discussion below, EPA examines a number of issues involved in developing this guidance. EPA seeks public input on all of these issues, to help design guidance to facilitate streamlined submission of EPCRA information.

A critical consideration in designing any guidance on streamlined submittal is to ensure that emergency response officials, State and local officials, and other members of the community continue to have timely access to information reported under EPCRA sections 311 and 312. As discussed, to be in compliance with EPCRA, covered facilities need to submit the required information by specific statutory and regulatory deadlines. For example, the reporting for EPCRA section 312 Tier I information is due each year by March 1st, to cover hazardous chemicals present at the facility the preceding calendar year. See EPCRA section 312(a)(2). Thus, any partnership program for joint access to information would need to ensure that the SERC, the LEPC and the fire department receive Tier I information by March 1st. As noted, under the partnership program concept, this could be accomplished by timely submittal to a central database that all three entities have unrestricted access to and thereby jointly receive. The critical point is that the goal of the streamlined submittal policy is to reduce the reporting burden on regulated facilities without diminishing timely and full access to reported information.

A potential example of streamlined submission is a joint electronic database. If, for example, covered facilities submitted the information required under EPCRA sections 311 and 312 to a joint electronic database to which the SERC, the LEPC and the fire department each have unrestricted access, then timely submittal to the single electronic database could constitute timely submittal to all three entities. The obvious advantage of the electronic database example is that the regulated community could provide the required information to all three entities through a single streamlined submission. This could reduce the reporting burden on the regulated community. EPA is interested in other examples of systems through which a single submittal of EPCRA information could similarly be jointly received by the SERC, the LEPC and the fire department.

In part V.A.3 of this document (immediately below), EPA explores the development of guidance on optional electronic submittal of information required under EPCRA sections 311 and 312 and the implementing regulations. If EPA establishes guidance for streamlined submittal that relies on the use of a central electronic database for joint receipt of EPCRA information, as suggested above, EPA would build on the guidance for electronic submittal of EPCRA information discussed in part V.A.3 of this document.

EPA notes that information partnerships could be structured to reduce the overall information management burden on SERCs, LEPCs and fire departments. By joining together to collectively access the EPCRA information reported under sections 311 and 312, SERCs, LEPCs and fire departments could conserve resources through economies of scale. For instance, in the electronic submittal example, a single electronic database would be more efficient than three separate databases. Thus, the initial effort to establish partnership programs for joint access to information could be offset by the resources saved from more efficient program administration.

Regardless, EPA does not wish to create burden for the State and local entities implementing EPCRA. Thus, an important principle of the streamlined submittal guidance under development is that participation by SERCs, LEPCs and fire departments would be entirely voluntary. SERCs, LEPCs and fire departments would decide on their own accord whether establishing partnership programs for joint access to information is a sensible option for them.

To promote flexibility in the establishment of partnership programs, EPA also wishes to explore how a variety of different partnerships could be created based on the interests and capabilities of the SERC, the LEPCs and the fire departments in any given State. Partnerships could range from statewide to more limited partnerships as SERCs, LEPCs and fire departments see fit. For example, a SERC could form partnerships with all of the LEPCs and fire departments in the State managing EPCRA information. If the SERC, the LEPCs and fire departments had unrestricted access to a statewide electronic database, then for any facility in the State, timely submission to the central electronic database could constitute timely submission to each entity under EPCRA.

Such a statewide EPCRA database could have several benefits in addition to reducing the reporting burden for the regulated community. For example, compilation of the information in a single database, such as a statewide web site accessible from the Internet, could provide greatly expanded public access to EPCRA information, advancing the fundamental purpose of EPCRA—community right-to-know. Further, if the public has ready access to the information, there may be fewer requests from the public for information, which could result in a decrease in the overall administrative burden to process such requests. EPA also recognizes that there may be technical information management issues to explore further. EPA seeks comment about how broad partnerships, such as statewide electronic databases, could best be implemented.

In addition, EPA seeks input on the establishment of more limited partnership programs for joint access to information. As an alternative to a statewide database, limited partnerships might include two of the three entities to which EPCRA information must be submitted. Such partnerships would still reduce the reporting burden for the regulated community. For example, the fire departments in a State that wishes to establish a partnership may not presently have adequate tools to access a central electronic database. A SERC and LEPC may nevertheless choose to establish a limited partnership so that timely submission to their joint database would constitute timely submission to both the SERC and the LEPC. In this example, EPCRA would still require a covered facility to make a separate submittal to the appropriate fire department, but the reporting burden on the regulated community would still be reduced. In a similar manner, limited partnerships could be formed between the LEPCs and fire departments or the SERC and fire departments. Under any such scenario, EPCRA would require a separate submission to the entity not included in the partnership.

EPA seeks public input on how partnerships, whether broad or limited, should be established by the partners. For example, EPA is contemplating whether it should encourage SERCs, LEPCs and fire departments to spell out partnerships through a Memorandum of Understanding (MOU) or other written document. There are several reasons to establish a partnership through a written document. First, a written document describing the partnership will help delineate clearly relative roles and responsibilities of the participating partners, ensure that all partners participate willingly, and provide continuity when there are changes in personnel. Further, a written document will help ensure that the regulated community is aware of the governmental partnership and, by making the partnership better known, will help maximize the benefits of reducing the EPCRA reporting burden. Additionally, formal delineation of partnerships will help ensure that the community knows and understands how the information is handled, promoting community involvement in the program. EPA seeks public comment on whether the partnerships should be formally delineated through MOUs or other written documents. EPA also seeks public input on whether, once formed, it makes sense to notify the regulated community and the public so that they are aware of, and can put to use, the streamlined submittal option.

EPA would like to maintain reporting flexibility under this draft guidance. State and local partnerships for streamlined submission of information under EPCRA sections 311 and 312 should be structured to allow facilities the option of submitting the information separately to all three entities (SERC, LEPC and local fire department), instead of submitting it to the joint database (or other appropriate system for joint access to information). Some regulated facilities may not have adequate electronic tools to submit information to an electronic database or may have other concerns with the streamlined submittal approach. The objective is to reduce the reporting burden on the regulated community. Therefore, if a facility owner or operator decided that, on balance, it is more sensible to submit separately instead of jointly to all three entities, EPA would not want that reporting option to be eliminated. Further, the SERC, the LEPC and the local fire department would still have the option to receive Tier II information separately from the facility by requesting it (see section 370.10(b) in today's proposed regulation).

To summarize, the proposed core elements of the draft streamlined submittal guidance are as follows:

- *Voluntary Participation.* SERCs, LEPCs and fire departments would voluntarily decide whether they wish to form partnership programs for joint access to EPCRA sections 311 and 312 information, based upon their own programmatic priorities.
- *Flexible Participation.* Partnership programs for joint access to information could include a range of potential partnerships; from SERC and LEPC, or LEPC and fire departments for a particular emergency planning district, to statewide partnerships that include the SERC, and all LEPCs and fire departments.
- *Information Management Systems that Streamline Reporting and Maintain Community Access.* Whatever the scope of the partnership, it should involve a system that allows for a single streamlined submission of EPCRA MSDS and Tier I information, that must be jointly and timely received by all members of the partnership, and that provides all partners unrestricted access to the EPCRA information (although a separate submission would need be made to an entity not included in the partnership). An example is submission of EPCRA information, by the compliance deadlines, to a joint, centralized electronic database that all partners can access without restriction. (Under EPCRA, the owner or operator of a covered facility would have to make a separate submission to any SERC, LEPC or fire department not included in the partnership.)
- *Written Formation and Public Notice of Partnership Programs for Joint Access to Information.* EPA believes there are clear advantages for the formation of partnership programs through a written instrument that describes relative roles and responsibilities under the partnership. The formation of a partnership should be announced to the public to promote awareness by regulated facilities and the affected community.

Because EPA's draft guidance addresses reporting under EPCRA, EPA is designing it to conform to the Federal requirements only. The draft guidance does not address any additional State or local reporting requirements. However, if desired, State and local officials could incorporate or expand partnerships to address additional State or local requirements. For example, where State law requires the routine submittal of Tier II information (instead of Tier I information) to all three entities, the partnership program could be designed to encompass Tier II information. In this particular example, the annual submittal of Tier II information could satisfy the EPCRA requirement for annual submittal of Tier I information, in addition to addressing State and local requirements, so long as the Tier II information is timely received by the SERC, the LEPC and fire department.

EPA seeks public input on a number of issues related to this draft guidance, including the following:

- Whether SERCs, LEPCs and fire departments would be interested in forming partnership programs for joint access to information; whether these entities currently have the tools to form such partnerships; what implementation obstacles are anticipated; and how EPA could reduce any administrative burden associated with developing and implementing such partnerships. EPA would also like to know whether any State is interested in piloting a partnership program, to promote streamlined submission of EPCRA information.
- Whether the proposed core elements of the guidance are sensible. Also, whether EPA has overlooked any specific concerns, and any suggestions on ways the draft guidance should be revised.
- How the draft streamlined submittal guidance described here should be implemented in conjunction with the guidance for electronic submittal of EPCRA sections 311 and 312

information (see part V.A.3 in this document), and what potential obstacles are presented by the use of electronic means to streamline submittal of information.

- EPA understands that some SERCs, LEPCs and fire departments are currently using electronic means to obtain and store reporting data that is required under EPCRA sections 311 and 312 and the implementing regulations. EPA is interested in comments concerning the various software programs used, and any pitfalls encountered. EPA is interested in how State and local experience might inform EPA's guidance.
- What other information systems, in addition to electronic databases, could be established through which a submission to a central database could be timely and jointly received by the SERC, the LEPC and fire department.
- Whether the partnership programs for joint access to information should be formed through an MOU or other written document. Also, how EPA could minimize the burden on SERCs, LEPCs and fire departments of developing MOUs. If MOUs or other written documents are not used to establish partnerships, how should partnerships be created?
- As discussed above, EPA suggests that partnerships may vary in scope—that is, a partnership could be between a SERC and LEPC for a single emergency planning district, or might encompass a statewide database. EPA seeks comment on whether the Agency should in any way restrict participation in partnerships.
- What technical database management issues are raised by the draft guidance, and how could such issues be addressed?

In addition, EPA seeks public input on any other suggestions and concerns regarding the draft guidance.

3. Electronic Submittal for EPCRA Sections 311 and 312 Reporting

EPA is considering the development of guidance on electronic submittal to satisfy sections 311 and 312 reporting. As noted, EPA's existing regulations give State and locals broad discretion to determine the reporting format for section 312 information. Likewise, under EPA's draft guidance on electronic submittal, States would continue to be able to develop their own format for electronically submitted section 312 reporting data, as long as the information includes the information required by the statute and its implementing regulations. Tier I information is the minimum information required under EPCRA section 312 and the regulations. Tier II information, which is more detailed, is required under some State laws and must be provided upon request under EPCRA. EPA's regulations require section 312 reporting information to be certified by the facility owner or operator, or an official designated representative, as to its accuracy and completeness. This requirement applies to section 312 reporting information regardless of the format in which it is submitted, and would apply to electronic submittal. Section 311 and the implementing regulations require submission of an MSDS or a list of hazardous chemicals. If an electronic MSDS is developed such that it fits the requirements for MSDS development found at 29 CFR 1910.1200(g), that MSDS could be submitted electronically. EPA's existing regulations don't specify a format for submission of a list of hazardous chemicals under EPCRA section 311. Such a list could be submitted electronically.

If States and locals allow section 312 reporting information to be submitted via the Internet, it will be necessary for the facility owner or operator or its officially designated representative to certify the information submitted. A number of Federal agencies, including EPA, have been striving to develop methods for certification of electronically submitted data. This is a difficult issue, and EPA has not yet resolved it. One option EPA is considering is for the facility owner or operator to mail a signed certification statement to the SERC, or to all three entities, for data that has been submitted electronically. It would be necessary to establish a precise correspondence between the data submitted electronically, and the certification statement submitted by mail. EPA seeks comments on ideas for establishing such a correspondence.

One way to solve the problem of certification of electronically submitted section 312 data is for the data be submitted on a diskette, along with a signed certification statement. The data would be submitted in an electronic format, but would not be transmitted via the Internet. This may reduce some of the current data management burden on regulated facilities, and on SERCs, LEPCs and fire departments that receive EPCRA section 312 information. EPA believes that some States may currently accept section 312 data on diskette (with signed certification on paper), and seeks comments on the feasibility and effectiveness of this reporting option.

Under EPCRA the requirements for Tier II information include providing the locations of specific chemicals present at a facility. At the same time, EPCRA provides that a facility may request that the SERC or LEPC not disclose confidential location information to the public, for a specific chemical. Under the current regulations a facility may choose to report confidential location information, with respect to a specific chemical, on a Tier II Confidential Location Information Sheet, which must be attached to the other Tier II information being reported. In this way, the SERC, the LEPC and the fire department receive the location information but can readily recognize and separate it in responding to a public request for Tier II information. If EPA develops guidance on electronic submittal for sections 311 and 312 reporting it will be necessary to address issues relating to submission of confidential location information. EPA seeks comments regarding submission of confidential location information electronically.

The requirements for section 312 Tier II information include providing the names of specific chemicals present at a facility; however, the facility may withhold this information from reporting if it claims the information as a trade secret. In addition, the facility may withhold chemical identities from the MSDS or list of chemicals required under section 311, if claimed as trade secret. Although trade secret information may be withheld from the SERC, the LEPC and the fire department, it must be submitted to EPA, along with a substantiation. Forms for trade secrecy claims are available on the CEPPO Internet site (www.epa.gov/ceppo), and EPA's final rule on trade secrecy (53 FR 28772, July 29, 1988) contains detailed information on how to submit trade secrecy claims. While EPA is exploring, in today's document, development of guidance for electronic submittal of sections 311 and 312 information to SERCs, LEPCs and fire departments, EPA is not considering receiving trade secrecy information electronically. EPA currently believes that the small number of trade secrecy claims that EPA receives for sections 311 and 312 information would not justify the development of a system for electronic submittal of such claims.

EPA is seeking public comments on the development of electronic submittal guidance for sections 311 and 312 reporting, including ideas for certification of electronically submitted data. EPA is interested in public comment regarding any other issues or concerns that may not have been discussed here, but that need to be considered in developing electronic

submittal guidance. EPA is particularly interested in responses from States, LEPCs and fire departments regarding their capabilities for receiving and processing electronically submitted sections 311 and 312 information.

4. Incorporation of Previous Submissions Into EPCRA Section 312 Reporting

Section 312(a) (1) and (2) of EPCRA mandate that the owner or operator of any facility that is required to prepare or have available an MSDS for a hazardous chemical under OSHA prepare and submit an inventory form containing Tier I information annually. Under EPCRA and the existing regulations, facility owners or operators are obliged to report all of the inventory information required under section 312 each year. The Tier I information is the minimum routinely required by the statute and regulations. Some States have imposed stricter reporting requirements under State and local law.

In some cases, a facility may find that some or all of the information from previous year's Tier I submission has not changed. EPA is considering developing guidance to help reduce the burden of re-creating information that has not changed from the previous year. In order for the statutory and regulatory information requirements to be satisfied, any option must ensure that the SERC, LEPC and local fire department have complete, up-to-date, section 312 inventory information by the reporting deadline each year. One option would be for the facility to simply reference and attach a copy of the unchanged information from the previous year's submittal to the current year's Tier I submission. This would mean that the facility would have to retain a copy of its previous submission.

A second option would be for the facility to reference previous submittals retained by the SERC, LEPC, and local fire department. However, if facilities are to submit only their changes each year, then SERCs, LEPCs, and fire departments receiving such reports need to have retained inventory information from prior year(s), in order to have complete, up-to-date information. In addition, facilities would need to accompany such a submission with a statement that the section 312 Tier I (or Tier II) information reported the prior year is ''incorporated by reference'' in the new submission.

All of the section 312 information is necessary for emergency planning and community right-to-know purposes. Thus, allowing facilities to report under this second option would only be feasible in cases where the SERC, LEPC and local fire department have maintained the reporting information from prior year(s) such that they continue to have access to all of the information required under section 312. This second reporting option would be limited to those facilities where the SERC, LEPC and fire department establish a policy to retain the necessary section 312 information from year to year, and seeks comments concerning this issue. Further, EPA believes that SERCs, LEPCs and fire departments that choose to implement incorporation of prior submissions by reference should communicate to potentially regulated facilities, that this second reporting option is available.

Under the second reporting option, EPA would consider submission of a statement of the changes in inventory information (or a statement that there are no changes to report), accompanied by a statement that the information submitted in the previous year's Tier I (or Tier II) report is ''incorporated by reference'' in the new report, to constitute submission of a Tier I ''inventory form'' as required by statute. A facility that made such a submission would be in compliance with the requirement to report Tier I inventory information under section 312 of EPCRA, provided that upon receipt of such a submission, the net result is that the SERC, LEPC and fire department had all of the Tier I inventory information required under EPCRA section 312 and the implementing regulations. (However, this may not meet State or local laws with more stringent reporting requirements.)

The information required under section 312 and the implementing regulations consists of a variety of data elements beyond the quantities of hazardous chemicals on site, such as the number of days that a chemical was on site, the general location of a chemical within the facility, and an emergency contact person for the facility. It would be necessary to consider each of the data elements required under the statute and implementing regulations, before reporting the changes in information (or that there were no changes), in order to use this reporting method.

If either option were implemented, public access to the Tier II reporting information required under section 312 and the implementing regulations would be preserved, because the public's right to request Tier II information would not be affected and facility owners or operators would still be required to submit Tier II information upon request of the SERC, LEPC or local fire department. In addition, States and local governments can always choose to establish stricter reporting requirements under State or local law.

Either reporting option would reduce the reporting burden for many regulated facilities, since much of the required information wouldn't typically change from year to year. The burden imposed on SERCs, LEPCs and fire departments may increase under the second option, however, because it would be necessary for these entities to retain reporting information from previous year(s) and to manage or read together more than a single report to comprehend a facility's reported information. If SERCs, LEPCs or fire departments indicate to regulated facilities that it is only necessary to report changes in section 312 information, and then these entities fail to establish a policy for keeping previous year's submissions, necessary inventory information may become less readily available to local emergency officials and the public.

EPA's regulations require the Tier I (or Tier II) information submitted under section 312 of EPCRA to be certified by the facility owner or operator, or an official designated representative, as to its accuracy and completeness. The certification must be accompanied by an original signature. By certifying the accuracy and completeness of a submission that attaches or incorporates previous reports, the certifying individual would be assuming full responsibility for the accuracy and completeness of the entire current submission, including any information attached or incorporated by reference from a previous report. The certifying individual couldn't disclaim responsibility for inaccurate information that was attached or incorporated from previous reports. EPA seeks comments regarding certification of a section 312 Tier I (or Tier II) submission that attaches or incorporates by reference prior section 312 reports.

EPCRA section 312 and the implementing regulations require submission of an inventory form containing, at a minimum, Tier I information. Although EPA publishes uniform federal formats for reporting (the Tier I and Tier II forms), State or local forms containing the same information as the uniform federal forms are acceptable for reporting inventory information. This flexibility is provided in sections 370.40 and 370.41 in the existing rule. Section 370.40 in today's proposed rule likewise provides that State or local formats containing at least the Tier I information are acceptable. The reporting requirements concern the specific information to be reported, not the form itself. EPA believes that a report stating any

changes in information, and attaching or incorporating by reference information previously submitted, could constitute an ''inventory form.'' EPA also believes that, provided that such a report contains, attaches, or incorporates at least the Tier I information, the statutory and regulatory requirements regarding the contents of an inventory form would be met. In EPA's judgement, the SERC, LEPC and fire department could implement either reporting option without a change to the federal EPCRA regulations.

In considering these reporting options, EPA's intent is to balance the amount of information generated under section 312 and the value of that information, with the costs of providing and managing the information. EPA is soliciting comments as to whether these reporting options are feasible, particularly the second option. In addition, EPA seeks public comment on whether the Agency should develop regulations to support or control either of these reporting options. EPA particularly seeks input from SERCs, LEPCs and fire departments about administrative and implementation issues or concerns, associated with the second option.

B. Electronic Access to Facilities' Databases of MSDSs

EPA believes that some facilities maintain an electronic database of MSDSs. EPA is exploring the possibility of allowing a facility to meet the requirement under EPCRA section 311 for submitting MSDSs by giving the SERC, LEPC, and local fire department electronic access to the facility's database of MSDSs, instead of actually submitting the MSDSs to each of the three entities. EPA is not advancing this reporting option at this time, but is seeking comment on the feasibility of such an option. This reporting option raises several concerns. It would be necessary to ensure that the SERC, LEPC or local fire department had the capabilities to access such a database at any time, to ensure the required information was clearly delineated and readily accessible, and to ensure that access was uninterrupted, even in the event of an emergency situation. While this option would reduce the burden on regulated facilities, it could increase the burden on the SERC, LEPC, or local fire department. EPA seeks comments on how this option would increase or decrease the burden on SERCs, LEPCs, and fire departments. EPA also seeks comment on whether facilities allowing access to an electronic database of MSDSs could constitute submission of an MSDS, as required under EPCRA section 311(a)(1).

