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Reader Aids
Consult the Reader Aids section at the end of this issue for phone numbers, online resources, finding aids, reminders, and notice of recently enacted public laws.

CFR PARTS AFFECTED IN THIS ISSUE

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

Rules and Regulations

Federal Register
Vol. 63, No. 114
Monday, June 15, 1998

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 351

RIN 3206–AG77

Reduction in Force Retreat Right

AGENCY: Office of Personnel Management.

ACTION: Final rulemaking.

SUMMARY: The Office of Personnel Management (OPM) is issuing final regulations that clarify employees' ''Retreat'' rights. These final regulations also clarify the content of specific reduction in force notices.

DATES: These regulations are effective July 15, 1998.

FOR FURTHER INFORMATION CONTACT: Thomas A. Glennon or Jacqui R. Yeatman, (202) 606–0960, FAX (202) 606–2329.

SUPPLEMENTARY INFORMATION:

Background

On August 25, 1995, OPM published interim retention regulations (60 FR 44254) that clarified the procedures agencies use to determine employees' rights to ''retreat'' to positions during a reduction in force. These regulations also clarified what information agencies must provide employees who receive a specific notice of reduction in force. Interested parties could provide OPM with written comments during the period covering 60 days from the date of publication.

Comments

OPM received seven comments on the retreat right provisions found in these interim regulations: four from agencies, and three from individual employees. OPM did not receive any comments on the revised notice provisions of the regulations.

One agency supported the regulations as written. Two agencies suggested that OPM further clarify how agencies determine employees' retreat rights in specific situations. The fourth agency suggested that OPM limit employees' retreat rights only to positions that the present agency can readily document (i.e., positions in the employee's present agency).

Of the three comments from individual employees, two employees suggested that OPM provide additional material covering how agencies determine retreat rights, while the third employee believed that the interim regulations expanded rather than clarified employees' retreat rights.

The agency comment suggesting that the retreat right be redefined to provide a more restrictive standard was not adopted.

The comments from two of the agencies and all three of the employees asking for clarification of how agencies determine retreat rights are reflected in the following material that explains the scope and purpose of these final regulations on retreat.

Final Regulations–Retreat Rights

OPM is now publishing final retention regulations that further clarify employees' retreat rights. Final § 351.701(c)(3) provides that an employee has the right to retreat to the same position, or an essentially identical position, formerly held by the released employee on a permanent basis in a Federal agency. Final § 351.701(c)(3) further clarifies that the agency determines an employee's retreat right based only on former positions in any Federal agency that the released employee held as a competing employee, or equivalent (i.e., when held by the released employee, the position would have been placed in tenure group I, II, or III, or equivalent).

In defining what constitutes ''an essentially identical position'' for this purpose, final § 351.701(c)(3) still provides that in determining whether a position is essentially identical, the agency uses the competitive level criteria found in § 351.403, but without regard to the respective grade, classification series, type of work schedule, or type of service, of the two positions. Consistent with OPM's interpretation of its own regulations, this reflects the longstanding history of retreat as a narrow right of same subgroup bumping limited to actual positions formerly held by a released employee, rather than a broader form of same subgroup bumping based upon a return to the same general occupation based upon personal qualifications for that position.

Effective August 22, 1947, the retreat right was originally incorporated in 5 CFR part 20.9 of the former U.S. Civil Service Commission's retention regulations. In 1954 the Commission began to use the term ''retreat'' in referring to this form of same subgroup bumping that was limited to positions from which, or in the same line of work through which, a released employee had previously been promoted.

The retreat right was based upon the assumption that a released employee who was so successful in performing a prior position that the employee was promoted to another position should be allowed to return to the former position if (1) the former position was substantially the same, and (2) because of higher same subgroup retention standing than the present incumbent of the position, the released employee would not be released from the retention register that includes the former position.

In final regulations published by OPM on January 3, 1986 (51 FR 319), the retreat right was expanded to include positions held on a permanent basis in the Federal service by the released employee without regard to whether the employee was promoted from that position (i.e., the retreat right now includes positions vacated because of reassignment and transfer). Consistent with this expansion of retreat rights, the January 3, 1986, revision also excludes positions that were simply in the same line of work through which a released employee had previously been promoted, but which the employee had not actually held.

These final retention regulations intend that agencies use a narrow modified competitive level standard set forth in § 351.701(c)(3) to determine an employee's retreat rights to an essentially identical position. This is consistent with OPM's as well as the former Commission's, longstanding definition of the competitive level as the basic standard for retreat rights. Also, this revision addresses the issue of what constitutes an ''essentially identical'' position in the wake of the decisions of the Merit Systems Protection Board in *Parkhurst* v. *Department of*

Transportation, 70 M.S.P.R. 309 (1995), and *Pigford* v. *Department of the Interior,* 75 M.S.P.R. 251 (1996).

Because retreat is a narrow right, § 351.701(c)(3) does not intend to provide a more disruptive, broader range of same subgroup bumping that, based upon personal qualifications, would provide a released employee with the right to displace a lower-standing employee solely because the released employee formerly held a position in the same general line of work.

At its discretion, an agency may provide a broader assignment opportunity to released employees that is primarily based on the personal qualifications set forth in section 351.702(a). However, this alternative is not applicable to a determination of an employee's retreat rights under authority of § 351.701(c).

As requested in several comments on the interim regulations, the following four examples of retreat rights are reprinted from the Supplementary Information material in the interim retention regulations that OPM published on August 25, 1995 (60 FR 44254).

Examples of Retreat Rights

Example number 1: A GS–7 employee formerly held a GS–322–5 position. Because of a new classification standard, the GS–322–5 is reclassified to a GS–326–5 with no change in duties, responsibilities, and qualifications. This regulation clarifies that the GS–7 employee would have a right to retreat to the GS–326–5 position held by a lower-standing employee if the agency determines that the employee's former GS–322–5 position and the GS–326–5 position are otherwise essentially identical using the competitive level test found in 5 CFR 351.403.

Example number 2: A WG–4204–10 employee formerly held a WG–4204–7 position. Because of classification error, the WG–4204–7 position is reclassified to a WG–4204–8 with no change in duties, responsibilities, and qualifications. This regulation clarifies that the WG–4204–10 employee would have a right to retreat to the WG–4204–8 position held by a lower-standing employee if the agency determines that the employee's former WG–4204–7 position and the WG–4204–8 position are otherwise essentially identical using the competitive level test found in 5 CFR 351.403.

Example number 3: A full-time GS–343–11 employee formerly held a part-time GS–343–7 position. This regulation clarifies that the full-time GS–343–11 employee would have a right to retreat to a full-time GS–343–7 held by a lower-standing employee if the agency determines that the employee's former part-time GS–343–7 position and the GS–343–7 position are otherwise essentially identical using the competitive level test found in 5 CFR 351.403.

Example number 4: A GS–334–11 competitive service employee formerly held a GS–334–7 position under an excepted service Veterans Readjustment Appointment (VRA). This regulation clarifies that the GS–334–11 employee would have a right to retreat to a GS–334–7 position held by a lower-standing competitive service employee if the agency determines that the employee's former GS–334–7 VRA position and the GS–334–7 position are otherwise essentially identical using the competitive level test found in 5 CFR 351.403.

Final Regulations—Reduction in Force Notices

OPM is publishing final regulations on reduction in force notices with revision only to an applicable section of statute cited in § 351.801(a)(2). Section 351.801(a)(2) provides that, from January 20, 1993, through January 31, 2000, each competing employee of the Department of Defense is entitled, under implementing regulations issued by that agency, to a specific written notice at least 120 full days before the effective date of release when a significant number of employees will be separated from a competitive area by reduction in force. This provision is consistent with section 341(a) of Pub. L. 103–337. (§ 351.801(a)(2) had contained a reference to section 911(a) of Pub. L. 103–337.)

Section 351.802(a)(1) provides that a specific reduction in force notice must cover the action to be taken, the effective date of the action, and the reasons for the action. This provision is consistent with statutory requirements set forth in 5 U.S.C. 3502(d)(2)(A).

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because it affects only certain Federal employees.

Executive Order 12866, Regulatory Review

This rule has been reviewed by the Office of Management and Budget in accordance with Executive Order 12866.

List of Subjects in 5 CFR Part 351

Administrative practice and procedure, Government employees.

Office of Personnel Management.

Janice R. Lachance,

Director.

Accordingly, OPM is amending part 351 of title 5, Code of Federal Regulations, as follows:

PART 351—REDUCTION IN FORCE

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

Authority: 5 U.S.C. 1302, 3502, 3503, Section 351.801 also issued under E.O. 12828, 58 FR 2965.

2. In § 351.701, paragraph (c)(3) is revised to read as follows:

§ 351.701 Assignment involving displacement.

* * * * *

(c) * * *

(3) Is the same position, or an essentially identical position, formerly held by the released employee as a competing employee in a Federal agency (i.e., when held by the released employee in an executive, legislative, or judicial branch agency, the position would have been placed in tenure groups I, II, or III, or equivalent). In determining whether a position is essentially identical, the determination is based on the competitive level criteria found in § 351.403, but not necessarily in regard to the respective grade, classification series, type of work schedule, or type of service, of the two positions.

* * * * *

3. In § 351.801, paragraph (a)(2) is revised to read as follows:

§ 351.801 Notice period.

(a) * * *

(2) Under authority of section 4433 of Pub. L. 102–484, as amended by section 341(a) of Pub. L. 103–337, each competing employee of the Department of Defense is entitled, under implementing regulations issued by that agency, to a specific written notice at least 120 full days before the effective date of release when a significant number of employees will be separated by reduction in force. The 120 days notice requirement is applicable during the period from January 20, 1993, through January 31, 2000. The basic requirement for 60 full days specific written notice set forth in paragraph (a) of this section is still applicable when less than a significant number of employees will be separated by reduction in force.

* * * * *

4. In § 351.802, paragraph (a)(1) is revised to read as follows:

§ 351.802 Content of notice.

(a)(1) The action to be taken, the reasons for the action, and its effective date;

* * * * *

[FR Doc. 98–15860 Filed 6–12–98; 8:45 am]
BILLING CODE 6325–01–P

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Parts 831 and 842

RIN 3206–AI25

Voluntary Early Retirement Authority

AGENCY: Office of Personnel Management.

ACTION: Interim rule.

SUMMARY: The Office of Personnel Management is publishing interim regulations covering Federal employee voluntary early retirements to implement new procedures affecting the application of voluntary early retirements. These temporary provisions affect agency requests, OPM approval, and agency offers of voluntary early retirement as well as several eligibility requirements for early retirement during a major reorganization, major reduction in force, or major transfer of function. The basic age and service requirements for voluntary early retirement remain unchanged.

DATES: Sections 831.108 and 842.205 are suspended from June 15, 1998 until October 1, 1999. Sections 831.114 and 842.213 are added effective from June 15, 1998 through September 30, 1999. Comments must be received by August 14, 1998.

ADDRESSES: Send written comments to Mary Lou Lindholm; Associate Director for Employment; Office of Personnel Management; Room 6500; 1900 E Street, NW; Washington, DC 20415.

FOR FURTHER INFORMATION CONTACT: Edward P. McHugh or Gregory P. Keller, 202–606–0960, FAX 202–606–2329.

SUPPLEMENTARY INFORMATION: 5 U.S.C. 8336(d)(2) and 8414(b)(1)(B) provide that OPM may approve voluntary early retirement authority for agencies undergoing a major reorganization, major reduction in force, or major transfer of function. 5 U.S.C. 8336(d)(2) authorizes the voluntary early retirement of employees under the Civil Service Retirement System (CSRS), while 5 U.S.C. 8414(b)(1)(B) authorizes the voluntary early retirement of employees under the Federal Employees Retirement System (FERS).

Section 7001 of Public Law 105–174, the Supplemental Appropriations and Rescissions Act, FY 1998, enacted May 1, 1998, provided authority for OPM and agencies to apply special provisions affecting the manner in which voluntary early retirements may be administered and approved for the period from May 1, 1998, through September 30, 1999.

Under section 7001, an agency may request a determination from the Office of Personnel Management that the agency or agency component(s) is undergoing a major reorganization, major reduction in force, or major transfer of function and that such action will result in the separation or downgrading of a significant percentage of the employees in the agency or component(s).

The law allows OPM to prescribe regulations which permit the agency, after OPM approval, to determine the scope of voluntary early retirement offers on the basis of one or more organizational units; one or more occupational series or levels; one or more geographic locations; other similar nonpersonal factors; or any appropriate combination of such factors.

Additionally, the law imposes several restrictions on eligibility for voluntary early retirement. Employees who have not been employed continuously by the agency since at least 31 days prior to the date of the agency's requests to OPM for early retirement; employees serving under time-limited appointments; and employees who have been notified that such employee is to be involuntarily separated for misconduct or unacceptable performance are ineligible for voluntary early retirements during the period this law is effective.

These interim regulations describe agencies' requests to OPM for approval of a voluntary early retirement authority; the manner in which agencies may offer voluntary early retirements; the responsibilities of agencies in managing approved voluntary early retirement authorities; eligibility of employees for voluntary early retirement; and agencies' required reports to OPM on use of the authorities.

Public Law 105–174 provided for the application of voluntary early retirements under these provisions through September 30, 1999. Therefore, 5 CFR 831.108 and 842.205 are suspended until October 1, 1999. In lieu of those sections, §§ 831.114 and 842.213 are added. 5 CFR 831.114 covers voluntary early retirement for CSRS employees, while the new 5 CFR 842.213 covers voluntary early retirement for FERS employees. Notwithstanding any future changes in the voluntary early retirement statutes, §§ 831.114 and 842.213 will expire September 30, 1999, at which time §§ 831.108 and 842.205 will be restored.

The special provisions in Public Law 105–174 do not affect the existing statutory requirements in 5 U.S.C. 8336(d) or 8414(b)(1) that, in order to be eligible for voluntary early retirement, an individual must have completed 25 years of service or have reached age 50 and completed 20 years of service.

Waiver of Notice of Proposed Rulemaking and Delay in Effective Date

Pursuant to 5 U.S.C. 553(b)(3)(B), I find that good cause exists for waiving the general notice of proposed rulemaking because it would be contrary to the public interest. Also, pursuant to 5 U.S.C. 553(d)(3), I find that good cause exists to make this amendment effective in less than 30 days. The general notice of proposed rulemaking and delay in the effective date are being waived because these regulations allow OPM to immediately implement statutory language in Public Law 105–174 governing voluntary early retirements which was effective May 1, 1998, and to give full effect to benefits extended by that statute.

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because it only affects Federal employees.

Executive Order 12866, Regulatory Review

This rule has been reviewed by the Office of Management and Budget in accordance with Executive Order 12866.

List of Subjects

5 CFR Part 831

Administrative practice and procedure, Alimony, Claims, Disability benefits, Firefighters, Government employees, Income taxes, Intergovernmental relations, Law enforcement officers, Pensions, Reporting and recordkeeping requirements, Retirement.

5 CFR Part 842

Air traffic controllers, Alimony, Firefighters, Government employees, Law enforcement officers, Pensions, Retirement.

U.S. Office of Personnel Management.

Janice R. Lachance,

Director.

Accordingly, OPM is amending parts 831 and 842 of title 5, Code of Federal Regulations, as follows:

PART 831—RETIREMENT

1. The authority citation for part 831 continues to read as follows:

Authority: 5 U.S.C. 8347; § 831.102 also issued under 5 U.S.C. 8334; § 831.106 also issued under 5 U.S.C. 552a; § 831.108 also issued under 5 U.S.C. 8336(d)(2); § 831.114 also issued under 5 U.S.C. 8336(d)(2) and section 7001 of Pub. L. 105–174; § 831.201(b)(1) also issued under 5 U.S.C. 8347(g); § 831.201(b)(6) also issued under 5 U.S.C. 7701(b)(2); § 831.201(g) also issued under sections 11202(f), 11232(e), and 11246(b) of Pub. L. 105–33, 111 Stat. 251; § 831.204 also issued under section 102(e) of Pub. L. 104–8, 109 Stat. 102, as amended by section 153 of Pub. L. 104–134, 110 Stat. 1321; § 831.303 also issued under 5 U.S.C. 8334(d)(2); § 831.502 also issued under 5 U.S.C. 8337; § 831.502 also issued under section 1(3), E.O. 11228, 3 CFR 1964–1965 Comp.; § 831.663 also issued under 5 U.S.C. 8339(j) and (k)(2); §§ 831.663 and 831.664 also issued under section 11004 (c)(2) of Pub. L. 103–66, 107 Stat. 412; § 831.682 also issued under section 201(d) of Pub. L. 99–251, 100 Stat. 23; subpart S also issued under 5 U.S.C. 8345(k); subpart V also issued under 5 U.S.C. 8343a and section 6001 of Pub. L. 100–203, 101 Stat. 1330–275; § 831.2203 also issued under section 7001(a)(4) of Pub. L. 101–508, 104 Stat. 1388–328.

Subpart A—Administration and General Provisions

2. Section 831.108 is suspended from June 15, 1998 until October 1, 1999.

3. Section 831.114 is added to subpart A effective from June 15, 1998 through September 30, 1999, to read as follows:

§ 831.114 Early retirement—major reorganization, major reduction in force, or major transfer of function.

(a) Upon an agency's request, as described in paragraph (c) of this section, OPM may make a determination as provided in 5 U.S.C. 8336(d)(2), that:

(1) The agency is undergoing a major reduction in force, major reorganization, or major transfer of function; and

(2) A significant percentage of the employees serving in the employing agency will be involuntarily separated, or subject to a reduction in basic pay.

(b)(1) Based on a determination by OPM under paragraph (a) of this section, OPM will provide to the agency the authority to offer voluntary early retirements to its employees.

(2) Under an OPM approved authority, the agency may offer voluntary early retirements to its employees based on:

(i) Organizational unit(s);

(ii) Occupational series or level(s);

(iii) Geographic area(s);

(iv) Specific window period(s);

(v) Any similar nonpersonal and objective factors; or

(vi) Any combination of factors under this paragraph (b)(2) that the agency determines to be appropriate and necessary to accomplish the reductions which formed the basis for OPM's determination under paragraph (a) of this section.

(3) An employee who separates from the service voluntarily under authority of 5 U.S.C. 8336(d)(2) after completing 25 years of service, or becoming age 50 and completing 20 years of service, is entitled to an annuity if, on the date of separation, the employee:

(i) Is serving in a position covered by an offer by the agency as described in paragraph (b)(2) of this section;

(ii) Has been employed in the requesting agency at least 31 days prior to the date the agency requested an OPM determination under paragraph (a) of this section;

(iii) Is not serving under a time-limited appointment; and

(iv) Is not in receipt of a decision of involuntary separation for misconduct or unacceptable performance.

(4) OPM may approve an agency's request for voluntary early retirement authority to cover the entire period of the major reduction in force, major reorganization, or major transfer of function; or through September 30, 1999, whichever is less.

(c)(1) An agency's request for voluntary early retirement must be signed by the head of the agency or by a specific designee with delegated authority.

(2) The agency's request for voluntary early retirement must contain the following:

(i) Identification of the agency or organizational unit(s) for which a determination is requested;

(ii) Reasons why the voluntary early retirement authority is needed. This explanation must include a detailed summary of the agency's personnel and budgetary situation that will result in an excess of personnel because of a major reduction in force, major reorganization, or major transfer of function as well as the date on which the agency expects to involuntarily separate employees as a result of the major reduction in force, major reorganization, or major transfer of function;

(iii) The time period during which voluntary early retirement will be offered. At the agency's discretion, the agency may request voluntary early retirement authority to cover the entire period of the major reduction in force, major reorganization, or major transfer of function; or through September 30, 1999, whichever is less;

(iv) The total number of nontemporary employees in the agency;

(v) The total number of nontemporary employees in the agency who will be involuntarily separated or downgraded because of reduction in force or relocation during a major reduction in force, major reorganization, or major transfer of function;

(vi) The total number of employees in the agency who are eligible for voluntary early retirement; and

(vii) An estimate of the total number of employees in the agency who are expected to retire early during the period covered by the request for voluntary early retirement authority.

(d)(1) The agency may not expand the availability of voluntary early retirements or offer early retirements to employees who are not within the authority approved by OPM.

(2) Except as provided in paragraph (d)(3) of this section, the agency may limit voluntary early retirement offers during window periods under paragraph (b)(2)(iv) of this section only by:

(i) An established opening and closing date which is announced to employees at the time of the initial offer; or

(ii) Receipt of a specified number of applications for retirement, provided that, at the time of the initial offer, the agency notified employees that the agency retained the right to limit voluntary early retirements on that basis.

(3) The agency may subsequently establish a revised closing date, or a revised number of applications, only when changes in the conditions that served as the basis for the approval of the voluntary early retirement authority have occurred. The revised closing date, or number of applications, may be applicable to the entire authority, or only to employees in specific organizational unit(s), occupational series or level(s), or geographic area(s).

(e) After approval of an authority, the agency is required to immediately notify OPM of any subsequent changes in the conditions that served as the basis for the approval of the voluntary early retirement authority.

(f) Agencies are required to provide OPM with interim and final reports on each voluntary early retirement authorization, as covered in OPM's approval letter to the agency. OPM may suspend an agency's early retirement authority if the agency is not in compliance with the reporting requirements or reporting schedule provided to the agency in the approval letter from OPM.

(g) Agencies are responsible for ensuring that employees are not coerced into voluntary early retirement. If an agency finds any instances of coercion,

it must take appropriate corrective action.

(h) OPM may terminate an agency's authority at any time that OPM determines the agency is no longer undergoing the major reorganization, major reduction in force, or major transfer of function that formed the basis for OPM's approval of the authority. OPM may take steps to amend, limit, or terminate an authority in order to ensure that early retirement programs are operated in a manner which is consistent with applicable laws or regulatory requirements.

(i) Pursuant to section 7001 of Public Law 105–174 (112 Stat. 91), the provisions of this section are applicable until September 30, 1999.

PART 842—FEDERAL EMPLOYEES RETIREMENT SYSTEM—BASIC ANNUITY

4. The authority citation for part 842 continues to read as follows:

Authority: 5 U.S.C. 8461(g); §§ 842.104 and 842.106 also issued under 5 U.S.C. 8461(n); § 842.105 also issued under 5 U.S.C. 8402(c)(1) and 7701(b)(2); § 842.106 also issued under section 102(e) of Pub. L. 104–8, 109 Stat. 102, as amended by section 153 of Pub. L. 104–134, 110 Stat. 1321; § 842.107 also issued under sections 11202(f), 11232(e), and 11246(b) of Pub. L. 105–33, 111 Stat. 251; § 842.205 also issued under 5 U.S.C. 8414(b)(1)(B); § 842.213 also issued under 5 U.S.C. 8414(b)(1)(B) and section 7001 of Pub. L. 105-174; §§ 842.604 and 842.611 also issued under 5 U.S.C. 8417; § 842.607 also issued under 5 U.S.C. 8416 and 8417; § 842.614 also issued under 5 U.S.C. 8419; § 842.615 also issued under 5 U.S.C. 8418; § 842.703 also issued under section 7001(a)(4) of Pub. L. 101–508; § 842.707 also issued under section 6001 of Pub. L. 100–203; § 842.708 also issued under section 4005 of Pub. L. 101–239 and section 7001 of Pub. L. 101–508; subpart H also issued under 5 U.S.C. 1104.

Subpart B—Eligibility

5. Section 842.205 is suspended from June 15, 1998 until October 1, 1999.

6. Section 842.213 is added to subpart B effective from June 15, 1998 through September 30, 1999, to read as follows:

§ 842.213 Early retirement—major reorganization, major reduction in force, or major transfer of function.

(a) Upon an agency's request, as described in paragraph (c) of this section, OPM may make a determination as provided in 5 U.S.C. 8414(b)(1)(B), that:

(1) The agency is undergoing a major reduction in force, major reorganization, or major transfer of function; and

(2) A significant percentage of the employees serving in the employing agency will be involuntarily separated, or subject to a reduction in basic pay.

(b)(1) Based on a determination by OPM under paragraph (a) of this section, OPM will provide to the agency the authority to offer voluntary early retirements to its employees.

(2) Under an OPM approved authority, the agency may offer voluntary early retirements to its employees based on:

(i) Organizational unit(s);

(ii) Occupational series or level(s);

(iii) Geographic area(s);

(iv) Specific window period(s);

(v) Any similar nonpersonal and objective factors; or

(vi) Any combination of factors under this paragraph (b)(2) that the agency determines to be appropriate and necessary to accomplish the reductions which formed the basis for OPM's determination under paragraph (a) of this section.

(3) An employee who separates from the service voluntarily under authority of 5 U.S.C. 8414(b)(1)(B) after completing 25 years of service, or becoming age 50 and completing 20 years of service, is entitled to an annuity if, on the date of separation, the employee:

(i) Is serving in a position covered by an offer by the agency as described in paragraph (b)(2) of this section;

(ii) Has been employed in the requesting agency at least 31 days prior to the date the agency requested an OPM determination under paragraph (a) of this section;

(iii) Is not serving under a time-limited appointment; and

(iv) Is not in receipt of a decision of involuntary separation for misconduct or unacceptable performance.

(4) OPM may approve an agency's request for voluntary early retirement authority to cover the entire period of the major reduction in force, major reorganization, or major transfer of function; or through September 30, 1999, whichever is less.

(c)(1) An agency's request for voluntary early retirement must be signed by the head of the agency or by a specific designee with delegated authority.

(2) The agency's request for voluntary early retirement must contain the following:

(i) Identification of the agency or organizational unit(s) for which a determination is requested;

(ii) Reasons why the voluntary early retirement authority is needed. This explanation must include a detailed summary of the agency's personnel and budgetary situation that will result in an excess of personnel because of a major reduction in force, major reorganization, or major transfer of function as well as the date on which the agency expects to involuntarily separate employees as a result of the major reduction in force, major reorganization, or major transfer of function;

(iii) The time period during which voluntary early retirement will be offered. At the agency's discretion, the agency may request voluntary early retirement authority to cover the entire period of the major reduction in force, major reorganization, or major transfer of function; or through September 30, 1999, whichever is less;

(iv) The total number of nontemporary employees in the agency;

(v) The total number of nontemporary employees in the agency who will be involuntarily separated or downgraded because of reduction in force or relocation during a major reduction in force, major reorganization, or major transfer of function;

(vi) The total number of employees in the agency who are eligible for voluntary early retirement; and

(vii) An estimate of the total number of employees in the agency who are expected to retire early during the period covered by the request for voluntary early retirement authority.

(d)(1) The agency may not expand the availability of voluntary early retirements or offer early retirements to employees who are not within the authority approved by OPM.

(2) Except as provided in paragraph (d)(3) of this section, the agency may limit voluntary early retirement offers during window periods under paragraph (b)(2)(iv) of this section only by:

(i) An established opening and closing date which is announced to employees at the time of the initial offer; or

(ii) Receipt of a specified number of applications for retirement, provided that, at the time of the initial offer, the agency notified employees that the agency retained the right to limit voluntary early retirements on that basis.

(3) The agency may subsequently establish a revised closing date, or a revised number of applications, only when changes in the conditions that served as the basis for the approval of the voluntary early retirement authority have occurred. The revised closing date, or number of applications, may be applicable to the entire authority, or only to employees in specific organizational unit(s), occupational series or level(s), or geographic area(s).

(e) After approval of an authority, the agency is required to immediately notify OPM of any subsequent changes in the

conditions that served as the basis for the approval of the voluntary early retirement authority.

(f) Agencies are required to provide OPM with interim and final reports on each voluntary early retirement authorization, as covered in OPM's approval letter to the agency. OPM may suspend an agency's early retirement authority if the agency is not in compliance with the reporting requirements or reporting schedule provided to the agency in the approval letter from OPM.

(g) Agencies are responsible for ensuring that employees are not coerced into voluntary early retirement. If an agency finds any instances of coercion, it must take appropriate corrective action.

(h) OPM may terminate an agency's authority at any time that OPM determines the agency is no longer undergoing the major reorganization, major reduction in force, or major transfer of function that formed the basis for OPM's approval of the authority. OPM may take steps to amend, limit, or terminate an authority in order to ensure that early retirement programs are operated in a manner which is consistent with applicable laws or regulatory requirements.

(i) Pursuant to section 7001 of Public Law 105–174 (112 Stat. 91), the provisions of this section are applicable until September 30, 1999.

[FR Doc. 98–15656 Filed 6–12–98; 8:45 am]

BILLING CODE 6325–01–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 958

[Docket No. FV98–958–1 FR]

Onions Grown in Certain Designated Counties in Idaho, and Malheur County, Oregon; Decreased Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This rule decreases the assessment rate established for the Idaho-Eastern Oregon Onion Committee (Committee) under Marketing Order No. 958 for the 1998–99 and subsequent fiscal periods from $0.10 to $0.09 per hundredweight of onions handled. The Committee is responsible for local administration of the marketing order which regulates the handling of onions grown in designated counties in Idaho, and Malheur County, Oregon. Authorization to assess Idaho-Eastern Oregon onion handlers enables the Committee to incur expenses that are reasonable and necessary to administer the program. The fiscal period begins July 1 and ends June 30. The assessment rate will remain in effect indefinitely unless modified, suspended, or terminated.

EFFECTIVE DATE: June 16, 1998.

FOR FURTHER INFORMATION CONTACT: Robert J. Curry, Northwest Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1220 SW Third Avenue, room 369, Portland, Oregon 97204–2807; telephone: (503) 326–2724, Fax: (503) 326–7440; or George Kelhart, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 720–2491, Fax: (202) 205–6632. Small businesses may request information on compliance with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 720–2491, Fax: (202) 205–6632.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement No. 130 and Marketing Order No. 958 (7 CFR part 958), both as amended, regulating the handling of onions grown in certain designated counties in Idaho, and Malheur County, Oregon, hereinafter referred to as the ''order.'' The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.''

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

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the order now in effect, Idaho-Eastern Oregon onion handlers are subject to assessments. Funds to administer the order are derived from such assessments. It is intended that the assessment rate as issued herein will be applicable to all assessable onions beginning on July 1, 1998, and continue until amended, suspended, or terminated. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

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

This rule decreases the assessment rate established for the Committee for the 1998–99 and subsequent fiscal periods from $0.10 to $0.09 per hundredweight of onions handled.

The order provides authority for the Committee, with the approval of the Department, to formulate an annual budget of expenses and collect assessments from handlers to administer the program. The Committee consists of six producer members, four handler members, and one public member, each of whom is familiar with the Committee's needs and with the costs for goods and services in their local area and are thus in a position to formulate an appropriate budget and assessment rate. The budget and assessment rate were discussed at a public meeting and all directly affected persons had an opportunity to participate and provide input.

For the 1996–97 and subsequent fiscal periods, the Committee recommended, and the Department approved, an assessment rate of $0.10 per hundredweight that would continue in effect from fiscal period to fiscal period unless modified, suspended, or terminated by the Secretary upon recommendation and information submitted by the Committee or other information available to the Secretary.

The Committee met on April 2, 1998, and unanimously recommended 1998–99 expenditures of $1,155,205 and an assessment rate of $0.09 per hundredweight of onions handled during the 1998–99 and subsequent fiscal periods. The Committee estimates that the 1998–99 onion crop will approximate 9,200,000 hundredweight of onions. In comparison, the 1997–98 fiscal period budget was established at $1,146,916 on an estimated assessable onion harvest of 8,800,000 hundredweight of onions. The decrease is necessary to prevent expected assessment income from exceeding the

amount necessary to administer the program for the 1998–99 fiscal period.

The Committee anticipates that assessment income during the 1997–98 fiscal period will be approximately $100,000 higher than that estimated for its 1997–98 budget. This is due to a greater level of onion production than anticipated by the Committee during its 1997–98 budget deliberations. The Committee also anticipates that it will not expend $1,146,916 as budgeted for the 1997–98 fiscal period, but rather will have expenditures totaling approximately $950,000. At the time the 1997–98 fiscal period budget was recommended, the Committee had estimated that it would draw up to $216,916 from its operating reserve. However, since 1997–98 assessment income is greater than anticipated and the respective expenditures are less than budgeted, the operating reserve may actually increase by the end of the fiscal period rather than decrease. As a consequence, the Committee estimates that its operating reserve will approximate $1,141,700 by June 30, 1998. Thus, to help ensure that the operating reserve does not exceed the maximum allowed by the order of approximately one fiscal period's expenditures, the Committee recommended that the assessment rate be decreased. Lower assessment rates were considered, but not recommended because they would not generate the income necessary to administer the program with an adequate operating reserve.

The major expenditures recommended by the Committee for the 1998–99 fiscal period include $215,205 for administration, $55,000 for production research, $750,000 for market promotion including paid advertising, $60,000 for export market development, and $75,000 for marketing order contingencies. Budgeted expenses for these items in the 1997–98 fiscal period were $206,716, $55,200, $750,000, $60,000, and $75,000, respectively.

The Committee based its recommended assessment rate decrease on the 1998–99 crop estimate, the 1998–99 fiscal period expenditures estimate, as well as the current and projected balance of the operating reserve. The decreased assessment rate should provide $828,000 in income, which, when combined with interest income of $55,000 and operating reserve funds of $272,205, will be adequate to cover budgeted expenses. As noted above, the Committee estimates it will have approximately $1,141,700 in its operating reserve at the end of the current fiscal period, which should be adequate to cover any income shortages. This amount is within the maximum permitted by the order of approximately one fiscal period's expenditures (§ 958.44).

The assessment rate established in this rule will continue in effect indefinitely unless modified, suspended, or terminated by the Secretary upon recommendation and information submitted by the Committee or other available information.

Although this assessment rate will be in effect for an indefinite period, the Committee will continue to meet prior to or during each fiscal period to recommend a budget of expenses and consider recommendations for modification of the assessment rate. The dates and times of Committee meetings are available from the Committee or the Department and are locally published. Committee meetings are open to the public and interested persons may express their views at these meetings. The Department will evaluate Committee recommendations and other available information to determine whether modification of the assessment rate is needed. Further rulemaking will be undertaken as necessary.

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

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

There are approximately 35 handlers of Idaho-Eastern Oregon onions who are subject to regulation under the order and approximately 260 onion producers in the regulated production area. Small agricultural service firms have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $5,000,000, and small agricultural producers are defined as those having annual receipts of less than $500,000. The majority of Idaho-Eastern Oregon onion handlers and producers may be classified as small entities.

This rule decreases the assessment rate established for the Committee and collected from handlers for the 1998–99 and subsequent fiscal periods from $0.10 to $0.09 per hundredweight of onions handled. Both the $0.09 assessment rate and the 1998–99 budget of $1,155,205 were unanimously recommended by the Committee at its April 2, 1998, meeting. The assessment rate established by this action is $0.01 lower than the 1997–98 rate. The Committee recommended a decreased assessment rate to help ensure that the operating reserve does not exceed the maximum allowed by the order of approximately one fiscal period's expenditures. The anticipated crop of 9,200,000 hundredweight is approximately 400,000 hundredweight larger than the crop estimate used to establish the 1997–98 budget. The $0.09 rate should provide $828,000 in assessment income, which, when combined with interest income of $55,000 and $272,205 from the operating reserve, will be adequate to meet the 1998–99 fiscal period's budgeted expenses.

The Committee reviewed and unanimously recommended 1998–99 expenditures of $1,155,205 which includes increases in administrative expenses, salaries, and committee expenses. Prior to recommending this budget, the Committee considered information from various sources, including the Idaho-Eastern Oregon Onion Executive, Research, Promotion, and Export Development Committees. Alternative expenditure levels were discussed and rejected by these subcommittees, and ultimately by the full Committee, based upon the relative value of various research and promotion projects to the Idaho-Eastern Oregon onion industry.

The major expenditures recommended by the Committee for the 1998–99 fiscal period include $215,205 for administration, $55,000 for production research, $750,000 for market promotion including paid advertising, $60,000 for export market development, and $75,000 for marketing order contingencies. Budgeted expenses for these items in the 1997–98 fiscal period were $206,716, $55,200, $750,000, $60,000, and $75,000, respectively.

A review of historical information and preliminary information pertaining to the upcoming season indicates that the F.O.B. price for the 1998–99 onion season could average $13.10 per hundredweight of onions. Therefore, the estimated assessment revenue for the 1998–99 fiscal period ($828,000) as a percentage of the projected total F.O.B. revenue ($120,520,000) would be 0.007 percent. This figure indicates that the $0.09 assessment rate will have a

relatively insignificant impact on the Idaho-Eastern Oregon onion industry.

This action decreases the assessment obligation imposed on handlers. While assessments impose some additional costs on handlers, the costs are minimal and uniform on all handlers. Some of the additional costs may be passed on to producers. However, these costs will be offset by the benefits derived by the operation of the order. In addition, the Committee's meeting was widely publicized throughout the Idaho-Eastern Oregon onion industry and all interested persons were invited to attend the meeting and participate in Committee deliberations on all issues. Like all Committee meetings, the April 2, 1998, meeting was a public meeting and all entities, both large and small, were able to express views on this issue.

This rule imposes no additional reporting or recordkeeping requirements on either small or large onion handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

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

A proposed rule concerning this action was published in the **Federal Register** on May 15, 1998 (63 FR 26999). A copy of the proposed rule was also sent via facsimile transmission to the administrative office of the Committee, which in turn notified Committee members and industry members. The proposal was also made available through the Internet by the Government Printing Office.

A 15-day comment period ending June 1, 1998, was provided to allow interested persons the opportunity to respond to the request for information and comments. No comments were received in response to the proposal.

After consideration of all relevant material presented, including the information and recommendation submitted by the Committee and other available information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because: (1) The Committee needs to have sufficient funds to pay its expenses which are incurred on a continuous basis; (2) the 1998–99 fiscal period begins on July 1, 1998, and the order requires that the rate of assessment for each fiscal period apply to all assessable onions handled during such fiscal period; (3) handlers are aware of this action which was recommended by the Committee at a public meeting; and (4) a 15-day comment period was provided for in the proposed rule, and no comments were received.

List of Subjects in 7 CFR Part 958

Marketing agreements, Onions, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 958 is amended as follows:

PART 958—ONIONS GROWN IN CERTAIN DESIGNATED COUNTIES IN IDAHO, AND MALHEUR COUNTY, OREGON

1. The authority citation for 7 CFR part 958 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. Section 958.240 is revised to read as follows:

§ 958.240 Assessment rate.

On and after July 1, 1998, an assessment rate of $0.09 per hundredweight is established for Idaho-Eastern Oregon onions.

Dated: June 10, 1998.

Robert C. Keeney,

Deputy Administrator, Fruit and Vegetable Programs.

[FR Doc. 98–15835 Filed 6–12–98; 8:45 am]

BILLING CODE 3410–02–P

NUCLEAR REGULATORY COMMISSION

10 CFR Part 71

RIN 3150–AF59

Requirements for Shipping Packages Used To Transport Vitrified High-Level Waste

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is amending its regulations to add vitrified high-level waste (HLW) contained in a sealed canister designed to maintain waste containment during handling activities associated with transport to the forms of plutonium which are exempt from the double-containment packaging requirements for transportation of plutonium. This amendment responds to a petition for rulemaking submitted by the Department of Energy, Office of Civilian Radioactive Waste Management (DOE/OCRWM). This final rule grants the petition for rulemaking, with modifications, and completes NRC action on the petition. This final rule also will make a minor correction regarding the usage of metric and English units, to be consistent with existing NRC policy on such use.

DATES: The effective date is July 15, 1998. The incorporation by reference of the American Society of Mechanical Engineers (ASME) Boiler and Pressure Vessel Code, Section VIII, editions through the 1995 Edition, is approved by the Director of the Federal Register as of July 15, 1998.

FOR FURTHER INFORMATION CONTACT: Earl Easton [telephone (301) 415–8520, e-mail EXE@nrc.gov] or Mark Haisfield [telephone (301) 415–6196, e-mail MFH@nrc.gov] of the Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

SUPPLEMENTARY INFORMATION:

Background

In 1974, the Atomic Energy Commission (AEC) adopted the special requirements in 10 CFR 71.63 that regulate the shipment of plutonium in excess of 0.74 terabecquerels (TBq) [20 Curies] per package. These requirements specify that plutonium must be in solid form and that packages used to transport plutonium must provide a separate inner containment (the ''double-containment'' requirement). In adopting these requirements, the AEC specifically excluded from the double-containment requirement plutonium in the form of reactor fuel elements, metal or metal alloys, and, on a case-by-case basis, other plutonium-bearing solids that the agency determines do not require double containment. The Statement of Consideration for the original rule (39 FR 20960; June 17, 1974), specifies that ''* * * solid forms of plutonium that are essentially nonrespirable should be exempted from the double-containment requirement.''

On November 30, 1993, DOE/OCRWM petitioned the NRC to amend § 71.63(b) to add vitrified HLW contained in a sealed canister to the forms of plutonium which are exempt from the double-containment packaging requirements of Part 71. The NRC published a notice of receipt for the petition, docketed as PRM–71–11, in the **Federal Register** on February 18, 1994 (59 FR 8143). Three comments were received on the petition.

Pursuant to the Nuclear Waste Policy Act of 1982, as amended (NWPA), DOE

is the Federal agency responsible for developing and administering a geologic repository for the deep disposal of HLW and spent nuclear fuel. DOE plans to ship the vitrified HLW in sealed canisters from four storage locations: Aiken, South Carolina; Hanford, Washington; West Valley, New York and Idaho Falls, Idaho; directly to the geologic repository in transportation packages certified by the NRC. Currently, this HLW exists mostly in the form of liquid and sludge resulting from the reprocessing of defense reactor fuels. DOE proposes to encapsulate the HLW in a borosilicate glass matrix. The HLW is added to molten glass and the mixture is then poured into a stainless steel canister and allowed to solidify (i.e., vitrify). The canister is then seal-welded shut. The canisters will eventually be placed inside Type B transportation packages for transport to the geologic repository or an interim storage facility.

The beneficial aspect of this amendment would be the elimination of an unnecessary requirement that DOE transport vitrified HLW in a separate inner container (i.e., a second barrier which is subject to the leak testing requirements of § 71.63(b)). The Commission believes that the vitrified HLW form in its sealed canister provides sufficient defense-in-depth for protection of public health and safety and the environment, when transported inside an NRC-certified Type B transportation package. The Commission agrees with DOE's assertion that shipments of this form of plutonium are comparable to shipments of (irradiated) reactor fuel elements which are exempt from the double-containment requirement. Therefore, the Commission agrees that the double-containment requirement is unnecessary. Additional beneficial aspects of this amendment would be a reduction in DOE's costs associated with the transportation of HLW from production sites to the geologic repository or an interim storage facility; and the simplification of the NRC staff's review of DOE's application for certification of a transportation package.

Although, in most other types of shipments, DOE is not subject to the requirements of Part 71, the NWPA requires that DOE's transport of spent nuclear fuel or HLW to a geologic repository or a monitored retrievable storage facility be in packages certified by the NRC. The packages used to transport vitrified HLW contained in sealed canisters will be certified by the NRC as Type B packages. Type B packages are designed to withstand the normal and hypothetical accident conditions specified in Part 71. The canistered vitrified HLW also will be subject to the special transport controls for a ''Highway Route Controlled Quantity'' pursuant to U.S. Department of Transportation regulations contained in 49 CFR Part 397. In addition, the NWPA requires DOE to provide technical assistance and funds to train emergency responders along the planned routes.

DOE asserted that shipments of vitrified HLW contained in a sealed canister will not adversely affect public health and safety and the environment if shipped without double containment. DOE stated that a separate inner container is unnecessary because of the high degree of confinement provided by the stainless steel waste canister and the essential nonrespirability of the solid, plutonium-bearing waste form. In addition, DOE argued that vitrified HLW in sealed canisters provides a comparable level of protection to that of irradiated reactor fuel elements, which the Commission previously determined should be exempt from the double-containment requirement (39 FR 20960).

On June 1, 1995, the NRC staff met with DOE in a public meeting to discuss the petitioner's request and the possible alternative of requesting an NRC determination under § 71.63(b)(3) to exempt vitrified HLW contained in a sealed canister from the double-containment requirement. DOE informed the NRC in a letter dated January 25, 1996, of its intent to seek an exemption under § 71.63(b)(3). The NRC received DOE's exemption request on July 16, 1996, in which DOE also requested that the original petition for rulemaking be held in abeyance until a decision was reached on the exemption request. In response to DOE's request, the NRC staff prepared a Commission paper (SECY–96–215, dated October 8, 1996) outlining and requesting Commission approval of the NRC staff's proposed approach for making an exemption under § 71.63(b)(3). However, in a staff requirements memorandum (SRM) dated October 31, 1996, the Commission disapproved the NRC staff's plan and directed that this policy issue be addressed by rulemaking rather than by exemption.

The NRC published a proposed rule in the **Federal Register** on May 8, 1997 (62 FR 25146) in response to DOE's petition. The Statement of Considerations for the proposed rule contains a complete discussion of DOE's petition, comments received on the petition, and the NRC's analysis of those comments.

Discussion

The NRC is amending 10 CFR 71.63 based on its evaluation of the petition submitted by the DOE; the attachment to the petition, ''Technical Justification to Support the PRM by the DOE to Exempt HLW Canisters from 10 CFR 71.63(b)'' (Technical Justification); the three public comments received on the petition after its publication in the **Federal Register**; and the seven comments on the proposed rule. In amending § 71.63, the NRC is accepting, with modifications, the petition submitted by DOE, for the reasons set forth in the following paragraphs.

In the early 1970's, the AEC anticipated that a large number of shipments of plutonium nitrate liquids could result from the spent fuel reprocessing anticipated at that time. This raised a concern about leakage of liquids because of the potential for a large number of packages (probably of more complex design) to be shipped due to reprocessing and the increased possibility of human error resulting from handling this expanded shipping load.

In 1973, the AEC proposed a rule which would deal with this problem by (a) requiring that shipments of plutonium containing greater than 20 curies be shipped in solid form, and (b) requiring that the solid plutonium be shipped in an inner container which would meet ''special form'' requirements as they then existed; i.e., not only would the whole package have to meet Part 71 requirements but the inner container would separately have to meet stringent requirements. One alternative to the proposed rule the AEC considered was to require that shipments of plutonium be in nonrespirable form, either in a single or double containment. This alternative was rejected, apparently because fuel fabricators did not have the technology to use plutonium in a nonrespirable form.

In 1974, the AEC published a final rule which contained two significant changes from the proposed rule:

(1) The AEC abandoned the ''special form'' requirement and instead simply required ''double containment'; i.e., the inner container was required not to release plutonium when the whole package was subjected to the normal and hypothetical accident tests of Part 71, but no separate tests were required for the inner container. Double containment was required to take account of the fact that the AEC had decided not to require that the plutonium be in a nonrespirable form; and

(2) The AEC exempted two forms of plutonium altogether—reactor fuel elements and metal or metal alloy—on the basis that

these forms were ''essentially nonrespirable'' and therefore did not require double containment. The exemption provision placed in the regulation also indicates that the AEC saw the possibility that other forms of plutonium would be similar enough to these two forms to also qualify for exemption from the double-containment requirement because they were also essentially nonrespirable. In the statement of considerations accompanying the final rule, the AEC stated that ''* * * solid forms of plutonium that are essentially nonrespirable should be exempt from the double containment requirements'' (39 FR 20960).

DOE's petition argues that a particular form of plutonium-vitrified high-level waste contained in a sealed canister—is similar enough to irradiated reactor fuel elements to qualify for its own exemption from the double-containment requirement. This is because of (1) the material properties of the vitrified HLW, (2) the high degree of confinement provided by the stainless steel waste canister, and (3) the NRC-approved quality assurance program implemented by DOE makes it highly unlikely that any plutonium would be released from an NRC-certified transportation package under the normal or hypothetical accident conditions of part 71. The NRC is required to certify the transportation packages used for vitrified HLW pursuant to Section 180 of the NWPA and every transportation package for vitrified HLW will be required to meet the standards for accident-resistant packages (i.e., Type B packages) set forth in part 71.

The tests described in DOE's Technical Justification demonstrate that the canisters containing the vitrified HLW provide an additional barrier to the release of radionuclides and compare favorably to the cladding surrounding spent fuel pellets in reactor fuel elements. The comparison is based upon physical drop tests, upon the material properties and dimensions of the sealed canisters, and the effects of radiation damage to materials.

DOE's analysis demonstrates much lower concentrations of plutonium in the HLW canisters than in irradiated reactor fuel elements. However, the DOE has not established an upper limit on plutonium concentration for these vitrified HLW canisters, and the NRC is not basing its decision to remove these canisters from the double-containment requirement based on the plutonium's concentration.

In its Technical Justification, DOE described the physical characteristics and acceptance standards of the canisters of vitrified HLW, including that the canistered waste form be capable of withstanding a 7-meter drop onto a flat, essentially unyielding surface, without breaching or dispersing radionuclides. This requirement is imposed by the DOE's ''Waste Acceptance System Requirements Document (WASRD),'' Rev. 0, which is referenced in the Technical Justification. This test should not be confused with the 9-meter drop test, onto an essentially unyielding surface, which is required by the hypothetical accident conditions of § 71.73. The 9-meter drop test is performed on the entire transportation package under the Part 71 certification process. The 7-meter drop test standard only applies to the canistered HLW.

The NRC agrees that the 7-meter drop test requirement is relevant to the demonstration that the canistered HLW represents an essentially nonrespirable form for shipping plutonium. The NRC believes that the 7-meter canister drop test is a more severe challenge than the 9-meter drop test for an NRC-approved Type B package. This is because the Type B package and the impact limiters will absorb much of the energy which would otherwise be expended against the canister.

In some of DOE's tests, the HLW canisters were dropped from 9 meters—2 meters above DOE's 7-meter design standard—and portions of the testing included deliberately introducing flaws (0.95 cm holes) in the canisters' walls. For those HLW canisters tested with the 0.95 cm holes, the quantity of respirable plutonium released through these holes was less than 0.74 TBq (20 curies). This review of DOE's Technical Justification has provided the NRC staff confidence that DOE's petition is supportable and that vitrified HLW in a sealed canister is essentially nonrespirable.

The NRC does not control the requirements in, or changes to, DOE's WASRD. Because of concerns that DOE's WASRD could be changed in the future, the NRC added the requirement in the proposed rule that vitrified HLW contained in a sealed canister meet the design criteria of § 60.135 (b) and (c). However, in response to comments received on the proposed rulemaking, the Commission has reconsidered its proposed imposition of referencing Part 60 design criteria. The final rule, instead, incorporates one of the design requirements from Part 60 into this rule. The other Part 60 design requirements are satisfied by other existing Part 71 requirements and other language in the final rule. Additionally, the Commission has included one acceptable method for meeting these design requirements for handling by referencing appropriate American Society of Mechanical Engineers Boiler and Pressure Vessel Code criteria. The explanation for this change is discussed below. Further, the NRC staff does perform technical reviews to certify package designs. For a HLW package, the review would include the sealed canister as well as the radioactive contents in the form of vitrified HLW. It is expected that an application for approval of a HLW package design would include a canister design and vitrified HLW contents with characteristics and attributes comparable to those described in the Technical Justification.

Comments on the Proposed Rule

This section presents a summary of the principal comments received on the proposed rule, the NRC's response to the comments, and changes made to the final rule as a result of these comments. The Commission received seven comment letters from six commenters on the proposed rule. One was from a member of the public, two were from national laboratories, one was from a transportation cask designer, one was from a consulting company, and one was from DOE. In addition, DOE submitted a subsequent letter commenting on one of the other comments. Overall, five of the six commenters supported the proposed rule and the remaining commenter, while not specifically opposing the rule, proposed changes regarding the performance of the canister and limiting its contents. Copies of these letters are available for public inspection and copying for a fee at the Commission's Public Document Room, located at 2120 L Street, NW (Lower Level), Washington, DC.

Comment. DOE and another commenter objected to the proposed rule's use of design criteria from Part 60. DOE noted that basing canistered waste approved for transport under § 71.63 upon the rules for disposal of HLW under § 60.135(b) and (c) assumes that certification approval for transport packages will not take place until a repository or interim storage facility becomes available; and that this may not be the case. The commenters are concerned that if certification for transport packages under the proposed rule is sought before a license application for a repository or interim storage facility is submitted, this situation could complicate and impede progress on the HLW cask certification process. One commenter supported the use of Part 60 criteria.

Response. The Commission has reconsidered the need to reference Part 60 criteria for canistered vitrified HLW in the amended regulation. The Commission agrees that it is best to avoid incorporating into Part 71—which

contains standards for the packaging and transportation of radioactive materials—requirements referenced from Part 60 which are intended for the permanent disposal of HLW in a geologic repository. The NRC staff has analyzed the requirements contained in § 60.135(b) and (c) and has determined that the intended requirement—that the canistered vitrified HLW maintain its integrity—can be achieved by reliance on existing Part 71 requirements and language from the proposed rule for all of the Part 60 requirements, but one. That one requirement is to design the canister to maintain waste containment during handling activities associated with transport. This has been added to the final rule. Additionally, the Commission has included one acceptable method for meeting these design requirements by referencing appropriate American Society of Mechanical Engineers Boiler and Pressure Vessel Code criteria.

The design criteria in § 60.135(b) require that the waste package shall not contain explosive, pyrophoric, or chemically reactive materials or free liquids in amounts that could cause harm; that waste packages shall be designed to maintain waste containment during handling; and that waste packages have unique identification numbers. The design criteria in § 60.135(c) require that the waste be in solid form and placed in a sealed container; that any particulate waste forms be consolidated into an encapsulating matrix; and that any combustible radioactive waste be reduced to noncombustible form. As noted, the Commission believed that by referencing these criteria in the proposed rule, it could assure the integrity of the canistered vitrified HLW.

The Commission now believes that the integrity objective can be achieved by relying on requirements in the final rule and other requirements in Part 71. First, as stated above, the final rule has added language that the canister be designed to maintain waste containment during handling activities associated with transport. Second the rule requires that the HLW be vitrified, and thus be in a solid form for encapsulation. Vitrification of HLW uses molten glass and this high temperature process will reduce any combustible radioactive waste into a noncombustible form. Finally, the Part 60 requirement that a unique identification number be attached to the HLW canister is not relevant for transportation.

Third, the Commission believes the integrity objective can be achieved by relying on other requirements in Part 71. Part 71 already requires that the transportation packages must not contain explosive, pyrophoric, or chemically reactive materials or free liquids. Section 71.43(d) requires that:

> A package must be made of materials and construction that assure that there will be no significant chemical, galvanic, or other reaction among the packaging components, among package contents, or between the packaging components and the package contents, including possible reaction resulting from inleakage of water, to the maximum credible extent. Account must be taken of the behavior of materials under irradiation.

The existing requirement in § 71.63(a) that the plutonium be in a solid form also will assure that the waste will be in solid form and that the waste package will be free of liquids.

Additionally, the Commission has included one acceptable method for meeting the canister design requirements for handling by referencing appropriate American Society of Mechanical Engineers Boiler and Pressure Vessel Code criteria. Use of the ASME Boiler and Pressure Vessel Code would ensure that the canister would be designed to maintain waste containment during handling, including normal loading and unloading activities. Certain criteria of the ASME Boiler and Pressure Vessel Code, Section VIII, are excluded because they are not appropriate for a sealed canister containing vitrified HLW. For example, the criteria to include a pressure relief device and openings to inspect the interior are unnecessary and could compromise the long term integrity of the canister. Specific alternatives to the ASME Boiler and Pressure Vessel Code criteria may be considered and approved without resorting to exemptions from the regulation.

Final Rule. The final rule has been revised to read as follows: Vitrified high-level waste contained in a sealed canister designed to maintain waste containment during handling activities associated with transport. As one method of meeting these design requirements, the NRC will consider acceptable a canister which is designed in accordance with the American Society of Mechanical Engineers (ASME) Boiler and Pressure Vessel Code, Section VIII, editions through the 1995 Edition. However, this canister need not be designed in accordance with the requirements of Section VIII, Parts UG–46, UG–115 through UG–120, UG–125 through UG–136, UW–60, UW–65, UHA–60, and UHA–65 and the canister's final closure weld need not be designed in accordance with the requirements of Section VIII, Parts UG–99 and UW–11. Necessary language to incorporate by reference the ASME Boiler and Pressure Vessel Code has also been added.

Comment. Four of the six commenters stated that the NRC should evaluate the technical bases for § 71.63, or referred to a Commission SRM to SECY–96–215, dated October 31, 1996, which directed the NRC staff to ''address whether the technical basis for 10 CFR 71.63 remains valid, or whether a revision or elimination of portions of 10 CFR 71.63 is needed to provide flexibility for current and future technologies.'' One of the commenters noted that the International Atomic Energy Agency standards do not impose a double-containment requirement. Four of the commenters recommended that if the NRC retained the double containment provision, that the rule use performance-based criteria for dispersibility and respirability as a basis for exemption, or that double containment only be required for ''highly dispersible materials.'' One of the commenters recommended that § 71.63 be eliminated entirely. One commenter expressed an interest in any Commission action on § 71.63, and recommended that the evaluation of § 71.63 take the form of an Advanced Notice of Proposed Rulemaking.

Response. The Commission believes that those comments to evaluate the technical basis for § 71.63, to revise § 71.63 (other than for vitrified HLW in canisters), or to eliminate the rule, are beyond the scope of this rulemaking. The NRC staff recently reviewed the technical bases for § 71.63, as directed in the SRM to SECY–96–215. The NRC staff concluded, in SECY–97–218, dated September 29, 1997, that the technical bases remain valid, and that the provisions provide adequate flexibility for current and future technologies. Except for the changes made in this rulemaking for vitrified HLW in canisters, the NRC staff concluded that the provisions in § 71.63 should remain unchanged. The NRC staff will further consider potential modifications to § 71.63 in its response to a petition for rulemaking, dated September 25, 1997, (Docket No. PRM–71–12). The NRC published a notice of receipt for the petition in the **Federal Register** (63 FR 8362, dated February 19, 1998).

Comment. One commenter suggested that the proposed rule be changed to require that HLW canister design, fabrication, test, and fill be conducted under a quality assurance program that meets, to the satisfaction of the NRC, the requirements of Part 71, Subpart H.

This commenter also suggested that the proposed rule be changed to require that the exemption will only apply to canisters of HLW in shipping packages which have been demonstrated by analysis or test to adequately contain the HLW canisters without allowing canister failure under the hypothetical

accident conditions of Part 71, Subpart F, when considered as a transportation system.

Response. The technical basis given in the DOE petition for an exemption is that a separate inner container is unnecessary because of the high degree of confinement provided by the stainless steel waste canister and the non-respirability of the solid, plutonium-bearing waste form. In support of its petition, DOE submitted a Technical Justification which included a description of a representative HLW canister together with the results of 7-meter and 9-meter drop testing of the canisters and a description of the standards used for canister fabrication and filling.

The technical review performed by the NRC staff to certify a HLW package would include the sealed canister as well as the radioactive contents in the form of vitrified HLW. It is expected that an application for approval of a HLW package design would include a canister design and vitrified HLW contents with characteristics and integrity comparable to those described in the DOE petition. The DOE HLW canisters will be subject to an NRC approved quality assurance plan.

The final rule has been revised to specify that the vitrified high-level waste be contained in a sealed canister designed to maintain waste containment during handling activities associated with transport. These standards would apply to all canisters containing vitrified HLW transported under this provision and will provide reasonable assurance that the package design adequately protects public health and safety.

Comment. One commenter suggested that the proposed rule be changed to require that the exemption will only apply to vitrified HLW from which plutonium has been removed prior to transfer to HLW storage tanks. The commenter suggested the vitrified HLW be restricted to no more than 3.7 TBq (100 Ci) of plutonium.

Response. The Statement of Considerations for the original rule (39 FR 20960) did not discuss activity limits (quantity limits); nor did the Commission adopt activity limits on the other forms of plutonium that are exempt from § 71.63(b). Rather, any limitations on the quantity of plutonium that can be shipped in a transportation package—for any exempt form of plutonium—are due to the inherent design features of the specific transportation package being used. These design features are reviewed by the NRC as part of the package certification process. The commenter has not provided any technical basis for requiring activity limits on this form of plutonium. The final rule does not specify a quantity limit for this exemption.

Regulatory Action

The NRC is amending 10 CFR 71.63 based on its evaluation of the petition submitted by DOE; the attachment to the petition, ''Technical Justification to Support the PRM by the DOE to Exempt HLW Canisters from 10 CFR 71.63(b),'' the three comments received on the petition; and the seven comments received on the proposed rule. Section 71.63(b) specifies special provisions for shipping plutonium in excess of 0.74 TBq (20 curies) per package, including a separate inner containment system, except when plutonium is in solid form of reactor fuel elements, metal, or metal alloys. In amending § 71.63(b), the NRC is granting, with modification, the petition submitted by DOE to eliminate these special provisions when transporting vitrified HLW contained in a sealed canister designed to maintain waste containment during handling activities associated with transport. The final rule completes NRC action on PRM–71–11. In the proposed rule, the NRC would have required that the HLW canister meet design criteria contained in § 60.135(b) and (c). The final rule, instead, incorporates these requirements into Part 71.

In addition, the NRC has corrected the usage of units in § 71.63. The metric units are used first with the English units in parenthesis.

Criminal Penalties

For the purposes of Section 223 of the Atomic Energy Act (AEA), the Commission is issuing the final rule under one or more of sections 161b, 161i, or 161o of the AEA. Willful violations of the rule will be subject to criminal enforcement.

Compatibility of Agreement State Regulations

Under the ''Policy Statement on Adequacy and Compatibility of Agreement State Programs'' approved by the Commission on June 30, 1997 (62 FR 46517), this rule is classified as compatibility category ''NRC.'' This regulation addresses areas of exclusive NRC authority. However, a State may adopt these provisions for the purposes of clarity and communication, as long as the State does not adopt regulations or program elements that would cause the State to regulate these areas.

