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Reader Aids
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CFR PARTS AFFECTED IN THIS ISSUE

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

Rules and Regulations

Federal Register

Vol. 63, No. 117

Thursday, June 18, 1998

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 846

RIN 3206–AG96

Federal Employees Retirement System—Open Enrollment Act Implementation

AGENCY: Office of Personnel Management.

ACTION: Interim rule with request for comments.

SUMMARY: The Office of Personnel Management (OPM) is issuing interim regulations to implement the Federal Employees Retirement System Open Enrollment Act of 1997. These regulations provide information about who may make open-enrollment-period elections and the procedures that employees must follow to elect Federal Employees Retirement System (FERS) coverage during the 1998 open enrollment period, and that agencies must follow in advising employees about such elections of FERS coverage and in processing such elections of FERS coverage.

DATES: Interim rules effective: June 18, 1998; comments must be received on or before August 17, 1998.

ADDRESSES: Send comments to Mary Ellen Wilson, Retirement Policy Division; Retirement and Insurance Service; Office of Personnel Management; P.O. Box 57; Washington, DC 20044; or deliver to OPM, Room 4351, 1900 E Street NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Harold L. Siegelman, (202) 606–0299.

SUPPLEMENTARY INFORMATION: Section 642 of the Treasury and General Government Appropriations Act, 1998, Pub. L. 105–61, approved October 10, 1997, as amended by section 348 of the Department of Transportation and Related Agencies Appropriations Act, 1998, Pub. L. 105–66, approved October 27, 1997, is entitled the Federal Employees Retirement System (FERS) Open Enrollment Act of 1997. It requires OPM to issue regulations under which individuals who are employed by the Federal Government and covered by the Civil Service Retirement System (CSRS) as of January 1, 1998, may elect to become covered by FERS.

Subsection (c) of section 642 prescribes certain requirements for the regulations. Elections must be made during the period beginning on July 1, 1998, and ending on December 31, 1998. OPM must provide for notice of the right to make the election including information on a comparison of the benefits an individual would receive under CSRS or FERS. Treatment of such an election must be ''similar to the applicable provisions of title III of the Federal Employees Retirement System Act of 1986 (Public Law 99–335; 100 Stat. 599 *et seq.*).''

These regulations implement the FERS Open Enrollment Act of 1997 by clarifying who is eligible to make an election under the Act and by establishing the procedures for making such an election. They assign to employing agencies the obligation to provide statutorily-required notice and, if requested, additional information, including a comparison of benefits, to employees about their election rights. How the employing agencies provide that notice is generally up to them. In addition, the regulations provide for belated elections as a safety valve for instances in which the agency fails to provide the statutorily-required notice. If an agency denies a request to make a belated election, the agency is responsible for defending the denial, including the adequacy of its notice, before the Merit Systems Protection Board (MSPB).

Generally, an election of FERS coverage is effective on the first day of the pay period beginning after the date the election (and, in cases affected by the former spouse consent requirement, the required supporting documentation) is received by the employing office. This is required under section 301(c) of the FERS Act and is reflected in section 846.703 of these regulations. The regulation also provides that an election cannot be effective before the beginning of the open enrollment period on July 1, 1998. For employees whose pay period is monthly and thus begins on July 1, the election is effective on August 1, the first day of the next pay period.

An election to be covered by FERS can be revoked anytime before it has become effective. Thus, an employee who submits an election to be covered by FERS prior to July 1, 1998, may revoke an election anytime before the beginning of the first pay period beginning after July 1, 1998.

An employee who does not want to elect FERS coverage does not need to file a completed election form. Although the SF 3109 does provide a space for an affirmative election not to be covered by FERS, such an election has no legal effect. To emphasize this, the regulations specifically provide that an election not to become covered by FERS may be revoked at any time during the open enrollment period by filing a new election. Agencies have no obligation to maintain records of elections not to become covered by FERS.

The Act provides that an individual must have been employed by the Federal Government on January 1, 1998, to be eligible to make an open-enrollment election. Because this statutory language is similar to the language concerning who was eligible to participate in the 1987 open enrollment period, we have interpreted the phrase ''employed by the Federal Government'' to have the same meaning as it was given in the 1987 open enrollment period. Thus, anyone who (1) qualifies as an employee under section 2105 of title 5, United States Code, (2) is eligible for social security coverage, and (3) is not excluded from FERS coverage may be eligible to make an election as provided in section 846.711 of these regulations. This includes employees serving under appointments generally excluded from CSRS coverage but not excluded from FERS coverage, such as term appointments, as well as some individuals who are treated as Federal employees for retirement purposes, such as certain employees of the District of Columbia Courts. It also includes employees serving under appointments generally excluded under CSRS but who have CSRS coverage under section 831.201(b)(1) of Title 5, Code of Federal Regulations. Section 831.201(b)(1) provides that an employee serving in a position covered by CSRS (other than an alien whose duty station is in a foreign

country) retains CSRS coverage upon moving to employment in a position in an excluded category if the move occurs without a break in service (or after a separation of 3 days or less).

By statute, four groups of individuals who may be covered by CSRS are not eligible to participate in the open enrollment opportunity. These statutory exclusions are reflected in 846.712 and 846.713. Section 846.712(a) excludes individuals employed by the government of the District of Columbia except for certain groups of employees who are permitted to be covered by FERS because by statute they are treated as Federal employees for retirement purposes. The National Capital Revitalization and Self-Government Improvement Act of 1997, title XI of Public Law 105–33, 111 Stat. 251, allows FERS coverage for non-judicial employees of the District of Columbia Courts and certain employees of the District of Columbia Department of Corrections Trustee or the District of Columbia Pretrial Services, Defense Services, Parole, Adult Probation and Offender Supervision Trustee who meet the requirements of section 831.201(g) of Title 5, Code of Federal Regulations. The District of Columbia Financial Responsibility and Management Assistance Act of 1995, Public Law 104–8, 109 Stat. 97, as amended, allows FERS coverage for employees of the District of Columbia Financial Responsibility and Management Assistance Authority who may make an election under section 831.204 of Title 5, Code of Federal Regulations.

Section 846.712(b) excludes Members of Congress. Members were eligible to participate in the 1987 open enrollment period; however, section 348 of the Department of Transportation and Related Agencies Appropriations Act, 1998, Pub. L. 105–66, approved October 27, 1997, expressly excludes Members of Congress from the class of individuals who can make an open-enrollment election.

Section 846.712(c) excludes individuals who are ineligible for social security coverage. The definition of ''employee'' for FERS in section 8401(11) of title 5, United States Code, permits only individuals who are eligible for social security coverage to elect FERS coverage.

Section 846.713 excludes individuals who are subject to the former spouse consent requirement under section 301(d) of the FERS Act unless they obtain the former spouse's consent or qualify for a waiver of the consent requirement. The methods of proving consent or qualifying for a waiver are discussed in connection with section 846.722, *infra*.

Section 846.721 establishes the actions that an eligible individual must take to elect FERS coverage. Elections must be documented by a completed SF 3109, the FERS Election of Coverage form, filed with the employing office. However, any signed writing timely filed with the employing office may be used as an election to establish the date of the election, and thus the effective date of FERS coverage, as long as the employing agency subsequently receives a completed SF 3109 to confirm such election. For example, if an employee on leave without pay or whose duty station is at a remote worksite, informs the agency by letter that he or she elects FERS coverage, the letter constitutes a valid election when confirmed with a completed SF 3109. The agency should have the employee complete an SF 3109 and should process the transfer of coverage effective at the beginning of the pay period after it received the letter.

Generally, the right to elect FERS may only be exercised personally by the employee. Section 846.721(b) provides the only exception. It allows the survivor of a deceased employee to sign and file the completed SF 3109 on behalf of a deceased employee as long as the employee had made an election, as described in section 846.721(b).

Section 301(d) of the FERS Act prohibits an election by an employee whose former spouse has filed with OPM certain court orders affecting the employee's retirement benefits. This restriction applied to elections during the 1987 open enrollment period and currently applies to all elections upon reemployment. We believe it would be consistent to apply such a restriction to elections during this open enrollment period. Accordingly, section 846.722 provides that the existing procedures applicable to the former spouse consent requirement generally apply to elections during the open enrollment period. In addition, the regulations provide for automatic approval of an extension of the time limit for election of FERS coverage until June 30, 1999, upon filing (before January 1, 1999) with the agency of a properly completed SF 3111, Request for Waiver, Extension or Search, requesting an extension.

Section 846.723 implements the requirement in section 642(c)(2) of the Act that OPM issue regulations to provide ''notice and information to individuals who may make such an election, including information on a comparison of benefits an individual would receive from coverage under [CSRS] or [FERS].'' Since comparisons of benefits are always unique to an individual employee, notice will be more effective if made by employing agencies directly. Accordingly, the regulations delegate to employing agencies responsibility to provide the required notice and information. Agencies may determine the exact form of the notice. *See* discussion of section 846.724(a) on belated elections and agency responsibility for defending the adequacy of its notice in any case in which it denies a request to make a belated election.

Unlike the 1987 open season, we are not requiring that agencies distribute paper copies of the FERS Transfer Handbook to each employee, but each eligible employee who does not receive a paper copy must have ready access to the Handbook. The Handbook is accessible on the OPM website at www.opm.gov/fers__election. The Handbook also will be distributed to agencies on a CD–ROM that mirrors the website.

The Handbook will be the primary tool employees will use in making their decisions. For most employees, reading the comparison of benefit provisions under the two systems and some of the scenarios contained in the Handbook will provide the information they need to make a decision.

A transfer model is available on the FERS Election Opportunities page (www.opm.gov/fers__election) of OPM's website and will be on the CD–ROM. This is a computer model that will allow employees to estimate their projected benefits under CSRS and FERS based on assumptions unique to each employee. As with the Handbook, it should be made available for use by all eligible employees. The revised computer model is a user-friendly, interactive, Windows®-based version that employees are able to use themselves to compare and contrast benefits under both systems. If the employing office cannot make the transfer model available to some employees, the agency is expected to make available an equivalent CSRS/FERS benefits estimate upon request.

While counseling employees who request it and assisting them in understanding how the systems affect their individual circumstances, agencies should emphasize that the final decision on which system the employee chooses is a personal one.

An agency decision that an employee is not eligible to elect FERS coverage or an agency's refusal to accept a belated election must be in writing and must notify the employee of the right to appeal the decision to MSPB and the 30-day time limit applicable to such

appeals. The employing agency is also responsible for defending such a coverage decision at MSPB. Each agency should keep such documentation that it considers appropriate for that purpose.

Since the statute expressly requires notice and, if requested, other information concerning the election including a comparison of benefits be provided to employees, the failure to provide these materials is a basis for tolling the time limit for making the election. *See e.g., Davies* v. *OPM,* 5 M.S.P.R. 199 (1981). Section 846.724 empowers agencies (subject to review by MSPB under section 846.725) to determine on a case-by-case basis whether they failed to provide sufficient information to justify acceptance of a belated election. The employing office may accept a belated election of FERS coverage without time limit if the employing office determines that the agency did not provide the notice required under section 846.723 in a timely manner, the agency did not provide access to the FERS Transfer Handbook to the employee in a timely manner, or the employee was unable, for cause beyond his or her control, to elect FERS coverage within the prescribed time limit. A belated election of FERS coverage is effective on the first day of the pay period beginning after the employing office receives the completed SF 3109, the FERS Election of Coverage form. Neither agencies nor OPM has any statutory authority to approve a retroactive effective date for belated elections of FERS coverage.

Section 846.724 also continues the current rules concerning correction of administrative errors. Failure to begin employee deductions and Government contributions on the effective date of coverage must be corrected in accordance with section 841.505 of Title 5, Code of Federal Regulations.

Section 846.725 establishes the procedures for appeal of decisions affecting elections of coverage under FERS. A person whose rights or interests concerning an election of FERS coverage are affected by the agency's final decision may request MSPB to review the decision in accord with procedures prescribed by MSPB. MSPB regulations relating to appeals are contained in chapter II of Title 5, Code of Federal Regulations.

Section 846.726 specifically delegates to agencies authority to act as OPM's agent for receipt of employee communications relating to elections of FERS coverage (i.e., any documents that employees are required by these regulations to file with OPM). Such documents are deemed received by OPM on the date that the employing office receives them. Such delegations are authorized under section 1104 of title 5, United States Code.

Under section 553(b)(3)(B) and (d)(3) of title 5, United States Code, I find that good cause exists for waiving the general notice of proposed rulemaking and for making this rule effective in less than 30 days. The notice is being waived and the regulation is being made effective in less than 30 days so that the regulation can be implemented in time to meet the statutory requirements of the Federal Employees Retirement System Open Enrollment Act of 1997. That statute requires the OPM to issue regulations under which individuals who are employed by the Federal Government and are covered by CSRS as of January 1, 1998 may elect to become covered by FERS. Such elections must be made between July 1, 1998 and December 31, 1998. This rule is being made effective in less than 30 days in order to establish timely election procedures and allow the regulation to be of maximum effectiveness and assistance for Federal agencies and employees considering their election options.

E.O. 12866, Regulatory Review

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

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because the regulation will only affect Federal employees and agencies and retirement payments to retired Government employees and their survivors.

List of Subjects in 5 CFR Part 846

Administrative practice and procedure, Air traffic controllers, Firefighters, Government employees, Law enforcement officers, Pensions, Retirement.

U.S. Office of Personnel Management.

Janice R. Lachance,

Director.

Accordingly, OPM amends 5 CFR part 846 as follows:

PART 846—FEDERAL EMPLOYEES RETIREMENT SYSTEM—ELECTIONS OF COVERAGE

1. The heading of part 846 is revised to read as set forth above.

1a. The authority citation for part 846 is revised to read as follows:

Authority: 5 U.S.C. 8347(a) and 8461(g) and Title III of Pub. L. 99–335, 100 Stat. 517; § 846.201(b) also issued under 5 U.S.C. 7701(b)(2) and section 153 of Pub. L. 104–134, 110 Stat. 1321; § 846.201(d) also issued under section 11246(b) of Pub. L. 105–33, 111 Stat. 251; § 846.202 also issued under section 301(d)(3) of Pub. L. 99–335, 100 Stat. 517; § 846.726 also issued under 5 U.S.C. 1104; subpart G also issued under section 642 of Pub. L. 105–61, 111 Stat. 1272.

2. Subpart G is added to read as follows:

Subpart G—1998 Open Enrollment Elections

Subpart G—1998 Open Enrollment Elections

§ 846.701 Purpose and scope.

This subpart contains OPM's regulations applicable to elections of FERS coverage during the 1998 open enrollment period, including—

(a) The requirements that an individual must satisfy to be eligible to make an election; and

(b) The procedures that—

(1) Employees must follow to make an election;

(2) Agencies must follow in advising employees about making an election and in processing employees' elections; and

(3) OPM will follow in cases subject to the former spouse consent requirement.

§ 846.702 Definitions.

In this subpart—

Election means an election of FERS coverage during the 1998 open enrollment period.

Former spouse consent requirement means the condition that must be satisfied under section 301(d) of the FERS Act for an employee with a former spouse to be eligible to elect FERS coverage.

Qualifying court order means a *court order acceptable for processing* as defined in § 838.103 of this chapter or a *qualifying court order* as defined in § 838.1003 of this chapter subject to the following conditions:

(1) If OPM has not received (as explained in § 838.131 of this chapter) a copy of the court order and identifying information required under § 838.221(b)(3), § 838.421(b)(3), § 838.721(b)(1)(iii), or § 838.1005(b)(3) of this chapter prior to the date on which the employing office receives the election to be covered by FERS, the court order is not a *qualifying court order.*

(2) If the former spouse loses entitlement to all CSRS benefits under the court order, the court order ceases to be a *qualifying court order.*

Social security coverage means coverage under the Old Age, Survivors, and Disability Insurance program under the Social Security Act.

1998 open enrollment period means July 1, 1998, through December 31, 1998.

§ 846.703 Effective date of FERS coverage.

An election under this subpart is effective on the later of—

(a) The first day of the pay period beginning after the date the election and any required supporting documentation is received by the employing office; or

(b) The first day of the pay period beginning after July 1, 1998.

§ 846.704 Irrevocability of an election of FERS coverage.

(a) An election to be covered by FERS becomes irrevocable on the date it becomes effective.

(b) If, during the 1998 open enrollment period, an employee files an election on an SF 3109 to remain covered by CSRS, the employee may revoke such an election by filing another election during the 1998 open enrollment period.

Who May Elect

§ 846.711 Eligibility to elect FERS coverage during the 1998 open enrollment period.

An employee who is not covered by FERS, and who was an employee on January 1, 1998, and who is not otherwise ineligible for FERS coverage (under subpart A of part 842 of this chapter or § 846.722) may elect FERS coverage during the 1998 open enrollment period.

§ 846.712 Statutory exclusions.

(a) *DC government employees.* An individual employed by the government of the District of Columbia is not eligible to make an election, except—

(1) Non-judicial employees of the District of Columbia Courts, District of Columbia Department of Corrections Trustee or the District of Columbia Pretrial Services, Defense Services, Parole, Adult Probation and Offender Supervision Trustee under the National Capital Revitalization and Self-Government Improvement Act of 1997, title XI of Public Law 105–33, 111 Stat. 251, who meet the conditions of § 831.201(g)(2), (3), and (4) of this chapter; and

(2) Employees of the District of Columbia Financial Responsibility and Management Assistance Authority under the District of Columbia Financial Responsibility and Management Assistance Act of 1995, Public Law 104–8, 109 Stat. 97, as amended, who elected CSRS under § 831.201(g)(5) of this chapter.

(b) *Members of Congress.* A Member (as defined in section 2106 of title 5, United States Code) is not eligible to make an election.

(c) *Persons without social security eligibility.* An individual is not eligible to make an election if that individual is not eligible for social security coverage.

§ 846.713 Former spouse consent requirement.

An election of FERS coverage cannot become effective unless the election is made with the written consent of any former spouse(s) entitled to benefits under part 838 of this chapter.

Election Procedures

§ 846.721 Electing FERS coverage.

(a) To elect FERS coverage, an employee must submit a completed FERS Election of Coverage form (SF 3109) and any additional documentation that may be required under § 846.722 (relating to the former spouse consent requirement) to the employing office no later than the close of business on December 31, 1998.

(b) Any writing signed by the employee and filed with the employing office may be treated as an election for the purpose of establishing the date of the election of FERS coverage if the employee intends that document to be an election, but the employee (or, if the employee dies after filing the election but before completing the SF 3109, the survivor) must submit a completed SF 3109 to confirm any such election.

§ 846.722 Former spouse's consent to an election of FERS coverage.

(a) Employee actions. (1) If the employee is subject to a qualifying court order, the employee must submit to the employing office a completed—

(i) SF 3110, Former Spouse's Consent to FERS Election, to document the former spouse's consent to the FERS coverage; or

(ii) SF 3111, Request for Waiver, Extension, or Search, to request a waiver of the former spouse consent requirement or to request an extension of the time limit for obtaining a former spouse's consent or amendment of the court order.

(2) If the employee states on the SF 3109, the FERS Election of Coverage form, that he or she does not know whether he or she is subject to a qualifying court order, the employee must submit to the employing office a completed SF 3111, Request for Waiver, Extension, or Search, to request OPM to determine whether it has a qualifying court order relating to the employee.

(b) *OPM actions*—(1) *Waiver of former spouse consent requirement*—(i) *Grounds for waiver.* OPM's authority to approve a waiver of the former spouse consent requirement is limited to cases in which the former spouse's whereabouts cannot be determined or exceptional circumstances make requiring the former spouse's consent inappropriate.

(ii) *Whereabouts cannot be determined.* OPM will waive the former spouse consent requirement upon a showing that the former spouse's whereabouts cannot be determined. A request for waiver on this basis must be accompanied by—

(A) A judicial or administrative determination that the former spouse's whereabouts cannot be determined; or

(B)(*1*) Affidavits by the employee and two other persons, at least one of whom is not related to the employee, attesting to the inability to locate the former spouse and stating the efforts made to locate the spouse; and

(*2*) Documentary corroboration such as newspaper reports about the former spouse's disappearance.

(iii) *Exceptional circumstances.* OPM will waive the former spouse consent requirement based on exceptional circumstances if the employee presents a judicial determination finding that—

(A) The case before the court involves a Federal employee who is in the process of electing FERS coverage and the former spouse of that employee;

(B) The former spouse has been given notice and an opportunity to be heard concerning this proceeding;

(C) The court has considered sections 301 and 302 of the FERS Act, Pub. L. 99–335, 100 Stat. 517, and this section as they relate to waiver of the former spouse consent requirement for an employee with a former spouse to elect FERS coverage; and

(D) The court finds that exceptional circumstances exist justifying waiver of the former spouse's consent.

(iv) *Approval of a waiver.* If OPM grants a waiver of the requirement of paragraph (a) of this section, OPM will notify both the individual and the employing office of its decision. OPM's notice to the employing office is deemed to complete the individual's election, which becomes effective with the first pay period after the employing office receives OPM's notice that the waiver is granted.

(2) *Extension of the time limit to obtain a former spouse's consent*—(i) *First request.* If an employee who is ineligible to elect FERS coverage solely because of a qualifying court order files, prior to January 1, 1999, a completed SF 3111, Request for Waiver, Extension or Search, requesting an extension of the time limit to seek an amendment of a qualifying court order, OPM is deemed to have approved the extension through June 30, 1999.

(ii) *Second request.* OPM will grant one extension of the time limit to seek an amendment of a qualifying court order to an individual who has been granted an extension under paragraph (b)(2)(i) of this section if the individual—

(A) Files an application for the extension (SF 3109) with the employing office before July 1, 1999;

(B) Has initiated legal proceedings to secure the modification of the qualifying court order on file at OPM to satisfy the former spouse consent requirement;

(C) Demonstrates to OPM's satisfaction that the individual has exercised due diligence in seeking to obtain the modification; and

(D) If seeking an extension beyond December 31, 1999, demonstrates to OPM's satisfaction that a longer extension is necessary.

(iii) *Expiration date of a second extension.* An approved extension under paragraph (b)(2)(ii) of this section expires on December 31, 1999, unless OPM's decision letter states a later expiration date.

(3) *Search for a qualifying court order.* (i) When an employing office notifies OPM that it has received an employee's request for a determination of whether OPM has a qualifying court order on file, OPM will determine whether it has such an order.

(ii) If OPM does not have a copy of a qualifying court order in its possession, OPM's notice to the employing office that it has no qualifying court order completes the employee's election of FERS coverage and the election becomes effective at the beginning of the first pay period after the employing office receives OPM's notification.

(iii) If OPM has a copy of a qualifying court order, OPM will notify both the individual and the employing office that it has a qualifying court order and that an extension until June 30, 1999, has been granted.

§ 846.723 Agency responsibilities.

(a) The employing office must determine whether the employee is eligible to elect FERS coverage.

(b)(1) As close as practicable to the beginning of the open enrollment period, the employing office must provide each employee eligible to elect FERS coverage with notice of that employee's right to make an election.

(2) The employing office must provide each employee eligible to elect FERS coverage with a copy of or ready access to the FERS Transfer Handbook.

(c) An election received by an employing office before July 1, 1998, is deemed to have been received by the employing office on July 1, 1998.

(d) An agency decision that an employee is not eligible to elect FERS coverage or refusing to accept a belated election under § 846.724 must be in writing, must fully set forth the findings and conclusions of the agency, and must notify the employee of the right to appeal the decision under this section to the Merit Systems Protection Board, including all information required under the Board's regulations. See 5 CFR 1201.21.

§ 846.724 Belated elections and correction of administrative errors.

(a) *Belated elections.* The employing office may accept a belated election of FERS coverage if it determines that—

(1) The employing office did not provide adequate notice to the employee in a timely manner;

(2) The agency did not provide access to the FERS Transfer Handbook to the employee in a timely manner; or

(3) The employee was unable, for cause beyond his or her control, to elect FERS coverage within the prescribed time limit.

(b) *Correction of administrative errors.* Failure to begin employee deductions and Government contributions on the effective date of coverage must be corrected in accordance with § 841.505 of this chapter.

§ 846.725 Appeal to the Merit Systems Protection Board.

(a) A person whose rights or interests under this part are affected by an agency decision that an employee is not eligible to elect FERS coverage or an agency refusal to accept a belated election under § 846.724, or an OPM decision denying an extension or waiver under § 846.722, may request the Merit Systems Protection Board (MSPB) to review such decision in accord with procedures prescribed by MSPB. MSPB regulations relating to appeals are contained in chapter II of this title.

(b) Paragraph (a) of this section is the exclusive remedy for review of agency decisions concerning eligibility to make an election under this subpart. An agency decision must not allow review under any employee grievance procedures, including those established by chapter 71 of title 5, United States Code, and 5 CFR part 771.

§ 846.726 Delegation of authority to act as OPM's agent for receipt of employee communications relating to elections.

The employing office is delegated authority to act as OPM's agent for the receipt of any documents that employees are required by this subpart to file with OPM. Such documents are deemed received by OPM on the date that the employing office receives them.

[FR Doc. 98–16264 Filed 6–17–98; 8:45 am]

BILLING CODE 6325–01–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 28

[CN–98–004]

Revision of User Fees for 1998 Crop Cotton Classification Services to Growers

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Agricultural Marketing Service (AMS) is reducing user fees for cotton producers for 1998 crop cotton classification services under the Cotton Statistics and Estimates Act in accordance with the formula provided in the Uniform Cotton Classing Fees Act of 1987. The 1997 user fee for this classification service was $1.40 per bale. This rule would reduce the fee for the 1998 crop to $1.30 per bale. The reduction in fees resulted from increased efficiency in classing operations. The fee is sufficient to recover the costs of providing classification services, including costs for administration, supervision, and development and maintenance of standards.

DATES: *Effective Date:* July 1, 1998.

FOR FURTHER INFORMATION CONTACT: Lee Cliburn, 202–720–2145.

SUPPLEMENTARY INFORMATION: A proposed rule detailing the revisions was published in the **Federal Register** on March 27, 1998, (63 FR 14839). A 30 day comment period was provided for interested persons to respond to the proposed rule: No comments were received.

This final rule has been determined to be not significant for purposes of Executive Order 12866, and it has not been reviewed by the Office of Management and Budget (OMB).

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. It is not intended to have retroactive effect. This rule would not preempt any state or local laws, regulations, or policies unless they present an irreconcilable conflict with this rule. There are no administrative procedures which must be exhausted prior to any judicial challenge to the provisions of this rule.

The Administrator, Agricultural Marketing Service (AMS), has considered the economic impact of this rule on small entities pursuant to the requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*). It has been determined that the implementation of this rule would not have a significant economic impact on a substantial number of small businesses.

The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to such actions in order that small businesses will not be disproportionately burdened. There are an estimated 40,000 cotton growers in the U.S. who voluntarily use the AMS cotton classing services annually, and the majority of these cotton growers are small businesses under the criteria established by the Small Business Administration (13 CFR § 121.601). The Administrator of AMS has certified that this action will not have a significant economic impact on a substantial number of small entities as defined in the RFA because:

(1) The fee reduction reflects a decrease in the cost-per-unit currently borne by those entities utilizing the services (the 1997 user fee for classification services was $1.40 per bale; the fee for the 1998 crop would be reduced to $1.30 per bale; the 1998 crop is estimated at 15,684,900 bales);

(2) The cost reduction will not affect competition in the marketplace; and

(3) The use of classification services is voluntary. For the 1997 crop, 17,949,575 bales were classed out of 18,346,450 bales produced.

(4) Based on the average price paid to growers for cotton from the 1996 crop of 69.3 cents per pound, 500 pound bales of cotton are worth an average of $346.50 each. The proposed user fee for classification services, $1.30 per bale, is less than one percent of the value of an average bale of cotton.

In compliance with OMB regulations (5 CFR part 1320) which implement the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), the information collection requirements contained in the provisions to be amended by this rule have been previously approved by OMB and were assigned OMB control number 0581–0009 under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

The changes will be made effective July 1, 1998, as provided by the Cotton Statistics and Estimates Act.

Fees for Classification under the Cotton Statistics and Estimates Act of 1927

The user fee charged to cotton producers for High Volume Instrument (HVI) classification services under the Cotton Statistics and Estimates Act (7 U.S.C. 473a) was $1.40 per bale during the 1997 harvest season as determined by using the formula provided in the Uniform Cotton Classing Fees Act of 1987, as amended by Public Law 102–237. The fees cover salaries, costs of equipment and supplies, and other overhead costs, including costs for administration, supervision, and development and maintenance of cotton standards.

This final rule establishes the user fee charged to producers for HVI classification at $1.30 per bale during the 1998 harvest season.

Public Law 102–237 amended the formula in the Uniform Cotton Classing Fees Act of 1987 for establishing the producer's classification fee so that the producer's fee is based on the prevailing method of classification requested by producers during the previous year. HVI classing was the prevailing method of cotton classification requested by producers in 1997. Therefore, the 1998 producer's user fee for classification service is based on the 1997 base fee for HVI classification.

The fee was calculated by applying the formula specified in the Uniform Cotton Classing Fees Act of 1987, as amended by Public Law 102–237. The 1997 base fee for HVI classification exclusive of adjustments, as provided by the Act, was $2.08 per bale. A two percent, or four cents per bale increase due to the implicit price deflator of the gross domestic product added to the $2.08 would result in a 1998 base fee of $2.12 per bale. The formula in the Act provides for the use of the percentage change in the implicit price deflator of the gross national product (as indexed for the most recent 12-month period for which statistics are available). However, this has been replaced by the gross domestic product by the Department of Commerce as a more appropriate measure for the short-term monitoring and analysis of the U.S. economy.

The number of bales to be classed by the United States Department of Agriculture from the 1998 crop is estimated at 15,684,900 bales. The 1998 base fee was decreased 15 percent based on the estimated number of bales to be classed (one percent for every 100,000 bales or portion thereof above the base of 12,500,000, limited to a maximum adjustment of 15 percent). This percentage factor amounts to a 32 cents per bale reduction and was subtracted from the 1998 base fee of $2.12 per bale, resulting in a fee of $1.80 per bale.

With a fee of $1.80 per bale, the projected operating reserve would be 46.806 percent. The Act specifies that the Secretary shall not establish a fee which, when combined with other sources of revenue, will result in a projected operating reserve of more than 25 percent. Accordingly, the fee of $1.80 must be reduced by 50 cents per bale, to $1.30 per bale, to provide an ending accumulated operating reserve for the fiscal year of 25 percent of the projected cost of operating the program. This would establish the 1998 season fee at $1.30 per bale.

Accordingly, § 28.909, paragraph (b) will be revised to reflect the reduction in the HVI classification fees.

As provided for in the Uniform Cotton Classing Fees Act of 1987, as amended, a five cent per bale discount will continue to be applied to voluntary centralized billing and collecting agents as specified in § 28.909 (c).

Growers or their designated agents requesting classification data provided on computer punched cards will be charged a fee of 10 cents per card to reflect the costs of providing this service. Requests for punch card classification data represent only 2.6 percent of the total bales classed. This change will be reflected in § 28.910 (a). Growers or their designated agents receiving classification data by methods other than computer punched cards will continue to incur no additional fees if only one method of receiving classification data was requested. The fee for each additional method of receiving classification data in § 28.910 will remain at five cents per bale, and it will be applicable even if the same method was requested. However, if computer punched cards were requested, a fee of ten cents per card would be charged. The fee in § 28.910 (b) for an owner receiving classification data from the central database will

remain at five cents per bale, and the minimum charge of $5.00 for services provided per monthly billing period will remain the same. The provisions of § 28.910 (c) concerning the fee for new classification memoranda issued from the central database for the business convenience of an owner without reclassification of the cotton will remain the same.

The fee for review classification in § 28.911 will be reduced from $1.40 per bale to $1.30 per bale.

The fee for returning samples after classification in § 28.911 will remain at 40 cents per sample.

Finally, the authority citation for Subpart D of Part 28 was revised at 61 FR 19512. This action would correct that revision by specifying Subpart D rather than a reference to Part 28 in its entirety.

List of Subjects in 7 CFR Part 28

Administrative practice and procedure, Cotton, Cotton samples, Grades, Market news, Reporting and recordkeeping requirements, Standards, Staples, Testing, Warehouses.

For the reasons set forth in the preamble, 7 CFR Part 28 is amended as follows:

PART 28—[AMENDED]

1. The authority citation for part 28, subpart D, is revised to read as follows:

Authority: 7 U.S.C. 471–476.

2. In § 28.909, paragraph (b) is revised to read as follows:

§ 28.909 Costs.

* * * * *

(b) The cost of High Volume Instrument (HVI) cotton classification service to producers is $1.30 per bale.

* * * * *

3. In § 28.910, paragraph (a) is revised to read as follows:

§ 28.910 Classification of samples and issuance of classification data.

(a) (1) The samples submitted as provided in the subpart shall be classified by employees of the Division and classification memoranda showing the official quality determination of each sample according to the official cotton standards of the United States shall be issued by any one of the following methods at no additional charge:

(i) Computer diskettes,

(ii) Computer tapes, or

(iii) Telecommunications, with all long distance telephone line charges paid by the receiver of data.

(2) When an additional copy of the classification memorandum is issued by any method listed in paragraph (a)(1), there will be a charge of five cents per bale. If provided as an additional method of data transfer, the minimum fee for each tape or diskette issued shall be $10.00.

(3) Upon request, computer punch cards may be issued. The fee for this service shall be 10 cents per card.

* * * * *

4. In § 28.911, the last sentence of paragraph (a) is revised to read as follows:

§ 28.911 Review classification.

(a) * * * The fee for review classification is $1.30 per bale.

* * * * *

Dated: June 16, 1998.

Enrique E. Figueroa,

Administrator, Agricultural Marketing Service.

[FR Doc. 98–16376 Filed 6–17–98; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 997 and 998

[Docket Nos. FV97–997–1 FIR and FV97–998–1 FIR]

Peanuts Marketed in the United States; Relaxation of Handling Regulations

AGENCY: Agricultural Marketing Service (AMS), USDA.

ACTION: Final rule.

SUMMARY: The Department of Agriculture (Department) is adopting, as a final rule, with modifications, the provisions of an interim final rule (IFR) that relaxed for 1997 and subsequent crop peanuts, several provisions regulating the handling of domestically produced peanuts marketed in the United States. This finalization continues the IFR's improved efficiency and reduced program costs resulting in a similar reduction in assessments charged Agreement signer and non-signer handlers.

EFFECTIVE DATE: June 19, 1998.

FOR FURTHER INFORMATION CONTACT: George J. Kelhart or Jim Wendland, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, P.O. Box 96456, room 2525–S, Washington, D.C. 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, P.O. Box 96456, room 2525–S, Washington, D.C., 20090–6456; telephone: (202) 720–2491, Fax: (202) 205–6632.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement No. 146 (Agreement)(7 CFR part 998) and the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.'' The Agreement and the regulations issued thereunder and the non-signatory peanut handler regulations (7 CFR part 997) regulate the quality of domestically produced peanuts.

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

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule. There are no administrative procedures which must be exhausted prior to any judicial challenge to the provisions of this rule.

Following explanation of each change to the Agreement's regulation, the corresponding change to the non-signatory handlers' regulation is discussed.

Incoming Regulations

Farmers Stock Storage and Handling Facilities

The Peanut Administrative Committee (Committee) recommended amending § 998.100 Incoming quality regulation for 1996 and subsequent crop peanuts by removing paragraph (g) *Farmers Stock Storage and Handling Facilities* which previously regulated the condition of such facilities and authorized Committee inspection. The Committee recommended the change to save approximately $450,000, by eliminating the positions of the seven fieldmen whose specified duties through the 1996 crop year included spending an estimated 60–65 percent of their time inspecting and approving such facilities. The vote was 17 ''For'' and 1 ''Against'', with the dissenting voter contending that the fieldmen were providing valuable services, their positions should not be eliminated, and that inspection and approval of such facilities by the Committee staff were important. Handlers contended they were already paying their own employees to do facilities inspections and the cost of such duplication of effort needed to be eliminated and the Department issued the change. Also, this cost-cutting has not adversely

affected quality since peanuts must still meet the Outgoing Quality Regulation.

Elimination of the regulatory provision has allowed the Committee to reduce its non-headquarters staff from seven to one compliance officer in each of the three production areas and reduce the current ''fieldmen'' staffing costs to zero. The compliance officers are conducting compliance audits of Agreement signers similar to AMS approved non-signer program compliance plan procedures, where AMS Compliance Staff auditors check non-signers' records. A revised 1997–98 compliance plan from the Committee includes these new procedures. AMS believes this will continue to assure compliance under the Agreement.

The non-signer regulation contains no similar requirements for inspection and approval of such facilities, so no change is needed to it.

Outgoing Regulations

The Committee unanimously recommended that § 998.200(a) be amended to provide that minimum grade requirements for lots of ''splits'' (the separated halves of peanut kernels) be modified to correspond with ''United States Standards For Grades Of: (1) Cleaned Virginia Type Peanuts In The Shell; or (2) Shelled Runner Type Peanuts; or (3) Shelled Spanish Type Peanuts; or (4) Shelled Virginia Type Peanuts'' (7 CFR part 51: Sections 51.1235–1242; 51.2710-2721; 51.2730–2741; and 51.2750–2763, respectively). The increase to 2.00 percent from the prior 1.50 percent for unshelled peanuts and damaged kernels was needed to provide consistency with the grade standards. Under the former regulation, a handler could have had a lot of peanuts which met U.S. Grade Standards for U.S. Splits, but failed to meet Agreement requirements for edible quality. It was initially expected that this change might reduce the number of lots needing remilling to meet outgoing quality requirements by less than 10 percent if it was an average year. But the 1997 crop has been stressed by drought conditions and the industry in virtually all peanut producing States has expressed having some problems with quality. Thus, this change is now expected to reduce handlers' need to remill by more than 10 percent during the 1997 crop year, saving an estimated $30 on each ton not needing to be remilled.

The only comment received concerning the IFR, filed by the Committee, dealt with § 998.200(a). The Committee urged that portions of Table 2 INDEMNIFIABLE GRADES, which had been removed by the IFR, be restored by adding them to the MAXIMUM LIMITATIONS table. The IFR modification inadvertently eliminated all nine of the INDEMNIFIABLE GRADE categories. The Committee said its intent was to cause all edible grade categories of peanuts to be eligible for indemnification, not to eliminate any grade categories. Three of the grade categories—Runner with splits, Virginia with splits, and Spanish and Valencia with splits—are not included in the U.S. grade standards for peanuts. ''Runner with splits'' exists under the American Peanut Shellers Association's specifications but not the other categories. Therefore, the three not included in the grade standards need to be restored, for convenient use by the peanut industry, since such peanuts still have a domestic market niche. Federal Government Commodity Procurement Program, Farm Service Agency's Commodity Operations Division and many commercial firms had used these grade categories in contract specifications to purchase such peanuts. Also, to be consistent with the other maximum tolerances in the ''Unshelled peanuts and damaged kernels'' column and the ''Unshelled peanuts and damaged kernels and minor defects'' column, the percentage tolerances for the three restored categories need to be relaxed to 1.50 percent from 1.25 and to 2.50 percent from 2.00, respectively. Therefore, the three ''* * * with splits'' type and grade categories and their relaxed tolerances need to be incorporated into the MAXIMUM LIMITATION table in § 998.200(a) and § 997.30(a). This simplifies grade requirements by having only one set of quality requirements for human consumption use. The Department agrees with the comment and includes the changes in this finalization of the IFR. This relaxation in tolerances will reduce the number of lots that need to be reconditioned to meet outgoing quality requirements. This will save signer handlers reconditioning and storage costs.

Similar changes are made to the corresponding § 997.30(a) of the non-signer regulation, with proportional savings on such handlers' much smaller volume.

The Committee unanimously recommended that § 998.200(h)(1) be amended to allow lots of peanuts which fail edible quality requirements, due to excessive fall through, to be custom blanched. However, such lots will have to be certified as meeting minimum ''fall through'' requirements after blanching. This finalization continues the elimination of the former requirement that prior to movement of such peanuts, handlers had to submit a form to the Committee and receive authorization for movement and blanching of each such lot.

Section 997.40(d) of the non-signer regulation currently does not require such handlers to submit a request to the Department and receive authorization for movement and blanching of each such lot. Therefore, no similar change to that provision is needed. However, this finalization continues the IFR's amendment which added ''fall through'' to the category of items allowed in the first and third sentences.

The Committee also unanimously recommended a further change to paragraph (h), specifically that subparagraphs (h)(1) and (h)(2) be further amended to provide that reject peanuts may be placed in suitable containers acceptable to the Committee. The current requirement specifies ''bagged'', which refers to the older standard-sized burlap bags, which hold approximately 110 pounds. It does not include the many newer and more efficient containers which are easier to handle such as tote bags, corrugated containers (including those with capacities of over a ton), Super Sacks, and other various company containers used by individual peanut product manufacturers. This finalization will continue the IFR's change which allowed handlers to use more efficient containers or those desired by their customers. For purposes of this provision, most any container that handlers use will be considered suitable.

Section 997.40(c) of the non-signer regulation previously provided for ''in bulk or bags or other suitable containers.'' This finalization continues the IFR's change to make it consistent with the Agreement's amended regulation, by removing the words ''in bulk or.'' The same applies to paragraphs (d) and (e) which were amended by removing the word ''bagged'' and replacing it with the words ''placed in suitable containers.''

The Committee also unanimously recommended that § 998.200 Outgoing quality regulation and § 998.300 Terms and conditions of indemnification * * * be amended to make all lots of edible quality peanuts indemnifiable, for freight reimbursement, when rejected on appeal after being certified ''negative'' as to aflatoxin. This finalization continues the IFR's changes to provisions specified in § 998.300, making product claim lots of edible quality peanuts also indemnifiable. This involves lots where a handler sustained a loss as a result of a buyer withholding

from human consumption any or all of the product made from a lot of peanuts which had been determined to be unwholesome due to aflatoxin after such lot had originally been certified ''negative'' as to aflatoxin. This change provided consistency by treating all edible quality peanuts equally, whether appeal claims or product claims. Although these changes have further reduced costs and promoted uniformity in the handling of indemnification of all edible quality peanuts, there is no way to accurately quantify how much these reductions have been, because the savings are different for each handler. However, the total savings are expected to be a minor fraction of the projected approximately $350,000 total 1997 crop indemnification costs.

The non-signer enabling legislation does not provide authority for indemnification. Therefore, no similar change was needed in the non-signer regulation.

The Committee further unanimously recommended that § 998.200(h)(3) be amended to provide that peanuts which have been certified as meeting minimum grade requirements specified in § 998.200(a)(1), but fail to meet requirements for aflatoxin, may be roasted while being blanched prior to being certified as meeting the aflatoxin requirements. After roasting, such peanuts must be sampled and assayed for aflatoxin content but do not have to be re-sampled and analyzed for grade again. This simplified process was recommended by the Committee and issued in the IFR by the Department. Prior to the IFR, such blanched peanuts, after certification, were often returned to the blancher for additional heating. This finalization continues the IFR's favorable effects of not having to remove the blanched peanuts short of the complete roasting process for sampling and aflatoxin analysis, and then running them back through the blancher again. This added costs to the roasting process and usually caused additional, unintentional damage due to the extra handling of the kernels. Also, the roasting enhances the blanching efforts to eliminate aflatoxin, thus improving the wholesomeness, quality and value of such shelled peanuts. The savings involved in blanching and roasting in one step may often outweigh the approximately $40 per hour costs of having an inspector present during this process to maintain needed positive lot identification. Any residual peanuts, excluding skins and hearts, resulting from this roasting process, must be red tagged and disposed of to inedible peanut outlets. The same factors apply to § 997.40(d) of the non-signer regulation.

This finalization continues the IFR's provision that unchanged portions of the incoming and outgoing regulations that were in effect for 1996 and subsequent crop peanuts will remain in effect for 1997 and subsequent crop peanuts.

An interim final rule concerning this action was published in the **Federal Register** on January 16, 1998 (63 FR 2846). A 60-day comment period, which ended on March 17, 1998, was provided to allow interested persons to respond to the interim final rule. One comment was received during the comment period. That comment was discussed earlier in this document, as a part of the discussion of changes in the regulations.

The Regulatory Flexibility Act and Effects on Small Businesses

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

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that the small businesses will not be unduly or disproportionately burdened. Marketing agreements and 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 27 signatory and 30 non-signatory peanut handlers who are currently subject to regulations under the Agreement and non-signer program respectively and approximately 25,000 commercial peanut producers in the 16-State production area. Small agricultural service firms, which include handlers, 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. Approximately 25 percent of the signatory handlers, virtually all of the non-signers, and most of the producers may be classified as small entities. This action will be favorable to the industry by tending to improve efficiency, reduce costs, and increase returns.

This finalization will continue the IFR's relaxations to handling regulations by simplifying requirements; thus, enabling handlers, both large and small, to cut costs and more efficiently handle their peanut supplies, without jeopardizing safeguard requirements in the current regulations.

The relaxations included:

1. The elimination of the requirement for inspection and approval of farmers stock storage and handling facilities has saved approximately $450,000 by eliminating the positions of the seven fieldmen, who had performed this activity through last crop year. Handlers contended they were already paying their own employees to do this and that the duplicate cost should be eliminated;

2. Relaxing the minimum grade requirements for ''splits'' to correspond with U.S. grade standards will likely reduce the number of lots which need to be remilled during the 1997 crop by 10 percent, due to stressed growing conditions in virtually all areas. This should result in significant reductions in handlers' costs;

3. Another IFR relaxation provided that all lots of edible quality peanuts, whether appeal claims or product claims, are eligible for Agreement signer handlers' indemnification benefits. Thus, such handlers with product claim lots are also eligible for reimbursement of most transportation expenses on such lots. Such additional reimbursement was not publicly quantified by the Committee, but is a minor portion of its projected $350,000 total 1997 crop indemnification costs;

4. The IFR's relaxed provision to allow lots which fail edible quality requirements, due to excessive fall through, to be custom blanched eliminates the previous requirement that handlers had to submit a form to the Committee and receive authorization for movement and blanching of each such lot. This relaxation has eliminated unnecessary paperwork and saved time for all affected handlers;

5. Relaxing the previous requirement that peanuts be ''bagged'' (i.e., placed only in older standard-size burlap bags holding approximately 110 pounds) by allowing the use of suitable containers, which permits use of the many newer and more efficient containers or those desired by handlers' customers; and

6. Another relaxation allowed peanuts which had been certified as meeting the minimum grade requirements, but failed to meet requirements for aflatoxin, to be roasted while being blanched prior to being certified as meeting the aflatoxin requirements. This simplified process eliminated running such peanuts back through the blancher again for roasting, which doubled the processing costs and tended to lower the peanuts' quality and value by causing additional damage to

them. Such savings may outweigh the approximately $40 per hour expense of having an inspector present to maintain needed positive lot identification.

The IFR's relaxed requirements have significantly improved efficiency and enabled the Committee to cut in half its 1997 crop year administrative budget and assessment rate charged Agreement signer and non-signer handlers to finance their respective programs. The rate of assessment for the 1996 crop year was $0.70 per net ton of assessable peanuts. The rate for the 1997 crop year was reduced to $0.35 per net ton by an earlier rulemaking action, as published in the September 17, 1997, issue of the **Federal Register** (62 FR 48749). This lower rate saved regulated domestic handlers approximately $500,000 in administrative assessment costs which, to a great extent, was made possible by the IFR's relaxation actions.

The finalization continues the IFR's specifics of each change and why they tended to increase returns to handlers, which were covered in detail near the beginning of this rule under the discussion starting with ''Incoming regulations.'' These IFR changes relaxed requirements on regulated domestic peanut handlers, improved their efficiency and cut costs, and benefitted the peanut industry, manufacturers, and consumers, while still assuring the quality of all peanuts in domestic human consumption markets.

As with all Federal marketing agreement and order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sectors. Consistent with the Paperwork Reduction Act (44 U.S.C. Chapter 35), the Committee unanimously recommended greatly reducing reporting and recordkeeping requirements on both large and small peanut handlers regulated under the Agreement. It has eliminated 20 of the 21 Committee forms previously approved by the Office of Management and Budget (OMB) that might accompany peanut shipments, to only require the use of the Form PAC–1. The PAC–1 is mailed to handlers on a monthly basis and is used to report receipts and acquisitions of farmers stock peanuts and to remit assessments. It is estimated that this has eliminated 95 percent (or about 2,291 hours and assuming $10 per hour, saving respondents nearly $23,000 in costs) of the previous estimated 2,417 hours of total reporting burden on Agreement signers, including small businesses, and a proportional reduction in non-signers' smaller reporting burdens. A notice of the proposed revision was published in the July 31, 1997, issue of the **Federal Register** (62 FR 41021). Sixty days were allowed for comments. One comment was received, from the American Peanut Shellers Association, supporting the reduced burdens. This information collection package was approved by the OMB under OMB Control No. 0581–0067.

In addition, the Department has not identified any Federal rules that duplicate, overlap, or conflict with this finalization.

Further, the Committee's meeting was widely publicized throughout the peanut industry and all interested persons were invited to attend the meeting and participate in the Committee's deliberations. Like all Committee meetings, the April 29–30, 1997, meeting was a public meeting and all entities, both large and small, were able to express their views on the issues. The 18-member Committee is composed of an equal number of peanut handlers and producers, the majority of whom are small entities.

Also, the Committee has a number of appointed subcommittees to review certain issues and make recommendations to the Committee. The Committee's Regulations, Indemnification and Quality Subcommittee and ''New Concept'' Subcommittee met on January 28, 1997, and discussed these issues in detail. On March 25, 1997, the Committee held an informational meeting to hear a presentation by the National Peanut Council's Peanut Industry Revitalization Project Steering Committee and discuss the issues and then take back to discuss with their industry peers, before voting on those issues at the April Committee meeting. The Committee's Administrative Budget Subcommittee also met March 25, 1997, to discuss budget recommendations. All of these meetings were public meetings and both large and small entities were able to participate and express their views.

An objective of the two domestic programs is to ensure that only high quality and wholesome peanuts enter human consumption markets in the United States. About half of the domestic commercial handlers, handling approximately 95 percent of the crop volume, have signed the Agreement. The other half are non-signatory handlers handling the remaining 5 percent of the domestic production.

Under these regulations, farmers stock peanuts with visible *Aspergillus flavus* mold (the principal source of aflatoxin) are required to be diverted to inedible uses. Each lot of milled peanuts must be sampled and the samples chemically analyzed for aflatoxin content. Costs to administer the Agreement and to reimburse the Department for oversight of the non-signatory program are paid by an administrative assessment levied on handlers in the respective programs.

The 18-member Committee, which is composed of an equal number of peanut producers and handlers, meets at least annually to review the Agreement's rules and regulations, which are effective on a continuous basis from one crop year to the next which begins July 1. Committee meetings are open to the public, and interested persons may express their views at these meetings. The Department evaluates Committee recommendations, as well as information from other sources, prior to making any recommended changes to the regulations under the Agreement.

Section 608b of the Act was amended in 1989 to require that all peanuts handled by persons who have not entered into the Agreement (non-signers) be subject to the same quality and inspection requirements to the same extent and manner as are required under the Agreement. Section 608b was further amended in 1993 to impose similar requirements regarding administrative assessments. The non-signatory handler regulations have been amended several times thereafter and are published in 7 CFR part 997.

Thus, the Committee's recommended changes to the Agreement signers' regulations, as finalized in this rule, also are finalized for the non-signers' regulations. This finalization of an IFR identifies the corresponding change to the non-signers' regulations for each change to the Agreement regulations.

According to the Committee, the domestic peanut industry has been undergoing a period of great change. The Committee bases its view, in part, on findings in a recent study entitled ''United States Peanut Industry Revitalization Project'' developed by the National Peanut Council and the Department's Agricultural Research Service (May 1996).

According to that study, the U.S. peanut industry has been in a period of dramatic economic decline since 1991 because: (1) Per capita peanut consumption has steadily declined a total of 11 percent; (2) harvested acreage has declined 25 percent; (3) production has declined 30 percent and farm value dropped 29 percent; and (4) imports of peanuts and peanut products have increased from insignificant quantities to 48,736 raw farmer stock tons in 1995, and to 55,536 in 1996.

That study points to recent increases in the duty-free import quota for raw peanuts due to the North American

Trade Agreement (NAFTA) and the Uruguay Round Agreements under the General Agreement on Tariffs and Trade (GATT). Under Section 22 import quota provisions, the volume of U.S. peanut imports had been limited to about 2.3 million pounds, in-shell basis, annually. Thus, imports have historically represented about one-tenth of 1 percent of U.S. food use of peanuts. Under NAFTA, Mexico has been granted a minimum access level for duty-free entry of peanuts of about 10 million pounds, in-shell basis. This level will increase about 3 percent annually through 2008, when quantitative limits will cease. Mexico's 1998 duty-free quota will total 8.4 million pounds. Under GATT, the 1997 quota was 86.8 million pounds, has increased to 96.8 million pounds (Argentina 81.3 & all other 15.5) in 1998, and can grow to about 125 million pounds in the year 2000.

The study also projects that farm production costs and revenue will be equal by the year 2000, as will handler costs and revenue, leaving no profit.

In addition, the modification of the Federal farm peanut poundage quota regulations implemented under the Agricultural Market Transition Act of 1996 (1996 Act) has resulted in the domestic industry undergoing significant changes scheduled to continue through the year 2002. The peanut support price has been reduced from $670 per ton in 1995 to $610 per ton through 2002. The USDA's Farm Service Agency final rule implementing the Act was published May 9, 1997, (62 FR 25433). That rule indicates that economic impacts of the 1996 Act include expected reductions in domestic peanut producers' revenue of $1.25 billion from 1996 through 2002. Quota lease holders could absorb a loss of about $40 million annually because of reduced leasing rates due to the lower peanut price support. Also, capitalized value of quotas could decline $200 to $300 million, thus reducing land values and the tax base of rural communities.

The Committee agrees that all of these factors combined show that the domestic peanut industry is in decline and that the outlook is not expected to change without some positive intervention by the industry.

World supply and demand are less important for peanuts than most U.S. farm commodities. Much of the world peanut production is for non-food uses, although production for food use might increase a little if there were no U.S. import restrictions. Also, import quotas, though increased recently, still are set at relatively low levels.

Domestic peanut production in 1996 was approximately 3.66 billion pounds, with a farm value of slightly under $1 billion. The Department reports U.S. peanut production in 1997 totaled 3.54 billion pounds, down 3 percent from the 1996 crop. Harvested acreage for 1997 was 1.41 million acres, up 2 percent from 1996. USDA estimates that acreage will increase by 3 percent in 1998. The U.S. yield per harvested acre for 1997 averaged 2,507 pounds, down 146 pounds from 1996. The 1997 marketing year average price received by farmers for peanuts is 26.4 cents per pound, down 1.7 cents from 1996. The value of peanut production for the 1997 crop is reported as $932 million, down 9 percent from a year earlier.

Production is expected to gradually increase to the year 2002 because domestic food use is projected to rise about 1.5 percent annually. Imports are expected to remain at a relatively small percentage of total U.S. peanut use.

Estimated exports of 750 million pounds in Marketing Year (MY) 1997 are below the average for the prior 3 years, but are 11 percent more than a year earlier. Peanut oil prices are expected to average about 38 cents a pound of oil in MY 1997, 6 percent lower than MY 1996 as vegetable oil supplies return to more normal levels. Peanut meal prices for MY 1997 are expected to decline to $175 a ton, down 25 percent from MY 1996 because of larger soybean meal supplies.

The 28.5 cents per pound season average price of farmer stock peanuts for MY 1997 was the lowest price of the last two years and reflects the adjustment to the reduced quota support level and an unexpected change in the proportions of quota and additionals in 1997 production. Average prices to growers are expected to increase, but will remain below 1995 prices because of the lower quota price support level. The value of farm production is expected to gradually rise and surpass that of 1995 by 2000/01.

The IFR changes of the Agreement's Incoming and Outgoing regulations for 1997 and subsequent crop peanuts being finalized in this rule were recommended by the Committee at its April 29–30, 1997, public meeting.

Alternative Actions Considered

Although the Committee could have recommended no changes or less changes to the current regulations, it unanimously concluded that those were not satisfactory solutions. It believes that all possible simplification and cost-cutting should be done and that these regulations should focus more on outgoing quality and less on the shelling and milling processes necessary to meet the outgoing, human consumption requirements. Newer, high technology milling and blanching equipment enable handlers to recondition failing peanut lots that could not have been economically reconditioned when the regulations were first promulgated. Therefore, it is no longer necessary to impose restrictions that hinder the efficiency of handling operations and result in the loss of potentially good quality peanuts. Thus, the Committee believes this finalization will tend to improve the returns to growers and handlers, while still maintaining consumer safeguard provisions in the current domestic regulations, because all peanuts intended for human consumption must still be inspected and certified acceptable for such use.

After review of the recommendations and comment of the Committee, the Department concurs that this finalization of the changes will tend to improve returns to the industry and be in the public interest. Expected benefits of the changes were covered in the previous discussion of each individual change.

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) information collection requirements that are contained in this rule have been previously approved by the OMB and have been assigned OMB Nos. 0581–0067 (for Agreement signers) and 0581–0163 (for non-signers).

One comment concerning the IFR was received during the 60-day comment period. That comment was discussed earlier in this document, as a part of the discussion of changes in the regulations.

After consideration of all relevant material presented, including the Committee's recommendations and comment, and other information, it is found that finalizing the IFR with changes, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

It is further found that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** (5 U.S.C. 553) because this final rule adopts with appropriate changes the provisions of the interim final rule; based upon a comment received, the provisions of the interim final rule have been modified; this rule relaxes several provisions of the regulations; and the end of the 1997–98 crop year is June 30, 1998.

List of Subjects

7 CFR Part 997

Food grades and standards, Peanuts, Reporting and recordkeeping requirements.

7 CFR Part 998

Marketing agreements, Peanuts, Reporting and recordkeeping requirements.

Accordingly, the interim final rule amending 7 CFR parts 997 and 998 which was published in the **Federal Register** at 63 FR 2846 on January 16, 1998, is adopted as a final rule with the following changes:

PART 997—PROVISIONS REGULATING THE QUALITY OF DOMESTICALLY PRODUCED PEANUTS HANDLED BY PERSONS NOT SUBJECT TO THE PEANUT MARKETING AGREEMENT

1. The authority citation for 7 CFR part 997 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. In § 997.30, in paragraph (a)(1), the ''Maximum Limitations'' table is revised to read as follows:

§ 997.30 Outgoing regulation.

* * * * *

MAXIMUM LIMITATIONS

[Excluding lots of ''splits'']

Type and grade category	Unshelled peanuts and damaged kernels (percent)	Unshelled peanuts, damaged kernels and minor defects (percent)	Fall through			Foreign materials (percent)	Moisture (percent)
			Sound split and broken kernels	Sound whole kernels	Total		
Runner	1.50	2.50	3.00%; 17/64 inch round screen.	3.00%; 16/64 × 3/4 inch slot screen.	4.00% Both screens.	.20	9.00
Virginia (except No. 2).	1.50	2.50	3.00%; 17/64 inch round screen.	3.00%; 15/64 × 1 inch slot screen.	4.00% Both screens.	.20	9.00
Spanish and Valencia.	1.50	2.50	3.00%; 16/64 inch round screen.	3.00%; 15/64 × 3/4 inch slot screen.	4.00% Both screens.	.20	9.00
No. 2 Virginia	1.50	3.00	6.00%; 17/64 inch round screen.	6.00%; 15/64 × 1 inch slot screen.	6.00% Both screens.	.20	9.00
Runner with splits (not more than 15% sound splits).	1.50	2.50	3.00% 17/64 inch round screen.	3.00% 16/64 × 3/4 inch slot screen.	4.00% Both screens.	.10	9.00
Virginia with splits (not more than 15% sound splits).	1.50	2.50	3.00% 17/64 inch round screen.	3.00% 15/64 × 1 inch slot screen.	4.00% Both screens.	.10	9.00
Spanish & Valencia with splits (not more than 15% sound splits).	1.50	2.50	3.00% 16/64 inch round screen.	2.00% 15/64 × 3/4 inch slot screen.	4.00% Both screens.	.10	9.00
Lots of ''splits''							
Runner (not more than 4% sound round whole kernels).	2.00	2.50	3.00%; 17/64 inch round screen.	3.00%; 14/64 × 3/4 inch slot screen.	4.00% Both screens.	.20	9.00
Virginia (not less than 90% splits).	2.00	2.50	3.00%; 17/64 inch round screen.	3.00%; 14/64 × 1 inch slot screen.	4.00% Both screens.	.20	9.00
Spanish & Valencia (not more than 4% sound whole kernels).	2.00	2.50	3.00%; 16/64 inch round screen.	3.00%; 13/64 × 3/4 inch slot screen.	4.00%; Both screens.	.20	9.00

* * * * *

PART 998—MARKETING AGREEMENT REGULATING THE QUALITY OF DOMESTICALLY PRODUCED PEANUTS

1. The authority citation for 7 CFR part 998 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. In § 998.200, in paragraph (a)(1) the ''Maximum Limitation'' table is revised to read as follows:

§ 998.200 Outgoing quality regulation for 1997 and subsequent crop peanuts.

* * * * *

MAXIMUM LIMITATIONS

[Excluding lots of "splits"]

Type and grade category	Unshelled peanuts and damaged kernels (percent)	Unshelled peanuts, damaged kernels and minor defects (percent)	Fall through			Foreign materials (percent)	Moisture (percent)
			Sound split and broken kernels	Sound whole kernels	Total		
Runner	1.50	2.50	300%; 17/64 inch round screen.	3.00%; 16/64 × 3/4 inch slot screen.	4.00%	.20	9.00
Virginia (except No. 2).	1.50	2.50	3.00%; 17/64 inch round screen.	3.00%; 15/64 × 1 inch slot screen.	4.00% Both screens.	.20	9.00
Spanish and Valencia.	1.50	2.50	3.00%; 16/64 inch round screen.	3.00%; 15/64 × 3/4 inch slot screen.	4.00% Both screens.	.20	9.00
No. 2 Virginia	1.50	3.00	6.00%; 17/64 inch round screen.	6.00%; 15/64 × 1 inch slot screen.	6.00% Both screens.	.20	9.00
Runner with splits (not more than 15% sound splits).	1.50	2.50	3.00%; 17/64 inch round screen.	3.00%; 16/64 × 3/4 inch slot screen.	4.00% Both screens.	.10	9.00
Virginia with splits (not more than 15% sound splits).	1.50	2.50	3.00%; 17/64 inch round screen.	3.00%; 15/64 × 1 inch slot screen.	4.00% Both screens.	.10	9.00
Spanish & Valencia with splits (not more than 15% sound splits).	1.50	2.50	3.00%; 16/64 inch round screen.	2.00%; 15/64 × 3/4 inch slot screen.	4.00% Both screens.	.10	9.00
Lots of "splits"							
Runner (not more than 4% sound whole kernels).	2.00	2.50	3.00%; 17/64 inch round screen.	3.00%; 14/64 × 3/4 inch slot screen.	4.00% Both screens.	.20	9.00
Virginia (not less than 90% splits).	2.00	2.50	3.00%; 17/64 inch round screen.	3.00%; 14/64 × 1 inch slot screen.	4.00% Both screens.	.20	9.00
Spanish and Valencia (not more than 4% sound whole kernels).	2.00	2.50	3.00%; 16/64 inch round screen.	3.00%; 13/64 × 3/4 inch slot screen.	4.00% Both screens.	.20	9.00

* * * * *

Dated: June 12, 1998.

Robert C. Keeney,

Deputy Administrator, Fruit and Vegetable Programs.

[FR Doc. 98–16269 Filed 6–17–98; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–NM–71–AD; Amendment 39–10601; AD 98–13–13]

RIN 2120–AA64

Airworthiness Directives; Mitsubishi Heavy Industries Ltd. Model YS–11 and YS–11A Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to all Mitsubishi Model YS–11 and YS–11A series airplanes. This amendment requires revising the Airplane Flight Manual (AFM) to prohibit positioning the power levers below the flight idle stop. This amendment is prompted by incidents and accidents involving airplanes equipped with turboprop engines in which the propeller beta was used improperly during flight. The actions specified by this AD are intended to prevent loss of airplane controllability or engine overspeed with consequent loss of engine power caused by the power levers being positioned below the flight idle stop while the airplane is in flight.

EFFECTIVE DATE: July 23, 1998.

ADDRESSES: Information pertaining to this amendment may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Mark Quam, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055–4056; telephone (425) 227–2145; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to all Mitsubishi Model YS–11 and YS–11A series airplanes was published in the **Federal Register** on April 9, 1998 (63 FR 17346). That action proposed to require revising the Limitations Section of the Airplane Flight Manual (AFM) to prohibit the positioning of the power levers below the flight idle stop while the airplane is in flight, and to add a statement of the consequences of positioning the power

levers below the flight idle stop while the airplane is in flight.

Comments

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

The commenter supports the proposed rule.

Conclusion

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

Interim Action

This is considered interim action until final action is identified, at which time the FAA may consider further rulemaking.

Cost Impact

The FAA estimates that 10 Mitsubishi Model YS–11 and YS–11A series 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 actions, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $600, 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, 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:

98–13–13 Mitsubishi Heavy Industries, Ltd. [Formerly Nihon Aeroplane Manufacturing Company (NMAC)]: Amendment 39–10601. Docket 97–NM–71–AD.

Applicability: All Model YS–11 and YS–11A –200, –300, –500, and –600 series airplanes; certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent loss of airplane controllability or engine overspeed with consequent loss of engine power caused by the power levers being positioned below the flight idle stop while the airplane is in flight, accomplish the following:

(a) Within 30 days after the effective date of this AD, revise the Limitations Section of the FAA-approved Airplane Flight Manual (AFM) to include the following statements. This action may be accomplished by inserting a copy of this AD into the AFM.

''Warning: While the airplane is airborne, the LOW STOP lever (flight fine pitch stop) should not be placed in the GROUND position for any reason. Placing the LOW STOP lever in the GROUND position in flight may lead to loss of airplane control or may result in an engine overspeed condition and consequent loss of engine power.''

(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, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Operations Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM–113.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

(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) This amendment becomes effective on July 23, 1998.

Issued in Renton, Washington, on June 11, 1998.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–16054 Filed 6–17–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–NM–25–AD; Amendment 39–10603; AD 98–13–15]

RIN 2120–AA64

Airworthiness Directives; Dassault Model Mystere-Falcon 200, Fan Jet Falcon, and Mystere-Falcon 20 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to all Dassault Model Mystere-Falcon 200, Fan Jet Falcon, and Mystere-Falcon 20 series airplanes, that requires repetitive inspections to detect cracks at the attaching holes of the wing-to-fuselage fairings and to ensure tightness of the attaching screws; and repair of any discrepancy. This amendment also requires installation of cupwashers under the vertical seams of the upper fairings. 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 the wing-to-fuselage upper fairings during flight, which could result in the fairings impacting the engines or tail sections, and consequent reduced controllability of the airplane.

EFFECTIVE DATE: July 23, 1998.

ADDRESSES: Information pertaining to this amendment may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington.

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

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to all Dassault Model Mystere-Falcon 200, Fan Jet Falcon, and Mystere-Falcon 20 series airplanes was published in the **Federal Register** on April 20, 1998 (63 FR 19427). That action proposed to require repetitive inspections to detect cracks at the attaching holes of the wing-to-fuselage fairings and to ensure tightness of the attaching screws; and repair of any discrepancy. That action also proposed to require installation of cupwashers under the vertical seams of the upper fairings.

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 239 airplanes of U.S. registry will be affected by this AD, that it will take approximately 2 work hours per airplane to accomplish the required actions, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $28,680, or $120 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, 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:

98–13–15 Dassault Aviation: Amendment 39–10603. Docket 98–NM–25–AD.

Applicability: All Model Mystere-Falcon 200, Fan Jet Falcon, and Mystere-Falcon 20 series airplanes; certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent loss of the wing-to-fuselage upper fairings during flight, which could result in the fairings impacting the engines or tail sections, and consequent reduced controllability of the airplane, accomplish the following:

(a) Within 7 months or 330 flight hours after the effective date of this AD, whichever occurs first, accomplish the requirements of paragraphs (a)(1) and (a)(2) of this AD in accordance with Chapter 53–50–0, dated May 1996, of Fan Jet Falcon Dassault Aviation Maintenance Manual Phase 34, dated June 1997 (for Model Fan Jet Falcon and Mystere-Falcon 20 series airplanes); or Chapter 53, Procedure 731–3 of Mystere-Falcon 200 Dassault Aviation Maintenance Manual, Revision 12, dated April 30, 1996 (for Model Mystere-Falcon 200 series airplanes); as applicable.

(1) Perform an inspection to detect cracks at the attaching holes of the wing-to-fuselage fairings and to ensure tightness of the screws. If any discrepancy is found, prior to further flight, repair. If a repair is not specified in the applicable maintenance manual, prior to further flight, repair in accordance with a method approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate. Thereafter, repeat the inspection at intervals not to exceed 6 months or 300 flight hours, whichever occurs first.

(2) Install cupwashers under the vertical seams of the upper fairings.

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

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

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

Note 3: The subject of this AD is addressed in French airworthiness directives 96–092–021(B), dated April 24, 1996; and 96–246–022(B), dated November 6, 1996.

(d) This amendment becomes effective on July 23, 1998.

Issued in Renton, Washington, on June 11, 1998.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–16052 Filed 6–17–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–NM–156–AD; Amendment 39–10600; AD 98–13–12]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 737, 747, 757, 767, and 777 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to certain Boeing Model 737, 747, 757, 767, and 777 series airplanes. This action requires a one-time inspection to detect discrepancies of the fasteners that connect the pushrods to the rudder pedal assemblies; and corrective actions, if necessary. This amendment is prompted by reports of loose and missing fasteners due to incorrect installation. The actions specified in this AD are intended to prevent loss of rudder control, jamming of the rudder system, uncommanded movement of the rudder system, and consequent reduced controllability of the airplane, due to loose or missing fasteners that connect the pushrods to the rudder pedal assemblies.

DATES: Effective July 6, 1998.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the **Federal Register** as of July 6, 1998.

Comments for inclusion in the Rules Docket must be received on or before August 17, 1998.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 98–NM–156–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

The service information referenced in this AD may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined 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.

FOR FURTHER INFORMATION CONTACT: R.C. Jones, Aerospace Engineer, Systems and Equipment Branch, ANM–130S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–1118; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION: The FAA has received a report from an operator indicating that, on a Boeing Model 737–400 series airplane, during rollout after landing, the captain's right rudder pedal moved to the full travel position when it was pushed. The pedal failed to return to its normal position after it was released even though the rudder remained at the neutral position. Consequently, the first officer used his rudder pedals to control the rudder and the nose wheel steering. Investigation revealed that the forward end of the pushrod on the right rudder pedal was not connected to the rudder pedal assembly. The nut and washer of the pushrod were found in the lower forward compartment. This airplane had accumulated 17,600 total flight hours and 7,900 total flight cycles. A second operator reported that a pilot felt a loose rudder pedal. Investigation revealed that the fastener connecting the pushrod to the rudder pedal assembly was loose.

In addition, on a Boeing Model 737–500 series airplane, a nut that connects the pushrod to the rudder pedal assembly was loose. This airplane had accumulated 3,012 total flight hours and 2,658 total flight cycles. Maintenance inspections of 130 in-service Boeing Model 737 series airplanes revealed four other loose fasteners.

The cause of the loose and missing nuts and bolts has been attributed to incorrect installation of the fasteners that connect the pushrods to the rudder pedal assemblies during manufacture. If the nut is not installed correctly, the bolt can fall out or may be able to move far enough to touch the opposite rudder pedal assembly. These conditions, if not corrected, could result in potential loss of rudder control, jamming of the rudder system, uncommanded movement of the rudder system, and consequent reduced controllability of the airplane.

The rudder pedal assemblies on certain Boeing Model 747, 757, 767, and 777 series airplanes are similar in design to those on the affected Model 737 series airplanes. Therefore, the rudder pedal assemblies on all of these models may have been installed incorrectly. Consequently, all of these models may be subject to the same unsafe condition.

Explanation of Relevant Service Information

The FAA has reviewed and approved Boeing Alert Service Bulletins 737–27A1212, 747–27A2368, 757–27A0128, 767–27A0156, and 777–27A0029, all dated March 26, 1998. These alert service bulletins describe procedures for a one-time inspection to detect discrepancies of the fasteners (nuts, bolts, and washers) that connect the forward ends of the pushrods to the rudder pedal assemblies; and corrective actions, if necessary. Corrective actions include tightening nuts and bolts to specified torque limits, installing missing fasteners, and replacing incorrectly installed fasteners with new fasteners.

Explanation of the Requirements of the Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design, this AD is being issued to prevent loss of rudder control, jamming of the rudder system, uncommanded movement of the rudder system, and consequent reduced controllability of the airplane, due to loose or missing fasteners that connect the pushrods to the rudder pedal assemblies. This AD requires accomplishment of the actions specified in the alert service bulletins described previously. This AD also requires that operators report results of findings of discrepancies to the FAA and to Boeing.

Interim Action

This is considered to be interim action until final action is identified, at which time the FAA may consider further rulemaking.

Determination of Rule's Effective Date

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

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire.

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 98–NM–156–AD.'' The postcard will be date stamped and returned to the commenter.

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

98–13–12 Boeing: Amendment 39–10600. Docket 98–NM–156–AD.

Applicability: Model 737, 747, 757, 767, and 777 series airplanes; as listed in Boeing Alert Service Bulletins 737–27A1212, 747–27A2368, 757–27A0128, 767–27A0156, and 777–27A0029; all dated March 26, 1998; 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 rudder control, jamming of the rudder system, uncommanded movement of the rudder system, and consequent reduced controllability of the airplane, due to loose or missing fasteners that connect the pushrods to the rudder pedal assemblies, accomplish the following:

(a) Within 90 days after the effective date of this AD, perform a one-time inspection to detect discrepancies of the fasteners that connect the forward ends of the pushrods to the rudder pedal assemblies; in accordance with Boeing Alert Service Bulletin 737–27A1212, 747–27A2368, 757–27A0128, 767–27A0156, or 777–27A0029, all dated March 26, 1998, as applicable.

(1) If no discrepancy is detected, no further action is required by this AD.

(2) If any discrepancy is detected, prior to further flight, perform the applicable corrective action in accordance with the applicable alert service bulletin.

(b) Submit a report of inspection findings (discrepant findings only) to the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; fax (425) 227–1181; and to the Boeing Commercial Airplane Group, Attention: Manager, Airline Support, P.O. Box 3707, Seattle, Washington 98124–2207; at the applicable time specified in paragraph (b)(1) or (b)(2) of this AD. The report must include a description of any discrepancy found, the airplane serial number, and the total number of landings and flight hours accumulated on the airplane. Discrepant findings include, but are not limited to, loose or missing fasteners, inadequately torqued fasteners, and fasteners incorrectly installed on the pedal assemblies or pushrod bearing surfaces. Information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) and have been assigned OMB Control Number 2120–0056.

(1) For airplanes on which the inspection is accomplished after the effective date of this AD: Submit the report within 10 days after performing the inspection required by paragraph (a) of this AD.

(2) For airplanes on which the inspection has been accomplished prior to the effective date of this AD: Submit the report within 10 days after the effective date 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, Seattle ACO. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

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

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

(e) The actions shall be done in accordance with:

- Boeing Alert Service Bulletin 737–27A1212, dated March 26, 1998;
- Boeing Alert Service Bulletin 747–27A2368, dated March 26, 1998;
- Boeing Alert Service Bulletin 757–27A0128, dated March 26, 1998;
- Boeing Alert Service Bulletin 767–27A0156, dated March 26, 1998; or
- Boeing Alert Service Bulletin 777–27A0029, dated March 26, 1998.

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–

2207. 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.

(f) This amendment becomes effective on July 6, 1998.

Issued in Renton, Washington, on June 11, 1998.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–16047 Filed 6–17–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Parts 204, 318, 352a, and 383

Administrative Corrections

AGENCY: Department of Defense.

ACTION: Final rule.

SUMMARY: This document corrects administrative errors in Department of Defense's published in title 32 of the Code of Federal Regulations.

EFFECTIVE DATE: June 18, 1998.

FOR FURTHER INFORMATION CONTACT: L.M. Bynum or P. Toppings, 703–697–4111.

SUPPLEMENTARY INFORMATION:

List of Subjects

32 CFR Part 204

Accounting, Armed forces, Government property.

32 CFR Part 318

Privacy.

32 CFR Part 352a and 383

Organization and functions.

Under the authority of 10 U.S.C. 301, title 32 chapter I, amended as follows:

PART 204—[AMENDED]

1. The authority citation for 32 CFR part 204 continues to read as follows:

Authority: 31 U.S.C. 483a.

§§ 204.4, 204.6 and 204.8 [Amended]

2. Footnotes 2–4 in § 204.4(c)(1)(vii) though (ix) and footnotes 5 through 8 in § 204.6(a)(1), (a)(4) and (b)(1)(v) and footnote 9 in § 204.8

PART 318—[AMENDED]

1. The authority citation for 32 CFR part 318 continues to read as follows:

Authority: Pub. L. 93–579, 88 Stat. 1896 (5 U.S.C. 552a).

§ 218.9 [Amended]

2. Section 318.9 is amended by redesignating paragraph ''(d)'' as paragraph ''(c)''

PART 352A—[AMENDED]

1. The authority citation for 32 CFR part 352a continues to read as follows:

Authority: 10 U.S.C. 113.

§ 352a.4 [Amended]

2. Section 352a.4 is amended by redesignating the second paragraph ''(c)'' as paragraph ''(d)''

PART 383a—[AMENDED]

1. The authority citation for 32 CFR part 383a continues to read as follows:

Authority: 10 U.S.C. 136.

§ 238a.4 [Amended]

2. Section 383a.4 is amended by redesignating the second paragraph ''(b)'' as paragraph ''(c)''.

Dated: June 12, 1998.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 98–16174 Filed 6–17–98; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD 08–98–029]

Drawbridge Operating Regulation; Ouachita River, Louisiana

AGENCY: Coast Guard, DOT.

ACTION: Notice of temporary deviation from regulations

SUMMARY: The Commander, Eighth Coast Guard District has issued a temporary deviation from the regulation governing the operation of the Union Pacific Railroad vertical lift bridge across the Ouachita River, mile 114.3, near Riverton, Caldwell Parish, Louisiana. This deviation allows the Union Pacific Railroad to close the bridge to navigation from 7 a.m. until 5 p.m. on Monday, June 22, 1998, and Wednesday, June 24, 1998. This temporary deviation is issued to allow for the replacement of rail expansion joints on the vertical lift span.

DATES: This deviation is effective from 7 a.m. until 5 p.m. on Monday, June 22, 1998, and Wednesday, June 24, 1998.

FOR FURTHER INFORMATION CONTACT: Mr. David Frank, Bridge Administration Branch, Commander (ob), Eighth Coast Guard District, 501 Magazine Street, New Orleans, Louisiana, 70130–3396, telephone number 504–589–2965.

SUPPLEMENTARY INFORMATION: The Union Pacific Railroad vertical lift span bridge across the Ouachita River near Riverton, Caldwell Parish, Louisiana has a vertical clearance of 7 feet above mean high water, elevation 71 feet Mean Sea Level, in the closed-to-navigation position and 57 feet in the open to navigation position. Navigation on the waterway consists primarily of tugs with tows and occasional recreational craft. Presently, the draw opens on signal for the passage of vessels.

The Union Pacific Railroad requested a temporary deviation from the normal operation of the bridge in order to do maintenance work on the bridge. The work consists of replacing the rail expansion joints on the bridge. This work is essential for the continued safe operation of the vertical lift span.

This District Commander has, therefore, issued a deviation from the regulations in 33 CFR 117.5 authorizing the Union Pacific Railroad vertical lift span bridge across the Ouachita River, Louisiana to remain in the closed-to-navigation position from 7 a.m. until 5 p.m. on Monday, June 22, 1998, and Wednesday, June 24, 1998.

Dated: June 10, 1998.

A.L. Gerfin, Jr.,

Captain, U.S. Coast Guard, Commander, 8th Coast Guard Dist. Acting.

[FR Doc. 98–16237 Filed 6–17–98; 8:45 am]

BILLING CODE 4910–15–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR 165

[COTP Savannah 98–034]

RIN Savannah 98–034]

Safety Zone; Skull Creek, Hilton Head Island, SC

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone on Skull Creek near Hudson's Seafood on Hilton Head Island, South Carolina for a fireworks display on July 4, 1998. The zone is needed to protect personnel and property associated with the storage, preparation, and lauchning of fireworks. Entry into this zone is prohibited unless authorized by the Captain of the Port.

DATES: These regulations are effective from 9 p.m. Eastern Daylight Time (EDT) to 10 p.m. on July 4, 1998.

FOR FURTHER INFORMATION CONTACT: LTJG Burt Lahn, Marine Safety Office Savannah at Tel: (912) 652–4353, between the hours of 7:30 a.m. and 4 p.m., Monday through Friday, except holidays.

SUPPLEMENTARY INFORMATION:

Background and Purpose

The events requiring this regulation will be from 9 p.m. EDT to 10 p.m. on July 4, 1998. The town of Hilton Head Island has scheduled a fireworks display for the July 4th Celebration lasting approximately 1 hour.

The safety zone is for all waters around the fireworks barge on Skull Creek near Hudson's Seafood on Hilton Head Island, South Carolina and will encompass a 150 yard radius around the fireworks barge at an approximate position of 32°13′09″ N, 80°45′10″ W.

The Captain of the Port has restricted vessel operations in this safety zone. No persons or vessels will be allowed to enter or operate within this zone, except as may be authorized by the Captain of the Port, Savannah, Georgia. This regulation is issued pursuant to 33 U.S.C. 1231, as set out in the authority citation of all of part 165.

In accordance with 5 U.S.C. 553, a notice of proposed rule making was not published for this regulation and good cause exists for making it effective in less than 30 day after **Federal Register** publication. Publishing an NPRM and delaying its effective date would be contrary to the public interest since immediate action is needed to protect personnel and property involved, as information regarding the event was only recently received.

Regulatory Evaluation

This temporary rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has been exempted from review by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. This regulatory policies and procedures of DOT is unnecessary. This regulation will only be in effect for a short period of time, and the impacts on routine navigation are expected to be minimal.

Small Entities

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

The Coast Guard certifies under section (b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) that this rule will not have significant economic impact upon a substantial number of small entities because the regulations will be in effect in a limited area for approximately 1 hour.

Collection of Information

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

Federalism

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612 and it has been determined that this temporary rule does not have sufficient Federalism implications to warrant the preparation of a Federalism Assessment.

Environmental Assessment

The Coast Guard has considered the environmental impact of this action and has determined pursuant to Figure 2–1, paragraph 34(g), of Commandant Instruction M16475.1C that this action is categorically excluded from further environmental documentation. A Categorical Exclusion Determination and Environmental Analysis Checklist are available in the docket for inspection or copying.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Safety measures, Waterways.

Temporary Regulations

In consideration of the foregoing, the Coast Guard amends Subpart C of Part 165 of Title 33, Code of Federal Regulations, as follows:

PART 165—[AMENDED]

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; 49 CFR 1.46.

2. A new section § 165.T07–034 is added to read as follows:

§ 165.T07–034 Safety Zone; Skull Creek, Hilton Head Island, SC.

(a) *Location:* The following area is a safety zone: All waters within a 150 yard radius around the fireworks barge at an approximate position of 32°13′09″ N, 080°45′10″ W. All coordinates referenced use Datum: NAD 83.

(b) *Regulations.* In accordance with the general regulations in § 165.23 of this part, entry into the zone is subject to the following requirements:

(1) This safety zone is closed to all marine traffic, except as may be permitted by the Captain of the Port or a representative of the Captain of the Port.

(2) The ''representative of the Captain of the Port'' is any Coast Guard commissioned, warrant or petty officer who has been designated by the Captain of the Port, Savannah, GA, to act on his behalf. The representative of the Captain of the Port will be abroad either a Coast Guard or Coast Guard Auxiliary vessel.

(3) Vessel operators desiring to enter or operate within the safety zone shall contact the Captain of the Port or his representative to obtain permission to do so. Vessel operators given permission to enter or operate in the safety zone shall comply with all directions given them by the Captain of the Port or his representative.

(4) The Captain of the Port may be contacted by telephone via the Command Duty Officer at (912) 652–4353. Vessels assisting in the enforcement of the safety zone may be contacted on VHF–FM channels 16 or 81. Vessel operators may determine the restrictions in effect for the safety zone by coming alongside a vessel patrolling the perimeter of the safety zone.

(5) Coast Guard Group Charleston will issue a Marine Safety Information Broadcast Notice to Mariners to notify the maritime community to the safety zone and restriction imposed.

(c) *Effective dates.* This section is effective from 9 p.m. to 10 p.m. EDT on July 4, 1998.

Dated: June 1, 1998.

R.E. Seebald,

U.S. Coast Guard, Captain of the Port, Savannah, Georgia.

[FR Doc. 98–16238 Filed 6–17–98; 8:45 am]

BILLING CODE 4910–15–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 9

[FRL–6111–4]

OMB Approval Numbers Under the Paperwork Reduction Act

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA), this technical amendment amends the table that lists the Office of Management and Budget (OMB) control numbers issued under the PRA for some of the information collections associated with National Pollutant Discharge Elimination System (NPDES) permits under the Clean Water Act (CWA).

EFFECTIVE DATE: This final rule is effective July 20, 1998.

FOR FURTHER INFORMATION CONTACT: Angela Lee, Environmental Protection Agency, Office of Water, Permits Division (4203), 401 M. Street, SW, Washington, D.C. 20460, Phone: 202–260–6814.

SUPPLEMENTARY INFORMATION: EPA is today amending the table of currently approved information collection request (ICR) control numbers issued by OMB for various regulations. Today's amendment updates the table to add an OMB control number to reflect the fact that EPA shifted the burden associated with specific regulatory provisions from one ICR to another. The affected regulations are codified at 40 Code of Federal Regulations (CFR) § 122.44(g) and (i). EPA will continue to present OMB control numbers in a consolidated table format to be codified in 40 CFR Part 9 of the Agency's regulations, and in each CFR volume containing EPA regulations. The table lists the section numbers with reporting and recordkeeping requirements, and the current OMB control numbers. This listing of the OMB control numbers and their subsequent codification in the CFR satisfy the requirements of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) and OMB's implementing regulations at 5 CFR part 1320.

The recordkeeping and monitoring requirements associated with the storm water program were approved in 1992 in a revision to the Discharge Monitoring Report ICR (OMB No. 2040–0004). The burden for the specific storm water requirements found in 40 CFR sections 122.44(i) and (ii) was subsequently removed from OMB No. 2040–0004 and incorporated into the NPDES Compliance Assessment/Certification ICR (OMB No. 2040–0110) in 1996. The Discharge Monitoring Report ICR and the NPDES Compliance Assessment/Certification ICR were previously subject to public notice and comment prior to OMB approval. As a result, EPA finds that there is ''good cause'' under section 553(b)(B) of the Administrative Procedure Act (5 U.S.C. 553(b)(B)) to amend this table without prior notice and comment. Due to the technical nature of the table, further notice and comment would be unnecessary.

Submission to Congress and the General Accounting Office

The Congressional Review Act, 5 U.S.C. section 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. However, section 808 provides that any rule for which the issuing agency for good cause finds (and incorporates the finding and a brief statement of reasons therefore in the rule) that notice and public procedure thereon are impracticable, unnecessary or contrary to the public interest, shall take effect at such time as the agency promulgating the rule determines. 5 U.S.C. 808(2). As stated previously, EPA has made such a good cause finding, including the reasons therefore, and established an effective date of July 20, 1998. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 9

Environmental protection, Reporting and recordkeeping requirements.

Dated: June 10, 1998.

Robert Perciasepe,

Assistant Administrator, Office of Water.

For the reasons set out in the preamble, 40 CFR part 9 is amended as follows:

PART 9—OMB APPROVALS UNDER THE PAPERWORK REDUCTION ACT

1. The authority citation for Part 9 continues to read as follows:

Authority: 7 U.S.C. 135 *et seq.*, 136–136y; 15 U.S.C. 2001, 2003, 2005, 2006, 2601–2671; 21 U.S.C. 331j, 346a, 348; 31 U.S.C. 9701; 33 U.S.C. 1251 *et seq.*, 1311, 1313d, 1314, 1318, 1321, 1326, 1330, 1342, 1344, 1345 (d) and (e), 1361; E.O. 11735, 38 FR 21243, 3 CFR, 1971–1975 Comp. p. 973; 42 U.S.C. 241, 242b, 243, 246, 300f, 300g, 300g–1, 300g–2, 300g–3, 300g–4, 300g–5, 300g–6, 300j–1, 300j–2, 300j–3, 300j–4, 300j–9, 1857 *et seq.*, 6901–6992k, 7401–7671q, 7542, 9601–9657, 11023, 11048.

2. In § 9.1 the table is amended by revising entry ''122.44(g),(i)'' to read as follows:

§ 9.1 OMB approvals under the Paperwork Reduction Act.

* * * * *

40 CFR citation	OMB control No.
* * * * *	
EPA Administered Permit Programs: The National Pollutant Discharge Elimination System	
* * * * *	
122.44(g), (i)	2040–0004, 2040–0170, 2040–0110
* * * * *	

[FR Doc. 98–16085 Filed 6–17–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[PA107–4066a; FRL–6111–8]

Approval and Promulgation of State Air Quality Plans for Designated Facilities and Pollutants Allegheny County, PA; Removal of Final Rule Pertaining to the Control of Landfill Gas Emissions from Existing Municipal Solid Waste Landfills

AGENCY: Environmental Protection Agency (EPA).

ACTION: Removal of direct final rule.

SUMMARY: On April 10, 1998, EPA published (63 FR 17683) approval of the municipal solid waste (MSW) landfill 111(d) plan submitted by the Commonwealth of Pennsylvania on behalf of Allegheny County for the purpose of controlling landfill gas emissions from existing MSW landfills. Approval of the 111(d) plan would have established certain emission limitations for landfill gas emissions, including operating, reporting and recordkeeping requirements. The intended effect of the action was to implement enforceable emission reductions in MSW landfill gas, which contain volatile organic

compounds (VOCs), other organic compounds, methane, and hazardous air pollutants.

EPA approved this direct final rulemaking without prior proposal because the Agency viewed it as a noncontroversial amendment and anticipated no adverse comments. The final rule was published in the **Federal Register** with a provision for a 30 day comment period (63 FR 17683). At the same time, EPA announced that this final rule would convert to a proposed rule in the event that adverse comments were submitted to EPA within 30 days of publication of the rule in the **Federal Register** (63 FR 17683, April 10, 1998). The final rulemaking action would be withdrawn by publishing a document announcing withdrawal of this action.

Adverse comments were submitted to EPA within the prescribed comment period. Therefore, EPA is amending 40 CFR part 62, subpart NN, by removing the April 10, 1998 final rulemaking action. All public comments received will be addressed in a subsequent rulemaking action based on the proposed rule.

EFFECTIVE DATE: June 18, 1998.

FOR FURTHER INFORMATION CONTACT: James B. Topsale at (215) 566–2190 or by e-mail at topsale.james@epamail.gov.

List of Subjects in 40 CFR Part 62

Environmental protection, Administrative practice and procedure, Air pollution control, Intergovernmental relations, Non-methane organic compounds, Methane, Municipal solid waste landfills, Reporting and recordkeeping requirements.

Dated: June 9, 1998.

W. Michael McCabe,

Regional Administrator, Region III.

40 CFR Part 62 is amended as follows:

PART 62—[AMENDED]

Subpart NN—Pennsylvania

1. The authority citation for Part 62 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

§§ 62.9630—62.9632 [Removed]

2. The undesignated centerheading and §§ 62.9630 through 62.9632 are removed.

[FR Doc. 98–16254 Filed 6–17–98; 8:45 am]

BILLING CODE 6560–50–P

LEGAL SERVICES CORPORATION

45 CFR Part 1644

Disclosure of Case Information

AGENCY: Legal Services Corporation.

ACTION: Final rule.

SUMMARY: This final rule implements a provision in the Legal Services Corporation's (LSC or Corporation) FY 1998 appropriations act which requires basic field recipients to disclose certain information to the public and to the Corporation regarding cases their attorneys file in court. The case information that is provided to the Corporation will be subject to disclosure under the Freedom of Information Act.

DATES: This rule is effective July 20, 1998.

FOR FURTHER INFORMATION CONTACT: Suzanne Glasow, Office of the General Counsel, 202–336–8817.

SUPPLEMENTARY INFORMATION: This final rule is intended to implement Section 505 of the Corporation's FY 1998 appropriations act, which requires basic field recipients to disclose certain information to the public and to the Corporation regarding cases filed in court by attorneys employed by recipients. See Public Law 105–119, 111 Stat. 2440. The Corporation issued a program letter on December 9, 1997, providing recipients with guidance on compliance with Section 505 until such time as a rule could be promulgated by the Corporation. On February 6, 1998, the Corporation's Operations and Regulations Committee (Committee) of the Corporation's Board of Directors (Board) met to consider a draft proposed rule to implement the case disclosure requirement. After deliberation, the Committee adopted a proposed rule that was published in the **Federal Register** for public comment. See 63 FR 8387 (Feb. 19, 1998).

The Corporation received 4 comments on the proposed rule. The comments agreed that, for the most part, the proposed rule accurately reflected legislative intent. For those provisions of the rule that the commenters believed went beyond the intent of Section 505, suggestions were made for changes. Several comments also asked for clarification on certain issues either in the commentary or the text of the final rule. The Committee met on April 5, 1998, to consider public comment. After making revisions to the proposed rule, the Committee recommended the rule as revised to the Board as a final rule. The Board adopted the rule as recommended by the Committee on April 6, 1998, for publication as a final rule in the **Federal Register**.

A section-by-section analysis and discussion of changes made from the proposed rule is provided below.

Section-by-Section Analysis

Section 1644.1 Purpose

The purpose section states that the rule is intended to ensure that recipients disclose certain required information to the public and to the Corporation on cases filed in court by their attorneys.

Section 1644.2 Definitions

The case disclosure provision requires that recipients disclose certain information, among which is the cause of action, for each case filed in court by their attorneys. To clarify this requirement, this final rule includes three definitions. Paragraph (a) of § 1644.2 defines to disclose the cause of action. The term means to provide a sufficient description of a particular case to indicate the principal nature of the case. Examples would include: breach of warranty, bankruptcy, divorce, domestic violence, petition to quiet title, action to recover property, and employment discrimination action.

Paragraph (b) clarifies the type of recipient subject to the case disclosure requirement. Recipient is defined as an entity that receives funds under Sec. 1006(a)(1)(A) of the LSC Act, 42 U.S.C. 2996e(a)(1)(A), that is, a basic field recipient which provides direct legal assistance to the poor. Although Section 505 does not specifically apply to subrecipients, as a matter of policy, the proposed rule extended the case disclosure requirement to subrecipients which provide direct legal representation to eligible clients.

The comments generally disagreed with this policy and urged the Corporation to exclude subrecipients from the reach of the requirement or, at least, limit the application of the requirement to activities under an LSC subgrant. In addition, comments pointed out that the interplay of the discussion of this issue in the preamble and the language in the rule itself created confusion as to whether the rule was intended to apply to all cases filed by subrecipients or only to cases filed by subrecipients that are funded under a subgrant.

The Board revised the definition of recipient and the applicability provisions in § 1644.3 [1] in order to clarify the intended application of the case disclosure requirement to subrecipients. It was the intent of the

[1] The section numbers for §§ 1644.3 and 1644.4 have been reversed from the proposed rule.

proposed rule to apply the requirement to cases funded under subgrants provided for the direct legal assistance to the poor, except for PAI subgrants. The language in the text and preamble, however, did not make this clear. The revised language better states the intent and also clarifies that the disclosure requirement does not apply to a subrecipient's non-LSC funded activities. This means that subrecipients are required to disclose information only for cases funded by their LSC subgrants. The final rule thus ensures that information will be available to the public regarding all cases filed by recipients and any cases filed by subrecipients that are funded under an LSC subgrant for the direct representation of eligible clients, except for PAI subgrants.

Paragraph (c) defines the term attorney, for the purposes of this part, to mean any attorney who is employed by a recipient. This would include attorneys employed as regular or contract employees, regardless of whether such attorneys are employed full-time or part-time. One comment asked for additional language in the definition that would clarify that attorney does not include any private attorney who, under the recipient's PAI program, receives compensation from a recipient under the terms of a contract or judicare arrangement, or who undertakes representation of eligible clients on a pro bono basis. Although the Board agreed with the substance of the comment, it did not revise the definition of attorney. Instead, it added § 1644.3(b) to the rule, which provides that the case disclosure requirement does not apply to private attorneys who provide legal assistance as part of a recipient's PAI activities.

Section 1644.3 Applicability

This section, which has been renumbered, clarifies the scope of the case disclosure requirement. Technical and clarifying revisions were made to this section by the Board, and language was added to clarify the applicability of this rule to subrecipients, as discussed under § 1644.2 above. Subparagraph (a)(1) clarifies that the disclosure requirement is limited to cases filed on behalf of plaintiffs and petitioners. This is consistent with the language of Section 505, which requires case information about ''each case filed by its [a recipient's] attorneys.'' This language clearly applies to ''each case'' filed, not to individual filings in a particular case. Thus, the case disclosure requirement does not require updates on the status of cases for which information has already been filed. In addition, the language of Section 505 refers to cases filed by a recipient attorney. The general understanding of the meaning of filing a case is that it refers to the initiation of a case, such as the filing of a complaint by a plaintiff. Accordingly, disclosure is not required for submissions of pleadings such as an answer or a cross claim on behalf of a defendant in a case that was not initiated by a recipient.

Although the case disclosure requirement normally applies only to the original filing of a case, subparagraph (a)(2) applies the requirement when there is an appeal filed in court by a recipient, the recipient's client is the appellant, and the recipient was not the attorney of record in the case below. The Board revised this provision from the proposed rule to add the requirement that the case be one where the recipient's client is the appellant. This is consistent with § 1644.3(a)(1), which limits the case disclosure requirement to cases filed on behalf of plaintiffs or petitioners.

Subparagraph (a)(3) applies the requirement to a request for judicial review of an administrative action filed in a court of competent jurisdiction. The language of this provision was revised to state more accurately the situation covered by the provision.

Finally, paragraph (b) provides that this rule does not apply to cases filed by private attorneys as part of a recipient's private attorney involvement activities pursuant to part 1614. PAI attorneys are not attorneys employed by recipients; rather, they are generally private attorneys with their own private practices who have been recruited by recipients to provide some legal assistance to eligible clients, either pro bono or on a compensated basis.

Section 1644.4 Case Disclosure Requirement

This section sets out the basic requirements of the case disclosure provision. Paragraph (a) provides that the disclosure requirement applies to each case filed in court by a recipient's attorneys. The preamble to the proposed rule explained that the disclosure requirement does not apply to cases filed by part-time attorneys outside of their employment with the recipient. One comment asked that this clarification be made explicit in the rule. The Board agreed and added language to § 1644.4(a) of the final rule that provides that the rule applies only to cases filed by recipient attorneys ''on behalf of a client of the recipient.'' A similar revision was also made for § 1644.3(a)(1).

Name and address of parties: Subparagraphs 1644.4(a)(1) through (a)(4) list the information a recipient must disclose about applicable cases. First, the name and full address of each party to a case must be disclosed unless one of the two statutory protections discussed below applies. The term ''full address'' means an address sufficient to contact a party to the case by mail, such as a street address or post office box number with the city, State and zip code. This provision is not intended to require recipients to provide a name and address of a party when they have no knowledge of and cannot reasonably obtain such information. This could occur, for example, when the information is not a matter of public record, the party is not a client of the recipient, and the private attorney for that party refuses to provide the information. However, the recipient must make a reasonable effort to obtain the information.

Pursuant to Section 505, a name or address need not be disclosed if (1) the name or address is protected by an order or rule of court or by State or Federal law, or (2) the recipient's attorney reasonably believes that revealing the information would put the client of the recipient at risk of physical harm. These protections are consistent with the express legislative intent of the purpose and scope of the requirement. The legislative history indicates that Congress intends that the disclosure requirement apply to ''the most basic information'' about a case which is already public and on file in court records, but does not apply to information, for example, that would risk harm to a person or that is protected by the attorney-client privilege. See 143 Cong. Rec. H 8004–8008 (Sept. 26, 1997).

One comment from an LSC recipient stated that the program receives a grant through the Victims of Crime Act (VOCA), which only funds legal assistance to protect victims of violence. In the view of the recipient, virtually all cases handled under the VOCA grant are likely to come within the physical harm exemption. Accordingly, the recipient asked that the rule include a blanket exemption for cases filed under grants specifically targeted for domestic violence victims.

The Board did not adopt the recommendation. The remedy provided by statute allows individual attorneys to decide for particular cases whether the physical harm exemption applies. Although many of the clients served under the VOCA grant may indeed fall within the physical harm exemption, the Board was not convinced that

virtually all such clients do. Nor was the Board convinced that the burden of making individual judgments for each case is a substantial burden on recipients.

During public consideration of the rule, a question was raised about the rule's policy for protecting relatives of the client, whose physical safety would be put at risk by disclosure of the client's name and address. For example, if the children of the client rather than the client had been threatened with physical harm, could the rule's exemption from disclosing the name and address be applied to protect the children? The Board noted that the statute does not expressly provide protections for any person other than the client of the recipient, but also noted that it is clear from the legislative history of the requirement that Congress did not intend for the requirement to put anyone in harm's way. The Board did not revise the rule, but directed staff to provide guidance for situations where a family member of a client would be put at risk of physical harm. Accordingly, when a recipient's attorney determines that a relative of the client would be put at risk of physical harm by disclosure of the client's name and address, the recipient may withhold the information, but the attorney should keep a record of that determination. This policy is based on the reasonable presumption that if one family member is put at risk by revealing the client's name and address, then it is likely that the client and any other family member who could be found by revealing the information are also at risk. This is especially true in cases where the relative at risk is a child of the client. For other situations where it may not be clear whether the risk-of-harm exception applies, a recipient should consult the Corporation for guidance.

Cause of action: The case disclosure requirement also requires disclosure of the cause of action for any applicable case. This requirement is intended to provide the public and the Corporation with information regarding the nature or types of cases filed in court by legal services attorneys, so that there is a public awareness of how legal services funds are being expended.

Name and address of court/case number: Finally, the case disclosure provision requires disclosure of the name and full address of the court where a case is filed and the case number assigned to the case. *Full address* means an address sufficient to contact the court by U.S. mail.

Paragraph (b) of this section requires recipients to provide their case information to the Corporation in semiannual reports as specified by the Corporation. The Corporation will provide guidance to recipients on how and when to provide the information. This paragraph also clarifies that reports submitted to the Corporation are subject to public disclosure by the Corporation under the Freedom of Information Act (FOIA).

The disclosure requirement in this rule is separate from the FOIA and nothing in this rule is intended to suggest that LSC recipients are subject to the FOIA. They are not. (However, they are subject to other disclosure requirements applicable to recipients in 45 CFR part 1619.) The Corporation, on the other hand, is subject to the FOIA, and this rule requires the Corporation to treat the case information submitted to it by recipients as subject to disclosure under the FOIA.

Paragraph (c) provides that a recipient must make the case information described in paragraph (a) available in written form to any person who requests such information. This rule does not mandate how recipients must maintain the case information for disclosure to the public, except that it must be provided in written form. However maintained, the case information must be made available within a reasonable time after a request is made by any member of the public. Paragraph (c) also permits recipients to charge reasonable mailing and document copying fees.

Comments expressed confusion regarding exactly what information recipients are required to disclose and inquired whether requests would be limited to certain time frames or whether recipients must respond to requests for information in a form different from that maintained by a recipient. For example, a recipient may choose to maintain a list of every case filed after January 1, 1998, in the order in which the cases were filed. If a request asks only for cases dealing with domestic violence, the recipient is not required to prepare another list separating out domestic violence cases. The recipient is only required to provide the list it has compiled, and the requester would have to search the list to find the domestic violence cases. This does not mean that a recipient may not choose to provide the information in different formats; it is just not required to do so by this rule.

In regard to time frames, recipients must disclose the required case information when requested by a member of the public for all cases filed by their attorneys after January 1, 1998, whenever the request is made. This rule does not include any cut-off dates or other specifics on the manner of reporting or disclosing information in the rule. If the Corporation determines that information loses its value after a period of time, so that it does not need to be maintained by recipients, it will provide clear written guidance on the matter.

Another comment asked that disclosure be required only for cases filed after the effective date of this rule if the client refuses to permit disclosure, since the client may have had no prior information about the rule and could not have consented to disclosure as a condition of representation.

The Board did not agree. The Corporation issued a program letter to all recipients on December 9, 1997, clearly stating that the law would be in effect as of January 1, 1998, and that recipients must start implementation of the case disclosure requirements set out in the letter. The letter advised recipients to inform affected clients, prior to filing a lawsuit, of the possible disclosure of the information required by this law.

Section 1644.4(c) provides that a recipient must make its case information available in written form, upon request from any person. One comment asked for clarification as to whether the word *person* includes government agencies, departments or subdivisions, non-profit corporations, public corporations, foreign corporations, or a person outside a program's service area. The term is intended to be all inclusive and is not limited by geography, or by the fact that the requesting person is asking on behalf of an organization or government entity. The legislative history clearly indicates an intent to make the information public to any requester. This is consistent with the interpretation of the terms *person* and *public* in the FOIA. The Board requested that this interpretation be included in this preamble.

Section 1644.5 Recipient Policies and Procedures

This section requires the recipient to establish written policies and procedures to guide the recipient's staff to ensure compliance with this rule. Such procedures could include information regarding how any person may be given access to or be provided with copies of a recipient's case disclosure information. The procedures could also set out the costs for copying or mailing such information.

List of Subjects in 45 CFR part 1644

Grant programs, Legal services, Reporting and recordkeeping.

For reasons set forth in the preamble, LSC amends Chapter XVI of Title 45 by adding part 1644 as follows:

PART 1644—DISCLOSURE OF CASE INFORMATION

Sec.
1644.1 Purpose.
1644.2 Definitions.
1644.3 Applicability.
1644.4 Case disclosure requirement.
1644.5 Recipient policies and procedures.

Authority: Pub. L. 105–119, 111 Stat. 2440, Sec. 505; Pub. L. 104–134, 110 Stat. 1321; 42 U.S.C. 2996g(a).

§ 1644.1 Purpose.

The purpose of this rule is to ensure that recipients disclose to the public and to the Corporation certain information on cases filed in court by their attorneys.

§ 1644.2 Definitions.

For the purposes of this part:

(a) *To disclose the cause of action* means to provide a sufficient description of the case to indicate the type or principal nature of the case.

(b) *Recipient* means any entity receiving funds from the Corporation pursuant to a grant or contract under section 1006(a)(1)(A) of the Act.

(c) *Attorney* means any full-time or part-time attorney employed by the recipient as a regular or contract employee.

§ 1644.3 Applicability.

(a) The case disclosure requirements of this part apply:

(1) To actions filed on behalf of plaintiffs or petitioners who are clients of a recipient;

(2) Only to the original filing of a case, except for appeals filed in appellate courts by a recipient if the recipient was not the attorney of record in the case below and the recipient's client is the appellant;

(3) To a request filed on behalf of a client of the recipient in a court of competent jurisdiction for judicial review of an administrative action; and

(4) To cases filed pursuant to subgrants under 45 CFR part 1627 for the direct representation of eligible clients, except for subgrants for private attorney involvement activities under part 1614 of this chapter.

(b) This part does not apply to any cases filed by private attorneys as part of a recipient's private attorney involvement activities pursuant to part 1614 of this chapter.

§ 1644.4 Case disclosure requirement.

(a) For each case filed in court by its attorneys on behalf of a client of the recipient after January 1, 1998, a recipient shall disclose, in accordance with the requirements of this part, the following information:

(1) The name and full address of each party to a case, unless:

(i) the information is protected by an order or rule of court or by State or Federal law; or

(ii) the recipient's attorney reasonably believes that revealing such information would put the client of the recipient at risk of physical harm;

(2) The cause of action;

(3) The name and full address of the court where the case is filed; and

(4) The case number assigned to the case by the court.