C. Interpretation of the Hazardous Chemical Exemption for Solids Under EPCRA Section 311(e)(2)

EPA is considering interpreting the exemption for hazardous chemicals found at EPCRA section 311(e)(2) so that only the amount of fume or dust given off a piece of metal (or other manufactured solid) that is being modified be subject to EPCRA sections 311 and 312 and applied toward threshold determination.

Under EPCRA section 311(e)(2), ''Any substance present as a solid in any manufactured item to the extent exposure to the substance does not occur under normal conditions of use'' is exempt from the definition of hazardous chemical and therefore need not be reported under sections 311 and 312. EPA's interpretation of this exemption has been that portions of metal stock that are modified such that exposure to a hazardous chemical can occur should be counted to determine the quantity present for threshold purposes. For example, if there are 10,000 pounds of steel undergoing a welding process at a facility at any one time, then 10,000 pounds would need be counted toward the quantity for threshold determination.

EPA believes that the current interpretation of this exemption occasionally requires reporting of information that is unnecessary for emergency planning and community right-to-know purposes. Refining this interpretation would relieve facilities from reporting that unnecessary information. Under this approach, the facility owner or operator would need to quantify the amount of fume or dust given off during a modification process, in order to apply that amount toward threshold determination.

EPA's intention is to interpret this exemption in a reasonable manner, one that provides a balance between the amount of information required to be reported, and the usefulness of the information for the protection of public health and the environment. EPA requests comments concerning whether it should revise its guidance on the meaning of this exemption and, if so, whether the alternative interpretation described above is sensible.

EPA would also like to clarify that, under any of the interpretations of this exemption being considered, stamping a piece of sheet metal doesn't negate the exemption for that piece of metal; the piece of metal would still qualify for the exemption. EPA believes that the stamping of sheet metal does not present exposure to a hazardous chemical.

EPA also seeks to clarify that bricks generally need not be reported under sections 311 and 312, provided that they are being neither manufactured nor modified, because they fall under the exemption at EPCRA section 311(e)(2). However, if a brick undergoes a modification process (for example cutting) such that exposure to a hazardous chemical can occur, then under the current interpretation, the brick would no longer be exempt; and under the alternative interpretation under consideration, that portion of the brick released as fume or dust would no longer be exempt, but the remainder of the brick would be exempt.

D. EPCRA Section 312 Reporting to Fulfill Reporting Requirements Under Section 311

EPA is considering guidance that addresses how facilities may use section 312 reporting to fulfill the reporting requirements under section 311, provided that the reporting conforms to the required time frame and that Tier II information is reported. The information and timing requirements are discussed below.

Section 312 reporting can only be used to fulfill section 311 reporting if the section 312 report contains all of the information required under section 311. Section 311 permits the choice of submitting either an MSDS for each hazardous chemical being reported, or a list of such chemicals grouped by hazard categories. Under section 312, a regulated facility may choose to submit Tier I information or Tier II information; some States may require Tier II information. Tier II information includes all of the data required under section 311. Tier II information requires the reporting of hazardous chemicals, with an indication of which hazard categories apply to each chemical being reported. In short, Tier II information constitutes a list of hazardous chemicals identified by hazard category, consistent with section 311.

In addition, section 312 and its implementing regulations require reporting Tier I information by March 1 of each year for which hazardous chemicals were present at a facility during the preceding year, and Tier II information within 30 days of a request from the SERC, the LEPC or the fire department. Section 311 and its implementing regulations require reporting within 3 months after becoming subject to the reporting requirements, or within 3 months after discovery of significant new information concerning a hazardous chemical that

has already been reported, or within 30 days of a request from the SERC, LEPC or the fire department. For any given year, a section 312 submission may be made between January 1 and March 1 of the following year. Section 312 reporting could be used to meet section 311 reporting for only those facilities that become subject to reporting under section 311, or discover significant new information concerning a hazardous chemical, between October 1 and December 31 of any given calendar year.

Both sections 311 and 312 require submission of reporting information to the SERC, the LEPC and the fire department with jurisdiction over the facility, so allowing section 312 reporting to meet section 311 reporting requirements does not create any difficulties concerning recipients of the information.

EPA seeks comments from regulated facilities, SERCs, LEPCs, and local fire departments regarding the usefulness of guidance on this reporting option, and any difficulties that may have been encountered in the past that might be relevant.

E. Emergency Planning Notification

Section 355.20 in today's proposed rule provides requirements for emergency planning notification. That section is based on section 355.30 of the existing regulations, and indicates that notice of any changes relevant to emergency planning, and any information requested by the LEPC that is necessary for developing or implementing the local emergency plan, must be submitted promptly to the SERC and the LEPC. EPA is taking this opportunity to consider guidance on the meaning of ''promptly.'' EPA does not intend to define the term ''promptly,'' however, EPA believes that 10 to 20 working days is generally a reasonable amount of time to provide such notice. EPA requests public comment on this potential guidance.

F. Emergency Release Notification

Section 355.40 in today's proposed rule provides requirements for emergency release notification. That section is based on section 355.40 of the existing regulations, and indicates that a written follow-up emergency notice is to be provided as soon as practicable after a release. EPA is taking this opportunity to consider guidance on the meaning of ''as soon as practicable.'' EPA does not intend to define the phrase ''as soon as practicable'—the amount of time required to provide a written follow-up notice will depend on the specific circumstances of an incident. However, EPA believes that it should be practicable to provide such notice in no more than 30 days (although, depending on the circumstances, more or less time may be appropriate for the written follow-up notification). EPA requests public comment on this potential guidance.

VI. What Else Is Different About This Rule?

A. Plain English Format

EPA is proposing today to rewrite and reorganize all of parts 355 and 370, which cover requirements for emergency planning and release notification and hazardous chemical community right-to-know reporting, to make them clearer and easier to use. These changes are proposed as part of the Agency's ongoing efforts at regulatory reinvention. Although the format has changed as a result of rewriting the regulatory text in ''plain English,'' the only substantive regulatory changes that EPA is proposing are those discussed above, under the heading What Regulatory Changes is EPA Proposing in This Rule? EPA is not intending to revise, reopen or reconsider the merits of any other aspects of the existing regulatory requirements at 40 CFR parts 355 and 370. In today's document EPA is also exploring the development of guidance on the implementation of existing statutory and regulatory requirements, as discussed under the heading What Draft Guidance is EPA Publishing in This Preamble? Any previous policy statements, interpretations, or guidance issued by EPA concerning the existing requirements under parts 355 and 370 would not be changed by today's document, except for the specific guidance EPA has described in this document.

EPA is seeking comments concerning whether the plain English format that is proposed in today's rulemaking is, in fact, clearer and easier to use than the existing regulatory text. EPA requests suggestions for improving the readability of the rule. EPA also is requesting comments on whether any unintended substantive changes have been made as a result of rewriting the regulatory text in plain English. Comments are requested concerning all issues and options regarding the specific substantive regulatory changes that are discussed in this preamble. However, the regulations at 40 CFR parts 355 and 370 have been in effect for many years and EPA is not soliciting comments on any other aspects regarding the merits of those regulations in today's rulemaking.

One of the proposed changes to parts 355 and 370 is to use tables to reorganize and clarify some of the requirements. In particular, sections 355.20, 355.60 and 370.14 of today's proposed rule each contain tables. EPA is interested in public comment on the usefulness of the proposed tables. Note that ellipses are used in the proposed tables to help the reader walk through the tables, and do not reflect the omission of any text. Ellipses used in the body of a table indicate that the rows contain sentences to be read across the table from left to right. Ellipses used in the heading of a table indicate the continuation of a concept in the rows below.

It is important to understand that all of the requirements found in today's proposed regulations, including those set forth in table format, constitute binding, enforceable legal requirements. The plain English format used in today's proposed regulations may appear different from other rules, but it establishes binding, enforceable legal requirements like those in the existing regulations at 40 CFR parts 355 and 370. Note, however, that EPA has added some non-binding guidance in today's proposed regulations in the form of notes. Such notes are indicated in the regulations by the word ''note'' and a smaller typeface (see, for example, the note at the end of proposed paragraph 355.40(b)). These notes are intended to improve understanding of the regulatory requirements, but are not binding under EPCRA. Proposed sections 355.1 and 370.1 explain that the notes are considered non-binding guidance.

B. Conversion Table

In an effort to make the requirements clearer and easier to use, the existing parts 355 and 370 have been reorganized. The conversion table below will help you to determine where the various sections of the existing regulations are located in today's proposed rule:

Existing section	Proposed section(s)	Comment
355.10	355.1	
355.20	355.61	Definitions for parts 355 and 370 were consolidated.

Existing section	Proposed section(s)	Comment
355.30	355.10, 355.11, 355.12, 355.13, 355.14, 355.15, 355.16, 355.20.	
355.40	355.30, 355.31, 355.32, 355.33, 355.40, 355.42, 355.43, 355.60.	
355.50		Penalty provisions were removed from the regulation; penalties continue to apply under statutory authority.
	355.2	New section.
	355.3	New section.
	355.21	New section.
	355.41	New section.
370.1	370.1	
370.2	355.61, 370.13	Definitions for parts 355 and 370 were consolidated; exceptions to the definition of hazardous chemical were also placed in section 370.13.
370.5		Penalty provisions were removed from the regulation; penalties continue to apply under statutory authority.
370.20	370.10, 370.12, 370.20, 370.30, 370.33, 370.40, 370.45.	
370.21	370.10, 370.30, 370.31, 370.32, 370.33, 370.62.	
370.25	370.10, 370.40, 370.44, 370.45, 370.62, 370.65.	
370.28	370.14.	
370.30	370.10, 370.60, 370.61, 370.62, 370.63.	
370.31	370.63, 370.64	
370.40	370.40, 370.41, 370.43	Tier I form and instructions were removed.
370.41	370.40, 370.42, 370.43, 370.64	Tier II form and instructions were removed.
	370.2	New section.
	370.3	New section.
	370.11	New section.

VII. Where Are SERCs and LEPCs Listed?

You may access a database of SERCs and LEPCs by visiting the CEPPO Internet site, at www.epa.gov/ceppo. The database provides the most up-to-date information that EPA has regarding contacts, phone numbers and addresses for SERCs and LEPCs. This information is subject to change, however. You may also contact the Hotline for information regarding SERCs, and your SERC should be able to direct you to your LEPC. Hotline phone numbers are listed in the preceding **FOR FURTHER INFORMATION CONTACT** section. EPA is providing this information here in an effort to ease compliance with the regulations at 40 CFR parts 355 and 370.

VIII. Regulatory Analyses

A. Executive Order No. 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 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, OMB has notified EPA that it considers this a ''significant regulatory action'' within the meaning of the Executive Order. This proposed rule is considered significant because it advances novel policy issues. Thus, EPA has submitted this action to OMB for review. The draft of this proposed rulemaking document submitted to OMB for review, related documents, and changes made in response to OMB suggestions or recommendations will be documented in the public record and made available for public inspection at EPA's CERCLA Docket Office (Docket No. 300RR–IF–1).

B. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*, as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, or SBREFA) whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small entities (i.e., small businesses, small organizations, and small governmental jurisdictions). This analysis is unnecessary, however, if the agency's administrator certifies that the rule will not have a significant economic impact on a substantial number of small entities.

EPA has examined this rule's potential effects on small entities as required by the Regulatory Flexibility Act and has determined that this action will not have a significant economic impact on a substantial number of small entities. This rule would reduce regulatory burdens for small entities. The overall economic effect of this regulation has been estimated to equate to 588,054 hours of burden reduction (with no added burden) at a total cost saving of approximately $16 million per year to all regulated entities. Therefore, this regulation will result in a cost savings. Accordingly, the Agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. This rule, therefore, does not require a regulatory flexibility analysis.

C. Paperwork Reduction Act

The information collection analysis for this proposed rule has been submitted for approval to OMB under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* An Information Collection

Request (ICR) document has been prepared by EPA (ICR No.1352.05) and a copy may be obtained from Sandy Farmer by mail at OPPE Regulatory Information Division; U.S. Environmental Protection Agency (2137); 401 M St., SW; Washington, DC 20460, by email at farmer.sandy@epamail.epa.gov, or by calling (202) 260–2740. A copy may also be downloaded off the Internet at http://www.epa.gov/icr.

EPA currently has an approved ICR (ICR No. 1395.03) of 965,982 hours for the existing EPCRA sections 302, 303 and 304 (40 CFR part 355) reporting requirements, based on 106,400 annual responses, averaging 20.75 hours per response for newly regulated facilities, 11.5 hours for existing facilities, and approximately 5 hours for emergency release notification requirements with no annual record keeping burden hours. Also, EPA currently has an approved ICR (ICR No. 1352.04) of 2,963,209 hours for the existing EPCRA sections 311 and 312 reporting requirements (40 CFR part 370), based on 868,527 annual responses, averaging 3.1 hours per response with no annual record keeping burden hours. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

As part of the President's program for reinventing government and reforming regulatory policy, EPA is proposing to relax the reporting burden imposed by the EPCRA regulations at 40 CFR parts 355 and 370. EPA anticipates that today's proposed rulemaking will reduce the burden for part 370 from 2,963,209 hours to 2,375,155 hours, for a reduction of 588,054 hours under ICR No. 1352.04. This translates into an estimated cost savings of over $16 million.

An Agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15.

Comments are requested on the Agency's need for this information, the accuracy of the provided burden reduction estimates, and any suggested methods for further minimizing respondent burden, including through the use of automated collection techniques. Send comments on the ICR to the Director, OPPE Regulatory Information Division; U.S. Environmental Protection Agency (2137); 401 M St., SW; Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th St., NW, Washington, DC 20503, marked ''Attention: Desk Officer for EPA.'' Include the ICR number in any correspondence. Since OMB is required to make a decision concerning the ICR between 30 and 60 days after June 8, 1998, a comment to OMB is best assured of having its full effect if OMB receives it by July 8, 1998. The final rule will respond to any OMB or public comments on the information collection requirements contained in this proposal.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Pub. L. 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

EPA has determined that this rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any one year. This rule is intended to provide burden relief, and doesn't impose additional costs to State, local, or tribal governments, or to the private sector. Thus, today's rule is not subject to the requirements of sections 202 and 205 of the UMRA.

EPA also has determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments. The intent of this rule is to provide burden relief to regulated entities, including small governments.

E. Environmental Justice

Executive Order 12898 requires that each Federal agency make achieving environmental justice part of its mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minorities and low-income populations. By proposing to rewrite the regulations at 40 CFR parts 355 and 370 in plain English, EPA intends to make the rule clearer and more easy to use, which may decrease the costs of compliance and also promote more meaningful public participation under EPCRA. This will benefit all of the public, including minorities and low-income populations.

F. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Pub. L. No. 104–113, section 12(d) (15 U.S.C. 272 note), directs EPA 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 practices, etc.) That are developed or adopted by voluntary consensus standards bodies. The NTTAA requires EPA to provide Congress, through OMB,

explanations when the Agency decides not to use available and applicable voluntary consensus standards.

EPA is not proposing any new test methods or other technical standards as part of today's rule, which proposes revisions to the regulations implementing the emergency planning and release notification and hazardous chemical community right-to-know requirements under EPCRA. Thus, the Agency does not need to consider the use of voluntary consensus standards in developing this proposed rule. EPA invites public comment on this analysis.

G. Executive Order 13045

The Executive Order 13045, entitled ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), applies to any rule that EPA determines (1) ''economically significant'' as defined under Executive Order 12866, and (2) the environmental health or safety risk addressed by the rule has a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children; and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency. This proposed rule is not subject to E.O. 13045 because a) this is not an economically significant regulatory action as defined by E.O. 12866 and b) the environmental health or safety risks addressed by this action do not have a disproportionate effect on children.

List of Subjects in 40 CFR Parts 355 and 370

Environmental protection, Air pollution control, Chemical accident prevention, Chemical emergency preparedness, Chemicals, Community emergency response plan, Community right-to-know, Contingency planning, Disaster assistance, Emergency planning and community right-to-know act, Hazardous substances, Intergovernmental relations, Natural resources, Reporting and recordkeeping requirements, Threshold planning quantity, Water pollution control, Water supply.

Dated: May 21, 1998.

Carol M. Browner,

Administrator.

For the reasons discussed in the preamble the Environmental Protection Agency proposes to revise 40 CFR parts 355 and 370 as follows:

PART 355—EMERGENCY PLANNING AND NOTIFICATION

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Sec.

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Appendix A to Part 355—The List of Extremely Hazardous Substances and Their Threshold Planning Quantities (Alphabetical Order)

Appendix B to Part 355—The List of Extremely Hazardous Substances and Their Threshold Planning Quantities (CAS Number Order)

Authority: Sections 302, 303, 304, 325, 327, 328, and 329 of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA) (42 U.S.C. 11002, 11003, 11004, 11045, 11047, 11048, and 11049).

Subpart A—General Information

§ 355.1 What is the purpose of this part?

(a) This part (40 CFR part 355) establishes requirements for a facility to provide information necessary for developing and implementing State and local chemical emergency response plans, and requirements for emergency notification of chemical releases. This part also lists Extremely Hazardous Substances (EHSs) and Threshold Planning Quantities (TPQs) in appendices A and B, which are used in determining if you are subject to these requirements.

(b) This part is written in a special format to make it easier to understand the regulatory requirements. Like other Environmental Protection Agency (EPA) regulations, this part establishes enforceable legal requirements. Information considered non-binding guidance under EPCRA is indicated in this regulation by the word ''note'' and a smaller typeface. Such notes are provided for information purposes only and are not considered legally binding under this part.

§ 355.2 Who do ''you,'' ''I,'' and ''your'' refer to in this part?

Throughout this part, ''you,'' ''I,''and ''your'' refer to the owner or operator of a facility.

§ 355.3 Which section contains the definitions of the key words used in this part?

The definitions of key words used in this part are in § 355.62. It is important to read the definitions for key words because the definition explains the word's specific meaning in the regulations in this part. When a defined word first appears in this part, it is printed with the initial letter capitalized.

Subpart B—Emergency Planning

Who Must Comply

§ 355.10 Must my facility comply with the emergency planning requirements of this subpart?

You must comply with the emergency planning requirements in this subpart if your facility meets either of the following two conditions:

(a) Any extremely hazardous substance (EHS) is present at your facility in an amount equal to or greater than its threshold planning quantity (TPQ), or

(b) Your facility has been designated for emergency planning purposes, after public notice and opportunity for comment, by one of the following three entities:

(1) The State Emergency Response Commission (SERC). SERC means the emergency response commission for the State in which the facility is located except where the facility is located in Indian Country, in which case, SERC means the emergency response commission for the Indian Tribe under whose jurisdiction the facility is located.

(2) The Governor of the State in which your facility is located.

(3) The Chief Executive Officer of the Tribe for the Indian Tribe under whose jurisdiction your facility is located.

§ 355.11 To what substances do the emergency planning requirements of this subpart apply?

The emergency planning requirements of this subpart apply to any extremely hazardous substance (EHS). EHSs are listed in appendices A and B of this part. If a facility is designated for emergency planning purposes, as provided in § 355.10(b) of this subpart, substances that are not EHSs may become subject to the emergency planning requirements of this subpart.

§ 355.12 What quantities of extremely hazardous substances trigger emergency planning requirements?

Any EHS present at your facility in an amount equal to or greater than its threshold planning quantity triggers the emergency planning requirements of this subpart. The threshold planning quantities are listed in appendices A and B of this part, in the column labeled ''threshold planning quantity.''

§ 355.13 How do I calculate the quantity of extremely hazardous substances present in mixtures?

If an EHS is present in a Mixture in a particular container, then determine the actual quantity of EHS in that container as follows: multiply the concentration of EHS (in weight percent) by the weight (in pounds) of mixture in the container. If the concentration of an EHS is less than or equal to one percent, you do not have to count that EHS present in the mixture. The following example illustrates the provisions of this paragraph:

Example

If you have 150 pounds of a mixture that contains 20 percent of a certain EHS, the quantity of that EHS present in the mixture can be calculated as follows:

EHS (in pounds)
= (weight percent of EHS) × (weight of mixture)
= (20 percent) × (150 pound mixture)
= (0.20) × (150)
EHS (in pounds)
= 30 pounds

§ 355.14 Do I have to aggregate extremely hazardous substances to determine quantities present?