Finding of No Significant Environmental Impact: Availability

The Commission has determined under the National Environmental Policy Act of 1969, as amended, and the Commission's regulations in Subpart A of 10 CFR Part 51, that this rule will not be a major Federal action significantly affecting the quality of the human environment, and therefore, an environmental impact statement is not required. The final rule change exempts shipments of vitrified HLW contained in a sealed canister designed to maintain waste containment during handling activities associated with transport. The purpose of the double containment rule is to ensure safety by requiring plutonium to be shipped as a solid, under double containment, thereby minimizing the likelihood of leakage during transport as a result of possible packaging errors. The Commission believes that the plutonium within vitrified HLW contained in a sealed canister is essentially nonrespirable and this form of plutonium provides a level of protection comparable to irradiated reactor fuel elements—which are exempt from the double-containment requirement. Therefore, double containment is unnecessary for vitrified HLW contained in a sealed canister designed to maintain waste containment during handling activities associated with transport.

The final environmental assessment and finding of no significant impact on which this determination is based are available for inspection at the NRC Public Document Room, 2120 L Street NW. (Lower Level), Washington, DC. Single copies of the environmental assessment and the finding of no significant impact are available from Mark Haisfield, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, telephone (301) 415–6196.

Paperwork Reduction Act Statement

This final rule does not contain a new or amended information collection requirement subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). Existing requirements were approved by the Office of Management and Budget, approval number 3150–0008.

Public Protection Notification

If an information collection does not display a currently valid OMB control number, the NRC may not conduct or sponsor, and a person is not required to respond to, the information collection.

Regulatory Analysis

The Commission has prepared a final regulatory analysis on this final regulation. The analysis examines the costs and benefits of the alternatives considered by the Commission. The analysis is available for inspection in the NRC Public Document Room, 2120 L Street NW. (Lower Level), Washington, DC. Single copies of the analysis may be obtained from Mark Haisfield, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone (301) 415–6196.

Regulatory Flexibility Certification

As required by the Regulatory Flexibility Act of 1980 (5 U.S.C. 605(b)), the Commission certifies that this rule does not have a significant economic impact on a substantial number of small entities. DOE is the only transporter of vitrified HLW. No other entities are involved. DOE is not a small entity as defined in 10 CFR 2.810.

Small Business Regulatory Enforcement Fairness Act

In accordance with the Small Business Regulatory Enforcement Fairness Act of 1996, the NRC has determined that this action is not a major rule and has verified this determination with the Office of Information and Regulatory Affairs, Office of Management and Budget.

Backfit Analysis

The NRC has determined that the backfit rule, 10 CFR 50.109, does not apply to this rule, and therefore, a backfit analysis is not required because these amendments do not involve any provisions that would impose backfits as defined in 10 CFR 50.109(a)(1).

List of Subjects in 10 CFR Part 71

Criminal penalties, Hazardous materials transportation, Incorporation by reference, Nuclear materials, Packaging and containers, Reporting and recordkeeping requirements.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as amended; and 5 U.S.C. 552 and 553; the NRC is adopting the following amendments to 10 CFR part 71.

PART 71—PACKAGING AND TRANSPORTATION OF RADIOACTIVE MATERIAL

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

Authority: Secs. 53, 57, 62, 63, 81, 161, 182, 183, 68 Stat. 930, 932, 933, 935, 948, 953, 954, as amended, sec. 1701, 106 Stat. 2951, 2952, 2953 (42 U.S.C. 2073, 2077, 2092, 2093, 2111, 2201, 2232, 2233, 2297f); secs. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846).

Section 71.97 also issued under sec. 301, Pub. L. 96–295, 94 Stat. 789–790.

2. Section 71.63 is revised to read as follows:

§ 71.63 Special requirements for plutonium shipments.

(a) Plutonium in excess of 0.74 TBq (20 Ci) per package must be shipped as a solid.

(b) Plutonium in excess of 0.74 TBq (20 Ci) per package must be packaged in a separate inner container placed within outer packaging that meets the requirements of Subparts E and F of this part for packaging of material in normal form. If the entire package is subjected to the tests specified in § 71.71 (''Normal conditions of transport''), the separate inner container must not release plutonium as demonstrated to a sensitivity of 10^{-6} A_2/h. If the entire package is subjected to the tests specified in § 71.73 (''Hypothetical accident conditions''), the separate inner container must restrict the loss of plutonium to not more than A_2 in 1 week. Solid plutonium in the following forms is exempt from the requirements of this paragraph:

(1) Reactor fuel elements;

(2) Metal or metal alloy;

(3) Vitrified high-level waste contained in a sealed canister designed to maintain waste containment during handling activities associated with transport. As one method of meeting these design requirements, the NRC will consider acceptable a canister which is designed in accordance with the American Society of Mechanical Engineers (ASME) Boiler and Pressure Vessel Code, Section VIII, 1995 Edition (earlier editions may be used in lieu of the 1995 Edition). However, this canister need not be designed in accordance with the requirements of Section VIII, Parts UG–46, UG–115 through UG–120, UG–125 through UG–136, UW–60, UW–65, UHA–60, and UHA–65 and the canister's final closure weld need not be designed in accordance with the requirements of Section VIII, Parts UG–99 and UW–11. The Director of the Federal Register approves this incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51. Copies of the ASME Boiler and Pressure Vessel Code, Section VIII, 1995 Edition, may be purchased from the American Society of Mechanical Engineers, Service Center, 22 Law Drive, P.O. Bos 2900, Fairfield, NJ 07007. It is also available for inspection at the NRC Library, 11545 Rockville Pike, Rockville, MD 20852–2738 or at the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC.; and

(4) Other plutonium bearing solids that the Commission determines should be exempt from the requirements of this section.

Dated at Rockville, Maryland, this 20th day of May, 1998.

For the Nuclear Regulatory Commission.

John C. Hoyle,

Secretary of the Commission.

[FR Doc. 98–14097 Filed 6–14–98; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–NM–85–AD; Amendment 39–10587; AD 98–12–34]

RIN 2120–AA64

Airworthiness Directives; Construcciones Aeronauticas, S.A. (CASA) Model CN–235 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain CASA Model CN–235 series airplanes, that requires modification of the forward beam of the vertical stabilizer by the installation of a structural reinforcement plate. This amendment is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by this AD are intended to prevent in-flight structural deformation or failure of the vertical stabilizer, resulting in reduced controllability of the airplane.

DATES: Effective July 20, 1998.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of July 20, 1998.

ADDRESSES: The service information referenced in this AD may be obtained from Construcciones Aeronauticas, S.A., Getafe, Madrid, Spain. This information may be examined at the Federal Aviation Administration (FAA),

Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

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

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain CASA Model CN–235 series airplanes was published in the **Federal Register** on April 14, 1998 (63 FR 18163). That action proposed to require modification of the forward beam of the vertical stabilizer by the installation of a structural reinforcement plate.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were submitted in response to the proposal or the FAA's determination of the cost to the public.

Conclusion

The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Cost Impact

The FAA estimates that 2 airplanes of U.S. registry will be affected by this AD.

It will take approximately 30 work hours per airplane to accomplish the required modification, at an average labor rate of $60 per work hour. Required parts will cost approximately $180 per airplane. Based on these figures, the cost impact of the modification required by this AD on U.S. operators is estimated to be $3,960, or $1,980 per airplane.

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

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

98–12–34 Construcciones Aeronauticas, S.A. (CASA): Amendment 39–10587. Docket 98–NM–85–AD.

Applicability: Model CN–235 series airplanes, as listed in CASA Service Bulletin SB–235–55–04, dated May 30, 1995; and Model CN–235 having serial number (S/N) C–011; certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent in-flight structural deformation or failure of the vertical stabilizer, resulting in reduced controllability of the airplane, accomplish the following:

(a) Within 6 months after the effective date of this AD, install a structural reinforcement plate on the forward beam of the vertical stabilizer, in accordance with CASA Service Bulletin SB–235–55–04, dated May 30, 1995.

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

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

(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) The installation shall be done in accordance with CASA Service Bulletin SB–235–55–04, dated May 30, 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 Construcciones Aeronauticas, S.A., Getafe, Madrid, Spain. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 3: The subject of this AD is addressed in Spanish airworthiness directive 08/96, dated December 9, 1996.

(e) This amendment becomes effective on July 20, 1998.

Issued in Renton, Washington, on June 5, 1998.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–15678 Filed 6–12–98; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–NM–98–AD; Amendment 39–10588; AD 98–12–35]

RIN 2120–AA64

Airworthiness Directives; Fokker Model F27 Mark 100, 200, 300, 400, 500, 600, and 700 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Fokker Model F27 Mark 100, 200, 300, 400, 500, 600, and 700 series airplanes, that requires replacement of the actuating ram bobbin and O-ring seals of the main landing gear (MLG) with new bobbins and improved O-ring seals. This amendment is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by this AD are intended to prevent loss of dampening of the MLG actuating ram, which could result in failure of the MLG lockstruts, and consequent structural damage to the airplane.

DATES: Effective July 20, 1998.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of July 20, 1998.

ADDRESSES: The service information referenced in this AD may be obtained from Fokker Services B.V., Technical Support Department, P. O. Box 75047, 1117 ZN Schiphol Airport, the Netherlands. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

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

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Fokker Model F27 Mark 100, 200, 300, 400, 500, 600, and 700 series airplanes was published in the **Federal Register** on April 15, 1998 (63 FR 18342). That action proposed to require replacement of the actuating ram bobbin and O-ring seals of the main landing gear (MLG) with new bobbins and improved O-ring seals.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were submitted in response to the proposal or the FAA's determination of the cost to the public.

Conclusion

The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Cost Impact

The FAA estimates that 34 airplanes of U.S. registry will be affected by this AD, that it will take approximately 26 work hours per airplane to accomplish the required replacement, and that the average labor rate is $60 per work hour. Required parts will be furnished by the manufacturer at no cost to the operators. Based on these figures, the cost impact of the replacement required by this AD on U.S. operators is estimated to be $53,040, or $1,560 per airplane.

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

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

98–12–35 Fokker Services B.V.: Amendment 39–10588. Docket 98–NM–98–AD.

Applicability: Model F27 Mark 100, 200, 300, 400, 500, 600, and 700 series airplanes; equipped with Dunlop main landing gear (MLG) actuating rams having part number (P/N) AC67132, AC67134, AC67848, or AC67850; 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 loss of dampening of the MLG actuating ram, which could result in failure of the MLG lockstruts, and consequent structural damage to the airplane, accomplish the following:

(a) Within 4,000 flight hours or 2 years after the effective date of this AD, whichever occurs first, replace the actuating ram bobbin, O-ring seals, and back-up O-ring seals of the MLG with new bobbins and improved O-ring seals, in accordance with Fokker Service Bulletin F27/32–168, dated October 23, 1996.

Note 2: Dunlop Equipment Division Service Bulletin SB 32–1142, dated October 22, 1996, and Revision 1, dated January 14, 1997, provides service information for accomplishment of the modification.

(b) As of the effective date of this AD, no person shall install on any airplane a Dunlop Main Undercarriage Ram, part number (P/N) AC67132, AC67134, AC67848, or AC67850, unless it has been modified in accordance with Fokker Service Bulletin F27/32–168, dated October 23, 1996.

(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 3: 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.

(e) The replacement shall be done in accordance with Fokker Service Bulletin F27/32–168, dated October 23, 1996. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Fokker Services B.V., Technical Support Department, P.O. Box 75047, 1117 ZN Schiphol Airport, the Netherlands. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 4: The subject of this AD is addressed in Dutch airworthiness directive 1996–142(A), dated November 29, 1996.

(f) This amendment becomes effective on July 20, 1998.

Issued in Renton, Washington, on June 5, 1998.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–15677 Filed 6–12–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–NM–194–AD; Amendment 39–10586; AD 98–12–33]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A320 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Airbus Model A320 series airplanes, that requires repetitive inspections to detect fatigue cracking on the connecting angle between frame 56 and the right-hand frame support at stringer 38; and replacement of the connecting angle, if necessary. This amendment also provides for an optional terminating action for the repetitive inspections.

This amendment is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by this AD are intended to detect and correct fatigue cracking on the connecting angle, which could result in reduced structural integrity of the airplane.

DATES: Effective July 20, 1998.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of July 20, 1998.

ADDRESSES: The service information referenced in this AD may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

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

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Airbus Model A320 series airplanes was published in the **Federal Register** on April 14, 1998 (63 FR 18156). That action proposed to require repetitive inspections to detect fatigue cracking on the connecting angle between frame 56 and the right-hand frame support at stringer 38; and replacement of the connecting angle, if necessary. That action also proposed to provide for an optional terminating action for the repetitive inspections.

Comments

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

The commenters support the proposed rule.

Conclusion

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Cost Impact

The FAA estimates that 5 airplanes of U.S. registry will be affected by this AD. It will take approximately 1 work hour per airplane to accomplish the required inspection, at an average labor rate of $60 per work hour. Based on this figure, the cost impact of the inspection required by this AD on U.S. operators is estimated to be $300, or $60 per airplane, per inspection cycle.

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

Should an operator elect to perform the optional terminating replacement provided by this AD, it would take approximately 3 work hours per airplane to accomplish the modification, at an average labor rate of $60 per work hour. Required parts would cost $136 or $153 per airplane, depending on the service kit purchased. Based on these figures, the cost impact of the optional terminating modification provided by this AD on U.S. operators is estimated to be as low as $1,580, or $316 per airplane, and as high as $1,665, or $333 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 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:

98–12–33 Airbus Industrie: Amendment 39–10586. Docket 97–NM–194–AD.

Applicability: Model A320 series airplanes, on which Airbus Modification 20941 (reference Airbus Service Bulletin A320–53–1011, dated December 9, 1994) has not been accomplished, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (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 fatigue cracking on the connecting angle between frame 56 and the right-hand frame support at stringer 38, which could result in reduced structural integrity of the airplane, accomplish the following:

(a) Prior to the accumulation of 20,000 total flight cycles, or within 1,000 flight cycles after the effective date of this AD, whichever occurs later, perform a visual inspection for fatigue cracking on the connecting angle between frame 56 and the right-hand frame support at stringer 38, in accordance with Airbus Service Bulletin A320–53–1084, Revision 1, dated November 28, 1995.

(1) If no cracking is detected, accomplish either paragraph (a)(1)(i) or (a)(1)(ii) of this AD.

(i) Prior to further flight, replace the connecting angle between frame 56 and the right-hand frame support at stringer 38 with a new part, in accordance with Airbus Service Bulletin A320–53–1011, dated December 9, 1994; or

(ii) Repeat the visual inspection thereafter at intervals not to exceed 12,000 flight cycles.

(2) If any cracking is detected, prior to further flight, replace the connecting angle between frame 56 and the right-hand frame support at stringer 38 with a new part, in accordance with Airbus Service Bulletin A320–53–1011, dated December 9, 1994.

(b) Accomplishment of the replacement of the connecting angle constitutes terminating action for the repetitive inspection requirements of this AD.

(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 requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

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

(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) The actions shall be done in accordance with the following Airbus service bulletins, which contain the specified effective pages:

Service bulletin referenced and date	Page No. shown on page	Revision level shown on page	Date shown on page
A320–53–1084, Revision 1, November 28, 1995	1, 2	1	Nov. 28, 1995.
	3–11	Original	Dec. 9, 1994.
A320–53–1011, December 9, 1994	1–11	Original	Dec. 9, 1994.

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 Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 3: The subject of this AD is addressed in French airworthiness directive 96–237–090(B), dated October 23, 1996, and Erratum to French airworthiness directive 96–237–090(B), dated February 26, 1997.

(f) This amendment becomes effective on July 20, 1998.

Issued in Renton, Washington, on June 5, 1998.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–15679 Filed 6–12–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–NM–64–AD; Amendment 39–10589; AD 98–13–01]

RIN 2120–AA64

Airworthiness Directives; Aerospatiale Model ATR42 and ATR72 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Aerospatiale Model ATR42 and ATR72 series airplanes, that

requires replacement of the left longitudinal net of the forward cargo compartment with a new reinforced net. This amendment is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by this AD are intended to prevent blockage of the access door, which could restrict access for crewmembers between the flight deck and the passenger compartment during normal operations or an emergency evacuation.

DATES: Effective July 20, 1998.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of July 20, 1998.

ADDRESSES: The service information referenced in this AD may be obtained from Aerospatiale, 316 Route de Bayonne, 31060 Toulouse, Cedex 03, France. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

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

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Aerospatiale Model ATR42 and ATR72 series airplanes was published in the **Federal Register** on April 14, 1998 (63 FR 18155). That action proposed to require replacement of the left longitudinal net of the forward cargo compartment with a new reinforced net.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were submitted in response to the proposal or the FAA's determination of the cost to the public.

Explanation of Changes Made to Proposal

The FAA has revised the final rule to reflect a change of the manufacturer's name referenced in the proposal for the service bulletins from Aerospatiale to Avions de Transport Regional.

Conclusion

The FAA has determined that air safety and the public interest require the adoption of the rule with the change previously described. The FAA has determined that this change will neither increase the economic burden on any operator nor increase the scope of this AD.

Cost Impact

The FAA estimates that 141 airplanes of U.S. registry will be affected by this AD, that it will take approximately 1 work hour per airplane to accomplish the required replacement, and that the average labor rate is $60 per work hour. Required parts will be supplied by the manufacturer at no cost to the operators. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $8,460, or $60 per airplane.

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

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

98–13–01 Aerospatiale: Amendment 39–10589. Docket 97–NM–64–AD.

Applicability: Model ATR42–300 and –320 series airplanes, on which Aerospatiale Modification 1878, 2482, 3193, or 8154 has not been installed, or on which simultaneous installation of Modifications 0481 and 0588 has not been accomplished; and Model ATR72–102, –202, and –212 series airplanes on which Aerospatiale Modification 2482, 3193, or 4648 has not been installed; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (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 blockage of the access door, which could restrict access for crewmembers between the flight deck and the passenger compartment during normal operations or an emergency evacuation, accomplish the following:

(a) Within 6 months after the effective date of this AD, replace existing cargo nets with new improved cargo nets, in accordance with paragraph (a)(1) or (a)(2) of this AD, as applicable.

(1) For Model ATR–42 series airplanes: Accomplish replacement of cargo nets in accordance with Avions de Transport Regional Service Bulletin ATR42–25–0108, dated January 24, 1997; or Revision 1, dated February 28, 1997; or Revision 2, dated July 1, 1997.

(2) For Model ATR–72 series airplanes: Accomplish replacement of cargo nets in accordance with Avions de Transport Regional Service Bulletin ATR72–25–1052, dated February 11, 1997; or Revision 1, dated July 1, 1997.

(b) As of the effective date of this AD, no person shall install on any airplane any cargo net having one of the following part numbers: 5366, 5367, 5370, 5375, or 5579.

(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 requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

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

(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) The replacement shall be done in accordance with the following Avions de Transport Regional service bulletins, which contain the specified effective pages:

Service bulletin referenced and date	Page No. shown on page	Revision level shown on page	Date shown on page
ATR42–25–0108	1–9	Original	Jan. 24, 1997.
ATR42–25–0108, Revision 1, February 28, 1997	1–3, 5–7	1	Feb. 28, 1997.
	4, 8, 9	Original	Jan. 24, 1997.
ATR42–25–0108, Revision 2, July 1, 1997	1, 2, 4	2	July 1, 1997.
	3, 5, 6, 7	1	Feb. 28, 1997.
	8, 9	Original	Jan. 24, 1997.
ATR72–25–1052	1–7	Original	Feb. 11, 1997.
ATR72–25–1052, Revision 1, July 1, 1997	1, 3	1	July 1, 1997.
	2, 4–7	Original	Feb. 11, 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 Aerospatiale, 316 Route de Bayonne, 31060 Toulouse, Cedex 03, France. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 3: The subject of this AD is addressed in French airworthiness directives 96–289–069(B)R1 and 96–288–032(B)R1, both dated December 18, 1996.

(f) This amendment becomes effective on July 20, 1998.

Issued in Renton, Washington, on June 8, 1998.

John J. Hickey,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–15784 Filed 6–12–98; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 37

Notice of Clarification and New Docket Prefix EY

AGENCY: Federal Energy Regulatory Commission.

ACTION: Clarification of rule.

SUMMARY: The Federal Energy Regulatory Commission is clarifying that, as required by section 37.4(a)(2) of the Commission's Rules and Regulations, 18 CFR 37.4(a)(2) (1997), transmission providers should report emergency circumstances affecting system reliability to the Commission within 24 hours by sending reports by facsimile to the Secretary of the Commission. In addition, the Commission is clarifying the information that transmission providers should include in the reports. The Commission is also establishing a new docket prefix, EY, to track the reports.

EFFECTIVE DATE: June 15, 1998.

FOR FURTHER INFORMATION CONTACT: Johnathan E. First, Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, (202) 208–1033.

SUPPLEMENTARY INFORMATION: In addition to publishing the full text of this document in the **Federal Register,** the Commission also provides all interested persons an opportunity to inspect or copy the contents of this document during normal business hours in the Public Reference Room at 888 First Street, N.E., Room 2A, Washington, D.C. 20426.

The Commission Issuance Posting System (CIPS) provides access to the texts of formal documents issued by the Commission. CIPS can be accessed via Internet through FERC's Homepage (http://www.ferc.fed.us) using the CIPS link or the Energy Information Online icon. The full text of this document will be available on CIPS in ASCII and Wordperfpect 6.1 format. CIPS is also available through the Commission's electronic bulletin board service at no charge to the user and may be accessed using a personal computer with a modem by dialing 202–208–1397, if dialing locally, or 1–800–856–3920, if dialing long distance. To acccess CIPS, set your communications software to 19200, 14400, 12000, 9600, 7200, 4800, 2400, or 1200 bps, full duplex, no parity, 8 data bits and 1 stop bit. User assistance is available at 202–208–2474 or by E-mail to CipsMaster@FERC.fed.us.

This document is also available through the Commission's Records and Information Management System (RIMS), an electronic storage and retrieval system of documents submitted to and issued by the Commission after November 16, 1981. Documents from November 1995 to the present can be viewed and printed. RIMS is available in the Public Reference Room or remotely via Internet through FERC's Homepage using the RIMS link or the Energy Information Online icon. User assistance is available at 202–208–2222, or by E-mail to RimsMaster@FERC.fed.us.

Finally, the complete text on diskette in Wordperfect format may be purchased from the Commission's copy contractor, La Dorn Systems Corporation. La Dorn Systems Corporation is located in the Public Reference Room at 888 First Street, N.E., Washington, D.C. 20426.

Notice of Clarification and New Docket Prefix EY

June 1, 1998.

The Commission clarifies the procedures that transmission providers should follow when reporting emergency circumstances that result in deviations from the standards of conduct. *See* 18 CFR 37.4(a)(2). Further, the Commission gives notice that it has established a new docket prefix, EY, for reports of emergency circumstances that transmission providers submit.

Background

In Order No. 889, the Commission issued rules governing an Open Access Same-Time Information System (OASIS)

and prescribing Standards of Conduct.[1] Section 37.4(a)(1) of the Commission's regulations, 18 CFR 37.4(a)(1) (1997), requires employees of transmission providers engaged in transmission system operations to function independently of employees engaged in wholesale merchant functions. Section 37.4(a)(2) creates an exception and states that, ''in emergency circumstances affecting system reliability, Transmission Providers may take whatever steps are necessary to keep the system in operation.'' The rule requires transmission providers that invoke the emergency exception to ''report to the Commission and on the OASIS each emergency that resulted in any deviation from the standards of conduct, within 24 hours of such deviation'' but does not provide guidance on how transmission providers should submit such reports or the details that should be included in the reports.

Reporting Procedures

To promote the uniform reporting of emergency circumstances as required by section 37.4(a)(2), the Commission clarifies that transmission providers should report emergencies to the Commission within 24 hours by sending a report by facsimile to the Secretary at the following telephone number: (202) 208–2268.

The use of facsimiles for reporting emergencies is an interim measure until the Commission develops a comprehensive information system that accepts filings and disseminates information electronically using the Commission's Internet site. The Commission will issue a subsequent notice when it implements a comprehensive electronic filing initiative.

Further, to allow for the uniform reporting of emergency circumstances as required by section 37.4(a)(2), the Commission clarifies that the reports should, at a minimum:

(a) Identify the name, title and telephone number of the person who prepared the report;

(b) State in the ''subject'' line of the facsimile that the correspondence reports an ''emergency deviation'';

(c) Identify when the emergency occurred and the duration of the emergency;

(d) Describe the emergency circumstances, including the nature of the emergency, the cause of the emergency, and the effects on system reliability; and

(e) Describe the resulting deviation(s) from the standards of conduct.

If the emergency is ongoing, the report should provide an estimate of when the emergency will be concluded. Transmission providers should provide updates as necessary until the emergency is concluded,

Further, section 37.4(a)(2) requires that transmission providers report emergency circumstances on the OASIS. However, the rule does not state a minimum period for transmission providers to post the reports on the OASIS. Accordingly, the Commission clarifies that reports must remain posted on the OASIS for 30 days from the date when the emergency ends. The OASIS reports must include the same information as the reports that transmission providers submit to the Commission.

New Docket Prefix EY

To properly track reports of emergency circumstances affecting system reliability, the Commission has established a new docket prefix EY. The new docket prefix will be EYFY–NNN, where the FY stands for the fiscal year in which the report is submitted and the NNN identifies the docket number for tracking emergency reports. If a transmission provider submits an emergency report and subsequently submits one or more update reports regarding the same emergency, the original report and updates will be filed under the same docket number.

The Commission will assign docket numbers to emergency reports only for internal record keeping purposes. The reports will not be subject to **Federal Register** notice or public comment. The public will have access to the same information on the OASIS.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–14926 Filed 6–12–98; 8:45 am]

BILLING CODE 6717–01–M

[1] Open Access Same-Time Information System (Formerly Real-Time Information Network) and Standards of Conduct, 61 FR 21737 (May 10, 1996), FERC Stats. & Regs., Regulations Preambles January 1991–June 1996 ¶ 31,035 (April 24, 1996); Order No. 889–A, *order on rehearing*, 62 FR 12484 (March 14, 1997), III FERC Stats. & Regs. ¶ 31,049 (March 4, 1997); Order No. 889–B, *rehearing denied*, 62 FR 64715 (December 9, 1997), 81 FERC ¶ 61,253 (November 25, 1997).

RAILROAD RETIREMENT BOARD

20 CFR Part 209

RIN 3220–AB21

Railroad Employers' Reports and Responsibilities

AGENCY: Railroad Retirement Board.

ACTION: Final rule.

SUMMARY: The Railroad Retirement Board amends its regulations to expand the methods by which compensation and service reports may be filed with the Board and to require that a social security account number be furnished for each employee for whom creditable railroad service and compensation is reported to the Board.

EFFECTIVE DATE: July 15, 1998.

ADDRESSES: Secretary to the Board, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611.

FOR FURTHER INFORMATION CONTACT: Thomas W. Sadler, Senior Attorney, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611, (312) 751–4513, TDD (312) 751–4701.

SUPPLEMENTARY INFORMATION: Employer reports are used to establish employee compensation and service records. These reports are based on payroll records. Due to changes in technology, employers now file their reports on magnetic tape and diskettes and transmit their reports by facsimile or computer-to-computer transmission (electronic filing). The punch card previously referred to in §§ 209.6, 209.7, 209.11, and 209.14 of the Board's regulations is an outdated medium of reporting. The quarterly report required by § 209.8 has been eliminated by the Employer Data Maintenance System. The Board amends part 209 of its regulations in order to reflect these changes. See § 209.4.

The Board also amends § 209.2 to add a provision that requires each employer to furnish a social security number (SSN) for each employee for whom creditable railroad service and compensation is reported to the Board. This amendment simply puts into regulation a current reporting requirement. Although not required, employers are encouraged to validate the social security numbers of their employees. In addition, the Board is revising the present § 209.11 to provide that the Board shall mail annual certificates of service and compensation to employees performing service for covered employers. Under previous regulation these certificates could be provided through the employer.

Finally, the Board has eliminated references to offices and titles that were eliminated as the result of a recent reorganization.

The final rule removes § 209.13, redesignated § 209.14 in the proposed rule, since the separate report required by that section with regard to miscellaneous compensation under § 211.11 of this chapter is no longer

required. In addition, the reference to § 209.13 is removed from § 209.15(d).

The Board published this rule as a proposed rule on January 20, 1998 (63 FR 2914), and invited comments by March 23, 1998. No comments were received.

The Board, with the concurrence of the Office of Management and Budget, has determined that this is not a major rule under Executive Order 12866; therefore, no regulatory impact analysis is required. Information collections required by this rule have been approved by the Office of Management and Budget.

List of Subjects in 20 CFR Part 209

Railroad employees, Railroad retirement, Railroads.

For the reasons set out in the preamble, Title 20, Chapter II, Part 209 of the Code of Federal Regulations is amended as follows:

PART 209—RAILROAD EMPLOYERS' REPORTS AND RESPONSIBILITIES

1. The authority citation for Part 209 continues to read as follows:

Authority: 45 U.S.C. 231f.

1a. Sections 209.8 and 209.13 are removed.

§§ 209.3 through 209.12 [Redesignated]

2. Sections 209.3 through 209.12 are redesignated as follows:

Old section	New section
209.3	209.5
209.4	209.6
209.5	209.7
209.6	209.8
209.7	209.9
209.9	209.10
209.10	209.11
209.11	209.12
209.12	209.13

3. A new § 209.3 is added as follows:

§ 209.3 Social security number required.

Each employer shall furnish to the Board a social security number for each employee for whom any report is submitted to the Board. Employers are encouraged to validate any social security number provided under this section.

(Approved by the Office of Management and Budget under control number 3220–0008)

4. A new § 209.4 is added as follows:

§ 209.4 Method of filing.

Any report or information required to be furnished under this part shall be prepared in accordance with instructions of the Board and shall be filed with the Board electronically, which includes the use of magnetic tape, computer diskette, electronic data interchange, or on such form as prescribed by the Board. If not filed electronically, reports shall be transmitted by facsimile or mailed directly to the Board. Any report which includes, or should include, information for 250 or more employees must be filed electronically, as described in this section.

5. Newly designated § 209.6 is revised to read as follows:

§ 209.6 Employers' notice of death of employees.

Each employer shall notify the Board immediately of the death of an employee who, prior to the employee's death, performed compensated service which has not been reported to the Board.

(Approved by the Office of Management and Budget under control number 3220–0005)

6. Newly designated § 209.7 is revised to read as follows:

§ 209.7 Employers' supplemental reports of service.

Each employer shall furnish the Board a report of the current year service of each employee who ceases work for the purpose of retiring under the provisions of the Railroad Retirement Act.

(Approved by the Office of Management and Budget under control number 3220–0005)

7. Newly designated § 209.8 is revised to read as follows:

§ 209.8 Employers' annual reports of creditable service and compensation.

Each year, on or before the last day of February, each employer is required to make an annual report of the creditable service and compensation (including a report that there is no compensation or service to report) of employees who performed compensated service in the preceding calendar year. The annual report shall include service and compensation previously furnished in supplemental reports and notices of death.

(Approved by the Office of Management and Budget under control number 3220–0008)

8. Newly designated § 209.9(c) is revised to read as follows:

§ 209.9 Employers' adjustment reports.

* * * * *

(c) Employers submitting adjustment reports covering pay for time lost as an employee shall report this compensation as provided for in § 211.3 of this chapter. Adjustment reports may be submitted to the Board each month.

(Approved by the Office of Management and Budget under control number 3220–0008)

9–10. Newly designated § 209.10 is amended by removing ''Director of Research and Employment Accounts'' and adding in its place ''Board'', and by removing ''§ 209.6(a)'' and adding in its place ''§ 209.8(a)''.

11. Newly designated § 209.11 revised to read as follows:

§ 209.11 Employee representatives' reports.

An individual claiming status as an employee representative shall describe his or her duties as an employee representative on the form prescribed by the Board. The Board shall determine whether the individual claiming to be an employee representative meets the requirements for such a status. If the individual is determined to be an employee representative, he or she is required to make an annual report of creditable compensation as provided for in § 209.8 of this part. If an employee representative's status is terminated, the last report of service and compensation shall be marked Final Compensation Report.

(Approved by the Office of Management and Budget under control number 3220–0014)

12. Newly designated § 209.12 is revised to read as follows:

§ 209.12 Certificates of service months and compensation.

(a) Each year the Board shall provide each employee who performed compensated service in the preceding calendar year a certificate of service months and compensation. This certificate is the employee's record of the service and compensation credited to his or her account at the Board. An employee who for any reason does not receive a certificate may obtain one from the nearest Board district office or may write the Board for one.

(b) By April 1 of each year each employer shall provide the Board the current address of each employee for whom it had reported compensation. This requirement shall not apply in the case of an employee for whom the employer had previously provided an address.

(Approved by the Office of Management and Budget under control number 3220–0194)

13–14. Paragraph (b) of newly designated § 209.13 is revised to read as follows:

§ 209.13 Employers' gross earnings reports.

* * * * *

(b) Employers shall submit reports annually for employees in the gross earnings sample. Such reports shall include the employee's gross annual earnings, which includes all compensation taxable under the hospital insurance portion of the tier I tax rate. Employers with 5,000 or more employees shall provide a monthly or quarterly breakdown of the year's earnings. Employers with fewer than 5,000 employees may submit an annual amount only, although a monthly or quarterly breakdown is preferable. Gross earnings are to be counted for the same time period as used in determining the employer's annual report of creditable compensation. The reports are to be prepared in accordance with prescribed instructions and filed in accordance with § 209.4 of this part.

(Approved by the Office of Management and Budget under control number 3220–0132)

15. Section 209.14 is revised to read as follows:

§ 209.14 Report of separation allowances subject to tier II taxation.

For any employee who is paid a separation payment, the employer must file a report of the amount of the payment. This report shall be submitted to the Board on or before the last day of the month following the end of the calendar quarter in which payment is made. The report is to be prepared in accordance with prescribed instructions and filed in accordance with § 209.4 of this part.

(Approved by the Office of Management and Budget under control number 3220–0173)

16. Section 209.15 is amended by removing the reference to ''§ 209.7'' wherever it appears and adding in its place ''209.9'', by removing ''Director of Research and Employment Accounts'' wherever it appears and adding in its place ''Board'', and by revising paragraph (d) to read as follows:

§ 209.15 Compensation reportable when paid.

* * * * *

(d) Miscellaneous pay. Miscellaneous pay, as defined in § 211.11 of this chapter, shall be reported in the year paid and reported on the annual report of compensation as provided for in § 209.8 of this part.

* * * * *

Dated: June 5, 1998.

By authority of the Board.

For the Board,

Beatrice Ezerski,

Secretary to the Board.

[FR Doc. 98–15798 Filed 6–12–98; 8:45 am]

BILLING CODE 7905–01–P

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Part 4044

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

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final rule.

SUMMARY: The Pension Benefit Guaranty Corporation's regulation on Allocation of Assets in Single-Employer Plans prescribes interest assumptions for valuing benefits under terminating single-employer plans. This final rule amends the regulation to adopt interest assumptions for plans with valuation dates in July 1998.

EFFECTIVE DATE: July 1, 1998.

FOR FURTHER INFORMATION CONTACT: Harold J. Ashner, Assistant General Counsel, Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005, 202–326–4024. (For TTY/TDD users, call the Federal relay service toll-free at 1–800–877–8339 and ask to be connected to 202–326–4024.)

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

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

Two sets of interest assumptions are prescribed, one set for the valuation of benefits to be paid as annuities and one set for the valuation of benefits to be paid as lump sums. This amendment adds to appendix B to part 4044 the annuity and lump sum interest assumptions for valuing benefits in plans with valuation dates during July 1998.

For annuity benefits, the interest assumptions will be 5.50 percent for the first 25 years following the valuation date and 5.25 percent thereafter. The annuity interest assumptions represent a decrease (from those in effect for June 1998) of 0.10 percent for the first 25 years following the valuation date and are otherwise unchanged. For benefits to be paid as lump sums, the interest assumptions to be used by the PBGC will be 4.00 percent for the period during which a benefit is in pay status and during any years preceding the benefit's placement in pay status. The lump sum interest assumptions represent a decrease (from those in effect for June 1998) of 0.25 percent for the period during which a benefit is in pay status; they are otherwise unchanged.

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

Because of the need to provide immediate guidance for the valuation of benefits in plans with valuation dates during July 1998, the PBGC finds that good cause exists for making the assumptions set forth in this amendment effective less than 30 days after publication.

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

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

List of Subjects in 29 CFR Part 4044

Pension insurance, Pensions.

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

PART 4044—ALLOCATION OF ASSETS IN SINGLE-EMPLOYER PLANS

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

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

2. In appendix B, a new entry is added to Table I, and Rate Set 57 is added to Table II, as set forth below. The introductory text of each table is republished for the convenience of the reader and remains unchanged.

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

TABLE I.—ANNUITY VALUATIONS

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

For valuation dates occurring in the month—	The values of i_t are:					
	i_t	for t =	i_t	for t =	i_t	for t =
* * *	*		*	*		*
July 1998	.0550	1–25	.0525	>25	N/A	N/A

TABLE II.—LUMP SUM VALUATIONS

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

Rate set	For plans with a valuation date		Immediate annuity rate (percent)	Deferred annuities (percent)				
	On or after	Before		i_1	i_2	i_3	n_1	n_2
*	*	*	*	*	*	*	*	*
57	07–1–98	08–1–98	4.00	4.00	4.00	4.00	7	8

Issued in Washington, DC, on this 8th day of June 1998.

David M. Strauss,

Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 98–15822 Filed 6–12–98; 8:45 am]

BILLING CODE 7708–01–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 938

[PA–112–FOR]

Pennsylvania Regulatory Program

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

ACTION: Final rule; correction.

SUMMARY: This notice corrects an inadvertent omission of a phrase at 30 CFR 938.16 paragraphs (vvv) through (bbbb), concerning required Pennsylvania regulatory program amendments as published on Wednesday, April 22, 1998 (63 FR 19802). As originally published, the required amendments did not provide Pennsylvania with the option to submit, in lieu of proposed written amendments, descriptions of amendments and timetables for enactment of the described amendments.

EFFECTIVE DATE: This correction is effective April 22, 1998.

FOR FURTHER INFORMATION CONTACT:

Robert J. Biggi, Director, Office of Surface Mining Reclamation and Enforcement, Harrisburg Field Office, Harrisburg Transportation Center, Third Floor, Suite 3C, 4th and Market Streets, Harrisburg, Pennsylvania 17101, Telephone: (717) 782–4036.

SUPPLEMENTARY INFORMATION:

Need for Correction

As originally published on Wednesday, April 22, 1998 (63 FR 19802), the required amendments codified at 30 CFR 938.16 paragraphs (vvv) through (bbbb) did not provide 30 CFR 732.17(f). Therefore, this notice announces a correction of each of the required amendments to include this option.

Under authority of 30 CFR 1201 *et seq.,* The **Federal Register** published on April 22, 1998, is corrected as set forth below.

List of Subjects in 30 CFR Part 938

Intergovernmental relations, Surface mining, Underground mining.

Dated: June 4, 1998.

Tim L. Dieringer,

Acting Regional Director, Appalachian Regional Coordinating Center.

For the reasons set out in the preamble, the final rule published April 22, 1998, is corrected as set forth below:

PART 938—PENNSYLVANIA

1. The authority citation for Part 938 continues to read as follows:

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

2. Beginning on page 63 FR 19820, § 938.16, paragraphs (vvv) through (bbbb) are corrected to read as follows:

§ 938.16 Required regulatory program amendments.

* * * * *

(vvv) By July 1, 1998, Pennsylvania shall amend the Pennsylvania program, or provide a written description of an amendment together with a timetable for enactment which is consistent with established administrative or legislative procedures in the State, to clarify the meaning of the term ''excess soil and related materials'' as that term is used in the definition of ''coal refuse disposal activities.''

(www) By July 1, 1998, Pennsylvania shall amend the Pennsylvania program, or provide a written description of an amendment together with a timetable for enactment which is consistent with established administrative or legislative

procedures in the State, to authorize stream buffer zone variances for coal refuse disposal activities only where such activities will not cause or contribute to the violation of applicable State or Federal water quality standards, and will not adversely affect water quality and quantity, or other environmental resources of the stream.

(xxx) By July 1, 1998, Pennsylvania shall amend the Pennsylvania program, or provide a written description of an amendment together with a timetable for enactment which is consistent with established administrative or legislative procedures in the State, to clarify, in the regulations to be developed to implement the provisions of section 6.2 of the Coal Refuse Disposal Act (as is required by Section 3.2(b) of the Coal Refuse Disposal Act), that preexisting discharges that are encountered must be treated to the State effluent standards at Chapter 90, subchapter D at 90.102.

(yyy) By July 1, 1998, Pennsylvania shall amend the Pennsylvania program, or provide a written description of an amendment together with a timetable for enactment which is consistent with established administrative or legislative procedures in the State, to clarify that Subsection 6.2(h) of the Coal Refuse Disposal Act pertains to preexisting discharges that are not encountered′.

(zzz) By July 1, 1998, Pennsylvania shall amend the Pennsylvania program, or provide a written description of an amendment together with a timetable for enactment which is consistent with established administrative or legislative procedures in the State, to be no less effective than 30 CFR 816.116(b)(5), by limiting the application of the revegetation standards under Subsection 6.2(k) of its Coal Refuse Disposal Act, to areas that were previously disturbed by mining and that were not reclaimed to the State reclamation standards.

(aaaa) By July 1, 1998, Pennsylvania shall amend the Pennsylvania program, or provide a written description of an amendment together with a timetable for enactment which is consistent with established administrative or legislative procedures in the State, to clarify that under Subsection 6.2(1) of its Coal Refuse Disposal Act, a special authorization for coal refuse disposal operations will not be granted, when such an authorization would result in the site being reclaimed to lesser standards than could be achieved if the moneys paid into the Fund, as a result of a prior forfeiture on the area, were used to reclaim the site to the standards approved in the original permit under which the bond moneys were forfeited.

(bbbb) By July 1, 1998, Pennsylvania shall amend the Pennsylvania program, or provide a written description of an amendment together with a timetable for enactment which is consistent with established administrative or legislative procedures in the State, by adding implementing rules no less effective than 30 CFR 785.13, and no less stringent than SMCRA Section 711 and which clarify that experimental practices are only approved as part of the normal permit approval process and only for departures from the environmental protection performance standards, and that each experimental practice receive the approval of the Secretary.

[FR Doc. 98–15762 Filed 6–12–98; 8:45 am]
BILLING CODE 4310–05–M

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 212

[DoD Instruction 1000.15]

RIN 0790–AG53

Private Organizations on DoD Installations

AGENCY: Assistant Secretary of Defense for Force Management Policy, DoD.

ACTION: Final rule.

SUMMARY: The revision of this part will ensure that private organizations operating on DoD installations do so in accordance with parameters established for their authorization and support. Private organizations are self-sustaining, non-Federal entities which operate on DoD installations outside the scope of any official capacity as officers, employees, or agents of the Federal Government.

EFFECTIVE DATE: October 23, 1997.

FOR FURTHER INFORMATION CONTACT: Martin S. Thomas III, LTC, USA, (703) 614–3112.

SUPPLEMENTARY INFORMATION: The Department of Defense published a proposed rule on February 24, 1998 (63 FR 9167). No material comments were received.

Executive Order 12866, ''Regulatory Planning and Review''

I, Francis M. Rush, Jr., Acting Assistant Secretary of Defense for Force Management Policy, hereby determine that 32 CFR part 212 is not a significant regulatory action. The rule does not:

(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 this Executive Order.

Public Law 96–354, ''Regulatory Flexibility Act'' (5 USC 601)

I, Frank M. Rush, Jr., Acting Assistant Secretary of Defense for Force Management Policy, hereby certify 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. The primary effect of this rule will not be on small businesses, but on private organizations operating on DoD installations as the procedures for their authorization and support have been redefined and reestablished in this final rule.

Public Law 104–13, ''Paperwork Reduction Act of 1995'' (44 USC Chapter 35)

I, Francis M. Rush, Jr., Acting Assistant Secretary of Defense for Force Management Policy, hereby certify that 32 CFR part 212 does not impose any reporting or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.).

List of Subjects in 32 CFR Part 212

DoD installations, Federal building and facilities, Private organizations.

Accordingly, 32 CFR part 212 is revised to read as follows:

PART 212—PRIVATE ORGANIZATIONS ON DOD INSTALLATIONS

Sec.

Authority: 5 U.S.C. 301.

§ 212.1 Reissuance and purpose.

This part:

(a) Revises 32 CFR part 212.

(b) Implements policy in DoD Directive 5124.5.[1]

(c) Updates responsibilities and procedures to define and reestablish parameters for private organizations located on DoD installations for their authorization and support.

§ 212.2 Applicability.

This part applies to:

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

(b) Private organizations authorized to operate on DoD installations.

§ 212.3 Definitions.

(a) *DoD Installation.* A location, facility, or activity owned, leased, assigned to, controlled, or occupied by a DoD Component.

(b) *Private Organizations.* Self-sustaining and non-Federal entities, incorporated or unincorporated, which are operated on DoD installations with the written consent of the installation commander or higher authority, by individuals acting exclusively outside the scope of any official capacity as officers, employees, or agents of the Federal Government.

§ 212.4 Policy.

It is DoD policy under DoD Directive 5124.5 that procedures be established for the operation of private organizations on DoD installations to prevent the official sanction, endorsement, or support by DoD Components except as in 32 CFR part 84. Private organizations are not entitled to sovereign immunity and privileges accorded to Federal entities and instrumentalities. Private organizations are not Federal entities and are not to be treated as such, in order to avoid conflicts of interest and unauthorized expenditures of appropriated, commissary surcharge, or nonappropriated funds.

§ 212.5 Responsibilities.

(a) The *Assistant Secretary of Defense for Force Management Policy,* under the *Under Secretary of Defense for Personnel and Readiness,* shall be responsible for all policy matters and OSD oversight for the monitoring of private organizations on DoD installations.

(b) The *Heads of the DoD Components* shall implement this part, shall be kept aware of all private organizations located on installations under their jurisdictions, and ensure that periodic reviews of private organizations are conducted to:

(1) Ensure for each such private organization that the membership provisions and purposes on the basis of which the organization was permitted on the installation continue to apply, thereby justifying continuance on the installation. Substantial changes to those conditions shall necessitate further review, documentation, and approval for continued permission to remain on the installation.

(2) Furnish reports to the Assistant Secretary of Defense for Force Management Policy on private organizations covered by this part as required.

§ 212.6 Procedures.

(a) To prevent the appearance of an official sanction or support by the Department of Defense, a private organization covered by this part shall not utilize the following in its title or letterhead:

(1) The name or seal of the Department of Defense or the acronym ''DoD.''

(2) The name, abbreviation, or seal of any DoD Component or instrumentality.

(3) The seal, insignia, or other identifying device of the local installation.

(4) Any other name, abbreviation, seal, logo, insignia, or the like, used by any DOD Component to identify any of its programs, locations, or activities.

(b) Activities of private organizations covered by this part shall not in any way prejudice or discredit the DoD Components or the other Agencies of the Federal Government.

(c) The nature, function, and objectives of a private organization covered by this part shall be delineated in a written constitution, by-laws, charter, articles of agreement, or other authorization documents acceptable to the head of the DoD installation. That documentation shall also include:

(1) Description of membership eligibility in the private organization.

(2) Designation of management responsibilities, to include the accountability for assets, satisfaction of liabilities, disposition of any residual assets on dissolution, and other matters that show responsible financial management.

(3) Documentation indicating an understanding by all members as to whether they are personally liable if the assets are insufficient to discharge all liabilities.

(d) A private organization covered by this part that offers programs or services similar to either appropriated or nonappropriated fund activities on a DoD installation shall not compete with, but may, when specifically authorized in the approval document, supplement those activities.

(e) Private organizations covered by this part shall be self-sustaining, primarily through dues, contributions, service charges, fees, or special assessment of members. There shall be no financial assistance to a private organization from a nonappropriated fund instrumentality in the form of contributions, repairs, services, dividends, or other donations of money or other assets. Fundraising and membership drives are governed by 32 CFR part 84.

(f) The DoD Components may provide logistical support to private organizations with appropriated Federal Government resources in accordance with 32 CFR part 84. In conformance with DoD Directive 1015.1,[2] nonappropriated fund instrumentalities funds or assets shall not be directly or indirectly transferred to private organizations.

(g) Personal and professional participation in private organizations by DoD employees is governed by 32 CFR part 84.

(h) Neither appropriated fund activities nor nonappropriated fund instrumentalities may assert any claim to the assets, or incur or assume any obligation of any private organization covered by this part except as may arise out of contractual relationships. Property abandoned by a private organization on its disestablishment or departure from the installation, or donated by it to the installation, may be acquired by the DoD installation under the terms of applicable agreements, statutes, and DoD policy.

(i) Adequate insurance, as defined by the Service concerned, shall be secured by the organization to protect against public liability and property damage claims or other legal actions that may arise as a result of activities of the organization or one or more of its members acting in its behalf, or the operation of any equipment, apparatus or device under the control and responsibility of the private organization.

(j) Private organizations shall be responsible for ensuring applicable fire and safety regulations, environmental laws, local, state, and Federal tax codes,

[1] Copies may be obtained, if needed, from the National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, VA 22161.

[2] See footnote to § 212.1(b).

and any other applicable statutes and regulations are complied within the operation of the private organization.

(k) Income shall not accrue to individual members except through wages and salaries as employees of the private organization or as award recognition for service rendered to the private organization or military community. The head of a DoD installation concerned may approve the operation of private organizations, such as investment clubs, in which the investment of members' personal funds result in a return on investment directly and solely to the individual members.

(l) No person because of race, color, creed, sex, age, disability or national origin shall be unlawfully denied membership, unlawfully excluded from participation, or otherwise subjected to unlawful discrimination by any private organization on a DoD installation covered by this part. DoD installations will publicly disseminate information on procedures for individuals to follow at the local installation when unlawful discrimination by private organizations is suspected.

(m) Applicable laws on labor standards for employment shall be observed.

(n) This part does not apply to the following organizations, which are governed by DoD Directives and Instructions as referenced:

(1) Scouting organizations operating at U.S. military installations located overseas (DoD Instruction 1015.9).[3]

(2) American National Red Cross (DoD Directive 1330.5).[4]

(3) United Service Organizations, Inc. (DoD Directive 1330.12).[5]

(4) United Seamen's Service (DoD Directive 1330.16).[6]

(5) Financial Institutions on DoD Installations (32 CFR part 231).

(o) Certain unofficial activities may be conducted on DoD installations, but need not be formally authorized because of the limited scope of their activities, membership or funds. Examples are office coffee funds, flower funds, and similar small, informal activities and funds. DoD Components shall establish the basis upon which such informal activities and funds shall operate.

Dated: June 9, 1998.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 98–15808 Filed 6–12–98; 8:45 am]

BILLING CODE 5000–04–M

[3] See footnote to § 212.1(b).

[4] See footnote to § 212.1(b).

[5] See footnote to § 212.1(b).

[6] See footnote to § 212.1(b).

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 234

Conduct on the Pentagon Reservation

AGENCY: Department of Defense, Washington Headquarters Services.

ACTION: Final rule.

SUMMARY: This document revises DoD policy concerning conduct on the Pentagon Reservation. The revisions are intended to ensure that DoD regulations are consistent with the statutory authority on which they are based, and to promote the safer, more efficient, and more secure operation of the Pentagon Reservation.

EFFECTIVE DATE: June 15, 1998.

FOR FURTHER INFORMATION CONTACT: Thomas R. Brooke, Office of General Counsel, Washington Headquarters Services, 1155 Defense Pentagon Room 1D197, Washington, DC 20301–1155, telephone (703) 693–7374.

SUPPLEMENTARY INFORMATION: On January 8, 1996, the Department of Defense published an interim final rule in the **Federal Register** (61 FR 541). Comments from the public were invited, but none were received. In the two years since the interim final rule was published, the Department has identified six sections requiring minor changes and has recognized the need to add one additional section.

The first change is the combination of the definitions of firearm and weapon in § 234.1. Because there is no functional reason to keep the definitions separate, they have been combined under the definition of weapon.

The second change is the incorporation of § 234.3 into § 234.17. Section 234.17 is the main provision addressing the use of vehicles on the Pentagon Reservation. As such, it is the natural place for the regulations to note that, in general, traffic and the use of vehicles are governed by state law. Also, to remove any ambiguity as to the application of state traffic laws, the following sentence has been added: ''Violating a provision of State law is prohibited.''

The third change is the amendment of the language of § 234.8. The interim language is awkward in that it reads in part, ''[D]amage to []private property is prohibited.'' The meaning of the provision is conveyed more straightforwardly in the final version, which prohibits ''destroying or damaging private property.'' Also, the word ''willfully'' has been added to distinguish between intentional and accidental acts. This distinction is consistent with the statutory authority for the regulations, which provides a criminal penalty only for willful violations of the regulations. Finally, the section's prohibition against the ''creation of any hazard to persons or things'' has been deleted because the subject is already addressed in the previous section, at § 234.7(d).

The fourth change is an amendment to the language of § 234.10. Because certain implements used for construction and other lawful purposes fall under this regulation's definition of ''weapons,'' paragraph (b) of that section, has been amended to allow the exemption of weapons used in support of a ''security, law enforcement, or other lawful purpose.''

The fifth change, for the sake of clarity and accuracy, is the replacement of the word ''use'' in § 234.11, referring to alcoholic beverages, with the term ''consumption.''

The sixth change, to remove any ambiguity as to the application of certain parking-related Department of Defense regulations and state laws, is the addition of the following clause in § 234.18, which addresses the enforcement of parking regulations: ''violating such provisions is prohibited.''

Finally, a new § 234.5 has been added. Section 40b.3 of the former regulations governing conduct at the Pentagon required compliance with official signs and the lawful directions of police officers. The provision covering directions from police officers was incorporated into the interim final version of § 234.6, but the officials signs provision was mistakenly left out of the interim final regulations. The final version of § 234.5 restores that provision. The language of the section is almost identical to the General Services Administration official signs provision found at 41 CFR part 101–20.304.

It has been certified that this rule is not a significant rule as defined under section 3(f)(1) through 3(f)(4) of Executive Order 12866. Further, it has been certified that this rule will not have a significant economic impact on a substantial number of small entities because it affects only those entities and persons who are on the Pentagon Reservation. Finally, it has been certified that this rule does not impose any reporting or recordkeeping requirements under the Paperwork Reduction Act of 1995.

List of Subjects in 32 CFR Part 234

Alcohol abuse, Drug testing, Federal buildings and facilities, Security measures, Traffic regulations.

Accordingly, chapter I of title 32 of the Code of Federal Regulations under the authority of 10 U.S.C. 301 is amended by revising part 234 to read as follows:

PART 234—CONDUCT ON THE PENTAGON RESERVATION

Sec.
234.1 Definitions.
234.2 Applicability.
234.3 Admission to property.
234.4 Trespassing.
234.5 Compliance with official signs.
234.6 Interfering with agency functions.
234.7 Disorderly conduct.
234.8 Preservation of property.
234.9 Explosives.
234.10 Weapons.
234.11 Alcoholic beverages and controlled substances.
234.12 Restriction on animals.
234.13 Soliciting, vending, and debt collection.
234.14 Posting of materials.
234.15 Use of visual recording devices.
235.16 Gambling.
234.17 Vehicles and traffic safety.
234.18 Enforcement of parking regulations.
234.19 Penalties and effect on other laws.

Authority: 10 U.S.C. 131 and 2674(c).

§ 234.1 Definitions.

As used in this part.

Authorized person. An employee or agent of the Defense Protective Service, or any other Department of Defense employee or agent who has delegated authority to enforce the provisions of this part.

Operator. A person who operates, drives, controls, otherwise has charge of, or is in actual physical control of a mechanical mode of transportation or any other mechanical equipment.

Pentagon Reservation. Area of land and improvements thereon, located in Arlington, Virginia, on which the Pentagon Office Building, Federal Building Number 2, the Pentagon heating and sewage treatment plants, and other related facilities are located, including all roadways, walkways, waterways, and all areas designated for the parking of vehicles.

Permit. A written authorization to engage in uses or activities that are otherwise prohibited, restricted, or regulated.

Possession. Exercising direct physical control of dominion, with or without ownership, over property.

State law. The applicable and nonconflicting laws, statutes, regulations, ordinances, and codes of the state(s) and other political subdivision(s) within whose exterior boundaries the Pentagon Reservation or a portion thereof is located.

Traffic. Pedestrians, ridden or herded animals, vehicles, and other conveyances, either singly or together, while using any road, path, street, or other thoroughfare for the purposes of travel.

Vehicle. Any vehicle that is self-propelled or designed for self-propulsion, any motorized vehicle, and any vehicle drawn by or designed to be drawn by a motor vehicle, including any device in, upon, or by which any person or property is or can be transported or drawn upon a highway, hallway, or pathway; to include any device moved by human or animal power, whether required to be licensed in any state or otherwise.

Weapons. Any loaded or unloaded pistol, rifle, shotgun, or other device which is designed to, or may be readily converted to, expel a projectile by the ignition of a propellant, by compressed gas, or by spring power; and bow and arrow, crossbow, blowgun, spear gun, hand-thrown spear, slingshot, irritant gas device, explosive device, or any other implement designed to discharge missiles; any other weapon, device, instrument, material, or substance, animate or inanimate that is used for or is readily capable of, causing death or serious bodily injury, including any weapon the possession of which is prohibited under the laws of the state in which the Pentagon Reservation or portion thereof is located; except that such term does not include a pocket knife with a blade of less than 2½ inches in length.

§ 234.2 Applicability.

The provisions of this part apply to all areas, lands, and waters on or adjoining the Pentagon Reservation and under the jurisdiction of the United States, and to all persons entering in or on the property. They supplement those penal provisions of Title 18, United States Code, relating to crimes and criminal procedure and those provisions of State law that are federal criminal offenses by virtue of the Assimilative Crimes Act, 18 U.S.C. 13.

§ 234.3 Admission to property.

(a) Access to the Pentagon Reservation or facilities thereon shall be restricted in accordance with Department of Defense Administrative Instruction Number 30 [1] in order to ensure the orderly and secure conduct of Department of Defense business. Admission to facilities or restricted areas shall be limited to employees and other persons with proper authorization.

(b) All persons entering or upon the Pentagon Reservation shall, when required and/or requested, display identification to authorized persons.

(c) All packages, briefcases, and other containers brought into, on, or being removed from facilities or restricted areas on the Pentagon Reservation are subject to inspection and search by authorized persons. Persons entering on facilities or restricted areas who refuse to permit an inspection and search will be denied entry.

(d) Any person or organization desiring to conduct activities anywhere on the Pentagon Reservation shall file an application for permit with the applicable Building Management Office. Such application shall be made on a form provided by the Department of Defense and shall be submitted in the manner specified by the Department of Defense. Violation of the conditions of a permit issued in accordance with this section is prohibited and may result in the loss of access to the Pentagon Reservation.

§ 234.4 Trespassing.

(a) Trespassing, entering, or remaining in or upon property not open to the public, except with the express invitation or consent of the person or persons having lawful control of the property, is prohibited. Failure to obey an order to leave under paragraph (b) of this section, or reentry upon property after being ordered to leave or not reenter under paragraph (b) of this section, is also prohibited.

(b) Any person who violates a Department of Defense rule or regulation may be ordered to leave the Pentagon Reservation by an authorized person. A violator's reentry may also be prohibited.

§ 234.5 Compliance with official signs.

Persons on the Pentagon Reservation shall at all times comply with official signs of a prohibitory, regulatory, or directory nature.

§ 234.6 Interfering with agency functions.

The following are prohibited:

(a) *Interference.* Threatening, resisting, intimidating, or intentionally interfering with a government employee or agent engaged in an official duty, or on account of the performance of an official duty.

(b) *Violation of a lawful order.* Violating the lawful order of a government employee or agent authorized to maintain order and control public access and movement during fire fighting operations, search

[1] Forward written requests for copies of the document to the Directorate for Freedom of Information and Security Review, Room 2C757, 1400 Defense Pentagon, Washington, D.C. 20301–1400.

and rescue operations, law enforcement actions, and emergency operations that involve a threat to public safety or government resources, or other activities where the control of public movement and activities is necessary to maintain order and public health or safety.

(c) *False information.* Knowingly giving a false or fictitious report or other false information:

(1) To an authorized person investigating an accident or violation of law or regulation, or

(2) On an application for a permit.

(d) *False report.* Knowingly giving a false report for the purpose of misleading a government employee or agent in the conduct of official duties, or making a false report that causes a response by the government to a fictitious event.

§ 234.7 Disorderly conduct.

A person commits disorderly conduct when, with intent to cause public alarm, nuisance, jeopardy, or violence, or knowingly or recklessly creating a risk thereof, such person commits any of the following prohibited acts:

(a) Engages in fighting or threatening, or in violent behavior.

(b) Uses language, an utterance, or gesture, or engages in a display or act that is obscene, physically threatening or menacing, or done in a manner that is likely to inflict injury or incite an immediate breach of the peace.

(c) Makes noise that is unreasonable, considering the nature and purpose of the actor's conduct, location, time of day or night, and other factors that would govern the conduct of a reasonably prudent person under the circumstances.

(d) Creates or maintains a hazardous or physically offensive condition.

(e) Impedes or threatens the security of persons or property, or which disrupts the performance of official duties by Department of Defense employees, or which obstructs the use of areas such as entrances, foyers, lobbies, corridors, concourses, offices, elevators, stairways, roadways, driveways, walkways, or parking lots.

§ 234.8 Preservation of property.

Willfully destroying or damaging private property is prohibited. The throwing of articles of any kind from or at buildings or persons, improper disposal of rubbish, and open fires are also prohibited.

§ 234.9 Explosives.

(a) Using, possessing, storing, or transporting explosives, blasting agents or explosive materials is prohibited, except pursuant to the terms and conditions of a permit issued by the applicable Building Management Office. When permitted, the use, possession, storage and transportation shall be in accordance with applicable Federal and State law.

(b) Using or possessing fireworks or firecrackers is prohibited, except in designated areas under such conditions as may be established by the applicable Building Management Office or pursuant to the terms and conditions of a permit issued by the applicable Building Management Office, and in accordance with applicable State law.