(b) Recipients shall provide the information required in paragraph (a) of this section to the Corporation in semiannual reports in the manner specified by the Corporation. Recipients may file such reports on behalf of their subrecipients for cases that are filed under subgrants. Reports filed with the Corporation will be made available by the Corporation to the public upon request pursuant to the Freedom of Information Act, 5 U.S.C. 552.

(c) Upon request, a recipient shall make the information required in paragraph (a) of this section available in written form to any person. Recipients may charge a reasonable fee for mailing and copying documents.

§ 1644.5 Recipient policies and procedures.

Each recipient shall adopt written policies and procedures to implement the requirements of this part.

June 15, 1998.

Victor M. Fortuno,

General Counsel.

[FR Doc. 98–16243 Filed 6–17–98; 8:45 am]

BILLING CODE 7050–01–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

49 CFR Parts 387, 390, 391, 392, 395, 396, and 397

[FHWA Docket No. FHWA–97–2328; MC–97–3]

RIN 2125–AD72

Review of the Federal Motor Carrier Safety Regulations; Regulatory Removals and Substantive Amendments

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Final rule.

SUMMARY: The FHWA is adopting a final rule to remove, amend, and redesignate certain provisions of the Federal Motor Carrier Safety Regulations concerning financial responsibility; general applicability and definitions; accident recordkeeping requirements; qualifications of drivers; driving of commercial motor vehicles; hours of service of drivers; inspection, repair, and maintenance; and the transportation of hazardous materials. The agency considers many of these regulations to be obsolete, redundant, unnecessary, ineffective, or burdensome. Others are more appropriately regulated by State and local authorities, better addressed by company policy, in need of clarification, or more appropriately contained in another section. This action is consistent with the FHWA's Zero Base Regulatory Review and the President's Regulatory Reinvention Initiative.

EFFECTIVE DATE: July 20, 1998.

FOR FURTHER INFORMATION CONTACT: Ms. Deborah M. Freund, Office of Motor Carrier Research and Standards, (202) 366–4009, or Mr. Charles E. Medalen, Office of the Chief Counsel, (202) 366–1354, Federal Highway Administration, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590–0001. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Background

As part of its Zero Base Regulatory Review Program, the FHWA published a notice of proposed rulemaking in the **Federal Register** on January 27, 1997 (62 FR 3855) to request comment on an extensive list of changes proposed concerning Parts 387, 390, 391, 392, 395, 396, and 397 of the Federal Motor Carrier Safety Regulations (FMCSRs). The agency had implemented an earlier set of changes to the FMCSRs on November 23, 1994 (59 FR 60319) after receiving comments to a notice of proposed rulemaking published on January 10, 1994 (59 FR 1366). The agency had also published a final rule on July 28, 1995 (60 FR 38739) making technical corrections to keep the FMCSRs accurate and up to date.

Discussion of Comments

The FHWA extended the comment period for the NPRM on March 27, 1997 (62 FR 14662). Comments to the docket were accepted through May 12, 1997.

Comments were received from 55 organizations, companies, and individuals as follows:

Ten States (State of California Business, Transportation, and Housing Agency; Colorado Department of Public

Safety; State of Connecticut; Delaware Department of Public Safety; State of Idaho Transportation Department; State of Missouri Department of Revenue and Department of Economic Development; North Dakota Department of Transportation; Commonwealth of Pennsylvania; Vermont Department of Motor Vehicles; Wisconsin Department of Transportation); and one city (City of Littleton, Colorado);

Five power utilities operating commercial motor vehicles (Alabama Power, Duquesne Light Company, Houston Lighting and Power, Southern Company Services, Inc., Virginia Power);

Six manufacturers and distributors of explosives (Austin Powder Company, Viking Explosives and Supply, Inc., Dyno Nobel, Inc., the Ensign-Bickford Company, Maynes Explosives Company, Sierra Chemical Company);

Two professional associations of the explosives industry (Institute of Makers of Explosives, International Society of Explosives Engineers);

Four consumer and safety advocacy groups (Advocates for Highway and Auto Safety, Transportation Consumer Protection Council, Inc., New York Operation Lifesaver, Operation Lifesaver, Inc.);

Four freight railroads and commuter rail lines (CSX Transportation, Louisiana Railroads, Metra (Northeast Illinois Regional Commuter Railroad Corporation), Vermont Railroad/ Clarendon and Pittsford);

Nine transportation industry associations (American Bus Association (ABA), American Trucking Associations (ATA), Association of American Railroads (AAR), Association of Waste Hazardous Materials Transporters (AWHMT), Distribution and LTL Carriers Association, National Automobile Dealers Association (NADA), National School Transportation Association (NSTA), National Tank Truck Carriers, Inc. (NTTC), Petroleum Marketers Association of America (PMAA));

Four drivers' organizations, labor unions, and other professional organizations (Brotherhood of Locomotive Engineers, International Association of Fire Fighters, Owner-Operator Independent Drivers Association, United Transportation Union);

Three motor carriers (Air Products and Chemicals, Ameritech, Radian International);

Two firms providing services to motor carriers (Consolidated Safety Services, Inc., DAC Services);

Three government agencies and associations of government organizations (American Association of Motor Vehicle Administrators, National Road Transport Commission of Australia, National Transportation Safety Board); and

Two individuals (Hoy Richards, Richards and Associates; O. Bruce Bugg).

Section 387.5, Definitions [Transportation of Property]

Under the statutory authority provided by 49 U.S.C 31139, the Secretary of Transportation is required to set forth regulations to require minimum levels of financial responsibility for the transportation of property for compensation by motor vehicles in interstate commerce. The FHWA proposed to amend the definitions in § 387.5 to make clear that for-hire transportation—transportation for compensation—included transportation by contract, common, and exempt motor carriers of property.

The Transportation Consumer Protection Council (TCPC) noted that, although the ICC Termination Act of 1995 (Pub. L. 104–88, 109 Stat. 803) eliminated the distinction between ''common'' and ''contract'' motor carriers, the terms still appear in proposed text of revised FMCSR sections. The TCPC also pointed out what it believed were errors in some citations.

The Owner-Operator Independent Drivers Association (OOIDA) supported the revision of the definition of ''motor carrier'' and suggested the elimination of the distinction between ''motor common carrier'' and ''motor contract carrier.''

The National Automobile Dealers Association (NADA) suggested that the preamble of the final rule include several examples of transportation involving a variety of facts and circumstances.

The Association of Waste Hazardous Materials Transporters (AWHMT) favored the proposed revision to eliminate what it viewed as obsolete definitions. Although the AWHMT agreed that transporters of hazardous materials should be subject to the financial responsibility provisions of part 387, it referenced a 1982 Interstate Commerce Commission (ICC) ruling that hazardous waste destined for disposal was not considered ''property.'' The AWHMT recommended that the ''property'' definition in part 387 include ''a motor vehicle with a gross vehicle weight rating of 10,000 pounds or more in interstate or foreign commerce.''

The OOIDA recommended eliminating the distinction between ''exempt'' and ''non-exempt'' commodities. The OOIDA holds that the economic regulations forming the basis for the definitions no longer exist at the Federal level. The OOIDA asserts that some States will not alter their regulations, and will continue to require duplicate registrations and separate insurance coverages until the definitions are changed through Federal regulation.

FHWA Response

The FHWA plans to address the definitional issue of for-hire motor carriers of property in detail in the context of future rulemakings addressing the commercial regulation of motor carriers. Responsibility for these regulations was transferred from the ICC to the DOT under the provisions of the ICC Termination Act of 1995.

The definition of ''motor carrier'' is revised to make it consistent with the definition as it appears in § 390.5. The terse definition proposed in the NPRM did not include the agents, officers and representatives of the motor carrier, nor its employees responsible for driver or vehicle safety.

As for the AWHMT's concern, the FHWA used the term ''property'' to differentiate between two types of transportation—non-passengers and passengers. The merits of using other terms, such as ''goods'' or ''commodities'' as a substitute for the ''property'' could be debated. However, the term ''property'' is of longstanding use and is clearly understood to imply non-passenger transportation. In this context, the term also includes transportation of refuse and hazardous materials waste.

Section 387.27(b)(4), Exceptions to Applicability [School Bus Transportation]

The American Bus Association (ABA) suggested using the term ''for-hire carrier under contract'' rather than ''contract motor carrier'' to be consistent with other definitions in part 387, § 387.27(b)(4). The ABA also recommended that the ''extracurricular'' trips envisioned in the proposal have some preponderant educational purpose to qualify for the exemption from the minimum financial responsibility requirements. The ABA expressed concern that school districts could contract to transport students to amusement parks or other non-educational destinations, without any insurance coverage for the passengers or the public.

FHWA Response

This revision adopted today is consistent with an interpretation issued on April 4, 1997 (62 FR 16370, at 16403) as part of the Regulatory Guidance for the Federal Motor Carrier Safety Regulations. It is also consistent with Congressional intent. In certain instances, motor carriers providing school bus transportation are not subject to the Bus Regulatory Reform Act of 1982 and the minimum financial responsibility requirements (part 387) issued under this Act (49 U.S.C. 31138(e)(1)). Transportation of school children and teachers that is organized, sponsored, and paid for by the school district is not subject to part 387 (49 CFR 387.27(b)(1)). Therefore, school bus contractors are not subject to the Federal financial responsibility requirements for interstate trips such as sporting events and class trips, but they must comply with all other requirements of the FMCSRs. They would, however, be subject to State financial responsibility requirements.

In today's final rule, the term ''contract motor carrier'' replaces ''motor carrier under contract.'' In all other respects, the final rule uses the language proposed in the NPRM.

Section 387.29, Definition, ''For-Hire Carriage'' [Passenger Transportation]

The FHWA proposed to amend this definition to codify regulatory guidance issued on November 17, 1993 (58 FR 60734) and slightly revised on April 4, 1997 (62 FR 16370, at 16406–16407). This guidance made clear the intent of the definition to cover transportation: (1) generally available to the public and (2) performed for a commercial purpose by a motor carrier who receives compensation for the transportation service.

The ABA believed there may be some confusion about the concept ''generally available to the public.'' It pointed out that many bus service contracts might not in fact be available to the general public. An example of this would be a contract with a corporation to transport employees between the corporation's facilities. The ABA noted that the FHWA still issues permits for motor contract carriers of passengers. The ABA recommended that the term be defined to include motor contract carriage operations.

FHWA Response

The FHWA is adopting a more direct definition than that proposed in the NPRM: ''For-hire motor carrier of passengers means a person engaged in the business of transporting, for compensation, passengers and their property, including any compensated transportation of the goods or property of another.'' This definition more clearly expresses the FHWA's intent to cover all types of for-hire passenger transportation, irrespective of the business relationship between the transportation provider and the customer. Because many motor carriers of passengers also transport the passengers' property (for example, their luggage), and, possibly, small packages not accompanying the passengers, the term ''goods or property of another'' is included in the definition.

Section 390.3(f)(2), Accident Register Requirement for Federal, State, and Local Government Agencies

The FHWA proposed removing the requirement that government agencies described in this section maintain an accident register for transportation activities involving interstate charter transportation of passengers.

The ABA opposed the proposal. It noted that, although governmental entities are not subject to FHWA compliance reviews, they are essentially unregulated from a safety standpoint (except for the commercial drivers license (CDL) and related controlled substance and alcohol testing regulations). The ABA argued that the FHWA will have no other means to obtain accident information about this segment of the charter service population. The ABA asserted that the minimal burden imposed on the public transit agencies is outweighed by the need to obtain this information to make informed decisions on regulatory policies. It added, ''[A]s the Federal Transit Administration continues to purchase intercity buses for suburban commuter operations, which buses might also be used for charter operations, this lack of accident information could be magnified.''

FHWA Response

The FHWA believes government agencies have a strong self-interest in maintaining safe operations. The fact that they are not subject to compliance reviews probably does not influence their recordkeeping practices concerning accidents. Furthermore, any accidents their vehicles are involved in are a matter of public record, and this information could be gathered readily if the need arises. Accordingly, paragraph 390.3(f)(2) is revised as proposed in the NPRM.

Section 390.5, Definitions

Accident

The FHWA attempted to clarify the meaning of the term ''public road'' in the definition of ''accident.'' The term ''public road'' was defined to include privately owned roads accessible to the general public. The intent of the proposed change was to emphasize that the defining factor is the road's accessibility to the public, rather than its owner's identity.

Commenters addressing this issue were: the Austin Powder Company (letters from its Director of Safety and Compliance and another employee who is Chairman of the American National Standards Institute A10.7 Standard Committee), Institute of Makers of Explosives (IME), International Society of Explosives Engineers, Viking Explosives & Supply, Inc., Dyno Nobel, Inc., Maynes Explosives Company, Sierra Chemical Company (letters from three officials and a staff engineer), and the Ensign-Bickford Company.

The commenters were concerned that the proposed revision to the definition of ''accident,'' and, in particular, the ''public road'' portion of the definition, could require many existing explosive storage facilities (magazines) to be closed, relocated, or have their storage capacities reduced. Several commenters noted that many of these magazines are currently accessed by private roads, or are located near private roads.

The associations, manufacturers, and users of explosives provided consistent commentary and background for their positions. The IME first developed a safety standard to provide protection from explosives storage sites in 1910. This was done at the request of the Bureau of Explosives (now part of the Department of the Treasury, Bureau of Alcohol, Tobacco, and Firearms (ATF)). The standard has been revised and updated over the years and is currently published as IME Safety Library Publication No. 2, ''The American Table of Distances.'' This table is incorporated into the regulations of the Occupational Safety and Health Administration (OSHA) (29 CFR 1910.109), the ATF (27 CFR 55.11 and 55.218), State regulations, ANSI standards, National Fire Protection Association standards, Uniform Fire Code, U.S. Army Corps of Engineers, Building Officials and Code Administrators, Southern Building Code, and other national safety standards and codes. Most of the commenters on this issue stated they use ANSI Standard A10.7, ''Commercial Explosives and Blasting Agents—Safety Requirements for Transportation Storage, Handling, and Use'' to provide

minimum recommendations for locating explosive storage sites in reference to inhabited buildings, public highways, and passenger railways.

The definition of ''highway'' applicable to the American Table of Distances (29 CFR 1910.109(c)(1)(v), Table H–21) is ''any public street, public alley, or public road.'' Commenters stated that the table has never been used to refer to ''private'' roads on construction sites, distribution sites, and the like. If the definition were to be changed to include ''private'' roads which may be accessible to the public, the commenters believed many existing explosive storage facilities (magazines), currently accessed by private roads, or located near private roads, may be forced to close or to significantly reduce their capacity due to quantity/distance restrictions. Several commenters expressed particular concern with a sentence in the preamble to the NPRM which stated: ''Therefore, accessibility to the public, not the identity of the owner, is the major factor which determines whether a road or way is public.'' The IME noted:

> Explosive storage facilities on mining properties, quarrying operations, and construction projects are accessed by mine and construction roads or are located in proximity to such roads. These roads have never been considered ''public roads'' for purposes of determining quantity/distance separations even though the public may have access to such roads (it would be a physical impossibility to fence off the hundreds of square miles on such sites in order to restrict public accessibility). Although such roads are generally posted and/or barricaded, experience has shown that even fences and roving patrols cannot keep the ''public'' in four wheel drive vehicles, all terrain vehicles (ATVs), snowmobiles, etc. from traveling the roads, especially during hunting and fishing seasons.
>
> For over eighty years, the term ''public road'' has always been regarded by the explosives, blasting, mining, quarrying, and construction industries to mean a road that was constructed, financed, maintained, and controlled by some political subdivision.

Two commenters asked for clarification concerning the applicability of the proposed definition to accidents on private property. The National Automobile Dealers Association (NADA) asked the FHWA to clarify whether the definition would extend to accidents occurring on truck dealership properties. The State of Idaho Transportation Department wished clarification concerning parking lots, garages, and private roads around stadiums, shopping malls, and similar facilities.

FHWA Response

The FHWA has never intended to expand the definition of ''public road'' to encompass any roadway only remotely accessible to the public at large. The agency's intent was to codify an interpretation published in the April 4, 1997, Regulatory Guidance for the Federal Motor Carrier Safety Regulations (62 FR 16370, at 16408). That interpretation reads as follows:

Section 390.5 Definitions

* * * * *

Question 26: What is considered a ''public road''?

Guidance: A public road is any road under the jurisdiction of a public agency and open to public travel or any road on private property that is open to public travel.

Many roads performing the identical access functions of ''public roads'' are, in fact, constructed, operated, and, sometimes, maintained by non-governmental entities. These entities include shopping center owners, commercial real estate developers, and homeowners associations. These roads are nearly always designed, constructed, marked, signed, and signaled in conformance with national, State, and local guidelines, regulations, and ordinances. In these times of scarce governmental resources, commercial and private enterprises are more often being required to provide the immediate access to their proposed land developments as a *quid pro quo* for obtaining a zoning approval and construction permit for a facility generating personal and vehicular travel on the surrounding roadway network. In addition, conformity with design and construction practices is usually a requirement for a local governmental entity to take over the maintenance of the completed facility.

Another term, ''Open to public travel,'' found at 23 CFR 460, clearly expresses the FHWA's intent. The definition reads as follows:

Open to public travel means that the road section is available, except during scheduled periods, extreme weather or emergency conditions, passable by four-wheel standard passenger cars, and open to the general public for use without restrictive gates, prohibitive signs, or regulation other than restrictions based on size, weight, or class of registration. Toll plazas of public toll roads are not considered restrictive gates.

The FHWA believes the definition specifically addresses the IME's concern because it excludes road sections barricaded or posted.

Another issue is the nature of the storage of commercial explosives. Footnote 5 to the American Table of Distances reads as follows:

This table applies only to the manufacture and permanent storage of commercial explosives. It is not applicable to the transportation of explosives, or any handling or temporary storage necessary or incident thereto. It is not intended to apply to bombs, projectiles, or other heavily encased explosives.

The FHWA believes the IME's and other commenters' concerns about the potential necessity of relocating explosives magazines may extend beyond the application of the American Table of Distances. Many magazines, such as those used in the earthmoving stages of road construction projects, are temporary storage facilities.

The FHWA is substituting the term ''road open to public travel'' for the term ''public road'' in the definition of ''accident.'' It is discussed in detail under the heading, ''Highway,'' later in this document.

The NADA and the State of Idaho Transportation Department asked about accidents taking place on a truck dealership's property, parking lots, parking garages, and roads providing access to shopping malls, stadiums, and similar facilities. If the property is ''open to public travel,'' a motor carrier would be required to record those accidents under § 390.15. In general, the FHWA considers the following *ungated* facilities to be open to public travel: Customer parking lots, garages and access roads to malls, stadiums, etc. On the other hand, *gated* parking lots, garages, etc., are not open to public travel. The customer parking areas of a truck dealership are open to the public, whereas areas of the dealership used to park or store new and used vehicles prior to sale generally are not.

Commercial Motor Vehicle

The FHWA proposed to revise the definition of commercial motor vehicle to provide consistent definitions of designed passenger capacity and transportation of hazardous materials in §§ 383.5 and 390.5. The FHWA received no comments on this element of the proposal.

The definition is, therefore, revised as proposed in the NPRM, with two minor changes. The first change deletes the modifying term ''public'' (as in ''public highway'') because the term ''highway'' is now defined and added to the definitions. The second change deletes the Code of Federal Regulations citation for the Hazardous Materials Regulations because the FHWA believes the motor

carriers subject to these regulations are well aware of the reference, and a cross-reference here is superfluous.

Several commenters addressed the issue of the weight threshold for commercial motor vehicles subject to the FMCSRs. Those comments appear under ''Comments to FMCSR sections not addressed in the NPRM,'' later in this document.

Highway

Because of the concern generated by the FHWA's proposal to revise the use of the term ''public road'' in the definition of ''accident,'' the FHWA is adding the term ''highway'' to the definitions of § 390.5. This definition builds upon the definition in Section 1–127 of the ''Uniform Vehicle Code and Model Traffic Ordinance'' (UVCMTO), 1992 Edition, published by the National Committee on Uniform Traffic Laws and Ordinances in Evanston, Illinois, which reads as follows:

§ 1–127—Highway.—The entire width between the boundary lines of every way publicly maintained when any part thereof is *open to the use of the public* for purposes of vehicular travel (emphasis added).

The FHWA has modified this definition and added it to those proposed in the NPRM: *Highway* means any road, street, or way, whether on public or private property, open to public travel. ''Open to public travel,'' as defined at 23 CFR 460.2, will be incorporated in this definition.

The key difference between the Uniform Vehicle Code definition and the definition the FHWA is adopting is the public-use nature of the facility, rather than its ownership or maintenance.

Intermittent, Casual, or Occasional Driver

Section 391.63 contains a limited exemption from certain driver qualification requirements for an ''intermittent, casual, or occasional driver.'' This term is defined in § 390.5 as a driver, who in any period of 7 consecutive days, is employed by more than a single motor carrier. Section 390.5 also defines a ''regularly employed driver'' as a driver employed or used solely by a single motor carrier in any period of 7 consecutive days. The FHWA proposed to replace the term ''intermittent, casual, or occasional driver'' with the term ''multiple-employer driver'' to clarify both definitions.

Radian International LLC (Radian) is concerned that the proposed term ''multi-employer driver'' would drastically alter the meaning of the current definition and eliminate the relief from certain recordkeeping requirements it provides. Radian, an environmental engineering firm, occasionally requires its employees to drive a company-owned commercial motor vehicle (CMV) with a gross vehicle weight rating (GVWR) of more than 10,000 pounds (4,545 kilograms) to test sites. It cited a letter of interpretation issued by the Office of Motor Carrier Standards on October 2, 1992, advising that its drivers were intermittent, casual, or occasional in this situation and that §§ 391.63 and 395.8(j)(2) of the FMCSRs would be applicable to Radian's situation.

FHWA Response

The FHWA has reassessed the 1992 letter of interpretation and now believes it was erroneous. A driver who is employed by a single motor carrier meets the definition of a regularly employed driver in § 390.5 even though he or she might drive a CMV only intermittently or occasionally. Radian provided no information at the time the interpretation was requested to support classification of its employees as anything other than ''regularly employed drivers,'' unless they drive CMVs for other motor carriers during any period of 7 consecutive days. The fact that these employees may only occasionally drive CMVs as part of their assigned duties does not change this fact. No other commenter challenged the revision to the definition, and it is being adopted as proposed. The 1992 letter of interpretation is therefore overruled. The administrative adjustments Radian must make are not arduous. Potentially, they can provide Radian with additional assurance of the safe driving records of its employees.

The FHWA will delete the second sentence of the definition proposed in the NPRM, referencing the qualifications of these drivers. Under Subpart G, Limited Exemptions, §§ 391.63 and 391.65 provide clear guidance to the exemptions for multiple-employer drivers and drivers furnished by other motor carriers.

The term ''single-employer driver'' replaces the term ''regularly-employed driver'' as proposed in the NPRM.

Interstate Commerce

The FHWA proposed to revise the definition of interstate commerce to clarify that transportation within a single State is considered interstate commerce if this transportation continues a through movement originating outside the State, or has a destination outside the State.

The Advocates for Highway and Auto Safety (AHAS) stated its strong support of the proposal to clarify the definition. The NTTC advised the FHWA to coordinate with the Research and Special Programs Administration on jurisdictional questions of interstate/intrastate hazardous materials transportation, and particularly recommended that the FHWA review the comprehensive HM–223 and HM–200 rulemakings concerning operation of non-specification cargo tank motor vehicles.

The Distribution and LTL Carriers Association (LTL) recommended that paragraph (3) of the definition be revised to read: ''Between two places in a State as part of trade, traffic, or transportation which has originated from outside the State or is destined by the shipper to go outside the State.''

In a related comment, the AHAS requested the FHWA to address ''commercial vehicle axle and gross weight limits for trucks operating wholly intrastate but engaging in transport that is interstate in character, hours of service requirements that diverge from the federal standards of 23 CFR Pt. 395 [sic], and States that establish overall length limits for trucks as viewed within the limitations and grandfathering provisions of 49 U.S.C. § 31111(b). We do not regard the interpretation of these and a number of other topics as obvious when certain intrastate commercial movements are denominated interstate.'' The AHAS did not explain how it defined ''transport that is interstate in character.''

FHWA Response

Although the LTL's suggested revision does not cover international movements, it is otherwise more concrete than the proposed definition. The agency therefore adopts a revised version of the LTL's suggested wording.

With respect to the NTTC's recommendation, the FHWA continues to work very closely with the RSPA on technical, jurisdictional, and programmatic issues related to all hazardous materials rulemaking actions.

The concerns of the AHAS about weights and dimensions of CMVs operating in interstate commerce are beyond the scope of this rulemaking, but we will forward them to the offices responsible for implementing the CMV size and weight regulations.

Principal Place of Business

The FHWA proposed to amend this definition to mean a single location where records required by parts 382, 387, 390, 391, 395, 396, and 397 of the FMCSRs will be made available for inspection within 48 hours after a request has been made by a special

agent or authorized representative of the FHWA. Because the definition is revised to accompany a new § 390.29, comments are summarized under the heading for that section.

Regularly Employed Driver

Section 390.5 defines a ''regularly employed driver'' as a driver employed or used solely by a single motor carrier in any period of 7 consecutive days. The FHWA proposed to replace this term with ''single employer driver'' to make it more consistent with the intended meaning.

The FHWA received no comments on this item and it will be revised as proposed in the NPRM.

Section 390.29, Location of Records or Documents

The FHWA proposed to allow motor carriers with multiple terminals or offices to maintain all records required by Subchapter B at regional offices or driver work-reporting locations, provided records can be produced at the principal place of business or other specified location within 48 hours after a request has been made by a special agent or authorized representative of the FHWA.

In regulatory guidance issued on November 17, 1993 [58 FR 60734], the FHWA allowed inspection, repair, and maintenance records required under part 396 to be maintained at a location of the motor carrier's choice, but required the motor carrier to make them available within two business days upon the FHWA's request. The revised definition of the principal place of business, and the new § 390.29, extend these recordkeeping allowances and provisions to all records required under parts 382, 387, 390, 391, 395, 396, and 397. The change proposed will provide motor carriers with increased flexibility in complying with recordkeeping requirements of the FMCSRs.

Houston Lighting and Power Company (Houston L&P), Distribution and LTL Carriers Association, ABA, and the National Automobile Dealers Association (NADA) supported the proposed revision.

National Tank Truck Carriers, Inc., a trade association of motor carriers specializing in cargo tank transportation, requested that the FHWA codify regulations concerning the retention of ''electronic'' records.

FHWA Response

The definition of ''Principal place of business'' in § 390.5 is revised as proposed in the NPRM with one minor addition. The NPRM language at 62 FR 3866 inadvertently omitted the reference to part 397 in the proposed rule, although it was mentioned in the preamble. It is included in today's rule.

The new § 390.29 is added as proposed in the NPRM, but with the phrase ''principal place of business'' added to clarify that a motor carrier may maintain records or documents at a headquarters location.

The FHWA will address the specific issue of electronic recordkeeping and information transmission in separate future rulemakings on the subject of supporting documents and other types of records.

Section 391.11, Qualifications of Drivers

The heading for § 391.11 is changed from ''Qualifications of drivers'' to ''General qualifications of drivers.'' Although this was not presented for comment in the NPRM, the FHWA believes there is good cause for this minor revision to the title of this section. The title more appropriately reflects the coverage of the section—basic qualifications, of a general nature, for CMV drivers.

Sections 391.11(b)(4) and (b)(5), Determining Proper Securement of Cargo

The FHWA proposed to delete these provisions from the driver qualifications section of the FMCSRs. The FHWA reasoned they were redundant because §§ 383.111(d) and 392.9(a) address the topic of a driver's knowledge and experience relating to proper securement of cargo.

Although no commenters addressed the proposal to delete these provisions, the FHWA has determined there is good cause to retain them because they pertain to the general qualifications of CMV drivers. An essential element of safe operations is a driver's ability to determine whether cargo is properly secured and to secure cargo himself/herself, and for motor carriers to assure themselves that their drivers have the necessary knowledge and skills to carry out these tasks. The paragraphs clearly complement the provisions of §§ 392.9 and 383.111(d).

The ability of a driver to determine the proper location, distribution, and securement is clearly a skill that is learned through instruction and experience. A driver might arrive at a new job without specific experience in handling a particular type of cargo, but be well qualified in other respects. The FHWA believes that skills and practice in safe cargo handling are more appropriately categorized as responsibilities, rather than ''qualifications.'' For that reason, these requirements will be placed under a new heading, Responsibilities of drivers, § 391.13.

Section 391.11(b)(7), Jurisdiction Issuing a Commercial Motor Vehicle Operator's License

The State of Idaho Transportation Department (Idaho) requested the FHWA to consider specifying that the currently-valid operator's license be issued by the driver's State or jurisdiction of domicile, rather than ''from one State or jurisdiction.'' Idaho reasoned this would be consistent with the definition of ''State of domicile'' used for the CDL in § 383.5 and the driver application procedures for transfer of a CDL in § 383.71(b).

FHWA Response

The FHWA acknowledges Idaho's comment concerning the desirability of consistent requirements for CMV drivers required to hold a CDL and CMV drivers required to hold an operator's license. The FHWA raised the issue of a driver's domicile in its 1990 NPRM concerning learner's permits for drivers seeking to obtain a CDL (55 FR 34478, August 22, 1990). The FHWA raised the issue of the domicile requirement in existing CDL regulations and their impact on drivers wishing to acquire commercial driver training in preparation for obtaining a CDL. The FHWA received a number of comments, filed under FHWA Docket Number MC–90–10 (now Department of Transportation Docket FHWA–97–2181). The issue of how best to deal with the definition of jurisdiction of licensure is still ongoing. The FHWA will address this issue in future rulemaking actions.

Because §§ 391.11(b)(4) and (b)(5) are redesignated as §§ 391.13(a) and (b), this paragraph is redesignated as (b)(5) and reads: ''Has a currently valid commercial motor vehicle operator's license issued only by one State or jurisdiction.''

Section 391.11(b)(10), Road Test

The FHWA proposed to delete all requirements related to the road test contained in subpart D, §§ 391.31 and 391.33. Therefore, this section, cross-referencing the road test provisions, was proposed to be deleted as well. The FHWA reasoned the road test requirement was redundant for driver applicants required to possess a CDL or who successfully completed a road test as part of the process of obtaining another type of license or as required by an employer. Additional discussion may be found under the heading for Section 391.31 later in this document.

The FHWA has determined that it is in the best interests of safety to retain

§ 391.31 and to revise § 391.33. The background of the proposed change, the summary of docket comments, and the FHWA's response are detailed under the headings for §§ 391.31 and 391.33. This section is retained and redesignated as § 391.11(b)(8).

Section 391.11(b)(11), Application for Employment

The FHWA proposed to remove the section requiring a commercial motor vehicle driver to furnish the employing motor carrier with an application for employment in accordance with § 391.21. The agency reasoned that the completion and furnishing of an employment application are not driver qualification standards as such. However, they are necessary and important actions to evaluate the competence of applicants for CMV driver positions, and they are addressed in § 391.21.

The ATA opposed the removal of this provision. It stated, ''Completion of an application for employment is fundamental to the process of selecting safe CMV drivers since the beginning of structured safety programming and was published as a trucking industry safety standard in 1939, 12 years before it was incorporated into the FMCSRs.'' The ATA believed the deletion of the paragraph would prevent motor carriers from gathering information to determine applicants' qualifications in accordance with § 391.21.

FHWA response

A driver's application for employment is not a ''qualification'' *per se*. The revised heading of § 391.11 as ''General qualifications'' clarifies the intent to include performance-oriented qualifications. An application for employment is simply a presentation of a document. The FHWA is not revising or removing § 391.21, Application for employment. As stated in the preamble to the NPRM, the action of removing § 391.11(b)(11) is not intended to affect the responsibility of CMV drivers to complete and furnish the motor carrier considering hiring them with employment applications containing certain information required by § 391.21.

Accordingly, § 391.11(b)(11) is removed as proposed in the NPRM.

Section 391.13, Responsibilities of Drivers

The FHWA proposed to delete §§ 391.11(b)(4) and (b)(5) concerning a CMV driver's knowledge and experience with methods and procedures for location, distribution, and securement of cargo. The FHWA has determined it is in the best interests of safety to retain those sections, as discussed above. A new § 391.13 will be added to the FMCSRs, and the provisions will be redesignated to appear under that heading.

Section 391.15(b), Disqualification for Loss of Driving Privileges

The FHWA proposed to redesignate § 392.42 as § 391.15(b)(2) and to title the paragraph ''Loss of driving privileges.'' The provision requires a driver who receives a notice that his/her license, permit, or privilege to operate a CMV has been revoked, suspended, or withdrawn to notify the employing motor carrier before the end of the business day following the day the driver received the notice. The FHWA believed the notification requirement would be more appropriately included in § 391.15 because it specifically addresses the disqualification of drivers, rather than general requirements for safe driving.

The FHWA also requested State driver licensing agencies to comment on whether they send written notification to the employing motor carrier of a driver who has had his/her license, permit, or privilege to operate a CMV revoked, suspended, or withdrawn. The FHWA sought information to determine if § 391.15(b) should be revised to exempt a driver from the requirement to notify his/her employing motor carrier if a State licensing agency sends written notification to the motor carrier in the event the driver's license was revoked, suspended, or withdrawn. The FHWA received many comments on this speculative proposal. Because they were requested under the heading of § 392.42 in the NPRM, they are summarized under that heading in this preamble.

The State of Idaho recommended an additional revision to this section. Idaho recommended adding a CMV driver's refusal to undergo controlled substance testing as a disqualifying offense, noting that ''Based on current regulations, a CDL driver cannot be disqualified for refusing to undergo a controlled substance test.''

FHWA Response

The agency is revising § 391.15(b) as proposed in the NPRM. The section contains general provisions to require a driver notified that a temporary or permanent limitation has been placed on his/her CMV driving privilege to inform the employing motor carrier of this event.

Because of continuing discussions regarding how to treat loss-of-privilege from a jurisdiction other than the one that issued a license to a driver, the FHWA has determined it is appropriate to retain the current title ''Disqualification for loss of driving privileges.'' Any proposals concerning loss-of-privilege actions imposed by the non-licensing jurisdiction will be addressed in a future rulemaking action.

The FHWA has determined it is not appropriate at this time to change the FMCSRs to require State licensing agencies to notify motor carrier employers of licensing actions taken against drivers. Placing the primary burden on the State licensing agencies to notify employers of drivers' disqualifications would create a significant unfunded mandate. The requirement would also be a difficult, if not impossible, undertaking for most States due to the high turnover rate of commercial motor vehicle drivers.

As for Idaho's comments, the intent of the current § 392.42 is to require the driver to inform the motor carrier of notifications received from State or local licensing or law enforcement agencies. In the case of a controlled substance test administered by a police officer, a driver's refusal to test would be covered by the appropriate State or local laws, and the driver would be required to inform the motor carrier of any adverse license actions related to the event.

On the other hand, Idaho's belief that ''a CDL driver cannot be disqualified for refusing a controlled substance test'' is not entirely accurate. The disqualifying offenses under § 391.15(c)(2), which have not been proposed for revision here, include driving a CMV under the influence of a Schedule I drug or other substance identified in 21 CFR 1308 [Schedule of Controlled Substances]. If the driver refused to take a controlled-substance test under the provisions of 49 CFR part 382, the refusal generates the same consequences as a positive test. The statute (49 U.S.C. 31306) requires a motor carrier to test its drivers under certain circumstances under regulations promulgated by the FHWA. One of these circumstances is a driver's refusal to comply with the statute. If the driver does not comply, he or she must not operate a CMV, and the motor carrier must not permit or require the driver to do so until the provisions of §§ 382.503 and 382.309 have been met through Substance Abuse Professional (SAP) evaluation and the return-to-duty testing process. This means the driver must take an actual test to be allowed to resume driving duties in interstate commerce. In addition, the driver may be subject to his or her employer's policy actions.

In sum, controlled-substance and alcohol tests administered by an employer do not fall under State laws.

The employer is responsible for taking the appropriate actions in accordance with the FMCSRs and with company policy. The FHWA's regulations consider a driver's refusal to submit to testing a prohibited practice. If a driver refuses to undergo a test, the motor carrier must prohibit the driver from driving a CMV and must provide the driver with names, addresses, and telephone numbers of substance abuse professionals.

The FHWA also believes it is inappropriate to equate a driver's refusal to test or a positive test result under part 382 as equivalent to a criminal conviction for driving under the influence of a controlled substance. Criminal convictions of this nature are generally based upon a law enforcement officer's determination that probable cause existed to require a test and an arrest under his/her jurisdiction's policies. The criminal process also generally allows a driver more due process rights to contest the arrest and positive test result because the driver's license privilege is in jeopardy.

The FHWA is reviewing regulations and guidance concerning controlled-substance and alcohol tests administered by law-enforcement officials. The agency will address these issues in a separate rulemaking.

Section 391.25, Annual Review of Driving Record

The FHWA proposed to revise this section to replace the annual review of a driver's driving record with a specific requirement to make an inquiry to the appropriate agency of every State in which the driver held a CMV operator's license or permit during the time period.

DAC Services (DAC), a consumer reporting agency and a major provider of automated driver screening services, favored the proposed revision. However, DAC was concerned that the proposed language could be interpreted to prohibit third-party firms from obtaining records on behalf of motor carriers. DAC noted that the FHWA field staff occasionally question whether the information obtained through DAC can be used to satisfy a motor carrier's compliance with § 391.23, Investigation and inquiries. DAC recommended changing the proposed revision explicitly to recognize the role of third-party information services:

§ 391.25(a) Except as provided in subpart G of this part, each motor carrier shall, at least once every 12 months, make, *or cause to be made by or through its agent,* an inquiry into the driving record of each driver it employs, covering at least the preceding 12 months, to the appropriate agency of every State in which the driver held a commercial motor vehicle operator's license or permit during the time period.

DAC also requested the FHWA add ''or its agent on the motor carrier's behalf,'' before the words ''shall make the following investigations and inquiries * * *'' in § 391.23.

The Delaware Department of Public Safety favored the proposed change while noting that expanded direct communications between motor carriers and State agencies will likely increase its workload. Taking another point of view, Duquesne Light Company's Nuclear Power Division believed the current requirements are sufficient, and implementing the proposed rule change would place an additional administrative burden on companies.

FHWA Response

The FHWA is amending § 391.25 as proposed in the NPRM with a minor editorial change. The language will be edited to clarify the requirement for the motor carrier to maintain a copy of the responses from each State agency to the inquiry concerning drivers' records. The motor carrier must maintain these responses regardless of their content.

In response to DAC's comment, the definition of ''motor carrier'' in § 390.5 specifically includes the motor carriers agents, officers, and representatives. Since third-party firms providing reporting and other services to a motor carrier act as the motor carrier's agents, they are already included in the definition of those entities who are authorized to obtain records on behalf of motor carriers.

In response to the Duquesne Light Company's concern, the requirement to make inquiries with each jurisdiction where the driver held a CMV operator's license or permit during the past year is intended to consider the documented recordkeeping practices of licensing jurisdictions, some of which remove data on drivers' convictions for various reasons.

However, as the Delaware Department of Public Safety pointed out, there are well-founded concerns about the workload for both the motor carriers and the DMVs. The time and cost burdens associated with the annual review of driving records are discussed under the Paperwork Reduction Act section of the preamble to today's final rule.

Section 391.27, Record of Violations

The FHWA proposed to delete the provision that a motor carrier require its drivers, at least every 12 months, to prepare and furnish the motor carrier with a list of all violations of motor vehicle traffic laws and ordinances (except those violations involving only parking), of which the driver has been convicted or has forfeited bond or collateral during that period. The FHWA reasoned that making these inquiries to State agencies would be a more effective way to gather this information because it would not rely on the driver's memory or veracity.

Air Products and Chemicals (Air Products) opposes the proposal to eliminate the requirement for motor carriers to require its drivers to furnish a list of traffic violations resulting in convictions. Air Products' experience has indicated that the information its outside service obtains from State sources is not always complete or timely—it lags behind the information drivers provide. Air Products maintains that States need to improve their collection and transmission of these data to make them sufficiently reliable to meet the company's needs. For the present, Air Products continues to check both State records and drivers' lists.

The ABA supported the proposal as a method of streamlining the process of inquiring into drivers' records.

The AHAS and the AAMVA both supported the proposal as a more objective method to gather information, as well as a way to corroborate information on violations reported by drivers. The AAMVA believed waiving the requirement for drivers to notify motor carriers is acceptable in the cases where the State has a mandatory notification program, but not where the State's program is discretionary.

The ATA forwarded concerns expressed by a motor carrier employing non-CDL CMV drivers. The motor carrier was concerned that, if § 391.27 were deleted, a motor carrier could not check information from a State motor vehicle record (MVR) against any information reported by its non-CDL drivers.

Vermont DMV Inspector R. Moore recommended making Commercial Drivers License Information System (CDLIS) inquiries in each State where a driver has driven during the preceding 12 months. This would provide a violation record on a national basis for each driver.

The ATA recommended allowing the motor carrier to require a driver to secure and submit an MVR annually. The ATA also recommend the FHWA accept evidence that a motor carrier has requested records from a State licensing agency as proof of compliance with the provision, even if the motor carrier has not received the State agency's response. The ATA maintains that privacy concerns have resulted in States developing elaborate procedures for

obtaining MVRs, and that delays are often encountered.

FHWA Response

The FHWA has determined it is in the best interest of safety to retain this section. The proposal to delete the provision was based on two assumptions which commenters have questioned. The first assumption was that State driver-licensing systems would be able to provide a comprehensive record of accidents and traffic violations involving interstate [non-CDL-holding] CMV drivers. The second assumption was that the State records would be far superior and more objective than the current practice of relying on a driver's memory. It appears that several serious limitations would prevent successful adoption of such a rule at this time.

Several commenters expressed reservations about the completeness and timeliness of States' operator license status information. They believe significant improvements must be made in the States' collection and transmission of this data before motor carriers should be asked to rely completely on it.

Relying completely on State information sources would also eliminate a cross-check between driver-provided information and information obtained from State MVRs. This would be especially problematic for non-CDL-licensed CMV drivers because there is no centralized information source similar to CDLIS, except for the National Driver Register Problem Driver Pointer System (NDR–PDPS) sponsored by the National Highway Traffic Safety Administration. This system focuses primarily upon adverse actions against a licensee, such as suspensions and revocations. One commenter also highlighted the administrative difficulty of gathering State MVR information on non-CDL drivers when the home States of the driver and the motor carrier are different. While this certainly can present a challenge for a motor carrier attempting to obtain the information on its own, the information is commonly available via third-party providers for a fee. However, there is no such service available to obtain NDR–PDPS information.

As the AAMVA noted, waiving the requirement for drivers to notify motor carriers might be acceptable in the cases where the State has a mandatory notification program, but not where the State's program is discretionary. The AAMVA noted that, as of mid-1997, no States had a mandatory program, and only two States had widespread voluntary programs, one of which was limited to intrastate drivers and motor carriers.

Requesting information from drivers serves another safety and business purpose. It is common practice for motor carriers to require drivers and driver-applicants to certify the correctness of information they provide. Falsification of information is often grounds for dismissal. Until the completeness and timeliness of State-based driver record information is substantially improved, it is important for motor carriers to obtain this information from both the driver and the State-based source to enable cross-verification of information.

The proposal to make an inquiry to each State where a driver has driven during the preceding 12 months would place an undue burden on drivers' employers and the State recordkeeping systems supporting the CDLIS. The FHWA plans to address improvements in the effectiveness of the CDLIS recordkeeping functions in a future rulemaking action.

The primary concern for both motor carriers and drivers is that a loss of driving privileges in a jurisdiction other than the one licensing a driver, is not always brought to the attention of the licensing jurisdiction. A common basis for a loss of driving privileges is the driver's failure to appear in court to respond to a traffic citation. Since ''failure to appear'' does not have a specific traffic violation associated with it, the licensing jurisdiction may choose not to post it on an MVR. This is a difficult and complex issue, and the FHWA expects to address it in a future NPRM.

The FHWA believes the ATA's first suggested revision could place the cost and time burden of obtaining information solely upon the driver. This is not the FHWA's intent. Furthermore, the regulation in its current form does not prohibit a motor carrier from requiring a driver to provide this information as a condition of employment: some motor carriers do, in fact, require their drivers to obtain their own MVRs.

The FHWA believes it is premature to accept the ATA's second recommendation, that evidence of an information request made to a State driver-licencing agency should constitute compliance with the section. This could encourage motor carriers to delay making these requests until they were compelled to, rather than integrating them into their normal safety-oversight practices. The agency is aware of recent significant changes in the reporting process made necessary by the Driver's Privacy Protection Act of 1994 (18 U.S.C. 2721–2725) and the recent amendments to the Fair Credit Reporting Act (15 U.S.C. 1681–1681u). Both of these laws are generating numerous adjustments within licensing agencies and the business community. The FHWA will monitor this issue as it affects driver records and we encourage users of this information to inform the agency if there are continuing problems.

Section 391.31, Road Test, and Related Sections 391.11(b)(10), 391.51(c)(4), 391.51(d)(2), 391.61, 391.67(c), 391.68(c), 391.69, and 391.73

The FHWA proposed to remove all requirements related to the road test and equivalent of the road test, with the exception of the applicability to drivers who apply for a waiver of physical disqualification. The FHWA reasoned the test requirements were redundant for those driver-applicants required to hold a CDL or who had successfully completed a road test as part of the process of obtaining another type of license or as required by an employer. The FHWA also highlighted beneficial outcomes of providing motor carriers more flexibility and reducing their recordkeeping burden.

The Houston Lighting and Power Company favored removing the requirement, contending that motor carriers are in the best position to determine whether a road test is needed for a non-CDL driver. The ABA also supported the proposal, noting ''it is no longer meaningful for any driver that has a Commercial Driver's License.''

The OOIDA opposed the proposal, contending that the key assumption is flawed: a CMV driver's possession of a CDL does not necessarily mean the driver is qualified to operate a CMV. The OOIDA's chief concern is that State-administered driving and skills tests are designed to assess a limited scope of performance. The OOIDA asserted that it is not uncommon for inexperienced drivers with little or no commercial driver training to pass skills tests administered by State personnel or State-authorized third-party testers, and that inadequate State budgets may have an adverse impact on both the thoroughness of the skills testing procedures and the qualifications of testing personnel. It quoted an ''On Guard'' bulletin issued by the FHWA in January 1997:

> A CDL does not indicate that the holder is a trained or experienced truck or bus driver . . . Title 49 CFR 391.11(b)(3), (Qualification of Drivers) requires that a driver be able, by reason of experience, training, or both, to safely operate the commercial motor vehicle he or she drives. This requirement is not met

by simply ascertaining that a prospective driver holds a CDL.

Air Products also opposed the proposal. The firm has found that many drivers holding CDLs do not possess the skills necessary to operate the company's vehicles safely. Air Products and the OOIDA shared the concern that some motor carriers, eager to reduce costs, would interpret the elimination of the FMCSR requirement for a road test as relieving them of all responsibility to test their drivers prior to hiring them.

FHWA Response

The FHWA has determined that it is in the best interest of safety to retain this section. It serves a useful purpose for both CDL and non-CDL drivers. Commenters noted that some CDL holders might not, or do not, possess the skills necessary to safely operate the vehicles the company plans to assign them to drive. This is a particular concern with drivers who hold endorsements for cargo tanks and operation of double and triple trailer combination vehicles, both of which are granted on the basis of written tests rather than road tests.

Section 391.33, Equivalent of Road Test

The FHWA proposed to delete this entire section as a requirement related to the road test proposed for deletion and discussed above. This section covers documents a driver may present, and a motor carrier may present, in place of, and as equivalent to, a road test required by § 391.31.

As part of its comment to the proposed deletion of §§ 391.31 and 391.33 (see above), the OOIDA requested removal of § 391.33(a)(1). That provision allows a driver to present and a motor carrier to accept a valid operator's license as equivalent to the road test required under § 391.31.

FHWA Response

As discussed in the previous section, the FHWA has determined that it is in the best interest of safety to retain the requirement for the road test, § 391.31. The agency has determined that a CDL, but not the double/triple trailer or cargo tank vehicle endorsements, may be considered as the equivalent of a road test. However, a non-CDL operator's license will no longer automatically be considered the equivalent of a road test. If a driver presents an operator's license (i.e., a State classified operator's license that is not a CDL), the motor carrier must make this determination in accordance with the existing provisions of § 391.33(c).

The provision in § 391.33(a)(1) currently allows a motor carrier to accept *a valid operator's license (emphasis added)* in place of and as equivalent to the road test required by § 391.31. The operator's license is different in many ways from the CDL. States' requirements for road tests required to obtain an operator's license vary considerably in their coverage and depth. On the other hand, the driving test required for CDL applicants contains a required series of activities and maneuvers for the driver to demonstrate basic vehicle control, safe driving, use of air brakes, and pre-trip vehicle inspection.

However, the CDL endorsements required to operate double/triple trailer combination CMVs and cargo tank CMVs are awarded based upon successfully passing a knowledge test. No States offer skills tests as a requirement for obtaining these endorsements. A motor carrier must still assess a driver's skill in operating these vehicles, using, at minimum, the maneuvers and operations required under § 391.31(c).

The FHWA will replace the words ''valid operator's license'' in § 391.33(a)(1) with the phrase ''valid Commercial Driver's License, as defined in § 383.5 of this subchapter, but not including double/triple trailer or tank vehicle endorsements''.

Section 391.49(d)(5), Copy of Certificate of Road Test for Drivers Requesting Waiver of Certain Physical Defects

The FHWA received no comments on the proposal to revise this section. The section concerns a copy of a certificate issued pursuant to a driver's road test administered as part of the process of requesting a physical qualifications waiver for drivers with specific listed limb impairments, who are otherwise qualified to drive a CMV.

FHWA Response

The FHWA has decided to retain this section as it appears in the current FMCSRs, including retaining the existing cross-reference to § 391.31. The proposed revision would have deleted, among other things, the requirement for the driver to successfully demonstrate performance of a pretrip inspection.

Section 391.51, Driver Qualification Files

The FHWA proposed to remove § 391.51(b)(5) covering ''any other matter which relates to the driver's qualification to drive a commercial motor vehicle safely.'' The FHWA noted that the rules in part 391 are minimum requirements, that motor carriers are allowed to maintain any document in a driver qualification file related to the driver's qualifications, and concluded that this section was unclear and unnecessary. The FHWA also proposed to remove paragraph (d), concerning files for intermittent, casual, or occasional drivers, and paragraph (e), concerning drivers employed by another motor carrier.

Inspector Moore of the Vermont DMV recommended retention of paragraph (b)(5) because he believed that it encompassed a variety of documentation making up an integral part of a driver qualification file, and that the motor carrier might not otherwise retain such documentation. Inspector Moore named some examples: The motor carrier's periodic inquiries to State DMVs concerning a driver's record [over and above those required by regulation]; copies of accident reports not otherwise required to be retained; correspondence concerning an individual's driving; correspondence concerning regulatory compliance received from industry, enforcement agencies, or the public; copies of safe driving awards; and copies of records of disciplinary action against the driver by the motor carrier.

The FHWA received no other comments concerning § 391.51.

FHWA Response

The FHWA believes most motor carriers retain all of this information and more as a normal business practice. Without a requirement to retain specific documents, there is a possibility some motor carriers might be more selective in their choice of records to be maintained and retained. The FHWA proposed to remove paragraph (b)(5) because it did not provide specific examples of what information the motor carrier would be required to retain. This might be remedied at some future time through regulatory interpretation. Accordingly, the section is revised as proposed in the NPRM, except that the provisions in the current regulations concerning the certificate of the driver's road test and the list or certificate relating to violations of traffic laws and ordinances are retained.

The FHWA is revising the other elements of § 391.51 as proposed in the NPRM.

Section 391.61, Drivers Who Were Regularly Employed Before January 1, 1971

The FHWA proposed to revise this section which covers limited exemptions from the part 391 driver qualification requirements for CMV drivers who were regularly employed before January 1, 1971. The agency proposed to delete the reference to the

road test, to change the term ''regularly employed driver'' to ''single-employer driver,'' and to delete the redundant final sentence of the section. No commenters addressed this section. Except for retaining the reference to the road test, the FHWA is revising the section as proposed in the NPRM.

Section 391.63, Intermittent, Casual, or Occasional Drivers

The FHWA proposed to revise this section to replace the term ''intermittent, casual, or occasional drivers'' with ''multi-employer drivers'' (see comments and discussion under the heading, § 390.5 Definitions, earlier in this document), and to revise the list of actions a motor carrier is not required to perform with respect to these drivers.

Because the FHWA has determined it is not in the interest of safety to remove the requirement that a driver provide a record of violations or a certificate in accordance with § 391.27, the action will remain in the list of exemptions under § 391.63.

Section 391.65, Drivers Furnished by Other Motor Carriers

The FHWA proposed two revisions to this section which concerns the driver qualification file requirements for drivers furnished by other motor carriers. The first would require a motor carrier that obtains a driver's qualification certificate from his/her previous motor carrier employer to contact that motor carrier to verify the validity of the certificate. The second would replace the current requirement for a motor carrier to recall a qualification certificate if it learns the driver is no longer qualified under the regulations of part 391. The revised regulation would require the motor carrier to be responsible for the accuracy of the certificate, and make the certificate invalid if the driver left the employment of the issuing motor carrier or the driver was no longer qualified under part 391.

No comments were received on these proposed revisions. The FHWA incorporates them into the final rule.

Section 391.67, Farm Vehicle Drivers of Articulated Commercial Motor Vehicles

The FHWA proposed to revise this section, which covers certain exemptions from the part 391 driver qualification requirements provided to farm vehicle drivers of articulated CMVs. The agency proposed replacing the references to § 391.11(b)(8), (b)(10), and (b)(11) with a reference to § 391.21 only. The FHWA also proposed to delete § 391.67(c) to conform to the proposed deletion of part 391, subpart D.

Because the FHWA has decided to retain § 391.11(b)(8) and subpart D, the reference will refer to redesignated §§ 391.11(b)(6) and 391.11(b)(8), and retain the references to subparts C, D, and F.

Section 391.68, Private Motor Carriers of Passengers (Nonbusiness)

The FHWA proposed to revise paragraph (a) of this section, concerning certain exemptions from the part 391 driver qualification requirements provided to CMV drivers of nonbusiness private motor carriers of passengers. The agency proposed replacing the references to § 391.11(b)(8), (b)(10), and (b)(11) with a reference to § 391.21 only. Because the FHWA has determined that § 391.11(b)(8) will be retained and § 391.11(b)(10) and (b)(11) will be redesignated, the section cross-references the redesignated §§ 391.11(b)(6) and (b)(8). Private motor carriers of passengers (nonbusiness) continue to be exempt from the requirement relating to a driver's application for employment.

Since the NPRM was published, a technical amendment published July 11, 1997 (62 FR 37150) removed all requirements and references to part 391, subpart H, from parts 355 through 391 of the FMCSRs. This was necessary because the implementation of part 382 made part 391, subpart H, obsolete. The final rule will also reflect this change.

Section 391.69, Drivers Operating in Hawaii

This section provides a limited exemption from certain driver qualification requirements for drivers who have been regularly employed by motor carriers operating in the State of Hawaii for a continuous period beginning prior to April 1, 1975. The FHWA believed the exemption provided was redundant and proposed to remove it.

The FHWA received no comments on this item. Accordingly, it will be removed.

Section 391.71, Intrastate Drivers of Commercial Motor Vehicles Transporting Class 3 Combustible Liquids

The FHWA proposed to delete this section that deals with certain exceptions to the part 391 driver qualification requirements for intrastate drivers of commercial motor vehicles transporting Class 3 combustible liquids. The agency reasoned it had no authority to support application of parts 390 through 399 of the FMCSRs to a motor carrier or driver operating a CMV in intrastate commerce, whether or not the motor carrier has an interstate operation. However, the FHWA noted the requirements of parts 382, 383, and 387 would continue to apply.

The FHWA received two comments concerning the proposal to delete this section. Houston L&P favored the proposal and supported the FHWA's assertion that the Hazardous Material Regulations cover these vehicles and drivers. The AWHMT also favored the proposal, although it questioned the rationale described in the preamble to the NPRM.

FHWA Response

The FHWA removes and reserves this section as proposed in the NPRM.

The preamble to the NPRM explained in detail the FHWA's reason for proposing to delete the section (see 62 FR 3855, at 3859). The agency concluded that 49 CFR 177.804 was never intended to make the FMCSRs applicable to intrastate commerce. Section 177.804 requires motor carriers subject to part 177 to comply with 49 CFR parts 390–397 ''to the extent those regulations apply.'' Its purpose was to make the civil penalty provisions of the Hazardous Materials Transportation Act applicable to hazardous materials carriers already subject to the FMCSRs. The assertion of jurisdiction over intrastate commerce in § 391.71, limited though it may be, is beyond the FHWA's authority. Section 391.71 is therefore being removed.

However, the Controlled Substances and Alcohol Use and Testing standards in 49 CFR part 382, and the CDL standards in 49 CFR part 383, apply to drivers and their employers who operate CMVs transporting hazardous materials in a quantity requiring placarding, in intrastate commerce. The financial responsibility requirements in part 387 still apply to motor carriers operating motor vehicles transporting certain types of hazardous materials, hazardous substances, and hazardous waste in certain types of containment systems, in intrastate commerce.

Section 391.73, Private Motor Carriers of Passengers (Business)

Because § 391.69 was proposed to be removed and § 391.71 was proposed to be removed and reserved, the FHWA proposed to redesignate this § 391.73 as § 391.69. This would place the section concerning provisions for private motor carriers of passengers (nonbusiness) directly after those for private motor carriers of passengers (business) in a more logical sequence in the FMCSRs.

The agency did not propose revisions to the scope or content of the section.

The FHWA received no comments on this proposal. The section will be redesignated as proposed in the NPRM.

Section 392.7, Equipment, Inspection, and Use; Section 392.8, Emergency Equipment, Inspection, and Use

The FHWA proposed to remove these sections. They cover the driver's responsibility to satisfy himself/herself that specified CMV parts, accessories, and emergency equipment are in good working order, and require the driver to use them when and as needed. The agency reasoned that they duplicated both § 396.13(a), which requires a driver to be satisfied the CMV is in safe operating condition before driving it, and the equipment requirements of part 393.

The FHWA received four comments concerning the proposal to remove these sections. Air Products recommended the specific language of § 392.7 be relocated to § 396.13(a), rather than being deleted. Air Products believes it is necessary for drivers to have instructions specifically identifying critical safety components. Inspector Moore of Vermont DMV expressed much the same concerns.

The ATA favored the proposal to remove the sections and to rely on the provisions in § 396.13 as an interim measure. However, the ATA was concerned that distributing ''initial compliance'' requirements among other sections of the FMCSRs may tend to diminish the importance of this issue in the minds of drivers: ''We believe drivers tend to focus their attention on parts 392 and 395 which have an inherently greater impact on their actions.'' The ATA also believed that incorporating driver vehicle inspection report requirements in part 396 and moving the ''pre-trip inspection'' checklist from part 392 to part 396 could send drivers the unintended message that these activities, and the completion and submittal of records associated with them, were of lesser importance.

The AAMVA expressed much the same concern regarding instructions for drivers on precautions for unattended vehicles and driving under hazardous conditions.

FHWA Response

The FHWA is retaining these two sections. The agency agrees with the commenters that there is a need for drivers to have instructions specifically identifying critical safety components. Also, the FMCSRs provide a specific, prescriptive basis for motor carriers to develop their own policies and procedures.

Section 392.9, Safe Loading, Drivers of Trucks and Truck Tractors

The FHWA proposed to remove this section, covering requirements for a driver to assure the proper loading and securement of cargo prior to driving, inspecting the cargo and its securement within the first 25 miles, and reexamining the cargo and its securement at a change of duty status or after 3 hours or 150 miles of driving.

The FHWA received two comments on this section. Houston L&P favored the proposed removal. It asserted that each motor carrier has a responsibility to ensure all loads are properly distributed and secured. Removing this section would give motor carriers this flexibility.

Air Products agreed with the FHWA's explanation of the reason for eliminating the paragraph, but was concerned how motor carriers would develop policies and procedures without guidance currently provided in the FMCSRs. Air Products maintained that many motor carriers rely on the specific prescriptive nature of the FMCSRs. It recommended that the FHWA place a requirement in § 393.100 to emphasize the need for motor carriers to develop adequate cargo securement inspection procedures for their drivers to follow.

FHWA Response

The FHWA retains this section in the FMCSRs. Although the section appears highly prescriptive, it is supported by operational practices and by contemporary research, including the nearly-completed Load Securement Study sponsored by the Ontario Ministry of Transportation and Communications, Transport Canada, and the FHWA. The U.S. Department of Transportation published an advance notice of proposed rulemaking on October 17, 1996 (61 FR 54142) and established a public docket, FHWA–97–2289 (formerly FHWA Docket MC–96–41) on this subject. The Canadian Council of Motor Transport Administrators (CCMTA), one of the members of a drafting group developing a model set of cargo securement guidelines based upon the results of the research, has posted information on the Internet. Its website is *http://www.ab.org/ccmta/ccmta.html.*

Section 392.9(c), Safe Loading, Buses

The FHWA proposed redesignating § 392.9(c)(1) as § 392.62, deleting § 392.9(c)(2), and redesignating § 392.9(c)(3) as § 392.9(b). This redesignation was proposed to consolidate several requirements related to transportation of passengers in a single location in the regulations and to remove a redundant requirement. No commenters addressed this proposal.

The FHWA removes and redesignates the sections as proposed in the NPRM with one minor editorial change. The term ''freight'' in the current § 392.9(c)(3) embraces the term ''express packages,'' so the phrase ''or express'' is deleted in the final rule.

Section 392.9b, Hearing Aid to Be Worn

The FHWA proposed to remove this section because it duplicates the information contained in the Medical Examiner's Certificate at § 391.45(g), ''[Driver] qualified only when wearing a hearing aid.''

The agency received no comments on this proposal. Accordingly, the section is removed as proposed.

Section 392.10(b)(1) and (3), Railroad Grade Crossings, Stopping Required

The provisions of § 392.10 require CMVs transporting passengers or hazardous materials requiring placarding to stop prior to crossing railroad tracks at grade, except in certain specified cases described in paragraphs (b)(1) through (b)(5). The FHWA proposed to add another exception, to permit these CMVs to cross without stopping at locations equipped with an active warning device (signal, gate, lights) when the device is not activated to warn drivers of the approach of an oncoming train.

The FHWA received 22 comments responding to this provision of the proposal. Four commenters favored the proposed revision.

The National Transportation Safety Board (NTSB) restated its 1981 Safety Recommendation H–81–77, the basis for the proposal. The NTSB recommendation stated:

> [T]he FHWA amend § 392.10, consistent with the Uniform Vehicle Code, to require trucks carrying bulk hazardous materials to stop at crossings with active warning devices only when the devices are activated to warn drivers of an approaching train. The Safety Board is not aware of any accident data nor has the Safety Board investigated any accident which suggests that the proposed revision would have an adverse impact on commercial vehicle or hazardous materials safety.

The ATA also favored revising the regulation. It pointed to considerations of disruption of the flow of traffic, as well as the potential of rear-end collisions and unsafe passing by other vehicles at the crossings. The ATA stated it had discussed the issue with

safety professionals from 4 major tank truck carriers [not named] at a meeting of the ATA's Safety Management Council, and that they supported the proposed regulatory revision. The ATA also recommended the FHWA urge States to amend their laws, noting that only 11 States provide relief from stops at active railroad crossings.

Mr. Hoy A. Richards, Principal, Richards & Associates and Senior Scientist, Texas Transportation Institute, also supported the proposal. He asserts stopped CMVs are a safety hazard unless pull-out lanes are provided; that State highway safety statistics (especially those from Texas, Illinois, and Oregon) ''will show that there are twice as many no-train motor vehicle accidents as there are motor vehicle/train accidents.'' He also believes most drivers have no understanding of why CMVs stop at non-activated [dark] signals, although he stated he could not quote statistics. Mr. Richards did not cite reports nor provide references to the accident statistics he cited in his comments.

Mr. Richards also recommended several countermeasures based upon changes to traffic signs and signals, including use of a black-on-white crossbuck at all active highway-rail intersections and installation of a green traffic signal in all active devices. He also recommended engineering studies to determine whether standard highway traffic signal control devices could be installed at branch line and industrial grade crossings.

The State of Connecticut's DOT (Connecticut) noted that its State statutes require passenger and hazardous-materials-laden CMVs to stop before crossing any railroad tracks at grade. Connecticut said it has recently established a committee to study highway-rail crossing matters, including, among other things, the requirement for school buses to stop at all active crossings. Although it stated that no consensus had been reached on this issue, Connecticut said it would generally support the proposed revision, provided the FHWA addressed two issues. It requested the FHWA to address the definition of an ''active warning device'' and limit it to those grade crossings with standard railroad flashing lights and gates. It also recommended specific regulatory signage at exempt crossings used exclusively for industrial switching purposes.

The remainder of the commenters were strongly opposed to the proposal. These commenters were: the Association of Waste Hazardous Materials Transporters; Air Products and Chemicals, Inc.; the North Dakota DOT; the City of Littleton, Colorado, Fire Department; New York Operation Lifesaver; the Association of American Railroads; CSX Transportation; the American Association of Motor Vehicle Administrators; the United Transportation Union; the International Association of Fire Fighters; Louisiana Railroads; Northeast Illinois Regional Commuter Railroad Corporation (Metra); Missouri Department of Economic Development; Operation Lifesaver, Inc.; Brotherhood of Locomotive Engineers; National School Transportation Association; and Vermont Railway/ Clarendon and Pittsford.

Commenters raised numerous concerns relating to the availability of current data to support the proposed regulatory revision, differentiation between active and passive grade crossings (availability and meaning of warning signals, habituation of CMV drivers to stop at one type of crossing but not another), reliability of the active warning devices, other drivers' expectations of tank vehicles and buses stopping at railroad grade crossings, and the use of a Federal standard as a foundation for States' motor carrier safety regulations and motor carriers' company policies. Some commenters also reflected upon their own and colleagues' experiences with near-misses and in dealing with the aftermath of rail-motor vehicle collisions. The following summaries are representative of these comments.

CSX Transportation noted ''In nearly every case involving a collision between any motor vehicle and a train, the primary contributing factor is *failure to stop* on behalf of the motor vehicle.''

Operation Lifesaver emphasized a need for contemporary research [T]o determine whether actions recommended [by the NTSB] 12 to 16 years ago are relevant or even advisable today from a safety perspective. Many highway-rail crossing safety issues have been addressed successfully during the past 16 years by federal, state, and local governments, and by private organizations, including Operation Lifesaver. In fact, highway-rail collisions nationwide have dropped from 8,500 in 1981 to 4,000 in 1995, a decrease of 53 percent. Given this marked safety improvement, the 1981 and 1985 recommendations may not reflect priority concerns in 1997.

Operation Lifesaver also criticized a 1985 FHWA study that recommended rescinding the CMV stopping requirement, although it also projected an increase in the number of hazardous materials-carrying CMVs, school buses, and passenger buses striking trains.

Louisiana Railroads stated that available data indicate approximately 50 percent of accidents occur at crossings where an active warning device is present, whether or not the device is activated.

The United Transportation Union commented:

In 1995, there were 579 deaths at public highway crossings, and 1,888 injuries were sustained. During the first 11 months of 1996 (the latest figures available) there have been 3,214 accidents at public crossings involving motor vehicles, and resulting in 328 deaths and 1,234 injured. It is important to keep in mind that these tragedies occurred even when CMVs are required to stop at all crossings. To permit such vehicles to continue through crossings when there is no signal activation will create an even more hazardous situation than currently exists.

The Brotherhood of Locomotive Engineers commented:

Locomotive Engineers are a unique party in this proceeding because we are usually the only witness to the real world at a highway rail crossing * * * Reckless behavior at the crossing is a sorry sight at best, a stupid and painful tragedy at worst. When the vehicle is one carrying hazardous material or passengers, the careless behavior at the crossing may literally destroy hundreds, perhaps thousands, of lives and wield tremendous economic damage. The consequences of a train collision with a large truck carrying hazardous materials or a bus carrying passengers could be so severe there seems little rational argument to support removing the extra measure of safety that is provided by stopping before crossing.

Several commenters pointed out the proposed change would negate many State statutes, and advised that the language of the proposed rule would not require a stop at an activated warning device.

FHWA Response

The FHWA has determined that it is in the best interest of highway safety to retain § 392.10 of the FMCSRs in its current format at this time.

The NTSB's Safety Recommendations, H–81–77 and H–89–36, if looked at together, propose that § 392.10 of the FMCSRs be amended by rescinding paragraph (b)(1) (exclusively for industrial switching) and revising the balance of the section. The FHWA's proposal would have revised the FMCSRs to require placarded hazardous materials laden CMVs, as well as passenger CMVs, to stop at only those railroad grade crossings equipped with active warning devices, and only when the devices are activated to warn drivers of an approaching train.

Data furnished by the Federal Railroad Administration that the FHWA forwarded to the NTSB show a constant and dramatic decrease in railroad grade crossing accidents involving

commercial motor vehicles during the past 10 years. While there is no data directly linking the FHWA's grade crossing regulations with this documented decline in grade crossing accidents, neither is there data to substantiate the hypothesis that changing § 392.10 of the FMCSRs to reflect the Board's recommendations is likely to result in a decline in grade crossing accidents. However, the trend information available substantiates the FHWA's experience that the current grade crossing requirements are warranted and, we believe, at least partially responsible for reducing the number of such accidents. We continue to be concerned that the recommendations, if implemented, would reduce the effectiveness of the current requirements and undo some of the progress that has been made in railroad grade crossing safety.

The text of § 11–702 of the UVCMTO, ''Certain vehicles must stop at all railroad grade crossings,'' has not changed substantively since the NTSB issued its Safety Recommendations. Although paragraph (b) of § 11–702 indicates certain types of railroad grade crossings where vehicles would not be required to stop, paragraph (c) states that the State officials ''shall adopt such regulations as may be necessary describing the vehicles which must comply with the stopping requirements of this section * * * [and] shall give consideration to the number of passengers carried by the vehicle and the hazardous nature of any substance carried by the vehicle. Such regulations shall correlate with and so far as possible conform to the most recent regulation of the United States Department of Transportation.'' The footnotes to the 1979, 1987, and 1992 editions of the UVCMTO refer to § 392.10 of the FMCSRs.

No commenters favoring the proposed revision addressed motor carriers' proactive actions to prevent rear-end collisions. Many CMVs carrying hazardous-materials have a sign, ''This vehicle stops at all RR crossings'' placed on the rear of the vehicle so it is clearly visible to other motorists. The statement that drivers of other vehicles do not understand why CMVs stop at railroad crossings was contradicted by several commenters in favor of retaining the current regulation.

Finally, none of the commenters favoring the proposed change provided current data in support of their positions. Mr. Richards' comments did not specify whether the ''no-train'' accidents he cited were all accidents in those States, or only those at or near grade crossings.

Sections 392.13, Drawbridges, Slowing Down of Commercial Motor Vehicles; Section 392.14, Hazardous Conditions, Extreme Caution; Section 392.15, Required and Prohibited Use of Turn Signals

The FHWA proposed to delete these sections because they are currently, and more appropriately, enforced through State and local traffic laws. In addition, the FHWA concluded that the provisions of § 392.14 are fundamental safe driving practices and are probably incorporated into most motor carriers' policy manuals.

Air Products generally supported the proposal to remove and reserve the three sections. However, it was concerned about potential non-uniformity of various State requirements and recommended that the FHWA issue guidelines to the States to minimize conflicts.

The ATA supported removing § 392.15 (a) through (c), but not paragraphs (d) and (e). The ATA asserted the prohibitions are unique to the FMCSRs and provided some history. The ''parking'' use prohibition in § 392.15(d) was a response to the use of turn signals on one side of the CMV prior to the advent of four-way flashers. The ''do pass'' prohibition in § 392.15(e) was incorporated into the FMCSRs with the support of the trucking industry because of lawsuits against motor carriers whose drivers had given this signal to a following driver who was then struck by a third vehicle. The ATA recommended that the FHWA review State laws on these topics before making a decision on revoking the provisions.

The Pennsylvania DOT was concerned that removing § 392.15 would limit enforcement because State personnel who are not sworn police officers cannot enforce traffic laws. Inspector Moore of the Vermont DMV commented that the Vermont State statutes contain no provisions similar to § 392.14, and that Vermont traffic laws require use of turn signals only for vehicles traveling on limited-access highways.

FHWA Response

The FHWA believes State and local traffic laws and motor carriers' safe and prudent operating practices cover these situations. Therefore, the FHWA is removing and reserving §§ 392.13 and 392.15 as proposed in the NPRM. However, the FHWA has determined it is in the interest of highway safety to retain § 392.14. This section provides a specific basis for motor carriers to develop their own safety policies and procedures for operating a CMV when adverse environmental conditions limit visibility or reduce traction.

The FHWA included § 392.15(d) and (e) in the recodification of the FMCSRs on December 26, 1968 (33 FR 19700), a year after the motor carrier safety regulations of the former Interstate Commerce Commission had been transferred to the new Department of Transportation. A review of the National Highway Traffic Safety Administration's Federal Motor Vehicle Safety Standard (FMVSS) suggests that the uses of turn signals described in § 392.15(d) and (e) have been made obsolete by the availability of vehicle hazard warning signal flashers, commonly known as ''four-ways.'' Table 1, Required Motor Vehicle Lighting Equipment Other than Headlamps (Multipurpose Passenger Vehicles, Trucks, Trailers, and Buses, of 80 or more inches Overall Width) of FMVSS 108 (49 CFR 571.108) references Society of Automotive Engineers (SAE) Recommended Practice J945, issued in February 1966.

The use of vehicle hazard warning signals also is described in the UVCMTO § 12–215. The UVCMTO was revised in 1968 to permit vehicles to be equipped with lamps for the purpose of warning the operators of other vehicles of the presence of a vehicular traffic hazard requiring the exercise of unusual care in approaching, overtaking, or passing. The same year, the UVCMTO also added a requirement that every bus, truck, truck-tractor, trailer semitrailer, or pole trailer 80 inches or more in overall width, or 30 feet for more in overall length be equipped with lamps meeting these requirements. Finally, paragraphs (f) and (g) of UVCMTO § 12–215 state:

> (f) The driver of any vehicle equipped with vehicular hazard warning lights may activate such lights whenever necessary to warn the operators of following vehicles that the signaling vehicle may itself constitute a traffic hazard.
>
> (g) The driver of a truck, bus, or truck tractor pulling a trailer or trailers, equipped with vehicular hazard warning lights may activate such lights when that vehicle is proceeding up a grade, or under other conditions requiring it to be operated at a speed less than the prevailing speed of traffic.

The FHWA believes these UVCMTO citations adequately address the concerns of the ATA and other commenters concerning the proper use of vehicular hazard warning lights.

In its current form, the section only considers potential hazards to passengers in the event a CMV is operated during adverse environmental conditions. The FHWA plans to address this issue as it relates in more general

terms to other highway users in a future rulemaking action.

Section 392.20, Unattended Commercial Motor Vehicles; Precautions

The FHWA proposed to remove the section prohibiting a commercial motor vehicle from being left unattended until the parking brake has been set and all reasonable precautions have been taken to prevent the vehicle from moving. The agency reasoned that State and local government authorities are in a better position to monitor and enforce regulations of this nature for commercial motor vehicles transporting non-hazardous materials (special regulations for HM-laden commercial motor vehicles are covered in part 397 of the FMCSRs). The FHWA received no comments, and the section is removed and reserved as proposed in the NPRM.

Section 392.22, Emergency Signals; Stopped Commercial Motor Vehicles

The FHWA proposed to revise paragraph (b) of this section, concerning the placement of warning devices in the event a CMV is stopped on the traveled portion or the shoulder of a highway for any cause other than necessary traffic stops. The agency believes drivers often do not place warning devices at the locations or distances specified in the regulation because the instructions are not clear and because it is difficult for them to estimate distances by eye. The agency proposed to revise the section to make the language clearer and to include the number of paces as well as the required linear distances at which warning devices are to be placed.

The ATA provided the only comment on this section. It recommended listing the distances in paces first, as they were when this regulation was first promulgated by the ICC.

FHWA Response

The FHWA agrees with the ATA's recommendation to list the locations for placing warning devices in paces, followed by the approximate linear distances in meters and feet. The final rule describes the locations as ''x paces (approximately y meters or z feet)'' where x, y, and z are the appropriate dimensions in § 392.22(b)(1) (i), (ii), and (iii).

Section 392.25, Emergency Signals; Dangerous Cargoes

The FHWA proposed to delete this section prohibiting the use of flame-producing devices on CMVs carrying certain hazardous materials cargoes or fueled by compressed gas. The agency reasoned it was unnecessary to prohibit the use of flame-producing devices because § 393.95(g) of the FMCSRs prohibits those devices from being carried on a CMV transporting the same classes of placarded hazardous materials described in § 392.25.

Several commenters opposed removing this section. Mr. O. Bruce Bugg, a law enforcement officer with experience in CMV and HM safety, stated that it is not uncommon for CMV drivers to borrow warning devices from other drivers to replace or to supplement their own equipment. He said other drivers, highway department personnel, and police officers could supply flame-producing devices to CMV drivers transporting placarded ''flammable'' cargoes. The Pennsylvania DOT had a similar comment.

The AHAS and Inspector Moore of the Vermont DMV also opposed removing the requirement. They noted this section contains the only specific prohibition on the use of these flame-producing devices. The AHAS recommended merging the proscription against use of the devices with the proscription against carrying the devices at § 393.95(g). Mr. Bugg recommended the provision be combined with sections in parts 393 or 396.

FHWA Response

The FHWA is retaining this section, and is also changing the heading to ''Flame producing devices'' to make the intent more clear. As several commenters pointed out, someone else (perhaps even a law-enforcement official) could give a flame-producing device to a CMV driver, with potentially serious consequences.

The FHWA believes the ''use'' provisions of part 392, the ''equipment'' provisions of part 393, and the ''inspection'' provisions of part 396 of the FMCSRs need to be considered in their own contexts. Section 392.25 specifically prohibits use of these devices. On the other hand, § 393.95(g), codified in an FMCSR part that describes requirements for ''equipment'' rather than its use, specifically prohibits carrying these devices.

Section 392.42, Notification of License Revocation

The FHWA proposed to move the requirement for a driver to notify the employing motor carrier of a license revocation, which is currently addressed in § 392.42, to § 391.15(b)(2). The agency also proposed to change the title of paragraph (b) to ''Loss of driving privileges.'' The change was proposed because the section addresses conditions relating to driver disqualification, rather than general safe driving provisions.

The FHWA also requested State driver licensing agencies to comment on whether they send written notification to the employing motor carrier of a driver who has had his/her license, permit, or privilege to operate a CMV revoked, suspended, or withdrawn. These comments were to be considered to determine if the FHWA should further revise § 391.15(b) to exempt a driver from the requirement to notify his/her employing motor carrier if a State licensing agency sends written notification to the motor carrier in the event the driver's license was revoked, suspended, or withdrawn.

The sole commenter favoring this speculative revision was Houston L&P. Houston L&P believed the MVR issued by a State licensing agency provides adequate means for obtaining information on convictions, disqualifications, license suspensions, revocations and cancellations as required under §§ 383.31(a) and 383.33. However, Houston L&P did not comment on whether these sections, applicable to CDL holders, provided comparable information for non-CDL CMV drivers.

All other commenters opposed the intent and direction of such a revision. The AAMVA, the States of Wisconsin, Delaware, Idaho, Missouri, Vermont, and Wisconsin, and one private motor carrier addressed this issue.

The AAMVA stated it would strongly oppose a requirement for DMVs to notify motor carriers of convictions or adverse licensing actions against motor carriers' employees' driving records. It noted that only a few Departments of Motor Vehicles (DMVs) have programs to notify motor carriers of any violations added to a driver's record. The AAMVA pointed out that California's statutory requirement and New York's voluntary program require motor carriers to pay participation fees. Finally, the AAMVA advised that these programs are costly to administer. Because employment turnover rates in the trucking industry are high, the single task of processing employer change notices requires significant resources.

Delaware, Idaho, Missouri (Department of Revenue), and Vermont stated they do not have a program in place to notify motor carriers when drivers lose their driving privilege. The Delaware DPS added it could not notify employers of CMV driver violations because it does not, nor does it propose to, maintain records of drivers' employers. This function would require a legislative change the Delaware DPS believes would be difficult or impossible to pass. The Delaware DPS stated it could not support a method

where the State would be held responsible or liable for this reporting. Delaware also identified many of the issues noted by the AAMVA concerning the significant difficulty in maintaining current basic information, such as a driver's address. Delaware was profoundly concerned that the transfer of these responsibilities to State agencies could take place without the Federal government adequately assessing the costs to the States. It cited ''the anticipated transfer of medical qualification determinations'' [the subject of an ongoing FHWA negotiated rulemaking] as an example of such a transfer.

The North Dakota Department of Transportation stated it would not be able to comply with a requirement that a State notify a driver's employer. North Dakota DOT noted many States do not keep records of drivers' employers, and many drivers do not work for the same motor carrier for any substantial length of time.

The Wisconsin Department of Transportation stated that it does not send a written notification to a motor carrier when a driver's privilege is withdrawn, and would oppose such a requirement. The State has a voluntary ''Employer Notification Program'' enabling them to receive notification of ''hits'' on an employee's record. The program requires the employer to keep the DMV informed when drivers leave the company or retire. Employers are charged a $20 annual base fee, a one-time fee of $2 per employed driver, and a fee of $3 per driver record abstract change generated by an accident, conviction, withdrawal from the program, or other event. During 1996, 1,012 employers received over 52,000 driver abstracts.

Air Products also strongly opposed the revision on the ground that each employee has a responsibility to report any issue negatively affecting his or her ability to perform job functions. Further, if a driver fails to report a license revocation, and that driver is involved in an accident while driving for the employing motor carrier, the motor carrier is still liable and responsible for the driver's actions. Air Products contends that ''by exempting drivers from this requirement, a message is being sent to the drivers that it is acceptable to remain quiet.''

The Delaware DPS' point of view was similar to that of Air Products—motor carriers are in the key position to review and assess the safety of the drivers they employ. Delaware DPS also commented that the FMCSRs might be amended to require at least an annual record check of the safest (i.e., violation-free) drivers and more frequent checks of the records of ''problem'' drivers.

FHWA Response

Section 392.42 is redesignated as § 391.15(b)(2) as proposed in the NPRM.

The issue of loss of driving privileges on the basis of citations from a driver's licensing State or a State or other jurisdiction other than the licensing State is a complex one. The FHWA will consider it in a future rulemaking action. The title of § 391.15(b) remains ''Disqualification for loss of driving privileges.''

No changes are made to require State licensing agencies to notify motor carrier employers of licensing actions taken against drivers. Placing the primary burden on the State licensing agencies to notify employers of drivers' disqualifications would create a significant unfunded mandate. The requirement would also be a difficult, if not impossible, undertaking for most States due to the high turnover rate of commercial motor vehicle drivers.

Section 392.51, Reserve Fuel

The FHWA proposed to remove this section. The section prohibits carrying fuel for propulsion or operation of accessories except in a properly mounted fuel tank. The agency believed there was no sound reason to prohibit carrying small amounts of fuel under those circumstances while (by implication) allowing the practice if the fuel were to be used to power machinery transported on the CMV.

The FHWA received two comments. The AWHMT asked the FHWA to clarify the rationale for removing this regulation. It raised two concerns: (1) The definition of ''small package;'' and (2) how the carriage of small packages containing fuel would be made consistent with the Hazardous Materials Regulations (HMRs). Houston L&P supported the proposal, citing the ''Materials of Trade'' exceptions to the HMRs issued in January 1997.

FHWA Response

Just prior to the publication of the FHWA's NPRM, the Research and Special Programs Administration issued a final rule, on January 8, 1997 (62 FR 1208). The RSPA final rule, effective October 1, 1997, with a compliance date of October 1, 1998 (see 62 FR 49560, September 22, 1997), applies a uniform system of safety regulations to all hazardous materials transported in commerce throughout the United States and requires intrastate motor carriers and shippers to comply with the HMRs, with certain exceptions. One set of exceptions applies to ''materials of trade.''

The RSPA defines a ''material of trade'' as a hazardous material, other than a hazardous waste, that is carried on a motor vehicle: (1) For the purpose of protecting the health and safety of the motor vehicle operator or passengers; (2) for the purpose of supporting the operation or maintenance of a motor vehicle (including its auxiliary equipment); or (3) by a private motor carrier (including vehicles operated by a rail carrier) in direct support of a principal business that is other than transportation by motor vehicle. See 49 CFR 171.8. The exceptions codified at 49 CFR 173.6 cover materials and amounts, packaging, hazard communication, and aggregate gross weight provisions for the ''materials of trade.''

Several of these exceptions apply to fuels. Packaging for gasoline must be made of metal or plastic and conform to requirements of 49 CFR parts 171, 172, 173, and 178, or requirements of the Occupational Safety and Health Administration contained in 29 CFR 1910.106. For a Packing Group II (including gasoline), Packing Group III (including aviation fuel and fuel oil), or ORM–D, the material is limited to 30 kg (66 pounds) or 30 L (8 gallons). A Division 2.1 material (flammable gas) in a cylinder is limited to a gross weight of 100 kg (220 pounds). The RSPA final rule states that the aggregate gross weight of all materials of trade on a motor vehicle may not exceed 200 kg (440 pounds).

The FHWA provides references to the RSPA regulation in the FMCSRs. For ready reference, the gross weight limits of commonly-used fuels (gasoline, diesel, and flammable gases) and the packaging requirements for gasoline are restated in today's final rule.

Accordingly, the FHWA will revise § 392.51 to allow small amounts of fuel for the operation or maintenance of a commercial motor vehicle (including its auxiliary equipment) to be carried as defined under ''materials of trade,'' 49 CFR 171.8.

Section 392.52, Buses; Fueling

The FHWA proposed to remove the section prohibiting buses from being fueled in a closed building with passengers aboard. The agency reasoned that this is a rare occurrence, does not influence highway safety, and does not warrant a Federal prohibition. No comments were received on this proposal. Accordingly, the section is removed and reserved as proposed in the NPRM.

Section 392.68, Motive Power Not To Be Disengaged

The FHWA proposed to remove and reserve this section, which prohibits CMVs from being driven with the source of motive power disengaged from the driving wheels. The agency reasoned that this prohibition is more appropriately monitored and enforced by State and local officials. This prohibition is, in fact, contained in the Uniform Vehicle Code and Model Traffic Ordinance, § 11–1108, Coasting Prohibited:

(a) The driver of any motor vehicle when traveling upon a down grade shall not coast with the gears or transmission of such vehicle in neutral.

(b) The driver of a truck or bus when traveling upon a down grade shall not coast with the clutch disengaged.

The FHWA received no comments on the proposal to remove this section. It is removed and reserved as proposed in the NPRM.

Sections 395.1(g), Hours of Service of Drivers; Retention of Driver's Record of Duty Status

The FHWA proposed to remove § 395.1(g), Retention of driver's record of duty status. This section covered the divided record authority provisions for records of duty status. As described earlier in this document, the FHWA proposed to allow motor carriers with multiple terminals or offices to maintain all records required by Subchapter B at regional offices or driver work-reporting locations, provided records can be produced at the principal place of business or other specified location within 48 hours after a request has been made by a special agent or authorized representative of the FHWA.

No commenters addressed this section, and the final rule incorporates the proposed change.

Sections 395.1(h), (i), and (j), and (k); Sleeper Berths, State of Alaska, State of Hawaii, Travel time, Agricultural operations, Ground Water Well Drilling Operations, Construction Materials and Equipment, Utility Service Vehicles

Because the FHWA proposed to delete § 395.1(g), it proposed to redesignate the four paragraphs following it. The agency proposed no substantive changes and received no comments concerning the redesignations for these sections. However, the FHWA inadvertently neglected to propose to redesignate the last four paragraphs in the section, 395.1(l) through 395.1(o). The final rule implements the proposed redesignations as well as redesignating by technical amendment §§ 395.1(l) through 395.1(o) as §§ 395.1(k) through 395.1(n).

Section 395.2, Definitions, ''On-duty Time''

The FHWA proposed to revise the definition by removing paragraph (2), inspection of equipment as required by §§ 392.7 and 392.8, because the agency had proposed to delete those sections. Although the FHWA has determined it is in the interest of safety to retain those sections (see discussion earlier in this document under those headings), the agency believes the proposed text, ''all time inspecting, servicing, or conditioning any commercial motor vehicle at any time,'' includes the equipment, parts, and accessories described in §§ 392.7 and 392.8. The proposed language is therefore being adopted.

Paragraph (7) under the definition of on-duty time covers time spent providing a breath sample or urine specimen, including travel time to and from the collection site, in order to comply with the FHWA and USDOT controlled substance and alcohol testing regulations. The paragraph refers to subpart H of part 391. After the NPRM was published, the regulations in subpart H of part 391 were removed because they have been superseded by part 382. The FHWA published a technical amendment describing this action on July 11, 1997 (62 FR 37150).

No commenters addressed the proposed revision of § 395.2. The FHWA has made several minor editorial changes (such as deleting the phrase ''of this section'') from the text proposed in the NPRM. The reference to subpart H is also removed as a technical amendment.

Section 395.8, Driver's Record of Duty Status

The FHWA proposed revising paragraph (k)(1) to reflect the proposal described earlier in this document to allow motor carriers with multiple terminals or offices to maintain all records required by Subchapter B at regional offices or driver work-reporting locations, provided records can be produced at the principal place of business or other specified location within 48 hours after a request has been made by a special agent or authorized representative of the FHWA.

No commenters addressed the provision as reflected in this section and it is revised as proposed.

Section 396.11(b), Driver Vehicle Inspection Report(s); Report Content

The proposed revision to this paragraph was editorial in nature (''vehicle'' for ''motor vehicle'' and ''report'' for ''vehicle inspection report''). The FHWA received no comments on the proposed revision, and the final rule incorporates the proposed changes.

Section 396.11(c), Corrective Action

The proposed revision to this paragraph made the language consistent with other parts of the FMCSRs (''prior to operating'' replaced with ''prior to requiring or permitting a driver to operate''). The FHWA received no comments, and this section is revised as proposed in the NPRM.

Sections 396.11(c)(1) Through (c)(3), 396.11(d), and 396.13(b), Concerning Driver Vehicle Inspection Report(s)

The FHWA proposed to remove § 396.11(c)(3), requiring a legible copy of the last driver vehicle inspection report (DVIR) to be carried on the power unit. Other paragraphs within the section would be revised to reflect this change. The agency believed the administrative burden of requiring the DVIR to be carried on the power unit outweighed its benefits. The NPRM stated that the presence or absence of a DVIR was not a factor in the decision to conduct a roadside inspection of a CMV and noted that failure to have the DVIR is not an out-of-service violation under the CVSA North American Out-of-Service Criteria. However, the FHWA emphasized that the proposed removal of the requirement was not intended to affect the driver's access to the DVIR and the requirement for the driver to review it before driving a CMV.

The FHWA received six comments concerning the proposal to delete these provisions. Two commenters favored the proposal, one suggested revisions to the proposed language, and three opposed it.

The ATA favored the proposal, but believed it was insufficient to ''alleviate the burdens and costs of the remaining 'paper chase'.'' The ATA also recommended the FHWA remove the requirement that the motor carrier or its agent certify correction of the defects on the DVIR and require the next driver to sign it. It contended that a review of a motor carrier's work orders, generated in response to specific defects reported by drivers, would be a more useful way to ascertain whether maintenance practices are effective at keeping CMVs safe.

Houston L&P supported the proposal as promoting performance-oriented flexibility.

Consolidated Safety Services, Inc. (CSS), a nationwide occupational safety and health organization, offered comments concerning the text of the proposed revisions to § 396.11. CSS

interpreted the proposed language to imply there is only one copy of the DVIR. CSS maintains the industry practice has been to use a two-copy form (original and legible copy). CSS recommended minor changes to the proposed revision to clarify the requirement for a single copy of the DVIR as follows:

396.11(c)(1) Every motor carrier or its agent shall certify on *the original* driver vehicle inspection report which lists any defect or deficiency that the defect or deficiency has been repaired or that repair is unnecessary before the vehicle is operated again.

396.11(c)(2) Every motor carrier shall maintain the *original* driver vehicle inspection report and the certification of repairs, *and the certification of the driver's review,* for three months from the date the written report was prepared.

The Colorado Department of Public Safety (CDPS), the Pennsylvania DOT (PennDOT), and Inspector Moore of the Vermont DMV opposed the proposal. The CDPS and Inspector Moore asserted that a roadside inspector's review of a DVIR provides opportunities to determine a driver's knowledge of how to perform a vehicle inspection, to assess an example of a motor carrier's maintenance procedures, and to determine whether education, review, or enforcement actions are warranted.

The CDPS proposed that §§ 396.11 and 396.13 be combined into a single requirement. The requirements for pre- and post-trip inspections would be retained, but motor carriers would determine which one would be documented and the documentation filed.

The PennDOT also found inappropriate the FHWA's rationale for proposing to delete this section. The PennDOT noted that, if the out-of-service criteria were the only basis for a regulatory requirement, then many of the other existing regulations would need to be eliminated as well.

Inspector Moore of the Vermont DMV believed many motor carriers will probably continue to carry the DVIR in the vehicle because they find it convenient to do so.

FHWA Response

The FHWA is removing § 396.11(c)(3) and revising § 396.13(b) as proposed in the NPRM, and incorporating the modifications that CSS suggested. The FHWA continues to believe that the presence or absence of a DVIR in the power unit is not a primary factor in a decision to conduct a roadside inspection. The FHWA believes the concerns of the CDPS regarding documentation of the inspection are addressed because there is no change in the requirement to document the results of an inspection and certification of corrective action.

The FHWA is not removing the requirement for certification of corrective action, as the ATA had recommended be done. The ATA's recommendation of reviewing a work order would significantly increase the complexity and time required to determine how a reported CMV defect had been resolved. It would require a driver to contact maintenance personnel who might not be available when the driver was being dispatched. It would also require FHWA motor carrier safety specialists to examine and cross-check separate maintenance and operational records. The final rule otherwise adopts the changes proposed in the NPRM.

Section 397.19, Transportation of Hazardous Materials; Driving and Parking Rules; Instructions and Documents

The FHWA proposed to revise the text of this section to remove the reference to the motor carrier's principal place of business in paragraph (b) to reflect the proposal described earlier in this document. The effect of this change would be to allow motor carriers with multiple terminals or offices to maintain all records required by Subchapter B at regional offices or driver work-reporting locations, provided records can be produced at the principal place of business or another specified location within 48 hours after a request has been made by a special agent or authorized representative of the FHWA.

No commenters addressed this provision and it is revised as proposed.

Comments on FMCSR Sections Not Addressed in the NPRM Definition of CMV

Houston L&P, Alabama Power, and Southern Company Services, Inc., believe a CMV should be defined to include vehicles of 26,001 or more pounds. The AAMVA and Ameritech Corporation (Ameritech) recommended the FHWA reconcile the weight definitions in parts 383 and 390 ''so only one definition exists.'' Ameritech believed the FHWA should evaluate the current GVWR criteria for the CMV definitions, weigh the regulatory burden and return on safety performance, and assess the different points where States apply the intrastate CMV safety regulations. Ameritech also stated the FMCSRs should apply to ''all applicable drivers * * * whether they operate a 12,000 pound utility truck or an 80,000 pound long-haul vehicle.''

FHWA Response

The FHWA is currently addressing the issue of the application of the FMCSRs to different weight classes of CMVs, the motor carriers operating them, and their drivers, in several ongoing regulatory activities. Section 344 of the National Highway System Designation Act of 1995 (Pub. L. 104–59, 109 Stat. 568) calls for a ''Motor Carrier Regulatory Relief and Demonstration Project'' to exempt CMVs and their drivers from elements of the FMCSRs for a 3-year pilot period (49 U.S.C. 31136(e)(2)). Applicant motor carriers must have an exemplary safety history to participate. The Secretary of Transportation will oversee safety through monitoring and reporting of safety-related data. A Notice of Final Determination for this project was published in the **Federal Register** on June 10, 1997 (62 FR 31655). The FHWA is accepting applications through June 30, 1998.

State Conformity With Interstate Regulations

The Pennsylvania DOT noted that its State Vehicle Code is automatically revised to conform to changes in the FMCSRs. It added that not all States have this provision, and incompatibilities between State and Federal regulations could arise.

FHWA Response

Several other States have brought similar concerns to the FHWA's attention from time to time. Because of differences in State laws and administrative procedures, the process to adopt FMCSR revisions into State regulations takes one of three paths. Twenty-four States adopt the FMCSRs by reference. Nineteen others adopt the FMCSRs into their State regulations following an administrative review process performed by executive-branch agencies (such as the State Department of Transportation). Nine States adopt changes after legislative review and process. One State adopts most changes through administrative process, but requires a legislative process for others. The FHWA's MCSAP provides a phase-in period of no longer than three years for States to revise their regulations to respond to revisions to the FMCSRs. Despite the variation in State adoption procedures and schedules, however, the MCSAP has produced a degree of national uniformity in commercial motor vehicle safety regulations never before achieved.

Enforcement Powers of Civilian State Motor Carrier Safety Personnel

The Pennsylvania DOT staffs its motor carrier safety programs with uniformed personnel from State and local police forces, as well as with civilian Public Utilities Commission and DOT inspectors. The Pennsylvania DOT advises the FHWA that its civilian officials, who are not sworn police officers, have limited enforcement powers. For example, they cannot enforce local traffic regulations concerning the use of turn signals, but they can cite a CMV driver under a State's version of 49 CFR 392.15, Required and prohibited use of turn signals.

FHWA Response

There are many more sworn officers in any given jurisdiction than there are civilian motor carrier safety officials. Although the Pennsylvania DOT may have to limit civilian inspectors to certain tasks, the FHWA believes there will be little, if any, negative impact from deleting § 392.15, as well as several other regulations adequately covered under State and local traffic laws.

Performance Oriented Compliance Criteria

Houston L&P suggested motor carriers with a satisfactory safety rating be relieved of certain regulatory requirements and be allowed to maintain ''core records.'' These could include the Driver Qualification File (§ 391.51), Alcohol and Drug Testing (part 382, pre-employment drug testing, post-accident testing, random testing at a 25 percent rate for drugs and 10 percent rate for alcohol), and documents pertaining to financial responsibility requirements (part 387), Inspection, repair, and maintenance (part 396), and hazardous materials. Houston L&P believes that, if a motor carrier were assigned an ''Unsatisfactory'' safety rating, the motor carrier should be required to add hours of service (part 395) and increase the random testing rates to 50 percent for drugs and 25 percent for alcohol.

FHWA Response

The FHWA may consider these comments in future rulemaking actions as part of the Zero-Base Regulatory Reform Initiative.

Other Simplifications, Clarifications Requested

Alabama Power and Southern Company Services, Inc. believe the zero-base process must continue to address regulations they consider burdensome and of questionable value for safety: ''Each section of the FMCSRs should be considered individually and impacted industries allowed to debate the requirements.'' They believe further simplification and clarification of some regulations is needed, including raising the threshold for FMCSR applicability to 26,000 pounds, requiring States to be more consistent regarding waivers and exemptions, and revising the hours-of-service regulations.

FHWA Response

The FHWA is currently addressing all of these issues. The agency is implementing a demonstration program required under Section 344 of the National Highway System Designation Act to exempt motor carriers operating vehicles with a GVWR of 10,001 to 26,000 pounds from certain regulations (61 FR 44385). The FHWA's MCSAP program activities and its consultative role in the CVSA continually address compatibility between State and federal determinations of applicability to motor carrier safety regulations. The FHWA has also initiated a rulemaking to revise the hours-of-service regulations (61 FR 57252, November 5, 1996).

Section 392.10(a), Railroad Grade Crossings; Stopping Required

The ATA recommended the FHWA delete this section's prohibition against shifting gears while crossing railroad tracks. The ATA contends that without this provision, CMVs would be able to negotiate grade crossings in shorter periods of time. The ATA based this conclusion upon results of a computer simulation performed by a major engine manufacturer (the ATA did not name the company). The simulation modeled crossing times for an 80,000 pound CMV consisting of a tractor powered by a 330-hp engine with 10-speed transmission towing a 53-foot semitrailer. For an upshift from third to fifth gear, times for crossing a single track were computed to be reduced from 13.6 to 9.9 seconds. For crossing a double track, the times were computed to be reduced from 14.8 to 10.6 seconds.

FHWA response

The FHWA appreciates this information. However, before a regulatory change can be considered, more analyses will be needed, similar to the work performed by the University of Michigan Transportation Research Institute for the FHWA in 1985 and reported in *Consequences of Mandatory Stops at Rail-Highway Crossings* (Report FHWA/RD–86/014). Those analyses should explore the influence of engine power ratings, longer trailer combinations including multiple trailers, multiple-track grade crossings, and different grades at the crossings.

Section 392.33, Obscured Lamps or Reflectors

The Colorado DPS suggested this section be removed because State law already requires that lamps be visible and §§ 396.3(a)(1) and 396.7 appear to cover this violation.

FHWA Response

The FHWA will consider this in a separate rulemaking as part of its Zero-Base Regulatory Reform initiative.

Section 393.70, Coupling Devices and Towing Methods, Except for Driveaway-Towaway Operations

Inspector Moore of the Vermont DMV requested the FHWA to revise the section to include a discussion of coupling device requirements for the towing of semitrailers not equipped with fifth wheel assemblies, such as those using pintle hook devices.

FHWA Response

The FHWA is addressing coupling devices and towing methods in a separate NPRM published April 14, 1997 (62 FR 18170). Among other things, the NPRM proposes revising §§ 393.70 and 393.71.

Section 395.1(e), 100 Air-Mile Radius Driver

This provision concerns the exemption from the requirements of § 395.8 for drivers who operate within a 100 air-mile radius of the drivers' normal work reporting location and return to the normal work reporting location and are released from work within 12 consecutive hours.

The Distribution and LTL Carriers Association (LTL) recommended the FHWA increase the 100 air-mile radius to 150 air-miles, or, alternatively, provide the exemption to drivers who report to and are released from a normal reporting location and who are on duty for 12 hours or less. The LTL also suggested linking the § 395.8 exemption to three of the five requirements in the current regulation: (1) the driver's on-duty status was 12 consecutive hours from start to finish of the shift; (2) the driver commences and concludes work at points where the motor carrier can verify the driver's on-duty status; and (3) the employer maintains accurate time records on shift starting time, completion time, and total hours on-duty. The LTL also raised the possibility of increasing the consecutive hours of the work shift in § 395.1(e)(2), but it did not specify a figure or range.

The LTL provided historical and operational perspectives to support its proposal. In 1980, the 100 air-mile exemption was increased from 50 air-miles. The same year, economic deregulation provided motor carriers the opportunity to expand their operations to meet customer needs. The LTL asserted that flexibility to meet those needs ''may necessitate more routine operations beyond 100 miles from terminals.'' According to the LTL, other factors, such as the use of larger-capacity 28-foot doubles trailers for linehaul operations, improvements to road networks, and increased operational scope of terminals and warehouses in large metropolitan areas, make it possible for runs within a 150-mile radius to be performed safely and efficiently under the current 10-hour driving limit, and within 12 hours of the time a driver reports to work.

According to the LTL, approximately 24 percent of the employees of distribution and LTL motor carriers are local or shorthaul drivers. Based on that figure, extending the exemption could relieve some 100,000 drivers of the paperwork burden of records of duty status. The LTL noted that the States of Illinois, Maryland, and Texas already permit a 150-air-mile radius exemption for intrastate transportation under the MCSAP Tolerance Guidelines, but that the FHWA had determined Florida's 200 air-mile radius exemption did not conform to the Guidelines.

FHWA Response

The FHWA recognizes that some drivers operating outside the 100 air-mile radius might drive less than a driver operating within the 100 air-mile radius. This brings into question the value of a distance-based compliance ''floor'' for records of the type required under § 395.8. The FHWA will address the issue of distance- and time-based exemptions to § 395.8 in a future rulemaking.

Section 395.8(k), Retention of Driver's Record of Duty Status

The Department of California Highway Patrol (CHP) suggests that the FHWA define ''supporting documents'' using the text of the November 1993 Regulatory Guidance (58 FR 60734).

FHWA Response

As part of the Hazardous Materials Transportation Authorization Act of 1994 (Sec. 113, Pub.L. 103–311, 108 Stat. 1673, 1676), the Congress directed the Secretary of Transportation to prescribe regulations to improve compliance with the hours of service requirements, and to improve the effectiveness and efficiency of Federal and State officials reviewing such compliance. As part of that mandate, Congress directed the FHWA to specify the supporting documents that motor carriers must maintain. The FHWA is addressing this issue in a Notice of Proposed Rulemaking published April 20, 1998 (63 FR 19457). The docket number is FHWA–98–3706. Comments are requested by June 19, 1998.

Section 396.9(d), Inspection of Motor Vehicles in Operation; Motor Carrier Disposition

Section 396.9(d) requires correction of violations or defects noted in the report, and requires the motor carrier to certify those corrections within 15 days following receipt of the report. In his comments, Inspector Moore of the Vermont DMV contended that motor carriers interpret this to mean they have 15 days to correct the violation. Inspector Moore requested this statement be amended to advise motor carriers that ''violations or defects identified on an inspection report, but which have not been designated as out-of-service violations, be repaired or corrected prior to use of the vehicle for any purpose other than the specific assignment it was engaged in at the time of the inspection.''

FHWA Response

The FHWA believes the current language of the regulation adequately addresses this issue.

Other Comments

Virginia Power and the Petroleum Marketers Association of America stated that they supported all the proposed changes.

For ease of reference the following distribution table is provided:

Old section	New section
387:5	387.5.
For-hire carriage	Revised.
Motor carrier	Revised.
None	387.27(b)(4) [added].
387.29	387.29.
Motor common carrier	Removed.
Motor contract carrier	Removed.
For-hire carriage	Revised.
Motor carrier	Revised.
390.3(f)(2)	Revised.
390.5	390.5 definitions revised.
Accident	Revised.
Commercial motor vehicle.	Revised.
Highway	Added.
Intermittent, casual, or occasional driver..	Renamed: Multiple-employer driver.
Interstate commerce	Revised.
Principal place of business.	Revised.
Regularly employed driver.	Renamed: Single-employer driver.
None	390.29 added.
391.11	391.11 section heading revised.
391.11(b)(4), (b)(5)	Redesignated as 391.13(a),(b).
391.11(b)(6)	391.11(b)(4).
391.11(b)(7)	391.11(b)(5) and revised.
391.11(b)(8)	391.11(b)(6).
391.11(b)(9)	391.11(b)(7).
391.11(b)(10)	391.11(b)(8) and revised.
391.11(b)(11)	Removed.
None	391.13 added.
391.15(b)	391.15(b)(1) and (2).
391.25	Revised.
391.33(a)(1)	Revised.
391.51(a)	Revised.
391.51(b) introduction	Revised.
391.51(b)(1)	391.51(b)(7).
391.51(b)(2)	391.51(b)(8).
391.51(b)(3)	391.51(b)(5).
391.51(b)(4)	391.51(b)(6).
391.51(b)(5)	Removed.
391.51(c) introduction	Removed.
391.51(c)(1)	Removed.
391.51(c)(2)	391.51(b)(1).
391.51(c)(3)	391.51(b)(2).
391.51(c)(4)	391.51(b)(3).
None	391.51(b)(4).
391.51(d)	Removed.
391.51(e)	Removed.
391.51(f)	391.51(c).
391.51(g)	Removed.
391.51(h) intro	391.51(d) intro.
391.51(h)(1)	391.51(d)(4).
391.51(h)(2)	391.51(d)(2).
391.51(h)(3)	391.51(d)(3).
391.51(h)(4)	391.51(d)(5).
None	391.51(d)(1).
391.61	Revised.
391.63	Revised.
391.65(b) and (c)	Revised.
391.67	Revised.
391.68	Revised.
391.69 Drivers operating in Hawaii.	Removed.
391.71	Removed and reserved.
391.73	Redesignated as § 391.69 and revised.
392.9(c)	Redesignated as § 392.62 and revised.
392.9b	Removed.
392.13	Removed and reserved.
392.15	Removed and reserved.
392.20	Removed. and reserved.
392.22(b)(1)	Revised.
392.25	Revised section heading.
392.42	Redesignated as § 391.15(b)(2) and revised.
392.51	Revised.
392.52	Removed and reserved.