You must aggregate (i.e., add together) EHSs at your facility to determine if a TPQ is present. This means that, for a particular extremely hazardous substance, you must consider the total amount present at any one time at your facility, by adding together the quantity present in all mixtures and all other quantities of the EHS, regardless of location, number of containers, or method of storage. You do not have to count extremely hazardous substances present in a mixture if the concentration is less than or equal to one percent.

§ 355.15 Which threshold planning quantity do I use for extremely hazardous substances present at my facility in solid form?

Extremely hazardous substances that are in solid form are subject to one of two different TPQs (for example, TPQs may be listed as 500/10,000 pounds), both of which are listed in appendices A and B of this part. The following explains how to determine which of the two listed TPQs you must use for an extremely hazardous substance present at your facility in solid form:

(a) Use the lower TPQ, from appendices A and B of this part, if the solid is in one of the following four categories:

(1) The solid is in powdered form and has a particle size less than 100 microns.

(2) The solid is in solution.

(3) The solid is in molten form.

(4) The solid meets the criteria for a National Fire Protection Association (NFPA) rating of 2, 3 or 4 for reactivity.

Note to paragraph (a): Use the instructions in § 355.16 to calculate the quantity present for the categories of solids listed in paragraphs (a)(1), (2) and (3) of this section.

(b) Use the higher TPQ, from appendices A and B of this part, if the solid does not meet one of the criteria in paragraph (a) of this section. The higher TPQ is 10,000 pounds in every case.

§ 355.16 How do I determine the quantity of extremely hazardous substance present for certain forms of solids?

For the following three forms of solids, which are listed in § 355.15(a), use these instructions to determine the quantity of extremely hazardous substance present:

(a) *Solid in powdered form with a particle size less than 100 microns.* Multiply the weight percent of solid with a particle size less than 100 microns in a particular container by the total weight of solid in the container.

(b) *Solid in solution.* Multiply the weight percent of solid in the solution in a particular container by the total weight of solution in the container.

(c) *Solid in molten form.* Multiply the weight of solid in molten form by 0.3.

How to Comply

§ 355.20 If this subpart applies to my facility, what information must I provide, who must I submit it to, and when is it due?

The following table tells you what information you must provide to comply with the emergency planning requirements of this subpart. The table also tells you to whom you must provide the information, and when the information is due:

What types of emergency planning notification are required?	What information must I provide?	To whom must I provide the information?	When must I provide the information?
Emergency planning notification.	You must provide notice that your facility is subject to the emergency planning requirements of this subpart.	To the SERC and the LEPC (LEPC means the local emergency planning committee appointed by the SERC).	By May 17, 1987, or within 60 days after your facility first becomes subject to the requirements of this subpart; if no LEPC exists for your facility at the time you are required to provide emergency planning notification, then report to the LEPC within 30 days after establishment of a LEPC for the emergency planning district in which your facility is located.
Facility emergency coordinator.	You must designate a facility representative who will participate in the local emergency planning process as a facility emergency response coordinator. You must provide notice of this facility representative.	To the LEPC (or the SERC if there is no LEPC, or the Governor if there is no SERC).	By September 17, 1987, or within 60 days after your facility first becomes subject to the requirements of this subpart; if no LEPC exists for your facility at the time you are required to provide facility emergency coordinator notification, then provide an additional report to the LEPC within 30 days after establishment of a LEPC for the emergency planning district in which your facility is located.
Changes relevant to emergency planning.	You must provide notice of any changes occurring at your facility that may be relevant to emergency planning.	To the LEPC	Promptly.
Requested information.	You must provide any information necessary for developing or implementing the local emergency plan if the LEPC requests it.	To the LEPC	Promptly.

§ 355.21 What format should the information be in?

EPA does not require any specific format. Note: EPA recommends that you submit the information described in § 355.20 in writing, in order to insure appropriate documentation. The SERC or LEPC may request a specific format for this information.

Subpart C—Emergency Release Notification

Who Must Comply

§ 355.30 What facilities must comply with the emergency release notification requirements of this subpart?

You must comply with the emergency release notification requirements in this subpart if both of the following two conditions are met:

(a) A Hazardous Chemical is produced, used, or stored at your facility.

(b) There is a release of a Reportable Quantity (RQ) of any extremely hazardous substance, or of a hazardous substance as defined by the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA Hazardous Substance) at your facility, except that certain releases are exempted from these requirements. Exempted releases are listed in § 355.31.

Note to paragraph (b): In addition to the emergency release notification requirements of this subpart, releases of CERCLA hazardous substances are subject to notification requirements under CERCLA. This is explained further in subpart D of this part.

§ 355.31 What types of releases are exempt from the emergency release notification requirements of this subpart?

You do not have to provide emergency release notification under this subpart for any of the following five types of releases of EHSs or CERCLA hazardous substances that occur at your facility:

(a) Any release that results in exposure to persons solely within the boundaries of your facility.

(b) Any release that is a federally permitted release as defined in section 101(10) of CERCLA.

(c) Any release of a pesticide product that is exempt from CERCLA section 103(a) reporting under section 103(e) of CERCLA.

(d) Any release that doesn't meet the definition of release under section 101(22) of CERCLA and is therefore exempt from CERCLA section 103(a) reporting.

(e) Any radionuclide release that occurs:

(1) Naturally in soil from land holdings such as parks, golf courses, or other large tracts of land.

(2) Naturally from land disturbance activities, including farming, construction, and land disturbance incidental to extraction during mining activities, except that which occurs at uranium, phosphate, tin, zircon, hafnium, vanadium, monazite, and rare earth mines. Land disturbance incidental to extraction includes: land clearing; overburden removal and stockpiling; excavating, handling, transporting, and storing ores and other raw materials; and replacing materials in mined-out areas as long as such materials have not been beneficiated or processed and do not contain elevated radionuclide concentrations (greater than 7.6 picocuries per gram or pCi/g of Uranium-238, 6.8 pCi/g of Thorium-232, or 8.4 pCi/g of Radium-226).

(3) From the dumping and transportation of coal and coal ash (including fly ash, bottom ash, and boiler slags), including the dumping and land spreading operations that occur during coal ash uses.

(4) From piles of coal and coal ash, including fly ash, bottom ash, and boiler slags.

§ 355.32 Which emergency release notification requirements apply to continuous releases?

If there is a release of an EHS or CERCLA hazardous substance that is continuous and stable in quantity and rate at your facility, as defined in 40 CFR 302.8(b), the release qualifies for reduced reporting requirements under this subpart. Under the reduced reporting requirements, you do not need to provide the notifications required under § 355.40. However, in addition to the notifications required under 40 CFR 302.8, you must make all of the following notifications to the

community emergency coordinator for the LEPC for any area likely to be affected by the release and to the SERC of any State likely to be affected by the release:

(a) Initial notifications as specified in 40 CFR 302.8 (d) and (e).

(b) Notification of a ''statistically significant increase,'' defined in 40 CFR 302.8(b) as any increase above the upper bound of the reported normal range.

(c) Notification of a ''new release'' as specified in 40 CFR 302.8(g)(1).

(d) Notification of a change in the normal range of the release as specified under 40 CFR 302.8(g)(2).

§ 355.33 Release of what quantities of EHSs and CERCLA hazardous substances trigger the emergency release notification requirements of this subpart?

The release of a reportable quantity (RQ) of an EHS or CERCLA hazardous substance, within any 24-hour period, triggers the emergency release notification requirements. Reportable quantities for extremely hazardous substances are listed in appendices A and B of this part, in the column labeled ''reportable quantity.'' Reportable quantities for CERCLA hazardous substances are listed in Table 302.4 of 40 CFR part 302, in the column labeled ''final RQ.''

How to Comply

§ 355.40 What information must I provide?

You must make two separate notifications to comply with the emergency release notification requirements of this subpart: an immediate notification, and as soon as practicable thereafter a written follow-up emergency notification (or notifications, as more information becomes available). You must include the following information in your notifications:

(a) *Immediate notification.* Your immediate notice must include all of the following, to the extent known at the time of notice and so long as no delay in notice or emergency response results:

(1) The chemical name or identity of any substance involved in the release.

(2) An indication of whether the substance is an extremely hazardous substance.

(3) An estimate of the quantity of any such substance that was released into the environment.

(4) The time and duration of the release.

(5) The medium or media into which the release occurred.

(6) Any known or anticipated acute or chronic health risks associated with the emergency and, where appropriate, advice regarding medical attention necessary for exposed individuals.

(7) Proper precautions to take as a result of the release, including evacuation (unless such information is readily available to the community emergency coordinator pursuant to the emergency plan).

(8) The name and telephone number of the individual (or individuals) to be contacted for further information.

(b) *Written follow-up emergency notification.* Except for releases during transportation, or storage incident to transportation, you must provide a written follow-up emergency notice (or notices, as more information becomes available), as soon as practicable after the release. In the written follow-up emergency notice you must set forth and update the information required in the immediate notification and include additional information with respect to all of the following:

(1) Actions taken to respond to and contain the release.

(2) Any known or anticipated acute or chronic health risks associated with the release.

(3) Where appropriate, advice regarding medical attention necessary for exposed individuals.

Note to paragraph (b): You are not required to submit a written follow-up notification for a release during transportation, or storage incident to transportation. See § 355.42(b) for requirements for reporting such releases.

§ 355.41 What format should the information be in?

The immediate notification, described in § 355.40(a), should be oral. The written follow-up emergency notification, described in § 355.40(b), must be in writing. The EPA does not specify a particular format for the written follow-up emergency notification.

Note: The LEPC may request a specific format for this information.

§ 355.42 To whom must I submit the information?

(a) You must provide the required emergency release notification information (both the immediate and written follow-up notification) to both of the following:

(1) The community emergency coordinator for the LEPC of any area likely to be affected by the release (if there is no LEPC, notify relevant local emergency response personnel).

(2) The SERC of any State likely to be affected by the release.

(b) With respect to a release during transportation, or storage incident to transportation, you may meet the requirements of this subpart by notifying the 911 operator (or in the absence of a 911 emergency telephone number, the operator) of the immediate notification information listed in § 355.40(a). You are not required under this subpart to submit a written follow-up notification, as described in § 355.40(b), for such a release.

§ 355.43 When must I submit the information?

You must provide the required emergency release notification information as follows:

(a) Provide the notice described under § 355.40(a), immediately.

(b) Provide the written follow-up emergency notice (or notices, as more information becomes available) described under § 355.40(b), as soon as practicable after the release.

Subpart D—Additional Provisions

§ 355.60 What is the relationship between the emergency release notification requirements of this part and the release notification requirements of CERCLA?

The emergency release notification requirements of this part are in addition to the release notification requirements of CERCLA. If you have a release of a CERCLA hazardous substance, you must comply with the emergency release notification requirements of this part and the release reporting requirements of CERCLA section 103, codified at 40 CFR part 302. Refer to the following table to determine which emergency release notification requirements apply to your release:

If a reportable quantity of a substance is released within a 24-hour period at your facility	And if the release is reportable under EPCRA section 304 then you must	And if the release is reportable under CERCLA section 103 then you must
And the substance is on BOTH the list of *EPCRA* Extremely Hazardous Substances (appendices A and B of this part) AND the list of CERCLA Hazardous Substances (Table 302.4 of 40 CFR 302.4).	Notify the local emergency planning committee (the LEPC) and the State emergency response commission (the SERC), in accordance with §§ 355.40 through 355.43 of this part (see exception for a release during transportation or storage incident to transportation, as provided in § 355.42(b)).	Comply with the release reporting requirements of CERCLA section 103 and its implementing regulations (40 CFR part 302). Call the National Response Center at 800/424–8802.
And the substance is on the list of CERCLA Hazardous Substances (Table 302.4 of 40 CFR 302.4) and NOT on the list of EPCRA extremely hazardous substances (appendices A and B of this part).	Notify the LEPC and the SERC, in accordance with §§ 355.40 through 355.43 of this part (see exception for a release during transportation or storage incident to transportation, as provided in § 355.42(b)),.	Comply with the release reporting requirements of CERCLA section 103 and its implementing regulations (40 CFR part 302). Call the National Response Center at 800/424–8802.
And the substance is on the list of EPCRA Extremely Hazardous Substances (appendices A and B of this part) and NOT on the list of CERCLA Hazardous Substances (Table 302.4 of 40 CFR 302.4).	Notify the LEPC and the SERC, in accordance with §§ 355.40 through 355.43 of this part (see exception for a release during transportation or storage incident to transportation, as provided in § 355.42(b)).	

Note: This table only applies to reportable releases, not to exempt releases.

§ 355.61 How are key words in this part defined?

This section contains the definitions of key words for 40 CFR parts 355 and 370. Therefore some of the key words defined in this section do not appear in this part, but appear in 40 CFR part 370 (40 CFR 370.3 indicates that definitions for part 370 are in this section). Many of the defined key words appear in both 40 CFR parts 355 and 370.

CERCLA means the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended.

Chief Executive Officer of the Tribe means the person who is recognized by the Bureau of Indian Affairs as the chief elected administrative officer of the Tribe.

Environment includes water, air, and land and the interrelationship that exists among and between water, air, and land and all living things.

EPCRA means the federal Emergency Planning and Community Right-To-Know Act.

Facility means all buildings, equipment, structures, and other stationary items that are located on a single site or on contiguous or adjacent sites and that are owned or operated by the same person (or by any person that controls, is controlled by, or under common control with, such person). *Facility* includes manmade structures as well as all natural structures in which chemicals are purposefully placed or removed through human means such that it functions as a containment structure for human use. For purposes of emergency release notification, the term includes motor vehicles, rolling stock, and aircraft.

Hazard category means any of the following:

(1) *Immediate (acute) health hazard,* including *highly toxic, toxic, irritant, sensitizer, corrosive,* (as defined under 29 CFR 1910.1200) and other hazardous chemicals that cause an adverse effect to a target organ and which effect usually occurs rapidly as a result of short-term exposure and is of short duration;

(2) *Delayed (chronic) health hazard,* including *carcinogens* (as defined under 29 CFR 1910.1200) and other hazardous chemicals that cause an adverse effect to a target organ and which effect generally occurs as a result of long-term exposure and is of long duration;

(3) *Fire hazard,* including *flammable, combustible liquid, pyrophoric,* and *oxidizer* (as defined under 29 CFR 1910.1200);

(4) *Sudden release of pressure,* including *explosive* and *compressed gas* (as defined under 29 CFR 1910.1200); and

(5) *Reactive,* including *unstable reactive, organic peroxide,* and *water reactive* (as defined under 29 CFR 1910.1200).

Hazardous chemical means any hazardous chemical as defined under 29 CFR 1910.1200(c), except that such term does not include the following substances:

(1) Any food, food additive, color additive, drug, or cosmetic regulated by the Food and Drug Administration.

(2) Any substance present as a solid in any manufactured item to the extent exposure to the substance does not occur under normal conditions of use.

(3) Any substance to the extent it is used:

(i) For personal, family, or household purposes, or is present in the same form and concentration as a product packaged for distribution and use by the general public. *Present in the same form and concentration as a product packaged for distribution and use by the general public* means a substance packaged in a similar manner and present in the same concentration as the substance when packaged for use by the general public, whether or not it is intended for distribution to the general public or used for the same purpose as when it is packaged for use by the general public;

(ii) In a research laboratory or hospital or other medical facility under the direct supervision of a technically qualified individual; or

(iii) In routine agricultural operations or is a fertilizer held for sale by a retailer to the ultimate customer.

Hazardous substances:

(1) *CERCLA hazardous substance* means a substance defined in section 101(14) of CERCLA. A list of such substances appears in Table 302.4 of 40 CFR part 302.

(2) *Extremely hazardous substance* (EHS) means a substance listed in appendices A and B of this part.

Indian Country means *Indian country* as defined in 18 U.S.C. 1151. That section defines Indian country as:

(1) All land within the limits of any Indian reservation under the jurisdiction of the United States government, notwithstanding the issuance of any patent, and, including rights-of-way running through the reservation;

(2) All dependent Indian communities within the borders of the United States whether within the original or subsequently acquired territory thereof, and whether within or without the limits of a State; and

(3) All Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through the same.

Indian Tribe or *Tribe* means those Tribes federally recognized by the Secretary of the Interior.

Inventory form means the uniform Tier I and Tier II emergency and hazardous chemical inventory forms published by the EPA. These forms can be used for reporting inventory information, as described in 40 CFR 370.40 through 370.45.

LEPC or *Local emergency planning committee* means the local emergency planning committee appointed by the State emergency response commission.

Material Safety Data Sheet or *MSDS* means the sheet required to be developed under 29 CFR 1910.1200(g).

Mixture means, for the purposes of 40 CFR part 355, a heterogenous association of substances where the various individual substances retain their identities and can usually be separated by mechanical means. This definition includes, for the purposes of 40 CFR part 355, solutions but does not include alloys or amalgams. For the purposes of part 370, *mixture* means *mixture* as defined under the Occupational Safety and Health Administration's Hazard Communication Standard in 29 CFR 1910.1200(c).

OSHA means the Occupational Safety and Health Act of 1970.

Person means any individual, trust, firm, joint stock company, corporation (including a government corporation), partnership, association, State, municipality, commission, political subdivision of a State, or interstate body.

Release means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the environment (including the abandonment or discarding of barrels, containers, and other closed receptacles) of any hazardous chemical, extremely hazardous substance, or CERCLA hazardous substance.

Reportable quantity means, for any CERCLA hazardous substance, the reportable quantity established in Table 302.4 of 40 CFR part 302, for such substance. For any extremely hazardous substance, reportable quantity means the reportable quantity established in appendices A and B of this part, for such substance. Unless and until superseded by regulations establishing a reportable quantity for newly listed EHSs or CERCLA hazardous substances, a weight of 1 pound shall be the reportable quantity.

SERC or *State Emergency Response Commission* means the emergency response commission for the State in which the facility is located except where the facility is located in Indian Country, in which case, *SERC* means the emergency response commission for the Tribe under whose jurisdiction the facility is located. In the absence of an emergency response commission for a State or an Indian Tribe, the Governor or the chief executive officer of the tribe, respectively, shall be the SERC. Where there is a cooperative agreement between a State and a Tribe, the SERC shall be the entity identified in the agreement.

State means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the United States Virgin Islands, the Northern Mariana Islands, any other territory or possession over which the United States has jurisdiction and Indian Country.

Threshold planning quantity (TPQ) means, for a substance listed in appendices A and B of this part, the quantity listed in the column ''threshold planning quantity'' for that substance.