(c) Violation of the conditions established by the applicable Building Management Office or of the terms and conditions of a permit issued in accordance with this section is prohibited and may result in the loss of access to the Pentagon Reservation.

§ 234.10 Weapons.

(a) Except as otherwise authorized under this section, the following are prohibited:

(1) Possessing a weapon.

(2) Carrying a weapon.

(3) Using a weapon.

(b) This section does not apply to any agency or Department of Defense component that has received prior written approval from the Defense Protective Service to carry, transport, or use a weapon in support of a security, law enforcement, or other lawful purpose while on the Pentagon Reservation.

§ 234.11 Alcoholic beverages and controlled substances.

(a) *Alcoholic beverages.* The consumption of alcoholic beverages or the possession of an open container of an alcoholic beverage within the Pentagon Reservation is prohibited unless authorized by the Director, Washington Headquarters Services, or his designee, or the Heads of the Military Departments, or their designees. Written notice of such authorizations shall be provided to the Defense Protective Service.

(b) *Controlled substances.* The following are prohibited:

(1) The delivery of a controlled substance, except when distribution is made by a licensed physician or pharmacist in accordance with applicable law. For the purposes of this paragraph, delivery means the actual, attempted, or constructive transfer of a controlled substance.

(2) The possession of a controlled substance, unless such substance was obtained by the possessor directly from, or pursuant to a valid prescription or order by, a licensed physician or pharmacist, or as otherwise allowed by Federal or State law.

(c) Presence on the Pentagon Reservation when under the influence of alcohol, a drug, a controlled substance, or any combination thereof, to a degree that may endanger oneself or another person, or damage property, is prohibited.

§ 234.12 Restriction on animals.

Animals, except guide dogs for persons with disabilities, shall not be brought upon the Pentagon Reservation for other than official purposes.

§ 234.13 Soliciting, vending, and debt collection.

Commercial or political soliciting, vending of all kinds, displaying or distributing commercial advertising, collecting private debts or soliciting alms upon the Pentagon Reservation is prohibited. This does not apply to:

(a) National or local drives for funds for welfare, health, or other purposes as authorized by 5 CFR parts 110 and 950, Solicitation of Federal Civilian and Uniformed Services Personnel for Contributions to Private Voluntary Organizations, issued by the U.S. Office of Personnel Management under Executive Order 12353, 3 CFR, 1982 Comp., p. 139, as amended.

(b) Personal notices posted on authorized bulletin boards, and in compliance with building rules governing the use of such authorized bulletin boards, advertising to sell or rent property of Pentagon Reservation employees or their immediate families.

(c) Solicitation of labor organization membership or dues authorized by the Department of Defense under the Civil Service Reform Act of 1978.

(d) Licensees, or their agents and employees, with respect to space licensed for their use.

(e) Solicitations conducted by organizations composed of civilian employees of the Department of Defense or members of the uniformed services among their own members for organizational support or for the benefit of welfare funds for their members, after compliance with the requirements of § 234.4(d).

§ 234.14 Posting of materials.

Posting or affixing materials, such as pamphlets, handbills, or fliers on the Pentagon Reservation is prohibited except as provided by § 234.13(b) or when conducted as part of activities approved by the applicable Building Management Office under § 234.4(d).

§ 234.15 Use of visual recording devices

The use of cameras or other visual recording devices in restricted areas or

in internal offices must be approved by the Department of Defense component occupying the space. Photographs for advertising or commercial purposes may only be taken with the permission of the Office of the Assistant to the Secretary of Defense for Public Affairs.

§ 234.16 Gambling.

Gambling in any form, or the operation of gambling devices, is prohibited. This prohibition shall not apply to the vending or exchange of chances by licensed blind operators of vending facilities for any lottery set forth in a State law and authorized by the provisions of the Randolph-Sheppard Act (20 U.S.C. 107, *et seq.*).

§ 234.17 Vehicles and traffic safety.

(a) *In general.* Unless specifically addressed by regulations in this part, traffic and the use of vehicles within the Pentagon Reservation are governed by State law. Violating a provision of State law is prohibited.

(b) *Open container of an alcoholic beverage.* (1) Each person within a vehicle is responsible for complying with the provisions of this section that pertain to carrying an open container. The operator of a vehicle is the person responsible for complying with the provisions of this section that pertain to the storage of an open container.

(2) Carrying or storing a bottle, can, or other receptacle containing an alcoholic beverage that is open or has been opened, or whose seal is broken, or the contents of which have been partially removed, within a vehicle on the Pentagon Reservation is prohibited.

(3) This section does not apply to:

(i) An open container stored in the trunk of a vehicle or, if a vehicle is not equipped with a trunk, to an open container stored in some other portion of the vehicle designed for the storage of luggage and not normally occupied by or readily accessible to the operator or passengers; or

(ii) An open container stored in the living quarters of a motor home or camper;

(4) For the purpose of paragraph (a)(3)(i) of this section, a utility compartment or glove compartment is deemed to be readily accessible to the operator and passengers of a vehicle.

(c) *Operating under the influence of alcohol, drugs, or controlled substances.* (1) Operating or being in actual physical control of a vehicle is prohibited while:

(i) Under the influence of alcohol, a drug or drugs, a controlled substance or controlled substances, or any combination thereof, to a degree that renders the operator incapable of safe operation; or

(ii) The alcohol concentration in the operator's blood or breath is 0.08 grams of more of alcohol per 100 milliliters of blood or 0.08 grams or more of alcohol per 210 liters of breath. Provided, however, that if State law that applies to operating a vehicle while under the influence of alcohol establishes more restrictive limits of alcohol concentration in the operator's blood or breath, those limits supersede the limits specified in this paragraph.

(2) The provisions of paragraph (b)(1) of this section shall also apply to an operator who is or has been legally entitled to use alcohol or another drug.

(3) *Tests.* (i) At the request or direction of an authorized person who has probable cause to believe that an operator of a vehicle within the Pentagon Reservation has violated a provision of paragraph (b)(1) of this section, the operator shall submit to one or more tests of the blood, breath, saliva, or urine for the purpose of determining blood alcohol, drug, and controlled substance content.

(ii) Refusal by an operator to submit a test is prohibited and may result in detention and citation by an authorized person. Proof of refusal may be admissible in any related judicial proceeding.

(iii) Any test or tests for the presence of alcohol, drugs, and controlled substances shall be determined by and administered at the direction of an authorized person.

(iv) Any test shall be conducted by using accepted scientific methods and equipment of proven accuracy and reliability operated by personnel certified in its use.

(4) *Presumptive levels.* (i) The results of chemical or other quantitative tests are intended to supplement the elements of probable cause used as the basis for the arrest of an operator charged with a violation of this section. If the alcohol concentration in the operator's blood or breath at the time of the testing is less than the alcohol concentration specified in paragraph (b)(1)(ii) of this section, this fact does not give rise to any presumption that the operator is or is not under the influence of alcohol.

(ii) The provisions of paragraph (b)(4)(i) of this section are not intended to limit the introduction of any other competent evidence bearing upon the question of whether the operator, at the time of the alleged violation, was under the influence of alcohol, a drug or drugs, or a controlled substance or controlled substances, or any combination thereof.

§ 234.18 Enforcement of parking regulations.

Parking regulations for the Pentagon Reservation shall be enforced in accordance with Department of Defense Administrative Instruction Number 88 [2] and State law; violating such provisions is prohibited. A vehicle parked in any location without authorization, or parked contrary to the directions of posted signs or markings, shall be subject to removal at the owner's risk and expense, in addition to any penalties imposed. The Department of Defense assumes no responsibility for the payment of any fees or costs related to such removal which may be charged to the owner of the vehicle by the towing organization. This section may be supplemented from time to time with the approval of the Director, Washington Headquarters Services, or his designee, by the issuance and posting of such parking directives as may be required, and when so issued and posted such directive shall have the same force and effect as if made a part hereof.

§ 234.19 Penalties and effect on other laws.

(a) Whoever shall be found guilty of willfully violating any rule or regulation enumerated in this part is subject to the penalties imposed by Federal law for the commission of a Class B misdemeanor offense.

(b) Whoever violates any rule or regulation enumerated in this part is liable to the United States for a civil penalty of not more than $1,000.

(c) Nothing in this part shall be construed to abrogate any other Federal laws.

Dated: June 3, 1998.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 98–15189 Filed 6–12–98; 8:45 am]

BILLING CODE 5000–04–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA181–0069; FRL–6110–2]

Approval and Promulgation of Implementation Plans; California State Implementation Plan Revision, South Coast Air Quality Management District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

[2] See footnote 1 to § 234.3(a).

SUMMARY: EPA is finalizing the approval of revisions to the California State Implementation Plan (SIP) proposed in the **Federal Register** on November 8, 1996. The revisions concern rules from the South Coast Air Quality Management District. This approval action will incorporate these rules into the federally approved SIP. The intended effect of approving these rules is to regulate emissions of oxides of nitrogen (NO_X)and sulfur (SO_X) in accordance with the requirements of the Clean Air Act, as amended in 1990 (CAA or the Act). The rules concern the control of NO_X and SO_X emissions from facilities in the South Coast Air Quality Management District (SCAQMD) with four or more tons of NO_X or SO_X emissions per year from permitted equipment. The subject facilities, in order to meet annual emission reduction requirements, will participate in an economic incentive program (EIP) in order to reduce emissions at a significantly lower cost. Thus, EPA is finalizing the approval of these revisions into the California SIP under provisions of the CAA regarding EPA action on SIP submittals, SIPs for national primary and secondary ambient air quality standards and plan requirements for nonattainment areas.

EFFECTIVE DATE: This action is effective on July 15, 1998.

ADDRESSES: Copies of the rule revisions and EPA's evaluation report for each rule are available for public inspection at EPA's Region IX office during normal business hours. Copies of the submitted rule revisions are available for inspection at the following locations:

Rulemaking Office (AIR–4), Air Division, U.S. Environmental Protection Agency, Region 9, 75 Hawthorne Street, San Francisco, CA 94105

Environmental Protection Agency, Air Docket (6102), 401 ''M'' Street, SW, Washington, D.C. 20460

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 2020 ''L'' Street, Sacramento, CA 95812

South Coast Air Quality Management District, 21865 East Copley Drive, Diamond Bar, CA 91765

FOR FURTHER INFORMATION CONTACT: Andrew Steckel, Rulemaking Office (AIR–4), Air Division, U.S. Environmental Protection Agency, Region 9, 75 Hawthorne Street, San Francisco, CA 94105, Telephone: (415) 744–1185.

SUPPLEMENTARY INFORMATION:

I. Applicability

The rules being approved into the California SIP include the following rules from the South Coast Air Quality Management District (SCAQMD): Rule 2000, ''General''; Rule 2001, ''Applicability''; Rule 2002, ''Allocations for Oxides of Nitrogen (NO_X) and Oxides of Sulfur (SO_X) Emissions''; Rule 2004, ''Requirements''; Rule 2005 ''New Source Review for Reclaim''; Rule 2006 ''Permits''; Rule 2007 ''Trading Requirements''; Rule 2011 ''Requirements for Monitoring, Reporting, and Recordkeeping for Oxides of Sulfur (SO_X) Emissions''; Rule 2011—Appendix A, ''Protocol for Monitoring, Reporting, and Recordkeeping for Oxides of Sulfur (SO_X) Emissions''; Rule 2012 ''Requirements for Monitoring, Reporting, and Recordkeeping for Oxides of Nitrogen (NO_X) Emissions''; Rule 2012—Appendix A, ''Protocol for Monitoring, Reporting, and Recordkeeping for Oxides of Nitrogen (NO_X) Emissions'' and Rule 2015 ''Backstop Provisions.'' These rules were submitted by the California Air Resources Board (CARB) to EPA on August 28, 1996. These rules were adopted by the SCAQMD on December 7, 1995 (Rules 2000, 2001, 2002, 2004, 2006, 2007, 2011, 2012, and 2015) and May 10, 1996 (Rule 2005).

This **Federal Register** action for the South Coast Air Quality Management District excludes the Los Angeles County portion of the Southeast Desert Air Quality Management Area, otherwise known as the Antelope Valley Region in Los Angeles County, which is now under the jurisdiction of the Antelope Valley Air Pollution Control District as of July 1, 1997. [1]

II. Background

On November 8, 1996 in 61 FR 57834, EPA proposed to approve the SCAQMD rules listed in the applicability section of this document. These rules are part of the South Coast Air Quality Management District's Regulation Twenty, the NO_X and SO_X Regional Clean Air Incentives Market (RECLAIM). Revisions to Regulation Twenty were adopted by the South Coast Air Quality Management District to address all of the deficiencies which EPA identified as necessary to be addressed to fully approve the program. These rules were adopted as part of South Coast Air Quality Management District's efforts to achieve the National Ambient Air Quality Standards (NAAQS) for ozone and in response to section 182(f) NO_X RACT requirements of the Clean Air Act (CAA). A detailed discussion of the background for each of the above rules and nonattainment areas is provided in the Notice of Proposed Rulemaking (NPRM) cited above.

EPA has evaluated the above rules for consistency with the requirements of the CAA and EPA regulations and EPA interpretation of these requirements as expressed in the various EPA policy guidance documents referenced in the NPRM cited above. EPA has found that the rules meet the applicable EPA requirements. A detailed discussion of the rule provisions and evaluations has been provided in the NPRM and in the technical support document (TSD), dated August, 1996, which is available at EPA's Region 9 office. This final approval of the August 28, 1996 submittal supersedes the limited disapproval of the March 21, 1994 submittal and removes the possibility of sanctions associated with the final limited approval/limited disapproval published on November 8, 1996 (see 61 FR 57775). This final approval permanently stops the sanction clock.

III. Response to Public Comments

A 30-day public comment period was provided in 61 FR 57834. EPA received no comments.

IV. EPA Action

EPA is finalizing this action to approve the above rules for inclusion into the California SIP. EPA is approving the submittal under section 110(k)(3) as meeting the requirements of section 110(a) and part D of the CAA. This approval action will incorporate these rules into the federally approved SIP. The intended effect of approving these rules is to regulate emissions of NO_X and SO_X in accordance with the requirements of the CAA.

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

[1] The State has recently changed the names and boundaries of the air basins located within the Southeast Desert Modified AQMA. Pursuant to State regulation the Coachella-San Jacinto Planning Area is now part of the Salton Sea Air Basin (17 Cal. Code. Reg. section 60114); the Victor Valley/Barstow region in San Bernardino County and Antelope Valley Region in Los Angeles County is a part of the Mojave Desert Air Basin (17 Cal. Code. Reg. section 60109). In addition, in 1996 the California Legislature established a new local air agency, the Antelope Valley Air Pollution Control District, to have the responsibility for local air pollution planning and measures in the Antelope Valley Region (California Health & Safety Code § 40106).

relation to relevant statutory and regulatory requirements.

V. Administrative Requirements

A. Executive Order 12866

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

B. Regulatory Flexibility Act

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

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

C. Unfunded Mandates

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

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

D. Submission to Congress and the General Accounting Office

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

E. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by August 14, 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) concerns an environmental health or safety risk that EPA has reason to believe 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.

List of Subjects in 40 CFR Part 52

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

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

Dated: May 4, 1998.

Felicia Marcus,

Regional Administrator, Region IX.

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 F—California

2. Section 52.220 is amended by adding paragraphs (c)(240)(i)(A)(*2*), (*3*), and (*4*) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(240) * * *

(i) * * *

(A) * * *

(*2*) Rules 2000, 2001, 2002, 2004, 2006, 2007, 2011, 2011—Appendix A, 2012, 2012—Appendix A, and 2015 adopted on October 15, 1993 and amended on December 7, 1995.

(*3*) Rule 2012(j)(3)—Testing Guidelines (Protocol) for Alternative Nitrogen Oxides Emission Rate Determination at Process Units, dated March 31, 1994, adopted on December 7, 1995.

(*4*) Rule 2005 adopted on October 15, 1993 and amended on May 10, 1996.

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[FR Doc. 98–15844 Filed 6–12–98; 8:45 am]

BILLING CODE 6560–50–P

Proposed Rules

Federal Register
Vol. 63, No. 114
Monday, June 15, 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 TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–NM–325–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 747–100, –200, –300, –SP, and –400F 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 Boeing Model 747–100, –200, –300, –SP, and –400F series airplanes. Among other things, this proposal would require repetitive leak checks of the lavatory drain system and repair, if necessary; installation of a cap or flush/fill line ball valve on the flush/fill line; would require periodic seal changes; and replacement of any ''donut'' type valves installed in the waste drain system. This proposal is prompted by continuing reports of damage to engines and airframes, separation of engines from airplanes, and damage to property on the ground, caused by ''blue ice'' that forms from leaking lavatory drain systems on transport category airplanes and subsequently dislodges from the airplane fuselage. The actions specified by this proposed AD are intended to prevent damage to engines, airframes, and property on the ground that is associated with the problems of ''blue ice'' that forms from leaking lavatory drain systems on transport category airplanes and subsequently dislodges from the airplane fuselage.

DATES: Comments must be received by July 30, 1998.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 97–NM–325–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.

This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Don Eiford, Aerospace Engineer, Systems and Equipment Branch, ANM–130S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington; telephone (425) 227–2788; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION:

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 97–NM–325–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 97–NM–325–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

Over the past several years, the FAA has received numerous reports of leakage from the lavatory service systems on in-service transport category airplanes that resulted in the formation of ''blue ice'' on the fuselage. In some instances, the ''blue ice'' subsequently dislodged from the fuselage and was ingested into an engine. In several of these incidents, the ingestion of blue ice into an engine resulted in the loss of an engine fan blade, severe engine damage, and the inflight shutdown of the engine. In two cases, the loads created by the ''blue ice'' being ingested into the engine resulted in the engine being physically torn from the airplane. Damage to an engine, or the separation of an engine from the airplane, could result in reduced controllability of the airplane.

The FAA also has received reports of at least three incidents of damage to the airframe of various models of transport category airplanes that was caused by foreign objects dislodged from the forward toilet drain valve and flush/fill line. One report was of a dent on the right horizontal stabilizer leading edge on a Boeing Model 737 series airplane that was caused by ''blue ice'' that had formed from leakage through a flush/fill line; in this case, the flush/fill cap was missing from the line at the forward service panel. Numerous operators have stated that leakage from the flush/fill line is a significant source of problems associated with ''blue ice.'' Such damage caused by ''blue ice'' could adversely affect the integrity of the fuselage skin or surface structures.

Additionally, there have been numerous reports of ''blue ice'' dislodging from airplanes and striking houses, cars, buildings, and other occupied areas on the ground. Although there have been no reports of any person being struck by ''blue ice,'' the FAA considers that the large number of reported cases of ''blue ice'' falling from lavatory drain systems is sufficient to support the conclusion that ''blue ice'' presents an unsafe condition to people on the ground. Demographic studies have shown that population density has increased around airports, and probably will continue to increase. These are populations that are at greatest risk of

damage and injury due to ''blue ice'' dislodging from an airplane during descent. Without actions to ensure that leaks from the lavatory drain systems are detected and corrected in a timely manner, ''blue ice'' incidents could go unchecked and eventually someone may be struck, perhaps fatally, by falling ''blue ice.''

Current Rules

On November 9, 1994, the FAA issued AD 94–23–10, amendment 39–9073 (59 FR 59124, November 16, 1994), which is applicable to Boeing Model 727 series airplanes. That AD contains numerous requirements that are similar to those proposed in this action, which is applicable to Model 747 series airplanes. In fact, several of the proposed requirements of this action are based on alternative methods of compliance that the FAA had approved previously for compliance with AD 94–23–10.

The FAA is currently considering additional rulemaking to address the problems associated with ''blue ice'' on other transport category airplanes.

Discussion of the Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the FAA is proposing this AD, which would require the following actions:

Paragraph (a) of the proposed AD would require periodic replacement of the valve seals of each lavatory drain system with new valve seals. This paragraph also would require repetitive leak tests of the lavatory dump valve and drain valve (either service panel or in-line drain valve). The leak test of panel valves would be required to be performed with a minimum of 3 PSID applied across the valve. If any leak is discovered during the leak tests, operators would be required either to repair the leak and retest it, or drain the lavatory system and placard it inoperative until repairs can be made.

In cases where the panel valve has both an inner seal and an outer cap seal, in lieu of pressure testing of the outer cap seal, operators are provided with the option of performing a visual inspection for damage or wear of the outer cap seal and seal surface. Any damaged parts detected would be required to be repaired or replaced prior to further flight, or the lavatory drained and placarded inoperative until repairs can be made.

Additionally, the flush/fill line anti-siphon valve would be required to be leak checked. Seals of the anti-siphon (check) valve, flush/fill line cap, or flush/fill line ball valve would be required to be replaced periodically.

Paragraph (b) of the proposed AD would require that all operators install a lever/lock cap on the flush/fill lines for all service panels, or install a flush/fill ball valve Kaiser Electroprecision part number series 0062–0009 on the flush/fill lines for all lavatories.

Paragraph (c) of the proposed AD would require that, before an operator places an airplane into service, a schedule for accomplishment of the leak tests required by this AD shall be established. This provision is intended to ensure that transferred airplanes are inspected in accordance with the AD on the same basis as if there were continuity in ownership, and that scheduling of the leak tests for each airplane is not delayed or postponed due to a transfer of ownership. Airplanes that have previously been subject to the AD would have to be checked in accordance with either the previous operator's or the new operator's schedule, whichever would result in the earlier accomplishment date for that leak test. Other airplanes would have to be inspected before an operator could begin operating them or in accordance with a schedule approved by the FAA Principal Maintenance Inspector (PMI), but within a period not to exceed 200 flight hours.

Economic Impact

There are approximately 711 Model 747 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 201 airplanes of U.S. registry and 89 U.S. operators would be affected by this proposed AD.

The proposed waste drain system leak test and outer cap inspection would take approximately 6 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact on U.S. operators of the waste drain system leak test and outer cap inspection is estimated to be $72,360, or $360 per airplane, per test/inspection.

Certain airplanes (i.e., those that have ''donut'' type drain valves installed) may be required to be leak tested as many as 15 times each year. Certain other airplanes having other valve configurations would be required to be leak tested as few as 1 time each year. Based on these figures, the annual (recurring) cost impact of the required repetitive leak tests on U.S. operators is estimated to be between $360 and $5,400 per airplane per year.

With regard to replacement of ''donut'' type drain valves, the cost of a new valve is approximately $1,200. However, the number of leak tests for an airplane that is flown an average of 3,000 flight hours a year is thereby reduced from 15 tests to 3 tests. The cost reduction because of the number of tests required is approximately equal to the cost of the replacement valve. Therefore, no additional cost would be incurred.

The FAA estimates that it would take approximately 1 work hour per airplane lavatory drain to accomplish a visual inspection of the service panel drain valve cap/door seal and seal mating surfaces, at an average labor rate of $60 per work hour. As with leak tests, certain airplanes would be required to be visually inspected as many as 15 times or as few as 3 times each year. Based on these figures, the annual (recurring) cost impact of the required repetitive visual inspections on U.S. operators is estimated to be between $180 and $900 per airplane per year.

The proposed installation of the flush/fill line cap would take approximately 1 work hour per cap to accomplish, at an average labor rate of $60 per work hour. The cost of required parts would be $275 per cap. There are an average of 4 caps per airplane. Based on these figures, the cost impact on U.S. operators of these proposed requirements of this AD is estimated to be $269,340, or $1,340 per airplane, per replacement cycle.

The seal replacements of the drain valves required by paragraph (a) of this AD would require approximately 2 work hours to accomplish, at an average labor cost of $60 per hour. The cost of required parts would be $200 per each seal change. Based on these figures, the cost impact on U.S. operators of these proposed requirements of this AD is estimated to be $64,320, or approximately $320 per airplane per replacement.

The number of required work hours, as indicated above, is presented as if the accomplishment of the actions proposed in this AD were to be conducted as ''stand alone'' actions. However, in actual practice, these actions could be accomplished coincidentally or in combination with normally scheduled airplane inspections and other maintenance program tasks. Therefore, the actual number of necessary ''additional'' work hours would be minimal in many instances. Additionally, any costs associated with special airplane scheduling should be minimal.

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

The FAA recognizes that the obligation to maintain aircraft in an airworthy condition is vital, but sometimes expensive. Because AD's require specific actions to address specific unsafe conditions, they appear to impose costs that would not otherwise be borne by operators. However, because of the general obligation of operators to maintain aircraft in an airworthy condition, this appearance is deceptive. Attributing those costs solely to the issuance of this AD is unrealistic because, in the interest of maintaining safe aircraft, prudent operators would accomplish the required actions even if they were not required to do so by the AD.

A full cost-benefit analysis has not been accomplished for this proposed AD. As a matter of law, in order to be airworthy, an aircraft must conform to its type design and be in a condition for safe operation. The type design is approved only after the FAA makes a determination that it complies with all applicable airworthiness requirements. In adopting and maintaining those requirements, the FAA has already made the determination that they establish a level of safety that is cost-beneficial. When the FAA, as in this proposed AD, makes a finding of an unsafe condition, this means that the original cost-beneficial level of safety is no longer being achieved and that the required actions are necessary to restore that level of safety. Because this level of safety has already been determined to be cost-beneficial, a full cost-benefit analysis for this proposed AD would be redundant and unnecessary.

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:

Boeing: Docket 97–NM–325–AD.

Applicability: All Model 747–100, –200, –300, –SP, and –400F 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 (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 engine damage, airframe damage, and/or hazard to persons or property on the ground as a result of ''blue ice'' that has formed from leakage of the lavatory drain system or flush/fill systems and dislodged from the airplane, accomplish the following:

(a) Accomplish the applicable requirements of paragraphs (a)(1) through (a)(9) of this AD at the time specified in each paragraph. If the waste drain system incorporates more than one type of valve, only one of the waste drain system leak test procedures (the one that applies to the equipment with the longest leak test interval) must be conducted at each service panel location. The waste drain system valve leak tests specified in this AD shall be performed in accordance with the following requirements: Fluid shall completely cover the upstream end of the valve being tested; the direction of the 3 pounds per square inch differential pressure (PSID) shall be applied across the valve in the same direction as occurs in flight; the other waste drain system valves shall be open; and the minimum time to maintain the differential pressure shall be 5 minutes. Any revision of the seal change intervals or leak test intervals must be approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate.

(1) Replace the valve seals with new valve seals in accordance with the applicable schedule specified in paragraphs (a)(1)(i), (a)(1)(ii), and (a)(1)(iii) of this AD.

(i) For each lavatory drain system that has an in-line drain valve installed, Kaiser Electroprecision part number series 2651–278 or 2651–357: Replace the seals within 5,000 flight hours after the effective date of this AD, or within 48 months after the last documented seal change, whichever occurs later. Thereafter, repeat the replacement of the seals at intervals not to exceed 48 months.

(ii) For each lavatory drain system that has a Pneudraulics part number series 9527 valve: Replace the seals within 5,000 flight hours after the effective date of this AD, or within 18 months of the last documented seal change, whichever occurs later. Thereafter, repeat the replacement of the seals at intervals not to exceed 18 months or 6,000 flight hours, whichever occurs later.

(iii) For each lavatory drain system that has any other type of drain valve: Replace the seals within 5,000 flight hours after the effective date of this AD, or within 18 months after the last documented seal change, whichever occurs later. Thereafter, repeat the replacement of the seals at intervals not to exceed 18 months.

(2) For each lavatory drain system that has an in-line drain valve installed, Kaiser Electroprecision part number series 2651–278: Within 4,500 flight hours after the effective date of this AD, and thereafter at intervals not to exceed 4,500 flight hours, accomplish the procedures specified in paragraphs (a)(2)(i) and (a)(2)(ii) of this AD:

(i) Conduct a leak test of the toilet tank dump valve (in-tank valve that is spring loaded closed and operable by a T-handle at the service panel) and the in-line drain valve. The toilet tank dump valve leak test must be performed by filling the toilet tank with a minimum of 10 gallons of water/rinsing fluid and testing for leakage after a period of 5 minutes. Take precautions to avoid overfilling the tank and spilling fluid into the airplane. The in-line drain valve leak test must be performed with a minimum of 3 PSID applied across the valve.

(ii) If a service panel valve or cap is installed, perform a visual inspection of the service panel drain valve outer cap/door seal and the inner seal (if the valve has an inner door with a second positive seal), and the seal mating surfaces for wear or damage that may allow leakage.

(3) For each lavatory drain system that has a service panel drain valve installed, Pneudraulics part number series 9527: Within 2,000 flight hours after the effective date of this AD, accomplish the requirements of paragraphs (a)(3)(i) and (a)(3)(ii) of this AD. Thereafter, repeat the leak tests at intervals not to exceed 2,000 flight hours.

(i) Conduct leak tests of the toilet tank dump valve and service panel drain valve. The toilet tank dump valve leak test must be performed by filling the toilet tank with a minimum of 10 gallons of water/rinsing fluid and testing for leakage after a period of 5 minutes. Take precautions to avoid overfilling the tank and spilling fluid into the airplane. The leak test of the service panel drain valve must be performed with a minimum of 3 PSID applied across the valve inner door/closure device.

(ii) Perform a visual inspection of the outer cap/door and seal mating surface for wear or damage that may cause leakage.

(4) For each lavatory drain system that has a service panel drain valve installed, Kaiser Electroprecision part number series 0218–0032 or 2651–357 or Shaw Aero part number/serial number as listed in Table 1 of this AD: Within 1,000 flight hours after the effective date of this AD, and thereafter at intervals not to exceed 1,000 flight hours, accomplish the requirements of paragraphs (a)(4)(i) and (a)(4)(ii) of this AD:

TABLE 1.—SHAW AERO VALVES APPROVED FOR 1,000 FLIGHT HOUR LEAK TEST INTERVAL

Shaw waste drain valve part number	Serial numbers of part number valve approved for 1,000-hour leak test interval
331 Series, 332 Series	All.
10101000B–A	None.
10101000B–A–1	0207–0212, 0219, 0226 and higher.
10101000BA2	0130 and higher.
10101000C–A	None.
10101000C–A–1	0277 and higher.
10101000CN OR C–N	3649 and higher.
Certain 10101000B valves	Any of these ''B'' series valves that incorporate the improvements of Shaw Service Bulletin 10101000B–38–1, dated October 7, 1994, and are marked ''SBB38–1–58.''
Certain 10101000C valves	Any of these ''C'' series valves that incorporate the improvements of Shaw Service Bulletin 10101000C–38–2 dated October 7, 1994, and are marked ''SBC38–2–58.''

Note 2: Table 1 is a comprehensive list of all approved Shaw valves, including those valves approved by Parts Manufacturer Approval (PMA) or Supplemental Type Certificate (STC) for installation on Boeing Model 747 series airplanes.

(i) Conduct a leak test of the toilet tank dump valve and service panel drain valve. The toilet tank dump valve leak test must be performed by filling the toilet tank with a minimum of 10 gallons of water/rinsing fluid and testing for leakage after a period of 5 minutes. Take precautions to avoid overfilling the tank and spilling fluid into the airplane. The service panel drain valve leak test must be performed with a minimum of 3 PSID applied across the valve inner door/closure device.

(ii) For each valve, except for Kaiser Electroprecision valve part number series 2651–357, perform a visual inspection of the outer cap/door and seal mating surface for wear or damage that may cause leakage.

(5) For each lavatory drain system that has a service panel drain valve installed, Kaiser Electroprecision part number series 0218–0026; or Shaw Aero Devices part number series 10101000B or 10101000C [except as specified in paragraph (a)(4) of this AD]: Within 600 flight hours after the effective date of this AD, and thereafter at intervals not to exceed 600 flight hours, accomplish the requirements of paragraphs (a)(5)(i) and (a)(5)(ii) of this AD:

(i) Conduct a leak test of the dump valve and the service panel drain valve. The leak test of the dump valve must be performed by filling the toilet tank with a minimum of 10 gallons of water/rinsing fluid and testing for leakage after a period of 5 minutes. Take precautions to avoid overfilling the tank and spilling fluid on the airplane. The service panel drain valve leak test must be performed with a minimum 3 PSID applied across the valve inner door/closure device.

(ii) Perform a visual inspection of the outer cap/door and seal mating surface for wear or damage that may cause leakage.

(6) For each lavatory drain system with a lavatory drain system valve that incorporates either ''donut'' plug, Kaiser Electroprecision part number 4259–20 or 4259–31; Kaiser Roylyn/Kaiser Electroprecision cap/flange part numbers 2651–194C, 2651–197C, 2651–216, 2651–219, 2651–235, 2651–256, 2651–258, 2651–259, 2651–260, 2651–275, 2651–282, 2651–286; Shaw Aero Devices assembly part number 0008–100; or other FAA-approved equivalent parts; accomplish the requirements of paragraphs (a)(6)(i), (a)(6)(ii), and (a)(6)(iii) of this AD at the times specified in those paragraphs. For the purposes of this paragraph [(a)(6)], ''FAA-approved equivalent part'' means either a ''donut'' plug which mates with the cap/flange part numbers listed above, or a cap/flange which mates with the ''donut'' plug part numbers listed above, such that the cap/flange and ''donut'' plug are used together as an assembled valve.

(i) Within 200 flight hours after the effective date of this AD, and thereafter at intervals not to exceed 200 flight hours, conduct leak tests of the toilet tank dump valve and the service panel drain valve. The leak test of the toilet tank dump valve must be performed by filling the toilet tank with a minimum of 10 gallons of water/rinsing fluid and testing for leakage after a period of 5 minutes. Take precautions to avoid overfilling the tank and spilling fluid on the airplane. The service panel drain valve leak test must be performed with a minimum 3 PSID applied across the valve.

(ii) Perform a visual inspection of the outer door/cap and seal mating surface for wear or damage that may cause leakage. This inspection shall be accomplished in conjunction with the leak tests of paragraph (a)(6)(i).

(iii) Within 5,000 flight hours after the effective date of this AD, replace the donut valve [part numbers per paragraph (a)(6) of this AD] with another type of FAA-approved valve. Following installation of the replacement valve, perform the appropriate leak tests and seal replacements at the intervals specified for that replacement valve, as applicable.

(7) For each lavatory drain system not addressed in paragraphs (a)(2), (a)(3), (a)(4), (a)(5), and (a)(6) of this AD: Within 200 flight hours after the effective date of this AD, and thereafter at intervals not to exceed 200 flight hours, accomplish the requirements of paragraphs (a)(7)(i) and (a)(7)(ii) of this AD:

(i) Conduct a leak test of the toilet tank dump valve and the service panel drain valve. The toilet tank dump valve leak test must be performed by filling the toilet tank with a minimum of 10 gallons of water/rinsing fluid and testing for leakage after a period of 5 minutes. Take precautions to avoid overfilling the tank and spilling fluid on the airplane. The service panel drain valve leak test must be performed with a minimum 3 PSID applied across the valve inner door/closure device.

(ii) Perform a visual inspection of the outer cap/door and seal mating surface for wear or damage that may cause leakage.

(8) For flush/fill lines: Within 5,000 flight hours after the effective date of this AD, accomplish the requirements of paragraph (a)(8)(i) or (a)(8)(ii), as applicable; and paragraph (a)(8)(iii) of this AD. Thereafter, repeat the requirements at intervals not to exceed 5,000 flight hours, or 48 months after the last documented seal change, whichever occurs later.

(i) If a lever lock cap is installed on the flush/fill line of the subject lavatory, replace the seals on the toilet tank anti-siphon (check) valve and the flush/fill line cap.

(ii) If a flush/fill ball valve, Kaiser Electroprecision part number series 0062–0009, is installed on the flush/fill line of the subject lavatory, replace the seals in the flush/fill ball valve and the toilet tank anti-siphon valve.

(iii) Leak test the toilet tank anti-siphon valve by filling the toilet tank with water/rinsing fluid to a level such that the bowl is approximately half full (at least 2 inches above the flapper in the bowl.) Apply 3 PSID across the valve in the same direction as

occurs in flight. If there is a cap/valve at the flush/fill line port, the cap/valve must be removed/open during the test. Check for leakage at the flush/fill line port for a period of 5 minutes.

(9) As a result of the leak tests and inspections required by paragraph (a) of this AD, or if evidence of leakage is found at any other time, accomplish the requirements of paragraph (a)(9)(i), (a)(9)(ii), or (a)(9)(iii), as applicable.

(i) If a leak is discovered, prior to further flight, repair the leak. Prior to further flight after repair, perform the appropriate leak test, as applicable. Additionally, prior to returning the airplane to service, clean the surfaces adjacent to where the leakage occurred to clear them of any horizontal fluid residue streaks; such cleaning must be to the extent that any future appearance of a horizontal fluid residue streak will be taken to mean that the system is leaking again.

Note 3: For purposes of this AD, ''leakage'' is defined as any visible leakage, if observed during a leak test. At any other time (than during a leak test), ''leakage'' is defined as the presence of ice in the service panel, or horizontal fluid residue streaks/ice trails originating at the service panel. The fluid residue is usually, but not necessarily, blue in color.

(ii) If any worn or damaged seal is found, or if any damaged seal mating surface is found, prior to further flight, repair or replace it in accordance with the valve manufacturer's maintenance manual.

(iii) In lieu of performing the requirements of paragraph (a)(9)(i) or (a)(9)(ii): Prior to further fight, drain the affected lavatory system and placard the lavatory inoperative until repairs can be accomplished.

(b) For all airplanes: Unless accomplished previously, within 5,000 flight hours after the effective date of this AD, perform the actions specified in paragraph (b)(1) or (b)(2) of this AD:

(1) Install an FAA-approved lever/lock cap on the flush/fill lines for all lavatories. Or

(2) Install a flush/fill ball valve Kaiser Electroprecision part number series 0062–0009 on the flush/fill lines for all lavatories.

(c) For any affected airplane acquired after the effective date of this AD: Before any operator places into service any airplane subject to the requirements of this AD, a schedule for the accomplishment of the leak tests required by this AD shall be established in accordance with either paragraph (c)(1) or (c)(2) of this AD, as applicable. After each leak test has been performed once, each subsequent leak test must be performed in accordance with the new operator's schedule, in accordance with paragraph (a) of this AD.

(1) For airplanes that have been maintained previously in accordance with this AD, the first leak test to be performed by the new operator must be accomplished in accordance with the previous operator's schedule or with the new operator's schedule, whichever results in the earlier accomplishment date for that leak test.

(2) For airplanes that have not been maintained previously in accordance with this AD, the first leak test to be performed by the new operator must be accomplished prior to further flight, or in accordance with a schedule approved by the FAA Prinicipal Maintenance Inspector (PMI), but within a period not to exceed 200 flight hours.

(d) Alternative method(s) of compliance with this AD: 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, Seattle ACO. Operators shall submit their requests through an appropriate FAA PMI, who may add comments and then send it to the Manager, Seattle ACO.

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

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

Issued in Renton, Washington, on June 8, 1998.

John J. Hickey,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–15783 Filed 6–12–98; 8:45 am]

BILLING CODE 4910–13–U

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 240

[Release No. 34–40077, International Series Release No. 1139, File No. S7–15–98]

RIN 3235–AH46

Exemption of the Securities of the Kingdom of Belgium Under the Securities Exchange Act of 1934 for Purposes of Trading Futures Contracts on Those Securities

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rule.

SUMMARY: The Commission proposes for comment an amendment to Rule 3a12–8 (''Rule'') that would designate debt obligations issued by the Kingdom of Belgium (''Belgium'') as ''exempted securities'' for the purpose of marketing and trading of futures contracts on those securities in the United States. The amendment is intended to permit futures trading on the sovereign debt of Belgium.

DATES: Comments should be submitted by July 15, 1998.

ADDRESSES: All comments should be submitted in triplicate and addressed to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Comments also may be submitted electronically at the following E-mail address: rule-comments@sec.gov. All comments should refer to File No. S7–15–98; this file number should be included on the subject line if e-mail is used. Comment letters will be available for public inspection and copying at the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549. Electronically submitted comment letters will also be posted on the Commission's Internet web site (http://www.sec.gov).

FOR FURTHER INFORMATION CONTACT: Joshua Kans, Attorney, Office of Market Supervision (''OMS''), Division of Market Regulation (''Division''), Securities and Exchange Commission (Mail Stop 10–1), 450 Fifth Street, NW., Washington, DC 20549, at 202/942–0079.

SUPPLEMENTARY INFORMATION:

I. Introduction

Under the Commodity Exchange Act (''CEA''), it is unlawful to trade a futures contract on any individual security unless the security in question is an exempted security (other than a municipal security) under the Securities Act of 1933 (''Securities Act'') or the Securities Exchange Act of 1934 (''Exchange Act''). Debt obligations of foreign governments are not exempted securities under either of these statutes. The Securities and Exchange Commission (''SEC'' or ''Commission''), however, has adopted Rule 3a12–8 (17 CFR 240.3a12–8) (''Rule'') under the Exchange Act to designate debt obligations issued by certain foreign governments as exempted securities under the Exchange Act solely for the purpose of marketing and trading futures contracts on those securities in the United States. As amended, the foreign governments currently designated in the Rule are Great Britain, Canada, Japan, Australia, France, New Zealand, Austria, Denmark, Finland, the Netherlands, Switzerland, Germany, the Republic of Ireland, Italy, Spain, Mexico, Brazil, Argentina, and Venezuela (the ''Designated Foreign Governments''). As a result, futures contracts on the debt obligations of these countries may be sold in the United States, as long as the other terms of the Rule are satisfied.

The Commission today is soliciting comments on a proposal to amend Rule 3a12–8 to add the debt obligations of the Kingdom of Belgium (''Belgium'') to the list of Designated Foreign Governments whose debt obligations are exempted by Rule 3a12–8. To qualify for the exemption, futures contracts on the debt obligations of Belgium would have to

meet all the other existing requirements of the Rule.

II. Background

Rule 3a12–8 was adopted in 1984 [1] pursuant to the exemptive authority in Section 3(a)(12) of the Exchange Act in order to provide a limited exception from the CEA's prohibition on futures overlying individual securities.[2] As originally adopted, the Rule provided that the debt obligations of Great Britain and Canada would be deemed to be exempted securities, solely for the purpose of permitting the offer, sale, and confirmation of ''qualifying foreign futures contracts'' on such securities. The securities in question were not eligible for the exemption if they were registered under the Securities Act or were the subject of any American depositary receipt so registered. A futures contract on the covered debt obligation under the Rule is deemed to be a ''qualifying foreign futures contract'' if the contract is deliverable outside the United States and is traded on a board of trade.[3]

The conditions imposed by the Rule were intended to facilitate the trading of futures contracts on foreign government securities in the United States while requiring offerings of foreign government securities to comply with the federal securities laws. Accordingly, the conditions set forth in the Rule were designed to ensure that, absent registration, a domestic market in unregistered foreign government securities would not develop, and that markets for futures on these instruments would not be used to avoid the securities law registration requirements. In particular, the Rule was intended to ensure that futures on exempted sovereign debt did not operate as a surrogate means of trading the unregistered debt.

Subsequently, the Commission amended the Rule to include the debt securities issued by Japan, Australia, France, New Zealand, Austria, Denmark, Finland, the Netherlands, Switzerland, Germany, Ireland, Italy, Spain, Mexico and, most recently, Brazil, Argentina, and Venezuela.[4]

III. Discussion

Belfox c.v./s.c. (''Belfox''), the Belgian company recognized as the institution to organize and administer the Belgian Futures and Options Exchange (''BELFOX''), has proposed that the Commission amend Rule 3a12–8 to include the sovereign debt of Belgium.[5] BELFOX currently lists two futures contracts [6] overlying Belgian public debt securities, and wishes to market and make trading of those products available to U.S. investors.

Under the proposed amendment, the existing conditions set forth in the Rule (*i.e.*, that the underlying securities not be registered in the United States, the futures contracts require delivery outside the United States, and the contracts be traded on a board of trade) would continue to apply. Belfox has represented that (1) the securities underlying the futures contracts listed on BELFOX are not registered in the United States; (2) the two futures contracts overlying Belgian public debt securities which BELFOX intends to market to U.S. investors are listed exclusively on BELFOX, located in Brussels, Belgium; and (3) when the BELFOX listed futures contracts expire, the underlying securities are delivered against payment through the clearing system of the National Bank of Belgium.[7]

In the most recent determinations to amend the Rule adding Mexico, Brazil, Argentina, and Venezuela, the Commission considered primarily whether an active and liquid secondary trading market existed for the particular sovereign debt of these countries.[8] Prior to the addition of those countries to the Rule, the Commission considered principally whether the particular sovereign debt had been rated in one of the two highest rating categories [9] by at least two nationally recognized statistical rating organizations (''NRSROs'').[10] The Commission will continue to consider the existence of a high credit rating in its evaluation of an application to amend the Rule, because the Commission believes that a high debt rating provides indirect evidence of

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[1] *See* Securities Act Release No. 20708 (''Original Adopting Release'') (March 2, 1984), 49 FR 8595 (March 8, 1984); Securities Exchange Act Release No. 19811 (''Original Proposing Release'') (May 25, 1983), 48 FR 24725 (June 2, 1983).

[2] In approving the Futures Trading Act of 1982, Congress expressed its understanding that neither the SEC nor the Commodity Futures Trading Commission (''CFTC'') had intended to bar the sale of futures on debt obligations of the United Kingdom of Great Britain and Northern Ireland to U.S. persons, and its expectation that administrative action would be taken to allow the sale of such futures contracts in the United States. *See* Original Proposing Release, *supra* note 1, 48 FR at 24725 (citing 128 Cong. Rec. H7492 (daily ed. September 23, 1982) (statements of Representatives Daschle and Wirth)).

[3] As originally adopted, the Rule required that the board of trade be located in the country that issued the underlying securities. This requirement was eliminated in 1987. *See* Securities Exchange Act Release No. 24209 (March 12, 1987), 52 FR 8875 (March 20, 1987).

[4] As originally adopted, the Rule applied only to British and Canadian government securities. *See* Original Adopting Release, *supra* note 1. In 1986, the Rule was amended to include Japanese government securities. *See* Securities Exchange Act Release No. 23423 (July 11, 1986), 51 FR 25996 (July 18, 1986). In 1987, the Rule was amendmed to include debt securities issued by Australia, France and New Zealand. *See* Securities Exchange Act Release No. 25072 (October 29, 1987), 52 FR 42277 (November 4, 1987). In 1988, the Rule was amended to include debt securities issued by Austria, Denmark, Finland, the Netherlands, Switzerland, and West Germany. *See* Securities Exchange Act Release No. 26217 (October 26, 1988), 53 FR 43860 (October 31, 1988). In 1992 the Rule was again amended to (1) include debt securities offered by the Republic of Ireland and Italy, (2) change the country designation of ''West Germany'' to the ''Federal Republic of Germany,'' and (3) replace all references to the informal names of the countries listed in the Rule with references to their official names. *See* Securities Exchange Act Release No. 30166 (January 8, 1992), 57 FR 1375 (January 14, 1992). In 1994, the Rule was amended to include debt securities issued by the Kingdom of Spain. *See* Securities Exchange Act Release No. 34908 (October 27, 1994), 59 FR 54812 (November 2, 1994). In 1995, the Rule was amended to include the debt securities of Mexico. *See* Securities Exchange Act Release No. 36530 (November 30, 1995), 60 FR 62323 (December 6, 1995). Finally, in 1996, the Rule was amended to include debt securities issued by the Federative Republic of Brazil, the Republic of Argentina, and the Republic of Venezuela. *See* Securities Exchange Act Release No. 36940 (March 7, 1996) 61 FR 10271 (March 13, 1996).

[5] *See* Letters from Jos Schmitt, President and Chief Executive Officer, Belfox, to Arthur Levitt, Jr., Chairman, Commission, dated June 27, 1997, to Howard L. Kramer, Senior Associate Director, Division, Commission, dated February 10, 1998 (collectively ''Belfox petition'').

[6] The Belgian long-term government bond future (''BGB future'') and the Belgian medium-term government bond future (''BMB future''). *Id.*

[7] The Belgian public debt securities underlying the two futures contracts traded on BELFOX are not represented by physical certificates, but appear as entries in an electronic register held by the National Bank of Belgium. *Id.*

[8] *See, e.g.*, Securities Exchange Act Release No. 36530 (November 30, 1995), 60 FR 62323 (December 6, 1995) (amending the Rule to add Mexico because the Commission believed that as a whole, the market for Mexican sovereign debt was sufficiently liquid and deep for the purposes of the Rule); Securities Exchange Act Release No. 36940 (March 7, 1996), 61 FR 10271 (March 13, 1996) (amending the Rule to add Brazil, Argentina and Venezuela because the Commission believed that the market for the sovereign debt of those countries was sufficiently liquid and deep for the purposes of the Rule).

[9] The two highest categories used by Moody's Investor Services (''Moody's'') for long-term debt are ''Aaa'' and ''Aa.'' *See* Moody's Investors Service, Rating Definitions (http://www.moodys.com/ratings/ratdefs.htm). The two highest categories used by Standard and Poor's (''S&P'') for long-term debt are ''AAA'' and ''AA.'' *See* Standard & Poor's Global Rating Handbook, ''Issue Credit Rating Definitions'' and ''Issuer Credit Rating Definitions'' (February 1998) (submitted as part of Belfox's petition).

[10] *See, e.g.*, Securities Exchange Act Release No. 30166 (January 6, 1992) 57 FR 1375 (January 14, 1992) (amending the Rule to include debt securities issued by Ireland and Italy—Ireland's long-term sovereign debt was rated Aa3 by Moody's and AA– by S&P, and Italy's long-term sovereign debt was rated Aaa by Moody's and AA+ by S&P); and Securities Exchange Act Release No. 34908 (October 27, 1994), 59 FR 54812 (November 2, 1994) (amending the Rule to include Spain, which had long-term debt ratings of Aa2 from Moody's and AA from S&P)

an active and liquid secondary trading market.[11] Absent a high debt rating, the Commission would consider a debt instrument's historical trading data.

Belgian long-term debt meets the debt rating standard. Moody's Investors Service (''Moody's'') has assigned an official rating of Aa1 to long-term local currency denominated [12] Belgian government securities and to long-term foreign currency denominated Belgian government securities.[13] Standard & Poor's (''S&P'') has assigned the Kingdom of Belgium a long-term local currency issuer credit rating of AAA and a long-term foreign currency issuer credit rating of AA+.[14]

The Commission also observes that there appears to exist an active and liquid trading market for Belgian issued debt instruments, based on the representations in Belfox's petition.[15] The total Belgian public debt outstanding[16] was equivalent to approximately US$258.92 billion as of December 31, 1996, approximately US$256.86 billion in 1995, and approximately US$251.64 billion in 1994. Linear bonds (''Obligations Linéaires—Lineaire Obligaties'' or ''OLOs''),[17] which are the only type of Belgian public debt instruments underlying the two futures contracts (BGB and BMB) currently listed on BELFOX, represented 53.6 percent of the total amount of Belgian public debt outstanding in 1996, 50.6 percent in 1995 and 44.6 percent in 1994.[18] At the end of the first quarter of 1997, the total amount of outstanding OLOs was equivalent to approximately US$139.89 billion. The total value traded in OLOs on an annual basis was equivalent to approximately US$1.86 trillion in 1996, US$1.7 trillion in 1995, and US$1.3 trillion in 1994. The average value traded in OLOs on a daily basis was equivalent to approximately US$7.44 billion in 1996, US$6.79 billion in 1995, and US$5.23 billion in 1994. The average number of trades on a daily basis involving OLOs was approximately 571, 614, and 636 for 1996, 1995 and 1994, respectively.[19]

In light of the above data, the Commission preliminarily believes that the debt obligations of Belgium should be subject to the same regulatory treatment under the Rule as the debt obligations of the Designated Foreign Governments. Moreover, the trading of futures on the sovereign debt of Belgium should provide U.S. investors with a vehicle for hedging the risks involved in the trading of the underlying sovereign debt of Belgium.

In addition, the Commission preliminarily believes that the proposed amendment offers potential benefits for U.S. investors. If adopted, the proposed amendment would allow U.S. and foreign boards of trade to offer in the United States, and U.S. investors to trade, a greater range of futures contracts on foreign government debt obligations. The Commission does not anticipate that the proposed amendment would result in any direct cost for U.S. investors or others. The proposed amendment would impose no recordkeeping or compliance burdens, and merely would provide a limited purpose exemption under the federal securities laws. The restrictions imposed under the proposed amendment are identical to the restrictions currently imposed under the terms of the Rule and are designed to protect U.S. investors.

Section 23(a)(2) of the Exchange Act[20] requires the Commission in amending rules to consider the potential impact on competition. Because the proposal is intended to expand the range of financial products available in the United States, the Commission preliminarily believes that the proposed amendment to the Rule will not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act.

IV. Request for Comments

The Commission seeks comments on the desirability of designating the debt securities of Belgium as exempted securities under Rule 3a12–8. Comments should address whether the trading or other characteristics of Belgium's sovereign debt warrant an exemption for purposes of futures trading. Commentators may wish to discuss whether there are any legal or policy reasons for distinguishing between Belgium and the Designated Foreign Governments for purposes of the Rule. The Commission also solicits comments on the costs and benefits of the proposed amendment to Rule 3a12–8. Specifically, the Commission requests commentators to address whether the proposed amendment would generate the anticipated benefits, or impose any costs on U.S. investors or others. The Commission also requests information regarding the potential impact of the proposed rule on the economy on an annual basis. If possible, commenters should provide empirical data to support their views. Finally, the Commission seeks comments on the general application and operation of the Rule given the increased globalization of the securities markets since the Rule was adopted.

V. Administrative Requirements

Pursuant to section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b), the Chairman of the Commission has certified that the amendment proposed herein would not, if adopted, have a significant economic impact on a substantial number of small entities. This certification, including the reasons therefor, is attached to this release as Appendix A. We encourage written comments on the Certification. Commentators are asked to describe the nature of any impact on small entities and provide empirical data to support the extent of the impact. The Paperwork Reduction Act does not apply because the proposed amendment does not impose recordkeeping or information collection requirements, or other

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[11] *See, e.g.,* Securities Exchange Act Release No. 36213 (September 11, 1995), 60 FR 48078 (September 18, 1995) (proposal to add Mexico to list of countries encompassed by rule); Securities Exchange Act Release No. 24428 (May 5, 1987), 52 FR 18237 (May 14, 1987) (proposed amendment, which was not implemented, that would have extended the rule to encompass all countries rated in one of the two highest categories by at least two NRSROs).

[12] The Belgian public debt is principally denominated in Belgian francs (''BEF''). The portion of Belgian public debt denominated in foreign currencies was 7.6% in 1996, 11.4% in 1995 and 14.5% in 1994. The debt instruments that underlie the futures contracts currently listed on BELFOX are denominated in Belgian francs. Belfox petition, *supra* note 5.

[13] *See* Moody's Investor Service, *Moody's Bond Record* at 131–32 (March 1998); *see also* Letter from Sosi Vartanesyan, Vice President, Moody's, dated January 15, 1998 (submitted as part of Belfox petition; confirming Aa1 ratings for Belgian long-term local currency denominated government securities and long-term foreign currency denominated government securities).

[14] *See* Letter from Konrad Reuss, Director, Standard & Poor's, to An De Pauw, Senior Legal Advisor, Belfox, dated Feb. 5, 1998 (accompanying Belfox petition). The letter explained that those ''issuer'' credit ratings ''have not been assigned as issue credit ratings to any outstanding debt issued by the Kingdom.''

[15] The market figures set forth here are found in Belfox's petition. U.S. dollar equivalents are based on a conversion rate of BEF 37.10 for USD 1.00 (the conversion rate on December 31, 1997). Belfox petition, *supra* note 5.

[16] Belgian public debt is comprised of government bonds, Treasury bills and various debt instruments of lesser importance, such as road fund loans, and municipal and provincial loans. *Id.*

[17] OLOs, which are issued by means of a price auction system, have maturities ranging from 1 to 20 years and are available with fixed or variable interest rate payments. Only those holding a Linear bond account with the National Bank of Belgium may participate in the auction for these bonds. The bonds are denominated in Belgian francs. *Id.*

[18] The amount of OLOs outstanding was equivalent to approximately US$138.79 billion at the end of 1996, US$130.01 billion in 1995, and US$112.27 billion in 1994. *Id.*

[19] OLOs are traded on the Brussels Stock Exchange and over the counter. *Id.*

[20] 15 U.S.C. 78w(a)(2).

collections of information which require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

VI. Statutory Basis

The amendment to Rule 3a12–8 is being proposed pursuant to 15 U.S.C. 78a *et seq.*, particularly sections 3(a)(12) and 23(a), 15 U.S.C. 78c(a)(12) and 78w(a).

List of Subjects in 17 CFR Part 240

Reporting and recordkeeping requirements, Securities.

Text of the Proposed Amendment

For the reasons set forth in the preamble, the Commission is proposing to amend part 240 of Chapter II, Title 17 of the Code of Federal Regulations as follows:

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

1. The authority citation for part 240 continues to read in part as follows:

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77z–2, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78d, 78f, 78i, 78j, 78j–1, 78k, 78k–1, 78*l*, 78m, 78n, 78o, 78p, 78q, 78s, 78u–5, 78w, 78x, 78*ll*(d), 78mm, 79q, 79t, 80a–20, 80a–23, 80a–29, 80a–37, 80b–3, 80b–4 and 80b–11, unless otherwise noted.

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2. Section 240.3a12–8 is amended by removing the word ''or'' at the end of paragraph (a)(1)(xviii), removing the ''period'' at the end of paragraph (a)(1)(xix) and adding ''; or'' in its place, and adding paragraph (a)(1)(xx), to read as follows:

§ 240.3a12–8 Exemption for designated foreign government securities for purposes of futures trading.

(a) * * *

(1) * * *

(xx) The Kingdom of Belgium.

* * * * *

By the Commission.

Dated: June 8, 1998.

Margaret H. McFarland,

Deputy Secretary.

Note: Appendix A to the Preamble will not appear in the Code of Federal Regulations.

Appendix A—Regulatory Flexibility Act Certification

I, Arthur Levitt, Jr., Chairman of the Securities and Exchange Commission, hereby certify, pursuant to 5 U.S.C. 605(b), that the proposed amendment to Rule 3a12–8 (''Rule'') under the Securities Exchange Act of 1934 (''Exchange Act'') set forth in Securities Exchange Act Release No. 40077, which would define the government debt securities of the Kingdom of Belgium (''Belgium'') as exempted securities under the Exchange Act for the purpose of trading futures on such securities, will not have a significant economic impact on a substantial number of small entities for the following reasons. First, the proposed amendment imposes no record-keeping or compliance burden in itself and merely allows, in effect, the marketing and trading in the United States of futures contracts overlying the government debt securities of Belgium. Second, because futures contracts on the nineteen countries whose debt obligations are designated as ''exempted securities'' under the Rule, which already can be traded and marketed in the U.S., still will be eligible for trading under the proposed amendment, the proposal will not affect any entity currently engaged in trading such futures contracts. Third, because those primarily interested in trading such futures contracts are large, institutional investors, neither the availability nor the unavailability of these futures products will have a significant economic impact on a substantial number of small entities, as that term is defined for broker-dealers in 17 CFR 240.0–10.

Dated: June 4, 1998.

Arthur Levitt, Jr.,

Chairman.

[FR Doc. 98–15827 Filed 6–14–98; 8:45 am]

BILLING CODE 8010–01–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

25 CFR Part 11

RIN 1076–AD76

Law and Order on Indian Reservations; Correction

AGENCY: Bureau of Indian Affairs.

ACTION: Correction to proposed regulations.

SUMMARY: This document contains corrections to the proposed regulations which were published Friday, July 5, 1996 (61 FR 35158) and corrections to the proposed regulations which were published Wednesday, February 26, 1997 (62 FR 8665) and Friday, November 14, 1997 (62 FR 61057). The proposed rule amends regulations governing Courts of Indian Offenses.

DATES: Comments must be received on or before July 15, 1998.

ADDRESSES: Comments are to be mailed to Bettie Rushing, Office of Tribal Services, Bureau of Indian Affairs, 1849 C Street, NW, MS 4641–MB, Washington, DC 20240; or, hand delivered to Room 4641 at the same address.

FOR FURTHER INFORMATION CONTACT: Bettie Rushing, Bureau of Indian Affairs (202) 208–4400.

SUPPLEMENTARY INFORMATION:

Background

The proposed rule that is the subject of these corrections supersedes 25 CFR 11.100(a) and affects those tribes that have exercised their inherent sovereignty by removing the names of those tribes from the list of Courts of Indian Offenses.

The Assistant Secretary-Indian Affairs, or his designee, has received law and order codes adopted by the Absentee Shawnee Tribe of Indians, the Cheyenne—Arapaho Tribe, the Citizen Band of Potawatomi Indians, the Iowa Tribe, the Kaw Tribe, the Kickapoo Tribe, the Otoe-Missouri Tribe, and the Pawnee Tribe, all of Oklahoma, the Quechan Indian Tribe in Arizona and California, and the Yomba Shoshone Tribe in Nevada, in accordance with their constitutions and by-laws and approved by the appropriate bureau official. The Assistant Secretary-Indian Affairs recognizes that these courts were established in accordance with the tribe's constitutions and by-laws.

Inclusion in § 11.100, Where are Courts of Indian Offenses established?, does not defeat the inherent sovereignty of a tribe to establish tribal courts and exercise jurisdiction under tribal law. *Tillett* v. *Lujan*, 931 F.2d 636, 640 (10th Cir. 1991) (CFR courts ''retain some characteristics of an agency of the federal government'' but they ''also function as tribal courts''); *Combrink* v. *Allen*, 20 Indian L. Rep. 6029, 6030 (Ct. Ind. App., Tonkawa, Mar. 5, 1993) (CFR court is a ''federally administered tribal court''); *Ponca Tribal Election Board* v. *Snake*, 17 Indian L. Rep. 6085, 6088 (Ct. Ind. App., Ponca, Nov. 10, 1988) (''The Courts of Indian Offenses act as tribal courts since they are exercising the sovereign authority of the tribe for which the court sits.''). Such exercise of inherent sovereignty and the establishment of tribal courts shall comply with the requirements in 25 CFR 11.100(c).