Old section	New section
392.68	Removed and reserved.
395.1(g)	Removed.
395.1(h)	Redesignated as § 395.1(g).
395.1(i)	Redesignated as § 395.1(h).
395.1(j)	Redesignated as § 395.1(i).
395.1(k)	Redesignated as § 395.1(j).
395.1(l)	Redesignated as § 395.1(k).
395.1(m)	Redesignated as § 395.1(l).
395.1(n)	Redesignated as § 395.1(m).
395.1(o)	Redesignated as § 395.1(n).
395.2:	395.2 definitions revised.
On-duty time	Revised.
395.8(k)(1)	Revised.
396.11(b)	Revised.
396.11(c)	Revised.
396.11(c)(1)	Revised.
396.11(c)(2)	Revised.
396.11(c)(3)	Removed.
396.11(d)	Revised.
396.13(b)	Revised.
397.19(b)	Revised.

Rulemaking Analyses and Notices

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

The FHWA has determined that this regulatory action is not significant under Executive Order 12866 or regulatory policies and procedures of the DOT. It is anticipated that the economic impact of this rulemaking will be minimal. In addition, this regulatory action is not expected to cause an adverse effect on any sector of the economy. The regulations which are the subject of this rulemaking are obsolete, redundant, unnecessary, ineffective, burdensome, more appropriately regulated by State and local authorities, better addressed by company policy, in need of clarification, or more appropriately contained in another section. Thus, the rulemaking actually lessens the burden imposed by regulations which are being removed, amended, or redesignated. No serious inconsistency or interference with another agency's actions or plans will result because this rulemaking deals exclusively with the FMCSRs. In addition, the rights and obligations of recipients of Federal grants will not be materially affected by this regulatory action. In light of this analysis, the FHWA finds that a full regulatory evaluation is not required.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (5 U.S.C. 601–612), the FHWA has evaluated the effects of this rule on small entities. The FHWA believes this rule will not have a significant economic impact on a substantial number of small entities.

For the most part, this rulemaking will reduce the burden of complying with the FMCSRs by making the regulations clearer and less repetitious. As a result, all entities which are subject to these regulations would benefit, regardless of size. Any benefits resulting from this action, however, would not be of sufficient magnitude to generate a significant economic impact on small entities that would require a full regulatory flexibility analysis to be performed.

This regulatory action will also facilitate compliance with the FMCSRs by removing certain regulations that are more appropriately addressed by company policy. This action will provide motor carriers with more flexibility in furthering the safety of their operations.

Unfunded Mandates Reform Act of 1995

The Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4; 2 U.S.C. 1532) requires each agency to assess the effects of its regulatory actions on State, local, and tribal governments and the private sector. Any agency promulgating a final rule likely to result in a Federal mandate requiring expenditures by a State, local, or tribal government or by the private sector of $100 million or more in any one year must prepare a written statement incorporating various assessments, estimates, and descriptions that are delineated in the Act. The FHWA has determined that the changes in this rulemaking will not have an impact of $100 million or more in any one year.

Executive Order 12612 (Federalism Assessment)

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined this rule does not have sufficient federalism impacts to warrant the preparation of a Federalism Assessment.

These changes to the FMCSRs will not preempt any State law or regulation and no additional costs or burdens will be imposed on the States. In fact, regulatory burdens will be reduced as a result of this rulemaking. In addition, this action will not have a significant effect on the States' ability to execute traditional State governmental functions.

Executive Order 12372 (Intergovernmental Review)

Catalog of Federal Domestic Assistance Program Number 20.217, Motor Carrier Safety. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities do not apply to this program.

Paperwork Reduction Act

Although this rulemaking does not impose new information collection requirements, it will change existing information collections. These changes were submitted to the Office of Management and Budget (OMB) for approval in accordance with the Paperwork Reduction Act of 1995, 44 U.S.C. 3501–3520. The final rule revises two elements and deletes one element within the existing information collections.

The first element is a recordkeeping requirement, Annual inquiry into drivers' driving records, included in the following information collection at § 391.51 OMB Control Number 2125–0065:

Title: Driver Qualification Files.

Affected Public: Approximately 405,000 motor carriers.

Abstract: Motor carriers are required to maintain a driver qualification file for each CMV driver to document that the driver meets the qualification standards to drive in interstate commerce.

Need: To ensure motor carriers employ only qualified interstate CMV drivers.

Requested Time Period of Approval: Three years.

Estimated Annual Burden: Based on an estimate of 5,500,000 interstate CMV drivers, and 405,000 motor carriers subject to the regulation, the initial employment applications impose an annual burden of 23,833 hours on drivers and 11,917 hour on motor carriers. Initial inquiry into drivers' records and investigations into employment records impose a burden of 178,750 hours. Annual inquiries into drivers' driving records impose an estimated annual burden of 398,750 hours. The recordkeeping requirements related to the list of certification of violations impose an estimated annual burden of 159,500 hours. The total estimated burden is 777,333 hours. The OMB has approved this information collection through October 31, 2000.

The second information collection revision involves the requirement that motor carriers who use a driver furnished by another motor carrier obtain information regarding the validity of the driver's qualification

certificate. This requirement is included in the following information collection required under § 391.63 and documented under OMB Control Number 2125–0081:

Title: Qualification Certificate.

Affected Public: Approximately 405,000 motor carriers.

Abstract: A motor carrier that employs a driver who is furnished by another motor carrier, is exempt from maintaining a driver qualification file for such driver, provided a qualification certificate is obtained from the furnishing motor carrier.

Need: To ensure motor carriers employ only qualified interstate CMV drivers.

Requested Time Period of Approval: Three years.

Estimated Annual Burden: The proposed information collection involving contacts to verify the validity of qualification certificates increases the total estimated annual burden of qualification certificates (approved by the OMB under control number 2125–0081) by 13,750 hours, from 13,750 total hours to 27,500 total hours. This information collection was approved by OMB through April 30, 2000.

The third information collection revision deletes the requirement codified at 49 CFR 396.11(c)(3) for a copy of the driver vehicle inspection report to be carried on the CMV's power unit.

Title: Inspection, Repair, and Maintenance.

OMB Number: 2125–0037.

Abstract: Motor carriers must maintain, or cause to be maintained, records that document the inspection, repair, and maintenance activities performed on their owned or leased motor vehicles. There are no prescribed forms. The records are used by the FHWA and its representatives to verify motor carriers' compliance with the inspection, repair, and maintenance standards in part 396 of the FMCSRs.

Respondents: 405,000 motor carriers.

Estimated Total Annual Burden per Record: 3,848,000 hours for routine inspection, repair, and maintenance records; 32,271,702 hours for driver vehicle inspection reports; 145,431 hours for the motor carrier disposition; 87,333 hours for the periodic inspection; 9,330 hours for the records of inspector qualifications; and 10,361 hours for the evidence of brake inspector qualifications.

Revision to Information collection budget for this item: The FHWA has determined safety will not be adversely impacted if it removes the requirement for a copy of the driver vehicle inspection report to be carried on the CMV's power unit. This will reduce the time burden by 4,661,468 hours for this item from the current 33,114,100 hours to 28,452,600 hours for the overall information collection. This information collection was approved by OMB through October 31, 2000. A discussion of this revision appears under the comments concerning part 396.

National Environmental Policy Act

The agency has analyzed this action for the purpose of the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4347) and has determined that this action would not have any effect on the quality of the environment.

Regulation Identification Number

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

List of Subjects

49 CFR Part 387

Hazardous materials transportation, Highway safety, Insurance, Intergovernmental relations, Motor carriers, Motor vehicle safety, Penalties, Reporting and recordkeeping requirements, Surety bonds.

49 CFR Part 390

Highway safety, Motor carriers, Motor vehicle safety, Reporting and recordkeeping requirements.

49 CFR Part 391

Highway safety, Motor carriers, Motor vehicle safety, Reporting and recordkeeping requirements.

49 CFR Part 392

Highway safety, Motor carriers, Motor vehicle safety.

49 CFR Part 395

Global positioning systems, Highway safety, Intelligent transportation systems, Motor carriers, Motor vehicle safety, Reporting and recordkeeping requirements.

49 CFR Part 396

Highway safety, Motor carriers, Motor vehicle maintenance, Motor vehicle safety, Reporting and recordkeeping requirements.

49 CFR Part 397

Hazardous materials transportation, Highway safety, Intergovernmental relations, Motor carriers, Motor vehicle safety, Reporting and recordkeeping requirements.

Issued on: June 9, 1998.

Kenneth R. Wykle,

Federal Highway Administrator.

In consideration of the foregoing, the FHWA amends title 49, Code of Federal Regulations, chapter III, subchapter B, parts 387, 390, 391, 392, 395, 396, and 397 as set forth below:

PART 387—MINIMUM LEVELS OF FINANCIAL RESPONSIBILITY FOR MOTOR CARRIERS

1. The authority citation for part 387 continues to read as follows:

Authority: 49 U.S.C. 13101, 13301, 13906, 14701, 31138, and 31139; and 49 CFR 1.48.

2. In § 387.5, the definitions *For-hire carriage* and *Motor carrier* are revised to read as follows:

§ 387.5 Definitions.

* * * * *

For-hire carriage means the business of transporting, for compensation, the goods or property of another.

* * * * *

Motor carrier means a for-hire motor carrier or a private motor carrier. The term includes, but is not limited to, a motor carrier's agent, officer, or representative; an employee responsible for hiring, supervising, training, assigning, or dispatching a driver; or an employee concerned with the installation, inspection, and maintenance of motor vehicle equipment and/or accessories.

* * * * *

3. Section 387.27 is amended by removing ''and'' at the end of paragraph (b)(2), by removing the period at the end of paragraph (b)(3) and adding ''; and'' in its place, and by adding paragraph (b)(4) to read as follows:

§ 387.27 Applicability.

* * * * *

(b) Exception. * * *

* * * * *

(4) A motor vehicle operated by a motor carrier under contract providing transportation of preprimary, primary, and secondary students for extracurricular trips organized, sponsored, and paid by a school district.

4. In § 387.29, the definitions of the terms *Motor common carrier* and *Motor contract carrier* are removed and the definitions of *For-hire carriage* and *Motor carrier* are revised to read as follows:

§ 387.29 Definitions.

* * * * *

For-hire carriage means the business of transporting, for compensation, passengers and their property, including any compensated transportation of the goods or property or another.

* * * * *

Motor carrier means a for-hire motor carrier. The term includes, but is not limited to, a motor carrier's agent, officer, or representative; an employee responsible for hiring, supervising, training, assigning, or dispatching a driver; or an employee concerned with the installation, inspection, and maintenance of motor vehicle equipment and/or accessories.

* * * * *

PART 390—FEDERAL MOTOR CARRIER SAFETY REGULATIONS; GENERAL

5. The authority citation for part 390 is revised to read as follows:

Authority: 49 U.S.C. 13301, 13902, 31132, 31133, 31136, 31502, and 31504; sec. 204, Pub. L. 104–88, 109 Stat. 803, 941 (49 U.S.C. 701 note); and 49 CFR 1.48.

6. Section 390.3 is amended by revising paragraph (f)(2) to read as follows:

§ 390.3 General applicability.

* * * * *

(f) * * *

(2) Transportation performed by the Federal government, a State, or any political subdivision of a State, or an agency established under a compact between States that has been approved by the Congress of the United States;

* * * * *

7. In § 390.5, the definition of the term *Accident* is revised; the term *Highway* is added; the term *Intermittent, casual, or occasional driver* is removed; the term *Multiple-employer driver* is added; the term *Regularly employed driver* is removed; the term *Single-employer driver* is added; and the terms *Commercial motor vehicle, Interstate commerce,* and *Principal place of business* are revised. All are placed in alphabetical order and read as follows:

§ 390.5 Definitions.

* * * * *

Accident means—

(1) Except as provided in paragraph (2) of this definition, an occurrence involving a commercial motor vehicle operating on a highway in interstate or intrastate commerce which results in:

(i) A fatality;

(ii) Bodily injury to a person who, as a result of the injury, immediately receives medical treatment away from the scene of the accident; or

(iii) One or more motor vehicles incurring disabling damage as a result of the accident, requiring the motor vehicle(s) to be transported away from the scene by a tow truck or other motor vehicle.

(2) The term accident does not include:

(i) An occurrence involving only boarding and alighting from a stationary motor vehicle; or

(ii) An occurrence involving only the loading or unloading of cargo.

* * * * *

Commercial motor vehicle means any self-propelled or towed vehicle used on a highway in interstate commerce to transport passengers or property when the vehicle—

(1) Has a gross vehicle weight rating or gross combination weight rating of 4,537 kg (10,001 lb) or more; or

(2) Is designed to transport 16 or more passengers, including the driver; or

(3) Is of any size and is used in the transportation of materials found to be hazardous for the purposes of the Hazardous Materials Transportation Act (49 U.S.C. 5101 *et seq.*) and which require the motor vehicle to be placarded under the Hazardous Materials Regulations (49 CFR chapter I, subchapter C).

* * * * *

Highway means any road, street, or way, whether on public or private property, open to public travel. ''Open to public travel'' means that the road section is available, except during scheduled periods, extreme weather or emergency conditions, passable by four-wheel standard passenger cars, and open to the general public for use without restrictive gates, prohibitive signs, or regulation other than restrictions based on size, weight, or class of registration. Toll plazas of public toll roads are not considered restrictive gates.

Interstate commerce means trade, traffic, or transportation in the United States—

(1) Between a place in a State and a place outside of such State (including a place outside of the United States);

(2) Between two places in a State through another State or a place outside of the United States; or

(3) Between two places in a State as part of trade, traffic, or transportation originating or terminating outside the State or the United States.

* * * * *

Multiple-employer driver means a driver, who in any period of 7 consecutive days, is employed or used as a driver by more than one motor carrier.

* * * * *

Principal place of business means the single location designated by the motor carrier, normally its headquarters, for purposes of identification under this subchapter. The motor carrier must make records required by parts 382, 387, 390, 391, 395, 396, and 397 of this subchapter available for inspection at this location within 48 hours (Saturdays, Sundays, and Federal holidays excluded) after a request has been made by a special agent or authorized representative of the Federal Highway Administration.

* * * * *

Single-employer driver means a driver who, in any period of 7 consecutive days, is employed or used as a driver solely by a single motor carrier. This term includes a driver who operates a commercial motor vehicle on an intermittent, casual, or occasional basis.

* * * * *

8. Section 390.29 is added to read as follows:

§ 390.29 Location of records or documents.

(a) A motor carrier with multiple offices or terminals may maintain the records and documents required by this subchapter at its principal place of business, a regional office, or driver work-reporting location unless otherwise specified in this subchapter.

(b) All records and documents required by this subchapter which are maintained at a regional office or driver work-reporting location shall be made available for inspection upon request by a special agent or authorized representative of the Federal Highway Administration at the motor carrier's principal place of business or other location specified by the agent or representative within 48 hours after a request is made. Saturdays, Sundays, and Federal holidays are excluded from the computation of the 48-hour period of time.

PART 391—QUALIFICATIONS OF DRIVERS

9. The authority citation for part 391 continues to read as follows:

Authority: 49 U.S.C. 504, 31133, 31136, and 31502; and 49 CFR 1.48.

10. Section 391.11 is amended by revising the section heading and by revising paragraph (b) to read as follows:

§ 391.11 General qualifications of drivers.

* * * * *

(b) Except as provided in subpart G of this part, a person is qualified to drive a motor vehicle if he/she—

(1) Is at least 21 years old;

(2) Can read and speak the English language sufficiently to converse with the general public, to understand highway traffic signs and signals in the English language, to respond to official inquiries, and to make entries on reports and records;

(3) Can, by reason of experience, training, or both, safely operate the type of commercial motor vehicle he/she drives;

(4) Is physically qualified to drive a commercial motor vehicle in accordance with subpart E—Physical Qualifications and Examinations of this part;

(5) Has a currently valid commercial motor vehicle operator's license issued only by one State or jurisdiction;

(6) Has prepared and furnished the motor carrier that employs him/her with the list of violations or the certificate as required by § 391.27;

(7) Is not disqualified to drive a commercial motor vehicle under the rules in § 391.15; and

(8) Has successfully completed a driver's road test and has been issued a certificate of driver's road test in accordance with § 391.31, or has presented an operator's license or a certificate of road test which the motor carrier that employs him/her has accepted as equivalent to a road test in accordance with § 391.33.

11. Section 391.13 is added to read as follows:

§ 391.13. Responsibilities of drivers.

In order to comply with the requirements of § 392.9(a) and § 393.9 of this subchapter, a motor carrier shall not require or permit a person to drive a commercial motor vehicle unless the person—

(a) Can, by reason of experience, training, or both, determine whether the cargo he/she transports (including baggage in a passenger-carrying commercial motor vehicle) has been properly located, distributed, and secured in or on the commercial motor vehicle he/she drives;

(b) Is familiar with methods and procedures for securing cargo in or on the commercial motor vehicle he/she drives.

12. Section 391.15 is amended by revising paragraph (b) to read as follows:

§ 391.15 Disqualification of drivers.

* * * * *

(b) Disqualification for loss of driving privileges. (1) A driver is disqualified for the duration of the driver's loss of his/her privilege to operate a commercial motor vehicle on public highways, either temporarily or permanently, by reason of the revocation, suspension, withdrawal, or denial of an operator's license, permit, or privilege, until that operator's license, permit, or privilege is restored by the authority that revoked, suspended, withdrew, or denied it.

(2) A driver who receives a notice that his/her license, permit, or privilege to operate a commercial motor vehicle has been revoked, suspended, or withdrawn shall notify the motor carrier that employs him/her of the contents of the notice before the end of the business day following the day the driver received it.

* * * * *

13. Section 391.25 is revised to read as follows:

§ 391.25 Annual inquiry and review of driving record.

(a) Except as provided in subpart G of this part, each motor carrier shall, at least once every 12 months, make an inquiry into the driving record of each driver it employs, covering at least the preceding 12 months, to the appropriate agency of every State in which the driver held a commercial motor vehicle operator's license or permit during the time period.

(b) Except as provided in subpart G of this part, each motor carrier shall, at least once every 12 months, review the driving record of each driver it employs to determine whether that driver meets minimum requirements for safe driving or is disqualified to drive a commercial motor vehicle pursuant to § 391.15.

(1) The motor carrier must consider any evidence that the driver has violated any applicable Federal Motor Carrier Safety Regulations in this subchapter or Hazardous Materials Regulations (49 CFR chapter I, subchapter C).

(2) The motor carrier must consider the driver's accident record and any evidence that the driver has violated laws governing the operation of motor vehicles, and must give great weight to violations, such as speeding, reckless driving, and operating while under the influence of alcohol or drugs, that indicate that the driver has exhibited a disregard for the safety of the public.

(c) Recordkeeping. (1) A copy of the response from each State agency to the inquiry required by paragraph (a) of this section shall be maintained in the driver's qualification file.

(2) A note, including the name of the person who performed the review of the driving record required by paragraph (b) of this section and the date of such review, shall be maintained in the driver's qualification file.

14. Section 391.33, paragraph (a)(1) is revised to read as follows:

§ 391.33 Equivalent of road test.

(a) * * *

(1) A valid Commercial Driver's License as defined in § 383.5 of this subchapter, but not including double/triple trailer or tank vehicle endorsements, which has been issued to him/her to operate specific categories of commercial motor vehicles and which, under the laws of that State, licenses him/her after successful completion of a road test in a commercial motor vehicle of the type the motor carrier intends to assign to him/her; or

15. Section 391.51 is revised to read as follows:

§ 391.51 General requirements for driver qualification files.

(a) Each motor carrier shall maintain a driver qualification file for each driver it employs. A driver's qualification file may be combined with his/her personnel file.

(b) The qualification file for a driver must include:

(1) The driver's application for employment completed in accordance with § 391.21;

(2) A written record with respect to each past employer who was contacted and a copy of the response by each State agency, pursuant to § 391.23 involving investigation and inquiries;

(3) The certificate of driver's road test issued to the driver pursuant to § 391.31(e), or a copy of the license or certificate which the motor carrier accepted as equivalent to the driver's road test pursuant to § 391.33;

(4) The response of each State agency to the annual driver record inquiry required by § 391.25(a);

(5) A note relating to the annual review of the driver's driving record as required by § 391.25(c)(2);

(6) A list or certificate relating to violations of motor vehicle laws and ordinances required by § 391.27;

(7) The medical examiner's certificate of his/her physical qualification to drive a commercial motor vehicle as required by § 391.43(f) or a legible photographic copy of the certificate; and

(8) A letter from the Regional Director of Motor Carriers granting a waiver of a physical disqualification, if a waiver was issued under § 391.49.

(c) Except as provided in paragraph (d) of this section, each driver's qualification file shall be retained for as long as a driver is employed by that motor carrier and for three years thereafter.

(d) The following records may be removed from a driver's qualification file three years after the date of execution:

(1) The response of each State agency to the annual driver record inquiry required by § 391.25(a);

(2) The note relating to the annual review of the driver's driving record as required by § 391.25(c)(2);

(3) The list or certificate relating to violations of motor vehicle laws and ordinances required by § 391.27;

(4) The medical examiner's certificate of the driver's physical qualification to drive a commercial motor vehicle or the photographic copy of the certificate as required by § 391.43(f); and

(5) The letter issued under § 391.49 granting a waiver of a physical disqualification.

(Approved by the Office of Management and Budget under control number 2125–0065)

16. Section 391.61 is revised to read as follows:

§ 391.61 Drivers who were regularly employed before January 1, 1971.

The provisions of § 391.21 (relating to applications for employment), § 391.23 (relating to investigations and inquiries), and § 391.33 (relating to road tests) do not apply to a driver who has been a single-employer driver (as defined in § 390.5 of this subchapter) of a motor carrier for a continuous period which began before January 1, 1971, as long as he/she continues to be a single-employer driver of that motor carrier.

17. Section 391.63 is revised to read as follows:

§ 391.63 Multiple-employer drivers.

(a) If a motor carrier employs a person as a multiple-employer driver (as defined in § 390.5 of this subchapter), the motor carrier shall comply with all requirements of this part, except that the motor carrier need not—

(1) Require the person to furnish an application for employment in accordance with § 391.21;

(2) Make the investigations and inquiries specified in § 391.23 with respect to that person;

(3) Perform the annual driving record inquiry required by § 391.25(a);

(4) Perform the annual review of the person's driving record required by § 391.25(b); or

(5) Require the person to furnish a record of violations or a certificate in accordance with § 391.27.

(b) Before a motor carrier permits a multiple-employer driver to drive a commercial motor vehicle, the motor carrier must obtain his/her name, his/her social security number, and the identification number, type and issuing State of his/her commercial motor vehicle operator's license. The motor carrier must maintain this information for three years after employment of the multiple-employer driver ceases.

(Approved by the Office of Management and Budget under control number 2125–0081)

18. Section 391.65 is amended by revising paragraphs (b) and (c) to read as follows:

§ 391.65 Drivers furnished by other motor carriers.

* * * * *

(b) A motor carrier that obtains a certificate in accordance with paragraph (a)(2) of this section shall:

(1) Contact the motor carrier which certified the driver's qualifications under this section to verify the validity of the certificate. This contact may be made in person, by telephone, or by letter.

(2) Retain a copy of that certificate in its files for three years.

(c) A motor carrier which certifies a driver's qualifications under this section shall be responsible for the accuracy of the certificate. The certificate is no longer valid if the driver leaves the employment of the motor carrier which issued the certificate or is no longer qualified under the rules in this part.

19. Section 391.67 is revised to read as follows:

§ 391.67 Farm vehicle drivers of articulated commercial motor vehicles.

The following rules in this part do not apply to a farm vehicle driver (as defined in § 390.5 of this subchapter) who is 18 years of age or older and who drives an articulated commercial motor vehicle:

(a) Section 391.11(b)(1), (b)(6) and (b)(8) (relating to general qualifications of drivers);

(b) Subpart C (relating to disclosure of, investigation into, and inquiries about the background, character, and driving record of drivers);

(c) Subpart D (relating to road tests); and

(d) Subpart F (relating to maintenance of files and records).

20. Section 391.68 is revised to read as follows:

§ 391.68 Private motor carrier of passengers (nonbusiness).

The following rules in this part do not apply to a private motor carrier of passengers (nonbusiness) and its drivers:

(a) Section 391.11(b)(1), (b)(6) and (b)(8) (relating to general qualifications of drivers);

(b) Subpart C (relating to disclosure of, investigation into, and inquiries about the background, character, and driving record of, drivers);

(c) So much of §§ 391.41 and 391.45 as require a driver to be medically examined and to have a medical examiner's certificate on his/her person; and

(d) Subpart F (relating to maintenance of files and records).

§ 391.69 [Removed]

21. Section 391.69, Drivers operating in Hawaii, is removed.

§ 391.71 [Removed and Reserved]

22. Section 391.71 is removed and reserved.

§ 391.73 [Redesignated as § 391.69]

23. Section 391.73 is redesignated as new § 391.69 and revised to read as follows:

§ 391.69 Private motor carrier of passengers (business).

The provisions of § 391.21 (relating to applications for employment), § 391.23 (relating to investigations and inquiries), and § 391.31 (relating to road tests) do not apply to a driver who was a single-employer driver (as defined in § 390.5 of this subchapter) of a private motor carrier of passengers (business) as of July 1, 1994, so long as the driver continues to be a single-employer driver of that motor carrier.

PART 392—DRIVING OF COMMERCIAL MOTOR VEHICLES

24. The authority citation for part 392 continues to read as follows:

Authority: 49 U.S.C. 31136 and 31502; and 49 CFR 1.48.

§ 392.9 [Amended]

25. Section 392.9(c) is redesignated as § 392.62 in subpart G and revised to read as follows:

§ 392.62 Safe operation, buses.

No person shall drive a bus and a motor carrier shall not require or permit a person to drive a bus unless—

(a) All standees on the bus are rearward of the standee line or other means prescribed in § 393.90 of this subchapter;

(b) All aisle seats in the bus conform to the requirements of § 393.91 of this subchapter; and

(c) Baggage or freight on the bus is stowed and secured in a manner which assures—

(1) Unrestricted freedom of movement to the driver and his proper operation of the bus;

(2) Unobstructed access to all exits by any occupant of the bus; and

(3) Protection of occupants of the bus against injury resulting from the falling or displacement of articles transported in the bus.

§ 392.9b [Removed]

26. Section 392.9b is removed.

§ 392.13 [Removed and Reserved]

27. Section 392.13 is removed and reserved.

§ 392.15 [Removed and Reserved]

28. Section 392.15 is removed and reserved.

§ 392.20 [Removed and Reserved]

29. Section 392.20 is removed and reserved.

30. Section 392.22 is amended by revising paragraph (b)(1) to read as follows:

§ 392.22 Emergency signals; stopped commercial motor vehicles.

* * * * *

(b) Placement of warning devices—

(1) *General rule.* Except as provided in paragraph (b)(2) of this section, whenever a commercial motor vehicle is stopped upon the traveled portion or the shoulder of a highway for any cause other than necessary traffic stops, the driver shall, as soon as possible, but in any event within 10 minutes, place the warning devices required by § 393.95 of this subchapter, in the following manner:

(i) One on the traffic side of and 4 paces (approximately 3 meters or 10 feet) from the stopped commercial motor vehicle in the direction of approaching traffic;

(ii) One at 40 paces (approximately 30 meters or 100 feet) from the stopped commercial motor vehicle in the center of the traffic lane or shoulder occupied by the commercial motor vehicle and in the direction of approaching traffic; and

(iii) One at 40 paces (approximately 30 meters or 100 feet) from the stopped commercial motor vehicle in the center of the traffic lane or shoulder occupied by the commercial motor vehicle and in the direction away from approaching traffic.

* * * * *

31. Section 392.25 is amended by revising the section heading to read as follows:

§ 392.25 Flame producing devices.

* * * * *

§ 392.42 [Removed]

32. Section 392.42 is removed.

33. Section 392.51 is revised to read as follows:

§ 392.51 Reserve fuel; materials of trade.

Small amounts of fuel for the operation or maintenance of a commercial motor vehicle (including its auxiliary equipment) may be designated as materials of trade (see 49 CFR 171.8).

(a) The aggregate gross weight of all materials of trade on a motor vehicle may not exceed 200 kg (440 pounds).

(b) Packaging for gasoline must be made of metal or plastic and conform to requirements of 49 CFR Parts 171, 172, 173, and 178 or requirements of the Occupational Safety and Health Administration contained in 29 CFR 1910.106.

(c) For Packing Group II (including gasoline), Packing Group III (including aviation fuel and fuel oil), or ORM–D, the material is limited to 30 kg (66 pounds) or 30 L (8 gallons).

(d) For diesel fuel, the capacity of the package is limited to 450 L (119 gallons).

(e) A Division 2.1 material in a cylinder is limited to a gross weight of 100 kg (220 pounds). (A Division 2.1 material is a flammable gas, including liquefied petroleum gas, butane, propane, liquefied natural gas, and methane).

§ 392.52 [Removed and Reserved]

34. Section 392.52 is removed and reserved.

§ 392.68 [Removed and Reserved]

35. Section 392.68 is removed and reserved.

PART 395—HOURS OF SERVICE OF DRIVERS

36. The authority citation for part 395 continues to read as follows:

Authority: 49 U.S.C. 31133, 31136, and 31502; sec. 345, Pub. L. 104–59, 109 Stat. 568, 613; and 49 CFR 1.48.

§ 395.1 [Amended]

37. Section 395.1 is amended by removing paragraph (g) and redesignating paragraphs (h) through (o) as paragraphs (g) through (n), respectively.

38. Section 395.2 is amended by revising the definition of *On duty time* to read as follows:

§ 395.2 Definitions.

* * * * *

On duty time means all time from the time a driver begins to work or is required to be in readiness to work until the time the driver is relieved from work and all responsibility for performing work. *On duty time* shall include:

(1) All time at a plant, terminal, facility, or other property of a motor carrier or shipper, or on any public property, waiting to be dispatched, unless the driver has been relieved from duty by the motor carrier;

(2) All time inspecting, servicing, or conditioning any commercial motor vehicle at any time;

(3) All driving time as defined in the term *driving time;*

(4) All time, other than *driving time*, in or upon any commercial motor vehicle except time spent resting in a *sleeper berth;*

(5) All time loading or unloading a commercial motor vehicle, supervising, or assisting in the loading or unloading, attending a commercial motor vehicle being loaded or unloaded, remaining in readiness to operate the commercial motor vehicle, or in giving or receiving receipts for shipments loaded or unloaded;

(6) All time repairing, obtaining assistance, or remaining in attendance upon a disabled commercial motor vehicle;

(7) All time spent providing a breath sample or urine specimen, including travel time to and from the collection site, in order to comply with the random, reasonable suspicion, post-accident, or follow-up testing required by part 382 of this subchapter when directed by a motor carrier;

(8) Performing any other work in the capacity, employ, or service of a motor carrier; and

(9) Performing any compensated work for a person who is not a motor carrier.

* * * * *

39. Section 395.8 is amended by revising paragraph (k)(1) to read as follows:

§ 395.8 Driver's record of duty status.

* * * * *

(k) *Retention of driver's record of duty status.* (1) Each motor carrier shall maintain records of duty status and all supporting documents for each driver it employs for a period of six months from the date of receipt.

* * * * *

PART 396—INSPECTION, REPAIR, AND MAINTENANCE

40. The authority citation for part 396 continues to read as follows:

Authority: 49 U.S.C. 31133, 31136, and 31502; 49 CFR 1.48.

41. Section 396.11 is amended by revising paragraphs (b), (c), and (d) to read as follows:

§ 396.11 Driver vehicle inspection report(s).

* * * * *

(b) *Report content.* The report shall identify the vehicle and list any defect or deficiency discovered by or reported to the driver which would affect the safety of operation of the vehicle or result in its mechanical breakdown. If no defect or deficiency is discovered by or reported to the driver, the report shall

so indicate. In all instances, the driver shall sign the report. On two-driver operations, only one driver needs to sign the driver vehicle inspection report, provided both drivers agree as to the defects or deficiencies identified. If a driver operates more than one vehicle during the day, a report shall be prepared for each vehicle operated.

(c) *Corrective action.* Prior to requiring or permitting a driver to operate a vehicle, every motor carrier or its agent shall repair any defect or deficiency listed on the driver vehicle inspection report which would be likely to affect the safety of operation of the vehicle.

(1) Every motor carrier or its agent shall certify on the original driver vehicle inspection report which lists any defect or deficiency that the defect or deficiency has been repaired or that repair is unnecessary before the vehicle is operated again.

(2) Every motor carrier shall maintain the original driver vehicle inspection report, the certification of repairs, and the certification of the driver's review for three months from the date the written report was prepared.

(d) *Exceptions.* The rules in this section shall not apply to a private motor carrier of passengers (nonbusiness), a driveaway-towaway operation, or any motor carrier operating only one commercial motor vehicle.

42. Section 396.13 is amended by revising paragraph (b) to read as follows:

§ 396.13 Driver inspection.

* * * * *

(b) Review the last driver vehicle inspection report; and

* * * * *

PART 397—TRANSPORTATION OF HAZARDOUS MATERIALS; DRIVING AND PARKING RULES

43. The authority citation for part 397 continues to read as follows:

Authority: 49 U.S.C. 322; 49 CFR 1.48. Subpart A also issued under 49 U.S.C. 31136, 31502. Subparts C, D, and E also issued under 49 U.S.C. 5112, 5125.

44. Section 397.19 is amended by revising paragraph (b) to read as follows:

§ 397.19 Instructions and documents.

* * * * *

(b) A driver who receives documents in accordance with paragraph (a) of this section must sign a receipt for them. The motor carrier shall maintain the receipt for a period of one year from the date of signature.

* * * * *

[FR Doc. 98–15880 Filed 6–17–98; 8:45 am]

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Proposed Rules

Federal Register
Vol. 63, No. 117
Thursday, June 18, 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.

FARM CREDIT ADMINISTRATION

12 CFR Part 615

RIN 3052–AB76

Funding and Fiscal Affairs, Loan Policies and Operations, and Funding Operations; Investment Management

AGENCY: Farm Credit Administration.

ACTION: Proposed rule.

SUMMARY: The Farm Credit Administration (FCA), by the FCA Board (Board), proposes to amend the investment regulations to provide Farm Credit System (Farm Credit, FCS, or System) banks with a broader array of eligible investments. Under the proposed regulations, Farm Credit banks are expected to hold only high-quality and liquid investments to maintain a liquidity reserve, invest surplus funds, and manage interest rate risk. The proposal provides System banks with guidance on sound practices for managing risks associated with investment activities and grants System banks greater flexibility to manage risk on an institutional, portfolio, or individual instrument level. These amendments are also designed to better enable FCS banks to adjust to the rapid and continual changes in the financial markets.

DATES: Written comments should be received on or before August 17, 1998.

ADDRESSES: Comments may be submitted by email to FCA at ''reg-comm@fca.gov.'' Comments may also be mailed or delivered to Patricia W. DiMuzio, Director, Regulation and Policy Division, Office of Policy and Analysis, Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102–5090 or sent by facsimile transmission to (703) 734–5784. Copies of all communications received will be available for review by interested parties in the Office of Policy and Analysis, Farm Credit Administration.

FOR FURTHER INFORMATION CONTACT:

Laurie A. Rea, Senior Policy Analyst, Office of Policy Analysis, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4498;
or
Richard Katz, Senior Attorney, Office of General Counsel, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4020, TDD (703) 883–4444.

SUPPLEMENTARY INFORMATION:

I. Background

Petitions by System banks, various developments and innovations in the securities markets, and improvements in risk management technologies have all led the FCA to reexamine its investment management regulations in subpart E of part 615. The FCA aims to develop a regulatory framework that establishes certain fundamental practices each Farm Credit bank should follow to fully understand and effectively manage the risks inherent in its investment portfolio. Although non-agricultural investments are a relatively small percentage of the assets of Farm Credit banks, proper investment management enables System banks to control risks stemming from their operations as monoline providers of agricultural credit. The FCA's proposal is specifically designed to enhance investment management practices at Farm Credit banks, and many aspects of this proposal are consistent with the policies that the Federal Financial Institutions Examination Council (FFIEC) recently adopted in a document entitled ''Supervisory Policy Statement on Investment Securities and End-User Derivatives Activities.'' [1]

The proposed amendments enable FCA to relax or repeal many of the detailed criteria that the existing regulations prescribe for specific types of investments. As a result, § 615.5140 will provide broader parameters for various classes of investments while retaining essential safety and soundness controls, such as credit ratings and diversification standards.

II. Investment Portfolio Management

Board and senior management should develop and implement comprehensive risk management processes to effectively identify, measure, monitor, and control risks associated with investment activities. Although risk management programs will differ among System banks, certain elements are fundamental to all sound risk management programs. Safe and sound banking practices require System banks to have programs to manage the market, credit, liquidity, operational, legal, and other risks associated with investment activities. Effective risk management also addresses risks in individual instruments, the investment portfolio, and the entire institution.

Proposed § 615.5133 sets forth the fundamental criteria for developing sound investment management practices at Farm Credit banks. Senior management, under the oversight of the board of directors, should adhere to investment practices that are appropriate for the bank's individual circumstances and consistent with these regulations. The failure to understand and manage the risks associated with investment activities will generally be considered an unsafe and unsound banking practice.

A. Investment Policy Requirements

Many aspects of the current investment management regulations are retained in this proposal. However, the complexity of many financial products, both on- and off-balance sheet, compels the FCA and other Federal financial institution regulators to advocate a more comprehensive and institution-wide approach to risk management. Thus, the FCA is proposing to strengthen, redesign, and reorganize this section.

1. Board and Senior Management Oversight

The introductory paragraph to proposed § 615.5133 outlines the basic responsibilities of the board of directors regarding the investment activities of its bank. The proposed rule requires the board to adopt written policies that specifically identify the purposes and objectives, risk parameters, delegations of authority, and reporting requirements for managing the bank's investment portfolio. The investment policy should also address how investment activities affect the institution's capital and earnings. For this reason, a Farm Credit bank board may include its investment policy in a broader asset-liability management (ALM) or risk management policy.

Oversight by both the board of directors and senior management of each Farm Credit bank is an integral

[1] *See* 63 FR 20191 (April 23, 1998).

part of an effective risk management program. The board of directors is responsible for ensuring that management and operational personnel have the requisite skills and resources to manage the risks associated with investment activities in accordance with the board's policies. Annually, the board of directors of each Farm Credit bank must review its investment policies to determine whether objectives and risk exposure limits continue to be appropriate for the bank. Senior management discharges its responsibility by adhering to the board's policies, providing advice to the board, and safely and soundly conducting investment activities on both a strategic and operational basis.

2. Risk Limits

Proposed § 615.5133(a) requires the board's policies to define the risk parameters for the bank's investment activities. Foremost, risk parameters are to be based on the strength of each Farm Credit bank's capital position and its ability to measure and manage risk. The risk parameters should be consistent with the bank's broader business strategies and institutional objectives. The bank's investment policies should identify the risk characteristics of permissible investments and establish risk limits and diversification requirements for the various classes of eligible investments and the investment portfolio. The policies of each Farm Credit bank should control credit, market, liquidity, and operational risks associated with investment activities.

B. Credit Risk

A System bank should not acquire investments without assessing the creditworthiness of issuers, obligors, or other counterparties. Credit risk generally refers to the risk that an issuer, obligor, or other counterparty will default on its obligation to pay the investor under the terms of the security or instrument.

Proposed § 615.5133(a)(1) requires each System bank to establish comprehensive policies to control credit risk in its investment portfolio. Each Farm Credit institution must maintain a well-diversified investment portfolio. As a result, every Farm Credit bank should limit concentrations relating to single or related counterparties, geographical areas, industries, or obligations with similar characteristics.

The FCA proposes to delete current § 615.5133(i) relating to specific credit risk controls on investments in collateralized mortgage obligations (CMOs), real estate investment conduits (REMICs), and asset-backed securities (ABS), in favor of the broader language proposed in § 615.5133(a)(1)(i). Nevertheless, the FCA continues to expect banks to address concentration risks associated with CMOs, REMICs, mortgage-backed securities (MBS), and ABS by establishing appropriate portfolio limits on each of these investments. More specifically, the policy of each Farm Credit bank should address minimum pool size, the minimum number of loans in a pool, geographic diversification of a pool, and maximum allowable premiums.

As part of its efforts to control credit risks, Farm Credit banks should consider the ability of counterparties to honor their obligations and commitments. The selection of dealers, brokers, and investment bankers (collectively, securities firms) is an important aspect of effective management of counterparty credit risk. Proposed § 615.5133(a)(1)(ii) requires bank boards of directors to identify the criteria for selecting securities firms. A satisfactory approval process includes a review of each firm's financial statements and an evaluation of its ability to honor its commitments, including an inquiry into the general reputation of the securities firm. In some situations, it is also prudent for System banks to review information from Federal or State securities regulators and industry self-regulatory organizations such as the National Association of Securities Dealers concerning any formal enforcement actions against the dealer, its affiliates, or associated personnel. Proposed § 615.5133(a)(1)(ii) also requires the board of directors to set limits on the amounts and types of transactions that the bank can execute with authorized securities firms. The board of directors must annually review management's selection of securities firms and limitations on transactions with such firms.

Proposed § 615.5133(a)(1)(ii) responds to requests by System banks for modifications in the FCA's policy concerning the board's role in selecting securities firms, financial institutions, and other counterparties. The proposed rule would no longer require the board of directors to approve specific depository institutions where the bank holds certificates of deposits and Federal funds. The FCA originally imposed this requirement on System banks at a time when small, isolated, and financially weak commercial banks were offering brokered deposits with high rates of return.[2] Reforms in the commercial banking industry and a widespread awareness of the risks inherent in such instruments have lessened FCA's regulatory concern. Furthermore, proposed § 615.5140(a)(4)(i) sets minimum credit and maturity limits for investments in certificates of deposits, Federal funds, and bankers acceptances.

Proposed § 615.5133(a)(1)(iii) requires Farm Credit banks to establish appropriate collateral margin requirements for repurchase agreements.[3] The FCA is proposing this amendment, in part, because proposed § 615.5140(a)(4)(iv) would expand the types of securities that Farm Credit banks may accept as collateral in repurchase transactions. As a means of managing potential counterparty credit risk, it is prudent for System banks to establish appropriate collateral margin requirements based on the quality of the collateral and the terms of the agreement. Farm Credit banks should also manage their exposure to loss on repurchase agreements by regularly marking the collateral to market and maintaining control of the collateral.[4]

C. Market Risk

From a safety and soundness perspective, it is crucial for the management of a Farm Credit bank to fully understand the market risks associated with investment securities prior to acquisition and on an ongoing basis. Market risk is the risk to a bank's financial condition resulting from adverse changes in value of its holdings arising from movements in interest rates or prices. The most significant market risk of investment activities is interest rate risk. Proposed § 615.5133(a)(2) would require bank boards to establish limits on market risk exposure at the institutional, portfolio, or individual instrument level. This change corresponds with pending changes in other parts of the FCA regulations that address interest rate risk management.[5]

To manage market risk exposure, System banks should evaluate how

[2] *See* 58 FR 63034, 63040 (November 30, 1993).

[3] In general, whether a given agreement is termed a ''repurchase agreement'' or a ''reverse repurchase agreement'' depends largely on which party initiated the transaction. Market participants typically view the transaction from the dealer's perspective. In this preamble and the proposed regulation, the FCA uses the term ''repurchase agreement'' regardless of the perspective from which the transaction is viewed.

[4] For a more detailed discussion on managing risks associated with repurchase agreements, Farm Credit banks should review the FFIEC's modified policy statement on repurchase agreements with securities dealers and others. *See* 63 FR 6935 (February, 11, 1998).

[5] The FCA's proposed capital regulations provide more detailed discussions of FCS institution responsibilities as they relate to interest rate risk management. *See* 62 FR 49623 (September, 23, 1997).

individual instruments and the investment portfolio as a whole affect the bank's overall interest rate risk profile. Bank's should monitor the price sensitivity of its investment portfolio and specify institution-wide interest rate risk limits. In addition, banks may find it useful to establish interest rate risk limits on the investment portfolio or on certain types of securities. Risk parameters should be commensurate with the bank's ability to measure, manage, and absorb risk. Boards should consider the bank's level of capital and earnings and its tolerance for market risk exposure when setting risk parameters. Market risk limits should be established in a manner that is consistent with all relevant regulations, policies, and guidance issued by the FCA.

D. Liquidity Risk

The FCA expects Farm Credit banks to manage liquidity risk at both the investment and the institutional levels. System banks may encounter liquidity risk stemming from market conditions surrounding individual investment activities. In this context, liquidity risk is the risk that a bank would not be able to easily sell or liquidate an investment quickly at a fair price. This inability may be due to inadequate market depth or market disruption. At the institutional level, liquidity risk is the risk that System banks could encounter a liquidity crisis if they are unable to fund operations at reasonable rates because access to the capital markets is impeded. This impediment may result from a market disruption or real or perceived credit problems.

The FCA proposes to repeal a provision in existing § 615.5134(b) which requires System banks to segregate investments held in the liquidity reserve from investments that are maintained for the other purposes permitted by existing § 615.5132. As a result of this amendment, System banks will have greater flexibility to decide how best to use their investments to manage exposure to risk.[6] Since the liquidity characteristics of an investment influence whether it is suitable for meeting particular institutional objectives, the FCA also proposes a conforming change to § 615.5133(a)(3). Pursuant to this amendment, the bank's policies must specify the desired liquidity characteristics of investments that it will use for maintaining a liquidity reserve and accomplishing other institutional objectives.

The bank's investment policies must also require the bank to maintain sufficient quantities of liquid investments to comply with the liquidity reserve requirements of § 615.5134. Pursuant to § 615.5132, each Farm Credit bank's total investments, including its liquidity reserve, cannot exceed 30 percent of its total outstanding loans. The FCA expects the policies of each Farm Credit bank to strike an appropriate balance between the need for a liquidity reserve, the management of interest rate risk, and the investment of surplus funds as it strives to accomplish its institutional objectives.

E. Operational Risk

Operational risk occurs when deficiencies in internal controls or information systems result in unexpected loss to a financial institution. Operational risk may arise from inadequate procedures, human error, information system failure, or fraud. Internal controls that effectively detect and prevent operating risks are an integral part of prudent investment management. The ability of management to accurately assess and control operating risks is often one of the greatest challenges that financial institutions face from investment activities. Therefore, proposed § 615.5133(a)(4) would require the board of directors of each Farm Credit bank to address operating risks by establishing policies that foster effective internal controls.

Organizational structure and reporting lines should clearly delineate responsibility and accountability for all investment management functions, including risk measurement, risk management, and oversight. Organizational structure should periodically be reviewed to reveal conflicts of interest or inadequate checks and balances. Proposed § 615.5133(b) specifically requires System banks to identify who has delegated authority to conduct investment transactions and the extent of that authority. In addition, the proposed rule requires a separation of duties and supervision between personnel executing investment transactions and those responsible for approving, revaluating, and overseeing the bank's investments. Separation of duties promotes integrity, accuracy, and reasonable business practices that reduce the risk of loss. Senior management must ensure that bank investment practices and risk exposure are regularly reviewed and evaluated by personnel who are independent from those responsible for executing investment transactions.

Existing § 615.5133(h), which the FCA proposes to modify and redesignate as § 615.5133(c), requires Farm Credit banks to establish appropriate internal controls to monitor their investment activities and prevent loss, fraud, embezzlement, conflicts of interest, and unauthorized investment practices. Redesignated § 615.5133(c)(1) adds conflicts of interest as an issue that every System bank must specifically address in its investment policies. The policies of each Farm Credit bank should provide guidelines to prevent or resolve conflicts of interest that may arise from employees who are directly involved in purchasing and selling securities. Furthermore, the bank's policies should ensure that all directors, officers, and employees act in the best interest of the institution.

Due to the increasingly complex nature of investment instruments, Farm Credit banks must maintain information systems that are capable of monitoring, measuring, and evaluating the risks inherent in their investment activities. Proposed § 615.5133(c)(3) would require banks to maintain management information systems that are commensurate with the nature, scope, and complexity of the bank's investment activities. Internal quantitative models and management expertise must be adequate to analyze individual investment instruments, the investment portfolio, and the effect investments have on the bank's cashflows, earnings, and capital.

Farm Credit banks may also be exposed to other sources of operating risks, such as legal risk that may result from contracts that are not legally enforceable. The FCA expects each bank to adequately assess and control other operational risks relating to investment activities. Accordingly, Farm Credit banks should clearly define documentation requirements for securities transactions, retention and safekeeping of documents, as well as possession and control of purchased instruments.

F. Securities Valuation

Accurate and frequent securities valuation is essential to measuring risk and monitoring compliance with the bank's objectives and risk parameters. Proposed § 615.5133(d) establishes the basic requirements for securities valuations by Farm Credit banks.[7]

[6] The minimum liquidity reserve that System banks maintain under § 615.5134 must be sufficient to fund their operations for approximately 15 days in the event that System access to the capital markets becomes impeded.

[7] Two provisions of this regulation, § 615.5133(d)(1) and (d)(2) are new, while existing

Continued

System banks must understand the value and price sensitivity of their investments prior to purchase and on an ongoing basis. System banks should rely on valuation methodologies that take into account all the risk elements in a security to determine its price. Appropriate securities valuation practices enable managers to fully understand the risks and cashflow characteristics of the investments.

A critical step in sound investment management is the independent verification of securities prices. Accordingly, proposed § 615.5133(d)(1) requires each Farm Credit bank, at the time of purchase or sale, to verify the value of the security (except new issues) with a source that is independent of the broker, dealer, counterparty, or other intermediary in the specific transaction. Under the proposed rule, independent verification of price can be as simple as obtaining a price from an industry-recognized information provider. Although price quotes from information providers are not actual market prices, they confirm whether the broker's price is reasonable. In the event that a bank is unable to obtain a second price quote on a particular security, a price quote may be obtained on a security with substantially similar characteristics.

Proposed § 615.5133(d)(2) requires Farm Credit banks to determine, at least monthly, the fair value of each security in their portfolio and the fair value of the investment portfolio as a whole. This provision is added to the regulations to ensure that management has the necessary information to assess the performance of the bank's investment portfolio. Additionally, this requirement enables management to provide accurate and timely reports to the board of directors in accordance with proposed § 615.5133(e).

Existing § 615.5140(c) has been modified and redesignated as proposed § 615.5133(d)(3). Currently, § 615.5140(c) requires each Farm Credit bank to perform ongoing evaluations of all eligible investments in its portfolio and to support its evaluation with the most recent credit rating by at least one nationally recognized statistical rating organization (NRSRO). As amended, proposed § 615.5133(d)(3) specifically requires Farm Credit banks to perform evaluations of the credit quality and price sensitivity to changes in market interest rates of all investments held in its portfolio prior to purchase and on an ongoing basis. This change emphasizes that effective credit and interest rate risk management is vital to successful FCS bank operations.

The substance and form of the evaluations are likely to vary depending on the type of instrument. Relatively simple or standardized instruments with readily identifiable risks require significantly less analysis than more volatile or complex instruments. Proposed § 615.5141 contains specific stress testing guidance for evaluating the price sensitivity of mortgage securities. Other eligible investments that have uncertain cashflows as a result of embedded options (such as call options, caps or floors) may require similar analytical techniques to appropriately evaluate the instruments. For example, prior to investing in ABS, the FCA expects a bank to conduct or obtain an evaluation of the collateral (including type, aging of the assets, and the credit quality of the underlying loans) and an analysis of the securities' structure and cashflows.

System banks must continue to support their credit evaluations by the most recent credit rating with a NRSRO. However, Farm Credit banks should not rely exclusively on NRSRO ratings prior to purchasing investments because there may be a lag before an adverse event is reflected in the credit rating.

G. Reports to the Bank's Board

Adequate reporting enables bank boards to properly discharge their fiduciary responsibilities. The investment policy should define routine reporting requirements and the means for reporting exceptions to policy. Management reports need to communicate effectively to the board of directors the nature of the risks inherent in the bank's investment activities. Reporting should occur frequently so that the board has timely, accurate, and sufficient information to understand how changes in the investment portfolio affect the balance sheet and the bank's risk profile. The FCA proposes to modify the second sentence of existing § 615.5133(h) to emphasize these points and to redesignate it as § 615.5133(e).

Proposed § 615.5133(e) requires quarterly reports on the performance (i.e., gains or losses) and risk of individual investments and the investment portfolio. Key risks should be specifically identified and discussed in the report. More specifically, reports should relate potential risk exposure to changes in market interest rates and any other factors (such as credit deterioration) that may affect the value of the bank's investment holdings. In addition, proposed § 615.5133(e) requires management reports to discuss how investments affect the bank's overall financial condition and to evaluate whether the performance of the investment portfolio effectively achieves the objectives established by the board of directors. Reports should specifically identify any deviations from the board's policies.

III. Eligible Investments

A. Overview

Section 615.5140 lists the eligible investments that System banks may purchase and hold to maintain a liquidity reserve, manage interest rate risk, and invest surplus short-term funds. Associations are also authorized to hold eligible investments listed in § 615.5140 to invest surplus funds and reduce interest rate risk pursuant to existing § 615.5141 (redesignated as § 615.5142). Only investments that can be promptly converted into cash without significant loss are suitable for achieving these objectives. For this reason, the eligible investments listed in both existing and proposed § 615.5140 generally have short maturities and maintain a high investment grade credit rating by an NRSRO. Furthermore, all eligible investments are either traded in active secondary markets or are valuable as collateral.

The proposed rule provides System institutions with a broad array of high-quality and liquid investments. The FCA proposes to expand the list of eligible investments and to relax or repeal certain restrictions in existing § 615.5140. These revisions reflect changes in the financial markets as well as the FCA's desire to develop a regulatory framework that can more readily accommodate innovations in financial products and analytical tools.

The FCA Board proposes to restructure the format of § 615.5140 to accommodate eligible investments that are newly authorized by the FCA and to provide an organizational structure that is easy to understand. Similar classes of investments, such as full faith and credit obligations of Federal and State governments and short-term money market instruments are now grouped together in proposed § 615.5140(a). The FCA proposes to reduce the number of portfolio caps and repeal existing regulatory restrictions on the amount that each FCS institution can invest in negotiable certificates of deposit, Federal funds, bankers acceptances, and prime commercial paper.

Requirements that apply to several categories of eligible investments have been relocated to § 615.5140(b). For example, the requirement that an investment must be marketable will now be covered by a single provision in

§ 615.5140(d) has been modified and redesignated as proposed § 615.5133(d)(3).

proposed § 615.5140(b)(1). Additionally, the sovereign rating for political and economic stability of foreign countries, which is currently repeated several times in the existing regulation, is relocated to proposed § 615.5140(b)(2).

The FCA is proposing to revise its regulatory terminology for credit ratings. References to the credit ratings of specific NRSROs are omitted from the proposed rule so it more accurately encompasses the broad universe of market ratings. Instead, the proposed regulation requires each eligible investment listed in § 615.5140(a) to maintain a specified long-term or short-term credit rating by an NRSRO that is recognized by the Securities and Exchange Commission (SEC). Whereas the existing regulation refers, for example, to a Standards and Poor's (S&P) Corporation rating of ''AA'' or its equivalent, the proposed regulation refers to ''the highest two credit ratings by an NRSRO.'' The following table provides a comparative illustration of S&P's investment grades for both long-term and short-term issue credit ratings.

Investment grade	S&P ratings	
	Long-term	Short-term
First	AAA	A–1
Second	AA	A–2
Third	A	A–3
Fourth	BBB	

The ratings in the table are often modified by either plus or minus signs to show relative standing within a major rating category. Specific investment credit ratings in the proposed rule refer to the generic rating categories, not modifiers within the generic group. Thus, for example, a long-term rating of ''AA−'' by S&P would be, for the purposes of FCA's regulations, within the ''two highest credit ratings by an NRSRO.''

The following section provides a category-by-category discussion of the FCA's proposed regulatory framework for eligible investments.

B. U.S. Treasury and Agency Securities

The FCA retains § 615.5140(a)(1) without revision. This provision authorizes each FCS institution to invest in obligations that are backed by the full faith and credit of the United States, its agencies, instrumentalities, and corporations. In response to frequent questions about the scope of this provision, the FCA confirms that § 615.5140(a)(1) permits the purchase of debt obligations of other Government-sponsored enterprises (GSEs). Private obligations that are fully insured or guaranteed as to both principal and interest by the United States, its agencies, instrumentalities, or corporations are also covered by this regulation. Thus, for example, a System institution may hold federally insured deposits, loans that are guaranteed by either the Export-Import Bank of the United States or the Overseas Private Investment Corporation, and certain obligations of the Small Business Administration.

C. Municipal Securities

The FCA proposes to redesignate § 615.5140(a)(10), which authorizes the investment in the general obligations of State and municipal governments, as § 615.5140(a)(2), without significant change. The FCA proposes to add a definition of ''general obligation of a State or political subdivision'' to § 615.5131 to codify its recent guidance on which bonds are deemed to be backed by the full faith and credit of a State or local government.[8] Under this definition, general obligation bonds are those that are: (1) Full faith and credit obligations of a State or local government that possesses powers of general taxation; or (2) obligations of a governmental unit that lacks powers of general taxation if an obligor possessing general powers of taxation unconditionally guarantees to make all payments on these obligations.

System banks have requested authority to invest in municipal revenue bonds. These bonds are not supported by the taxation powers of the obligor and are repayable from fee income and other sources of revenue. Although many municipal revenue bonds are highly rated by NRSROs and are actively traded in secondary markets, others are not. The universe of municipal revenue bonds is also diverse, and effective regulation of System investment in these securities could be difficult. For these reasons, the FCA requests comments on how it could permit these investments while limiting risks to System institutions. Specifically, the FCA solicits comments on how the regulation could establish: (1) Criteria for determining which revenue bonds are suitable for meeting the investment purposes in § 615.5132; and (2) an appropriate limit on the amount of these investments.

D. International and Multilateral Development Banks

Obligations of the International Bank for Reconstruction and Development (World Bank) are eligible investments under existing § 615.5140(a)(3). The FCA's proposal expands the scope of this provision to include the obligations of other international and multilateral development banks (such as the Inter-American Development Bank and the North American Development Bank) in which the United States is a voting shareholder. This amendment recognizes other highly rated banks that work in concert with the World Bank to promote development in various countries.

E. Money Market Instruments

Several provisions of existing § 615.5140(a) authorize investments in negotiable certificates of deposit, Federal funds, bankers acceptances, prime commercial paper, and repurchase agreements. These money market instruments have high credit quality and short maturities. Additionally, they can be sold on active secondary markets prior to maturity. These qualities make them highly liquid and valuable as collateral. Accordingly, the FCA proposes to group all money market instruments together into a single regulatory provision, § 615.5140(a)(4). Since these money market instruments pose limited risks to investors, the FCA believes that this regulation should no longer impose specific limitations on the amounts of negotiable certificates of deposit, Federal funds, bankers acceptances, and prime commercial paper that each FCS institution could hold in its investment portfolio. However, § 615.5140(b)(3) continues to restrict the amount that an FCS institution could invest with a single obligor or institution to 20 percent of its total capital. The FCA is also proposing to omit the definitions of negotiable certificates of deposit, Federal funds, and Term Federal funds from existing § 615.5131 because the meanings of these instruments are commonly understood by participants in the money markets. Additionally, the FCA has relocated the definitions of prime commercial paper and repurchase agreements from existing § 615.5131 to proposed § 615.5140(a)(4) so these regulations are easier to read.

The FCA proposes to omit specific references to Eurodollar and Yankee certificates of deposits from § 615.5131 and § 615.5140 because proposed § 615.5140 (a)(4)(i) is sufficiently broad to permit investment in both of these instruments. The provision in existing § 615.5140(a)(5) regarding deposit insurance for domestic and Yankee certificates of deposit became redundant in 1996 when the FCA amended § 615.5140(a)(1) to specifically cover Federal insurance of private debt

[8] *See* FCA BL–038, ''Guidance Relating to Investment Activities,'' (November 26, 1997).

obligations.[9] Deposit insurance usually is not a consideration when an FCS institution purchases negotiable Eurodollar certificates of deposit because only a small portion of its investment is typically insured.

System banks requested authority to invest in Eurodollar time deposits. A Eurodollar time deposit is a non-negotiable deposit denominated in United States dollars that is issued by an overseas branch of a United States bank or by a foreign bank outside the United States. The riskiness of Eurodollar time deposits depends on both the creditworthiness of the issuing bank and the foreign country where the deposit is located. Financial institutions generally use Eurodollar time deposits as an alternative to Federal funds. Most Eurodollar time deposits mature within 180 days.

The FCA agrees that Eurodollar time deposits are suitable for investing short-term surplus funds and interest rate risk management. However, the FCA proposes several safety and soundness constraints for Eurodollar time deposits because these instruments are not negotiable and they are held at depository institutions outside of the United States. Specifically, proposed § 615.5140(a)(4)(ii) allows each FCS institution to invest in Eurodollar time deposits that mature within 90 days and that are issued by depository institutions that maintain the highest short-term issuer credit rating by an NRSRO. In addition, proposed § 615.5140(b)(2) further requires Eurodollar time deposits to be held at depository institutions located in foreign countries that maintain the highest sovereign rating for political and economic stability. The FCA also proposes to limit investments in Eurodollar time deposits to 20 percent of an FCS institution's total investment portfolio to control concentration risk in these non-negotiable instruments.

System banks also requested authority to invest in certificates of deposits that mature within 3 years but contain a put option that enables the investor to require the depository institution to repurchase the instrument. The FCA's research reveals that the market for certificates of deposits with embedded put options is almost nonexistent, and no commercial banks have issued these instruments in several years. These instruments are neither liquid nor traded in active secondary markets. Commercial banks have engineered the few existing certificates of deposits with put options for specific customers. Therefore, the FCA has not added these instruments to the list of eligible investments in the proposed rule.

Prime commercial paper remains an eligible investment under the proposed regulations. The FCA has redesignated § 615.5140(a)(7) as § 615.5140(a)(4)(iii).

The FCA proposes to expand the types of collateral that support eligible repurchase agreements. System banks have asserted that the FCA's investment eligibility criteria limit their ability to participate in the repurchase agreement market because market participants are often unwilling to post collateral that specifically complies with the investment criteria in existing § 615.5140. The FCA acknowledges that repurchase transactions can be a valuable tool for investing short-term surplus funds, and they are relatively safe due to short maturities, high quality of collateral, and collateral margin requirements. For this reason, the FCA proposes to amend this regulation. The proposed regulatory approach will allow more latitude to participate in this market, while maintaining essential safety and soundness controls.

Redesignated § 615.5140(a)(4)(iv) permits each FCS institution to invest in repurchase agreements where the FCS institution agrees to purchase marketable securities subject to a legal agreement that requires the counterparty to repurchase the same or identical securities at a specific price within 100 days or less. Any securities held as collateral in connection with repurchase agreements must be either eligible investments authorized by this section or other marketable securities that are rated in the highest credit rating category by an NRSRO. In the event that the counterparty defaults on the agreement and the FCS institution takes possession of the collateral, the divestiture requirements in existing § 615.5142 (redesignated as proposed § 615.5143) apply to any collateral that fails to qualify as an eligible investment under § 615.5140(a).

In 1995, the FCA approved a System request to invest in Master Notes pursuant to existing § 615.5140(a)(11), which permits the FCA to authorize additional investments on a case-by-case basis. As requested, the FCA proposes § 615.5140(a)(4)(v) to codify System institutions' authority to invest in Master Notes.[10] The proposed regulation authorizes investments in Master Notes that: (1) Are executed with a domestic counterparty that maintains the highest issuer short-term credit rating by an NRSRO; and (2) mature overnight or within 270 days under a callable contract. The FCA also proposes to increase the portfolio limit on Master Notes from 15 to 20 percent of the FCS institution's investment portfolio.

F. Mortgage Securities

1. Overview

Currently, § 615.5140(a)(2) authorizes investment in mortgage securities that are issued or guaranteed by the Government National Mortgage Association (Ginnie Mae or GNMA), the Federal National Mortgage Association (Fannie Mae or FNMA), and the Federal Home Loan Mortgage Corporation (Freddie Mac or FHLMC). CMOs that are collateralized by mortgage securities of GNMA, FNMA and FHLMC are also expressly authorized under the current regulations, even though they are packaged, issued, and sold under a private label.[11] Under the existing regulation, eligible mortgage securities must either reprice within 1 year or comply with the stress tests specified in § 615.5140(a)(2)(iii).[12] System banks may hold mortgage securities that are issued or fully guaranteed by Ginnie Mae without restriction as to amount. However, the existing regulation restricts mortgage securities that are issued or fully guaranteed by Fannie Mae and Freddie Mac to 50 percent of each bank's total investments.

System banks seek further opportunities to invest in the mortgage securities market because of the high credit quality and liquidity of these securities. In particular, Farm Credit banks have requested authority to invest in mortgage securities that are collateralized by loans that do not comply with the FNMA and FHLMC underwriting standards and certain stripped mortgage-backed securities (SMBS). Recently, System banks petitioned the FCA to repeal the portfolio limit on Fannie Mae and Freddie Mac mortgage securities. This request also suggested that the revised regulation authorize FCS institutions to invest in mortgage securities that are rated within the two highest investment credit grades by an NRSRO. The

[9] *See* 61 FR 67187 (December 20, 1996).

[10] Master Notes are interest-bearing unsecured promissory notes that are issued by institutions to investors under a master note agreement. The most common type of master note agreement is a variable-amount note which is a type of open-ended commercial paper that allows the investment and withdrawal of funds on a daily basis and pays a daily interest rate tied to the commercial paper rate.

[11] *See* 58 FR 63035, (November 30, 1993). Private label mortgage securities are issued by commercial banks, thrifts, and private conduits. Unlike agency securities, private label mortgage securities must be registered with the SEC.

[12] Section 615.5174 permits Farm Credit banks and associations to invest in mortgage-related securities that are guaranteed by the Federal Agricultural Mortgage Corporation (Farmer Mac).

proposed rule permits investment in a greater variety of mortgage securities, subject to essential safety and soundness constraints.

2. Limits on FNMA and FHLMC Mortgage Securities

As previously noted, System banks requested that the FCA repeal the 50-percent investment portfolio limit on mortgage securities that are issued or guaranteed as to principle and interest by FNMA and FHLMC. System banks commented that no other financial institution regulatory agency places restrictions on the credit exposure to GSEs and that exposure limits on these securities should be left to the discretion of each bank.

At this time, the FCA does not propose to repeal the existing portfolio limits for FNMA and FHLMC mortgage securities. As explained in greater detail below, the proposed regulation significantly expands the authority of System institutions to purchase and hold mortgage securities. The FCA's proposal will permit System institutions to invest, for the first time, in non-agency mortgage securities. Under certain circumstances, System banks would also be able to hold mortgage derivative products, such as SMBS, for interest rate risk management. Additionally, the new regulations will enable System institutions to rely on alternate stress tests for measuring the price sensitivity of mortgage securities.

The FCA agrees with System commenters that the board and management of each FCS institution should establish risk exposure limits for all mortgage securities. A regulatory portfolio limit on FNMA and FHLMC mortgage securities does not absolve an institution's board or management of its responsibility to establish risk parameters that are based on the institution's unique risk-bearing capacity. The FCA also expects each FCS institution to maintain a well-diversified investment portfolio, regardless of whether these regulations impose a portfolio cap on particular classes of investments.

Regulatory portfolio limits enhance safety and soundness by limiting credit exposure, promoting diversification of System investment portfolios, and curtailing investments in securities that may exhibit considerable interest rate or liquidity risks. The FCA invites further comment about this issue.

3. Non-agency Mortgage Securities

The size and liquidity of the non-agency mortgage securities market has increased markedly since the implementation of the current regulations in 1993. The largest sector of the non-agency market is comprised of securities that are collateralized by ''jumbo'' mortgages with principal amounts that exceed the maximum limits for FNMA and FHLMC programs.[13]

The credit quality and liquidity of any particular non-agency mortgage security are dependent upon a myriad of factors, including the type of collateral and the structure, term, and originator of the issue. Non-agency mortgage securities are not explicitly or implicitly guaranteed by the United States, so these instruments typically require credit enhancements to receive a high rating. Credit enhancement is usually provided by some combination of issuer or third-party guarantee, letter of credit, over-collateralization, pool insurance, or subordination. As a result of these credit enhancements, highly rated non-agency mortgage securities enjoy low default rates.

The FCA determines that non-agency mortgage securities that maintain the highest credit rating by an NRSRO have sufficient protections against default risk. Proposed § 615.5140(a)(5)(ii) permits each System institution to invest in mortgage securities that are offered by private sector entities. Under this proposal, privately issued mortgage securities are eligible investments for System institutions if they are rated in the highest rating category by an NRSRO and they are collateralized by qualifying residential mortgages, meeting the requirements of the Secondary Mortgage Market Enhancement Act of 1984 (SMMEA).[14] Prior to investing in such securities, every System bank must subject each non-agency mortgage security to stress testing in accordance with § 615.5141. Non-agency mortgage securities cannot exceed 15 percent of each institution's total investments. Furthermore, mortgage securities that are issued by any party other than Ginnie Mae cannot exceed 50 percent of each institutions' total investments. This amendment balances the System's request for a broader selection of mortgage securities with appropriate safety and soundness restraints.

4. Fixed-rate Mortgage Pass-through Securities

Currently, fixed-rate mortgage securities are eligible investments for System institutions if they satisfy the three-pronged stress test in existing § 615.5140(a)(2)(ii).[15] This stress test provides a basic method for measuring the price sensitivity of a mortgage security to changes in interest rates.[16] System banks requested that the FCA repeal the requirement in existing § 615.5140(a)(2) that subjects mortgage pass-through securities to the stress test. The Farm Credit banks asserted that interest rate risk in mortgage pass-through securities is easier to model and analyze and other federally regulated financial institutions are not subject to similar requirements.

The FCA believes that stress testing of all mortgage securities is a necessary discipline that enables each System institution to better understand and manage the risks inherent in these instruments. Therefore, the FCA does not incorporate the System's suggestion in this proposal. However, as discussed below, the FCA proposes significant changes to the stress-testing requirements for mortgage securities.

5. Other Mortgage-derivative Products

The FCA also plans to repeal existing §§ 615.5131(r) and (s), 615.5140(a)(2)(v), and certain provisions in § 615.5174(c) that explicitly ban investments in SMBS and inverse floating-rate debt classes.[17] System banks claim that the explicit ban on SMBS is overly broad and, as a

[13] Several other asset classes in the non-agency MBS market exist, including: (1) Housing and Urban Development paper; (2) high loan-to-value loans; (3) Community Reinvestment Act loans; and (4) loans to borrowers with conforming loan balances with other features that prevent agency securitization, such as low documentation, self-employment, and unique property features.

[14] The proposed rule allows investments in mortgage securities that are offered and sold pursuant to section 4 (5) of the Securities Act of 1933, 15 U.S.C. 77d(5), or are residential mortgage related securities within the meaning of section 3 (a) (41) of the Securities Exchange Act of 1934, 15 U.S.C. 78c(a) (41). SMMEA amended several statutes to encourage private sector investment in certain mortgage-related securities. *See* Pub. L. 98–440, 98 Stat. 1689, October 3, 1984.

[15] A recent FCA bookletter explains the authority of System banks to invest in fixed-rate mortgage securities that convert to adjustable rate securities. *See* BL–038, ''Guidance Relating to Investment Activities,'' (November 26, 1997).

[16] Under existing § 615.5140(a)(2)(ii), each fixed-rate mortgage security must have a weighted average life (WAL) of 5 years or less, and changes in its WAL and price cannot exceed specified percentages, assuming parallel and sustained shift in interest rates of 300 basis points.

[17] Existing § 615.5131(r) defines SMBS as ''securities created by segregating the cashflows from the underlying mortgages or mortgage securities to create two or more new securities, each with a specified percentage of the underlying security's principal payments, interest payments, or combination of the two.'' Furthermore, existing § 615.5140(a)(2)(v)(A) and 615.5174(c) specifically prohibit System banks from acquiring SMBS that are issued by GNMA, FNMA, FHLMC, and the Farmer Mac. When the existing regulations were adopted, the FCA reasoned that SMBS exhibit extreme price volatility to shifting interest rates, and therefore, these instruments were not suitable for maintaining a liquidity reserve or managing interest rate risk. *See* 56 FR 65091, 65096 (December 18, 1991); 58 FR 63034, 63046 (November 30, 1993).

result, it excludes securities with limited interest rate risk. The FCA concludes that the explicit regulatory ban on certain mortgage-derivative products is unnecessary because all mortgage securities are subject to stress-testing requirements under both the current and proposed rules. The degree of price sensitivity that a mortgage security exhibits to changes in market interest rates is influenced by its unique characteristics. A System institution should determine whether a particular mortgage security meets its risk management objectives by using analytical techniques and methodologies that effectively evaluate how interest rate changes will affect prepayments and cashflows of the instrument.

Repeal of these regulatory restrictions will afford each System institution greater latitude to manage interest rate risks in the investment portfolio and its balance sheet. Although certain mortgage derivative products are risky because their prices may be subject to substantial fluctuations, the FCA recognizes that they can also be useful tools for reducing interest rate risk. Successful risk management of these instruments requires a thorough understanding of the principles that govern the pricing of these instruments. In general, FCA would view it as an unsafe and unsound practice to hold SMBS and inverse floaters for any purpose other than to reduce specific interest rate risks. Management must document, prior to purchase and each quarter thereafter, that the mortgage derivative product is reducing the interest rate risk of a designated group of assets or liabilities and the interest rate risk of the institution. However, if such an instrument exhibits only minimal price sensitivity under the stress test in proposed § 615.5141, a System institution would be allowed to purchase and hold the instrument for other purposes permitted by existing § 615.5132.

6. Stress-testing Requirements

Although credit risk on highly rated mortgage securities is minimal, these securities may expose investors to significant interest rate risk. Since borrowers may prepay their mortgages, investors may not receive the expected cashflows and returns on these securities. Numerous factors influence the cashflow pattern and price sensitivity of mortgage securities. Prepayments on these securities are affected by the spread between market rates and the actual interest rates of mortgages in the pool, the path of interest rates, and the unpaid balances and remaining terms to maturity on the mortgage collateral. The price behavior of a mortgage security also depends on whether the security was purchased at a premium or at a discount. Therefore, each System institution needs to employ appropriate analytical techniques and methodologies to measure and evaluate interest rate risk inherent in mortgage securities. More specifically, prudent risk management practices require every System institution to examine the performance of each mortgage security under a wide array of possible interest rate scenarios. For these reasons, the FCA continues to believe that appropriate stress testing of all mortgage securities is necessary to gain a full understanding of the risks inherent in the instruments.

Originally, FCS banks requested technical modifications to FCA's existing regulatory stress test. System banks subsequently requested that the FCA repeal the regulatory stress test after the FFIEC rescinded a policy statement that required depository institutions to stress test mortgage derivative products.[18] The System banks commented that the FCA should make its regulatory approach consistent with the FFIEC's new policy.

In response, the FCA proposes significant changes to existing requirements for evaluating the price sensitivity of mortgage securities and determining their suitability. The FCA's revised regulatory approach reflects improvements in prepayment models and methodologies for evaluating and measuring the price sensitivity of a security. Specifically, this proposal would enable each FCS institution to choose between two alternative approaches for measuring and evaluating the price sensitivity of mortgage securities to interest rate fluctuations.

Under the first option, an FCS institution may continue to use a modified version of the existing three-pronged stress test. The FCA proposes to modify the third prong of the stress test, which establishes a price sensitivity limit for mortgage securities. Under proposed § 615.5141(a)(3), the estimated change in the price of the security cannot exceed 13 percent due to an immediate and sustained parallel shift in the yield curve of plus or minus 300 basis points. This revision, which was originally requested by System banks, corrects an inconsistency in the test that may arise under certain interest rate scenarios. This change affords more latitude for investment in mortgage securities.

[18] *See* 63 FR 20191 (April 23, 1998).

Proposed § 615.5141(b) allows the use of alternative stress tests to evaluate the price sensitivity of investments in mortgage securities. The FCA is permitting alternative stress tests because new risk management technologies better enable investors to measure interest rate risks in complex mortgage securities. Alternative stress tests must be able to measure the price sensitivity of mortgage instruments over different interest rate/yield curve scenarios prior to purchase and each quarter thereafter. The methodology that an FCS institution uses to analyze mortgage securities must be commensurate with the complexity of the instrument's structure and cashflows. For example, a pre-purchase analysis may show the effect of an immediate and parallel shift in the yield curve of plus and minus 100, 200, and 300 basis points. Depending on the instrument's complexity, such analysis may encompass a wider range of scenarios, including non-parallel changes in the yield curve. A comprehensive analysis may also take into consideration other relevant factors, such as interest rate volatility and changes in credit spreads. The methodology used to evaluate an instrument's price sensitivity should enable management to determine that the particular mortgage security: (1) Is compatible with the objectives and risk limits in the institution's investment policies; and (2) does not expose capital and earnings to excessive risk.

An FCS institution employing internal models for valuation and risk measurement of mortgage securities should have adequate procedures to validate the models and periodically review all elements of the modeling process, including assumptions and risk measurement methodologies and techniques. Any FCS institution that relies on third parties for valuation and risk measurement must understand the assumptions and techniques used. All analysis must be available for review by the Office of Examination of the FCA.

7. Other Technical Changes

The FCA proposes to replace the definitions of ''CMOs,'' ''mortgage-backed securities,'' and ''REMICs'' in existing § 615.5131(e), (l), and (p) with a single definition of ''mortgage securities'' in proposed § 615.5131(i), which encompasses mortgage pass-through securities and all mortgage derivative products. Although proposed § 615.5131(i) continues to refer to CMOs and REMICS, the FCA has omitted specific regulatory definitions for these securities from the regulation because

their meanings are commonly understood in the financial markets.

The FCA proposes to relocate the applicable regulatory provision governing ARM securities from § 615.5140(a)(2)(ii) to § 615.5141 and to delete the definition of ''adjustable-rate mortgage'' in existing § 615.5131(b) because it is redundant.

G. Corporate Debt Obligations and ABS

Currently, corporate debt obligations and ABS are subject to a single regulatory provision, existing § 615.5140(a)(8). Under the existing regulation, corporate bonds and ABS, *combined*, cannot exceed 15 percent of the total investments of each FCS institution. Under this proposal, corporate bonds and ABS would be governed by separate regulatory provisions, and the portfolio cap for each category would be 20 percent of total outstanding investments. The FCA's proposal to expand the portfolio limits for these two investments provides every FCS institution with greater flexibility to invest in these securities within reasonable risk diversification parameters.

Existing § 615.5140(a)(8)(ii) authorizes each FCS institution to invest in ABS that mature in 5 years, are collateralized by loans on new automobiles (CARs) or credit card receivables (CARDs), and maintain the highest investment grade credit rating by an NRSRO. The FCA adopted § 615.5140(a)(8)(ii) in 1993 when CARs and CARDs comprised approximately 80 percent of the ABS market and other types of ABS were not actively traded in the secondary markets.[19]

The scope and depth of the ABS market has expanded rapidly since 1993. As a result, System banks have requested authority to invest in ABS that are collateralized by other types of assets. Originally, System banks petitioned the FCA for authority to purchase and hold ABS that are secured by home equity loans, manufactured housing loans, agricultural equipment loans, student loans, and wholesale dealer automobile loans. Subsequently, System banks requested that the FCA amend the regulation so it places no restrictions on the types of collateral that securitize ABS. System banks assert that a high credit rating is more indicative of an ABS's liquidity than its underlying collateral. Farm Credit banks also suggested that the FCA revise the maturity limits on ABS to permit fixed-rate ABS that have both a final maturity of 7 years or less and a WAL of 5 years or less, and floating-rate ABS that have both a final maturity of 10 years or less and a WAL of 7 years or less.

This proposal adopts a modified version of the System's original recommendation.[20] Proposed § 615.5140(a)(6) would authorize investment in ABS that are collateralized by CARs, CARDs, home equity loans, manufactured housing loans, equipment loans, student loans, and wholesale dealer automobile loans. The FCA emphasizes that securities collateralized by home equity loans are ABS, not mortgage securities, under this proposal. The FCA finds that the market for these types of ABS is sufficiently developed and that these securities are suitable for meeting the objectives of § 615.5132. This broad array of ABS should provide FCS institutions with an ample selection of highly rated, fixed-income investments that have relatively stable cashflows.

Under proposed § 615.5140(a)(6), FCA specifies that the WAL for all eligible ABS cannot exceed 5 years *and* the final maturity cannot exceed 7 years. The FCA proposes to extend the final maturity from 5 to 7 years in recognition that ABS with final maturities of 7 years typically have much shorter WALs. This approach has the added advantage of facilitating comparisons between amortizing ABS and other fixed-income securities. The FCA does not adopt the System's suggestion regarding the maturity of adjustable-rate ABS for two reasons. Most ABS have final maturities that are shorter than the timeframe recommended by Farm Credit banks. Other factors, such as the frequency of repricing, periodic and life-time interest rate caps and the index to which the instrument is tied are important determinants of how the instrument will perform. Therefore, the FCA requests comments on how the regulations could address maturity limits for adjustable ABS.

The FCA anticipates that there will be further growth in the ABS market and active secondary markets will ultimately develop for ABS that are backed by other types of collateral. Thus, the FCA also requests comments on how it could develop a more flexible final regulation that would enable the regulator to establish criteria for determining the suitability of new types of ABS that financial markets may create.

The FCA proposes no substantive changes to the regulatory provisions that govern investments in corporate debt obligations. Under this proposal, existing § 615.5140(a)(8)(i) will be redesignated as § 615.5140(a)(7).

H. Shares in Investment Companies

The FCA believes that investment companies provide System institutions with another convenient method to diversify and manage risks. Therefore, the FCA proposes to authorize investment in shares of any investment company that is registered under section 8 of the Investment Company Act of 1940, 15 U.S.C. 80a–8, as long as the investment company's portfolio consists exclusively of securities that are authorized by § 615.5140. Prior to investing in a particular investment company, an FCS institution would be required by proposed § 615.5140(a)(8) to evaluate the investment company's risk and return objectives. As part of this evaluation, the FCS institution should determine whether the investment company's use of financial derivatives is consistent with its investment policies. For instance, the FCA would generally view it an unsafe and unsound practice for an FCS institution to invest in an investment company that uses financial derivatives for speculative purposes rather than as a risk management tool. Every System institution should maintain appropriate documentation on each investment, including a prospectus and analysis, so its investment and selection process can be audited and examined.

Proposed § 615.5140(b)(5) addresses how the obligor and portfolio limitations in § 615.5140(b)(3) and (b)(4) apply to an FCS institution's interest in an investment company. Generally, proposed § 615.5140(b)(5)(i) requires combining the institution's direct holdings of an eligible investment with its pro rata interest in the same type of instrument in the portfolio of an investment company for the purpose of complying with § 615.5140(b)(3), (b)(4)(i), and (b)(4)(ii). The FCA notes that aggregation is required only if this regulation subjects a particular investment to an obligor or portfolio limit. For example, prime commercial paper is subject to an obligor limit, but not a portfolio limit. As a result, the regulation requires aggregation to ensure that no more than 20 percent of an FCS institution's total capital is invested in the prime commercial paper of any single obligor. However, no regulatory restriction applies to the amount of prime commercial paper that an FCS institution may hold in its investment portfolio, either directly or through an investment company.

Proposed § 615.5140(b)(5)(ii) carves out two exceptions to this aggregation rule. The first exception applies to the

[19] *See* 58 FR 63034, 63050 (November 30, 1993).

[20] Although the System's recommendation did not address the credit rating for ABS, the FCA proposes to retain the requirement in the existing regulation that all eligible ABS maintain the highest credit rating by an NRSRO.

obligor limit, while the second exemption covers portfolio restrictions. Under § 615.5140(b)(5)(ii)(A), an FCS institution may elect not to combine its pro rata interest in a particular security in an investment company with its direct holdings of securities that are issued by the same obligor if the investment company's holdings of the securities of any one issuer do not exceed 5 percent of its total portfolio. Pursuant to § 615.5140(b)(5)(ii)(B), an FCS institution may elect not to combine its pro rata interest in a type of security in an investment company with its direct holding of a class of securities that are subject to the portfolio limits if its shares in a particular investment company do not exceed 10 percent of its total investments.

I. Other Eligible Investments

The FCA proposes to redesignate existing § 615.5140(a)(11) as § 615.5140(a)(9). This proposal contains no substantive amendments to this provision, which allows the purchase of other short-term investments, as authorized by the FCA that are marketable and highly rated by an NRSRO. Whenever possible, the FCA seeks to repeal regulatory prior-approval requirements that are not mandated by the Act. The FCA requests comments on how the final regulation could permit FCS institutions, under certain circumstances, to invest in short-term, highly rated, marketable securities that are not expressly authorized by § 615.5140 without requiring Agency approval.

IV. Technical Amendments

The FCA proposes several conforming amendments to § 615.5174 relating to investments in securities issued by Farmer Mac. The terminology for mortgage securities has been revised so that it is consistent with proposed amendments to § 615.5131.

The FCA proposes to repeal the definitions of ''asset-liability management,'' ''Federal funds,'' ''interest rate risk,'' ''market value of equity,'' ''net interest income,'' ''total capital,'' and ''weighted average maturity'' in § 615.5131 because the meanings of these terms are commonly understood in financial markets. Separately, the FCA has redefined ''absolute final maturity'' in § 615.5131(a) as ''final maturity'' in proposed § 615.5131(c).

The FCA also proposes to repeal § 615.5142(a) and remove the designation from paragraph (b) because this provision is obsolete. Existing § 615.5142(a) pertains to the divestiture of investments that were rendered ineligible when the FCA originally adopted these regulations in 1993.

List of Subjects in 12 CFR Part 615

Accounting, Agriculture, Banks, banking, Government securities, Investments, Rural areas.

For the reasons stated in the preamble, part 615 of chapter VI, title 12 of the Code of Federal Regulations is proposed to be amended to read as follows:

PART 615—FUNDING AND FISCAL AFFAIRS, LOAN POLICIES AND OPERATIONS, AND FUNDING OPERATIONS

1. The authority citation for part 615 continues to read as follows:

Authority: Secs. 1.5, 1.7, 1.10, 1.11, 1.12, 2.2, 2.3, 2.4, 2.5, 2.12, 3.1, 3.7, 3.11, 3.25, 4.3, 4.3A, 4.9, 4.14B, 4.25, 5.9, 5.17, 6.20, 6.26, 8.0, 8.3, 8.4, 8.6, 8.7, 8.8, 8.10, 8.12 of the Farm Credit Act (12 U.S.C. 2013, 2015, 2018, 2019, 2020, 2073, 2074, 2075, 2076, 2093, 2122, 2128, 2132, 2146, 2154, 2154a, 2160, 2202b, 2211, 2243, 2252, 2278b, 2278b–6, 2279aa, 2279aa–3, 2279aa–4, 2279aa–6, 2279aa–7, 2279aa–8, 2279aa–10, 2279aa–12); sec. 301(a) of Pub. L. 100–233, 101 Stat. 1568, 1608.

2. Subpart E is amended by revising the heading to read as follows:

Subpart E—Investment Portfolio Management

3. Section 615.5131 is revised to read as follows:

§ 615.5131 Definitions.

For purposes of this subpart, the following definitions shall apply:

(a) *Asset-backed securities (ABS)* mean investment securities that provide for ownership of a fractional undivided interest or collateral interests in specific assets of a trust that are sold and traded in the capital markets. For the purposes of this subpart, ABS exclude mortgage securities that are defined in § 615.5131(i).

(b) *Eurodollar time deposit* means a non-negotiable deposit denominated in United States dollars and issued by an overseas branch of a United States bank or by a foreign bank outside the United States.

(c) *Final maturity* means the last date on which the remaining principal amount of a security is due and payable (matures) to the registered owner. It shall not mean the call date, the expected average life, the duration, or the weighted average maturity.

(d) *General obligations of a State or political subdivision* means:

(1) The full faith and credit obligations of a State, the District of Columbia, the Commonwealth of Puerto Rico, a territory or possession of the United States, or a political subdivision thereof that possesses general powers of taxation, including property taxation; or

(2) An obligation payable from a special fund or by an obligor not possessing general powers of taxation when an obligor possessing general powers of taxation, including property taxation, has unconditionally promised to make payments into the fund or otherwise provide funds to cover all required payments on the obligation.

(e) *Liquid investments* are assets that can be promptly converted into cash without significant loss to the investor. In the money market, a security is liquid if the spread between bid and ask prices is narrow and a reasonable amount can be sold at those prices.

(f) *Loans* are defined by § 621.2(f) of this chapter and are calculated quarterly (as of the last day of March, June, September, and December) by using the average daily balance of loans for the quarter then ended.

(g) *Market risk* means the risk to the bank's financial condition resulting from a decline in value of its holdings arising from changes in interest rates or market prices. A bank's exposure to market risk can be measured by assessing the effect of changing rates and prices on either earnings or economic value of an individual instrument, a portfolio, or the entire institution.

(h) *Marketable investment* means an asset that can be sold with reasonable promptness at a price that reasonably reflects its fair value in an active and universally recognized secondary market.

(i) *Mortgage securities* means securities that are either:

(1) Collateralized with residential mortgage loans (excluding home equity loans) that represent ownership of a fractional undivided interest in a specific pool of mortgages (commonly known as pass-through securities or participation certificates), or

(2) A multi-class, pay-through bond backed by a pool of residential mortgage pass-through securities or residential mortgage loans (including securities commonly known as collateralized mortgage obligations and real estate mortgage investment conduits).

(j) *Nationally Recognized Statistical Rating Organization (NRSRO)* means a rating organization that the Securities and Exchange Commission has recognized as an NRSRO.

(k) *Weighted average life (WAL)* means the average time to receipt of principal, weighted by the size of each principal payment. Weighted average

life for mortgage and asset-backed securities is calculated under specific prepayment assumptions.

4. Section 615.5133 is revised to read as follows:

§ 615.5133 Investment portfolio management.

The board of directors of each Farm Credit bank is responsible for adopting written policies for managing the bank's investment activities. The board of directors shall also ensure that the bank's investments are safely and soundly managed in accordance with the written policies and that appropriate internal controls are in place to preclude investment actions that undermine the solvency and liquidity of the bank. Written investment policies must address the purposes and objectives of investments, risk parameters, delegations of authority, and reporting requirements. Annually, the board of directors of each Farm Credit bank shall review its investment policies to determine whether objectives and risk exposure limits continue to be appropriate for the bank.

(a) *Risk parameters.* The investment policies shall establish risk limits and diversification requirements for the various classes of eligible investments and the entire investment portfolio. Risk parameters shall be based on the Farm Credit bank's institutional objectives, capital position, and its tolerance for risk. The policies must identify the types and quantity of investments that the bank will hold to achieve its objectives and control credit, market liquidity, and operational risks.

(1) *Credit risk.* The bank's investment policies shall establish:

(i) Credit quality standards, limits on counterparty risk, and risk diversification requirements that limit concentrations based on a single or related counterparties, a geographical area, industries or obligations with similar characteristics.

(ii) Criteria for selecting brokers, dealers, and investment bankers (collectively, securities firms). The policy shall also set limits on the amounts and types of transactions that the bank shall execute with authorized securities firms. The board of directors shall annually review management's selection of securities firms and limitations on transactions with such securities firms.

(iii) Collateral margin requirements on repurchase agreements.

(2) *Market risk.* The bank's investment policies shall set market risk limits for the institution, the investment portfolio or specific types of investments pursuant to the regulations in this chapter and guidance by the Farm Credit Administration.

(3) *Liquidity risk.* The bank's policies shall describe the liquidity characteristics of investments used to accomplish institutional objectives and its liquidity needs sufficient to comply with the requirements of § 615.5134.

(4) *Operational risk.* The bank's policy shall address operational risks, including delegations of authority and internal controls in accordance with paragraphs (b) and (c) of this section.

(b) *Delegations of authorities.* All delegations of the management of the bank's investments to specific personnel or committees shall state the extent of management's authority and responsibilities.

(c) *Internal controls.* Each Farm Credit bank shall:

(1) Establish appropriate internal controls to detect and prevent loss, fraud, embezzlement, conflicts of interest, and unauthorized investments and ensure compliance with policies established by the board.

(2) Ensure that a separation of duties and supervision exists between personnel executing investment transactions and those responsible for approving, revaluating, and overseeing the bank's investments.

(3) Maintain management information systems that are commensurate with the level and complexity of the bank's investment activities.

(d) *Securities valuation.* Each Farm Credit bank shall:

(1) Verify the value of any security (except new issues) that it purchases or sells from a source that is independent of the broker, dealer, counterparty, or other intermediary in the specific transaction.

(2) Determine, at least monthly, the fair value of each security in its portfolio and the fair value of the portfolio as a whole.

(3) Perform evaluations of the credit quality and price sensitivity to changes in market interest rates of all investments held in its portfolio prior to purchase and on an ongoing basis.

(e) *Reports to the board.* Reports on the performance and risk of each investment and the investment portfolio shall be made to the board of directors or a committee thereof each quarter. Reports shall identify potential risk exposure to changes in market interest rates and other factors that may affect the value of the bank's investment holdings. Each report shall discuss how investments affect the bank's overall financial condition and evaluate whether the performance of the investment portfolio effectively achieves the objectives established by the board of directors. Any deviations from the board's policies shall be specifically identified in the report.

5. Section 615.5134 is amended by revising paragraph (b) to read as follows:

§ 615.5134 Liquidity reserve requirement.

* * * * *

(b) All investments held for the purpose of meeting the liquidity reserve requirement under this section shall be free of lien.

* * * * *

6. Section 615.5140 is revised to read as follows:

§ 615.5140 Eligible investments.

(a) Farm Credit banks are authorized to hold the following types of eligible investments, denominated in United States dollars, to comply with the requirements of §§ 615.5132, 615.5134, and 615.5135 of this subpart:

(1) *Treasury and agency securities.* Obligations of the United States; full-recourse obligations, other than mortgage securities, of agencies, instrumentalities or corporations of the United States, or debt obligations of other obligors that are fully insured or guaranteed as to both principal and interest by the United States, its agencies, instrumentalities, or corporations.

(2) *General obligations of a State or political subdivision* that mature within 10 years and are rated in one of the three highest credit rating categories by an NRSRO.

(3) *Obligations of international and multilateral development banks* in which the United States is a voting shareholder.

(4) *Money market instruments:* (i) Negotiable certificates of deposit that mature within 1 year or less, Federal funds, term Federal funds that have a callable contract with a term to maturity of 100 days or less, and bankers acceptances that are issued by depository institutions. All issuers of money market instruments listed in paragraph (a)(4)(i) of this section shall maintain a rating in one of the two highest short-term credit rating categories by an NRSRO.

(ii) Eurodollar time deposits that mature within 90 days and are held at depository institutions that maintain a rating in the highest short-term credit rating category by an NRSRO.

(iii) Prime commercial paper that has a maturity of 270 days or less and is rated in the highest short-term credit rating category by an NRSRO.

(iv) Repurchase agreements where a Farm Credit bank agrees to purchase marketable securities subject to an agreement that requires a counterparty

to repurchase the same or identical securities at a specific time within 100 days or less. The collateral for repurchase agreements shall be either eligible investments authorized by this section or other marketable securities that are rated in the highest credit rating category by an NRSRO.

(v) Master notes that mature overnight, or have a callable feature and mature within 270 days, and are executed with domestic counterparties that maintain a rating in the highest short-term credit rating category by an NRSRO.

(5) *Mortgage securities* that are rated in the highest credit rating category by an NRSRO and are either:

(i) Agency mortgage securities that are issued or guaranteed as to principal and interest by the Government National Mortgage Association, the Federal National Mortgage Association, Federal Home Loan Mortgage Corporation, or

(ii) Non-agency mortgage securities that are offered and sold pursuant to section 4(5) of the Securities Act of 1933, 15 U.S.C. 77d(5) or are residential mortgage-related securities within the meaning of section 3(a)(41) of the Securities Exchange Act of 1934, 15 U.S.C. 78c(a)(41).

(iii) Mortgage securities shall not be consider eligible investments, unless they comply with the requirements of § 615.5141 of this subpart.

(6) *Asset-backed securities* that are collateralized by credit card receivables, automobile loans, home equity loans, manufactured housing loans, equipment loans, student loans, or wholesale dealer automobile loans that are rated in the highest credit rating category by an NRSRO. The expected WAL on eligible ABS shall not exceed 5 years and the final maturity shall not exceed 7 years.

(7) *Corporate debt securities* that are rated within the two highest credit rating categories by an NRSRO, mature within 5 years and are not convertible into equity securities.

(8) *Investment companies.* Shares of an investment company registered under section 8 of the Investment Company Act of 1940, 15 U.S.C. 80a–8 (including mutual funds, unit investment trusts, and collective investment funds maintained by a national bank under 12 CFR part 9), provided that the portfolio of the investment company consists exclusively of eligible investments that are authorized by this section or § 615.5174 of this part. In addition, Farm Credit banks must evaluate the investment company's risk and return objectives and use of derivatives to ensure that the investment company's objectives and strategies for achieving its objectives are consistent with the bank's investment policies and the requirements of this subpart.

(9) *Other investments,* as authorized by the Farm Credit Administration, that have a short maturity and are rated investment grade by an NRSRO. A Farm Credit bank seeking approval of an investment under this paragraph should provide the Farm Credit Administration with documentation that describes the risk characteristics of the investment and explains the bank's purpose and objectives for making the investment.

(b) The authority of Farm Credit banks to hold the investments listed in paragraph (a) of this section is subject to the following requirements:

(1) *Marketable securities.* Except for the money market instruments listed in paragraph (a)(4) of this section, all other eligible investments shall be marketable within the meaning of § 615.5131(h).

(2) *Rating of foreign countries.* Whenever the obligor or issuer of an eligible investment is located outside of the United States, the host country shall maintain the highest sovereign rating for political and economic stability by an NRSRO.

(3) *Obligor limits.* Except for eligible investments covered by paragraph (a)(1) of this section and mortgage securities that are issued by or guaranteed as to principal and interest by the Government National Mortgage Association, Federal National Mortgage Association, or the Federal Home Loan Mortgage Corporation under paragraph (a)(5)(i) of this section, each Farm Credit bank shall not invest more than twenty (20) percent of its total capital in eligible investments issued by any single institution, issuer, or obligor.

(4) *Portfolio limits.* Subject to § 615.5132, each Farm Credit System bank is authorized to hold eligible investments listed in paragraph (a) of this section without limitation as to amount except:

(i) Mortgage securities shall not exceed fifty (50) percent of the bank's total investments authorized under this section provided that mortgage securities that are issued under paragraph (a)(5)(ii) of this section shall not exceed fifteen (15) percent of the bank's total investments. Mortgage securities that are issued by the Government National Mortgage Association shall not be subject to any restriction on amount.

(ii) Each of the following types of investments shall not exceed twenty (20) percent of the bank's total investments authorized under this section:

(A) Eurodollar time deposits;

(B) Master notes;

(C) Asset-backed securities; and

(D) Corporate bonds.

(5) *Limit on investment company holdings.* (i) *General.* A Farm Credit bank shall combine its direct holdings of eligible investments with its pro rata interest in the same type of instrument or obligor in the portfolio of an investment company for the purpose of complying with the obligor and portfolio limitations of paragraphs (b)(3), (b)(4)(i), and (b)(4)(ii) of this section.

(ii) *Alternate diversification requirements for investment companies.* (A) *Exemption from the obligor limit.* A Farm Credit bank may elect not to combine its pro rata interest in a particular security in an investment company with the bank's direct holdings of securities that are subject to the obligor limit in paragraph (b)(3) of this section if the investment company's holdings of the securities of any one issuer do not exceed five (5) percent of its total portfolio.

(B) *Exemption from the portfolio limits.* A Farm Credit bank may elect not to combine its pro rata interest in a type of security in an investment company with the bank's direct holding of a class of securities that are subject to the portfolio limits in paragraphs (b)(4)(i) and (b)(4)(ii) of this section if the bank's shares in an investment company do not exceed ten (10) percent of its total investments.

§ 615.5141 through 615.5143 [Redesignated]

7. Sections 615.5141, 615.5142, and 615.5143 are redesignated as §§ 615.5142, 615.5143, and 615.5144, respectively, and a new § 615.5141 is added to read as follows:

§ 615.5141 Stress tests for mortgage securities.

Each Farm Credit bank shall perform stress tests to determine how interest rate fluctuations will affect the cashflows and price of all mortgage securities that it purchases and holds under § 615.5140(a)(5), as well as their overall affect on the earnings and capital of the bank. Adjustable mortgage securities that have a repricing mechanism of 12 months or less and tied to an index are not subject to stress testing. Farm Credit banks may conduct the stress tests in accordance with either paragraph (a) or (b) of this section.

(a) Mortgage securities shall comply with the following three tests at the time of purchase and each quarter thereafter:

(1) *Average Life Test.* The expected WAL of the instrument does not exceed 5 years.

(2) *Average Life Sensitivity Test.* The expected WAL does not extend for more

than 2 years, assuming an immediate and sustained parallel shift in the yield curve of plus 300 basis points, nor shorten for more than 3 years, assuming an immediate and sustained parallel shift in the yield curve of minus 300 basis points.

(3) *Price Sensitivity Test.* The estimated change in price is not more than thirteen (13) percent due to an immediate and sustained parallel shift in the yield curve of plus or minus 300 basis points.

(4) *Exemption.* A floating-rate mortgage security shall not be subject to paragraphs (a)(1) and (2) of this section if at the time of purchase, and each subsequent quarter, it bears a rate of interest that is below the contractual cap on the instrument.

(b) A Farm Credit bank may use alternative stress tests to evaluate the price sensitivity of its investments in mortgage securities. Alternative stress tests must be able to measure the price sensitivity of mortgage instruments over different interest rate/yield curve scenarios prior to purchase and each quarter thereafter. The methodology used to analyze mortgage securities shall be commensurate with the complexity of the instrument's structure and cashflows. Prior to purchase and quarterly thereafter, the stress test should determine that the mortgage security's risk is compatible with the bank's investment policies and the investment does not expose the bank's capital and earnings to excessive risks.

(c) In applying the stress tests in either paragraphs (a) or (b) of this section, each Farm Credit bank shall rely on verifiable information to support all of its assumptions, including prepayment and interest-rate volatility assumptions. All assumptions that form the basis of the bank's evaluation of the security and its underlying collateral shall be available for review by the Office of Examination of the Farm Credit Administration. Subsequent changes in the bank's assumptions shall be documented. If at any time after purchase, a mortgage security no longer complies with requirements in this section, the bank shall divest the security in accordance with § 615.5143 of this part.

§ 615.5143 [Amended]

8. Newly designated § 615.5143 is amended by removing paragraph (a) and the paragraph designation from paragraph (b).

Subpart F—Property and Other Investments

§ 615.5174 [Amended]

9. Section 615.5174 is amended by removing the words ''mortgage-backed securities (MBSs), as defined by § 615.5131(l), collateralized mortgage obligations (CMOs), as defined by § 615.5131(e), and Real Estate Mortgage Investment Conduits (REMICs), as defined by § 615.5131(p)'' in paragraph (a), and adding in their place, the words ''mortgage securities as defined by § 615.5131(l);'' by removing the words, ''as defined by § 615.5131(b),'' from paragraph (b)(1); by removing paragraph (c); and redesignating paragraphs (d) and (e) as paragraphs (c) and (d), respectively.

Dated: June 15, 1998.

Floyd Fithian,

Secretary, Farm Credit Administration Board.

[FR Doc. 98–16208 Filed 6–17–98; 8:45 am]

BILLING CODE 6705–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–CE–51–AD]

RIN 2120–AA64

Airworthiness Directives; Schempp-Hirth K.G. Model Cirrus Sailplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to adopt a new airworthiness directive (AD) that would apply to certain Schempp-Hirth K.G. (Schemmp-Hirth) Model Cirrus sailplanes. The proposed AD would require modifying or replacing the connecting rod between the airbrake bellcranks, and replacing the existing 6 millimeter (mm) bolt with an 8 mm bolt. The proposed AD is the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for Germany. The actions specified by the proposed AD are intended to prevent the threaded bolt that is welded to the connecting rod between the airbrake bellcranks from breaking, which could result in loss of airbrake control with a possible reduction/loss of sailplane control.

DATES: Comments must be received on or before July 21, 1998.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 98–CE–51–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

Service information that applies to the proposed AD may be obtained from Schempp-Hirth Flugzeugbau GmbH, Krebenstrasse 25, Postfach 1443, D–73230 Kircheim/Teck, Germany. This information also may be examined at the Rules Docket at the address above.

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

SUPPLEMENTARY INFORMATION:

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. 98–CE–51–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 98–CE–51–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Discussion

The Luftfahrt-Bundesamt (LBA), which is the airworthiness authority for Germany, notified the FAA that an unsafe condition may exist on certain Schempp-Hirth Model Cirrus sailplanes. The LBA reports that the threaded bolt welded to the connecting rod of the airbrake bellcranks broke off on two of the above-referenced sailplanes. The threaded bolt is a 6 millimeter (mm) bolt. Beginning with serial number 51, Schempp-Hirth manufactured Model Cirrus sailplanes with an 8 mm bolt that is welded to the connecting rod of the airbrake bellcranks. The FAA has not received reports of broken 8 mm bolts on Schempp-Hirth Model Cirrus sailplanes.

These conditions, if not corrected, could result in loss of airbrake control with a possible reduction/loss of sailplane control.

Relevant Service Information

Schempp-Hirth has issued Technical Note No. 265–8, dated February 11, 1985, which specifies procedures for modifying or replacing the connecting rod between the airbrake bellcranks, and replacing the existing 6 mm bolt with an 8 mm bolt.

The LBA classified this technical note as mandatory and issued German AD 85–56, dated March 4, 1985, in order to assure the continued airworthiness of these sailplanes in Germany.

The FAA's Determination

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

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

Explanation of the Provisions of the Proposed AD

Since an unsafe condition has been identified that is likely to exist or develop in other Schempp-Hirth Model Cirrus sailplanes of the same type design registered in the United States, the FAA is proposing AD action. The proposed AD would require modifying or replacing the connecting rod between the airbrake bellcranks, and replacing the existing 6 mm bolt with an 8 mm bolt. Accomplishment of the proposed action would be in accordance with Schempp-Hirth Technical Note 265–8, dated February 11, 1985.

Compliance Time of the Proposed AD

Although the unsafe condition identified in this proposed AD occurs during flight and is a direct result of sailplane operation, the FAA has no way of determining how long the 6 mm bolt may go without breaking. For example, the condition could exist on a sailplane with 200 hours time-in-service (TIS), but could be developing and not actually exist on another sailplane until 300 hours TIS. For this reason, the FAA has determined that a compliance based on calendar time should be utilized in the proposed AD in order to assure that the unsafe condition is addressed on all gliders in a reasonable time period.

Cost Impact

The FAA estimates that 21 sailplanes in the U.S. registry would be affected by the proposed AD, that it would take approximately 12 workhours per sailplane to accomplish the proposed action, and that the average labor rate is approximately $60 an hour. Parts cost approximately $60 per sailplane. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $16,380, or $780 per sailplane.

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Schempp-Hirth K.G.: Docket No. 98–CE–51–AD.

Applicability: Model Cirrus sailplanes, serial numbers 1 through 50, certificated in any category.

Note 1: This AD applies to each sailplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For sailplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (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: Within the next 4 calendar months after the effective date of this AD, unless already accomplished.