APPENDIX A TO PART 355—THE LIST OF EXTREMELY HAZARDOUS SUBSTANCES AND THEIR THRESHOLD PLANNING QUANTITIES

[Alphabetical Order]

CAS No.	Chemical name	Notes	Reportable quantity* (pounds)	Threshold planning quantity (pounds)
75–86–5	Acetone Cyanohydrin		10	1,000
1752–30–3	Acetone Thiosemicarbazide		1,000	1,000/10,000
107–02–8	Acrolein		1	500
79–06–1	Acrylamide	l	5,000	1,000/10,000
107–13–1	Acrylonitrile	l	100	10,000
814–68–6	Acrylyl Chloride	h	100	100
111–69–3	Adiponitrile	l	1,000	1,000
116–06–3	Aldicarb	c	1	100/10,000
309–00–2	Aldrin		1	500/10,000
107–18–6	Allyl Alcohol		100	1,000
107–11–9	Allylamine		500	500
20859–73–8	Aluminum Phosphide	b	100	500
54–62–6	Aminopterin		500	500/10,000
78–53–5	Amiton		500	500
3734–97–2	Amiton Oxalate		100	100/10,000
7664–41–7	Ammonia	l	100	500
300–62–9	Amphetamine		1,000	1,000
62–53–3	Aniline	l	5,000	1,000
88–05–1	Aniline, 2,4,6-Trimethyl-		500	500
7783–70–2	Antimony Pentafluoride		500	500
1397–94–0	Antimycin A	c	1,000	1,000/10,000
86–88–4	ANTU		100	500/10,000
1303–28–2	Arsenic Pentoxide		1	100/10,000
1327–53–3	Arsenous Oxide	h	1	100/10,000
7784–34–1	Arsenous Trichloride		1	500
7784–42–1	Arsine		100	100
2642–71–9	Azinphos-Ethyl		100	100/10,000
86–50–0	Azinphos-Methyl		1	10/10,000
98–87–3	Benzal Chloride		5,000	500
98–16–8	Benzenamine, 3-(Trifluoromethyl)-		500	500
100–14–1	Benzene, 1-(Chloromethyl)-4-Nitro-		500	500/10,000
98–05–5	Benzenearsonic Acid		10	10/10,000
3615–21–2	Benzimidazole, 4,5-Dichloro-2-(Trifluoromethyl)-	g	500	500/10,000

APPENDIX A TO PART 355—THE LIST OF EXTREMELY HAZARDOUS SUBSTANCES AND THEIR THRESHOLD PLANNING QUANTITIES—Continued

[Alphabetical Order]

CAS No.	Chemical name	Notes	Reportable quantity* (pounds)	Threshold planning quantity (pounds)
98–07–7	Benzotrichloride		10	100
100–44–7	Benzyl Chloride		100	500
140–29–4	Benzyl Cyanide	h	500	500
15271–41–7	Bicyclo[2.2.1]Heptane-2-Carbonitrile, 5-Chloro-6-((((Methylamino)Carbonyl)Oxy)Imino)-, (1s-(1-alpha,2-beta,4-alpha,5-alpha,6E))-.		500	500/10,000
534–07–6	Bis(Chloromethyl) Ketone		10	10/10,000
4044–65–9	Bitoscanate		500	500/10,000
10294–34–5	Boron Trichloride		500	500
7637–07–2	Boron Trifluoride		500	500
353–42–4	Boron Trifluoride Compound With Methyl Ether (1:1)		1,000	1,000
28772–56–7	Bromadiolone		100	100/10,000
7726–95–6	Bromine	l	500	500
1306–19–0	Cadmium Oxide		100	100/10,000
2223–93–0	Cadmium Stearate	c	1,000	1,000/10,000
7778–44–1	Calcium Arsenate		1	500/10,000
8001–35–2	Camphechlor		1	500/10,000
56–25–7	Cantharidin		100	100/10,000
51–83–2	Carbachol Chloride		500	500/10,000
26419–73–8	Carbamic Acid, Methyl-, O-(((2,4-Dimethyl-1, 3-Dithiolan-2-yl)Methylene)Amino)-	d	1	100/10,000
1563–66–2	Carbofuran		10	10/10,000
75–15–0	Carbon Disulfide	l	100	10,000
786–19–6	Carbophenothion		500	500
57–74–9	Chlordane		1	1,000
470–90–6	Chlorfenvinfos		500	500
7782–50–5	Chlorine		10	100
24934–91–6	Chlormephos		500	500
999–81–5	Chlormequat Chloride	h	100	100/10,000
79–11–8	Chloroacetic Acid		100	100/10,000
107–07–3	Chloroethanol		500	500
627–11–2	Chloroethyl Chloroformate		1,000	1,000
67–66–3	Chloroform	l	10	10,000
542–88–1	Chloromethyl Ether	h	10	100
107–30–2	Chloromethyl Methyl Ether	c	10	100
3691–35–8	Chlorophacinone		100	100/10,000
1982–47–4	Chloroxuron		500	500/10,000
21923–23–9	Chlorthiophos	h	500	500
10025–73–7	Chromic Chloride		1	1/10,000
62207–76–5	Cobalt, ((2,2'-(1,2-Ethanediylbis (Nitrilomethylidyne)) Bis(6-Fluorophenolato))(2-)-N,N',O,O')-.		100	100/10,000
10210–68–1	Cobalt Carbonyl	h	10	10/10,000
64–86–8	Colchicine	h	10	10/10,000
56–72–4	Coumaphos		10	100/10,000
5836–29–3	Coumatetralyl		500	500/10,000
95–48–7	Cresol, o-		100	1,000/10,000
535–89–7	Crimidine		100	100/10,000
4170–30–3	Crotonaldehyde		100	1,000
123–73–9	Crotonaldehyde, (E)-		100	1,000
506–68–3	Cyanogen Bromide		1,000	500/10,000
506–78–5	Cyanogen Iodide		1,000	1,000/10,000
2636–26–2	Cyanophos		1,000	1,000
675–14–9	Cyanuric Fluoride		100	100
66–81–9	Cycloheximide		100	100/10,000
108–91–8	Cyclohexylamine	l	10,000	10,000
17702–41–9	Decaborane(14)		500	500/10,000
8065–48–3	Demeton		500	500
919–86–8	Demeton-S-Methyl		500	500
10311–84–9	Dialifor		100	100/10,000
19287–45–7	Diborane		100	100
111–44–4	Dichloroethyl ether		10	10,000
149–74–6	Dichloromethylphenylsilane		1,000	1,000
62–73–7	Dichlorvos		10	1,000
141–66–2	Dicrotophos		100	100
1464–53–5	Diepoxybutane		10	500
814–49–3	Diethyl Chlorophosphate	h	500	500
71–63–6	Digitoxin	c	100	100/10,000
2238–07–5	Diglycidyl Ether		1,000	1,000
20830–75–5	Digoxin	h	10	10/10,000
115–26–4	Dimefox		500	500

APPENDIX A TO PART 355—THE LIST OF EXTREMELY HAZARDOUS SUBSTANCES AND THEIR THRESHOLD PLANNING QUANTITIES—Continued

[Alphabetical Order]

CAS No.	Chemical name	Notes	Reportable quantity* (pounds)	Threshold planning quantity (pounds)
60–51–5	Dimethoate		10	500/10,000
2524–03–0	Dimethyl Phosphorochloridothioate		500	500
77–78–1	Dimethyl sulfate		100	500
75–78–5	Dimethyldichlorosilane	h	500	500
57–14–7	Dimethylhydrazine		10	1,000
99–98–9	Dimethyl-p-Phenylenediamine		10	10/10,000
644–64–4	Dimetilan	d	1	500/10,000
534–52–1	Dinitrocresol		10	10/10,000
88–85–7	Dinoseb		1,000	100/10,000
1420–07–1	Dinoterb		500	500/10,000
78–34–2	Dioxathion		500	500
82–66–6	Diphacinone		10	10/10,000
152–16–9	Diphosphoramide, Octamethyl-		100	100
298–04–4	Disulfoton		1	500
514–73–8	Dithiazanine Iodide		500	500/10,000
541–53–7	Dithiobiuret		100	100/10,000
316–42–7	Emetine, Dihydrochloride	h	1	1/10,000
115–29–7	Endosulfan		1	10/10,000
2778–04–3	Endothion		500	500/10,000
72–20–8	Endrin		1	500/10,000
106–89–8	Epichlorohydrin	l	100	1,000
2104–64–5	EPN		100	100/10,000
50–14–6	Ergocalciferol	c	1,000	1,000/10,000
379–79–3	Ergotamine Tartrate		500	500/10,000
1622–32–8	Ethanesulfonyl Chloride, 2-Chloro-		500	500
10140–87–1	Ethanol, 1,2-Dichloro-, Acetate		1,000	1,000
563–12–2	Ethion		10	1,000
13194–48–4	Ethoprophos		1,000	1,000
538–07–8	Ethylbis(2-Chloroethyl)Amine	h	500	500
371–62–0	Ethylene Fluorohydrin	c, h	10	10
75–21–8	Ethylene Oxide	l	10	1,000
107–15–3	Ethylenediamine		5,000	10,000
151–56–4	Ethyleneimine		1	500
542–90–5	Ethylthiocyanate		10,000	10,000
22224–92–6	Fenamiphos		10	10/10,000
115–90–2	Fensulfothion	h	500	500
4301–50–2	Fluenetil		100	100/10,000
7782–41–4	Fluorine	k	10	500
640–19–7	Fluoroacetamide	j	100	100/10,000
144–49–0	Fluoroacetic Acid		10	10/10,000
359–06–8	Fluoroacetyl Chloride	c	10	10
51–21–8	Fluorouracil		500	500/10,000
944–22–9	Fonofos		500	500
50–00–0	Formaldehyde	l	100	500
107–16–4	Formaldehyde Cyanohydrin	h	1,000	1,000
23422–53–9	Formetanate Hydrochloride	d, h	1	500/10,000
2540–82–1	Formothion		100	100
17702–57–7	Formparanate	d	1	100/10,000
21548–32–3	Fosthietan		500	500
3878–19–1	Fuberidazole		100	100/10,000
110–00–9	Furan		100	500
13450–90–3	Gallium Trichloride		500	500/10,000
77–47–4	Hexachlorocyclopentadiene	h	10	100
4835–11–4	Hexamethylenediamine, N,N′-Dibutyl-		500	500
302–01–2	Hydrazine		1	1,000
74–90–8	Hydrocyanic Acid		10	100
7647–01–0	Hydrogen Chloride (gas only)	l	5,000	500
7664–39–3	Hydrogen Fluoride		100	100
7722–84–1	Hydrogen Peroxide (Conc > 52%)	l	1,000	1,000
7783–07–5	Hydrogen Selenide		10	10
7783–06–4	Hydrogen Sulfide	l	100	500
123–31–9	Hydroquinone	l	100	500/10,000
13463–40–6	Iron, Pentacarbonyl-		100	100
297–78–9	Isobenzan		100	100/10,000
78–82–0	Isobutyronitrile	h	1,000	1,000
102–36–3	Isocyanic Acid, 3,4-Dichlorophenyl Ester		500	500/10,000
465–73–6	Isodrin		1	100/10,000
55–91–4	Isofluorphate	c	100	100

APPENDIX A TO PART 355—THE LIST OF EXTREMELY HAZARDOUS SUBSTANCES AND THEIR THRESHOLD PLANNING QUANTITIES—Continued

[Alphabetical Order]

CAS No.	Chemical name	Notes	Reportable quantity* (pounds)	Threshold planning quantity (pounds)
4098–71–9	Isophorone Diisocyanate		100	100
108–23–6	Isopropyl Chloroformate		1,000	1,000
119–38–0	Isopropylmethylpyrazolyl Dimethylcarbamate	d	1	500
78–97–7	Lactonitrile		1,000	1,000
21609–90–5	Leptophos		500	500/10,000
541–25–3	Lewisite	c, h	10	10
58–89–9	Lindane		1	1,000/10,000
7580–67–8	Lithium Hydride	b	100	100
109–77–3	Malononitrile		1,000	500/10,000
12108–13–3	Manganese, Tricarbonyl Methylcyclopentadienyl	h	100	100
51–75–2	Mechlorethamine	c	10	10
950–10–7	Mephosfolan		500	500
1600–27–7	Mercuric Acetate		500	500/10,000
7487–94–7	Mercuric Chloride		500	500/10,000
21908–53–2	Mercuric Oxide		500	500/10,000
10476–95–6	Methacrolein Diacetate		1,000	1,000
760–93–0	Methacrylic Anhydride		500	500
126–98–7	Methacrylonitrile	h	1,000	500
920–46–7	Methacryloyl Chloride		100	100
30674–80–7	Methacryloyloxyethyl Isocyanate	h	100	100
10265–92–6	Methamidophos		100	100/10,000
558–25–8	Methanesulfonyl Fluoride		1,000	1,000
950–37–8	Methidathion		500	500/10,000
2032–65–7	Methiocarb		10	500/10,000
16752–77–5	Methomyl	h	100	500/10,000
151–38–2	Methoxyethylmercuric Acetate		500	500/10,000
80–63–7	Methyl 2-Chloroacrylate		500	500
74–83–9	Methyl Bromide	l	1,000	1,000
79–22–1	Methyl Chloroformate	h	1,000	500
60–34–4	Methyl Hydrazine		10	500
624–83–9	Methyl Isocyanate		10	500
556–61–6	Methyl Isothiocyanate	b	500	500
74–93–1	Methyl Mercaptan	l	100	500
3735–23–7	Methyl Phenkapton		500	500
676–97–1	Methyl Phosphonic Dichloride	b	100	100
556–64–9	Methyl Thiocyanate		10,000	10,000
78–94–4	Methyl Vinyl Ketone		10	10
502–39–6	Methylmercuric Dicyanamide		500	500/10,000
75–79–6	Methyltrichlorosilane	h	500	500
1129–41–5	Metolcarb	d	1	100/10,000
7786–34–7	Mevinphos		10	500
315–18–4	Mexacarbate		1,000	500/10,000
50–07–7	Mitomycin C		10	500/10,000
6923–22–4	Monocrotophos		10	10/10,000
2763–96–4	Muscimol		1,000	500/10,000
505–60–2	Mustard Gas	h	500	500
13463–39–3	Nickel Carbonyl		10	1
54–11–5	Nicotine	c	100	100
65–30–5	Nicotine Sulfate		100	100/10,000
7697–37–2	Nitric Acid		1,000	1,000
10102–43–9	Nitric Oxide	c	10	100
98–95–3	Nitrobenzene	l	1,000	10,000
1122–60–7	Nitrocyclohexane		500	500
10102–44–0	Nitrogen Dioxide		10	100
62–75–9	Nitrosodimethylamine	h	10	1,000
991–42–4	Norbormide		100	100/10,000
0	Organorhodium Complex (PMN–82–147)		10	10/10,000
630–60–4	Ouabain	c	100	100/10,000
23135–22–0	Oxamyl	d	1	100/10,000
78–71–7	Oxetane, 3,3-Bis(Chloromethyl)-		500	500
2497–07–6	Oxydisulfoton	h	500	500
10028–15–6	Ozone		100	100
1910–42–5	Paraquat Dichloride		10	10/10,000
2074–50–2	Paraquat Methosulfate		10	10/10,000
56–38–2	Parathion	c	10	100
298–00–0	Parathion-Methyl	c	100	100/10,000
12002–03–8	Paris Green		1	500/10,000
19624–22–7	Pentaborane		500	500

APPENDIX A TO PART 355—THE LIST OF EXTREMELY HAZARDOUS SUBSTANCES AND THEIR THRESHOLD PLANNING QUANTITIES—Continued

[Alphabetical Order]

CAS No.	Chemical name	Notes	Reportable quantity* (pounds)	Threshold planning quantity (pounds)
2570–26–5	Pentadecylamine		100	100/10,000
79–21–0	Peracetic Acid		500	500
594–42–3	Perchloromethylmercaptan		100	500
108–95–2	Phenol		1,000	500/10,000
4418–66–0	Phenol, 2,2'-Thiobis(4-Chloro-6-Methyl)-		100	100/10,000
64–00–6	Phenol, 3-(1-Methylethyl)-, Methylcarbamate	d	1	500/10,000
58–36–6	Phenoxarsine, 10,10'-Oxydi-		500	500/10,000
696–28–6	Phenyl Dichloroarsine	h	1	500
59–88–1	Phenylhydrazine Hydrochloride		1,000	1,000/10,000
62–38–4	Phenylmercury Acetate		100	500/10,000
2097–19–0	Phenylsilatrane	h	100	100/10,000
103–85–5	Phenylthiourea		100	100/10,000
298–02–2	Phorate		10	10
4104–14–7	Phosacetim		100	100/10,000
947–02–4	Phosfolan		100	100/10,000
75–44–5	Phosgene	l	10	10
732–11–6	Phosmet		10	10/10,000
13171–21–6	Phosphamidon		100	100
7803–51–2	Phosphine		100	500
2703–13–1	Phosphonothioic Acid, Methyl-, O-Ethyl O-(4-(Methylthio) Phenyl) Ester		500	500
50782–69–9	Phosphonothioic Acid, Methyl-, S-(2-(Bis(1Methylethyl)Amino)Ethyl) O-Ethyl Ester		100	100
2665–30–7	Phosphonothioic Acid, Methyl-, O-(4-Nitrophenyl) O-Phenyl Ester		500	500
3254–63–5	Phosphoric Acid, Dimethyl 4-(Methylthio)Phenyl Ester		500	500
2587–90–8	Phosphorothioic Acid, O,O-Dimethyl-S-(2-Methylthio) Ethyl Ester	c, g	500	500
7723–14–0	Phosphorus	b, h	1	100
10025–87–3	Phosphorus Oxychloride		1,000	500
10026–13–8	Phosphorus Pentachloride	b	500	500
7719–12–2	Phosphorus Trichloride		1,000	1,000
57–47–6	Physostigmine	d	1	100/10,000
57–64–7	Physostigmine, Salicylate (1:1)	d	1	100/10,000
124–87–8	Picrotoxin		500	500/10,000
110–89–4	Piperidine		1,000	1,000
23505–41–1	Pirimifos-Ethyl		1,000	1,000
10124–50–2	Potassium Arsenite		1	500/10,000
151–50–8	Potassium Cyanide	b	10	100
506–61–6	Potassium Silver Cyanide	b	1	500
2631–37–0	Promecarb	d, h	1	500/10,000
106–96–7	Propargyl Bromide		10	10
57–57–8	Propiolactone, Beta-		10	500
107–12–0	Propionitrile		10	500
542–76–7	Propionitrile, 3-Chloro-		1,000	1,000
70–69–9	Propiophenone, 4-Amino-	g	100	100/10,000
109–61–5	Propyl Chloroformate		500	500
75–56–9	Propylene Oxide	l	100	10,000
75–55–8	Propyleneimine		1	10,000
2275–18–5	Prothoate		100	100/10,000
129–00–0	Pyrene	c	5,000	1,000/10,000
140–76–1	Pyridine, 2-Methyl-5-Vinyl-		500	500
504–24–5	Pyridine, 4-Amino-	h	1,000	500/10,000
1124–33–0	Pyridine, 4-Nitro-,l-Oxide		500	500/10,000
53558–25–1	Pyriminil	h	100	100/10,000
14167–18–1	Salcomine		500	500/10,000
107–44–8	Sarin	h	10	10
7783–00–8	Selenious Acid		10	1,000/10,000
7791–23–3	Selenium Oxychloride		500	500
563–41–7	Semicarbazide Hydrochloride		1,000	1,000/10,000
3037–72–7	Silane, (4-Aminobutyl)Diethoxymethyl-		1,000	1,000
7631–89–2	Sodium Arsenate		1	1,000/10,000
7784–46–5	Sodium Arsenite		1	500/10,000
26628–22–8	Sodium Azide ($Na(N_3)$)	b	1,000	500
124–65–2	Sodium Cacodylate		100	100/10,000
143–33–9	Sodium Cyanide (Na(CN))	b	10	100
62–74–8	Sodium Fluoroacetate		10	10/10,000
13410–01–0	Sodium Selenate		100	100/10,000
10102–18–8	Sodium Selenite	h	100	100/10,000
10102–20–2	Sodium Tellurite		500	500/10,000
900–95–8	Stannane, Acetoxytriphenyl-	g	500	500/10,000
57–24–9	Strychnine	c	10	100/10,000

APPENDIX A TO PART 355—THE LIST OF EXTREMELY HAZARDOUS SUBSTANCES AND THEIR THRESHOLD PLANNING QUANTITIES—Continued

[Alphabetical Order]

CAS No.	Chemical name	Notes	Reportable quantity* (pounds)	Threshold planning quantity (pounds)
60–41–3	Strychnine Sulfate		10	100/10,000
3689–24–5	Sulfotep		100	500
3569–57–1	Sulfoxide, 3-Chloropropyl Octyl		500	500
7446–09–5	Sulfur Dioxide	1	500	500
7783–60–0	Sulfur Tetrafluoride		100	100
7446–11–9	Sulfur Trioxide	b	100	100
7664–93–9	Sulfuric Acid		1,000	1,000
77–81–6	Tabun	c, h	10	10
7783–80–4	Tellurium Hexafluoride	k	100	100
107–49–3	TEPP		10	100
13071–79–9	Terbufos	h	100	100
78–00–2	Tetraethyllead	c	10	100
597–64–8	Tetraethyltin	c	100	100
75–74–1	Tetramethyllead	c, 1	100	100
509–14–8	Tetranitromethane		10	500
10031–59–1	Thallium Sulfate	h	100	100/10,000
6533–73–9	Thallous Carbonate	c, h	100	100/10,000
7791–12–0	Thallous Chloride	c, h	100	100/10,000
2757–18–8	Thallous Malonate	c, h	100	100/10,000
7446–18–6	Thallous Sulfate		100	100/10,000
2231–57–4	Thiocarbazide		1,000	1,000/10,000
39196–18–4	Thiofanox		100	100/10,000
297–97–2	Thionazin		100	500
108–98–5	Thiophenol		100	500
79–19–6	Thiosemicarbazide		100	100/10,000
5344–82–1	Thiourea, (2-Chlorophenyl)-		100	100/10,000
614–78–8	Thiourea, (2-Methylphenyl)-		500	500/10,000
7550–45–0	Titanium Tetrachloride		1,000	100
584–84–9	Toluene 2,4-Diisocyanate		100	500
91–08–7	Toluene 2,6-Diisocyanate		100	100
110–57–6	Trans-1,4-Dichlorobutene		500	500
1031–47–6	Triamiphos		500	500/10,000
24017–47–8	Triazofos		500	500
76–02–8	Trichloroacetyl Chloride		500	500
115–21–9	Trichloroethylsilane	h	500	500
327–98–0	Trichloronate	k	500	500
98–13–5	Trichlorophenylsilane	h	500	500
1558–25–4	Trichloro(Chloromethyl)Silane		100	100
27137–85–5	Trichloro(Dichlorophenyl) Silane		500	500
998–30–1	Triethoxysilane		500	500
75–77–4	Trimethylchlorosilane		1,000	1,000
824–11–3	Trimethylolpropane Phosphite	h	100	100/10,000
1066–45–1	Trimethyltin Chloride		500	500/10,000
639–58–7	Triphenyltin Chloride		500	500/10,000
555–77–1	Tris(2-Chloroethyl)Amine	h	100	100
2001–95–8	Valinomycin	c	1,000	1,000/10,000
1314–62–1	Vanadium Pentoxide		1,000	100/10,000
108–05–4	Vinyl Acetate Monomer	1	5,000	1,000
81–81–2	Warfarin		100	500/10,000
129–06–6	Warfarin Sodium	h	100	100/10,000
28347–13–9	Xylylene Dichloride		100	100/10,000
58270–08–9	Zinc, Dichloro(4,4-Dimethyl-5((((Methylamino)Carbonyl) Oxy)Imino)Pentanenitrile)-, (T-4)-.		100	100/10,000
1314–84–7	Zinc Phosphide	b	100	500

*Only the statutory or final RQ is shown. For more information, see 40 CFR table 302.4.