Need for Correction

As published, the proposed rule contains errors which may prove to be misleading and are in need of clarification.

Correction of Publication

Accordingly, the publication on November 14, 1997 of the corrections to the proposed regulations, (62 FR 61057) is further corrected as follows:

§ 11.100(a) [Corrected]

On page 61057 and 61058, §11.100 (a) is corrected to read as follows:

§ 11.100 Where are Courts of Indian Offenses established?

(a) Unless indicated otherwise in this part, the regulations in this part apply to the Indian country (as defined in 18 U.S.C. 1151) occupied by the following tribes:

(1) Red Lake Band of Chippewa Indians (Minnesota).

(2) Te-Moak Band of Western Shoshone Indians (Nevada).

(3) Kootenai Tribe (Idaho).

(4) Shoalwater Bay Tribe (Washington).

(5) Eastern Band of Cherokee Indians (North Carolina).

(6) Ute Mountain Ute Tribe (Colorado).

(7) Hoopa Valley Tribe, Yurok Tribe and Coast Indian Community of California (California jurisdiction limited to special fishing regulations).

(8) Louisiana Area (includes Coushatta and other tribes located in the State of Louisiana which occupy Indian country and which accept the application of this part); Provided that this part shall not apply to any Louisiana tribe other than the Coushatta Tribe until notice of such application has been published in the **Federal Register**.

(9) For the following tribes located in the former Oklahoma Territory (Oklahoma):

(i) Apache Tribe of Oklahoma.

(ii) Caddo Tribe of Oklahoma.

(iii) Comanche Tribe of Oklahoma (Except Comanche Children's Court).

(iv) Delaware Tribe of Western Oklahoma.

(v) Fort Sill Apache Tribe of Oklahoma.

(vi) Kiowa Tribe of Oklahoma.

(vii) Ponca Tribe of Oklahoma.

(viii) Tonkawa Tribe of Oklahoma.

(ix) Wichita and Affiliated Tribes of Oklahoma.

(10) For the following tribes located in the former Indian Territory (Oklahoma):

(i) Chickasaw Nation.

(ii) Choctaw Nation.

(iii) Thlopthlocco Tribal Town.

(iv) Seminole Nation.

(v) Eastern Shawnee Tribe.

(vi) Miami Tribe.

(vii) Modoc Tribe.

(viii) Ottawa Tribe.

(ix) Peoria Tribe.

(x) Quapaw Tribe.

(xi) Wyandotte Tribe.

(xii) Seneca-Cayuga Tribe.

(xiii) Osage Tribe.

* * * * *

Dated: June 4, 1998.

Kevin Gover,

Assistant Secretary—Indian Affairs.

[FR Doc. 98–15833 Filed 6–12–98; 8:45 am]

BILLING CODE 4310–02–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 914

[SPATS No. IN–128–FOR; Amendment No. 95–6]

Indiana Regulatory Program

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

ACTION: Proposed rule; withdrawal of proposed amendment.

SUMMARY: OSM is announcing the withdrawal of a proposed amendment to the Indiana regulatory program (hereinafter the ''Indiana program'') under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The amendment concerned revisions to the Indiana rules pertaining to identification of interests, compliance information, and permit conditions. Indiana is withdrawing the amendment at its own initiative.

FOR FURTHER INFORMATION CONTACT: Andrew R. Gilmore, Director, Indianapolis Field Office, Telephone: (317) 226–6700.

SUPPLEMENTARY INFORMATION: By letter dated February 18, 1997 (Administrative Record No. IND–1555), the Indiana Department of Natural Resources (IDNR) submitted a proposed amendment to its program pursuant to SMCRA. Indiana submitted the proposed amendment in response to a letter dated May 11, 1989 (Administrative Record No. IND–0644), that OSM sent to Indiana in accordance with 30 CFR 732.17(c), and at its own initiative. Indiana proposed to amend the provisions of the Indiana Administrative Code (IAC) concerning identification of interests, compliance information, and permit conditions for surface and underground coal mining.

OSM announced receipt of the proposed amendment in the March 13, 1997, **Federal Register** (62 IAC 11807) and invited public comment on its adequacy. The public comment period ended April 14, 1997.

By letter dated June 24, 1997 (Administrative Record No. IND–1576), OSM notified Indiana that the U.S. Court of Appeals for the district of Columbia Circuit invalidated the language of the Federal regulations upon which the proposed revisions were based. On May 21, 1998 (Administrative Record No. IND–1610), Indiana requested that the proposed amendment be withdrawn. Indiana will submit a revised version of the amendment after OSM completes its revisions to the Federal regulations pertaining to ownership and control. Therefore, the proposed amendment announced in the March 13, 1997, **Federal Register** is withdrawn.

List of Subjects in 30 CFR Part 914

Intergovernmental relations, Surface mining, Underground mining.

Dated: June 5, 1998.

Charles E. Sandberg,

Acting Regional Director, Mid-Continent Regional Coordinating Center.

[FR Doc. 98–15763 Filed 6–12–98; 8:45 am]

BILLING CODE 4310–05–M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 948

[WV–080–FOR]

West Virginia Permanent Regulatory Program

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

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

SUMMARY: OSM is announcing receipt of a proposed amendment to the West Virginia permanent regulatory program (hereinafter referred to as the West Virginia program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The amendment consists of the revisions to the West Virginia Surface Mining Reclamation Regulations. The amendments are intended to improve the operational efficiency of the West Virginia program.

DATES: Written comments must be received on or before 4:00 p.m. July 15, 1998. If requested, a public hearing on the proposed amendments will be held at 1:00 p.m. on July 10, 1998. Requests to present oral testimony at the hearing must be received on or before 4:00 p.m. on June 30, 1998.

ADDRESSES: Written comments and requests to speak at the hearing should be mailed or hand delivered to Mr. Roger W. Calhoun, Director, Charleston Field Office at the address listed below.

Copies of the West Virginia program, the program amendment decision that is the subject of this notice, and the administrative record on the West Virginia program are available for public review and copying at the addresses below, during normal business hours, Monday through Friday, excluding holidays. Each requester may receive one free copy of the proposed changes by contacting the OSM Charleston Field Office.

Mr. Roger W. Calhoun, Director, Charleston Field Office, Office of Surface Mining Reclamation and Enforcement, 1027 Virginia Street, East, Charleston, West Virginia 25301 Telephone: (304) 347–7158.

West Virginia Division of Environmental Protection, 10 McJunkin Road, Nitro, West Virginia 25143, Telephone: (304) 759–0515

In addition, copies of the amendments that are the subject of this notice are available for inspection during regular business hours at the following locations:

Office of Surface Mining Reclamation and Enforcement, Morgantown Area Office, 75 High Street, Room 229, P.O. Box 886, Morgantown, West Virginia 26507, Telephone: (304) 291–4004

Office of Surface Mining Reclamation and Enforcement, Beckley Area Office, 323 Harper Park Drive, Suite 3, Beckley, West Virginia 25801, Telephone: (304) 255–5265.

FOR FURTHER INFORMATION CONTACT: Mr. Roger W. Calhoun, Director, Charleston Field Office; Telephone: (304) 347–7158.

SUPPLEMENTARY INFORMATION:

I. Background on the West Virginia Program

On January 21,1981, the Secretary of the Interior conditionally approved the West Virginia program. Background information on the West Virginia program, including the Secretary's findings, the disposition of comments, and the conditions of the approval can be found in the January 21, 1981, **Federal Register** (46 FR 5915–5956). Subsequent actions concerning the West Virginia program and previous amendments are codified at 30 CFR 948.10, 948.12, 948.13, 948.15, and 948.16.

II. Discussion of the Proposed Amendment

By letter dated May 11, 1998 (Administrative Record Number WV 1086), the West Virginia Division of Environmental Protection (WVDEP) submitted an amendment to its approved permanent regulatory program pursuant to the Federal regulations at 30 CFR 732.17(b). The recent West Virginia Legislative session amended CSR 38–2 of the State's Surface Mining Reclamation Regulations, and the West Virginia Governor signed the amendments on April 12, 1998.

The proposed amendments are identified below.

1. CSR 38–2–2 Definitions

Subsection 2.25 The definition of ''Coal Remining Operation'' is amended to mean a coal mining operation on lands which would be eligible for expenditures under section four, article two of chapter twenty-two.

Subsection 2.102 The definition of ''Remined Area'' is amended to mean only that area of any coal remining operation.

The WVDEP explained that these changes were done to correspond with the Energy Policy Act of 1992, Public Law 102–846. the WVDEP stated that the changes are consistent with changes to Chapter 22, Article 3 of the Code of West Virginia, which were made during the last legislative session.

2. CSR 38–2–3.14 Removal of Abandoned Coal Refuse Disposal Piles

Subsection 3.14.a is amended by deleting the terms ''special permit'' and in their place adding the term ''reclamation contract.'' Also, the words ''permit application'' are deleted and replaced by the word ''request.''

Subsection 3.14.b is amended by deleting the phrase ''an application for a special permit,'' and adding in its place the phrase ''a request for a reclamation contract.''

Subsection 3.14.b.1 is amended by excluding subsections 3.1.c., d., k., n., and o. from the requirement that all information required by subsection 3.1 should be included in a request for a reclamation contract under subsection 3.14.b. Subsection 3.14.b.2 is amended by reducing the comment period from 30 days to 10 days.

Subsection 3.14.b.3 is amended by deleting the phrase ''and where applicable subsection 3.3 of the regulations.''

Subsection 3.14.b.4.E is amended by deleting the existing language and adding in its place the words, ''Permits or approvals as necessary from the appropriate environmental agencies or other agencies.''

Subsection 3.14.b.7 is deleted.

Subsections 3.14.b.8 through 3.14.b.15 have been renumbered as 3.14.b.7 through 3.14.b.14.

Subsection 3.14.d is amended by deleting the existing language and adding in its place the words, ''Insurance and filing fee in accordance with subsection b. Of Section 28 of the Act.''

Subsection 3.14.e is amended to read, ''Removal operations permitted under this subsection shall be subject to paragraph 1., subsection 22.5 of this rule and all other applicable performance standards of the Act and the reclamation contract.'' Subsection 3.14.f is added to read as follows: ''All persons conducting removal of abandoned coal disposal piles under a reclamation contract shall have on site, a copy of the written approval for such activities issued by the Director.''

In its submittal, the WVDEP stated that changes to Section 3 will allow the reclamation of coal refuse sites by a reclamation contract that normally does not require any state expenditure. The WVDEP stated that it believes that totally removing a refuse pile constitutes reclamation. Further the WVDEP stated that the amendments are consistent with the change to Chapter 22, Article 3 Section 28 of the Code of West Virginia which occurred in the last legislative session.

3. CSR 38–2–3.32 Findings—Permit Issuance

Subsection 3.32.d.12 is amended by deleting the reference to subsection 14.16, and adding in its place a reference to subsection 24. In addition, the words ''and prior to August 3, 1977'' are deleted and replaced by the words, ''would be eligible for expenditures under Section 4, Article 2 of Chapter 22.

Subsection 3.32.g is added to read as follows. ''The prohibition of subsection c. shall not apply to a permit application due to any violation resulting from an unanticipated event or condition at a surface mine eligible for remining held by the applicant.''

In its submittal, the WVDEP stated that this change is due to a new Federal definition of ''remining'' which basically states that any site eligible for abandoned mined lands funding is also eligible for remining.

4. CSR 18–2–14.14.a.1 Disposal of Excess Spoil

This subsection is amended by adding language to allow excess spoil to be deposited on abandoned mine lands and/or forfeited mine lands under a

reclamation contract pursuant to Section 28 of the Act and this rule. The new language further provides that it is the permittee's responsibility to obtain right of entry and any necessary approvals from the appropriate environmental agencies or other agencies.

The WVDEP stated that these changes will allow the director to issue no-cost reclamation contracts to a permittee to reclaim abandoned and forfeited sites.

5. CSR 38–2–14.16 Is Being Moved to New Section CSR 38–2–24

6. CSR 38–2–14.17 Is Redesignated as CSR 38–2–14.16

7. CSR 38–2–14–18 Is Redesignated as CSR 38–2–14.17

8. CSR 38–1–14.19 Is Redesignated as CSR 38–2–14.18

Old subsection 14.19.d is deleted because it conflicts with CSR 38–2–8.2.e that was added during the last legislative session.

9. CSR 38–2–22.5.1 Removal of Abandoned Coal Refuse Piles

Subsection 22.51 is amended by deleting the words ''special permit'' and adding in their place the words ''reclamation contract.''

The WVDEP explained that the changes to Section 3 will allow the reclamation of coal refuse sites by a reclamation contract that normally does not require any state expenditure.

10. CSR 38–2–23 Special Authorization for Coal Extraction as an Incidental Part of Development of Land for Commercial, Residential, or Civic Use

This entire section is new language. This section would allow special authorization for coal extraction as an incidental part of development of land for commercial, residential, industrial, or civic use. The section contains provisions for applicant information, site development and sampling information; provisions for approval of Notice of Intent for coal extraction as an incidental part of development of land for commercial, residential, or civic use; performance standards; expiration of a notice of intent coal extraction as an incidental part of development; escrow release; notice on site; and public records.

The WVDEP explained that the new language is intended to implement new code provisions that allow the director to give special authorization for coal extraction as an incidental part of development of land for commercial, residential, industrial, or civic use.

11. CSR 38–2–24 Performance Standards Applicable Only to Remining Operations

This entire section is new. However, subsection 24.1 was previously 14.16; subsection 24.2.a was previously 14.16.m; subsection 24.3 was previously 14.16.n; subsection 24.2.b is new language; and subsection 24.4 is new language.

Subsection 24.1 provides for backfilling, remining, and grading of previously mined areas. Subsection 24.2 provides for revegetation of coal remining operations. Subsection 24.3 provides for water quality of coal remining operations. Subsection 24.4 provides the requirements for release of bonds for coal remining operations.

The WVDEP stated that subsection 24.2.b is due to a new Federal remining regulation which basically states that successful revegetation shall be for a period of not less than two growing seasons. Subsection 24.4 will allow for release of the land reclamation bond if the post-remining water quality discharging from the site is equal to or better than pre-remining water quality.

III. Public Comment Procedures

In accordance with the provisions of 30 CFR 732.17(h), OSM is now seeking comments on the proposed amendments to the West Virginia program that were submitted on May 11, 1998. Comments should address whether the proposed amendments satisfy the applicable program approval criteria of 30 CFR 732.15. If the amendments are deemed adequate, they will become part of the West Virginia program.

Written Comments

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

Public Hearing

Persons wishing to testify at the public hearing should contact the person listed under **FOR FURTHER INFORMATION CONTACT** by the close of business on June 30, 1998. If no one requests an opportunity to testify at the public hearing by that date, the hearing will not be held.

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

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

Public Meeting

If only one person or group requests to testify at a hearing, a public meeting, rather than a public hearing, may be held. Persons wishing to meet with OSM representatives to discuss the proposed clarification, removal of the required amendment, or change in the effective dates of the approval may request a meeting at the OSM Charleston Field Office listed under **ADDRESSES** by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**.

All such meetings will be open to the public and, if possible, notices of meetings will be posted in advance at the locations listed under **ADDRESSES**. A written summary of each public meeting will be made a part of the Administrative Record.

IV. Procedural Determinations

Executive Order 12866

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

Executive Order 12988

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

National Environmental Policy Act

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

Paperwork Reduction Act

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

Regulatory Flexibility Act

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

Unfunded Mandates

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

List of Subjects in 30 CFR Part 948

Intergovernmental relations, Surface mining, Underground mining.

Dated: June 4, 1998.

Tim L. Dieringer,

Acting Regional Director, Appalachian Regional Coordinating Center.

[FR Doc. 98–15761 Filed 6–12–98; 8:45 am]

BILLING CODE 4310–05–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AE

Endangered and Threatened Wildlife and Plants; Reopening of Comment Period and Notice of Public Hearings on Proposed Threatened Status for the Plant Helianthus Paradoxus (Pecos Sunflower)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; notice of public hearings and reopening of comment period.

SUMMARY: The U.S. Fish and Wildlife Service (Service) provides notice that three public hearings will be held on the proposed determination of threatened status for *Helianthus paradoxus* (Pecos sunflower). This plant is dependent on desert wetlands in New Mexico and western Texas.

DATES: Public hearings will be held from 7 p.m. to 9 p.m. on July 8, 1998, in Fort Stockton, Texas; July 9, 1998, in Roswell, New Mexico; and July 13, 1998, in Grants, New Mexico. The comment period, which originally closed on June 1, 1998, is reopened and now closes on August 13, 1998.

ADDRESSES: The public hearings will be held at the large Community Hall in James Rooney Memorial Park on U.S. Highway 285 (Sanderson Highway) in Fort Stockton, Texas; the Roswell Public Library, 301 North Pennsylvania Avenue, in Roswell, New Mexico; and the City Hall Council Chambers, 600 West Santa Fe Avenue, in Grants, New Mexico. Written comments and materials should be sent to the Field Supervisor, New Mexico Ecological Services Field Office, U.S. Fish and Wildlife Service, 2105 Osuna Road, NE., Albuquerque, New Mexico 87113, facsimile 505/346–2542. Comments and materials received will be available for public inspection during normal business hours, by appointment, at the above address.

FOR FURTHER INFORMATION CONTACT: Charlie McDonald, Endangered Species Botanist, at the above address or telephone 505/346–2525, ext. 112; facsimile 505/346–2542.

SUPPLEMENTARY INFORMATION:

Background

Pecos sunflower is a wetland plant that grows in permanently saturated soils. Areas that maintain these conditions are mostly desert wetlands (cienegas) associated with springs, but they may also include stream margins and the margins of impoundments. When Pecos sunflowers are associated with impoundments, the impoundments typically have replaced natural cienega habitats. Pecos sunflower is presently known from 25 sites that occur in 5 general areas. These areas are Pecos and Reeves counties, Texas, in the vicinity of Fort Stockton and Balmorhea; Chaves County, New Mexico, from Dexter to just north of Roswell; Guadalupe County, New Mexico, in the vicinity of Santa Rosa; Valencia County, New Mexico, along the lower part of the Rio San Jose; and Cibola County, New Mexico, in the vicinity of Grants. Threats to Pecos sunflower include drying of wetlands from groundwater depletion; alteration of wetlands (*e.g.* wetland fills, draining, impoundment construction); competition with nonnative plant species, particularly saltcedar; excessive livestock grazing; mowing; and highway maintenance.

On April 1, 1998, the Service published a proposed rule to list the Pecos sunflower as threatened under the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*), as amended (Act). Section 4(b)(5)(E) of the Act requires that a public hearing be held if it is requested within 45 days of the publication of a proposed rule in the **Federal Register**. Public hearing requests were received within the allotted time period from the New Mexico Farm and Livestock Bureau; New Mexico County Farm and Livestock Bureaus in Colfax, Cibola-McKinley, and Santa Fe counties; Production Credit Association of New Mexico; Texas and Southwestern Cattle Raisers Association; and Davis Mountains Trans-Pecos Heritage Association.

The Service has scheduled hearings from 7 p.m. to 9 p.m. in Fort Stockton, Texas, on July 8, 1998, at the large Community Hall in James Rooney Memorial Park on U.S. Highway 285 (Sanderson Highway); in Roswell, New Mexico, on July 9, 1998, at the Roswell Public Library, 301 North Pennsylvania Avenue; and in Grants, New Mexico, on July 13, 1998, at the City Hall Council Chambers, 600 West Santa Fe Avenue. Anyone wishing to make an oral statement for the record is encouraged to provide a written copy of their statement to be presented to the Service at the start of the hearing. In the event there is a large attendance, the time allotted for oral statements may have to be limited. Oral and written statements receive equal consideration. There are no limits to the length of written comments presented at these hearings or

mailed to the Service. Legal notices announcing the dates, times, and locations of the hearings are being published in newspapers concurrently with this **Federal Register** notice.

The comment period on the proposal originally closed on June 1, 1998. In order to accommodate the hearing, the Service also reopens the public comment period. Written comments may now be submitted to the Service until August 13, 1998, to the office listed in the **ADDRESSES** section.

Author: The primary author of this notice is Charlie McDonald, New Mexico Ecological Services Field Office (see **ADDRESSES** section).

Authority

The authority for this action is the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*).

Dated: June 5, 1998.

Renne Lohoefener,

Acting Regional Director, Region 2.

[FR Doc. 98–15786 Filed 6–12–98; 8:45 am]

BILLING CODE 4310–55–P

Notices

Federal Register
Vol. 63, No. 114
Monday, June 15, 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

Forest Service

Extension of Currently Approved Information Collection for Disposal of Mineral Materials

AGENCY: Forest Service, USDA.

ACTION: Notice; request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Forest Service announces its intent to extend the existing information collection found in 36 CFR Part 228, Subpart C, for the disposal of mineral materials. The current information collection will expire August 31, 1998.

DATES: Comments must be received in writing on or before August 14, 1998.

ADDRESSES: Send written comments to Director, Minerals and Geology Management, mail stop 1126, Forest Service, USDA, P.O. Box 96090, Washington, D.C. 20090–6090.

The public may inspect comments in the Office of the Director. To facilitate entrance into the building, visitors are encouraged to call (202) 205–1042 to make arrangements.

FOR FURTHER INFORMATION CONTACT: Mike Greeley, Minerals and Geology Management, at (202) 205–1237.

SUPPLEMENTARY INFORMATION:

Description of Information Collection

Title: Mineral Materials.

OMB Number: 0596–0081.

Expiration Date of Approval: August 31, 1998.

Type of Request: Extension of an existing information collection.

Abstract: The Secretary of Agriculture has the statutory authority to dispose of petrified wood and common varieties of sand, stone, gravel, pumice, pumicite, cinders, clay, and other similar materials on lands administered by the Forest Service. Mineral operators must conduct their activities in accordance with the mineral regulations at 36 CFR Part 228, Subpart C, to ensure that environmental impacts are minimized to the extent practicable.

Disposal of mineral materials is administered with an approved form for a sales contract or free use permit, which may include an attached operating plan, if required. This gives the authorized officer the opportunity to determine if the proposed operation is appropriate and consistent with all applicable land management laws and regulations, assures financial accountability, and provides that environmental impacts be minimized. The information also provides the means of documenting planned operations and the terms and conditions that the Forest Service deems necessary to protect surface resources.

Purchasers are required to complete the form, Contract For The Sale Of Mineral Materials (FS–2800–9). Information required includes the purchaser's name and address, the location and dimensions of the area to be mined, the kind of material that will be mined, the quantity of material that will be mined, the sales price of the mined material, the payment schedule, the amount of the bond, and the period of the contract.

Each applicant is required to complete the form, Application/Permit (R1–FS–2850–1), for the free use or preliminary prospecting of mineral materials. The questions on the form require that the applicant provide their name and address, the type of material for which the applicant intends to mine or prospect, the period for which the applicant wants the permit, the type of structure that will be erected, the description of the construction, the location and dimensions of the area to be mined or prospected, the statement of need and justification for use of Forest Service land and minerals, the local socioeconomic and environmental impacts that may result from the mining or prospecting, and the measures the applicant has taken to protect the environment.

Estimate of Burden: 2.5 hours.

Type of Respondents: Mineral materials operators.

Estimated Number of Respondents: 3,000.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 7,500.

Comment is Invited

The agency invites comments on the following: (a) 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; (b) the accuracy of the Agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Use of Comment

All comments, including name and address when provided, will become a matter of public record. Comments received in response to this notice will be summarized and included in the request for Office of Management and Budget approval.

Dated: June 9, 1998.

Robert Lewis, Jr.,

Acting Associate Chief.

[FR Doc. 98–15817 Filed 6–12–98; 8:45 am]

BILLING CODE 3410–11–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: Technology Administration.

Title: National Medal of Technology Nomination Applications.

Agency Form Number: None.

OMB Approval Number: 0692–0001.

Type of Request: Reinstatement, with change.

Burden: 2,500 hours.

Number of Respondents: 100.

Avg. Hours Per Response: 25.

Needs and Uses: The Stevenson-Wydler Technology Innovation Act established an annual National Medal of

Technology Award. This Award is the highest honor bestowed by the President to America's leading innovators who have made considerable contributions to enhancing America's competitiveness and standard of living. The information provided through the nomination process is used by the Evaluation Committee to determine eligibility and merit according to specified criteria.

Affected Public: Individuals, Business or other for-profit organizations, not-for-profit institutions, and the Federal Government.

Frequency: Annually.

Respondent's Obligation: Required to obtain or retain benefits, voluntary.

OMB Desk Officer: Maya Bernstein, (202) 395–4816.

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 of this notice to Maya Bernstein, OMB Desk Officer, Room 10235, New Executive Office Building, 725 17th Street, NW, Washington, DC 20503.

Dated: June 9, 1998.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 98–15760 Filed 6–12–98; 8:45 am]

BILLING CODE 3510–18–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 provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Bureau of Export Administration (BXA).

Title: Procedure for Voluntary Self-Disclosure of Violations.

Agency Form Number: None.

OMB Approval Number: 0694–0058.

Type of Request: Extension of a currently approved collection of information.

Burden: 800 hours.

Average Time Per Response: 10 hours per response.

Number of Respondents: 80 respondents.

Needs and Uses: BXA codified its voluntary self-disclosure policy to increase public awareness of this policy and to provide the public with a good idea of BXA's likely response to a given disclosure. Voluntary self-disclosures allow BXA to conduct investigations of the disclosed incidents faster than would be the case if BXA had to detect the violations without such disclosures.

Affected Public: Individuals, businesses or other for-profit institutions.

Frequency: On occasion.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Victoria Baecher-Wassmer.

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, D.C. 20230.

Written comments and recommendations for the proposed information collection should be sent on or before July 15, 1998 to Victoria Baecher-Wassmer, OMB Desk Officer, (202) 395–5871, Room 10202, New Executive Office Building, Washington, DC 20230.

Dated: June 9, 1998.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 98–15806 Filed 6–12–98; 8:45 am]

BILLING CODE 3510–DT–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 provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Bureau of Export Administration (BXA).

Title: Delivery Verification Certificate.

Agency Form Number: BXA–647P.

OMB Approval Number: 0694–0016.

Type of Request: Extension of a currently approved collection of information.

Burden: 56 hours.

Average Hours Per Response: Approximately 30 minutes for the form and 1 minute for recordkeeping.

Number of Respondents: 100.

Needs and Uses: The Delivery Verification Certificate is the result of an agreement between the United States and a number of other countries to increase the effectiveness of their respective controls over international trade in strategic commodities. The form is issued and certified by the government of the country of ultimate destination, at the request of the U.S. government (BXA). It is a service performed to honor an agreement between the U.S. Government and the other countries participating in this Delivery Verification procedure.

Affected Public: Individuals, businesses or other for-profit institutions.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain benefits.

OMB Desk Officer: Victoria Baecher-Wassmer (202) 395–5871.

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 of this notice to Victoria Baecher-Wassmer, OMB Desk Officer, (202) 395–5871, Room 10202, New Executive Office Building, 725 17th Street, Washington, DC 20503.

Dated: June 9, 1998.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 98–15807 Filed 6–12–98; 8:45 am]

BILLING CODE 3510–33–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Fastener Quality Act Public Workshop; Postponement

AGENCY: National Institute of Standards and Technology, United States Department of Commerce.

ACTION: Notice.

SUMMARY: NIST is postponing the open meeting to provide details and interpretations on the regulations related to the Quality Assurance Systems (QAS) of fastener manufacturing contained in the April 14, 1998, final regulation under the Fastener Quality Act, previously scheduled for June 16, 1998. The meeting will be rescheduled at a later date and will be announced in the **Federal Register**.

DATES: The meeting was to be held on June 16, 1998.

FOR FURTHER INFORMATION CONTACT: Dr. Subhas G. Malghan, FQA Program Manager, Building 820, Room 306, NIST, Gaithersburg, MD 20899; telephone (301) 975–5120, fax (301) 975–5414, E-mail: malghan@nist.gov.

SUPPLEMENTARY INFORMATION: On June 1, 1998, NIST announced in the **Federal Register**, (63 FR 29702), that it would be holding a public meeting on June 16, 1998, to provide details and interpretations on the regulations related to the Quality Assurance System (QAS) of fastener manufacturing contained in the April 14, 1998, final regulation under the Fastener Quality Act. NIST is postponing that meeting and will issue a future notice announcing a new date for the meeting.

Dated: June 10, 1998.

Robert E. Hebner,

Acting Deputy Director, National Institute of Standards and Technology.

[FR Doc. 98–15935 Filed 6–12–98; 8:45 am]

BILLING CODE 3510–13–M

DEPARTMENT OF COMMERCE

Patent and Trademark Office

[Docket No. 980605148–8148–01]

Request for Comments on Interim Guidelines for Examination of Patent Applications Under the 35 U.S.C. 112 ¶ 1 ''Written Description'' Requirement

AGENCY: Patent and Trademark Office, Commerce.

ACTION: Notice and request for public comments.

SUMMARY: The Patent and Trademark Office (PTO) requests comments from any interested member of the public on the following interim guidelines. These guidelines will be used by PTO personnel in their review of biotechnological patent applications for compliance with the ''written description'' requirement of 35 U.S.C. 112 ¶ 1. Although the guidelines are directed primarily to written descriptions of biotechnological inventions, they reflect the current understanding of the PTO and apply across the board to all relevant technologies.

DATES: Written comments on the interim guidelines will be accepted by the PTO until September 14, 1998.

ADDRESSES: Written comments should be addressed to Box 8, Commissioner of Patents and Trademarks, Washington, D.C. 20231, marked to the attention of Scott A. Chambers, Associate Solicitor or to Box Comments, Assistant Commissioner for Patents, Washington, D.C. 20231 marked to the attention of Linda S. Therkorn. Alternatively, comments may be submitted to Scott Chambers via facsimile at (703) 305–9373 or by electronic mail addressed to ''scott.chambers@uspto.gov'' or to Linda Therkorn via facsimile at (703) 305–8825 or by electronic mail addressed at ''linda.therkorn@uspto.gov.''

FOR FURTHER INFORMATION CONTACT: Scott Chambers by telephone at (703) 305–9035, by facsimile at (703) 305–9373, by mail to his attention addressed to Box 8, Commissioner of Patents and Trademarks, Washington, D.C. 20231, or by electronic mail at ''scott.chambers@uspto.gov'; or Linda Therkorn by telephone at (703) 305–8800, by facsimile at (703) 305–8825, by mail addressed to Box Comments, Assistant Commissioner for Patents, Washington, D.C. 20231, or by electronic mail at ''linda.therkorn@uspto.gov.''

SUPPLEMENTARY INFORMATION: The PTO requests comments from any interested member of the public on the following interim guidelines. These guidelines will be used by PTO personnel in their review of biotechnological patent applications for compliance with the ''written description'' requirement of 35 U.S.C. 112 ¶ 1. Although the guidelines are directed primarily to written descriptions of biotechnological inventions, they reflect the current understanding of the PTO and apply across the board to all relevant technologies. Because these guidelines govern internal practices, they are exempt from notice and comment rulemaking under 5 U.S.C. 553(b)(A).

Written comments should include the following information: (1) name and affiliation of the individual responding; and (2) an indication of whether the comments offered represent views of the respondent's organization or are they respondent's personal views. The PTO is particularly interested in comments relating to: (1) the accuracy of the methodology; (2) relevant factors to consider in determining whether the written description requirement of 35 U.S.C. 112 ¶ 1 is satisfied; (3) whether the scope of these guidelines should be limited to certain technologies, such as biotechnology, or even a particular area of biotechnology such as nucleic acids, or encompass all technologies generally; (4) whether the scope of these guidelines should be expanded to include processes and/or product-by-process claims; and (5) the impact these guidelines may have on currently pending applications as well as future applications.

Parties presenting written comments are requested, where possible, to provide their comments in machine-readable format in addition to a paper copy. Such submissions may be provided by electronic mail messages sent over the Internet, or on a 3.5″ floppy disk formatted for use in either a Macintosh, Windows, Windows for Workgroups, Windows 95, Windows NT, or MS-DOS based computer.

Written comments will be available for public inspection on or about September 14, 1998, in Suite 918, Crystal Park 2, 2121 Crystal Drive, Arlington, Virginia. In addition, comments provided in machine-readable format will be available through anonymous file transfer protocol (ftp) via the Internet (address: comments.uspto.gov) and through the World Wide Web (address: www.uspto.gov).

Interim Guidelines for the Examination of Patent Applications Under The 35 U.S.C. 112 ¶ 1 ''Written Description'' Requirement

These ''Written Description Guidelines'' are intended to assist Office personnel in the examination of patent applications for compliance with the written description requirement of 35 U.S.C. 112, ¶ 1, in view of *University of California* v. *Eli Lilly* [1] and the earlier cases *Fiers* v. *Revel* [2] and *Amgen, Inc.* v. *Chugai Pharmaceutical Co.* [3] These Interim Guidelines are directed primarily to determining whether there is written description support for product claims and are not intended to specifically address the description necessary to support process or product-by-process claims. Similarly, these Guidelines are not intended to directly address the question of new matter, which is currently addressed in the Manual of Patent Examining Procedure §§ 2163.06–.07. The Final Guidelines may address these additional issues if public comment suggests they should be addressed. These guidelines are based on the Office's current understanding of the law and are believed to be fully consistent with binding precedent of the Supreme Court, the Federal Circuit, and the Federal Circuit's predecessor courts.

These guidelines do not constitute substantive rulemaking and hence do not have the force and effect of law. They are designed to assist Office personnel in analyzing claimed subject matter for compliance with substantive law. Rejections will be based upon the substantive law, and it is these rejections which are appealable. Consequently, any failure by Office personnel to follow the guidelines is neither appealable nor petitionable.

These guidelines are intended to form part of the normal examination process. Thus, where Office personnel establish a *prima facie* case of lack of written description for a claim, a thorough review of the prior art and examination on the merits for compliance with the other statutory requirements, including those of 35 U.S.C. 101, 102, 103, and 112, is to be conducted prior to completing an Office action which includes a rejection for lack of written description.

Office personnel are to rely on these guidelines in the event of any inconsistent treatment of issues involving the written description requirement between these guidelines and any earlier guidance provided from the Office. Although these guidelines address examples principally drawn from the biotechnological arts, they are intended to be equally applicable to all fields of invention.

I. General Principles Governing Compliance with the ''Written Description'' Requirement for Applications

The first paragraph of 35 U.S.C. 112 requires that the ''specification shall contain a written description of the invention * * *'' This requirement is separate and distinct from the enablement requirement.[4] This written description requirement has several policy objectives. ''[T]he ''essential goal'' of the description of the invention requirement is to clearly convey the information that an applicant has invented the subject matter which is claimed.''[5] Another objective is to put the public in possession of what the applicant claims as the invention. The written description requirement prevents an applicant from claiming subject matter that was not described in the specification as filed, and the proscription against the introduction of new matter in a patent application[6] serves to prevent an applicant from adding information that goes beyond the subject matter originally filed.

To satisfy the written description requirement, a patent specification must describe the claimed invention in sufficient detail that one skilled in the art can reasonably conclude that the inventor had possession of the claimed invention.[7] This requirement of the Patent Act promotes the progress of the useful arts by ensuring that patentees adequately describe their inventions in their patent specifications for the benefit of the public in exchange for the right to exclude others from practicing the invention for the duration of the patent's term.[8]

II. Evaluate Whether The Application Complies With the ''Written Description'' Requirement

The inquiry into whether the description requirement is met must be determined on a case-by-case basis and is a question of fact.[9] The examiner has the initial burden of presenting evidence or reasons why a person skilled in the art would not recognize in an applicant's disclosure a description of the invention defined by the claims.[10] Office personnel should adhere to the following procedures when reviewing patent applications for compliance with the written description requirement of 35 U.S.C. 112, ¶ 1.

A. Review the Entire Application To Determine What Applicant has Invented, the Field of the Invention and the Level of Predictability in the Art

Prior to determining whether the claims satisfy the written description requirement, Office personnel should review the entire specification, including the specific embodiments, figures, sequence listings, and the claims, to understand what applicant has invented and the correspondence between what applicant has described, i.e., has possession of, and what applicant is claiming. Such a review should be conducted from the standpoint of one of skill in the art at the time the application was filed and should include a determination of the field of the invention and, thus, the level of predictability in the art. Predictability of the structure of a species can be premised upon:

(1) Whether the level of skill in the art leads to a predictability of structure; and/or

(2) Whether teachings in the application or prior art lead to a predictability of structure.

There is an inverse correlation between the level of predictability in the art and the amount of disclosure necessary to satisfy the written description requirement. For example, if there is a well-established correlation between structure and function in the art, one skilled in the art will be able to reasonably predict the complete structure of the claimed invention from its function. Thus, in some factual situations, the written description requirement may be satisfied through disclosure of function alone when there is a well-established correlation between structure and function. In contrast, without such a correlation, prediction of structure from function is highly unlikely. In this latter case, disclosure of function alone will not satisfy the written description requirement.[11]

B. For Each Claim, Determine What the Claim as a Whole Covers

Each claim must be separately analyzed and given its broadest reasonable interpretation.[12] The entire claim, including its preamble language and transitional phrase, must be considered. ''Preamble language'' is that language in a claim appearing before a transitional phase, e.g., before ''comprising,'' ''consisting essentially of,'' or ''consisting of''. The transitional term ''comprising'' (and other comparable terms, e.g., ''containing'' and ''including'') is ''open-ended''—it covers the expressly recited subject matter alone or in combination with other unstated subject matter.[13] There must be adequate written description to support the claimed invention *including* the preamble.[14] The claim as a whole, including all limitations found in the preamble, the transitional phrase, and the body of the claim, must be described sufficiently to satisfy the written description requirement.[15] For claims of the form ''A [structure] comprising SEQ ID NO: 1'' there may be a written description problem if the claim as a whole, including its preamble and transitional phrase, is directed to an invention of unpredictable structure that is not fully described.

For example, when the term ''gene,'' ''mRNA,'' or ''cDNA'' is recited in the preamble, it implies a specific structure (or a small genus of specific structures) when used in the traditional sense, i.e., to mean the structure having the naturally occurring sequence. Thus, ''A gene comprising SEQ ID NO: 1''; ''A mRNA comprising SEQ ID NO: 1''; and ''A cDNA comprising SEQ ID NO: 1'' implicitly recite specific structures such as promoters, enhancers, coding regions, and other regulatory elements in the preamble which must be sufficiently described in the specification so as to show the applicant was in possession of the claimed inventions.

In contrast, use of less specific, generic preamble language, such as ''composition,'' ''nucleic acid,'' ''DNA,'' and ''RNA,'' does not typically present a written description problem. These terms are sufficiently general that one skilled in the art can readily envision a sufficient number of members of the claimed genus to provide written description support for the genus.

A claim such as ''A gene comprising SEQ ID NO: 1,'' can be viewed as a species claim in which the preamble recites a combination and the body of the claim recites a subcombination: The ''gene'' is the combination and ''SEQ ID

NO: 1'' (which is a fragment of the gene) is the subcombination. Written description of only the subcombination (in this example the fragment SEQ ID NO: 1) normally does not put one in possession of the combination (in this example the gene).

Likewise, generic claims to sequences can be viewed as a genus of such combination-subcombination claims. For example, a claim such as ''A nucleic acid comprising SEQ ID NO: 1'' can be viewed as a genus claim in which each member of the genus (each species) is itself a combination-subcombination: Each member of the genus ''nucleic acid'' is a combination containing the subcombination ''SEQ ID NO: 1'' (which is a fragment of the nucleic acid). Again, the generic term ''nucleic acid'' does not typically present a written description problem because one skilled in the art can readily envision a sufficient number of members of the claimed genus to provide written description support for the genus. [16]

C. For Each Claimed Species, Determine Whether There is Sufficient Written Description To Inform a Skilled Artisan That Applicant was in Possession of the Claimed Invention at the Time the Application was Filed

Written description may be satisfied through disclosure of relevant identifying characteristics, i.e., structure, other physical and/or chemical characteristics, functional characteristics when coupled with a known or disclosed correlation between function and structure, or some combination of such characteristics. What is well known to one skilled in the art need not be disclosed. If a skilled artisan would have understood the inventor to be in possession of the claimed invention at the time of filing, even if every nuance of the claims is not explicitly described in the specification, then the adequate description requirement is met.

For each claimed species:

(1) Determine whether a complete structure is disclosed. The complete structure of a species typically satisfies the requirement that the description be set forth in ''such full, clear, concise and exact terms'' to show possession of the claimed invention. If a complete structure is disclosed, the written description requirement is satisfied for that species, and a rejection under 35 U.S.C. 112 ¶ 1 for lack of written description must not be made.

For example, consider the following claim:

A probe for use in detecting nucleic acid sequences coding for enzyme Q from the genus Bacillus consisting of SEQ ID NO: 16.

Considering the claim as a whole, it is a species claim covering the probe SEQ ID NO: 16. The specification discloses the complete sequence for SEQ ID NO: 16. Thus, this claim falls into the ''safe harbor'' described under C(1).

(2) If the complete structure is not disclosed, determine whether the specification discloses other relevant identifying characteristics, i.e., physical and/or chemical characteristics and/or functional characteristics coupled with a known or disclosed correlation between function and structure, sufficient to describe the claimed invention in such full, clear, concise and exact terms that a skilled artisan would recognize applicant was in possession of the claimed invention. Disclosure of any combination of such identifying characteristics that would lead one of skill in the art to the conclusion that the applicant was in possession of the claimed species is sufficient. In such a case, a rejection for lack of written description under 35 U.S.C. 112 ¶ 1 must not be made.

For example, consider the following claim:

An isolated double-stranded DNA consisting of (1) a single-stranded DNA which has a molecular size of 2.57 Kb and is derived from golden mosaic virus, and (2) a DNA complementary to said single-stranded DNA, giving the restriction endonuclease cleavage map shown in FIG.2(a) and having no Mbo I restriction endonuclease site.

Although the specification does not disclose the complete structure for the claimed DNA, it does disclose sufficient identifying characteristics, i.e., size, cleavage map, and source from which the DNA is derived. Thus, while this claim does not meet the C(1) criteria because the complete sequence is not disclosed, it does meet the C(2) criteria because one skilled in the art would recognize from the characteristics, e.g., size, map, source, that applicant was in possession of the claimed material at the time of filing.

The following protein claim also falls within the C(2) criteria:

An isolated alginate lyase enzyme wherein said enzyme lyses alginate in the mucous substance produced in a patient with cystic fibrosis and wherein said enzyme has the N-terminal amino acid sequence SEQ ID No. 1, obtained from Flavobacterium pepermentium and has the following physicochemical properties: (1) Activity: lyses alginate to saccharides having a non-reducing end C_4–C_5 double bond and ultimately to 4-deoxy-5-ketouronic acid; (2) Molecular weight: 60,000 daltons; (3) Optimal pH: 8.0; (4) Stable pH: 6.0–8.0; (5) Optimal temperature: 70 degrees C; and (6) Substrate specificity: alginate.

In this example, the specification discloses the molecular weight, origin, activity, and specificity but does not disclose the complete structure for the claimed enzyme. Thus, this claim would not meet the C(1) criteria because the complete sequence is not disclosed. However, the claim meets the C(2) criteria because, although the complete structure is not disclosed, one skilled in the art would recognize from the disclosed physical characteristics—e.g., molecular weight, origin, activity, and specificity—that applicant was in possession of the claimed material at the time of filing.

In contrast, consider the following claim:

An isolated nucleotide sequence consisting of the sequence of the reverse transcript of a human mRNA, which mRNA encodes insulin.

The specification in this example provides the coding sequence for rat insulin but not that for human insulin. The description for the reverse transcript of human mRNA is limited to its function, encoding human insulin, and to a method for isolating the claimed sequence from its natural source. A sequence described only by a *purely* functional characteristic, without any known or disclosed correlation between that function and the structure of the sequence, normally is not a sufficient identifying characteristic for written description purposes, even when accompanied by a method of obtaining the claimed species. In this case, even though a genetic code table would correlate a known insulin amino acid sequence with a genus of coding nucleic acids, the same table cannot predict the native, naturally occurring nucleic acid sequence of human mRNA or its corresponding cDNA. Thus, the specification in this example does not provide adequate written description, either under the C(1) or C(2) criteria.

Any claim to a species that does not meet the test described under C(1) or C(2)must be rejected as lacking adequate written description under 35 U.S.C. 112 ¶ 1.

D. For Each Claimed Genus, Determine Whether There is Sufficient Written Description to Inform a Skilled Artisan That Applicant was in Possession of the Claimed Genus at the Time the Application was Filed

The written description requirement for a claimed genus may be satisfied through sufficient description of a representative number of species by relevant identifying characteristics, i.e., structure or other physical and/or chemical characteristics, by functional characteristics coupled with a known or disclosed correlation between function and structure, or by a combination of such identifying characteristics, sufficient to show the applicant was in possession of the claimed genus. A ''representative number of species'' requires that the species which are expressly described be representative of the entire genus. Thus, when there is substantial variation within the genus, it may require a description of the various species which reflect the variation within the genus. For example, a broadly drawn claim to a specific gene from ruminant mammals may require a representative species from cattle, buffalo, bison, goat, deer, antelope, camel, giraffe and llama.

What constitutes a ''representative number'' is an inverse function of the predictability of the art, as determined in IIA above. The number must be sufficient to reasonably identify the other members of genus. In an unpredictable art, adequate written description of a genus *cannot* be achieved by disclosing only one species within the genus. In fact, if the members of the genus are expected to vary widely in their identifying characteristics, such as structure and activity, written description for each member within the genus may be necessary.

Generalized descriptions alone, such as ''vertebrate insulin cDNA'' or ''mammalian insulin cDNA,'' fail to satisfy the written description requirement because they do not describe any members of the genus except by function without any known or disclosed correlation between function and structure.[24] If the correlation between structure and function in the art would not have been known to one skilled in the art and the specification does not describe the correlation, the written descriptive support cannot depend on that correlation.

For each claim to a genus:

(1) Determine whether a representative number of species have been described by complete structure as in C(1) above. If a representative number have been so described, then the applicant has written description support for the claimed genus and a rejection under 112 ¶ 1 for lack of written description must not be made.

For example, consider the following claim to a genus:

> An isolated DNA probe for detecting HIV–X, wherein said DNA probe hybridizes to the nucleotide sequence set forth in SEQ ID NO:1 under the following conditions: hybridization in 7% sodium dodecyl sulfate (SDS), 0.5M $NaPO_4$ pH 7.0, 1mM EDTA at 50° C.; and washing with 1% SDS at 42° C.

In this case, the specification discloses the sequence of the isolated DNA molecule consisting of SEQ ID NO: 1 and discloses several sequences that hybridize to SEQ ID NO: 1. Hybridization under the stringent conditions specified here requires that the claimed nucleic acid probes be structurally similar to the complement of the nucleic acid sequence disclosed as SEQ ID NO: 1. In this case, the description as a whole is sufficient to evidence possession of the claimed genus because the genus is defined by relation to the structure of the sequence provided as SEQ ID NO: 1, and because several species are disclosed that possess the hybridization property which further defines the genus. Thus, this claim to a genus meets the D(1) criteria.

(2) For each claim to a genus not supported as described under D(1), determine whether there is a representative number of adequately described species, as analyzed under C(2). The representative number must permit one skilled in the art to reasonably identify the remaining members of the genus. If a representative number are so described, then the written description requirement is satisfied and, again, a rejection under 112 ¶ 1 for lack of written description must not be made.

For example, consider the following claim to a genus:

> A monoclonal antibody which specifically binds to the novel cancer associated TAG–31 antigen but which does not substantially bind normal adult human tissues, wherein said monoclonal antibody has a binding affinity of greater than 3 times 10^9 M^{-1} for TAG–31.

Considering the claim as a whole, it is drawn to a genus of monoclonal antibodies. Although the specification does not disclose the complete structure of a representative number of species to support the claimed genus of antibodies, it does disclose multiple monoclonal antibodies which have the isotype claimed as well as the binding specificity and binding affinity characteristics recited in the claims. In this well-developed art, additional identifying characteristics for a substantial portion of the genus are well-known (e.g., number of chains, disulfide bonds, constant and variable regions, etc.). Thus, applicant's disclosure combined with what was known in the art are sufficient to describe the claimed genus of monoclonal antibodies in such full, clear, concise and exact terms to show applicant was in possession of the claimed antibodies. Thus, the claim meets the D(2) criteria.

As another example, consider the following claim to a genus:

> An isolated mutanase enzyme produced by Bacillus having the following physicochemical properties (1) to (9): (1) action: an ability to cleave alpha-1,3-glucosidic links of mutan; (2) substrate specificity: an ability to effectively decompose mutan; (3) optimum pH: pH 4 to 4.5 when reacting on a mutan substrate at 35 degrees C for 10 minutes; (4) pH range for stability: pH 4 to 10 when kept at 25 degrees C for 24 hours; (5) optimum temperature: 50 degrees to 65 degrees C when reacted at pH 5 with mutan as a substrate; (6) thermal stability: enzyme activity remains stable below 50 degrees C after incubation at pH 5 for 10 minutes; (7) effect of metal ions: mercury and silver show inhibitory effect on a mutan substrate; (8) effect of inhibitors: p-chloromercurybenzoic acid shows inhibitory effect on a mutan substrate; and (9) molecular weight: about 140,000 to about 160,000 as determined by SDS-polyacrylamide gel electrophoresis.

Considering the claim as a whole, it covers a genus of mutanase enzymes. Although the specification does not disclose the complete structure of a representative number of species to support the claimed genus of enzyme compositions, it does disclose 3 mutanase species produced by different strains of Bacillus (mutanases A, B and C) which are identified by multiple relevant identifying characteristics, i.e., molecular weight, substrate specificity, optimum and ranges of temperature and pH for mutan cleavage activity, etc. In this well-developed art, these identifying characteristics are sufficient for a skilled artisan to recognize applicant had possession of the species from the identifying characteristics of the three mutanase species, to reasonably predict sufficient identifying characteristics of the other members of the genus and, thus, establish possession of the genus. Thus, the claim meets the D(2) criteria.

As another example, consider the following claim to a genus:

A DNA comprising a novel DF3 enhancer and DNA encoding a heterologous gene but not encoding DF3 wherein said DF3 enhancer consists of SEQ ID NO: 1.

Considering the claim as a whole, it covers a genus of DNA. The specification does not describe a representative number of members of the genus by complete structure. Thus, the claim does not meet the D(1) criteria. However, there is sufficient disclosure of identifying characteristics common to the members of the genus, i.e., DF3 enhancer, to meet the D(2) criteria. Because of the nature of the generic term ''DNA,'' one skilled in the art could envision a sufficient number of the members of the genus to describe the invention in such full, clear and concise terms as to show possession of the invention at the time of filing.

In contrast, consider the claim:

An isolated nucleic acid comprising the structure of the reverse transcript of a mammalian mRNA, which mRNA encodes insulin.

Considering the claim as a whole, the claim covers the genus of nucleotide sequences encoding mammalian insulin. The specification only provides the coding sequence for rat insulin cDNA and a method to isolate the coding sequence from its natural source.[25] This description does not meet the criteria of D(1) or D(2) and thus does not satisfy the written description requirement.

Also contrast the claim ''A gene comprising SEQ ID NO: 1.'' Although all genes encompassed by this claim share the characteristic of comprising SEQ ID NO: 1, and as such might appear to meet the D(2) criteria, there is insufficient description of the characteristics (e.g., promoters, enhancers, coding regions, and other regulatory elements) which identify the genes, as opposed to any DNA comprising SEQ ID NO: 1.

If sufficient identifying characteristics are not disclosed for a given genus, as described in D(1) or D(2), the claim to that genus must be rejected as lacking adequate written description under 35 U.S.C. 112 ¶ 1.

III. Complete Patentability Determination Under All Statutory Requirements and Clearly Communicate Findings, Conclusions and Their Bases

The above only describes how to determine whether the written description requirement of 35 U.S.C. 112 ¶ 1 is satisfied. Regardless of the outcome of that determination, Office personnel must complete the patentability determination under all the relevant statutory provisions of the Patent Act.

Once Office personnel have concluded analysis of the claimed invention under all the statutory provisions, including 35 U.S.C. 101, 112, 102 and 103, they should review all the proposed rejections and their bases to confirm their correctness. Only then should any rejection be imposed in an Office action. The Office action should clearly communicate the findings, conclusions and reasons which support them.

Specific to these guidelines:

A. For Each Claim Lacking Written Description Support, Reject the Claim Under Section 112, ¶1, for Lack of Adequate Written Description

In rejecting a claim, set forth express findings of fact regarding the above analysis which support the lack of written description conclusion. These findings should:

(1) identify the claim limitation not described; and

(2) provide reasons why a person skilled in the art at the time the application was filed would not have recognized the description of this limitation in view of the disclosure of the application as filed.

When appropriate, suggest amendments to the claims which would bring the claims into compliance with the written description in the specification, bearing in mind the prohibition against new matter in the claims and corresponding description set forth in 35 U.S.C. 112 and 132.

B. Upon Reply by Applicant, Again Determine the Patentability of the Claimed Invention, Including Whether the Written Description Requirement is Satisfied by Performing the Analysis Described Above in View of the Whole Record

Upon reply by applicant, before repeating any rejection under Section 112 ¶ 1 for lack of written descriptive basis, review the basis for the rejection in view of the record as a whole, including amendments, arguments and any evidence submitted by applicant. If the whole record now demonstrates that the written description requirement is satisfied, do *not* repeat the rejection in the next Office action. If the record still does not demonstrate that written description is adequate to support the claim(s), repeat the rejection under 35 U.S.C. 112 ¶ 1, fully respond to applicant's rebuttal arguments, and properly treat any further showings submitted by applicant in the reply. Any affidavits, including those relevant to the 112 ¶ 1 written description requirement, must be thoroughly analyzed and discussed in the Office action.

Endnotes

1. 119 F.3d 1559, 43 USPQ2d 1398 (Fed. Cir. 1997).
2. 984 F.2d 1164, 25 USPQ2d 1601 (Fed. Cir. 1993).
3. 927 F.2d 1200, 18 USPQ2d 1016 (Fed. Cir. 1991).
4. *E.g., Vas-Cath, Inc.* v. *Mahurkar,* 935 F.2d 1555, 1560, 19 USPQ2d 1111, 1115 (Fed. Cir. 1991).
5. *In re Barker,* 559 F.2d 588, 592 n.4, 194 USPQ 470, 473 n.4 (CCPA 1977).
6. 35 U.S.C. §§ 132 & 251.
7. *E.g., Vas-Cath, Inc.* v. *Mahurkar,* 935 F.2d 1555, 1563, 19 USPQ2d 1111, 1116 (Fed. Cir. 1991). Much of the written description case law addresses whether the specification as originally filed supports claims not originally in the application. The issue raised in the cases is most often phrased as whether the original application provides ''adequate support'' for the claims at issue or whether the material added to the specification incorporates ''new matter'' in violation of 35 U.S.C. § 132. The ''written description'' question similarly arises in the interference context, where the issue is whether the specification of one party to the interference can support the newly added claims corresponding to the count at issue, i.e., whether that party can ''make the claim'' corresponding to the interference count. *E.g., see Martin* v. *Mayer,* 823 F.2d 500, 502, 3 USPQ2d 1333, 1335 (Fed. Cir. 1987).

In addition, early opinions suggest the Patent and Trademark Office was unwilling to find written descriptive support when the only description was found in the claims; however, this viewpoint was rejected. *See In re Koller,* 613 F.2d 819, 204 USPQ 702 (CCPA 1980) (original claims constitute their own description); *In re Gardner,* 475 F.2d 1389, 177 USPQ 396 (CCPA 1973) (accord); *In re Wertheim,* 541 F.2d 257, 191 USPQ 90 (CCPA 1976) (accord). It is now well-accepted that a satisfactory description can be mined from the claims or any other portion of the originally filed specification.

These early opinions did not address the quality or specificity of particularity that was required in the description, i.e., how much description is enough.

8. *See Eli Lilly,* 119 F.3d at 1566, 43 USPQ2d at 1404.
9. *See In re Smith,* 458 F.2d 1389, 1395, 173 USPQ 679, 683 (CCPA 1972) (''Precisely how close [to the claimed invention] the description must come to comply with § 112 must be left to a case-by-case development.''); *In re Wertheim,* 541 F.2d 257, 262, 191 USPQ 90, 96 (CCPA 1976) (inquiry is primarily factual and depends on the nature of the invention and the amount of knowledge imparted to those skilled in the art by the disclosure).
10. *Wertheim,* 541 F.2d at 262, 191 USPQ at 96.
11. *See Eli Lilly,* 119 F.3d at 1568, 43 USPQ2d at 1406 (written description requirement not satisfied by merely providing ''a result that one might achieve if one made that invention''); *In re Wilder,* 736 F.2d 1516, 1521, 222 USPQ 369, 372–73

(Fed. Cir. 1984) (affirming a rejection for lack of written description because the specification does ''little more than outline goals appellants hope the claimed invention achieves and the problems the invention will hopefully ameliorate'').

12. *See, e.g., In re Morris*, 127 F.3d 1048, 1053–54, 44 USPQ2d 1023, 1027 (Fed. Cir. 1997).

13. *See, e.g., Ex parte Davis*, 80 USPQ 448, 450 (1948) (''comprising'' leaves the ''claim open for the inclusion of unspecified ingredients even in major amounts''.), *quoted with approval in Moleculon Research Corp* v. *CBS, Inc.*, 793 F.2d 1261, 1271, 229 USPQ 805, 812 (Fed. Cir. 1986).

14. *See Pac-Tec Inc.* v. *Amerace Corp.*, 903 F.2d 796, 801, 14 USPQ2d 1871, 1876 (Fed. Cir. 1990) (determining that preamble language that constitutes a structural limitation is actually part of the claimed invention).

15. An applicant shows possession of the claimed invention by describing the claimed invention with all of its limitations. *Lockwood* v. *American Airlines, Inc.*, 107 F.3d 1565, 1572, 41 USPQ2d 1961, 1966 (Fed. Cir. 1997).

16. *E.g., Eli Lilly*, 119 F.3d at 1568, 43 USPQ2d at 1405–06.

17. A ''relevant identifying characteristic'' is one that would provide evidence that applicant was in possession of what is claimed. For example, the presence of a restriction enzyme map of a gene may be relevant to a statement that the gene has been isolated. One skilled in the art could determine whether the gene disclosed was the same as or different than a gene isolated by another by comparing the restriction enzyme map. In contrast, evidence that the gene could be digested with a nuclease would not normally represent a relevant characteristic since any gene would be digested with a nuclease.

Examples of identifying characteristics include a sequence, structure, binding affinity, binding specificity, molecular weight and length. Although structural formulas provide a convenient method of demonstrating possession of specific molecules, other identifying characteristics can demonstrate the requisite possession. For example, unique cleavage by particular enzymes, isoelectric points of fragments, detailed restriction enzyme maps, a comparison of enzymatic activities, or antibody cross reactivity may be sufficient to show possession of the claimed invention to one of skill in the art. *See Lockwood* v. *American Airlines, Inc.*, 107 F.3d 1565, 1572, 41 USPQ2d 1961, 1966 (1997) (''written description'' requirement may be satisfied by using ''such descriptive means as words, structures, figures, diagrams, formulas, etc. that fully set forth the claimed invention'').

However, a definition by function alone ''does not suffice'' to sufficiently describe a coding sequence ''because it is only an indication of what the gene does, rather than what it is.'' *Eli Lilly*, 119 F.3 at 1568, 43 USPQ2d at 1406. *See also Fiers*, 984 F.2d at 1169–71, 25 USPQ2d at 1605–06 (discussing Amgen).

18. *See Hybritech Inc.* v. *Monoclonal Antibodies, Inc.*, 802 F.2d 1367, 1379–80, 231 USPQ 81, 90 (Fed. Cir. 1986).

19. *See, e.g., Vas-Cath*, 935 F.2d at 1563, 19 USPQ2d at 1116; *Martin* v. *Johnson*, 454 F.2d 746, 751, 172 USPQ 391, 395 (CCPA 1972) (stating ''the description need not be in ipsis verbis to be sufficient'').

20. 35 U.S.C. § 112 ¶ 1. *Cf. Fields* v. *Conover*, 443 F.2d 1386, 1392, 170 USPQ 276, 280 (CCPA 1971) (finding a lack of written description because the specification lacked the ''full, clear, concise, and exact written description'' which is necessary to support the claimed invention).

21. The examples contained within these guidelines are not intended to represent the minimum requirements necessary to comply with 35 U.S.C. § 112 ¶ 1.

22. *See Eli Lilly*, 119 F.3d at 1568, 43 USPQ2d at 1406.

23. *See id.* at 1568, 43 USPQ2d at 1406.

24. *Cf. Eli Lilly*, 119 F.3d at 1567, 43 USPQ2d at 1405 (stating that ''The name cDNA is not itself a written description of that DNA; it conveys no distinguishing information concerning itself.'').