To prevent the threaded bolt that is welded to the connecting rod between the airbrake bellcranks from breaking, which could result in loss of airbrake control with a possible reduction/loss of sailplane control, accomplish the following:

(a) Modify or replace the connecting rod between the airbrake bellcranks, and replace the existing 6 millimeter (mm) bolt with an 8 mm bolt. Accomplish these actions in accordance with Schempp-Hirth Technical Note 265–8, dated February 11, 1985.

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

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

FAA Maintenance Inspector, who may add comments and then send it to the Manager, Small Airplane Directorate.

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

(d) Questions or technical information related to Schempp-Hirth Technical Note 265–8, dated February 11, 1985, should be directed to Schempp-Hirth Flugzeugbau GmbH, Krebenstrasse 25, Postfach 1443, D–73230 Kircheim/Teck, Germany. This service information may be examined at the FAA, Central Region, Office of the Regional Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Note 3: The subject of this AD is addressed in German AD 85–56, dated March 4, 1985.

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

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–16165 Filed 6–17–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–ANE–53–AD]

RIN 2120–AA64

Airworthiness Directives; Pratt & Whitney PW4000 Series Turbofan Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Pratt & Whitney (PW) PW4000 series turbofan engines not incorporating modifications described in certain PW service bulletins listed in the applicability section. This proposal would require high pressure compressor (HPC) blade tip grinding of the rotor assembly, installation of aluminum oxide coated HPC blade tips in stages 9 through 12, modification of HPC 8th through 14th stage stators, incorporation of 1st stage high pressure turbine (HPT) vanes with increased airflow area which also requires additional HPT hardware modifications, and incorporation of HPC 13th–15th stage zirconium oxide blade tips. This proposal is prompted by reports of HPC surge caused by excessive HPC rear stage rotor-to-case clearance. The actions specified by the proposed AD are intended to prevent HPC surge, which can result in engine power loss at a critical phase of flight such as takeoff or climb.

DATES: Comments must be received by August 17, 1998.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 97–ANE–53–AD, 12 New England Executive Park, Burlington, MA 01803–5299. Comments may also be sent via the Internet using the following address: ''9-ad-engineprop@faa.dot.gov''. Comments sent via the Internet must contain the docket number in the subject line. Comments may be inspected at this location between 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Pratt & Whitney, 400 Main St., East Hartford, CT 06108; telephone (860) 565–6600, fax (860) 565–4503. This information may be examined at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA.

FOR FURTHER INFORMATION CONTACT: Chris Gavriel, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (781) 238–7147, fax (781) 238–7199.

SUPPLEMENTARY INFORMATION:

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 97–ANE–53–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 97–ANE–53–AD, 12 New England Executive Park, Burlington, MA 01803–5299.

Discussion

The Federal Aviation Administration (FAA) has received reports of certain Pratt & Whitney (PW) PW4000 series turbofan engine power loss events occurring frequently during a critical phase of flight such as takeoff or climb. The events have led to the flight crew conducting rejected takeoffs and to engine power loss or shutdown events in flight. A rejected takeoff could result in the airplane overrunning the runway, incurring airplane damage, and injuring airplane occupants. Engine power loss or shutdown during takeoff also significantly increases crew workload during a critical phase of flight. The investigations into these events revealed that they were caused by high pressure compressor (HPC) surge that could require crew action to recover. Further investigation revealed that the surge results from excessive HPC rear stage rotor-to-case clearance. This condition, if not corrected, could result in HPC surge, which can result in engine power loss at a critical phase of flight such as takeoff.

The FAA has reviewed and approved the technical contents of the following PW Service Bulletins (SB): PW4ENG–72–484, Revision 3, dated July 1, 1997, that describes procedures for HPC blade tip grinding at the rotor assembly and introduces HPC aluminum oxide blade tip coating in stages 9 through 15 compatible with tip grinding; PW4ENG–72–486, Revision 1, dated November 23, 1994, that describes procedures for modifying HPC 8th through 14th stage stators; PW4ENG–72–514, Revision 1, dated August 2, 1996, that describe procedures for high pressure turbine (HPT) hardware modifications to accommodate the incorporation of 1st stage HPT vanes with increased airflow area; and PW4ENG–72–575, Revision 1, dated June 30, 1997, that describes procedures for incorporating HPC 13th–15th stage zirconium oxide tips.

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require grinding of the HPC blade tips at the rotor assembly and incorporation of HPC stage 9 through 12 aluminum oxide blade tips, modification of HPC 8th through 14th stage stators, modification of HPT hardware to accommodate incorporation of 1st stage HPT vanes with increased airflow area and incorporation of these vanes, and incorporation of HPC 13th through 15th stage zirconium oxide blade tips, within 1,400 cycles in service after the effective date of this AD, or prior to June 30, 1999, whichever occurs first. The calendar end-date was based upon analysis of test data and service experience data. The actions would be required to be accomplished in accordance with the SBs described previously.

There are approximately 187 engines of the affected design in the worldwide fleet. The FAA estimates that there are currently 61 engines installed on aircraft of U.S. registry that would be affected by this proposed AD. Required parts would cost approximately $20,000 per engine. Based on these figures, the total cost impact of the proposed AD, including labor costs, is estimated to be $1,220,000.

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:

Pratt & Whitney: Docket No. 97–ANE–53–AD.

Applicability: Pratt & Whitney (PW) Model PW4152, PW4056, PW4156, PW4256, PW4052, PW4158, W4060, PW4160, PW4460, PW4050, PW4060A, PW4156A, PW4062, PW4462, PW4060C, and PW4650 turbofan engines, not incorporating at least one of the modifications described in the PW service bulletins (SBs) and listed in items (1) through (6), excluding those engines having a (-3) identifier next to the engine model number on the engine data plate. These engines are installed on but not limited to Boeing 767 and 747 series aircraft, McDonnell Douglas MD–11 series aircraft, and Airbus A310 and A300–600 series aircraft.

(1) PW4ENG 72–484, Revision 3, dated July 1, 1997, or earlier revisions, PW4ENG 72–486, Revision 1, dated November 23, 1994, or original issue.

(2) PW4ENG 72–484, Revision 3, dated July 1, 1997, or earlier revisions, PW4ENG 72–575, Revision 1, dated June 30, 1997, or original issue, PW4ENG 72–486, Revision 1, dated November 23, 1994, or original issue.

(3) PW4ENG 72–514, Revision 1, dated August 2, 1996, or original issue.

(4) PW4ENG 72–490, Revision 1, dated August 2, 1994, or original issue.

(5) PW4ENG 72–504, Revision 1, dated May 9, 1995, or original issue.

(6) PW4ENG 72–572, dated June 16, 1995.

Note 1: This airworthiness directive (AD) applies to each engine identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For engines that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (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 high pressure compressor (HPC) surge, which can result in engine power loss at a critical phase of flight such as takeoff, accomplish the following:

(a) Within 1,400 cycles in service (CIS) after the effective date of this AD, or prior to June 30, 1999, whichever occurs first, perform the following modifications:

(1) Incorporate stage 9 through 12 aluminum oxide blade tips and grind HPC blade tips at the rotor assembly in accordance with the Accomplishment Instructions of PW SB No. PW4ENG–72–484, Revision 3, dated July 1, 1997, concurrently with the requirements of paragraph (a)(4) of this AD.

(2) Modify HPC 8th–14th stage stators in accordance with the Accomplishment Instructions of PW SB No. PW4ENG–72–486, Revision 1, dated November 23, 1994.

(3) Modify the 1st stage high pressure turbine (HPT) cooling duct (TOBI Duct), install a metering plug in the Number 2 bearing thrust balance vent tube, and incorporate 1st stage HPT vanes with increased airflow area in accordance with the Accomplishment Instructions of PW SB No. PW4ENG–72–514, Revision 1, dated August 2, 1996.

(4) Incorporate HPC 13th–15th stage zirconium oxide blade tips in accordance with the Accomplishment Instructions of PW SB No. PW4ENG–72–575, Revision 1, dated June 30, 1997.

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

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

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

Issued in Burlington, Massachusetts, on June 11, 1998.

Jay J. Pardee,

Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 98–16271 Filed 6–17–98; 8:45 am]

BILLING CODE 4910–13–P

COMMODITY FUTURES TRADING COMMISSION

17 CFR Chapter I

Concept Release: Performance Data and Disclosure for Commodity Trading Advisors and Commodity Pools

AGENCY: Commodity Futures Trading Commission.

ACTION: Request for Comments.

SUMMARY: The Commodity Futures Trading Commission (''CFTC'' or ''Commission'') wishes to obtain public comment regarding possible changes to regulatory requirements which apply to the programs offered to the public by commodity trading advisors (''CTAs'') and commodity pool operators (''CPOs''). The proposals discussed in this release originate from two sources. First, National Futures Association (''NFA'') submitted a set of proposals (the ''NFA Proposal'') to the Commission for its approval, which concern computational and disclosure matters relating to participating in CTA programs on a partially-funded basis. Second, the Commission staff's preliminary review of the NFA Proposal gave rise to a number of additional related proposals which the Commission also wishes to consider. The NFA Proposal is set forth separately in a section entitled ''NFA Proposal,'' in the form in which it was submitted to the Commission for approval. NFA's and the Commission staff's related proposals, collectively, fall within the following categories: (1) improving risk profile data for clients considering participation in CTA programs on a partially-funded basis, (2) providing CTA client account information to FCMs for risk management purposes, (3) improving risk profile data on commodity pools, (4) providing a theoretically sound basis of computation and presentation for rate of return (''ROR'') and related risk profile data, (5) improving the presentation of historical performance and risk profile data, and (6) providing periodic statements of program activity and results to CTA clients.

All of the proposals, including the NFA Proposal and the additional proposals originated by the Commission staff, are discussed in detail in Part IV of this release, entitled ''Request for Comment.'' At the end of each section, questions are posed to help focus public comment on the issues raised. Comment would also be welcome on any related issue and need not be limited to the questions posed in this release.

After considering the comments received, the Commission may approve or disapprove the NFA Proposal without further public notice, may request NFA to amend its proposal, or may propose for public comment changes to various Commission rules, advisories or interpretations pertaining to performance reporting and disclosure.

DATE: Comments must be received on or before August 17, 1998.

ADDRESS: Interested parties should submit their comments to Jean A. Webb, Secretary of the Commission, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, N.W., Washington, D.C. 20581. Reference should be made to ''Performance Data and Disclosure for Commodity Trading Advisors and Commodity Pools.'' In addition, comments may be sent by facsimile transmission to (202) 418–5221 or by electronic mail to secretary@cftc.gov.

FOR FURTHER INFORMATION CONTACT: Paul H. Bjarnason, Jr., Chief Accountant, (202) 418–5459, electronic mail: ''paulb@cftc.gov;'' Robert B. Wasserman, Special Counsel, (202) 418–5092, electronic mail: ''rwasserman@cftc.gov;'' Kevin P. Walek, Branch Chief, (202) 418–5463, electronic mail: ''kwalek@cftc.gov;'' or Eileen R. Chotiner, Futures Trading Specialist, (202) 418–5467, electronic mail: ''echotiner@cftc.gov,'' Division of Trading and Markets, Commodity Futures Trading Commission, 1155 21st Street, N.W., Washington, D.C. 20581.

SUPPLEMENTARY INFORMATION:

I. Background

Past performance information presented to clients and prospective clients is a primary marketing tool for CTA programs and commodity pools. This type of information appears in disclosure documents, advertisements, promotional materials, and in compendia prepared by third-party services. Performance information is also reported either directly to clients to communicate the results of the CTA's trading on behalf of their accounts or in periodic report to investors in public and private commodity pools.

The Commission's aim is that information provided to clients be accurate, complete, and understandable. The Commission believes that performance data can be useful to clients as a way of making risk and return comparisons among investment alternatives. Performance information can assist clients in distinguishing one CTA from another in terms of historical willingness to undertake risk, fee load, volatility and longer term results or facilitating comparisons with other investment opportunities. However, the Commission recognizes that requiring more data does not always result in better information for clients. It does not wish to overload clients with excessive amounts of data, nor does it wish to burden CTAs and CPOs with excessive requirements. As noted above, the Commission and NFA have identified ways to improve existing regulatory requirements that apply to CTAs and CPOs. This release discusses a variety of issues and requests public comment thereon.

II. Discussion

A. Rate-of-Return

The Commission's current requirements for the presentation of ROR data are based upon the ''return on investment'' (''ROI'') concept used by economists, financial analysts and other professionals throughout the business world to measure the results of a variety of investment activities, from real estate development to internal capital budgeting to securities or commodities trading. ROI is used to compare various types of investments, as well as different investment managers. However, in all areas outside of commodities trading, the divisor used in the calculation of ROI represents an actual ''investment'' of tangible assets of the client—that is, the divisors used are amounts of actual cash funding that are owned or borrowed by the investor.

ROR is calculated, in accordance with Commission regulations, by dividing the net performance [1] by the beginning net asset value (''BNAV'') as of the beginning of the period.[2] Under current Commission advisories,[3] the BNAV used to calculate the ROR must be based on a set of ''fully-funded'' accounts—accounts for which the ''nominal account size'' [4] at the inception of the trading program is equal to the ''actual

[1] Commission Rules 4.25(a)(7)(i)(D) and 4.35(a)(6)(i)(D) specify that net performance represents the change in the net asset value net of additions, withdrawals, redemptions, fees and expenses.

[2] Commission Rules 4.25(a)(7)(i)(A) and 4.35(a)(6)(i)(A). Commission Rule 4.10(b) defines ''net asset value'' as ''total assets minus total liabilities, determined in accord with generally accepted accounting principles, with each position in a commodity interest accounted for at fair market value.''

[3] CFTC Advisory 87–2 [1986–87 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 23,624 (June 2, 1987); CFTC Advisory 93–13, 58 FR 8226 (February 12, 1993).

[4] ''Nominal account size'' is discussed in the next section.

funds'' [5] subject to the CTA's access and control.[6]

''Actual funds'' held pursuant to the CTA's trading program are funds deposited with the client's FCM either (1) in an account for which the CTA is granted discretionary trading authority or (2) in another account, subject to a binding agreement permitting the FCM to transfer funds to the first account at the direction of the CTA and committed to the CTA's trading program, as demonstrated by factors specified in Advisory 87–2.[7]

Commission Rules 4.25 and 4.35 require that the performance of accounts directed by a CTA be disclosed for the past five years and the current year to date. In order to permit performance data to be disclosed without excessive detail and repetition, the rules permit the performance of all reasonably comparable accounts in each of a CTA's programs to be shown on a composite basis.[8] When performance disclosure requirements were first adopted by the Commission over 20 years ago, the data required under the rules provided only a simple historical perspective on the profits earned or losses incurred by the participants in a CTA's or CPO's programs. However, in recent years the Commission has amplified the requirements to include data which provides a clearer focus on volatility, as opposed to simply displaying profits and losses. The performance capsules are now required to include, among other things, monthly rates of return for the most recent five calendar years and the current year-to-date, the worst monthly percentage drawdown [9] during that time period, the worst peak-to-valley percentage drawdown [10] for the time period, and the amount of funds under management.[11]

B. Nominal Account Size

The ''nominal account size'' is an amount the CTA and the customer have agreed upon, usually in a written contract.[12] It determines the level of trading for the client relative to other accounts in the CTA's program, regardless of the level of actual funds.[13] This means that customers of a given CTA who have the same nominal account size will have the same trades placed for their accounts. Generally, it also means that a customer who has agreed to a nominal account size of twice that of another customer of the same CTA will have twice the number of positions.[14] The use of nominal account sizes simplifies management of the trading for a multiplicity of accounts, especially where the desired level of trading by the clients is not represented by the actual funding levels, as explained below.

It is important to point out what nominal account size does not represent. It does not represent a particular number of positions, since there are times when a CTA may believe it prudent to stay out of the markets entirely or, alternatively, to be more aggressive than usual. It is not a function of margin requirements, nor is there any absolute or constant relationship to margin requirements arising from the CTA's trading. While in a retail context, the nominal account size is sometimes described as an amount sufficient to make it unlikely that any further cash deposits will be necessary over the course of the client's participation in the CTA's program, the client may not look to the nominal account size as a maximum possible loss, since unexpected losses could exceed the nominal account size. Therefore, the nominal account size does not represent the limit of the customer's liability, nor may any CTA represent that it is an indication of the maximum likely or possible loss that may be incurred.

Nominal account sizes are not comparable from one CTA to the next. In discussions with representatives of the industry concerning this issue over the past ten years, it has become clear to the Commission staff that there is no method in common use in the industry relating the nominal account sizes to the number of positions traded. Indeed, NFA has reported that setting such levels ''is inherently a subjective process'' and ''a matter of the CTA's judgement.'' [15]

Nominal account size is sometimes referred to as a ''legally binding'' amount. While the amount specified does establish some legally binding obligations between the customer and the CTA, these only extend to (1) the basis of the management fees to be paid by the customer and (2) the trading level to be employed by the CTA for this account relative to other accounts managed under the same program. the nominal account size does not represent an obligation to furnish an amount of actual funds. The account arrangement between the CTA and its client may be terminated by the client at any time regardless of the amounts deposited in any account over which the CTA has or had trading authority. Of course, the client must settle any debits left in the account at the FCM as a result of trades ordered by the CTA before termination. As indicated above, these debits could exceed the nominal account size.

The fact that nominal account size does not represent an actual investment—or even a comitment—of tangible funds and the lack of a commonly accepted method for determining the nominal account size have been major factors in the Commission's reluctance to permit the use of the nominal account size in determining ROR, except as permitted by Advisory 93–13.[16]

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[5] CFTC Advisory 93–13 defines actual funds as ''the amount of margin-qualifying assets on deposit in a commodity interest account, generally cash and marketable securities.''

[6] A CPO may only report the performance of a pool on the basis of actual funds. *See* Advisory 93–13, 58 FR at 8229. However, the issues discussed herein are applicable to CPOs with respect to disclosure of CTA performance in pool disclosure documents.

[7] These factors include the following: (1) the client must have the same ownership interest in each account; (2) the funds must be available for transfer to the client's trading account; (3) the client must commit the funds to the CTA's program under a written agreement, signed by the FCM, which permits the FCM to transfer up to a specific amount to the client's regulated commodity account at the direction of the CTA, and (4) the CTA must be able to demonstrate that the funds committed to his control were actually deposited in accounts to which he had access.

[8] Commission Rules 4.25(a)(4) and 4.35(a)(3).

[9] Commission Rule 4.10(k) defines ''drawdown'' as ''losses experienced by a pool or account over a specified period.''

[10] Worst peak-to-valley drawdown is defined in Commission Rule 4.10(l) as ''the greatest cumulative percentage decline in month-end net asset value due to losses sustained by a pool, account or trading program during any period in which the initial month-end net asset value is not equaled or exceeded by a subsequent month-end net asset value.''

[11] The table must also include any additional notes needed to avoid misleading the reader about the CTA's program or the data presented. Commission Rules 4.24(w) and 4.34(o).

[12] A written contract would be required under the NFA Proposal and is required under Advisory 93–13.

[13] Advisory 93–13.

[14] In practice, there are exceptions to this rule. For example, in some programs newly-opened accounts will take up to a few months to be fully phased into a program. Therefore, an account being phased in will not always have the full gamut of positions in it, as compared to the other accounts. Also, in some programs the smaller accounts may not be large enough to carry the full range of trades indicated by a CTA's program. In such a case, the CTA may only include the smaller accounts together with the larger accounts in the composite and in calculating ROR if it can be demonstrated that the RORs are materially the same. Advisory 93–13, 58 FR at 8228.

[15] October 2, 1997 letter from Daniel J. Roth, General Counsel, NFA, to Paul H. Bjarnason, Jr., Chief Accountant, Division of Trading and Markets, CFTC.

[16] Advisory 93–13 describes the use of a fully-funded subset to compute ROR. The fully-funded subset is a device to link the nominal account sizes assigned by the CTA to its clients to tangible funding.

C. Evolution of Present Commission Requirements

As mentioned above, the Commission's requirements have evolved over time in response to identified problems and issues. One of the issues which has been at the forefront of consideration is the so-called ''notional funds'' issue. This issue pertains to the determination of the BNAV, which is the amount to be used as the divisor in the computation of ROR. The Commission first addressed this issue in 1987. Consistent with current Commission rules on the matter, Advisory 87–2 affirmed that only actual funds on deposit could be used in determining BNAV. Its purpose was to permit inclusion in BNAV of funds which are not carried at the FCM, but which can be reached by the FCM to satisfy a margin call. Advisory 87–2 provided that actual funds for the ROR calculation could include funds carried at the FCM or located at other depositories to which the FCM had access. This Advisory was needed because a literal application of the Commission's rules resulted in the exclusion of some funding for accounts which logically should have been included. For the successful trader, the undue minimization of BNAV had the effect of resulting in unrealistically magnified RORs. The converse was true for losses. However, issuing Advisory 87–2 did not solve all of the reporting issues.

Some clients deposit to the account managed by a CTA actual funds which are only a fractional percentage of the nominal account size. This practice is referred to as ''notional funding'' or ''partial funding.'' As indicated by NFA, the widespread use of partially-funded accounts raises the issue of how to report the performance of these accounts in a manner which is not misleading and without creating an undue number of performance tables. Prior to 1993, the Commission's reporting scheme was entirely based on ''actual funds.''

Advisory 93–13's main feature was the ''fully-funded subset'' method of ROR reporting. Under this method, the RORs presented in the performance table were not based upon all the accounts in a CTA's program. The RORs were based only upon the fully-funded accounts—hence, the name ''fully-funded subset'' method. The Advisory provided for a matrix to permit clients to convert the fully-funded subset RORs to RORs for various partial funding levels. To qualify for the method, the fully-funded accounts must, in the aggregate, represent at least ten percent of the total nominal amount of funds traded by the CTA in the trading program. The Advisory also requires that the CTA make certain additional calculations to ensure that the subset is representative of the CTA's program.[17] As long as the two tests are met, this method produces approximately the same ROR as does a method (such as the NFA Proposal) that bases BNAV on the nominal account size.

The Commission has also sought to highlight the risk of CTA trading programs and commodity pools. In August 1995, the Commission enhanced requirements for the disclosure of the risk of volatility in all CTA and CPO programs by adding two new disclosure requirements—the largest percentage monthly drawdown and peak-to-valley drawdown for each program or pool offered by a CTA or CPO. The Commission felt that this new dimension to performance data provided a valuable heightened focus upon the risk of commodities trading, namely the possibility of large drawdowns of equity—either on a monthly or continuous basis.[18]

Since August 1995, the Commission has received requests to address CTAs that have difficulty achieving the fully-funded subset necessary to qualify to use Advisory 93–13. The interest in this issue suggests that partially-funded account programs are becoming more prevalent. Because of the possibility that more clients are participating on a partially-funded basis, the Commission has become concerned that full-funded basis data may be irrelevant or misleading for a growing segment of clients. Since partially-funded accounts are more highly leveraged than fully-funded accounts, they will incur magnified gains and losses compared to fully-funded accounts. For example, a customer who is funding its account at 25% of the nominal account size will realize gains—and losses—at four times the rate experienced by a fully-funded client. A loss of 30% on a fully-funded basis will result in a loss of 120% of the investment of a customer which funds its account at 25% of the nominal level, wiping out the initial investment and leaving a deficit to be repaid by the customer.

The Commission has also noted that commodity pools are accessing CTA programs on a partially-funded basis. Therefore, commodity pools raise similar concerns because their disclosure documents contain information on the pool's CTAs only on a fully-funded basis.

III. NFA Proposal

On February 26, 1998, NFA submitted for Commission approval a change to its Compliance Rule 2–29(b)(5) that would require RORs for CTAs to be based on the nominal account size as described in proposed NFA Compliance Rule 2–34, rather than upon the actual funds which are associated with the CTA's program, as presently required by Commission regulations. Proposed NFA Compliance Rule 2–34 and a related Interpretive Notice, both of which were previously submitted for Commission approval, specify certain requirements regarding account documentation and disclosure for partially-funded accounts, as well as certain disclosure requirements for COPs.[19] Together, the amendments to NFA Compliance Rule 2–29(b)(5), proposed NFA Compliance Rule 2–34, and the proposed Interpretive Notice constitute the NFA Proposal.[20]

The NFA Proposal requires a CTA who directs a client's account to enter into a written agreement with the client that includes:

(1) The account size which the CTA will use as the basis for its trading decisions, i.e., the nominal account size;

(2) The name or description of the trading program in which the client is participating;

(3) Whether the client will deposit, maintain or make accessible the FCM an amount equal to or less than the nominal account size; and

(4) How additions, withdrawals, profit and losses will affect the nominal account size and the computation of fees.

The CTA would be required to provide a copy of this agreement to the FCM carrying the client's account. The CTA would be required to disclose, in writing, the factors considered by the CTA in determining any minimum account size of the trading program in

[17] The latter requirement is not unique to partially-funded accounts, since all accounts include in a composite must be similar to one another. The calculation simply established or proved that the accounts of the fully-funded subset performed similarly to all of the other accounts.

[18] While there is generally agreement that past performance data is not predictive of future performance, academic studies have shown that it does some predictive value as to volatility. *See* Scott H. Irwin, *et al., The Predictability of Managed Futures Returns,* J. Derivatives 20, 23 (Winter 1994). This is why the Commission has sought to emphasize the drawndown aspects of ROR, as opposed to the profitability aspects.

[19] The full text of NFA Compliance Rules 2–29(b)(5) and 2–34 and the Interpretive Notice are attached to this release as Appendix I.

[20] The Commission notes that approval of the NFA Proposal by the Commission would, in order to avoid conflicts between NFA and Commission rules, require the Commission to rescind its Advisories 87–2 and 93–13, which are discussed elsewhere in this release.

which the client is participating. In addition, unless a client is a qualified eligible client as defined in Commission Rule 4.7,[21] the CTA would be required to disclose the following information in writing:

(1) An estimated range of the amount of customer equity generally devoted to margin requirements or option premiums, expressed as a percentage of the nominal account size, and an explanation of the effect of partially funding an account at that percentage;

(2) A description of how management fees will be computed, expressed as a percentage of the nominal account size, and an explanation of the effect of partially funding an account at that percentage;

(3) An estimated range of the commissions generally charged to an account, expressed as a percentage of the nominal account size, and an explanation of the effect of partially funding an account at that percentage; and

(4) A statement that the greater the disparity between the nominal account size and the amount deposited, maintained with or made available to the FCM, the greater the likelihood, and possible size, of margin calls.

The NFA Proposal prohibits the use of ROR figures in promotional material unless such figures are calculated in a manner consistent with that required under CFTC regulations and are based on the nominal account size as described in NFA Compliance Rule 2–34.[22]

The NFA Proposal also imposes disclosure requirements on CPOs who allocate assets among the pool's CTAs in such a way that the total allocations to its CTAs are greater than the total assets of the pool. In particular, the CPO must disclose the following information in writing to all participants except QEPs, as defined in Commission Rule 4.7:

(1) A statement of the total amount allocated to CTAs as a percentage of the pool's net assets;

(2) A description of how management fees charged by the CPO and the CTAs will be computed, including a statement of the total amount of management fees charged to the pool as a percentage of the pool's net assets;

(3) An estimated range of the amount of commissions and transaction fees that will be charged to the pool in the next twelve months and an estimate of these fees as a percentage of the pool's net assets; and

(4) A statement that allocating in excess of the pool's net assets among CTAs has the effect of proportionately magnifying the profits and losses that may be incurred by the pool.

NFA presents several reasons for its Proposal. NFA states that basing BNAV solely on the amount deposited by the client with the FCM can distort the past performance results reported to clients. The accounts of two clients who have permitted the CTA to base its trade orders on the same account size during the same time period, using the same program, can show very different RORs based solely on their cash management strategies. According to NFA, this factor has nothing to do with the CTA's trading decisions. NFA believes that a CTA's performance history should reflect the results of the CTA's trading decisions and should not be affected by the client's cash management strategies. NFA further believes that computing ROR for partially-funded accounts based on actual funds on deposit overstates both positive and negative returns in those accounts. In addition, NFA believes that the fully-funded subset is so restrictive that more and more CTAs have been unable to use it.

NFA also recognizes that there are valid concerns regarding the documentation, disclosure, and sales practice problems that notional funding can create. According to NFA, however, these concerns are not computational issues to be addressed through BNAV but are separate issues that should be addressed independently of the ROR calculation. Therefore, NFA has proposed using the nominal account size for calculating BNAV and imposing the separate requirements, which are set forth above, to address these compliance concerns.

IV. Request for Comment

The Commission shares NFA's concern for accurate disclosure. In this connection, the proposals, collectively, are designed to ease the calculation of ROR for CTAs and enhance the amount and quality of data available to prospective clients of CTAs and investors in commodity pools. In considering the issues involved, the Commission wishes to obtain as much information as possible and to consider all relevant options. The sections below contain discussion and pose questions regarding several broad topic areas. The Commission does not wish to limit comment to the issues and questions set forth below, and comment is welcome on any aspect of CTA or commodity pool ROR reporting, accounting or disclosure.

A. Disclosure of Risk Profile Data on CTA Programs for Clients Considering Participation on a Partially-Funded Basis

The Commission staff suggests consideration of expanded disclosure of historical percentage drawdown data, as explained below.

Discussion: Presently, drawdown data is required to be presented for CTA programs only on a fully-funded basis. The Commission staff has become concerned that historical drawdown data presented only on a fully-funded basis may mislead investors who are considering a partially-funded participation. It is important to convey to investors, as clearly as possible, that partially-funded participation in a CTA program will result in proportionately greater volatility—and proportionately greater drawdowns—compared to a fully-funded participation. Accordingly, the Commission wishes to explore the costs and benefits of requiring drawdown percentage data to be presented at two or three partial-funding levels that are representative of those offered by the CTA (*e.g.*, at the 25% 50%, and 75% levels) in addition to the fully-funded level. Presenting actual drawdown data on a partially-funded basis would illustrate the volatility of partial funding with a clarity that could not be achieved in a textual discussion. A CTA would not be required to present information for partial funding levels which are below the minimum offered by that CTA (*e.g.*, a CTA which does not accept accounts which are funded at less than 50% partial funding would not be required to present information at the 25% level).

Questions:

(1) What would be the costs and benefits of presenting drawdown figures geared to two or three partial funding levels?

(2) What would be the most effective format for the presentation?

[21] Commission Rule 4.7 provides an exemption from certain Part 4 requirements with respect to the operators of commodity pools whose participants are limited to qualified eligible participants (''QEPs'') and with respect to commodity trading advisors whose clients are qualified eligible clients (''QECs''), as those term are defined by the Rule.

[22] The NFA Proposal would appear to prohibit the presentation of ROR figures based on any of the ''actual funds'' methods required in Commission regulations or permitted in Advisories 87–2 and 93–13. This language would also appear to prohibit the presentation of worst month and worst peak-to-valley figures—which are rate-of-return figures—on a partially-funded basis to prospective investors. As discussed below, the Commission is requesting comment on a proposal that CTAs who permit the use of partial funding levels present such ''worst-case'' information to potential investors on a partially-funded, ''as-if'' basis, in order to highlight the increased risk imposed by the leveraging that partial funding represents. The NFA Proposal would thus proscribe the disclosure of risks which the Commission proposal would require.

B. Presentation of Data Concerning Estimated Margin Ratios

NFA proposes to require CTAs to disclose, to any client which is not a QEC under Commission Rule 4.7 and which partially funds a participation in a CTA's program:

> An *estimated* range of the amount of customer equity *generally* devoted to margin requirements or option premiums, expressed as a percentage of the nominal account size of the accounts traded by the CTA, and an explanation of the effect of partially funding an account at that percentage.

Proposed Rule 2–34(b)(1) (emphasis added).

Discussion: This ratio, which is to be presented to *partially*-funded customers, is nonetheless a measure of the CTA's program on a *fully*-funded basis, since it is based upon the nominal account size. It appears that use of the ratio is intended to provide a measure or indicator of the risk of the CTA's program. The addition textual requirement is designed to help clients understand how partial funding increases such risk.

The Commission believes any new required disclosure should be assessed in light of its clarity, reliability in achieving its intended purpose, and its potential for being misunderstood by investors. If this proposed disclosure were required, it is possible that prospective clients will compare CTAs on the basis of this ratio. This possibility leads to the following issues for consideration:

- In determining whether presentation of the margin ratio should be required, it is important to consider whether aggregate margin requirements are a reliable indicator of risk. It is unclear that any two portfolios with the same aggregate margin requirement are equal as to their level of risk, regardless of the mix of commodities represented or the mix of futures, long and short options comprising the portfolio. The Commission knows of no academic studies on the matter, and the staff's experience reviewing margin requirements indicates that there can be significant differences between margin requirements relative to the level of risk on different contracts. For example, the margin requirements on stock index futures are generally more conservative (*i.e.*, higher relative to volatility) than the margin requirements on energy products.
- The NFA Proposal's provision that the ''estimated'' range be disclosed allows the CTA to exceed the upper limit of the range presented. The Commission staff is concerned that disclosure of such a range might create a misleading expectation of limited losses.
- It is unclear that a textual explanation of the risk of partially funding a CTA program participation, added to the currently required disclosures, is likely to attract the attention of the potential investor.

Questions:

(1) Will disclosure of information concerning the margin ratio, as discussed above, be useful to potential investors? Please give details of how potential investors will use this information.

(2) What evidence, in the form of studies or otherwise, supports the proposition that margin requirements are a reliable indicator of the level of risk?

(3) Does a requirement that CTAs disclose an ''estimated'' range of the amount of customer equity ''generally'' devoted to margin involve a standard so inherently discretionary that it creates a danger of presenting information that is misleading to potential investors?

(4) Would a requirement that CTAs commit to an absolute maximum percentage of customer equity devoted to margin, beyond which no margin-increasing changes will be made, provide a more useful disclosure structure? What would be the advantages and disadvantages of such a structure? How should such a structure be implemented?

(5) Would any other alternative structures present more useful information? What would be the advantages and disadvantages of such structures?

C. Providing the CTA/Client Agreement to the FCM

The NFA Proposal calls for the CTA to provide a copy of the CTA/client agreement to the FCM carrying the customer's account.

Discussion: NFA has indicated that it believes an FCM would find the nominal account size useful as a general indicator of the amount and size of trading intended to be undertaken in the account on behalf of the customer. The FCM could use this information in making a determination as to whether to accept this client and, if so, under what credit terms.

Questions:

(1) Do FCMs consider the client's nominal account size useful information? Do they currently obtain such information? Would the imposition of a regulatory requirement aid them in doing so?

(2) Would a different method of providing the FCM with information concerning nominal account sizes be more efficient? What method (if any) of communication should be required? What should the timing and the form of this communication be?

D. Presentation of Risk Profile Data on Commodity Pools

The NFA Proposal imposes various disclosure requirements on CPOs that allocate assets among a pool's CTAs in such a way that the total allocations to its CTAs are greater than the total assets of the pool. One of the requirements is for the CPO to provide a statement of the total amount of nominal account sizes allocated to a pool's CTAs as a percentage of the pool's net assets. The Commission desires to obtain comment on an alternative method of presenting a risk profile for a commodity pool which was developed by its staff.

Discussion: The most readily apparent use for NFA's proposed ratio would be for prospective clients to compare one commodity pool to another. On initial consideration, it might seem that the greater the amount of the nominal account size compared to pool net assets, the greater the risk of a pool would be. But in this connection there are some issues that should be explored.

Although nominal account sizes may be useful in the context of an individual CTA, it does not follow that the ratio would be a consistent measure for even a single pool over time. As noted above, nominal account sizes are not comparable across CTAs. Therefore, a ratio based on the aggregate of nominal account sizes would not lend itself to making accurate and reliable comparisons between pools. Moreover, the ratio of one CTA's nominal account size to the others may change over time. The Commission is interested in reviewing evidence which contradicts or supports this preliminary conclusion.

The Commission wishes to explore an alternative approach to enhancing the presentation of risk profile data for pools. This approach is founded on the precept that the volatility of a pool is a function of the volatilities of the investment vehicles (*i.e.*, CTA programs or investee funds) in which it has invested. Therefore, the Commission wishes to consider requiring the presentation of data disclosing, on a pro forma basis, the effect of the worst historical drawdown for each of the vehicles the pool invested in over the course of the year. Such a presentation requirement might be implemented as follows:

> (1) For each investment vehicle selected, present the worst monthly and worst peak-to-valley drawdown percentages on a leveraged basis for:

(a) the investment vehicle itself, at the pool's leveraged basis (*e.g.,* if the fully-funded worst drawdown for CTA ''X'' was 10 percent and the pool funds its participation in the program of CTA ''X'' on a 50 percent basis, the worst drawdown would be presented as 20 percent); and

(b) the investment vehicle's historical pro-forma impact on the pool, as though the highest percentage of pool assets over the past year were invested in the investment vehicle for the full historical period, at the leverage level of the pool (*e.g.,* if CTA ''X'' had been allocated 25 percent of the pool's net assets, the 20 percent worst monthly drawdown would be presented as a 5 percent impact (20% * 25%) upon the pool's net assets).

(2) For major investee funds, data on the investee fund's major investments would be required on a ''look-through'' basis, if they qualified as material under the selection criteria discussed below.

(3) Finally, for each investment vehicle, identify the number of days during the year that the fund was invested in the vehicle and whether it is currently so invested.

An example of such a presentation follows:

Investment	Investment (leveraged)		Highest percentage of fund	Impact on fund		Number of days held
	Worst month	Worst peak-to-valley		Worst month	Worst peak-to-valley	
CTA *X*	(20%)	(Y%)	25%	(5%)	(Y *25%)	365

The purpose of the selection criteria is to select investment vehicles for which detailed risk profile data must be provided, *i.e.,* those which expose the pool to the risk of material loss. It is also important to limit the number of vehicles for which information is presented, to avoid overwhelming the investor with an excessive volume of data. Finally, the criteria should consider the pool's investments over the course of a year, rather than on a particular date, to avoid strategic behavior aimed at ''cleaning up'' the portfolio for a single measurement day. One example of a selection method would be the following:

Identify each investment vehicle in which, at any time during the course of the year, the actual funds invested by the pool equaled or exceeded five percent of the pool net assets. For each such investment vehicle, calculate an index which is the product of (A) the greatest amount invested (by *notional* value) times (B) the vehicle's worst monthly drawdown percentage, times (C) the number of days during the year that the pool was invested in this vehicle. Present the data described above for the investment vehicles with the top *N* index values.

Questions:

(1) What evidence supports or contradicts the proposition that the ratio between aggregate notional value and total pool net asset value is a useful measure of the risk level of a commodity pool?

(2) Would presentation of leverage worst drawdown data, as described above, for a selection of a commodity pool's investment vehicles provide useful information to potential investors? What would be the disadvantages of providing such information? What is the most effective means of presenting such information? Should the results of the calculations described above be presented, or should different information be presented?

(3) Are the selection criteria described above useful? Would a different selection method be more appropriate? For how many investment vehicles should the data be presented?

(4) When should this table be presented: in disclosure documents? Sales literature? Pool annual reports?

E. Theoretical Soundness of the Basis of Computation and Presentation for ROR and Related Risk-Profile Data

The NFA Proposal does not require CTAs to maintain any fully-funded accounts to validate their nominal account sizes. By contrast, current practice, as described in Advisory 93–13, requires a fully-funded subset comprised of fully-funded accounts accounting for ten percent of the aggregate nominal account sizes, to validate the nominal account sizes. The Commission wishes to explore the implications of this change.

Discussion: The Commission has always sought to ensure that the methodologies it has required or permitted to be used in the various reporting schemes under its jurisdiction are based upon sound economic and accounting principles. In this connection, wherever possible, the Commission adheres to Generally Accepted Accounting Principles (''GAAP'') in CTA, commodity pool, and FCM financial reporting. The fully-funded subset method permitted in Advisory 93–13 is consistent with the Commission's historical approach to standards by requiring that the nominal account sizes set by the CTA be validated by the existence of a subset of accounts that are fully-funded with actual assets, pursuant to GAAP. This explicit linkage to actual funds, in effect, permitted to RORs to have some basis in traditional financial and accounting methods. By contrast, the NFA Proposal, which permits unrestricted use of the subjectively established nominal account size, lacks such an anchor or reference point.

Question:

(1) Should the fully-funded subset requirement be retained to validate the nominal account sizes used by the CTA, or should it be dropped entirely?

(2) Does the fact that many CTAs may have difficulty in obtaining a fully-funded subset demonstrate a flaw in the regulatory methodology, or does it demonstrate an unrealistic setting of nominal account sizes? In other words, if the greatest actual funding level for any of a given CTA's accounts was 50% (e.g., all $1 million nominal accounts are funded at $500,000 or less), is it not more accurate to express the nominal account sizes at 50% of their initial level?

(3) If the fully-funded subset should be dropped, what would be the theoretical basis for the method of computing ROR, in terms of economic and financial accounting theory?

(4) How do nominal account sizes used by CTAs generally fit into the broader world of financial services, so that a potential investor might fairly compare investments in commodity pools with other potential investments?

F. Changes in the Presentation of Historical Data

Current regulations require disclosure of approximately five years of historical ROR data, presented on a monthly basis, and presentation on a capsule basis of the single worst monthly drawdown and worst peak-to-valley drawdown during the same period.[23] The Commission wishes to consider the costs and benefits of requiring a longer time-frame for disclosing performance data for CTAs and commodity pools while reducing the period for which disclosure of monthly data is necessary in the basic disclosure documents.[24]

[23] Commission Rule 4.25(a)(1)(F), (G); Rule 4.25(a)(2)(ii). The time required is ''the most recent five calendar years and year-to-date.'' Commission Rule 4.25(a)(5).

[24] The Commission anticipates that monthly data would be made available by some means to

The focus of the disclosure document would be to provide key profile information. The Commission staff has also suggested that the Commission consider expanding the number of worst drawdown months presented, from one to three or possibly six. The overall effect of this change would be to reduce the number of data items presented in the disclosure document, while increasing the scope of the information made available to the investor.

Discussion: In many markets, extreme market events do not always occur within a five-year time-frame, which is the limit of the present requirement. Often the time interval between market events is ten years or more. Thus, limiting the historical presentation requirements to a five-year period, as the current regulations do, may permit some CTAs and commodity pools to omit their greatest drawdowns from their historical risk profiles.[25] Requiring data for a longer period will present a fuller picture to prospective clients.[26] Such disclosure is especially important where notional funding is used, given the magniification of drawdowns inherent in partial funding.

The Commission also seeks to strike a balance between the sometimes conflicting goals of requiring all data that would be useful and avoiding the presentation of a volume of data that is cumbersome to read and analyze or too complex or voluminous to be easily assimilated by the prospective client. Therefore, the Commission staff has suggested that the Commission consider reducing the number of years for which monthly data is required and presenting the balance of the information on an annual basis or on some other summary basis, as discussed below.

In connection with consideration of reducing the number of monthly data items, the Commission staff has suggested that the Commission consider requiring more detailed information concerning the volatility of the CTA's program, either by requiring presentation of an expanded number of worst drawdown months, e.g., the three worst months or the six worst months, or by requiring presentation of the standard deviation of the monthly returns. Presently, only disclosure of the worst single monthly return is required. Given the unreliability of past performance data as a predictor of future performance and the relatively greater correlation between past and future volatility, presentation of data which is more indicative of volatility seems warranted.

Questions:

(1) What are the costs and benefits of requiring performance data for a period greater than the past five years? What period should be required?

(2) How many years of monthly data should be required? What would be the most effective method of presenting such data? What would be the most appropriate method of presenting data for earlier periods (e.g., annual performance, annual performance plus footnoted standard deviation of monthly performance, etc.)?

(3) What data should be presented to enable investors to measure the volatility of returns from a CTA's program or a commodity pool? How many months of worst drawdown data should be required (e.g., one, three, six)? What would be the most effective format for the presentation of this data?

G. Keeping Clients Regularly Informed Regarding CTA Program Status

The Commission seeks to ensure that clients receive timely and complete information on the status of their participation in CTA programs.

Discussion: Commission rules do not currently require that CTAs provide any periodic reports to their clients.[27] Presently, the only information the Commission requires to be reported to a client is that provided to the FCM (e.g. trade confirmations and monthly account statements provided to the CTA's clients and to the CTA).[28] However, this information does not fully inform the customer as to the status of its participation in the CTA's program. Among the items the customer may also need are the following: (a) account fees (e.g., the amount of fees earned/charged during the period, payments received from client on amounts owed during the period both through charges to the client account at the FCM and from sources outside the FCM account, and may balance unpaid by or credit due to the client at end of the period); (b) information on the basis of incentive fee calculations (including the amount of unrecovered prior losses carried forward); and (c) the current nominal account (i.e., amount originally agreed to, changes during the period and balance at end of period). It also may be useful to require the monthly statement to contain the management and incentive fee percentages, even though they are contained in the CTA/client agreement. This would permit the clients more easily to verify the amount charged.

Questions:

(1) Which of the data items discussed above would be valuable for clients to receive on a regular basis from CTAs? Are there any other data items which should be required? How often should this information be reported to clients? Is there a particular format which should be required?

(2) What would be the costs for CTAs to report this information to clients on a regular basis?

(3) On balance, what reporting requirements, if any, should be established?

V. Conclusion

The Commission believes that it is appropriate to examine concerns regarding ROR computation and other performance issues which are raised in connection with the proposals made by the Commission staff and NFA. The Commission hopes to develop a balanced approach to address these issues that will enable performance data provided to customers to be as useful and meaningful as possible, while not being excessively burdensome to CTAs and CPOs. To this end, the Commission requests public comment on the proposals and the related issues set forth above.

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potential investors who wish it, such as by mail on request or by inclusion on the CTA's website.

[25] Commission Advisory 96–1 allows, but does not require, CTAs to present the performance of offered programs, and CPOs to present the performance of offered pools, since inception provided that such performance capsules include, among other things, worst monthly and peak-to-valley drawdown percentages for both the required five-year and year-to-date period and since inception of trading for the program or pool. Comm. Fut. L. Rep. (CCH) ¶ 26,639 (March 6, 1996).

[26] For example, recent revisions to the Securities and Exchange Commission's (''SEC'') Form N–1A, which is used by mutual funds to register their securities and offer their shares, require that a fund's risk/return summary include a bar chart showing the fund's annual returns for each of the last 10 calendar years and a table comparing the fund's average annual returns for the last 1-, 5-, and 10-fiscal years to those of a broad-based securities market index. In order to assist investors in understanding the variability of a fund's returns and the risks of investing in the fund, a fund must also disclose its best and worst returns for a quarter during the 10-year (or other) period reflected in the bar chart. Securities & Exchange Commission, Registration Form Used by Open-End Management Investment Companies, 63 FR 13916, 13947–52 (March 23, 1998).

[27] However, Commission Rule 4.36(c)(1)(i) specifies that if a CTA knows or should know that its Disclosure Document is materially inaccurate or incorporate in any respect, it must distribute corrected information to its existing clients.

[28] Commission Rule 1.33.

Issued in Washington, D.C. on June 11, 1998 by the Commission.

Jean A. Webb,

Secretary of the Commission.

Concept Release: Performance Data and Disclosure for Commodity Trading Advisor and Commodity Pools

Statement of Commissioner John E. Tull, Jr.

I concur in issuing this Concept Release, because I believe wholeheartedly in the practice that a better informed agency makes smarter, better decisions in carrying out its regulatory functions. And as I have consistently maintained, I believe this agency should defer to the private sector and self-regulatory organizations to the fullest extent possible in fulfilling our mission to protect the integrity of the markets and their users.

Therefore, I welcome and endorse this concept release. I am not entirely convinced that the rule changes discussed may not create more confusion than they would resolve. At this point I personally believe that using the notional amount of an account may be the simplest and most uniform method of disclosing risk and performance data. This, after all, is the objective of the rules under consideration.

With that in mind, I look forward to reviewing the comments to this Concept Release.

John E. Tull, Jr.,

June 11, 1998.

Appendix I—Compliance Rules

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RULE 2–29. COMMUNICATIONS WITH THE PUBLIC AND PROMOTIONAL MATERIAL

* * * * *

(b) Content of Promotional Material.

No Member or Associate shall use any promotional material which:

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(5) includes any specific numerical or statistical information about the past performance of any actual accounts (including rate of return) unless such information is and can be demonstrated to NFA to be representative of the actual performance for the same time period of all reasonably comparable accounts and, in the case of rate of return figures, unless such figures are calculated in a manner consistent with that required under CFTC Rule 4.25(a)(7)(i)(F) and are based on the nominal account size (as described in Compliance Rule 2–34).

* * * * *

RULE 2–34. DIRECTED ACCOUNTS AND COMMODITY POOLS

(a) At the time a Member CTA enters into an agreement to direct a client's account, the Member CFT must obtain a written agreement signed by the client (or someone legally authorized to act on the client's behalf) which states:

(1) the account size which the CTA will use as the basis for its trading decisions, i.e., ''the nominal account size'';

(2) the name or description of the trading program in which the client is participating;

(3) whether the client will deposit, maintain or make accessible to the FCM an amount equal to or less than the nominal account size, i.e., to fully or partially fund the account; and

(4) how additions, withdrawals, profits and losses will affect the nominal account size and the computation of fees.

The Member CTA must provide a copy of the agreement to the FCM carrying the account. The Member CTA must also disclose in writing the factors considered by the CTA in determining any minimum account size of the trading program in which the client is participating.

(b) Unless the client is a qualified eligible client under CFTC Rule 4.7, any Member CTA which directs a partially funded account must provide the following information in writing to the client:

(1) an estimated range of the amount of customer equity generally devoted to margin requirements or options premiums expressed as a percentage of the nominal account size and an explanation of the effect of partially funding an account on that percentage;

(2) a description of how the management fees will be computed, expressed as a percentage of the nominal account size and an explanation of the effect of partially funding an account on that percentage;

(3) an estimated range of the commissions generally charged to an account expressed as a percentage of the nominal account size and an explanation of the effect of partially funding an account on that percentage;

(4) a statement that the greater the disparity between the nominal account size and the amount deposited, maintained or made accessible to the FCM, the greater the likelihood, and possible size of, margin calls.

(c) Unless the pool participants are qualified eligible participants under CFTC Rule 4.7, any Member CPO which allocates assets among the pool's CTAs in such a way that the total allocations to its CTAs is greater than the total assets of the pool must provide the following information in writing to the pool participants:

(1) a statement of the total amount allocated to CTAs as a percentage of the pool's net assets;

(2) a description of how management fees charged by the CPO and the CTAs will be computed, including a statement of the total amount of management fees charged to the pool as a percentage of the pool's net assets;

(3) an estimated range of the amount of commissions and transaction fees which will be charged to the pool in the next twelve months and an estimate of such fees as a percentage of the pool's net assets; and

(4) a statement that allocating in excess of the pool's net assets among CTAs has the effect of proportionately magnifying the profits and losses which may be incurred by the pool.

(d) Each CTA Member which directs accounts and each CPO Member which allocates assets among CTAs in such a way that the total committed is greater than the total assets of the pool shall maintain the records required by this Rule in the form and for the period of time required by CFTC Rule 1.31.

(e) Each CTA Member which directs accounts and each CPO Member to which this rule applies allocates assets among CTAs in such a way that the total allocated is greater than the total assets of the pool shall establish and enforce adequate procedures to review all records made pursuant to this Rule and to supervise the activities of its Associates in complying with this Rule.

* * * * *

INTERPRETIVE NOTICE NFA COMPLIANCE RULE 2–34

The Board of Directors recently passed NFA Compliance Rule 2–34, Documentation and Disclosure for Partially Funded Accounts. The Board recognized that certain customers may, for their own legitimate business purposes, deposit with the FCMs carrying their accounts less than the amount which they have directed the CTA trading their account to use as the basis for trading decisions. The Board sought to ensure that in such situations performance records accurately reflect trading results, that there is an adequate audit trail to verify past performance records and that customers receive adequate disclosures on the implications of partially funded accounts.

In the Board's view, the solicitation of partially funded accounts, particularly with less sophisticated customers, raises a number of compliance issues. Therefore, the Board wishes to make clear that NFA Compliance Rule 2–34 does not in any way diminish a Member's responsibilities under other NFA rules, most notably NFA's sales practice rules, when dealing with a customer who is considering a partially funded account.

Specifically, the Member must ensure that any solicitation present a balanced view of the risks and benefits of such an arrangement and disclose all material information. Furthermore, under NFA Compliance Rule 2–30, the Member must obtain the specified information regarding its customer's experience and financial condition and, in light of that information, must provide the customer with an adequate description of the risks of his investment. As the Board stated in its Interpretive Notice of that rule, for some customers the only adequate disclosure is that futures trading is simply too risky for that customer. That is particularly true when retail customers are induced to increase their leverage further by partially funding a trading account.

Any Member soliciting unsophisticated customers to trade with a partially funded account will bear the burden of demonstrating that its solicitation was in compliance with all NFA requirements.

[FR Doc. 98–16075 Filed 6–17–98; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 201

[Release Nos. 33–7546; 34–40089; 35–26884; 39–2364; IA–1726; IC–23250; File No. S7–16–98]

RIN 3235–AH47

Proposed Amendment to Rule 102(e) of the Commission's Rules of Practice

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rule.

SUMMARY: The Securities and Exchange Commission (''Commission'') is proposing an amendment to Rule 102(e) of the Commission's Rules of Practice. Under Rule 102(e), the Commission can censure, suspend or bar persons who appear or practice before it. The proposed amendment clarifies the Commission's standard for determining when accountants engage in ''improper professional conduct'' under Rule 102(e)(1)(ii).

DATES: Comments must be received on or before July 20, 1998.

ADDRESSES: Submit comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 5th Street, NW., Washington, DC. 20549–6009. Comments can be submitted electronically at the following E-mail address: rule-comments@sec.gov. All comment letters should refer to File No. S7–16–98; include this file number on the subject line if E-mail is used. All comments received will be available for public inspection and copying in the Commission's Public Reference Room, 450 5th Street, NW., Washington, DC. 20549–6009. Electronically-submitted comment letters will be posted on the Commission's Internet Web site (http://www.sec.gov).

FOR FURTHER INFORMATION CONTACT: Michael J. Kigin, Associate Chief Accountant, Office of the Chief Accountant, at (202) 942–4400; or David R. Fredrickson, Assistant General Counsel, Office of the General Counsel, at (202) 942–0890.

SUPPLEMENTARY INFORMATION: The Securities and Exchange Commission today is proposing for comment an amendment to Rule 102(e).[1]

I. The Purpose of this Release

The purpose of this release is to solicit comments on a proposed amendment to Rule 102(e) of the Commission's Rules of Practice. Under Rule 102(e), the Commission can censure, suspend or bar professionals who appear or practice before it.[2] Specifically, pursuant to the Rule, the Commission can impose a sanction upon a professional whom it finds, after notice and an opportunity for hearing:

(i) Not to possess the requisite qualifications to represent others; or

(ii) To be lacking in character or integrity or to have engaged in unethical or improper professional conduct; or

(iii) To have willfully violated, or willfully aided and abetted the violation of, any provision of the Federal securities laws or the rules and regulations thereunder.[3]

In a recent opinion addressing the conduct of two accountants, the U.S. Court of Appeals for the District of Columbia Circuit found that the Commission had not articulated clearly the ''improper professional conduct'' element of the Rule.[4] To address the court's concerns, the Commission is proposing an amendment to the text of Rule 102(e) that clarifies the Commission's standard for determining when accountants engage in ''improper professional conduct.''[5]

II. A Brief Overview of Rule 102(e)

A. The Importance of Rule 102(e)

The Commission adopted Rule 102(e) as a ''means to ensure that those professionals, on whom the Commission relies heavily in the performance of its statutory duties, perform their tasks diligently and with a reasonable degree of competence.''[6] Courts have recognized that it is appropriate for the Commission to use a disciplinary mechanism such as Rule 102(e) to encourage professionals to adhere to ethical standards and minimum standards of competence.[7] In adopting the Rule, the Commission did not intend to add an ''additional weapon'' to its ''enforcement arsenal''[8] but to protect its system of securities regulation and, by extension, the interests of the investing public.

B. The Important Role of Accountants

Accountants play many roles in the Commission's system of securities regulation. In recognition of the significance of auditors and audited financial statements in the Commission's disclosure process, this release focuses particular attention upon the role of auditors in the securities registration and reporting processes under the federal securities laws. The proposed amendment, however, covers all accountants who appear or practice before the Commission.[9]

''Corporate financial statements are one of the primary sources of information available to guide the decisions of the investing public.''[10] Various provisions of the federal securities laws require publicly held companies to file audited financial statements with the Commission.[11] These financial statements must be audited by independent accountants in accordance with generally accepted auditing standards (''GAAS'').[12] The auditor plans and performs the audit to obtain reasonable assurance that the financial statements are free from material misstatement. Commission regulations require the auditor to issue a report containing an opinion on the financial statements.[13] The auditor's opinion states whether the financial statements present fairly, in all material respects, the financial position of the company as of a specific date.[14] The opinion also states whether the results of the company's operations and cash

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[1] 17 CFR 201.102(e).

[2] The Rule addresses the conduct of attorneys, accountants, engineers and other professionals or experts who appear or practice before the Commission. 17 CFR 201.102(e)(2) and (f)(2).

[3] 17 CFR 201.102(e)(1)(i), (ii) and (iii).

[4] *Checkosky v. SEC*, 139 F.3d 221 (D.C. Cir. 1998) (''*Checkosky II*'').

[5] This clarification addresses the conduct of accountants only, and is not meant to address the conduct of lawyers or other professionals who practice before the Commission.

[6] *Touche Ross & Co. v. SEC*, 609 F.2d 570, 582 (2d Cir. 1979). The AICPA also recognizes that accountants must discharge their duties with competence. *See, e.g.*, AICPA Professional Standards, Vol. 2, ET sec. 56 (1997).

[7] Rule 102(e) was promulgated under the Commission's broad authority to adopt those rules and regulations necessary for carrying out the agency's designated functions and its inherent authority to protect the integrity of the agency's processes. Three U.S. Courts of Appeals have upheld the validity of Rule 102(e). *See Touche Ross; Sheldon v. SEC*, 45 F.3d 1515, 1518 (11th Cir. 1995); *Davy v. SEC*, 792 F.2d 1418, 1421 (9th Cir. 1986). The *Checkosky* opinions held that the Commission had not clearly articulated the ''improper professional conduct'' standard or the rationale for that standard. Also, the *Checkosky* opinions did not decide the issue of the scope of the Commission's authority.

[8] *Touche Ross*, 609 F.2d at 579.

[9] *See* 17 CFR 201.102(f)(1) and (2). The Commission has interpreted ''practice'' before the Commission to include accountants functioning in many roles, including those who serve as officers of public companies. *See, e.g., In re Terrano*, Securities Exchange Act of 1934 (''Exchange Act'') Rel. No. 39485 (Dec. 23, 1997), 66 SEC Docket 494 (Jan. 20, 1998); *In re Hersh*, Exchange Act Rel. No. 39089 (Sept. 18, 1997), 65 SEC Docket 1170 (Oct. 14, 1997); *In re Bryan*, Exchange Act Rel. No. 39077 (Sept. 15, 1997), 65 SEC Docket 1129 (Oct. 14, 1997).

[10] *U.S. v. Arthur Young & Co.*, 465 U.S. 805, 810 (1984).

[11] *See, e.g.*, Securities Act of 1933 (''Securities Act'') Schedule A (25)—(27), 15 U.S.C. 77aa(25)—(27); Exchange Act 12(b)(1)(J)—(L), 15 U.S.C. 78*l*(b)(1)(J)—(L).

[12] Regulation S-X, 17 CFR 210.1–02(d) (1997).

[13] *See* Regulation S-X, 17 CFR 210.2–02 (1985).

[14] *Id.*

flows for the year (or other period) then ended, are in conformity with generally accepted accounting principles (''GAAP''), and whether the audit was conducted in accordance with GAAS.[15]

Investors have come to rely on the accuracy of the financial statements of public companies when making investment decisions. Because the Commission has limited resources, it cannot closely scrutinize each of these financial statements.[16] Consequently, the Commission must rely on the integrity of the auditors who certify, and accountants who prepare, financial statements. In short, both the Commission and the investing public rely heavily on accountants to assure corporate compliance with federal securities law requirements and disclosure of accurate and reliable financial information.

The Commission and the courts have long acknowledged ''the duty of accountants to those who justifiably rely on [their] reports.''[17] Accountants who issue audit and other reports speak to investors, publicly representing that the accounting and auditing standards of the accounting profession have been followed.[18] An incompetent or unethical accountant can damage the Commission's processes and erode investor confidence in our markets.[19]

III. The Standard Applied to Accountants

A. ''Improper Professional Conduct'' In General

The Court of Appeals in *Checkosky II* criticized the Commission for not clearly articulating when an accountant would be deemed to have engaged in ''improper professional conduct'' under Rule 102(e)(1)(ii). This proposed amendment clarifies that whether an accountant engages in ''improper professional conduct'' is determined first by evaluating whether the accountant violated applicable professional standards. It also specifies the mental state required before an accountant may be sanctioned under the Rule. The proposed amendment covers conduct that the Commission historically has treated as ''improper professional conduct'' under Rule 102(e)(1)(ii).

Rule 102(e)(1)(ii) has been an effective disciplinary and remedial tool because it has been used to address a range of misconduct that poses a future threat to the Commission's processes.[20] Accountants who engage in intentional or knowing misconduct, which includes reckless misconduct, clearly pose this type of future threat. Accountants who engage in negligent misconduct also can pose as great a threat to the Commission's system of securities regulation as accountants who knowingly violate the professional standards.

Rule 102(e)(1)(ii) is not meant, however, to encompass every professional misstep.[21] A harmless judgment error or immaterial mistake does not pose a future threat to the Commission's processes and does not constitute ''improper professional conduct.'' Similarly, the Commission does not seek to use the Rule to establish new standards for the accounting profession.

B. The Proposed Standard

The Rule addresses conduct that fails to meet professional standards. The proposed amendment delineates categories of conduct that constitute ''improper professional conduct'' under Rule 102(e)(1)(ii). These categories are:

(A) An intentional or knowing violation, including a reckless violation, of applicable professional standards;[22] or

(B) Negligent conduct in the following circumstances:

(1) An unreasonable violation of applicable professional standards that presents a substantial risk, which is either known or should have been known, of making a document prepared pursuant to the federal securities laws materially misleading; or

(2) Repeated, unreasonable violations of applicable professional standards that demonstrate that the accountant lacks competence.

1. Intentional or Knowing Violations, Including Reckless Violations

Subparagraph (A) of the amendment defines ''improper professional conduct'' to include the most blatant violations of the professional standards. The Commission consistently has used Rule 102(e)(1)(ii) proceedings to address these types of violations of the professional standards.[23]

Clearly, an accountant who intentionally or knowingly, including recklessly[24], violates the professional standards has engaged in ''improper professional conduct.'' Accountants who engage in this type of misconduct undoubtedly pose the type of future threat to the Commission's system of regulation that requires Commission action.

2. Specific, Negligent Conduct

The proposed amendment also covers specific, negligent violations of the professional standards.[25] The Commission has recognized that ''an incompetent or negligent auditor can do just as much harm to public investors and others who rely on him as one who acts with an improper motive.''[26] For this reason, the Commission has stated that negligent conduct can trigger a Rule 102(e)(1)(ii) proceeding, and has brought Rule 102(e)(1)(ii) proceedings based on negligent conduct.[27]

The Court of Appeals in *Checkosky II* faulted the Commission for not articulating with some degree of

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[15] *Id.*

[16] *See Touche Ross,* 609 F.2d at 580–81.

[17] *In re Carter,* Exchange Act Rel. No. 17595 (Feb. 28, 1981), 22 SEC Docket 292, 298 (Mar. 17, 1981). Cf. *Arthur Young,* 465 U.S. at 817–18.

[18] *See Carter,* 22 SEC Docket at 298.

[19] ''In our complex society, the accountant's certificate * * * can be instruments for inflicting pecuniary loss more potent than the chisel or the crowbar.'' *U.S. v. Benjamin,* 328 F.2d 854, 863 (2d Cir.), *cert. denied,* 377 U.S. 953 (1964).

[20] *Carter,* 22 SEC Docket at 297. Because Rule 102(e)(1)(ii) is remedial and not punitive in nature, the conduct must be evaluated to determine whether the accountant poses a future threat to the Commission's processes.

[21] As Commissioner Johnson has noted:

A professional often must make difficult decisions, navigating through complex statutory and regulatory requirements, and in the case of accountants, complying with (GAAS) and applying (GAAP). These determinations require the application of independent professional judgment and sometimes involve matters of first impression.

Exchange Act Rel. No. 38183 (Jan. 21, 1997), 63 SEC Docket 1948, 1976 (Feb. 18, 1997) (Johnson, Comm'r, dissenting), *rev'd Checkosky II.*

[22] ''Applicable professional standards'' includes such things as generally accepted accounting principles, generally accepted auditing standards, generally accepted attestation standards, the AICPA Code of Professional Conduct, the AICPA Statements on Standards for Consulting Services, the AICPA Statements on Standards for Accounting and Review Services, pronouncements of the Independence Standards Board, and certain of the Commission's rules and regulations.

[23] *See, e.g., In re Finkel,* Securities Act Rel. No. 7401 (Mar. 12, 1997), 64 SEC Docket 103 (Apr. 8, 1997); *In re Basson,* Exchange Act Rel. No. 35840 (June 13, 1995), 59 SEC Docket 1650 (July 11, 1995); *In re F.G. Masquelette & Co,* Accounting Series Rel. No. 68, [1937–1982 Transfer Binder] Fed. Sec. L. Rep. (CCH), ¶ 72,087 (June 30, 1982); *In re Weiner,* Exchange Act Rel. No. 14249 (Dec. 12, 1997), 13 SEC Docket 1113 (Dec. 27, 1977).

[24] *See generally SEC v. Blavin,* 760 F.2d 706, 711 (6th Cir. 1985); *Mansbach v. Prescott, Ball & Turben,* 598 F.2d 1017, 1023–24 (6th Cir. 1979).

[25] In other instances, the federal securities laws expressly subject auditors to liability without requiring intentional misconduct. For example, the Supreme Court has recognized that Section 11 allows recovery for ''negligent conduct.'' *Herman & MacLean v. Huddleston,* 459 U.S. 375, 384 (1983), *referring to Ernst & Ernst v. Hochfelder,* 425 U.S. 185, 210 (1976).

[26] *In re Checkosky,* Exchange Act Rel. No. 31094 (Aug. 26, 1992), 52 SEC Docket 1389, 1410 (Sept. 15, 1992), *rev'd Checkosky v. SEC,* 23 F.3d 452 (D.C. Cir. 1994) (''*Checkosky I*''), *citing In re Schulzetenberg,* Admin. Proc. 3–6881, slip op. at 2 (Order Denying Motion to Dismiss Nov. 10, 1987)(unpublished opinion).

[27] *In re Gotthilf,* Exchange Act Rel. No. 33949 (April 21, 1994), 56 SEC Docket 1543 (May 10, 1944).

specificity when negligent conduct by an accountant constitutes ''improper professional conduct.'' [28] The proposed amendment provides this specificity. Specifically, subparagraph (B) of the amendment defines ''improper professional conduct'' to include: (1) An unreasonable violation of the applicable professional standards that presents a substantial risk, which is either known or should have been known, of making a document prepared pursuant to the federal securities laws materially [29] misleading; or (2) repeated, unreasonable violations of the applicable professional standards that demonstrate that the accountant lacks competence.

Under this standard, a single violation of the professional standards could constitute ''improper professional conduct'' if the violation presents a substantial risk, which is either known or should have been known, of making a document prepared pursuant to the federal securities laws materially misleading. Under these circumstances, the single violation most likely would be related to a transaction or event as to which any reasonable auditor would give heightened scrutiny.[30] The integrity of the Commission's processes is threatened by an accountant who fails to exercise due professional care with respect to the critical areas of his or her professional responsibilities.

For example, an auditor who failed to verify properly the amount of cash purportedly held in a vault at a branch of a bank, where that amount constituted 61% of the branch's and 45% of the bank's total cash on hand, engaged in improper professional conduct under Rule 102(e)(1)(ii).[31] In this particular matter, at least $400,000 of the $2.7 million cash purportedly on hand had been misappropriated by a bank employee. Although the sum of money misappropriated may not have been quantitatively material to the bank's balance sheet, a Rule 102(e)(1)(ii) proceeding was appropriate. Because a shortage of the total amount of cash actually on hand would impact materially on the bank's pre-tax earnings, the auditor's failure to verify properly the cash on hand could be considered negligent under subparagraph (B)(1) of the proposed amendment since it presented a substantial risk, which should have been known, of making a document prepared pursuant to the federal securities laws materially misleading.[32]

Proposed subparagraph (B)(2) of the amendment would define improper professional conduct to include repeated, unreasonable violations of applicable professional standards that demonstrate that the accountant lacks competence. Repeated, unreasonable violations of the professional standards by an accountant can damage both the Commission's processes and investor confidence in the integrity of financial statements. This level of incompetence calls into question the reliability of any work performed by the accountant. Further, an accountant who engages in this type of misconduct may well benefit from remedial measures before resuming practice before the Commission. Repeated violations would include two or more violations that could occur within one audit [33] or in several audits.[34] Repeated violations also could include a course or pattern of violations regardless of whether the types of violations are similar.

C. The ''Good Faith'' Defense

With respect to defenses to a Rule 102(e)(1)(ii) proceeding, the Commission has never considered the subjective good faith of an accountant to be an absolute defense.[35] Good faith actions of an accountant are more appropriately considered when determining what sanction would be appropriate. For instance, an accountant who acts in good faith, but is unable to conform to the minimum standards of the profession, may benefit from additional training, peer review, supervision and other appropriate remedial action undertaken while suspended from practicing before the Commission or as a condition of future practice before the Commission.

D. The AICPA Rulemaking Petition

The American Institute of Certified Public Accountants (''AICPA'') submitted a rulemaking petition to the Commission proposing a definition for ''improper professional conduct'' under Rule 102(e)(1)(ii).[36] The AICPA Rulemaking Petition would define improper professional conduct in a manner that includes a knowing violation and a conscious and deliberate disregard of the professional standards, as well as a course or pattern of misconduct.[37] The Commission, like the AICPA, also is proposing that accountants who engage in knowing misconduct or a course or pattern of misconduct should be subject to Rule 102(e)(1)(ii) proceedings.

The Commission preliminarily believes that the public interest may be better served with the somewhat broader definition of ''improper professional conduct'' proposed in this release. While a harmless judgment error or immaterial mistake should not trigger a Rule 102(e)(1)(ii) proceeding, reckless and specific negligent misconduct may require Commission action to protect the integrity of the Commission's processes and the interests of the investing public. Accordingly, the Commission has determined to seek comment on the proposed amendment contained in this release.

IV. General Request For Comments

The Commission requests that any interested persons submit comments on the proposed amendment to Rule 102(e). The Commission also invites comments on the following specific issues.

The proposed amendment is intended to clarify the definition of ''improper professional conduct.'' Does the proposed amendment achieve this objective? This definition is consistent with how the Commission has applied the ''improper professional conduct'' standard. Would another definition of ''improper professional conduct'' be

[28] *Checkosky II*, 139 F.3d at 224.

[29] Material, as used in this context, means a substantial likelihood of being considered significant by a reasonable investor. *Basic, Inc. v. Levinson*, 485 U.S. 224, 231–32 (1988), *citing TSC Indus., Inc. v. Northway, Inc.*, 426 U.S. 438, 449 (1976).

[30] *Cf.* AICPA Professional Standards, Vol. 1 AU sec. 312 (1997).

[31] *See In re Curtin*, Exchange Act Rel. No. 32519 (June 28, 1993), 54 SEC Docket 1137 (July 20, 1993).

[32] *See also In re Valade*, Exchange Act Rel. No. 4002 (May 19, 1998), 1998 SEC LEXIS 966; *In re Smith*, Exchange Act Rel. No. 37738 (Sept. 27, 1996), 62 SEC Docket 2840 (Oct. 29, 1996); *In re Denton*, Exchange Act Rel. No. 35381 (Feb. 15, 1995), 58 SEC Docket 2294 (Mar. 14, 1995); *In re Lamirato*, Exchange Act Rel. No. 33660 (Feb. 23, 1994), 56 SEC Docket 345 (Mar. 15, 1994).

[33] *See, e.g., In re Childers*, Exchange Act Rel. No. 32505 (June 24, 1993), 54 SEC Docket 1017 (July 13, 1993).

[34] *See, e.g., In re Withers*, Exchange Act Release No. 34537 (Aug. 17, 1994), 57 SEC Docket 1101 (Sept. 13, 1994).

[35] *See In re Haskins & Sells*, Accounting Series Rel. No. 73 (Oct. 30, 1952), [1937–1982 Transfer Binder] Fed. Sec. L. Rep. (CCH) ¶ 72,092 (June 30, 1982). Similarly, an auditor who is deceived by the client and commits an audit error in reliance upon the deception does not have an automatic defense. *See generally In re Hope*, Accounting and Auditing Enforcement Rel. No. 109A (Aug. 6, 1986), 36 SEC Docket 663, 750–55 (Sept. 10, 1986). *See also In re Ernst & Ernst*, Accounting Series Rel. No. 248 (May 31, 1978), 14 SEC Docket 1276, 1301 and n.71 (June 13, 1978).

[36] Rulemaking Petition by the AICPA Concerning Rule 102(e) (''AICPA Rulemaking Petition''), SEC File No. 4–410 (May 7, 1998).

[37] Under the AICPA Rulemaking Petition, before an accountant can be found to have engaged in ''improper professional conduct,'' the accountant also must pose a current threat to the integrity of the Commission's processes or to the financial reporting system. *See also* Task Force on Rule 102(e) Proceedings, American Bar Association, *Report of the Task Force on Rule 102(e) Proceedings: Rule 102(e) Sanctions Against Accountants*, 52 Bus. Law. 965, 985 (May 1997).

better suited to achieving the Commission's goal of protecting the integrity of its processes? Does the proposed amendment include conduct that should not be considered ''improper professional conduct?'' If yes, what conduct should be excluded? Does the proposed amendment cover all of the conduct that should be considered ''improper professional conduct'' under Rule 102(e)(1)(ii)? If not, what else should be included? The proposed amendment defines ''improper professional conduct'' to include ''reckless'' conduct. Should the Commission use a definition of ''recklessness'' commonly used in cases brought under Rule 10b-5 of the Exchange Act?[38] Would a less rigorous standard of ''recklessness''[39] be more appropriate in the context of a disciplinary rule such as Rule 102(e)(1)(ii) where the purpose of the rule is to protect the integrity of the Commission's processes?

The proposed amendment defines ''improper professional conduct'' to include negligent conduct under two specified circumstances. In order to adequately protect the Commission's processes, should other circumstances be included?

Does the term ''applicable professional standards'' provide adequate guidance to the accounting profession? What weight should be given to the good faith of an accountant at the sanctioning stage of a Rule 102(e)(1)(ii) proceeding?

Any interested person wishing to submit written comments on any of the issues set forth in this release are invited to do so by submitting them in triplicate to Jonathan G. Katz, Secretary, U.S. 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 comment letters should refer to File No. S7–16–98 this file number should be included on the subject line if e-mail is used. Comments received will be available for public inspection and copying in the Commission's public reference room at 450 Fifth Street, NW., Washington, DC 20549. Electronically submitted comment letters will be posted on the Commission's Internet Web site (http://www.sec.gov).

V. Summary of Initial Regulatory Flexibility Analysis

The Commission has prepared an Initial Regulatory Flexibility Analysis (''IRFA'') on the proposed amendment to Rule 102(e). The IRFA indicates that the proposed amendment would clarify the standard by which the Commission determines whether accountants have engaged in ''improper professional conduct.''

The IRFA sets forth the statutory authority for the proposed amendment. The IRFA also discusses the effect of the proposed amendment on small entities. The IRFA states that approximately 1000 accounting firms can or do appear or practice before the Commission. While most of this practice is conducted by the ''Big Six'' firms, which are not small entities, many smaller firms do practice before the Commission. However, the Commission does not collect information about revenues of accounting firms, which information generally is not made public by the firms, and therefore cannot determine how many of these are small entities for purposes of the analysis. In any event, the proposed amendment should have little or no impact on small entities because the proposal simply clarifies the Commission's standard for determining when accountants engage in ''improper professional conduct.''

The IRFA states that the proposed amendment would not impose any new reporting, recordkeeping or compliance requirements, and the Commission believes that there are no rules that duplicate, overlap or conflict with the proposed amendment.

The IRFA discusses the various alternatives considered to minimize the effect on small entities, including: (a) The establishment of differing compliance or reporting requirements or timetables that take into account the resources of small entities; (b) the clarification, consolidation or simplification of compliance and reporting requirements under the Rule for small entities; (c) the use of performance rather than design standards; and (d) an exemption from coverage of the Rule, or any part thereof, for small entities. The Commission believes it would be inconsistent with the purposes of the Rule to exempt small entities from the proposed amendment. Different compliance or reporting requirements for small entities are not necessary because the proposed amendment does not establish any new reporting, recordkeeping or compliance requirements. The proposed amendment is already designed to clarify the current standard employed in Rule 102(e)(1)(ii), and the Commission does not believe it is feasible to further clarify, consolidate or simplify the Rule for small entities. Finally, the proposal does use a performance standard, not a design standard, to specify what conduct is expected of accountants; the Commission does not believe different performance standards for small entities would be consistent with the purposes of the Rule.

The IRFA solicits comments generally, and in particular, on the number of small entities that would be affected by the proposed amendment and the existence or nature of the effect. For purposes of the Small Business Regulatory Enforcement Fairness Act of 1996,[40] the Commission is also requesting information regarding the potential impact of the proposed amendment on the economy on an annual basis—in particular, whether the proposed amendment is likely to have an annual effect on the economy of $100 million or more. Commenters should provide empirical data to support their views.

A copy of the IRFA may be obtained by contacting David R. Fredrickson, Office of the General Counsel, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549.

VI. Cost-Benefit Analysis

The Commission requests the views of commenters about any costs or benefits associated with the proposed amendment. The Commission anticipates several benefits from the amendment. The amendment will provide clearer guidance to accountants. Members of the accounting profession will better understand the standard the Commission uses to determine ''improper professional conduct'' and thus conduct themselves accordingly. Also, the clarifying amendment will make it easier for the Commission, its administrative law judges and the courts to administer the Rule, which will further benefit the integrity of the Commission's processes. The Commission anticipates no costs associated with the proposal.

Section 23(a)(2) of the Exchange Act requires the Commission to consider the impact of its rules on competition. Moreover, section 2(b) of the Securities Act, section 3(f) of the Exchange Act and section 2(c) of the Investment Company Act of 1940 (''Investment Company Act'') require the Commission, when engaged in

[38] *See, e.g., Mansbach, SEC v. Steadman,* 967 F.2d 636, 641–642 (D.C. Cir. 1992) (both citing *Sundstrand Corp. v. Sun Chemical Corp.,* 553 F.2d 1033, 1045 (7th Cir.), *cert. denied,* 434 U.S. 875 (1977)).

[39] *See, e.g., Saba v. Compagnie Nationale Air France,* 78 F.3d 664, 668 (D.C. Cir. 1996), *citing Farmer v. Brennan,* 511 U.S. 825, 836–37 (1994); *see generally* W. Keeton, *et al., Prosser and Keeton on the Law of Torts* (''Prosser''), sec. 34 at 213–214; (5th ed. 1984); *Restatement (Second) of Torts* sec. 500, comment (a) (1965).

[40] 5 U.S.C. 801 *et seq.*

rulemaking that requires a public interest finding, to consider, in addition to the protection of investors, whether the action will promote efficiency, competition and capital formation. The Commission requests data on what effect, if any, the proposed amendment would have on efficiency, competition and capital formation.

VII. Statutory Authority

The Commission is proposing the amendment to the Rule pursuant to its authority under section 19(a) of the Securities Act, section 23(a) of the Exchange Act, section 20(a) of the Public Utility Holding Company Act of 1935, section 319(a) of the Trust Indenture Act of 1939, section 211(a) of the Investment Advisers Act of 1940 and section 38(a) of the Investment Company Act.

Text of Amendment

List of Subjects in 17 CFR Part 201

Administrative practice and procedure, Investigations, Securities.

In accordance with the foregoing, Title 17, Chapter II of the Code of Federal Regulations is proposed to be amended as follows:

PART 201—RULES OF PRACTICE

1. The authority citation for Part 201, Subpart D continues to read as follows:

Authority: 15 U.S.C. 77f, 77g, 77h, 77h-1, 77j, 77s, 77u, 78c(b), 78d-1, 78d-2, 78*l*, 78m, 78n, 78o(d), 78o-3, 78s, 78u-2, 78u-3, 78v, 78w, 79c, 79s, 79t, 79z-5a, 77sss, 77ttt, 80a-8, 80a-9, 80a-37, 80a-38, 80a-39, 80a-40, 80a-41, 80a-44, 80b-3, 80b-9, 80b-11, and 80b-12 unless otherwise noted.

2. Amend § 201.102 by adding paragraphs (e)(1)(iv) to read as follows:

§ 201.102 Appearance and practice before the Commission.

(e) *Suspension and disbarment.*—(1) *Generally.* * * *

(iv) With respect to persons licensed to practice as accountants, ''improper professional conduct'' under § 201.102(e)(1)(ii) means:

(A) An intentional or knowing violation, including a reckless violation, of applicable professional standards; or

(B) Negligent conduct in the following circumstances:

(*1*) An unreasonable violation of applicable professional standards that presents a substantial risk, which is either known or should have been known, of making a document prepared pursuant to the federal securities laws materially misleading; or

(*2*) Repeated, unreasonable violations of applicable professional standards that demonstrate that the accountant lacks competence.

* * * * *

Dated: June 12, 1998.

By the Commission.

Jonathan G. Katz,

Secretary.

Separate Statement of Commissioner Norman S. Johnson

I write separately to address what I consider to be the plain import of the two decisions of the United States Court of Appeals for the District of Columbia Circuit in *Checkosky v. SEC*, 23 F.3d 452 (D.C. Cir. 1994) (*Checkosky I*), and *Checkosky v. SEC*, 139 F.3d 221 (D.C. Cir. 1998) (*Checkosky II*).[1] In today's release, the Commission proposes to adopt a negligence standard under Rule 102(e) of our Rules of Practice, a matter of crucial importance to the accountants who practice before us.[2] As Judge Randolph observed:

> A proceeding under Rule 2(e) threatens ''to deprive a person of a way of life to which he has devoted years of preparation and on which he and his family have come to rely.'' Henry J. Friendly, ''*Some Kind of Hearing,*'' 123 U. Pa. L. Rev. 1267, 1297 (1975). It is of little comfort to an auditor defending against such charges that the Commission's authority is limited to suspending him from agency practice. For many public accountants such work represents their entire livelihood. Moreover, when one jurisdiction suspends a professional it can start a chain reaction.

Checkosky I, 23 F.3d at 479 (opinion of Randolph, J.).

With all due respect to my esteemed colleagues, today's release reflects precisely the same sort of overly aggressive approach that led to the Commission's two stinging defeats in *Checkosky*. The consequences of overreaching in this area might well be severe. If the Commission selects an insupportable standard many of the worst offenders of Rule 102(e) may escape sanction altogether. Prudence would seem to dictate a much more cautious approach than that taken in today's release.

Because I believe that the Commission lacks the authority to adopt a negligence standard, I must dissent. *See Checkosky I*, 23 F.3d 452; *Checkosky II*, 139 F.3d 221. Even apart from the *Checkosky* decisions, adoption of a negligence standard would contravene public policy.

Some background is in order.

I.

Respondents in *Checkosky* were two accountants who audited the financial statements of Savin Corporation in the early 1980's. The Commission brought charges against the accountants in 1987, and in 1992 affirmed an Administrative Law Judge's decision finding violations of Rule 102(e). *See David J. Checkosky*, Release No. 34–31094, 1992 SEC LEXIS 2111 (Aug. 26, 1992). In its first opinion, the Commission found that Savin's financial statements were false in that the company improperly capitalized certain expenses for research and development rather than recording them in their entirety as expenses in the years incurred. *Id.* These violations were based on finding that the auditors, in violation of Generally Accepted Auditing Standards (GAAS), had improperly permitted Savin to capitalize these expenditures and falsely certified that Savin's financial statements set forth its financial condition in accordance with Generally Accepted Accounting Principles (GAAP).[3] *Id.*

In *Checkosky I*, the D.C. Circuit remanded the case because it was unable to discern from the Commission's opinion the basis for the Commission's action other than the finding that the accountants had violated GAAS and falsely certified that the financial statements set forth the financial condition of the company in accordance with GAAP. 23 F.3rd at 454. The Court held that the Commission was authorized to promulgate Rule 102(e) as a means to protect the integrity of its processes, but each of the three judges (Judges Silberman, Randolph and a district court judge sitting by designation, Judge Reynolds) issued a separate opinion.

Judges Silberman and Randolph both questioned the Commission's ability to impose sanctions under Rule 102(e) for misconduct not rising to the level of scienter, i.e., misconduct that is only negligent.[4] Judge Silberman explained that:

[1] The weight the Commission must attach to the views of the D.C. Circuit cannot be overstated. Under the jurisdictional provisions of the securities laws, every respondent in a Commission administrative proceeding has the option of appealing an adverse outcome to the D.C. Circuit. *See, e.g.*, 15 U.S.C. 77i(a) & 78y(a)(1).

[2] Rule 102(e) was formerly designated Rule 2(e). There are no substantive differences between the two rules.

[3] Commissioner Roberts concurred in the majority's finding that respondents violated GAAS and had misapplied GAAP, but dissented from the finding that these errors amounted to ''improper professional conduct'' under Rule 102(e)(1)(ii). 1992 SEC LEXIS 2111, at *47. In Commissioner Roberts' view respondents' conduct did not provide a sufficient basis for a finding that they would threaten the Commission's processes. *Id.* at *48.

[4] Senior District Judge Reynolds disagreed with the circuit judges' conclusion that ''improper

Continued

If the purpose of Rule 2(e) is to protect the integrity of administrative processes, then sanctions for improper professional conduct under 2(e)(1)(ii) are permissible only to the extent that they prevent the disruption of proceedings. Punishment for mere negligence, so the argument goes, extends beyond this realm of protective discipline into general regulatory authority over a professional's work.

23 F.3d at 456. Judge Silberman further suggested that the Commission could not legitimately adopt a negligence standard under Rule 102(e) because that might amount to ''a *de facto* substantive regulation of the profession.'' 23 F.3d at 459; *see also* 23 F.3d 460 (suggestion that Commission adoption of negligence standard might be arbitrary and capricious).

Judge Randolph also questioned the Commission's ability to adopt a negligence standard. In Judge Randolph's view, the ''Commission's authority under Rule 2(e) must rest on and be derived from the statutes it administers,'' such as Section 10(b) of the Exchange Act that requires scienter. *See* 23 F.3d at 466–69. Judge Randolph also extensively discussed an earlier Commission decision that rejected a negligence standard under Rule 102(e) in a case involving lawyers, *William R. Carter*, 47 S.E.C. 471 (1981). *See* 23 F.3d at 480–87. In Judge Randolph's view, the reasoning of *Carter* was equally applicable to accountants, and precluded the Commission from adopting a negligence standard under Rule 102(e). *See* 23 F.3d at 483–87.

On remand, the Commission's majority opinion did not directly address the mental state question posed by the Court. *David J. Checkosky*, Release No. 34–38183, 1997 SEC LEXIS 137 (Jan. 21, 1997). While the majority found that the accountants had behaved recklessly, it insisted that any deviation from GAAP or GAAS, including purely negligent deviations, could violate Rule 102(e), and that the accountants' recklessness was relevant only to the choice of sanctions. *Id*. I dissented from the Commission's second *Checkosky* opinion because of my belief that ''improper professional conduct'' requires proof of scienter, which includes recklessness.[5] 1997 SEC LEXIS 137, at *48.

On appeal in *Checkosky II*, the D.C. Circuit again reversed. The Court again found that the Commission had again failed to offer an adequate explanation of its interpretation of Rule 102(e). 139 F.3d at 222 (referring to the ''multiplicity of inconsistent interpretations'' in the Commission's opinion). Because of the Commission's ''persistent failure to explain itself'' and ''the extraordinary duration of these proceedings,'' the Court declined to give the Commission a third chance to explain itself, and instead invoked the extremely rare remedy of remanding the case with instructions to dismiss. 139 F.3d at 222 & 227.

More importantly for today's release, the D.C. Circuit in *Checkosky II* again questioned the Commission's ability to adopt a negligence standard under Rule 102(e)(1)(ii). 139 F.3d at 225. The Court appeared to reaffirm its previous statements about the limits of the Commission's authority in disciplining securities professionals subject to Rule 102(e), remarking that ''adoption of a negligence standard might be *ultra vires*'' because it might amount to ''a back-door expansion of [the Commission's] regulatory oversight powers.'' *Id*. (citing *Checkosky I*, 23 F.3d at 459).[6]

II.

As explained above, the *Checkosky* opinions preclude us, as a practical matter, from adopting a negligence standard. Even were the situation otherwise, public policy considerations also call for rejection of a negligence standard. *See, e.g., David J. Checkosky*, Release No. 34–38183, 1997 SEC LEXIS 137, at *48 (Jan. 21, 1997) (dissenting opinion of Commission Johnson). In my view, ''improper professional conduct'' in Rule 102(e)(1)(ii) requires proof of scienter.

Our system of securities regulation is based on disclosure. To ensure that Commission filings and other statements made to the investing public are truthful and accurate, we have to rely in large part on the work of talented, well-trained professionals. Accordingly, I fully agree with former Chairman Williams' statement that we would be unable to administer effectively the securities laws if those ''involved in the capital raising process were not routinely served by professionals of the highest integrity and competence, well-versed in the requirements of the statutory scheme Congress has created.'' *Keating, Muething & Klekamp*, 47 S.E.C 95, 120 (1979) (concurring opinion of Chairman Williams); *see also Touche, Ross & Co.* v. *SEC*, 609 F.2d 570, 580–81 (2d Cir. 1979) (because of limited resources, ''the Commission necessarily must rely heavily on both the accounting and legal professions to perform their tasks diligently and responsibly''). On the other hand, I also believe that the Commission has a limited mandate under Rule 102(e) for determining who may ''practice'' before us, and that we must exercise a high degree of self-restraint in this area.

As to accountants, the very nature of their responsibilities within our disclosure system mandates restraint. Accountants, like other securities professionals subject to Rule 102(e), must make difficult judgment calls, navigating through complex statutory and regulatory requirements. In addition, accountants are required to follow GAAS and to apply GAAP. These determinations demand the application of independent professional judgment and often involve matters of first impression.

The Commission itself recognized the importance of these principles in *Carter*, when it asserted that, in order to assure the exercise of a professional's ''best independent judgment,'' the professional ''must have the freedom to make innocent—or even, in certain cases, careless—mistakes without fear of (losing) the ability to practice before'' us. 47 S.E.C. at 504. Equating negligence with ''improper professional conduct'' will impair relationships between professionals and their clients. If such an adverse impact occurs, our ability to rely on these professionals to enhance compliance with the securities laws will be crippled. I share the view endorsed by the Commission in *Carter* that professionals ''motivated by fears for their personal liability will not be consulted on difficult issues.'' *Id*.

Securities professionals owe a duty to serve the interests of their clients. To discharge this duty, professionals must enjoy the cooperation and trust of their clients. Indeed, in construing *Carter*, Judge Randolph observed:

(W)ithout a scienter requirement, lawyers would slant their advice out of fear of incurring liability, and management therefore would not consult them on difficult questions. I cannot see why this sort of reasoning would not apply as well to auditors. I recognize that although companies need not retain outside counsel, they are legally compelled to ''consult'' independent accountants * * * . This creates an obligation on the part of management to cooperate with and provide information to the auditor. * * * There are, however, degrees of cooperation. Encouraging management to be completely candid with its

professional conduct'' under Rule 102(e)(1)(ii) required proof of scienter. 23 F.3d at 493–95.

[5] *See Sundstrand Corp.* v. *Sun Chemical Corp.*, 553 F.2d 1033, 1045 (7th Cir. 1977) (defining recklessness as '''highly unreasonable''' conduct involving '''an extreme departure from the standards of ordinary care'''); *see also, e.g., Mansbach* v. *Prescott, Ball & Turben*, 598 F.2d 1017, 1025 (6th Cir. 1979) (following *Sundstrand*).

[6] This point is made clear by the concurring opinion, in which Judge Henderson expressly disagreed with the majority's discussion of this issue. *See* 139 F.3d at 227.

auditor about difficult accounting issues may be just as desirable as encouraging management to consult candidly with outside lawyers, and for similar reasons.

Checkosky I, 23 F.3d at 485.

Accountants and attorneys are members of ''ancient professions,'' regulated according to rigorous ethical rules enforced by professional societies and, in the case of accountants, state licensing boards. I simply do not believe that we should recast negligent violations of an accounting standard as improper professional conduct under the Commission's Rules of Practice. That is not an appropriate role for this Commission. Difficult ethical and professional responsibility concerns are generally matters most appropriately dealt with by professional organizations or, in certain cases, malpractice litigation. Nor do I believe that mere misjudgments or negligence establishes either professional incompetence warranting Commission disciplinary action or the likelihood of future danger to the Commission's processes.

* * * * *

For all these reasons, I believe that the Commission lacks the authority to adopt a negligence standard under Rule 102(e). Likewise, the Commission may only hold a professional liable for ''improper professional conduct'' only if scienter is proven. I urge accountants and trade groups directly subject to Rule 102(e), as well as any others who have an interest in Rule 102(e), to submit their views on this important matter. It is my most fervent hope that the Commission receives an abundance of comment letters responding to this release.

[FR Doc. 98–16251 Filed 6–17–98; 8:45 am]

BILLING CODE 8010–01–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD07–98–023]

RIN 2115–AE84

Regulated Navigation Area; San Juan Harbor, San Juan, PR

AGENCY: Coast Guard, DOT.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: The Coast Guard proposes to establish a permanent regulated navigation area in San Juan Harbor in the vicinity of La Puntilla in San Juan, PR. This regulated navigation area is needed to protect personnel and vessels moored at Coast Guard Base San Juan from the hazards created by the wakes of passing vessel traffic. By establishing this permanent regulation, the Coast Guard expects to reduce the risk of personnel injury and property damage.

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

ADDRESSES: Comments should be mailed to Commanding Officer, U.S. Coast Guard, Marine Safety Office, P.O. Box 9023666, San Juan, PR 00902–3666. Comments will become part of this docket and will be available for inspection or copying at the above address.

FOR FURTHER INFORMATION CONTACT: LT D.R. Xirau, Assistant Chief Port Operations Department, USCG Marine Safety Office San Juan at (787) 729–6800, ext 320.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard encourages interested persons to participate in this rulemaking by submitting written views, data, or arguments. Persons submitting comments should include their names and addresses, identify this rulemaking [CGD07–98–023], and the specific section of this proposal to which each comment applies and give the reason for each comment. The Coast Guard requests that all comments and attachments be submitted in an 8″ X 11″ unbound format suitable for copying and electronic filing. If this is not practical, a second copy of any bound material is requested. Persons requesting acknowledgment of receipt of comments should enclose a stamped, self-addressed postcard or envelope. The Coast Guard will consider all comments received during the comment period. It may change this proposal in view of the comments received.

The Coast Guard plans no public hearing. Persons may request a public hearing by writing to Commanding Officer, Marine Safety Office San Juan at the address under **ADDRESSES**. The request should include the reasons why a hearing would be beneficial. If the Coast Guard determines that the opportunity for oral presentations will aid this rulemaking, it will hold a public hearing at a time and place announced by a later notice in the **Federal Register**.

Background and Purpose

These proposed regulations create a regulated navigation area requiring all vessels to maintain minimum steerageway in the vicinity of Coast Guard Base San Juan. These proposed regulations are necessary to provide for the safety of personnel and the protection of vessels that are moored alongside the piers at Coast Guard Base San Juan. Coast Guard Base San Juan is located at La Puntilla in Old San Juan, at a junction of major channels in the San Juan Harbor. The Coast Guard believes that a significant risk exists under current conditions because wakes cause damage to vessels and the piers, and create major safety hazards to personnel working onboard moored vessels.

The vessels most affected by wakes at Base San Juan are 110-foot Coast Guard patrol boats and other smaller vessels. Heavy wakes have caused moored vessels to roll up to 15 degrees without warning. This places Coast Guard personnel working onboard these vessels at higher risk of injury due to the unexpected movement brought on by wakes. Moreover, while heavy equipment and supplies are being moved on a vessel, a sudden roll could cause the load to be dropped or the personnel carrying the load to lose their balance, possibly resulting in serious injury. There have been many ''near miss'' incidents which could have proven fatal if personnel had been directly involved, including heavy hatches secured in the open position being jarred loose by strong wakes and slamming shut without warning.

Heavy wakes also cause damage to property at Coast Guard Base San Juan. Vessel hulls, cleats, stanchions, and gangways have been bent or parted. Piers have deteriorated more rapidly due to the added stresses of vessels affected by wakes. In addition, electrical shore ties and fueling hoses have been pulled loose, creating very hazardous situations. By establishing a minimum steerageway in the vicinity of La Puntilla, the risks to personnel and property inherent to wakes will be minimized.

Additionally, beginning in June 1998, five Coast Guard patrol boats will be relocated to Coast Guard base San Juan. After this relocation, there will be a total of eight Coast Guard vessels permanently stationed in San Juan. The construction of new piers to accommodate the additional vessels will commence prior to the end of Fiscal Year 1998. These proposed regulations will also serve to minimize hazards during the construction, which is expected to take one year to complete.

Regulatory Evaluation

This proposal is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has been exempted from review by the Office of Management and

Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this proposal to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary as the regulations only require minimum steerage way speeds and do not limit the amount of incoming and outgoing vessels.

Small Entities

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

The Coast Guard certifies under section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), that this proposal, if adopted, would not have a significant impact on a substantial number of small entities as there are no limits imposed on the quantity of incoming or outgoing vessels.

Collection of Information

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

Federalism

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612 and it has been determined that the rulemaking does not have sufficient Federalism implication to warrant the preparation of a Federalism Assessment.

Environmental Analysis

The Coast Guard has considered the environmental impact of this proposal and has determined pursuant to figure 2–1, paragraph (34)(g) of Commandant Instruction M16475.1C, that this proposal is categorically excluded from further environmental documentation. A Categorical Exclusion Determination and Environmental Analysis Checklist will be prepared during the comment period and will be available for inspection and copying after the comment period for this proposed rulemaking has expired.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reports and recordkeeping requirements, Security measures, Waterways.

Proposed Regulations

In consideration of the foregoing, the Coast Guard proposes to amend Subpart F of Part 165 of Title 33, Code of Federal Regulations, as follows:

PART 165—[AMENDED]

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; 49 CFR 1.46.

2. Add a new § 165.756 to read as follows:

§ 165.756 Regulated Navigation Area; San Juan Harbor, San Juan, Puerto Rico.

(a) *Regulated Area.* The following is a Regulated Navigation Area: All the waters of San Juan Harbor bounded by the following geographic coordinates: Lighted Buoy #11 (LLNR 30805) in approximate position 18–27.31N, 066–07.01W; east to Puerto Rico Ports Authority Pier #3 in approximate position 18–27.40N, 066–06.43W; south to Lighted Buoy ''A'' (LLNR 30845) in approximate position 18–26.55N, 066–06.26W; west to Nun Buoy ''A'' in approximate position 18–27.01N, 066–06.59W; and thence north to the point of origin. All coordinates referenced use Datum: NAD 83.

(b) *Regulations.* Unless otherwise authorized by the Captain of the Port, San Juan, Puerto Rico, vessels operating in the regulated area must travel no faster than needed for steerageway. The general regulations in § 165.13 of this part apply.

(c) *Enforcement.* Violations of this regulated navigation area should be reported to the Captain of the Port, San Juan, PR.

Dated: June 5, 1998.

N.T. Saunders,

Rear Admiral, U.S. Coast Guard Commander, Seventh Coast Guard District.

[FR Doc. 98–16240 Filed 6–17–98; 8:45 am]

BILLING CODE 4910–15–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 187–0064; FRL–6112–1]

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

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve a revision to the California State Implementation Plan (SIP) which concerns the control of volatile organic compound (VOC) emissions from architectural coatings.

The intended effect of proposing approval of this rule is to regulate emissions of VOCs in accordance with the requirements of the Clean Air Act, as amended in 1990 (CAA or the Act). EPA's final action on this proposed rulemaking will incorporate this rule into the federally approved SIP. EPA has evaluated this rule and is proposing to approve it 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.

DATES: Comments must be received on or before July 20, 1998.

ADDRESSES: Comments may be mailed to: Andrew Steckel, Rulemaking Office (AIR–4), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

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

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

South Coast Air Quality Management District, 21865 E. Copley Drive, Diamond Bar, CA 91765–4182.

FOR FURTHER INFORMATION CONTACT: Yvonne Fong, Rulemaking Office (AIR–4), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901, (415) 744–1199.

SUPPLEMENTARY INFORMATION:

I. Applicability

This Federal Register action for the South Coast Air Quality Management

District excludes the Los Angeles County portion of the Southeast Desert AQMD, 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. The rule being proposed for approval into the California SIP is South Coast Air Quality Management District (SCAQMD) Rule 1113, Architectural Coatings. This rule was submitted by the California Air Resources Board to EPA on November 26, 1996.

II. Background

On March 3, 1978, EPA promulgated a list of ozone nonattainment areas under the provisions of the Clean Air Act, as amended in 1977 (1977 CAA or pre-amended Act), that included the Los Angeles-South Coast Air Basin Area. 43 FR 8964; 40 CFR 81.305. On May 26, 1988, EPA notified the Governor of California, pursuant to section 110(a)(2)(H) of the pre-amended Act, that the above district's portions of the California SIP were inadequate to attain and maintain the ozone standard and requested that deficiencies in the existing SIP be corrected (EPA's SIP-Call).

On November 15, 1990, the Clean Air Act Amendments of 1990 were enacted. Pub. L. 101–549, 104 Stat. 2399, codified at 42 U.S.C. 7401–7671q. Section 110(a)(2)(A) of the Act requires that plans which are submitted to the EPA in order to achieve or maintain the National Ambient Air Quality Standards (NAAQS) contain enforceable emission limitations. The Los Angeles-South Coast Air Basin Area has retained its designation of nonattainment and is classified as extreme.[1]

The State of California submitted many rules for incorporation into its SIP on November 26, 1996, including the rule being acted on in this document. This document addresses EPA's proposed action for South Coast Air Quality Management District Rule 1113, Architectural Coatings. The South Coast Air Quality Management District adopted Rule 1113 on November 8, 1996. This submitted rule was found to be complete on February 11, 1997 pursuant to EPA's completeness criteria that are set forth in 40 CFR part 51, appendix V[2] and is being proposed for approval into the SIP.

The South Coast Air Quality Management District Rule 1113 controls volatile organic compound (VOC) emissions from architectural coatings. VOCs contribute to the production of ground-level ozone and smog. This rule was adopted as part of the district's efforts to achieve the NAAQS for ozone and in response to EPA's SIP-Call and the section 110(a)(2)(A) CAA requirement. The following is EPA's evaluation and proposed action for this rule.

III. EPA Evaluation and Proposed Action

In determining the approvability of a VOC rule, EPA must evaluate the rule for consistency with the requirements of the CAA and EPA regulations, as found in section 110 and part D of the CAA and 40 CFR part 51 (Requirements for Preparation, Adoption, and Submittal of Implementation Plans).

In addition, this rule was evaluated against the general requirements of the Clean Air Act (section 110 and part D), 40 CFR part 52, ''Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations—Clarification to Appendix D of November 24, 1987 **Federal Register**'' (EPA's ''Blue Book''), and the EPA Region IX—California Air Resources Board document entitled ''Guidance Document for Correcting VOC Rule Deficiencies'' (April 1991). In general, these guidance documents have been set forth to ensure that VOC rules are fully enforceable and strengthen or maintain the SIP.

On January 24, 1985, EPA approved into the SIP a version of Rule 1113, Architectural Coatings that had been adopted by the SCAQMD on March 16, 1984. The version of Rule 1113 currently included in the SIP was also used to evaluate the version being proposed for approval. The SCAQMD Rule 1113 submitted on November 26, 1996 includes the following significant changes from the current SIP:

- Addition, deletion, and consolidation of definitions (section (b));
- Future low-VOC limits for the following coating categories: flats, lacquers, multi-color, and traffic coatings (section (c)(2));
- VOC content limits for the following specialty coating categories: japans, magnesite, and fire-proofing coatings (section (c)(2));
- VOC content limits for previously exempted specialty coating categories (section (c)(2));
- Requirement that VOC containing materials must be stored in closed containers (section (c)(5));
- Averaging provision to allow manufacturers to average the VOC content of their flat coatings, on a sales weighted basis (section (c)(6) and appendix A);
- Language clarifying how exceedances of allowable emissions will be handled when a source uses averaging (appendix A);
- Labeling requirements for quick-dry enamels and quick-dry primers, sealers, and undercoaters (section (d)(4));
- Test methods for determining VOC content, acid content, metal content, flame spread index, drying times, and gloss (section (e));
- Technology assessment for flat and lacquer coating categories (section (f));
- Additional reporting requirements for manufacturers utilizing the exemption for quick-dry primers, sealers, and undercoaters (section (g)(2));
- Exemption for lacquers to add up to 10% retarder above the VOC limit during cool, humid days to prevent blushing of acetone formulated lacquers with a maximum VOC content of 550 g/L (section (g)(3)); and
- Small business exemption from lower future effective VOC limits for lacquers and flats (section (g)(4)). In the aggregate, these changes to the SIP approved rule provide additional flexibility and recognition of some specialty products without relaxing the requirements of the rule.

The SCAQMD staff report for Rule 1113 projects that the submitted rule will reduce VOC emissions from architectural coatings by 17.2% by the year 2010. In contrast, control measure CTS–07 of SCAQMD's 1994 Air Quality Management Plan (AQMP) commits SCAQMD to reduce architectural coating emissions by 75% by 2010. EPA approved the 1994 AQMP, and thus the 75% commitment, into the SIP on September 26, 1996 (52 FR 1150, January 8, 1997). The AQMP relies on the concept that each industry will reduce its fair share of emissions. Therefore, the 17.2% reduction is ''only a fraction of the 75% emission reduction that will eventually be required from AIM coatings to provide their fair share of the required emission reductions'' (page 8, District staff recommendation to Board regarding Board meeting to be held on November 8, 1996 to amend Rule 1113).

EPA has evaluated the submitted rule and has determined that it is enforceable and strengthens the applicable SIP. Therefore, South Coast Air Quality Management District Rule

[1] The Los Angeles-South Coast Air Basin Area retained its designation of nonattainment and was classified by operation of law pursuant to sections 107(d) and 181(a) upon the date of enactment of the CAA. See 56 FR 56694 (November 6, 1991).

[2] EPA adopted the completeness criteria on February 16, 1990 (55 FR 5830) and, pursuant to section 110(k)(1)(A) of the CAA, revised the criteria on August 26, 1991 (56 FR 42216).

1113, Architectural Coatings is being proposed for approval under section 110(k)(3) of the CAA in light of EPA's authority pursuant to section 301(a) to adopt regulations necessary to further air quality by strengthening the SIP. The submitted version of Rule 1113 strengthens the SIP by updating a portion of the SIP for the Los Angeles Air Basin that has not been revised since 1985. EPA notes, however, that the submitted rule does not fulfill SCAQMD's SIP-approved commitment in CTS–07 to reduce VOCs from architectural coatings by 75%. Air quality progress and attainment of the public health-based ozone standard both require that the District pursue expeditiously further emission reductions from this large segment of the South Coast VOC emissions inventory.

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

IV. Administrative Requirements

A. Executive Order 12866

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

The proposed rule is not subject to E.O. 13045, entitled ''Protection of Children from Environmental Health Risks and Safety Risks,'' because it is not an ''economically significant'' action under E.O. 12866.

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 sections 110 and 301, 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 the private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action proposed 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.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, Volatile organic compound.

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

Dated: June 7, 1998.

Felicia Marcus,

Regional Administrator, Region IX.