NOTES:

a This chemical does not meet acute toxicity criteria. Its TPQ is set at 10,000 pounds.

b This material is a reactive solid. The TPQ does not default to 10,000 pounds for non-powder, non-molten, nonsolution form.

c The calculated TPQ changed after technical review as described in the technical support document.

d Indicates that the RQ is subject to change when the assessment of potential carcinogenicity and/or other toxicity is completed.

e Statutory reportable quantity for purposes of notification under SARA sect 304(a)(2).

f [Reserved]

g New chemicals added that were not part of the original list of 402 substances.

h Revised TPQ based on new or re-evaluated toxicity data.

j TPQ is revised to its calculated value and does not change due to technical review as in proposed rule.

k The TPQ was revised after proposal due to calculation error.

l Chemicals on the original list that do not meet toxicity criteria but because of their high production volume and recognized toxicity are considered chemicals of concern (''Other chemicals'').

APPENDIX B TO PART 355.—THE LIST OF EXTREMELY HAZARDOUS SUBSTANCES AND THEIR THRESHOLD PLANNING QUANTITIES

[CAS Number Order]

CAS No.	Chemical name	Notes	Reportable quantity* (pounds)	Threshold planning quantity (pounds)
0	Organorhodium Complex (PMN–82–147)		10	10/10,000
50–00–0	Formaldehyde	l	100	500
50–07–7	Mitomycin C		10	500/10,000
50–14–6	Ergocalciferol	c	1,000	1,000/10,000
51–21–8	Fluorouracil		500	500/10,000
51–75–2	Mechlorethaminec	c	10	10
51–83–2	Carbachol Chloride		500	500/10,000
54–11–5	Nicotine	c	100	100
54–62–6	Aminopterin		500	500/10,000
55–91–4	Isofluorphate	c	100	100
56–25–7	Cantharidin		100	100/10,000
56–38–2	Parathion	c	10	100
56–72–4	Coumaphos		10	100/10,000
57–14–7	Dimethylhydrazine		10	1,000
57–24–9	Strychnine	c	10	100/10,000
57–47–6	Physostigmine	d	1	100/10,000
57–57–8	Propiolactone, Beta-		10	500
57–64–7	Physostigmine, Salicylate (1:1)	d	1	100/10,000
57–74–9	Chlordane		1	1,000
58–36–6	Phenoxarsine, 10,10′-Oxydi-		500	500/10,000
58–89–9	Lindane		1	1,000/10,000
59–88–1	Phenylhydrazine Hydrochloride		1,000	1,000/10,000
60–34–4	Methyl Hydrazine		10	500
60–41–3	Strychnine sulfate		10	100/10,000
60–51–5	Dimethoate		10	500/10,000
62–38–4	Phenylmercury Acetate		100	500/10,000
62–53–3	Aniline	l	5,000	1,000
62–73–7	Dichlorvos		10	1,000
62–74–8	Sodium Fluoroacetate		10	10/10,000
62–75–9	Nitrosodimethylamine	h	10	1,000
64–00–6	Phenol, 3-(1-Methylethyl)-, Methylcarbamate	d	1	500/10,000
64–86–8	Colchicine	h	10	10/10,000
65–30–5	Nicotine sulfate		100	100/10,000
66–81–9	Cycloheximide		100	100/10,000
67–66–3	Chloroform	l	10	10,000
70–69–9	Propiophenone, 4-Amino-	g	100	100/10,000
71–63–6	Digitoxin	c	100	100/10,000
72–20–8	Endrin		1	500/10,000
74–83–9	Methyl Bromide	l	1,000	1,000
74–90–8	Hydrocyanic Acid		10	100
74–93–1	Methyl Mercaptan	l	100	500
75–15–0	Carbon Disulfide	l	100	10,000
75–21–8	Ethylene Oxide	l	10	1,000
75–44–5	Phosgene	l	10	10
75–55–8	Propyleneimine		1	10,000
75–56–9	Propylene Oxide	l	100	10,000
75–74–1	Tetramethyllead	c, l	100	100
75–77–4	Trimethylchlorosilane		1,000	1,000
75–78–5	Dimethyldichlorosilane	h	500	500
75–79–6	Methyltrichlorosilane	h	500	500
75–86–5	Acetone Cyanohydrin		10	1,000
76–02–8	Trichloroacetyl Chloride		500	500
77–47–4	Hexachlorocyclopentadiene	h	10	100
77–78–1	Dimethyl Sulfate		100	500
77–81–6	Tabun	c, h	10	10
78–00–2	Tetraethyllead	c	10	100
78–34–2	Dioxathion		500	500
78–53–5	Amiton		500	500
78–71–7	Oxetane, 3,3-Bis(Chloromethyl)-		500	500
78–82–0	Isobutyronitrile	h	1,000	1,000
78–94–4	Methyl Vinyl Ketone		10	10
78–97–7	Lactonitrile		1,000	1,000
79–06–1	Acrylamide	l	5,000	1,000/10,000
79–11–8	Chloroacetic Acid		100	100/10,000
79–19–6	Thiosemicarbazide		100	100/10,000
79–21–0	Peracetic Acid		500	500
79–22–1	Methyl Chloroformate	h	1,000	500
80–63–7	Methyl 2-Chloroacrylate		500	500

APPENDIX B TO PART 355.—THE LIST OF EXTREMELY HAZARDOUS SUBSTANCES AND THEIR THRESHOLD PLANNING QUANTITIES—Continued

[CAS Number Order]

CAS No.	Chemical name	Notes	Reportable quantity* (pounds)	Threshold planning quantity (pounds)
81–81–2	Warfarin		100	500/10,000
82–66–6	Diphacinone		10	10/10,000
86–50–0	Azinphos-Methyl		1	10/10,000
86–88–4	ANTU		100	500/10,000
88–05–1	Aniline, 2,4,6-Trimethyl-		500	500
88–85–7	Dinoseb		1,000	100/10,000
91–08–7	Toluene 2,6-Diisocyanate		100	100
95–48–7	Cresol, o-		100	1,000/10,000
98–05–5	Benzenearsonic Acid		10	10/10,000
98–07–7	Benzotrichloride		10	100
98–13–5	Trichlorophenylsilane	h	500	500
98–16–8	Benzenamine, 3-(Trifluoromethyl)-		500	500
98–87–3	Benzal Chloride		5,000	500
98–95–3	Nitrobenzene	l	1,000	10,000
99–98–9	Dimethyl-p-Phenylenediamine		10	10/10,000
100–14–1	Benzene, 1-(Chloromethyl)-4-Nitro-		500	500/10,000
100–44–7	Benzyl Chloride		100	500
102–36–3	Isocyanic Acid, 3,4-Dichlorophenyl Ester		500	500/10,000
103–85–5	Phenylthiourea		100	100/10,000
106–89–8	Epichlorohydrin	l	100	1,000
106–96–7	Propargyl Bromide		10	10
107–02–8	Acrolein		1	500
107–07–3	Chloroethanol		500	500
107–11–9	Allylamine		500	500
107–12–0	Propionitrile		10	500
107–13–1	Acrylonitrile	l	100	10,000
107–15–3	Ethylenediamine		5,000	10,000
107–16–4	Formaldehyde Cyanohydrin	h	1,000	1,000
107–18–6	Allyl Alcohol		100	1,000
107–30–2	Chloromethyl Methyl Ether	c	10	100
107–44–8	Sarin	h	10	10
107–49–3	TEPP		10	100
108–05–4	Vinyl Acetate Monomer	l	5,000	1,000
108–23–6	Isopropyl Chloroformate		1,000	1,000
108–91–8	Cyclohexylamine	l	10,000	10,000
108–95–2	Phenol		1,000	500/10,000
108–98–5	Thiophenol		100	500
109–61–5	Propyl Chloroformate		500	500
109–77–3	Malononitrile		1,000	500/10,000
110–00–9	Furan		100	500
110–57–6	Trans-1,4-Dichlorobutene		500	500
110–89–4	Piperidine		1,000	1,000
111–44–4	Dichloroethyl Ether		10	10,000
111–69–3	Adiponitrile	l	1,000	1,000
115–21–9	Trichloroethylsilane	h	500	500
115–26–4	Dimefox		500	500
115–29–7	Endosulfan		1	10/10,000
115–90–2	Fensulfothion	h	500	500
116–06–3	Aldicarb	c	1	100/10,000
119–38–0	Isopropylmethylpyrazolyl Dimethylcarbamate	d	1	500
123–31–9	Hydroquinone	l	100	500/10,000
123–73–9	Crotonaldehyde, (E)-		100	1,000
124–65–2	Sodium Cacodylate		100	100/10,000
124–87–8	Picrotoxin		500	500/10,000
126–98–7	Methacrylonitrile	h	1,000	500
129–00–0	Pyrene	c	5,000	1,000/10,000
129–06–6	Warfarin Sodium	h	100	100/10,000
140–29–4	Benzyl Cyanide	h	500	500
140–76–1	Pyridine, 2-Methyl-5-Vinyl-		500	500
141–66–2	Dicrotophos		100	100
143–33–9	Sodium Cyanide (Na(CN))	b	10	100
144–49–0	Fluoroacetic Acid		10	10/10,000
149–74–6	Dichloromethylphenylsilane		1,000	1,000
151–38–2	Methoxyethylmercuric Acetate		500	500/10,000
151–50–8	Potassium Cyanide	b	10	100
151–56–4	Ethyleneimine		1	500
152–16–9	Diphosphoramide, Octamethyl-		100	100
297–78–9	Isobenzan		100	100/10,000

APPENDIX B TO PART 355.—THE LIST OF EXTREMELY HAZARDOUS SUBSTANCES AND THEIR THRESHOLD PLANNING QUANTITIES—Continued

[CAS Number Order]

CAS No.	Chemical name	Notes	Reportable quantity* (pounds)	Threshold planning quantity (pounds)
297–97–2	Thionazin		100	500
298–00–0	Parathion-Methyl	c	100	100/10,000
298–02–2	Phorate		10	10
298–04–4	Disulfoton		1	500
300–62–9	Amphetamine		1,000	1,000
302–01–2	Hydrazine		1	1,000
309–00–2	Aldrin		1	500/10,000
315–18–4	Mexacarbate		1,000	500/10,000
316–42–7	Emetine, Dihydrochloride	h	1	1/10,000
327–98–0	Trichloronate	k	500	500
353–42–4	Boron Trifluoride Compound With Methyl Ether (1:1)		1,000	1,000
359–06–8	Fluoroacetyl Chloride	c	10	10
371–62–0	Ethylene Fluorohydrin	c, h	10	10
379–79–3	Ergotamine Tartrate		500	500/10,000
465–73–6	Isodrin		1	100/10,000
470–90–6	Chlorfenvinfos		500	500
502–39–6	Methylmercuric Dicyanamide		500	500/10,000
504–24–5	Pyridine, 4-Amino-	h	1,000	500/10,000
505–60–2	Mustard Gas	h	500	500
506–61–6	Potassium Silver Cyanide	b	1	500
506–68–3	Cyanogen Bromide		1,000	500/10,000
506–78–5	Cyanogen Iodide		1,000	1,000/10,000
509–14–8	Tetranitromethane		10	500
514–73–8	Dithiazanine Iodide		500	500/10,000
534–07–6	Bis(Chloromethyl) Ketone		10	10/10,000
534–52–1	Dinitrocresol		10	10/10,000
535–89–7	Crimidine		100	100/10,000
538–07–8	Ethylbis(2-Chloroethyl)Amine	h	500	500
541–25–3	Lewisite	c, h	10	10
541–53–7	Dithiobiuret		100	100/10,000
542–76–7	Propionitrile, 3-Chloro-		1,000	1,000
542–88–1	Chloromethyl Ether	h	10	100
542–90–5	Ethylthiocyanate		10,000	10,000
555–77–1	Tris(2-Chloroethyl)Amine	h	100	100
556–61–6	Methyl Isothiocyanate	b	500	500
556–64–9	Methyl Thiocyanate		10,000	10,000
558–25–8	Methanesulfonyl Fluoride		1,000	1,000
563–12–2	Ethion		10	1,000
563–41–7	Semicarbazide Hydrochloride		1,000	1,000/10,000
584–84–9	Toluene 2,4-Diisocyanate		100	500
594–42–3	Perchloromethylmercaptan		100	500
597–64–8	Tetraethyltin	c	100	100
614–78–8	Thiourea, (2-Methylphenyl)-		500	500/10,000
624–83–9	Methyl Isocyanate		10	500
627–11–2	Chloroethyl Chloroformate		1,000	1,000
630–60–4	Ouabain	c	100	100/10,000
639–58–7	Triphenyltin Chloride		500	500/10,000
640–19–7	Fluoroacetamide	j	100	100/10,000
644–64–4	Dimetilan	d	1	500/10,000
675–14–9	Cyanuric Fluoride		100	100
676–97–1	Methyl Phosphonic Dichloride	b	100	100
696–28–6	Phenyl Dichloroarsine	h	1	500
732–11–6	Phosmet		10	10/10,000
760–93–0	Methacrylic Anhydride		500	500
786–19–6	Carbophenothion		500	500
814–49–3	Diethyl Chlorophosphate	h	500	500
814–68–6	Acrylyl Chloride	h	100	100
824–11–3	Trimethylolpropane Phosphite	h	100	100/10,000
900–95–8	Stannane, Acetoxytriphenyl-	g	500	500/10,000
919–86–8	Demeton-S-Methyl		500	500
920–46–7	Methacryloyl Chloride		100	100
944–22–9	Fonofos		500	500
947–02–4	Phosfolan		100	100/10,000
950–10–7	Mephosfolan		500	500
950–37–8	Methidathion		500	500/10,000
991–42–4	Norbormide		100	100/10,000
998–30–1	Triethoxysilane		500	500
999–81–5	Chlormequat Chloride	h	100	100/10,000

APPENDIX B TO PART 355.—THE LIST OF EXTREMELY HAZARDOUS SUBSTANCES AND THEIR THRESHOLD PLANNING QUANTITIES—Continued

[CAS Number Order]

CAS No.	Chemical name	Notes	Reportable quantity* (pounds)	Threshold planning quantity (pounds)
1031–47–6	Triamiphos		500	500/10,000
1066–45–1	Trimethyltin Chloride		500	500/10,000
1122–60–7	Nitrocyclohexane		500	500
1124–33–0	Pyridine, 4-Nitro-,1-Oxide		500	500/10,000
1129–41–5	Metolcarb	d	1	100/10,000
1303–28–2	Arsenic Pentoxide		1	100/10,000
1306–19–0	Cadmium Oxide		100	100/10,000
1314–62–1	Vanadium Pentoxide		1,000	100/10,000
1314–84–7	Zinc Phosphide	b	100	500
1327–53–3	Arsenous Oxide	h	1	100/10,000
1397–94–0	Antimycin A	c	1,000	1,000/10,000
1420–07–1	Dinoterb		500	500/10,000
1464–53–5	Diepoxybutane		10	500
1558–25–4	Trichloro(Chloromethyl)Silane		100	100
1563–66–2	Carbofuran		10	10/10,000
1600–27–7	Mercuric Acetate		500	500/10,000
1622–32–8	Ethanesulfonyl Chloride, 2-Chloro-		500	500
1752–30–3	Acetone Thiosemicarbazide		1,000	1,000/10,000
1910–42–5	Paraquat Dichloride		10	10/10,000
1982–47–4	Chloroxuron		500	500/10,000
2001–95–8	Valinomycin	c	1,000	1,000/10,000
2032–65–7	Methiocarb		10	500/10,000
2074–50–2	Paraquat Methosulfate		10	10/10,000
2097–19–0	Phenylsilatrane	h	100	100/10,000
2104–64–5	EPN		100	100/10,000
2223–93–0	Cadmium Stearate	c	1,000	1,000/10,000
2231–57–4	Thiocarbazide		1,000	1,000/10,000
2238–07–5	Diglycidyl Ether		1,000	1,000
2275–18–5	Prothoate		100	100/10,000
2497–07–6	Oxydisulfoton	h	500	500
2524–03–0	Dimethyl Phosphorochloridothioate		500	500
2540–82–1	Formothion		100	100
2570–26–5	Pentadecylamine		100	100/10,000
2587–90–8	Phosphorothioic Acid, O,O-Dimethyl-S-(2-Methylthio) Ethyl Ester	c, g	500	500
2631–37–0	Promecarb	d, h	1	500/10,000
2636–26–2	Cyanophos		1,000	1,000
2642–71–9	Azinphos-Ethyl		100	100/10,000
2665–30–7	Phosphonothioic Acid, Methyl-, O-(4-Nitrophenyl) O-Phenyl Ester		500	500
2703–13–1	Phosphonothioic Acid, Methyl-, O-Ethyl O-(4-(Methylthio)Phenyl) Ester		500	500
2757–18–8	Thallous Malonate	c, h	100	100/10,000
2763–96–4	Muscimol		1,000	500/10,000
2778–04–3	Endothion		500	500/10,000
3037–72–7	Silane, (4-Aminobutyl)Diethoxymethyl-		1,000	1,000
3254–63–5	Phosphoric Acid, Dimethyl 4-(Methylthio)Phenyl Ester		500	500
3569–57–1	Sulfoxide, 3-Chloropropyl Octyl		500	500
3615–21–2	Benzimidazole, 4,5-Dichloro-2-(Trifluoromethyl)-	g	500	500/10,000
3689–24–5	Sulfotep		100	500
3691–35–8	Chlorophacinone		100	100/10,000
3734–97–2	Amiton Oxalate		100	100/10,000
3735–23–7	Methyl Phenkapton		500	500
3878–19–1	Fuberidazole		100	100/10,000
4044–65–9	Bitoscanate		500	500/10,000
4098–71–9	Isophorone Diisocyanate		100	100
4104–14–7	Phosacetim		100	100/10,000
4170–30–3	Crotonaldehyde		100	1,000
4301–50–2	Fluenetil		100	100/10,000
4418–66–0	Phenol, 2,2′-Thiobis(4-Chloro-6-Methyl)-		100	100/10,000
4835–11–4	Hexamethylenediamine, N,N′-Dibutyl-		500	500
5344–82–1	Thiourea, (2-Chlorophenyl)-		100	100/10,000
5836–29–3	Coumatetralyl		500	500/10,000
6533–73–9	Thallous Carbonate	c, h	100	100/10,000
6923–22–4	Monocrotophos		10	10/10,000
7446–09–5	Sulfur Dioxide	l	500	500
7446–11–9	Sulfur Trioxide	b	100	100
7446–18–6	Thallous Sulfate		100	100/10,000
7487–94–7	Mercuric Chloride		500	500/10,000
7550–45–0	Titanium Tetrachloride		1,000	100
7580–67–8	Lithium Hydride	b	100	100

APPENDIX B TO PART 355.—THE LIST OF EXTREMELY HAZARDOUS SUBSTANCES AND THEIR THRESHOLD PLANNING QUANTITIES—Continued

[CAS Number Order]