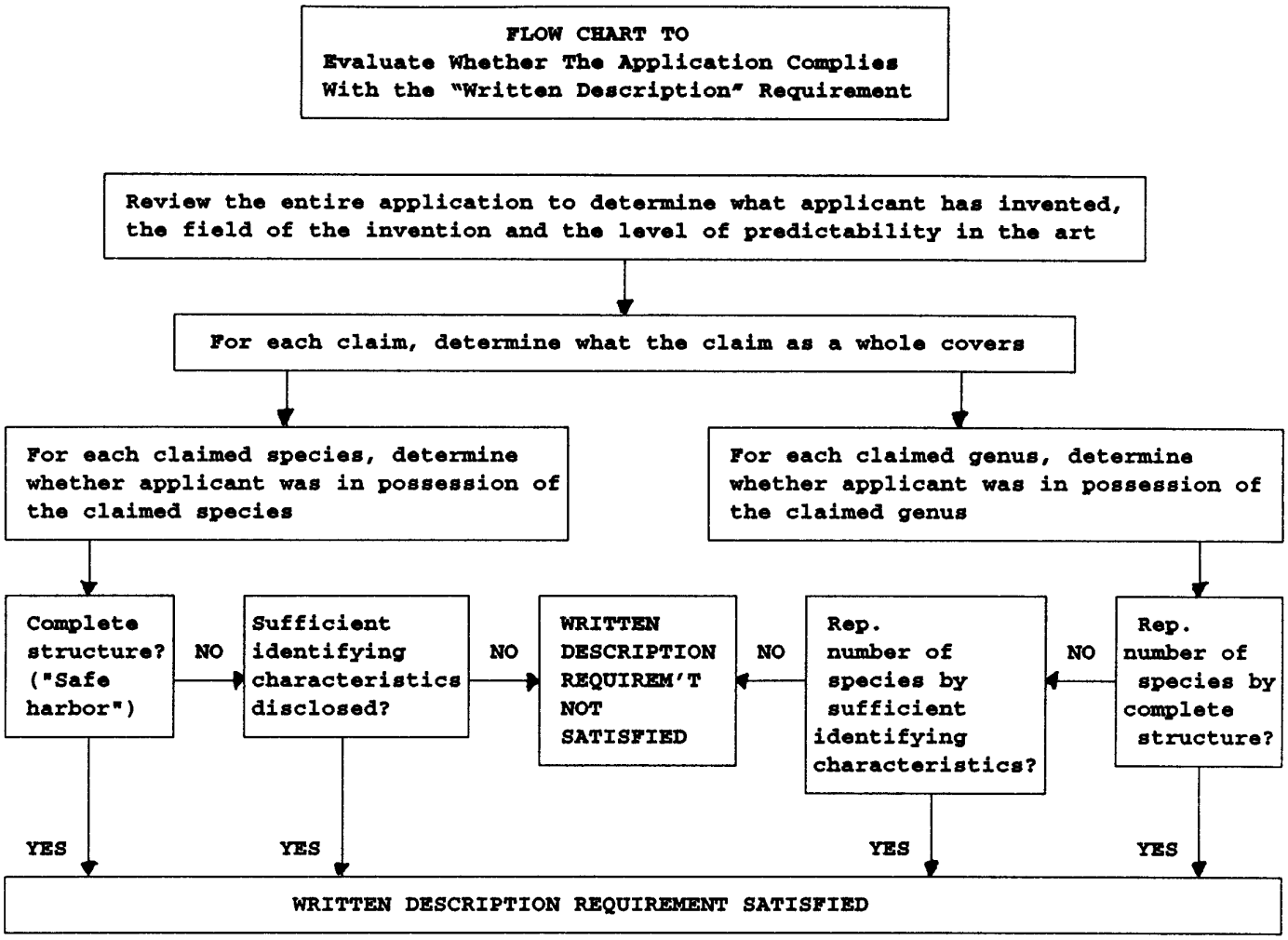
25. *See id.* 1568, 43 USPQ2d at 1406.

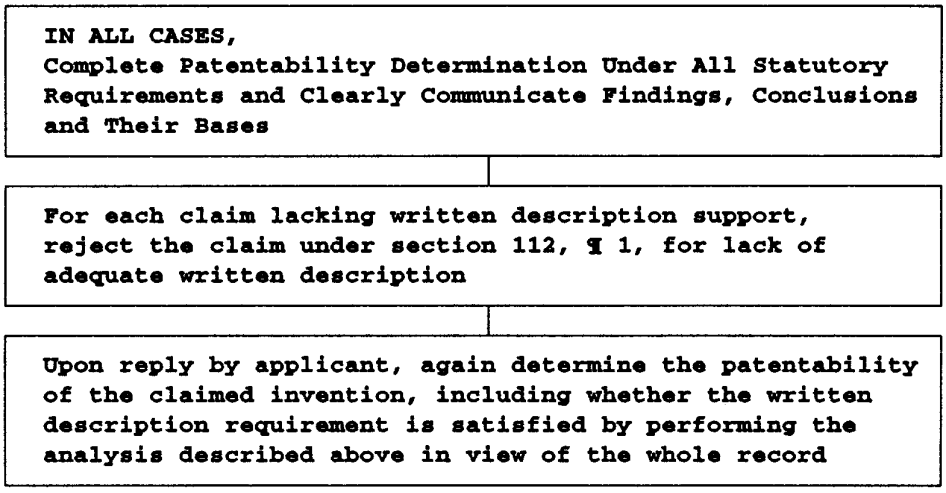
Dated: June 9, 1998.

Bruce A. Lehman,

Assistant Secretary of Commerce and Commissioner of Patents and Trademarks.

BILLING CODE 3510–10–P





[FR Doc. 98–15777 Filed 6–12–98; 8:45 am]
BILLING CODE 3510–16–C

DEPARTMENT OF COMMERCE

Patent and Trademark Office

[Docket No. 980605147–8147–01]

Request for Comments on Interim Guidelines for Reexamination of Cases in View of In re Portola Packaging, Inc., 110 F.3d 786, 42 USPQ2d 1295 (Fed. Cir. 1997)

AGENCY: Patent and Trademark Office, Commerce.

ACTION: Notice and request for public comments.

SUMMARY: The Patent and Trademark Office (PTO) requests comments from the public on interim guidelines that will be used by PTO personnel in their review of requests for reexaminations and ongoing reexaminations for compliance with the decision in In re Portola Packaging, Inc., 110 F.3d 786, 42 USPQ2d 1295 (Fed. Cir. 1997).

DATES: To be ensured consideration, written comments on the interim guidelines must be received by the PTO by September 14, 1998.

ADDRESSES: Written comments should be addressed to Commissioner of Patents and Trademarks, Attention: Kevin T. Kramer or John M. Whealan, Box 8, Washington, DC 20231. Comments may be submitted by facsimile at (703) 305–9373. Comments may also be submitted by electronic mail addressed to ''kevin.kramer@uspto.gov'' or ''john.whealan@uspto.gov''.

FOR FURTHER INFORMATION CONTACT: John M. Whealan or Kevin T. Kramer by telephone at (703) 305–9035; by facsimile at (703) 305–9373; by mail addressed to Box 8, Commissioner of Patents and Trademarks, Washington, DC 20231; or by electronic mail at ''john.whealan@uspto.gov'' or ''kevin.kramer@uspto.gov.''

SUPPLEMENTARY INFORMATION: The PTO requests comments from the public on the following interim guidelines. These guidelines will be used by PTO personnel in their review of requests for reexaminations and ongoing reexaminations for compliance with the decision in In re Portola Packaging, Inc., 110 F.3d 786, 42 USPQ2d 1295 (Fed. Cir. 1997). Because these guidelines govern internal practices, they are exempt from notice and comment rulemaking under 5 U.S.C. 553(b)(A).

Written comments should include the following information: (1) Name and affiliation of the individual responding; and (2) an indication of whether the comments offered represent views of the respondent's organization or are the respondent's personal views. Where possible, parties presenting written comments are requested to provide their comments in machine-readable format. Such submissions may be provided by electronic mail sent over the Internet, or on a 3.5″ floppy disk formatted for use in a Windows® based computer. Preferably, machine-readable submissions should be provided in WordPerfect® 6.1 format.

Written comments will be available for public inspection in Suite 918, Crystal Park 2, 2121 Crystal Drive, Arlington, Virginia. In addition, comments provided in machine-readable format will be available through anonymous file transfer protocol (ftp) via the Internet (address: comments.uspto.gov) and through the World Wide Web (address: www.uspto.gov).

I. Interim Guidelines for Reexamination of Cases in View of In re Portola Packaging, Inc., 110 F.3d 786, 42 USPQ2d 1295 (Fed. Cir. 1997)

The following guidelines have been developed to assist Patent and Trademark Office (PTO) personnel in determining whether to order a reexamination or terminate an ongoing reexamination in view of the United States Court of Appeals for the Federal Circuit's decision in In re Portola Packaging, Inc.[1] These guidelines supersede and supplement any previous guidelines issued by the PTO with respect to reexamination. These guidelines apply to all reexaminations regardless of whether they are initiated by the Commissioner, requested by the patentee, or requested by a third party. When made final, these guidelines will be incorporated into Chapter 2200 of the Manual of Patent Examining Procedure.

A. Explanation of Portola Packaging

In order for the PTO to conduct reexamination, prior art must raise a ''substantial new question of patentability.'' [2] In Portola Packaging, the Federal Circuit held that a combination of two references that were expressly relied upon individually to reject claims during the original examination does not raise a substantial new question of patentability.[3] The Federal Circuit also held that an amendment of the claims during reexamination does not raise a substantial new question of patentability.[4] The court explained that ''a rejection made during reexamination does not raise a substantial new question of patentability if it is supported only by prior art previously considered by the PTO.'' [5]

B. General Principles Governing Compliance With Portola Packaging

If prior art was previously expressly relied upon to reject a claim in a prior related PTO proceeding,[6] the PTO will *not* order or conduct reexamination based *only* on such prior art, regardless of whether that prior art is to be relied upon to reject the same or different claims in the reexamination.

If prior art was *not* expressly relied upon to reject a claim, but was cited in the record of a prior related PTO proceeding and *its relevance to the patentability of any claim was actually discussed on the record,*[7] the PTO will *not* order or conduct reexamination based *only* on such prior art.

In contrast, the PTO *will* order and conduct reexamination based on prior art that was cited but whose relevance to patentability of the claims was *not discussed* in any prior related PTO proceeding.

C. Procedures for Determining Whether a Reexamination May Be Ordered in Compliance With Portola Packaging

PTO personnel must adhere to the following procedures when determining whether a reexamination may be ordered in compliance with the Federal Circuit's decision in Portola Packaging:

1. Read the reexamination request to identify the prior art on which the request is based.

2. Conduct any necessary search of the prior art relevant to the subject matter of the patent for which reexamination was requested.[8]

3. Read the prosecution histories of prior related PTO proceedings.

4. Determine if the prior art in the reexamination request and the prior art uncovered in any search was:

(a) expressly relied upon to reject any claim in a prior related PTO proceeding; or

(b) cited *and* its relevance to patentability of any claim discussed in a prior related PTO proceeding.

5. *Deny* the reexamination request if the decision to order reexamination would be based *only* on prior art that was (a) expressly relied upon to reject any claim and/or (b) cited and its relevance to patentability of any claim discussed in a prior related PTO proceeding.[9]

6. *Order* reexamination if the decision to order reexamination would be based *at least in part* on prior art that was neither (a) expressly relied upon to reject any claim nor (b) cited and its relevance to patentability of any claim discussed in a prior related PTO proceeding, and a substantial new question of patentability is raised with respect to any claim of the patent.[10]

D. Procedures for Determining Whether an Ongoing Reexamination Must be Terminated in Compliance With Portola Packaging

PTO personnel must adhere to the following procedures when determining whether any current or future ongoing reexamination should be terminated in compliance with the Federal Circuit's decision in Portola Packaging:

1. Prior to making any rejection in an ongoing reexamination, determine for any prior related PTO proceeding what prior art was (a) expressly relied upon to reject any claim or (b) cited *and* discussed.

2. Base any and all rejections of the patent claims under reexamination *at least in part* on prior art that was neither (a) expressly relied upon to reject any claim nor (b) cited and its relevance to patentability of any claim discussed in any prior related PTO proceeding.

3. Withdraw any rejections based only on prior art that was previously either (a) expressly relied upon to reject any claim or (b) cited and its relevance to patentability of any claim discussed in any prior related PTO proceeding.

4. Terminate reexaminations in which the *only* remaining rejections are *entirely* based on prior art that was previously (a) expressly relied upon to reject any claim and/or (b) cited and its relevance to patentability of a claim discussed in any prior related PTO proceeding.[11]

E. Application of Portola Packaging to Unusual Fact Patterns

The PTO recognizes that each case must be decided on its particular facts and that cases with unusual fact patterns will occur. In such a case, the reexamination should be brought to the attention of the Group Director who will then determine the appropriate action to be taken.

Unusual fact patterns may appear in cases in which prior art was expressly relied upon to reject any claim or cited and discussed with respect to the patentability of a claim in a prior related PTO proceeding, but other evidence clearly shows that the examiner did not appreciate the issues raised in the reexamination request or the ongoing reexamination with respect to that art. Such other evidence may appear in the reexamination request, in the nature of the prior art, in the prosecution history of the prior examination, or in an admission by the patent owner, applicant, or inventor.[12]

For example, if a textbook was cited during original examination, the record of that examination may show that only select information from the textbook was discussed with respect to the patentability of the claims.[13] If the reexamination request relied upon other information in the textbook that actually teaches what is required by the claims, it may be appropriate to rely on this other information in the textbook to conduct reexamination.[14]

Another example involves the situation where an examiner discussed a reference in a prior PTO proceeding, but did not either expressly reject a claim based upon the reference or maintain the rejection based on the mistaken belief that the reference did not qualify as prior art.[15] If the reexamination request were to explain how and why the reference actually does qualify as prior art, it may be appropriate to conduct reexamination.[16]

Another example involves foreign language prior art references. If a foreign language prior art reference was cited and discussed in any prior PTO proceeding, Portola Packaging may not prohibit reexamination over a complete and accurate translation of that foreign language prior art reference. Specifically, if a reexamination request were to explain why a more complete and accurate translation of that same foreign language prior art reference actually teaches what is required by the patent claims, it may be appropriate to conduct reexamination.

Another example of an unusual fact pattern involves cumulative references. To the extent that a cumulative reference is repetitive of a prior art reference that was previously expressly applied or discussed, Portola Packaging may prohibit reexamination of the patent claims based only on the repetitive reference.[17] However, it is expected that a repetitive reference which cannot be considered by the PTO during reexamination will be a rare occurrence since most references teach additional information or present information in a different way than other references, even though the references might address the same general subject matter.

F. Notices Regarding Compliance With Portola Packaging

1. If a request for reexamination is denied under C.5. above in order to comply with the Federal Circuit's decision in Portola Packaging, the notice of denial should state: ''This reexamination request is denied based on In re Portola Packaging, Inc., 110 F.3d 786, 42 USPQ2d 1295 (Fed. Cir. 1997). No final patentability determination has been made.''

2. If an ongoing reexamination is terminated under D.4. above in order to comply with the Federal Circuit's decision in Portola Packaging, the termination notice should state: ''This reexamination is terminated based on In re Portola Packaging, Inc., 110 F.3d 786, 42 USPQ2d 1295 (Fed. Cir. 1997). No final patentability determination has been made.''

3. If a rejection in the reexamination has previously issued and that rejection is withdrawn under D.3. above in order to comply with the Federal Circuit's decision in Portola Packaging, the Office action withdrawing such rejection should state: ''The rejection is withdrawn in view of In re Portola Packaging, Inc., 110 F.3d 786, 42 USPQ2d 1295 (Fed. Cir. 1997). No final patentability determination of the claims of the patent in view of such prior art has been made.'' If multiple rejections have been made, the Office action should clarify which rejections are being withdrawn.

Endnotes

1. 110 F.3d 786, 42 USPQ2d 1295 (Fed. Cir.), *reh'g in banc denied*, 122 F.3d 1473, 44 USPQ2d 1060 (1997).

2. 35 U.S.C. 304.

3. During the original prosecution of the application which led to the patent, the PTO had expressly rejected the claims separately based upon the Hunter and Faulstich references. The PTO never expressly applied the references in combination. During reexamination, Portola Packaging amended the patent claims, and for the first time the PTO expressly rejected the amended patent claims based upon the Hunter and Faulstich references in combination. Despite these facts, the Federal Circuit determined that the PTO was precluded from conducting reexamination on those references. 110 F.3d at 790, 42 USPQ2d at 1299.

4. 110 F.3d at 791, 42 USPQ2d at 1299.

5. 110 F.3d at 791, 42 USPQ2d at 1300.

6. Prior related PTO proceedings include the original prosecution history, any reissue prosecution history, and any previous reexamination prosecution history of a concluded PTO proceeding.

7. The relevance of the prior art to patentability may be discussed by either the applicant, patentee, examiner, or any third party. However, 37 CFR 1.2 requires that all PTO business be transacted in writing. Thus, the PTO cannot presume that a prior art reference was previously relied upon to reject or discussed in a prior PTO proceeding if there is no basis in the written record to so conclude other than the examiner's initials or a check on an information disclosure statement. Thus, any discussion of prior art must appear on the record of a prior related PTO proceeding. Examples of generalized statements in a prior related PTO proceeding that would not preclude reexamination include statements that prior art is ''cited to show the state of the art,'' ''cited to show the background of the invention,'' or ''cited of interest.''

8. *See* 35 U.S.C. 303 (''On his own initiative, and any time, the Commissioner

may determine whether a substantial new question of patentability is raised by patents and publication discovered by him . * * *''); *see also* MPEP § 2244 (''If the examiner believes that additional prior art patents and publications can be readily obtained by searching to supply any deficiencies in the prior art cited in the request, the examiner can perform such an additional search.'').

9. *See* Portola Packaging, Inc., 110 F.3d at 790, 42 USPQ2d at 1299 (examiner presumed to have done his job). There may be unusual fact patterns and evidence which suggests that the PTO did not consider the prior art that was discussed in the prior PTO proceeding. These cases should be brought to the attention of the Group Director. For a discussion of the treatment of such cases, see section E above.

10. If not specified, a reexamination generally includes all claims. However, reexamination may be limited to specific claims. *See* 35 U.S.C. 304 (authorizing the power to grant reexamination for determination of a ''substantial new question of patentability affecting *any claim* of a patent.'') (emphasis added). Thus, the Commissioner may order reexamination confined to specific claims. However, reexamination is not necessarily limited to those questions set forth in the reexamination order. *See* 37 CFR 1.104(a) (''The examination shall be complete with respect both to compliance of the application or patent under reexamination with the applicable statutes and rules and to the patentability of the invention as claimed. * * *'').

11. The Commissioner may conduct a search for new art prior to determining whether a substantial new question of patentability exists prior to terminating any ongoing reexamination proceeding. *See* 35 U.S.C. 303. *See also* 35 U.S.C. 305 (indicating that ''reexamination will be conducted according to the procedures established for initial examination,'' thereby suggesting that the Commissioner may conduct a search during an ongoing reexamination proceeding).

12. *See* 62 FR 53,151, 53,191 (October 10, 1997) (to be codified at 37 CFR § 1.104(c)(2)).

13. The file history of the prior PTO proceeding should indicate which portion of the textbook was previously considered. *See* 37 CFR 1.98(a)(2)(ii) (an information disclosure statement must include a copy of each ''publication or that *portion* which caused it to be listed'') (emphasis added).

14. However, a reexamination request that merely provides a new interpretation of a reference already previously expressly relied upon or actually discussed by the PTO does not create a substantial new question of patentability.

15. For example, the examiner may have not believed that the reference qualified as prior art because: (i) the reference was undated; (ii) the applicant submitted a declaration believed to be sufficient to antedate the reference under 37 CFR 1.131; or (iii) the examiner attributed an incorrect filing date to the claimed invention.

16. For example, the request could: (i) verify the date of the reference; (ii) undermine the sufficiency of the section 131 declaration; or (iii) explain the correct filing date accorded a claim.

17. For purposes of reexamination, a cumulative reference that is repetitive is one that substantially reiterates verbatim the teachings of a reference that was either previously expressly relied upon or discussed in a prior PTO proceeding even though the title or the citation of the reference may be different.

Dated: June 9, 1998.

Bruce A. Lehman,

Assistant Secretary of Commerce and Commissioner of Patents and Trademarks.

[FR Doc. 98–15778 Filed 6–12–98; 8:45 am]

BILLING CODE 3510–16–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

ACTION: Submission for OMB review; comment request.

SUMMARY: The Acting Deputy Chief Information Officer, Office of the Chief Information Officer, invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before July 15, 1998.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Danny Werfel, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection requests should be addressed to Patrick J. Sherrill, Department of Education, 600 Independence Avenue, SW, Room 5624, Regional Office Building 3, Washington, DC 20202–4651.

FOR FURTHER INFORMATION CONTACT: Patrick J. Sherrill (202) 708–8196. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The 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.

Dated: June 10, 1998.

Hazel Fiers,

Acting Deputy Chief Information Officer, Office of the Chief Information Officer.

Office of the Under Secretary

Type of Review: New.
Title: Follow-up Study of State Implementation of Federal Elementary and Secondary Education Programs.
Frequency: One time.
Affected Public: State, local or Tribal Gov't; SEAs or LEAs.
Reporting and Recordkeeping Hour Burden:
Responses: 459.
Burden Hours: 459.
Abstract: The Department of Education is charged with evaluating Title I of the Elementary and Secondary Education Act (ESEA) and other elementary and secondary education legislation enacted by the 103rd Congress. These surveys will collect information on the operations and effects at the state level of legislative provisions and federal assistance, in the context of state education reform efforts. Findings will be used in reporting to Congress and improving information dissemination. Respondents are managers in nine programs in all 50 state education agencies.

Office of the Under Secretary

Type of Review: New.
Title: 1998 Study of America Reads Challenge: READ*WRITE*NOW! (ARC:RWN) Summer Sites.
Frequency: On Occasion.
Affected Public: State, local or Tribal Gov't, SEAs or LEAs.
Reporting and Recordkeeping Hour Burden:

Responses: 65.
Burden Hours: 65.

Abstract: The Department of Education will use this data collection to generate information that describes ARC:RWN pilot sites providing summer and year-round community literacy programs. The information, collected from up to 65 project coordinators, will be used by Department Officials to inform ARC reauthorization and proposed RWN legislation, and by ARC:RWN project coordinators and other community reading initiatives to design new projects.

[FR Doc. 98–15848 Filed 6–12–98; 8:45 am]
BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Office of Energy Research

Energy Research Financial Assistance Program Notice 98–19: Human Genome Program—Ethical, Legal, and Social Implications

AGENCY: Department of Energy.

ACTION: Notice inviting grant applications.

SUMMARY: The Office of Biological and Environmental Research (OBER) of the Office of Energy Research (ER), U.S. Department of Energy (DOE), hereby announces its interest in receiving applications in support of the Ethical, Legal, and Social Implications (ELSI) subprogram of the Human Genome Program (HGP). The HGP is a coordinated, multidisciplinary, directed research effort aimed at obtaining a detailed understanding of the human genome at the molecular level. This particular research notice invites research grants that address ethical, legal, and social implications from the use of information and knowledge resulting from the HGP.

DATES: Potential applicants are strongly encouraged to submit a brief preapplication. All preapplications, referencing Program Notice 98–19, should be received by 4:30 p.m., E.D.T., July 30, 1998. Early submissions are encouraged. A response discussing the potential program relevance and encouraging or discouraging a formal application generally will be communicated within 20 days of receipt.

Formal applications submitted in response to this notice must be received by 4:30 p.m., E.D.T., September 17, 1998, to be accepted for merit review in November and to permit timely consideration for award in Fiscal Year 1999.

ADDRESSES: Preapplications, referencing Program Notice 98–19, should be sent to: Dr. Daniel W. Drell, Office of Biological and Environmental Research, ER–72, 19901 Germantown Road, Germantown, MD 20874–1290.

Formal applications, referencing Program Notice 98–19, should be forwarded to: U.S. Department of Energy, Office of Energy Research, Grants and Contracts Division, ER–64, 19901 Germantown Road, Germantown, MD 20874–1290, ATTN: Program Notice 98–19. This address also must be used when submitting applications by U.S. Postal Service Express Mail, or any commercial mail delivery service, or when hand carried by the applicant. An original and seven copies of the application must be submitted.

FOR FURTHER INFORMATION CONTACT: Dr. Daniel W. Drell, Office of Biological and Environmental Research, ER–72, Office of Energy Research, U.S. Department of Energy, 19901 Germantown Road, Germantown, MD 20874–1290, telephone: (301) 903–6488 or E-mail: daniel.drell@oer.doe.gov. The full text of Program Notice 98–19 is available via the Internet using the following web site address: http://www.er.doe.gov/production/grants/grants.html.

SUPPLEMENTARY INFORMATION: The DOE encourages the submission of applications that will address, analyze, or anticipate ELSI issues associated with human genome research. The DOE particularly encourages research in four broad areas:

I. The uses, impacts, implications of, and privacy of genetic information in the workplace, particularly screening and monitoring programs that involve the collection and evaluation of genetic information, and the use of the workplace as a research venue. Research is encouraged that would explore historical experiences, current practices, and lessons learned as they pertain to the collection and use of worker genetic information. This research can include issues arising from the creation, use, maintenance, privacy and disclosure of genetic information obtained in workplace settings that can include, but is not limited to, workplaces at which DOE activities are taking place or have in the past.

II. Access to, and protection of, genetic information particularly information stored in computerized databases, or obtained from stored human tissue or sample archives. Research is encouraged to explore confidentiality of genetic data in databanks and databases, the anonymization of genetic records and samples, and the intellectual property protection of genetic information and genome research tools, technologies, and resources.

III. The preparation and dissemination of relevant educational materials in any appropriate medium that will enhance understanding of the ethical, legal, and social aspects of the HGP among the public or specified groups. An interest of this notice is the education of Institutional Review Boards (IRB) that review protocols involving the gathering of genetic information and genome investigators who work with human subjects or materials from which genetic information can be obtained. Additional groups of interest could include judges, the media, policy makers, and DOE employees and contractors.

IV. The ethical, legal, and societal implications of advances in the scientific understanding of complex or multi-genic characteristics and conditions, gene-environment interactions that result in diseases or disease susceptibilities, and human polymorphisms. In particular, the DOE is interested in studies identifying the responses of institutions (e.g., courts, employers, companies, schools, etc.) that must deal with ''genetic uncertainty,'' e.g., lack of certainty of the results of screening for susceptibility genes, uncertain consequences of yet-undefined environmental influences, and highly polymorphic genes whose numerous alleles are not fully characterized.

All applications should demonstrate knowledge of the relevant literature, any related completed activities, and should include detailed plans for the gathering and analysis of factual information and the associated ethical, legal, and social implications. All applications should include, where appropriate, detailed discussion of human subjects protection issues, e.g., storage of, manipulation of, and access to data. Provisions to ensure the inclusion of women, minorities, and potentially disabled individuals must be described, unless specific exclusions are scientifically necessary and justified in detail. All proposed research applications should address the issue of efficient dissemination of results to the widest appropriate audience as well as a time line for their production and dissemination. In the absence of tangible products, rigorous assessments must be included to facilitate evaluation of progress. All applications should include letters of agreement to collaborate from potential collaborators; these letters should specify the contributions the collaborators intend to make if the application is accepted and funded. If an educational effort for a

specific group is proposed, the value to the Human Genome Program of that group or community should be explained in detail. In addition, the DOE encourages applications for the support of novel and innovative conferences focusing on the concerns addressed in this notice, e.g., privacy and access to research materials, workplace uses of genetic information, education of targeted groups such as IRBs and investigators, and susceptibility/sensitivity genes, and polymorphisms.

Educational and conference applications should demonstrate awareness of the relevant literature, include detailed plans for the accomplishment of project goals, and clearly describe the outcomes or ''deliverables'' from the activity. For conference applications, a detailed and largely complete roster of speakers is necessary. Educational and conference applications must also demonstrate awareness of the need to reach the widest appropriate audience, and not be focused exclusively on a local community or group. For all conferences supported under this notice, a summary report is required following the conference. In applications that propose the production of educational materials, the DOE requests that samples of previous similar work by the producers and writers be submitted along with the application. In applications for the support of educational activities, the DOE requires inclusion of a plan for assessment of the effectiveness of the proposed activities.

DOE does not encourage applications dealing with issues consequent to the initiation or implementation of genetic testing protocols. Also, DOE does not encourage survey-based research, unless a compelling case is made that this methodology is critical to address an issue of uncommon significance. DOE generally discourages applications for local efforts (e.g., college or school curricula that will not be disseminated) and requests detailed justification of the need for external support, beyond normal departmental and college resources, evidence of commitment from the parent department or college, and a dissemination plan. Applications for the writing of scholarly publications or books should include justifications for the relevance of the publications or book to the goals of the Human Genome Project as well as discussion of the estimated readership and impact. DOE ordinarily will not provide unlimited support for a funded program and thus strongly encourages the inclusion of plans for transition to self-sustaining status.

The dissemination of materials and research data in a timely manner is essential for progress toward the goals of the DOE Human Genome Program. The OBER requires the timely sharing of resources and data. Applicants should, in their applications, discuss their plans for disseminating research results and materials that may include, where appropriate, publication in the open literature, wide-scale mailings, etc. Once OBER and the applicant have agreed upon a distribution plan, it will become part of the award conditions. Funds to defray the costs of disseminating results and materials are allowable; however, such requests must be sufficiently detailed and adequately justified. Applicants should also provide time lines projecting progress toward achieving proposed goals.

Program Funding

It is anticipated that approximately $1,500,000 will be available for multiple grant awards to be made during Fiscal Year 1999, contingent upon the availability of appropriated funds. Multiple year funding of grant awards is expected, and is also contingent upon the availability of funds. Previous awards have ranged from $50,000 per year up to $500,000 per year with terms from one to three years; most awards average about $200,000 per year for two or three years. Similar award sizes are anticipated for new grants. Generally, conference awards do not exceed $25,000 and indirect costs are not allowed as part of conference grant awards.

Collaboration

Applicants are encouraged to collaborate with researchers in other institutions, such as universities, industry, non-profit organizations, federal laboratories and federally funded research and development centers (FFRDCs), including the DOE National Laboratories, where appropriate, and to incorporate cost sharing and/or consortia wherever feasible.

Collaborative research applications may be submitted in several ways:

(1) When multiple private sector or academic organizations intend to propose collaborative or joint research projects, the lead organization may submit a single application which includes another organization as a lower-tier participant (subaward) who will be responsible for a smaller portion of the overall project. If approved for funding, DOE may provide the total project funds to the lead organization who will provide funding to the other participant via a subcontract arrangement. The application should clearly describe the role to be played by each organization, specify the managerial arrangements and explain the advantages of the multi-organizational effort.

(2) Alternatively, multiple private sector or academic organizations who intend to propose collaborative or joint research projects may each prepare a portion of the application, then combine each portion into a single, integrated scientific application. A separate Face Page and Budget Pages must be included for each organization participating in the collaborative project. The joint application must be submitted to DOE as one package. If approved for funding, DOE will award a separate grant to each collaborating organization.

(3) Private sector or academic organizations who wish to form a collaborative project with a DOE FFRDC may not include the DOE FFRDC in their application as a lower-tier participant (subaward). Rather, each collaborator may prepare a portion of the proposal, then combine each portion into a single, integrated scientific proposal. The private sector or academic organization must include a Face Page and Budget Pages for its portion of the project. The FFRDC must include separate Budget Pages for its portion of the project. The joint proposal must be submitted to DOE as one package. If approved for funding, DOE will award a grant to the private sector or academic organization. The FFRDC will be funded, through existing DOE contracts, from funds specifically designated for new FFRDC projects. DOE FFRDCs will not compete for funding already designated for private sector or academic organizations. Other Federal laboratories who wish to form collaborative projects may also follow guidelines outlined in this section.

Preapplications

A brief preapplication should be submitted. The preapplication should identify, on the cover sheet, the institution, Principal Investigator name, address, telephone, fax and E-mail address, title of the project, and the field of scientific research. The preapplication should consist of a two to three page narrative describing the research project objectives and methods of accomplishment. These will be reviewed relative to the scope and research needs of the DOE's Human Genome Program.

Preapplications are strongly encouraged but not required prior to

submission of a full application. Please note that notification of a successful preapplication is not an indication that an award will be made in response to the formal application.

Applications will be subjected to a scientific merit review (peer review) and will be evaluated against the following evaluation criteria listed in descending order of importance as codified at 10 CFR 605.10(d):

1. Scientific and/or Technical Merit of the Project,
2. Appropriateness of the Proposed Method or Approach,
3. Competency of Applicant's Personnel and Adequacy of Proposed Resources,
4. Reasonableness and Appropriateness of the Proposed Budget.

The evaluation will include program policy factors such as the relevance of the proposed research to the terms of the announcement and an agency's programmatic needs. Note, external peer reviewers are selected with regard to both their scientific expertise and the absence of conflict-of-interest issues. Non-federal reviewers may be used, and submission of an application constitutes agreement that this is acceptable to the investigator(s) and the submitting institution.

Information about development and submission of applications, eligibility, limitations, evaluation, selection process, and other policies and procedures may be found in 10 CFR Part 605 and in the Application Guide for the Office of Energy Research Financial Assistance Program. Electronic access to the Guide and required forms is made available via the World Wide Web at: http://www.er.doe.gov/production/grants/grants.html.

Energy Research, as part of its grant regulations, requires at 10 CFR 605.11(b) that a recipient receiving a grant to perform research involving recombinant DNA molecules and/or organisms and viruses containing recombinant DNA molecules shall comply with the National Institutes of Health ''Guidelines for Research Involving Recombinant DNA Molecules,'' which is available via the World Wide Web at: http://www.niehs.nih.gov/odhsb/biosafe/nih/nih97–1.html, (59 FR 34496, July 5, 1994), or such later revision of those guidelines as may be published in the **Federal Register**.

The Catalog of Federal Domestic Assistance number for this program is 81.049, and the solicitation control number is ERFAP 10 CFR Part 605.

Issued in Washington, DC, on June 4, 1998.

John Rodney Clark,

Associate Director for Resource Management, Office of Energy Research.

[FR Doc. 98–15830 Filed 6–12–98; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. GT98–47–000]

Canyon Creek Compression Company; Notice of Proposed Changes in FERC Gas Tariff

June 8, 1988.

Take notice that on June 3, 1998, Canyon Creek Compression Company (Canyon) tendered for filing Title Page as part of its FERC Gas Tariff, Third Revised Volume No. 1, to be effective July 3, 1998.

Canyon states that the purpose of the filing is to reflect an address change and a name change regarding the contact person and the contact person's telephone and facsimile numbers.

Canyon requested waiver of the Federal Energy Regulatory Commission's (Commission) Regulations to the extent necessary to permit the tendered Title Page to become effective July 3, 1998, thirty (30) days from the date of the filing.

Canyon states that copies of the filing are being mailed to Canyon's 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, 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.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–15788 Filed 6–12–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98–570–000]

Eastern Shore Natural Gas Company; Notice of Request Under Blanket Authorization

June 9, 1998.

Take notice that on May 27, 1998, Eastern Shore Natural Gas Company (Eastern Shore), Post Office Box 1769, Dover, Delaware 19903–1769, filed a request with the Commission in Docket No. CP98–570–000, pursuant to Sections 157–205, and 157.212 of the Commission's Regulations under the Natural Gas Act (NGA) for authorization to add one new delivery point for Delaware Division of Chesapeake Utilities Corporation (Delaware Division), an existing customer authorized in blanket certificate issued in Docket No. CP83–40–000, all as more fully set forth in the request on file with the Commission and open to public inspection.

Eastern Shore proposes to construct and operate one delivery point and associated facilities near Greenspring Road (County Road 47) in Smyrna, New Castle County, Delaware to serve Delaware Division.

Eastern Shore states that the delivery of gas through the new tap would be within the customer's existing entitlement, that there would be no adverse impact on Eastern Shore's other customers' peak and annual deliveries, and that no additional facilities would be required to serve the new delivery point other than a meter and regulating station and service lateral. The estimated cost of the proposed new delivery point would be $75,000.00 which would be paid for by Delaware Division.

Any person or the Commission's staff may, within 45 days after the Commission has issued this notice, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the NGA (18 CFR 157.205) a protest to the request. If no protest is filed within the allowed time, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an

application for authorization pursuant to Section 7 of the NGA.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–15790 Filed 6–12–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98–587–000]

Questar Pipeline Company; Notice of Application

June 9, 1998.

Take notice that on June 2, 1998, Questar Pipeline Company (Questar), 180 East 100 South, Salt Lake City, Utah 84111, filed in Docket No. CP98–587–000 an application pursuant to Sections 7(c) and 7(b) of the Natural Gas Act to construct and abandon portions of its Main Line 40 facilities in Uintah County, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Specifically, Questar proposes to: (1) abandon approximately 929 feet of 20-inch pipeline, representing a portion of its Main Line 40, that is suspended immediately adjacent to the Glen Bench Road bridge; (2) relocate, replace, and bury approximately 846 feet of existing 20-inch pipeline at the White River crossing; and (3) install parallel to the relocated pipeline within the same Main Line 40 right of way, an additional 988 feet of 20-inch pipeline for use as part of an anticipated future project to loop the entire length of the Main Line 40. Questar indicates that the buried river crossing will be installed and tied into the existing Main Line 40 at an approximate cost of $150,000, and that the proposed parallel pipeline segment will be installed at an approximate cost of $150,000. It is indicated that the costs will be financed from funds on hand.

Questar explains that the replacement is required in anticipation of improvements that may be made to the existing Glen Bench Road Bridge by the Uintah County Special Service District and the Bureau of Indian Affairs involving the Uintah and Ouray Reservations. Questar indicates that the primary purpose of its proposal is to alleviate safety concerns with respect to future improvements to the bridge. Questar also states that it will bury the new pipeline to the east of the bridge. It is also indicated that 112 feet of the total length of the proposed pipeline will be buried under the White River using open-cut pipeline trenching techniques.

With respect to the proposed parallel line, Questar explains that concurrent installation of the loop line within the same right of way will significantly minimize environmental impacts and construction costs that will be incurred if the segment of pipeline loop were installed at a later date. Questar also explains that the segment of pipeline loop will be capped on both ends and reserved for future use until the entire looping of Main Line 40 is accomplished. Questar also states that the costs associated with the pipeline loop will be maintained in Account 105 (Gas Plant Held for future use) until such time as the entire looping project is authorized and constructed and inclusion of the costs in rate base is approved in a future rate proceeding.

Questar requests that the requested authorization be issued prior to July 15, 1998, so that the construction may commence during a limited construction window stipulated by the United States Fish and Wildlife Service requiring all construction to be completed by August 15, 1998. It is indicated that the construction window is required because of the migration patterns of two endangered species, the Colorado Squawfish and the Razorback Sucker.

Any person desiring to be heard or to make any protest with reference to said application should on or before June 19, 1998, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to take but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate and permission for abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Questar to appear or be represented at the hearing.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–15792 Filed 6–12–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. CP96–159–000, et al. and CP97–172–000]

Shell Gas Pipeline Company; Notice of Corporate Name Change

June 9, 1998.

Take notice that on June 4, 1998, Shell Gas Pipeline Company (SGPC) tendered for filing in the above-captioned dockets a notice concerning a change in its corporate name.

SGPC informs the Commission that effective May 15, 1998, the name of Shell Gas Pipeline Company has been changed to Mississippi Canyon Gas Pipeline, LLC. SGPC requests that the Commission modify its records in the above-docketed proceedings, including the certificates granted to SGPC, to reflect the new name. SGPC states that its corporate name change is a change in name only and does not reflect any substantive change in beneficial ownership or operation.

Any person desiring to be heard or to protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.211 ans 385.214 of the Commission's rules and Regulations. All such motions must be filed on or before June 19, 1998, as provided in Section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of the filing are on file with the Commission and are available

for public inspection in the Public Reference room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–15789 Filed 6–12–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98–594–000]

Transcontinental Gas Pipe Line; Notice of Request under Blanket Authorization

June 9, 1998.

Take notice that on June 4, 1998, Transcontinental Gas Pipe Line Corporation (Transco), Post Office Box 1396, Houston, Texas 77251, filed in Docket No. CP98–594–000, a request pursuant to Section 157.205 and 157.212 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 157.212) for authorization to construct a new delivery point to North Carolina Natural Gas Corporation (NCNG), under Transco's blanket certificate issued in Docket No. CP82–426–000, pursuant to 18 CFR Part 157, Subpart F of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Transco states that NCNG is a transportation, storage and sales customer of Transco under Transco's Rate Schedules IT, FT, GSS, WSS, ESS, LG–A, FS and X–302. It is also stated that pursuant to NCNG's request, Transco proposes to construct the Conway Meter Station at milepost 131.34 on Transco's South Virginia Lateral in Conway, Northhampton County, North Carolina. It is further stated that the Conway Meter Station would consist of one 4-inch tap on Transco's pipeline, a single 2-inch orifice meter tube, odorization equipment, and data acquisition and communication equipment. Transco also states that this point of delivery would be used by NCNG to receive gas into its local distribution system.

Transco states that the Conway Meter Station would be used by NCNG to receive into its local distribution system up to 3,384 Mdf of gas per day from Transco. It is stated that the estimated cost to construct the Conway Meter Station is $293,000 and what NCNG would be responsible for all costs associated with this project.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–15793 Filed 6–12–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98–577–000]

Williams Gas Pipelines Central, Inc.; Notice of Request Under Blanket Authorization

June 9, 1998.

Take notice that on May 29, 1998, Williams Gas Pipelines Central, Inc. (Williams), P.O. Box 3288, Tulsa, Oklahoma 74101, filed in Docket No. CP98–577–000 a request pursuant to Sections 157.205 and 157.212 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.212) for authorization to utilize measuring and appurtenant facilities installed in Jackson County, Missouri, pursuant to NGPA Section 311 authority, to deliver transportation gas to Missouri Gas Energy (MGE) at Kentucky Avenue for purposes other than NGPA Section 311 transportation, under Williams's blanket authorization issued in Docket No. CP82–479–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Williams states that the projected annual volume of delivery is estimated to be approximately 28,105,000 Dth with a peak day volume of 77,000 Dth. The project cost was approximately $343,063 which was paid from funds on hand.

Williams states that the delivery point is not prohibited by its existing tariff and that it has sufficient capacity to accomplish deliveries without detriment or disadvantage to other customers. The proposed delivery point will not have an effect on FGT's peak day and annual deliveries and the total volumes delivered will not exceed total volumes authorized prior to this request.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–15791 Filed 6–12–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER98–2568–000, ER98–2569–000, and ER98–2584–000, (not consolidated)]

WKE Station Two, Inc. et al; Western Kentucky Energy Corp., and LG&E Energy Marketing Inc. Notice of Filing

June 9, 1998.

Take notice that on June 9, 1998, Petitioners WKE Station Two, Inc. (Station Two Subsidiary), Western Kentucky Energy Corp. (WKEC) and LG&E Energy Marketing Inc. (LEM) tendered for filing information which amends in part certain rate schedules and service agreements previously submitted for approval in each of the above-referenced dockets.

Any person desiring to be heard or protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before June 19, 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 proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–15818 Filed 6–12–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project 2177, GA]

Georgia Power Company; Notice of Scoping Meeting Pursuant to the National Environmental Policy Act of 1969 for an Applicant Prepared Environmental Assessment and a Site Visit

June 9, 1998.

The Commission's regulations allow applicants to prepare their own Environmental Assessment (EA) for hydropower projects and file it with the Federal Energy Regulatory Commission (Commission) along with their license application as part of the applicant-prepared EA (APEA) process.[1] On May 26, 1998, the Commission approved the use of the APEA process in the preparation of license application for Georgia Power Companies' (GPC) Middle Chattahoochee Project, No. 2177.

GPC will hold two public meetings, pursuant to the National Environmental Policy Act (NEPA) of 1969, to identify the scope of environmental issues that should be analyzed in the EA. At the scoping meetings, GPC will: (1) summarize the environmental issues tentatively identified for analysis in the EA; (2) outline any resources they believe would not require a detailed analysis; (3) identify reasonable alternatives to be addressed in the EA; (4) solicit from the meeting participants all available information, especially quantitative data, on the resources at issue; and (5) encourage statements from experts and the public on issues that should be analyzed in the EA.

Although GPC's intent is to prepare an EA, there is the possibility that an Environmental Impact Statement (EIS) will be required. Nevertheless, this meeting will satisfy the NEPA scoping requirements, irrespective of whether an EA or EIS is issued by the Commission.

Scoping Meetings

The times and locations of the scoping meeting are:

Agency scoping meeting	Public scoping meeting
July 9, 1998, 8:30 am to Noon, The Columbus Hilton, Chattahoochee Room, 800 Front Street, Columbus GA 31901, (706) 324–1800.	July 9, 1998, 7:00 pm, Columbus State University, Elizabeth Bradley Turner Center, 4225 University Avenue, Columbus, GA 31907, (706) 568–2023.

All interested individuals, organizations, and agencies are invited and encouraged to attend any or all of the meetings to assist in identifying and clarifying the scope of environmental issues that should be analyzed in the EA.

To help focus discussions, GPC prepared and distributed a scoping document on May 6, 1998. Copies of the Scoping Document can be obtained by calling George Martin, Georgia Power Company, at (404) 506–1357. Copies of the document will also be available at the scoping meetings.

Site Visit

GPC has also scheduled a site visit, for all interested individuals, to the Middle Chattahoochee Project on Thursday, July 9, 1998. The site visit participants will depart from the Columbus Hilton at 1:30 pm and will return to the Columbus Hilton at 5:00 pm.

Meeting Procedures

The meetings will be conducted according to the procedures used at Commission scoping meetings. Because this meeting will be a NEPA scoping meeting under the APEA process, the Commission does not intend to conduct a NEPA scoping meeting after the application and draft EA are filed with the Commission. Instead, Commission staff will attend the meetings on July 9, 1998.

All the scoping meetings will be recorded by a stenographer or tape recorder, and will become part of the formal record of the proceedings for this project.

Those who choose not to speak during the scoping meetings may instead submit written comments on the project. Written comments should be mailed to: Mr. C.M. Hobson, Manager, Environmental Affairs, Georgia Power Company, 241 Ralph McGill Boulevard NE, BIN 10221, Atlanta, GA 30308–3374, Attn: George Martin, by September 8, 1998. All correspondence should show the following caption on the first page: Scoping Comments, Middle Chattahoochee Project Hydroelectric Project (2177).

For further information please contract George Martin at (404) 506–1357 or Ronald McKitrick of the Commission at (404) 770–2363 ext. 44.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–15794 Filed 6–12–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Tendered for Filing With the Commission

June 9, 1998.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* New License.

b. *Project No.:* 2731–020.

c. *Date Filed:* May 27, 1998.

d. *Applicant:* Central Vermont Public Service Corporation.

e. *Name of Project:* Weybridge Hydroelectric Project.

f. *Location:* On Otter Creek, which discharges into Lake Champlain, in the towns of Weybridge and New Haven, Addison County, Vermont.

[1] 81 FERC ¶ 61,103 (1997)

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791 (a)–825(r).

h. *Applicant Contact:* Timothy J. Oakes, Kleinschmidt Associates, 33 West Main Street, Strasburg, PA 17579, (717) 687–2711.

i. *FERC Contact:* Jack Duckworth (202) 219–2818.

j. *Comment Date:* 60 days from the issuance date of this notice.

k. *Description of Project:* The existing project consists of: (1) a 30-foot-high, 302.6-foot-long concrete gravity dam consisting of: (a) two spillway sections, a 150-foot-long west spillway section topped with 6 foot-high hinged steel flashboards and one 20-foot-wide, 10-foot-high Taintor gate; and a 116-foot-long east spillway section topped with an automatically inflated rubber weir; (2) a 1.5-mile-long, 62 acre impoundment with a normal water surface elevation of 174.3 feet; (3) a powerhouse integral with the dam containing a single turbine generator with an installed capacity of 3.0 MW; (4) transmission facilities; and (5) appurtenant facilities.

The applicant states that the average annual generation is approximately 14,000 megawatthours. The applicant is not proposing any changes to the existing project works.

1. With this notice, we are initiating consultation with the VERMONT STATE HISTORIC PRESERVATION OFFICER (SHPO), as required by 106, National Historic Preservation Act, and the regulations of the Advisory Council on Historic Preservation, 36 CFR 800.4.

m. Pursuant to Section 4.32(b)(7) of 18 CFR of the Commission's regulations, if any resource agency, Indian Tribe, or person believes that an additional scientific study should be conducted in order to form an adequate factual basis for a complete analysis of the application on its merit, the resource agency, Indian Tribe, or person must file a request for a study with the Commission not later than 60 days from the issuance date of this notice and serve a copy of the request on the applicant.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–15795 Filed 6–12–98; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[OPPTS–400131; FRL–5796–8]

Toxics Data Reporting Committee of the National Advisory Council for Environmental Policy and Technology; Notice of Public Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of public meeting.

SUMMARY: Under the Federal Advisory Committee Act, EPA is providing notice of a 2-day meeting of the Toxics Data Reporting (TDR) Committee of the National Advisory Council for Environmental Policy and Technology (NACEPT). This will be the sixth meeting of the Toxics Data Reporting (TDR) Committee, whose mission is to provide advice to EPA regarding the Agency's Toxics Release Inventory (TRI) Program.

DATES: The public meeting will take place on June 30, 1998 from 8:30 a.m. to 5:00 p.m. and on July 1, 1998 from 8:30 a.m. to 12 noon. Written and electronic comments in response to this notice should be received by June 22, 1998.

ADDRESSES: The meeting will be held at: Double Tree National Airport, 300 Army Navy Drive, Arlington, VA, telephone number: (703) 416–4100.

Each comment must bear the docket control number OPPTS–400131. All comments should be sent in triplicate to: OPPT Document Control Officer (7407), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 401 M St., SW., Rm. G–099, East Tower, Washington, DC 20460.

Comments and data may also be submitted electronically to: oppt.ncic@epamail.epa.gov. Follow the instructions under Unit II. of this document. No Confidential Business Information (CBI) should be submitted through e-mail.

All comments which contain information claimed as CBI must be clearly marked as such. Three sanitized copies of any comments containing information claimed as CBI must also be submitted and will be placed in the public record for this action. Persons submitting information on any portion of which they believe is entitled to treatment as CBI by EPA must assert a business confidentiality claim in accordance with 40 CFR 2.203(b) for each such portion. This claim must be made at the time that the information is submitted to EPA. If a submitter does not assert a confidentiality claim at the time of submission, EPA will consider this as a waiver of any confidentiality claim and the information may be made available to the public by EPA without further notice to the submitter.

FOR FURTHER INFORMATION CONTACT: Cassandra Vail, telephone: (202) 260–0675, fax number: (202) 401–8142, e-mail: vail.cassandra@epamail.epa.gov or Michelle Price, telephone: (202) 260–3372, fax number: (202) 401–8142, e-mail: price.michelle@epamail.epa.gov.

SUPPLEMENTARY INFORMATION:

I. Background

At the 2-day meeting, the TDR Committee will focus mainly on discussing options for burden reduction associated with the TRI program. The meeting will include discussion of the renewal of the Information Collection Request for the Alternate Reporting Threshold Certification Statement (Form A) and possible modifications to the Form A to increase burden reduction for eligible facilities. The TDR Committee will also spend some portion of the same meeting discussing options to reduce burden in complying with the TRI program, which were suggested by TDR members during the May meeting.

Information on availability of meeting summaries from previous TDR meetings will be available on the TRI Home Page. The address of the TRI Home Page is http://www.epa.gov/opptintr/tri. This information can be found under the heading ''TRI Stakeholder Dialogue.'' In addition, the agenda for the June 30 and July 1 Committee meeting will also be available at this same site prior to the meeting. Oral presentations or statements by interested parties will be limited to 5 minutes. Interested parties are encouraged to contact Cassandra Vail, to schedule presentations before the Committee.

II. Public Record and Electronic Submissions

The official record for this action, as well as the public version, has been established for this action under docket control number OPPTS–400131 (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 12 noon to 4 p.m., Monday through Friday, excluding legal holidays. The official record is located in the TSCA Nonconfidential Information Center, Rm. NE–B607, 401 M St., SW., Washington, DC.

Electronic comments can be sent directly to EPA at:

oppt.ncic@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on disks in WordPerfect 5.1/6.1 or ASCII file format. All comments and data in electronic form must be identified by the docket control number OPPTS–400131. Electronic comments on this action may be filed online at many Federal Depository Libraries.

List of Subjects

Environmental protection.

Dated: June 9, 1998.

Cassandra Vail,

Designated Federal Official, Office of Pollution Prevention and Toxics.

[FR Doc. 98–15858 Filed 6–12–98; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[OPPTS–42205B; FRL–5798–3]

Enforceable Consent Agreement Development for Methyl Isobutyl Ketone (MIBK); Solicitation of Interested Parties and Notice of Public Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA is soliciting interested parties who want to monitor or participate in negotiations on an enforceable consent agreement (ECA) for conducting a reproductive toxicity study to meet testing requirements for the methyl isobutyl ketone (MIBK)/ECA negotiations in the proposed Toxic Substances Control Act (TSCA) section 4 hazardous air pollutants (HAPs) test rule. In addition, EPA invites all interested parties to attend a public meeting to initiate negotiations on the ECA for MIBK.

DATES: EPA must receive written notification requesting designation as an interested party for the MIBK/ECA negotiations on or before . Those persons who identify themselves as interested parties may submit written comments to EPA on the reproductive toxicity study proposal for this chemical and other materials in the docket for the proposed HAPs test rule that relate to the ECA process for this chemical by July 6, 1998.

The public meeting is scheduled from 1 p.m. to 3 p.m. on July 16, 1998.

ADDRESSES: Each comment must bear the docket control number, OPPTS–42205B. All comments should be sent in triplicate to: OPPT Document Control Officer (7407), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 401 M St., SW., Rm. G–099, East Tower, Washington, DC 20460. The Document Control Office telephone number is (202) 260–7093.

EPA will address these comments at the public meeting.

Comments and data may also be submitted electronically to: oppt.ncic@epa.gov following the instructions under Unit VI. of this document. No Confidential Business Information (CBI) should be submitted through e-mail.

All comments which contain information claimed as CBI must be clearly marked as such. Three sanitized copies of any comments containing information claimed as CBI must also be submitted and will be placed in the public record for this document. Persons submitting information any portion of which they believe is entitled to treatment as CBI by EPA must assert a business confidentiality claim in accordance with 40 CFR 2.203(b) for each such portion. This claim must be made at the time that the information is submitted to EPA. If a submitter does not assert a confidentiality claim at the time of submission, EPA will make the information available to the public without further notice to the submitter.

The public meeting will be held at EPA Headquarters, 401 M St., SW., Washington, DC in the EPA Conference Center, North Conference Area in Room 3.

FOR FURTHER INFORMATION CONTACT: *For additional information*: Susan B. Hazen, Director, Environmental Assistance Division (7408), Rm. ET–543B, Office of Pollution Prevention and Toxics, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460; telephone: (202) 554–1404, TDD: (202) 554–0551; e-mail address: TSCA-Hotline@epa.gov.

For technical information: Richard W. Leukroth, Jr., Project Manager, Chemical Control Division (7405), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460; telephone: (202) 260–0321; fax: (202) 260–1096; e-mail address: leukroth.rich@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Electronic Availability

Internet: Electronic copies of this document and various support documents are available from the EPA Home Page at the **Federal Register**—Environmental Documents entry for this document under ''Laws and Regulations'' (http://www.epa.gov/fedrgstr/EPA-TOX/1998/).

II. Background

EPA proposed health effects testing under TSCA section 4(a) on June 26, 1996, for a number of HAPs chemicals (61 FR 33178) (FRL–4869–1). As indicated in the proposed HAPs test rule, EPA would use the data obtained from testing to implement several provisions of section 112 of the Clean Air Act (CAA), including the determination of residual risk, the estimation of the risks associated with accidental releases of chemicals, and determinations whether substances should be removed from the CAA section 112(b)(1) list of hazardous air pollutants (delisting). The data also would be used by other Federal agencies (e.g. Agency for Toxic Substances and Disease Registry (ATSDR), National Institute of Occupational Safety and Health (NIOSH), Occupational Safety and Health Administration (OSHA), and Consumer Product Safety Commission (CPSC)) in assessing chemical risks and in taking appropriate actions within their programs.

In the proposed HAPs test rule, EPA invited the submission of proposals for pharmacokinetics (PK) studies for the HAPs chemicals, which could provide the basis for negotiation of ECAs. On December 24, 1997, in an amendment to the proposed HAPs test rule (62 FR 67466) (FRL–5742–2), EPA provided the opportunity for the submission of ECA proposals for alternative testing that could fulfill the testing needs described in the proposed HAPs test rule, as amended. The Agency indicated that such ECA proposals may or may not include PK and mechanistic data development as a component of the alternative testing proposal. EPA received alternative testing proposals to perform reproductive toxicity testing for MIBK from the Ketones Panel of the Chemical Manufacturers Association (CMA Ketones Panel) on December 11, 1996 and March 30, 1998. The Agency has completed its preliminary review of the CMA Ketones Panel proposal and determined that there is sufficient merit to proceed with ECA negotiations focussed specifically on fulfilling the proposed HAPs test rule need for a 2-generation reproduction study of MIBK. This was documented in subsequent correspondence between EPA and the CMA Ketones Panel. A copy of the proposal and correspondence is contained in the public record for this ECA process. These materials will be

used during discussions at the negotiating meeting. EPA is hereby initiating the procedures for ECA negotiations for the HAPs chemical, MIBK. The procedures for ECA negotiations are described at 40 CFR 790.22(b).

The proposed HAPs test rule, as amended on December 24, 1997 (62 FR 67466) (FRL–5742–2) and on April 21, 1998 (63 FR 19694) (FRL–5780–6), and the ECA negotiations on chemicals included in the proposed rule are separate and parallel activities. While the Agency's objective of obtaining data could be accomplished by either activity, EPA recognizes that the final testing program performed by industry may differ depending on whether it is accomplished under the final HAPs test rule or via the ECA process. During the course of ECA negotiations, additional information may be brought forward that could cause the Agency to re-evaluate the nature of the testing requirements as stated in the proposed HAPs test rule, as amended. This could result in the development of an ECA that would fulfill the Agency's data needs in ways not stated in the proposed HAPs test rule, as amended. It is therefore essential for all interested parties to recognize these differences at the outset and respond accordingly within the framework of these two separate and parallel activities. Comments on the proposed HAPs test rule, as amended, must be submitted under docket control number, OPPTS–42187A, as described in the proposed HAPs test rule, as amended, and will be addressed by EPA via the rulemaking process, which is separate and distinct from the ECA process. Participation in the ECA process is described in Units II. through IV. of this preamble.

Negotiations on developing an ECA for MIBK will focus on 2-generation reproductive toxicity testing. The objective of the ECA process is to conclude an ECA that will set in place industry-sponsored testing that will adequately address EPA's data needs for the proposed HAPs reproductive toxicity testing requirement for MIBK.

III. Identification of Interested Parties

EPA is soliciting interested parties to monitor or participate in testing negotiations on an ECA for MIBK. The CMA Ketones Panel, the submitter of the 2-generation reproduction study proposal for MIBK, and the member companies of the CMA Ketones Panel are already considered interested parties and do not need to respond to this document. Additionally, any persons who respond to this document on or before July 6, 1998 will be given the status of interested parties. Interested parties must respond in writing to the address specified in the ''ADDRESSES'' section located at the beginning of this document. These interested parties will not incur any obligations by being so designated. Negotiations will be conducted in one or more meetings open to the public. The negotiation time schedule for MIBK will be established at the first negotiation meeting and will not exceed a period of 4 months from the initial meeting. If an ECA is not established in principle within this timeframe and EPA does not choose to extend the negotiation time period, negotiations will be terminated and testing will be required under the final HAPs test rule. If the testing from the ECA does not meet the Agency's needs, EPA reserves the right to proceed with rulemaking.

IV. Public Participation in Negotiations

Under EPA regulations, the Agency is required to provide the public with an opportunity to comment on and participate in the development of ECAs. The procedural rule for ECAs (40 CFR part 790) contains provisions to ensure that the views of interested parties are taken into account during the ECA process.

Individuals and groups who respond to this document will have the status of interested parties. All negotiating meetings for the development of this ECA for MIBK will be open to the public and minutes of each meeting will be prepared by EPA and placed in the public docket for this ECA process. The Agency will advise interested parties of meeting dates and make available meeting minutes, testing proposals, background documents, and other materials exchanged at or prepared for negotiating meetings. Where tentative agreement is reached on acceptable testing, a draft ECA will be made available for comment by interested parties and, if necessary, EPA will hold a public meeting to discuss any comments that have been received and determine whether revisions to the ECA are appropriate. EPA will not reimburse costs incurred by non-EPA participants in this ECA negotiation process.

ECAs will only be concluded where an agreement can be obtained which is satisfactory to the Agency, manufacturers or processors who are potential test sponsors, and other interested parties, concerning the need for and scope of testing. In the absence of an ECA, EPA reserves the right to proceed with rulemaking.

A. The Agency will not enter into an ECA if either:

1. EPA and affected manufacturers or processors cannot reach an agreement on the provisions of the ECA; or

2. The draft ECA is considered inadequate by other interested parties who have submitted timely written objections to the draft ECA.

B. EPA may reject these objections if the Agency concludes either that:

1. They are not made in good faith;

2. They are untimely;

3. They are not related to the adequacy of the proposed testing or other features of the agreement that may affect EPA's ability to fulfill the goals and purposes of TSCA; or

4. They are not accompanied by a specific explanation of the grounds on which the draft agreement is considered objectionable.

EPA will prepare an explanation of the basis for each ECA. The explanatory document will summarize the agreement (including the required testing), explain the objectives of the testing, and outline the chemical's use and exposure characteristics. The document, which will also announce the availability of the ECA, will be published in the **Federal Register**.

V. Proposal of Export Notification Requirements for MIBK

EPA intends to publish a proposed rule in an upcoming **Federal Register** document to require export notification by all persons who export or intend to export MIBK under TSCA section 12(b) upon the successful conclusion of an ECA for MIBK.

VI. Public Record and Electronic Submissions

As described above, MIBK is listed as a chemical that would be subject to testing requirements under the proposed HAPs test rule, as amended. This ECA negotiation process and the proposed rule, as amended, are separate and parallel activities. The official record for this ECA action on MIBK, including the public version, has been established under docket control number OPPTS–42205B (including comments and data submitted electronically as described below). The official record for this document also includes all material and submissions filed under docket control number OPPTS–42187A; FRL–4869–1, the record for the proposed HAPs test rule, as amended, and all materials and submissions filed under docket control number OPPTS–42187B; FRL–4869–1, the record for the receipt of alternative testing proposals for developing ECAs for HAPs chemicals.