[FR Doc. 98–16255 Filed 6–17–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[OH116–1; FRL–6112–8]

Approval and Promulgation of Maintenance Plan Revisions; Ohio

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The United States Environmental Protection Agency (EPA) is proposing to approve an April 27, 1998, request from Ohio, for State Implementation Plan (SIP) maintenance plan revision for the Dayton-Springfield (Montgomery, Clark, Greene and Miami Counties) ozone maintenance area. The revision would remove the air quality triggers from the area's contingency plan. The contingency plans were included in the areas' maintenance plan to correct violations of the one hour ozone National Ambient Air Quality Standard (NAAQS), which has been proposed to be revoked for this area.

DATES: Written comments on this proposal must be received on or before July 20, 1998.

ADDRESSES: Copies of the documents relevant to this action are available for inspection during normal business hours at the following location: Regulation Development Section, Air Programs Branch, (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604.

Please contact Scott Hamilton at (312) 353–4775 before visiting the Region 5 office.

Written comments should be sent to: J. Elmer Bortzer, Chief, Regulation Development Section, Air Programs Branch, (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Scott Hamilton, Environmental Scientist, Regulation Development Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 353–4775.

SUPPLEMENTARY INFORMATION:

I. Attainment Areas in Ohio

Since the initial Clean Air Act (CAA) attainment status designations were made, the Dayton area has attained the one hour ozone standard and has been redesignated to attainment status for ozone. As a requirement to being redesignated to attainment status, the

area developed a maintenance plan. The purpose of the maintenance plan is to assure maintenance of the one hour ozone NAAQS for at least ten years.

The maintennce plan included contingency provisions. The purpose of the contingency provisions are to identify and correct any violation of the one hour ozone NAAQS in a timely fashion. Triggers are included in the contingency provisions to identify the need to implement measures and correct air quality problems until such time as a revised maintenance or attainment plan could be developed to address the level of the air quality problem. Triggering events in the contingency plans could be linked to ozone air quality and/or an emission level of ozone precursors.

Dayton's maintenance plan was finalized by EPA and published in the **Federal Register** on May 5, 1995 (60 FR 22289).

II. One Hour Ozone Standard Revocation

On July 18, 1997, EPA finalized a revision to the NAAQS for ozone which changed the standard from 0.12 parts per million (ppm) averaged over one hour, to 0.08 ppm, averaged over eight hours. The EPA is revoking the one hour standard in separate rulemakings based on an area's attainment of the one hour ozone standard. The first round of revocations will be for areas attaining the one hour standard based on quality assured air monitoring data for the years 1994–1996. The second round of one hour ozone standard revocations will be for areas attaining the one hour standard based on quality assured air monitoring data for the years 1995–1997. After these two rulemakings are finalized, EPA intends to publish rulemakings on an annual basis revoking the one hour ozone standard for additional areas that come into attainment of the one hour standard.

On May 18, 1998, EPA published a proposed rule (63 FR 27247) in the **Federal Register** proposing to revoke the one hour ozone standard in areas attaining the one hour standard based on quality assured air monitoring data for the years 1995–1997. In that proposal, EPA proposed to revoke the one hour ozone standard in the Dayton, Ohio ozone maintenance area.

On July 16, 1997, President Clinton issued a directive to Administrator Browner on implementation of the new ozone standard, as well as the current one hour ozone standard (62 FR 38421). In that directive the President laid out a plan on how the new ozone and particulate matter standards, as well as the current one hour standard, are to be implemented. A December 29, 1997, memorandum entitled ''Guidance for Implementing the 1-Hour and Pre-Existing PM10 NAAQS,'' signed by Richard D. Wilson, EPA's Acting Assistant Administrator for Air and Radiation, reflected that directive. The purpose of the guidance reflected in the memorandum is to ensure that the momentum gained by States to attain the one hour ozone NAAQS was not lost when moving toward implementing the eight hour ozone NAAQS.

The guidance document explains that maintenance plans will remain in effect for areas where the one hour standard is revoked; however, those maintenance plans may be revised to withdraw certain contingency measure provisions that have not been triggered or implemented prior to EPA's determination of attainment and revocation. Where the contingency measure is linked to the one hour ozone standard or air quality ozone concentrations, the measures may be removed from the maintenance plan. Measures linked to non-air quality elements, such as emissions increases or vehicle miles traveled, may be removed if the State demonstrates that removing the measure will not affect an area's ability to attain the eight hour ozone standard.

In other words, after the one hour standard is revoked for an area, EPA believes it is permissible to withdraw contingency measures designed to correct violations of that standard. Since such measures were designed to address future violations of a standard that no longer exists, it is no longer necessary to retain them. Furthermore, EPA believes that future attainment and maintenance planning efforts should be directed toward attaining the eight hour ozone NAAQS. As part of the implementation of the eight hour ozone standard, the State's ozone air quality will be evaluated and eight hour attainment and nonattainment designations will be made.

III. Review of the State Submittal

In a letter from Donald R. Schregardus, Director, Ohio Environmental Protection Agency (OEPA) received by EPA on April 27, 1998, OEPA officially requested that all air quality triggers be deleted from the maintenance plans for the areas in Ohio now attaining the one hour ozone standard and where EPA has proposed to revoke the one hour standard. On May 18, 1998, EPA proposed to revoke the one hour ozone standard in the Dayton area. Therefore, in this **Federal Register** document, EPA is proposing to delete the air quality trigger in the Dayton area's maintenance plan. In a previous Notice of Proposed Rulemaking, EPA proposed the deletion of air quality triggers in maintenance plans for other Ohio areas (where the one hour standard was proposed to be revoked) (see 63 FR 27895).

The OEPA has officially announced a public hearing on this matter to be held on June 1, 1998.

EPA believes that Ohio's request is consistent with the December 29, 1997 guidance document and the July 16, 1997 Presidential Directive, and that the request is approvable.

This revision approval is being proposed under a procedure called parallel processing, whereby EPA proposes rulemaking action concurrently with the State's procedures for amending its regulations. If the proposed revision is substantially changed, EPA will evaluate those changes and may publish another notice of proposed rulemaking. If no substantial changes are made other than any consistent with this document, the EPA will publish a final rulemaking on the revisions. The final rulemaking action by EPA on Ohio's request to revise the maintenance plan to remove the air quality trigger will occur only after the one hour ozone standard has been revoked in final and Ohio's public hearing documentation is submitted to the EPA.

IV. EPA Proposed Action

The EPA is proposing to approve the requested revision to the Dayton area's maintenance plan. The EPA is parallel processing this request concurrent with State proceedings on the affected provision. Written comments must be received by EPA on or by July 20, 1998.

V. Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget has exempted this regulatory action from Executive Order 12866 review.

B. Executive Order 13045

The proposed rule is not subject to Executive Order 13045, titled ''Protection of Children's Health from Environmental Health Risks and Safety Risks,'' because it is not an ''economically significant'' action under Executive Order 12866.

C. Future Requests

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

factors and in relation to relevant statutory and regulatory requirements.

D. Regulatory Flexibility

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction. This proposed rule will not have a significant impact on a substantial number of small entities because 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 create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities. Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of a flexibility analysis would constitute Federal inquiry into the economic reasonableness of the 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, 256–66 (1976) 42 U.S.C. 7410(a)(2).

E. Unfunded Mandates

Under Section 202 of the Unfunded Mandates Reform Act of 1995, signed into law on March 22, 1995, EPA must undertake various actions in association with any proposed or final rule that includes a Federal mandate that may result in estimated costs to state, local, or tribal governments in the aggregate; or to the private sector, of $100 million or more. This Federal action approves pre-existing requirements under state or local law, and imposes no new requirements. Accordingly, no additional costs to state, local, or tribal governments, or the private sector, result from this action.

F. Audit Privilege and Immunity Law

Nothing in this action should be construed as making any determination or expressing any position regarding Ohio's audit privilege and immunity law (sections 3745.70—3745.73 of the Ohio Revised Code). EPA will be reviewing the effect of the Ohio audit privilege and immunity law on various Ohio environmental programs, including those under the Clean Air Act, and taking appropriate action(s), if any, after thorough analysis and opportunity for Ohio to state and explain its views and positions on the issues raised by the law. The action taken herein does not express or imply any viewpoint on the question of whether there are legal deficiencies in this or any Ohio Clean Air Act program resulting from the effect of the audit privilege and immunity law. As a consequence of the review process, the regulations subject to the action taken herein may be disapproved, federal approval for the Clean Air Act program under which they are implemented may be withdrawn, or other appropriate action may be taken, as necessary.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Intergovernmental relations, Nitrogen oxides, Ozone.

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

Dated: June 2, 1998.

David A. Ullrich,

Acting Regional Administrator.

[FR Doc. 98–16247 Filed 6–17–98; 8:45 am]

BILLING CODE 6560–50–P

Notices

Federal Register

Vol. 63, No. 117

Thursday, June 18, 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

Cooperative State Research, Education, and Extension Service

Research, Education, and Economics; Notice of the National Agricultural Research, Extension, Education, and Economics Advisory Board Executive Committee Special Meeting

AGENCY: Research, Education, and Economics, USDA.

ACTION: Notice of special meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, 5 U.S.C. App., the United States Department of Agriculture announces a Special Meeting of the Executive Committee of the National Agricultural Research, Extension, Education, and Economics Advisory Board.

SUPPLEMENTARY INFORMATION: The National Agricultural Research, Extension, Education, and Economics Advisory Board, which represents 30 constituent categories, as specified in section 1408 of the National Agricultural Research, Extension, and Teaching Policy Act of 1977, as amended by section 802 of the Federal Agriculture Improvement and Reform Act of 1996 (Pub. L. 104–127), will have a special meeting of the Advisory Board's Executive Committee, with USDA officials to discuss the Advisory Board's role under the pending Agricultural Research, and Education Reform Act of 1998.

Dates: June 29, 1998, 9:00 a.m.–4:30 p.m.

Place: USDA, Cooperative State Research Service, Aerospace Building, Conference Room 824A–B, 901 D Street, SW., Washington, DC.

Type of Meeting: Open to the public. Conference room space is limited. The public is requested to confirm attendance with the contact person below. Identification is required upon entering the USDA facilities.

Comments: The public may also file written comments before or within 2 weeks after the meeting with the contact person. All statements will become a part of the official records of the National Agricultural Research, Extension, Education, and Economics Advisory Board and will be kept on file for public review in the Office of the Advisory Board; Research, Education, and Economics; U.S. Department of Agriculture; Washington, D.C. 20250–2255.

For Further Information Contact: Deborah Hanfman, Executive Director, National Agricultural Research, Extension, Education, and Economics Advisory Board, Research, Education, and Economics Advisory Board Office, Room 3918 South Building, U.S. Department of Agriculture, STOP: 2255, 1400 Independence Avenue, SW., Washington, DC 20250–2255. Telephone: 202–720–3684. Fax: 202–720–6199, or e-mail: lshea@reeusda.gov.

Done at Washington, D.C. this 9th day of June 1998.

I. Miley Gonzalez,

Under Secretary, Research, Education, and Economics.

[FR Doc. 98–16154 Filed 6–17–98; 8:45 am]

BILLING CODE 3410–22–P

DEPARTMENT OF AGRICULTURE

Forest Service

Moira Environmental Impact Statement

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an Environmental Impact Statement.

SUMMARY: The Department of Agriculture, Forest Service, will prepare an Environmental Impact Statement (EIS) to provide timber for the Ketchikan Area timber sale program. The Record of Decision will disclose how the Forest Service has decided to provide harvest units, roads, and associated timber harvesting facilities. The proposed action is to harvest up to an estimated 435 million board feet (mmbf) of timber on an estimated 3,000 acres in several timber sales. A range of alternatives responsive to significant issues will be developed and will include a no-action alternative. The proposed timber harvest is located within Tongass Forest Plan Value Comparison Units 683, 691, 692, 693, and 694 on Prince of Wales Island, Alaska, on the Craig Ranger District of the Ketchikan Area of the Tongass National Forest.

DATES: Comments concerning the scope of this project should be received by July 30, 1998.

ADDRESSES: Please send written comments to Forest Supervisor's Office; Tongass National Forest, Ketchikan Area; Attn: Moira EIS; Federal Building, Ketchikan, AK 99901.

FOR FURTHER INFORMATION CONTACT: Questions about the proposal and EIS should be directed to Dale Kanen, District Ranger, Craig Ranger District, Tongass National Forest, P.O. Box 500, Craig, AK 99921; telephone (907) 826–3271 or Norm Matson, Planning Biologist, Federal Building, Ketchikan, AK 99901; telephone (907) 228–6273.

SUPPLEMENTARY INFORMATION: Public participation will be an integral component of the study process and will be especially important at several points during the analysis. The first is during the scoping process. The Forest Service will be seeking information, comments, and assistance from Federal, State, local agencies, individuals and organizations that may interested in, or affected by, the proposed activities. The scoping process will include: (1) identification of potential issues; (2) identification of issues to be analyzed in depth; and (3) elimination of insignificant issues or those which have been covered by a previous environmental review. Written scoping comments are being solicited through a scoping package that will be sent to the project mailing list. For the Forest Service to best use the scoping input, comments should be received by July 30, 1998. Tentative issues identified for analysis in the EIS include the potential effects of the project on and the relationship of the project to: Subsistence resources, old-growth ecosystem management and the maintenance of habitat for viable populations of wildlife and plant species, timber supply, scenery and recreational resources, anadromous and resident fish habitat, soil and water resources, wetlands, cultural resources and others.

Based on results of scoping and the resource capabilities within the project area, alternatives including a ''no action'' alternative will be developed for the Draft Environmental Impact

Statement (Draft EIS). The Draft EIS is projected to be filed with the Environmental Protection Agency (EPA) in May 1999. Subsistence hearings, as provided for in Title VIII, Section 810 of the Alaska National Interest Lands Conservation Act (ANILCA), are planned during the comment period on the Draft EIS. The Final EIS is anticipated by April 2000.

The comment period on the draft environmental impact statement will be 45 days from the date the Environmental Protection Agency publishes the notice of availability in the **Federal Register**.

The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC,* 435 U.S. 519, 553 (1978). Environmental objections that could have been raised at the draft environmental impact statement stage may be waived or dismissed by the courts. *City of Angoon* v. *Hodel,* 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris,* 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45-day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final environmental impact statement.

To assist the Forest Service in identifying and considering issues and concerns of the proposed action, comments during scoping and comments on the draft environmental impact statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft environmental impact statement or the merits of the alternatives formulated and discussed in the statement. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points. Comments received in response to this solicitation, including names and addresses of those who comment, will be considered part of the public record on this proposed action and will be available for public inspection. Comments submitted anonymously will be accepted and considered; however, those who submit anonymous comments will not have standing to appeal the subsequent decision under 36 CFR Parts 215 or 217. Additionally, pursuant to 7 CFR 1.27(d), any person may request the agency to withhold a submission from the public record by showing how the Freedom of Information Act (FOIA) permits such confidentiality. Requesters should be aware that, under FOIA, confidentiality may be granted in only very limited circumstances, such as to protect trade secrets. The Forest Service will inform the requester of the agency's decision regarding the request for confidentiality, and where the request is denied, the agency will return the submission and notify the requester that the comments may be resubmitted with or without name and address within 7 days.

Permits: permits required for implementation include the following:

1. U.S. Army Corp of Engineers
   —Approval of discharge of dredged or fill material into the waters of the United States under Section 404 of the Clean Water Act;
   —Approval of the construction of structures or work in navigable waters of the United States under Section 10 of the Rivers and Harbors Act of 1899;
2. Environmental Protection Agency
   —National Pollutant Discharge Elimination System (402) Permit;
   —Review Spill Prevention Control and Countermeasure Plan;
3. State of Alaska, Department of Natural Resources
   —Tideland Permit and Lease or Easement;
4. State of Alaska, Department of Environmental Conservation
   —Solid Waste Disposal Permit;
   —Certification of Compliance with Alaska Water Quality Standard (401 Certification)

Responsible Official

Bradley E. Powell, Forest Supervisor, Ketchikan Area, Tongass National Forest, Federal Building, Ketchikan, Alaska 99901, is the responsible official. The responsible official will consider the comments, response, disclosure of environmental consequences, and applicable laws, regulations, and policies in making the decision and stating the rationale in the Record of Decision.

Dated: June 9, 1998.

Bradley E. Powell,

Forest Supervisor.

[FR Doc. 98–16222 Filed 6–17–98; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Hells Canyon National Recreation Area Comprehensive Management Plan, Wallowa-Whitman, Nez Perce, and Payette National Forests, Baker and Wallowa Counties in Oregon and Nez Perce, Idaho, and Adams Counties in Idaho

AGENCY: Forest Service, USDA.

ACTION: Notice of Intent to prepare a Revised Environmental Impact Statement.

SUMMARY: Notice is hereby given that the USDA, Forest Service will prepare a revised draft environmental impact statement for the Hells Canyon National Recreation Area Comprehensive Management Plan. The decision to revise the draft environmental impact statement is based on two factors: (1) Over two years have passed since the release of the draft environmental impact statement and new information has been released from the Interior Columbia Basin Ecosystem Management Project that may affect the project area, thus warranting a review. This new information will be evaluated in the context of the affected environment to determine if proposed management direction should be modified; and (2) an additional alternative should be analyzed in detail that was submitted by interest groups in 1995 and was never fully analyzed in the February 1996 draft environmental impact statement. This alternative proposes management direction to manage the Hells Canyon National Recreation Area to thrive as a healthy native ecosystem that is an integral component of a larger bioregion. The proposed action is unchanged from that described in the November 16, 1994 issue of **Federal Register** (59 FR 59203).

DATES: Comments concerning the scope of the analysis should be received in writing, no later than June 30, 1998.

ADDRESSES: Send written comments to Wallowa-Whitman National Forest, P.O. Box 907, Baker City, Oregon 97814.

FOR FURTHER INFORMATION CONTACT: Direct questions regarding this notice of intent and its modification to Kurt Wiedenmann, Ecosystem Planning Staff Officer at 541–523–1296 or e-mail at: kwiedenmann/r6pnw__wallowawhitman@fs.fed.us.

SUPPLEMENTARY INFORMATION: The Wallowa-Whitman National Forest proposes to amend the Forest Land and Resource Management Plan (Forest Plan) to modify management direction for the Hells Canyon National Recreation Area (HCNRA) and affirm continuation of other existing management direction. The planning process will be guided by the National Environmental Policy Act (NEPA) with implementation scheduled for January 2000.

This modified or affirmed direction will provide programmatic management direction for the next 10 to 15 years. The changes will reflect the intent of the HCNRA Act (Pub. L. 94–199), public and private land use regulations (36 CFR Part 292), Forest Service directives, changing social values, agency emphasis on ecosystem sustainability, new information and research findings, and results from the monitoring and evaluation process.

The proposed action would integrate management direction from the HCNRA within the framework of Forest Plan decisions and would establish: management goals; management objectives; standards and guidelines; management area direction; and monitoring and evaluation. Management goals, objectives, standards, and guidelines will be developed for the following resource areas: recreation; access and facilities; wild and scenic rivers; wilderness; heritage resources; scientific; vegetation; biologically unique habitat; soil; air; fire; fish habitat; wildlife habitat; heritage resources/pre-historic sites; heritage resources/historic sites; minerals; landownership; and tribal trust responsibilities.

The HCNRA consists of an estimated 652,488 acres. The HCNRA is comprised of the following management areas: wilderness, wild and scenic rivers, dispersed recreation/native vegetation, forage, dispersed recreation/timber management, research natural areas, and developed recreation and administrative facilities.

The analysis will consider a range of alternatives, including no-action.

Public participation will be especially important at several points during the analysis, beginning with the scoping process (40 CFR 1501.7). The Forest Service will be seeking information, comments, and assistance from Federal, State, local agencies and other individuals, organizations, or governments who may be interested in or affected by the proposed project. This input will be used in preparation of the draft EIS. The scoping process includes:

1. Identifying potential issues.
2. Identifying major issues to be analyzed in depth.
3. Identifying issues which have been covered by a relevant previous environmental analysis.
4. Exploring additional alternatives based on themes which will be derived from issues recognized during scoping activities.
5. Identifying potential environmental effects of this project and alternatives (i.e., direct, indirect, and cumulative effects and connected actions).
6. Determining potential cooperating agencies and task assignments.
7. Notifying interested publics of opportunities to participate through meetings, personal contacts, or written comment. Keeping the public informed through the media and/or written material (i.e., newsletters, correspondence, etc.).

The draft EIS will be filed with the Environmental Protection Agency (EPA) and is expected to be available for public review by January 1999. The comment period on the draft EIS will be 45 days from the date the EPA publishes the notice of availability in the **Federal Register**. The final EIS is expected to be available for public review by June 1999.

The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process.

First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 435 U.S. 519, 553 (1978). Also, environmental objections that could have been raised at the draft stage may be waived or dismissed by the court if not raised until after completion of the final EIS. *City of Angoon* v. *Hodel*, 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in the proposed action participate by the close of the 30-day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully be considered and responded to in the final EIS.

To be most helpful, comments on the draft EIS should be as specific as possible and may address the adequacy of the statement or the merit of the alternatives discussed. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

In the final EIS, the Forest Service is required to respond to comments and responses received during the comment period that pertain to the environmental consequences discussed in the draft EIS and applicable laws, regulations, and policies considered in making the decision regarding the proposal. Karyn L. Wood, Forest Supervisor, is the Responsible Official. As the Responsible Official, she will decide whether to implement the proposal or a different alternative. The Responsible Official will document the decision and reasons for the decision in the Record of Decision. That decision will be subject to Forest Service Appeal Regulations (36 CFR 217).

Dated: June 18, 1998.

William R. Gast, Jr.,

Deputy Forest Supervisor.

[FR Doc. 98–16199 Filed 6–17–98; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

Municipal Interest Rates for the Third Quarter of 1998

AGENCY: Rural Utilities Service, USDA.

ACTION: Notice of municipal interest rates on advances from insured electric loans for the third quarter of 1998.

SUMMARY: The Rural Utilities Service hereby announces the interest rates for advances on municipal rate loans with interest rate terms beginning during the third calendar quarter of 1998.

DATES: These interest rates are effective for interest rate terms that commence during the period beginning July 1, 1998, and ending September 30, 1998.

FOR FURTHER INFORMATION CONTACT: Carolyn Dotson, Loan Funds Control Assistant, U.S. Department of Agriculture, Rural Utilities Service, Room 0227–S, Stop 1524, 1400 Independence Avenue, SW, Washington, DC 20250–1500. Telephone: 202–720–1928. FAX: 202–690–2268. E-mail: CDotson@rus.usda.gov.

SUPPLEMENTARY INFORMATION: The Rural Utilities Service (RUS) hereby announces the interest rates on advances made during the third calendar quarter of 1998 for municipal rate electric loans. RUS regulations at 7 CFR 1714.4 state that each advance of funds on a municipal rate loan shall

bear interest at a single rate for each interest rate term. Pursuant to 7 CFR 1714.5, the interest rates on these advances are based on indexes published in the ''Bond Buyer'' for the four weeks prior to the third Friday of the last month before the beginning of the quarter. The rate for interest rate terms of 20 years or longer is the average of the 20 year rates published in the Bond Buyer in the four weeks specified in 7 CFR 1714.5(d). The rate for terms of less than 20 years is the average of the rates published in the Bond Buyer for the same four weeks in the table of ''Municipal Market Data—General Obligation Yields'' or the successor to this table. No interest rate may exceed the interest rate for Water and Waste Disposal loans.

The table of Municipal Market Data includes only rates for securities maturing in 1998 and at 5 year intervals thereafter. The rates published by RUS reflect the average rates for the years shown in the Municipal Market Data table. Rates for interest rate terms ending in intervening years are a linear interpolation based the average of the rates published in the Bond Buyer. All rates are adjusted to the nearest one eighth of one percent (0.125 percent) as required under 7 CFR 1714.5(a). The market interest rate on Water and Waste Disposal loans for this quarter is 5.125 percent.

In accordance with 7 CFR 1714.5, the interest rates are established as shown in the following table for all interest rate terms that begin at any time during the third calendar quarter of 1998.

Interest rate term ends in (year)	RUS rate (0.000 percent)
2019 or later	5.125
2018	5.125
2017	5.125
2016	5.000
2015	5.000
2014	5.000
2013	5.000
2012	4.875
2011	4.750
2010	4.625
2009	4.625
2008	4.500
2007	4.500
2006	4.375
2005	4.375
2004	4.250
2003	4.250
2002	4.125
2001	4.000
2000	3.875
1999	3.750

Dated: June 8, 1998.

Wally Beyer,

Administrator, Rural Utilities Service.

[FR Doc. 98–16146 Filed 6–17–98; 8:45 am]

BILLING CODE 3410–15–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–427–801, A–428–801, A–475–801, A–588–804, A–485–801, A–559–801, A–401–801, A–412–801]

Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From France, Germany, Italy, Japan, Romania, Singapore, Sweden, and the United Kingdom; Final Results of Antidumping Duty Administrative Reviews

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

ACTION: Notice of final results of antidumping duty administrative reviews.

SUMMARY: On February 9, 1998, the Department of Commerce published the preliminary results of administrative reviews of the antidumping duty orders on antifriction bearings (other than tapered roller bearings) and parts thereof from France, Germany, Italy, Japan, Romania, Singapore, Sweden, and the United Kingdom. The types of subject merchandise covered by these orders are ball bearings and parts thereof, cylindrical roller bearings and parts thereof, and spherical plain bearings and parts thereof. The reviews cover 20 manufacturers and/or exporters. The period of review is May 1, 1996, through April 30, 1997.

Based on our analysis of the comments received, we have made changes, including corrections of certain inadvertent programming and clerical errors, in the margin calculations. Therefore, the final results differ from the preliminary results. The final weighted-average dumping margins for the reviewed firms are listed below in the section entitled ''Final Results of Reviews.''

EFFECTIVE DATE: June 18, 1998.

FOR FURTHER INFORMATION CONTACT: The appropriate case analyst, for the various respondent firms listed below, of Import Administration, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230; telephone: (202) 482–4733.

France—Chip Hayes (SKF), Lisa Tomlinson (SNFA), or Richard Rimlinger.

Germany—Davina Hashmi (SKF), Hermes Pinilla (Torrington Nadellager), or Robin Gray.

Italy—Mark Ross (FAG), William Zapf (Meter), Chip Hayes (SKF), Minoo Hatten (Somecat), Robin Gray, or Richard Rimlinger.

Japan—J. David Dirstine (Koyo Seiko), Hermes Pinilla (NPBS), Thomas Schauer (NSK Ltd. and Nachi-Fujikoshi Corp.), Gregory Thompson (NTN), Robin Gray, or Richard Rimlinger.

Romania—Suzanne Flood (Tehnoimportexport, S.A.) or Robin Gray.

Singapore—Lyn Johnson (NMB/Pelmec) or Richard Rimlinger.

Sweden—Mark Ross (SKF) or Richard Rimlinger.

United Kingdom—Suzanne Flood (Barden), Hermes Pinilla (FAG U.K.), Diane Krawczun (NSK–RHP), Lyn Johnson (SNFA U.K.), Robin Gray, or Richard Rimlinger.

SUPPLEMENTARY INFORMATION:

The Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Act), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department's regulations are to 19 CFR Part 353 (April 1997).

Background

On February 9, 1998, the Department of Commerce (the Department) published the preliminary results of administrative reviews of the antidumping duty orders on antifriction bearings (other than tapered roller bearings) and parts thereof (AFBs) from France, Germany, Italy, Japan, Romania, Singapore, Sweden, and the United Kingdom (63 FR 6512). The reviews cover 20 manufacturers and/or exporters. The period of review (POR) is May 1, 1996, through April 30, 1997. We invited parties to comment on our preliminary results of reviews. At the request of certain interested parties, we held public hearings for U.K.-specific issues on March 24, 1998, and for Japan-specific issues on March 25, 1998. The Department has conducted these administrative reviews in accordance with section 751 of the Act.

Scope of Reviews

The products covered by these reviews are AFBs and constitute the following types of subject merchandise: ball bearings and parts thereof (BBs), cylindrical roller bearings and parts

thereof (CRBs), and spherical plain bearings and parts thereof (SPBs). For a detailed description of the products covered under these types of subject merchandise, including a compilation of all pertinent scope determinations, *see* the ''Scope Appendix,'' which is appended to this notice of final results.

Use of Facts Available

In the preliminary results under the ''Use of Facts Available'' section, we inadvertently made two inaccurate statements with regard to Torrington Nadellager (*see* Memorandum from Laurie Parkhill, Office Director, to Richard W. Moreland, Deputy Assistant Secretary, dated February 5, 1998). Neither of the statements was accurate for Torrington Nadellager. We did not use facts available when calculating Torrington Nadellager's margin.

Sales Below Cost in the Home Market

The Department disregarded home-market sales made at prices below the cost of production for the following firms and classes or kinds of merchandise for these final results of reviews:

Country	Company	Subject merchandise
France	SKF	BBs.
Germany	SKF	BBs, CRBs, SPBs.
Italy	FAG	BBs.
	SKF	BBs.
Japan	Koyo	BBs.
	Nachi	BBs, CRBs.
	NSK	BBs, CRBs.
	NTN	BBs, CRBs, SPBs.
	NPBS	BBs.
Singapore	NMB/Pelmec	BBs.
Sweden	SKF	BBs.
United Kingdom	Barden	BBs.
	NSK–RHP	BBs, CRBs.

Changes Since the Preliminary Results

Based on our analysis of comments received, we have made certain revisions that changed our results. We have corrected certain programming and clerical errors in our preliminary results, where applicable. Any alleged programming or clerical errors with which we or the parties do not agree are discussed in the relevant sections of the Issues Appendix.

In addition, as a result of *CEMEX, S.A.* v. *United States*, 133 F.3d 897 (CAFC 1998) (CEMEX), we have changed our model-matching methodology when we have disregarded sales of identical merchandise in the home market because they were at prices below the cost of production. Instead of relying on constructed value (CV) as the basis for normal value for that U.S. model, as we did in the preliminary results, we have attempted first to match models sold in the United States to models sold in the comparison market that fall within the same family of bearings (*i.e.*, similar bearings). If we found no appropriate matches within the same family, we then used CV as the basis of normal value.

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties to these concurrent administrative reviews of AFBs are addressed in the ''Issues Appendix,'' which is appended to this notice of final results.

Final Results of Reviews

We determine that the following percentage weighted-average margins exist for the period May 1, 1996, through April 30, 1997:

Company	BBs	CRBs	SPBs
France			
SKF	8.31	[3]	54.84
SNFA	0.45	1.78	[3]
Germany			
SKF	2.26	7.32	5.06
Torrington Nadellager	[2]	0.16	[3]
Italy			
FAG	1.18	[3]	.....
Meter	[3]	10.65	.....
SKF	3.61	[3]	.....
Somecat	0.00	[3]	.....
Japan			
Koyo Seiko	6.17	[3]	[3]
Nachi	3.37	1.67	[3]
NPBS	2.30	[2]	[3]
NSK	2.35	2.21	[3]
NTN	7.10	11.55	14.18
Romania			
TIE	0.94	.....	.....
Singapore			
NMB Singapore/ Pelmec Ind.	5.33	.....	.....
Sweden			
SKF	11.61	[1]	.....
United Kingdom			
Barden	6.63	[1]	.....
FAG	[1]	[1]	.....
NSK–RHP	17.14	22.16	.....
SNFA	58.20	[3]	.....

[1] No shipments or sales subject to this review. Rate is from the last relevant segment of the proceeding in which the firm had shipments/sales.

[2] No shipments or sales subject to this review. The firm has no individual rate from any segment of this proceeding.

[3] No review.

Assessment Rates

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. Because sampling and other simplification methods prevent entry-by-entry assessments, we have calculated, wherever possible, an exporter/importer-specific assessment rate or value for each type of subject merchandise.

Export Price Sales

With respect to export price (EP) sales for these final results, we divided the total dumping margins (calculated as the difference between normal value and EP) for each importer/customer by the total number of units sold to that importer/customer. We will direct Customs to assess the resulting per-unit dollar amount against each unit of

merchandise in each of that importer's/customer's entries under the relevant order during the review period. Although this will result in assessing different percentage margins for individual entries, the total antidumping duties collected for each importer/customer under each order for the review period will be almost exactly equal to the total dumping margins.

Constructed Export Price Sales

For constructed export price (CEP) sales (sampled and non-sampled), we divided the total dumping margins for the reviewed sales by the total entered value of those reviewed sales for each importer. Where an affiliated party acts as an importer for EP sales we have included the applicable EP sales in this assessment-rate calculation. We will direct Customs to assess the resulting percentage margin against the entered Customs values for the subject merchandise on each of that importer's entries under the relevant order during the review period. While the Department is aware that the entered value of sales during the POR is not necessarily equal to the entered value of entries during the POR, use of entered value of sales as the basis of the assessment rate permits the Department to collect a reasonable approximation of the antidumping duties which would have been determined if the Department had reviewed those sales of merchandise actually entered during the POR.

Cash-Deposit Requirements

To calculate the cash-deposit rate for each respondent (*i.e.*, each exporter and/or manufacturer included in these reviews) we divided the total dumping margins for each company by the total net value for that company's sales of merchandise during the review period subject to each order.

In order to derive a single deposit rate for each order for each respondent we weight-averaged the EP and CEP deposit rates (using the EP and CEP, respectively, as the weighting factors). To accomplish this where we sampled CEP sales, we first calculated the total dumping margins for all CEP sales during the review period by multiplying the sample CEP margins by the ratio of total days in the review period to days in the sample weeks. We then calculated a total net value for all CEP sales during the review period by multiplying the sample CEP total net value by the same ratio. We then divided the combined total dumping margins for both EP and CEP sales by the combined total value for both EP and CEP sales to obtain the deposit rate.

We will direct Customs to collect the resulting percentage deposit rate against the entered Customs value of each of the respondent's entries of subject merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice.

Entries of parts incorporated into finished bearings before sales to an unaffiliated customer in the United States will receive the respondent's deposit rate applicable to the order.

Furthermore, the following deposit requirements will be effective upon publication of this notice of final results of administrative reviews for all shipments of AFBs entered, or withdrawn from warehouse, for consumption on or after the date of publication, as provided by section 751(a)(1) of the Act: (1) the cash-deposit rates for the reviewed companies will be the rates shown above except that, for firms whose weighted-average margins are less than 0.5 percent, and therefore *de minimis*, the Department shall require a zero deposit of estimated antidumping duties; (2) for previously reviewed or investigated companies not listed above, the cash-deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original less-than-fair-value (LTFV) investigation, but the manufacturer is, the cash-deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) the cash-deposit rate for all other manufacturers or exporters will continue to be the ''All Others'' rate for the relevant order made effective by the final results of review published on July 26, 1993 (*see Final Results of Antidumping Duty Administrative Reviews and Revocation in Part of an Antidumping Duty Order*, 58 FR 39729 (July 26, 1993), and, for BBs from Italy, *see Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From France, et al: Final Results of Antidumping Duty Administrative Reviews, Partial Termination of Administrative Reviews, and Revocation in Part of Antidumping Duty Orders*, 61 FR 66472 (December 17, 1996)). These rates are the ''All Others'' rates from the relevant LTFV investigations.

These deposit requirements shall remain in effect until publication of the final results of the next administrative reviews.

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Department's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of doubled antidumping duties.

This notice also serves as the only reminder to parties subject to administrative protective orders (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 353.34(d) or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

We are issuing and publishing this determination in accordance with section 715(a)(1) and 777(i)(1) of the Act.

Dated: June 9, 1998.

Richard W. Moreland,

Acting Assistant Secretary for Import Administration.

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Scope Appendix

A. Description of the Merchandise

The products covered by these orders, antifriction bearings (other than tapered roller bearings), mounted or unmounted, and parts thereof (AFBs), constitute the following three types of subject merchandise:

1. *Ball Bearings and Parts Thereof:* These products include all AFBs that employ balls as the roller element. Imports of these products are classified under the following categories: antifriction balls, ball bearings with integral shafts, ball bearings (including radial ball bearings) and parts thereof, and housed or mounted ball bearing units and parts thereof. Imports of these products are classified under the following Harmonized Tariff Schedule (HTS) subheadings: 3926.90.45, 4016.93.00, 4016.93.10, 4016.93.50, 6909.19.5010, 8431.20.00, 8431.39.0010, 8482.10.10, 8482.10.50, 8482.80.00, 8482.91.00, 8482.99.05, 8482.99.35, 8482.99.2580, 8482.99.6595, 8483.20.40, 8483.20.80, 8483.50.8040, 8483.50.90, 8483.90.20, 8483.90.30, 8483.90.70, 8708.50.50, 8708.60.50, 8708.60.80, 8708.70.6060, 8708.70.8050, 8708.93.30, 8708.93.5000, 8708.93.6000, 8708.93.75, 8708.99.06, 8708.99.31, 8708.99.4960, 8708.99.50, 8708.99.5800, 8708.99.8080, 8803.10.00, 8803.20.00, 8803.30.00, 8803.90.30, and 8803.90.90.

2. *Cylindrical Roller Bearings, Mounted or Unmounted, and Parts Thereof:* These products include all AFBs that employ cylindrical rollers as the rolling element. Imports of these products are classified under the following categories: antifriction rollers, all cylindrical roller bearings (including split cylindrical roller bearings) and parts thereof, housed or mounted cylindrical roller bearing units and parts thereof.

Imports of these products are classified under the following HTS subheadings: 3926.90.45, 4016.93.00, 4016.93.10, 4016.93.50, 6909.19.5010, 8431.20.00, 8431.39.0010, 8482.40.00, 8482.50.00, 8482.80.00, 8482.91.00, 8482.99.25, 8482.99.35, 8482.99.6530, 8482.99.6560, 8482.99.70, 8483.20.40, 8483.20.80, 8483.50.8040, 8483.90.20, 8483.90.30, 8483.90.70, 8708.50.50, 8708.60.50, 8708.93.5000, 8708.99.4000, 8708.99.4960, 8708.99.50, 8708.99.8080, 8803.10.00, 8803.20.00, 8803.30.00, 8803.90.30, and 8803.90.90.

3. *Spherical Plain Bearings, Mounted or Unmounted, and Parts Thereof:* These products include all spherical plain bearings that employ a spherically shaped sliding element and include spherical plain rod ends.

Imports of these products are classified under the following HTS subheadings: 3926.90.45, 4016.93.00, 4016.93.00, 4016.93.10, 4016.93.50, 6909.50.10, 8483.30.80, 8483.90.30, 8485.90.00, 8708.93.5000, 8708.99.50, 8803.10.00, 8803.10.00, 8803.20.00, 8803.30.00, and 8803.90.90.

The HTS subheadings are provided for convenience and customs purposes. The written description of the scope of this proceeding is dispositive.

Size or precision grade of a bearing does not influence whether the bearing is covered by the orders. These orders cover all the subject bearings and parts thereof (inner race, outer race, cage, rollers, balls, seals, shields, etc.) outlined above with certain limitations. With regard to finished parts, all such parts are included in the scope of these orders. For unfinished parts, such parts are included if (1) they have been heat-treated, or (2) heat treatment is not required to be performed on the part. Thus, the only unfinished parts that are not covered by these orders are those that will be subject to heat treatment after importation.

The ultimate application of a bearing also does not influence whether the bearing is covered by the orders. Bearings designed for highly specialized applications are not excluded. Any of the subject bearings, regardless of whether they may ultimately be utilized in aircraft, automobiles, or other equipment, are within the scopes of these orders.

B. Scope Determinations

The Department has issued numerous clarifications of the scope of the orders. The following is a compilation of the scope rulings and determinations the Department has made:

Scope determinations made in the *Final Determinations of Sales at Less than Fair Value; Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof from the Federal Republic of Germany,* 54 FR 19006, 19019 (May 3, 1989):

Products Covered

- Rod end bearings and parts thereof
- AFBs used in aviation applications
- Aerospace engine bearings
- Split cylindrical roller bearings
- Wheel hub units
- Slewing rings and slewing bearings (slewing rings and slewing bearings were subsequently excluded by the International Trade Commission's negative injury determination) (*see International Trade Commission: Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof from the Federal Republic of Germany, France, Italy, Japan, Romania, Singapore, Sweden, Thailand and the United Kingdom,* 54 FR 21488 (May 18, 1989))
- Wave generator bearings
- Bearings (including mounted or housed units and flanged or enhanced bearings) ultimately utilized in textile machinery

Products Excluded

- Plain bearings other than spherical plain bearings
- Airframe components unrelated to the reduction of friction
- Linear motion devices
- Split pillow block housings
- Nuts, bolts, and sleeves that are not integral parts of a bearing or attached to a bearing under review
- Thermoplastic bearings
- Stainless steel hollow balls
- Textile machinery components that are substantially advanced in function(s) or value
- Wheel hub units imported as part of front and rear axle assemblies; wheel hub units that include tapered roller bearings; and clutch release bearings that are already assembled as parts of transmissions

Scope rulings completed between April 1, 1990, and June 30, 1990 (*see Scope Rulings,* 55 FR 42750 (October 23, 1990)):

Products Excluded

- Antifriction bearings, including integral shaft ball bearings, used in textile machinery and imported with attachments and augmentations sufficient to advance their function beyond load-bearing/friction-reducing capability

Scope rulings completed between July 1, 1990, and September 30, 1990 (*see Scope Rulings,* 55 FR 43020 (October 25, 1990)):

Products Covered

- Rod ends
- Clutch release bearings
- Ball bearings used in the manufacture of helicopters
- Ball bearings used in the manufacture of disk drives

Scope rulings published in *Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof; Final Results of Antidumping Administrative Review (AFBs I),* 56 FR 31692, 31696 (July 11, 1991):

Products Covered

- Load rollers and thrust rollers, also called mast guide bearings
- Conveyor system trolley wheels and chain wheels

Scope rulings completed between April 1, 1991, and June 30, 1991 (*see Notice of Scope Rulings*, 56 FR 36774 (August 1, 1991)):

Products Excluded

- Textile machinery components including false twist spindles, belt guide rollers, separator rollers, damping units, rotor units, and tension pulleys

Scope rulings completed between July 1, 1991, and September 30, 1991 (*see Scope Rulings*, 56 FR 57320 (November 8, 1991)):

Products Covered

- Snap rings and wire races
- Bearings imported as spare parts
- Custom-made specialty bearings

Products Excluded

- Certain rotor assembly textile machinery components
- Linear motion bearings

Scope rulings completed between October 1, 1991, and December 31, 1991 (*see Notice of Scope Rulings*, 57 FR 4597 (February 6, 1992)):

Products Covered

- Chain sheaves (forklift truck mast components)
- Loose boss rollers used in textile drafting machinery, also called top rollers
- Certain engine main shaft pilot bearings and engine crank shaft bearings

Scope rulings completed between January 1, 1992, and March 31, 1992 (*see Scope Rulings*, 57 FR 19602 (May 7, 1992)):

Products Covered

- Ceramic bearings
- Roller turn rollers
- Clutch release systems that contain rolling elements

Products Excluded

- Clutch release systems that do not contain rolling elements
- Chrome steel balls for use as check valves in hydraulic valve systems

Scope rulings completed between April 1, 1992, and June 30, 1992 (*see Scope Rulings*, 57 FR 32973 (July 24, 1992)):

Products Excluded

- Finished, semiground stainless steel balls
- Stainless steel balls for non-bearing use (in an optical polishing process)

Scope rulings completed between July 1, 1992, and September 30, 1992 (*see Scope Rulings*, 57 FR 57420 (December 4, 1992)):

Products Covered

- Certain flexible roller bearings whose component rollers have a length-to-diameter ratio of less than 4:1
- Model 15BM2110 bearings

Products Excluded

- Certain textile machinery components

Scope rulings completed between October 1, 1992, and December 31, 1992 (*see Scope Rulings*, 58 FR 11209 (February 24, 1993)):

Products Covered

- Certain cylindrical bearings with a length-to-diameter ratio of less than 4:1

Products Excluded

- Certain cartridge assemblies comprised of a machine shaft, a machined housing and two standard bearings

Scope rulings completed between January 1, 1993, and March 31, 1993 (*see Scope Rulings*, 58 FR 27542 (May 10, 1993)):

Products Covered

- Certain cylindrical bearings with a length-to-diameter ratio of less than 4:1

Scope rulings completed between April 1, 1993, and June 30, 1993 (*see Scope Rulings*, 58 FR 47124 (September 7, 1993)):

Products Covered

- Certain series of INA bearings

Products Excluded

- SAR series of ball bearings
- Certain eccentric locking collars that are part of housed bearing units

Scope rulings completed between October 1, 1993, and December 31, 1993 (*see Scope Rulings*, 59 FR 8910 (February 24, 1994)):

Products Excluded

- Certain textile machinery components

Scope rulings completed between January 1, 1994, and March 31, 1994:

Products Excluded

- Certain textile machinery components

Scope rulings completed between October 1, 1994 and December 31, 1994 (*see Scope Rulings*, 60 FR 12196 (March 6, 1995)):

Products Excluded

- Rotek and Kaydon—Rotek bearings, models M4 and L6, are slewing rings outside the scope of the order

Scope rulings completed between April 1, 1995 and June 30, 1995 (see Scope Rulings, 60 FR 36782 (July 18, 1995)):

Products Covered

- Consolidated Saw Mill International (CSMI) Inc.—Cambio bearings contained in CSMI's sawmill debarker are within the scope of the order
- Nakanishi Manufacturing Corp.—Nakanishi's stamped steel washer with a zinc phosphate and adhesive coating used in the manufacture of a ball bearing is within the scope of the order

Scope rulings completed between January 1, 1996 and March 31, 1996 (*see Scope Rulings*, 61 FR 18381 (April 25, 1996)):

Products Covered

- Marquardt Switches—Medium carbon steel balls imported by Marquardt are outside the scope of the order

Scope rulings completed between April 1, 1996 and June 30, 1996 (*see Scope Rulings*, 61 FR 40194 (August 1, 1996)):

Products Excluded

- Dana Corporation—Automotive component, known variously as a center bracket assembly, center bearings assembly, support bracket, or shaft support bearing, is outside the scope of the order
- Rockwell International Corporation—Automotive component, known variously as a cushion suspension unit, cushion assembly unit, or center bearing assembly, is outside the scope of the order
- Enkotec Company, Inc.—''Main bearings'' imported for incorporation into Enkotec Rotary Nail Machines are slewing rings and, therefore, are outside the scope of the order

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Company Abbreviations

Barden—Barden Corporation (U.K.) Ltd. and the Barden Corporation
FAG Italy—FAG Italia S.p.A.; FAG Bearings Corp.
FAG U.K.—FAG (U.K.) Ltd.
Koyo—Koyo Seiko Co. Ltd.
Meter—Meter, S.p.A.
Nachi—Nachi-Fujikoshi Corp., Nachi America Inc. and Nachi Technology, Inc.
NMB/Pelmec—NMB Singapore Ltd.; Pelmec Industries (Pte.) Ltd.
NPBS—Nippon Pillow Block Manufacturing Co., Ltd.; Nippon Pillow Block Sales Co., Ltd.; FYH Bearing Units USA, Inc.
NSK—Nippon Seiko K.K.; NSK Corporation
NSK–RHP—NSK Bearings Europe, Ltd.; RHP Bearings; RHP Bearings, Inc.
NTN—NTN Corporation; NTN Bearing Corporation of America; American

NTN Bearing Manufacturing Corporation
SKF France—SKF Compagnie d'Applications Mecaniques, S.A. (Clamart); ADR; SARMA
SKF Germany—SKF GmbH; SKF Service GmbH; Steyr Walzlager
SKF Italy—SKF Industrie; RIV–SKF Officina de Villar Perosa; SKF Cuscinetti Speciali; SKF Cuscinetti; RFT
SKF Group—SKF—France; SKF-Germany; SKF—Italy; SKF-Sweden; SKF USA, Inc.
SKF Sweden—SKF Sverige AB
SNFA France—SNFA S.A.
SNFA U.K.–SNFA Bearings, Ltd.
TIE—Tehnoimportexport
Torrington—The Torrington Company
Torrington Nadellager—Torrington Nadellager, GmbH

Other Abbreviations

COP—Cost of Production
COM—Cost of Manufacturing
CV—Constructed Value
CEP—Constructed Export Price
NME—Non-Market Economy
OEM—Original Equipment Manufacturer
POR—Period of Review
PSPA—Post-Sale Price Adjustment
SAA—Statement of Administrative Action
SG&A—Selling, General, & Administrative Expenses
URAA—Uruguay Round Agreements Act

Regulations

19 CFR Part 353, *et al.,* Antidumping Duties; Countervailing Duties; Final rule (applicable regulations).

19 CFR Part 351, *et al.,* Antidumping Duties; Countervailing Duties; Final rule, 62 FR 27296—27424 (May 19, 1997) (new regulations).

AFB Administrative Determinations

LTFV Investigation—Final Determinations of Sales at Less than Fair Value; Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof from the Federal Republic of Germany, 54 FR 19006 (May 3, 1989).

AFBs 1—Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof from the Federal Republic of Germany; Final Results of Antidumping Duty Administrative Review, 56 FR 31692 (July 11, 1991).

AFBs 2—Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From France, et al.; Final Results of Antidumping Duty Administrative Reviews, 57 FR 28360 (June 24, 1992).

AFBs 3—Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From France, et al.; Final Results of Antidumping Duty Administrative Reviews and Revocation in Part of an Antidumping Duty Order, 58 FR 39729 (July 26, 1993).

AFBs 4—Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From France, et al; Final Results of Antidumping Duty Administrative Reviews, Partial Termination of Administrative Reviews, and Revocation in Part of Antidumping Duty Orders, 60 FR 10900 (February 28, 1995).

AFBs 5—Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From France, et al; Final Results of Antidumping Duty Administrative Reviews and Partial Termination of Administrative Reviews, 61 FR 66472 (December 17, 1996).

AFBs 6—Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From France, et al; Final Results of Antidumping Duty Administrative Reviews and Partial Termination of Administrative Reviews, 62 FR 2081 (January 15, 1997).

AFBs 7—Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From France, et al; Final Results of Antidumping Duty Administrative Reviews and Partial Termination of Administrative Reviews, 62 FR 54043 (October 17, 1997).

1. Discounts, Rebates, and Price Adjustments

Comment 1: Torrington contends that the Department should disallow certain discounts which NTN reported. Torrington states that, based on its understanding of the record, NTN's reported discounts were allocated across all sales to a particular customer, but the discounts only applied to certain products sold to that customer. Torrington states that this makes the allocation methodology distortive and open to potential manipulation.

Citing to *The Torrington Company* v. *United States,* 82 F.3d 1039, 1047–1051 (Fed. Cir. 1996) (*Torrington*), Torrington states that the Court made a distinction between direct and indirect expenses and rejected a contention that the former could be allocated in a manner suitable for the latter, *i.e.,* allocated to sales not directly affected. Torrington states that NTN's allocation is clearly inconsistent with this decision.

NTN states the Department properly accepted these discounts in the preliminary results, and in prior reviews, and that Torrington is ignoring the Department's prior decisions on this issue. NTN states further that the Department verified the discount methodology thoroughly and that the Department should deny Torrington's request.

Department's Position: We agree with NTN. Contrary to petitioner's understanding of the way this discount is granted and allocated, we found that NTN granted the discount on a customer-and product-category basis (*i.e.,* by customer and on an antidumping (AD) order-specific (*i.e.,* BB, CRB, SPB) basis), as well as allocated it by customer on an AD order-specific basis (BBs, CRBs, or SPBs). (*See* Verification Report dated January 22, 1998, at 8 and at exhibit 13.) During verification, we reviewed numerous documents which NTN uses to track this type of discount (on an order-specific basis) and determined that NTN reported this discount in the most feasible manner possible. The allocation was AD order-specific (BBs, CRBs, or SPBs) and the bearings do not vary significantly in terms of value, physical characteristics, or the manner in which they are sold such that the results of the allocation are not unreasonably inaccurate or distortive. Therefore, we find this methodology to be acceptable.

In addition, we disagree with Torrington's characterization of the Federal Circuit's decision in *Torrington.* Therein, the Court held that the Department could not make an adjustment for post-sale price adjustments (PSPAs) as indirect selling expenses (under the exporter's sales price-offset regulation) when the PSPAs were related directly to the transactions in question. While the Court held that the method of allocating or reporting an expense does not alter the relationship between the expense and the related sales (*see Torrington,* 82 F.3d at 1051), the Court did not indicate that allocations of direct expenses were impermissible.

Comment 2: Torrington argues that the Department should reject two types of Nachi's reported rebates because, it alleges, the allocation methodology Nachi used is distortive. (In making its argument, Torrington relies on business proprietary information which is not susceptible to summary.)

Nachi contends that Torrington has not demonstrated that Nachi's rebates are distortive and that the Department has accepted its rebate-allocation methodologies in prior reviews. Nachi contends that, because the Department verified that it is impossible for Nachi to report these rebates on a transaction-specific basis and because the reporting method that it has employed is the best alternative given its particular method of keeping records, the Department should allow these rebates in the final results of reviews.

Department's Position: We disagree with Torrington. We find that Nachi acted to the best of its ability in reporting both types of rebates with which Torrington takes issue and that Nachi's allocation methodology was reasonable. In addition, there is no information on the record which indicates that the bearings included in Nachi's allocations vary significantly in terms of value, physical characteristics, or the manner in which sold, such that Nachi's allocations would result in unreasonably inaccurate or distortive allocations.

With regard to rebate 3, the first of the two rebates in question, we find that Nachi reported this rebate on the most specific basis feasible, considering its particular method of recordkeeping. Nothing on the record indicates that only certain types of bearings are subject to the rebate. Nachi's response indicates that it calculated the rebate on an invoice-specific basis (Nachi generates invoices on a monthly basis in the home market). We determine that Nachi's statement that the rebate is based on ''the bearings covered by the claim submitted by the customer'' refers to the bearings covered by a specific invoice and not a limited set of bearings. *See* Nachi's Section B response, dated September 5, 1997, at page B–2 of Exhibit B/18.1. We found nothing at verification to contradict this statement. *See* Verification Report, dated January 26, 1998. Therefore, we conclude that, by allocating the rebate over the sales of each invoice to which the rebate was applicable, Nachi reported rebate 3 as accurately as possible.

With regard to rebate 5, we determine that Nachi reported this rebate as specifically as is feasible, given the records Nachi keeps in its normal course of business. Nachi reported that it ''pays (this rebate) on a customer-specific basis for eligible products only and has allocated and reported rebates to the Department on the same basis.'' *See* Nachi's Section B response dated September 9, 1998, at page B–1 of Exhibit B/18.1. Nachi also noted in its Supplemental Response dated November 10, 1998, at page 14 that, ''because it is not possible (for Nachi) to tie the payment of a rebate paid several months after a sale, Nachi allocated the payment each month on as specific a basis as possible.'' Again, we found nothing at verification that contradicts these statements. *See* the Verification Report for Nachi, dated January 26, 1998. Therefore, because we determine that Nachi acted to the best of its ability and that its allocation methodology for these rebates is reasonable, we have adjusted normal value for these rebates for these final results.

Comment 3: Torrington contends that the Department should reject SKF Germany's claim for adjustments in connection with its support rebate because SKF Germany applied the rebate to all sales of any distributor who qualified for this type of rebate. Torrington argues that, in addition, SKF Germany has granted rebates to distributors for non-subject merchandise. Torrington states that, because the rebate is allocated over all sales to a given distributor and not on a transaction-specific basis, the allocation is not reflective of how the rebate was incurred and, thus, distorts the dumping margins. The petitioner states that, because it does not have access to the information that would enable it to demonstrate such distortions, the respondent should bear the burden of proving that the reporting of its support rebate is not distortive.

SKF Germany rebuts Torrington's argument that it has employed a distortive methodology for reporting the support rebate. It states that it reported this rebate for each customer which received the rebate. SKF Germany explains that the rebate applied to the aggregate sales of a particular customer and that it reported the rebate by customer number. SKF Germany argues that, by allocating the support rebate to all sales to each of the particular customers which actually received the rebate, SKF Germany reported the rebate in the manner in which it was incurred. SKF Germany refutes Torrington's argument that the support rebate includes non-subject merchandise and points to the Department's verification report which indicates that the rebate is reasonable and allocated in a non-distortive manner. SKF Germany states that the Department has accepted its reporting methodology for the support rebate in the two previous AFB administrative reviews. SKF Germany states that, moreover, the CIT has affirmed SKF Germany's support rebate as a direct adjustment, citing *INA Walzlager Schaeffler KG et al.* v. *United States*, 957 F. Supp. 251, 269 (CIT 1997).

Department's Position: We disagree with Torrington. As in *AFBs 7*, we have not found SKF Germany's allocation methodologies to be unreasonably distortive. Because SKF Germany grants the support rebates to distributors/dealers on the basis of their overall sales to the particular distributor/dealer, SKF Germany can not report this rebate on a transaction-specific basis. We examined SKF Germany's home-market support rebates in detail at verification and found that, although SKF Germany calculates this rebate on a customer-specific basis, ''we found no evidence of distortion in the data that we reviewed,'' a point which Torrington has acknowledged. Furthermore, we verified the accuracy of the claim of payments. There is no information on the record which indicates that the bearings included in SKF Germany's allocation vary significantly in terms of value, physical characteristics, or the manner in which they are sold such that SKF Germany's allocations would result in unreasonably inaccurate or distortive allocations. Moreover, we find that SKF Germany reported these rebates on as specific a basis as possible. For these reasons, we have adjusted for SKF Germany's support rebates. *See AFBs 7* at 54052–53 for a further discussion on the Department's position regarding this issue.

Comment 4: Torrington argues that the Department should deny certain home-market rebates claimed by Koyo. The petitioner contends that, instead of identifying the sales to a certain distributor and reporting the rebate for these sales only, Koyo allocated this substantial rebate across all sales to the distributor.

In rebuttal, Koyo argues that it reported its rebate expenses in these reviews in the same manner as it has in past reviews and that the Department has verified and accepted the claimed expense repeatedly. Koyo contends further that, during the POR, it did not have the capability in its computerized recordkeeping system to distinguish between sales of bearings to this distributor for a specific application covered by the rebate and sales to the same distributor of these bearing models that, although suitable for the specific application for which the rebate was intended, were sold for different applications that were not covered by the rebate. Koyo admits that its rebate-allocation methodology adjusts sales prices for some sales to this distributor for which rebates were not actually granted, but it concludes that its methodology is, nonetheless, not distortive overall. Koyo states that the determination of whether an allocation is distortive is not dependent on whether the allocation pool included merchandise for which the expense was not originally incurred, the degree to which the allocated adjustment exceeded any arbitrary benchmark, nor the difference between the allocated adjustment and the actual adjustment associated with any individual transaction. Instead, Koyo argues that the Department's test of whether an allocation is distortive is whether the

merchandise for which the adjustment was actually granted is different from the merchandise over which the adjustment was allocated in terms of value, physical characteristics, and the manner in which it was sold. Koyo contends that, in this case, it was not. Finally, Koyo argues that, before accepting an allocated rebate adjustment, the Department determines whether the respondent acted to the best of its ability in reporting these adjustments.

Department's Position: We disagree with Torrington. For these final results we have accepted claims for rebates as direct adjustments to price if we determined that the respondent, in reporting these adjustments, acted to the best of its ability and that its reporting methodology was not unreasonably distortive. While we recognize that there are differences in bearings, we have found no support for the proposition that the bearings included in Koyo's allocation vary significantly in terms of value, physical characteristics, or the manner in which they are sold such that Koyo's allocation would result in an unreasonably inaccurate or distortive allocation. Thus, since Koyo has reported this rebate on as specific a basis as possible, we have made a direct adjustment to home-market price for Koyo's rebates.

Comment 5: Torrington argues that the Department should disallow NSK's reported negative post-sale billing adjustments because NSK has not demonstrated that these price adjustments were contemplated at the time of sale or that they are part of NSK's normal business practice.

NSK contends that Torrington is incorrect when it argues that, in order for NSK to claim a negative billing adjustment, its customer must have known at the time of sale that there would be a downward adjustment to price. Citing the preamble to new regulations, *Antidumping Duties; Countervailing Duties; Final Rule,* 62 FR 27295 (new regulations) at 27344, NSK contends that the Department rejected the request of certain parties that the Department adopt such a requirement.

Department's Position: We disagree with Torrington. The new regulations, at 19 CFR 351.401(c), state that the Department ''(i)n calculating export price, constructed export price, and normal value (where normal value is based on price) * * * will use a price that is net of any price adjustment, as defined in section 351.102(b), that is reasonably attributable to the subject merchandise or the foreign like product (whichever is applicable).'' Price adjustments are defined in the new regulations at section 351.102(b) as ''any change in the price charged for subject merchandise or the foreign like product, such as discounts, rebates and post-sale price adjustments, that are reflected in the purchaser's net outlay.'' While the Department stated in the preamble at 27344 that respondents should not be ''allowed to eliminate dumping margins by providing price adjustments 'after the fact,' '' there is no evidence on the record in these reviews that demonstrates or even suggests that this is happening. Finally, generally speaking, there is nothing unusual about PSPAs in this industry and, specifically, there is nothing on the record to suggest that NSK manipulated these adjustments. Accordingly, we have granted NSK this adjustment.

Comment 6: Torrington argues that the Department should disallow NSK's reported negative lump-sum billing adjustments because NSK has not demonstrated that these price adjustments were contemplated at the time of sales or that they are part of NSK's normal business practice. Torrington contends further, citing *Torrington,* that, because these billing adjustments are allocated on a customer-specific basis and, as a result, applied to sales on which they were not actually incurred, the Department should deny the adjustment.

NSK contends that it documented its entitlement to this adjustment fully. NSK also asserts that this issue has been raised by Torrington in previous reviews and that the Department has rejected Torrington's argument in those reviews.

Department's Position: We disagree with Torrington. With regard to the contention that the lump-sum billing adjustments were not contemplated at the time of sale, *see* our position in response to Comment 5 of this section, above. With regard to the fact that NSK allocated these adjustments, we note that our new regulations at 19 CFR 351.401(g)(1) direct that we ''may consider allocated expenses and price adjustments when transaction-specific reporting is not feasible, provided (we are) satisfied that the allocation method used does not cause inaccuracies or distortions.'' Although NSK allocated lump-sum price adjustments on a customer-specific basis, we determine that NSK acted to the best of its ability in reporting this information when it used customer-specific allocations.

Our review of the information which NSK submitted indicates that, given the lump-sum nature of this adjustment, the fact that NSK's records do not readily identify a discrete group of sales to which each rebate pertains, and the extremely large number of sales NSK made during the POR, it is not feasible for NSK to report this adjustment on a more specific basis. Furthermore, there is no information on the record which indicates that the bearings included in NSK's allocation vary significantly in terms of value, physical characteristics, or the manner in which they are sold such that NSK's allocations would result in unreasonably inaccurate or distortive allocations. Therefore, we have adjusted normal value for NSK's reported negative lump-sum billing adjustments.

Comment 7: Torrington argues that the Department should reject SKF Germany's home-market billing adjustment 2 and, accordingly, deny all related downward adjustments. Torrington contends that SKF Germany claimed downward adjustments for transactions for which none were warranted because SKF Germany allocated the adjustment over all transactions with a given SKF Germany customer. By not reporting this adjustment on a transaction-specific basis, Torrington claims that SKF Germany has distorted the home-market price of particular models. Torrington also argues that the Department should deny billing adjustment 2 because double-counting may have occurred for those transactions for which SKF Germany reported both billing adjustment 1 and billing adjustment 2 and that SKF Germany has failed to demonstrate that double-counting did not occur. Torrington acknowledges that the Department accepted SKF Germany's reported home-market billing adjustment 2 in *AFBs 7,* but states that the Department's decision to do so was contrary to the Court of Appeals, for the Federal Circuit (CAFC) decision in *Fujitsu General Ltd.* v. *United States,* 88 F.3d 1034, 1040 (Fed. Circ. 1996) (Fujitsu). Torrington posits that the Department should deny only SKF Germany's reported downward adjustments associated with billing adjustment 2 as it has done in previous AFB administrative reviews.

SKF Germany rebuts Torrington's argument that its reporting methodology for home-market billing adjustment 2 is distortive. SKF Germany argues that the Department has verified and accepted both the manner in which its billing adjustment 2 is recorded in its normal course of business and the manner in which it was reported to the Department in the 1994/95, 1995/96, and current AFB administrative reviews. SKF Germany also refutes Torrington's claim that double-counting may have occured because, for some sales transactions, both billing adjustment 1 and billing

adjustment 2 were reported. SKF Germany contends that the underlying purposes of these two adjustments are distinct from one another and, as such, the adjustments are not mutually exclusive. SKF Germany also refutes Torrington's assertion that the only adjustments that should be disallowed are downward adjustments.

Department's Position: We disagree with the petitioner. We examined this expense closely at verification and found that the calculation of this adjustment was not unreasonably distortive. In particular, there is no information on the record which indicates that the bearings included in SKF Germany's allocation vary significantly in terms of value, physical characteristics, or the manner in which they are sold such that SKF Germany's allocations would result in unreasonably inaccurate or distortive allocations. We also found that SKF Germany has used the most specific reporting methodology possible by calculating an individual adjustment factor for each customer based on SKF Germany's annual sales of bearings to that customer. SKF Germany then used this factor to calculate each specific adjustment. *See* Verification Report, December 12, 1997, p. 6–7. In addition, we verified that billing adjustments 1 and 2 are separate billing adjustments, with different underlying purposes. Accordingly, we have determined that SKF Germany has allocated billing adjustment 2 in the most specific manner possible and this allocation is not unreasonably distortive. Therefore, we have granted this adjustment for these reviews.

We also disagree with Torrington's statement that our acceptance of SKF Germany's billing adjustment 2 is inconsistent with the CAFC's decision in *Fujitsu*. In *Fujitsu*, the CAFC upheld the Department's rejection of a respondent's claim regarding start-up costs because the respondent had failed to meet its burden of proof. In this case, SKF Germany has provided sufficient information such that the Department was able to and has determined that SKF Germany is entitled to a price adjustment for billing adjustment 2.

Comment 8: Torrington argues that the Department should deny all of Koyo's downward billing adjustments because they were not truly billing adjustments and, in some cases, were not reported correctly. The petitioner argues that the Department should only accept billing adjustments if they reflect agreements made prior to the sale or if they reflect normal business practices. Specifically, Torrington asserts that the Department should reject billing adjustments 1 and 2 because both include a ''substantial number'' of downward adjustments and because both offer a potential for manipulation associated with PSPAs. In addition, the petitioner contends that billing adjustment 2 is distortive because it includes adjustments which Koyo granted on a model-specific basis but allocated over all sales to the customer involved, as well as lump-sum adjustments granted on a customer-specific basis, with the end result that adjustments are made to transactions for which no adjustment actually applied. Torrington argues that Koyo has the burden of justifying any downward adjustment to normal value and that this requires the company to present concrete evidence demonstrating distortion is not likely, given the nature of each adjustment, each customer, and each sale.

In rebuttal, Koyo argues that the Department should reject Torrington's arguments in these reviews as it has done in the past two AFB reviews. Koyo contends that, given that there is a complete absence of evidence that Koyo has been manipulating price adjustments, the Department should accept them as reported. Koyo states that it reported three general types of price adjustments in its questionnaire response: (1) adjustments made to preliminary prices where a pricing agreement did not previously exist; (2) adjustments made due to the renegotiation of existing price agreements (*e.g.*, to correct for Koyo's continued shipment of merchandise to a customer under the terms of an expired contract while price negotiations continued); and (3) lump-sum adjustments negotiated between Koyo and its customers without reference to the model-specific selling prices and other adjustments negotiated on a case-by-case basis. Koyo contends that each of these types of adjustments is a ''normal business practice'' for Koyo. Koyo argues further that, although the Department, under the pre-URAA antidumping law, rejected some of Koyo's PSPAs in some administrative reviews, it did so because of objections to the allocation methodology Koyo used, never because of any doubt as to the validity of the underlying post-sale commercial activities. Koyo states that, for billing adjustment 1, it matched debit and credit memos to the relevant sales and claimed the adjustment on a transaction-specific basis. In refuting Torrington's argument that Koyo's customer-specific billing adjustments reported under billing adjustment 2 are distortive, Koyo argues that requiring the precise assignment of adjustments to sales would in effect prohibit the use of allocations. Koyo argues that this is contrary to Congressional intent, as expressed in the URAA, and the express provisions of the Department's recently enacted antidumping regulations.

Department's Position: With respect to both billing adjustments, our examination of the record leads us to conclude that both rebates are part of Koyo's long-term business practices and there is no information on the record that Koyo attempted to manipulate its downward price adjustments for the purpose of lowering or eliminating its dumping margin. Koyo incurs and reports the first billing adjustment on a transaction-specific basis and therefore this adjustment does not involve any type of allocation. Accordingly, each adjustment to normal value reflects an actual billing adjustment. With respect to the second billing adjustment, we have determined that Koyo has reported it to the best of its ability. We have based our determination on the fact that this PSPA is comprised of two types of adjustments, including both lump-sum adjustments negotiated with customers without reference to model-specific prices and also adjustments granted on a model-specific basis, but which Koyo records in its computer system on a customer-specific basis only. Given the large number of sales involved, it is not feasible to report this on a more specific basis. *See AFBs 7* at 54050–51. Moreover, there is no information on the record which indicates that the bearings included in Koyo's allocation vary significantly in terms of value, physical characteristics, or the manner in which they are sold such that Koyo's allocations would result in unreasonably inaccurate or distortive allocations. Therefore, we have allowed Koyo's lump-sum adjustments as direct adjustments to normal value.

2. Circumstance-of-Sale Adjustments

2.A. *Credit Expense. Comment:* Torrington argues that the Department should reject the credit expense adjustment NMB/Pelmec claimed on its home-market sales. Although NMB/Pelmec alleges that it used the borrowing experience of its affiliate, Minebea Technologies Pte., Ltd. (MTL), Torrington asserts that the actual interest rates NMB/Pelmec used to calculate home-market credit expenses are unsupported by evidence on the record. Torrington notes first that NMB/Pelmec miscalculated the short-term interest rate of MTL (the exact nature of this alleged miscalculation can not be described here due to its proprietary nature—*see* Analysis Memorandum

dated May 19, 1998). Torrington then points to NMB/Pelmec's financial statements and the interest rates for NMB/Pelmec's parent company, Minebea Group, as an example of the inconsistent reporting. Furthermore, Torrington asserts that the rate NMB/Pelmec used for calculating home-market credit expenses (*i.e.*, MTL's short-term interest rate) is also inconsistent with the rate it used to calculate inventory carrying costs.

NMB/Pelmec responds that it calculated its average short-term interest rate for the POR by dividing MTL's average monthly interest expenses by its average outstanding end-of-month loan balances which, NMB/Pelmec contends, is a routinely accepted formula to derive interest rates in antidumping proceedings. NMB/Pelmec cites *Steel Wire Rope from the Republic of Korea*, 61 FR 55965, 55969 (October 30, 1996), and *Foam Extruded PVC and Polystyrene Framing Stock from the United Kingdom*, 61 FR 51411, 51420–21 (October 2, 1996), to support its statement. NMB/Pelmec argues that Torrington has not provided any supporting evidence demonstrating that the Department should disregard this methodology. Moreover, NMB/Pelmec notes, the Department verified the home-market credit calculations in prior reviews. NMB/Pelmec argues that Torrington's reference to Minebea Group's rates is irrelevant since MTL holds the receivables in the home market and other Minebea Group companies do not. Furthermore, NMB/Pelmec argues that, during the time that the merchandise remains in inventory at the factory (Stage 1), it is being held by NMB/Pelmec and, therefore, it is appropriate to use NMB/Pelmec's rate to calculate inventory carrying costs (as opposed to MTL's rate).

Department's Position: Although we agree with NMB/Pelmec that its use of MTL's interest rates is appropriate for calculating home-market credit expenses, we also agree with Torrington that there was a miscalculation in NMB/Pelmec's methodology for deriving its average short-term interest rate. Therefore, we have corrected this error for these final results (*see* Analysis Memo dated May 19, 1998). Furthermore, we agree with the respondent that the use of NMB/Pelmec's interest rate is appropriate for the calculation of inventory carrying costs for Stage 1 because NMB/Pelmec incurs this cost. Where there are differences in the circumstances, such as how NMB/Pelmec incurs inventory carrying costs as opposed to its short-term interest expenses, different applications are appropriate, supported by evidence on the record. Therefore, with the correction noted above, we have accepted NMB/Pelmec's credit expenses and inventory carrying costs.

2.B. *Other Direct Selling Expenses.*

Comment: Torrington argues that the Department should reject NSK–RHP's claim for a direct adjustment for other direct selling expenses. Torrington maintains that NSK–RHP has not shown that these expenses are direct expenses and that these expenses include the cost of salaries. Torrington argues further that the Department should reject an adjustment for direct expenses allocated across all reported sales rather than to those sales where the expense was actually incurred. In addition, Torrington argues, the respondents must substantiate that more accurate reporting is not feasible and that the allocation does not cause unreasonable inaccuracies or distortions. Torrington concludes that NSK–RHP should have reported its expenses on a sale-specific basis in accordance with *Torrington*.

NSK–RHP responds that, since the Department's verification in these reviews uncovered no evidence suggesting evasive reporting by NSK–RHP, the Department should continue to deduct other direct selling expenses from normal value as it did in *AFBs 6* and *AFBs 7*. NSK–RHP also maintains that it incurred the expense on a sale-by-sale basis. NSK–RHP argues that it reported, in separate direct cost centers for its channels of distribution, expenses associated with selling activities related to particular customers. NSK–RHP contends that, since it was not feasible to report these expenses on a more specific basis due to its accounting system, it acted to the best of its ability and allocated the costs in a manner that did not cause unreasonable inaccuracies or distortions.

Department's Position: We agree with Torrington. The expenses which NSK–RHP claims are ''other direct selling expenses'' are the type of expenses which we normally do not categorize as sale-specific expenses and, in the absence of the sale, such expenses would be incurred. NSK–RHP includes salaries as an other direct selling expense; however, we normally categorize the costs of salaries to employees as a fixed, indirect expense. *See* Department's Questionnaire at I–5; *Torrington* at 1050. Moreover, the other expenses which NSK–RHP claims to be other direct selling expenses, which can not be described here due to their proprietary nature, also do not vary depending upon whether a particular sale occurs. *See* Analysis Memorandum dated May 20, 1998. Therefore, we have treated these costs as indirect selling expenses.

Because we find these selling costs to be indirect in nature, we need not address whether NSK–RHP allocated its costs in an unreasonably inaccurate or distortive manner. The fact that NSK–RHP allocated this expense did not enter into our decision to treat it as an indirect selling expense. We note further that *Torrington* addresses the allocation of direct, rather than indirect expenses, and thus this argument is inapplicable here.

Finally, neither our treatment in previous reviews of these expenses as direct nor our verification of U.S. expenses precludes the current finding. Furthermore, the issue is not whether evidence has been uncovered suggesting evasive reporting. Rather, the burden is on the respondent to demonstrate that the expenses are direct, as claimed. In this case, the evidence indicates that the expenses are indirect in nature.

2.C. *Indirect Selling Expenses.*

Comment: NTN states that the Department should use its indirect selling expenses as reported by level of trade instead of allocating them on an aggregate basis. NTN states further that the Department provides no explanation in its preliminary results as to its rationale for recalculating this expense. Finally, NTN states that the adjustment is particularly inappropriate because it combines NTN's selling expenses with those of an affiliate.

Torrington contends that, since the Department refused to find the relationship between home-market levels of trade and home-market indirect selling expenses self evident in *AFBs 7*, the burden of proof was on NTN to provide such evidence. Torrington states that, because NTN showed no relationship between the home-market levels of trade and indirect expenses incurred, the Department should affirm its preliminary results.

Department Position: We agree with Torrington. The method that NTN used to allocate its indirect selling expenses does not bear any relationship to the manner in which NTN incurs the expenses in question, thereby leading to distorted allocations (*see AFBS 3* at 39750). Therefore, we have allocated NTN's home-market indirect selling expenses over the total sales values, without regard to levels of trade.

3. Level of Trade

In accordance with section 773(a)(1)(B) of the Act, to the extent practicable, we determine normal value based on sales in the comparison market at the same level of trade as the EP or CEP transaction. The normal-value level

of trade is that of the starting-price sales in the comparison market or, when normal value is based on CV, that of the sales from which we derive selling, general, and administrative (SG&A) expenses and profit. For EP, the U.S. level of trade is also the level of the starting-price sale, which is usually from exporter to importer. For CEP, it is the level of the constructed sale from the exporter to the importer.

To determine whether normal-value sales are at a different level of trade than EP or CEP, we examine stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated customer. If the comparison-market sales are at a different level of trade, and the difference affects price comparability, as manifested in a pattern of consistent price differences between the sales on which normal value is based and comparison-market sales at the level of trade of the export transaction, we make an level-of-trade adjustment under section 773(a)(7)(A) of the Act. Finally, for CEP sales, if the normal-value level is more remote from the factory than the CEP-level and there is no basis for determining whether the difference in the levels between normal value and CEP affects price comparability, we adjust normal value under section 773(a)(7)(B) of the Act (the CEP offset provision). *See Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate from South Africa,* 62 FR 61731 (November 19, 1997).

As in the preliminary results, where we established that the comparison sales were made at a different level of trade than the sales to the United States, we made a level-of-trade adjustment if we were able to determine that the differences in levels of trade affected price comparability. We determined the effect on price comparability by examining sales at different levels of trade in the comparison market. Any price effect must be manifested in a pattern of consistent price differences between foreign-market sales used for comparison and foreign-market sales at the level of trade of the export transaction. To quantify the price differences, we calculated the difference in the average of the net prices of the same models sold at different levels of trade. We used the average difference in net prices to adjust normal value when normal value is based on a level of trade different from that of the export sale. If there was a pattern of no price differences, the differences in levels of trade did not have a price effect and, therefore, no adjustment was necessary.

We were able to quantify such price differences and make a level-of-trade adjustment for certain comparisons involving EP sales, in accordance with section 773(a)(7)(A). For such sales, the same level of trade as that of the U.S. sales existed in the comparison market but we could only match the U.S. sale to comparison-market sales at a different level of trade because there were no usable sales of the foreign like product at the same level of trade. Therefore, we determined whether there was a pattern of consistent price differences between these different levels of trade in the home market. We made this determination by comparing, for each model sold at both levels, the average net price of sales made in the ordinary course of trade at the two levels of trade. If the average prices were higher at one of the levels of trade for a preponderance of the models, we considered this to demonstrate a pattern of consistent price differences. We also considered whether the average prices were higher at one of the levels of trade for a preponderance of sales, based on the quantities of each model sold, in making this determination. We applied the average percentage difference to the adjusted normal value as the level-of-trade adjustment.

We were unable to quantify price differences in other instances involving comparisons of sales made at different levels of trade. First, with respect to CEP sales, the same level of trade as that of the CEP for merchandise under review did not exist in the comparison market for any respondent except NMB/Pelmec. We also did not find the same level of trade in the comparison market for some EP sales of merchandise under review. Therefore, for comparisons involving these sales, we could not determine whether there was a pattern of consistent price differences between the levels of trade based on respondents' home market sales of merchandise under review.

In such cases, we looked to alternative sources of information in accordance with the SAA. The SAA provides that ''if information on the same product and company is not available, the level-of-trade adjustment may also be based on sales of other products by the same company. In the absence of any sales, including those in recent time periods, to different levels of trade by the exporter or producer under investigation, Commerce may further consider the selling experience of other producers in the foreign market for the same product or other products.'' *See* SAA at 830. Accordingly, where necessary, we attempted to examine the alternative methods for calculating a level-of-trade adjustment. In these reviews, however, we did not have information that would allow us to apply these alternative methods for companies that, unlike NMB/Pelmec, did not have a home-market level of trade equivalent to the level of the CEP.

The only company for which we made a level-of-trade adjustment for CEP sales in these final results was NMB/Pelmec. However, we concluded that it would be inappropriate to apply the level-of-trade adjustment we calculated for NMB/Pelmec to any of the other respondents. Because no respondent reported sales in the same market as NMB/Pelmec (*i.e.*, Singapore), we have not used NMB/Pelmec's data as the basis of a level-of-trade adjustment for any other respondents.

In those situations where the U.S. sales were EP sales and we were unable to quantify a level-of-trade adjustment based on a pattern of consistent price differences, the statute requires no further adjustments. However, with respect to CEP sales for which we were unable to quantify a level-of-trade adjustment, we granted a CEP offset where the home-market sales were at a more advanced level of trade than the sales to the United States, in accordance with section 773(a)(7)(B) of the Act.

Comment 1: NSK argues that the Department should make a level-of-trade adjustment when CEP sales are matched to home-market aftermarket sales. NSK contends that the Department can make a level-of-trade adjustment on the basis of the difference between the OEM and aftermarket levels of trade in the home market. NSK asserts that, although the home-market OEM sales and the level of CEP sales are not equivalent, the Department is not required to adjust for the entire amount of the difference between levels of trade when making a level-of-trade adjustment and could make a partial adjustment instead. NSK contends that the level of home-market OEM sales is closer to the level of CEP sales than is the level of home-market aftermarket sales because the prices for home-market OEM sales are lower than the prices for home-market aftermarket sales. NSK asserts that it would be appropriate, therefore, to adjust normal value with a level-of-trade adjustment based on the difference between the home-market levels of trade whenever CEP sales are compared to home-market aftermarket sales.

Torrington states that the Department's approach to level-of-trade adjustments and CEP offsets is extraordinarily complex. Torrington contends that NSK's arguments are incomplete and fail to address the

complexities of the Department's approach. For example, Torrington argues, NSK fails to describe how the statutory language at section 773(7)(A) ''partly due to'' is quantifiable when customer categories define level of trade. Torrington states that the fact that the CEP level of trade is ''closer to the factory'' than any other home-market level of trade is not in itself a controlling factor for purposes of quantifying an adjustment.

Department's Position: We disagree with NSK. We may make level-of-trade adjustments when there is ''any difference... between the export price or constructed export price and the normal value that is shown to be wholly or partly due to a difference in the level of trade between the export price or the constructed export price and normal value.'' *See* section 773(a)(7)(A) of the Act. We find no explicit authority to make a level-of-trade adjustment between two home-market levels of trade where neither level is equivalent to the level of the U.S. sale. *See AFBs 7.*

Comment 2: The petitioner alleges that, based on the record, there are considerable differences in the selling functions NSK and SKF Italy perform for EP and home-market OEM customers and thus, home-market OEM sales are not equivalent to EP OEM sales. Therefore, Torrington concludes, because there is no home-market level of trade equivalent to the level of EP sales, there is no basis for making a level-of-trade adjustment to normal value for EP OEM sales when the comparison sales were made to aftermarket customers.

NSK contends that, although there are some differences in selling functions between the home-market OEM level of trade and the level of the EP OEM sales, these two levels of trade are equivalent because many of the selling functions are the same. More importantly, NSK asserts, the purpose of defining levels of trade is to determine which customers are at the same marketing stage. In this case, NSK asserts, both home-market sales and EP OEM sales are sold directly to customers for OEM consumption. NSK contends that the fact that there are some differences does not alone demonstrate that the two levels of trade are not equivalent.

SKF Italy counters that Torrington has misconstrued or incorrectly analyzed and compared data regarding U.S. and home-market levels of trade in its response. SKF Italy affirms that it provided thorough, accurate, and accordant information on the levels of trade in the two markets that supports their being considered comparable.

Department's Position: We disagree with Torrington. As we stated in *AFBs 7* at 54055, ''differences in selling functions, even substantial ones, are not alone sufficient to establish a difference in the level of trade.'' We have reviewed the records in these reviews and found that the differences in selling functions between the home-market and the EP OEM levels of trade are not great. Some of the differences Torrington describes appear to be small differences in the level of intensity of the selling function. For some other functions, the record indicates that a minimal level of the function is performed at one level and not at the other level. While there are a few individual selling functions that vary substantially, we determine that these functions, by themselves, do not offset many similarities of the selling functions both respondents performed at the two levels of trade. *See* Level-of-Trade Memorandum from Robin Gray and Richard Rimlinger to Laurie Parkhill dated January 26, 1998.

Furthermore, while customer categories alone are also insufficient in themselves to establish that there is a difference in the levels of trade, they provide useful information in the identification of such differences. In this case, given the fact that the customer categories of the home-market and EP OEM levels of trade are identical, the fact that there is a qualitatively minimal difference in selling functions between the levels of trade does not persuade us that they are distinct. For these reasons, we conclude that the home-market and EP OEM levels of trade are equivalent.

Therefore, because we determined that there were two levels of trade in both home markets (*see* Level-of-Trade Memorandum from Robin Gray and Richard Rimlinger to Laurie Parkhill dated January 26, 1998), we have made our comparisons and a level-of-trade adjustment, as appropriate.

Comment 3: Koyo contends that the Department's practice with regard to level of trade effectively precludes a level-of-trade adjustment to normal value for CEP sales and is thus contrary to law and the intent of Congress.

Koyo asserts that it and other respondents have proposed alternative methods by which the Department could construct an appropriate home-market level of trade by deducting from normal value those expenses which correspond to the expenses the Department deducts from CEP, but that the Department has failed to provide a reasonable explanation for rejecting the proposals.

Torrington agrees with the Department's rejection of Koyo's proposal to use a ''constructed normal value'' to calculate a level-of-trade adjustment. Torrington maintains that the Department has responded to Koyo's argument in detail in *AFBs 6* and *AFBs 7.*

Department's Position: We disagree with Koyo that we should adopt alternative methods by which to construct home-market levels of trade. We base home-market levels of trade on the respondent's actual experience in the home market. The statute is clear that ''...the amount of the adjustment shall be based on the price differences between the two levels of trade in the country in which normal value is determined.'' (*See* 773(a)(7)(A)). Therefore, we have not used Koyo's claimed constructed home-market levels of trade in order to calculate a level-of-trade adjustment for Koyo's CEP-sales comparisons. *See AFBs 6* at 2081 and *AFBs 7* at 54043.

Comment 4: NTN states that the Department should use the transaction to the first unaffiliated customer in the United States to determine the level-of-trade adjustment. NTN suggests that, based on this transaction, NTN satisfies the statutory requirements for an adjustment. Finally, NTN states that the methodology the Department used in the preliminary results would effectively bar an entire class of sales, CEP transactions, from ever being granted a price-based level-of-trade adjustment.

While Torrington acknowledges that it once espoused this same position, it acquiesces to the Department's past decisions on this issue and believes the current approach is now well established and should not be changed. Finally, Torrington states that, since the statute is unclear on this matter, the Department needs only to construct a reasonable methodology, which it has done.

Department's Position: We disagree with NTN. The statutory definition of ''constructed export price'' contained at section 772(d) of the Act indicates clearly that we are to base CEP on the U.S. resale price adjusted for selling expenses and profit. As such, the CEP reflects a price exclusive of all selling expenses and profit associated with economic activities occurring in the United States. *See* SAA at 823. These adjustments are necessary in order to arrive at, as the term CEP makes clear, a ''constructed'' export price. The adjustments we make to the starting price, specifically those made pursuant to section 772(d) of the Act (''Additional Adjustments for Constructed Export Price''), normally change the level of trade. Accordingly, we must determine the level of trade of CEP sales exclusive

of the expenses (and concomitant selling functions) that we deduct pursuant to this sub-section. Therefore, because no home-market levels of trade NTN reported were equivalent to the level of trade of its CEP sales, we were unable to make a level-of-trade adjustment for such sales. *See* Level-of-Trade Memorandum from Robin Gray and Richard Rimlinger to Laurie Parkhill dated January 26, 1998.

4. Cost of Production and Constructed Value

4.A. *Cost-Test Methodology.* On January 8, 1998, the Court of Appeals for the Federal Circuit issued a decision in *CEMEX* v. *United States,* 133 F.3d 897 (CAFC 1998) (*CEMEX*). In that case, based on the pre-URAA version of the Act, the Court discussed the appropriateness of using CV as the basis for foreign market value when the Department finds home-market sales to be outside the ''ordinary course of trade.'' The URAA amended the definition of sales outside the ''ordinary course of trade'' to include sales below cost. *See* section 771(15) of the Act. In our preliminary results, we invited parties to comment on this issue and various parties have provided comments.

Comment 1: Torrington argues that the Department should attempt to match U.S. sales to comparison-market sales of similar models before resorting to CV when comparison-market sales of identical models are excluded from the home-market sales database because they failed the cost test. Torrington asserts that the CAFC's decision in *CEMEX* requires the Department to do this whenever comparison-market sales of identical models are outside the ordinary course of trade or otherwise do not exist. Koyo does not disagree with the position stated by Torrington regarding the impact of the *CEMEX* decision.

NSK argues that the *CEMEX* decision does not provide a basis for the Department to change its practice of resorting to CV when comparison-market sales of identical models are excluded from the home-market sales database because they failed the cost test. NSK contends that *Federal-Mogul Corp.* v. *United States,* 918 F. Supp. 386, 396–397 (CIT 1996) (*Federal-Mogul 1*), supports this methodology. NSK asserts that, in *CEMEX,* the CAFC was faced with sales that were outside the ordinary course of trade under the statute as it existed prior to its amendment pursuant to the URAA. NSK explains that, under the pre-URAA law, below-cost sales were not considered outside the ordinary course of trade. NSK argues that it is incumbent upon the Department to demonstrate how the URAA amendments require a change in the practice endorsed by *Federal-Mogul 1.* NSK contends that the statute, at section 773(b), provides that the Department shall base normal value upon CV when all sales of the foreign like product are excluded because they have failed the below-cost test. NSK also asserts that the SAA supports this interpretation by indicating that the only change from the Department's practice prior to the URAA was to eliminate the ten-percent floor for using above-cost sales of a particular model and that, to the extent that the Department perceives any conflict between sections 773(b)(1) and 771(15), the express language of the former must control the general language of the latter. NSK contends further that the SAA confirms that sales below cost are a special, separate category of non-ordinary-course-of-trade sales to which *CEMEX* can not be applied.

NTN states that the *CEMEX* decision should have no impact on the current reviews because it did not address the issue of below-cost sales. NTN asserts further that the CAFC made no mention of section 773(b)(1) of the Act which requires the Department to use CV when it has disregarded below-cost sales from the calculation of normal value. In conclusion, NTN contends that, based on the aforementioned section of the law, if all sales of identical merchandise are found to have been sold below cost, as is the case in the current reviews, no sales of like product remain in the ordinary course of trade and the Department should base normal value on CV.

SKF France, SKF Germany, and SKF Italy contend that the Department should adhere to the policy set forth in the *CEMEX* decision and, as such, should resort to finding similar merchandise as a basis for determining normal value rather than CV in instances where normal value can not be based on identical merchandise in the home market.

Department's Position: The Department has reconsidered its practice as a result of the *CEMEX* decision and has determined that it would be inappropriate to resort directly to CV as the basis for normal value if the Department finds sales of the most similar merchandise to be outside the ''ordinary course of trade.'' Instead, the Department will use sales of other similar merchandise, if such sales exist. The Department will use CV as the basis for normal value only when there are no above-cost sales of a foreign like product that are otherwise suitable for comparison.

In response to NSK's comments, the Court stated in *CEMEX* that ''[t]he language of the statute requires Commerce to base foreign market value on nonidentical but similar merchandise * * *, rather than constructed value when sales of identical merchandise have been found to be outside the ordinary course of trade.'' *See CEMEX* at 904. There was no cost test in *CEMEX* and *CEMEX* was under the pre-URAA statute. However, under the URAA, below-cost sales in substantial quantities and within an extended period of time are outside the ordinary course of trade and we disregard them from consideration. Therefore, in order to be consistent with *CEMEX* for these final results, when making comparisons in accordance with section 771(16) of the Act, we considered all products sold in the home market that were comparable to merchandise within the scope of each order and which were sold in the ordinary course of trade for purposes of determining appropriate product comparisons to U.S. sales. Where there were no sales of identical merchandise in the home market made in the ordinary course of trade to compare to U.S. sales, we compared U.S. sales to sales of the most similar foreign like product made in the ordinary course of trade. Only where there where no sales of foreign like product in the ordinary course of trade did we resort to CV.

Comment 2: Barden argues that the Department does not have the authority to conduct a sales-below-cost test with respect to Barden because the Department can not use the results of a prior below-cost investigation which the Department has acknowledged was unlawful to conclude that it has ''reasonable grounds to believe or suspect'' that sales in the home market have been made below COP in these reviews. As such, Barden requests that the Department restore all disregarded home-market sales and recalculate the margin accordingly.

Torrington disagrees with Barden and asserts that the Department acted correctly by using COP data Barden submitted both to test whether home-market sales were above COP and to calculate profit for CV on the basis of above-cost sales. Torrington claims further that the Department is entitled to use COP data voluntarily placed on the record and, therefore, a respondent may not submit data voluntarily and then insist that the Department can not use it. Torrington claims that Barden does not argue that its COP data can not be used because it is in error, unreliable, or

incomplete. As such, the petitioner believes that section 773(b) of the Act authorizes the Department to consider and use the COP data submitted, both to test home-market prices and to calculate CV profit.

Department's Position: We have reconsidered the original decision to initiate a below-cost investigation for Barden in this review. In *FAG (U.K.) Ltd.* v. *United States,* Consol. Court No. 97–01–00063–SI *(FAG–U.K.),* reviewing the results of *AFBs 5,* the Department has acknowledged that, ''prior to conducting the test, Commerce had no reasonable belief that Barden's ball bearings were sold at below cost.'' Therefore, we conceded that we had applied the below-cost test to Barden in the 1993–1994 administrative review unlawfully, and, accordingly, we have requested a partial remand to rescind the COP investigation for that POR. Since our initiation of cost investigations in subsequent reviews were based on the results of our below-cost test in the 1993–1994 administrative reviews, we have concluded that our initiation of cost investigations in the current administrative reviews was unjustified. However, since the petitioner was precluded from filing cost allegations prior to the 120-day deadline due to our earlier decision to initiate these cost investigations, we allowed the petitioner to file cost allegations after our normal deadline. *See* the Department's letter dated April 2, 1998. We have now accepted Torrington's April 13, 1998 cost allegation and have performed a below-cost test of Barden's home-market sales for these final results. *See* Cost-Allegation Memorandum, dated May 1, 1998.

Comment 3: SKF France argues that the Department conducted a below-cost test of home-market sales for its SPB transactions improperly. SKF France notes that the Department has never initiated a test of sales below cost for SPBs. SKF France also contends that the Department should not use its reported costs in the calculation of profit for CV. SKF France contends that the data should only be used to test its reported variable costs of manufacture.

Torrington counters that the Department should continue to use SKF France's reported cost data. The petitioner states that the CIT has affirmed the Department's authority under the statute to consider and use submitted cost data both to test home-market prices and to calculate CV profit, citing *NSK Ltd.* v. *United States,* 969 F. Supp. 34 (1997).

Department's Position: We agree with SKF France that we were incorrect in conducting a test to determine whether it made home-market sales of SPBs below COP. We stated in *FAG U.K.* (*see* our response to Comment 2 above) that it is improper to examine whether sales are being made below COP unless we have received an allegation to substantiate such an examination or have disregarded below-cost sales in the most recent segment of the proceeding. Since we did not receive such an allegation in this review and have not disregarded below-cost sales in prior reviews, we have not conducted a below-cost test of SKF France's sales of home-market SPBs for these final results. We disagree with SKF France, however, that we should not use reported costs to determine profit for CV. Although we have flexibility to use alternate methods to determine profit for CV, our stated preference is to calculate profit on the sales of the foreign like product. Therefore, since SKF France submitted such data voluntarily, we have continued to use SKF France's reported costs for the calculation of CV profit of SPBs for these final results.

4.B. *Profit for Constructed Value.* Subparagraph (A) of section 773(e)(2) of the Act sets forth the preferred method for determining the amount of profit to be included in CV, and subparagraph (B) of the same section sets forth three alternative CV-profit calculation methods for use when the actual data are not available with respect to the amounts described in subparagraph (A). For all respondents, except Torrington Nadellager, in the preliminary results of these administrative reviews we calculated CV profit in accordance with the preferred method set forth under section 773(e)(2)(A) of the Act. For Torrington Nadellager, we calculated CV profit using the alternative methodology set forth under section 773(e)(2)(B)(iii).

Comment 1: FAG Italy and Barden argue that the Department has not calculated CV profit as required by section 773(e)(2)(A) of the Act since the actual calculations encompass multiple foreign like products, *i.e.,* all AFB models within the order-specific subject merchandise that were reported in the foreign-market sales databases as potential matches to U.S. sales. The respondents assert that, if the Department is going to calculate CV profit based on multiple foreign like products, it must perform the calculation in accordance with one of the three alternative methodologies set forth in section 773(e)(2)(B) of the Act.

The respondents assert that section 773(e)(2)(B)(i) of the Act provides for a CV-profit calculation methodology that is, for the most part, similar to the one the Department used. However, the respondents claim that, unlike the Department's methodology, section 773(e)(2)(B)(i) does not specifically limit the calculation of CV profit to sales in the ordinary course of trade. The respondents suggest that, since sections 773(e)(2)(A) and (2)(B)(ii) of the Act contain specific language to limit the CV-profit calculation to sales in the ordinary course of trade, the Department should interpret the lack of specificity under section (2)(b)(i) as not requiring such a limitation. As support for this position, the respondents cite to *The Ad Hoc Committee of AZ–NM–TX–FL Producers of Gray Portland Cement* v. *United States,* 12 F.3d 398, 401 (CAFC 1994) (*Portland Cement*), in which the Court stated that ''(w)here Congress has included specific language in one section of the statute but has omitted it from another, related section of the same Act, it is generally assumed that Congress intended the omission.''

Torrington asserts that the Department has calculated CV profit in accordance with section 773(e)(2)(A) of the Act. Torrington contends that it is not necessary therefore to use one of the alternative CV-profit calculation methodologies as suggested by the respondents.

Department's Position: We agree with Torrington. As we stated in *AFBs 7* at 54062, we believe that an aggregate calculation that encompasses all foreign like products under consideration for normal value represents a reasonable interpretation of section 773(e)(2)(A) of the Act. Moreover, we believe that, in applying the preferred method for computing CV profit under section 773(e)(2)(A) of the Act, the use of aggregate data results in a reasonable and practical measure of profit that we can apply consistently in each case. By contrast, a method based on varied groupings of foreign like products, each defined by a minimum set of matching criteria shared with a particular model of the subject merchandise, would add an additional layer of complexity and uncertainty to antidumping duty proceedings without necessarily generating more accurate results. It would also make the statutorily preferred CV-profit method inapplicable to most cases involving CV. *See* the preamble to our new regulations at section 351.405.

As noted above, we believe that our calculation of CV profit is in accordance with section 773(e)(2)(A) of the Act and, therefore, we disagree with respondents' assertion that our methodology for calculating CV profit is most similar to the first alternative methodology

described under section 773(e)(2)(B)(i) of the Act. However, we agree with the respondents' assertion that we should interpret the lack of a specific reference to sales in the ordinary course of trade under section 773(e)(2)(B)(i) of the Act as requiring that we not limit the CV-profit calculation under this method to sales in the ordinary course of trade. We addressed this issue in the preamble of our new regulations (*see* section 351.405), stating that, ''(w)ith respect to the other alternative profit methods authorized by section 773(e)(2)(B), the Department believes that the absence of any ordinary course of trade restrictions under the first alternative (subsection (i)) is a clear indication that the Department normally should calculate profit under this method on the basis of all home-market sales, without regard to whether such sales were made at below-cost prices.'' Therefore, for these final results we have used all sales under consideration for normal value and in the ordinary course of trade as the basis for calculating CV profit.

Comment 2: NSK argues that the Department must calculate CV profit on a model-specific or family-specific basis. Acknowledging that in prior segments of these proceedings the Department rejected arguments in support of such a methodology, NSK suggests that the issue be revisited in light of the recent CAFC decision in *CEMEX*. NSK suggests that the Department's calculation of CV profit based on the aggregation of data that encompasses all foreign like products under consideration for normal value is unlawful in light of the statutory requirement that the calculation of CV profit be limited to actual amounts for a ''foreign like product'' (NSK claims that a foreign like product as defined by section 771(16) of the Act is a category of merchandise that is narrower than the pre-URAA class-or-kind definition). In conclusion, NSK suggests that its proposed methodology for the calculation of CV profit would improve the accuracy of the margin calculations by more closely approximating price-to-price comparisons.

Torrington disagrees with NSK and asserts that the justification the Department provided for using this methodology in the last segment of these proceedings is still valid. Torrington suggests that the Department's interpretation of section 773(e)(2)(A) is reasonable on the basis that the law did not specify how the term ''foreign like product'' is to be applied in the context of calculating CV profit. Torrington contends that there is no reason that the term ''foreign like product'' can not have different applications for different purposes in the same statute. Noting that section 773(e)(2)(A) of the Act is the preferred method for calculating profit, Torrington asserts that NSK's narrow reading of the statute would render the ''preferred'' method useless in most situations involving CV. Furthermore, Torrington asserts that the Department could never apply the alternative CV-profit calculation methodology in section 773(e)(2)(B)(ii) of the Act if it were to adopt NSK's reading of the statute. Finally, Torrington argues that NSK's reliance on the Court's decision in *CEMEX* is misplaced because the decision dealt with a different issue.

Department's Position: We disagree with NSK for the reasons we stated in *AFBs 7* at 54062 and our response above to Comment 1 of this section. Therefore, we have not changed our CV-profit calculation methodology for the final results of these reviews. Regarding NSK's assertion that we should re-examine the issue in light of the CAFC's recent decision in *CEMEX*, we agree with Torrington that NSK's reliance on that decision is misplaced. The Court's decision in *CEMEX* dealt with how to determine foreign market value when there were home-market sales which were outside the ordinary course of trade. *See* our response to Comment 1 of section 4.A. above.

Comment 3: SNFA U.K. argues that, using its ten-transaction home-market sales listing to calculate CV profit is improper (the ten transactions comprise sales of models that are potential identical or similar matches to those models of subject merchandise sold to the United States during the POR). SNFA U.K. claims that the ten transactions account for a small percentage of its total home-market sales of BBs during the POR. The respondent asserts that relying on this limited reporting to calculate profit for CV does not yield a fair and representative result and ignores the economic reality of SNFA U.K.'s actual overall profit experience. The respondent asserts further that the average profit for one bearing model drives the profit rate for the entire limited database. SNFA U.K. argues that such a result is contrary to the Department's policy, noting that the Department stated in the preamble to its new regulations at section 351.405 that ''the sales used as the basis for CV profit should not lead to irrational and unrepresentative results.''

SNFA U.K. asserts that, in recent cases, the Department has resorted to more accurate data submitted on the record. SNFA U.K. cites *Certain Stainless Steel Wire Rods From France: Final Results of Administrative Review*, 62 FR 7206 (February 18, 1997) *(Certain Stainless Steel Wire Rods)*, and *Certain Hot-Rolled Lead and Bismuth Carbon Steel Products from the United Kingdom: Final Results of Antidumping Administrative Review*, 61 FR 56514 at 56514 (November 1, 1996) *(Lead and Bismuth Carbon Steel Products)* to support its argument.

SNFA U.K. contends that the CIT and CAFC have rejected the use of data that leads to clearly anomalous and unrepresentative results. To support this, SNFA U.K. cites *CEMEX*, at 901, stating that the Court upheld the Department's exclusion of certain sales in the calculation of CV profit because the (much lower) profit level of these sales indicated that they were distortive and outside the ordinary course of trade. SNFA U.K. asserts that what is most important is that the Court stated that ''these sales represent a minuscule percentage of CEMEX's total sales of cement, a fact that indicates that they were not in the ordinary course of trade'' (id). SNFA U.K. also cites *Fabrique de fer de Charleroi S.A.* v. *United States, et al.*, 1998 CIT Lexis 53, Slip Op. 98–4 (CIT 1998) (*Fabrique*), in which the Court directed that unusually high-priced sales be excluded from the calculation of CV profit where the sales were ''but a fraction of sales'' made in the home market and led to unrepresentative results. (*Id.* at * 13.)

Finally, SNFA U.K. argues that section 771(16)(A) of the Act defines ''foreign like product'' as ''subject merchandise *and* other merchandise which is identical in physical characteristics with * * * that [subject] merchandise'' (emphasis added). Citing section 771(25) of the Act, SNFA U.K. continues that subject merchandise is in turn defined as ''the class or kind of merchandise that is within the scope of an investigation.'' SNFA U.K. asserts that the Department's June 20, 1997, AFBs questionnaire (at Appendix I–7) supports this definition and contends that the Department itself has held in other cases that ''(f)or purposes of calculating CV and CEP profit, we interpret the term ''foreign like product'' to be inclusive of all merchandise sold in the home market which is in the same general class or kind or merchandise as that under consideration,'' citing *Final Determination of Sales at Less than Fair Value: Large Newspaper Printing Presses and Components Thereof, Whether Assembled or Unassembled, from Japan*, 61 FR 38139, 38145–38147 (July 23, 1996).

SNFA U.K. requests that the Department use the profit rate that it calculated and submitted in its

questionnaire response which is based on audited financial data for home-market sales of subject merchandise. SNFA U.K. contends that its profit calculation is supported under section 773(e)(2)(A) of the Act.

Torrington argues that the fact that the home-market transactions used to calculate CV profit involve sales of high-tech merchandise does not render the profit unrepresentative but, rather, duly reflects the nature of SNFA U.K. as a producer of high-tech bearings. Torrington points out that, in *AFBs 6* at 2114, the Department rejected a similar argument by FAG Germany and FAG Italy on the basis that nothing in the statute or SAA required the Department either to identify bearings with equivalent commercial values or to limit the profit levels observed on home-market sales. Therefore, Torrington concludes, the Department should not modify its calculation of CV profit in this case.

Department's Position: We agree with Torrington and, consistent with our practice in these proceedings, have continued to calculate CV profit using all foreign-like products under consideration for normal value, which is in accordance with the preferred methodology set forth under section 773(e)(2)(A) of the Act. *See* our response to Comment 1 of this section.

First, we do not find the respondent's submitted profit information to be an appropriate basis for determining CV profit. Although the respondent calculated and reported an alternative profit rate in its questionnaire response, it did not explain why it was providing this information at the time of submission or at any time during which additional factual information could reasonably be sought. It was not until the submission of its case brief that SNFA U.K. took issue with our usual practice for calculating CV profit and proposed using its alternative profit rate. By waiting until this late date in these reviews to claim that we should use SNFA U.K.'s alternative data, SNFA U.K. precluded our ability to seek additional information about its claimed profit rate. In particular, we did not have an opportunity to obtain necessary record evidence to establish the accuracy of the alternative profit rate (*e.g., a* reconciliation of the alternative profit rate with SNFA U.K.''s audited financial statements). Because we did not have an opportunity to obtain necessary record evidence regarding SNFA U.K.'s alternative profit rate, we can not consider using this information.

Furthermore, we disagree with SNFA U.K. that our CV-profit calculation is improper. In support of its argument, SNFA U.K. cites to the preamble of our new regulations where we stated that ''the sales used as the basis for CV profit should not lead to irrational and unrepresentative results.'' *See* preamble at section 351.405. This is an accurate statement of our policy, even before the adoption of these regulations. However, in deciding whether certain sales used as the basis for CV profit lead to irrational and unrepresentative results, we must consider the specific facts and circumstances surrounding the transactions. Furthermore, this is an issue that must be examined on a case-by-case basis, and the burden of showing that certain profits earned are ''abnormal,'' or otherwise unusable as the basis for CV profit, rests with the party making the claim. *See* preamble at section 351.405. Proof that the profits a respondent earned on specific sales are abnormal will depend on a number of factors. These factors include the type of merchandise under investigation or review and the normal business practices of the respondent and of the industry in which the merchandise is sold. In this respect, SNFA U.K. argues that it reported a few home-market sales which consist of some specialty, high-priced bearings that are rarely sold in the home market, but SNFA U.K. has not claimed that certain transactions in the home-market sales listing are outside the ordinary course of trade. Based on our analysis of the home-market sales listing and other information on the record, it appears that all of the reported models have a relatively high profit margin and that these high-profit home-market sales (reported by SNFA U.K. as potential identical or similar matches to those models of subject merchandise sold to the United States during the POR) meet the requirements for calculating CV profit in accordance with the preferred methodology set forth under section 773(e)(2)(A) of the Act.