CAS No.	Chemical name	Notes	Reportable quantity* (pounds)	Threshold planning quantity (pounds)
7631–89–2	Sodium Arsenate		1	1,000/10,000
7637–07–2	Boron Trifluoride		500	500
7647–01–0	Hydrogen Chloride (gas only)	l	5,000	500
7664–39–3	Hydrogen Fluoride		100	100
7664–41–7	Ammonia	l	100	500
7664–93–9	Sulfuric Acid		1,000	1,000
7697–37–2	Nitric Acid		1,000	1,000
7719–12–2	Phosphorus Trichloride		1,000	1,000
7722–84–1	Hydrogen Peroxide (Conc > 52%)	l	1,000	1,000
7723–14–0	Phosphorus	b, h	1	100
7726–95–6	Bromine	l	500	500
7778–44–1	Calcium Arsenate		1	500/10,000
7782–41–4	Fluorine	k	10	500
7782–50–5	Chlorine		10	100
7783–00–8	Selenious Acid		10	1,000/10,000
7783–06–4	Hydrogen Sulfide	l	100	500
7783–07–5	Hydrogen Selenide		10	10
7783–60–0	Sulfur Tetrafluoride		100	100
7783–70–2	Antimony Pentafluoride		500	500
7783–80–4	Tellurium Hexafluoride	k	100	100
7784–34–1	Arsenous Trichloride		1	500
7784–42–1	Arsine		100	100
7784–46–5	Sodium Arsenite		1	500/10,000
7786–34–7	Mevinphos		10	500
7791–12–0	Thallous Chloride	c, h	100	100/10,000
7791–23–3	Selenium Oxychloride		500	500
7803–51–2	Phosphine		100	500
8001–35–2	Camphechlor		1	500/10,000
8065–48–3	Demeton		500	500
10025–73–7	Chromic Chloride		1	1/10,000
10025–87–3	Phosphorus Oxychloride		1,000	500
10026–13–8	Phosphorus Pentachloride	b	500	500
10028–15–6	Ozone		100	100
10031–59–1	Thallium Sulfate	h	100	100/10,000
10102–18–8	Sodium Selenite	h	100	100/10,000
10102–20–2	Sodium Tellurite		500	500/10,000
10102–43–9	Nitric Oxide	c	10	100
10102–44–0	Nitrogen Dioxide		10	100
10124–50–2	Potassium Arsenite		1	500/10,000
10140–87–1	Ethanol, 1,2-Dichloro-, Acetate		1,000	1,000
10210–68–1	Cobalt Carbonyl	h	10	10/10,000
10265–92–6	Methamidophos		100	100/10,000
10294–34–5	Boron Trichloride		500	500
10311–84–9	Dialifor		100	100/10,000
10476–95–6	Methacrolein Diacetate		1,000	1,000
12002–03–8	Paris Green		1	500/10,000
12108–13–3	Manganese, Tricarbonyl Methylcyclopentadienyl	h	100	100
13071–79–9	Terbufosh	h	100	100
13171–21–6	Phosphamidon		100	100
13194–48–4	Ethoprophos		1,000	1,000
13410–01–0	Sodium Selenate		100	100/10,000
13450–90–3	Gallium Trichloride		500	500/10,000
13463–39–3	Nickel Carbonyl		10	1
13463–40–6	Iron, Pentacarbonyl-		100	100
14167–18–1	Salcomine		500	500/10,000
15271–41–7	Bicyclo[2.2.1]Heptane-2-Carbonitrile, 5-Chloro-6-((((Methylamino)Carbonyl)Oxy)Imino)-, (1s-(1-alpha,2-beta,4-alpha,5-alpha,6E))-.		500	500/10,000
16752–77–5	Methomyl	h	100	500/10,000
17702–41–9	Decaborane(14)		500	500/10,000
17702–57–7	Formparanated	d	1	100/10,000
19287–45–7	Diborane		100	100
19624–22–7	Pentaborane		500	500
20830–75–5	Digoxin	h	10	10/10,000
20859–73–8	Aluminum Phosphide	b	100	500
21548–32–3	Fosthietan		500	500
21609–90–5	Leptophos		500	500/10,000
21908–53–2	Mercuric Oxide		500	500/10,000
21923–23–9	Chlorthiophos	h	500	500

APPENDIX B TO PART 355.—THE LIST OF EXTREMELY HAZARDOUS SUBSTANCES AND THEIR THRESHOLD PLANNING QUANTITIES—Continued

[CAS Number Order]

CAS No.	Chemical name	Notes	Reportable quantity* (pounds)	Threshold planning quantity (pounds)
22224–92–6	Fenamiphos		10	10/10,000
23135–22–0	Oxamyl	d	1	100/10,000
23422–53–9	Formetanate Hydrochloride	d, h	1	500/10,000
23505–41–1	Pirimifos-Ethyl		1,000	1,000
24017–47–8	Triazofos		500	500
24934–91–6	Chlormephos		500	500
26419–73–8	Carbamic Acid, Methyl-, O-(((2,4-Dimethyl-1, 3-Dithiolan-2-yl)Methylene)Amino)-	d	1	100/10,000
26628–22–8	Sodium Azide ($Na(N_3)$)	b	1,000	500
27137–85–5	Trichloro(Dichlorophenyl)Silane		500	500
28347–13–9	Xylylene Dichloride		100	100/10,000
28772–56–7	Bromadiolone		100	100/10,000
30674–80–7	Methacryloyloxyethyl Isocyanateh		100	100
39196–18–4	Thiofanox		100	100/10,000
50782–69–9	Phosphonothioic Acid, Methyl-, S-(2-(Bis(1-Methylethyl)Amino)Ethyl) O-Ethyl Ester		100	100
53558–25–1	Pyriminil	h	100	100/10,000
58270–08–9	Zinc, Dichloro(4,4-Dimethyl-5((((Methylamino) Carbonyl)Oxy)Imino)Pentanenitrile)-, (T-4)-		100	100/10,000
62207–76–5	Cobalt, ((2,2′-(1,2-Ethanediylbis (Nitrilomethylidyne)) Bis(6-Fluorophenolato)) (2-)-N,N′,O,O′)-		100	100/10,000

*Only the statutory or final RQ is shown. For more information, *see* 40 CFR table 302.4.

NOTES:

a. This chemical does not meet acute toxicity criteria. Its TPQ is set at 10,000 pounds.
b. This material is a reactive solid. The TPQ does not default to 10,000 pounds for non-powder, non-molten, non-solution form.
c. The calculated TPQ changed after technical review as described in the technical support document.
d. Indicates that the RQ is subject to change when the assessment of potential carcinogenicity and/or other toxicity is completed.
e. Statutory reportable quantity for purposes of notification under SARA sect 304(a)(2).
f. [Reserved]
g. New chemicals added that were not part of the original list of 402 substances.
h. Revised TPQ based on new or re-evaluated toxicity data.
j. TPQ is revised to its calculated value and does not change due to technical review as in proposed rule.
k. The TPQ was revised after proposal due to calculation error.
l. Chemicals on the original list that do not meet toxicity criteria but because of their high production volume and recognized toxicity are considered chemicals of concern (''Other chemicals'').

PART 370—HAZARDOUS CHEMICAL REPORTING: COMMUNITY RIGHT-TO-KNOW

Subpart A—General Information

Sec.

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Subpart D—Community Access to Information

370.60 How does a person obtain MSDS information about a specific facility?
370.61 How does a person obtain inventory information about a specific facility?
370.62 What information may a State or local official request from a facility?
370.63 What responsibilities do the SERC and the LEPC have to make requested information available?
370.64 What information can I claim as trade secret or confidential?
370.65 Must I allow the local fire department to inspect my facility, and must I provide it with specific location information about hazardous chemicals at my facility?

Authority: Sections 302, 311, 312, 322, 324, 325, 327, 328, and 329 of the Emergency Planning and Community Right-To-Know Act of 1986 (EPCRA) (Pub. L. 99–499, 100 Stat.1613, 42 U.S.C. 11002, 11021, 11022, 11042, 11044, 11045, 11047, 11048, and 11049).

Subpart A—General Information

§ 370.1 What is the purpose of this part?

(a) This part (40 CFR part 370) establishes reporting requirements that provide the public with important information on the Hazardous Chemicals in their communities. Reporting raises community awareness of chemical hazards and aids in the development of State and local emergency response plans. The

reporting requirements established under this part consist of Material Safety Data Sheet (MSDS) reporting, and inventory reporting.

(b) This part is written in a special format to make it easier to understand the regulatory requirements. Like other Environmental Protection Agency (EPA) regulations, this part establishes enforceable legal requirements. Information considered non-binding guidance under EPCRA is indicated in this regulation by the word ''note'' and a smaller typeface. Such notes are provided for information purposes only and are not considered legally binding under this part.

§ 370.2 Who do ''you,'' ''I,'' and ''your'' refer to in this part?

Throughout this part, ''you,'' ''I,'' and ''your'' refer to the owner or operator of a Facility.

§ 370.3 Which section contains the definitions of the key words used in this part?

The definitions of key words used in this part are in 40 CFR 355.62. It is important to read the definitions for key words because the definition explains the word's specific meaning in the regulations in this part. When a defined word first appears in this part, it is printed with the initial letter capitalized.

Subpart B—Who Must Comply

§ 370.10 Who must comply with the hazardous chemical reporting requirements of this part?

(a) You must comply with the reporting requirements of this part if the Occupational Safety and Health Act of 1970 (OSHA) and regulations issued under that Act require your facility to prepare or have available a material safety data sheet (MSDS) for a hazardous chemical and if either of the following conditions is met:

(1) A hazardous chemical that is an Extremely Hazardous Substance (EHS) is present at your facility at any one time in an amount equal to or greater than the threshold level for that EHS—500 pounds (or 227 kg, approximately 55 gallons) or the Threshold Planning Quantity (TPQ), whichever is lower. Extremely hazardous substances and their TPQs are listed in appendices A and B of 40 CFR part 355.

(2) A hazardous chemical that is not an extremely hazardous substance is present at your facility at any one time in an amount equal to or greater than the threshold level for that hazardous chemical. Threshold levels for such hazardous chemicals are as follows:

(i) For any hazardous chemical that does not meet the criteria in paragraph (a)(2) (ii), (iii), (iv) or (v) of this section, the threshold level is 10,000 pounds (or 4,540 kg).

(ii) For gasoline at a retail gas station, when stored in a tank entirely underground and in compliance with the Underground Storage Tank regulations at 40 CFR part 280, the threshold level is 75,000 gallons (for all grades of gasoline combined). For purposes of this part, retail gas station means a retail gasoline facility principally engaged in selling gasoline to the public and convenience stores engaged in selling gasoline to the public.

(iii) For diesel fuel at a retail gas station, when stored in a tank entirely underground and in compliance with the Underground Storage Tank regulations at 40 CFR part 280, the threshold level is 100,000 gallons.

(iv) For sand, gravel, and rock salt the threshold level is infinite. For purposes of this part, an infinite threshold level means that you do not have to comply with the reporting requirements of this part, except for § 370.10(b).

(v) For any chemical that is considered minimal hazard and minimal risk under § 370.11, the threshold level is infinite. For purposes of this part, an infinite threshold level means that you do not have to comply with the reporting requirements of this part, except for § 370.10(b).

(b) You also must comply with the reporting requirements of this part if OSHA and regulations issued under that Act require your facility to prepare or have available an MSDS for a hazardous chemical and if the LEPC requests that you submit an MSDS (and you have not already submitted an MSDS to the LEPC for that hazardous chemical), or if the LEPC, the SERC, or the fire department with jurisdiction over your facility requests that you submit Tier II information. For reporting in response to any such requests under this paragraph (§ 370.10(b)), the threshold level is zero. Tier II information is discussed in § 370.42. LEPC means the local emergency planning committee appointed by the State emergency response commission. SERC means the emergency response commission for the State in which the facility is located except where the facility is located in Indian Country, in which case, SERC means the emergency response commission for the Tribe under whose jurisdiction the facility is located.

§ 370.11 What specific criteria must be met for a hazardous chemical to qualify for relief from routine reporting requirements?

(a) A hazardous chemical present at your facility that is not an EHS, a CERCLA hazardous substance, a toxic chemical listed in 40 CFR part 372 or a regulated substance listed under the Clean Air Act (CAA) Risk Management Program (RMP) in 40 CFR part 68 qualifies for the infinite threshold level under § 370.10(a)(2)(v), which provides for relief from routine reporting requirements, if the hazardous chemical meets each of the following specific criteria:

(1) The chemical has a minimal inherent hazard and presents a minimal physical or health risk, to individuals in the community beyond the site or sites on which the facility is located, and to emergency responders on-site, under normal conditions of production, use, or storage, or in a foreseeable emergency.

(2) The chemical has a minimal inherent hazard and presents a minimal risk, to the environment beyond the site or sites on which the facility containing the chemical is located.

(3) You have followed the notification requirements under paragraph (b) of this section.

(b) For a hazardous chemical present at your facility to qualify for the infinite threshold level under § 370.10(a)(2)(v), which provides for relief from routine reporting requirements, you must meet each of the following notification requirements:

(1) You must notify the appropriate SERC, LEPC and fire department of your assessment that the chemical meets the specific criteria in paragraph (a) of this section, and must notify them of the name of the chemical and conditions relevant to the assessment.

(2) You must follow the notification procedure described in this section one time, unless a change occurs that may affect whether the chemical continues to meet the criteria in paragraph (a) of this section. If such a change occurs, you must repeat the notification requirements of this paragraph. Until these notification requirements are met, you must report using the applicable threshold level under §§ 370.10(a)(2)(i) through (iv).

§ 370.12 What hazardous chemicals must I report under this part?

You must report any hazardous chemical for which you are required to prepare or have available an MSDS under OSHA and regulations issued under that Act that is present at your facility above the applicable threshold specified in § 370.10. (Specific exemptions from reporting are in

§ 370.13.) The EPA has not issued a list of hazardous chemicals subject to reporting under this part; a substance is a hazardous chemical, and required to have an MSDS, if it meets the definition of hazardous chemical under the OSHA regulations found at 29 CFR 1910.1200(c).

§ 370.13 What substances are exempt from these reporting requirements?

You do not have to report substances for which you are not required to have an MSDS under the OSHA regulations, or that are excluded from the definition of hazardous chemical under EPCRA section 311(e). Each of the following substances are excluded under EPCRA section 311(e):

(a) Any food, food additive, color additive, drug, or cosmetic regulated by the Food and Drug Administration.

(b) Any substance present as a solid in any manufactured item to the extent exposure to the substance does not occur under normal conditions of use.

(c) Any substance to the extent it is used:

(1) For personal, family, or household purposes, or is present in the same form and concentration as a product packaged for distribution and use by the general public. *Present in the same form and concentration as a product packaged for distribution and use by the general public* means a substance packaged in a similar manner and present in the same concentration as the substance when packaged for use by the general public, whether or not it is intended for distribution to the general public or used for the same purpose as when it is packaged for use by the general public;

(2) In a research laboratory or hospital or other medical facility under the direct supervision of a technically qualified individual; or

(3) In routine agricultural operations or is a fertilizer held for sale by a retailer to the ultimate customer.

§ 370.14 How do I report mixtures containing hazardous chemicals?

(a) If a hazardous chemical is present at your facility as part of a Mixture, you must report according to one of the following two options:

(1) Report the required information in reference to each component in the mixture that is a hazardous chemical.

(2) Report the required information in reference to the mixture itself.

(b) For a mixture containing a hazardous chemical, use the following table to determine if a reporting threshold is equaled or exceeded, and to determine how to report:

If your mixture contains a hazardous chemical	Then to determine if the threshold level for that hazardous chemical is equaled or exceeded you must	And if the threshold level for that hazardous chemical is equaled or exceeded then you must
That is an EHS	Determine the total quantity of the EHS present throughout your facility at any one time, by adding together the quantity present as a component in all mixtures and all other quantities of the EHS (you must include the quantity present in a mixture even if you are also applying that particular mixture as a whole toward the threshold level for that mixture).	Report in reference to either: the EHS component—submit an MSDS (or list) for the EHS, as provided under § 370.30, and submit Tier I information for the EHS, as provided under § 370.40 or the mixture itself—submit an MSDS (or list) for the mixture, as provided under § 370.30, and submit Tier I information for the mixture, as provided under § 370.40.
That is not an EHS.	Determine either: the total quantity of the hazardous chemical present throughout your facility at any one time, by adding together the quantity present as a component in all mixtures and all other quantities of the hazardous chemical (you must include the quantity present in a mixture even if you are also applying that particular mixture as a whole toward the threshold level for that mixture) or the total quantity of that mixture present throughout your facility at any one time.	Report in reference to either: the hazardous chemical component—submit an MSDS (or list) for the hazardous chemical, as provided under § 370.30, and submit Tier I information for the hazardous chemical, as provided under § 370.40 or the mixture itself—submit an MSDS (or list) for the mixture, as provided under § 370.30, and submit Tier I information for the mixture, as provided under § 370.40.

(c) To determine the quantity of a hazardous chemical component present in a mixture, multiply the concentration of the hazardous chemical component (in weight percent) by the weight of the mixture (in pounds). You do not have to count a hazardous chemical present in a mixture if the concentration is less than or equal to 1%, or less than or equal to 0.1% for a carcinogenic chemical.

(d) For each specific mixture, the reporting option used must be consistent for both MSDS and inventory reporting, unless impracticable. This means that if you report on a specific mixture as a whole for MSDS reporting, you must report on that mixture as a whole for inventory reporting too (unless impracticable). MSDS reporting and inventory reporting are discussed in detail in subpart C of this part.

(e) If a hazardous chemical is present at your facility both by itself and as a component in mixture(s), you must determine the total amount present to apply the threshold level. To calculate the total amount, add together the quantity in all mixtures, and all other quantities of the hazardous chemical present at your facility.

Subpart C—Reporting Requirements

§ 370.20 What are the reporting requirements of this part?

The reporting requirements of this part consist of MSDS reporting and inventory reporting. If you are the owner or operator of a facility subject to the reporting requirements of this part then you must comply with both types of reporting requirements. MSDS reporting requirements are addressed in §§ 370.30 through 370.33. Inventory reporting requirements are addressed in §§ 370.40 through 370.45.

How to Comply With MSDS Reporting

§ 370.30 What information must I provide, and what format must I use?

(a) You must report the hazardous chemicals present at your facility that exceed the applicable threshold levels (threshold levels are in § 370.10). You must comply with this requirement by doing one of the following:

(1) Submit an MSDS for each hazardous chemical present at your facility above its applicable threshold level.

(2) Submit a list of all hazardous chemicals present at your facility that exceed applicable threshold levels. The hazardous chemicals on your list must be grouped by Hazard Category as defined under 40 CFR 355.62. The list must contain the chemical or common name of each hazardous chemical as provided on the MSDS.

(b) You must also submit an MSDS for any hazardous chemical present at your facility for which you have not submitted an MSDS, to the LEPC within 30 days of receipt of a request by the LEPC (as provided in § 370.10(b)).

§ 370.31 Do I have to update the information?

You must update the information in all of the following ways:

(a) Submit a revised MSDS after discovery of significant new information concerning a hazardous chemical for which an MSDS was submitted.

(b) Submit an MSDS, or a list as described in § 370.30(a), for any hazardous chemical for which you become subject to these reporting requirements.

(c) Submit an MSDS for any hazardous chemical present at your facility for which you have not submitted an MSDS, and for which the LEPC requests you to submit an MSDS, as provided in § 370.30(b).

§ 370.32 To whom must I submit the information?

You must submit the required reporting information to the following entities:

(a) Submit an MSDS or list, as provided in § 370.30(a), to the LEPC, the SERC, and the fire department with jurisdiction over your facility.

(b) Submit an MSDS requested by the LEPC, as provided in § 370.30(b), to the LEPC.

§ 370.33 When must I submit the information?

You must submit the required reporting information at the following times:

(a) Submit an MSDS, or a list as provided in § 370.30(a), for a hazardous chemical subject to the reporting requirements of this part by October 17, 1987, or within 3 months after you first become subject to the reporting requirements of this part (as provided in §§ 370.30 and 370.31(b)).

(b) Submit a revised MSDS, as provided in § 370.31(a), within 3 months after discovering significant new information about a hazardous chemical for which an MSDS was submitted.

(c) Submit an MSDS requested by the LEPC, as provided in §§ 370.30(b) and 370.31(c), within 30 days of receiving the request.

How to Comply With Inventory Reporting

§ 370.40 What information must I provide, and what format must I use?

(a) If you are required to comply with the hazardous chemical reporting requirements of this part, then you must annually—by March 1—submit inventory information regarding any hazardous chemical present at your facility at any time during the previous calendar year in an amount equal to or in excess of its threshold level. Threshold levels are provided in § 370.10.

(b) Tier I information is the minimum information that you must report to be in compliance with the inventory reporting requirements of this part, and is described in § 370.41. You may choose to report Tier II information, which is described in § 370.42, for any hazardous chemical at your facility. You must submit Tier II information to the SERC, LEPC, or fire department having jurisdiction over your facility if they request it. The EPA publishes Tier I and Tier II Inventory Forms, which are uniform formats for reporting the Tier I and Tier II information. You may use a State or local format for reporting inventory information if the State or local format contains at least the Tier I information.