The official record for this document, including the public version, which does not include any information

claimed as CBI, has been established for this document under docket control number OPPTS–42205B. The public version of this record is available for inspection from 12 noon to 4 p.m., Monday through Friday, excluding legal holidays. The public record is located in the TSCA Nonconfidential Information Center, Rm. NE B–607, 401 M St., SW., Washington, DC 20460.

Electronic comments can be sent directly to EPA at:

oppt.ncic@epa.gov.

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on disks in WordPerfect 5.1/6.1 or ASCII file format. All comments and data in electronic form must be identified by the docket control number, OPPTS–42205B. Electronic comments on this document may be filed online at many Federal Depository Libraries.

The record contains the following information:

A. **Federal Register** notices/EPA documents pertaining to this notice consisting of:

1. ''Proposed Test Rule for Hazardous Air Pollutants; Proposed Rule'' (61 FR 33178, June 26, 1996).

2. ''Amended Proposed Test Rule for Hazardous Air Pollutants; Extension of Comment Period'' (62 FR 67466, December 24, 1997).

3. ''Amended Proposed Test Rule for Hazardous Air Pollutants; Extension of the Comment Period'' (63 FR 19694, April 21 1998).

B. Alternative ECA proposal materials consisting of:

1. Letter from Langley A. Spurlock, Chemical Manufacturers Association to Charles M. Auer, EPA with attachment entitled: ''Alternative Testing Proposal for Methyl Isobutyl Ketone,'' Chemical Manufacturers Association Ketones Panel, December 11, 1996.

2. Letter from Courtney M. Price, Chemical Manufacturers Association, Ketones Panel to Charles M. Auer, EPA, March 30, 1998, with attachments entitled: ''Alternative Testing Proposal for Methyl Isobutyl Ketone,'' and ''Comments of the Chemical Manufacturers Association Ketones Panel on EPA's Proposed Test Rule for Hazardous Air Pollutants.''

C. Letters, facsimilies, electronic correspondence, and contact reports consisting of:

1. Letter from Charles M. Auer, EPA to Barbara Francis, Chemical Manufacturers Association Ketones Panel, February 26, 1997.

2. EPA Contact Report from Charles M. Auer, EPA with William Rawson, Chemical Manufacturers Association Ketones Panel, January 5, 1998.

3. Email from Charles M. Auer, EPA to William Rawson, Chemical Manufacturers Association Ketones Panel, March 9, 1998.

4. Email from Charles M. Auer, EPA to William Rawson, Chemical Manufacturers Association Ketones Panel, March 13, 1998.

List of Subjects

Environmental protection, Chemicals, Hazardous substances, Reporting and recordkeeping requirements.

Dated: June 9, 1998.

Ward Penberthy,

Acting Director, Chemical Control Division, Office of Pollution Prevention and Toxics.

[FR Doc. 98–15856 Filed 6–12–98; 8:45 am]

BILLING CODE 6065–50–F

ENVIRONMENTAL PROTECTION AGENCY

[OPP–30455; FRL–5792–6]

Certain Companies; Applications to Register Pesticide Products

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces receipt of applications to register pesticide products containing new active ingredients not included in any previously registered products pursuant to the provisions of section 3(c)(4) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended.

DATES: Written comments must be submitted by July 15, 1998.

ADDRESSES: By mail, submit written comments identified by the document control number [OPP–30455] and the file symbols to: Public Information and Records Intregrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Environmental Protection Agency, Rm. 119, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA.

Comments and data may also be submitted electronically to: opp-docket@epamail.epa.gov. Follow the instructions under ''SUPPLEMENTARY INFORMATION.'' No Confidential Business Information (CBI) should be submitted through e-mail.

Information submitted as a comment concerning this notice may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. The public docket is available for public inspection in Rm. 119 at the Virginia address given above, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding holidays.

FOR FURTHER INFORMATION CONTACT: The product manager listed in the table below:

Product Manager	Office location/telephone number	Address
James Tompkins (PM 25).	Rm. 239, CM #2, 703–305–5697, e-mail:tompkins.james@epamail.epa.gov.	1921 Jefferson Davis Hwy, Arlington, VA
Marion Johnson (PM 10)	Rm. 208, CM #2, 703–305–6788, e-mail: johnson.marion@epamail.epa.gov.	Do.

SUPPLEMENTARY INFORMATION: EPA received applications as follows to register pesticide products containing active ingredients not included in any previously registered products pursuant to the provision of section 3(c)(4) of FIFRA. Notice of receipt of these applications does not imply a decision by the Agency on the applications.

I. Products Containing Active Ingredients Not Included In Any Previously Registered Products

1. File Symbol: 10182–UUU. Applicant: Zeneca Ag Products, 1800 Concord Pike, P.O. Box 15458, Wilmington, DE 19850–5458. Product Name: ZA1296 4-SC Herbicide. Herbicide. Active ingredient: 2-[4-(Methylsulfonyl)-2-nitrobenzoyl]-1,3,-cyclohexanedione at 40 percent. Proposed classification/Use: None. For control of annual broadleaf weeds in corn. (J. Tompkins)

2. File Symbol: 241–GOE. Applicant: American Cyanamid Company, P.O. Box 400, Princeton, NJ 08543–0400. Product

Name: Chlorfenapyr Termiticide-Insecticide. Insecticide. Active ingredient: Chlorfenapyr 4-bromo-2-(4-chlorophenyl)-1-(ethoxymethyl)-5-(trifluoromethyl)-1*H*-pyrrole-3-carbonitrile at 21.44 percent. Proposed classification/Use: General. For use on cockroaches, ants, and wood infesting insects. (M. Johnson)

Notice of approval or denial of an application to register a pesticide product will be announced in the **Federal Register**. The procedure for requesting data will be given in the **Federal Register** if an application is approved.

Comments received within the specified time period will be considered before a final decision is made; comments received after the time specified will be considered only to the extent possible without delaying processing of the application.

II. Public Record and Electronic Submissions

The official record for this notice, as well as the public version, has been established for this notice under docket number [OPP–30455] (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The official notice record is located at the address in ''ADDRESSES'' at the beginning of this document.

Electronic comments can be sent directly to EPA at:

opp-docket@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comment and data will also be accepted on disks in Wordperfect 5.1/6.1 or ASCII file format. All comments and data in electronic form must be identified by the docket number [OPP–30455]. Electronic comments on this notice may be filed online at many Federal Depository Libraries.

Authority: 7 U.S.C. 136.

List of Subjects

Environmental protection, Pesticides and pest, Product registration.

Dated: June 5, 1998.

James Jones,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 98–15857 Filed 6–12–98; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[OPP–50841; FRL–5793–2]

Issuance of Experimental Use Permits

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has granted experimental use permits to the following applicants. These permits are in accordance with, and subject to, the provisions of 40 CFR part 172, which defines EPA procedures with respect to the use of pesticides for experimental use purposes.

FOR FURTHER INFORMATION CONTACT: By mail: Biopesticides and Pollution Prevention Division (7511W), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

In person or by telephone: Contact the product manager at the following address at the office location, telephone number, or e-mail address cited in each experimental use permit: 2800 Crystal Drive, Arlington, VA.

SUPPLEMENTARY INFORMATION:

275–EUP–82. Issuance. Abbott Laboratories, Dept. 28R, Bldg. A1, 1401 Sheridan Rd., North Chicago, IL 60064-4000. This experimental use permit allows the use of 16 pounds of the plant regulator aminoethoxyvinylglycine hydrochloride on a total of 72 acres of stone fruits (apricots, cherries (sweet), nectarines, peaches, plums, and prunes) to evaluate fruit quality (at harvest and following storage), pre-harvest drop control, and effects of different application timings/rates/volumes. The program is authorized only in the States of Alabama, California, Georgia, Illinois, Maryland, Michigan, New Jersey, New York, North Carolina, Oregon, Pennsylvania, South Carolina, Utah, Virginia, and Washington. The experimental use permit is effective from February 26, 1998 to March 1, 1999. This permit is issued with the limitation that all treated crops will be destroyed or used for research purposes only. (Denise Greenway, CS1 5th Floor, (703) 808–8263, e-mail: greenway.denise@epamail.epa.gov)

275–EUP–83. Issuance. Abbott Laboratories, Dept. 28R, Bldg. A1, 1401 Sheridan Rd., North Chicago, IL 60064-4000. This experimental use permit allows the use of 28 pounds of the plant regulator aminoethoxyvinylglycine hydrochloride on a total of 127 acres of cotton, melons, and tomatoes to evaluate product efficacy. The program is authorized only in the States of Alabama, Arizona, California, Florida, Illinois, Louisiana, Maryland, Michigan, Mississippi, New Jersey, New York, North Carolina, Ohio, Oregon, Pennsylvania, Tennessee, Texas, Virginia, and Washington. The experimental use permit is effective from February 26, 1998 to March 1, 1999. This permit is issued with the limitation that all treated crops will be destroyed or used for research purposes only. (Denise Greenway, CS1 5th Floor, (703) 808–8263, e-mail: greenway.denise@epamail.epa.gov)

71281–EUP–1. Issuance. Paramount Farming Company, 33141 E. Lerdo Highway, Bakersfield, CA 93308. This experimental use permit allows the use of 3.1 kilograms of the pheromone 11,13-hexadecadienal, (Z,Z)- on 1,280 acres of pistachios to evaluate the control of navel orangeworms. The program is authorized only in the State of California. The experimental use permit is effective from April 8, 1998 to April 8, 1999. (Driss Benmhend, CS1 5th Floor, (703) 308–9525, e-mail: benmhend.driss@epamail.epa.gov)

71281–EUP–2. Issuance. Paramount Farming Company, 33141 E. Lerdo Highway, Bakersfield, CA 93308. This experimental use permit allows the use of 327 kilograms of the pheromones 11,13-hexadecadienal, (Z,Z)-, 5-decen-1-o1, acetate (E)-, and 5-decen-1-o1, (E)- on 2,720 acres of almonds to evaluate the control of navel orangeworms and peach twigborers. The program is authorized only in the State of California. The experimental use permit is effective from April 2, 1998 to April 2, 1999. (Driss Benmhend, CS1 5th Floor, (703) 308–9525, e-mail: benmhend.driss@epamail.epa.gov)

71281–EUP–3. Issuance. Paramount Farming Company, 33141 E. Lerdo Highway, Bakersfield, CA 93308. This experimental use permit allows the use of 119 kilograms of the pheromones 11-hexadecen-1-yl acetate (Z)- and 11-hexadecenal, (Z)- on 1,440 acres of mixed row crops and ornamental flowers to evaluate the control of diamondback moths. The program is authorized only in the State of California. The experimental use permit is effective from April 8, 1998 to April 8, 1999. (Driss Benmhend, CS1 5th Floor, (703) 308–9525, e-mail: benmhend.driss@epamail.epa.gov)

71281–EUP–4. Issuance. Paramount Farming Company, 33141 E. Lerdo Highway, Bakersfield, CA 93308. This experimental use permit allows the use of 2.5 kilograms and 96.9 kilograms of the pheromones 8,10-dodecadien-1-o1, (E,E)- and 11,13-hexadecadienal, (Z,Z)-, respectively on 800 acres of walnuts to evaluate the control of navel orangeworms and codling moth. The program is authorized only in the State of California. The experimental use permit is effective from April 8, 1998 to April 8, 1999. (Driss Benmhend, CS1 5th Floor, (703) 308-9525, e-mail: benmhend.driss@epamail.epa.gov)

Persons wishing to review these experimental use permits are referred to the designated product managers. Inquires concerning these permits should be directed to the persons cited above. It is suggested that interested persons call before visiting the EPA office, so that the appropriate file may be made available for inspection purposes from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

Authority: 7 U.S.C. 136.

List of Subjects

Environmental protection, Experimental use permits.

Dated: May 29, 1998.

Janet L. Andersen,

Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.

[FR Doc. 98–15855 Filed 6–12–98; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission

June 5, 1998.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before August 14, 1998. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Judy Boley, Federal Communications Commission, Room 234, 1919 M St., NW, Washington, DC 20554 or via internet to jboley@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s), contact Judy Boley at 202–418–0214 or via internet at jboley@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Approval No.: 3060–0031.

Title: Application for Consent to Assignment of Broadcast License Construction Permit or License.

Form No.: FCC 314.

Type of Review: Revision of a currently approved collection.

Respondents: Businesses or other for-profit, not-for-profit institutions.

Number of Respondents: 1,400.

Estimated Hours Per Response: 11–41 hours (1 hour contract time AM/FM/TV assignments, 10 hours AM/FM assignments, 40 hours TV assignments).

Frequency of Response: On occasion reporting requirements.

Cost to Respondents: $5,300,200.

Estimated Total Annual Burden: 1,400.

Needs and Uses: FCC Form 314 is required to be filed when applying for consent for assignment of an AM, FM or TV broadcast station construction permit or license. In addition, the applicant must notify the Commission when consummation of an approved assignment of a broadcast station construction permit or license is completed.

On 3/7/96, the Commission adopted an Order which amended the Commission's rules to eliminate current national multiple radio ownership restrictions and to relax local radio ownership restrictions (the ''radio contour overlap'' rule). This action was necessary to conform the rules to Sections 202(a) and 202(b)(1) of the Telecommunications Act of 1996. This action will revise the Exhibit dealing with market and audience share information.

This collection also includes the third party disclosure requirement of Section 73.3580. This section requires local public notice in a newspaper of general circulation of the filing of all applications for assignment of license/permit. This notice must be completed within 30 days of the tendering of the application. This notice must be published at least twice a week for two consecutive weeks in a three-week period. A copy of this notice must be placed in the public inspection file along with the application. Additionally, an applicant for assignment of license must broadcast the same notice over the station at least once daily on four days in the second week immediately following the tendering for filing of the application.

The data is used by FCC staff to determine whether the applicants meet basic statutory requirements to become a Commission licensee/permittee.

OMB Approval No.: 3060–0032.

Title: Application for Consent to Transfer of Control of Corporation Holding Broadcast Construction Permit or License.

Form No.: FCC 315.

Type of Review: Revision of a currently approved collection.

Respondents: Businesses or other for-profit, not-for-profit institutions.

Number of Respondents: 1,400.

Estimated Hours Per Response: 11–41 hours (1 hour contract time AM/FM/TV assignments, 10 hours AM/FM assignments, 40 hours TV assignments).

Frequency of Response: On occasion reporting requirement.

Cost to Respondents: $5,300,200.

Estimated Total Annual Burden: 1,400.

Needs and Uses: FCC Form 315 is required to be filed when applying for transfer of control of corporation holding an AM, FM or TV broadcast station construction permit or license. In addition, the applicant must notify the Commission when consummation of an approved transfer of control of a broadcast station construction permit or license is completed.

On 3/7/96, the Commission adopted an Order which amended the Commission's rules to eliminate current national multiple radio ownership restrictions and to relax local radio ownership restrictions (the ''radio contour overlap'' rule). This action was necessary to conform the rules to

Sections 202(a) and 202(b)(1) of the Telecommunications Act of 1996. This action will revise the Exhibit dealing with market and audience share information.

This collection also includes the third party disclosure requirement of Section 73.3580. This section requires local public notice in a newspaper of general circulation of the filing of all applications for transfer of control of license/permit. This notice must be completed within 30 days of the tendering of the application. This notice must be published at least twice a week for two consecutive weeks in a three-week period. A copy of this notice must be placed in the public inspection file along with the application. Additionally, an applicant for transfer of control of license must broadcast the same notice over the station at least once daily on four days in the second week immediately following the tendering for filing of the application.

The data is used by FCC staff to determine whether the applicants meet basic statutory requirements to become a Commission licensee/permittee.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 98–15774 Filed 6–12–98; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1216–DR]

Kentucky; Amendment No. 4 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the Commonwealth of Kentucky, (FEMA–1216–DR), dated April 29, 1998, and related determinations.

EFFECTIVE DATE: June 3, 1998.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3260.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the Commonwealth of Kentucky, is hereby amended to include following area among those determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of April 29, 1998:

The county of Letcher for Individual Assistance (already designated for Public Assistance).

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

Laurance W. Zensinger,

Division Director, Response and Recovery Directorate.

[FR Doc. 98–15837 Filed 6–12–98; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1218–DR]

South Dakota; Amendment No. 1 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of South Dakota, (FEMA–1218–DR), dated June 1, 1998, and related determinations.

EFFECTIVE DATE: June 3, 1998.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3260.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of South Dakota, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of June 1, 1998:

The counties of Clark, Marshall, and Spink for Public Assistance.

The county of Hanson for Individual Assistance and Categories A and B under the Public Assistance program.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program)

Lacy E. Suiter,

Executive Associate Director, Response and Recovery Directorate.

[FR Doc. 98–15836 Filed 6–12–98; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act. Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than July 14, 1998.

A. Federal Reserve Bank of Chicago (Philip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690-1413:

1. Banc One Corporation (''Banc One'') and Banc One Corporation (DE) (''Banc One DE'') both of Columbus, Ohio; to merge with First Chicago NBD Corporation, Chicago, Illinois (''FCNBD''), and thereby acquire all of FCNBD's subsidiary banks: American National Bank and Trust Company, Chicago, Illinois; FCC National Bank, Wilmington, Delaware; NBD Bank, Detroit, Michigan; NBD Bank, NA, Indianapolis, Indiana; First National Bank of Chicago, Chicago, Illinois; NBD

Bank, Venice, Florida; and NBD Bank, Elkhart, Indiana. Banc One and Banc One DE also have requested the Board's approval to hold and exercise options to purchase up to 19.9 percent of the voting shares of FCNBD, if certain events occur. Banc One and Banc One DE may form one or more intermediate bank holding companies.

In connection with the proposed transaction, Banc One and Banc One DE also have provided notice to acquire all of the nonbanking subsidiaries of FCNBD and to engage, directly or indirectly, in all of the nonbanking activities that FCNBD is currently authorized by the Board to conduct. The nonbanking activities, and the subsidiaries of FCNBD engaged in these activities, are described in the notice filed by Banc One and Banc One DE with the Board. The activities and subsidiaries include the following: extending credit and servicing loans through First Chicago Capital Corporation, Chicago, Illinois, and other subsidiaries, pursuant to § 225.28(b)(1) of Regulation Y; activities related to extending credit through First Chicago NBD Real Estate Services, Inc., Indianapolis, Indiana, and other companies, pursuant to § 225.28(b)(2) of Regulation Y; engaging in leasing personal or real property through FNW Capital, Inc., Mt. Prospect, Illinois, and other companies, pursuant to § 225.28(b)(3) of Regulation Y; performing trust company functions through First Chicago Trust Company of New York, New York, New York, pursuant to § 225.28(b)(5) of Regulation Y; providing financial and investment advisory services through First Chicago Capital Markets, Inc., Chicago, Illinois (''FCCM''), and other companies, pursuant to § 225.28(b)(6) of Regulation Y; providing agency transactional services for customer investments through FCCM and other companies, pursuant to § 225.28(b)(7) of Regulation Y; engaging in investment transactions as principal through FCCM and other companies, pursuant to § 225.28(b)(8) of Regulation Y; engaging in insurance agency and underwriting activities through NBD Insurance Agency, Inc., Troy, Michigan, and other companies, pursuant to § 225.28(b)(11) of Regulation Y; engaging in community development activities through various subsidiaries, pursuant to § 225.28(b)(12) of Regulation Y; and providing data processing services through various subsidiaries, pursuant to § 225.28(b)(14) of Regulation Y. In addition, Banc One and Banc One DE propose to engage in certain other activities that the Board has approved by order, including engaging through FCCM in underwriting and dealing, to a limited extent, in all types of debt and equity securities (other than ownership interests in open-end investment companies). Banc One and Banc One DE propose to engage in these activities in accordance with previous Board decisions.

Under this proposal, Banc One and Banc One DE would retain all of Banc One's subsidiary banks, including Bank One, NA, Columbus, Ohio; Bank One Trust Company, NA, Columbus, Ohio; Bank One, Arizona, NA, Phoenix, Arizona; Bank One, Colorado, NA, Denver, Colorado; Bank One, Illinois, NA, Springfield, Illinois; Bank One, Indiana, NA, Indianapolis, Indiana; Bank One, Oklahoma, NA, Oklahoma City, Oklahoma; Bank One, Louisiana, NA, Baton Rouge, Louisiana; Bank One, Kentucky, NA, Louisville, Kentucky; Bank One, Texas, NA, Dallas, Texas; Bank One, Wisconsin, Milwaukee, Wisconsin; Bank One, West Virginia, NA, Huntington, West Virginia; Bank One, Utah, NA, Salt Lake City, Utah; and Bank One, Wheeling Steubenville, NA, Wheeling, West Virginia. Pending consummation of the proposed acquisition of First Commerce Corporation, New Orleans, Louisiana (''First Commerce''), by Banc One, Banc One and Banc One DE also would retain the bank and nonbank subsidiaries of First Commerce, including First National Bank of Commerce, New Orleans; City National Bank of Baton Rouge, Baton Rouge; Rapides Bank & Trust Company in Alexandria, Alexandria; The First National Bank of Lafayette, Lafayette; The First National Bank of Lake Charles, Lake Charles; and Central Bank, Monroe, all in Louisiana.

Banc One and Banc One DE would continue to engage in all of the nonbanking activities in which Banc One is currently authorized by the Board to conduct. The nonbanking activities and the companies conducting these activities are described in the notice filed with the Board. These subsidiaries and activities include: extending credit and servicing loans through Finance One Corporation, Columbus, Ohio, and other companies, pursuant to § 225.28(b)(1) of Regulation Y; activities related to extending credit through Banc One Mortgage Capital Markets, LLC, Dallas, Texas, and other companies, pursuant to § 225.28(b)(2) of Regulation Y; leasing personal or real property through BOI Leasing Corporation, Indianapolis, Indiana, and other companies, pursuant to § 225.28(b)(3) of Regulation Y; operating an industrial bank through First USA Financial Services, Inc., Salt Lake City, Utah, pursuant to § 225.28(b)(4)(i) of Regulation Y; performing trust company functions through Liberty Trust Company, Oklahoma City, Oklahoma, pursuant to § 225.28(b)(5) of Regulation Y; providing financial and investment advisory services through Banc One Capital Markets, Inc., Columbus, Ohio (''BOCM''), and other companies, pursuant to § 225.28(b)(6) of Regulation Y; engaging in agency transactional services for customer investments through BOCM and other companies, pursuant to § 225.28(b)(7) of Regulation Y; engaging in investment transactions as principal through BOCM and other companies, pursuant to § 225.28(b)(8) of Regulation Y; engaging insurance agency and underwriting activities through various companies, pursuant to § 225.28(b)(11) of Regulation Y; engaging in community development activities through various companies, pursuant to § 225.28(b)(12) of Regulation Y; engaging in data processing activities through Paymentech Merchant Services, Inc., Dallas, Texas, and other companies, pursuant to § 225.28(b)(14) of Regulation Y. In addition, Banc One and Banc One (DE) propose to engage in certain other activities that the Board has approved by order, including underwriting and dealing, to a limited extent, in all types of debt and equity securities (other than ownership interests in open-end investment companies), in accordance with previous Board decisions.

Board of Governors of the Federal Reserve System, June 9, 1998.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 98–15776 Filed 6–12–98; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank

indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act. Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than July 10, 1998.

A. Federal Reserve Bank of Richmond (A. Linwood Gill III, Assistant Vice President) 701 East Byrd Street, Richmond, Virginia 23261-4528:

1. First Region Bancshares, Inc., Richlands, Virginia; to become a bank holding company by acquiring 100 percent of the voting shares of First Sentinel Bank, Richlands, Virginia.

B. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63102-2034:

1. Mercantile Bancorporation Inc., St. Louis, Missouri, and its wholly owned subsidiary, Ameribanc, Inc., St. Louis, Missouri; to acquire and thereby merge with Financial Services Corporation of the Midwest, Rock Island, Illinois, and thereby indirectly acquire The Rock Island Bank, N.A., Bettendorf, Iowa.

C. Federal Reserve Bank of Kansas City (D. Michael Manies, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198-0001:

1. Financial Bancshares, Inc., Holton, Kansas; to acquire 18.18 percent of the voting shares of Arizona Bancshares, Inc., Flagstaff, Arizona, and thereby indirectly acquire First State Bank, Flagstaff, Arizona, a *de novo* bank. Comments regarding this application must be received not later than July 6, 1998.

2. Gold Banc Corporation, Inc., Leawood, Kansas; to acquire 100 percent of the voting shares of Northwest Bancshares, Inc., Colby, Kansas, and thereby indirectly acquire Peoples State Bank, Colby, Kansas.

Board of Governors of the Federal Reserve System, June 10, 1998.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 98–15841 Filed 6–12–98; 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 30, 1998.

A. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63102-2034:

1. The Peoples Bancshares, Inc., Sardis, Tennessee; to engage in the leasing of personal or real property, pursuant to § 225.28(b)(3) of Regulation Y.

Board of Governors of the Federal Reserve System, June 10, 1998.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 98–15842 Filed 6–12–98; 8:45 am]

BILLING CODE 6210–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Announcement Number 98088]

Notice of Availability of Funds for Fiscal Year 1998; Resource Center for Unintentional Injury Prevention Among Older Americans

Introduction

The Centers for Disease Control and Prevention (CDC), announces the availability of fiscal year (FY) 1998 funds for a cooperative agreement to establish a Resource Center for Unintentional Injury Prevention Among Older Americans.

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 to the priority area of Unintentional Injuries. (For ordering copies of ''Healthy People 2000'' and ''Major Causes of Unintentional Injuries Among Older Persons'' [1996], see the Section WHERE TO OBTAIN ADDITIONAL INFORMATION.)

Authority

This program is authorized under sections 301, 317, and 391–394 [42 U.S.C. 241, 247b, and 280b–280b–3] of the Public Health Service Act as amended.

Smoke-Free Workplace

CDC strongly encourages all grant recipients to provide a smoke-free workplace and to promote the non-use of all tobacco products, and Public Law 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

Applications may be submitted by public and private non-profit organizations and by governments and their agencies. Thus, universities, colleges, research institutions, hospitals, other public and private nonprofit organizations, State and local governments or their bona fide agents, and federally recognized Indian tribal governments, Indian tribes, or Indian tribal organizations are eligible to apply.

Note: Effective January 1, 1996, Public Law 104–65 states that an organization described

in section 501(c)(4) of the Internal Revenue Code of 1986 which engages in lobbying activities shall not be eligible to receive Federal funds constituting an award, grant (cooperative agreement), contract, loan, or any other form.

Availability of Funds

Approximately $194,000 is available in FY 1998 to fund one award. It is expected that the award will begin on or about September 30, 1998, and will be made for a 12-month budget period within a project period of up to 3 years. Funding estimates may vary and are subject to change.

A continuation award within the project period will be made on the basis of satisfactory progress and the availability of funds.

Restrictions on Lobbying

Applicants should be aware of restrictions on the use of 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 a Federal contract) for lobbying Congress or any Federal agency in connection with the award of a particular contract, grant, 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 (Public Law 105–78) states in Section 503 (a) and (b) that no part of any appropriation contained in this Act shall be used, other than for normal and recognized executive-legislative relationships, 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 itself or any State legislature. 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.

Prohibition on Use of CDC Funds for Certain Gun Control Activities

The Departments of Labor, Health and Human Services, and Education, and Related Agencies Appropriations Act, 1998, specifies that: ''None of the funds made available for injury prevention and control at the Centers for Disease Control and Prevention may be used to advocate or promote gun control.''

Anti-Lobbying Act requirements prohibit lobbying Congress with appropriated Federal monies. Specifically, this Act prohibits the use of Federal funds for direct or indirect communications intended or designed to influence a member of Congress with regard to specific Federal legislation. This prohibition includes the funding and assistance of public grassroots campaigns intended or designed to influence members of Congress with regard to specific legislation or appropriation by Congress.

In addition to the restrictions in the Anti-Lobbying Act, CDC interprets the language in the CDC's 1998 Appropriations Act to mean that CDC's funds may not be spent on political action or other activities designed to affect the passage of specific Federal, State, or local legislation intended to restrict or control the purchase or use of firearms.

Background

The elderly population is increasing more rapidly than other age groups, and its share of the total U.S. population is rising rapidly. Among people 65 years and older, unintentional injuries are the seventh leading cause of death; there were over 29,000 deaths from unintentional injuries in 1995. The death rate from injuries increases exponentially with age. Among people aged 65 years and older; the death rate is higher among men than among women, and higher among whites than among other races. The major causes of unintentional injury mortality are falls, motor vehicle crashes, drowning, fires and burns, and poisonings.

Falls are the second leading cause of injury deaths among people 65–84 and the leading cause for people aged 85 years and older. In 1995, almost 7,900 people over age 65 years died as a result of falls. Falls are the most common cause of injuries and hospital admissions for trauma among the elderly. Falls account for 87 percent of all fractures among people aged 65 years or older and are the second leading cause of spinal cord and brain injury. The most serious fall-related injury is hip fracture. Approximately 240,000 hip fractures occur each year in the United States; 75 percent to 80 percent of all hip fractures are sustained by women. The impact of these injuries on the quality of life is enormous. Half of all elderly adults hospitalized for hip fracture cannot return home or live independently after the fracture. The annual cost for treating these injuries was over 3 billion dollars in 1986.

Since most fractures are the result of falls, understanding factors which contribute to falling is essential in order to design effective intervention strategies. For people aged 65 years or older, 60 percent of fatal falls occur in the home, 30 percent occur in public places, and 10 percent occur in health care institutions. Factors that contribute to falls include dementia, visual impairment, neurologic and musculoskeletal disabilities, psychoactive medications, and difficulties in gait and balance. Environmental hazards such as slippery surfaces, uneven floors, poor lighting, loose rugs, unstable furniture, and objects on floors may also play a role.

People 65 years and older represent 13 percent of the population and about 17 percent of all motor vehicle-related deaths. In 1995, 6,991 people 65 years and older died in crashes—79 percent as passenger vehicle occupants, and 18 percent as pedestrians. This represents a 25 percent increase from 1985. Per mile driven, elderly drivers have higher fatal crash rates than drivers in all other age groups except teenagers. One reason elderly people have higher death rates than younger people from motor vehicle crashes is that they are more susceptible to medical complications following injuries. This means they are more likely to die from their injuries.

Purpose

The purpose of this announcement is to establish a Resource Center for the Prevention of Unintentional Injuries Among Older Americans (people ages 65 and older) and to disseminate this information. The Resource Center will provide this information to health care professionals, caretakers, and other individuals concerned about reducing injuries among Older Americans.

Program Requirements

In conducting activities to achieve the purpose of this program, the recipient will be responsible for the activities under A. (Recipient Activities), and CDC will be responsible for the activities listed under B. (CDC Activities).

A. Recipient Activities

In Year one:

1. Establish links and/or collaborative relationships with organizations which have demonstrated resources, information, and/or programs related to injuries among older adults.

2. Identify the target audiences which will benefit from access to injury prevention program materials. For example, these may include public or private organizations, health care professionals, caretakers, and others concerned about reducing injuries among seniors.

3. Conduct a needs assessment to determine the types and forms of information needed by the various target audiences. This assessment should guide the decisions about what types and in what forms data are to be made available.

4. Compile unintentional injury prevention program information and resource materials related to people 65 years and older from these collaborating organizations and establish a repository for these materials.

5. Develop and test a system that incorporates a variety of methods by which the identified target audiences can access/obtain this data.

6. Develop training materials and distribution plan that will ensure participation of the target audiences.

7. Conduct process and outcome evaluation of year 01 activities.

In Years two and three: (Continue work on 1–7).

8. Implement the dissemination/ distribution plan developed during Year 01.

9. Conduct process and outcome evaluation of Year 02 and 03 activities.

B. CDC Activities

1. Provide technical advise and consultation on all aspects of recipient activities.

2. Provide technical assistance regarding up-to-date scientific resources regarding injuries and injury prevention among people 65 years and older.

Technical Reporting Requirements

An original and two copies of a semi-annual progress report must be submitted 30 days after the end of each six month period. The progress reports must include the following for each function or activity involved: (1) a comparison of actual accomplishments to the objectives established for the period; (2) the reasons for slippage if established objectives are not met; and (3) other pertinent information including, when appropriate, analysis and explanation of unexpectedly high costs for performance. An original and two copies of a Financial Status Report (FSR) is required no later than 90 days after the end of the budget period. A final progress report and FSR are due no later than 90 days after the end of the project period. All reports are submitted to the Grants Management Branch, CDC.

Application Content

Each application should be limited to 30 pages, excluding the budget/budget justification page(s) and attachments (i.e., letters of commitment, data collection forms, resumes, etc.). All material must be typewritten, double-spaced, with type no smaller than 10 characters per inch (CPI) or 12 point type Times Roman or Courier 10 point, on 8.5″ x 11″ paper, with at least a 1″ margin. Number each page clearly and provide a complete index.

A. The application must include:

1. *Abstract:* A one page abstract and summary of the proposed effort.

2. *Background and Need:* Provide background and documentation of the need for and benefits of maintaining a national repository and actively disseminating information on injury prevention among older Americans, and keeping the subject in the public's attention.

3. *Goals and Objectives:* Overall goal(s) which indicate where the applicant desires to be at the end of the project period and specific time-framed, measurable and achievable program objectives for each goal(s).

4. *Description of Activities:* A detailed description (i.e., who, what, how, and when) of specific activities to be undertaken to achieve each of the program objectives during the project period. A time-frame should be included which indicates when each activity will occur and who will be responsible for each activity. Include an organizational chart identifying placement of the program within its relevant organizational system (e.g., the university system).

5. *Methodology:* A detailed description of the process and outcome methods used to evaluate the effectiveness of each activity proposed, including what will be evaluated, the data to be used, who will perform the evaluation and the time-frame for the evaluation. The evaluation should include progress in meeting the objectives and conducting activities during the project period.

6. *Collaboration:* A description of any proposed collaboration with other entities, including academic institutions, Federal, State or local agencies, institutes, associations, laboratories, or experts. Applicant should provide a letter from each outside entity describing their willingness and capacity to fulfill their specific responsibilities.

7. *Staff and Resources:* A description of the roles and responsibilities of the project director and all other staff members and collaborators. Descriptions should include the position titles, education and experience, and the percentage of time each will devote to the program. Curriculum vitae for each critical staff member and collaborator should be included. Include a description of current activities and previous experience in injury prevention. Include relevant experience and capability to implement and maintain a database and actively disseminate information.

8. *Budget:* A detailed budget with accompanying narrative justifying all individual budget items which make up the total amount of funds requested. The budget should be consistent with the stated objectives and planned activities.

Evaluation Criteria

Applications will be reviewed and evaluated according to the following criteria:

1. Background and Need (10 Percent)

The extent to which the applicant presents the magnitude of the need for this project, demonstrates experience in this area, and describes the likely impact of their activities on the this need.

2. Goals and Objectives (25 Percent)

The extent to which the goal(s) and objectives are relevant to the purpose of the proposal, feasible for accomplishment during the project period, measurable, and specific in terms of what is to be done and the time involved. The extent to which the objectives address all activities necessary to accomplish the purpose of the proposal.

3. Methods (20 Percent)

The extent to which the applicant provides a detailed description of all proposed activities needed to achieve each objective and the overall program goal(s). The extent to which the applicant provides a reasonable and complete schedule for implementing all activities. The extent to which position descriptions, lines of command, and collaborations are appropriate to accomplishing the program goal(s) and objectives.

4. Evaluation (20 Percent)

The extent to which the proposed evaluation plan is detailed and capable of documenting program process and outcome measures (e.g., establishing a

tracking system to record number of calls received, type and number of materials distributed). The extent to which the applicant demonstrates staff and/or collaborator availability, expertise, and capacity to perform the evaluation.

5. Facilities, Staff, and Resources (25 Percent)

The extent to which the applicant can provide adequate facilities, staff and/or collaborators, and resources to accomplish the proposed goal(s) and objectives during the project period. The extent to which the applicant demonstrates staff and/or collaborator availability, expertise, previous experience, and capacity to perform the undertaking successfully.

6. Budget and Justification (Not Scored)

The extent to which the applicant provides a detailed budget and narrative justification consistent with the stated objectives and planned program activities.

Executive Order 12372

Applications are subject to Intergovernmental Review of Federal Programs as governed by Executive Order (E.O.) 12372, which 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 forward them to Ron Van Duyne, Grants Management Officer, ATTN: Joanne Wojcik, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., Room 300, Mailstop E–13, Atlanta, GA 30305, no later than 45 days after the application deadline. The granting agency does not guarantee to ''accommodate or explain'' for 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 Ron Van Duyne, Grants Management Officer, ATTN: Joanne Wojcik, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., Room 300, Mailstop E–13, Atlanta, GA 30305, no later than 45 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 subject to the Public Health System Reporting Requirements. Under these requirements, all community-based non-governmental organizations submitting health services applications must prepare and submit the items identified below to the head of the appropriate State and/or local health agency(s) in the program area(s) that may be impacted by the proposed project no later than the application deadline date of the Federal application. The appropriate State and/or local health agency is determined by the applicant. The following information must be provided:

A. A copy of the face page of the application (SF 424).

B. A summary of the project that should be titled ''Public Health System Impact Statement'' (PHSIS), not to exceed one page, and include the following:

1. A description of the population to be served;

2. A summary of the services to be provided; and

3. A description of the coordination plans with the appropriate State and/or local health agencies.

If the State and/or local health official should desire a copy of the entire application, it may be obtained from the State Single Point of Contact (SPOC) or directly from the applicant.

Catalog of Federal Domestic Assistance Number

The Catalog of Federal Domestic Assistance Number is 93.136.

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.

Application Submission and Deadline

The original and two copies of the application PHS Form 5161–1 (Revised 7/92, OMB Control Number 0937–0189) must be submitted to Joanne Wojcik, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., Room 300, Mailstop E–13, Atlanta, GA 30305, on or before August 10, 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 independent review committee. For proof of timely mailing, applicant must request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or the U.S. Postal Service. Private metered postmarks will not be acceptable 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 in the current competition and will be returned to the applicant.

Where to Obtain Additional Information

The program announcement and application forms may be downloaded from the Internet: www.cdc.gov (look under funding). You may also receive a complete application kit by calling 1–888–GRANTS4. You will be asked to identify the program announcement number and provide a name and mailing address. A complete announcement kit will be mailed to you.

If you have questions after reviewing the forms, for business management technical assistance contact Joanne Wojcik, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., Mailstop E–13, Atlanta, GA 30305, telephone (404) 842–6535, Internet Address: jcw6@cdc.gov.

Programmatic assistance may be obtained from Judy Stevens, Ph.D., National Center for Injury Prevention and Control, Centers for Disease Control and Prevention (CDC), 4770 Buford Highway, NE, Mailstop K63, Atlanta, GA 30341–3724, telephone (770) 488–4652, Internet Address: jas2@cdc.gov.

Please refer to Announcement Number 98088 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.

A copy of American Society for Testing and Materials (ASTM) Number 1292 may be obtained from ASTM, Customer Services, 1916 Race Street, Philadelphia, PA 19103–1187, telephone (215) 299–5585.

Dated: June 9, 1998.

John L. Williams,

Director, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 98–15805 Filed 6–12–98; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 98N–0378]

Agency Information Collection Activities: Proposed Collection; Comment Request; Correction

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; correction.

SUMMARY: The Food and Drug Administration (FDA) is correcting a notice that appeared in the **Federal Register** of May 19, 1998 (63 FR 27581). The document announced an opportunity for public comment on the proposed collection of certain information by the agency. The document published with the incorrect docket number. This document corrects that error.

FOR FURTHER INFORMATION CONTACT: Margaret R. Schlosburg, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1223.

In FR Doc. No. 98–13228, appearing on page 27581 in the **Federal Register** of Tuesday, May 19, 1998, the following correction is made:

1. On page 27581, in the first column, ''[Docket No. 98N–0194]'' is corrected to read ''[Docket No. 98N–0378]''.

Dated: June 5, 1998.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 98–15770 Filed 6–12–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 98N–0357]

Agency Information Collection Activities; Submission for OMB Review; Comment Request

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that the proposed collection of information listed below has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995 (the PRA).

DATES: Submit written comments on the collection of information by July 15, 1998.

ADDRESSES: Submit written comments on the collection of information to the Office of Information and Regulatory Affairs, OMB, New Executive Office Bldg., 725 17th St. NW., rm. 10235, Washington, DC 20503, Attn: Desk Officer for FDA.

FOR FURTHER INFORMATION CONTACT: Margaret R. Schlosburg, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1223.

SUPPLEMENTARY INFORMATION: In compliance with section 3507 of the PRA (44 U.S.C. 3507), FDA has submitted the following proposed collection of information to OMB for review and clearance.

Medical Devices; Current Good Manufacturing Practice (CGMP) Quality System (QS) (21 CFR Part 820)—(OMB Control Number 0910–0073—Reinstatement)

Under section 520(f) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360j(f)), the Secretary of the Department of Health and Human Services (the Secretary) has the authority to prescribe regulations requiring that the methods used in, and the facilities and controls used for, the manufacture, pre-production design validation (including a process to assess the performance of a device but not including an evaluation of the safety and effectiveness of a device), packing, storage, and installation of a device conform to CGMP, as described in such regulations, to assure that the device will be safe and effective and otherwise in compliance with the act.

The CGMP/QS regulation implementing the authority provided by this statutory provision is found in part 820 of the Code of Federal Regulations (21 CFR part 820) and sets forth basic CGMP requirements governing the design, manufacture, packing, labeling, storage, installation, and servicing of all finished medical devices intended for human use. Section 820.20(a) through (e) requires management with executive responsibility to establish, maintain, and/or review: The quality policy; the organizational structure; the quality plan; and the quality system procedures of the organization. Section 820.22 requires the conduct and documentation of quality system audits and reaudits. Section 820.25(b) requires the establishment of procedures to identify training needs and documentation of such training.

Section 820.30(a)(1) and (b) through (j) requires, in the following respective order, the establishment, maintenance, and/or documentation of: Procedures to control design of class III and class II devices, and certain class I devices as listed therein; plans for design and development activities and updates; procedures identifying, documenting, and approving design input requirements; procedures defining design output, including acceptance criteria, and documentation of approved records; procedures for formal review of design results and documentation of results in the design history file (DHF); procedures for verifying device design and documentation of results and approvals in the DHF; procedures for validating device design, including documentation of results in the DHF; procedures for translating device design into production specifications; procedures for documenting, verifying validating approved design changes before implementation of changes; and the records and references constituting the DHF for each type of device.

Section 820.40 requires the establishment and maintenance of procedures for the review, approval, issuance and documentation of required records (documents) and changes to those records.

Section 820.50 requires the establishment and maintenance of procedures and requirements to ensure service and product quality, records of acceptable suppliers and purchasing

data describing specified requirements for products and services.

Sections 820.60 and 820.65 require, respectively, the establishment and maintenance of procedures for identifying all products from receipt to distribution and for using control numbers to track surgical implants and life-sustaining or supporting devices and their components.

Section 820.70(a) through (e), and (g) through (i) requires the establishment, maintenance, and/or documentation of: Process control procedures; procedures for verifying or validating changes to specification, method, process, or procedure; procedures to control environmental conditions and inspection result records; requirements for personnel hygiene; procedures for preventing contamination of equipment and products; equipment adjustment, cleaning and maintenance schedules; equipment inspection records; equipment tolerance postings; procedures for utilizing manufacturing materials expected to have an adverse effect on product quality; and validation protocols and validation records for computer software and software changes.

Sections 820.72 and 820.75(a), (b), (b)(2), and (c) require, respectively, the establishment, maintenance, and/or documentation of: Equipment calibration and inspection procedures; national, international or in-house calibration standards; records that identify calibrated equipment and next calibration dates; validation procedures and validation results for processes not verifiable by inspections and tests; procedures for keeping validated processes within specified limits; records for monitoring and controlling validated processes; and records of the results of revalidation where necessitated by process changes or deviations.

Sections 820.80 and 820.86, respectively, require the establishment, maintenance, and/or documentation of: Procedures for incoming acceptance by inspection, test or other verification; procedures for ensuring that in-process products meet specified requirements and the control of product until inspection and tests are completed; procedures for, and records that show, incoming acceptance or rejection is conducted by inspections, tests or other verifications; procedures for, and records that show, finished devices meet acceptance criteria and are not distributed until device master (DMR) activities are completed; records in the DHR showing acceptance dates, results and equipment used; and the acceptance/rejection identification of products from receipt to installation and servicing.

Sections 820.90 and 820.100 require, respectively, the establishment, maintenance and/or documentation of: Procedures for identifying, recording, evaluating and disposing of nonconforming product; procedures for reviewing and recording concessions made for, and disposition of, nonconforming product; procedures for reworking products, evaluating possible adverse rework effect and recording results in the DHR; procedures and requirements for corrective and preventive actions, including analysis, investigation, identification and review of data, records, causes and results; and records for all corrective and preventive action activities.

Sections 820.120(b) and (d), 820.130, 820.140, 820.150, 820.160, and 820.170, respectively, require the establishment, maintenance, and/or documentation of: Procedures for controlling and recording the storage, examination, release and use of labeling; the filing of labels/labeling used in the DHR; procedures for controlling product storage areas and receipt/dispatch authorizations; procedures controlling the release of products for distribution; distribution records that identify consignee, product, date and control numbers; and instructions, inspection and test procedures that are made available, and the recording of results for devices requiring installation.

Sections 820.180(b) and (c), 820.181, 820.184, and 820.186 require, respectively, the maintenance of records: That are retained at prescribed site(s), made readily available and accessible to FDA and retained for the device's life expectancy or for 2 years; that are contained or referenced in a DMR consisting of device, process, quality assurance, packaging and labeling, and installation, maintenance, and servicing specifications and procedures; that are contained in DHR's, demonstrate the manufacture of each unit, lot or batch of product in conformance with DMR and regulatory requirements, and include manufacturing and distribution dates and quantities, acceptance documents, labels and labeling, and control numbers; and that are contained in a quality system record (QSR) consisting of references, documents, procedures and activities not specific to particular devices.

Sections 820.198(a) through (c) and 820.200(a) and (d), respectively, require the establishment, maintenance and/or documentation of: Complaint files and procedures for receiving, reviewing and evaluating complaints; complaint investigation records identifying the device, complainant and relationship of the device to the incident; complaint records that are reasonably accessible to the manufacturing site or at prescribed sites; procedures for performing and verifying that device servicing requirements are met and that service reports involving complaints are processed as complaints; and service reports that record the device, service activity, and test and inspection data.

Section 820.250 requires the establishment and maintenance of procedures to identify valid statistical techniques necessary to verify process and product acceptability; and sampling plans, when used, that are written and based on a valid statistical rationale, and procedures for ensuring adequate sampling methods.

The final CGMP/QS regulation amended and revised the CGMP requirements for medical devices set out at part 820. The final rule added design and purchasing controls; modified previous critical device requirements; revised previous validation and other requirements; and harmonized device CGMP requirements with quality system specifications in the international standard, ISO (International Organization for Standardization) 9001:1994 ''Quality Systems—Model for Quality Assurance in Design, Development Production, Installation and Servicing.'' The rule does not apply to manufacturers of components or parts of finished devices, nor to manufacturers of human blood and blood components subject to 21 CFR part 606. With respect to devices classified in class I, design control requirements apply only to class I devices listed in § 820.30(a)(2) of the regulation.

The rule imposed burdens upon finished device manufacturer firms, which are subject to all recordkeeping requirements, and upon finished device contract manufacturer, specification developer, repacker and relabeler, and contract sterilizer firms, which are subject only to requirements applicable to their activities. The establishment, maintenance and/or documentation of procedures, records and data required by this final regulation will assist FDA in determining whether firms are in compliance with CGMP requirements, which are intended to ensure that devices meet their design, production, labeling, installation, and servicing specifications and, thus are safe, effective and suitable for their intended purpose. In particular, compliance with CGMP design control requirements should decrease the number of design-related device failures that have resulted

in deaths and serious injuries. If FDA did not impose these recordkeeping requirements, it anticipates that design-related device failures would continue to occur in the same numbers as before and continue to result in a significant number of device recalls and preventable deaths and serious injuries. Moreover, manufacturers would be unable to take advantage of substantial savings attributable to reduced recall costs, improved manufacturing efficiency, and improved access to international markets through compliance with CGMP requirements that are harmonized with international quality system standards.

FDA estimates information collection burdens imposed by the addition, modification and revision of CGMP requirements in the final rule as follows:

TABLE 1.—Annual Recordkeeping Burden

21 CFR Section	Number of Recordkeepers	Annual Frequency of Recordkeeping	Total Annual Records	Hours per Recordkeeper	Total Hours[1] (incremental increase in burdens)	Total Hours[2] (prior continuing burdens)	Total Operating & Maintenance Costs
820.20(a)	7,237	1	7,237	10.96	79,386	-------	-------
820.20(b)	7,237	1	7,237	6.38	35,285	10,885	--------
820.20(c)	7,237	1	7,237	10.28	74,364	-------	-------
820.20(d)	7,237	1	7,237	16.49	119,305	-------	-------
820.20(e)	7,237	1	7,237	16.49	119,305	-------	-------
820.22(a)	7,237	1	7,237	53.53	376,507	10,885	-------
820.25(b)	7,237	1	7,237	21.13	152,896	-------	-------
820.30(a)(1)	7,237	1	7,237	2.92	21,162	-------	-------
820.30(b)	7,237	1	7,237	9.91	71,718	-------	-------
820.30(c)	7,237	1	7,237	2.92	21,162	-------	-------
820.30(d)	7,237	1	7,237	2.92	21,162	-------	-------
820.30(e)	7,237	1	7,237	38.98	282,115	-------	-------
820.30(f)	7,237	1	7,237	62.37	451,342	-------	$27,363,204
820.30(g)	7,237	1	7,237	62.37	451,342	-------	-------
820.30(h)	7,237	1	7,237	5.56	40,236	-------	-------
820.30(l)	7,237	1	7,237	28.77	208,173	-------	-------
820.30(j)	7,237	1	7,237	4.40	31,848	-------	-------
820.40	7,237	1	7,237	13.61	85,081	13,420	-------
820.40(a) and (b)	7,237	1	7,237	2.04	-------	14,748	-------
820.50(a)(1) through (a)(3)	7,237	1	7,237	34.34	225,240	23,251	$898,500
820.50(b)	7,237	1	7,237	10.04	72,679	-------	-------
820.60	7,237	1	7,237	0.54	3,914	-------	-------
820.65	7,237	1	7,237	0.67	-------	4,839	-------
820.70(a)(1) through (a)(5)	7,237	1	7,237	1.85	-------	13,420	-------
820.70(b) and (c)	7,237	1	7,237	1.85	-------	13,420	-------
820.70(d)	7,237	1	7,237	4.11	22,335	7,374	-------
820.70(e)	7,237	1	7,237	1.85	-------	13,420	-------
820.70(g)(1) through (g)(3)	7,237	1	7,237	1.43	-------	10,347	-------
820.70(h)	7,237	1	7,237	1.85	-------	13,420	-------
820.70(i)	7,237	1	7,237	11.26	68,092	13,420	-------
820.72(a)	7,237	1	7,237	7.26	42,165	10,347	-------
820.72(b)(1) through (b)(3)	7,237	1	7,237	1.43	-------	10,347	-------
820.75(a)	7,237	1	7,237	3.81	20,172	7,374	-------
820.75(b)	7,237	1	7,237	1.02	-------	7,374	-------
820.75(b)(2)	7,237	1	7,237	1.17	1,096	7,374	-------
820.75(c)	7,237	1	7,237	1.17	1,096	7,374	-------
820.80(a) through (e)	7,237	1	7,237	4.80	-------	34,721	-------
820.86	7,237	1	7,237	0.79	-------	5,735	--------
820.90(a)	7,237	1	7,237	7.39	44,217	9,272	-------
820.90(b)(1) and (b)(2)	7,237	1	7,237	7.39	44,217	9,272	-------
820.100(a)(1) through (a)(7)	7,237	1	7,237	20.50	145,144	3,226	-------
820.100(b)	7,237	1	7,237	1.28	-------	9,272	-------
820.120	7,237	1	7,237	0.45	-------	3,226	-------
820.120(b)	7,237	1	7,237	0.45	-------	3,226	-------
820.120(d)	7,237	1	7,237	0.45	-------	3,226	-------
820.130	7,237	1	7,237	0.45	-------	3,226	-------
820.140	7,237	1	7,237	10.12	68,418	4,839	-------
820.150(a) and (b)	7,237	1	7,237	9.45	68,418	-------	-------
820.160(a) and (b)	7,237	1	7,237	0.67	-------	4,839	-------
820.170(a) and (b)	7,237	1	7,237	1.50	-------	10,885	-------
820.180(b) and (c)	7,237	1	7,237	1.50	-------	10,885	-------
820.181(a) through (e)	7,237	1	7,237	1.21	-------	8,783	-------
820.184(a) through (f)	7,237	1	7,237	1.41	-------	10,240	-------

820.186	7,237	1	7,237	0.40	-------	2,873	-------
820.198(a) through (c)	7,237	1	7,237	6.42	26,850	19,644	-------
820.200(a) through (d)	7,237	1	7,237	4.35	31,459	-------	-------
820.250	7,237	1	7,237	0.67	-------	4,839	-------
Totals	7,237	1	7,237		3,527,901	375,268	$28,261,704
Grand Totals[3]						3,903,169	$28,261,704

[1] Incremental increase in burden hours to achieve compliance with additional requirements in revised regulation.
[2] Recordkeeping hours for prior requirements carried over into revised regulation, as approved by OMB on July 16, 1992, and expired on June 30, 1995 (OMB No. 0910–0073).
[3] Note: Totals may not add due to rounding.

Under OMB information collection 0910–0073, Current Good Manufacturing Practices (CGMP) for Medical Devices, there were 375,266 hours approved for recordkeeping information collections contained in part 820. These hours included 114,882 burden hours as a one time start up expenditure for 650 new firms. The additional requirements contained in Current Good Manufacturing Practice; Quality system (CGMP/QS) regulation will add 3,527,901 burden hours to the burden, resulting in a total recordkeeping burden of 3,903,169 hours. The 3,527,901 burden hours includes 1,433,579 burden hours for a one time start up expenditure for 7,237 manufacturers and 2,094,321 burden hours expended annually by 7,237 manufacturers.

The recordkeeping estimate includes approximately 9.6 times as many manufacturers with a one time start up expenditure, due to the addition of the design control requirements. Further, the recordkeeping burden hour calculations were estimated using a complex methodology involving the estimated noncompliance ratio for small, medium, large, and very large manufacturers multiplied by the number of manufacturers in each category. These calculations factor in a rate of product innovation for new products, including 510(k) devices.

Approximately 85 percent of the additional burden hours for CGMP/QS regulation originate from the following four subparts of part 820: (1) Subpart B—Quality System Requirements; (2) Subpart C—Design controls; (3) Subpart E—Purchasing Controls; and (4) Subpart J—Corrective and Preventive Action. Over 45 percent of the 3,527,901 burden hours are attributed directly to the addition of design control requirements. The purchasing control requirements and the respective recordkeeping burden are approximately 8 percent of the additional recordkeeping burden.

Dated: June 8, 1998.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 98–15812 Filed 6–12–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 98F–0390]

BASF Corp.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that BASF Corp. has filed a petition proposing that the food additive regulations be amended to provide for the safe use of 2,9-dimethylanthra[2,1,9-def:6,5,10-d′e′f′]diisoquinoline-1,3,8,10(2H,9H)-tetrone, (C.I. Pigment Red 179) as a colorant for all polymers intended for use in contact with food.

FOR FURTHER INFORMATION CONTACT: Vir D. Anand, Center for Food Safety and Applied Nutrition (HFS–215), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3081.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5) (21 U.S.C. 348(b)(5))), notice is given that a food additive petition (FAP 8B4596) has been filed by BASF Corp., 3000 Continental Dr. North, Mt. Olive, NJ 07828–1234. The petition proposes to amend the food additive regulations in § 178.3297 *Colorants for polymers* to provide for the safe use of 2,9-dimethylanthra[2,1,9-def:6,5,10-d′e′f′]diisoquinoline-1,3,8,10(2H,9H)-tetrone, (C.I. Pigment Red 179) as a colorant for all polymers intended for use in contact with food.

The agency has determined under 21 CFR 25.32(i) 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.

Dated: May 28, 1998.

Laura M. Tarantino,

Acting Director, Office of Premarket Approval, Center for Food Safety and Applied Nutrition.

[FR Doc. 98–15765 Filed 6–12–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food And Drug Administration

[Docket No. 98F–0391]

BASF Corp.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that BASF Corp. has filed a petition proposing that the food additive regulations be amended to provide for the safe use of 2,9-bis[4-(phenylazo)phenyl]anthra[2,1,9-def:6,5,10-d′e′f′]diisoquinoline-1,3,8,10(2H,9H)-tetrone, (C.I. Pigment Red 178) as a colorant for all polymers intended for use in contact with food.

FOR FURTHER INFORMATION CONTACT: Vir D. Anand, Center for Food Safety and Applied Nutrition (HFS–215), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3081.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5) (21 U.S.C. 348(b)(5))), notice is given that a food additive petition (FAP 8B4595) has been filed by BASF Corp., 3000 Continental Drive North, Mt. Olive, NJ 07828–1234. The petition proposes to amend the food additive regulations to provide for the safe use of 2,9-bis[4-(phenylazo)phenyl]anthra[2,1,9-def:6,5,10-d′e′f′]diisoquinoline-1,3,8,10(2H,9H)-tetrone, (C.I. Pigment Red 178) as a colorant for all polymers intended for use in contact with food.

The agency has determined under 21 CFR 25.32(i) that this action is of the type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

Dated: May 28, 1998.

Laura M. Tarantino,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 98–15767 Filed 6–12–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 91F–0392]

Phoenix Medical Technology, Inc.; Withdrawal of Food Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the withdrawal of a food additive petition (FAP 1B4273) proposing that the food additive regulations be amended to provide for the safe use of 2,4,4'-trichloro-2-hydroxydiphenyl ether as an antimicrobial agent in the manufacture of polyvinyl chloride gloves for food-contact use.

FOR FURTHER INFORMATION CONTACT: Julius Smith, Center for Food Safety and Applied Nutrition (HFS–215), Food and Drug Administration, 200 C St., SW., Washington, DC 20204, 202–418–3091.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of November 6, 1991 (56 FR 56656), FDA announced that a food additive petition (FAP 1B4273) had been filed by Phoenix Medical Technology, Inc., P.O. Box 346, Andrews, SC 29510. The petition proposed to amend the food additive regulations to provide for the safe use of 2,4,4'-trichloro-2-hydroxydiphenyl ether as an antimicrobial agent in the manufacture of polyvinyl chloride gloves for food-contact use.

On August 3, 1996, the Food Quality Protection Act (Pub. L. No. 104–170), which amended the Federal Food, Drug, and Cosmetic Act (the act), transferred from FDA the regulatory authority over the petitioned use of this substance as a food additive under section 409 (21 U.S.C. 348) of the act to the Environmental Protection Agency (EPA) as a pesticide chemical under section 408 (21 U.S.C. 346a) of the act, as amended.

In response to a request by the petitioner, which was prompted by the change in regulatory authority over the antimicrobial substance that is the subject of this petition, FDA transferred the records for Food Additive Petition 1B4273, including all of FDA's reviews of information in the petition, to EPA.

Phoenix Medical Technology, Inc., has now withdrawn the petition.

Dated: May 21, 1998.

Laura M. Tarantino,

Acting Director, Office of Premarket Approval, Center for Food Safety and Applied Nutrition.

[FR Doc. 98–15766 Filed 6–12–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 97N–0487]

Agency Information Collection Activities; Announcement of OMB Approval

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a collection of information entitled ''Abbreviated New Drug Application Regulations, Patent and Exclusivity Provision'' has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (the PRA).

FOR FURTHER INFORMATION CONTACT: Karen L. Nelson, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1482.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of December 12, 1997 (62 FR 65431), the agency announced that the proposed information collection had been submitted to OMB for review and clearance under section 3507 of the PRA (44 U.S.C. 3507). 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. OMB has now approved the information collection and has assigned OMB control number 0910–0305. The approval expires on May 31, 2001.

Dated: June 5, 1998.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 98–15768 Filed 6–12–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 89N–0474]

Agency Information Collection Activities; Announcement of OMB Approval

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a collection of information entitled ''Specific Requirements on Content and Format of Labeling for Human Prescription Drugs, Addition of 'Geriatric Use' Subsection in the Labeling'' has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (the PRA).

FOR FURTHER INFORMATION CONTACT: Karen L. Nelson, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1482.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of Wednesday, August 27, 1997 (62 FR 45313), the agency announced that the proposed information collection had been submitted to OMB for review and clearance under section 3507 of the PRA (44 U.S.C. 3507). 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. OMB has now approved the information collection and has assigned OMB control number 0910–0370. The approval expires on May 31, 2001.

Dated: June 8, 1998.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 98–15813 Filed 6–12–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 98D–0365]

Revised Guidance for Industry and Reviewers on Repeal of Section 507 of the Federal Food, Drug, and Cosmetic Act

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a revised guidance for industry and reviewers entitled ''Repeal of Section 507 of the Federal Food, Drug, and Cosmetic Act.'' The guidance clarifies the processes that will be followed in implementing this section of the Food and Drug Administration Modernization Act of 1997 (Modernization Act). This revision includes clarification of the procedures applicable to bulk drug substances for products previously regulated under the Federal Food, Drug, and Cosmetic Act (the act).

DATES: General comments on the agency guidance documents are welcome at any time.

ADDRESSES: Copies of this guidance are available on the Internet at http://www.fda.gov/cder/guidance/index.htm. Submit written requests for single copies of this guidance to the Drug Information Branch (HFD–210), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857. Send one self-addressed adhesive label to assist that office in processing your requests. Submit written comments on the guidance to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT:

For general information regarding this notice: Murray M. Lumpkin, Center for Drug Evaluation and Research (HFD–20), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–5400.