In the respective final determinations for *Certain Stainless Steel Wire Rods* and *Lead and Bismuth Carbon Steel Products,* we acknowledged that, in the respective preliminary results, we had erred in each case by calculating the profit ratio multiplied by COP to derive CV profit. Initially, we calculated the profit ratio by computing a profit percentage for each home-market sales transaction and then weight-averaged the percentages by quantity. We later revised our calculation to derive the profit ratio by dividing total home-market profit by total home-market costs which is consistent with our normal methodology. However, this recalculation was not a result of too few home-market sales transactions or, as suggested by respondents, a ''micro-calculation'' which caused serious distortion in the profit rate. In fact, we derived the profit ratio for SNFA U.K. in the same way we derived the corrected profit ratio in the cases cited above by dividing the total home-market profit by total home-market costs.

In *CEMEX,* the CAFC supported the Department's decision to exclude certain types of cement sold in the home market from the margin calculations because there was substantial evidence on the record to support that the sales were outside the ordinary course of trade. The substantial evidence upon which we relied was that (1) the sales represented a minuscule percentage of total home-market sales, (2) shipping arrangements departed significantly from the standard industry practice in the home market which resulted in a significantly low profit margin, and (3) the sales were of a promotional quality which differentiated them from other products. *See CEMEX* at 133 F.3d at 901. With respect to SNFA U.K., again, the respondent did not provide substantial evidence on the record for the Department to determine whether sales of any of the models that SNFA U.K. claims were designed for special use were outside the ordinary course of trade. Furthermore, sales of these specially designed bearings do not represent a minuscule percentage of the total home-market sales reported in SNFA U.K.'s sales listing. In fact, these so-called specialty bearings account for most of SNFA U.K.'s reported home-market sales. At any rate, the simple fact that these products represent a small portion of total home-market sales alone does not render the sales outside the ordinary course of trade. In *CEMEX*, the Court cited *Murata Mfg. Co.* v. *United States,* 820 F. Supp. 603, 607 (CIT 1993), and stated that the Department must evaluate not just ''one factor taken in isolation but rather * * * all the circumstances particular to the sales in question.'' Here, after evaluating all the circumstances particular to the sales in question, we do not find that the transactions are outside the ordinary course of trade.

Finally, we do not find SNFA U.K's reliance on *Fabrique* persuasive. While in *Fabrique* the CIT found that the inclusion of profit on certain home-market sales for the calculation of CV profit extrapolated the average profit ''out of realistic and rational proportion'' (*Fabrique* at *16), we believe the facts of that case differ significantly from the present case. In *Fabrique,* the CV-profit calculation was affected by home-market sales of ''Z-

type product,'' a type of merchandise that the respondent did not sell in the United States. *Id.* at * 3–4. In the present case, SNFA U.K. is objecting to the inclusion in the CV-profit calculation of the home-market sales of merchandise it reported as potential identical or similar to matches to merchandise it sold in the United States. For this reason, we do not find *Fabrique* to be persuasive.

We note that the cases SNFA U.K. cites are pre-URRA cases in which profit was required to be calculated on the general class or kind of merchandise sold in the country of exportation. Under the new law, we are directed to calculate, where possible, profit in connection with the production and sale of the foreign like product made in the ordinary course of trade. In other new-law cases, we have interpreted this to mean the specific products reported for use as normal value for purposes of the CV-profit calculation. We discussed this in *AFBs 7* at 54062 and in our response to Comment 1 of this section. Therefore, our calculation of SNFA U.K.'s profit based on its reported sales is consistent with our past practice. Since SNFA U.K. has not demonstrated that its high-profit sales were outside the ordinary course of trade, we have continued to use them in our profit calculation for CV.

Comment 4: Barden argues that, in the absence of a valid sales-below-cost investigation (*see* Comment 2 of Section 4.A. above), the Department should deem all of its home-market sales as sold in the ordinary course of trade and, therefore, use all of the transactions to calculate CV profit.

Torrington disagrees with the Barden. Torrington contends that the Department was correct to eliminate sales below cost from the home-market sales database before calculating CV profit.

Department's Position: As we noted in our response to Comment 2 of Section 4.A. above, for the current segment of the proceedings we believe that we are justified in performing a sales-below-cost examination of Barden's reported home-market sales. Therefore, for the final results of reviews, in calculating the Barden's CV profit, we have continued to eliminate home-market sales that we disregarded because they were sold at below-cost prices and thus, not in the ordinary course of trade. This CV-profit calculation methodology is in accordance with the preferred method set forth under section 773(e)(2)(A) of the Act.

Comment 5: Citing to the CAFC's ruling in *CEMEX*, Barden argues that sales with abnormally high profits, or sales in small quantities, must be excluded from the calculation of CV profit on the basis that such transactions are outside the ordinary course of trade. Barden notes that the CAFC upheld the Department's decision to exclude from the calculation of CV profit two types of cement products on the basis that the ''profit margin on these types was significantly lower than * * * profits on other cement types,'' citing *CEMEX* at 901. Regarding sales in small quantities, Barden asserts that in *CEMEX* and in the CIT's ruling in *Mantex* v. *United States*, 841 F. Supp. 1290, 1307–08 (CIT 1993) (*Mantex*), the courts observed that a low volume of sales of certain products being examined demonstrates that such transactions are outside the ordinary course of trade.

In light of the above court rulings, Barden suggests that for the final results the Department perform a special analysis of profit and sales volume of transactions in the home-market database to determine whether certain sales fall outside a mean profit/quantity amount and thus outside the ordinary course of trade.

Torrington does not agree with Barden's argument that high-profit sales should be excluded from the calculation of CV profit. Torrington notes that, in *AFBs 7* at 54065, the Department rejected similar arguments in which the respondents claimed that section 773(a)(1)(B) of the Act and the Department's new regulations at 351.102(b) require that sales with abnormally high profits be treated as outside the ordinary course of trade. Torrington asserts that the ruling in *CEMEX* is different from the issue at hand here because the Department found ''unique or unusual characteristics,'' apart from differences in profit margins, which rendered the sales outside the ordinary course of trade. Torrington contends that, since there is no such evidence in this case, no modification should be made for the final results.

Department's Position: We disagree with Barden. First, we believe that the circumstances surrounding the CAFC's ruling in *CEMEX* are different from the circumstances here. As Torrington notes, in *CEMEX* we found ''unique or unusual characteristics,'' apart from differences in profit margins, that rendered the sales outside the ordinary course of trade. These characteristics include sales in a niche market and shipping arrangements that differ significantly from standard industry practice. Here, we find that there is not substantial evidence on the record to justify such a determination.

Rather than supporting its argument by citing to record evidence or presenting an analysis based on its reported home-market sales, Barden merely claims that sales with abnormally high profits or sales in small quantities should be found to be outside the ordinary course of trade. Barden attempts to place the burden of substantiating its arguments upon the Department, suggesting that the Department must develop special tests regarding profit and sales volume on the reported home-market sales transactions in order to determine whether such sales are outside the ordinary course of trade. Implementing such a suggestion would cause unnecessary delays in these reviews and impose an inappropriate burden upon the Department. As we stated in the preamble of the new regulations at section 351.405 (page 27358), the burden of showing that profits earned on above-cost sales are abnormal (or otherwise unusable as the basis for CV profit) rests with the party making the claim. If Barden wanted particular sales to be disregarded in the calculation of CV profit, it bore the burden of providing substantial record evidence and analysis to justify excluding those sales. Barden has not met that burden.

We also disagree with Barden's assertion that the courts' rulings in *CEMEX* and *Mantex* support a determination, here, that certain sales in small quantities should be excluded from the calculation of CV profit on the basis that such transactions are outside the ordinary course of trade. As noted above, the burden of establishing that a particular sale (or grouping of sales) is outside the ordinary course of trade rests on the party making the claim. Barden has not provided evidence to substantiate its claim that the sales in question are outside the ordinary course of trade.

Accordingly, we have not altered our calculation of Barden's CV profit for the final results of these administrative reviews.

4. C. *Affiliated-Party Inputs.*

Comment: The petitioner argues that the Department should use the higher of transfer price or actual costs for all NTN affiliated-party inputs. Specifically, the petitioner states that, pursuant to section 773(f)(2) of the Act, the Department should reject NTN's transfer values not meeting the arm's-length test, just as the Department did in *AFBs 7* (at 54065). Torrington makes the additional argument that, due to the circumstances involved (*see* proprietary case brief dated March 16, 1998), the Department should apply facts available in

accordance with the same methodology used in seventh review.

NTN contends that the Department should accept NTN's reported transfer prices for affiliated-party inputs because they reflect market values accurately and that use of facts available is not appropriate. NTN states that it realizes that sections 773(f)(2) and (3) of the Act instruct the Department to disregard certain affiliated-party transactions. However, the respondent emphasizes that these provisions do not apply to the factual situation at hand. NTN claims that there is no record evidence that its affiliated-party input transactions did not reflect arm's-length prices. Moreover, NTN argues that, even if a company sells an input at less than its cost of production, it does not follow that the transfer price is not reflective of a fair market price. NTN then argues that section 773(f)(3) of the Act applies only to ''major inputs.'' Thus, the company believes that the Department's decision in the preliminary results is incorrect because it applied the major-input rule to minor inputs NTN obtained from affiliates. NTN also states that the Department made a ministerial error in its preliminary results by applying section 773(f)(3) of the Act to services provided by affiliates. NTN believes that the Department did not intend to apply the major-input rule to these transactions.

Department's Position: We disagree with NTN that we should accept in all instances its reported transfer prices for transactions between affiliates. Pursuant to section 773(f)(3) of the Act, in the case of a transaction between affiliated persons involving the production of a major input, the Department may consider whether the amount represented as the value of the major input is less than its cost of production. In addition, section 351.407 of the Department's new regulations states that, for purposes of section 773(f)(3) of the Act, the value of a major input purchased from an affiliated person will be based on the higher of: (1) the price paid by the exporter or producer to the affiliated person for the major input; (2) the amount usually reflected in sales of the major input in the market under consideration; or (3) the cost to the affiliated person of producing the major input. We have relied upon this methodology in past AFB reviews as well as in other cases. *See, e.g., AFBs 7* at 54065, *AFBs 6* at 2117; *Final Results of Antidumping Duty Administrative Review; Certain Corrosion-Resistant Carbon Steel Flat Products and Certain Cut-to-Length Carbon Steel Plate From Canada*, 62 FR 18449, 18457 (April 15, 1997).

In this case, in our COP questionnaire we asked NTN to provide a list of the major inputs it received from affiliated parties which it used to produce the merchandise under review. NTN responded to the question by directing us to several exhibits. These exhibits listed the inputs NTN considered to be major inputs and provided the respective transfer prices and cost information for the inputs. We examined this information and determined that in some instances the company's reported transfer prices were less than their respective COP. As there were no other market prices available in most instances, we restated NTN's COP and CV in the instances where the affiliated supplier's COP for inputs used to manufacture the merchandise under review was higher than the transfer price.

In this regard, we disagree with NTN's contention that we misapplied section 773(f)(3) of the Act. This section governs the valuation of major inputs. NTN provided information regarding the cost of major inputs it used in manufacturing the subject merchandise; it was reasonable to rely upon the costs of producing these inputs which NTN provided. Therefore, the Department applied section 773(f)(3) correctly for purposes of determining COP and CV for these final results.

Furthermore, we disagree with NTN's allegation that we applied the major-input rule incorrectly, as described above, to processes performed by affiliates in the preliminary results. We intended to apply the the major-input rule to processes performed by affiliates because section 773(f)(3) of the Act directs us to examine the costs incurred for transactions between affiliated persons. These transactions may involve either the purchase of materials, subcontracted labor, or other services.

Finally, we did not find it necessary to use facts available in applying the major-input rule as we did in our previous review of NTN (*see AFBs 7* at 54065) and as suggested by the petitioner for these reviews. NTN provided the necessary information to restate costs appropriately.

4.D. *General, Selling, and Administrative Expenses. Comment:* The petitioner contends that NTN did not include in its calculation of COP and CV the bonus payments it made to its board of directors and auditors. Torrington notes that, in the normal course of business, NTN treats these payments as direct reductions to the company's retained earnings. However, the petitioner believes NTN should include these bonus payments in COP and CV in the same manner as any other current personnel expense. To adjust for this omission, the petitioner first suggests that the Department allocate the omitted cost exclusively to the merchandise under review. Second, Torrington suggests that the Department re-characterize all other reductions to ''retained earnings'' as current expenses because NTN apparently uses ''retained earnings'' to pay current expenses.

NTN counters that it excluded the bonuses distributed from retained earnings from its COP and CV calculations appropriately. NTN argues that the Department has determined on numerous occasions that these type of bonuses are similar to dividend payments and, accordingly, are not production costs, citing *Final Results of Antidumping Duty Review of Tapered Roller Bearings, Finished and Unfinished, and Parts Thereof, from Japan*, 57 FR 4951, 4957 (February 11, 1992), and *Final Results of Antidumping Administrative Review of Tapered Roller Bearings, Finished and Unfinished, and Parts Thereof, from Japan*, 56 FR 41508 (August 21, 1991). Furthermore, NTN argues that these bonuses should not be considered as a personnel expense because the payments are not for contractual remuneration, the disbursement is a distribution from retained earnings, and the company makes this distribution when it deems it appropriate.

Department's Position: We agree with the petitioner that these bonus payments which NTN distributed through its retained earnings represent compensation for services provided to the company. Therefore, in accordance with section 773(f)(1)(A) of the Act, we believe that it is appropriate to include these amounts in the calculation of COP and CV. Moreover, including this type of bonus payment in COP and CV is consistent with our treatment of this type of retained-earnings bonus distributions in the *Final Determination of Sales at Less Than Fair Value; Static Random Access Memory Semiconductors From Taiwan*, 63 FR 8909, 8921 (February 23, 1998). In that proceeding, we determined that the amounts distributed by the respondents represented compensation for services which the individual had provided the companies. In the *Final Determination of Sales at Less Than Fair Value: Oil Country Tubular Goods from Austria*, 60 FR 33551, 33557 (June 28, 1995), and the *Final Results of Antidumping Duty Administrative Review of Porcelain-on-Steel Cookware from Mexico*, 62 FR 25908, 25914 (May 12, 1997), we also made similar determinations. In both instances, we determined that the respondents' bonuses and profit-sharing

distributions were forms of compensation and not dividends. Hence, we disagree with NTN's classification of these payments as dividends and its claim that the inclusion of these amounts in COP and CV contradicts our normal practice. We have revisited this issue in more recent cases and, based on a more thorough analysis, revised the position that we took in the TRBs decisions NTN cited.

As to the petitioner's suggestion that this bonus distribution only relates to the production of subject merchandise, we disagree. We found that this distribution relates to the administrative activities of the company as a whole and should be treated as such because it is not specific to the manufacture, design or sale of the product under review. We also disagree with petitioner's suggestion that it is necessary to include all other reductions made to ''retained earnings'' in the calculation of COP and CV. We reviewed the information on the record and found no evidence to suggest that NTN's other retained-earning distributions related to current expenses of the company. As for revising NTN's reported costs, we reviewed the information on the record and noted that the excluded amount is insignificant in this instance; inclusion of this bonus in the calculation of the dumping margins would have a minuscule effect on the final margin calculations. Therefore, while our policy is to include such amounts in our calculations because it has no effect on the final margins, for these final results, we have not included the bonus payments that NTN distributed from its retained earnings to its board of directors and auditors.

4.E. *Cost Variances. Comment*: The petitioner argues that the Department should restate NTN's reported cost variance to conform with variances reported in the company's normal books and records. The petitioner alleges that NTN is manipulating its reported COP and CV because it calculated its reported variances inconsistently. According to the petitioner, NTN calculated some of its models' variances based on product-specific costs while others were based on general plant-wide costs. Torrington asserts that the Department's acceptance of respondent's different calculation methods allows respondent too much potential for cost manipulation. Thus, petitioner suggests that the Department rely on the variances NTN calculated in the normal course of business.

NTN does not object to the Department's use of the company's variances calculated in the normal course of business. However, NTN points out that it only recalculated its submitted variances to conform voluntarily with previous Departmental decisions on this issue. Consequently, NTN does not believe that a revision of its reported COP and CV is necessary.

Department's Position: We disagree with the petitioner that the variances NTN used in the calculation of COP and CV distort model-specific costs. In *AFBs 4* at 10928, the Department determined that NTN's application of a plant-wide variance shifted costs unreasonably between products. Moreover, the Department found that the cost-accounting system the company used in the ordinary course of business maintained the necessary data to calculate more specific variances. Since completion of that administrative review, we have required NTN to compute its reported variances on the more specific basis when calculating COP and CV. For the instant reviews, we found NTN's more-specific variance computations reasonable because they allocate costs to products under review accurately. We also found that NTN only applied plant-wide variances to those models that it manufactured in facilities dedicated to producing only a single product type. If a facility produced more than one product type, NTN calculated and applied product-specific variances. At verification, we reviewed and tested NTN's method of calculating its product-specific variances (*see Memorandum from Stan Bowen to Chris Marsh*, pages 14, 15, 16, and related cost-verification exhibits (January 30, 1998)). The following is a summary of the verification steps we performed: (1) we reconciled NTN's submitted variances to source accounting records; (2) we confirmed that NTN calculated the submitted variances in the same manner as the variance calculated in the normal course of business; (3) we reconciled NTN's product-specific variances to respective plant-wide variances used in the normal course of business; (4) we confirmed that NTN grouped physically similar models when calculating its product-specific variances; and (5) we confirmed that NTN used the same method of calculating its various product-specific variances consistently. Our testing and review noted no exceptions. Therefore, for these final results, we have accepted NTN's product-specific variances and used them to calculate NTN's COP and CV.

5. Further Manufacturing

Comment: NSK–RHP argues that the Department erred when it did not apply the ''special rule'' for NSK–RHP's further-manufactured merchandise. NSK–RHP asserts that the Department erred when it used its traditional value-added methodology based on respondent's Section E data. NSK–RHP maintains that the weighted-average entered value of merchandise subject to further manufacturing is less than 35 percent of the net selling price to its unaffiliated U.S. customer; thus, it contends, these sales qualify for the special rule. NSK–RHP asserts further that there is a sufficient quantity of U.S. sales of finished bearings to provide a reasonable basis for comparison.

Torrington responds that the Department's rejection of the special rule was a proper exercise of its discretion. Torrington argues that the Department retains the authority to both employ and excuse Section E data as the basis of its further-manufacturing analysis. The Department need not modify the preliminary results with regard to the further-manufactured products, Torrington maintains, since calculating the value added clearly did not impose an added burden upon the Department.

Department's Position: We agree with the petitioner. As we stated in our new regulations, the special rule for further manufacturing exists in order to reduce the Department's administrative burden. 62 FR at 27353. *See*, also, section 772(e) of the Act, which provides that the Department need only apply the special rule where it determines that the use of such alternative calculation methodologies is appropriate. We retain the authority to refrain from applying the special rule in those situations where the value added, while large, is simple to calculate. *Id*. Respondent submitted Section E data in its questionnaire and supplemental responses. We acted within our discretion by employing this data to calculate the U.S. value added, as the calculation involves little more than the subtraction of the value-added figures which NSK–RHP provided. Thus, this case does not present the complex data-gathering and calculation burdens contemplated by the special rule.

6. Packing and Movement Expenses

6.A. *Repacking Expenses. Comment*: NSK and NSK–RHP argue that the Department should deduct U.S. repacking expenses as a movement expense. Both respondents state that U.S. repacking is an element of warehousing and as such should be classified like a warehousing expense under section 772(c)(2)(A) of the Act of 1930. NSK and NSK–RHP also contend that the Department's reasoning as expounded in *AFBs 7* at 54067 is flawed: the fact that respondents would

not repack merchandise if they did not have to in order to make a sale does not make repacking expense a selling expense. NSK and NSK–RHP assert that for the final results the Department should deduct U.S. repacking as a movement charge from CEP and exclude U.S. repacking from the calculation of CEP profit.

Torrington argues that the Department should not treat U.S. repacking expense as a movement expense. It asserts that the Department's existing position is valid. Furthermore, Torrington asserts that repackaging is a function of selling. Moreover, Torrington believes that the expense is incurred by reason of the sale, which is the test for a *direct* selling expense, and cites *Torrington* at 1050. In Torrington's view, the mere fact that the above-named companies do not retain sale-by-sale records does not change this basic character of the repacking. Accordingly, Torrington concludes that the Department's *AFBs 7* determination remains valid.

Department's Position: We disagree with NSK and NSK–RHP. As NSK and NSK–RHP note, section 772(c)(2)(A) of the Act covers ''transportation and other expenses, including warehousing expenses, incurred in bringing the subject merchandise from the original place of shipment in the exporting country to the place of delivery in the United States.'' *See* SAA at 153. We do not view repacking expenses as movement expenses. The repacking of subject merchandise in the United States bears no relationship to moving the merchandise from one point to another. The fact that repacking is not necessary to move merchandise is borne out by the fact that the merchandise was moved from the exporting country to the United States prior to repacking. Rather, we view repacking expenses as direct selling expenses respondents incur on behalf of certain sales which we deduct pursuant to section 772(d)(1)(B) of the statute, which directs us to reduce CEP by ''expenses that result from, and bear a direct relationship to, the sale, such as credit expenses, guarantees, and warranties.''

We also disagree with NSK and NSK–RHP's characterization of repacking expense as a warehousing expense. We regard repacking expense as a direct selling expense because it was performed on individual products in order to sell the merchandise to the unaffiliated customer in the United States. Warehousing expense, on the other hand, is merely an expense associated with storing the merchandise in a location before or during the movement process. As noted above, repacking does not have to be performed in order for merchandise to be moved while warehousing may be required in the movement process. Thus, we conclude that U.S. repacking expense is an expense associated with selling the merchandise.

6.B. *Inland Freight. Comment 1:* Torrington contends that the Department should reject the home-market inland-freight expenses which SKF Italy, SKF France, SKF Sweden, Barden, Koyo, FAG Italy, and NSK–RHP reported because those expenses are distortive since respondents failed to account for modes of transportation or distances shipped. Torrington asserts that freight charges are likely to be affected by the latter factors, noting that respondents' customers are located in different parts of the domestic markets and that in some situations sea transport might have been necessary. Due to the potential for distortion, Torrington asserts that the respondents should have employed a more specific per-unit freight-cost calculation methodology. Torrington states that, since the Department's dumping analysis is transaction-specific and given that variances in freight expenses may, in part, be a function of distance, the derivation of an average freight expense using a factor based on total transport expense and total transport weights or total sales values provides over-stated freight expenses in certain instances. Torrington states further that transaction-specific reporting is feasible, as Torrington's affiliate exporting from Germany, Torrington Nadellager, demonstrated.

SKF Italy, SKF France, and SKF Sweden respond that the Department has verified the accuracy of the expense and weight components of their inland-freight factors in these and earlier reviews and found those factors to be a reasonable reflection of SKF's freight expenses. The respondents assert that the Department has broad discretion under the post-URAA statute to employ the allocation of expenses when transaction-specific reporting is not feasible, provided such allocation does not cause inaccuracies or distortions. SKF Italy, SKF France, and SKF Sweden contend that the fact that transaction-specific reporting may be feasible for Torrington Nadellager is irrelevant to a determination of whether such reporting is feasible for other respondents. Therefore, SKF Italy, SKF France, and SKF Sweden state, the Department should continue to accept their reported home-market inland-freight expenses.

Barden argues that Torrington has not demonstrated sufficiently that Barden's methodology is in fact distortive. Barden claims that it is unable to report freight amounts on a shipment-specific basis from its records and that the Department has verified this on three separate occasions, most recently in these reviews. Barden argues further that the record demonstrates that it ships a significant amount of bearings in the home market using the regular postal service. Barden asserts that all postal rates are dependent upon weight, not distance, in England.

In rebuttal, Koyo states that, as it reported in its response, its home-market freight expenses are not incurred on a distance (or weight or volume) basis. Koyo argues that the methodology which it has used in prior reviews reflects Koyo's experience of shipping to hundreds of customer locations from various Koyo warehouses and plants throughout its home market. In summary, Koyo argues that Torrington's argument regarding its home-market freight expenses should be rejected and that Koyo's freight adjustment should be accepted as in all prior reviews.

FAG Italy contends that the Department should accept its reporting methodology unless Torrington can provide evidence of distortion. FAG Italy asserts that, in accordance with the questionnaire, it allocated freight expenses on the basis incurred, *i.e.*, by weight, and contends that there is nothing on the record to suggest that freight charges are dependent upon distance. Furthermore, FAG Italy notes that in its supplemental questionnaire response it stated that freight rates are based upon weight of the merchandise and do not vary significantly based upon the customer's destination.

NSK–RHP responds that it is unable, and should not be required, to submit freight charges on a transaction-specific basis. NSK–RHP argues that it used largely its own fleet of vehicles to ship merchandise to home-market customers and that it should not be forced to maintain freight accounts in the manner of Torrington's foreign affiliate. NSK–RHP asserts that the Department has verified and accepted previously its allocation of freight expense on the basis of weight and, therefore, has recognized that freight expenses are often not incurred on a transaction-specific basis.

Department's Position: We disagree with Torrington that respondents' reported home-market inland-freight expenses should be disallowed as distortive. In the first instance, Torrington's argument about the Department's uses of a transaction-specific analysis is not thoroughly accurate. While we do initially examine transaction-specific information on home-market sales, ultimately we

calculate a weighted-average home-market price for comparison to U.S. sales. The averaging of net home-market prices has the effect of averaging the components used to calculate those net prices, including inland freight. Therefore, the use of an allocated expense would not necessarily result in a distortion of home-market prices. Respondents in different markets incur freight charges on different bases and frequently on more than one basis. These factors generally make the calculation of a transaction-specific expense infeasible and no more reasonable than the allocation techniques respondents employed for these reviews. We are satisfied that the components of respondents' reported inland-freight expenses were reported accurately and allocated reasonably for the calculation of normal value. Therefore, we have continued to use these reported expenses in our final results.

Comment 2: Torrington contends that, because NTN calculated home-market pre-sale inland-freight expenses based upon sales values, the Department should disallow this expense or, at the minimum, apply the lowest per-unit amount reported by any other Japanese respondent as a facts-available solution. Torrington states that determining this expense based upon sales value is unnecessary and yields distortive results. Torrington states further that Torrington Nadellager was able to make allocations for this expense by invoice and that other respondents should be able to do the same.

NTN states that the Department verified the reported movement expenses and found them to be accurate and, as such, it should use them for the final results. In addition, NTN states that Torrington's argument regarding Torrington Nadellager's experience is illogical. NTN states that the argument completely ignores the fact that the Department's determination must be based on the facts unique to NTN, citing *Ipsco. Inc.* v. *U.S.*, 899 F.2d 1192, 1197 (Fed. Cir. 1990).

Finally, NTN argues that the Department's decision in *AFBs 7* must apply here since there have been no changes in law or fact which would compel a different result in these reviews.

Department's Position: In these reviews, we have accepted the methodology NTN used in past reviews. We did not find it to be distortive in those reviews and do not find it distortive here. See *AFBs 7* at 54084. Furthermore, we verified NTN's methodology for these reviews and found it to be reasonable because NTN explained that it can not calculate these expenses on a transaction-specific basis (*see* verification report dated January 22, 1998, at 8). Finally, one respondent's experience or recordkeeping system can not be imposed on another respondent. Therefore, we have accepted NTN's methodology for allocating freight expenses in the present reviews.

Comment 3: Torrington asserts that SKF Sweden might have overstated the reported per-unit cost of inland freight from warehouse to customer by including freight revenue in the numerator of the factor calculation.

SKF Sweden contends that it did not overstate the reported per-unit cost of inland freight from warehouse to customer. SKF Sweden asserts that, in order to calculate the total freight expense to use as the numerator in the freight-expense factor calculation, it must sum freight expenses from two separate freight accounts, freight revenue (freight which SKF Sweden initially incurred but later charged to customers) and freight expenses. SKF Sweden notes that it reported the actual per-unit freight revenue it received from its customers separately.

Department's Position: We agree with SKF Sweden that it did not overstate the per-unit cost of inland freight from warehouse to customer. The respondent calculated the reported per-unit cost of inland freight from warehouse to customer by applying a freight factor to the weight of each bearing shipped. SKF Sweden's invoice price includes an amount for freight paid by its customers. Therefore, to calculate the freight factor, SKF Sweden added the amount of freight it ultimately incurred on its own account to the amount of freight it initially incurred but later charged to customers, and it divided the sum by the corresponding weight of all bearings shipped. Since SKF Sweden reported the amount of freight revenue it received separately in its response and we added this revenue to the unit price, we must take into account freight costs SKF billed to its customers in calculating the numerator of the freight-factor calculation. This avoids understating SKF Sweden's total freight costs. The *AFBs 7* verification report for SKF Sweden's home-market sales contains a detailed explanation of how the respondent calculated this per-unit adjustment. We have included a public version of the report as an attachment to our May 29, 1998, analysis memorandum for the final results of this administrative review for SKF Sweden.

6.C. *Ocean and Air Freight. Comment 1:* Torrington argues that the Department should not have allowed Koyo to aggregate and then allocate ocean-and air-freight costs. Moreover, the petitioner notes that Koyo made no attempt to demonstrate that the failure to report separate amounts for ocean- and air-freight expenses did not distort the reported freight costs. As such, Torrington believes that the Department should not accept Koyo's position that it does not maintain a database that permits it to trace individual transactions. In addition, Torrington asserts that the Department should reject Koyo's reporting and recalculate a separate air-freight factor.

Koyo states that nothing in its recordkeeping or data-reporting methodologies has changed from previous reviews and that the Department has verified and accepted Koyo's treatment of these expenses. Koyo contends further that nothing in its response to the Department's requests for additional information demonstrates an ability to identify air-freight shipments with specific U.S. sales.

Department's Position: We disagree with Torrington. We have found that it is generally not feasible for respondents to report air and ocean freight on a transaction-specific basis in these proceedings. *See, e.g., AFBs 7* at 54081. Where respondents were unable to report ocean and air freight separately, we have accepted aggregated international freight data. *See AFBs 6* at 2121; *see also The Torrington Company* v. *United States*, Slip Op. 97–57 at 11–14 (CIT May 14, 1997) (affirming the Department's methodology for accepting co-mingled ocean and air freight where a respondent could not report the two expenses separately). Furthermore, we note that section 351.401(g) of our new regulations provides that we may consider allocated expenses and price adjustments when transaction-specific reporting is not feasible, provided we are satisfied that the allocation method used does not cause inaccuracies or distortions. While the new regulations are not binding in the instant reviews, they are a codification of our practice in this area. *See* also *AFBs 7* at 54081. While we have considered Torrington's claim that aggregating and then allocating air and ocean freight is potentially distortive, we find that this allocation is not unreasonably distortive.

Because we determined that the respondent acted to the best of its ability, it would be improper to make adverse inferences about its reported data by applying facts available simply because its recordkeeping system does not record the data on a transaction-specific basis. Therefore, we have

accepted Koyo's reported air-and ocean-freight expenses.

Comment 2: Torrington argues that the Department should disallow SKF Italy's attribution of air-freight expenses to all EP sales, but it should distinguish such shipments on a transaction-specific basis. The petitioner contends that the Department should not assume that more accurate delineation of transportation expenses for EP sales is not feasible. Torrington states that the diluted attribution of the expense distorts the calculation of net prices for EP transactions. Torrington suggests that the Department increase international-freight expenses for SKF Italy's EP transactions with a factor representing the additional cost of air freight.

SKF Italy counters that it would be inappropriate for the Department to segregate and identify the expense on a transaction-specific basis, since transportation of the shipments in question is dictated by SKF's determination to maintain inventory balances rather than customer orders. SKF states that it has calculated a separate international-freight factor for EP transactions and that the Department has verified and accepted this methodology in verifications of previous responses.

Department's Position: We disagree with Torrington that SKF Italy's reporting of air-freight expenses for EP transactions distorts the calculation of net prices for those transactions. In verifications of the expense in past reviews we have found that SKF has reported it in the best manner that its records will allow. It was not feasible to tie the air shipments to specific transactions. Thus, we determined its methodology of allocating the expense to the specific customer to be a reasonable attribution of the expense to EP sales. There is no information in the record of these reviews that would indicate that the attribution of the expense is no longer reasonable. Because SKF has acted to the best of its ability, we have continued to accept SKF's reporting methodology for the final results.

7. Affiliated Parties

Comment 1: Torrington claims that the Department should apply facts available to Nachi because Nachi reported sales it made to its affiliated resellers instead of sales which the affiliated resellers made to unaffiliated customers. Citing the preamble of the Department's regulation at section 351.402, Torrington argues that the volume of sales to unaffiliated resellers is greater than the regulatory threshold that the Department considers significant. Torrington also claims that the letters Nachi's affiliated resellers provided claiming an inability to report resales are unconvincing. Citing *Fresh Cut Flowers from Colombia*, 62 FR 53287 (October 14, 1997) (*Colombian Flowers*), Torrington argues that the Department has previously required small companies to adhere to similar standards in other proceedings regardless of the computer capacity of the company involved. In addition, Torrington notes that the Department's verification report does not address whether sales to affiliated resellers were at arm's-length prices. As facts available, Torrington suggests that the Department increase dumping duties by an amount equal to the value of the sales to resellers multiplied by the applicable facts-available margin for cooperative respondents for both BBs and CRBs.

Nachi contends that it has reported its sales to the best of its ability and that the Department tested its sales to affiliated resellers to ascertain whether they were made at arm's length. Nachi argues that the verification report's silence on the issue of sales to affiliated parties indicates the Department's acceptance of the evidence Nachi submitted. In addition, Nachi contends that Torrington's citation to *Colombian Flowers* is inapposite, since the case does not establish a rule as to how much information is required to determine that a respondent with limited computer capabilities has reported information to the best of its ability. Accordingly, Nachi argues that the record of these reviews demonstrates that Nachi has reported its sales to the best of its ability and that it would be contrary to law to apply adverse facts available.

Department's Position: We disagree with Torrington that the use of facts available is warranted. The record shows that Nachi attempted to obtain downstream-sales information from its affiliates, but it was unable to do so because ''these affiliates are small companies with unsophisticated computer systems that do not permit them to retain the sales data required by the Department.'' *See* Nachi's Supplemental Questionnaire response dated November 10, 1997, at page 11 and the letters from the affiliates contained in Exhibit A/1.f of Nachi's Section A Response dated September 5, 1997. No evidence on the record contradicts this claim.

Furthermore, Torrington's citation to the preamble to the new regulations does not compel the use of facts available in this case. Although the regulation to which Torrington cites does not govern these administrative reviews, they do reflect current practice. Section 351.403(d) of the new regulations states that ''the Secretary normally will not calculate normal value based on the sale by an affiliated party if sales of the foreign like product by an exporter or producer to affiliated parties account for less than five percent of the total value (or quantity) of the exporter's or producer's sales of the foreign like product in the market in question.'' The preamble to the regulations at section 351.403 also states that ''we have decided to codify the Department's current practice regarding the reporting of downstream sales when the volume of sales to affiliates is small. Under our current practice, we normally do not require the reporting of downstream sales if total sales of the foreign like product by a firm to all affiliated customers account for five percent or less of the firm's total sales.'' 62 FR at 27356. Those provisions do not indicate that we will necessarily base normal value on sales by affiliates in every circumstance. Rather, the preamble states that ''(t)he Department does not believe it necessary or appropriate to require the reporting of downstream sales in all instances. Questions concerning the reporting of downstream sales are complicated, and the resolution of such questions depends on a number of considerations, including the nature of the merchandise sold to and by the affiliate, the volume of sales to the affiliate, the levels of trade involved, and whether sales to affiliates were made at arm's length.'' *Id.* Thus, while we normally require respondents to report sales by affiliates rather than sales to affiliates, we can and do make exceptions on a case-by-case basis. In this case, we have accepted Nachi's sales to affiliates *in lieu* of sales by Nachi's affiliates for the following reasons: (1) the large overall number of sales to unaffiliated customers Nachi reported; (2) the fact that the majority of sales Nachi made to affiliated customers were made at arm's-length prices (*see* the margin calculation program attached to Nachi's Final Results Analysis Memorandum dated May 12, 1998); and (3) Nachi's inability to obtain those prices from its affiliates.

Finally, we agree with Nachi that *Colombian Flowers* is inapposite. In *Colombian Flowers* we did not establish a rule that must be applied in other cases but, rather, we stated our practice of determining whether to accept a respondent's sales to its affiliates instead of sales by its affiliates on a case-by-case basis. Therefore, for these final results we have based normal value on Nachi's sales to its affiliates

where we determine that those sales were made at arm's-length prices.

Comment 2: Torrington argues that the Department should increase Nachi's dumping margin to account for certain sales Nachi made to affiliated parties but did not report to the Department. Torrington states that Nachi excluded sales to affiliates of the foreign like product in the comparison market which Nachi sold for consumption. Torrington claims that, had they been reported, a portion of these unreported sales would have been matched to U.S. sales and thus resulted in margins. Torrington suggests as facts available that the Department increase dumping duties by an amount equal to the unreported sales multiplied by the facts-available margin for cooperative respondents.

Nachi claims that the Department should accept the exclusion of these sales from its home market database because these sales were outside the ordinary course of trade. According to Nachi, the total volume of sales was extremely small and its affiliated customers purchased the bearings for the purpose of repairing machinery and not resale. Nachi also states that it made these sales at aberrant prices.

Department's Position: We agree with Torrington that Nachi should have reported certain sales made to affiliated parties. In the questionnaire, we asked all respondents to ''report (their) sales to affiliated customers that consume the foreign like product.'' *See* questionnaire dated June 20, 1997, at B–7. Nachi failed to report these sales and did not explain why it did not report these sales either in its original response or its supplemental response. The company did not claim that these sales were outside of the ordinary course of trade until its March 23, 1998, rebuttal brief, and there is no evidence on the record to demonstrate that these sales actually are outside the ordinary course of trade. In addition, Nachi was obligated to report all sales, irrespective of the number of sales being excluded, and we do not consider the ultimate use of a bearing to be a relevant factor in our dumping analysis. Because there is no information on the record concerning the kinds, quantities, or values of bearings Nachi failed to report, we are adopting Torrington's suggestion for adverse facts available.

Comment 3: Torrington contends that Koyo did not report resales by all its resellers as the Department requested in its questionnaire and urges the Department to apply facts available to all models for which Koyo did not report home-market reseller sales. Torrington states that Koyo admitted it would have been possible, but that compliance efforts would be ''out of proportion'' to the fraction of home-market sales involved.

In rebuttal, Koyo states that it consulted with the Department on this issue prior to responding to the questionnaire. Specifically, Koyo reasons that it conferred with the Department as to whether it was acceptable to report (1) its sales to certain affiliated resellers rather than the sales by those affiliates to their customers, and (2) the percentage of sales made to the affiliated resellers rather than those affiliates' resales. Koyo argues that, although the volume of merchandise involved is small, the number of transactions is enormous. Furthermore, Koyo explains that the subject affiliates do not maintain either their sales information in a computerized format consistent with Koyo's records or their sales records according to the product descriptions Koyo uses. Thus, Koyo contends that the amount of work required to collect this data would involve an amount of time that ultimately would be disproportional to the volume of sales. Koyo also states that it used the same methodology in these reviews as in the 1994/95 and 1995/96 reviews. Finally, Koyo argues that the amount of sales involved accounts for less than five percent of the firm's total sales of the foreign like product.

Department's Position: We disagree with the petitioner. Koyo notified us of its intention to report sales to affiliated customers in the home market prior to answering our questionnaire (Koyo reported its direct sales to unaffiliated customers as well). Given that the sales to certain affiliated customers, for which collecting the data regarding the resales would be a major undertaking, constituted less than five percent of Koyo's home-market sales, we agreed that Koyo could report the sales to these affiliates and that it would not be necessary to report those affiliates' resales. Furthermore, since the quantity of these sales is below the five-percent threshold as stated in the new regulations at 351.403, we determined that facts available is not warranted in this case.

8. Sample Sales/Prototypes and Zero-Priced Transactions

On June 10, 1997, the CAFC held that the term ''sold'' requires both a transfer of ownership to an unrelated party and consideration. *NSK Ltd.* v. *United States*, 115 F.3d 965, 975 (Fed. Cir. 1997) (*NSK*). The CAFC determined that samples which NSK had given to potential customers at no charge and with no other obligation lacked consideration. *Id.* Moreover, the CAFC found that, since free samples did not constitute ''sales,'' the Department should not have included them in calculating U.S. price.

In light of the CAFC's opinion, we have re-evaluated and revised our policy with respect to sales of sample products. Therefore, pursuant to the CAFC's opinion, the Department now excludes from the margin calculation sample transactions for which a respondent has established that there is no transfer of ownership and no consideration.

This new policy does not mean that the Department automatically excludes from analysis any transaction to which a respondent applies the label ''sample.'' In fact, in these reviews, we determined that there were instances where we should not exclude such alleged samples from our dumping analysis. It is well-established that the burden of proof rests with the party in possession of the needed information. *See, e.g., NTN Bearing Corporation of America* v. *United States*, 997 F.2d 1453, 1458–59 (Fed. Cir. 1993) (citing *Zenith Elecs. Corp.* v. *United States*, 988 F.2d 1573, 1583 (Fed. Cir. 1993), and *Tianjin Mach. Import & Export Corp.* v. *United States*, 806 F. Supp. 1008, 1015 (CIT 1992)). In several cases, as discussed below, respondents failed to demonstrate or to submit documentation to show that their claimed sample sales lacked consideration. When respondents failed to support their sample claim, we did not exclude the alleged samples from our margin analysis. Because the inclusion of zero-priced transactions in the home-market database would benefit respondents by lowering average normal value, however, we excluded zero-priced items from the home-market database when such unsupported transactions occurred in the home market.

With regard to home-market sales, in addition to excluding home-market sample transactions which do not meet the definition of ''sales,'' we may exclude sales designated as samples or prototypes from our analysis pursuant to section 773(a)(1) of the Act when a respondent has provided evidence demonstrating that the sales were not made in the ordinary course of trade, as defined in section 771(15) of the Act.

With regard to assessment rates, in order to ensure that we collect duties only on sales of subject merchandise, we included the entered values and quantities of the sample transactions in our calculation of the assessment rates, and we set the dumping duties due for

such transactions to zero. We have done this because U.S. Customs will collect the *ad valorem* (or per-unit, where applicable) duty-assessment rate on all entries of subject merchandise regardless of whether the merchandise was a sample transaction. However, to ensure that sample transactions do not dilute the cash-deposit margin, we excluded both the calculated U.S. prices and quantities for sample transactions from our calculation of the cash-deposit rates.

Comment 1: Torrington contends that the Department should include SKF Germany's reported home-market sample and prototype sales in the final margin calculation. Torrington argues that SKF Germany did not reply to many of the Department's requests for information to support such an exclusion (*i.e.*, comparison of prices and quantities of samples and non-samples). Torrington also submits that, in its supplemental questionnaire response, SKF Germany admitted that it did not respond to the Department's inquiries purposely because the effort to do so would be disproportionate to any potential benefit. Citing *Fujitsu*, Torrington argues that the respondents have the burden of proof to establish that the sales in question were made outside the ordinary course of trade.

SKF Germany argues that the Department should exclude its home-market sample and prototype sales. SKF Germany submits that, given the few sample and prototype sales it made, it did not find it necessary to provide detailed information to the Department's exhaustive request for information. SKF Germany posits that the Department should rely on the same information provided in these reviews as it provided in *AFBs 7*. SKF Germany also states that its three-page narrative is responsive and the identification of these sales in its sales listing should be sufficient to warrant the exclusion of such sales from the margin calculation.

Department's Position: We agree with Torrington. Our practice is to exclude home-market sales transactions that are outside the ordinary course of trade based on the circumstances particular to the sales in question. However, despite our additional request for information in our supplemental questionnaire, SKF Germany has not demonstrated that the circumstances relating to these home-market sales are outside the ordinary course of trade and, therefore, we have included them in our analysis.

Comment 2: Torrington argues that the Department should include SKF Germany's reported zero-value and non-zero-value U.S. sample and prototype sales in the final margin calculation. Torrington contends that SKF Germany did not provide all of the data, including price and quantity comparisons, necessary for the Department to determine whether such sales lacked consideration to support their exclusion from the dumping analysis.

SKF Germany rebuts that it did provide enough data to establish that its zero-priced transactions lacked consideration to support their exclusion from the dumping analysis. SKF Germany argues that, pursuant to the Department's supplemental questionnaire, it answered in detail each of the five questions in the Department's questionnaire and it provided sales, cost, price, and quantity data for all sales transactions in question. SKF Germany contends that it has provided all necessary data to support the exclusion of its zero-priced U.S. sample and prototype sales from the final margin calculation.

Department's Position: We disagree with Torrington. Based on the information provided in SKF Germany's responses, we determined that no consideration was provided for SKF Germany's reported U.S. zero-priced transactions and prototype sales. Therefore, we did not calculate a margin on U.S. sales which SKF Germany designated as zero-priced samples or prototypes.

Comment 3: Torrington argues that, since Koyo is not requesting the exclusion of any U.S. sample sales or prototype sales from the margin calculation, the Department should assume that any zero-priced U.S. sales are nevertheless for consideration and not exclude them from the database.

Koyo does not oppose Torrington's suggestion.

Department's Position: We agree with Torrington. As we noted in the introduction to this issue, the party in possession of the information has the burden of producing that information. Koyo did not answer our questions regarding the purchase history of parties receiving samples. Koyo also did not answer our questions regarding comparisons of the prices and quantities involved in sample and non-sample transactions. Lacking knowledge of the details of these transactions, we can not conclude that Koyo received no consideration for these alleged samples. Therefore, for these final results, we have included Koyo's samples sales in its U.S. sales database in calculating the margins.

Comment 4: NTN requests that the Department exclude its sample sales from its U.S. sales databases in accordance with the CAFC's ruling in *NSK*. NTN also states that, in *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From Japan, and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, From Japan; Final Results of Antidumping Duty Administrative Reviews*, 63 FR 2558, 2581 (January 15, 1998), the Department stated that it had reconsidered its policy with respect to samples and would now exclude from its dumping calculations sample transactions for which a respondent has established that there is either no transfer of ownership and no consideration. Finally, NTN states that zero-priced sales, by their very nature, lack consideration.

Torrington argues that NTN has the burden of proving entitlement to any favorable claim. Torrington asserts that NTN does not represent, much less demonstrate with facts, that no consideration is involved in its U.S. sample transactions. Rather, Torrington maintains, NTN merely asserts that zero-priced sales, by their very nature, lack consideration. Torrington states that NTN has failed to provide facts showing the absence of consideration, other than the zero price, and that the Department should reject the claim.

Department's Position: We agree with Torrington. As we noted in the introduction to this issue, the party in possession of the information has the burden of producing that information, particularly when seeking a favorable adjustment or exclusion. NTN did not answer our questions regarding the purchase history of parties receiving samples or our questions regarding comparisons of the prices and quantities involved in U.S. sample and non-sample sales adequately. The answers to these questions would have aided us in determining whether the alleged sample sales were, in fact, zero-priced samples with no consideration or, instead, provided essentially as a discount in conjunction with other sales. Because NTN did not provide the details we requested, we can not conclude that NTN received no consideration for these alleged samples. NTN withheld information within the meaning of section 776(a)(2)(A) of the Act and, in so doing, failed to cooperate by acting to the best of its ability to comply with our information request within the meaning of section 776(b) of the Act. Thus, we have determined that an adverse inference is appropriate. Therefore, for these final results, we have included NTN's claimed sample sales in its U.S. sales database.

Comment 5: NTN states that sample sales with abnormally high profits

should be excluded from the calculation of normal value. NTN asserts that normal value must be based on sales made in the home market that are in the ''ordinary course of trade.'' NTN states that the ordinary-course-of-trade provision serves an important purpose: ''to prevent dumping margins from being based on sales which are not representative'' of the home market, citing *Monsanto Co.* v. *United States*, 698 F. Supp. 275, 278 (CIT 1988). NTN states further that, to guarantee that sales the Department uses to calculate normal value are representative, the Department examines ''the circumstances particular to the sales in question,'' citing *CEMEX* at 6. Finally, NTN states that a profit-level comparison is probative of the economic reality of the sales and therefore the disparity in profit margins is indicative of sales that were not in the ordinary course of trade, citing *Mantex* v. *United States*, 841 F. Supp. 1290, 1308 (CIT 1993).

Torrington states the Department should include all alleged samples in NTN's home-market database. Torrington states that providing samples is ordinary practice in the market for bearings and the fact that NTN records transactions as ''samples'' in its books is not a basis for allowing the company to exclude arguably higher-price transactions from its antidumping database, as that would be a self-serving practice. Furthermore, Torrington states that NTN failed to show that profits it earned on particular transactions were aberrational or abnormal, and, thus, outside the ordinary course of trade. Finally, Torrington states that no one factor can determine whether particular transactions are within or outside the ordinary course of trade, citing *CEMEX*.

Department's Position: We agree with Torrington. With regard to home-market ''sample'' sales which NTN claimed were outside the ordinary course of trade, our practice is to exclude home-market sales transactions from the margin calculation as outside the ordinary course of trade based on *all* the circumstances particular to the sales in question. *See Murata Mfg. Co.* v. *United States*, 820 F. Supp. 603, 607 (CIT 1993). With regard to NTN's abnormally high-profit sales, the presence of profits higher than those of numerous other sales does not necessarily place the sales outside the ordinary course of trade. In order to determine that a sale is outside the ordinary course of trade due to abnormally high profits, there must be unique and unusual characteristics related to the sale in question which make it unrepresentative of the home market. *See CEMEX*, 133 F.3d at 900 (citation omitted). However, NTN has provided no information other than the numerical profit amounts to support its contention that these home-market sales had abnormally high profits. The simple fact of high profits, standing alone, is not sufficient to find sales to be outside the ordinary course of trade. Accordingly, we have not excluded NTN's ''sample'' sales with allegedly high profits in calculating normal value.

Comment 6: Nachi argues that the Department should have excluded its claimed home-market prototype sales. Nachi contends that it demonstrated that these sales were outside the ordinary course of trade and the Department verified the accuracy of the claim.

Torrington disagrees, asserting that Nachi did not provide the information the Department requested with regard to its home-market prototype sales. Torrington contends further that whether the Department verified the fact that these sales were outside the ordinary course of trade can not remedy Nachi's failure to respond to the Department's questionnaire.

Department's Position: We agree with Nachi. Nachi demonstrated at verification that its home-market prototype sales are outside of the ordinary course of trade. *See* the Department's home-market verification for Nachi report dated January 26, 1998, at page 11. Therefore, we have excluded such sales from our analysis for these final results.

9. Export Price and Constructed Export Price

Comment 1: SKF Sweden asserts that the Department erroneously deducted the inventory carrying costs incurred for the time merchandise was in transit between Europe and the United States from the price used to establish the CEP. SKF Sweden argues that the Department should not deduct these expenses because they are not associated with commercial activity occurring in the United States.

Torrington requests that the Department continue to deduct these expenses from CEP. Citing to the SAA at 823 and the Department's new regulations at 351.402(b), Torrington asserts that the Department will generally make a deduction from CEP for expenses associated with commercial activities in the United States. Torrington contends that, since SKF Sweden's U.S. affiliate bore the expenses at issue, the costs are associated with U.S. commercial activity.

In addition, Torrington suggests that because the expenses relate to the transit of goods from Europe to the United States, the expenses should be deducted as a movement expense under section 772(c)(2)(A) of the Act.

Department's Position: We agree with SKF Sweden that the inventory carrying costs incurred for the time merchandise was in transit between Europe and the United States should not be deducted from the price used to calculate CEP. It is evident from both the SAA at 823 and our new regulations that, under section 772(d) of the Act, we only deduct from CEP the expenses associated with commercial activity in the United States which relate to the resale to an unaffiliated purchaser. We find that the expenses at issue are not associated with commercial activity in the United States and do not relate to the resale to the unaffiliated customer. Rather, these inventory carrying costs reflect part of the interest expense SKF Sweden incurred when it extended credit on the sale to its U.S. affiliate. Our new regulations direct us clearly not to deduct from the starting price any expense that is ''related solely to the sale to an affiliated importer in the United States,'' *i.e.*, those expenses that support the sale from the exporter to its U.S. affiliate (*see* 351.402). Thus, for the final results, we did not deduct these expenses from CEP.

We also disagree with Torrington's suggestion for treating the inventory carrying costs as a movement expense. Section 772(c)(2)(A) of the Act instructs us to reduce CEP by ''* * *. the amount, if any, included in such price, attributable to any additional costs, charges, or expenses, and United States import duties, which are incident to *bringing* the subject merchandise from the original place of shipment in the exporting country to the place of delivery in the United States * * *'' (emphasis added). The expenses at issue do not relate to ''bringing'' the subject merchandise from Sweden to the United States. As noted above, the expenses reflect the financing cost of holding inventory. Thus, we have not treated the inventory carrying costs as a movement expense.

Comment 2: Torrington argues that, with respect to certain sales made through one of FAG Italy's U.S. affiliates, to calculate CEP in accordance with section 772(d)(1)(A) of the Act the Department should have deducted the warehousing commissions and sales commissions paid to affiliated warehousing companies rather than deducting pre-sale warehousing expenses and indirect selling expenses for these sales. Torrington argues that

under no circumstance should the Department resort to the amounts reported for pre-sale warehousing expenses and indirect selling expenses over the actual commission amounts FAG Italy's U.S. affiliate paid to an affiliated warehousing company. Torrington argues further that the statute prefers the use of the commissions over adjustments like pre-sale warehousing expenses and indirect selling expenses on the basis that commissions are direct and reflect the actual amount paid while pre-sale warehousing expenses and indirect selling expenses are costs. In support of this argument, Torrington cites *Smith Corona Group* v. *United States*, 713 F.2d 1568, 1575 (Fed. Cir 1983), cert. denied, 465 U.S. 1022, 79 L.Ed.2d 679 (1984).

FAG Italy supports the Department's methodology of deducting pre-sale warehousing expenses and indirect selling expenses rather than deducting the commissions paid to affiliated warehousing companies. FAG Italy argues that commission payments between affiliated parties are not actual expenses within the meaning of the antidumping law. On the basis that commission payments between affiliated parties are not actual expenses, FAG Italy suggests that Torrington's argument for deducting actual amounts supports rather than disputes the Department's methodology.

Department Position: We disagree with Torrington's contention that in calculating the CEP of FAG Italy's U.S. sales we should have deducted certain warehousing commissions and sales commissions rather than pre-sale warehousing expenses and indirect selling expenses.

The sales that Torrington addresses in its comment were made by one of FAG Italy's U.S. affiliates to unaffiliated customers through affiliated warehousing companies. For these CEP sales, FAG Italy's U.S. affiliate paid both a sales commission and a warehousing commission to the affiliated warehousing companies. FAG Italy asserted on page 24 of its December 3, 1997, supplemental questionnaire response that the Department should deduct pre-sale warehousing expenses incurred on these transactions and not the warehousing commissions it paid to the affiliated warehousing companies because the deduction of both would result in double-counting. To avoid further double-counting, FAG Italy requested, if the Department deducted the sales commissions on these transactions, that it not deduct the indirect selling expenses reported for the U.S. affiliate because the sales agent assumed the selling functions and expenses for these sales.

To address FAG Italy's concern about double-counting, for the preliminary results we did not deduct from the price used to establish the CEP the warehousing commissions and sales commissions that FAG Italy's U.S. affiliate paid to its affiliated warehousing companies. Rather, we deducted the actual expenses, *i.e.*, indirect selling expenses and pre-sale warehousing expenses, that FAG Italy's U.S. affiliates incurred on the sales. We followed this methodology because we generally rely on actual expenses rather than intra-company transfers. See, for example, *Certain Fresh Cut Flowers from Colombia; Final Results of Antidumping Duty Administrative Reviews*, 62 FR 53287, 53294 (October 14, 1997), and *AFBs 5* at 66489. Affiliated-party commissions are an intra-company transfer of funds to compensate an affiliate for actual expenses incurred in completing the sale to unaffiliated customers. We do not believe that such intra-company transfers of funds are a proper adjustment to price and, therefore, have not altered our methodology for the final results.

Comment 3: Torrington argues that the Department should reject Koyo's exclusion from the sum of its U.S. indirect selling expenses its excluded antidumping-related expenses because Koyo did not explain how they were calculated or what they involve.

In rebuttal, Koyo argues that it is evident from its questionnaire response that the only antidumping-related expense it reported was the antidumping-related legal expense that Koyo incurred during the POR. Koyo argues further that the Department has a well-established policy by which it does not consider legal expenses incurred in defending against an allegation of dumping to be expenses incurred in selling the merchandise in the United States, citing *AFBs 7* at 54079.

Department's Position: We agree with Koyo that the response makes clear that the expenses in question are antidumping-related legal expenses. We also agree with Koyo that we should not consider the legal fees associated with participation in an antidumping case to be U.S. indirect selling expenses. As we stated in *AFBs 7* at 54079, such expenses are incurred solely as a result of the existence of the antidumping duty order and to deduct such expenses from U.S. price would involve a circular logic that could result in an unending spiral of deductions for an amount that is intended to represent the actual offset for the dumping.

Comment 4: NTN states that the Department had no basis for including in the preliminary results the profit on EP sales in the calculation of CEP profit. NTN contends that the statute states clearly that the adjustment of profit to the CEP is to be based on expenses incurred in the United States as a percentage of total expenses, citing section 772(d) of the Act. NTN states that there is no provision in the statute for the inclusion of EP expenses or CV profit in this calculation and requests that the Department exclude these sales from the calculation of CEP profit in the final results.

Torrington states that the Department addressed this issue in *Tapered Roller Bearings, Four Inches or Less from Japan* (63 FR 2558, 2570 (January 15, 1998)) recently and in a policy bulletin dated September 4, 1997, and should stand by its determination in the preliminary results.

Department Position: We disagree with NTN. The basis for total actual profit is the same as the basis for total expenses under section 772(f)(2)(C) of the Act. The first alternative under this section states that, for purposes of determining profit, the term ''total expenses'' refers to all expenses incurred with respect to the subject merchandise sold in the United States (as well as home-market expenses). Thus, where the respondent makes both EP and CEP sales to the United States, sales of the subject merchandise would encompass all such transactions. Therefore, because NTN had EP sales, we have included these sales in the calculation of CEP profit. *See* also September 4, 1997, policy bulletin.

Comment 5: NTN argues that the Department should calculate CEP profit on a level-of-trade-specific basis. Citing section 772(f) of the Act, NTN maintains that the statute expresses a preference for CEP profit to be calculated on the narrowest possible basis which, NTN states, ensures more accurate results.

Torrington contends that the Department should follow its prior determinations. Torrington notes that NTN is mischaracterizing the statute and states that the statute refers to the ''narrowest'' group of products only when the groups are broader than the subject merchandise involved.

Department's Position: We agree with Torrington that NTN's reliance on the ''narrowest'' language is misplaced (section 773 (f)(2)(c)(ii)). That language addresses only the second alternative basis for the profit calculation, whereas here we rely on the first alternative. Moreover, neither the statute nor the

SAA requires us to calculate CEP profit using any of the alternatives on a basis more specific than subject merchandise and foreign like product (*see AFBs 7* at 54072). Thus, we have not adopted NTN's suggestion.

10. Miscellaneous Issues

10.A. *Programming and Clerical Errors.* Barden, FAG Italy, Koyo, Nachi, NMB/Pelmec, NSK, NSK-RHP, NTN, SNFA France, SKF France, SKF Germany, SKF Italy, SKF Sweden, Torrington Nadellager, and the petitioner have alleged that we made programming and/or clerical errors in the preliminary result calculations. Where we and all parties agree that a programming or clerical error had occurred, we made the necessary correction and addressed the comment only in the final-results analysis memoranda. (*See* Final Results Analysis Memoranda of various dates.) The comments included in this notice address situations where parties alleged that we made a programming or clerical error but either we or a party to the proceedings disagrees with the allegation.

Comment 1: SKF Italy, SKF France, and SKF Germany address inconsistencies between the methodology the Department specified for assigning level of trade in its preliminary results analysis memoranda dated January 26, January 27, and February 2, 1998, respectively, and the actual methodology the Department used in its margin calculations. Specifically, the respondents note that, while the Department's preliminary-results analysis memoranda indicate that the variable for customer category, *e.g.*, OEM or distributor, was used to designate a level of trade for sales to unaffiliated customers, the Department actually used the channel-of-distribution variable in its calculations. The respondents assert that, in a situation where there is an inconsistency between the calculations and the analysis memoranda, the calculations reflect the Department's intent. For the final results, the respondents request that the Department note a correction in the analysis memoranda.

Torrington asserts that the Department's preliminary-results analysis memoranda are statements of intent. Therefore, Torrington contends, the Department should modify its calculations for SKF France, SKF Germany, and SKF Italy so that the variable for customer category is used to designate the level of trade.

Department's Position: We agree with these respondents that, for these reviews, we should use the variable for channel of distribution to designate the level of trade on their sales to unaffiliated customers for this period of review. Our reference in the analysis memoranda to assigning the level of trade of the respondents' sales to unaffiliated customers based on the variable for customer category was an error.

In our view, customer categories alone are insufficient to establish the level of trade. For the CEP transactions at issue, in performing the analysis necessary for determining normal value at the same level of trade as the starting price for the CEP, which was the price to the unaffiliated customer, we examined the selling activities performed in each channel of distribution, as well as the point in the chain of distribution where the selling activities occurred. *See* January 26, 1998, Level-of-Trade memorandum that is on the General Issues record. Based on our analysis of all the SKF companies in these reviews, we determined that the variable for channel of distribution was the most appropriate item to use for designating the level of trade of their sales to unaffiliated customers. This variable identifies groupings of transactions that are most similar in terms of the selling activities the respondents and their affiliates performed in selling to unaffiliated customers in the home market and the United States. For the final results, we did not need to alter the level-of-trade designations in the margin calculations for SKF Italy, SKF France, and SKF Germany because we used the variable for channel of distribution to assign a level-of-trade for the preliminary results.

Comment 2: SKF Sweden asserts that in its preliminary-results margin calculation the Department assigned the level of trade for sales to unaffiliated customers incorrectly based on customer categories rather than channels of distribution.

Torrington asserts that no changes need to be made to SKF Sweden's calculations since the Department implemented the methodology described in the preliminary-results analysis memorandum.

Department's Position: We agree with SKF Sweden that we should use the variable for channel of distribution to designate the level of trade of sales to unaffiliated customers. In our preliminary-results margin calculations, we erred by assigning the level of trade to SKF Sweden's sales to unaffiliated customers based on the variable for customer category. Based on our analysis of SKF Sweden, the variable for channel of distribution is the most appropriate item to use for designating the level of trade on its sales to unaffiliated customers. *See* our response to Comment 1 of this section for additional information regarding our level-of-trade analysis. Thus, for these final results, we altered our calculations for SKF Sweden such that we used the channel-of-distribution variable to assign the level of trade of sales to unaffiliated customers.

Comment 3: Torrington refers to language in the Department's computer program for FAG Italy and asserts that the language excludes zero-priced U.S. sales from the margin calculation. Torrington contends that the Department should remove this programming language since FAG Italy reported that there were no sample transactions of Italian-made bearings in the U.S. sales database.

FAG Italy asserts that, since it did not report any zero-priced U.S. sales, there is no reason for the Department to delete the programming language. FAG Italy also suggests that the programming language should remain since it represents a correct statement of law.

Department's Position: We agree with FAG Italy that there is no reason to delete the programming language to which Torrington refers. However, we disagree with the respondent that this particular programming language should remain because it represents a correct statement of law. Rather, the purpose of this programming language is to avoid the creation of an error message when the numerator of the transaction-specific percentage margin calculation is zero or negative and the denominator is positive.

Moreover, with respect to FAG Italy, the issue of whether to exclude zero-priced U.S. sales is moot because we examined the respondent's U.S. sales database and determined that there are no such transactions. We also examined the output of the margin-calculation program and confirmed that no U.S. sales are being removed.

Comment 4: NTN contends that the Department's application of a sampling factor to its CEP sales of SPBs is an error, asserting that it did not report these sales on a sampled basis.

Torrington states that, if NTN reported 2000 or more SPB transactions, the Department should apply the sampling factor but, if the company had fewer transactions, it should not.

Department Position: We agree with NTN. However, because of the proprietary nature of our position on this issue, we are not able to respond adequately here. *See* memorandum from Greg Thompson to the file dated May 20, 1998.

Comment 5: NTN asserts that the Department miscalculated CEP profit.

Torrington contends that NTN's comment on this issue is too vague. Torrington contends that it is not able to provide a meaningful response without the respondent clarifying its point of contention and requests that the Department reject NTN's argument.

Department Position: We agree with Torrington. Inasmuch as NTN does not state what it believes is in error, what caused the error, or how the calculations should be changed to fix the alleged problem, we can not address the issue.

Comment 6: NTN states that, consistent with the Department's position in the *Final Results of the Administrative Review of Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From Japan*, 61 FR 57629, 57636 (November 7, 1996), the Department should use the U.S. selling expenses based on level of trade as NTN reported.

Torrington asserts that the Department should not use NTN's U.S. selling expenses based on level of trade because the reporting rationale is not supported by the record. Furthermore, Torrington contends that the Department's use of NTN's reported methodology appears to be a ministerial error, noting that the analysis memorandum does not provide an explanation of the Department's substantive departure from prior determinations.

Department Position: We agree with Torrington on both points. Moreover, due to a ministerial error, we did not revise NTN's reporting of U.S. indirect selling expenses for the preliminary results of review. We have corrected the problem for the final results. *See* memorandum from Greg Thompson to the file, dated May 20, 1998. Also, *see* our response to comment B.2. of the ''Circumstance of Sale'' section of this document.

10.B. *Pre-Existing Inventory. Comment:* SKF Italy, SKF France, and SKF Germany note that the Department's preliminary-results analysis memoranda dated January 26, January 27, and February 2, 1998, do not address the issue of whether U.S. sales of merchandise that entered into inventory prior to the suspension of liquidation in the original LTFV investigation were excluded from the margin calculations. The respondents suggest that the Department's failure to include instructions in the margin-calculation program to exclude sales of this merchandise is a programming error. Respondents request that the Department address this oversight for the final results and modify its calculations to exclude sales of pre-suspension inventory.

Torrington contends that no programming error occurred and, therefore, no changes need to be made. Moreover, Torrington asserts that it is the Department's policy to base its antidumping analysis of CEP sales on all transactions that have a sale date during the POR. Since the merchandise at issue was sold during the POR, Torrington argues, the Department should continue to include the sales in the margin analysis.

Department's Position: We agree with Torrington that no programming error occurred.

In *Stainless Steel Wire Rod from France*, 61 FR 47874, 47875 (Sept. 11, 1996), we discussed the treatment of U.S. sales of merchandise that entered into inventory prior to the suspension of liquidation. In that case, we indicated that sales of merchandise that can be demonstrably linked with entries prior to the suspension of liquidation are not subject merchandise within the meaning of section 771(25) of the Act and, therefore, are not subject to our review. However, in these reviews, the respondents did not submit record evidence to establish that the sales at issue are of merchandise that entered the United States prior to the original suspension of liquidation. Therefore, consistent with our practice in the prior segment of these proceedings (*see AFBs 7* at 54084), for the final results we have continued to consider the transactions to be sales of subject merchandise and included them in our margin calculation.

10.C. *Military Sales. Comment:* Barden argues that the Department included military sales improperly in the preliminary calculations. Barden observes that, in its preliminary-analysis memo, the Department stated that, ''because the United Kingdom government does not have a Memorandum of Understanding (MOU) with the United States, we have included these sales in our analysis.'' Barden argues that this statement is incorrect and that there is a current MOU between the United States and the United Kingdom. Therefore, Barden contends that the Department must exclude all U.S. military sales in the calculation of Barden's final margins as it has in all prior reviews to date.

Torrington disagrees with Barden's argument and opines that the Department is not required to modify its preliminary results because Barden did not supply the Department with the information requested in the initial and supplemental questionnaires necessary to permit an exclusion of military sales. The petitioner asserts that the Department should reject Barden's argument and that the Department is justified in ignoring Barden's claims, citing *Murata Mfg. Co. Ltd.* v. *United States*, 17 CIT 259, 264, 820 F. Supp. 603, 607 (1993).

Department's Position: We agree with the respondent because our preliminary-analysis memorandum was in error. There is a current MOU between the U.S. and the U.K. governments effective until January 1, 2005. This memorandum is an agreement in the public domain. Therefore, we have excluded Barden's military sales from the final results in these reviews, as we have in all prior reviews to date. *See* section 771(20)(B) of the Act.

11. Cash-Deposit Financing

Comment: NTN argues that the Department's decision to ignore adjustments to NTN's U.S. indirect selling expenses for interest on cash deposits of antidumping duties is contrary to the Department's position in past reviews of these orders and in recent litigation.

NTN contends, the Department noted in *AFBs 6* at 2104 that such expenses were not selling expenses since they ''were incurred only because of the existence of the antidumping duty orders'' and the Department concluded that ''the expenses can not correctly be characterized as selling expenses.'' NTN also points to the Department's acceptance of this adjustment in *AFBs 5 and 6*, and in the position the Department took in comments it filed with the CIT in the litigation arising from *AFBs 4*. According to NTN, the CIT adopted these comments in large part, holding that ''interest NTN paid for antidumping duty deposits is not a selling expense and, thus, should be excluded from NTN's U.S. indirect selling expenses'' (*Federal-Mogul* v. *United States*, 20 CIT __, __, Slip Op. 96–193 (December 12, 1996) (*Federal-Mogul 2*)).

NTN argues that, in addition to disregarding Departmental and judicial precedent on this issue, the Department's decisions in the instant reviews are flawed. First, NTN contends, the Department's decision to disallow the adjustment in the preliminary results contradicts the well-reasoned analysis the Department set forth in *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From Japan, and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, From Japan; Final Results of Antidumping Duty Administrative*

Reviews and Termination in Part (*TRBs Final Results*), 62 FR 11,825, 11828–830 (March 13, 1997), in which the Department explained that it ''recognize(s) that opportunity costs * * * have a real financial impact on the firm.''

Second, NTN asserts, the Department's statements that opportunity costs are not associated with making cash deposits is a misunderstanding of the definition of ''opportunity costs.'' NTN argues that opportunity costs are ''the real economic loss which an entity experiences when it must forgo some other, more profitable use of its resources,'' citing *Cartersville Elevator, Inc.* v. *ICC*, 724 F.2d 668, 670 (8th Cir. 1984), and *Mira* v. *Nuclear Measurements Corp.*, 107 F.3d 466, 472 (7th Cir. 1997) (describing the diversion of funds from more profitable activity as ''the classic definition of opportunity costs''). NTN argues that the expense associated with making cash deposits fits these definitions. In NTN's view, the source of the funds does not determine whether this is an opportunity cost because, in either case, these funds can not be put to a more profitable use.

Finally, NTN argues that, at some point, the Department's prior decisions must become case law, citing *Shikou Chemicals* v. *United States*, 16 CIT 383, 388 (1992) (*Shikou Chemicals*).

Torrington argues that the Department rejected an adjustment to NTN's U.S. selling expenses for cash-deposit financing expenses properly. Torrington contends that there are both policy and legal reasons that support the Department's decision.

Torrington states that posting the estimated antidumping duties is a direct consequence of respondent's conscious decision to dump and, as such, is a selling (or other import) expense. Torrington contends that, if deposits were not made, then there would be no merchandise to resell. Thus, Torrington concludes, deposits are a cost of doing business for those who choose to trade unfairly.

Torrington acknowledges that the CIT, in *Federal-Mogul 2*, reached a contrary conclusion but contends that this is irrelevant, stating that, when the statute is unclear on its face, the court only reviews the Department's determinations for reasonableness, citing *The Timken Company* v. *United States*, 37 F.3d 1470, 1474 (Fed Cir. 1994). Torrington states that, since the statute provides no definition of ''indirect selling expense,'' the Court only affirmed the reasonableness of the Department's old position and, therefore, it remained open for the Department to reconsider and reach another reasonable position. Torrington states further that administrative agencies may change their positions, as the Department did in *AFBs 7*, if they provide reasoned explanations, citing *Busse Broadcasting Corp.* v. *F.C.C.*, 87F.3d 1456 (CAFC 1996), and *Household Goods Forwarders Tariff Bureau* v. *I.C.C.*, 968 F.2d 81 (CAFC 1992).

Torrington contends that the ''law of the case'' doctrine does not apply in this situation. Torrington states that the Department made this very clear in *AFBs 5* when it stated that each administrative review is a separate reviewable segment of the proceeding involving different sales, adjustments, and underlying facts.

Finally, Torrington states that *Shikou Chemicals* is not relevant in the instant case because the Department has determined that its old methodology was conceptually incorrect and required change, whereas in *Shikou Chemicals* the Department simply changed a methodology to improve a prior method. Moreover, Torrington argues that, in *Shikou Chemicals*, the respondent relied on the old methodology. In the instant reviews, NTN was fully aware of the determination made in *AFBs 7*.

Department's Position: We agree with Torrington that we should deny an adjustment to NTN's U.S. indirect selling expenses for expenses which NTN claims are related to financing cash deposits. However, we do not agree with the reasons Torrington has presented.

We should not remove such financial expenses from reported indirect selling expenses under any circumstances because they do not bear directly on an expense that parties incur solely as a result of the antidumping duty order; this holds regardless of whether the party claims any link to antidumping duty deposits or other expenses, such as legal fees. As we have stated previously: ''money is fungible. If an importer acquires a loan to cover one operating cost, that may simply mean that it will not be necessary to borrow money to cover a different operating cost.'' *See AFBs 7* at 54079.

Even if a respondent has a loan amount that equals its cash deposits or can demonstrate a ''paper trail'' connecting the loan amount to cash deposits, we do not consider the loan amount to be related to the cash deposits and will not remove it from the indirect selling expenses. Moreover, the result should not be different where an actual expense can not be associated in any way with the cash deposits. We reject imputation of an adjustment both for this reason and the reason Torrington stated: there is no real opportunity cost associated with cash deposits when the paying of such deposits is a precondition for doing business in the United States. As a result, we have not accepted NTN's reduction in indirect selling expenses based on actual borrowings to finance cash deposits nor will we accept such a reduction based on imputed borrowings. We consider all financial expenses the affiliated importer incurred with respect to sales of subject merchandise in the United States to be indirect selling expenses under section 772(d)(1)(D) of the Act.

Although we have allowed removal of expenses for financing cash deposits in a post-URAA case (*see TRBs Final Results*), we reexamined this issue in a previous segment of these proceedings and concluded that the new policy best reflects commercial reality with respect to affiliated-importer situations (*see AFBs 7*).

12. Romania-Specific Issues

Comment 1: Torrington argues that the Indonesian import data used to value the steel to manufacture inner and outer rings (Indonesian tariff classification HTS 7228.30) appear to be erroneous. Torrington claims that these data only appear in the trade statistics for January-February 1996 and therefore do not include full-year data for 1996. Torrington also argues that the Indonesian import statistics for the entire year 1996 demonstrate no imports of that category of steel. Torrington claims that the only reliable Indonesian import data on the record for HTS 7228.30 are those for the full-year 1995, which Torrington submitted on December 12, 1997. Thus, Torrington contends that the Department should determine that the January-February 1996 data for this certain Indonesian tariff classification are unreliable and rely on data for the full-year 1995 instead.

TIE disagrees with Torrington's argument and claims that the January-February 1996 data the Department used to value steel used to manufacture inner and outer rings (Indonesian tariff classification HTS 7228.30) are reliable. TIE states that it is logical to assume that the end-of-year data for that tariff classification was simply not available for publication at the time the year-end Indonesian statistics were issued. TIE claims that Torrington provided no factual evidence showing that end-of-year steel data are available. TIE notes that there is only a slight difference between the average import price as derived from the January-February 1996

data and the full-year 1995 data and thus claims that the similarity in prices supports the reliability of January-February 1996 data.

Department's Position: We agree with the petitioner. We find that using full-year 1995 data is more appropriate than using only two months of data from 1996, especially given that the 1995 data, unlike the 1996 data, allow us to remove imports from NME countries and countries with small volumes of exports to Indonesia. *See* our response to comment 2 below.

Comment 2: Torrington argues that surrogate values for bearing-quality steel should have been adjusted in conformity with Department practice to exclude imports from NMEs, imports of small quantities, and imports from non-producers of bearing-quality steel when the Department calculated surrogate values from import statistics. Torrington suggests that the Department use the 1995 Indonesian import-statistics report that lists the source countries of the import data and develop ratios to apply to Indonesian imports in other periods for which the source countries are not listed, citing *Tapered Roller Bearings and Parts Thereof, Finished or Unfinished, from Romania; Final Results of Antidumping Duty Administrative Review,* 62 FR 37194, 37195 (July 11, 1997) (*TRBs from Romania*).

The respondent argues that, under the circumstances, the Department should not exclude imports from NMEs, imports of small quantities, and imports from non-producers of the relevant product in calculating surrogate values from import statistics. TIE states that the most current and accurate data are not available to make the appropriate adjustments in the final results.

Department's Position: We agree with the petitioner. It is our practice to exclude imports from countries we have previously determined to be NMEs, small import quantities, and imports from non-producers of bearing-quality steel in calculating surrogate values for material inputs, where such exclusions are possible based on record information. *See TRBs from Romania* at 37195. Therefore, using the data available in the record and consistent with our practice in *TRBs from Romania* at 37195, we have excluded imports from countries that export less than seven metric tons *per annum* to Indonesia for the final results. We also have excluded imports from NMEs and imports from non-producers of bearing-quality steel.

Comment 3: Torrington argues that the Department should not use factory overhead, SG&A, and profit rates from the financial statements of an Indonesian steel company, P.T. Jaya Pari Steel, and asserts that it is not in the same industry category as the bearing industry. Torrington asserts that data from another Indonesian manufacturer, P.T. Lion Metal Works, is on the record and this company produces merchandise which more closely approximates the bearing industry. Torrington asserts that in the final results the Department should use the financial statements of P.T. Lion to calculate SG&A and profit rates, adjusting the calculation to avoid double-counting of movement expenses by using public data available on the record.

TIE disagrees with Torrington's argument that the Department should use the financial statements of P.T. Lion Metal works to calculate factory overhead, SG&A, and profit rates instead of using the financial statement of P.T. Jaya Pari Steel. TIE recognizes that P.T. Jaya Pari Steel is not a bearings producer. However, TIE argues that P.T. Jaya Pari Steel is a steel company and, therefore, is more closely related to a bearings producer than is P.T. Lion, which is involved in activities such as hospital and high-security equipment.

TIE asserts that, in *AFBs 7* at 54080, the Department used the factory overhead, SG&A, and profit values of P.T. Jaya Pari and should conform to past practice. TIE also asserts that, in this review, P.T. Jaya Pari's information contains, in a single, public source, factory overhead, SG&A, and profit data. TIE claims that it would be inaccurate to use P.T. Lion's data since it could not be ensured that costs are included correctly within administrative or distribution expenses and that the Department would be forced to go to another source to get the overhead information for its analysis.

Department's Position: As we stated in *AFBs 7* at 54080, in our hierarchy for selecting data for possible surrogate values, we prefer to use current, publicly available information. P.T. Jaya Pari's information is contemporaneous with the POR, P.T. Jaya Pari is a steel producer and therefore more similar to a bearings producer than P.T. Lion, a manufacturer of hospital and high-security equipment, and, finally, the P.T. Jaya Pari statements, unlike the P.T. Lion statements, allow us to calculate overhead, SG&A, and profit from one source as well as to analyze the components of each element. *See* Preliminary Analysis Memorandum for AFBs from Romania for the 1996–1997 POR dated January 26, 1998. Therefore, we have used P.T. Jaya Pari's financial statement because it represents a closer approximation of the costs incurred by TIE than would use of P.T. Lion's financial statement.

Comment 4: Torrington argues that, to value the steel used in the manufacture of TIE's bearings, the Department should use the appropriate tariff classification for steel used to manufacture balls, *i.e.*, other wire of alloy steel (HTS 7229.90). Torrington argues that TIE stated that wire is used to produce balls but it appears that the Department used the value of steel ''rod'' in coils (HTS 7227.90), not ''wire'' (HTS 7229.90), to value the steel for balls. Torrington suggests that the Department correct this error in the final results, replacing the value for ''rod,'' wherever it is used to value the steel for balls, with the appropriate value for ''wire.''

Department's Position: We have reviewed the record and found that we used the appropriate values for steel used to manufacture balls, *i.e.*, HTS 7229.90 (other alloy wire of alloy steel). Our materials for the final results contain the correct HTS numbers.

Comment 5: Torrington contends that the International Labor Office (ILO) costs the Department used in the preliminary results of review are flawed because the wage rates the Department used to calculate labor costs reflect only minimum wages in Indonesia and thus do not represent actual labor costs accurately.

Torrington also disagrees with the Department's use of the ILO's ''average daily wage and hours worked per week for the iron and steel basic industries'' to value direct labor. Torrington claims that the iron and steel basic industries are not within the same industry category as the industry producing bearings. Torrington argues that the Department decided the proper classification of the AFB industry in *TRBs from Romania* at 37194. The petitioner claims that, even if the minimum wage rates the Department used reflected rates actually paid in Indonesia, the rates would not be applicable to the industry in this review under any reasonable interpretation of the comparable-merchandise standard set forth in section 773(c)(4)(B) of the Act.

Torrington proposes that, in the interest of the Department's desire to obtain actual or as accurate as possible information, the Department should use, for the final results, either the Department's *Expected Wages of Selected Nonmarket Economy Countries*, the 1997 issue of *Investing, Licensing and Trading Conditions Abroad* (IL&T), or *Doing Business in Indonesia* (1996).

TIE claims that it was reasonable and in accordance with law for the Department to use the ILO labor costs. TIE argues that there is nothing on the record which indicates that the ILO wages do not reflect actual costs to employers. TIE explains that in *TRBs from Romania* at 37197 the Department found no indication that the ''minimum'' rate for the industry excludes any employee-benefit costs which the Department normally considers. TIE notes that the Department also addressed this issue in its January 26, 1998, Preliminary Analysis Memorandum, where it added amounts to labor rates to account for benefits. TIE states that the Department adjusted the ILO data correctly by using information from the Foreign Labor Trends, as in *Lighters from the PRC*, which showed supplementary benefits to be 33 percent of manufacturing earnings.

TIE also opposes Torrington's contention that the Department should not use data from Indonesian iron and steel basic industries to value direct and indirect labor. TIE claims that the Department responded to this same argument in *TRBs from Romania* at 37197, where it acknowledged that wage rates for laborers in the iron and steel basic industries are not in the same industry as the bearings industry. TIE notes that section 773(c)(4) of the statute states that the Department will attempt to find producers of comparable products in selecting surrogate countries when the Department can not locate information from the same industry. TIE argues that the facts of the current case are the same as those in *TRBs from Romania* and, therefore, that there is no information on the record which pertains specifically to the bearing industry.

In addition, TIE argues that the Department rejected in *TRBs from Romania* at 37197 two of the alternate sources for surrogate data, *IL&T* and *Doing Business in Indonesia* (1996), proposed by Torrington. Also, TIE contests Torrington's suggestion that the Department use its own calculation of wage rates for NME countries, *Expected Wages of Selected Nonmarket Economy Countries*, which is referenced by the Department's new regulations. TIE argues that the new regulations are not relevant in this review and, therefore, it would be unreasonable for the Department to apply those wage rates in an old-regulations case without prior notice to TIE.

Department's Position: We disagree with the petitioner. The wage rates we used in the preliminary results represent actual costs. Although the ILO data is a minimum wage, it includes such costs as ''cost-of-living allowances, and other guaranteed and regularly paid allowances,'' according to the ILO's Special Supplement to the Bulletin of Labor Statistics (1994). Furthermore, this follows our practice in *AFBs 7, TRBs from Romania,* and in *Tapered Roller Bearings and Parts Thereof, Finished or Unfinished, from Romania; Preliminary Results of Antidumping Duty Administrative Review*, 63 FR 11217 (March 6, 1998). Thus, we have continued to use, in these final results, the ILO labor data that we used in the preliminary results.

We have not used our own calculation of wage rates for NME countries, *Expected Wages of Selected Nonmarket Economy Countries,* because this administrative review is not governed by the new regulations. We do, however, intend to use this data source in any subsequently requested administrative reviews which will be governed by the new regulations.

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–475–059]

Pressure Sensitive Plastic Tape From Italy; Preliminary Results of Antidumping Duty Administrative Review

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

ACTION: Notice of preliminary results of antidumping duty administrative review of pressure sensitive plastic tape from Italy.

SUMMARY: In response to a request from an importer, Horizon Plastics, the Department of Commerce is conducting an administrative review of the antidumping duty finding on pressure sensitive plastic tape from Italy. The period of review is October 1, 1996 through September 30, 1997. This review covers products manufactured and exported by N.A.R.S.p.A. We have preliminarily found that sales of subject merchandise have been made below normal value. If these preliminary results are adopted in our final results, we will instruct the Customs Service to assess antidumping duties based on the difference between the export price or constructed export price and normal value.

Interested parties are invited to comment on these preliminary results. Parties who submit arguments are requested to submit with the argument (1) a statement of the issue and (2) a brief summary of the argument. We will issue the final results not later than 120 days from the date of publication of this notice.

EFFECTIVE DATE: June 18, 1998.

FOR FURTHER INFORMATION CONTACT: Todd Peterson or Thomas Futtner, AD/CVD Enforcement Office 4, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482–4195, and 482–3814, respectively.

SUPPLEMENTARY INFORMATION:

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department of Commerce's (the Department's) regulations refer to the regulations codified at 19 CFR Part 351 (62 FR 27296, May 19, 1997).

Background

On October 21, 1997, the Department published in the **Federal Register** (42 FR 56110) the antidumping duty finding on pressure sensitive plastic tape (PSPT) from Italy. On October 31, 1997, in accordance with 19 CFR 351.213(b), an interested party and importer of the subject merchandise, Horizon Plastics, Inc., requested that the Department conduct an administrative review of N.A.R.S.p.A. exports of subject merchandise to the United States. We published the notice of initiation of this review on November 26, 1997 (62 FR 63069).

Scope of the Review

Imports covered by the review are shipments of PSPT measuring 1⅜ inches in width and not exceeding 4 mils in thickness. During the period of review (POR), the above described PSPT was classified under HTS subheadings 3919.90.20 and 3919.90.50. The HTS subheadings are provided for convenience and for U.S. Customs purposes. The written description remains dispositive as to the scope of the product coverage.

Use of Facts Otherwise Available

We preliminarily determine that, in accordance with section 776(a)(2)(A) of the Act, the use of facts available is

appropriate for N.A.R.S.p.A. because this firm did not respond to the Department's antidumping questionnaire. In addition, there is no information on the record within the meaning of section 782(e) of the Act with regard to sales by N.A.R.S.p.A. and therefore no information to consider as an alternative to facts available in determining the margin for N.A.R.S.p.A.

The Department finds that, in not responding to the questionnaire, this firm failed to cooperate by not acting to the best of its ability to comply with requests for information from the Department. Where the Department must base the entire dumping margin for a respondent in an administrative review on the facts available because the respondent failed to cooperate, section 776(b) authorizes the Department to use an inference adverse to the interests of the respondent in choosing the facts available. Section 776(b) also authorizes the Department to use as adverse facts available information derived from the petition, the final determination, a previous administrative review, or other information placed on the record.

As adverse facts available, we have used the highest rate from any prior segment of the proceeding, 12.66 percent. This rate was calculated in the *Final Results of Administrative Review of Antidumping Finding* (48 FR 35666), covering the period February 18, 1977 through September 30, 1980. Information from prior segments of the proceeding constitutes ''secondary information'' within the meaning of section 776(c) of the Act. Section 776(c) provides that the Department shall, to the extent practicable, corroborate secondary information by comparing it with independent sources reasonably at its disposal. The Statement of Administrative Action (SAA) provides that corroborate means simply that the Department will satisfy itself that the secondary information to be used has probative value.

To corroborate secondary information, the Department will, to the extent practicable, examine the reliability and relevance of the information to be used. However, unlike other types of information, such as input costs or selling expenses, there are no independent sources for calculated dumping margins. The only source for margins is administrative determinations. Thus, in an administrative review, if the Department chooses as total adverse facts available a calculated dumping margin from a prior segment of the proceeding, it is not necessary to question the reliability of the margin for that time period. With respect to the relevance aspect of corroboration, however, the Department will consider information reasonably at its disposal as to whether there are circumstances that would render a margin not relevant. Where circumstances indicate that the selected margin is not appropriate as adverse facts available, the Department will disregard the margin and determine an appropriate margin (*see, e.g., Fresh Cut Flowers from Mexico; Preliminary Results of Antidumping Duty Administrative Review* (60 FR 49567), where the Department disregarded the highest margin as averse facts available because the margin was based on another company's uncharacteristic business expense resulting in an unusually high margin). No such circumstances exist in this case which would cause the Department to disregard a prior margin.

Preliminary Results of the Review

As a result of this review, we preliminarily determine that the following margin exists for the period October 1, 1996, through September 30, 1997:

Manufacturer/exporter	Margin (percent)
N.A.R.S.p.A	12.66

Parties to the proceeding may request disclosure within five days of the date of publication of this notice. Interested parties may also request a hearing within ten days of publication. If requested, a hearing will be held as early as convenient for the parties but not later than 39 days after the date of publication of the first work day thereafter. Interested parties may submit case briefs not later than 30 days after the date of publication of this notice. Rebuttal briefs, which must be limited to issues raised in the case briefs, may be filed not later than 37 days after the date of publication of this notice. The Department will issue a notice of the final results of this administrative review, which will include the results of its analysis of issues raised in any such briefs, within 120 days from the publication of these preliminary results.

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. Furthermore, the following deposit requirements will be effective upon completion of the final results of this administrative review for all shipments of pressure sensitive plastic tape from Italy entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(1) of the Act: (1) the cash deposit rate for the reviewed company will be the rate established in the final results of this administrative review (except no cash deposit will be required where weighted-average margin is *de minimis, i.e.*, less than 0.5 percent); (2) for merchandise exported by manufacturers or exporters not covered in this review but covered in the original less-than-fair-value (LTFV) investigation or a previous review, the cash deposit will continue to be the most recent rate published in the final determination or final results for which the manufacturer or exporter received an individual rate; (3) if the exporter is not a firm covered in this review, a previous review, or the original investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) if neither the exporter nor the manufacturer is a firm covered in this or any previous reviews or the original investigation, the cash deposit rate will be 12.66 percent, the ''new shipper'' rate established in the first notice of final results of administrative review published by the Department (48 FR 35686, August 5, 1983).

This notice serves as a preliminary reminder to importers of their responsibility to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This administrative review and notice are in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: June 11, 1998.

Robert S. LaRussa,

Assistant Secretary, Import Administration.

[FR Doc. 98–16273 Filed 6–17–98; 8:45 am]

BILLING CODE 3510–DS–M

DEPARTMENT OF COMMERCE

International Trade Administration

North American Free-Trade Agreement (NAFTA), Article 1904 Binational Panel Reviews

AGENCY: NAFTA Secretariat, United States Section, International Trade Administration, Department of Commerce.

ACTION: Notice of decision of panel.

SUMMARY: On June 4, 1998 the binational panel issued its decision in the review of the final antidumping duty administrative review respecting Certain Corrosion-Resistant Carbon Steel Flat Products from Canada, Secretariat File No. USA–97–1904–03. The panel affirmed in part and remanded in part the final determination for further action within 60 days. Copies of the panel decision are available from the U.S. Section of the NAFTA Secretariat.

FOR FURTHER INFORMATION CONTACT:

James R. Holbein, United States Secretary, NAFTA Secretariat, Suite 2061, 14th and Constitution Avenue, Washington, D.C. 20230, (202) 482–5438.

SUPPLEMENTARY INFORMATION: Chapter 19 of the North American Free-Trade Agreement (''Agreement'') establishes a mechanism to replace domestic judicial review of final determinations in antidumping and countervailing duty cases involving imports from a NAFTA country with review by independent binational panels. When a Request for Panel Review is filed, a panel is established to act in place of national courts to review expeditiously the final determination to determine whether it conforms with the antidumping or countervailing duty law of the country that made the determination.

Under Article 1904 of the Agreement, which came into force on January 1, 1994, the Government of the United States, the Government of Canada and the Government of Mexico established *Rules to Procedure for Article 1904 Binational Panel Reviews* (''Rules''). These Rules were published in the **Federal Register** on February 23, 1994 (59 FR 8686). The panel review in this matter has been conducted in accordance with these Rules. BACKGROUND: On May 12, 1997, Stelco, Inc. filed a First Request for Panel Review with the U.S. Section of the NAFTA Secretariat pursuant to Article 1904 of the North American Free Trade Agreement. Panel review was requested of the final antidumping duty Administrative review made by the International Trade Administration in the administrative review respecting Certain Corrosion-Resistant Carbon Steel Flat Products from Canada. This determination was published in the **Federal Register** on April 15, 1997 (62 FR 18448). The NAFTA Secretariat assigned Case Number USA–97–1904–03 to this request. The panel reviewed the complaints, briefs and other documents and heard oral argument in this matter.

Panel Decision: The panel remanded the final determination to ITA to (1) reconsider the calculations of transfer prices for certain inputs and consider arguments that the transfer price of those inputs should be recalculated to take account of the actual costs with regard to those inputs; (2) recompute the net interest expense factor to include certain payments to governments other than income tax; and (3) correct clerical errors concerning certain inland freight expenses. The panel ordered the remand determination to be returned within 60 days (by August 3, 1998).

Dated: June 8, 1998.

James R. Holbein,

U.S. Secretary, NAFTA Secretariat.

[FR Doc. 98–16159 Filed 6–17–98; 8:45 am]

BILLING CODE 3510–61–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[Docket No. 980429111–8111–01]

RIN 0648–ZA43

Coastal Services Center Coastal Change Analysis Program

AGENCY: National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of availability of Federal assistance.

SUMMARY: The Coastal Services Center announces the availability of Federal assistance for fiscal year 1999 in the Coastal Change Analysis Program. This announcement provides detailed guidelines for the program area and include details for the technical program, evaluation criteria, and selection procedures. All applicants are required to submit a NOAA Grants Application Package and project proposal. The standard NOAA Grants Application Package (which includes forms SF–424, SF–424A, SF–424B, SF–424C, SF–424D, CD–511, DC–512, and SF–LLL) can be obtained from the Coastal Services Center, (843) 740–1200. Each funded project will establish a cooperative agreement. The total amount of funding is $200,000 to $335,000. A 20% cost share is required.

DATES: Completed applications will be accepted through 5:00 pm Eastern Daylight Time on July 15, 1998. Target award date is anticipated to be within 90 days of application closing date.

ADDRESSES: Send completed applications to Dr. Dorsey Worthy, NOAA Coastal Services Center, 2234 South Hobson Avenue, Charleston, South Carolina 29405–2413.

FOR FURTHER INFORMATION CONTACT:

Dr. Dorsey Worthy, (843) 740–1234 or dworthy@csc.noaa.gov.

SUPPLEMENTARY INFORMATION:

Authority

Statutory authority for this program is provided under 16 U.S.C. Sec. 1456.c (Technical Assistance); 15 U.S.C. Sec. 1540 (Cooperative Agreements); 33 U.S.C. Sec. 1442 [Research program respecting possible long-range effects of pollution, overfishing, and man-induced changes of ocean ecosystems]; and 33 U.S.C. Sec. 1441 (Monitoring and research programs).

Catalog of Federal Domestic Assistance (CFDA)

The CSC Program is listed in the Catalog of Federal Domestic Assistance under Number 11.473.

Program Description

NOAA's Coastal Services Center (CSC) is seeking proposals to expand its national effort to monitor change in coastal habitats. The purpose of these guidelines is to identify eligibility criteria, roles and responsibilities, milestones, and selection criteria associated with the award. Each funded project will establish a one year cooperative agreement between CSC and the Cooperator. Most projects will be funded in the approximately $10,000–$75,000 range. A cost share of 20% of the total award amount is required for consideration.

Background

The National Oceanic and Atmospheric Administration's (NOAA) Coastal Services Center (CSC) in Charleston, South Carolina is a coastal science and resource advisory center that draws on the expertise of NOAA and its partners to address critical coastal resource issues. Established in 1994 in Charleston, the Center's mission is to provide information, education and technology transfer to the coastal community for improved decision making. The Center serves to bridge the gap between coastal scientists and resource managers by bringing Center staff, technologies, and outside partner expertise to bear on national problems related to coastal ecosystems and economies.

The Coastal Services Center's Coastal Change Analysis Program (C–CAP) is a nationwide effort to produce standardized land cover and benthic habitat maps and change data for all coastal areas of the United States. This work is accomplished in close

cooperation with state and local resource management agencies. The objectives of the program are to produce nationally consistent baseline and change data, and to determine the impacts these changes have on living marine resources for informed coastal decision making as well as for identifying and protecting essential fish habitat. For these C–CAP efforts, consideration for funding will be limited to projects in the following states, based on gaps in previous mapping efforts: Florida, Massachusetts, New Jersey, New York, North Carolina, Oregon and Texas. Total amount of funding available is $200,000 to $335,000.

C–CAP will initiate projects in three general areas in FY99:

0. New terrestrial land cover change analysis projects will be initiated to derive Landsat Thematic Mapper (TM) based terrestrial wetlands and uplands land cover characterizations and change for state or regional scale studies. These projects are part of the C–CAP effort to establish a baseline change assessment for all coastal areas of the United States. Project funding for FY99 will range from $10,000 to $75,000, for a total of up to $300,000 maximum for this category.

1. New seagrass and other submersed-benthic mapping projects will be initiated to derive location and change maps of seagrass and other nearshore benthic resources as part of the continuing C–CAP effort to establish a baseline change assessment for all coastal areas of the United States. Project funding for FY99 will range from $5,000 to $10,000, for a total of up to $30,000 maximum for this category.

2. State and local land cover and benthic change applications projects will be initiated to foster local (county and township level) use of C–CAP land cover and benthic resource maps for coastal land use planning and management. Project funding for FY99 will range from $10,000 to $35,000, for a total of up to $35,000 maximum for this category.

Roles and Responsibilities

These projects are intended to be cooperative in nature. The project proposals should demonstrate cooperative efforts among various participants such as federal, state, and local governments. Successful proposals will establish a consortium of key participants, and identify appropriate responsibilities for these project partners. The following items identify the minimum project participation expected by the Coastal Services Center and the project applicant. Additional roles and responsibilities should be identified by the applicant.

1. Coastal Services Center. C–CAP and the Coastal Services Center shall have primary responsibility for the following activities associated with the project:

2 Provide all Landsat TM imagery or aerial Photography needed for the project. The original, government-provided data are property of CSC and must be returned to CSC upon completion of the project.

2 Provide technical guidance for image processing, field verification, and accuracy assessment to ensure all procedures and products meet the guidelines presented in Dobson *et al.* 1995 (Available on the C–CAP homepage of the CSC web site or upon request from the CSC library). This includes:

—The provision of guidance and manpower in all field exercises deemed necessary by both parties; and

—Site visits by C–CAP personnel to the facilities of the cooperator(s) to provide technical assistance as necessary during data processing.

2 Provide all necessary forms, information and assistance to document Federal Geographic Data Committee (FGDC) compliant metadata for the change detection product.

2 Monitor progress and evaluate biannual progress reports.

0. Cooperator. The Cooperator shall have primary responsibility for the following activities associated with the project:

2 Organize and manage project planning and partnership development.

2 Administer the cooperative agreement in accordance with the terms of the cooperative agreement award.

2 Identify a technical coordinator that will take the lead for all technical aspects of the change detection and a management coordinator that will be responsible for relating the data to key management issues an ensuring that the data are integrated into pertinent coastal management programs.

2 Perform a change detection analysis for the study area as per this announcement presented in Dobson *et al.* 1995.

2 Furnish for the change detection analysis all digital (i.e. NWI) or hard copy (i.e. aerial photos) data at their disposal that may be valuable as ancillary data.

2 Provide complete FGDC compliant metadata for the change detection products.

2 Provide all georeferenced field data collected during image verification and accuracy assessment.

2 Submit biannual progress reports.

0. Joint Responsibility Both C–CAP and the cooperator will provide final field accuracy assessment of the product, which may require either party to supply such equipment as laptop computers for field use, GPS units, four-wheel drive vehicles, etc.

Project Funding Priority

Program policy factors may be considered in final award decisions to ensure a balance of technical areas and geographic distribution.

Project Proposal

All project proposals should include the following sections for a total of 6–8 pages maximum:

2 Goals and Objectives—identify broad project goals and quantifiable objectives;

2 Background/Introduction—state the problem and summary of existing federal/state/local efforts;

2 Audience—describe specifics of how the project will contribute to improving or resolving coastal management issues with the primary target audience, also identify the audience explicitly;

2 Project Description/Methodology—describe the specifics of the project (in 3 pages maximum), with a complete and explicit description of the project area (i.e. TM scene path, row; number and location of aerial photos, flightlines etc);

2 Project Partners—identify project partners and their respective roles;

2 Milestones and Outcomes—list target milestones, timelines, and desired outcomes in terms of products or services; and,

2 Project Budget—provide a detailed budget breakdown by category and provide a brief narrative budget justification, including identification of 20% cost share.

Note: All applicants are required to submit 1 original and 2 copies of a completed and signed NOAA Grants Application Package. The application package may be obtained by calling the Coastal Services Center at (843) 740–1200.

Selection Process

Applicants will submit applications to the Coastal Services Center by the published due date. Each proposal will be reviewed by two external and two NOAA reviewers. Reviewers will individually score each proposal following the criteria published in these guidelines. Each proposal will be ranked by average score and submitted to the CSC Coastal Information Services Associate Director, who will make the final selections based on reviewer

rankings and the project funding priorities outlined above. It is anticipated that 3 to 10 projects will be funded.

Evaluation Criteria (With Weights)

Applications that do not meet the required 20% cost share *will not be considered*.

Coastal Management Relevance (40 points).

2 Does the project tie into ongoing federal, state or local management activities and/or programs? (25 points).

2 Does the project address critical federal, state or local coastal management policies relating to land cover and land cover change (i.e. non-point source runoff? (15 points).

Strength of Partnerships (30 points).

2 Does the project have a clearly defined audience and products have clearly defined users? (15 points).

2 How will the project foster ongoing federal, state or local partnerships for use of land cover change to answer coastal management needs among key collaborators? (15 points).

Technical Merit (30 points).

2 Does the proposed project maximize the use of existing resources? (15 points).

2 Is the approach scientifically sound and relevant at the local level? (15 points).

Selection Schedule

The following are the approximate milestones and dates for the selection schedule of the cooperator:

Applications due: July 15, 1998

Award target start date: October 31, 1998

Project Reporting/Evaluation Requirements

The Cooperator will be asked to provide biannual progress reports.

Funding Availability

Specific funding available for awards will be finalized after NOAA budget for FY 99 is authorized. Total funding available for this announcement will be between $200,000 and $335,000. There is nos guarantee that sufficient funds will be available to make awards for all approved projects. Publication of this notice does not obligate NOAA to award any specific grant or cooperative agreement or to obligate all or any parts of the available funds.

Cost Sharing

Cost sharing at 20% of the total Federal project funding cost is required in response to these guidelines and should be provided by the applicant or third party contributions.

Eligibility Criteria

Applicant eligibility is limited to projects in the following states, based on gaps in previous efforts; Florida, Massachusetts, New Jersey, New York, North Carolina, Oregon and Texas. Other Federal agencies or institutions are not eligible to receive Federal assistance under this notice.

Indirect Costs

The total dollar amount of the indirect costs proposed in an application under this program must not exceed the current indirect cost rate negotiated and approved by the applicant's cognizant Federal agency, prior to the proposed effective date of the award or 100 percent of the total proposed direct costs dollar amount in the application, whichever is less. If a rate has not been established, one will be negotiated by the Department of Commerce Office of Inspector General.

Federal Policies and Procedures

Recipients and sub-recipients are subject to all Federal laws and Federal and DOC policies, regulations, and procedures applicable to Federal assistance awards.

Name Check Review

All non-profit and for-profit applicants are subject to a name check review process. Name checks are intended to reveal if any key individuals associated with the recipient have been convicted of, or are presently facing, criminal charges such as fraud, theft, perjury, or other matters that significantly reflect on the recipient's management, honesty, or financial integrity.

Past Performance

Unsatisfactory performance under prior Federal awards may result in an application not being considered for funding.

Pre-Award Activities

If applicants incur any costs prior to an award being made, they do so solely at their own risk of not being reimbursed by the Government. Notwithstanding any oral or written assurance that may have been received, there is no obligation on the part of DOC to cover pre-award costs, should an award not be made or funded at a level less than requested.

No Obligation for Future Funding

If the application is selected for funding, DOC has no obligation to provide any additional future funding in connection with that award. Renewal of an award to increase funding or extend the period of performance is at the total discretion of DOC.

Delinquent Federal Debts

No award or Federal Funds shall be made to an applicant who has an outstanding delinquent Federal debt until either:

(i) The delinquent account is paid in full,

(ii) A negotiated repayment schedule is established and at least one payment is received, or

(iii) Other arrangements satisfactory to DOC are made.

Primary Applicant Certifications

All organizations or individuals preparing grant applications must submit a completed Form CD–511 ''Certifications Regarding Debarment, Suspension, and Other Responsibility Matters; Drug-Free Workplace Requirements and Lobbying,'' and explanations are hereby provided:

Non-Procurement Debarment and Suspension

Prospective participants (as defined at 15 CFR part 26, Section 105) are subject to 15 CFR part 26, ''Nonprocurement Debarment and Suspension'' and the related section of the certification form prescribed above applies;

Drug-Free Workplace

Grantees (as defined at 15 CFR part 26, Section 605) are subject to 15 CFR part 26, subpart f, ''Government side Requirements for Drug-Free Workplace (Grants)'' and the related section of the certification form prescribed above applies;

Anti-Lobbying

Persons (as defined at 15 CFR part 28, Section 105) are subject to the lobbying provisions of 31 U.S.C. 1352, ''Limitation on use of appropriated funds to influence certain Federal contracting and financial transactions,'' and the lobbying section of the certification form prescribed above applies to application/bids for grants, cooperative agreements, and contracts for more than $100,000, and loans and loan guarantees for more than $150,000, or the single family maximum mortgage limit for affected programs, whichever is greater; and Anti-Lobbying Disclosures. Any applicant that has paid or will pay for lobbying using any funds must submit an SF–LLL, ''Disclosure of Lobbying Activities,'' as required under 15 CFR part 28, Appendix B.

Lower-Tier Certifications

Recipients shall require applicants/bidders for sub-grants, contracts,

subcontracts, or other lower-tier-covered transactions at any tier under the award to submit, if applicable, a completed Form CD–512, ''Certifications Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transactions and Lobbying'' and disclosure form, SF–LLL, ''Disclosure of Lobbying Activities.'' Form CD–512 is intended for the use of recipients and should not be transmitted to DOC. SF–LLL submitted by any tier recipient or sub-recipient should be submitted to DOC in accordance with the instructions contained in the aware document.

False Statements

A false statement on an application is grounds for denial or termination of funds and grounds for possible punishment by a fine or imprisonment as provided in 18 U.S.C. 1001.

Intergovernmental Review

____ Applications under this program are subject to Executive Order 12372, ''Intergovernmental Review of Federal Programs.''

Buy American-Made Equipment or Products

Applicants are hereby notified that they will be encouraged, to the greatest extent practicable, to purchase American-made equipment and products with funding provided under this program in accordance with Congressional intent.

Classification

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

Prior notice and an opportunity for public comment are not required by the Administrative Procedure Act or any other law for this notice concerning grants, cooperative agreements, benefits, and contracts. Therefore, a regulatory flexibility analysis is not required for purposes of the Regulatory Flexibility Act. Notwithstanding any other provision of law, no person is required to respond to, nor shall a person be subject to, a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act (PRA) unless the collection of information displays a currently valid OMB control number.

This notice involves a collection-of-information requirement subject to the Paperwork Reduction Act. The collection-of-information has been approved by OMB, OMB Control Numbers 0348–0043, 0348–0044, 0348–0040, 0348–0046, and 0605–0001.