Note to paragraph (b): Some States require Tier II information annually under State law.

(c) You should contact the SERC to determine State requirements for format and procedures regarding inventory reporting. If your State has a policy for electronic submittal of inventory information, you should obtain instructions from the SERC. You may also contact the SERC to obtain inventory forms specific to that State. You may obtain the most current versions of the EPA Tier I and Tier II forms, and instructions for completing the Tier I and Tier II forms, by contacting the National Center for Environmental Publications and Information (NCEPI) at 800/490–9198. The forms are also available on the Internet at www.epa.gov/ceppo/publications/.

§ 370.41 What is Tier I inventory information?

Tier I information provides State and local officials and the public with information on the general types and locations of hazardous chemicals present at your facility during the previous calendar year. The Tier I information is the minimum information that you must provide to be in compliance with the inventory reporting requirements of this part. If you are reporting Tier I information, you must report aggregate information on hazardous chemicals by hazard categories. There are two health hazard categories and three physical hazard categories for purposes of reporting under this part. These five hazard categories are defined in 40 CFR 355.62. Tier I information includes all of the following:

(a) Certification. The owner or operator or the officially designated representative of the owner or operator must certify that all information included in the submission is true, accurate, and complete by certifying the following: ''I certify under penalty of law that I have personally examined and am familiar with the information submitted and that based on my inquiry of those individuals responsible for obtaining the information, I believe that the submitted information is true, accurate, and complete.'' This certification shall be accompanied by your full name, official title, signature, date signed, and total number of pages in the submission including all attachments.

(b) The calendar year for the reporting period.

(c) The complete name (and company identifier where appropriate) and address of your facility. Include the full street address or state road, the city, county, State and zip code.

(d) The North American Industry Classification System (NAICS) code for your facility.

(e) The Dun & Bradstreet number of your facility.

(f) The owner's or operator's full name, mailing address, and phone number.

(g) Emergency contact. The name, title, and phone number(s) of at least one local individual or office that can act as a referral if emergency responders need assistance in responding to a chemical accident at your facility. You must provide an emergency phone number where such emergency information will be available 24 hours a day, every day.

(h) An indication whether the information being reported is identical to that submitted the previous year.

(i) An estimate (in ranges) of the maximum amount of hazardous chemicals in each hazard category present at your facility at any time during the preceding calendar year. You must use codes that correspond to different ranges. The range codes are in § 370.43.

(j) An estimate (in ranges) of the average daily amount of hazardous chemicals in each hazard category present at your facility during the preceding calendar year. You must use codes that correspond to different ranges. The range codes are in § 370.43.

(k) The greatest number of days that any single hazardous chemical within

each hazard category was present at your facility.

(l) The general location of hazardous chemicals in each hazard category, within your facility. For each hazard type, list the locations of all applicable chemicals. As an alternative, you may choose to submit a site plan, and list the site coordinates related to the appropriate locations.

§ 370.42 What is Tier II inventory information?

Tier II information provides State and local officials and the public with specific information on amounts and locations of hazardous chemicals present at your facility during the previous calendar year. If you are reporting Tier II information, you must include the following:

(a) Certification. The owner or operator (or the officially designated representative of the owner or operator) must certify that all information included in the submission is true, accurate, and complete by certifying the following: ''I certify under penalty of law that I have personally examined and am familiar with the information submitted and that based on my inquiry of those individuals responsible for obtaining the information, I believe that the submitted information is true, accurate, and complete.'' This certification must be accompanied by your full name, official title, original signature, date signed, and total number of pages in the submission including all Confidential and Non-Confidential Information Sheets and all attachments. All other pages must also contain your signature or signature stamp, the date you signed the certification, and the total number of pages in the submission.

(b) The calendar year for the reporting period.

(c) The complete name (and company identifier where appropriate) and address of your facility. Include the full street address or state road, the city, county, State and zip code.

(d) The North American Industry Classification System (NAICS) code for your facility.

(e) The Dun & Bradstreet number of your facility.

(f) The owner's or operator's full name, mailing address, and phone number.

(g) Emergency contact. The name, title, and phone number(s) of at least one local individual or office that can act as a referral if emergency responders need assistance in responding to a chemical accident at your facility. You must provide an emergency phone number where such emergency information will be available 24 hours a day, every day.

(h) An indication whether the information being reported is identical to that submitted the previous year.

(i) For each hazardous chemical that you are required to report, you must provide the following information:

(1) The chemical name or the common name of the chemical as provided on the material safety data sheet, and the Chemical Abstract Service (CAS) registry number. If you are withholding the name in accordance with trade secret criteria, you must provide the generic class or category that is structurally descriptive of the chemical, and indicate that the name is withheld because of trade secrecy. Trade secret criteria are addressed in § 370.64(a).

(2) An indication if any of these descriptors apply to the chemical: pure or mixture; solid, liquid, or gas; and whether the chemical is or contains an EHS.

(3) If the chemical is a mixture containing an EHS, the chemical name of each EHS in the mixture.

(4) An indication of which hazard categories apply to the chemical. The five hazard categories are defined in 40 CFR 355.62.

(5) An estimate (in ranges) of the maximum amount of the hazardous chemical present at your facility on any single day during the preceding calendar year. You must use codes that correspond to different ranges. The range codes are in § 370.43.

(6) An estimate (in ranges) of the average daily amount of the hazardous chemical present at your facility during the preceding calendar year. You must use codes that correspond to different ranges. The range codes are in § 370.43.

(7) The number of days that the hazardous chemical was present at your facility during the preceding calendar year.

(8) A brief description of the precise location of the hazardous chemical at your facility. You may choose to attach a site plan with site coordinates indicated, a list of site coordinate abbreviations, or a description of dikes and other safeguard measures. Under EPCRA section 324 you may choose to withhold the location information regarding a specific chemical from disclosure to the public. If you choose to withhold the location information from disclosure to the public you must clearly indicate that the information is ''confidential.'' You must provide the ''confidential'' location information on a separate sheet from the other Tier II information (which will be disclosed to the public), and attach the ''confidential'' location information sheet to the other Tier II information. Indicate any attachments you are including.

(9) A brief description of the manner of storage of the hazardous chemical, including container type, temperature and pressure, for each location listed. You must use codes that correspond to different storage types and temperature and pressure conditions. The storage codes are in § 370.43. If the specific location for which you are reporting storage conditions is a ''confidential'' location then you must report the storage conditions on a separate ''confidential'' location information sheet.

§ 370.43 What codes are used to report Tier I and Tier II inventory information?

(a) *Weight range codes.* You must use the following codes to report the maximum amount and average daily amount when reporting Tier I or Tier II information:

Range codes	Weight range in pounds	
	From	To
01	0	99.
02	100	999.
03	1,000	9,999.
04	10,000	99,999.
05	100,000	999,999.
06	1,000,000	9,999,999.
07	10,000,000	49,999,999.
08	50,000,000	99,999,999.
09	100,000,000	499,999,999.
10	500,000,000	999,999,999.
11	1 billion	Higher than 1 billion.

Note to paragraph (a): To convert gas or liquid volume to weight in pounds, multiply by an appropriate density factor.

(b) *Storage type codes.* You must use the following codes to report storage types when you are reporting Tier II information:

Codes	Types of storage
A	Above ground tank.
B	Below ground tank.
C	Tank inside building.
D	Steel drum.
E	Plastic or non-metallic drum.
F	Can.
G	Carboy.
H	Silo.
I	Fiber drum.
J	Bag.
K	Box.
L	Cylinder.
M	Glass bottles or jugs.
N	Plastic bottles or jugs.
O	Tote bin.
P	Tank wagon.
Q	Rail car.
R	Other.

(c) *Storage condition codes.* You must use the following codes to report storage conditions when you are reporting Tier II information:

Codes	Storage conditions
	Pressure conditions
1	Ambient pressure.
2	Greater than ambient pressure.
3	Less than ambient pressure.
	Temperature conditions
4	Ambient temperature.
5	Greater than ambient temperature.
6	Less than ambient temperature but not cryogenic.
7	Cryogenic conditions.

(d) Your SERC or LEPC may provide other range codes for reporting maximum amounts and average daily amounts, or may require reporting of specific amounts. You may use your SERC's or LEPC's range codes (or specific amounts) provided the ranges are not broader than the ranges in paragraph (a) of this section. Your SERC or LEPC may also provide other codes for storage types or conditions. You may use those codes provided your SERC's or LEPC's storage types and conditions codes specify the same or more detailed information as the codes in paragraphs (b) and (c) of this section.

§ 370.44 To whom must I submit the inventory information?

You must submit the required inventory information to each of the following:

(a) Your State emergency response commission (SERC).

(b) Your local emergency planning committee (LEPC).

(c) The fire department with jurisdiction over your facility.

§ 370.45 When must I submit the inventory information?

You must report the required inventory information as follows:

(a) Submit the required inventory information by March 1, each year (beginning in 1988 or beginning after your facility first becomes subject to this part), and by March 1 of each year afterwards. Your submission must contain the required inventory information on hazardous chemicals present at your facility during the preceding calendar year at or above the threshold levels. Threshold levels are in § 370.10. The minimum required inventory information under EPCRA section 312 is Tier I information. Tier I information requirements are described in § 370.41.

(b) Submit Tier II information within 30 days of the receipt of such a request from the SERC, LEPC, or the fire department having jurisdiction over your facility, as provided in § 370.10(b). Tier II information requirements are described in § 370.42.

Subpart D—Community Access to Information

§ 370.60 How does a person obtain MSDS information about a specific facility?

Any person may obtain an MSDS for a specific facility, by writing to the LEPC and asking for such an MSDS.

(a) If the LEPC has the MSDS, it must provide it to the person making the request.

(b) If the LEPC does not have the MSDS, it must request the MSDS from the facility's owner or operator.

§ 370.61 How does a person obtain inventory information about a specific facility?

(a) Any person may request Tier II information for a specific facility by writing to the SERC or the LEPC and asking for such information.

(1) If the SERC or LEPC has the Tier II information, the SERC or LEPC must provide it to the person making the request.

(2) If the SERC or LEPC does not have the Tier II information, it must request it from the facility's owner or operator in either of the following cases:

(i) The person making the request is a State or local official acting in his or her official capacity.

(ii) The request is for hazardous chemicals stored at the facility—in an amount greater than 10,000 pounds—at any time during the previous calendar year.

(3) If the SERC or LEPC does not have the Tier II information, it may request it from the facility's owner or operator in the following case: neither condition in paragraph (a)(2) of this section is met, but the person's request includes a general statement of need.

(b) A SERC or LEPC must respond to a request for Tier II information under this section within 45 days of receiving such a request.

§ 370.62 What information may a State or local official request from a facility?

The LEPC may ask a facility's owner or operator to submit an MSDS for a hazardous chemical present at the facility. The SERC, LEPC, or fire department having jurisdiction over a facility may ask a facility's owner or operator to submit Tier II information. The owner or operator must submit the MSDS (unless the owner or operator has already submitted an MSDS to the LEPC for that hazardous chemical) or Tier II information within 30 days of receipt of such request.

§ 370.63 What responsibilities do the SERC and the LEPC have to make requested information available?

If a person makes a request under this subpart, the SERC or LEPC must make available the following information (except for confidential location information, which is discussed in § 370.64(b)):

(a) All information obtained from an owner or operator in response to a request under this subpart.

(b) Any requested Tier II information or MSDS otherwise in possession of the SERC or the LEPC.

§ 370.64 What information can I claim as trade secret or confidential?

(a) *Trade secrets.* When submitting MSDS reporting or inventory reporting information that requires you to provide the names of specific chemicals present at your facility, you may be able to withhold the name of a specific chemical from reporting, if that information is claimed as a trade secret. The requirements for withholding trade secret information are set forth in EPCRA section 322 and implemented in 40 CFR part 350. EPA's final regulation on trade secrecy (53 FR 28772, July 29, 1988) contains detailed information on how to submit trade secrecy claims. If you are withholding the name of a specific chemical as a trade secret, in accordance with trade secrecy requirements, you must report the generic class or category that is structurally descriptive of the chemical along with all other required information; you must also submit the withheld information to EPA and must adequately substantiate your claim.

(b) *Confidential location information.* If you are reporting Tier II information then you are required to provide the precise locations of specific chemicals present at your facility (Tier II information is described in § 370.42). You may request that the SERC or the LEPC not disclose to the public the location of any specific chemical required to be submitted as Tier II information. If you make such a request, the SERC or LEPC must not disclose the location of the specific chemical for which you made the request. If you use a Tier II form to report your inventory information, you can choose to report confidential location information with respect to a specific chemical on a Tier Two Confidential Location Information Sheet, which must be attached to the other Tier II information you are reporting. Although you may request

that location information with respect to a specific chemical be withheld from the public, you may not withhold this information from the SERC, the LEPC, or the local fire department.

§ 370.65 Must I allow the local fire department to inspect my facility, and must I provide it specific location information about hazardous chemicals at my facility?

If you are the owner or operator of a facility that has submitted inventory information under this part, you must comply with the following two requirements upon request by the fire department with jurisdiction over your facility:

(a) You must allow the fire department to conduct on-site inspection of your facility.

(b) You must provide the fire department with information about the specific locations of hazardous chemicals at your facility.

[FR Doc. 98–14490 Filed 6–5–98; 8:45 am]

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federal register

Monday
June 8, 1998

Part III

Department of Education

National Institute on Disability and Rehabilitation Research Projects: Proposed Funding Priorities, Fiscal Years 1998–1999; Notice

DEPARTMENT OF EDUCATION

National Institute on Disability and Rehabilitation Research; Notice of Proposed Funding Priorities for Fiscal Years 1998–1999 for Disability and Rehabilitation Research Projects

SUMMARY: The Secretary proposes funding priorities for two Disability and Rehabilitation Research Projects (DRRPs) 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 July 8, 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:

comment@ed.gov

You must include the term ''Burn and Traumatic Brain Injury—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) 205–5516.

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 Disability and Rehabilitation Research Projects related to: coordinating burn data and collaborative Traumatic Brain Injury (TBI) research.

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.

Disability and Rehabilitation Research Projects

Authority for Disability and Rehabilitation Research Projects (DRRPs) is contained in section 202 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 761a). DRRPs carry out one or more of the following types of activities, as specified in 34 CFR 350.13–350.19: research, development, demonstration, training, dissemination, utilization, and technical assistance. Disability and Rehabilitation Research Projects develop methods, procedures, and rehabilitation technology that maximize the full inclusion and integration into society, employment, independent living, family support, and economic and social self-sufficiency of individuals with disabilities, especially individuals with the most severe disabilities. In addition, DRRPs improve the effectiveness of services authorized under the Rehabilitation Act of 1973, as amended.

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: Burn Data Coordinating Project

Background

In 1994 NIDRR established the Burn Injury Rehabilitation Model Systems of Care (Burn Model Systems) by awarding three 36-month projects. In 1997 NIDRR reestablished the Burn Model Systems with the award of four 60-month projects. These projects develop and demonstrate a comprehensive, multidisciplinary model system of rehabilitative services for individuals with severe burns, and evaluate the efficacy of that system through the collection and analysis of uniform data on system benefits, costs, and outcomes. The projects study the course of recovery and outcomes following the delivery of a coordinated system of care including emergency care, acute care management, comprehensive inpatient rehabilitation, and long-term interdisciplinary follow-up services.

The Burn Model Systems projects serve a substantial number of patients, allowing the projects to conduct clinical research and program evaluation. In addition, the Burn Model Systems projects utilize a complex data collection and retrieval program with the capability to analyze the different system components and provide information on project effectiveness and benefits. The projects are intended to establish appropriate, uniform descriptors of rehabilitation care. Information is collected throughout the rehabilitation process. Systematic burn injury care permits long-term follow-up on the course of injury and the identification of continuing needs and results in areas such as functional outcome, health and rehabilitation services, procedures for cost-reimbursement and billing and community integration. The Burn Model Systems projects serve as regional and national models for program development and as information centers for consumers, families, and professionals.

In order to take full advantage of the data collected by individual Burn Model System projects, there is a need for a project to assist the projects in their research efforts and establish and maintain a combined database for short- and long-term outcome evaluations (functional, health, psycho-social and vocational status measures) and financial assessments (rehabilitation, professional and hospital charges) for various burn care and injury rehabilitation strategies.

Proposed Priority 1

The Secretary proposes to establish a Burn Data Coordinating Project for the purpose of maintaining a common database of burn care and injury rehabilitation information compiled by the Burn Model Systems projects supported by NIDRR. The project shall:

(1) Establish and maintain a common database through the data collection, entry, transfer, editing, quality control, issues resolution, and integration efforts of NIDRR's Burn Injury Rehabilitation Model Systems' projects;

(2) Provide technical assistance to the Burn Model Systems projects in the compilation of common data values from each Burn Injury Model System into a single quality information database for both joint and site specific management reporting, center evaluations and research analyses;

(3) Develop management reports on each Burn Injury Model System project's database-related activities and on trends that can be combined with and compared to other national data systems for evaluation of burn injury outcomes;

(4) Provide technical assistance to the Burn Model System projects in the preparation of scientific articles by providing statistical and analytical support;

(5) Provide technical assistance to the Burn Model Systems projects in the design, implementation, and analysis of specialized clinical studies that assess new burn injury rehabilitation methodologies; and

(6) Provide technical assistance to the Burn Model Systems projects in the clinical and systems analysis studies by collecting and analyzing data on patient characteristics, diagnoses, causes of injury, interventions, outcomes, and costs within a uniform standardized database.

In carrying out these purposes, the project must:

- As appropriate, collaborate with other model systems (such as spinal cord and traumatic brain injury model systems) data collection activities; and
- Link Burn Injury Model Systems, NIDRR Staff, and the project as required to facilitate database interactions and information dissemination opportunities.

Proposed Priority 2: Collaborative Research for Traumatic Brain Injury Model Systems

Background

In 1987 NIDRR funded four research and demonstration projects to establish the Traumatic Brain Injury Model Systems of Care (TBI Model Systems) for individuals in need of comprehensive, multidisciplinary rehabilitative services. At present NIDRR supports five TBI Model Systems projects to study the course of recovery and outcomes following the delivery of a coordinated system of care including emergency care, acute neuro-trauma management, comprehensive inpatient rehabilitation, and long-term interdisciplinary follow-up services. The TBI Model Systems projects collect and analyze uniform data from projects on system benefits, costs, and outcomes.

The TBI Model Systems projects serve a substantial number of individuals, allowing the projects to conduct clinical research and program evaluation, and maximize the potential for project replication. In addition, the systems have a complex data collection and retrieval program with the capability to analyze different system components and provide information on cost effectiveness and benefits. Information is collected throughout the rehabilitation process, permitting long-term follow-up on the course of injury, outcomes, and changes in employment status, community integration, substance abuse and family needs. The TBI Model Systems projects serve as regional and national models for program development and as information centers for consumers, families, and professionals.

On January 21, 1998, NIDRR published a notice in the **Federal Register** inviting applications to establish 10 additional TBI Model Systems projects (63 FR 3240). In conjunction with the establishment of these new TBI Model Systems projects, NIDRR is proposing to establish collaborative research projects to broaden knowledge and encourage multi-institutional studies of outcomes, rehabilitation interventions and service delivery system innovation for individuals with traumatic brain injury. The following are examples of collaborative research topics that the proposed project could carry out: evaluation of emerging pharmacologic interventions; examination of the effects of specific type and intensity of rehabilitative treatments; aging with TBI; secondary conditions of TBI; assessment and treatment in mild traumatic brain injury; impact of environmental factors on long term outcomes; impact of substance abuse on memory; and implications of managed care on availability and type of care for persons with TBI.

Proposed Priority 2

The Secretary proposes to establish collaborative research projects for the purpose of improving the knowledge about rehabilitation outcomes in order to improve the lives of persons with TBI, their families, and caregivers. A collaborative research project shall:

(1) Investigate rehabilitation interventions or service delivery issues; and

(2) Disseminate information based on that investigation to TBI Model Systems projects and other appropriate rehabilitation settings.

In carrying out the purposes of the priority, the project must:

- Collaborate with one or more of NIDRR TBI Model Systems projects; and
- Once a year, participate in the TBI Model Systems project directors' meeting.

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
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Anyone may also view these documents in text copy only on an electronic bulletin board of the Department. Telephone: (202) 219–1511 or, toll free, 1–800–222–4922. The documents are located under Option G—Files/Announcements, Bulletins and Press Releases.

Note: The official version of this document is the document published in the **Federal Register**.

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 Part 350.

Program Authority: 29 U.S.C. 760–762.