For issues on bulk drug substance procedures: Gordon R. Johnston, Center for Drug Evaluation and Research (HFD–601), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–5845.

SUPPLEMENTARY INFORMATION: FDA is announcing the availability of a revised guidance for industry and reviewers entitled ''Repeal of Section 507 of the Federal Food, Drug, and Cosmetic Act.'' Section 125 of title I of the Modernization Act (Pub. L. 105–115), signed into law by President Clinton on November 21, 1997, repealed section 507 of the act (21 U.S.C. 357). As a result of the repeal of section 507 of the act, which took effect immediately, several of the agency's administrative processes for reviewing and approving antibiotic drug applications had to be changed. This guidance document, intended to clarify several of the administrative processes that will be followed in implementing section 125 of the Modernization Act, has now been revised to include the procedures applicable to bulk drug substances for products previously marketed under section 507 of the act.

This revised guidance document is a level 1 guidance document consistent with FDA's good guidance practices (62 FR 8961, February 27, 1997). It represents the agency's current thinking on the implementation of the repeal of section 507 of the act. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statute, regulations, or both.

Interested persons may, at any time, submit comments on the guidance to the Dockets Management Branch (address above). Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. The guidance and received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Dated: June 8, 1998.

William B. Schultz,

Deputy Commissioner for Policy.

[FR Doc. 98–15769 Filed 6–12–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Proposed Collection: Comment Request

In compliance with the requirement for opportunity for public comment on proposed data collection projects (section 3506(c)(2)(A) of Title 44, United States Code, as amended by the Paperwork Reduction Act of 1995, Public Law 104–13), the Health Resources and Services Administration (HRSA) will publish periodic summaries of proposed projects being developed for submission to OMB under the Paperwork Reduction Act of 1995. To request more information on the proposed project or to obtain a copy of the data collection plans and draft instruments, call the HRSA Reports Clearance Officer on (301) 443–1129.

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 of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Proposed Project: Disadvantaged Assistance Tracking and Outcome Report (New)

The Health Careers Opportunity Program (HCOP) and the Centers of Excellence (COE) Program (sections 740 and 739 of the Public Health Service (PHS) Act, respectively) provide opportunities for under-represented minorities and disadvantaged individuals to enter and graduate from health professions schools. The Disadvantaged Assistance Tracking and Outcome Report (DATOR) will be used to track program participants through the health professions pathway to a health professions practice outcome. The current inability to track students' education progression in the health professions is a major impediment in assessing the outcome of these programs. There is no identifier used that transcends the various education levels, professional disciplines, and educational institutions.

The DATOR, to be completed annually by HCOP and COE grantees, includes basic data on student participants (name, social security number, gender, race/ethnicity; targeted health professions, their status in the educational pipeline from pre-professional through professional training; financial assistance received through the grants funded under sections 739 and 740 of the PHS Act in the form of stipends, fellowships or per diem; and their employment or practice setting following their entry into the health care work force).

The proposed reporting instrument is not expected to add significantly to the grantees reporting burden. This reporting instrument complements the grantees internal automated reporting mechanisms of using name and social security number in tracking students. Estimates of annualized burden are as follows:

Type of report	Number of respondents	Responses per respondent	Hours per response	Total burden hours
Disadvantaged Assistance Tracking Outcome Report (DATOR)	200	1	10	2,000

Send comments to the HRSA Reports Clearance Officer, Room 14–36, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857; telephone number (301) 443–1129. Written comments should be received within 60 days of this Notice.

Dated: June 5, 1998.

Jane Harrison,

Director, Division of Policy Review and Coordination.

[FR Doc. 98–15764 Filed 6–12–98; 8:45 am]

BILLING CODE 4160–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration (SAMHSA)

Correction of Meeting Notice

Pursuant to Pub. L. 92–463, notice is hereby given of a correction of a notice of meeting of the SAMHSA Special Emphasis Panel II meeting to be held in July 1998.

Public notice was given in the **Federal Register** on June 9, 1998 (Volume 63, Number 110, page 31517) that the SEP II would be meeting on July 1, 1998, at the Parklawn Building, Room 16C–26. The date of this meeting ha subsequently changed to June 29, 1998. The agenda of the meeting and the contact for additional information remain as announced.

Dated: June 9, 1998.

Jeri Lipov,

Committee Management Officer, Substance Abuse and Mental Health Services Administration.

[FR Doc. 98–15811 Filed 6–12–98; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4351–N–06]

Notice of Proposed Information Collection for Public Comment

AGENCY: Office of the Assistant Secretary for Policy Development and Research, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: Comments are due on or before August 14, 1998.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and should be sent to: Reports Liaison Officer, Office of Policy Development and Research, Department of Housing and Urban Development, 451 7th Street, SW., Room 8226, Washington, DC 20410.

FOR FURTHER INFORMATION CONTACT: Alan Fox, Economic and Market Analysis Division, Office of Policy Development and Research, Department of Housing and Urban Development, 451 7th Street, SW., Room 8222, Washington, DC 20410; telephone (202) 708–0614, Extension 5863; e-mail alan__fox@hud.gov. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Fox.

SUPPLEMENTARY INFORMATION: The Department of Housing and Urban Development will submit the proposed information collection package to OMB for review as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended.)

This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Section 8 Random Digit Dialing Fair Market Rent Telephone Survey.

OMB Control Number: 2528–0142.

Description of the need for the information and proposed use: This provides HUD with a fast, inexpensive way to estimate and update Section 8 Fair Market Rents (FMRs) in areas not covered by AHS or CPI surveys, and in areas where FMRs are believed to be incorrect. It also provides estimates of annual rent changes. Section 8(C)(1) of the United States Housing Act of 1937 requires the Secretary to publish Fair Market Rents (FMRs) annually to be effective on October 1 of each year. FMRs are used for the Section 8 Rental Certificate Program (including space rentals by owners of manufactured homes under that program); the Moderate Rehabilitation Single Room Occupancy program; housing assisted under the Loan Management and Property Disposition programs; payment standards for the Rental Voucher program; and any other programs whose regulations specify their use.

Random digit dialing (RDD) telephone surveys have been used for several years to adjust FMRs. These surveys are based on a sampling procedure that uses computers to select statistically random samples of telephone numbers to locate certain types of rental housing units for surveying. HUD contracts with a private company to conduct two types of RDD surveys: (1) Approximately 50 individual FMR areas are surveyed every year to test the accuracy of their FMRs; (2) In addition, 20 RDD surveys are conducted every year to provide updating factors for FMRs not surveyed individually and for Annual Adjustment Factors (AAFs). These surveys are conducted in the nonmetropolitan portions of all 10 HUD regions, and in the 10 metropolitan portions that do not have their own Consumer Price Index (CPI) surveys.

Members of affected public: Individuals or households living in areas surveyed.

Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: The RDD surveys require a great many telephone calls to reach the required number of eligible respondents—those living in 1 or 2 bedroom nonsubsidized rental housing,

who had moved in recently. Most numbers are screened out on the first completed telephone call, which is brief. The few that are eligible are asked a longer series of questions, for a total elapsed time of about 4 minutes each. Information collection is voluntary.

Status of the proposed information collection: Pending OMB approval.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended; and Section 8(C)(1) of the United States Housing Act of 1937.

Dated: June 8, 1998.

Paul A. Leonard,

Deputy Assistant Secretary for Policy Development.

[FR Doc. 98–15850 Filed 6–12–98; 8:45 am]

BILLING CODE 4210–62–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Intent (Notice) To Prepare an Environmental Impact Statement (EIS) on the Development of a Comprehensive Conservation Plan for Stillwater National Wildlife Refuge (NWR) Complex, Churchill and Storey Counties, Nevada, and a Boundary Revision for Stillwater NWR, Churchill County

AGENCY: Fish and Wildlife Service, Department of the Interior.

ACTION: Notice of intent.

SUMMARY: The Fish and Wildlife Service is preparing an EIS for a comprehensive conservation plan for Stillwater NWR Complex and an associated boundary revision for Stillwater NWR. Stillwater NWR Complex currently consists of Stillwater NWR, Fallon NWR, Stillwater Wildlife Management Area (WMA), and Anaho Island NWR.

DATES: To ensure that the Service has adequate time to evaluate and incorporate suggestions and other input into the planning process, comments must be received by July 17, 1998.

ADDRESSES: Send written comments, or requests to be added to the mailing list, to the following address: Stillwater NWR Complex CCP/Boundary Revision, c/o Refuge Manager, Stillwater National Wildlife Refuge Complex, P.O. Box 1236, Fallon, Nevada 89407, telephone (702) 423–5128.

SUPPLEMENTARY INFORMATION: The first notification of the intent to prepare an EIS on the development of a comprehensive conservation plan for Stillwater NWR Complex, including a boundary revision for Stillwater NWR, was published in the **Federal Register** on March 14, 1997 in a Notice of Intent to prepare an EIS and hold public scoping workshops on water resources management proposals in the Truckee and Carson Rivers, Churchill, Douglas, Lyon, Storey, and Washoe Counties, Nevada (Pages 12245–12246, Volume 62, Number 50). Comprehensive conservation planning at the Stillwater NWR Complex, including the Stillwater NWR boundary revision, was one of four Federal actions covered in the March 14, 1997 Notice for this Department of the Interior EIS. Scoping meetings were held on March 10, 11, and 19, 1997 in Fallon, Fernley, and Reno, Nevada, respectively, to identify potential issues related to various water resource management proposals in the Truckee and Carson River drainages, including the development of a comprehensive conservation plan and boundary revision for Stillwater NWR Complex. During March, April, and July 1997, a total of six additional open-house workshops were conducted in Fallon and Reno specifically to address the comprehensive conservation plan and boundary revision. A number of other meetings have been held with the Nevada Division of Wildlife, Fallon Paiute-Shoshone Tribe, Pyramid Lake Paiute Tribe, Churchill County, City of Fallon, and various organizations and individuals to gain additional information about issues relevant to the comprehensive conservation plan and boundary revision. Comments received from the public during these meetings constitute the bulk of the public scoping comments being used by the Fish and Wildlife Service to prepare a separate draft EIS on comprehensive conservation planning and boundary revisions for Stillwater NWR Complex, which will no longer be analyzed in a Department of the Interior EIS on water resources management proposals in the Truckee and Carson Rivers.

Wetlands on Stillwater NWR and Stillwater WMA are located at the terminus of the Carson River. They are major components of the Lahontan Valley wetland ecosystem. Stillwater NWR, Stillwater WMA, and Fallon NWR also encompass significant upland habitats, including parts of a 25-mile-long sand dune complex. Anaho Island NWR is located on Pyramid Lake within the Pyramid Lake Paiute Reservation, at the terminus of the Truckee River in Storey County, Nevada.

Comprehensive Conservation Plan

A comprehensive conservation plan is being developed for the Stillwater NWR Complex in accordance with the National Wildlife Refuge System Administration Act of 1966 (16 U.S.C. 6688dd *et seq.*), as amended. This act requires the Fish and Wildlife Service to prepare comprehensive conservation plans for all refuges in the Refuge System. The comprehensive conservation plan for the Stillwater NWR Complex will cover a 15-year planning period and will identify goals, objectives, strategies, and a monitoring program for achieving refuge purposes and contributing to the mission of the Refuge System. Care will be taken to ensure consistency with the National Wildlife Refuge System Administration Act, as amended; other applicable laws and international treaties; Fish and Wildlife Service policy; and sound principles of biodiversity conservation and other aspects of natural resources management. The mission of the Refuge System ''is to administer a national network of lands and waters for the conservation, management, and where appropriate, restoration of the fish, wildlife, and plant resources and their habitats within the United States for the benefit of present and future generations of Americans.''

Stillwater NWR and Stillwater WMA were originally established in 1948 as part of an agreement (Tripartite Agreement) between the Fish and Wildlife Service, Nevada Division of Wildlife, and the Truckee-Carson Irrigation District. Stillwater WMA, which was established for the co-equal purposes of conserving wildlife and public hunting, will cease to exist after November 26, 1998, when the 50-year Tripartite Agreement expires. The Tripartite Agreement also specified that livestock grazing and muskrat trapping were to be managed commensurate with wildlife conservation and hunting. Anaho Island was originally established in 1913 under Executive Order 1819 as a preserve and breeding ground for native birds. Fallon NWR was established in 1931 for the purpose of providing a refuge and breeding ground for birds and other wildlife.

The Truckee-Carson-Pyramid Lake Water Settlement Act of 1990 (Title II of Public Law 101–618) enlarged Stillwater NWR by reducing the size of Stillwater WMA and directed the Secretary of the Interior to manage Stillwater NWR for the following purposes:

(A) restoring and maintaining natural biological diversity within the refuge;

(B) conserving and managing fish, wildlife, and their habitat within the refuge;

(C) fulfilling international treaty obligations with respect to fish and wildlife; and

(D) providing opportunities for scientific research, environmental

education, and wildlife-oriented recreation.

Public Law 101–618 also directed the Secretary to manage Anaho Island for the benefit and protection of colonial nesting species and other migratory birds.

The comprehensive conservation plan will include strategies for managing water and water rights that the Fish and Wildlife Service is acquiring through its water-rights acquisition program that was authorized and directed by Public Law 101–618. In November 1996, an EIS was completed and a Record of Decision was signed for cooperative efforts to acquire water rights to sustain, on a long-term average, approximately 25,000 acres of primary wetlands habitat in Lahontan Valley, including wetlands on Stillwater NWR and Stillwater WMA. To date, about 27,000 acre-feet of water rights have been acquired by Fish and Wildlife Service, State of Nevada, and Nevada Waterfowl Association to supplement agricultural drainwater and intermittent controlled releases from Lahontan Reservoir. Given the mandate to restore natural biological diversity within the refuge, natural hydrologic patterns and their applications to management are being explored.

The comprehensive conservation plan will guide the management of public use on the Stillwater NWR Complex in accordance with existing laws. These laws require that refuge planning efforts explore opportunities for hunting, fishing, wildlife observation and photography, and environmental education and interpretation, to the extent these activities do not interfere with or detract from (i.e., are compatible with) achieving the purposes of individual refuge units and the mission of the Refuge System. Compatibility of public uses will be evaluated as part of the comprehensive planning process, in accordance with the requirement that such determinations must be consistent with sound principles of fish and wildlife management, available scientific information, and applicable laws.

The comprehensive conservation plan comprises the following programs: wildlife and habitat management, including management of acquired water, control of undesirable species, prescribed burning, and livestock grazing; public use management, including the management of areas open to different types of public uses, and the management of hunting, fishing, wildlife observation and photography, and environmental interpretation and education; cultural resource management; law enforcement; facilities management; and administration.

Several alternative management scenarios are being developed and evaluated. The following draft goals for the Stillwater NWR Complex were developed based primarily on establishing authorities, the Refuge System mission, and other provisions of applicable laws, international treaties, and principles of natural resource conservation.

Stillwater NWR

(1) Conserve and manage fish, wildlife, and their habitats to restore and maintain natural biological diversity.

(2) Fulfill obligations of international treaties and other international agreements with respect to fish and wildlife.

(3) Provide opportunities for scientific research, environmental education, and wildlife-dependent recreation that are compatible with refuge purposes.

Fallon NWR

(1) Provide high-quality sanctuary and nesting habitat for migratory birds.

(2) Restore and maintain natural biological diversity.

(3) Provide opportunities for scientific research, environmental education, and wildlife-dependent recreation that are compatible with refuge purposes.

Anaho Island NWR

(1) Protect and perpetuate colonial nesting birds and other migratory birds.

(2) Restore and maintain natural biological diversity.

Major categories of issues identified to date include wildlife and habitat protection and enhancement, including concerns with respect to emphasizing natural biological diversity; opportunities for wildlife-dependent recreational uses; continued protection of cultural resources; and potential effects on local agriculture, irrigation project, and economy. Major, on-refuge environmental problems to be addressed in the comprehensive conservation plan include inadequate water supplies and timing of water inflows, dominance and spread of invasive nonnative plants, contaminants, and the effects of livestock grazing on biological communities. Major public use issues to be addressed include the balancing of compatible wildlife-dependent recreational uses (including concerns with respect to a legally-required shift from managing the hunting program as a co-equal top priority with wildlife conservation to managing hunting as one of several recreational uses that are secondary to wildlife conservation), inadequate facilities to provide a broad spectrum of high-quality experiences for refuge visitors and for environmental education activities, and the compatibility and appropriateness of camping and other nonwildlife-dependent recreational uses.

Stillwater NWR Boundary Revision

Public Law 101–618 authorized the Secretary of the Interior to recommend to Congress boundary revisions to Stillwater NWR that may be appropriate to carry out the purposes of the refuge and to facilitate the protection and enhancement of Lahontan Valley wetland habitat. It also authorized the Secretary to recommend the transfer of any Bureau of Reclamation withdrawn public lands within existing wildlife use areas in Lahontan Valley (e.g., Stillwater WMA) to the Fish and Wildlife Service for addition to the National Wildlife Refuge System. Furthermore, it authorized the identification of lands in Lahontan Valley currently under the jurisdiction of the Fish and Wildlife Service that no longer warrant continued status as units of the Refuge System. Several alternative boundary revisions are being analyzed.

Tentative Schedule

Estimated dates for completing an EIS that evaluates the potential impacts of implementing a comprehensive conservation plan for Stillwater NWR Complex and revising the boundary of Stillwater NWR are as follows:

Supplemental Scoping Period—July 17, 1998

Draft EIS Distributed to Public—November 1998

Public Review/Comment Period November 1998—February 1999

Final EIS filed with EPA—August 1999

Implementation of the Decision—September 1999

Date: June 8, 1998.

Thomas J. Dwyer,

Acting Regional Director, Region 1, Portland, Oregon.

[FR Doc. 98–15802 Filed 6–12–98; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Aquatic Nuisance Species Task Force Advisory Panel, Aquatic Nuisance Species Dispersal Barrier for the Chicago Sanitary and Ship Canal

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of meeting.

SUMMARY: This notice announces a meeting of the Advisory Panel for the

Aquatic Nuisance Species Dispersal Barrier for the Chicago Sanitary and Ship Canal. Subjects to be discussed during the meeting include: the results to date and current status of ongoing laboratory and field tests; current round goby distribution in Chicago area waterways; new project cost estimates; barrier technologies; and, the draft interim project report for Congress.

DATES: The Advisory Panel will meet from 9:00 a.m. to 4:00 p.m. on Tuesday, June 23, 1998.

ADDRESSES: The Advisory Panel meeting will be held at the Great Lakes Conference and Training Center, 12th Floor, 77 West Jackson, Chicago, IL 60604.

FOR FURTHER INFORMATION CONTACT: Dr. Philip B. Moy, U.S. Army Corps of Engineers, 111 N. Canal Street, Chicago, IL 60606–7206; telephone, 312–353–6400 ext. 2021.

SUPPLEMENTARY INFORMATION: 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 Advisory Panel, Dispersal Barrier for the Chicago Sanitary and Ship Canal, established under the authority of the Nonindigenous Aquatic Nuisance Prevention and Control Act of 1990 (P.L. 101–646, 104 Stat. 4761, 16 U.S.C. 4701 *et seq.*, November 29, 1990). Minutes of the meetings will be maintained by the Advisory Panel Chairperson, Dr. Philip B. Moy, U.S. Army Corps of Engineers, 111 N. Canal Street, Chicago, IL 60606–7206, and will be available for public inspection during regular business hours, Monday through Friday within 30 days following the meeting.

Dated: June 9, 1998.

William E. Knapp,

Acting Assistant Director, Fisheries, Co-Chair, Aquatic Nuisance Species Task Force.

[FR Doc. 98–15800 Filed 6–12–98; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF THE INTERIOR

Proposed Agency Information Collection Activities; Comment Request

AGENCY: Bureau of Indian Affairs.

ACTION: Notice.

SUMMARY: The Department of the Interior (Department) announces that an information collection request has been submitted to the Office of Management and Budget as required by the Paperwork Reduction Act of 1995. The information collection will be used by the Secretary of the Interior to document the local conditions of tribes, tribal justice systems and Courts of Indian Offenses and to determine the resources and funding, including base support funding, needed to provide for expeditious and effective administration of justice. The Department invites comment on the information collection described below.

DATES: Interested persons are invited to submit comments on or before August 14, 1998.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the survey instrument and directions may be directed to Bettie Rushing, Office of Tribal Services, Bureau of Indian Affairs, Department of the Interior, 1849 C Street, NW, MS–4631, Washington, DC 20240, and 202/208–4400. The survey instrument will also be available on the BIA HOMEPAGE at http://www.bia.gov.

SUPPLEMENTARY INFORMATION:

1. Information Collection Request

The Department is seeking comments on the following Information Collection Request.

Type of review: New.

Title: Survey of Tribal Justice Systems and Courts of Indian Offenses.

Effected Entities: Tribal Governments; Tribal Courts.

Abstract: As required by the Indian Tribal Justice Act (Act), 25 U.S.C. 3601 *et seq.*, the Secretary of the Interior contracted with a non-federal entity to develop and conduct a survey of the conditions of tribal justice systems and Courts of Indian Offenses. Under the guidance of an advisory group consisting of Tribal representatives and judges and following comments received at Indian judges conferences, the contractor developed a national survey to be distributed to all federally recognized tribes. The survey instrument includes questions regarding the geographic area and population to be served, levels of functioning and capacity of the tribal justice system; volume and complexity of caseloads, projected number of cases per month, projected number of persons receiving probation services or participating in diversion programs; facilities (including detention facilities) and program resources available, research resources available, funding levels and personnel staffing requirements, and training and technical assistance. (see: 25 U.S.C. 3612).

Burden Statement: The Survey of Tribal Justice Systems and Courts of Indian Offenses requires a reporting burden of 4.5 hours for each response from 554 tribes, of which an estimated 280 have tribal justice systems or are served by Courts of Indian Offenses. This estimate includes the time for reviewing instructions, searching existing data sources, gathering the data needed, and completing the survey. The total burden for this collection is estimated to be 2,493 hours. The estimate of total burden hours is based upon staff and tribal expertise in the program area responsible for the development and management of tribal justice systems.

Number of respondents	Third party collection	Frequency of response	Total annual responses	Burden hours per response	Annual burden hours	Cost to respondents
554	0	1	554	4.5	2,493	$149,580

The Bureau of Indian Affairs will not conduct or require tribes and tribal justice systems to respond to a collection of information until the Survey of Tribal Justice Systems and Courts of Indian Offenses references a currently valid Office of Management and Budget control number.

2. Request for Comments

The Department solicits comments to:

(a) 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.

(b) Evaluate the accuracy of the agencies' estimates of burden of the proposed collection of information, including the methodology and assumptions used.

(c) Enhance the quality, utility, and clarity of the information to be collected.

(d) 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 collection techniques or other forms of information technology.

Tribes, organizations and individuals desiring to submit comments on the

information collection requirement should direct them to the Office of Information and Regulatory Affairs, OMB, Room 10202, New Executive Office Building, Washington, DC 20503; Attention: Desk Officer for the U.S. Department of the Interior.

Dated: June 5, 1998.

Kevin Gover,

Assistant Secretary—Indian Affairs.

[FR Doc. 98–15834 Filed 6–12–98; 8:45 am]

BILLING CODE 4310–02–P

DEPARTMENT OF INTERIOR

Bureau of Land Management

[UT–020–08–2811–00]

Salt Lake District Proposed Fire Management Plan

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability.

SUMMARY: The Bureau of Land Management, Salt Lake District Office, has completed an Environmental Assessment (EA)/Finding of No Significant Impact (FONSI) for a Proposed Fire Management Plan which would amend the following plans: (1) Pony Express Resource Management Plan (1990); (2) Box Elder Resource Management Plan (1986); (3) Isolated Tract Planning Analysis (1985); (4) Park City Management Framework Plan (1982); and (5) Randolph Management Framework Plan (1980). The Proposed Fire Management Plan amends the plans by reintroducing fire as a critical natural process into the ecosystem and providing a comprehensive and consistent policy of how fires are handled for all public lands administered by the District.

DATES: The proposed plan amendment may be protested. The protest period will commence with the date of publication of this notice. Protests must be submitted on or before July 15, 1998.

ADDRESSES: Protests must be addressed to the Director (WO–210), Bureau of Land Management, Attn: Brenda Williams, Resource Planning Team, 1849 C Street, NW., Washington, DC 20240, within 30 days after the date of publication of this notice for the proposed planning amendment.

FOR FURTHER INFORMATION CONTACT: Dan Washington, Bureau of Land Management, Salt Lake District Office, 2370 South 2300 West, telephone (801) 977–4346. Copies of the Proposed Plan Amendment are available for review at the Salt Lake District Office.

SUPPLEMENTARY INFORMATION: Any person who participated in the planning process and has an interest which is or may be adversely affected by the Proposed Plan Amendment may protest to the Director of the Bureau of Land Management. The protest must be in writing and filed within 30 days of the date of publication of this Notice of Availability in the **Federal Register**. The protest must be specific and contain the following information:

—The name, mailing address, telephone number and interest of the person filing the protest;

—A statement of the issue(s) being protested;

—A statement of the part(s) of the proposed amendment being protested;

—A copy of all documents addressing the issue(s) that were submitted by the protestor during the planning process; and

—A concise statement explaining why the BLM State Director's proposed decision is believed to be in error.

In the absence of timely objections, this proposal shall become the final determination of the Department of the Interior.

G. William Lamb,

State Director, Utah.

[FR Doc. 98–15772 Filed 6–12–98; 8:45 am]

BILLING CODE 4310–DQ–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO–017–1610–00]

Notice of Intent To Prepare Environmental Impact Statement

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of intent to prepare an Environmental Impact Statement, Colorado Sodium Products Development Project.

SUMMARY: Notice is hereby given that the Bureau of Land Management (BLM) will prepare an Environmental Impact Statement (EIS) for the Colorado Sodium Products Development Project (Project), located in Rio Blanco County and Garfield County, Colorado.

The BLM will evaluate the Commercial Mine Plan prepared for the Project. The EIS will assess the environmental consequences of Mine Plan approval and development of the Project.

In accordance with the National Environmental Policy Act, the BLM will conduct public scoping meetings to solicit comments on potential environmental impacts associated with the project. These public scoping meetings will be held in two locations:

1. Bureau of Land Management, White River Resource Area Office, 73544 Highway 64, Meeker, Colorado, on June 24, 1998, at 7:00 p.m.
2. Town Hall Council Chambers, 222 Grand Valley Way, Parachute, Colorado, on June 25, 1998 at 7:00 p.m.

To familiarize the public and interested organizations with the likely scope of environmental issues that will be involved, the BLM has prepared a Scoping Document for the Colorado Sodium Products Development Project. This document includes a list of the various environmental/resource issues that will be addressed in the EIS. This list has been compiled based on experience gained to date with American Soda's test-phase operation in Rio Blanco County and consideration of likely environmental impact issues that would be encountered during construction and operation of the proposed commercial scale project. Copies of the Scoping Document are available at the White River Resource Area office in Meeker, Colorado, for public review. Alternatively, a copy of the Scoping Document can be requested by mail. Copies of the Scoping Document will also be available at the public scoping meetings described above. Comments received at the scoping meetings or by mail will supplement the issues identified in the Scoping Document.

DATES: Comments and recommendations on this Notice of Intent to prepare an EIS should be received on or before July 10, 1998.

ADDRESSES: Address all comments concerning this notice to Mr. Larry Shults, Natural Resource Specialist, U.S. Bureau of Land Management, White River Resource Area, 73544 Highway 64, Meeker, CO 81641.

FOR FURTHER INFORMATION CONTACT: Larry Shults, (970) 878–3601.

SUPPLEMENTARY INFORMATION: American Soda, L.L.P. (American Soda) intends to construct and operate a commercial nahcolite solution mining operation at a site in the northcentral portion of the Piceance Creek Basin in Rio Blanco County, Colorado. Nahcolite is naturally occurring sodium bicarbonate that is found in association with oil shale deposits. After the nahcolite is removed from the ground, it would be processed into a sodium carbonate solution and transported by a 44-mile buried pipeline south to a processing operation to be located at an existing industrial site in

the Parachute Valley in Garfield County, Colorado. There it would be further processed to commercial grade sodium carbonate, sodium bicarbonate, and other sodium products.

The project would occur on BLM lands of the White River Resource Area and on private lands in Rio Blanco and Garfield Counties, Colorado. The proposed solution mine site is contained within Sections 17, 18, 19, 20, 21, 28, and 29 of Township 1 South, Range 97 West of the Sixth Prime Meridian (PM), Rio Blanco County, Colorado. It is approximately 63 miles north-northeast of Grand Junction, 22 miles west-southwest of Meeker, and 29 miles east-southeast of Rangely, Colorado. The proposed processing operation would be located on private property in Sections 34 and 35 of Township 6 South, Range 96 West of the Sixth PM, Garfield County, Colorado, approximately 3 miles northwest of the town of Parachute, Colorado.

The solution mine site and the processing operation site would be connected by two parallel, insulated buried pipelines that would run east-southeast from the solution mine for approximately 9 miles and then generally south along an existing pipeline right-of-way for approximately 35 miles to the processing operation. Bulk sodium products would be shipped from the processing operation via a 4-mile-long dedicated rail spur to an interstate rail connection near the town of Parachute.

The solution mining process would require approximately 1 cubic foot per second (cfs) of water, including solutions in the product pipeline. An existing water right would be used to allow process water to be taken from the Colorado River via an existing intake located in the river near the town of Parchute. Water would be transported from the Colorado River to the proposed solution mine site by a return water pipeline paralleling the product pipeline.

The American Soda commercial mining program is anticipated to operate indefinitely. The commercial Mine Plan under development addresses the first 30 years of operation, with an initial design basis of 1.4 million tons per year (tpy) of nahcolite recovered.

Dated: June 8, 1998.

John J. Mehlhoff,

Resource Area Manager, Meeker, CO.

[FR Doc. 98–15816 Filed 6–12–98; 8:45 am]

BILLING CODE 4310–BY–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR–010–1430–00; GP8–0204]

Meeting Notice for the Southeast Oregon Resource Advisory Council

AGENCY: Lakeview District, Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Southeast Oregon Resource Advisory Council will meet at the Red Lion Hotel, 621 21st Street, Lewiston, Idaho 83501, from 12:00 noon to 5:00 pm Pacific Daylight Time on July 14, 1998. Public comments are scheduled from 4:30 pm to 5:00 pm on July 14, 1998. The Council will discuss the Interior Columbia Basin Ecosystem Management Draft Environmental Impact Statement and such other matters as may reasonably come before the Council. On July 15, 1998, the Council will view noxious weed infestations on public and private land in the Grande Ronde, Snake, and Salmon River Canyons. The entire meeting is open to the public; however, transportation into the canyons will not be provided to the public.

FOR FURTHER INFORMATION CONTACT: Sonya Hickman, Bureau of Land Management, Lakeview District Office, P.O. Box 151, Lakeview, OR 97630 (Telephone 541–947–2177).

Dated: June 2, 1998.

Richard W. Mayberry,

Acting Lakeview District Manager.

[FR Doc. 98–15799 Filed 6–12–98; 8:45 am]

BILLING CODE 4310–33–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–930–4210–05; N–61108]

Notice of Realty Action: Lease/ Conveyance for Recreation and Public Purposes

AGENCY: Bureau of Land Management.

ACTION: Recreation and Public Purpose Lease/Conveyance.

SUMMARY: The following described public land in Las Vegas, Clark County, Nevada has been examined and found suitable for lease/conveyance for recreational or public purposes under the provisions of the Recreation and Public Purposes Act, as amended (43 U.S.C. 869 et seq.). Clark County proposes to use the land for a public park.

Mount Diablo Meridian, Nevada

T. 22 S., R. 61 E.,

Sec. 15, NE¼SE¼NE¼, SE¼SE¼NE¼.

Containing 20.0 acres, more or less.

The land is not required for any federal purpose. The lease/conveyance is consistent with current Bureau planning for this area and would be in the public interest. The lease/patent, when issued, will be subject to the provisions of the Recreation and Public Purposes Act and applicable regulations of the Secretary of the Interior, and will contain the following reservations to the United States:

1. A right-of-way thereon for ditches or canals constructed by the authority of the United States, Act of August 30, 1890 (43 U.S.C. 945).

2. All minerals shall be reserved to the United States, together with the right to prospect for, mine and remove such deposits from the same under applicable law and such regulations as the Secretary of the Interior may prescribe and will be subject to:

1. An easement 50 feet in width along the eastern and southern boundaries in favor of Clark County for roads, public utilities, or flood control purposes.

2. Those rights for distribution line purposes which have been granted to Las Vegas Valley Water District by Permit No. N–57091 under the Act of October 21, 1976 (43 U.S.C. 1761).

3. Those rights for telephone line purposes which have been granted to Sprint Central Telephone by Permit No. N–59915 under the Act of October 21, 1976 (43 U.S.C. 1761).

Detailed information concerning this action is available for review at the office of the Bureau of Land Management, Las Vegas Field Office, 4765 W. Vegas Drive, Las Vegas, Nevada.

Upon publication of this notice in the **Federal Register**, the above described land will be segregated from all other forms of appropriation under the public land laws, including the general mining laws, except for lease/conveyance under the Recreation and Public Purposes Act, leasing under the mineral leasing laws and disposals under the mineral material disposal laws.

For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments regarding the proposed lease/conveyance for classification of the lands to the Las Vegas Field Office Manager, Las Vegas Field Office, 4765 Vegas Drive, Las Vegas, Nevada 89108.

Classification Comments

Interested parties may submit comments involving the suitability of the land for a park site. Comments on

the classification are restricted to whether the land is physically suited for the proposal, whether the use will maximize the future use or uses of the land, whether the use is consistent with local planning and zoning, or if the use is consistent with State and Federal programs.

Application Comments

Interested parties may submit comments regarding the specific use proposed in the application and plan of development, whether the BLM followed proper administrative procedures in reaching the decision, or any other factor not directly related to the suitability of the land for a park site.

Any adverse comments will be reviewed by the State Director.

In the absence of any adverse comments, the classification of the land described in this Notice will become effective 60 days from the date of publication in the **Federal Register**. The lands will not be offered for lease/conveyance until after the classification becomes effective.

Dated: June 8, 1998.

Rex Wells,

Assistant Field Office Manager, Las Vegas, NV.

[FR Doc. 98–15803 Filed 6–12–98; 8:45 am]

BILLING CODE 4310–HC–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[MT–926–08–1420–00]

Montana: Filing of Plat of Survey

AGENCY: Bureau of Land Management, Montana State Office, Interior.

ACTION: Notice.

SUMMARY: The plat of survey of the following described land is scheduled to be officially filed in the Montana State Office, Billings, Montana, thirty (30) days from the date of this publication.

Black Hills Meridian, South Dakota

T. 5 S., R. 9 E.

The plat, in three sheets, representing the dependent resurvey of a portion of the south boundary, a portion of the subdivisional lines, and the adjusted original meanders of the left and right banks of the South Fork of the Cheyenne River through sections 22, 27, 28, and 33, and the subdivision of sections 27, 28, and 33, and the survey of the last thread, the medial line, and certain partition lines of the abandoned channel of the South Fork of the Cheyenne River in sections 28 and 33, and a division of accretion line in section 27, and the new meanders of a portion of the left and right banks of the South Fork of the Cheyenne River through sections 22, 27, 28, and 33, Township 5 South, Range 9 East, Black Hills Meridian, South Dakota, was accepted May 29, 1998.

This survey was executed at the request of the U.S. Forest Service, Custer National Forest, and was necessary to identify lands administered by the U.S. Forest Service.

A copy of the preceding described plat will be immediately placed in the open files and will be available to the public as a matter of information.

If a protest against this survey, as shown on this plat, is received prior to the date of the official filing, the filing will be stayed pending consideration of the protest. This particular plat will not be officially filed until the day after all protests have been accepted or dismissed and become final or appeals from the dismissal affirmed.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, 222 North 32nd Street, P.O. Box 36800, Billings, Montana 59107–6800.

Dated: June 4, 1998.

Steven G. Schey,

Acting Chief Cadastral Surveyor, Division of Resources.

[FR Doc. 98–15773 Filed 6–12–98; 8:45 am]

BILLING CODE 4310–DN–P

DEPARTMENT OF THE INTERIOR

National Park Service

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before June 6, 1998. Pursuant to section 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, 1849 C St. NW, NC400, Washington, DC 20240. Written comments should be submitted by June 30, 1998.

Carol D. Shull,

Keeper of the National Register.

CALIFORNIA

Alameda County

Downtown Oakland Historic District, Roughly along Broadway from 17th to 11th St., Oakland, 98000813

COLORADO

Larimer County

Craggs Lodge, 300 Riverside Dr., Estes Park, 98000814

GEORGIA

Washington County

Tennille Woman's Clubhouse, 132 Smith St., Tennille, 98000815

MISSOURI

Iron County

Ursuline Academy—Arcadia College Historic District, Jct. of Maine and Maple Sts., Arcadia, 98000816

Reynolds County

Civil War Fortification at Barnesville, Deer Run State Forest, Ellington vicinity, 98000817

TENNESSEE

Cocke County

Rhea—Mims Hotel, 335 East Broadway, Newport, 98000822

Davidson County

Tanglewood Historic District, 4907, 4909, and 4911 Tanglewood Dr., Nashville, 98000819

Grainger County

Nance Building, Jct. of Marshall St. and US 11W, Rutledge, 98000824

Jefferson County

New Market Presbyterian Church, 1000 W. Old Andrew Johnson Hwy, New Market, 98000823

Johnson County

Johnson, Alfred, Farm, 825 Johnson Hollow Rd., Mountain City vicinity, 98000820

Knox County

Tyson Junior High School (Knoxville and Knox County MPS), 2607 Kingston Pike, Knoxville, 98000821

Williamson County

Leipers Fork Historic District (Williamson MPS), Roughly bounded by Joseph St., Old TN 96, Old Hillsboro Rd., and Sycamore St., Leipers Fork, 98000818

TEXAS

Anderson County

North Side Historic District (Palestine, Texas MPS), Roughly bounded by Kolstad, N. Perry, W. Green, and N. Conrad Sts., Palestine, 98000825

South Side Historic District

(Palestine, Texas MPS) Roughly bounded by W. Colorado, and S. Michaux Sts., and Union Pacific Railroad Tracks, Palestine, 98000826

UTAH

Salt Lake County

Mountain States Telephone and Telegraph Co. Garage, 1075 E. Hollywood Ave., Salt Lake City, 98000827

WISCONSIN

Dane County

University of Wisconsin Field House, 1450 Monroe St., Madison, 98000829

Milwaukee County

Wauwatosa Woman's Club Clubhouse, 1626 Wauwatosa Ave., Wauwatosa, 98000828
A CHANGE has been requested for:
FROM:

TEXAS

Bowie County

Bowie County Courthouse and Jail Public Sq., Boston, 77001429

TO:

TEXAS

Bowie County

Bowie County Jail Public Sq., Boston, 77001429

A REMOVAL has been requested for:

MINNESOTA

Lac qui Parle County

Yellow Bank Church Campground Bridge Twp. Rd. Over Yellow Bank R. Odessa vicinity, 89001831

[FR Doc. 98–15819 Filed 6–14–98; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion for Native American Human Remains from Missouri and Florida in the Possession of the U.S. Fish & Wildlife Service, Valley Stream, NY

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is hereby given in accordance with provisions of the Native American Graves Protection and Repatriation Act (NAGPRA), 43 CFR 10.9, of the completion of an inventory of human remains from Missouri and Florida in the possession of the U.S. Fish & Wildlife Service, Valley Stream, NY.

A detailed assessment of the human remains was made by U.S. Fish & Wildlife professional staff in consultation with representatives of Peoria Tribe of Indians of Oklahoma and the Seminole Tribe of Florida.

On March 16, 1998, Mr. William Stevens, owner of the Evolution: Natural History in New York City, pled guilty to selling Native American human remains under 53 U.S.C. 18 Sec. 1170. Since September 16, 1997, the following Native American human remains have been in the possession and control of the U.S. Fish and Wildlife Service as a result of the investigation and seizures from Evolution: Natural History and Mr. Stevens.

At an unknown date, human remains representing two individuals were taken from Caruthersville, MO by person(s) unknown and delivered into Mr. William Stevens' possession under unknown circumstances. No known individuals were identified. No associated funerary objects are present.

At an unknown date, human remains representing one individual were taken from Pemiscot County, MO by person(s) unknown and delivered into Mr. William Stevens' possession under unknown circumstances. No known individuals were identified. No associated funerary objects are present.

Based on cranial morphology, these human remains have been identified as Native American. Although information obtained during the seizure of these human remains indicates a date range of 500 A.D. to 1400 A.D., the apparent age of the remains is estimated at ''several hundred years'' based on expert evaluation of these remains. Within the last several hundred years, village sites within Pemiscot County, Missouri have been occupied by bands of the Illinois Confederacy into the protohistoric period. The present-day descendent of the Illinois Confederacy is the Peoria Tribe of Indians of Oklahoma.

Based on the above mentioned information, officials of the U.S. Fish & Wildlife Service have determined that, pursuant to 43 CFR 10.2 (d)(1), the human remains listed above represent the physical remains of three individuals of Native American ancestry. Officials of the U.S. Fish & Wildlife Service have determined that, pursuant to 43 CFR 10.2 (e), there is a relationship of shared group identity which can be reasonably traced between these Native American human remains and the Peoria Tribe of Indians of Oklahoma.

At an unknown date, human remains representing a minimum of seven individuals were removed from Florida by person(s) unknown and delivered into Mr. William Stevens' possession under unknown circumstances. No known individuals were identified. No associated funerary objects are present.

Based on cranial morphology, these human remains have been identified as Native American. The apparent age of the remains is estimated at ''several hundred years'' based on expert evaluation of these remains.

Based on the above mentioned information, officials of the U.S. Fish & Wildlife Service have determined that, pursuant to 43 CFR 10.2 (d)(1), the human remains listed above represent the physical remains of a minimum of seven individuals of Native American ancestry. Officials of the U.S. Fish & Wildlife Service have determined that, pursuant to 43 CFR 10.2 (e), there is a relationship of shared group identity which can be reasonably traced between these Native American human remains and the Seminole Tribe of Florida.

This notice has been sent to officials of the Peoria Tribe of Indians of Oklahoma, the Seminole Tribe of Florida, and the Seminole Nation of Oklahoma. Representatives of any other Indian tribe that believes itself to be culturally affiliated with these human remains should contact Mr. Edward Grace, U.S. Fish & Wildlife Service, 70 E. Sunrise Highway, Suite 419, Valley Stream, NY 11581; telephone: (516) 825–3950 ext. 232, before July 15, 1998. Repatriation of the human remains to the Peoria Tribe of Indians of Oklahoma and the Seminole Tribe of Florida may begin after that date if no additional claimants come forward.

The National Park Service is not responsible for the determinations within this notice.

Dated: June 9, 1998.

Francis P. McManamon,

Departmental Consulting Archeologist, Manager, Archeology and Ethnography Program.

[FR Doc. 98–15821 Filed 6–12–98; 8:45 am]

BILLING CODE 4310–70–F

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Intent to Repatriate Cultural Items from Arizona in the Possession of the Museum of Indian Arts and Cultures/Laboratory of Anthropology, Museum of New Mexico, Santa Fe, NM

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 in the possession of the Museum of Indian Arts and Culture/Laboratory of Anthropology, Museum of New Mexico, Santa Fe, NM which meet the definition of ''object of cultural patrimony'' under Section 2 of the Act.

The 15 cultural items consist of five Apache *gaan* masks constructed of painted wood, cloth, and feathers; nine associated painted wood wands; and one associated bull roarer constructed of wood and leather.

Prior to 1935, Grenville Goodwin acquired these 15 cultural items on the San Carlos Apache Reservation. In 1935,

these cultural items were purchased from Mr. Goodwin by the Laboratory of Anthropology, which became part of the Museum of New Mexico in 1947.

The cultural affiliation of these cultural items is clearly San Carlos Apache as indicated through donor information, museum records, and consultation with representatives of the San Carlos Apache Tribe of the San Carlos Reservation. Representatives of the San Carlos Apache Tribe of the San Carlos Reservation have further stated that these items have ongoing historical, traditional, and cultural importance central to the tribe itself, and no individual had or has the right to alienate them.

Officials of the Museum of Indian Arts and Culture/Laboratory of Anthropology, Museum of New Mexico have determined that, pursuant to 43 CFR 10.2 (d)(4), these 15 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 Museum of Indian Arts and Culture/Laboratory of Anthropology, Museum of New Mexico 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 White Mountain Apache Tribe of the Fort Apache Reservation, the Tonto Apache Tribe of Arizona, the Yavapai-Apache Nation of the Camp Verde Reservation, the Apache Tribe of Oklahoma, and the Fort McDowell Mohave-Apache Indian Community of the Fort McDowell Indian Reservation. Representatives of any other Indian tribe that believes itself to be culturally affiliated with these objects should contact Patricia House, Director, Museum of Indian Arts and Culture/Laboratory of Anthropology, Museum of New Mexico, P.O. Box 2087, Santa Fe, NM 87504–2087; telephone: (505) 827–6344 before July 15, 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 8, 1998.

Francis P. McManamon,

Departmental Consulting Archeologist, Manager, Archeology and Ethnography Program.

[FR Doc. 98–15820 Filed 6–12–98; 8:45 am]

BILLING CODE 4310–70–F

NUCLEAR REGULATORY COMMISSION

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: U.S. Nuclear Regulatory Commission (NRC).

ACTION: Notice of the OMB review of information collection and solicitation of public comment.

SUMMARY: The NRC has recently submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). The NRC hereby informs potential respondents that an agency may not conduct or sponsor, and that a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

1. *Type of submission, new, revision, or extension:* Extension

2. *The title of the information collection:* 10 CFR Part 11—Criteria and Procedures for Determining Eligibility for Access to or Control Over Special Nuclear Material

3. *How often the collection is required:* New applications, certifications, and amendments may be submitted at any time. Applications for renewal are submitted every 5 years.

4. *Who will be required or asked to report:* Employees (including applicants for employment), contractors and consultants of NRC licensees and contractors whose activities involve access to or control over special nuclear material at either fixed sites or in transportation activities.

5. *The estimated number of annual respondents:* The majority of responses required under Part 11 are submitted using Standard Form 86, Personnel Security Packet, OMB Clearance No. 3206–0007, and NRC Form 237, Request for Access Authorization, OMB Clearance No. 3150–0050. The response and burden information for those forms is reported separately under those clearances. The remaining number of responses under Part 11 is estimated to be 5.

6. *An estimate of the total number of hours needed annually to complete the requirement or request:* Approximately 0.25 hours annually per response, for an industry total of 1.25 hours annually.

7. *An indication of whether Section 3507(d), Pub. L. 104–13 applies:* Not applicable.

8. *Abstract:* NRC regulations in 10 CFR Part 11 establish requirements for access to special nuclear material, and the criteria and procedures for resolving questions concerning the eligibility of individuals to receive special nuclear material access authorization. Personal history information which is submitted on applicants for relevant jobs is provided to OPM, which conducts investigations. NRC reviews the results of these investigations and makes determinations of the eligibility of the applicants for access authorization.

A copy of the final supporting statement may be viewed free of charge at the NRC Public Document Room, 2120 L Street, NW (lower level), Washington, DC. OMB clearance requests are available at the NRC worldwide web site (http://www.nrc.gov) under the FedWorld collection link on the home page tool bar. The document will be available on the NRC home page site for 60 days after the signature date of this notice.

Comments and questions should be directed to the OMB reviewer by July 15, 1998: Erik Godwin, Office of Information and Regulatory Affairs (3150–0062), NEOB–10202, Office of Management and Budget, Washington, DC 20503.

Comments can also be submitted by telephone at (202) 395–3084.

The NRC Clearance Officer is Brenda Jo. Shelton, 301–415–7233.

Dated at Rockville, Maryland, this 5th day of June 1998.

For the Nuclear Regulatory Commission.

Brenda Jo. Shelton,

NRC Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 98–15853 Filed 6–12–98; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No.: 030–29288]

Permagrain Products, Incorporated License Amendment and Opportunity for Hearing

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice Of Intent to Approve Amendment Request for the Permagrain Products, Inc., facility located in the Quehanna Wild Area, Pennsylvania, and Opportunity for Hearing.

The U.S. Nuclear Regulatory Commission (NRC) is considering approval of an amendment request for Byproduct Material License No. 37–17860–02, issued to Permagrain Products, Inc. (PPI), to authorize decontamination and decommissioning activities of the licensee's facilities in the Quehanna Wild Area, Pennsylvania

site which require remediation prior to release for unrestricted use.

PPI shall be authorized by the NRC, to perform within specific areas of its Quehanna Wild Area facilities, decontamination activities of licensed radioactive materials, and to possess, package, store, and transfer to authorized recipients radioactive wastes containing strontium-90 and cobalt-60. The amendment is to promote timely decommissioning and remediation of the licensed facilities by PPI. Due to the complexity of the decommissioning, the NRC added this site to its Site Decommissioning Management Plan (SDMP) in 1990. The NRC established and implemented the SDMP to identify and resolve issues associated with the timely and effective cleanup of the sites on the list.

PPI maintains an NRC license which authorizes the possession of radiological contamination from former operations, such as the manufacture of sealed sources. The licensee submitted an amendment request to the NRC on May 13, 1998, for approval of their proposed decommissioning plan and schedule. The NRC requires the licensee to remediate those portions of the PPI facilities licensed by NRC to meet the NRC guidance criteria for release of facilities for unrestricted use, and to maintain effluents and doses within NRC requirements and as low as reasonably achievable during remediation activities.

The decommissioning plan schedule describes time estimates to complete various elements of the decommissioning process. No demolition of site structures was requested, however, the licensee may determine future use of the buildings and equipment after license termination. NRC final radiation surveys and inspection will be performed after PPI's decontamination and remediation activities are completed.

The NRC hereby provides notice that this is a proceeding on a licensee-initiated amendment request, falling within the scope of Subpart L, ''Informal Hearing Procedures for Adjudications in Materials and Operator Licensing Proceedings,'' of NRC's rules and practice for domestic licensing proceedings in 10 CFR Part 2. Pursuant to § 2.1205(a), any person whose interest may be affected by this proceeding may file a request for a hearing in accordance with § 2.1205(d). A request for a hearing must be filed within thirty (30) days of the date of publication of this **Federal Register** Notice.

The request for a hearing must be filed with the Office of the Secretary either:

1. By delivery to the Docketing and Service Branch of the Secretary at One White Flint North, 11555 Rockville Pike, Rockville, MD 20852–2738; or

2. By mail or telegram addressed to the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Attention: Docketing and Service Branch.

In addition to meeting other applicable requirements of 10 CFR Part 2 of the NRC's regulations, a request for a hearing filed by a person other than an applicant must describe in detail:

1. The interest of the requestor in the proceeding;

2. How that interest may be affected by the results of the proceeding, including the reasons why the requestor should be permitted a hearing, with particular reference to the factors set out in § 2.1205(h);

3. The requestor's areas of concern about the licensing activity that is the subject matter of the proceeding; and

4. The circumstances establishing that the request for a hearing is timely in accordance with § 2.1205(d).

In accordance with 10 CFR 2.1205(f), each request for a hearing must also be served, by delivering it personally or by mail, to:

1. The applicant, Permagrain Products, Inc, Attention: A. E. Witt, Ph.D., President, Permagrain Products, Inc., 4789 West Chester Pike, Newtown Square, PA 19073; and

2. The NRC staff, by delivery to the Executive Director for Operations, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852–2738 or by mail, addressed to the Executive Director for Operations, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

For further details with respect to this action, the application for amendment request is available for inspection at the NRC's Public Document Room, 2120 L Street NW., Washington, DC 20555 or at NRC's Region I offices located at 475 Allendale Road, King of Prussia, PA 19406. Persons desiring to review documents at the Region I Office should call Ms. Sheryl Villar at (610) 337–5239 several days in advance to assure that the documents will be readily available for review.

Dated at King of Prussia, Pennsylvania this 3rd day of June 1998.

For the Nuclear Regulatory Commission.

George Pangburn,

Deputy Director, Division of Nuclear Materials Safety Region I.

[FR Doc. 98–15852 Filed 6–12–98; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Appointments to Performance Review Boards for Senior Executive Service

AGENCY: U.S. Nuclear Regulatory Commission.

ACTION: Appointment to Performance Review Boards for Senior Executive Service.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) has announced the following appointments to the NRC Performance Review Boards.

The following individuals are appointed as members of the NRC Performance Review Board (PRB) responsible for making recommendations to the appointing and awarding authorities on performance appraisal ratings and performance awards for Senior Executives:

Patricia G. Norry, Deputy Executive Director for Management Services
Stephen G. Burns, Deputy General Counsel, Office of the General Counsel
Guy P. Caputo, Director, Office of Investigations
Samuel J. Collins, Director, Office of Nuclear Reactor Regulation
James E. Dyer, Deputy Regional Administrator, Region IV
Margaret Federline, Deputy Director, Office of Nuclear Regulatory Research
Jesse L. Funches, Chief Financial Officer
Edward L. Halman, Director, Office of Administration
Malcolm R. Knapp, Deputy Director, Office of Nuclear Material Safety and Safeguards
Thomas T. Martin, Director, Office for Analysis and Evaluation of Operational Data
Roy P. Zimmerman, Associate Director for Projects, Office of Nuclear Reactor Regulation

The following individuals will serve as members of the NRC PRB Panel that was established to review appraisals and make recommendations to the appointing and awarding authorities for NRC PRB members:

Hugh L. Thompson, Jr., Deputy Executive Director for Regulatory Programs
Karen D. Cyr, General Counsel, Office of the General Counsel
John C. Hoyle, Secretary of the Commission

All appointments are made pursuant to Section 4314 of Chapter 43 of Title 5 of the United States Code.

EFFECTIVE DATE: June 15, 1998.

FOR FURTHER INFORMATION CONTACT: Carolyn J. Swanson, Secretary,

Executive Resources Board, U.S. Nuclear Regulatory Commission, Washington, DC 20555, (301) 415–7530.

Dated at Rockville, Maryland, this 9th day of June 1998.

For the U.S. Nuclear Regulatory Commission.

Carolyn J. Swanson,

Secretary, Executive Resources Board.

[FR Doc. 98–15851 Filed 6–12–98; 8:45 am]

BILLING CODE 7590–01–P

PENSION BENEFIT GUARANTY CORPORATION

Interest Assumption for Determining Variable-Rate Premium; Interest Assumptions for Multiemployer Plan Valuations Following Mass Withdrawal

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Notice of interest rates and assumptions.

SUMMARY: This notice informs the public of the interest rates and assumptions to be used under certain Pension Benefit Guaranty Corporation regulations. These rates and assumptions are published elsewhere (or are derivable from rates published elsewhere), but are collected and published in this notice for the convenience of the public. Interest rates are also published on the PBGC's web site (http://www.pbgc.gov).

DATES: The interest rate for determining the variable-rate premium under part 4006 applies to premium payment years beginning in June 1998. The interest assumptions for performing multiemployer plan valuations following mass withdrawal under part 4281 apply to valuation dates occurring in July 1998.

FOR FURTHER INFORMATION CONTACT: Harold J. Ashner, Assistant General Counsel, Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005, 202–326–4024. (For TTY/TDD users, call the Federal relay service toll-free at 1–800–877–8339 and ask to be connected to 202–326–4024.)

SUPPLEMENTARY INFORMATION:

Variable-Rate Premiums

Section 4006(a)(3)(E)(iii)(II) of the Employee Retirement Income Security Act of 1974 (ERISA) and § 4006.4(b)(1) of the PBGC's regulation on Premium Rates (29 CFR part 4006) prescribe use of an assumed interest rate in determining a single-employer plan's variable-rate premium. The rate is the ''applicable percentage'' (described in the statute and the regulation) of the annual yield on 30-year Treasury securities for the month preceding the beginning of the plan year for which premiums are being paid (the ''premium payment year''). The yield figure is reported in Federal Reserve Statistical Releases G.13 and H.15.

For plan years beginning before July 1, 1997, the applicable percentage of the 30-year Treasury yield was 80 percent. The Retirement Protection Act of 1994 (RPA) amended ERISA section 4006(a)(3)(E)(iii)(II) to change the applicable percentage to 85 percent, effective for plan years beginning on or after July 1, 1997. (The amendment also provides for a further increase in the applicable percentage—to 100 percent—when the Internal Revenue Service adopts new mortality tables for determining current liability.)

The assumed interest rate to be used in determining variable-rate premiums for premium payment years beginning in June 1998 is 5.04 percent (*i.e.*, 85 percent of the 5.93 percent yield figure for May 1998).

(Under section 774(c) of the RPA, the amendment to the applicable percentage was deferred for certain regulated public utility (RPU) plans for as long as six months. The applicable percentage for RPU plans has therefore remained 80 percent for plan years beginning before January 1, 1998. For ''partial'' RPU plans, the assumed interest rates to be used in determining variable-rate premiums can be computed by applying the rules in § 4006.5(g) of the premium rates regulation. The PBGC's 1997 premium payment instruction booklet also describes these rules and provides a worksheet for computing the assumed rate.)

The following table lists the assumed interest rates to be used in determining variable-rate premiums for premium payment years beginning between July 1997 and June 1998. The rates for July through December 1997 in the table (which reflect an applicable percentage of 85 percent) apply only to non-RPU plans. However, the rates for months after December 1997 apply to RPU (and ''partial'' RPU) plans as well as to non-RPU plans.

For premium payment years beginning in:	The assumed interest rate is:
July 1997	5.75
August 1997	5.53
September 1997	5.59
October 1997	5.53
November 1997	5.38
December 1997	5.19
January 1998	5.09
February 1998	4.94
March 1998	5.01
April 1998	5.06
May 1998	5.03
June 1998	5.04

Multiemployer Plan Valuations Following Mass Withdrawal

The PBGC's regulation on Duties of Plan Sponsor Following Mass Withdrawal (29 CFR part 4281) prescribes the use of interest assumptions under the PBGC's regulation on Allocation of Assets in Single-employer Plans (29 CFR part 4044). The interest assumptions applicable to valuation dates in July 1998 under part 4044 are contained in an amendment to part 4044 published elsewhere in today's **Federal Register**. Tables showing the assumptions applicable to prior periods are codified in appendix B to 29 CFR part 4044.

Issued in Washington, DC, on this 8th day of June 1998.

David M. Strauss,

Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 98–15823 Filed 6–12–98; 8:45 am]

BILLING CODE 7708–01–P

SECURITIES AND EXCHANGE COMMISSION

Extension; Comment Request

Extension: Rule 53, SEC File No. 270–376, OMB Control No. 3235–0426, Rule 54, SEC File No. 270–376, OMB Control No. 3235–0427, Rule 55, SEC File No. 270–376, OMB Control No. 3235–0430, Rule 57(a) and Form U–57, SEC File No. 270–376, OMB Control No. 3235–0428, Rule 57(b) and Form U–33–S, SEC File No. 270–376, OMB Control No. 3235–0429, Rule 1(c) and Form U5S, SEC File No. 270–168, OMB Control No. 3235–0164, Rule 2 and Form U–3A–2, SEC File No. 270–83, OMB Control No. 3235–0161.

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings, Information, and Consumer Services, 450 Fifth Street, NW., Washington, DC 20549.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501, *et seq.*), the Securities and Exchange Commission (''Commission'') is soliciting comments on the collections of information summarized below. The Commission plans to submit these existing collections of information to the Office of Management and Budget for extension and approval.

Sections 32 and 33 of the Public Utility Holding Company Act of 1935, as amended (''Act''), and rules 53, 54, 55

and 57 thereunder, permit holding companies registered under the Act to make direct or indirect investments in exempt wholesale generators (''EWGs'') and foreign utility companies (''FUCOs''), as defined in sections 32 and 33 of the Act, respectively, without the prior approval of the Commission, if certain conditions are met. Rules 53, 54 and 55 do not create a reporting burden for respondents. These rules do, however, contain a recordkeeping and retention requirement. The purpose of requiring the availability of books and records identifying investments in and earnings from any subsidiary EWG or FUCO is to allow the Commission to monitor the extent and the effect of registered holding companies' investments in these new entities. This criterion was specifically cited by Congress as an appropriate item for inclusion in the Commission's rulemaking. The Commission estimate that the total annual reporting and recordkeeping burden of collections under each of rules 53, 54 and 55 is 110 hours per rule (*e.g.*, 11 responses per rule × 10 hours per rule = 110 burden hours per rule).

Rule 57 imposes two reporting requirements. First, and pursuant to rule 57(a) companies seeking FUCO status must file a notification on Form U–57 on the occasion of each transaction involving the acquisition of a FUCO. In instances where non-utility entities acquire a FUCO, Form U–57 is the Commission's sole source of information regarding such projects. Even when public-utility companies make the acquisition, Form U–57 may provide the only prospective data available to the Commission with respect to such acquisition. The Commission estimates that the total reporting and recordkeeping burden of collections under rule 57(a) is 144 hours (*e.g.*, 48 responses × 3 hours = 144 burden hours).

The second reporting requirement of Rule 57 is the filing of Form U–33–S, which imposes an annual reporting requirement on any public-utility company that acquires one or more FUCOs. The information from Form U–33–S allows the Commission to monitor overseas investments by public-utility companies. The Commission estimates that the total reporting and recordkeeping burden of collections under rule 57(b) is 267 hours (*e.g.*, 89 responses × 3 hours = 267 burden hours).

Section 3 of the Act and rule 2 under the Act require the Commission to monitor exempt holding companies to make sure that exemptions are not detrimental to the public interest or the interest of investors or consumers. Form U–3A–2 is the single uniform periodic submission which allows the staff to effectively accomplish this task. The Commission estimates that the total reporting and recordkeeping burden of collections under rule 2 is 319 hours (*e.g.*, 91 responses × 3.5 hours=319 burden hours).