Dated: June 9, 1998.

Captain Evelyn J. Fields,

Acting Deputy Assistant Administrator for Ocean Services and Coastal Zone Management.

[FR Doc. 98–16268 Filed 6–17–98; 8:45 am]

BILLING CODE 3510–08–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 061198C]

Federal Investment Task Force; Public Meeting

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

ACTION: Notice of public meeting.

SUMMARY: The Sustainable Fisheries Act (SFA) requires the Secretary of Commerce (Secretary) to establish a task force to study the role of the Federal Government in subsidizing fleet capacity and influencing capital investment in fisheries. The Federal Investment Task Force will hold its fourth meeting on June 26–29, 1998, in Portland, ME.

DATES: The meeting of the task force will be held June 26–29, 1998. See **SUPPLEMENTARY INFORMATION** for specific dates and times.

ADDRESSES: The meeting will be held at the Sheraton South Portland, 363 Maine Hall Road, Portland, ME 04106, telephone (207) 775–6161.

FOR FURTHER INFORMATION CONTACT: John Reisenweber, Atlantic States Marine Fisheries Commission, (301) 713–2363; fax: (301) 713–1875; email: john.reisenweber@noaa.gov; or Matteo Milazzo, (301) 713–2276.

SUPPLEMENTARY INFORMATION:

Meeting Dates

June 26, 1998, 1:00 p.m. to 9:00 p.m.

The Task Force will review the Federal programs that were discussed at the previous meeting. The review will include a discussion of the influence that these programs have had on capacity and capitalization of fishing fleets.

June 27, 1998, 8:30 a.m. to 6:00 p.m.

The Task Force will review the working papers that have been updated and developed since the last meeting.

June 28, 1998, 7:00 p.m. to 9:00 p.m.

The Task Force will hear public input regarding the Federal Investment Study. The public is encouraged to comment on the general scope and concept of the study, as well as the effect of Federal programs on the capacity and capitalization of fishing fleets.

June 29, 1998, 8:30 a.m. To 5:00 p.m.

The Task Force will review the comments received at the public meeting. The Task Force will conclude its review and further discuss the influence of other federal agencies and policies on capacity and capitalization in the fishing fleet. The Task Force will also determine the subjects and topics to be included on the agenda for the next meeting.

Special Accommodations

The meeting is physically accessible to those with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to John Reisenweber at (301) 713–2363 at least 5 days prior to the meeting date.

Dated: June 15, 1998.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 98–16244 Filed 6–17–98; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Telecommunications and Information Administration

[Docket No. 980422102–8152–02]

Public Meeting To Explore Privacy Issues Related to Electronic Commerce

AGENCY: National Telecommunications and Information Administration, Department of Commerce.

ACTION: Notice.

SUMMARY: This public meeting will provide an opportunity for members of the academic community, industry, privacy advocates, public interest groups, the public and government to explore issues surrounding electronic commerce privacy. The meeting will provide a forum for debate and dialogue.

DATES: The meetings will be held on June 23 and 24, 1998 from 9 a.m. until 5 p.m.

ADDRESSES: The meeting is scheduled to take place at the Department of Commerce, main auditorium, 14th Street and Constitution Avenue, NW., Washington, DC. Attendees should use the Main Entrance on 14th Street. To facilitate entry please (1) have a picture ID available and/or a U.S. government building pass if applicable and (2) have your registration form with you.

If the meeting location changes, another Federal Register notice will be

issued. Updates about the location of the meeting will also be available on the NTIA website at *www.ntia.doc.gov/ntiahome/privacy,* or you may call Jane Coffin at 202–482–1866. The meeting will also be broadcast over the Internet. The broadcast can be accessed via the NTIA website.

FOR FURTHER INFORMATION CONTACT: Jane Coffin, by phone (202) 482–1866, by facsimile (202) 482–1865, by mail marked to her attention at NTIA/OIA, Room 4701, 14th Street and Constitution Avenue, NW., Washington, DC 20230, or by electronic mail at privacy@ntia.doc.gov.

MEDIA INQUIRIES: Please contact the Office of Public Affairs, at (202) 482–7002.

SUPPLEMENTARY INFORMATION: The U.S. Department of Commerce announces a two-day meeting on privacy and electronic commerce. The purpose of the meeting is to promote dialogue and discussion regarding privacy issues related to electronic commerce, to discuss whether, and to what extent, self regulation can address privacy concerns, to discuss the elements of effective self regulation, to consider privacy issues and concerns specific to children, to review and discuss the advantages and disadvantages regarding a proposed methodology for assessing compliance in regard to self regulation, to examine successful strategies for protecting privacy on the Internet and to survey current technologies available to protect consumer privacy on the Internet.

Agenda

June 23

Overview of privacy issues
Issues of Children's Privacy
Results of Public Surveys on Privacy
Elements of Effective Self Regulation

June 24

Industry Reports on Self Regulatory Approaches
Children's Workshop
Technology Tools to Protect Privacy
Consumer Education/Consumer Assistance

This agenda is subject to change. For an updated, more detailed agenda, please check the NTIA website at *www.ntia.doc.gov/ntiahome/privacy/.*

Public Participation: The meeting will be open to the public and physically accessible to people with disabilities. Any member of the public wishing to attend and requiring special services, such as sign language interpretation or other ancillary aids, should contact Amy Flatten at least five (5) working days prior to the meeting at (202) 482–1866.

Registration: Information about paper and electronic registration for the summit will be available on the National Telecommunications and Information Administration website, *http://www.ntia.doc.gov/ntiahome/privacy/,* or contact Jane Coffin, Telecommunications Policy Specialist, the NTIA/OIA, U.S. Department of Commerce, Main Auditorium, 14th Street and Constitution Avenue, NW., Washington, DC 20230. Telephone: (202) 482–1866; Fax: (202) 482–1865; e-mail at *privacy@ntia.doc.gov.*

Shirl Kinney,

Deputy Assistant Secretary and Administrator, National Telecommunications and Information Administration.

[FR Doc. 98–16126 Filed 6–17–98; 8:45 am]

BILLING CODE 3510–60–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Submission for OMB Review; Comment Request

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Title, Associated Form, and OMB Number: Department of Defense Standard Tender of Freight, MT Form 364–R, OMB Number 0704–0261.

Type of Request: Reinstatement.

Number of Respondents: 993.

Responses per Respondent: 13.

Annual Responses: 13,500.

Average Burden per Response: 45 minutes.

Annual Burden Hours: 10,125.

Needs and Uses: The Department of Defense Standard Tender of Freight Services is used to determine freight transportation charges, accessorial and security service costs, and to select carriers for 1.2 million Government Bill of Lading (GBL) freight shipments annually. The information derived from the DoD tenders on file with the Military Traffic Management Command (MTMC) is used by the MTMC subordinate commands and DoD shippers to select the lowest cost carrier to transport freight shipments. This information is used to develop about 140,000 procurement rate quotations annually. Additionally, DoD tender rate and other pertinent tender data are noted on the GBL at the time of shipment. The DoD tender is used as the source document for the General Services Administration post-shipment audit of carrier freight bills.

Affected Public: Business or Other For-Profit.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain benefits.

OMB Desk Officer: Mr. Peter N. Weiss.

Written comments and recommendations on the proposed information collection should be sent to Mr. Weiss at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Mr. Robert Cushing.

Written requests for copies of the information collection proposal should be sent to Mr. Cushing, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202–4302.

Dated: June 12, 1998.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 98–16172 Filed 6–17–98; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 98–17]

36(b)(1) Arms Sales Notification

AGENCY: Department of Defense, Defense Security Assistance Agency.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of P.L. 104–164 dated 21 July 1996.

FOR FURTHER INFORMATION CONTACT: Ms. J. Hurd, DSAA/COMPT/RM, (703) 604–6575.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittal 98–17, with attached transmittal and policy justification.

L. M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5000–04–M

DEFENSE SECURITY ASSISTANCE AGENCY

WASHINGTON, DC 20301-2800

1 JUN 1998
In reply refer to:
I-56705/97

Honorable Newt Gingrich
Speaker of the House of
Representatives
Washington, D.C. 20515-6501

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, we are forwarding herewith Transmittal No. 98-17 and under separate cover the classified annex thereto. This Transmittal concerns the Department of the Air Force's proposed Letter(s) of Offer and Acceptance (LOA) to Taipei Economic and Cultural Representative Office in the United States for defense articles and services estimated to cost $160 million. Soon after this letter is delivered to your office, we plan to notify the news media of the unclassified portion of this Transmittal.

Sincerely,

MICHAEL S. DAVISON, JR.
LIEUTENANT GENERAL, USA
DIRECTOR

Attachments

Separate Cover:
Classified Annex

Same ltr to: House Committee on International Relations
Senate Committee on Appropriations
Senate Committee on Foreign Relations
House Committee on National Security
Senate Committee on Armed Services
House Committee on Appropriations

Transmittal No. 98-17

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act

(i) Prospective Purchaser: Taipei Economic and Cultural Representative Office (TECRO) in the United States pursuant to P.L. 96-8

(ii) Total Estimated Value:

Major Defense Equipment*	$ 120 million
Other	$ 40 million
TOTAL	$ 160 million

(iii) Description of Articles or Services Offered: Twenty-eight sets of PATHFINDER/SHARPSHOOTER navigation and targeting pods, integration of the pods with the F-16A/B aircraft, flight testing, personnel training and training equipment, special test sets and support equipment, publications and technical data, U.S. Government and contractor engineering and logistics personnel services, spare and repair parts, maintenance support of repairable material and other related elements of program support.

(iv) Military Department: Air Force (SKA, Amendment 8)

(v) Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid: none

(vi) Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold: See Annex under separate cover.

(vii) Date Report Delivered to Congress: 1 JUN 1998

* as defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

Taipei Economic and Cultural Representative Office (TECRO) in the United States - Navigation and Targeting Pods

The Taipei Economic and Cultural Representative Office (TECRO) in the United States pursuant to P.L. 96-8 has requested a possible sale of 28 sets of PATHFINDER/SHARPSHOOTER navigation and targeting pods, integration of the pods with the F-16A/B aircraft, flight testing, personnel training and training equipment, special test sets and support equipment, publications and technical data, U.S. Government and contractor engineering and logistics personnel services, spare and repair parts, maintenance support of repairable material and other related elements of program support. The estimated cost is $160 million.

This possible sale is consistent with the United States law and policy as expressed in Public Law 96-8.

The recipient will use these navigation and targeting pods on its F-16A/B aircraft to provide a low altitude navigation and targeting capability. Taiwan will have no difficulty absorbing these navigation and targeting pods into its inventory as part of the F-16A/B aircraft program.

The possible sale of this equipment and support will not affect the basic military balance in the region.

The prime contractor will be the Lockheed Martin Corporation, Orlando, Florida. There are no offset agreements proposed to be entered into in connection with this potential sale.

Implementation of this possible sale will not require the assignment of any additional U.S. Government personnel in-country; however, it is estimated that five contractor representatives will be required in-country to provide technical support for approximately three to six months following delivery of the pods.

There will be no adverse impact on U.S. defense readiness as a result of this possible sale.

[FR Doc. 98–16173 Filed 6–17–98; 8:45 am]
BILLING CODE 5000–04–C

DEPARTMENT OF DEFENSE

Department of the Army

Army Science Board; Notice of Closed Meeting

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (P.L. 92–463), announcement is made of the following Committee Meeting:

Name of Committee: Army Science Board (ASB).

Date of Meeting: 13–23 July 1998.

Time of Meeting: 0800–1700.

Place: Arnold & Mabel Beckman Center—Irvine, CA.

Agenda: The Army Science Board's (ASB) Summer Study panels on ''Prioritizing Army Space Needs'' and ''Concepts and Technology of the Army Beyond 2010'' will meet for the purpose of discussion, report writing, and finalizing briefings for their respective sponsors. These meetings will be closed to the public in accordance with Section 552b(c) of Title 5, U.S.C., specifically subparagraph (4) thereof, and Title 5, U.S.C., Appendix 2, subsection 10(d). The classified and unclassified matters to be discussed are so inextricably intertwined so as to preclude opening any portion of these meetings. For further information, please contact our office at (703) 604–7490.

Wayne Joyner,

Program Support Specialist, Army Science Board.

[FR Doc. 98–16150 Filed 6–17–98; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army

Army Science Board; Notice of Closed Meeting

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (P.L. 92–463), announcement is made of the following Committee Meeting:

Name of Committee: Army Science Board (ASB).

Date of Meeting: 15 June 1998.

Time of Meeting: 0900–1600.

Place: Edgewood, MD.

Agenda: The Army Science Board's (ASB) Issue Group panel on ''Review of Risk Assessment Methodology for Proposed DoD Range Rule'' will meet to the effort to scope and write their assessment of the risk methodology. This meeting will be closed to the public in accordance with Section 552b(c) of Title 5, U.S.C., specifically subparagraph (4) thereof, and Title 5, U.S.C., Appendix 2, subsection 10(d). The classified and unclassified matters to be discussed are so inextricably intertwined so as to preclude opening any portion of these meetings. For further information, please contact our office at (703) 604–7490.

Wayne Joyner,

Program Support Specialist, Army Science Board.

[FR Doc. 98–16151 Filed 6–17–98; 8:45 am]

BILLING CODE 3710–08–M

DELAWARE RIVER BASIN COMMISSION

Notice of Commission Meeting and Public Hearing

Notice is hereby given that the Delaware River Basin Commission will hold a public hearing on Wednesday, June 24, 1998. The hearing will be part of the Commission's regular business meeting which is open to the public and scheduled to begin at 1:30 p.m. in the Goddard Conference Room of the Commission's offices at 25 State Police Drive, West Trenton, New Jersey.

An informal conference among the Commissioners and staff will be held at 9:30 a.m. at the same location and will include a presentation on loadings of PCBs from tributaries and point sources to the tidal Delaware River; discussion of DRBC advisory committee functions and 1998 DRBC meeting schedule and locations.

In addition to the subjects listed below which are scheduled for public hearing, the Commission will also address the following: Minutes of the May 27, 1998 business meeting; announcements; General Counsel's report; report on Basin hydrologic conditions; consideration of request for hearing re Glen Mills School Docket No. D–97–39; a resolution concerning funding to support the position of Delaware Estuary Program Coordinator; a resolution providing for the election of the Commission offices of Chair, Vice Chair and Second Vice Chair; and public dialogue.

The subjects of the hearing will be as follows:

Applications for Approval of the Following Projects Pursuant to Article 10.3, Article 11 and/or Section 2.8 of the Compact

1. *Evansburg Water Company D–96–57 CP.* A ground water withdrawal project to supply water to the applicant's Perkiomen Division distribution system from existing Well Nos. 201, 203, 204, and from new Well No. 202, and to increase the combined allocation of ground water from 5.5 million gallons (mg)/30 days to 6.06 mg/30 days. The project is located in Perkiomen Township, Montgomery County in the Southeastern Pennsylvania Ground Water Protected Area.

2. *New Jersey Department of Military and Veterans Affairs D–96–66 CP.* A ground water withdrawal project to supply up to 14.4 mg/30 days of water to the applicant's cemetery turf irrigation system from new Well Nos. A, B and C, and to limit the withdrawal limit from all wells to 14.4 mg/30 days. The project is located in North Hanover Township, Burlington County, New Jersey.

3. *Township of Buckingham D–97–49 CP.* A ground water withdrawal project to supply water to the applicant's distribution system from existing Well Nos. BV–1, BV–2, FS–1, FS–2, CS–1, CS–2 and CS–3, from acquired Well Nos. L–1 and L–2 (formerly Peddler's Village Partnership Well Nos. 1 and 3), from new Well Nos. F–1 and F–2, and to increase the existing withdrawal limit from 21.15 mg/30 days to 33.2 mg/30 days. The project is located in Buckingham Township, Bucks County in the Southeastern Pennsylvania Ground Water Protected Area.

4. *Warwick Township Water & Sewer Authority D–98–19 CP.* An interconnection project for the transfer of an average up to 1.2 million gallons per day (mgd) of treated water from Philadelphia Suburban Water Company (PSWC) to the applicant. The water transfer will serve the projected needs of the applicant's service area in Warwick Township, Bucks County, Pennsylvania. The proposed transfer will establish a conjunctive use water system for the project service area, which currently relies on ground water and is located in the Southeastern Pennsylvania Ground Water Protected Area. PSWC's Neshaminy Creek intake in Middletown Township, Bucks County, will supply the surface water via the interconnection that entails a water main extension from the PSWC system along County Line Road in Warminster Township, Bucks County north to the applicant's storage tank on Dark Hollow Road in Warwick Township, Bucks County.

5. *Moorestown Township D–98–21 CP.* A project to rerate the applicant's sewage treatment plant (STP) No. 1 from 3.5 mgd to 3.88 mgd. Located off Pine Road in Moorestown Township, Burlington County, New Jersey, the STP serves Moorestown Township and will continue to discharge to North Branch Pennsauken Creek.

6. *Papen Farms, Inc. D–98–24.* A ground water withdrawal project to supply up to 32.4 mg/30 days of water to the applicant's agricultural irrigation system from the Wilson Farm Well; to increase the existing withdrawal limit of

130 mg/30 days from all wells to 160.2 mg/30 days, and to increase the withdrawal limit from all wells and intakes from 176 mg/30 days to 207 mg/30 days. The project is located in Kent County, Delaware.

7. *Great Spring Waters of America, Inc. D–98–27.* A project to increase withdrawals from an existing spring water system from a combined total of just less than 100,000 gallons per day (gpd) to 300,000 gpd, which consists of three sources, Spring Nos. 1, 2 and 3, located in the drainage area of Ontelaunee Creek in Lynn Township, Lehigh County, Pennsylvania. The springs are situated within 1,000 feet of each other and are approximately 2,000 feet east of State Route 309 and 1,000 feet west of Mountain Road. The withdrawals will be transported via tank truck to the applicant's bottling plant located near the City of Allentown, Lehigh County, Pennsylvania.

Documents relating to these items may be examined at the Commission's offices. Preliminary dockets are available in single copies upon request. Please contact Thomas L. Brand at (609) 883–9500 ext. 221 concerning docket-related questions. Persons wishing to testify at this hearing are requested to register with the Secretary at (609) 883–9500 ext. 203 prior to the hearing.

Dated: June 9, 1998.

Susan M. Weisman,

Secretary.

[FR Doc. 98–16223 Filed 6–17–98; 8:45 am]

BILLING CODE 6360–01–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 20, 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, S.W., Room 5624, Regional Office Building 3, Washington, D.C. 20202–4651.

FOR FURTHER INFORMATION CONTACT: Patrick J. Sherrill (202) 708–8196. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Acting Deputy Chief Information Officer, Office of the Chief Information Officer, publishes this notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment at the address specified above. Copies of the requests are available from Patrick J. Sherrill at the address specified above.

Dated: June 12, 1998.

Hazel Fiers,

Acting Deputy Chief Information Officer, Office of the Chief Information Officer.

Office of Postsecondary Education

Type of Review: Revision.

Title: Federal Perkins Loan Program (formerly National Direct/Defense Student Loan Program) Assignment Form.

Frequency: Annually.

Affected Public: Individuals or households; Businesses or other for-profits; Not-for-profit institutions.

Reporting and Recordkeeping Hour Burden: Responses: 30,500; Burden hours: 15,250.

Abstract: This form is used to collect pertinent data regarding defaulted student loans from institutions participating in the Federal Perkins Loan program. The ED Form 533 serves as the transmittal document in the assignment of such defaulted loans to the Federal government for collection.

[FR Doc. 98–16162 Filed 6–17–98; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER97–2354–001]

Citizens Utilities Company; Notice of Filing

June 12, 1998.

Take notice that on December 15, 1997, Citizens Utilities Company (Citizens), tendered for filing an Amendment to its March 27, 1997, revised Open Access Transmission Tariff filing applicable to its Vermont Electric Division.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions and protests should be filed on or before June 22, 1998. Protests will be considered by the Commission to determine 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.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–16181 Filed 6–17–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project Nos. 4632–020 and 4632–021]

Clifton Power Corporation; Notice of Intent To Accept Surrender of License

June 12, 1998.

Take notice that the Commission proposes to accept surrender of Clifton Power Corporation's license for the 800-

kilowatt Clifton Mills No. 1 Project No. 4632 located on the Pacolet River in Spartanburg County, South Carolina.

By order issued June 2, 1998, (Clifton Power Corporation, Order on Settlement Offer, 83 FERC ¶ 61,257) the Commission directed its Secretary to issue public notice of its intention to unconditionally accept surrender of the license for this project, unless comments opposing such acceptance are filed within 30 days after issuance of the notice. The Commission will also terminate, without re-assessment, the civil penalty proceeding in this matter (*Clifton Power Corp*. v. *FERC*, 88 F.3d 1258 (D.C. Cir. 1996), pending on remand from the court).

The Commission will consider whether to accept surrender of the license, and if so, under what conditions, in light of any such comments received. If no such comments are received, the surrender of the license will be accepted unconditionally on the thirty-first day after issuance of this public notice, without further order of the Commission. After acceptance of surrender, the Commission will no longer regulate the safety of the project or any other aspect of its operation.

Any person may file comments. All comments must be received on or before July 13, 1998, and must bear in all capital letters the title ''COMMENTS,'' and the project number P–4632. Comments may be filed by providing an original and 8 copies to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, DC 20426.

Comments must also be served upon: Clifton Power Corporation, 5250 Clifton-Glendale Road, Spartansburg, SC 29307.

Questions about this notice may be addressed to Dean Wight at (202) 219–2675.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–16188 Filed 6–17–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–234–002]

CNG Transmission Corporation; Notice of Tariff Compliance

June 12, 1998.

Take notice that on June 9, 1998, CNG Transmission Corporation (CNG) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets, with an effective date of June 15, 1998:

Sub. Third Revised Sheet No. 361A

CNG respectfully requests a waiver of Section 154.207 of the Commission's Regulations, so that its proposed repagination tariff sheet become effective June 15, 1998.

CNG states that the purpose of this filing is to comply with the Commission's directive to correct the pagination of a duplicately numbered tariff sheet from CNG's June 3, 1998 filing in Docket No. RP98–234–001. CNG proposes no substantive revision to the content of these tariff sheets, other than that which was reflected in CNG's June 3, 1998 filing.

CNG states that copies of its filing have been mailed to CNG's customers and interested state commissions.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed 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. 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. 98–16192 Filed 6–17–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98–598–000]

Columbia Gas Transmission Corporation; Notice of Request Under Blanket Authorization

June 12, 1998.

Take notice that on June 5, 1998, Columbia Gas Transmission Corporation (Columbia), 12801 Fair Lakes Parkway, Fairfax Virginia 22030–0146, filed a request pursuant to Sections 157.205 and 157.211 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.211) for authorization to construct and operate facilities necessary to establish four new points of delivery for firm transportation service, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Specifically, Columbia proposes to construct and operate the necessary facilities to establish four new delivery points for firm transportation service under Part 284. Columbia states that the quantities to be provided through the new delivery points will be within its authorized level of services. As such, Columbia states that there is no impact on its existing design daily and annual obligations to the customers.

Columbia estimates the cost to install the new taps to be approximately $150 per tap.

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. 98–16185 Filed 6–17–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP96–128–008]

Eastern Shore Natural Gas Company; Notice of Proposed change in FERC Gas Tariff

June 12, 1998.

Take notice that on June 1, 1998, Eastern Shore Natural Gas Company (Eastern Shore) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets, with a proposed effective date of July 1, 1998:

First Revised Sheet No. 213
First Revised Sheet No. 214
First Revised Sheet No. 215

Eastern Shore states that the purpose of the filing is to comply with ordering paragraph (G) of the Commission's October 15, 1997 order issued in Docket Nos. CP96–128–000, *et al.* The order

directed Eastern Shore to file revised tariff sheets by June 1, 1998 to be effective July 1, 1998 to fully comply with the GISB electronic communication standards.

Eastern Shore states that copies of its filing are available for inspection at its office at 417 Bank Lane, Dover, Delaware and has been mailed to all firm customers, interruptible customers, and affected state commissions.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed 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. 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. 98–16184 Filed 6–17–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–245–000]

High Island Offshore System; Notice of Proposed Changes in FERC Gas Tariff

June 12, 1998.

Take notice that on June 10, 1998, High Island Offshore System (HIOS) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets to be effective August 1, 1998:

Sixth Revised Sheet No. 110
Second Revised Sheet No. 110A
Third Revised Sheet No. 110B
Second Revised Sheet No. 110C

HIOS asserts that the purpose of this filing is to comply with the Commission's April 16, 1998, letter order in the captioned proceeding regarding Order No. 587–G. Pipelines must comply with the adoption of Version 1.2 of the GISB standards (284.10(b)) and the standards regarding the posting of information on websites and retention of electronic information (284.10(c)(3) (ii) through (v)).

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 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should 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. 98–16195 Filed 6–17–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–342–005]

Kern River Gas Transmission Company; Notice of Compliance Filing

June 12, 1998.

Take notice that on June 9, 1998, Kern River Gas Transmission Company (Kern River) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, Substitute Original sheet No. 141, to become effective July 1, 1998.

Kern River states that the purpose of this filing is to comply with the Commission's June 2, 1998 letter order in Docket No. RP97–342–004 by modifying Kern River's pooling provision to clarify that reimbursement for fuel and lost and unaccounted-for gas will be determined according to Section 12 of the General Terms and Conditions of Kern River's tariff.

Kern River states that it has served copies of the filing upon all intervenors in Docket No. RP97–342.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed 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. 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. 98–16191 Filed 6–17–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98–592–000]

Koch Gateway Pipeline Company; Notice of Request Under Blanket Authorization

June 12, 1998.

Take notice that on June 4, 1998, Koch Gateway Pipeline Company (Koch Gateway), Post Office Box 1478, Houston, Texas 77251–1478, filed a request with the Commission in Docket No. CP98–592–000, pursuant to Sections 157.205, and 157.216(b) of the Commission's Regulations under the Natural Gas Act (NGA) for authorization to abandon by removal an inactive 1-inch delivery tap, authorized in blanket certificate issued in Docket No. CP82–430–000, all as more fully set forth in the request on file with the Commission and open to public inspection.

Koch Gateway proposes to abandon by removal, a 1-inch tap that formerly served an individual farm tap customer on behalf of Entex, Inc. (Entex), a local distribution company, in Jim Wells County, Texas. The tap is inactive since the end-user was converted to propane service. Entex concurs with the proposed abandonment.

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. 98–16183 Filed 6–17–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–246–000]

NorAm Gas Transmission Company; Notice of Proposed Changes in FERC Gas Tariff

June 12, 1998.

Take notice that on June 10, 1998, NorAm Gas Transmission Company (NGT) tendered for filing as part of its FERC Gas Tariff, Fourth Revised Volume No. 1, the following revised tariff sheets to be effective July 10, 1998:

Second Revised Sheet No. 36
Third Revised Sheet No. 66
Second Revised Sheet No. 81
Second Revised Sheet No. 307A
Original Sheet 307B

NGT states that the revised tariff sheets are being filed to implement the non-discriminatory waiver of fuel charges for certain path-specific limited term backhaul transactions that do not require the use of fuel on NGT's system and to implement the posting of such transactions via NorAm's EDGE electronic bulletin board.

Any person desiring to be heard or to protect 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. 98–16196 Filed 6–17–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–247–000]

Northwest Alaskan Pipeline Company; Notice of Proposed Changes in FERC Gas Tariff

June 12, 1998.

Take notice that on June 9, 1998, Northwest Alaskan Pipeline Company (Northwest Alaskan) tendered for filing to become part of its FERC Gas Tariff, Original Volume No. 2, the following tariff sheets, with the proposed effective date of October 1, 1998:

Original Sheet Nos. 124DN–124DQ
First Revised Sheet No. 219
Original Sheet Nos. 220–223
First Revised Sheet No. 317
Original Sheet Nos. 318–321
Fifth Revised Sheet No. 400

Northwest Alaskan states that this filing is being made to reflect the proposed abandonment and tariff termination of Rate Schedule X–4 and tariff revisions to Rate Schedules X–1, X–2 and X–3 to implement, in part, a broader transaction which is intended to restructure the arrangements among Northwest Alaskan, its supplier, Pan-Alberta Gas Ltd. (Pan-Alberta) and its purchaser, PITCO. In brief, this transaction would restructure the sale such that Northwest Alaskan's rights and obligations under the Gas Sales Contract dated March 9, 1978, by and between Northwest Alaskan and Pan-Alberta, as amended (WesternContract) will be assigned to and assumed by Pan-Alberta Gas U.S. (PAG–US); Northwest Alaskan's related sale to PITCO and PITCO's related sale to Southern California Gas Company (''SoCalGas'') will be terminated; and PAG–US will enter into a new contract directly with SoCalGas for the sale of a portion of the gas. In addition, PITCO will transfer its current pipeline capacity rights on the PG&E Gas Transmission-Northwest Pipeline Corporation (PGT) and Northwest Pipeline Corporation systems to PAG–US.

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. 98–16197 Filed 6–17–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–243–000]

Panhandle Eastern Pipe Line Company; Notice of Reconciliation Report

June 12, 1998.

Take notice that on June 5, 1998, Panhandle Eastern Pipe Line Company (Panhandle) tendered for filing its final reconciliation report in compliance with Article I, Section 3(d)(ii) of the April 18, 1996 Stipulation and Agreement in Docket No. RP95–411–000 (Settlement). The Settlement required the filing of a reconciliation report as soon as practicable following the termination of the Second Firm GSR Settlement Rates.

Panhandle states that it filed in Docket No. RP98–146–000 on February 27, 1998, to suspend the Second GSR Settlement Reservation Surcharge for firm transportation services provided under Rate Schedules FT, EFT and LFT and the Second GSR Settlement Volumetric Surcharge for service provided under Rate Schedule SCT effective April 1, 1998. Panhandle's February 27, 1998 filing was approved by Commission letter order issued March 27, 1998.

Panhandle states that copies of its filing are being served on all affected customers and applicable state regulatory agencies.

Any person desiring to be heard or to protest this filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed 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 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. 98–16193 Filed 6–17–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–244–000]

U–T Offshore System; Notice of Proposed Changes in FERC Gas Tariff

June 12, 1998.

Take notice that on June 10, 1998 U–T Offshore System (U–TOS) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the following tariff sheets, to become effective August 1, 1998:

Eighth Revised Sheet No. 73,
Third Revised Sheet No. 73A,
Second Revised Sheet No. 73B,

U–TOS asserts that the purpose of this filing is to comply with the Commission's April 16, 1998, letter order in the captioned proceeding regarding Order No. 587–G. Pipelines must comply with the adoption of Version 1.2 of the GISB standards (284.10(b)) and the standards regarding the posting of information on websites and retention of electronic information (284.10(c)(3)(ii) through (v)).

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. 98–16194 Filed 6–17–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. GT98–51–000]

Viking Gas Transmission Company; Notice of GRI Refund

June 12, 1998.

Take notice that on June 9, 1998, Viking Gas Transmission Company (Viking) tendered for filing a report of Gas Research Institute (GRI) refunds to Viking for the period from January 1, 1997 to December 31, 1997.

Viking states that the refunds have been based on a total refund from GRI to Viking of $181,337.00, and have been allocated to Viking's firm shippers based on their relative contributions to GRI funding during 1997. Viking also states that the reported refunds will be credited to Viking's customers on May 1998 invoices that will be mailed in June.

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 Section 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must 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 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. 98–16186 Filed 6–17–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER98–3006–000, et al.]

K&K Resources, Inc., et al. Electric Rate and Corporate Regulation Filings

June 9, 1998.

Take notice that the following filings have been made with the Commission:

1. K&K Resources, Inc.

[Docket No. ER98–3006–000]

Take notice that on June 4, 1998, K&K Resources, Inc. (K&K) amended its petition for acceptance of K&K Rate Schedule FERC No. 1; the granting of certain blanket approvals, including the authority to sell electricity at market-based rates; and the waiver of certain Commission regulations.

K&K intends to engage in wholesale electric power and energy purchases and sales as a marketer. K&K is not in the business of generating or transmitting electric power.

Comment date: June 24, 1998, in accordance with Standard Paragraph E at the end of this notice.

2. California Power Exchange Corporation

[Docket Nos. EC96–19–028 ER96–1663–029, ER98–1955–001, and ER98–2095–001]

Take notice that on June 1, 1998, California Power Exchange Corporation (PX) tendered for filing proposed compliance changes to its PX Operating Agreement and Tariff, including Protocols. The compliance filing responded to Commission orders issued October 30, 1997, December 17, 1997, and March 30, 1998 in the WEPEX proceedings. The filing also includes a *pro forma* Meter Service Agreement for PX Participants and a PX Participation Agreement. The PX also seeks waiver of Section 35.10 of the Commission's Regulations, 18 CFR 35.10.

The PX states that its filing has been served on all parties listed on the official service lists in the above-captioned dockets.

Comment date: August 5, 1998, in accordance with Standard Paragraph E at the end of this notice. In addition, the comment must be categorized as follows:

(1) Comments related to the proposed changes to the PX Operating Agreement and Tariff, including Protocols in compliance with the Commission's orders;

(2) Comments on issues other than compliance changes to the PX Operating Agreement and Tariff, including protocols, such as issues that have not yet been addressed by the Commission;

(3) Comments related to the proposed changes to the PX Participation Agreement or the Meter Service Agreement for PX Participants.

3. California Independent System Operator Corporation

[Docket Nos. EC96–19–029 and ER96–1663–030]

Take notice that on June 1, 1998, California Independent System Operator Corporation (ISO) tendered for filing proposed compliance changes to its Tariff, including Protocols, Bylaws and Code of Conduct. The ISO seeks an extension of time to file certain

additional changes to its Tariff and Bylaws. The ISO also seeks waiver of section 35.10 of the Commission's regulations, 18 CFR 35.10 (1997).

The ISO states that its filing has been served on all parties listed on the official service lists in the above-captioned dockets.

Comment date: August 5, 1998, in accordance with Standard Paragraph E at the end of this notice, and must included a one-page executive summary.

In addition, for administrative convenience, the Commission has classified the compliance filing into eight categories. The captioned docket includes, and is limited to, the ISO Tariff, including Protocols, Bylaws, and Code of Conduct.[1]

Any comments addressing the ISO's June 1 submittal of the ISO Tariff, including Protocols, Bylaws, and Code of Conduct, must be filed in the captioned proceeding, and should be further categorized as follows:

(1) Comments related to the proposed changes to the ISO Tariff, including Protocols, Bylaws and Code of Conduct, in compliance with the Commission's orders; or

(2) Comments on issues other than compliance changes to the ISO Tariff, including Protocols, Bylaws and Code of Conduct, such as issues that have not yet been addressed by the Commission;

4. California Independent System Operator Corporation

[Docket Nos. ER98–899–001, ER98–990–001, ER98–992–001, ER98–1019–001, ER98–1057–001, ER98–1499–001, and ER98–1971–001]

Take notice that on June 1, 1998, California Independent System Operator Corporation (ISO), tendered for filing proposed compliance changes to its Transmission Control Agreement, certain *pro forma* operating agreements and certain bilateral operating agreements. The ISO seeks an extension of time to file certain additional compliance changes to its Transmission Control Agreement. The ISO also seeks waiver of Section 35.10 of the Commission's Regulations, 18 CFR 35.10.

The ISO states that its filing has been served on all parties listed on the official service lists in the above-captioned dockets.

In addition, for administrative convenience, the Commission has classified the ISO's compliance filing into eight categories. The captioned dockets include, and are limited to, seven of these categories, including the Transmission Control Agreement, the *pro forma* agreements, and the bilateral agreements submitted by the ISO as part of the compliance filing. [2]

Any comments addressing the ISO's June 1 submittal of the various agreements must be filed in separate documents under the appropriate docket number, as follows:

(1) Comments related to the proposed changes to the Transmission Control Agreement should be submitted in Docket No. ER98–1971–001.

(2) Comments related to the proposed changes to the *pro forma* and bilateral Scheduling Coordinator Agreements should be submitted in Docket No. ER98–990–001.

(3) Comments related to the proposed changes to the Interim Black Start Agreement should be submitted in Docket No. ER98–1019–001.

(4) Comments related to the proposed changes to the pro forma and bilateral Meter Service Agreements with either Scheduling Coordinators or ISO Metered Entities should be submitted in Docket No. ER98–1499–001.

(5) Comments related to the proposed changes to the pro forma and bilateral Participating Generator Agreements should be submitted in Docket No. ER98–992–001.

(6) Comments related to the proposed changes to the Responsible Participating Transmission Owner Agreements should be submitted in Docket No. ER98–1057–001.

(7) Comments related to the proposed changes to the pro forma and bilateral Utility Distribution Company Agreements should be submitted in Docket No. ER98–899–001.

Comment date: August 5, 1998, in accordance with Standard Paragraph E at the end of this notice.

5. Wisconsin Electric Power Company

[Docket No. ER98–3216–000]

Take notice that on June 4, 1998, Wisconsin Electric Power Company (Wisconsin Electric), tendered for filing an electric service agreement under its Market Rate Sales Tariff (FERC Electric Tariff, Original Volume No. 8) with Central Minnesota Municipal Power Agency (CMMPA). Wisconsin Electric respectfully requests an effective date of June 1, 1998, to allow for economic transactions.

Copies of the filing have been served on CMMPA, the Michigan Public Service Commission, and the Public Service Commission of Wisconsin.

Comment date: June 24, 1998, in accordance with Standard Paragraph E at the end of this notice.

6. Florida Power & Light Company

[Docket No. ER98–3218–000]

Take notice that on June 4, 1998, Florida Power & Light Company (FPL) tendered for filing proposed service agreements with Orlando Utilities Commission for Short-Term Firm transmission service under FPL's Open Access Transmission Tariff.

FPL requests that the proposed service agreement be permitted to become effective on May 15, 1998.

Comment date: June 24, 1998, in accordance with Standard Paragraph E at the end of this notice.

7. Arizona Public Service Company

[Docket No. ER98–3219–000]

Take notice that on June 4, 1998, Arizona Public Service Company (APS) tendered for filing a revised Contract Demand Exhibit for the Bureau of Indian Affairs (BIA) on behalf of the San Carlos Irrigation Project applicable under the APS–FERC Rate Schedule No. 201.

Current rate levels are unaffected, revenue levels are unchanged from those currently on file with the Commission, and no other significant change in service to these or any other customer results from the revisions proposed herein. No new facilities or modifications to existing facilities are required as a result of these revisions.

Copies of the filing have been served on the BIA and the Arizona Corporation Commission.

Comment date: June 24, 1998, in accordance with Standard Paragraph E at the end of this notice.

8. Carolina Power & Light Company

[Docket No. ER98–3220–000]

Take notice that on June 4, 1998, Carolina Power & Light Company (CP&L), tendered for filing a service

[1] The remaining seven categories relate to the Transmission Control Agreement and certain pro forma and bilateral agreements submitted by the ISO as part of the compliance filing. These portions of the compliance filing are addressed in a separate notice, issued concurrently in Docket Nos. ER98–899–001, ER98–990–001, ER98–992–001, ER98–1019–001, ER98–1057–001, ER98–1499–001 and Docket No. ER98–1971–001. Comments addressing the various agreements submitted with the compliance filing, including pro forma agreements, should be submitted in separate documents in the relevant dockets, as described in the separate notice.

[2] The remaining category relates to the ISO Tariff, including Protocols, Bylaws and Code of Conduct, submitted by the ISO as part of the compliance filing. Those portions of the compliance filing are addressed in a separate notice, issued concurrently in Docket Nos. EC96–19–029 and ER96–1663–030. Comments addressing the ISO Tariff, including Protocols, Bylaws, and Code of Conduct should be submitted separately in the relevant dockets, as described in the separate notice.

agreement between CP&L and Engelhard Power Marketing, Inc., pursuant to CP&L's Power Sales Tariff No. 1; a service agreement between CP&L and Baltimore Gas and Electric Company pursuant to CP&L's Power Sales Tariff No. 1; a service agreement between CP&L and LG&E Power pursuant to CP&L's Open Access Transmission Tariff; and a service agreement between CP&L and Pan Energy Power Services, Inc., pursuant to CP&L's Open Access Transmission Tariff. Additionally, CP&L filed a Motion for Waiver of Notice of Filing Requirements or, in the Alternative, Request for Exercise of Commission's Equitable Authority.

Copies of the filing were served on the affected customers and on the North Carolina Utilities Commission and the South Carolina Public Service Commission.

Comment date: June 24, 1998, in accordance with Standard Paragraph E at the end of this notice.

9. California Independent System Operator Corporation

[Docket No. ER98–3221–000]

On June 4, 1998, the California Independent System Operator Corporation (ISO) tendered for filing a Meter Service Agreement for ISO Metered Entities between the ISO and Burney Forest Products (Burney) for acceptance by the Commission.

The ISO states that this filing has been served on Burney and the California Public Utilities Commission.

Comment date: June 24, 1998, in accordance with Standard Paragraph E at the end of this notice.

10. California Independent System Operator Corporation

[Docket No. ER98–3222–000]

On June 4, 1998, the California Independent System Operator Corporation (ISO) tendered for filing a Scheduling Coordinator Agreement between the ISO and Hafslund Energy Trading L.L.C. (Hafslund) for acceptance by the Commission.

The ISO states that this filing has been served on Hafslund and the California Public Utilities Commission.

Comment date: June 24, 1998, in accordance with Standard Paragraph E at the end of this notice.

11. California Independent System Operator Corporation

[Docket No. ER98–3223–000]

On June 4, 1998, the California Independent System Operator Corporation (ISO) tendered for filing a Participating Generator Agreement between Burney Forest Products (Burney) and the ISO for acceptance by the Commission.

The ISO states that this filing has been served on Burney and the California Public Utilities Commission.

Comment date: June 24, 1998, in accordance with Standard Paragraph E at the end of this notice.

12. California Independent System Operator Corporation

[Docket No. ER98–3224–000]

On June 4, 1998, the California Independent System Operator Corporation (ISO) tendered for filing a Participating Generator Agreement between Ormond Beach Power Generation, L.L.C. (Ormond Beach) and the ISO for acceptance by the Commission.

The ISO states that this filing has been served on Ormond Beach and the California Public Utilities Commission.

Comment date: June 24, 1998, in accordance with Standard Paragraph E at the end of this notice.

13. The Empire District Electric Co.

[Docket No. ER98–3225–000]

Take notice that on June 4, 1998, The Empire District Electric Company (EDE) tendered for filing a service agreement between EDE and Merchant Energy Group of the Americas providing non-firm point-to-point transmission service pursuant to EDE's Open Access Transmission Tariff.

EDE states that a copy of this filing has been served on Merchant Energy Group of the Americas.

Comment date: June 24, 1998, in accordance with Standard Paragraph E at the end of this notice.

14. The Empire District Electric Co.

[Docket No. ER98–3226–000]

Take notice that on June 4, 1998, The Empire District Electric Company (EDE) tendered for filing a service agreement between EDE and Southern Company Energy Marketing L.P. providing non-firm point-to-point transmission service pursuant to EDE's Open Access Transmission Tariff.

EDE states that a copy of this filing has been served on Southern Company Energy Marketing L.P.

Comment date: June 24, 1998, in accordance with Standard Paragraph E at the end of this notice.

15. The Empire District Electric Co.

[Docket No. ER98–3227–000]

Take notice that on June 4, 1998, The Empire District Electric Company (EDE) tendered for filing a service agreement between EDE and Western Resources Incorporated providing firm point-to-point transmission service pursuant to EDE's Open Access Transmission Tariff.

EDE states that a copy of this filing has been served on Western Resources Incorporated.

Comment date: June 24, 1998, in accordance with Standard Paragraph E at the end of this notice.

16. The Empire District Electric Co.

[Docket No. ER98–3228–000]

Take notice that on June 4, 1998, The Empire District Electric Company (EDE), tendered for filing changes of name and address for companies with which EDE has on file with the Commission completed umbrella service agreements for non-firm point-to-point transmission service pursuant to EDE's Open Access Transmission Tariff.

EDE states that a copy of this filing has been served on Cargill-IEC L.L.C., LG&E Energy Marketing, Inc., and PG&E Power Services.

Comment date: June 24, 1998, in accordance with Standard Paragraph E at the end of this notice.

17. The Empire District Electric Co.

[Docket No. ER98–3229–000]

Take notice that on June 4, 1998, The Empire District Electric Company (EDE), tendered for filing a service agreement between EDE and AMOCO Energy Trading Corp., providing non-firm point-to-point transmission service pursuant to EDE's Open Access Transmission Tariff.

EDE states that a copy of this filing has been served on AMOCO Energy Trading Corp.

Comment date: June 24, 1998, in accordance with Standard Paragraph E at the end of this notice.

18. Consumers Energy Company

[Docket No. ER98–3230–000]

Take notice that on June 4, 1998, Consumers Energy Company (Consumers) tendered for filing an executed service agreement for Non-Firm Point-to-Point Transmission Service pursuant to the Joint Open Access Transmission Service Tariff filed on December 31, 1996, by Consumers and The Detroit Edison Company (Detroit Edison) with the following transmission customer: OGE Energy Resources, Inc.

Copies of the filed agreement were served upon the Michigan Public Service Commission, Detroit Edison and the transmission customer.

Comment date: June 24, 1998, in accordance with Standard Paragraph E at the end of this notice.

19. Virginia Electric and Power Co.

[Docket No. ER98–3231–000]

Take notice that on June 4, 1998, Virginia Electric and Power Company (Virginia Power) tendered for filing a Service Agreement between Virginia Power and City of Springfield, Illinois City Water, Light and Power under Virginia Power's FERC Electric Tariff (First Revised Volume No. 4), which was accepted by order of the Commission dated November 6, 1997 in Docket No. ER97–3561–001. Under the tendered Service Agreement, Virginia Power will provide services to City of Springfield, Illinois City Water, Light and Power under the rates, terms and conditions of the applicable Service Schedules included in the Tariff. Virginia Power requests an effective date of June 1, 1998, for the Service Agreement.

Copies of the filing were served on City of Springfield, Illinois City Water, Light and Power, the Virginia State Corporation Commission and the North Carolina Utilities Commission.

Comment date: June 24, 1998, in accordance with Standard Paragraph E at the end of this notice.

20. The Empire District Electric Co.

[Docket No. ER98–3232–000]

Take notice that on June 4, 1998, The Empire District Electric Company (EDE) tendered for filing a service agreement between EDE and OGE Energy Resources, Inc., providing for non-firm point-to-point transmission service pursuant to EDE's Open Access Transmission Tariff.

EDE states that a copy of this filing has been served on OGE Energy Resources, Inc.

Comment date: June 24, 1998, in accordance with Standard Paragraph E at the end of this notice.

21. Environmental Resources Trust, Inc.

[Docket No. ER98–3233–000]

Take notice that on June 4, 1998, Environmental Resources Trust, Inc. (ERT), tendered for filing an Application for Blanket Approvals, Waivers and Order Accepting Rate Schedule for Filing, requesting authorization to engage in electric power and energy transactions as a marketer. ERT also requests certain authorizations, waiver of certain regulations, and acceptance for filing of its proposed FERC Electric Rate Schedule No. 1, which provides for the sale of electric energy and/or capacity at negotiated rates.

Comment date: June 24, 1998, in accordance with Standard Paragraph E at the end of this notice.

22. The Empire District Electric Co.

[Docket No. ER98–3234–000]

Take notice that on June 4, 1998, The Empire District Electric Company (EDE), tendered for filing a service agreement between EDE and American Electric Power Services Corporation providing non-firm point-to-point transmission service pursuant to EDE's Open Access Transmission Tariff.

EDE states that a copy of this filing has been served on American Electric Power Services Corporation.

Comment date: June 24, 1998, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–16182 Filed 6–17–98; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2232–356]

Duke Energy Corporation; Notice of Availability of Environmental Assessment

June 12, 1998.

An Environmental Assessment (EA) is available for public review. The EA was prepared for an application filed on November 17, 1997, by the Duke Energy Corporation, licensee for the Catawba-Wateree Hydroelectric Project located in North Carolina and South Carolina. In its application, the licensee requests that the Commission allow Harborside Development, LLC., to excavate an approximately 0.64 acre area of lake bottom and to stabilize 295 feet of shoreline on Lake Norman.

The EA finds that the proposed action would not be a major federal action significantly affecting the quality of the human environment.

The EA was written by staff in the Office of Hydropower Licensing, Federal Energy Regulatory Commission. Copies of the EA can be obtained by calling the Commission's public reference room at (202) 208–1371.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–16187 Filed 6–17–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Amendment of Application Filed With the Commission

June 12, 1998.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Major License.

b. *Project No.:* P–11607–000.

c. *Date Filed:* January 30, 1998.

d. *Applicant:* Holyoke Gas & Electric Department, Ashburnham Municipal Light Plant, and Massachusetts Municipal Wholesale Electric Company.

e. *Name of Project:* Holyoke Hydroelectric Project.

f. *Location:* On the Connecticut River in Hampden, Hampshire, and Franklin Counties, Massachusetts.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. §§ 791(a)–825(r).

h. *Applicant Contact:*

George E. Leary, Manager, Holyoke Gas & Electric Department, 99 Suffolk Street, Holyoke, MA 01040–4457, (413) 536–9311.

Roger W. Bacon, Director, Power Services Division, Massachusetts Wholesale Electric Company, Randall Road, P.O. Box 426, Ludlow, MA 01056, (413) 589–1041

John LeMieur, Acting General Manager, Ashburnham Municipal Light Plant, 78 Central Street, P.O. Box 823, Ashburnham, MA 01430–0823, (508) 827–4424

i. *FERC Contact:* Allan Creamer (202) 219–0365.

j. *Comment Date:* July 20, 1998.

k. *Description of Amendment:* On January 30, 1998, the Holyoke Gas & Electric Department (HG&E), the Ashburnham Municipal Light Plant (Ashburnham), and the Massachusetts Municipal Wholesale Electric Company (MMWEC) jointly filed an application to amend the license application filed by

Ashburnham and MMWEC on August 29, 1997, for the Holyoke Hydroelectric Project (FERC Project No. 11607), which is pending before the Commission. The Commission staff will be acting on this license application in the future.

The amendment: (1) adds HG&E as a co-applicant to the application originally filed by Ashburnham and MMWEC; (2) specifies that HG&E, rather than MMWEC, will finance the project and sell a portion of the project power to Ashburnham; and (3) adds several new environmental measures, including (a) sponsoring the annual shad derby, (b) providing canoe portage around the Holyoke dam, and (c) installing an exclusion structure at the mouth of the No. 2 Overflow spillway. The amendment also (1) changes the location where copies of the amended application are available to HG&E's offices, (2) names the applicant contact for HG&E, and (3) makes changes to the applicant contacts for Ashburnham and R.W. Beck, the applicant's consultant.

l. Federal, state, and local agencies, as well as other interested parties, are invited to file comments on the described amendment of application. A copy of the amended application may be obtained by agencies directly from the applicant. If any agency or other party does not file comments within the time specified for filing comments, as shown in paragraph (j), it will be presumed to have no comments. One copy of an agency's comments must also be sent to the applicant's representative(s).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–16189 Filed 6–17–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application for Preliminary Permit

June 12, 1998.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 11614–000.

c. *Date filed:* May 1, 1998.

d. *Applicant:* Allison Lake Hydro.

e. *Name of Project:* Allison Lake Project.

f. *Location:* On Allison Lake and Creek discharging into Port Valdez, in Valdez County, Alaska.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C., § 791(a)–825(r).

h. *Applicant Contact:* Mr. Earle V. Ausman, Allison Lake Hydro, 1503 West 33rd Avenue, Anchorage, AK 99503, (907) 258–2420.

i. *FERC Contact:* Mr. Robert Bell, (202) 219–2806.

j. *Comment Date:* August 18, 1998.

k. *Description of Project:* The proposed project would consist of: (1) an existing natural Allison Lake having a surface area of 245 acres with a storage capacity of 8,000 acre-feet and normal water elevation of 1,345 feet msl; (2) a proposed intake structure; (3) a proposed 3,900-foot-long, micro-drilled tunnel, and a proposed 6,800-foot-long 38-inch-diameter pipeline; (4) a proposed powerhouse having a generating unit with an installed capacity of 6,000–kW; (5) a proposed rock lined channel or culvert tailrace; and (6) appurtenant facilities.

The project would have an annual generation of 20.4 MWH and would be sold to a local utility.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C, and D2.

A5. Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

A7. Preliminary Permit—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

A9. Notice of intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal state of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) names in this public notice.

A10. Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

B. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In Determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comnment date for the particular application.

C. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title ''COMMENTS'', ''NOTICE OF INTENT TO FILE COMPETING APPLICATION'', ''COMPETING APPLICATION'', ''PROTEST'', ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. Any of the above named documents must be filed by providing the original and the number of copies provided by the commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Project Review, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

D2. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does

not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Linwood A. Watson, Jr.

Acting Secretary.

[FR Doc. 98–16190 Filed 6–17–98; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[SWH–FRL–6112–4]

Agency Information Collection Activities-Proposed Collection; Comment Request; Survey of the Chlorinated Aliphatics Industry

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that EPA is planning to submit the following proposed Information Collection Request (ICR) to the Office of Management and Budget (OMB): Survey of Chlorinated Aliphatics Industry, ICR Number 1866.01. This ICR includes information about clarifications to updated information from the initial RCRA section 3007 questionnaire and possible site visits anticipated for this information collection effort. Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection as described below.

DATES: Comments must be submitted on or before August 17, 1998.

ADDRESSES: Commenters must send an original and two copies of their comments referencing docket number F–98–CAIP–FFFFF to: RCRA Docket Information Center, Office of Solid Waste (5305G), U.S. Environmental Protection Agency Headquarters (EPA, HQ), 401 M Street, SW, Washington, DC 20460. Hand deliveries of comments should be made to the Arlington, VA, address below. Comments also may be submitted electronically through the Internet to: rcradocket@epamail.epa.gov. Comments in electronic format also should be identified by the docket number F–98–CAIP–FFFFF. All electronic comments must be submitted as an ASCII. All electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

Commenters should not submit electronically any confidential business information (CBI). An original and two copies of CBI must be submitted under separate cover to: RCRA CBI Document Control Officer, Office of Solid Waste (5305W), U.S. EPA, 401 M Street, SW, Washington, DC 20460.

Public comments and supporting materials are available for viewing in the RCRA Information Center (RIC), located at Crystal Gateway I, First Floor, 1235 Jefferson Davis Highway, Arlington, VA. The RIC is open from 9 am to 4 pm, Monday through Friday, excluding federal holidays. To review docket materials, it is recommended that the public make an appointment by calling (703) 603–9230. The public may copy a maximum of 100 pages from any regulatory docket at no charge. Additional copies cost $0.15/page. The index and some supporting materials are available electronically.

The ICR is available on the Internet. Follow these instructions to access the information electronically;

WWW: http://www.epa.gov/epaoswer/osw/hazwaste. htm#id

FTP: ftp.epa.gov
Login: anonymous
Password: your internet address
Files are located in /pub/epaoswer

The official record or this action will be kept in paper form. Accordingly, EPA will transfer all comments received electronically into paper form and place them in the official record, which also will include all comments submitted directly in writing.

EPA responses to comments, whether the comments are written or electronic, will be in a document in the **Fedeal Register.** EPA will not reply immediately to commenters electronically other than to seek clarification of electronic comments that may be garbled in transmission or during conversion to paper form, as discussed above.

FOR FURTHER INFORMATION CONTACT: For general information, contact the RCRA Hotline at (800) 424–9346 or TDD (800) 553–7672 (Hearing impaired).In the Washington, DC metropolitan area, call (703) 412–9810 or TDD (703) 412–3323.

For more detailed information on specific aspects of this rulemaking, contact Wanda Levine, Office of Solid Waste (5304W), U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460, (703) 308–0438, or levine. wanda@epamail.epa.gov.

SUPPLEMENTARY INFORMATION:

Affected entities: Entities potentially affected by this action are those generating, transporting, storing or disposing of the wastes of interest from the chlorinated aliphatics industry.

Title: Survey of Chlorinated Aliphatics Industry ICR, Number 1866.01.

Abstract: Under the Industry Studies Program, EPA's Office of Solid Waste is planning to conduct surveys of various industries during the rest of this fiscal year through FY 1999, primarily for the purpose of developing hazardous waste listing determinations as part of a rulemaking effort under sections 3001 and 3004 of the Resources Conservation and Recovery Act (RCRA). Information collected under authority of this ICR specifically will be used to establish and expand an information data base with regard to hazardous waste generation and management by industry to support a goal of more effective regulation under sections 3001 and 3004 of RCRA.

The information acquired through the Industry Studies Program has contributed to the effective development and implementation of the hazardous waste regulatory program. The ICR, once approved, will allow continued and expanded data collection for the following program areas:

- Listing.
- Land Disposal Restrictions (LDR) and Capacity.
- Source Reduction and Recycling.
- Risk Assessment.

To support these hazardous waste program areas, EPA has been conducting surveys and site visits for the chlorinated aliphatics industry since 1992 under authority granted under RCRA section 3007 and OMB #2050–0042. Responses to the surveys were received and site visits conducted in early 1993 to collect data for development of hazardous waste rulemakings as required by a consent decree signed December 9, 1994, which resulted from the *EDF* v. *Reilly* case.

For the chlorinated aliphatics that is the subject of this information collection, the main data to be collected will be clarifications to updated survey information, and possibly site visits if necessary.

The information collected will be used primarily to determine if wastes from the chlorinated aliphatics industry should be listed as hazardous. In addition, this information also will be used to support other RCRA activities including developing engineering analyses; conducting regulatory impact analyses, economic analyses, and risk assessments; and developing land disposal restrictions treatment standards and waste minimization programs.

EPA anticipates that some data provided by respondents will be

claimed as confidential business information (CBI). Respondents may make a business confidentially claim by marking the appropriate data as CBI. Respondents may not withhold information from the Agency because they believe it is confidential. Information so designated will be disclosed by EPA only to the extent set forth in 40 CFR part 2.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15.

EPA would like to solicit comments to:

(i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

(ii) Evaluate the accuracy of the Agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) Enhance the quality, utility, and clarity of the information to be collected; and

(iv) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology; *e.g.*, permitting electronic submission of responses.

Burden Statement: Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

The average annual burden imposed by the clarification to the survey updates is approximately 20.0 hours per respondent. The average number of responses for each respondent is 1. The estimated number of likely respondents is 25. The average annual burden imposed by site visits is approximately 16 hours per respondent. The average number of responses for each respondent is 1.

The estimated number of likely respondents is 3.

Data will be collected from the chlorinated aliphatics industry that generate wastes that may be listed as hazardous.

Dated: June 2, 1998.

Elizabeth A. Cotsworth,

Acting Director, Office of Solid Waste.

[FR Doc. 98–16257 Filed 6–17–98; 8:45 am]

BILLING CODE 6560–50–M

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–5497–7]

Second Public Scoping Meeting for EPA's Environmental Impact Statement for the Final Rule for Environmental Impact Assessment of Nongovernmental Activities in Antarctica

AGENCY: U.S. Environmental Protection Agency (EPA).

ACTION: Notice of second public scoping meeting for EPA's Environmental Impact Statement (EIS) for the final rule for environmental impact assessment (EIA) of nongovernmental activities in Antarctica.

SUMMARY: The U.S. EPA, in accordance with Section 102(2)(c) of the National Environmental Policy Act (NEPA), will prepare a Draft EIS for proposed final regulations that will provide for: (1) environmental impact assessment of nongovernmental activities, including tourism, in Antarctica for which the United States is required to give advance notice under paragraph 5 of Article VII of the Antarctic Treaty of 1959; and (2) coordination of the review of information regarding environmental impact assessments received by the United States from other Parties to the Protocol on Environmental Protection to the Antarctic Treaty. These final regulations will be prepared pursuant to the Antarctic Science, Tourism, and Conservation Act of 1996. EPA held its first public scoping meeting on July 8, 1997, and, at the request of the International Association of Antarctica Tour Operators, individual Antarctica tour operators, and The Antarctica Project on behalf of the Antarctic and Southern Ocean Coalition, agreed to conduct a second scoping meeting following the 1997–1998 Antarctic tour season, the first such season following promulgation of EPA's Interim Final Rule governing Environmental Impact Assessment of Nongovernmental Activities in Antarctica (**Federal Register**/Vol. 62, No. 83/ Wednesday, April 30, 1997/Rules and Regulations). EPA invites comments and suggestions on the scope of the rulemaking with regard to the environmental and regulatory issues to be addressed in the EIS.

DATES: The public scoping meeting will be on Tuesday, July 14, 1998, from 1:00 PM until 4:30 PM, at the Washington Information Center—EPA Conference Service Center, Conference Room 3 North, Waterside Mall, 4th and M Street SW, Washington, DC. To access Conference Room 3 North, enter Waterside Mall through the entrance directly in front of the Waterfront-SEU Metro Station (green line), turn right at the central hallway, left at the end of this hallway, and enter the North Conference Center through the last door on the right. Written comments from the public may also be sent directly to EPA to the contacts listed below and will be accepted by EPA through July 31, 1998.

FOR FURTHER INFORMATION CONTACT: Mr. Joseph Montgomery or Ms. Katherine Biggs, Office of Federal Activities (2252A), U.S. Environmental Protection Agency, 401 M Street SW, Washington, DC 20460; telephone: (202)564–7157 or (202)564–7144, respectively.

SUPPLEMENTARY INFORMATION: Please refer to the Public Scoping Meeting Notice for the July 8, 1997 meeting (**Federal Register**/Vol. 62, No. 105/ Monday, June 2, 1997/Notices), and the Notice of Intent to Prepare an EIS for the final rule for EIA of nongovernmental activities in Antarctica (**Federal Register**/Vol. 62, No. 90/Friday, May 9, 1997/Notices). Copies of documents pertinent to this project are available from the contacts listed above and also on the World Wide Web at: http://www.epa.gov/oeca/ofa.

Richard E. Sanderson,

Director, Office of Federal Activities.

[FR Doc. 98–16209 Filed 6–17–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6112–3]

Common Sense Initiative Council (CSIC)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notification of Public Advisory CSI Petroleum Refining and Computers

and Electronics Sector Subcommittee meetings; open meetings.

SUMMARY: Pursuant to the Federal Advisory Committee Act, Public Law 92–463, notification is hereby given that the Petroleum Refining and Computers and Electronics Sector Subcommittees of the Common Sense Initiative Council will meet on the dates and times described below. All meetings are open to the public. Seating at the meeting will be on a first-come basis and limited time will be provided for public comment. For further information concerning specific meetings, please contact the individuals listed with the announcement below.

(1) Petroleum Refining Sector Subcommittee Meeting—July 7–8, 1998

Notification is hereby given that the Environmental Protection Agency will hold an open meeting of the Common Sense Initiative (CSI) Petroleum Refining Sector Subcommittee on July 7–8, 1998. The Equipment Leaks and Refinery Air Information Reporting System (RAIRS) Workgroup meetings will be held from 1:00 p.m. EST to 6:00 p.m. EST on Monday, July 6. The full Petroleum Refining Sector Subcommittee will meet from 9:00 a.m. EST to 6:00 p.m. EST on Tuesday, July 7 and from 9:00 a.m. EST to 5:00 p.m. EST on Wednesday, July 8. The meeting will be held at the Old Town Alexandria Holiday Inn Select, 480 King Street, Alexandria, VA 22314. The hotel telephone number is 703–549–6080 or 800–368–5047.

The preliminary agenda for the Subcommittee meeting includes comments from the National Petroleum Refiners Association and the American Petroleum Institute on an Equipment Leaks Project Report and a discussion of a strategic framework and performance goals for the Petroleum Refining Sector Subcommittee. There will also be reports of the Accidental Release Information Project, the RAIRS Project, and the Equipment Leaks Project. Additionally, presentations are planned on Marathon Oil Company's Texas City Refinery consolidated leak detection and repair program, and the potential of laser technologies as alternatives to current emissions monitoring methods. A public comment period will also be provided.

For further information concerning this meeting of the Petroleum Refining Sector Subcommittee, please contact either Craig Weeks, Designated Federal Officer (DFO), at US EPA Region 6 (6EN), 1445 Ross Avenue, Dallas, TX 75202–2733, by telephone at 214–665–7505 or E-mail at weeks.craig@epamail.epa.gov or Steve Souders, Alternate DFO, at US EPA by mail (5306W), 401 M Street, SW, Washington, DC 20460, by telephone at 703–308–8431 or E-mail at souders.steve@epamail.epa.gov.

(2) Computers and Electronics Sector Subcommittee—July 15 and 16, 1998

Notification is hereby given that the Environmental Protection Agency will hold an open meeting of the Common Sense Initiative (CSI) Computers and Electronics Sector Subcommittee on July 15 from 8:30 a.m. EST to 5:00 p.m. EST and on July 16 from 8:30 a.m. EST to 3:00 p.m. EST. The meeting will be held at the Washington Marriott Hotel at 1221—22nd Street, NW, Washington, DC. The Hotel telephone number is 202–872–1500.

Both days, July 15 and 16, 1998, will include meetings of the full subcommittee, and breakout sessions for the three subcommittee workgroups (Reporting and Information Access; Overcoming Barriers to Pollution Prevention, Product Stewardship, and Recycling; and Alternative Strategies). Projects to be discussed include CURE (Consolidated Uniform Report for the Environment); BOLDER (Basic On-Line Disaster and Emergency Response); Green Track, a project to offer regulatory flexibility or other incentives for improvement of environmental performance at facilities; a project to develop a printed resource guide to assist stakeholders to develop constructive approaches to address environmental issues in their own communities; Evaluation of Models and Development of Best Practices for Electronic Equipment Recovery in a San Francisco Recycling Pilot, an examination of data from pilot collection projects to identify data gaps and develop a report. The subcommittee will also discuss the results of the June 9, 1998 meeting of the Common Sense Initiative Council. Opportunity for public comment on major issues under discussion will be provided at intervals throughout the meeting.

For further information concerning the meeting of the Computers and Electronics Sector Subcommittee meeting, please contact John J. Bowser, Acting DFO, U.S. EPA on (202) 260–1771, by fax on (202) 260–1096, by e-mail at bowser.john@epamail.epa.gov., or by mail at U.S. EPA (MC 7405), 401 M Street, S.W., Washington, DC 20460; Mark Mahoney, U.S. EPA Region 1 on (617) 565–1155; or David Jones, U.S. EPA Region 9 on (415) 744–2266.

Inspection of Subcommittee Documents: Documents relating to the above Sector Subcommittee announcements will be publicly available at the meeting. Thereafter, these documents, together with the official minutes for the meeting, will be available for public inspection in room 3802M of EPA Headquarters, Common Sense Initiative Staff, 401 M Street, SW, Washington, DC 20460, telephone number 202–260–7417. Common Sense Initiative information can be accessed electronically on our web site at http.//www.epa.gov/commonsense.

Dated: June 12, 1998.

Helga B. Butler,

Acting Designated Federal Officer.

[FR Doc. 98–16256 Filed 6–17–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6111–9]

Peak Oil Superfund Site Notice of Proposed De Minimis Settlement

AGENCY: Environmental Protection Agency.

ACTION: Notice of proposed de minimis settlement.

SUMMARY: Under section 122(g)(4) of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), the Environmental Protection Agency (EPA) has offered approximately 650 de minimis parties at the Peak Oil Superfund Site (Site) an opportunity to enter into an Administrative Order on Consent (AOC) to settle claims for past and future response costs at the Site. On August 28, 1997, EPA published the names of 140 parties that returned signature pages accepting EPA's offer. Since that time, 37 additional parties have submitted signature pages accepting EPA's de minimis settlement offer.

Following is a list of those additional 37 parties: B&W Corporation f/k/a Bowman Transportation, Case International Harvester, Crews Equipment Company, City of Fort Myers, City of Wauchula, Compressed Air Products, Inc., Crown Datsun n/k/a Crown Nissan, Crown Pontiac, Dundee Citrus Growers Association, Eagle Supply, Inc., Fred P. Smith, Inc., Graff's Union 76, Grimsley Oil Company, Inc., Haines City Citrus Growers Association, Hoagland Oldsmobile, Hough Chevrolet, Jiffy Lube International, Inc., Jim McKeel Buick-GMC Trucks n/k/a Blount Buick-GMC Trucks, Lake Placid Citrus Growers, Inc., M. Anderson Industries, Inc., Nitram, Inc., Okeechobee County School Board, SmithKline Beecham Corporation, Peace River Packing

Company, Penreco, Pinckney, Inc., Polk Nursery Company, Inc., Shell Distributor (Hobson Ingram), Sims Crane & Equipment Co. (Sims Crane Service, Inc.), Smith Brothers Oil Company, Smoak Groves, Inc., Spring Lock Scaffolding, Tampa Bay Hermetics, Inc., Tampa Yacht and Country Club, Inc., Tito's Service Center, Inc., United Telephone Company of Florida, Unocal Corp., and The Wickie Company.

EPA will consider public comments on the proposed settlement with these 37 parties for thirty days. EPA may withdraw from or modify the proposed settlement should such comments disclose facts or considerations which indicate the proposed settlement is inappropriate, improper, or inadequate. Copies of the proposed settlement are available from: Ms. Paula V. Batchelor, U.S. Environmental Protection Agency, Region IV, Program Services Branch, Waste Management Division, 61 Forsyth Street, S.W., Atlanta, Georgia 30303, (404) 562–8887.

Written comment may be submitted to Mr. Greg Armstrong at the above address within 30 days of the date of publication.

Dated: May 27, 1998.

Jewell Harper,

Acting Director, Waste Management Division.

[FR Doc. 98–16253 Filed 6–17–98; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL ELECTION COMMISSION

Sunshine Act Meeting

AGENCY: Federal Election Commission.

* * * * *

FEDERAL REGISTER NUMBER: 15702.

PREVIOUSLY ANNOUNCED DATE & TIME: Thursday, June 18, 1998, 10:00 a.m., Meeting open to the public.

This meeting has been cancelled.

* * * * *

DATE & TIME: Tuesday, June 23, 1998 at 10:00 a.m.

PLACE: 999 E Street, N.W., Washington, D.C.

STATUS: This meeting will be closed to the public.

ITEMS TO BE DISCUSSED:

Compliance matters pursuant to 2 U.S.C. § 437g.

Audits conducted pursuant to 2 U.S.C. § 437g, § 438(b), and Title 26, U.S.C.

Matters concerning participation in civil actions or proceedings or arbitration.

Internal personnel rules and procedures or matters affecting a particular employee.

* * * * *

DATE & TIME: Thursday, June 25, 1998 at 10:00 a.m.

PLACE: 999 E Street, N.W. Washington, D.C. (Ninth Floor).

STATUS: This meeting will be open to the public.

ITEMS TO BE DISCUSSED:

Correction and Approval of Minutes.

Audit: 1996 Democratic National Convention Committee, Inc.

Audit: Chicago's Committee for '96.

Soft Money: Revised Draft Notice of Proposed Rulemaking.

Administrative Matters.

PERSON TO CONTACT FOR INFORMATION: Mr. Ron Harris, Press Officer, Telephone: (202) 694–1220.

Marjorie W. Emmons,

Secretary of the Commission.

[FR. Doc. 98–16334 Filed 6–16–98; 10:49 am]

BILLING CODE 6715–01–M

FEDERAL MARITIME COMMISSION

Ocean Freight Forwarder License Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission applications for licenses as ocean freight forwarders pursuant to section 19 of the shipping Act of 1984 (46 U.S.C. app. 1718 and 46 CFR 510).

Persons knowing of any reason why any of the following applicants should not receive a license are requested to contact the Office of Freight Forwarders, Federal Maritime Commission, Washington, DC 20573; Kenneth Clark Company, Inc., 6505 St. Helena Avenue, P.O. Box 9145, Baltimore, MD 21222, Officers: Wayne K. Clark, President, Janice M. Clark, Vice President.

Dated: June 15, 1998.

Joseph C. Polking,

Secretary.

[FR Doc. 98–16204 Filed 6–17–98; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisition of Shares of Banks or Bank Holding Companies; Correction

This notice corrects a notice (FR Doc. 98-15501) published on page 31994 of the issue for Thursday, June 11, 1998.

Under the Federal Reserve Bank of Kansas City heading, the entry for Frank P. Giltner III, Phoenix, Arizona, is revised to read as follows:

A. Federal Reserve Bank of Kansas City (D. Michael Manies, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198-0001:

1. Frank P. Giltner III, and Renee Valladares Giltner, both of Phoenix, Arizona; to acquire voting shares of The Avoca Company, Avoca, Nebraska, and thereby indirectly acquire voting shares of Farmers State Bank of Nebraska, Bennet, Nebraska.

Comments on this application must be received by June 25, 1998.

Board of Governors of the Federal Reserve System, June 12, 1998.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 98–16170 Filed 6–17–98; 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 13, 1998.

A. Federal Reserve Bank of Atlanta (Lois Berthaume, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303-2713:

1. Habersham Bancorp, Cornelia, Georgia; to acquire 27.06 percent of the voting shares of Empire Bank Corp., Homerville, Georgia, and thereby

indirectly acquire Empire Banking Co., Homerville, Georgia.

B. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63102-2034:

1. National City Bancshares, Inc., Evansville, Indiana; to merge with Community First Financial, Inc., Maysville, Kentucky, and thereby indirectly acquire Community First Bank of Kentucky, Warsaw, Kentucky, and Community First Bank, N.A., Maysville, Kentucky.

2. National City Bancshares, Inc., Evansville, Indiana; to merge with Trigg Bancorp, Inc., Cadiz, Kentucky, and thereby indirectly acquire Trigg County Farmers Bank, Cadiz, Kentucky.

3. Independent Southern Bancshares, Inc. ESOT, Brownsville, Tennessee, and its subsidiary, Independent Southern Bancshares, Inc., Brownsville, Tennessee; to acquire 100 percent of the voting shares of First Western Bank, Cooper City, Florida.

C. Federal Reserve Bank of Kansas City (D. Michael Manies, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198-0001:

1. Archer, Inc., Central City, Nebraska; to acquire an additional 9 percent, for a total of 57.20 percent, of the voting shares of Osceola Insurance, Inc., Osceola, Nebraska, and thereby indirectly acquire First National Bank, Osceola, Nebraska, and Gretna State Bank, Gretna, Nebraska.

2. Gold Banc Corporation, Inc., and Gold Banc Acquisition Corporation VII, Inc., both of Leawood, Kansas; to acquire 100 percent of the voting shares of First State Bancorp., Inc., Pittsburg, Kansas, and thereby indirectly acquire First State Bank & Trust Company, Pittsburg, Kansas. In connection with this application Gold Banc Acquisition Corporation VII, Inc., Leawood, Kansas, has applied to become a bank holding company by acquiring 100 percent of the voting shares of First State Bancorp., Inc., Pittsburg, Kansas;, and thereby indirectly acquire First State Bank & Trust Company, Pittsburg, Kansas.

Board of Governors of the Federal Reserve System, June 12, 1998.

Robert dev. Frierson,

Associate Secretary of the Board.

[FR Doc. 98–16171 Filed 6–17–98; 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 13, 1998.

A. Federal Reserve Bank of Dallas (W. Arthur Tribble, President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

1. The A.N.B. Holding Company, Ltd., The ANB Corporation, and ANB Delaware Corporation, all of Terrell, Texas; to acquire 100 percent of the voting shares of Bank of Van Zandt, Canton, Texas.

Board of Governors of the Federal Reserve System, June 15, 1998.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 98–16250 Filed 6–17–98; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y, (12 CFR Part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than July 2, 1998.

A. Federal Reserve Bank of New York (Betsy Buttrill White, Senior Vice President) 33 Liberty Street, New York, New York 10045-0001:

1. Cooperatieve Centrale Raiffeisen-Boerenleenbank B.A., Utrecht, The Netherlands; to acquire Weiss, Peck & Greer, L.L.C., New York, New York, and thereby engage in acting as investment and financial adviser to any person, pursuant to § 225.28(b)(6) of Regulation Y; conducting agency transactional services for customer investments, pursuant to § 225.28 (b)(7) of Regulation Y; acting directly or indirectly as general partner of, managing member in or otherwise controlling investment funds that invest in up to 5 percent of the voting securities and 25 percent of the nonvoting equity of companies; *See The Dresdner Bank, A.G.*, 84 Fed. Res. Bull. 361 (1998), (''Dresdner/Oeschle''); *The Bessemer Group, Incorporated*, 82 Fed. Bull. 569 (1996); and *Meridian Bancorp, Inc.*, 80 Fed. Res. Bull. 736 (1994); acting as a commodity pool operator, *See Dresdner/Oeschle*; providing administrative services to mutual funds to the extent set forth in Board orders, *See Lloyds/IAI Lloyds TSB Group plc*, 84 Fed. Res. Bull. 116 (1998); *The Governor and Company of the Bank of Ireland*, 82 Fed. Res. Bull. 1129 (1996); *Bankers Trust New York Corporation*, 83 Fed. Res. Bull. 780 (1996); and *J.P.Morgan*, 84 Fed. Res. Bull. 113 (1997).

Board of Governors of the Federal Reserve System, June 12, 1998.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 98–16169 Filed 6–17–98; 8:45 am]

BILLING CODE 6210–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 97D–0381]

Draft Guidance for Industry on Providing Regulatory Submissions in Electronic Format—NDA's; Reopening of Comment Period

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; reopening of comment period.

SUMMARY: The Food and Drug Administration (FDA) is reopening until July 8, 1998, the comment period for a notice announcing the availability of a draft guidance for industry entitled ''Providing Regulatory Submissions in Electronic Format—NDA's'' that appeared in the **Federal Register** of April 8, 1998 (63 FR 17184). FDA is taking this action in response to a request for an extension and to allow interested parties additional time for review and to submit comments.

DATES: Written comments by July 8, 1998. General comments on the agency guidance documents are welcome at any time.

ADDRESSES: Copies of the draft guidance for industry are available on the Internet at http://www.fda.gov/cder/guidance/index.htm. Submit written requests for single copies of the draft 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 draft 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: Kenneth Edmunds, Center for Drug Evaluation and Research (HFD–350), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–3276; ESUB@CDER.fda.gov.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of April 8, 1998 (63 FR 17184), FDA's Center for Drug Evaluation and Research (CDER) published a notice announcing the availability of a draft guidance for industry entitled ''Providing Regulatory Submissions in Electronic Format—NDA's.'' The draft guidance is intended to assist applicants who wish to submit new drug applications (NDA's) in electronic format. Although voluntary, submissions of NDA's in electronic format should reduce the amount of paperwork for applicants and the agency. The April 8, 1998, notice invited interested persons to submit written comments on the draft guidance within 60 days.

On April 20, 1998, FDA received a letter from Pharmaceutical Research and Manufacturers of America, requesting that the agency extend the comment period on the draft guidance 90 days. In addition, in the **Federal Register** of June 1, 1998 (63 FR 29741), FDA's Center for Biologics Evaluation and Research (CBER) published a draft guidance for industry entitled ''Guidance for Industry: Electronic Submissions of a Biologics License Application (BLA) or Product License Application (PLA)/Establishment License Application (ELA) to the Center for Biologics Evaluation and Research.''

Because a number of NDA sponsors have expressed the wish to see the draft guidance become final as soon as possible and because the agency considers this to be a dynamic document, which will be updated in the future, the agency does not believe it is necessary to extend the comment period an additional 90 days. However, the agency agrees that an additional period will provide time for interested parties to review both CDER and CBER's guidances. Therefore, the agency is reopening the comment period for an additional 30 days, until July 8, 1998.

Interested persons may, on or before July 8, 1998, submit to the Dockets Management Branch (address above) written comments on the draft guidance. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. The draft guidance and received comments are available for public examination in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: June 9, 1998.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 98–16140 Filed 6–17–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 98D–0388]

Draft Guidance for Industry on Topical Dermatological Drug Product NDA's and ANDA's—In Vivo Bioavailability, Bioequivalence, In Vitro Release and Associated Studies; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a draft guidance for industry entitled ''Topical Dermatological Drug Product NDA's and ANDA's—In Vivo Bioavailability, Bioequivalence, In Vitro Release and Associated Studies.'' The draft guidance is intended to provide recommendations to sponsors of new drug applications (NDA's), abbreviated new drug applications (ANDA's), and supplements who intend to perform bioavailability and bioequivalence studies for topically applied dermatological drug products during either the preapproval or postapproval period. The agency is seeking comments on the draft guidance.

DATES: Written comments may be submitted on the draft guidance by August 17, 1998. General comments on the agency guidances are welcome at any time.

ADDRESSES: Copies of this draft guidance are available on the Internet at ''http://www.fda.gov/cder/guidance/index.htm'' .

Submit written comments on this draft guidance to the Dockets Management Branch (HFD–305), Food and Drug Administration, 12420 Parklawn Dr., rm 1–23, Rockville, MD. 20857. 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.

FOR FURTHER INFORMATION CONTACT: Vinod P. Shah, Center for Drug Evaluation and Research (HFD–350), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–5635.

SUPPLEMENTARY INFORMATION: FDA is announcing the availability of a draft guidance for industry entitled ''Topical Dermatological Drug Product NDA's and ANDA's—In Vivo Bioavailability, Bioequivalence, In Vitro Release and Associated Studies.'' The draft guidance

is intended to provide recommendations to sponsors of NDA's, ANDA's, and supplements who intend to perform, during either the preapproval or postapproval period, bioavailability and bioequivalence studies for topical dermatological drug products.

The definitions of ''bioavailability'' and ''bioequivalence,'' the requirements for submitting such data in NDA's, ANDA's, and supplements, and the types of in vivo studies that are acceptable to establish bioavailability and bioequivalence are set forth in CFR part 320. These regulatory definitions and requirements reflect requirements in the Federal Food, Drug, and Cosmetic Act and other agency regulations.

Generally, bioavailability and bioequivalence of a drug product can be assessed through measurement of the active moiety(ies)/active ingredient(s) in an accessible biologic fluid such as blood, plasma, and urine. For some drug products, including topical dermatological drug products, it is not possible to use pharmacokinetic measurements of the active moiety(ies)/active ingredient(s) in blood, plasma, or urine to document bioequivalence because topical dermatological products generally do not produce measurable concentrations in extracutaneous biological fluids. This draft guidance document proposes other methods to establish bioavailability and bioequivalence, including the following types of studies: (1) Clinical studies; (2) pharmacodynamic studies; (3) dermatopharmacokinetic studies; and (4) in vitro studies. These approaches are discussed at 21 CFR 320.24, although these regulations do not provide specific methodologic approaches. In addition to general comments, FDA welcomes the submission of data that support or refute the use of any of these approaches, especially dermatopharmacokinetic approaches, in the documentation of bioavailiability and bioequivalence of topical dermatological drug products. FDA also welcomes the submission of relevant clinical, dermatopharmacokinetic, and in vitro release data for further evaluation of these approaches in the guidance. At some time following receipt of public comments and other information to this draft guidance, FDA intends to discuss the guidance and the public response to the guidance before a joint meeting of the Advisory Committee for Pharmaceutical Science and the Dermatologic and Ophthalmic Drugs Advisory Committee.

This draft guidance is a level 1 draft guidance document consistent with FDA's good guidance practices (62 FR 8961, February 27, 1997). It represents the agency's current thinking on bioavailability and bioequivalence approaches for topical dermatological drug products. 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.

Submit written requests for single copies of the draft 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. Requests should be identified with the docket number found in brackets in the heading of this document. Copies of the draft guidance and received comments are available for public examination in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: June 8, 1998.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 98–16141 Filed 6–17–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[Document Identifier: HCFA–SP–0001]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Health Care Financing Administration.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Collection Request: Extension of a currently approved collection; *Title of Information Collection:* Medicaid Post-Eligibility Preprint and Supporting Regulations in 42 CFR 430.10; *Form No.:* HCFA–SP–0001 (OMB# 0938–0673); *Use:* The post-eligibility preprint is part of the comprehensive statement that a State submits to show that it is meeting the requirements for Federal funding of its Medicaid program. It comprises part of each State's Plan which outlines the mandatory and optional aspects of a State's Medicaid program. Accurate submission of this information is necessary in order for States to receive Federal funding.; *Frequency:* On occasion; *Affected Public:* State, local or tribal government and Federal Government; *Number of Respondents:* 56; Total Annual Responses: 56; *Total Annual Hours:* 280.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access HCFA's Web Site address at http://www.hcfa.gov/regs/prdact95.htm, or E-mail your request, including your address, phone number, OMB number, and HCFA document identifier, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 30 days of this notice directly to the OMB desk officer: OMB Human Resources and Housing Branch, Attention: Allison Eydt, New Executive Office Building, Room 10235, Washington, D.C. 20503.

Dated: June 9, 1998.

John P. Burke III,

HCFA Reports Clearance Officer, HCFA Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards.

[FR Doc. 98–16148 Filed 6–17–98; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[Form # HCFA–21, 21B, 21P, 21.11A, 21E, 64, 64.21, 64.21U, 64.21P, 64.21UP, 64EC, 64.21E, 64.9P, 64.10P, 64.11A, 64.9d]

Emergency Clearance: Public Information Collection Requirements Submitted to the Office of Management and Budget (OMB)

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services (DHHS), has submitted to the Office of Management and Budget (OMB) the following request for Emergency review. We are requesting an emergency review because the collection of this information is needed prior to the expiration of the normal time limits under OMB's regulations at 5 CFR, Part 1320. The Agency cannot reasonably comply with the normal clearance procedures because of the need for States to report financial and related statistical information pursuant to the operation of their Medicaid programs, under title XIX of the Social Security Act, and their Children's Health Insurance Programs (CHIP) under title XXI of the Act. States will begin reporting information after the end of the third quarter of Federal fiscal year 1998 (after June 30, 1998). Without the capacity for States to report this information discussed below, the States and HCFA will not be able to properly implement the provisions enacted by the Balanced Budget Act (BBA) of 1997 related to the CHIP.

HCFA is requesting OMB review and approval of this collection within eleven working days, with a 180-day approval period. Written comments and recommendations will be accepted from the public if received by the individual designated below, within ten working days of publication of this notice in the **Federal Register**.

During this 180-day period HCFA will pursue OMB clearance of this collection as stipulated by 5 CFR 1320.5.

(1) *Type of Information Collection Request:* New Collection;

Title of Information Collection: Children's Health Insurance Program (CHIP) Budget and Expenditure System State Reporting Forms.

Form Nos.: HCFA–21, 21B, 21P, 21.11A, 21E;

Use: These forms will be used by State CHIP agencies to report CHIP program budget projections and actual CHIP program benefits and administrative expenditures, and the numbers of children being served in the CHIP program, to the Health Care Financing Administration (HCFA). The information provided by these new forms will be used by HCFA to prepare the grant awards to States for the CHIP, to ensure that the appropriate level of Federal payments for State expenditures under the CHIP are made in accordance with the CHIP-related BBA legislative provisions of 1997, and to track, monitor, and evaluate the numbers of children being served by the CHIP.

Note: At this time Form HCFA–21E of this package is for States to report the numbers of children, by service delivery system, that are served in the States' CHIPs based on age categories. However, we are continuing to work with the States to develop an appropriate format for States to report the numbers of children, by service delivery system, that are served in the CHIP based on Federal poverty income level categories and under the age categories previously requested. When this format is finalized it will be incorporated into Form HCFA–21E.

For a short description of the CHIP reporting forms, see below:

- Form HCFA–21 Summary Sheet. Quarterly Children's Health Insurance Program Statement of Expenditures for Title XXI Summary Sheet. This form summarizes the total expenditures in the State's CHIP reported by the State for the reporting quarter.
- Form HCFA–21. Children's Health Expenditures by Type of Service for the Title XXI Program, Expenditures in this Quarter. States use this form to report CHIP current quarter expenditures in accordance with services categories authorized under title XXI.
- Form HCFA–21B. Children's Health Insurance Program Budget Report for the Title XXI Program State Expenditure Plan. States use this form to report their budget projections each quarter for their Title XXI CHIPs for the current and budget Federal fiscal years and broken out by quarter.
- Form HCFA–21P. Children's Health Expenditures by Type of Service for the Title XXI Program, Prior Period Adjustments. States use this form to report CHIP prior period adjustment expenditures claimed in the submission quarter in accordance with services categories authorized under title XXI.
- Form HCFA–21.11A. Provider-Related Donations and Health Care Related Taxes, Fees, and Assessments Received Under Section 1903(w) for Title XXI. States use this form to report CHIP-related State receipts of provider related donations, and health care related taxes, fees, and assessments.
- Form HCFA–21E. Children's Health Insurance Program, Number of Children Served. States use this form to report the numbers of children, by service delivery system, that are served in the States' CHIPs based on age categories.

Note: HCFA is working with States to develop an appropriate format for States to report numbers of children, by service delivery system, that are served in the CHIP based on Federal poverty income level categories and under the age categories previously requested. When the format is finalized it will be incorporated into this form.

Frequency: Quarterly;

Affected Public: State and Federal government;

Number of Respondents: 56;

Total Annual Responses: 224;

Total Annual Hours: 7,840.

(2) *Type of Information Collection Request:* Revision of a currently approved collection; Title of Information Collection: Quarterly Medicaid Statement of Expenditures for the Medical Assistance Program.

Form Nos.: HCFA–64, 64.21, 64.21U, 64.21P, 64.21UP, 64EC, 64.21E, 64.9, 64.10, 64.10P, 64.11a, 64.9d;

Use: These new forms are revisions of the currently approved collection report Form HCFA–64. These forms will be used by State Medicaid agencies to report their actual CHIP-related Medicaid expenditures and the numbers of CHIP-related children, and other children being served in the Medicaid program, to the Health Care Financing Administration(HCFA). The forms will be used by the HCFA to ensure that the appropriate level of Federal payments for the State's CHIP-related Medicaid program expenditures are made in accordance with the CHIP and related Medicaid provisions of the BBA of 1997, and to track, monitor, and evaluate the numbers of CHIP-related children and other individuals being served by the Medicaid program.

Note: At this time Forms HCFA–64.21E and HCFA–64EC of this package are for States to report the numbers of CHIP-related children and other children, by service delivery system, that are served in States' Medicaid programs based on age categories. However, we are continuing to work with the States to develop an appropriate format for States to report the numbers of children, by service delivery system, that are served in the States' Medicaid programs based on Federal poverty income level categories and under the age categories previously requested. When this format is finalized it will be incorporated into Forms HCFA–21E and HCFA–64EC.

For a short description of the CHIP-related Medicaid reporting forms, see below:

• HCFA–64 SUMMARY SHEET

Quarterly Medicaid Statement of Expenditures for the Medical Assistance Program, Summary Sheet. The form HCFA–64 summary sheet is a one-page summary sheet summarizing the total expenditures reported for the quarter. The remaining forms provide additional detail and support the entries made on the summary sheet.

• HCFA–64.9

Quarterly Medicaid Statement of Expenditures for the Medical Assistance Program, Expenditures in this Quarter. The form HCFA–64.9 is comprised of two pages that are used for detailing, by category, current quarter program expenditures by type of service (e.g., clinical services, dental services). The total figures from the form HCFA–64.9 are transferred to the form HCFA–64 Summary Sheet, Line 6, columns (a) and (b). A separate copy of the form HCFA–64.9 must also be submitted for each waiver granted to the State agency for which expenditures have been incurred. The total waiver figures are already incorporated in the expenditures reported on the ''base'' (one form) form HCFA–64.9.

• HCFA–64.9p

Quarterly Medicaid Statement of Expenditures for the Medical Assistance Program, Prior Period Adjustment. The form HCFA–64.9p supports claims or adjustments for prior period (years) which are transferred to the form HCFA–64 summary sheet and noted on Lines 7, 8, 10.A., and 10.B., columns (a) and (b). It contains the same service categories as the form HCFA–64.9. This two-page form details the program expenditures, by category, arraying the expenditures by fiscal year. A separate form HCFA–64.9p is prepared to support each fiscal year and each line entry (Lines 7, 8, 10.A., and 10.B.) on the summary sheet. If the prior period adjustment includes waiver-related expenditures, a separate form HCFA–64.9p must be filed for each waiver including HCBS waivers.

• HCFA–64.9d

Allocation of Disproportionate Share Hospital Payment Adjustments to Applicable FFYs. The form HCFA–64.9d has been created to track payments of DSH by Federal Fiscal Year. This one page form details, by Inpatient Hospital Services and Mental Health Facility Services, details the allotment and DSH payments by Federal Fiscal Years. This is authorized under § 1923(f) of the Act.

• HCFA–64.10

Expenditures for State and Local Administration for the Medical Assistance Program, Expenditures in this Quarter. The form HCFA–64.10 supports administrative expenditures reported on the summary sheet. This one page form details, by category, the current quarter expenditures for administering the Medicaid program. The total figures from the ''base'' form HCFA–64.10 summary sheet. The State agency must also file a separate form HCFA–64.10 or each of its waivers granted to the State agency for which expenditures have been incurred. The waiver expenditures reported on a supporting form HCFA–64.10 are already included with the overall expenditures reported on the ''base'' form HCFA–64.10.

• HCFA–64.10p

Expenditures for State and Local Administration for the Medical Assistance Program, Prior Period Adjustments. The form HCFA–64.10p is similar to the form HCFA–64.10 except that it addresses adjustments to prior period expenditures. The totals from the form HCFA–64.10p are transferred to the form HCFA–64 summary sheet, Lines 7, or 8. or 10.A., or 10.B., columns (c) and (d). A separate form HCFA–64.10p must be completed for each line item entry, by fiscal year, on the summary sheet.

• HCFA–64.11

Summary Total of Receipts from form HCFA–64.11A. The form HCFA–64.11 has been created to summarize the information reported on the various HCFA–64.11a forms. This is authorized under § 1903(w) of the Act.

• HCFA–64.11A

Actual Receipts by Plan Name. The form HCFA–64.11a has been created to report the actual receipts by plan names form provider-related donation and health care related taxes, fees and assessments. This is authorized under § 1903(w) of the Act.

• There are no forms numbered 64.1 through 64.8 because of form development and redevelopment over the years. There are also no forms detailing items 9.B. through 9.E. of the summary sheet because there is no need for further breakdown of these figures for reimbursement calculations.

HCFA–64.21 Quarterly Medical Assistance Expenditure By Children's Health Insurance Program Expenditure Categories. States will use this form to report current quarter expenditures for children who are determined presumptively eligible under section 1920A of the Act.

HCFA–64.21U Quarterly Medical Assistance Expenditure Categories by Children's Health Insurance Program Expenditure Categories. States will use this form to report current quarter expenditures described under section 1905(u)(2) and 1905(u)(3) of the Act.

HCFA–64.21P Quarterly Medical Assistance Expenditures By Children's Health Insurance Program expenditure categories. States will use this form to report prior period expenditures for children who are determined presumptively eligible under section 1920A of the Act.

HCFA–64.21UP Quarterly Medical Assistance Expenditures by Children's Health Insurance Program Expenditure Categories, Prior Period Expenditures. States will use this form to report prior period expenditures described under section 1905(u)(2) and (3) of the Act.

HCFA–64.21E Number of Children Served Related to Children's Health Insurance Program. States use this form to report the numbers of CHIP-related children, by service delivery system, that are served in the States' Medicaid programs based on age categories.

Note: HCFA is working with States to develop an appropriate format for States to report numbers of CHIP-related children, by service delivery system, that are served in the States' Medicaid programs related to CHIP based on Federal poverty income level categories and under the age categories previously requested. When the format is finalized it will be incorporated into this form.

HCFA–64EC Number of Children Served Related to Children's Health Insurance Program. States use this form to report the numbers of children (other than CHIP-related children), by service delivery system, that are served in the States' Medicaid programs based on age categories.

Note: HCFA is working with States to develop an appropriate format for States to report numbers of children (other than CHIP-related children), by service delivery system, that are served in the Medicaid program based on Federal poverty income level categories and under the age categories previously requested. When the format is finalized it will be incorporated into this form.

Frequency: Quarterly;

Affected Public: State and Federal government;

Number of Respondents: 56;

Total Annual Responses: 224;

Total Annual Hours: 16,464.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access HCFA's Web

Site address at http://www.hcfa.gov/regs/prdact95.htm, or E-mail your request, including your address, phone number, OMB number, and HCFA document identifier, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326.

HCFA is requesting OMB review and approval of these collections within eleven working days of publication in the **Federal Register**. However, comments on these information collections and record keeping requirements must be received by the designees referenced below, within ten working days of publication in the **Federal Register**: Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503, Fax Number: (202) 395–6974 or (202) 395–5167, Attn: Laura Oliven , HCFA Desk Officer.

Dated: June 9, 1998.

John P. Burke III,

HCFA Reports Clearance Officer, HCFA, Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards.

[FR Doc. 98–16221 Filed 6–17–98; 8:45 am]

BILLING CODE 4120–03–P

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, 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: HIV/AIDS Dental Reimbursement Program

(OMB No. 0915–0151)—Extension and Revision—This is a request for extension and revision of the instructions used by accredited dental schools and post-doctoral dental programs requesting reimbursement for documented uncompensated costs for providing oral health care for HIV-infected individuals. Awards are authorized under section 776(b) of the Public Health Service Act (42 U.S.C. 294n).

The HIV/AIDS Bureau needs to collect this information to determine the amount of the reimbursement award that is made to each institution. The information will also assist the Health Resources and Services Administration (HRSA) in understanding: (1) the extent to which dental programs are involved in the treatment of HIV-infected individuals; (2) the type of individuals seeking care; (3) the scope and extent of HIV oral health services provided; (4) the time and costs involved in providing these services; and (5) how the funds used by the institutions are allocated.

Comparisons are requested between HIV and non-HIV infected patients to enable HRSA to determine the impact on dental programs of providing oral health services to HIV-infected patients.

The hourly burden estimate has increased substantially based on the experience of the grantees in completing the information required.

Collection	Number of respondents	Hours per response	Total burden hours
Reimbursement Request	125	20	2,500

Send comments to HRSA Reports Clearance Officer, Room 14–36, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857. Written comments should be received within 60 days of this Notice.

Dated: June 12, 1998.

Jane Harrison,

Director, Division of Policy Review and Coordination.

[FR Doc. 98–16143 Filed 6–17–98; 8:45 am]

BILLING CODE 4160–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Statement of Organization, Functions and Delegations of Authority

This notice amends Part R of the Statement of Organization, Functions and Delegations of Authority of the Department of Health and Human Services (DHHS), Health Resources and Services Administration (60 FR 56605 as amended November 6, 1995, as last amended at 63 FR 7422 dated February 13, 1998). This notice reflects the establishment of the Health Resources and Services Administration's (HRSA) five (5) Field Clusters in the Office of Field Coordination (RS5). This notice also updates the functional statements for the Division of Facilities and Loans (RR2) in the Office of Special Programs (RR). The changes are as follows.

I. Under Part R, HRSA, establish a new chapter as the ''HRSA Field Clusters (RS5F),'' to read as follows:

Section RS5F–00 Mission

The HRSA Field Clusters are comprised of the Northeast Cluster, the Southeast Cluster, the Midwest Cluster, the West Central Cluster and the Pacific West Cluster. These clusters support the Department's mission of improving the health of the Nation's population by administering HRSA field health programs and activities to assure a coordinated HRSA effort in support of national health policies and State and local needs within the field. The clusters will assist HRSA in addressing cross-cutting program issues and initiatives to achieve program goals, and in providing a HRSA focal point for responding to the needs of State and local governments, community agencies and others involved in the planning or provision of general health. This organizational structure will support intergovernmental activities which respond to health issues on both the State and local levels, help administer health activities and programs to provide prevention of health problems, and assure access to and quality of general health services.

Section RS5F–10 Organization

Each cluster is headed up by a Field Coordinator who reports to the Director, Office of Field Coordination, who reports to the Associate Administrator for Management and Program Support.

The clusters are organized as follows:

A. Northeast Cluster (RS5F1)

1. Philadelphia, PA.—lead city

2. Boston, MA.
3. New York, NY.

B. Southeast Cluster (RS5F2)
1. Atlanta, GA.

C. Midwest Cluster (RS5F3)
1. Chicago, IL.—lead city
2. Kansas City, MO.

D. West Central Cluster (RS5F4)
1. Dallas, TX.—lead city
2. Denver, CO.

E. Pacific West Cluster (RS5F5)
1. San Francisco, CA.—lead city
2. Seattle, WA.

Section RS5F–20 Function

A. The lead cities in the Northeast, Southeast, Midwest, West Central and Pacific West Clusters consist of the following components.

1. Immediate Office of the Field Coordinator

Serves as HRSA's senior public health official in the field, providing liaison with State and local health officials as well as private and professional organizations; (2) provides input from local regional and State perspectives to assist the Administrator and Associate Administrators in the formulation, development, analysis and evaluation of HRSA programs and initiatives; (3) at the direction of the Administrator and/or in conjunction with the Associate Administrators and the Director, Office of Field Coordination, coordinates the field implementation of special initiatives which involve multiple HRSA programs and/or field offices (e.g. Border Health); (4) assists with the implementation of HRSA programs in the field by supporting the coordination of activities, alerting program officials of potential issues and assessing policies and service delivery systems; (5) represents the Administrator in working with the other Federal agencies in coordinating health programs and activities; and (6) exercises line management authority as delegated from the Administrator for general administrative and management functions within the field structure.

2. Division of Health Services

Directs and coordinates field development and implementation of HRSA primary care programs and activities designed to increase access to primary care for underserved populations in the States served by the division; (2) provides continuous program monitoring of HRSA health service grants and contracts for compliance with applicable laws, regulations, policies and performance standards; (3) assures implementation of loan programs; (4) provides for development, implementation and monitoring of the annual field work plan related to assigned program areas, including setting objectives responsive to national and field priorities based on guidance provided by the appropriate HRSA bureau component and assigns division resources required to attain these objectives; (5) coordinates with other field office staff and headquarters staff to develop and consolidate objectives crossing program and division lines; (6) serves as a source of expertise on health services development, primary health care programs and as field program liaison with HRSA headquarters on technical programmatic matters; (7) establishes effective communication and working relationships with health-related organizations of States and other jurisdictions; and (8) serves as a focal point for information on health service programs and related efforts, including voluntary professional and other private sector activities.

3. Division of Health Resources

Directs and coordinates field development and implementation of HRSA programs and activities designed to increase the capacity and capability of health facilities construction, maternal and child health care programs and other health-related programs in the States served by the cluster; (2) provides continuous program monitoring of HRSA grants and contracts for compliance with applicable laws, regulations, policies and performance standards; (3) assures implementation of loan programs; (4) provides for development, implementation, and monitoring of the annual field work plan related to assigned program areas, including setting objectives responsive to national and field priorities based on guidance provided by appropriate HRSA bureau components and assigns division resources required to attain these objectives; (5) coordinates with other field office staff and headquarters staff to develop and consolidate objectives crossing program and division lines; (6) serves as a source of expertise on resource development, maternal and child health programs, HIV/AIDS programs, health professions programs and as field program liaison with HRSA headquarters on technical programmatic matters, (7) establishes effective communication and working relationships with health-related organizations of States and other jurisdictions, (8) serves as a focal point for information on health resource programs and related efforts, including voluntary, professional and other private sector activities.

II. Under the Office of Special Programs, Division of Facilities and Loans, make the following changes:

Delete the and before item (9). Place a (;) at the end of item (9) and add the following statement: and (10) coordinates the facilities and construction engineering activities for the field.

Section RS5F–30 Delegations of Authority

All delegations and redelegations of authority which were in effect immediately prior to the effective date hereof have been continued in effect in them or their successors pending further redelegation. I hereby ratify and affirm all actions taken by any DHHS official which involved the exercise of these authorities prior to the effective date of this delegation.

This reorganization is effective upon date of signature.

Dated: June 10, 1998.

Claude Earl Fox,

Administrator.

[FR Doc. 98–16142 Filed 6–17–98; 8:45 am]

BILLING CODE 4160–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Environmental Health Sciences; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Environmental Health Sciences Special Emphasis Panel Studies To Evaluate Toxicologic and Carcinogenic Potential of Triethanolamine in Mice.

Date: June 23, 1998.

Time: 9:00 AM to 11:30 AM.

Agenda: To review and evaluate grant applications.

Place: NIEHS-East Campus, Building 4401, Conference Room 3446, Research Triangle Park, NC 27709 (Telephone Conference Call).

Contact Person: Carol K. Shreffler, PHD, Health Scientist Administrator, 104 T. W.

Alexander Drive, Research Triangle Park, NC 27709, (919) 541–1445.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.113, Biological Response to Environmental Health Hazards; 93.114, Applied Toxicological Research and Testing; 93.115, Biometry and Risk Estimation—Health Risks from Environmental Exposures; 93.142, NIEHS Hazardous Waste Worker Health and Safety Training; 93.143, NIEHS Superfund Hazardous Substances—Basic Research and Education; 93.894, Resources and Manpower Development in the Environmental Health Sciences, National Institutes of Health, HHS)

Dated: June 11, 1998.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 98–16231 Filed 6–17–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Environmental Health Sciences; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Environmental Health Sciences Special Emphasis Panel Coordinating Center for the African-American Diabetes Mellitus Study Network.

Date: July 8, 1998.

Time: 11 a.m. to 1 p.m.

Agenda: To review and evaluate grant applications.

Place: NIEHS–East Campus, Building 4401, Conference Room 3446, Research Triangle park, NC 27709 (Telephone Conference Call).

Contact Person: Carol K. Shreffler, PHD, Health Scientist Administrator, 104 T. W. Alexander Drive, Research Triangle Park, NC 27709, (919) 541–1445.

Name of Committee: Environmental Health Sciences Review Committee.

Date: July 30–31, 1998.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: NIEHS–South Campus, Building 1, Conference Room ''B'', Research Triangle Park, NC 27709.

Contact Person: Ethel B. Jackson, DDS, Chief, Scientific Review Branch, Div of Extramural Res & Training, Natl Inst of Environmental Hlth Scis, National Institutes of Health, PHS, DHHS, Research Triangle Park, NC 27709.

(Catalogue of Federal Domestic Assistance Program Nos. 93.113, Biological Response to Environmental Health Hazards; 93.114, Applied Toxicological Research and Testing; 93.115, Biometry and Risk Estimation—Health Risks from Environmental Exposure; 93.142, NIEHS Hazardous Waste Worker Health and Safety Training; 93.143, NIEHS Superfund Hazardous Substances—Basic Research and Education, 93.894, Resources and Manpower Development in the Environmental Health Sciences, National Institutes of Health, HHS)

Dated: June 11, 1998.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 98–16232 Filed 6–17–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Alcohol Abuse and Alcoholism; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Alcohol Abuse and Alcoholism Special Emphasis Panel.

Date: June 12, 1998.

Time: 7:30 AM to 9:00 AM.

Agenda: To review and evaluate grant applications.

Place: 6000 Executive Blvd., Suite 409, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Sean O'Rouke, Scientific Review Administrator, 6000 Executive Blvd., Suite 409.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.271, Alcohol Research Career Development Awards for Scientists and Clinicians; 93.272, Alcohol National Research Service Awards for Research Training; 93.273, Alcohol Research Programs; 93.891, Alcohol Research Center Grants, National Institutes of Health, HHS)

Dated: June 11, 1998.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 98–16233 Filed 6–17–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Mental Health Special Emphasis Panel.

Date: July 6, 1998.

Time: 10:00 AM to 11:30 AM.

Agenda: To review and evaluate grant applications.

Place: Parklawn Building—Room 9–105, Rockville, MD 20857, (Telephone Conference Call).

Contact Person: Henry J. Haigler, PHD, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Parklawn Building, 5600 Fishers Lane, Room 9–105, Rockville, MD 20857, 301–443–7216.

Name of Committee: National Institute of Mental Health Special Emphasis Panel.

Date: July 16, 1998.

Time: 11:00 AM to 12:30 PM.

Agenda: To review and evaluate grant applications.

Place: Parklawn Building—Room 9–105, 5600 Fishers Lane, Rockville, MD 20857, (Telephone Conference Call).

Contact Person: Henry J. Haigler, PHD, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Parklawn Building, 5600 Fishers Lane, Room 9–105, Rockville, MD 20857, 301–443–7216.

Name of Committee: National Institute of Mental Health Special Emphasis Panel.

Date: June 22, 1998.