Dated: June 3, 1998.

(Catalog of Federal Domestic Assistance Number 84.133A, Disability and Rehabilitation Research Projects)

Curtis L. Richards,

Acting Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 98–15165 Filed 6–5–98; 8:45 am]

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Monday
June 8, 1998

Part IV

Department of Education

National Institute on Disability and Rehabilitation Research: Rehabilitation Research and Training Centers Proposed Funding Priorities, Fiscal Years 1998–1999; Notice

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 three 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 July 8, 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: comment@ed.gov

You must include the term ''Employment Opportunities-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 three RRTCs related to: employment opportunities for American Indians, community integration for persons with mental retardation, and policies affecting families of children with disabilities.

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 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 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: Employment Opportunities for American Indians

Background

On August 1, 1997, the U.S. population of American Indians, including Alaskan Native and Aleut, was 2.3 million. This population has the highest rate of disability of any racial or ethnic group. One in three American Indians aged 15 and over reports having a disability; about one in seven reports having a ''severe'' disability. One in two American Indians aged 65 or over has a severe disability (U.S. Department of Commerce, Bureau of the Census, *Census Facts For Native American Month,* October, 1997). American Indians have the highest unemployment rates, the lowest family incomes, and highest percentage of people living below the poverty level (U.S. Department of Commerce, Bureau of the Census, *Current Population Reports, Special Studies Series,* P 23–189, pg. 51, July, 1995). The Nation's several hundred reservations have a 50 percent average unemployment rate (Kalt, J. ''Development Strategies for American Indians,'' *Social Policy Research Bulletin,* pg. 21, fall, 1996).

In addition, American Indians have the most severe health problems of all U.S. groups, including the shortest life expectancy and highest infant mortality rate. American Indians experience alcohol and substance abuse, sensory impairment, diabetes mellitus, learning disabilities, fetal alcohol syndrome, and accidents and injuries at alarming rates when compared to the general population (U.S. General Accounting Office, *Indian Health Service, Basic Services Mostly Available; Substance Abuse Problems Need Attention,* GAO/HRD–93–48, April, 1993). American Indians have the Nation's highest school dropout rates and the lowest postsecondary attainment rates. Only 66 percent of American Indians have high school diplomas, compared to a 78 percent rate for whites and Asian-Americans (U.S. Department of Education, Office of Educational Research and Improvement, *National Assessment of Vocational Education, Final Report to Congress, Volume IV Access to Programs and Services for Special Populations,* pg. 70, July, 1994).

Although some data on employment and on disability are available, there is little specific information on employment of American Indians with disabilities. In addition, although general disability rates are available for this population, there is little information on the distribution of disability within the population. Many factors may have an impact on the employment status of, and the delivery of, employment services to American Indians with disabilities. These factors include, but are not limited to health status, poverty, educational level, and availability of culturally relevant vocational rehabilitation services.

State vocational rehabilitation (VR) agencies provide employment services to American Indians with disabilities who meet the eligibility criteria for the Vocational Rehabilitation Services Program authorized by the Rehabilitation Act of 1973 (the Act). In 1996, VR agencies assisted approximately 1600 American Indians with disabilities to achieve an employment outcome. However, data from the Rehabilitation Services Administration (RSA) indicate that American Indians served under the program achieve employment outcomes at a lower rate compared to other populations receiving vocational rehabilitation services (*RSA Case Service Reports, RSA–911,* 1991–1996).

Geographic, cultural, language, and political factors affect the ability of State agencies to deliver services to this population, particularly those individuals residing on reservations. Approximately, one-third of American Indians live on reservations or trust lands. Most reservations have populations of less than one thousand and are located in rural areas. Many of these Indian communities are in isolated areas where poor roads and populations spread out over many miles. In addition, tribes are often sovereign political entities with specific powers of self-governance, thus affecting access to populations on reservations.

In recognition of this problem, Congress amended the Act in 1978 to authorize grants for American Indian Vocational Rehabilitation Service Projects (Section 130 Projects) to support tribal vocational rehabilitation programs. These discretionary grant projects, also administered by RSA, are awarded to the governing bodies of Indian tribes located on Federal and State reservations to provide VR services for American Indians who are individuals with disabilities residing on reservations. There are currently 39 such projects.

Nearly two-thirds of American Indians live in urban areas. Much of the urban Indian population is assimilated and dispersed throughout urban census tracts, making it difficult for Vocational Rehabilitation agencies to identify and serve this population (The National Urban Indian Policy Coalition, *Report to the White House Domestic Policy Council,* April, 1995). The lack of culturally sensitive definitions of disability in national data collection efforts, such as the National Health Interview Survey or the Survey of Income and Program Participation, further complicates this problem.

Cultural and language barriers significantly impede delivery of employment services, including vocational rehabilitation programs. There are 557 federally recognized tribes, speaking about 200 languages and dialects. Cultural barriers affect knowledge, understanding, and acceptance of disability and contemporary medical and health practices. In addition, concepts such as self-sufficiency, self-determination and self-advocacy may have very different meanings across Indian cultures.

Proposed Priority 1

The Secretary proposes to establish a RRTC to improve the employment status of American Indians with disabilities. The RRTC shall:

(1) Investigate and analyze existing data, demographic and other, relevant to disability and employment outcomes and recommend methodological improvements to enhance the usefulness and comprehensiveness of such data for the purpose of planning and evaluating employment services, including vocational rehabilitation services (as described in 34 CFR 361.48), for Indians with disabilities;

(2) Analyze existing employment and vocational rehabilitation service strategies for American Indians with disabilities and identify those that have produced successful employment outcomes, taking into consideration the actual employment opportunities that exist on and off the reservation, and examine how these strategies might be applied to the Section 130 Projects;

(3) Develop and evaluate model employment services, including vocational rehabilitation services, for American Indians with disabilities, incorporating best practices from the review of existing services, taking into account cultural issues and reflecting needs of American Indians on and off the reservations as well as the Section 130 Projects; and

(4) Disseminate both the recommendations for data collection improvements and the results of the evaluation of model employment services to a range of relevant audiences, using appropriate accessible formats.

In carrying out the purposes of the priority, the RRTC must:

- As appropriate, carry out separate analyses for Indians with disabilities who live on the reservation and for those who live off the reservation; and
- Collaborate with the Section 130 Projects, and coordinate with the Rehabilitation Services Administration, the Bureau of Indian Affairs and the Indian Health Service, the RRTC on Disability Statistics, and other entities carrying out related research or training activities.

Proposed Priority 2: Community Integration for Persons with Mental Retardation

Background

Since 1965, NIDRR has supported research and demonstrations in the area of developmental disabilities, particularly in the area of mental retardation. During these years, researchers have addressed issues involving deinstitutionalization, special education, transition from school to work, supported employment and the overall supports persons with mental retardation need to live in the community.

Based on the 1994–1995 National Health Interview Survey-Disability Supplement on adults living in the general household population and surveys of people in formal residential support programs, about .78 percent or 1,250,000 of the population of the U.S. can be identified as being limited in a major life activity and having a primary or secondary condition of mental retardation. Until the Disability Supplement survey was conducted, information was not available about individuals with mental retardation who are not participants in specialized programs, but live in the community with their families or on their own.

Many persons with mental retardation and their families receive long-term services and supports through State developmental disability authorities (SDDAs) that are funded primarily by the State or Federal Medicaid program. According to the results of a recent membership survey conducted by the National Association of State Directors of Developmental Disabilities Services (NASDDS), many SDDAs are currently designing or launching large scale system change initiatives. This is due, in part, to Medicaid reforms, managed care initiatives and budget constraints. Seventy-one percent of the respondents said that cost containment is a major factor prompting system change. The initiatives differ in their specifics but share several common themes: decentralizing authority to local managing entities; shifting to less categorical budgeting; promoting greater flexibility in the purchase and provision of community services and supports; and embracing self determination to define a new relationship between the system and individuals and their families (NASDDS, *Community Services Reporter*, pg. 3, Jan, 1998).

Since 1981, the Medicaid Home and Community Based Services (HCBS) waiver has facilitated flexibility and service innovation. HCBS waivers afford States the flexibility to develop and implement creative alternatives to placing Medicaid eligible individuals in facilities such as nursing homes. The HCBS waiver program recognizes that many individuals at risk of being placed in a long-term care facility can be supported in their own homes and communities, preserving their independence and ties to family and friends at a cost no higher than that of institutional care. Services that may be provided in HCBS waiver programs are case management, homemaker services, home health aide services, personal care services, adult day health services, habilitation, and respite care. Other services States request may include transportation and meal services. States have the flexibility to design each waiver program and select the mix of waiver services that best meet the needs of the population they wish to serve. HCBS waiver services may be provided statewide or may be limited to specific geographic subdivisions.

However, in the last several years, States have attempted to contain Medicaid spending through the application of managed care approaches. Long-term care services, including Medicaid-funded intermediate care facilities for persons with mental retardation and HCBS waiver services for persons with mental retardation, account for 35 percent of all Medicaid spending. Programs serving persons with mental retardation are not likely to be exempt from these cost containment measures (Center on Human Policy, *Information Package on Managed Care and Long-term Supports for People with Developmental Disabilities*, pg. 3, June, 1997).

There is little information available on the use and outcomes of managed care practices in providing long-term supports to persons with mental retardation. Currently, States are implementing various models to consolidate health and long-term care services under one managed care organization. This approach is intended to be cost-effective and improve service coordination. Under some of these models, support networks for persons with mental retardation that now stand alone, could become subspecialty branches of larger care delivery systems (Ashbaugh, J. and Smith, G., ''MCARE Policy Brief, ''*Integration of Health and Long-term Care Services: A Cure in Search of and Illness*,'' No. 1, pg. 12, 1997). Some observers have voiced concern that the use of consolidated models may lead to reduced funding for services. Organizations representing persons with mental retardation have proposed integrated models that combine under a single umbrella organization, health and long-term supports in a configuration uniquely suitable for this population.

Emerging practice suggests that people with mental retardation should play leading roles in determining the substance of their lives and that services should be developed as needed to support their preferences. For example, some current service delivery models may provide new options for individuals and their families to self manage their chosen services through vouchers, individual budgets or cash. The field is moving past traditional service delivery approaches to become more responsive to the demands of service recipients and to promote self determined lifestyles. Services developed around the specific needs and choices of an individual may produce better outcomes and cost savings.

There are a number of emerging models for system redesign. Participant driven managed supports refer to a variety of strategies for administering

systems to increase their effectiveness and efficiency, while maintaining a commitment to community integration and self determination (Agosta, J., et al., ''MCARE Policy Brief,'' *Developmental Disability Services at the Century's End: Facing the Challenges Ahead,* No. 2, pg. 4, 1997). The consumer managed care approach assumes that consumers with limited budgets will spend more prudently in order to get the most value for their money and increase their use of natural supports in lieu of public supports. Accordingly, consumer choice will spawn a competitive market economy where those providers representing the most value to all consumers will survive (Smith, G. and Ashhbaugh, J., *Managed Care and People with Developmental Disabilities: A Guidebook,* pg. 8, 1996).

Coupled with States' efforts toward containment of long-term care costs, most States have long waiting lists for services. Waiting lists are expected to grow in the future due to increased longevity and higher expectations of families. After examining State-by-State data regarding the status of requests for residential, day care, vocational and other community support services, a 1997 Arc study found that 218,000 requests for community-based support services remained unanswered. In addition to individuals living in institutions and nursing homes, these waiting lists include students exiting from special education programs and individuals living at home with caregivers. There is a need to understand the methods and procedures that States are using to provide community-based services, as well as to identify ways in which service systems can be redesigned to better respond to the needs of persons with mental retardation and their families.

Residential direct care providers (e.g., group home staff members, foster family members, roommates in supported living arrangements) are the primary providers of support, training, supervision and personal assistance to persons with mental retardation in home and community settings (Larson, S. A., et al., ''Residential Services Personnel,'' *Challenges for a Service System in Transition,* pg. 313, 1994). In community residential settings, there have been few attempts to study the effects of staff orientation and in-service training programs on important outcomes for persons with mental retardation as well as on direct service personnel (Larson, S. A., ibid., pg. 326). As the service delivery system changes, training for these providers will be essential. In addition, it will be important to determine what training efforts contribute to the desired outcomes of fuller community participation and autonomy for persons with mental retardation.

Proposed Priority 2

The Secretary proposes to establish an RRTC to improve community integration outcomes for individuals with mental retardation. The RRTC shall:

(1) Investigate effective and cost-beneficial approaches to assist families to support members with mental retardation at home, or in homes of their own;

(2) Describe and analyze efforts to redesign policy and services in selected State systems serving persons with mental retardation and their families;

(3) Identify and analyze State policies and practices in the management of Medicaid resources that foster or impede access to supports and services;

(4) Identify and analyze policies that foster or impede (e.g., result in individuals being placed on waiting lists for community-based services) the full participation and integration of persons with mental retardation into their communities;

(5) Analyze the outcomes of the implementation of consumer-controlled services, personal assistance, and individual control-of-service purchasing in areas of quality of life and cost effectiveness; and

(6) Identify outcomes of training for residential direct care providers and the long-term costs and benefits of specific training strategies.

In carrying out the purposes of the priority, the RRTC must: coordinate with research and demonstration activities sponsored by the Health Care Financing Administration, the Administration on Developmental Disabilities, the Office of Disability, Aging, and Long-term Care Policy in the Department of Health and Human Services, and other entities carrying out related research or training activities.

Proposed Priority 3: Policies Affecting Families of Children with Disabilities

Background

The 1992 National Health Interview Survey (NHIS) estimates that 4 million children and adolescents, or 6.1 percent of the U.S. population under 18 years of age, have disabilities. The NHIS broadly defines disability to include any limitation in activity due to a chronic health condition or impairment. Among children under age five, 2 percent are limited in play activities and among children 5–17, 5.5 percent have school related disabilities. In addition, the NHIS estimates that 3.8 million families, or 5.5 percent of all families, contain one or more children with disabilities.

Families of children with disabilities must interact with at least three large service systems: health care, human and social services, and educational systems. It is often difficult to assess the impact of policies, service systems, and service delivery practices because the organizational structures and the services provided under the auspices of public and private institutions vary. The integration and coordination of these systems can be inferred from the patterns of interagency relationships involving client referrals, information flows and resource exchanges (Morrissey, J.P., et al., ''Methods for System-Level Evaluations of Child Mental Health Service Networks'' *Outcomes for Children and Youth with Behavioral and Emotional Disorders and Their Families: Programs and Evaluation Best Practices,* pg. 299, 1998). For the purposes this priority, the policies affecting families of children with disabilities include, but are not limited to, those in the areas of health care (including mental health), human and social services (including legal systems such as juvenile services), and public and private education.

Families of children with disabilities often need assistance with accessing and financing services, information about caring for their child, support from other families, community-based respite care, and case management services. Case management services are intended to ensure that services are delivered in an effective and efficient manner. Numerous models of case management currently exist. However, there is little extant research on the effectiveness, either at the family or system level, of case management services for families of children with disabilities.

Numerous methodological problems limit the study of the complex service systems surrounding children with disabilities and their families. Current methods of measuring service coordination and examining roles in service delivery systems are not structured to assess the needs of children and their families (Koren, P. E., et al., ''Service Coordination in Children's Mental Health: An Empirical Study from the Caregivers Perspective,'' *Journal of Emotional and Behavioral Disorders,* 5(3), pg. 164, 1997). Measurement issues become even more complex when the focus of a study moves from the individual and family level to the State and local service system level or when policy analysis is required. There is currently a shortage

of methods for assessing the interrelationship between Federal, State, and local policy, service systems, and outcomes for families of children with disabilities. The limited availability of data and methodological tools needed for scientific measurement of the impact of systemic and policy reforms on families of children with disabilities serves as a barrier to increasing our understanding of the relationship between policy and outcomes. Recent major changes in Federal policies for social services, child care, family preservation and support services, and related educational and health care services may be having profound impacts upon these families.

Changes at the Federal level may be having an impact at the State and local level. However, little is known or documented about the effects of Federal policy changes on State and local service systems and families of children with disabilities.

Under new Federal and State legislation, States have more flexibility to administer human service programs. Policymakers and legislators have new opportunities to shape integrated and flexible programs to better serve the needs of families and their children with and without disabilities. Some States are experimenting with a decategorization of State and Federal funding streams so that local communities can reshape their service systems through the use of vouchers. Some State and local agencies are conducting demonstrations of family support programs that decentralize public services for families of children with disabilities.

The impact of devolution from a system with authority at the Federal level and management of public services at the State level, to a system of both authority and management at the local level has not been documented. Information is needed on these practices and other interventions, the family benefits associated with these policies and practices, and the consequences of practice and policy change in order to facilitate implementation of policies and programs that are sensitive to the needs of families of children with disabilities and to promote effective models of care for families of children with disabilities.

In addition to policy changes in the social services arena, health care systems are changing rapidly the way they provide services to consumers. Families of children with disabilities, and the health care providers that serve them, are facing many challenges that differ from the coverage and access issues that are present for the general population. Even families of children with disabilities that use few medical services often require special knowledge or accommodations when they do access the health care system. Many States have little or no experience in assuring that their health care providers meet the specialized needs of families of children who have disabilities. These challenges are further complicated by the high cost of services for children with disabilities.

Among children enrolled in Medicaid, the average per-person health care costs in 1992 were seven times higher for disabled than nondisabled children. Compared with nondisabled children in the general population, some disabled children use twice as many physician visits and five times as many ancillary services, such as physical therapy. Under current policies and practices, the potential exists to use medical necessity standards to prevent disabled children from receiving therapy or equipment when they need it to maintain existing levels of functioning (U.S. General Accounting Office, *Medicaid Managed Care: Serving the Disabled Challenges States Programs,* (GAO/HEHS Publication No. 96–136) pg. 16, 1996). Research is needed on health care policies and service delivery practices in order to develop longterm strategies to remove service delivery barriers that exist in the health care system and to facilitate establishment of policies that support access to services for families of children with disabilities.

Frequently, children with disabilities who are participating in special education programs and their families have needs that are addressed by health care or social service agencies. As public schools' regular and special education programs restructure, opportunities may arise to expand successful service delivery strategies and develop new ones to fill in existing gaps in the service delivery systems. The development of integrated, community-based services for children with disabilities and their families is an essential component of this reform effort (Duchnowski, A. J., et al., ''Integrated and Collaborative Community Services in Exceptional Student Education,'' *Special Education Practice: Applying the Knowledge, Affirming the Values and Creating the Future,* pgs. 177–188, 1997).

Many communities have begun initiatives to create more responsive family-centered service delivery systems. Mechanisms for interagency coordination at the State and local levels are necessary to ensure optimal service delivery conditions. Service coordination should involve linkages between education agencies, health care systems, and social services systems. In addition, due to the changing demographics of society, little is known about the influence of culture, ethnicity and socioeconomics on how families seek and receive services for their children with disabilities.

Basic information sharing, coordination and collaboration between agencies that provide services to families of children with disabilities is limited. There is a need to evaluate current best practices in service delivery coordination and collaboration, develop a methodology for analyzing collaboration among agencies, establish principles for coordination and collaboration, and develop performance indicators that foster partnerships.

Proposed Priority 3

The Secretary proposes to establish an RRTC to assess the impact of policies on service delivery and outcomes for families of children with disabilities. The RRTC shall:

(1) Develop an analytical framework, including tools for assessing: family characteristics and policies, structure of service systems, service delivery processes, interagency coordination and collaboration, and outcomes for families with disabled children;

(2) Using the methodology developed above, determine the effectiveness of specific policies, implementation strategies, service delivery procedures, and coordination practices in meeting the needs of families of children with disabilities;

(3) Identify the impact of specific characteristics of interagency collaboration and coordination on families of children with disabilities; and

(4) Assess the impact of specific policies on access to services of families from diverse cultural, linguistic, ethnic and socioeconomic backgrounds.

In carrying out these purposes, the RRTC must:

- Disseminate materials and coordinate research and training activities with the Maternal and Child Health Bureau, the Administration on Developmental Disabilities, the Office of Policy and Planning in the Department of Health and Human Services, the Office of Special Education, the Federal Interagency Coordinating Council, and other entities carrying out related research or training activities; and
- Establish practical statistical methodologies and measurement tools that specifically assess the policies affecting families of children with disabilities.

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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 Part 350.

Program Authority: 29 U.S.C. 760–762.

(Catalog of Federal Domestic Assistance Numbers 84.133B, Rehabilitation Research and Training Centers)

Dated: June 3, 1998.

Curtis L. Richards,

Acting Assistant Secretary for Special Education and Rehabilitative Services.

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H.R. 2472/P.L. 105–177

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[1] Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

[2] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

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[4] 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.

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