Section 5 of the Act imposes similar duties on the Commission with respect to registered holding companies. The Form U5S allows the staff to gather an annual ''snapshot'' of each registered system for review and comparison with other systems. Relying on the fragmented information submitted with applications on Form U–1 for Commission approval of certain transactions, or other submissions by registered holding companies or their subsidiaries, would not be an appropriate substitute for the comprehensive and timely information provided on Form U5S. The Commission estimates that the total reporting and recordkeeping burden of collections under Form U5S is 4,142 hours (*e.g.*, 19 responses × 218 hours = 4,142 burden hours).

These estimates of average burden hours are made solely for the purposes of the Paperwork Reduction Act and are not derived from a comprehensive or even a representative survey or study of the costs of SEC rules and forms.

It should be noted that ''an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.''

Written 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 will have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to Michael E. Bartell, Associate Executive Director, Securities and Exchange commission, 450 5th Street, NW, Washington, DC 20549.

Dated: June 5, 1998.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–15825 Filed 6–12–98; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–23246; 812–10970]

M Fund, Inc., et al.; Notice of Application

June 9, 1998.

AGENCY: Securities and Exchange Commission (''SEC'').

ACTION: Notice of application for exemption under section 6(c) of the Investment Company Act of 1940 (the ''Act'') from section 15(a) of the Act and rule 18f–2 under the Act.

SUMMARY OF APPLICATION: Applicants, M Fund, Inc. (''Company'') and M Financial Investment Advisers, Inc. (''Adviser''), request an order to permit them to enter into and materially amend investment advisory contracts without shareholder approval.

FILING DATES: The application was filed on January 16, 1998, and amended on May 18, 1998, and June 4, 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 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 30, 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, 205 S.E. Spokane Street, Portland, Oregon 97202.

FOR FURTHER INFORMATION CONTACT: Edward P. Macdonald, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application

may be obtained for a fee at the SEC's Public Reference Branch, 450 Fifth St., N.W., Washington, DC 20549 (tel. 202–942–8090).

Applicants' Representations

1. The Company, a Maryland corporation registered under the Act as an open-end diversified management investment company currently has four series (''Funds'') that are offered exclusively to variable annuity and variable life insurance separate accounts of life insurance companies. The Adviser, registered under the Investment Advisers Act of 1940 (''Advisers Act''), is the investment adviser to each of the Funds pursuant to an investment advisory agreement (''Agreement''). Each Fund currently has one investment subadviser (''Manager''), each of which is registered under the Advisers Act.

2. Under the Agreement, the Adviser oversees the administration of all operations of the Company and oversees each Fund's Manager. Each Manager recommended by the Adviser is ultimately approved by the Fund's board of directors (''Board''), including a majority of the Fund's directors who are not ''interested persons'' of the Fund as defined in section 2(a)(19) of the Act (''Independent Directors''). The Adviser monitors each Manager's compliance with each Fund's investment objectives and policies, reviews the performance of each Manager, and periodically reports each Manager's performance to the Board. As compensation for its services, the Adviser receives a fee, paid by the Company, based on the average daily net assets of each of the Funds.

3. Under subadvisory agreements between the Adviser and the Managers (''Subadvisory Agreements'') the specific investment decisions for each Fund are, and will continue to be, made by each Manager. The Managers' fees are paid by the Adviser out of its fee.

4. Applicants request an exemption from section 15(a) of the Act and rule 18f–2 under the Act to permit Managers selected by the Adviser and approved by the Board to serve as investment subadvisers for the Funds without shareholder approval.[1]

Shareholder approval is, and will continue to be, required for any Manager that is an affiliated person, as defined in section 2(a)(3) of the Act, other than by reason of serving as a Manager to one or more of the Funds (''Affiliated Manager'').

Applicants' Legal Analysis

1. Section 15(a) of the Act makes it unlawful for any person to act as an investment adviser to a registered investment company except pursuant to a written contract that has been approved by a majority of the investment company's outstanding voting securities. Rule 18f–2 under the Act provides that each series or class of stock in a series company affected by a matter must approve the matter if the Act requires shareholder approval.

2. Section 6(c) of the Act provides that the SEC may exempt any person, security, or transaction from any provision of the Act if, and to the extent that, such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Applicants believe that their requested relief meets this standard for the reasons discussed below.

3. Applicants assert that the Company's investors rely on the Adviser to select Managers best suited to achieve a Fund's investment objectives. The Adviser has represented itself as an investment adviser whose strength and expertise lies in its ability to evaluate, select and supervise those Managers who can add the most value to a shareholder's investment in the Company. Applicants state that, from the perspective of an investor, the role of the Managers is similar to that of individual portfolio managers employed by traditional investment advisory firms. Applicants thus contend that the requested relief will allow each Fund to operate more efficiently by enabling the Funds to act quickly and cost effectively to replace Managers when the Board and the Adviser feel that a change would benefit the Fund. Applicants also note that the Agreement will remain fully subject to the requirements of section 15 of the Act and rule 18f–2 under the Act, including the requirements for shareholder approval.[2]

Applicants' Conditions

Applicants agree that the requested order will be subject to the following conditions:

1. Before a Future Fund that does not presently have an effective registration statement may rely on the order requested herein, the operation of the Future Fund in the manner described in the application will be approved by its initial shareholder(s) before shares of the Future Fund are made available to the public.

2. The Company will disclose in its prospectus the existence, substance, and effect of any order granted pursuant to this application. In addition, each Fund will hold itself out to the public as employing the management structure described in the application. The prospectus will prominently disclose that the Adviser has the ultimate responsibility to oversee the Managers and recommend their hiring, termination, and replacement.

3. At all times, a majority of the Company's Board will consist of Independent Directors, and the nomination of new or additional Independent Directors will be at the discretion of the then existing Independent Directors.

4. The Adviser will not enter into a Subadvisory Agreement with any Affiliated Manager without that Agreement, including the compensation to be paid thereunder, being approved by the shareholders of the applicable Fund.

5. When a Manager change is proposed for a Fund with an Affiliated Manager, the Company's Board, including a majority of the Independent Directors, will make a separate finding, reflected in the Company's Board minutes, that the change is in the best interests of the Fund and its shareholders and does not involve a conflict of interest from which the Adviser of the Affiliated Manager derives an inappropriate advantage.

6. Within 90 days of the hiring of any new Manager shareholders will be furnished relevant information about the new Manager or Subadvisory agreement that would be contained in a proxy statement including any change in the disclosure caused by the addition of the new Manager. The Adviser will meet this condition by providing shareholders, within 90 days of the hiring of a Manager, an informal information statement meeting the requirements of Regulations 14C, Schedule 14C, and Item 22 of Schedule 14A under the Securities Exchange Act of 1934.

7. The Adviser will provide general management services to each Fund,

[1] Applicants request that the relief also apply to any series of the Company that may be created in the future, and to all subsequently registered open-end investment companies that in the future are advised by the Adviser, or any entity controlling, controlled by, or under common control with the Adviser, provided that these companies operate in substantially the same manner as the Funds with respect to the Adviser's responsibility to select, evaluate and supervise Managers and comply with the conditions to the requested order as set forth in the application (''Future Funds'').

[2] The Company's prospectus has disclosed, since the effective date of the Company's registration statement, that the Company would seek an exemptive order from the SEC permitting changes in Managers without submitting the Subadvisory Agreements to a vote of the Company's shareholders.

including overall supervisory responsibility for the general management and investment of each Fund's portfolio, and subject to review and approval by the Board, will: (i) set the Fund's overall investment strategies; (ii) select managers, (iii) when appropriate, recommend to the Board the allocation and reallocation of a Fund's assets among multiple Managers; (iv) monitor and evaluate the performance of Manager; and (v) ensure that the Managers comply with the Fund's investment objectives, policies, and restrictions.

8. No director or officer of the Company or director or officer of the Adviser will own directly or indirectly (other than through a pooled investment vehicle that is not controlled by that director or officer) any interest in a Manager except for (i) ownership of interests in the Adviser or any entity that controls, is controlled by, or is under common control with the Adviser; or (ii) ownership of less than 1% of the outstanding securities of any class of debt or equity of a publicly-traded company that is either a Manager or an entity that controls, is controlled by, or is under common control with a Manager.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–15826 Filed 6–12–98; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–40075; File No. SR–CBOE–98–07]

Self-Regulatory Organizations; Order Approving Proposed Rule Change by the Chicago Board Options Exchange, Incorporated Relating to the Committee Responsible for Governing RAES Participation in SPX

June 4, 1998.

On February 20, 1998, the Chicago Board Options Exchange, Incorporated (''CBOE'' of the ''Exchange'') filed with Securities and Exchange Commission (''Commission'') the proposed rule change pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] to change the Committee responsible for governing RAES eligibility in options on the Standard & Poor's 500 Index (''SPX'') from the appropriate Floor Procedure Committee to the appropriate Market Performance Committee. CBOE filed an amendment on April 15, 1998, requesting that the filing be handled as a regular way filing under Section 19(b)(2) of the Act.[3] The Commission published notice of the proposed rule change in the **Federal Register** on April 30, 1998.[4] No comment letters were received. This order approves the proposed rule change.

I. Description of the Proposal

The Exchange proposes to change the Committee responsible for governing RAES eligibility in options on the SPX from the appropriate Floor Procedure Committee to the appropriate Market Performance Committee. Currently, SPX is the only options class in which the issues concerning the eligibility of market-makers to participate in RAES is governed by a Floor Procedure Committee instead of by a Market Performance Committee. Rule 8.16 (in the case of option classes other than OEX[5], SPX, and DJC[6]) and Rule 24.17 (in the case of OEX and DJX option classes) provide that the appropriate Market Performance Committee will govern the RAES market-maker eligibility issues. This change, therefore, will make the regulation of SPX RAES eligibility consistent with that of the other option classes traded on the Exchange. The governance of eligibility issues for SPX RAES will initially be delegated to the newly formed Index Market Performance Committee.

As with the other options classes, the Index Market Performance Committee will have authority to exempt market-makers the requirement that the market-maker be present in the crowd to log onto or remain on RAES (Rule 24.16(a)(iii), the requirement that the market-maker must log onto RAES at any time during an expiration month when he is present in the crowd and when he has logged on previously during that expiration month (Rule 24.16(d)), certain requirements concerning the participation of joint accounts (Rule 24.16(c)), and certain requirements concerning the participation of member organizations with multiple nominees (Rule 24.16(d)). The Index Market Performance Committee will also take over the broader authority of the SPX Floor Procedure Committee to set the maximum number of RAES participants in RAES groups, to disallow the participation of certain RAES groups (Rule 24.16(e)), to require market-makers of the trading crowd to log onto RAES if there is inadequate participation (Rule 24.16(f)), and to take other remedial action as appropriate (Rule 24.16(g)).

II. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and in particular, the requirements of Sections 6(b)(5)[7] of the Act in that it is designed to prevent fraudulent and manipulative acts and practices and to promote just and equitable principles of trade, and to remove impediments to and protect the mechanism of a free and open market.[8]

Specifically, the Commission believes that changing the Committee that oversees the eligibility of market makers to participate in RAES for the trading of SPX will ensure that the regulation of SPX RAES eligibility will be consistent with that of the other options classes traded on the Exchange.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act[9] that the proposed rule change SR–CBOE–98–07) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

[FR Doc. 98–15780 Filed 6–12–98; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–40071; File No. SR–DTC–98–10]

Self-Regulatory Organizations; The Depository Trust Company; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Fees and Charges

June 4, 1998.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (''Act''), notice is hereby given that on

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4

[3] *See*, letter from Timothy H. Thompson, Director, Regulatory Affairs, Legal Department, CBOE to Victoria Berberi-Doumar, Special Counsel, Division of Market Regulation, SEC, dated April 15, 1998.

[4] Securities Exchange Act Release No. 39911 (April 24, 1998), 63 FR 23820 (April 30, 1998).

[5] OEX stands for options on the Standard & Poor's 100 Index.

[6] DJX stands for options on the Dow Jones Industrial Average.

[7] 15 U.S.C. 78f(b)(5).

[8] In approving this rule, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation, 15 U.S.C. 78c(f).

[9] 15 U.S.C. 78s(b)(2).

[10] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

May 15, 1998, The Depository Trust Company (''DTC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which items have been prepared primarily by DTC. The Commission is publishing this notice to solicit comments from interested persons on the proposed rule change.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change adjusts the fees charged by DTC for copies of software used to access its Institutional Delivery (''ID'') system. The revised fee schedule is attached as Exhibit 1.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, DTC 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. DTC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.[2]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to revise the fees that DTC charges for providing copies of software used to access its ID system. The present fees were filed as part of a previous proposed rule change.[3]

DTC continually strives to align service fees with estimated service costs, and the subject revisions are part of that effort. DTC believes that the proposed rule change is consistent with the requirements of Section 17A of the Act[4] and the rules and regulations thereunder because it provides for the equitable allocation of dues, fees, and other charges among users of DTC's ID system.

(B) Self-Regulatory Organization's Statement on Burden on Competition

DTC does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purpose of the Act.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No comments on the proposed rule change were solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii)[5] of the Act and pursuant to Rule 19b–4(e)(2)[6] promulgated thereunder because the proposal establishes or changes a due, fee, or other charge imposed by DTC. At any time within sixty days of the filing of such rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of DTC. All submissions should refer to File No. SR–DTC–98–10 and should be submitted by July 6, 1998.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[7]

Margaret H. McFarland,

Deputy Secretary.

EXHIBIT 1.—PARTICIPANT OPERATING PROCEDURES FEES

Institutional Delivery (ID) System: [other ID system fees are not reprinted here.]

Present fee		Proposed fee	
Dial-in Terminal Service:		*Dial-in Terminal Service:*	
—Ability to dial in to DTC's ID System via personal computer to receive reports.	$800.00 per year communications charge.	*—Ability to dial in to DTC's ID System via personal computer.*	No change.
—Ability to dial in to DTC's ID System via personal computer to access ID services (per location).		*—Ability to dial in to DTC's ID System via personal computer using DTC's Tradesuite™* software.	
• Connection charge	500.00 per year	• *Connection charge*	No change.
• For access to ID services based on number of copies of software obtained.		• *For access to ID services based on number of copies of software obtained.*	
—one	500.00 per year	*—one*	No change.
—two	800.00 per year	*—two*	No change.
—three	1,000.00 per year	*—three*	No change.
—four	1,300.00 per year	*—four*	*$1,350.00 per year.*

[2] The Commission has modified the text of the summaries prepared by DTC.

[3] Securities Exchange Act Release No. 39946 (May 4, 1998), 63 FR 26235.

[4] 15 U.S.C. 78q–1.

[5] 15 U.S.C. 78s(b)(3)(A)(ii).

[6] 17 CFR 240.19b–4(e)(2).

[7] 17 CFR 200.30–3–(a)(12).

EXHIBIT 1.—PARTICIPANT OPERATING PROCEDURES FEES—Continued

Institutional Delivery (ID) System: [other ID system fees are not reprinted here.]

Present fee		Proposed fee	
—five	1,500.00 per year	*—five*	1,600.00 per year.
—more than five	1,800.00 per year	*—more than five*	*1,600.00 per year and an additional $200 per year for each copy beyond five.*

[FR Doc. 98–15828 Filed 6–12–98; 8:45 am]
BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–40074; File No. SR–NASD–98–32]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to Filing Requirements for Independently Prepared Research Reports

June 4, 1998.

AGENCY: Securities and Exchange Commission (''SEC'').

ACTION: Notice of Application for Deregistration under the Investment Company Act of 1940 (the ''Act'').

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''), 15 U.S.C. 78s(b)(1), notice is hereby given that on April 9, 1998, the National Association of Securities Dealers, Inc. (''NASD'') 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''). On May 14, 1998, the NASD filed an amendment, which has been incorporated in this filing, to clarify the proposed change and delete its request for accelerated approval. [1] 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

NASD Regulation is proposing to amend Rule 2210 of the Conduct Rules of the NASD to exclude independently-prepared research reports from the filing requirements of Rule 2210. Below is the text of the proposed rule change. Proposed new language is in italics.

AMENDMENTS TO NASD CONDUCT RULE 2210

Paragraph (c)(6) of Conduct Rule 2210 is amended by adding new paragraph (G), as follows: (6) The following types of material are excluded from the foregoing filing requirements and *(except for research reports under paragraph (G)) the foregoing* spot-check procedures:

* * *

(G) any research report concerning an investment company registered under the Investment Company Act of 1940, provided that:

(i) *the report is prepared by an entity (the ''research firm'') that is independent of the investment company, its affiliates, and the member using the report;*

(ii) *in preparing the report, the services of the research firm have not been procured by the investment company, any of its affiliates or any member using the report;*

(iii) *the research firm prepares and distributes similar types of reports with respect to a substantial number of investment companies;*

(iv) *the report is distributed and updated with reasonable regularity in the normal course of the research firm's business; and*

(v) *the report has not been materially altered by the member using the report.*

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NASD Regulation 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

(a) Purpose

NASD Conduct Rule 2210 requires that any ''advertisement'' or ''sales literature'' (as defined by the rule) concerning a registered investment company be filed with the Advertising/Investment Companies Regulation Department (''Department'') and meet the content standards of that rule, as well as all applicable Commission rules. The rule defines ''sales literature'' to include a research report. Consequently, Rule 2210 requires that NASD members file all investment company research reports, including any research report that has been prepared by an entity that is independent of the investment company and its affiliates and of any NASD member, and whose services are not produced by the investment company or any of its affiliates or any NASD member to prepare the report (''independent research firms'').

As the investment company industry has grown in recent years, so too has the coverage of this industry by independent research firms. Many of these firms publish reports that analyze a wide variety of investment companies and provide information, such as each investment company's historical performance, the investment company's fees and expenses, and a description and narrative analysis of the investment company's investment strategies and portfolio management style.

NASD members use these independently-prepared research reports in a number of ways. Some members may make the entire research service available to customers at a branch office. Members may also distribute an independently-prepared research report concerning a particular investment company as part of the selling process.

The proposed rule change would clarify the meaning, administration and enforcement of Rule 2210 insofar as it may appear to apply to certain types of independently-prepared research

[1] Letter from John Ramsey, Vice President, Deputy General Counsel, NASD Regulation, Inc., to Katherine A. England, Assistant Director, Division of Market Regulation, SEC, dated May 13, 1998.

reports. The proposed rule change would clarify that these types of independently-prepared research reports would not have to be filed with the Department. The Department intends to interpret the term ''independent'' in (G)(i) of the proposed rule change in a manner similar to the use of that term in NASD Rule IM–2210–3 regarding rankings.

Under the proposed rule change, these research reports would continue to be subject to the Department's spot-check procedures. Moreover, the proposed rule change would impose certain conditions designed to ensure that the opinions in the research reports are objective, that the presentation is balanced, and that investors have access to regular updates of the reports. In particular, the proposed rule change would impose several requirements derived from an analogous SEC rule, Rule 139, which provides a safe harbor from the definition of ''offer for sale'' and ''offer to sell'' in the Securities Act of 1933.

Thus, under the proposed rule change, a published article that analyzes only a few funds or that is not regularly updated in the normal course of business would have to be filed with the Department if it is to be distributed or made generally available to customers or the public. Moreover, while a member could distribute an independently-prepared research report concerning a particular fund without filing the report with the Department, if the member alters the report in any material way, then the member would have to file it with the Department if it is to be distributed or made generally available to customers or the public.

NASD Regulation believes that the proposed rule change would not raise significant investor protection concerns. In its filing and review program, the Department rarely has found significant issues with the types of research reports that would be expected by the proposed rule change. Moreover, to ensure that investors are adequately protected, the proposed rule change would except these types of research reports only from the filing requirements, and not the content requirements of applicable NASD rules. Under the proposed rule change, these research reports would continue to be subject to the content requirements of Rule 2210 as well as Conduct Rule 2110 (requiring that a member ''observe high standards of commercial honor and just and equitable principles of trade''); Rule 2120 (prohibiting use of manipulative, deceptive or other fraudulent devices); and IM–2310–2 (requiring fair dealing with customers, including an avoidance of fraud violations). In addition, Conduct Rule 2210 would continue to require that these research reports be approved prior to use by a registered principal of the member.

The proposed rule change would apply to independently-prepared research reports that are contained in software or that are electronically communicated, as well as those on paper.

(b) Statutory Basis

NASD Regulation believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6)[2] of the Act, which require that the Association adopt and amend its rules to promote just and equitable principles of trade, and generally provide for the protection of investors and the public interest in that the proposed rule change allows the dissemination of certain research reports, subject to the content requirements of the NASD Conduct Rules.

B. Self-Regulatory Organization's Statement on Burden on Competition

NASD Regulation does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, 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 number in the caption above and should be submitted by July 6, 1998.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30–3(a)(12).

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–15781 Filed 6–12–98; 8:45 am]

BILLING CODE 8010–01–M

[2] 15 U.S.C. 78*o*–3.

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–40070; File No. SR–PCX–98–19]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Pacific Exchange, Inc. Relating to Capital Requirements and Guaranteed Participation of Lead Market Makers

June 4, 1998.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on April 16, 1998, the Pacific Exchange, Inc. (''PCX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change, and amended such proposed rule change on June 4, 1998,[2] as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] Amendment No. 1 clarified the text of the proposed rule change. *See* letter from Michael D. Pierson, Senior Attorney, to Heidi Pilpel, Special Counsel, Division of Market Regulations, SEC (June 4, 1998).

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

PCX is proposing to modify its capital requirements for Lead Market Makers (''LMMs'') on the Exchange and to clarify the procedures applicable to LMMs' guaranteed participation. The text of the proposed rule change is attached as Exhibit A.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, PCX included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. PCX has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

a. *LMM Capital*. PCX Rule 6.82(c)(11) currently provides that each LMM on the Exchange must maintain a cash or liquid asset position in the amount of $100,000 or in an amount sufficient to assume a position of twenty trading units of the security underlying the option the LMM has been allocated, whichever amount is greater.[3] The term ''trading unit'' means, in the case of stocks, 100 shares.[4] Therefore, LMMs are currently required to maintain a cash or liquid asset position in the amount of $100,000 or in an amount sufficient to assume a position of 2000 shares of stock in each option issue allocated to the LMM.

The Exchange is proposing to eliminate the current LMM capital requirement and to replace it with another one providing that each LMM must maintain a cash or liquid asset position of at least $350,000, plus $25,000 for each issue over eight issues that have been allocated to the LMM.[5] Under the proposal, PCX Rule 6.82(c)(11) will continue to provide that in the event that two or more LMMs are associated with each other and deal for the same LMM account, the LMM capital requirement will apply to such LMMs collectively, rather than to each LMM individually.[6]

The Exchange believes that the current LMM capital requirement, which generally fluctuates as the price of the underlying stock fluctuates, is unduly complicated and difficult to calculate, both for the Exchange and for individual LMMs. In that regard, the Exchange notes that the Commission's net capital rule also establishes fixed dollar amounts applicable to broker-dealers. In addition, the Exchange believes that all of its LMMs should have cash or liquid asset positions of at least $350,000 and the current minimum amount of $100,000 is insufficient.

b. *Guaranteed Participation*. PCX Rule 6.82(d)(2) currently provides that LMMs are guaranteed 50% participation in transactions occurring on their disseminated bids or offers in their allocated issues. But the LMM's guaranteed participation may be reduced from 50% to 40% in a multiply-traded issue, and may be reduced from 50% to 25% in a non-multiply traded issue, if trading in the issues reaches certain levels (and other events occur). The applicable trading volume requirement, for both multiply-traded and non-multiply traded issues, is an average daily trading volume of 3,000 contracts at the Exchange for three consecutive months. The Exchange believes that the current formulation of this provision is ambiguous and therefore is proposing to clarify it by replacing the words ''for three consecutive months'' with the words ''during any three-calendar-month period (measured on a 'rolling' three-calendar-month basis).'' [7]

The Exchange is also proposing to adopt Rule 6.82(d)(2)(C) to specify the circumstances under which an LMM may return to receiving a guaranteed 50% participation after having had it reduced to 40% or to 25%. Specifically, the proposal states that ''[i]f the Options Allocation Committee has reduced an LMM's guaranteed participation in an issue pursuant to subsections (A) or (B) . . . and average daily trading volume in an issue falls below 3,000 contracts at the Exchange during any three-calendar-month period (measured on a 'rolling' three-calendar-month basis), the Options Allocation Committee will evaluate the LMM's performance in that issue and, based on that evaluation, may raise the LMM's guaranteed participation in that issue from 40% to 50% (in a multiply-traded issue) or from 25% to 50% (in a non-multiply traded issue).'' The purpose of this proposal is to codify the Exchange's existing policy on when an LMM's guaranteed participation may return to 50%.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6(b)[8] of the Act, in general, and furthers the objectives of Section 6(b)(5),[9] in particular, in that it is designed to promote just and equitable principles of trade and to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate, up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding, or (ii) as to which the Exchange consents, the Commission will:

A. by order approve such proposed rule change, or

B. institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and

[3] *Cf.* CBOE Rule 8.80, Interp. and Policy .02. The Commission notes that PCX rules governing LMMs, including PCX Rule 6.82, apply strictly to options trading.

[4] *See* PCX Rule 5.3(a).

[5] As with the current rule, the proposed rule would not apply to issues traded by an LMM in connection with the Exchange's LMM Book Pilot Program, as provided in PCX Rule 6.82(h). The current capital requirement for LMMs trading such issues is a cash or liquid asset position of at least $500,000 plus $25,000 for each issue over 5 issues for which they perform the function of an Order Book Official. *See* PCX Rule 6.82, Comm. 04. LMMs who are participating in the LMM Book Pilot Program are also required to maintain ''minimum net capital'' as provided in SEC Rule 15c3–1. *Id.*

[6] *Cf.* CBOE Rule 8.80, Interp. and Policy .02.

[7] Thus, for example, if trading volume in an issue reached an average of 2,000 contracts per day in the first month, 4,000 per day in the second month, and 4,000 per day in the third month, the condition would have been met under the proposed formulation, but not under the current formulation.

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 79f(b)(5).

arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549. Copies of the submissions, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any persons, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW, Washington, DC 20549. Copies of such filings will also be available for inspection and copying at the principal office of the PCX. All submissions should refer to File No. SR–PCX–98–19 and should be submitted by July 6, 1998.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

Margaret H. McFarland,

Deputy Secretary.

Exhibit A

Test of the Proposed Rule Change [1]

LEAD MARKET MAKERS

¶ 5181 Lead Market Makers

Rule 6.82(a)–(b)—No change.

(c) Obligations of Lead Market Makers

Each LMM *must* [shall] meet the following obligations:

(1)–(10)—No change.

(11) Maintain a cash or liquid asset position [in the amount] of at *least $350,000, plus $25,000 for each issue over 8 issues that have been allocated to the LMM.* [$100,000 or in an amount sufficient to assume a position of twenty (20) trading units of the security underlying the option the LMM has been allocated, whichever amount is greater.] In the event that two or more LMMs are associated with each other and deal for the same LMM account, this requirement *will* [shall] apply to such LMMs collectively, rather than to each LMM individually;

(12)–(13)—No change.

(d) Rights of Lead Market Makers:

(1)—No change.

(2) *Guaranteed Participation*—No change.

(A) Multiply-traded Issues. If the average daily trading volume in a multiply-traded issue reaches 3,000 contracts at the Exchange *during any three-calendar-month period (measured on a rolling three-calendar-month basis),* [for three consecutive months] and if:

(i) in the case of an issue traded by two options exchanges, the Exchange's *monthly* share of the total multi-exchange customer trading volume in an issue drops from above 70% to below 70%; or

(ii) in the case of an issue traded by three or more options exchanges, the Exchange's *monthly* share of the total multi-exchange customer trading volume in the issue drops from above 45% to below 45%; the Options Allocation Committee *will* [shall] evaluate the LMM's performance in that issue and, based on that evaluation, may reduce the LMM's guaranteed participation in that issue from 50% to 40%.

(B) *Non-multiply-traded Issues.* If the average daily trading volume in a non-multiply-traded issue reaches 3,000 contracts at the Exchange *during any three-calendar-month period (measured on a ''rolling'' three-calendar-month basis)* [for three consecutive months,] the Options Allocation Committee *will* [shall] evaluate the LMM's performance in that issue and, based on that evaluation, may reduce the LMM's guaranteed participation in that issue from 50% to 25%.

(C) Return to Previous Levels of Guaranteed Participation. If the Options Allocation Committee has reduced an LMM's guaranteed participation in an issue pursuant to subsections (A) or (B) above, and average daily trading volume in the issue falls below 3,000 contracts at the Exchange during any three-calendar-month period (measured on a ''rolling'' three calendar month basis), the Options Allocation Committee will evaluate the LMM's performance in that issue and, based on that evaluation, may raise the LMM's guaranteed participation in that issue from 40% to 50% (in a multiply-traded issue) or from 25% to 50% (in a non-multiply-traded issue).

(e)–(g)—No change.

Commentary: .01–.04—No change.

[FR Doc. 98–15824 Filed 6–12–98; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF TRANSPORTATION

Aviation Proceedings, Agreements Filed During the Week Ending June 5, 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–98–3898.
Date Filed: June 2, 1998.
Parties: Members of the International Air Transport Association.
Subject: PTC31 S/CIRC PAC 0047 dated May 29, 1998 Expedited South Pacific Resos 002L (r1) & 015v (r2) Tables—PTC31 S/CIRC Fares 0016 dated May 29, 1998 Intended effective date: expedited July 1, 1998.

Docket Number: OST–98–3929.
Date Filed: June 5, 1998.
Parties: Members of the International Air Transport Association.
Subject: PTC31 Telex Mail Vote 938, Las Vegas-Japan fares r1–10, Correction—Telex TE651, Voting Result—Telex TE654, Intended effective date: July 1, 1998.

Docket Number: OST–98–3930.
Date Filed: June 5, 1998.
Parties: Members of the International Air Transport Association.
Subject: CSC/Reso/001 Dated April 1, 1998, Book of adopted Resos/RPs r1–9, Minutes—CSC/Minutes/002 dated May 12, 1998, Intended effective date: October 1, 1998.

Dorothy W. Walker,

Federal Register Liaison.

[FR Doc. 98–15847 Filed 6–12–98; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q During the Week Ending June 5, 1998

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under Subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 et. seq.). The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: OST–98–3895.
Date Filed: June 1, 1998.
Due Date for Answers, Conforming Applications, or Motions to Modify Scope: June 29, 1998.
Description: Application of Reliant Airlines, Inc. pursuant to 49 U.S.C. Section 41102 and Subpart Q of the Regulations, applies for a certificate of public convenience and necessity authorizing Reliant to conduct interstate charter air transportation of property and mail between points in the United States beginning on or about September 1, 1998.

Docket Number: OST–98–3896.
Date Filed: June 1, 1998.
Due Date for Answers, Conforming Applications, or Motions to Modify Scope June 29, 1998.
Description: Application of Reliant Airlines, Inc. pursuant to 49 U.S.C. Section 41102 and Subpart Q of the

[10] 17 CFR 200.30–3(a)(12).

[1] New text is italicized, deleted test is bracketed.

Regulations, applies for a certificate of public convenience and necessity authorizing Reliant to conduct foreign charter air transportation of property and mail between points in the United States and any point(s) outside the United States beginning on or about September 1, 1998.

Docket Number: OST–98–3900.

Date Filed: June 2, 1998.

Due Date for Answers, Conforming Applications, or Motions to Modify Scope: June 30, 1998.

Description: Application of Korean Air Lines Co., Ltd. pursuant to 49 U.S.C. Section 41301 and Subpart Q of the Regulations, applies for an amendment to its foreign air carrier permit to engage in the foreign air transportation between any point or points behind the Republic of Korea and any point or points in the Republic of Korea, via any intermediate point or points, and any point or points in the United States, and beyond the United States to any point or points, with full traffic rights. KAL also requests that the amended permit authorize KAL to engage in charter foreign air transportation pursuant to, and with all other rights available to KAL under, the 1998 Agreement.

Dorothy W. Walker,

Federal Register Liaison.

[FR Doc. 98–15846 Filed 6–12–98; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA 98–3791]

New Flyer of America, Inc.; Grant of Application for Decision of Inconsequential Noncompliance

New Flyer of America, Inc., of Crookston, Minnesota, has determined that 115 buses failed to comply with 49 CFR 571.217, Federal Motor Vehicle Safety Standard (FMVSS) No. 217, ''Bus Emergency Exits and Window Retention and Release,'' and has filed an appropriate report pursuant to 49 CFR Part 573, ''Defect and Noncompliance Reports.'' New Flyer petitioned the National Highway Traffic Safety Administration (NHTSA) to be exempted from the notification and remedy requirements of 49 U.S.C. Chapter 301—''Motor Vehicle Safety'' on the basis that the noncompliance is inconsequential to motor vehicle safety.

Notice of receipt of the application was published, with a 30-day comment period, on October 23, 1997, in the **Federal Register** (62 FR 55303). NHTSA received no comments on this application during the 30-day comment period.

FMVSS No. 217, Paragraph S5.2.2.1 requires that buses other than school buses provide an emergency exit area, in total square centimeters, of at least 432 times the number of designated seating positions on the bus. It requires at least that 40 percent of the emergency exit area be distributed on each side of the bus. It also limits the amount of area to 3,458 square centimeters that can be credited for an emergency exit, regardless of exit area.

During the 1995–1997-model years, New Flyer produced 115 transit buses, models D35LF (Diesel 35 ft Low Floor) and C35LF (CNG 35 ft Low Floor) which do not comply with FMVSS No. 217. The subject transit buses have only one emergency exit on the right side of the bus instead of the two, as required by the standard.

New Flyer supported its application for an inconsequential noncompliance with the following:

1. The buses exceed the exit total area requirements on all sides. The left side has two exit windows for a total of 25,000 square centimeters or 4.67 times the required area. The right side has one exit window with 12,500 square centimeters of exit area or 2.33 times the required area. The standard does not allow any one exit to claim more than 3,458 square centimeters. Therefore, the right side of the bus does not have the required number of emergency exits although it exceeds the required area. Each bus has two roof exits, where the standard only requires one roof exit. Overall, the buses have 3.28 times the required exit area.

2. Retrofitting these buses to comply with the standard would require modifying and retesting the existing exit door or replacing the right side window with an emergency exit window, which is not possible because the wheel housing limits accessibility. The seating position relative to the window allows for an easy exit. If the window was accidentally opened, there is potential for someone to fall out of the bus. Modifying the exit door to conform to the release force requirements is a possible solution, but would require redesigning the door. Considering the bus already has 3.28 times the required exit area, modifying the buses to include an additional exit would not add to motor vehicle safety.

3. New Flyer does not believe that the buses are a safety hazard because they have excessive accessible emergency exit area. These buses are operated by transit authorities with trained professional drivers; none are operated by the general public. New Flyer has a close relationship with the operators of the buses and is continuously informed of any problems or concerns, and has never had an incident or complaint involving the number or location of emergency exits.

NHTSA considers the safety of the public in transit buses to be of great importance because these buses are intended for daily service and therefore carry hundreds of people each day. In considering whether to grant or deny this petition, the agency looked at the various conditions that would require an emergency evacuation. The agency identified three types of situations in which the evacuation of a bus may be necessary:

1. *Minor crashes or mechanical failures.* These may result in all passengers leaving the bus. Since evacuation time is not a major concern, all passengers would likely exit from one of the service doors.

2. *Major crashes.* It is likely to be important for all bus passengers to leave the bus. Evacuation is important, but conditions indicate that it can be done in an orderly fashion. Again, all of the passengers would likely exit from either service door.

3. *Catastrophic crashes (e.g., fires or submersions).* All bus passengers must evacuate the bus as quickly as possible. Evacuation time is the major concern, passengers would likely exit from any opening available.

The primary safety purpose of requiring the 40 percent distribution of emergency exits area on each side of a bus is to ensure that passengers have sufficient emergency exit openings to escape, should the bus become involved in an incident where the bus would need to be evacuated quickly. This provision in FMVSS No. 217 ensures that emergency exits are distributed throughout the bus and not all on one side. These buses have two emergency exit windows on the left side, one emergency exit window on the right side and two roof exits. Thus, the buses have the minimum number of emergency exits required by FMVSS No. 217. However, these exits were not distributed properly. Instead of a second emergency exit on the right side, these buses have an additional roof exit. This additional roof exit would provide for much needed emergency exit openings should the bus occupants need to evacuate due to a rollover incident. While this additional roof exit is not required by the standard, it does provide for an additional level of safety in the above situation.

In consideration of the foregoing, NHTSA has decided that the applicant has met its burden of persuasion that the noncompliance it described above is inconsequential to motor vehicle safety. Accordingly, its application is granted, and the applicant is exempted from providing the notification of the noncompliance that is required by 49 U.S.C. 30118, and from remedying the

noncompliance, as required by 49 U.S.C. 30120.

(49 U.S.C. 30118, 30120, with delegations of authority at 49 CFR 1.50 and 501.8)

Issued on: June 9, 1998.

L. Robert Shelton,

Associate Administrator for Safety Performance Standards.

[FR Doc. 98–15839 Filed 6–12–98; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

Proposed Renewal of Information Collections; Comment Request

AGENCY: Office of the Comptroller of the Currency (OCC), Treasury.

ACTION: Notice and request for comment.

SUMMARY: The OCC, 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 continuing information collections, as required by the Paperwork Reduction Act of 1995. Currently, the OCC is soliciting comment concerning its extension without change of several information collections.

DATES: Written comments should be submitted by August 14, 1998.

ADDRESSES: Direct all written comments to the Communications Division, Attention: 1557–LIST, Third Floor, Office of the Comptroller of the Currency, 250 E Street, SW, Washington, DC 20219. In addition, comments may be sent by facsimile transmission to (202)874–5274, or by electronic mail to REGS.COMMENTS@OCC.TREAS.GOV.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the collection may be obtained by contacting Jessie Gates or Camille Dickerson, (202)874–5090, Legislative and Regulatory Activities Division (1557-LIST), Office of the Comptroller of the Currency, 250 E Street, SW, Washington, DC 20219.

SUPPLEMENTARY INFORMATION: The OCC is proposing to extend OMB approval of the following four information collections:

1. *Title:* International Regulations (12 CFR 28).

OMB Number: 1557–0102.

Form Number: None.

Abstract: This submission covers an existing regulation and involves no change to the regulation or to the information collections embodied in the regulation. The OCC requests only that OMB renew its approval of the information collections in the current regulation.

The International Banking Act of 1978, 12 U.S.C. 3101 *et seq.*, as amended, requires collection of specific information relating to licensing applications and supervision of Federal branches and agencies of foreign banks in the United States and mandates recordkeeping requirements for capital equivalency deposits, voluntary liquidations, asset pledges, and asset maintenance requirements.

The International Lending Supervision Act of 1983 (Pub. L. No. 98–181, Title IX, 97 Stat. 1153, 12 U.S.C. 3906) mandates the reporting and disclosure requirements for international assets as well as the recordkeeping requirements for accounting for fees on international loans.

The OCC's regulations in 12 CFR 28 implement requirements imposed on national banks and Federal branches and agencies concerning international activities.

The information collections in 12 CFR 28 are as follows:

Section 28.3 requires a national bank to notify the OCC when it takes certain actions regarding its foreign operations;

Section 28.12 requires a national bank to apply to the OCC before it establishes a Federal branch or agency or exercises fiduciary powers at a Federal branch;

Section 28.15 requires a national bank to maintain records and to seek OCC approval before permitting withdrawal of certain foreign bank capital equivalency deposits;

Section 28.16 contains recordkeeping requirements and allows a foreign bank to apply to the OCC for an exemption to permit an uninsured Federal branch to accept or maintain certain deposit accounts;

Section 28.17 requires a Federal branch or agency to notify the OCC of certain changes in its activities or operations;

Section 28.18 requires a Federal branch or agency to maintain records, in English, and to provide the OCC with a copy of certain reports filed with other Federal regulatory agencies;

Section 28.22 requires a Federal branch or agency to make notice and filings in case of liquidation;

Section 28.52 requires a banking institution to maintain records regarding its allocated transfer risk reserve; and

Section 28.53 requires a banking institution to maintain records regarding its accounting for fees on international loans.

These information collection requirements ensure bank compliance with applicable Federal law, further bank safety and soundness, provide protections for banks, and further public policy interests.

Type of Review: Extension, without change, of a currently approved collection.

Affected Public: Businesses or other for-profit.

Number of Respondents: 185.

Total Annual Responses: 185.

Frequency of Response: On occasion.

Total Annual Burden: 6,708 Hours.

2. *Title:* (MA)—Securities Offering Disclosure Rules (12 CFR 16).

OMB Number: 1557–0120.

Form Number: None.

Abstract: This submission covers an existing regulation and involves no change to the regulation or to the information collections embodied in the regulation. The OCC requests only that OMB renew its approval of the information collections in the current regulation.

Under 12 U.S.C. 93a, the OCC is empowered to issue rules and regulations to carry out its responsibilities. The requirements in part 16 enable the OCC to perform its responsibilities relating to offerings of securities by national banks by providing the investing public with facts about the condition of the bank, the reasons for raising new capital, and the terms of the offering. Part 16 requires national banks to conform generally to Securities and Exchange Commission rules.

The collections of information contained in 12 CFR Part 16 are as follows:

Section 16.3 requires a national bank to file its registration statement with the OCC;

Section 16.4 states that the OCC may require a national bank to submit to the OCC certain communications not deemed an offer;

Section 16.6 requires a national bank to file documents with OCC and to make certain disclosures to purchasers in sales of nonconvertible debt;

Section 16.17 requires a national bank to file four copies of each document filed under Part 16, and requires filers of amendments or revisions to underline or otherwise indicate clearly any changed information;

Section 16.19 requires a national bank to submit a request to OCC if it wishes to withdraw a registration statement, amendment, or exhibit;

Section 16.20 requires a national bank to file current and periodic reports as required by sections 12 and 13 of the Exchange Act (15 U.S.C. 78l and m) and

SEC Regulation 15D (17 CFR 240.15d–1 through 240.15Aa–1); and

Section 16.30 requires a national bank to include certain elements and follow certain procedures in any request to OCC for a no-objection letter.

These information collection requirements ensure bank compliance with applicable Federal law, further bank safety and soundness, provide protections for banks and the public, and further public policy interests.

Type of Review: Extension, without change, of a currently approved collection.

Affected Public: Businesses or other for-profit.

Number of Respondents: 80.

Total Annual Responses: 140.

Frequency of Response: On occasion.

Total Annual Burden: 2,660 Hours.

3. *Title:* Fair Housing Home Loan Data System Regulation (12 CFR 27).

OMB Number: 1557–0159.

Form Number: None.

Abstract: This submission covers an existing regulation and involves no change to the regulation or to the information collections embodied in the regulation. The OCC requests only that OMB renew its approval of the information collections in the current regulation. This regulation requires national banks to maintain records and to make occasional filings to the OCC, upon the OCC's request, regarding home loans and certain other real estate loans.

The Fair Housing Act (42 U.S.C. 3605) prohibits discrimination in the financing of housing on the basis of race, color, religion, sex, or national origin. The Equal Credit Opportunity Act (15 U.S.C. 1691 *et seq.*) prohibits discrimination in any aspect of a credit transaction on the basis of race, color, religion, national origin, sex, marital status, age, receipt of income from public assistance, or exercise of any right under the Consumer Credit Protection Act. The OCC is responsible for ensuring that national banks comply with those laws. This information collection is needed to promote national bank compliance and for OCC to fulfill its statutory responsibilities.

The collections of information contained in 12 CFR Part 27 are as follows:

Section 27.3 requires a national bank that is required to collect data on home loans under 12 CFR 203 to present the data on Federal Reserve Form FR HMDA–LAR, or in an automated format in accordance with the HMDA–LAR instructions, and to include one additional item (the reason for denial) on the HMDA–LAR. Section 27.3 also lists exceptions to HMDA–LAR recordkeeping requirements. Section 27.3 further lists the information that banks should obtain from an applicant as part of a home loan application, and states information that a bank must disclose to an applicant;

Section 27.5 requires a national bank to maintain the information for 25 months after the bank notifies the applicant of action taken on an application, or after withdrawal of an application; and

Section 27.7 requires that a bank submit the information to the OCC upon its request, prior to a scheduled examination.

These information collection requirements ensure bank compliance with applicable Federal law, further bank safety and soundness, provide protections for banks and the public, and further public policy interests.

Type of Review: Extension, without change, of a currently approved collection.

Affected Public: Businesses or other for-profit.

Number of Respondents: 3,763.

Total Annual Responses: 3,763.

Frequency of Response: On occasion.

Total Annual Burden: 6,300 Hours.

4. *Title:* (MA)—Loans in Areas Having Special Flood Hazards (12 CFR 22).

OMB Number: 1557–0202.

Form Number: None.

Abstract: This submission covers an existing regulation and involves no change to the regulation or to the information collections embodied in the regulation. The OCC requests only that OMB renew its approval of the information collections in the current regulation. This regulation requires national banks to make disclosures and keep records regarding whether a property securing a loan is located in a special flood hazard area.

This collection of information is required by section 303(a) and Title V of the Riegle Community Development and Regulatory Improvement Act of 1994, Pub. L. 103–325, 108 Stat. 2160, 2255–87, the National Flood Insurance Reform Act of 1994 amendments to the National Flood Insurance Act of 1968, Pub. L. 90–448, 82 Stat. 476, and the Flood Disaster Protection Act of 1973, Pub. L. 93–234, 87 Stat. 975. (These statutes are codified at 44 U.S.C. 4001 *et seq.*).

The collections of information contained in 12 CFR Part 22 are as follows:

Section 22.6 requires a national bank to use the standard flood hazard determination form developed by the Federal Emergency Management Agency (FEMA). The bank must maintain a copy of the form, in either hard copy or electronic form, for the period of time the bank owns the loan; and

Section 22.7 requires a bank or its servicer, in case of where the borrower has not obtained required flood insurance or has purchased inadequate coverage, to notify the borrower that the borrower should obtain adequate flood insurance coverage.

Section 22.9 requires a bank making a loan secured by property located in a special flood hazard area to notify the borrower and loan servicer (whether or not flood insurance is available) that the collateral is located in a special flood hazard area, whether flood insurance coverage under the National Flood Insurance Program is available, and whether Federal disaster relief may be available in the event of flooding. The bank must maintain a record of the receipt of the notice to the borrower and loan servicer for the period of time the bank owns the loan.

Section 22.10 requires a bank making a loan secured by property located in a special flood hazard area to notify FEMA or a designee of the identity of the servicer, and of any change in servicers.

These information collection requirements ensure bank compliance with applicable Federal law, further bank safety and soundness, provide protections for banks and the public, and further public policy interests.

Type of Review: Extension, without change, of a currently approved collection.

Affected Public: Businesses or other for-profit.

Number of Respondents: 3,000.

Total Annual Responses: 303,000.

Frequency of Response: On occasion.

Total Annual Burden: 78,000 Hours.

Comments

Comments submitted in response to this notice will be summarized and included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on:

(a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information has practical utility;

(b) The accuracy of the agency's estimate of the burden of the collection of information;

(c) Ways to enhance the quality, utility, and clarity of the information to be collected;

(d) Ways to minimize the burden of the collection on respondents, including through the use of automated collection techniques or other forms of information technology; and

(e) Estimates of capital or startup costs and costs of operation, maintenance,

and purchase of services to provide information.

Dated: June 8, 1998.

Karen Solomon,

Director, Legislative & Regulatory Activities Division.

[FR Doc. 98–15801 Filed 6–12–98; 8:45 am]

BILLING CODE 4810–33–P

DEPARTMENT OF THE TREASURY

Customs Service

Country of Origin Marking Rules for Textiles and Textile Products Advanced in Value, Improved in Condition, or Assembled Abroad

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Proposed interpretation; solicitation of comments.

SUMMARY: This notice advises the public that Customs is proposing a new interpretation concerning the country of origin rules for certain imported textiles and textile products. It is Customs' proposed position that 19 CFR 12.130(c) should not control for purposes of country of origin marking of textiles and textile products, and that Chapter 98, Subchapter II, U.S. Note 2(a), Harmonized Tariff Schedule of the United States (HTSUS), does not apply for country of origin marking purposes.

DATES: Comments must be received on or before August 14, 1998.

ADDRESSES: Written comments (preferably in triplicate) may be addressed to the Regulations Branch, Office of Regulations and Rulings, U.S. Customs Service, 1300 Pennsylvania Avenue, N.W., Washington, D.C. 20229. Comments submitted may be inspected at the Regulations Branch, Office of Regulations and Rulings, U.S. Customs Service, 1300 Pennsylvania Avenue, N.W., Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Monika Brenner, Special Classification and Marking Branch, Office of Regulations and Rulings (202–927–1675).

SUPPLEMENTARY INFORMATION:

Background

On May 9, 1984, the President issued Executive Order 12475 to address a number of problems that had arisen in the context of the U.S. textile import program. These problems included (1) the absence of specific regulatory standards for determining the origin of imported textiles and textile products for purposes of textile agreements and (2) an ever increasing number and variety of instances in which attempts were made to circumvent and frustrate the objectives of the United States textile import program and the bilateral and multilateral textile agreements negotiated thereunder. Section 1(a) of that Executive Order instructed the Secretary of the Treasury, in accordance with policy guidance provided by the Committee for the Implementation of Textile Agreements (CITA) to issue regulations governing the entry of textiles and textile products subject to section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

By T.D. 85–38, published in the **Federal Register** on March 5, 1985 (50 FR 8710), Customs adopted as a final rule interim amendments to part 12 of the Customs Regulations (19 CFR part 12), which involved the addition of a new § 12.130 that established criteria to be used in determining the country of origin of imported textiles and textile products for purposes of multilateral or bilateral textile agreements entered into by the United States pursuant to section 204, Agricultural Act of 1956, as amended. In that final rule document, Customs stated that the principles of origin contained in § 12.130 are applicable to merchandise for all purposes, including duty and marking. In T.D. 90–17 (55 FR 7303, March 1, 1990), which involved a change of practice to conform several previously published Customs positions to certain provisions within 19 CFR 12.130, Customs again stated that the criteria set forth in 19 CFR 12.130 should be used in making country of origin determinations for all Customs purposes, including determinations for purposes of country of origin marking and for assessing duty on imported articles.

Paragraph (c) of § 12.130 operates as an exception to the basic country of origin rule set forth in paragraph (b) of § 12.130. Paragraph (c)(1) of § 12.130 specifically provides, in part, that in order to have:

> a single country of origin for a textile or textile product, notwithstanding paragraph (b), merchandise which falls within the purview of Chapter 98, Subchapter II, Note 2, Harmonized Tariff Schedule of the United States, may not, upon its return to the U.S., be considered a product of the U.S.

Furthermore, 19 CFR 12.130(c)(1) provides that:

> Chapter 98, Subchapter II, Note 2, Harmonized Tariff Schedule of the United States, provides that any product of the U.S. which is returned after having been advanced in value or improved in condition abroad, or assembled abroad, shall be a foreign article for the purposes of the Tariff Act of 1930, as amended.

Paragraph (c)(2) of section 12.130, added by T.D. 93–27 (58 FR 19347, April 14, 1993), accords essentially the same treatment to products of insular possessions.

In T.D. 95–69, published at 60 FR 46188 (September 5, 1995), Customs issued final amendments to the Customs Regulations (set forth principally at 19 CFR 102.21) to implement the provisions of section 334 of the Uruguay Round Agreements Act (URAA) regarding the country of origin of textile and apparel products, that are to be used for purposes of the Customs laws (including the marking statute, section 304, Tariff Act of 1930, as amended (19 U.S.C. 1304)) and the administration of quantitative restrictions and except as otherwise provided for by statute. T.D. 95–69 also amended 19 CFR 12.130(b), (d), and (e)(1) to clarify that the origin of textile and apparel products covered by 19 CFR 102.21 are determined pursuant to that regulatory provision. Since T.D. 95–69 did not amend 19 CFR 12.130(c)(1) or (2), and since T.D. 85–38 and T.D. 90–17 reflected the Customs position that 19 CFR 12.130 should be used in making country of origin determinations for all Customs purposes, including determinations for purposes of country of origin marking, 19 CFR 12.130(c) still applies to products of the United States or insular possessions advanced in value, improved in condition, or assembled abroad for purposes of country of origin marking.

In connection with the development of the final NAFTA Marking Rules (T.D. 96–48, published at 61 FR 28932, June 6, 1996), Customs stated in a notice of proposed rulemaking, published at 60 FR 22312, 22318 (May 5, 1995), that it had reconsidered the position originally set forth in the interim NAFTA Marking Rules (T.D. 94–4, published at 59 FR 110, January 3, 1994) that Chapter 98, Subchapter II, U.S. Note 2(a), HTSUS, has application for general country of origin purposes, including marking. (Chapter 98, Subchapter II, U.S. Note 2(a), HTSUS, is identical to the U.S. Note 2 referred to in 19 CFR 12.130(c); subsequent to the promulgation of 19 CFR 12.130(c), U.S. Note 2 was divided into two paragraphs, U.S. Note 2(a) and (b). U.S. Note 2(b) provides a special preferential tariff treatment only for goods imported from countries listed in General Note 7, HTSUS, that are made wholly from U.S. materials and ingredients. U.S. Note 2(b) is not applicable and totally unrelated to this proposal. *See* H.R. Conf. Rep. No. 650, 101st Cong., 2d Sess. 133, reprinted in 1990 U.S. Code & Admin. News 928, 1023; and subheading 9802.00.8040,

HTSUS). Accordingly, in order to reflect the reconsidered position of Customs reflected in the May 5, 1995 notice of proposed rulemaking, the final NAFTA Marking Rules document included the removal of 19 CFR 102.14 and 19 CFR 10.22. Section 102.14 provided that no good last advanced in value or improved in condition outside the United States has United States origin, and § 10.22 provided that the country of origin of assembled goods entitled to a duty allowance under subheading 9802.00.80, HTSUS, was the country of assembly for marking purposes.

Accordingly, since Customs has already stated that Chapter 98, Subchapter II, U.S. Note 2(a), HTSUS, no longer applies for country of origin marking purposes, Customs proposes to adopt a new position that 19 CFR 12.130(c) does not apply for purposes of country of origin marking. However, 19 CFR 12.130(c) will still be applicable for all other purposes specified in T.D. 85–38 and T.D. 90–17, since T.D. 95–69 as stated above did not repeal 19 CFR 12.130(c).

It should be noted that this change does not exempt textile and apparel products imported into the United States from the labeling requirements of the Textile Fiber Products Identification Act, 15 U.S.C. 70, enforced by the Federal Trade Commission. For example, the Rules and Regulations under the Textile Fiber Products Identification Act, 16 CFR 303.33(a)(1), provides that unless exempt under section 12 of that Act, each imported textile fiber product shall be labeled with the name of the country where such imported product was processed or manufactured. Therefore, once it is determined under the proposed new position set forth herein that an imported textile or apparel product is not required to be marked in accordance with 19 U.S.C. 1304, as implemented by 19 CFR 102.21, the imported textile or apparel product would still be required to be labeled in accordance with the Textile Fiber Products Identification Act.

Authority

This notice is published in accordance with § 177.9, Customs Regulations (19 CFR 177.9).

Comments

Before adopting this proposed change in position, consideration will be given to any written comments timely submitted to Customs. Comments submitted will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552), § 1.4, Treasury Department Regulations (31 CFR 1.4), and § 103.11(b), Customs Regulations (19 CFR 103.11(b)), on regular business days between the hours of 9 a.m. and 4:30 p.m. at the Regulations Branch, 1300 Pennsylvania Avenue, NW., Washington, DC.

Samuel H. Banks,

Acting Commissioner of Customs.

Approved: May 26, 1998.

John P. Simpson,

Deputy Assistant Secretary of the Treasury.

[FR Doc. 98–15809 Filed 6–12–98; 8:45 am]

BILLING CODE 4820–02–P

UNITED STATES ENRICHMENT CORPORATION

Meetings; Sunshine Act

AGENCY: United States Enrichment Corporation.

SUBJECT: Board of Directors.

TIME AND DATE: 5:00 p.m., Thursday, June 11, 1998.

PLACE: USEC Corporate Headquarters, 6903 Rockledge Drive, Bethesda, Maryland 20817.

STATUS: The Board meeting will be closed to the public.

MATTER TO BE CONSIDERED: Privatization of the Corporation.

CONTACT PERSON FOR MORE INFORMATION: Elizabeth Stuckle at 301/564–3399.

Dated: June 10, 1998.

William H. Timbers, Jr.,

President and Chief Executive Officer.

[FR Doc. 98–15931 Filed 6–11–98; 8:45 am]

BILLING CODE 8720–01–M

UNITED STATES INFORMATION AGENCY

Culturally Significant Objects Imported for Exhibition; Determinations

Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985, 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978 (43 FR 13359, March 29, 1978), and Delegation Order No. 85–5 of June 27, 1985 (50 FR 27393, July 2, 1985), I hereby determine that the objects to be included in the exhibit ''TONY SMITH: Architect, Painter, Sculptor'' (see list),[1] imported from various foreign lenders for the temporary exhibition without profit within the United States, are of cultural significance. These objects are imported pursuant to loan agreements with the foreign lenders. I also determine that the exhibition or display of the listed exhibit objects at The Museum of Modern Art, New York, N.Y. from on or about July 2, 1998, to on or about September 22, 1998, is in the national interest. Public Notice of these determinations is ordered to be published in the **Federal Register**.

Dated: June 9, 1998.

Les Jin,

General Counsel.

[FR Doc. 98–15829 Filed 6–12–98; 8:45 am]

BILLING CODE 8230–01–M

DEPARTMENT OF VETERANS AFFAIRS

Advisory Committee on Structural Safety of Department of Veterans Affairs Facilities, Notice of Charter Renewal

This gives notice under the Federal Advisory Committee Act (Public Law 92–463) of October 6, 1972, that the Advisory Committee on Structural Safety of Department of Veterans Affairs Facilities has been renewed for a 2-year period beginning May 1, 1998, through May 1, 2000.

Dated: June 5, 1998.

By direction of the Secretary.

Heyward Bannister,

Committee Management Officer.

[FR Doc. 98–15796 Filed 6–12–98; 8:45 am]

BILLING CODE 8320–01–M

[1] A copy of this list may be obtained by contacting Ms. Neila Sheahan, Assistant General Counsel, at 202/619–5030, and the address is Room 700, U.S. Information Agency, 301 Fourth Street, S.W., Washington, D.C. 20547–0001.

Corrections

Federal Register

Vol. 63, No. 114

Monday, June 15, 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.

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meeting

Correction

In notice document 98–13868 appearing on page 28370 in the issue of Friday, May 22, 1998, make the following correction:

In the first column, in the second document, under **TIME AND DATE**, in the second line ''15, 1998.'' should read ''5, 1998.''.

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

Centers for Disease Control and Prevention

42 CFR Part 493

[HCFA-2239-F]

RIN 0938-AH82

CLIA Program; Simplifying CLIA Regulations Relating to Accreditation, Exemption of Laboratories Under a State Licensure Program, Proficiency Testing, and Inspection

Correction

In rule document 98–12752, beginning on page 26722 in the issue of Thursday, May 14, 1998, make the following corrections:

1. On page 26732, in the first column, in the table of contents to subpart E, in section 493.553, in the first line, ''Approved'' should read ''Approval''.

§ 493.1773 [Corrected]

2. On page 26737, in the second column, in § 493.1773(b), in the first line, ''General requirements:'' should read ''*General requirements*.''.

3. On page 26737, in the third column, in § 493.1773(c), in the first line, ''Accessible records and data:'' should read ''*Accessible records and data*.''.

4. On page 26737, in the third column, in § 493.1773(d), in the first line, ''Requirement to provide information and data:'' should read ''*Requirement to provide information and data*.''.

5. On page 26737, in the third column, in § 493.1773(e), in the first line, ''Reinspection:'' should read ''*Reinspection*.''.

6. On page 26737, in the third column, in § 493.1773(f), in the first line, ''Complaint inspection:'' should read ''*Complaint inspection*.''.

7. On page 26737, in the third column, in § 493.1773(g), in the first line, ''Failure to permit an inspection or reinspection:'' should read ''*Failure to permit an inspection or reinspection*.''.

BILLING CODE 1505-01-D

Reader Aids

Federal Register

Vol. 63, No. 114

Monday, June 15, 1998

CUSTOMER SERVICE AND INFORMATION

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FEDERAL REGISTER PAGES AND DATES, JUNE

CFR PARTS AFFECTED DURING JUNE

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

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REMINDERS

The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

RULES GOING INTO EFFECT JUNE 15, 1998

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Commodity option transactions:
- Enumerated agricultural commodities; off-exchange trade options; published 4-16-98

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- Conduct on Pentagon Reservation; published 6-15-98

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Federal Energy Regulatory Commission

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- Open access same-time information system (OASIS) and standards of conduct—
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- Pulp, paper, and paperboard industries; effluent limitations guidelines, pretreatment standards, and new source performance standards; published 4-15-98

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- Locomotives and locomotive engines—
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- Georgia; published 4-29-98
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- California; published 5-18-98
- Mississippi; published 5-15-98
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- Accreditation, laboratories exemptions under State licensure program, proficiency testing, and inspection; published 5-14-98

HEALTH AND HUMAN SERVICES DEPARTMENT

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- Accreditation, laboratories exemptions under State licensure program, proficiency testing, and inspection; published 5-14-98

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  - Propulsion and auxiliary marine engines; comments due by 6-22-98; published 5-22-98

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LIST OF PUBLIC LAWS

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H.R. 2400/P.L. 105–178

Transportation Equity Act for the 21st Century (June 9, 1998; 112 Stat. 107)

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An asterisk (*) precedes each entry that has been issued since last week and which is now available for sale at the Government Printing Office.

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Complete set (one-time mailing)		264.00	1996

[1] Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

[2] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[3] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

[4] No amendments to this volume were promulgated during the period July 1, 1996 to June 30, 1997. The volume issued July 1, 1996, should be retained.

[5] No amendments to this volume were promulgated during the period January 1, 1997 through December 31, 1997. The CFR volume issued as of January 1, 1997 should be retained.

[6] No amendments to this volume were promulgated during the period April 1, 1997, through April 1, 1998. The CFR volume issued as of April 1, 1997, should be retained.