Time: 12:00 PM to 1:00 PM.

Agenda: To review and evaluate grant applications.

Place: Parklawn Building—Room 9–101, Russell Martenson, 5600 Fishers Lane, Rockville, MD 20857, (Telephone Conference Call).

Contact Person: Russell E. Martenson, PHD, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, National Institutes of Health, PHD, DHHS, Bethesda, MD 20892, 301–443–3936.

Name of Committee: National Institute of Mental Health Special Emphasis Panel.

Date: July 23–24, 1998.

Time: July 23, 1998, 8:00 AM to adjournment.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Contact Person: Russell E. Martenson, PHD, Scientific Review Administrator, Division of Extramural Activities, National Insititute of Mental Health, National Institutes of Health, PHS, DHHS, Bethesda, MD 20892, 301–443–3936.

Name of Committee: National Institute of Mental Health Special Emphasis Panel.

Date: July 28, 1998.

Time: 10:00 AM to 1:00 PM.

Agenda: To review and evaluate grant applications.

Place: Parklawn Building, Conference Room ''O'', Rockville, MD 20857.

Contact Person: Ron Schoenfeld, PHD, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Parklawn Building, 5600 Fishers Lane, Room 9–101, Rockville, MD 20857, 301–443–3936.

Name of Committee: National Institute of Mental Health Special Emphasis Panel.

Date: July 30, 1998.

Time: 12:00 PM to 1:00 PM.

Agenda: To review and evaluate grant applications.

Place: Parlwan Building—Room 9–010, Russell Martenson, 5600 Fishers Lane, Rockville, MD 20857, (Telephone Conference Call).

Contact Person: Russell E. Martenson, PHD, Scientific Review Administrator, Division Of Extramural Activities, National Institute of Mental Health, National Institutes of Health, PHS, DHHS, Bethesda, MD 20892. 301–443–3936.

Name of Committee: National Institute of Mental Health Special Emphasis Panel.

Date: July 31, 1998.

Time: 2:00 PM to 3:30 PM.

Agenda: To review and evaluate grant applications.

Place: Parklawn Building—Room 9–105, 5600 Fishers Lane, Rockville, MD 20857, (Telephone Conference Call).

Contact Person: Henry J. Haigler, PHD, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Parklawn Building, 5600 Fishers Lane, Room 9–105, Rockville, MD 20857, 301–443–7216.

Name of Committee: National Institute of Mental Health Special Emphasis Panel.

Date: July 31, 1998.

Time: 12:00 PM to 1:00 PM.

Agenda: To review and evaluate grant applications.

Place: Parklawn Building—Room 9–101, Russell Martenson, 5600 Fishers Lane, Rockville, MD 20857, (Telephone Conference Call).

Contact Person: Russel E. Martenson, PHD, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, National Institutes of Health, PHS, DHHS, Bethesda, MD 20892, 301–443–3936.

(Catalogue of Federal Domestic Assistance Program Nos. 93.242, Mental Health Research Grants; 93.281, Scientist Development Award, Scientist Development Award for Clinicians, and Research Scientist Award; 93.282, Mental Health National Research Service Awards for Research Training, National Institutes of Health, HHS)

Dated: June 11, 1998.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 98–16234 Filed 6–17–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Arthritis and Musculoskeletal and Skin Diseases; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Arthritis and Musculoskeletal and Skin Diseases Special Emphasis Panel; NIAMS SEP Clinical Trial B.

Date: July 9, 1998.

Time: 9:00 AM to 4:00 PM.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Bethesda, 8120 Wisconsin Ave, Bethesda, MD 20814.

Contact Person: Aftab A. Ansari, PHD, NIAMS, 45 Center Drive, 5AS 25U.

Name of Committee: National Institute of Arthritis and Musculoskeletal and Skin Diseases Special Emphasis Panel; NIAMS SEP Eisenberg Supplement.

Date: July 15, 1998.

Time: 10:00 AM to 11:00 AM.

Agenda: To review and evaluate grant applications.

Place: Natcher Bldg, Bethesda, MD 20892–6400 (Telephone Conference Call).

Contact Person: Aftab A. Ansari, PHD, NIAMS 45 Center Drive, 5AS 25U.

(Catalogue of Federal Domestic Assistance Program Nos. 93.846, Arthritis, Musculoskeletal and Skin Diseases Research, National Institutes of Health, HHS)

Dated: June 11, 1998.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 98–16235 Filed 6–17–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Mental Health Special Emphasis Panel.

Date: June 22, 1998.

Time: 9:00 AM to 10:30 AM.

Agenda: To review and evaluate grant applications.

Place: Parklawn Building, Room 9–105, Rockville, MD 20857, (Telephone Conference Call).

Contact Person: Henry J. Haigler, Phd, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Parklawn Building, 5600 Fishers Lane, Room 9–105, Rockville, MD 20857, 301–443–7216.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute of Mental Health Special Emphasis Panel.

Date: June 23, 1998.

Time: 10:30 AM to 1:00 PM.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn, 5520 Wisconsin Ave, Palladian West, Chevy Chase, MD 20815.

Contact Person: Ron Schoenfeld, Phd, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Parklawn Building, 5600

Fishers Lane, Room 9–101, Rockville, MD 20857, 301–443–3936.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.242, Mental Health Research Grants; 93.281, Scientist Development Award, Scientist Development Award for Clinicians, and Research Scientist Award; 93.282, Mental Health National Research Service Awards for Research Training, National Institutes of Health, HHS)

Dated: June 11, 1998.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 98–16236 Filed 6–17–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Receipt of Applications for Permit

The following applicants have applied for a permit to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, *as amended* (16 U.S.C. 1531, *et seq.*):

Applicant: Horseshoe Creek Wildlife Foundation, Inc., Davenport, FL, PRT–691840

The applicant requests a permit to re-export and re-import leopards (*Panthera pardus*), tiger (*Panthera tigris*), and progeny of the animals currently held by the applicant and any animals acquired in the United States by the applicant to/from worldwide locations to enhance the survival of the species through conservation education. This notification covers activities conducted by the applicant over a three year period.

Applicant: Exotic Endangered Cats of World, Gibsonton, FL, PRT–798412.

The applicant requests a permit to re-export and re-import leopards (*Panthera pardus*), tiger (*Panthera tigris*)(*Panthera tigris altaica*) (*Uncia uncia*), and progeny of the animals currently held by the applicant and any animals acquired in the United States by the applicant to/from worldwide locations to enhance the survival of the species through conservation education. This notification covers activities conducted by the applicant over a three year period.

Applicant: John Horton, McKenzie, FL, PRT–843762.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus dorcas*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

Applicant: Peter's Taxidermy, Graham, WA, PRT–840263.

The applicant requests a permit to export one mounted jaguar (Panthera onca) and the articulated skeleton of one snow leopard (Unica unica) to a museum in Japan for the purpose of enhancement of the survival of the species through conservation education.

Applicant: Kenneth Glander, Duke University Primate Center, Durham, NC, PRT–843817.

The applicant requests a permit to import blood samples taken from wild mantled howling monkeys (*Alouatta palliata*) in Ecuador for the purpose of genetic research.

Applicant: Richard H. Manly, Augusta, GA, PRT–843737.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus dorcas*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

Written data or comments should be submitted to the Director, U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203 and must be received by the Director within 30 days of the date of this publication.

The public is invited to comment on the following application for a permit to conduct certain activities with marine mammals. The application was submitted to satisfy requirements of the Marine Mammal Protection Act of 1972, *as amended* (16 U.S.C. 1361 *et seq.*) and the regulations governing marine mammals (50 CFR 18).

Applicant: Mote Marine Laboratory, Sarasota, FL, PRT–843809.

Permit Type: Take for Scientific Research.

Name and Number of Animals: Florida Manatee (*Trichecus manatus latirostris*), 70.

Summary of Activity to be Authorized: The applicant requests a permit to conduct controlled approaches to manatees using a variety of vessels and operating conditions, as part of a study of responses of manatees to vessels.

Source of Marine Mammals: Manatees occupying Sarasota Bay, Florida from April through October.

Period of Activity: Up to 5 years from issuance date of permit, if issued.

Concurrent with the publication of this notice in the **Federal Register**, the Office of Management Authority is forwarding copies of this application to the Marine Mammal Commission and the Committee of Scientific Advisors for their review.

Applicant: Dennis John Tucker, Deforest, WI, PRT–843445.

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport-hunted from the Northern Beaufort Sea polar bear population, Northwest Territories, Canada for personal use.

Applicant: Joseph J. Sisca, Jr., Brewster, NY, PRT–843452.

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport-hunted from the McClintock Channel polar bear population, Northwest Territories, Canada for personal use.

Applicant: William F. Kneer, Jr., Whitehall, MI, PRT–843647.

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport-hunted from the McClintock Channel polar bear population, Northwest Territories, Canada for personal use.

Applicant: Leroy M. Wurst, Pigeon, MI, PRT–843726.

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport-hunted from the McClintock Channel polar bear population, Northwest Territories, Canada for personal use.

Applicant: Ronald Guire, Los Gatos, CA, PRT–843828.

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport-hunted from the McClintock Channel polar bear population, Northwest Territories, Canada for personal use.

Written data or comments, requests for copies of the complete application, or requests for a public hearing on this application should be sent to the U.S. Fish and Wildlife Service, Office of Management Authority, 4401 N. Fairfax Drive, Room 700, Arlington, Virginia 22203, telephone 703/358–2104 or fax 703/358–2281 and must be received within 30 days of the date of publication of this notice. Anyone requesting a hearing should give specific reasons why a hearing would be appropriate. The holding of such a hearing is at the discretion of the Director.

Documents and other information submitted for these applications are available for review by any party who submits a written request to the U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North

Fairfax Drive, Rm 700, Arlington, Virginia 22203, phone (703) 358–2104 or Fax (703) 358–2281.

Dated: June 12, 1998.

MaryEllen Amtower,

Acting Chief, Branch of Permits, Office of Management Authority.

[FR Doc. 98–16156 Filed 6–17–98; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service, Interior

Availability of an Environmental Assessment and Receipt of an Application for an Incidental Take Permit for the Bonny Doon Quarries, Santa Cruz County, CA

AGENCY: Fish and Wildlife Service.

ACTION: Notice of availability.

SUMMARY: RMC Lonestar of Pleasanton, California, has applied to the Fish and Wildlife Service for an incidental take permit pursuant to section 10(a)(1)(B) the Endangered Species Act of 1973, as amended. The proposed 10-year permit would authorize the incidental take of the California red-legged frog (Rana aurora draytonii), federally listed as threatened, during operation and maintenance of settlement ponds in the Bonny Doon Quarries in Santa Cruz County, California.

This notice announces the availability of the permit application and the environmental assessment for public comment. The permit application includes a habitat conservation plan for the Bonny Doon Quarries' settlement ponds and an implementation agreement. All comments received, including names and addresses, will become part of the administrative record and may be made available to the public.

DATES: Written comments should be received on or before July 20, 1998.

ADDRESSES: Comments should be addressed to Diane K. Noda, Field Supervisor, Fish and Wildlife Service, 2493 Portola Road, Suite B, Ventura, California 93003. Written comments also may be sent by facsimile to (805) 644–3958.

FOR FURTHER INFORMATION CONTACT: David Pereksta, Fish and Wildlife Biologist, at the above address (805–644–1766).

SUPPLEMENTARY INFORMATION:

Availability of Documents

Individuals wishing copies of the documents should immediately contact the Service's Ventura Fish and Wildlife Office at the above referenced address or telephone. Documents will also be available for public inspection, by appointment, during normal business hours at the above address.

Background Information

RMC Lonestar proposes to continue operation and maintenance of five of seven settlement ponds and associated culverts and open drains that serve active and formerly active operational areas, including both quarrying and waste disposal areas, at the Bonny Doon Quarries. The site is known to support populations of the California red-legged frog. As a component of recent environmental review conducted by the County of Santa Cruz (County) for RMC Lonestar's operations and as a condition of RMC Lonestar's mining permit, the County now requires regular cleaning of an engineered drainage system that includes the five settlement ponds and associated culverts and open drains noted above. Operational areas are either owned or leased by RMC Lonestar and covered by the mining permit. The County may add these maintenance requirements to two additional ponds and their associated culverts and drains.

At a minimum, each settlement pond must have adequate capacity to hold run-off from a 10-year, 2-hour rainfall event falling in its catchment area. To maintain this pond capacity, RMC Lonestar must perform general maintenance and remove accumulated sediment each year from at least some of the ponds in the late summer or early fall. The pond maintenance cannot begin before April 15 and must be completed by October 15 to satisfy the County's objectives for the protection of water quality.

RMC Lonestar needs an incidental take permit from the Service because listed wildlife species are protected against ''take'' pursuant to section 9 of the Endangered Species Act. That is, no one may harass, harm, pursue, hunt, shoot, wound, kill, trap, capture or collect listed animal species, or attempt to engage in such conduct (16 USC 1538). The Service, however, may issue permits to take listed animal species if such taking is incidental to, and not the purpose of, otherwise lawful activities. Regulations governing permits for threatened species are found at 50 CFR 17.32.

The Service proposes to issue a 10-year permit to RMC Lonestar for incidental take of California red-legged frogs during operation and maintenance of settlement ponds, associated culverts, and open drains at the Bonny Doon Quarries. The proposed project would result in the loss of California red-legged frogs and their habitat within the settlement ponds, associated culverts, and open drains as the natural vegetation communities in which they are found and the hydrological conditions that provide suitable habitat are removed or altered during operation and maintenance activities.

The proposed action would authorize the incidental take of California red-legged frogs within the 5-acre area of the settlement ponds serving the 455-acre Bonny Doon Quarries. During 1997, California red-legged frogs were found in three of the seven settlement ponds; breeding occurred within two of those three. California red-legged frogs also were found along Liddell Creek and at RMC Lonestar's mitigation ponds along Liddell Creek.

RMC Lonestar's habitat conservation plan contains the following measures to minimize and mitigate impacts to the California red-legged frog and its habitat from the operation and maintenance of the settlement ponds and to further the conservation of the species: (1) training programs to familiarize employees and subcontractors of RMC Lonestar with the biology of the species and the protection provided to the frog under the Endangered Species Act; (2) a community outreach program for distribution to local schools and community associations in Davenport and Bonny Doon; (3) annual breeding surveys at all settlement ponds and mitigation ponds; (4) pre-maintenance activity surveys for California red-legged frogs; (5) avoidance of impacts to or removal from harm's way of juvenile or adult California red-legged frogs to the greatest extent possible; (6) timing of water releases to minimize impacts to breeding populations of California red-legged frogs; (7) the use of speed limits, trash control, and predator control as necessary to protect California red-legged frogs; (8) minimization of disturbance to and enhancement of habitat within Settlement Pond 1, consistent with other regulatory objectives; (9) deepening and maintaining the depth of the mitigation ponds to provide benefits to the California red-legged frog; (10) monitoring of project impacts and success of mitigation measures for the term of this habitat conservation plan and for 5 years following the term of the permit; and (11) submission of an annual report of the activities conducted under this habitat conservation plan during the previous year.

Environmental Assessment

The environmental assessment considers the environmental consequences of the proposed action

and no-action alternatives. The proposed action alternative is issuance of the incidental take permit and implementation of the habitat conservation plan as submitted by RMC Lonestar. Two other alternatives were considered, but were not advanced for detailed analysis because they were neither technically nor economically feasible.

Under the no-action alternative, the Service would not issue an incidental take permit to RMC Lonestar and a habitat conservation plan would not be implemented. No maintenance activities would be performed on the ponds, and the incidental take associated with those activities would be avoided. Therefore, no permit would be needed. This alternative is not being used because RMC Lonestar is under a legal obligation to carry out these maintenance activities by the County and the Regional Water Quality Control Board. These objectives are in place to protect water quality in the streams below the quarry areas. If the ponds were allowed to fill with sediment, the protection to water quality provided by the ponds would be lost and increased sedimentation of downstream areas would result. California red-legged frogs inhabiting downstream habitat would likely be adversely affected. For these reasons, this alternative was rejected.

This notice is provided pursuant to section 10(a)(1)(B) of the Endangered Species Act and Service regulations for implementing the National Environmental Policy Act of 1969 (40 CFR 1506.6). The Service will evaluate the application, associated documents, and comments submitted thereon to determine whether the application meets the requirements of law. If the Service determines that the requirements are met, a permit will be issued for the incidental take of the listed species. A final decision on permit issuance will be made no sooner than 30 days from the date of this notice.

Dated: June 11, 1998.

David L. McMullen,

Acting Regional Director, Region 1, Portland, Oregon.

[FR Doc. 98–16267 Filed 6–17–98; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WO–420–1050–01 24 1A]

Notice of New Information Collection

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Bureau of Land Management (BLM) announces its intention to request approval from the Office of Management and Budget (OMB) to collect certain information from Alaska natives, groups of Alaska natives, or associations or corporations of Alaska natives who want to graze reindeer on public lands in Alaska that are vacant and unappropriated. This information allows BLM to determine whether or not applicants are qualified to receive a reindeer grazing permit. BLM also collects information from permittees to determine whether or not they are using their permits according to the terms and conditions.

DATES: BLM must receive comments on the proposed information collection by August 17, 1998 to assure consideration of them.

ADDRESSES: Mail comments to: Director (630), Bureau of Land Management, 1849 C St., NW, Mail Stop 401LS, Washington, DC 20240. Send comments via Internet to: WoComment@wo.blm.gov. Please include ''Attn: 1004-NEW'' and your name and return address in the Internet message.

FOR FURTHER INFORMATION CONTACT: Frances Watson, (202) 452–5006.

SUPPLEMENTARY INFORMATION: In accordance with 5 CFR 1320.12(a), BLM is required to provide a 60-day notice in the **Federal Register** concerning a collection of information from 10 or more people who are not Federal employees on (a) whether a proposed collection of information is necessary for the proper performance of agency functions, 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 collecting the information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological techniques or other forms of information technology. BLM will receive and analyze any comments sent in response to this notice and include them with its request for approval from OMB.

BLM conducts the reindeer grazing program under the authority of the Act of September 1, 1937, which authorizes the Secretary of the Interior to manage the reindeer industry in Alaska to maintain a self-sustaining industry for natives of Alaska. The Act also authorizes the Secretary to issue permits to those natives for grazing reindeer on public lands.

BLM uses the information on the Grazing Permit Application to determine an individual or group's qualifications to receive a grazing lease or permit. The information requested on the form includes: the applicant's name and address; a legal description of the land applied for; whether or not the applicant is an Alaska native, citizen of the United States, or a qualified corporation; whether or not the applicant has examined the land and whether there are any improvements on the land, in which case a list of the owners; whether or not the applicant has previously used the land; how many acres of adjoining land, if any, the applicant controls; whether or not the applicant can furnish a statement of financial responsibility; and the types and numbers of livestock the applicant intends to graze on the land.

The Reindeer Grazing Permit requires permittees to file a report describing his or her grazing operations for the preceding year. The report is filed annually with BLM before April 1.

There is an average of six applicants annually for grazing permits, and six permittees file annual reports with BLM. The estimated time for collecting the information, filling out and filing each permit application is 1 hour, for a total of 6 burden hours. The estimated time for collecting the information and providing it for the annual report is 15 minutes, for a total of 1.5 burden hours. The total number of respondents for this collection is therefore six respondents and 7.5 burden hours annually.

Dated: June 11, 1998.

Carole Smith,

Bureau of Land Management, Information Collection Officer.

[FR Doc. 98–16220 Filed 6–17–98; 8:45 am]

BILLING CODE 4310–84–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO–078–98–1310–00]

Notice of Availability of the Draft Supplemental Environmental Impact Statement (SEIS) on Oil and Gas Leasing in the Glenwood Springs Resource Area

AGENCY: Bureau of Land Management.

ACTION: Notice of availability.

SUMMARY: Pursuant to sec. 202 of the Federal Land Policy and Management Act of 1976 and Bureau of Land Management (BLM) regulations in CFR 1610.5–5, BLM proposes to amend the Resource Management Plan (RMP) for its Glenwood Springs Resource Area (GSRA). As described in a Notice of Intent published on April 21, 1997 (62 FR 19349), BLM has prepared a supplemental EIS on the impacts of oil and gas development in the GSRA. On March 17, 1998, an additional Notice of Intent (63 FR 13068) expressed BLM's intent to include lands in the Naval Oil Shale Reserves (NOSR) in the SEIS and the RMP amendment. That SEIS is now available for review and comment.

Copies of the SEIS will be available at the following BLM offices: the Glenwood Springs Resource Area Office, 50629 Highway 6 & 24, Glenwood Springs, Colorado, 81602; the Grand Junction District Office, 2815 H Road, Grand Junction, Colorado, 81506; and the Colorado State Office, 2850 Youngfield Street, Lakewood, Colorado, 80215.

DATES: Comments will be accepted until September 17, 1998. A public meeting on the SEIS will be held on July 7, 1998, from 3:00 to 8:00 PM in the Valley Senior Center, 540 Parachute Avenue, Parachute, Colorado, 81635.

ADDRESSES: Comments should be sent to the Area Manager, Glenwood Springs Resource Area, Bureau of Land Management, P.O. Box 1009, Glenwood Springs, CO 81602, ATTN: Oil and Gas SEIS.

FOR FURTHER INFORMATION CONTACT: Steve Moore,(970) 947–2824

SUPPLEMENTARY INFORMATION: A Notice of Intent to prepare a supplemental EIS on oil and gas leasing and development in the GSRA was published on April 21, 1997 (62 FR 19349). The EIS process indicated that some changes in the leasing decisions are necessary and that an RMP amendment will be required. After publication of that notice, the Department of Defense Authorization Act of 1998 (November 18, 1997) transferred management authority for the Naval Oil Shale Reserves (NOSR) from the Department of Energy to BLM. In addition to transferring management authority to BLM, the Act directs BLM to lease approximately 6,000 acres in the NOSR for oil and gas development by November 18, 1998. On March 17, 1998, BLM published an additional Notice of Intent (63 FR 13068) expressing its intent to include lands in the Naval Oil Shale Reserves (NOSR) in the oil and gas leasing SEIS and RMP amendment.

Among the issues identified and evaluated in the SEIS are: the effects on visual quality of gas development in highly visible terrain; the impact on riparian areas; the effects on wildlife and wildlife habitat; and the potential success of reclamation efforts in the arid environment.

Three alternatives were evaluated:

The Continuation of Current Management Alternative, which would continue leasing and mitigation decisions adopted in a 1991 RMP amendment and extend them to the NOSR area to be leased;

The Maximum Protection Alternative, which would attempt to maximize mitigation measures regardless of the impact on gas production; and

The Proposed Action, which describes the GSRA's attempt to provide multiple resource management of oil and gas development.

Larry J. Porter,

Acting District Manager.

[FR Doc. 98–16164 Filed 6–17–98; 8:45 am]

BILLING CODE 4310–JB–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO–018–1430–00]

Notice of Availability, Wolford Mountain Reservoir, Amended Record of Decision

AGENCY: Craig District Office, Kremmling Resource Area.

ACTION: Notice of Availability, Wolford Mountain Reservoir, Amended Record of Decision.

SUMMARY: In accordance with Section 102(c) of the National Environmental Policy Act, the Craig District prepared a Final Environmental Impact Statement (FEIS) and issued a Record of Decision (ROD), February 8, 1991, for the Muddy Creek Reservoir project, now referred to as the Wolford Mountain Reservoir project. The FEIS analyzed the impacts of storing water to the 7,500 foot elevation level. The ROD stated that 60,000 acre-feet of water would be stored up to the 7,485 elevation level. During construction, the Probable Maximum Flood Event was recalculated. This permitted the spillway to be redesigned to allow storage of an additional 6,000 acre-feet of water at a maximum elevation of 7,489 feet, an increase of four feet in elevation. The new pool elevation remains below the 7,500 foot elevation level analyzed in the FEIS. No additional ''in basin'' impacts were identified. ''Out of basin'' impacts are mitigated by using the additional 6,000 acre-feet of storage as a ''fish pool'' from which the Colorado River Water Conservation District will make releases for the benefit of endangered fish species downstream in the Colorado River.

DATES: This notice announces the beginning of the 30 day review period.

ADDRESSES: Comments on the Amended Record of Decision should be sent to Linda M. Gross, Kremmling Area Manager, BLM, PO Box 68, Kremmling, CO 80459.

FOR FURTHER INFORMATION CONTACT: To obtain additional information or to receive a copy of the Amended Record of Decision, contact Jim Perry at (970) 724–3437.

SUPPLEMENTARY INFORMATION: Those individuals, organizations, and agencies with known interest in the proposal have been sent a copy of the Amended Record of Decision.

Mark T. Morse,

District Manager.

[FR Doc. 98–16149 Filed 6–17–98; 8:45 am]

BILLING CODE 4310–JB–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY–060–1620–01; WYW141435]

Notice of Intent

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of intent to prepare an Environmental Impact Statement (EIS) on a lease application received from Antelope Coal Company for Federal coal in the decertified Powder River Federal Coal Production Region, Wyoming, and Notice of Scoping on a modification to the lease application.

SUMMARY: The Bureau of Land Management (BLM) received a competitive coal lease application (WYW141435) from Antelope Coal Company (ACC) on February 14, 1997, for a tract containing approximately 177.5 million tons of Federal coal and including approximately 1,471 acres in an area adjacent to the company's Antelope Mine. ACC is a subsidiary of Kennecott Energy and Coal Company. The Antelope Mine is located in northern Converse County, Wyoming; the lease application area is located in Campbell and Converse Counties, Wyoming. The tract, which is referred to as the Horse Creek LBA Tract, was applied for as a maintenance tract lease-by-application (LBA) under the provisions of 43 Code of Federal

Regulations (CFR) 3425.1. The Powder River Regional Coal Team (RCT) reviewed the competitive lease application at their meeting on April 23, 1997, in Casper, Wyoming, and recommended that it be processed. On May 1, 1998, BLM received an application from ACC to modify the area included in the proposed Horse Creek LBA Tract. The modified tract includes approximately 2,838 acres and approximately 356.5 million tons of coal. The BLM is currently requesting comments from the public on specific concerns or issues that BLM should consider in processing the modified application for the Horse Creek LBA Tract.

BLM conducted scoping on the original lease application in November 1997, including a public scoping meeting held at the Tower West Lodge in Gillette, Wyoming, on November 13 at 7 p.m. As part of that scoping process, BLM requested comments on whether an EIS or an Environmental Assessment (EA) would best satisfy the requirements of the National Environmental Policy Act (NEPA).

After consideration of the comments received during the scoping period and discussions with the applicant, the BLM determined that the requirements of NEPA would be best served by preparing an EIS for this lease application. The Office of Surface Mining will be a cooperating agency on the EIS.

DATES: As part of the public scoping process on the modified lease application area, the public has the opportunity to submit written comments on concerns or issues that the BLM should address in processing the modified lease application. BLM will accept comments on the modified lease application at the address given below. Comments should be submitted by July 24, 1998, in order to be considered in the draft EIS.

ADDRESSES: Please address questions, comments, or concerns to the Casper District Office, Bureau of Land Management, Attn: Nancy Doelger, 1701 East E Street, Casper, Wyoming 82601, or fax them to 307–234–1525.

FOR FURTHER INFORMATION CONTACT: Nancy Doelger or Mike Karbs at the above address, or phone: 307–261–7600.

SUPPLEMENTARY INFORMATION: On February 14, 1997, ACC filed coal lease application WYW141435 for the following lands in Campbell and Converse Counties, Wyoming:

T. 41 N., R. 71 W., 6th PM, Wyoming
Section 22: Lots 2 and 3;
Section 23: Lots 10 thru 16;
Section 25: Lot 11;
Section 26: Lots 1 thru 8, 12, and 13;
Section 27: Lots 5, 6, 11 thru 14, and 16;
Section 34: Lots 1, 7, 8 thru 10, and 16;
Section 35: Lots 8 thru 10;

Containing 1,470.570 acres more or less with an estimated 177.5 million tons of coal.

On May 1, 1998, ACC filed a modification to the Horse Creek LBA tract which added the following lands to the area applied for:

T. 41 N., R. 71 W., 6th PM, Wyoming
Section 14: Lots 5 thru 7, and 10 thru 15;
Section 15: Lots 6 thru 11, and 14 thru 16;
Section 22: Lots 1, 4 thru 6, and 9 thru 13;
Section 23: Lots 2 thru 7;
Section 25: Lot 12 (S 1/2);
Section 27 Lots 1 thru 3;

Containing 1,493.470 acres more or less.

The Horse Creek LBA Tract application modification also removed the following lands from the area applied for:

T. 41 N., R. 71 W., 6th PM, Wyoming
Section 22: Lot 2;
Section 27: Lots 6 and 11;

Containing 126.130 acres more or less.

The modified Horse Creek LBA tract includes the following lands:

T. 41 N., R. 71 W., 6th PM, Wyoming
Section 14: Lots 5 thru 7, and 10 thru 15;
Section 15: Lots 6 thru 11, and 14 thru 16;
Section 22: Lots 1, 3 thru 6, and 9 thru 13;
Section 23: Lots 2 thru 7, and 10 thru 16;
Section 25: Lots 11 and 12(S 1/2);
Section 26: Lots 1 thru 8, 12, and 13;
Section 27: Lots 1 thru 3, 5, 12 thru 14, and 16;
Section 34: Lots 1, 7, 8 thru 10, and 16;
Section 35: Lots 8 thru 10;

Containing 2,837.91 acres more or less with an estimated 356.5 million tons of coal.

The Antelope Mine, which is adjacent to the lease application area, has an approved mining and reclamation plan from the Land Quality Division of the Wyoming Department of Environmental Quality and an approved air quality permit from the Air Quality Division of the Wyoming Department of Environmental Quality to mine up to 30 million tons of coal per year. According to the application filed for the Horse Creek LBA Tract, the maintenance tract would be mined to extend the life of the existing mine.

Using the LBA process, ACC acquired maintenance coal lease WYW128322, containing approximately 617 acres and 60 million tons of minable coal adjacent to the Antelope Mine, effective February 1, 1997.

The Office of Surface Mining Reclamation and Enforcement (OSM) will be a cooperating agency in the preparation of the EIS. If the Horse Creek LBA tract is leased to the applicant, the new lease must be incorporated into the existing mining plans for the adjacent mine and the Secretary of the Interior must approve the revised mining plan before the Federal coal in the tract can be mined. OSM is the Federal agency that would be responsible for recommending approval, approval with conditions, or disapproval of the revised mining plan to the Secretary if the tract is leased.

The lease application area is within the boundaries of the Thunder Basin National Grasslands. Some of the surface lands in the area were formerly under the jurisdiction of the United States and were administered by the U.S. Forest Service (USFS) as part of the Thunder Basin National Grasslands. As a result of recent land exchanges between the USFS and local landowners, however, there are no longer any surface lands within the lease application area that are under the jurisdiction of the USFS, and as a result, the USFS will not be a cooperating agency in the preparation of the EIS.

There are six surface coal mines (Jacobs Ranch, Black Thunder, North Rochelle, Rochelle, North Antelope, and Antelope) located southeast of Wright, Wyoming, in southern Campbell County and northern Converse County. Since decertification of the Powder River Federal Coal Region in 1990, these mines have leased approximately 10,360 acres including approximately 1.2 billion tons of minable Federal coal, and have applied for approximately 8,900 additional acres of Federal coal.

Several issues related to this lease application were identified during the initial scoping in November of 1997, including the potential impacts to wetlands, aquifers, agricultural producers, wildlife, wildlife habitat, wildlife-based recreation, cultural resources, and access to public lands that may occur if a lease is issued for this tract, and the potential for conflict with development of existing oil and gas leases in this area, including coalbed methane. If you have specific concerns about these issues, or have other concerns or issues that BLM should consider in processing this application, please address them in writing to the above address. Written comments should be received by July 24, 1998, in order to be fully considered in the draft EIS.

Dated: June 15, 1998.

Alan L. Kesterke,

Associate State Director.

[FR Doc. 98–16274 Filed 6–17–98; 8:45 am]

BILLING CODE 4310–22–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[MT–960–1990–00]

Resource Advisory Council Meeting, Butte, MT

AGENCY: Butte Field Office, Bureau of Land Management, DOI.

ACTION: Notice of Butte Resource Advisory Council Meeting, Butte, Montana.

SUMMARY: The Council will convene at 9 AM, Friday, July 10, 1998. The main issue will be to prepare guidelines for BLM trails and roads.

The meeting is open to the public and written comments may be given to the Council. Oral comments may be presented to the Council at 3 PM. The time allotted for oral comment may be limited, depending on the number of persons wishing to be heard. Individuals who plan to attend and need further information about the meeting, or need special assistance, such as sign language or other reasonable accommodations, should contact the Butte Field Office, 106 North Parkmont (PO Box 3388), Butte, Montana 59702–3388, telephone 406–494–5059.

FOR FURTHER INFORMATION CONTACT: Merle Good at the above address or telephone number.

Dated: June 8, 1998.

Merle Good,

Field Office Manager.

[FR Doc. 98–16176 Filed 6–17–98; 8:45 am]

BILLING CODE 4310–DN–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[UT–912–08–0777–52]

Utah Resource Advisory Council Meeting

AGENCY: Bureau of Land Management, Interior.

Utah's Resource Advisory Council (RAC) will meet June 29–30, 1998. The RAC will be touring the Five Mile Pass Area and the Salt Flats looking at the impacts of recreation within these areas. The RAC will be briefed on OHV usage on the Five Mile Pass Recreation Area and looking at the results of the first year of the lay-down project along with filming use conflicts on the Salt Flats.

A public comment period has been scheduled for June 29, from 4:30–5:00 p.m. at the Comfort Inn, 491 South Main Street, Tooele, Utah. Anyone wishing to address the Council and/or attend the meeting should contact Sherry Foot, Special Programs Coordinator, Bureau of Land Management, 324 South State Street, Salt Lake City, Utah 84111; telephone (801) 539–4195. Resource Advisory Council meetings are open to the public; however, transportation, meals, and overnight accommodations are the responsibility of the participating public.

Dated: June 10, 1998.

Linda Colville,

Associate State Director.

[FR Doc. 98–16225 Filed 6–17–98; 8:45 am]

BILLING CODE 4310–DQ–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WO–220–08–1060–00–24 1A]

Wild Horse and Burro Advisory Board Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Announcement of meeting.

SUMMARY: The Bureau of Land Management (BLM) announces that the Wild Horse and Burro Advisory Board will conduct a meeting on matters pertaining to management and protection of wild, free-roaming horses and burros on the Nation's public lands.

DATES: The advisory board will meet July 9–10, 1998, from 1:00 p.m. to 5:30 p.m. local time on Thursday, July 9, and from 8:00 a.m. to 5:00 p.m. local time on Friday, July 10. On July 11, 1998, the advisory board will participate in a field trip from approximately 7:30 a.m. to 1:00 p.m. local time.

Submit written comments no later than close of business July 20, 1998.

ADDRESSES: The advisory board will meet in the DoubleTree Club Hotel Riverport, 13735 Riverport Drive, Maryland Heights (St. Louis County), Missouri, 63043.

Send written comments to Bureau of Land Management, WO–610, Mail Stop 406 LS, 1849 C Street, NW, Washington, DC 20240. See **SUPPLEMENTARY INFORMATION** section for electronic access and filing address.

FOR FURTHER INFORMATION CONTACT: Mary Knapp, Wild Horse and Burro Public Affairs Specialist, (202) 452–5176. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service at 1–800–877–8339 between 8:00 a.m. and 4:00 p.m. Eastern Daylight Time, Monday through Friday, excluding Federal holidays.

SUPPLEMENTARY INFORMATION:

I. Public Meeting

Under the authority of 43 CFR part 1784, the Wild Horse and Burro Advisory Board advises the Secretary of the Interior, the Director of the BLM, the Secretary of Agriculture, and the Chief, Forest Service, on matters pertaining to management and protection of wild, free-roaming horses and burros on the Nation's public lands. The tentative agenda for the meeting is:

Thursday, July 9, 1998

—Breakout into subcommittees to address the following topics: horses on the range, horses off the range, science, and burros;

Friday, July 10, 1998

—Welcome by BLM Director Pat Shea;
—Program Update;
—Subcommittee Reports to the entire Board;
—Presentation of comments by members of the public.

Saturday, July 11, 1998

—Field trip to the Flickerwood Arena in Jackson, Missouri, 120 miles southeast of St. Louis, to observe a competitive bid adoption of wild horses and burros.

The meeting is open to the public. The advisory board will make detailed minutes of the meeting. BLM will make the minutes available to interested parties who contact the individual listed under **FOR FURTHER INFORMATION CONTACT.**

The meeting sites are accessible to individuals with disabilities. An individual with a disability who will need an auxiliary aid or service to participate in the hearing, such as interpreting service, assistive listening device, or materials in an alternate format, must notify the person listed under **FOR FURTHER INFORMATION CONTACT** two weeks before the scheduled hearing date. Although BLM will attempt to meet a request received after that date, the requested auxiliary aid or service may not be available because of insufficient time to arrange it.

Under the Federal advisory committee management regulations (41 CFR 101–6.1015(b)), BLM is required to publish in the **Federal Register** notice of a meeting 15 days prior to the meeting date.

II. Public Comment Procedures

Members of the public may make oral statements to the advisory board on July 10, 1998 at the appropriate point in the agenda, which is anticipated to occur at

3:30 p.m. local time. Persons wishing to make statements should register with BLM by noon on July 10, 1998, at the meeting location. Depending on the number of speakers, the advisory board may limit the length of presentations. Speakers should address specific wild horse and burro-related topics listed on the agenda. Speakers must submit a written copy of their statement to the address listed in the **ADDRESSES** section or bring a written copy to the meeting.

Participation in the advisory board meeting is not a prerequisite for submittal of written comments. BLM invites written comments from all interested parties. Your written comments should be specific and explain the reason for any recommendation. BLM appreciates any and all comments, but those most useful and likely to influence decisions on management and protection of wild horses and burros are those that are either supported by quantitative information or studies or those that include citations to and analysis of applicable laws and regulations. Except for comments provided in electronic format, commenters should submit two copies of their written comments where feasible. BLM will not necessarily consider comments received after the time indicated under the **DATES** section or at locations other than that listed in the **ADDRESSES** section.

In the event there is a request under the Freedom of Information Act (FOIA) for a copy of your comments, we intend to make them available in their entirety, including your name and address (or your e-mail address if you file electronically). However, if you do not want us to release your name and address (or e-mail address) in response to a FOIA request, you must state this prominently at the beginning of your comment. We will honor your wish to the extent allowed by law. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be released in their entirety, including names and addresses (or e-mail addresses).

Electronic Access and Filing Address

Commenters may transmit comments electronically via the Internet to: mknapp@wo.blm.gov. Please include the identifier ''WH&B'' in the subject of your message and your name and address in the body of your message.

Dated: June 15, 1998.

Pat Shea,

Director, Bureau of Land Management.

[FR Doc. 98–16265 Filed 6–17–98; 8:45 am]

BILLING CODE 4310–84–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY–920–1430–11; WYW 83359]

Public Land Order No. 7342; Modification and Partial Revocation of 12 Secretarial Orders; Wyoming

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order modifies 2 Secretarial orders to establish a 20-year term as to 2,762.97 acres of public lands withdrawn for stock driveway purposes. The lands will remain closed to surface entry. The lands have been and will remain open to mineral location, subject to the regulations found at 43 CFR 3815. In addition, this order partially revokes 11 Secretarial orders as to 72,826.27 acres of public and National Forest System lands withdrawn for stock driveway purposes that are no longer needed for that purpose. There are an additional 2,948.18 acres of stock driveway withdrawals on patented lands being revoked for record clearing purposes only. All of the lands have been and will remain open to mineral leasing.

EFFECTIVE DATE: July 20, 1998.

FOR FURTHER INFORMATION CONTACT: Jim Paugh, BLM Wyoming State Office, P.O. Box 1828, Cheyenne, Wyoming 82003, 307–775–6306.

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1994), it is ordered as follows:

1. The Secretarial Orders dated August 3, 1921, and December 7, 1926, which withdrew lands for stock driveway purposes, are hereby modified to expire 20 years from the effective date of this order unless as a result of a review conducted before the expiration date pursuant to Section 204(f) of the Federal Land Policy and Mangement Act of 1976, 43 U.S.C. 1714(f) (1994), the Secretary determines that the withdrawals should be extended insofar as they affect the lands described below.

Sixth Principal Meridian

T. 32 N., R. 106 W.,
Sec. 19, lots 1, 3, NE¼NE¼, and NE¼NW¼;
Sec. 20, lots 1 to 4, inclusive;
Sec. 21, N½N½.
T. 35 N., R. 110 W.,
Sec. 5, lot 4, SW¼NW¼, and W½SW¼;
Sec. 6, lots 1 to 3, inclusive, S½NE¼, and SE¼NW¼;
Sec. 8, W½;
Sec. 17, W½E½ and E½W½;
Sec. 20, W½NE¼ and NW¼SE¼.
T. 36 N., R. 110 W.,
Sec. 17, NW¼ and W½SW¼;
Sec. 18, SE¼NE¼ and E½SE¼;
Sec. 19, NE¼NE¼;
Sec. 20, NW¼NW¼;
Sec. 30, lots 1 to 4, inclusive, NW¼NE¼, and E½W½;
Sec. 31, lots 1 to 4, inclusive, E½W½, and W½SE¼.

The areas described aggregate 2,762.97 acres in Sublette County.

2. Secretarial Orders dated May 24, June 20, and September 13, 1918, March 9, 1920, February 4 and August 17, 1921, May 25, 1923, December 7, 1926, April 30, 1930, March 5, 1931, and August 27, 1941, which withdrew lands for stock driveway purposes, are hereby revoked insofar as they affect the following described lands:

Sixth Principal Meridian

(a) Public Lands

T. 18 N., R. 97 W.,
Sec. 6, lots 8 to 11, inclusive, S½N½, and S½;
Sec. 24, SE¼NW¼ and NE¼SW¼.
T. 19 N., R. 97 W.,
Sec. 12, lots 1 to 4, inclusive, and W½;
Secs. 14, 22, 28, 30, and 32.
T. 14 N., R. 98 W.,
Secs. 3 and 4;
Sec. 10, E½NE¼, W½, and SW¼SE¼;
Sec. 15, W½NE¼, W½, NW¼SE¼, and SE¼E¼;
Sec. 22, NE¼NE¼, SW¼NE¼, W½, NW¼SE¼, and SE¼SE¼;
Sec. 25, S½;
Sec. 26, S½;
Sec. 27, E½E½, NW¼, W½SW¼, and SW¼SE¼.
T. 15 N., R. 98 W.,
Sec. 18.
T. 16 N., R. 98 W.,
Secs. 4, 8, 18, 20, 28, 32, and 34.
T. 17 N., R. 98 W.,
Sec. 6, lots 8 to 11, inclusive, S½NE¼, E½SW¼, and SE¼;
Secs. 8, 18, and 20.
T. 18 N., R. 98 W.,
Secs. 12, 14, 22, 28, and 32.
T. 21 N., R. 98 W.,
Secs. 6, 8, 18, 20, 30, and 32.
T. 22 N., R. 98 W.,
Secs. 5, 8, 18, 20, 30, and 32.
T. 17 N., R. 99 W.,
Secs. 2, 10, 12, and 14.
T. 18 N., R. 99 W.,
Secs. 2, 4, and 8;
Sec. 10, lots 2, 3, N½N½, SE¼NE¼, SW¼NW¼, NW¼NW¼SW¼, S½NW¼SW¼, S½S½, and NE¼SE¼;
Secs. 14, 20, 22, 26, 28, and 34.
T. 19 N., R. 99 W.,
Secs. 2, 10, 14, 22, 26, and 34.
T. 20 N., R. 99 W.,

Secs. 2, 10, 14, 22, and 26;
Sec. 34, N½, SW¼, N½SE¼, and SE¼ SE¼.
T. 29 N., R. 100 W.,
Sec. 30.
T. 13 N., R. 101 W.,
Secs. 7 and 8.
T. 13 N., R. 102 W.,
Secs. 7 to 12, inclusive.
T. 13 N., R. 103 W.,
Secs. 1 to 6, inclusive, and sec. 12.
T. 14 N., R. 103 W.,
Sec. 7, lots 5 and 11;
Sec. 18, lots 5, 8, 9, and SE¼NW¼;
Sec. 19, lots 9 to 11, inclusive, SW¼NE¼, SE¼NW¼, E½SW¼, W½SE¼, and SE¼SE¼;
Secs. 30 and 31.
T. 15 N., R. 104 W.,
Sec. 26, SW¼NW¼;
Sec. 27, SE¼NE¼, SE¼SW¼, N½SE¼, and SE¼SE¼;
Sec. 28, NW¼NW¼, SE¼NW¼, NE¼ SW¼, and S½SW¼;
Sec. 29, E½NE¼.
T. 16 N., R. 104 W.,
Secs. 4, 8, 20, and 28.
Sec. 34, N½, SW¼, N½SE¼, and SW¼ SE¼.
T. 17 N., R. 104 W.,
Secs. 18, 20, and 28;
Sec. 32, N½, N½SW¼, SE¼SW¼, and SE¼.
T. 18 N., R. 104 W.,
Sec. 20, NE¼NE¼.
T. 16 N., R. 105 W.,
Sec. 4;
Sec. 28, N½NE¼, SE¼NE¼, N½NW¼, SW¼NW¼, W½SW¼, SE¼SW¼, SW¼SE¼, and E½SE¼.
T. 17 N., R. 105 W.,
Sec. 22, S½NE¼ and SE¼NW¼.
T. 20 N., R. 105 W.,
Sec. 6, lots 13 to 15, inclusive, NE¼SE¼, and S½SE¼;
Sec. 8;
Sec. 21, E½;
Secs. 22 and 26;
Sec. 28, E½, N½NW¼, SE¼NW¼, and NE¼SW¼.
T. 32 N., R. 107 W.,
Sec. 20, lot 1.
T. 33 N., R. 107 W.,
Sec. 19, lot 4, SE¼SW¼, and SW¼SE¼;
Sec. 30, W½E½;
Sec. 31, W½E½.
T. 30 N., R. 108 W.,
Sec. 2, lot 4 and SW¼NW¼.
T. 32 N., R. 108 W.,
Sec. 17, lots 2, 3, W½SW¼, and SE¼ SW¼;
Sec. 18.
T. 33 N., R. 108 W.,
Sec. 1, lots 1 to 4, inclusive;
Sec. 2, lot 1, SE¼NE¼, and E½SE¼;
Sec. 11, E½NE¼, N½SE¼, and SW¼ SE¼;
Sec. 14, W½E½ and S½SW¼;
Sec. 23, NW¼NW¼ and S½N½;
Sec. 24, E½SW¼ and S½SE¼.
T. 35 N., R. 109 W.,
Sec. 33, W½E½.
T. 25 N. R. 115 W.,
Sec. 10, W½SE¼;
Sec. 15, NW¼NE¼, S½NE¼, and SE¼;
Sec. 22, W½E½;
Sec. 27, W½E½.
T. 25 N., R. 115½ W.,
Sec. 34, lots 1 and 2;
Sec. 35, lots 3 and 4.
T. 26 N., R. 115 W.,
Sec. 32, NW¼.
T. 30 N., R. 119 W.,
Sec. 11, NW¼.

(b) National Forest System Lands

T. 29 N., R. 118 W.,
Sec. 14;
Sec. 21, SE¼;
Sec. 22, NE¼ and S½;
Secs. 23 and 24;
Sec. 27, NW¼;
Sec. 28, N½ and SW¼;
Sec. 29, NE¼ and S½;
Sec. 30, SE¼;
Sec. 31;
Sec. 32, N½.

The areas described in (a) and (b) above aggregate 72,826.27 acres in Sweetwater, Sublette, and Lincoln Counties.

(c) Non-Federal Lands

T. 15 N., R. 97 W.,
Sec. 7, lots 1, 2, and E½NW¼.
T. 14 N., R. 98 W.,
Sec. 10, W½NE¼, N½SE¼, and SE¼ SE¼;
Sec. 15, E½NE¼, NE¼SE¼, and SW¼ SE¼;
Sec. 22, NW¼NE¼, SE¼NE¼, NE¼SE¼, and SW¼SE¼;
Sec. 27, W½NE¼, SE¼SW¼, NW¼SE¼, and NE¼SW¼.
T. 15 N., R. 98 W.,
Sec. 8, SW¼.
T. 17 N., R. 98 W.,
Sec. 6, lots 3 to 5, inclusive, and SW¼ NW¼.
T. 18 N., R. 99 W.,
Sec, 10, lots 1, 4, and NE¼NW¼SW¼;
Tract 37.
T. 15 N., R. 104 W.,
Sec. 22, NE¼SE¼;
Sec. 26, NW¼NE¼ and N½NW¼;
Sec. 29, SE¼;
Sec. 32.
T. 16 N., R. 104 W.,
Sec. 34, SE¼SE¼.
T. 17 N., R. 104 W.,
Sec. 32, SW¼SW¼.
T. 18 N., R. 104 W.,
Sec. 28, SW¼.
T. 30 N., R. 104 W.,
Sec. 17, NE¼SE¼.
T. 16 N., R. 105 W.,
Sec. 28, SW¼NE¼, SE¼NW¼, NE¼ SW¼, and NW¼SE¼.
T. 20 N., R. 105 W.,
Sec. 28, SW¼NW¼, W½SW¼, and SE¼ SW¼.
T. 25 N., R. 115 W.,
Sec. 15, NE¼NE¼.

The areas described in (c) above aggregate 2,948.18 acres in Sublette, Sweetwater, and Lincoln Counties.

3. At 9:30 a.m. on July 20, 1998, the public lands described in paragraph 2(a) shall be opened to the operation of the public land laws generally, subject to valid existing rights, the provisions of existing withdrawals, other segregations of record, and the requirements of applicable law. All valid applications received at or prior to 9:30 a.m. on July 20, 1998, shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing.

4. At 9:30 a.m. on July 20, 1998, the National Forest System lands described in paragraph 2(b) shall be opened to such forms of disposition as may by law be made of National Forest System lands subject to valid existing rights, the provisions of existing withdrawals, other segregations of record, and the requirements of applicable law.

5. The lands described in paragraph 2(c) have been conveyed out of Federal ownership. This is a record clearing action only.

Dated: June 4, 1998.

Bob Armstrong,

Assistant Secretary of the Interior.

[FR Doc. 98–16160 Filed 6–17–98; 8:45 am]

BILLING CODE 4310–22–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AK–050–08–1430–01; AA–77640]

Lease of Public Land; Crooked Creek, AK

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action.

SUMMARY: This notice of realty action involves a proposal for a 20 year renewable commercial lease to Chris Bulard, Watana Lodge East Fork Adventures. The lease is intended to resolve an unintentional occupancy trespass involving commercial recreational facilities related to guiding and outfitting activities on public Land.

DATES: Comments and an application must be received on or before August 3, 1998.

ADDRESSES: Comments and an application must be submitted to the Glennallen District Management Team, P.O. Box 147, Glennallen, Alaska 99588–0147.

FOR FURTHER INFORMATION CONTACT: David Mushovic (907) 822–3217.

SUPPLEMENTARY INFORMATION: The 17.5 acre site examined and found suitable for leasing under the provisions of Sec. 302 of the Federal Land Policy and Management Act of 1976, and 43 CFR 2920, is described as within:

Sec. 29 and 30, T. 20 S., R. 8 W., Fairbanks Meridian.

An application will only be accepted from Chris Bulard, who owns Watana

Lodge East Fork Adventures and all existing improvements. The comments and application must include a reference to this notice. Fair market rental as determined by appraisal will be collected for the use of these lands, and reasonable administrative and monitoring costs for processing the lease. A final determination will be made after completion of an environmental assessment.

David Mushovic,

Realty Specialist.

[FR Doc. 98–16200 Filed 6–17–98; 8:45 am]

BILLING CODE 4310–JA–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NM–070–1050–00]

Cultural Resource Areas Critical Environmental Concern (ACECs) for the Farmington District, New Mexico

AGENCY: Bureau of Land Management (BLM), Interior.

ACTION: Notice of availability.

SUMMARY: The BLM, Farmington District announces the availability of a Proposed Resource Management Plan (RMP) Amendment/Finding of No Significant Impact (FONSI) and supporting Environmental Assessment (EA). This document discusses the designation of 44 new ACECs, including the expansion of three existing Special Management Area and their designation as ACECs. Approximately 10,592.76 federal acres are identified for designation. In addition to designation, the plan amendment, when approved, will guide the BLM programs and management practices within the ACECs. The Proposed Plan is a modified version of the Preferred Alternative presented in the Draft. The Proposed RMP Amendment/FONSI and supporting EA is available for public review. A 30-day protest period is provided, as required, by BLM planning regulations (43 CFR 1610.5–2).

DATES: Protests on the Proposed Plan must be postmarked on or before July 20, 1998.

ADDRESSES: Protests must be sent to Director (WO–210), Bureau of Land Management, ATTN: Brenda Williams, 1849 C Street, NW, Washington, D.C. 20240.

FOR FURTHER INFORMATION CONTACT: Lee Otteni, District Manager, BLM Farmington District at (505) 599–6300 or Peggy Gaudy, Project Leader, Farmington District at (505) 599–6337.

SUPPLEMENTARY INFORMATION: ACECs are land designations unique to the BLM. The purpose of ACECs is to recognize, protect, and manage unique or sensitive resources or potential hazards to the public. Each area receives management or protection based on its unique needs, in consultation and coordination with the public. The Farmington District has completed inventories of areas containing unique or sensitive cultural resources and has designated a sample as ACECs. In addition the District has reviewed nominations both internally and from the public to consider several areas as ACECs based on cultural values.

The draft document discusses two alternatives, the No Action Alternative and the Proposed Action. The BLM's preferred alternative is to implement the Proposed Action by designating and managing 44 new ACECs, including the expansion of three existing Special Management Areas and their designation as ACECs. These management prescription proposals represent the highest level of resource protection and continued public use.

The proposed ACECs represent seven site types: Chacoan Outliers, Chacoan Roads, Navajo Refugee (Pueblito) Sites, Navajo Habitation Sites (Non-pueblito), Pictograph and Petroglyph Sites, Historic Sites, and Native American Traditional Use and Sacred Areas. Management prescriptions are site specific depending on both the site type and the current development in each proposed ACEC.

Eight Chacoan Outliers have been identified and proposed for ACEC designation. They are: Toh-la-kai, Bee Burrow, Indian Creek, Upper Kin Klizhin, Bis sa'ani, Morris 41, Andrews Ranch and Church Rock Outlier.

Management prescriptions for Chacoan Outliers vary slightly with the needs of each site, but in general they include preparation of Cultural Resource Management Plans at sites without existing plans, designation as ''closed' or ''limited'' Off-Highway Vehicle (OHV) areas, if possible acquisition of non-federal minerals, withdrawal from mineral leasing or sale, coordination with lease holders to minimize resource damage, and withdrawal from land or resource modification or sale. No new rights-of-way will be issued. The only exception is where a new right-of-way will be issued in existing disturbance at Church Rock Outlier. The BLM will coordinate with existing right-of-way and easement holders, and continue monitoring and patrol programs. Also proposed is complete Historic American Buildings Survey (HABS) documentation of sites which have not been documented, stabilize structures as needed, conduct cultural inventories, complete cadastral survey and fences as needed, nominate to the National Register of Historic Places and World Heritage List, consolidate previous research data, and designate as Class I Visual Resource Management areas. Church Rock Outlier will be proposed for inclusion as a Chaco Culture Archaeological Protection Site. Private and state lands have been identified for acquisition at Andrews Ranch if there are willing participants.

Three Chacoan Roads have been identified and proposed for ACEC designation. They are: North Road, Ah-shi-sle-pah Road, and Crownpoint Steps and Herradura.

Management prescriptions for Chacoan Roads vary slightly with the needs of each site, but in general they include preparation of Cultural Resource Management Plans, designation as ''closed'' or ''limited'' Off-Highway Vehicle areas, if possible acquisition of minerals which are not under federal ownership, withdrawal from oil and gas leasing or sale under 160 acres, with other ''no surface occupancy'' lease stipulation on other parcels, withdrawal from other mineral entry, withdrawal from land or resource modification or sale, coordination with existing lease holders to minimize resource damage, and acquisition of identified private lands. No new rights-of-way will be issued in the 160 acres containing Halfway House or the Crownpoint Steps and Herradura parcel, or across parallel roads and the ''Quads.'' In other areas, rights-of-way will only be authorized with intensive roads inventory. The BLM will coordinate with existing right-of-way holders. Also proposed is to conduct roads inventories, nominate to National Register of Historic Places, consolidate previous research data, and designate as Class II Visual Resource Management areas (the 40 acres containing Halfway House in Segment 6 have already been designated and will remain a Class I area).

Nine Navajo Refugee (Pueblito) Sites have been identified and proposed for ACEC designation. They are: Deer House, NM 01–39344, Kachina Mask, Hummingbird, Blanco Mesa, Ye'is-in-Row, Kiva, Pretty Woman and Gomez Point.

Management prescriptions for Navajo Refugee (Pueblito) Sites vary slightly with the needs of each site, but in general they include preparation of Cultural Resource Management Plans, designation as ''closed'' or ''limited'' Off-Highway Vehicle areas, no surface

occupancy oil and gas lease stipulation, withdrawal from non-oil and gas mineral leasing or sale, coordination with lease holders to minimize resource damage, and withdrawal from land or resource modification or sale. New rights-of-way will only be authorized in existing right-of-way disturbance and the BLM will coordinate with existing right-of-way and easement holders. Also proposed is complete Historic America Building Survey documentation, nominate to National Register of Historic Places, and stabilize structures as needed. The proposed ACECs will be designated as Class II Visual Resource Management areas.

Two Navajo Habitation Sites (Non-pueblito) have been identified and proposed for ACEC designation. They are: Gould Pass Camp and Superior Mesa Community.

Management prescriptions for the Navajo Habitation Sites (Non-pueblito) include preparation of Cultural Resource Management Plans, designation as ''closed'' OHV area at Gould Pass Camp and ''limited'' OHV area at Superior Mesa Community, no surface occupancy oil and gas lease stipulation, withdrawal from non-oil and gas mineral leasing or sale, coordination with lease holders to minimize resource damage, and withdrawal from land or resource modification or sale. Also proposed is that new rights-of-way will only be authorized in existing right-of-way disturbance, coordinate with existing right-of-way holders, and designate as Class II Visual Resource Management areas. The ACECs will be nominated to the National Register of Historic Places.

Fifteen Petroglyph and Pictograph Sites have been identified and proposed for ACEC designation. They are: Pregnant Basketmaker, Encierro Canyon, NM 01–39236, Delgadita/Pueblo Canyons, Cibola Canyon, Bi Yaazh, Four Ye'i, Largo Canyon Star Ceiling, Star Spring, Blanco Star Panel, Shield Bearer, Big Star, Rabbit Tracks, Carrizo Cranes, and Martinez Canyon.

Management prescriptions for Petroglyph and Pictograph Sites vary slightly with the needs of each site, but in general they include preparation of Cultural Resource Management Plans, designation as ''closed'' or ''limited'' Off-Highway Vehicle areas, no surface occupancy oil and gas lease stipulation, withdrawal from non-oil and gas mineral leasing or sale, coordination with lease holders to minimize resource damage, and withdrawal from land or resource modification or sale. State land and minerals at two sites and private surface at one site have been identified for acquisition if there are willing participants. New rights-of-way will only be authorized in existing right-of-way disturbance and the BLM will coordinate with existing right-of-way holders. Also proposed is nomination to the National Register of Historic Places, Class III cultural inventories including detail documentation of images, withdrawal of 55 acres from grazing, and designation as Class II Visual Resource Management areas.

Recent land survey in the Pregnant Basketmaker proposed ACEC determined that the boundaries needed to be adjusted. The revised legal description of this 10 acre proposed ACEC is T30N R8W Section 35. E/2NE/4SW/4SW/4 and S/2NW/4SE/4SW/4

Six Historic Sites have been identified and are proposed for ACEC designation. They are: Dogie Canyon School, Rock House—Nestor Martin Homestead, Gonzales Canyon—Senon S. Vigil Homestead, Martin Apodaco Homestead, Margarita Martinez Homestead and Santos Peak.

Management prescriptions for Historic Sites vary slightly with the needs of each site, but in general they include preparation of Cultural Resource Management Plans, designation as ''closed'' or ''limited'' Off-Highway Vehicle areas, no surface occupancy oil and gas lease stipulation, withdrawal from non-oil and gas mineral leasing or sale, coordination with lease holders to minimize resource damage, and withdrawal from land or resource modification or sale. New rights-of-way will only be authorized in existing rights-of-way disturbance and the BLM will coordinate with existing right-of-way and easement holders. Also proposed is nomination to the National Register of Historic Places, conduct stabilization of structures as needed, withdrawal of 35 acres from grazing and designation as Class II Visual Resource Management area. Private minerals have been identified for acquisition at three sites.

One Native American Traditional Use and Sacred Area has been identified and is proposed for ACEC designation. It is Cho'li'i [Gobernador Knob].

Management prescriptions for the Native American Traditional Use and Sacred Area include preparation of a Cultural Resource Management Plan, designation as a ''limited'' Off-Highway Vehicle area, no surface occupancy oil and gas lease stipulation, withdrawal from non-oil and gas mineral leasing or sale, coordination with lease holders to minimize resource damage, and withdrawal from land or resource modification or sale. New rights-of-way will only be authorized in existing right-of-way disturbance and the BLM will coordinate with existing right-of-way holders. Also proposed is nomination to the National Register of Historic Places, conduct Class III cultural and ethnographic inventories, and designation as Class II Visual Resource Management area. The area will remain open for Native American religious practices.

Additional data on management prescriptions for individual ACECs can be found in this RMP amendment.

Any person who is on record for participating in the planning process and has an interest that may be adversely affected may be adversely affected may protest approval of the Plan Amendment. Protest should be made to the Director with the following information : (1) Name, mailing address, telephone number, and interest of the person filing the protest; (2) a statement of the concern or concerns being protested; (3) a statement of the part or parts being protested; (4) a copy of all documents addressing the concern or concerns that were submitted during the planning process by the protesting party or an indication of the date the concern or concerns were discussed for the records; and (5) a concise statement explaining why the BLM New Mexico State Director's decision is wrong. At the end of the 30-day protest period, the Proposed Plan, excluding any portions under protest, will become final. Approval will be withheld on any portion of the Plan under protest until final action has been completed on such protest. Individuals not wishing to protest the Plan, but wanting to comment, may send comments to the BLM, Farmington District Office, 1235 La Plata Highway, Farmington, New Mexico 87401. All comments received will be considered in preparation of the Decision Record.

Comments, including names and street addresses of respondents, will be available for public review at the BLM Farmington District Office, 1235 La Plata Highway, Farmington, New Mexico, during regular business hours (7:45 a.m. to 4:30 p.m.) Monday through Friday, except holidays, and may be published as part of the RMP Amendment/EA. Individuals respondents may request confidentiality. If you wish to withhold your name or street address from public review or from disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your written comment. Such requests will be honored to the extent allowed by law. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of

organizations or businesses, will be made available for public inspection in their entirety.

Public participation has occurred throughout the RMP Amendment process. A Notice of Intent was filed in the **Federal Register** (Vol. 61, No. 39 Pages 7273–7274) on February 27, 1996. An article was published in the Farmington Daily Times on March 6, 1996, notifying the public that the BLM was requesting public input on proposed ACECs. A notice of a 60-day comment period on the designation of the ACECs and a Notice of Availability of the draft RMP Amendment/ preliminary FONSI and supporting EA was published in the **Federal Register** (Vol. 62, No. 247, pages 67402–67405) on December 24, 1997. Affected individuals and companies along with those known to have concern with cultural resources or the planning process on public lands in northwest New Mexico were notified of the availability of the draft RMP Amendment/preliminary FONSI and supporting EA by mail. Several public meetings and briefing were conducted during the comment period to solicit comments and ideas, or to familiarize various groups with the proposal and the BLM planning process. Comments received during the 60-day comment period were considered in preparation of the Proposed RMP Amendment and supporting EA. Single copies of the proposed RMP Amendment/FONSI and supporting EA for the Cultural Resource ACECs may be obtained from the BLM Farmington District Office, 1235 La Plata Highway, Farmington, NM 87401. A public reading copy is available for review at the BLM New Mexico State Office, 1474 Rodeo Road, Santa Fe, New Mexico.

Dated: June 8, 1998.

Lee Otteni,

District Manager, Farmington.

[FR Doc. 98–15544 Filed 6–17–98; 8:45 am]

BILLING CODE 4310–FB–P

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Availability; Draft Environmental Impact Statement, Interagency Bison Management Plan for the State of Montana and Yellowstone National Park

AGENCY: National Park Service, Department of the Interior.

ACTION: Notice of Availability of Draft Environmental Impact Statement.

SUMMARY: Pursuant to section 102(2)(c) of the National Environmental Policy Act of 1969, the National Park Service announces the availability of a draft environmental impact statement (DEIS) for the long-term management of bison in Yellowstone National Park and the state of Montana. This notice also announces the locations of public hearings for the purpose of receiving comments on the draft document.

DATES: There will be a 120-day public review period on the document. Comments on the DEIS should be received no later than October 16, 1998. Public hearings will be held in Helena, Billings, Gardiner, and West Yellowstone, Montana; Cody and Jackson Hole, Wyoming; Idaho Falls, Idaho; Denver, Colorado; Salt Lake City, Utah; Minneapolis, Minnesota; San Francisco, California; Austin, Texas; and Washington D.C. from July through October 1998. The exact dates and locations of the public hearings will be announced in press releases in regional newspapers.

ADDRESSES: Comments on the DEIS should be sent to Sarah Bransom, National Park Service DSC–RP, P.O. Box 25287, Denver, CO 80225–0287, Telephone: (303) 969–2310. A limited number of copies of the DEIS or the executive summary are available upon request from the above address. The executive summary of the DEIS and a complete listing of libraries where the DEIS is available for review on the Internet at http://www.nps.gov/planning/current.htm.

Copies of the DEIS will be available for review at the following locations:

Office of Public Affairs, National Park Service, Department of the Interior, 18th and C Streets NW, Washington D.C. 20240, Telephone: (202) 208–6843.

Yellowstone National Park, Yellowstone NP, Wyoming 82190, Telephone: (307) 344–2207.

National Park Service, Denver Service Center, 12795 West Alameda Parkway, Lakewood, CO 80228, Telephone: (303) 969–2310.

Gallatin National Forest, 10 East Babcock Street, Bozeman, Montana 59771, Telephone: (406) 587–6701.

MT. Department of Fish, Wildlife and Parks, 1420 East 6th, Helena, Montana 59620, Telephone: (406) 444–2535.

MT. Department of Livestock, 301 Roberts, Room #308, Helena, MT 59620, Telephone: (406) 444–2023.

APHIS Veterinary Services, Western Regional Office, 384 Inverness Drive South, Englewood, CO 80112, Telephone: (303) 784–6200.

Montana State University Reene Library, P.O. Box 73320, Bozeman, Montana 59717–3320, Telephone: (406) 994–3119.

University of Montana, Mansfield Library, Missoula, Montana 59812, Telephone: (406) 243–6860.

SUPPLEMENTARY INFORMATION: Since 1990, management of bison in and adjacent to Yellowstone National Park has been covered by a series of interim management plans. In 1992, the National Park Service (lead agency), state of Montana (co-lead), United States Forest Service (co-lead), and the Animal and Plant Health Inspection Service (cooperating agency) signed a Memorandum of Understanding to prepare a long-term bison management plan/EIS.

The DEIS presents seven alternatives with a full range of management techniques for maintaining a wild, free ranging bison population while minimizing the risk of transmitting the disease Brucellosis from bison to domestic cattle on public and private lands in Montana adjacent to Yellowstone National Park. Management techniques used in various combinations to meet the plan's objectives include capturing and testing bison for Brucellosis, quarantining, slaughtering, hunting and vaccination.

Impacts are analyzed on the following topics: bison population, recreation, livestock operations, socioeconomics, threatened, endangered and sensitive species, other wildlife species, human health, cultural resources, and visual resources.

All review comments received on the DEIS will become part of the public record.

Dated: June 3, 1998.

John E. Cook,

Regional Director, Intermountain Region, National Park Service.

[FR Doc. 98–16203 Filed 6–17–98; 8:45 am]

BILLING CODE 4310–70–P

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 731–TA–781 through 786 (Preliminary)]

Stainless Steel Round Wire From Canada, India, Japan, Korea, Spain, and Taiwan

Determination

On the basis of the record [1] developed in the subject investigations, the United States International Trade Commission determines, pursuant to section 733(a)

[1] The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR § 207.2(f)).

of the Tariff Act of 1930 (19 U.S.C. § 1673b(a)), that there is a reasonable indication that an industry in the United States is materially injured by reason of imports from Canada, India, Japan, Korea, Spain, and Taiwan of stainless steel round wire, provided for in subheading 7223.00.10 of the Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at less than fair value (LTFV).

Commencement of Final Phase Investigations

Pursuant to section 207.18 of the Commission's rules, the Commission also gives notice of the commencement of the final phase of its investigations. The Commission will issue a final phase notice of scheduling which will be published in the **Federal Register** as provided in section 207.21 of the Commission's rules upon notice from the Department of Commerce (Commerce) of an affirmative preliminary determination in the investigations under section 733(b) of the Act, or, if the preliminary determination is negative, upon notice of an affirmative final determination in the investigations under section 735(a) of the Act. Parties that filed entries of appearance in the preliminary phase of the investigations need not enter a separate appearance for the final phase of the investigations. Industrial users, and, if the merchandise under investigation is sold at the retail level, representative consumer organizations have the right to appear as parties in Commission antidumping and countervailing duty investigations. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to the investigations.

Background

On March 27, 1998, a petition was filed with the Commission and Commerce by ACS Industries, Inc., Woonsocket, RI; Al Tech Specialty Steel Corp., Dunkirk, NY; Branford Wire & Manufacturing Co., Mountain Home, NC; Carpenter Technology Corp., Reading, PA; Handy & Harman Specialty Wire Group, Cockeysville, MD; Industrial Alloys, Inc., Pomona, CA; Loos & Co., Inc., Pomfret, CT; Sandvik Steel Co., Clarks Summit, PA; Sumiden Wire Products Corp., Dickson, TN; and Techalloy Co., Inc., Mahwah, NJ, alleging that an industry in the United States is materially injured or threatened with material injury by reason of LTFV imports of stainless steel round wire from Canada, India, Japan, Korea, Spain, and Taiwan. Accordingly, effective March 27, 1998, the Commission instituted antidumping investigations Nos. 731–TA–781 through 786 (Preliminary).

Notice of the institution of the Commission's investigations and of a public conference to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of April 6, 1998 (63 FR 16827). The conference was held in Washington, DC, on April 17, 1998, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determination in these investigations to the Secretary of Commerce on June 5, 1998. The views of the Commission are contained in USITC Publication 3111 (June 1998), entitled ''Stainless Steel Round Wire from Canada, India, Japan, Korea, Spain, and Taiwan: Investigations Nos. 731–TA–781 through 786 (Preliminary).''

By order of the Commission.

Issued: June 11, 1998.

Donna R. Koehnke,

Secretary.

[FR Doc. 98–16202 Filed 6–17–98; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under The Clean Air Act

Under 28 CFR 50.7, notice is hereby given that on June 8, 1998, a proposed Consent Decree in *United States v. American Honda Motor, Co., Inc.*, Civil Action No. 98–01433, was lodged with the United States District Court for the District of Columbia.

The United States has asserted, in a civil complaint under the Clean Air Act, 42 U.C.S. 7401 *et seq.*, that certain model-year 1995, 1996, and 1997 American Honda vehicles fail to comply with the emission-control requirements of the Act and the regulations promulgated thereunder relating to the detection of engine misfire through the use of computerized on-board diagnostics. Under the proposed Consent Decree, American Honda has agreed to resolve the United States' claims by proving each current and all subsequent owners of Honda vehicles covered by the settlement with a 14 year/150,000 mile extended emissions warranty, a free engine check at any time between 50,000 an 75,000 miles of use (to identify emission-related defects covered by the extended emissions warranty), plus a free tune up (to maintain the engines' emissions performance) at any time between 75,000 and 150,000 miles of use. The Decree requires American Honda to notify affected owners of the extended emissions warranty and services available under the Decree (including persons who purchase the vehicles from current owners) following entry of the Consent Decree by the Court, again when each vehicle is approximately four years old, and a final time when the vehicle is approximately 9 years old. Further, Honda will pay $10.1 in civil penalties and spend $1 million to implement a supplemental environmental project to enhance the use of on-board diagnostics by the states in connection with their motor vehicle emissions inspection and maintenance programs.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Consent Decree. Comments should be addressed to the Assistant Attorney General of the Environmental and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States and American Honda Motor, Co., Inc.*, Civil Action No. 98–01433, D.J. Ref. 90–5–2–1–2170.

The Consent Decree may be examined at the Office of the United States Attorney for the District of Columbia, Judiciary Center Bldg., 555 Fourth St., NW., Washington, DC 20001; at the Environmental Protection Agency Library, Reference Desk, Room 2904, 401 M Street, SW., Washington, DC 20460; and at the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC 20005, 202–624–0892. A copy of the Consent Decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC 20005. In requesting a copy, please enclose a check in the amount of $21.50 (25 cents per page reproduction cost) payable to the Consent Decree Library.

Joel M. Gross,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 98–16214 Filed 6–17–98; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act

This Notice amends a Notice previously published at 63 FR 29751–29752 (Wed., Jun. 1, 1998), announcing that a proposed consent decree was lodged on April 21, 1998 with the United States District Court for the Eastern District of California. The Consent Decree embodies a settlement in *United States* v. *Chevron USA, Inc., et al.,* Civil Action No. F–98–5412 REC DLB. This Notice makes technical corrections to the description of the work to be performed under the Consent Decree.

In the complaint filed concurrently with the lodging of the consent decree, the United States sought injunctive relief for performance of response actions, and reimbursement for response costs incurred by the United States Environmental Protection Agency, in response to releases of hazardous substances at the Purity Oil Sales Superfund Site, located near Fresno, California, pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act (''CERCLA''), 42 U.S.C. § 9601 *et seq.* The settling defendants have agreed to contribute towards performance of future response actions at the Purity Site; defendant Chevron USA Inc. has agreed to perform that work. Future work includes operation and maintenance of the groundwater extraction and treatment system for the groundwater operable unit (estimated to cost $10 million) and construction, operation, and maintenance of the components of the soils operable unit (estimated to cost between $10 and 12 million). The soils operable unit may include treatment of soils at a depth of 14 to 40 feet with a soil vapor extraction system pending a two-year soil vapor monitoring program, construction of a cap, and enclosure of an on-site canal in a reinforced concrete pipe.

The consent decree includes a covenant not to sue under Sections 106 and 107 of CERCLA, 42 U.S.C. §§ 9606, 9607, and under Section 7003 of the Resource Conservation and Recovery Act (''RCRA''), 42 U.S.C. § 6973.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, U.S. Department of Justice, Washington, D.C. 20530, and should refer to *United States* v. *Chevron USA Inc.*, DOJ Ref. #90–11–2–355. Commenters may request a public hearing in the affected area, pursuant to Section 7003(d) of RCRA, 42 U.S.C. § 6973(d).

The proposed consent decree may be examined at the office of the United States Attorney, Eastern District of California, Room 3654 Federal Building, 1130 ''O'' Street, Fresno, California 93721; the Region IX Office of the Environmental Protection Agency, 75 Hawthorne Street, San Francisco, California 94105; and at the Consent Decree Library, 1120 ''G'' Street, N.W., 4th Floor, Washington, D.C. 20005, (202) 624–0892. A copy of the proposed consent decree may be obtained in person or by mail from the Consent Decree Library, 1120 ''G'' Street, N.W., 4th Floor, Washington, D.C. 20005. In requesting a copy, please refer to the referenced case and enclose a check in the amount of $116.50 (25 cents per page reproduction costs), payable to the Consent Decree Library. A copy of the decree, exclusive of signature pages and attachments, may be obtained for $21.50.

Joel Gross,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 98–16215 Filed 6–17–98; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act

In accordance with Departmental Policy, 28 CFR 50.7, 38 FR 19029, and 42 U.S.C. 9622(i), notice is hereby given that a proposed Consent Decree in *United States* v. *William Davis, et al.*, Civ. Action No. 90–0484–T, was lodged in the United States District Court for the District of Rhode Island on May 18, 1998. The proposed Consent Decree resolves the United States' claims against Power Semiconductors, Inc. and Swan Engraving Company (''Settling Defendants''), under Sections 106 and 107(a) of the Comprehensive Environmental Response, Compensation and Liability Act (''CERCLA''), as amended, 42 U.S.C. 9607(a), concerning response action at the Davis Liquid Waste Superfund Site located in Smithfield, Providence County, Rhode Island (the ''Davis Site'').

Under the terms of the Consent Decree the Settling Defendants are required to pay $74,375 to the United States in partial reimbursement of the United States' past and future costs. Swan Engraving Company's share of this amount, $63,750, will be paid in three equal payments over two years. In addition, the Settling Defendants are jointly and severally responsible along with United technologies Corp. (''UTC'') and other previous settlers for the source control portion of the remedy at the Site.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, written comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General for the Environmental and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to *United States* v. *William Davis, et al.*, Civ. Action No. 90–0484–T, DOJ #90–11–2–137B.

The proposed Consent Decree may be examined at the Office of the United States Attorney, District of Rhode Island, Westminster Square Building, 10 Dorrance Street, 10th Floor, Providence, Rhode Island 02903; at the Region I Office of the U.S. Environmental Protection Agency, 90 Canal Street, Boston, Massachusetts 02203; and at the Consent Decree Library, 1120 G Street, NW 4th Floor, Washington, DC 20005, (202) 624–0892. Copies of the Consent Decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, NW, 4th Floor, Washington, DC 20005, In requesting a copy, please enclose a check in the amount of $11.00 (25 cents per page reproduction costs) payable to the Consent Decree Library.

Joel M. Gross,

Chief, Environmental Enforcement Section, Environment and Natural Resource Division.

[FR Doc. 98–16211 Filed 6–17–98; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA)

In accordance with Departmental policy, 28 CFR § 50.7, and with Section 122 of CERCLA, 42 U.S.C. § 9622, notice is hereby given that a consent decree in *United States* v. J.E.M., a Partnership, Civil Action No. 3:CV–95–1882 (M.D. Pa.), was lodged on June 2, 1998, with the United States District Court for the Middle District of Pennsylvania. The consent decree resolves the claims of the United States under Section 107 of

the Comprehensive Environmental Response, Compensation, and Liability Act, as amended (''CERCLA''), for reimbursement of costs incurred and to be incurred for response actions taken or to be taken at or in connection with the release or threatened release of hazardous substances at the Route 940 Drum Site in Tobyhanna Township, Monroe County, Pennsylvania, and a declaration of liability for further response costs to be incurred at the Site. Under the terms of the Consent Decree, the Estate of Herman Martens and Emil Wagner will pay $335,000, John Baymor will pay $40,000, and Summit Tool Corporation will pay $25,000. In addition, Emil Wagner (or his estate) will be obligated to pay to the United States the sum of $300,000 if either one of two contingencies occurs.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the consent decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washignton, D.C., 20530, and should refer to *United States* v. *J.E.M. a Partnership,* DOJ Ref. #90–11–3–1539.

The consent decree may be examined at the Office of the United States Attorney, 228 Walnut Street, Harrisburg, PA; the Region III Office of the Environmental Protection Agency, 841 Chestnut Street, Philadelphia, PA; and at the Consent Decree Library, 1120 G Street, NW 4th Floor, Washington, D.C. 20005, (202) 624–0892. A copy of the consent decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, NW, 4th Floor, Washington, D.C. 20005. In requesting a copy please refer to the referenced case and enclose a check in the amount of $12.50 (25 cents per page reproduction cost), payable to the Consent Decree library.

Joel M. Gross,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 98–16212 Filed 6–17–98; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Safe Drinking Water Act

In accordance with Departmental policy, 28 CFR 50.7, and 42 U.S.C. 9622(d), notice is hereby given that on May 19, 1998, the United States, on behalf of the United States Environmental Protection Agency, filed with the United States District Court for the Western District of Washington a modification to the Consent Decree that was entered on June 5, 1996, in *United States* v. *Selleck, Inc. and Robert E. Schaefer,* Civil Action No. C93–1004Z. The modification amends the June 5, 1996 Consent Decree in light of the defendants' agreement to convey the Selleck Water Supply System in its entirety to the Kangley Water Association. Accordingly, the parties agree that their June 5, 1996 Consent Decree should be modified so that only Section III.B (permanent injunction against Robert E. Schaefer) and Section XIV (retention by the district court of jurisdiction) will remain operative and in effect. This modification is expressly conditioned upon the successful completion of the defendants' conveyance to the Kangley Water Association.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed modification to the June 5, 1996 Consent Decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to *United States* v. *Selleck, Inc. and Robert E. Schaefer,* DOJ Ref. #90–5–1–1–5029.

A copy of the proposed modification to the Consent Decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005, (202) 624–0892. In requesting copies of the consent decree, please refer to *United States* v. *Selleck, Inc. and Robert E. Schaefer.* If you are requesting a copy from the Consent Library, please enclose a check payable to the Consent Decree Library in the amount of $1.00 (25 cents per page reproduction costs).

Joel M. Gross,

Chief, Environmental Enforcement Section, Environment and natural Resources Division.

[FR Doc. 98–16213 Filed 6–17–98; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Antitrust Division

Proposed Final Judgment and Competitive Impact Statement; United States v. Enova Corporation

Notice is hereby given pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16(b)–(h), that a proposed Final Judgment, Stipulation, and Competitive Impact Statement have been filed with the United States District Court for the District of Columbia in *United States* v. *Enova Corporation,* Civil No. 98–CV–583 (TFH). The proposed Final Judgment is subject to approval by the Court after the expiration of the statutory 60-day public comment period and compliance with the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16(b)–(h).

On March 9, 1998, the United States filed a Complaint seeking to enjoin a transaction in which Pacific Enterprises (''Pacific'') would merge with Enova Corporation (''Enova''). Pacific is a California gas utility company and Enova is a California electric utility company. Enova sells electricity from plants that use coal, gas, nuclear power, and hydropower. Pacific is virtually the sole provider of natural gas and transportation storage services to plants in southern California. The proposed merger would have created a company with both the incentive and the ability to lessen competition in the market for electricity in California. The Complaint alleged that the proposed merger would substantially lessen competition in the market for electricity in California during high demand periods in violation of Section 7 of the Clayton Act, 15 U.S.C. § 18.

The proposed Final Judgment, filed contemporaneously with the Complaint, (1) orders Enova to sell certain of its generating assets to a purchaser or purchasers acceptable to the United States; and (2) limits Enova's ability to acquire similar assets. The Stipulation also imposes a hold separate agreement that, in essence, requires the defendant to ensure that, until the divestiture mandated by the Final Judgment has been accomplished, Enova's generators subject to the divestiture will be held separate and apart from, and operated independently of, any of its other Enova assets and businesses. A competitive Impact Statement filed by the United States describes the Complaint, the proposed Final Judgment, and remedies available to private litigants.

Public comment is invited within the statutory 60-days comment period. Such comments, and responses thereto, will be published in the **Federal Register** and filed with the Court. Written comments should be directed to Roger W. Fones, Chief, Transportation, Energy, and Agriculture Section, Antitrust Division, 325 Seventh Street, NW., Suite 500, Washington, DC 20530 (telephone (202) 307–6351).

Copies of the Complaint, Stipulation, proposed Final Judgment, and Competitive Impact Statement are available for inspection in Room 215 of the U.S. Department of Justice, Antitrust

Division, 325 Seventh Street, NW., Washington, DC 20530 (telephone: (202) 514–2481) and at the office of the Clerk of the United States District Court for the District of Columbia, 333 Constitution Avenue., NW., Washington, DC 20001. Copies of any of the materials may be obtained upon request and payment of a copying fee.

Constance K. Robinson,

Director of Operations & Merger Enforcement, Antitrust Division.

United States District Court, District of Columbia

United States of America, Plaintiff, v. Enova Corporation, Defendant. Civil Action No. 1:98CV00583. Filed: March 9, 1998. Judge: Thomas Hogan.

Stipulation and Order

It is stipulated by and between the undersigned parties, through their respective attorneys, that:

1. The Court has jurisdiction over the subject matter of this action and over each of the parties hereto, and venue of this action is proper in the District of Columbia.

2. The parties consent that a Final Judgment in the form hereto attached may be filed and entered by the Court, upon the motion of any party or upon the Court's own motion, at any time after compliance with the requirements of the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16, and without further notice to any party or other proceedings, provided that Plaintiff United States has not withdrawn its consent, which it may do at any time before the entry of the proposed Final Judgment by serving notice thereof on Defendant and by filing that notice with the Court.

3. Defendant shall abide by and comply with the provisions of the proposed Final Judgment pending entry of the Final Judgment, or until expiration of time for all appeals of any court ruling declining entry of the proposed Final Judgment, and shall, from the date of signing of this Stipulation, comply with all terms and provisions of the proposed Final Judgment as though the same were in full force and effect as an order of the Court.

4. This Stipulation shall apply with equal force and effect to any amended proposed Final Judgment agreed upon in writing by the parties and submitted to the Court.

5. In the event Plaintiff United States withdraws its consent, as provided in Paragraph 2, above, or if the proposed Final Judgment is not entered pursuant to this Stipulation, the time has expired for all appeals of any Court ruling declining entry to the Final Judgment, and the Court has not otherwise ordered continued compliance with the terms and provisions of the proposed Final Judgment, then the parties are released from all further obligations under this Stipulation, and the making of this Stipulation shall be without prejudice to any party in this or any other proceeding.

6. Defendant represents that the divestiture ordered in the proposed Final Judgment can and will be made, and that they will later raise no claims of hardship or difficulty as grounds for asking the Court to modify any of the divestiture provisions contained therein.

Respectfully submitted.

For Plaintiff

United States of America

Jade Alice Eaton,

DC Bar # 939629.

Andrew K. Rosa,

HI Bar # 6366, Attorneys, Antitrust Division, U.S. Department of Justice, 325 Seventh St., NW., Washington, DC 20004, (202) 307–6316, (202) 307–0886.

For Defendant

Enova Corporation

Steven C. Sunshine,

DC Bar # 450078, Shearman & Sterling, 801 Pennsylvania Avenue, NW., Washington, DC 20004, (202) 508–8022.

Dated: March 9, 1998.

Order

It is so ordered, this _____ day of _____, 1998.

_____

United States District Court Judge

Final Judgment

Whereas Plaintiff United States of America (hereinafter ''United States''), having filed its Complaint herein on March 9, 1998, and Plaintiff and Defendant, by their respective attorneys, having consented to the entry of this Final Judgment without trail or adjudication of any issue of fact or law herein, and without this Final Judgment constituting any evidence against or an admission by any party with respect to any issue of law or fact herein;

And *whereas* Defendant has agreed to be bound by the provisions of this Final Judgment pending its approval by the Court;

And *whereas* the essence of this Final Judgment is divestiture of assets to ensure that competition, as alleged in the Complaint, is not substantially lessened;

And *whereas* Plaintiff requires Defendant to make certain divestitures for the purpose of remedying the loss of competition alleged in the Complaint;

And whereas Defendant has represented to Plaintiff that as to the divestiture ordered herein Defendant will later raise no claims of hardship or difficulty as grounds for asking the Court to modify any of the divestiture provisions contained below;

Now, therefore, before the taking of any testimony, and without trail or adjudication or admission of any issue of fact or law herein, and upon consent of the parties hereto, it is hereby Ordered, Adjudged, and Decreed as follows:

I. Jurisdiction

This Court has jurisdiction over each of the parties hereto and the subject matter of this action. The Complaint states a claim upon which relief may be granted against Defendant under Section 7 of the Clayton Act, as amended. 15 U.S.C.A. § 18 (West 1997).

II. Definitions

As used in this Final Judgment:

A. ''Acquire'' means obtaining any interest in any electricity generating facilities or capacity, including, but not limited to, all real property, deeded development rights to real property, capital equipment, buildings, fixtures, or contracts related to the generation facility, and including all generations, tolling, reverse tolling, and other contractual rights.

B. ''California Generation Facilities'' means (1) electricity generation facilities in California in existence in January 1, 1998, excluding such facilities that are rebuilt, repowered, of activated out of dormancy after January 1, 1998, as long as such rebuild, repower, or activation out of dormancy project, if done by Defendant, begins with one year of purchase; and (2) any contract for operation and sale of output from generating assets of the Los Angeles Department of Water and Power (''LADWP'').

C. ''California Public Power Generation Management Services Contract'' means a bona fide contract for managing for operation and sale of output from California Generation Facilities owned by a municipality, an irrigation district, other California state authority, or their agents on January 1, 1998; provided, however, that a contract for managing the operation and sale of output from generation assets of LADWP shall not be deemed a California Public Power Generation Management Services Contract.

D. ''Common Facilities'' means those facilities associated with the generation assets to be divested that are located on

or near such assets, and that are necessary to the operation of non-generating aspects of Enova's electric business, including, but not limited to, the operation of Enova's distribution, transmission, and communications systems.

E. ''Control'' means to have the ability to set the level of output of an electricity generation facility.

F. ''Divestiture Assets'' means the Encina and South Bay electricity generation facilities owned by Enova at Carlsbad and Chula Vista, California, including, but not limited to, all real property rights necessary to the operation of the facilities; buildings, generation equipment, inventory, fixed assets and fixtures, materials, supplies, on-site warehouses or storage facilities, and other tangible property to improvements used in the operation of the facilities; licenses, permits (including but not limited to environmental permits and all permits from federal or state agencies), and authorizations issued by any governmental organization relating to the facilities, and all work in progress on permits or studies undertaken in order to obtain permits; plans for design or redesign of these electricity generating assets; contracts (including but not limited to customer contracts), agreements, leases, commitments, and understandings pertaining to the facilities and their operations; customer lists, and marketing or consumer surveys relating to these electricity generating assets; contracts for firm capacity and energy of longer than three months relating to these assets; records maintained by Enova necessary to operation of these assets; and all other interests, assets or improvements customarily used in the generation of electricity at these facilities.

G. The terms ''Enova'' and ''Defendant'' mean Enova Corporation, a California corporation headquartered in San Diego, California, and includes its successors and assigns, and its parents, subsidiaries, directors, officers, managers, agents, and employees acting for or on behalf of any of them.

H. The terms ''Independent System Operators'' or ''ISO'' means an entity that operates the intrastate gas transmission pipelines and related facilities of Pacific Enterprises. ''Operates'' includes full operational and pricing control over all such facilities and total authority to determine whether and how much capacity is available in the intrastate pipeline, whether curtailment of transmission service is require on any part of that system, whose service is curtailed, and the prices to be charged.

I. ''Pacific'' means Pacific Enterprises, a California corporation headquartered in Los Angeles, California, and includes its successors and assign, and its parents, subsidiaries, directors, officers, managers, agents, and employee acting for or on behalf of any of them.

J. ''Portland General Electric Contract'' means the contracts, dated November 15, 1985, for 75 MW of firm capacity and associated transmission.

K. The terms ''Auction Procedures'' and ''California Auction Procedures'' mean the auction procedures set forth in a decision addressing Enova's application under section 851 of the California Public Utilities Code to divest the Divestiture Assets.

L. The term ''Southern California'' means the counties in California currently served by Pacific's gas pipelines.

III. Applicability

A. The provisions of this Final Judgment apply to Defendant, its successors and assigns, parents, subsidiaries, directors, officers, managers, agents, and employees, and all other persons in active concert or participation with any of them who shall have received actual notice of this Final Judgment by personal service or otherwise.

B. Enova shall require, as a condition of the sale or other disposition of all or substantially all of its assets, or of a lesser business unit that includes Enova's business of intrastate transmission and retail distribution and sale of natural gas, that the transferee agree to be bound by the provisions of this Final Judgment.

IV. Divestiture

A. Defendant is hereby ordered and directed, in accordance with the terms of this Final Judgment, and specifically in accordance with the schedule in this section, to divest the Divestiture Assets to a purchaser or purchasers acceptable to the United States, in its sole discretion. Purchasers whose bids are accepted by the United States under Section IV(D)(3) will be deemed acceptable.

B. Except as provided in Section VI, these divestitures shall occur through the Auction Procedures and shall be subject to necessary approvals by the California Public Utilities Commission (''CPUC'') and other governmental authorities.

C. Defendant shall use its best efforts to accomplish the divestiture as expeditiously as possible, but in any event within the schedule set forth in Section IV(E) below. These efforts shall include, but are not limited to, making the necessary regulatory filings and applications in a timely fashion and using its reasonable best efforts to obtain such approvals as expeditiously and timely as possible.

D. Certain Conditions on the Auction Procedures.

1. Enova may reject any bid submitted by any party for all or part of the Divestiture Assets if the bid offers consideration in an amount less than the book value of such assets as reflected on the most recent regularly prepared balance sheet of Enova at the time the bid is submitted; provided, however, that nothing in this section shall prevent the CPUC from setting a minimum bid price or rejecting any bid on the basis of price or otherwise.

2. Enova may structure its requests for bids to require reasonable easements, licenses, and other arrangements for the continued operation of Common Facilities by Enova.

3. Before Enova can accept a bid by a potential purchaser received under the Autcion Procedures with respect to any of the Divestiture Assets to be divested, the bid must be screened by the United States as specified in this section. Enova shall provide to the United States copies of all bids and any other documents submitted by any potential purchaser pursuant to the Auction Procedures. The United States shall have thirty days from the date it receives a copy of a bid to notify Enova that the potential bid is unacceptable with respect to any of the Divestiture Assets specified in the bid; provided, however, the United States may extend the thirty-day review period for any such bid for one additional thirty-day period by providing written notice to Enova; provided further, in all cases the period for review of potential bids by the United States shall expire no later than the earlier of five days prior to the date set by the CPUC for submission of the proposed winning bid by Enova or the thirty-day period (with one possible thirty-day extension) described above. If the United States does not notify Enova that a proposed bid is unacceptable within the applicable time period specified above, the purchaser making such bid shall be deemed acceptable by the United States with respect to all of the Divestiture Assets specified in that bid. The United States shall base its review of all potential bids screened pursuant to this paragraph solely on the criteria identified in Section IV(I) of this Final Judgment. The United States shall take all appropriate and necessary steps to keep the information received pursuant to this section confidential.

E. Timing.

1. Enova shall submit applications for authorization and approval of the auctions specified in Paragraph IV(B) above for the Divestiture Assets no later than ninety days after notice of entry of this Final Judgment.

2. Enova shall complete the sale of the Divestiture Assets as soon as practical after the receipt of all necessary governmental approvals; provided, however, if the sale of any of the Divestiture Assets is not completed within eighteen months after the date of the entry of this Final Judgment, a trustee shall be appointed pursuant to Section VI of this Final Judgment to effect the divestiture of any unsold assets; provided further, the United States may extend the eighteen-month period by six months by servicing written notice on Enova prior to the expiration of the eighteen-month period; provided further, Enova and the United States may be mutual agreement extend further the time in which any of the Divestiture Assets shall be sold.

F. In accomplishing the divestiture ordered by this Final Judgment, Defendant promptly shall make known, by usual and customary means, the availability of the Divestiture Assets. The California Auction Procedures shall be deemed to satisfy this requirement. Defendant shall inform any person making an inquiry regarding a possible purchase that the sale is being made pursuant to this Final Judgment and provide such person with a copy of this Final Judgment. Defendant shall make known to any person making an inquiry regarding a possible purchase of the Divestiture Assets that the assets defined in Section II(F) are being offered for sale. Defendant shall also offer to furnish to all bona fide prospective purchasers, subject to customary confidentiality assurances, all information regarding the Divestiture Assets customarily provided in a due diligence process except such information subject to attorney-client privilege or attorney work-product privilege. Defendant shall make available such information to Plaintiff at the same time that such information is made available to any other person.

G. Defendant shall not interfere with any negotiations by any purchaser to employ any employee of the Defendant necessary to the operation of Divestiture Assets.

H. Defendant, shall, at minimum, permit prospective purchasers of the Divestiture Assets to have reasonable access to personnel and to make such inspection of the Divestiture Assets, and any and all financial, operational, or other documents and information customarily provided as part of a due diligence process.

I. Unless the United States otherwise consents in writing, the divestiture or divestitures pursuant to this section, or by the trustee appointed pursuant to Section VI of this Final Judgment, shall include the Divestiture Assets as specified in this Final Judgment (though not necessarily all to the same purchaser) and be accomplished by selling or otherwise conveying the Divestiture Assets to a purchaser or purchasers in such a way as to satisfy the United States, in its sole discretion, that none of the terms of any agreement between any purchaser and Defendant give Defendant the ability unreasonably to raise the purchaser's costs, to lower the purchaser's efficiency, or otherwise to interfere in the ability of the purchaser to compete effectively in the provision of electricity in California; provided, however, the purchaser need not continue operation of these assets.

V. Acquisition

A. General Prohibitions.

1. Defendant is enjoined from acquiring California Generation Facilities without prior notice to and approval of the United States. Such prior approval shall be within the sole discretion of the United States.

2. Defendant is enjoined from entering into any contracts that allow Defendant to control any California Generation Facilities without prior notice to and approval of the United States. Such prior approval shall be within the sole discretion of the United States.

B. Limitations on Prohibitions.

1. Acquisition cap—Defendant may acquire or control California Generation Facilities without prior approval of the United States if Defendant does not own or control, in the aggregate, more than 500 MW of capacity of California Generation Facilities. The capacity of Defendant's existing nuclear generation assets are excluded from the calculation of whether the 500 MW cap has been reached so long as the prices Enova receives for electricity generated by the existing nuclear generation assets are fixed by law or regulation. The Portland General Electric Contract capacity (75 MW) shall be included in the calculation of whether the 500 MW cap has been reached (reducing the total available to 425 MW), unless and until the Portland General Electric Contract terminates or is divested. The capacity of the Divestiture Assets shall be included in the calculation of whether the 500 MW cap has been reached, as long as Defendant owns such assets.

2. Acquisitions above the cap—In any event, the Defendant may acquire or control, California Generation Facilities in excess of 500 MW, subject to the prior approval of the United States as provided in Paragraphs V(A)(1) and V(A)(2).

C. Exceptions.

1. Outside California—Defendant may own, operate, control, or acquire any electricity generation facilities other than California Generation Facilities.

2. Cogeneration facilities—Defendant may own, operate, or control any cogeneration or renewable generation facilities in California.

3. Tolling agreements—Defendant may enter into tolling and reverse tolling agreements with any electricity generation facilities in California, provided Defendant does not control such facilities; provided further, that all such tolling and reverse tolling agreements include the following provision: ''In accordance with the Final Judgment in *United States v. Enova Corporation*, entered on [date], Enova's successors and their affiliates shall not have any ability to set the level of output of this electricity generation facility.''

4. California Public Power Generation Management Services Contracts.—Defendant's entry into California Public Power Generation Management Services Contracts is not prohibited under Section V(A)(2) above, regardless of whether the contract allows for Defendant to exercise control of such facilities, and such contracts shall not be included in the calculation of whether the Acquisition Cap in Section V(B)(1) has been reached; provided however, Defendant may not enter into California Public Power Generation Management Services Contracts that allow the Defendant to exercise control of such facilities, without notice to the United States.

5. Notification of California Public Power Generation Management Services Contracts—Unless such transaction is otherwise subject to the reporting and waiting period requirements of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended, 15 U.S.C.A. § 18a (West 1997) (''HSR Act''), for each California Public Power Generation Management Services Contract it enters for which notice is required, Defendant shall provide notice thereof to the United States as follows:

a. Notification shall be provided within five days of acceptance of the contract, and shall include copies of all contracts, the names of the principal representatives of the parties to the agreement who negotiated the agreement, and any management or strategic plans discussing the California Public Power Generation Management

Services Contract that was the subject of the transaction.

b. This Section shall be broadly construed and any ambiguity or uncertainty regarding the filing of notice under this Section shall be resolved in favor of filing notice.

D. Methods of Obtaining Prior Approvals and of Providing Notice—Defendant shall obtain prior approval and provide notice by sending the required materials to Chief, Transportation, Energy, and Agriculture Section, Antitrust Division, United States Department of Justice, 325 Seventh Street, N.W., Suite 500, Washington, DC 20004.

E. Other Legal Requirements—Nothing in this section limits the Defendant's responsibility to comply with the requirements of the HSR Act, with respect to any acquisition.

VI. Appointment of Trustee

A. In the event that Defendant has not divested all of the Divestiture Assets within the time specified in Section IV of this Final Judgment, the Court shall appoint, on application of the United States, a trustee selected by the United States to effect the divestiture of the assets.

B. At or anytime after the appointment of the trustee, if either party believes a conflict may exist between this Final Judgment and an order of the CPUC relating to the Divestiture Assets, that party may move the Court for a resolution of the conflict in light of the status of any relevant CPUC proceeding and the purpose of this Final Judgment.

C. After the appointment of the trustee becomes effective, the trustee shall have the right to sell the Divestiture Assets. The trustee shall have the power and authority to accomplish the divestiture at the best price then obtainable upon a reasonable effort by the trustee, subject to the provisions of Sections VI and VII of this Final Judgment, and shall have such other powers as the Court shall deem appropriate. Subject to Section VI(D) of this Final Judgment, the trustee shall have the power and authority to hire at the cost and expense of Defendant any investment bankers, attorneys, or other agents reasonably necessary in the judgment of the trustee to assist in the divestiture, and such professionals and agents shall be accountable solely to the trustee. The trustee shall have the power and authority to accomplish the divestiture at the earliest possible time to a purchaser acceptable to the United States, in its sole judgment. Defendant shall not object to a sale by the trustee on any grounds other than the trustee's malfeasance. Any such objections by Defendant must be conveyed in writing to Plaintiff and the trustee no later than ten calendar days after the trustee has provided the notice required under Section VII of this Final Judgment.

D. The trustee shall serve at the cost and expense of Defendant, on such terms and conditions as the Court may prescribe, and shall account for all monies derived from the sale of the assist sold by the trustee and all costs and expenses so incurred. After approval by the Court of the trustee's accounting, including fees for its services and those of any professionals and agents retained by the trustee, all remaining money shall be paid to Enova and the trust shall then be terminated. The compensation of such trustee and of any professionals and agents retained by the trustee shall be reasonable in light of the value of the Divestiture Assets and based on a fee arrangement providing the trustee with an incentive based on the price and terms of the divestiture and the speed with which it is accomplished.

E. After the appointment of the trustee becomes effective, Defendant shall take no action to interfere with or impede the trustee's accomplishment of the required divestiture, and shall use its best efforts to assist the trustee in accomplishing the required divestiture, including best efforts to effect all necessary regulatory approvals. Subject to a customary confidentiality agreement, the trustee and any consultants, accountants, attorneys, and other persons retained by the trustee shall have full and complete access to the personnel, books, records, and facilities related to the Divestiture Assets, and Defendant shall develop such financial or other information relevant to the Divestiture Assets to be divested customarily provided in a due diligence process as the trustee may reasonably request. Defendant shall permit prospective purchasers of the Divestiture Assets to have access to personnel and to make such inspection of physical facilities and any and all financial, operational or other documents and information as may be relevant to the divestiture required by this Final Judgment.

F. After the appointment of the trustee becomes effective, the trustee shall file monthly reports with Defendant, the United States, and the Court, setting forth the trustee's efforts to accomplish divestiture of the Divestiture Assets as contemplated under this Final Judgment; provided, however, that to the extent such reports contain information that the trustee deems confidential, such reports shall not be filed in the public docket of the Court. Such reports shall include the name, address and telephone number of each person who, during the preceding month, made an offer to acquire, expressed an interest in acquiring, entered into negotiations to acquire, or was contacted or made an inquiry about acquiring, any interest in the Divestiture Assets, and shall describe in detail each contact with any such person during that period. Defendant may request that information in such reports that has been provided as confidential by the Defendant be deemed confidential by the trustee. If the trustee does not deem the information to be confidential, the information shall not be made public before Defendant has an opportunity to seek a protective order from the Court. The trustee shall maintain full records of all efforts made to divest these operations.

G. If the trustee has not accomplished the divestiture required by Section IV of this Final Judgment within six months after the appointment of the trustee becomes effective, the trustee shall promptly file with the Court a report setting forth (1) the trustee's efforts to accomplish the required divestiture, (2) the reasons, in the trustee's judgment, why the required divestiture has not been accomplished, and (3) the trustee's recommendations; provided, however, that to the extent such reports contain information that the trustee deems confidential, such reports shall not be filed in the public docket of the Court. The trustee shall at the same time furnish such reports to Defendant and the United States, who shall each have the right to be heard and to make additional recommendations. The Court shall thereafter enter such orders as it shall deem appropriate to accomplish the purposes of this Final Judgment, which shall, if necessary, include extending the term of the trustee's appointment by a period requested by the United States.

VII. Notification

Within two business days following execution of a definitive agreement, contingent upon compliance with the terms of this Final Judgment, to effect, in whole or in part, any proposed divestiture pursuant to Sections IV or VI of this Final Judgment, Defendant of the trustee, whichever is then responsible for effecting the divestiture, shall notify Plaintiff of the proposed divestiture. If the trustee is responsible, it shall similarly notify Defendant. The notice shall set forth the details of the proposed transaction and list the name, address, and telephone number of each person not previously identified who

offered to, or expressed an interest in or a desire to, acquire any ownership interest in the assets that are the subject of the binding contract, together with full details of same. Within fifteen calendar days of receipt by Plaintiff of such notice, Plaintiff may request from Defendant, the proposed purchaser, any other third party, or the trustee, if applicable, additional information concerning the proposed divestiture and the proposed purchaser. Defendant and the trustee shall furnish any additional information requested within fifteen calendar days of the receipt of the request, unless the parties shall otherwise agree. Within thirty calendar days after receipt of the notice or within twenty calendar days after Plaintiff has been provided the additional information requested from Defendant, the proposed purchaser, any third party, and the trustee, if there is one, whichever is later, the United States shall provide written notice to Defendant and the trustee, if there is one, stating whether or not it objects to the proposed divestiture. If the United States provides written notice to Defendant and the trustee that it does not object, then the divestiture may be consummated, subject only to Defendant's limited right to object to the sale under Section VI(C) of this Final Judgment. Absent written notice that the United States does not object to the proposed purchaser or upon objection by the United States, a divestiture proposed under Section IV or Section VI shall not be consummated. Upon objection by Defendant under the proviso in Section VI(C), a divestiture proposed under Section VI shall not be consummated. Provided, however, a proposed divestiture pursuant to the Auction Procedures approved by the United States under Section IV(D)(3) of this Final Judgment shall be deemed acceptable to the United States under this section.

VIII. Affidavits

A. Within thirty calendar days of the filing of this Final Judgment and every forty-five calendar days thereafter until the divestiture has been completed whether pursuant to Section IV or Section VI of this Final Judgment, Enova shall, with respect to Divestiture Assets, deliver to Plaintiff an affidavit as to the fact and manner of Defendant's compliance with Sections IV or VI of this Final Judgment. Each such affidavit shall include, inter alia, the name, address, and telephone number of each person who, at any time after the period covered by the last such report, made an offer to acquire, expressed an interest in acquiring, entered into negotiations to acquire, or was contacted or made an inquiry about acquiring, any interest in the Divestiture Assets, and shall describe in detail each contact with any such person during that period. Each such affidavit shall also include a description of the efforts that Defendant has taken to solicit a buyer from the Divestiture Assets and to provide required information to prospective purchasers, including the limitations, if any, on such information.

B. For Divestiture Assets being sold using the California Auction Procedures, during such Auction Procedures, submission of bids to the United States in compliance with Section IV shall satisfy compliance with the required contents of the affidavits in Section VII(A).

C. Within twenty calendar days of the filing of this Final Judgment, Defendant shall deliver to Plaintiff an affidavit which describes in detail all actions Defendant has taken and all steps Defendant has implemented on an on-going basis to preserve the Divestiture Assets pursuant to Section X of this Final Judgment and describes the functions, duties and actions taken by or undertaken at the supervision of the individuals described at Section X(J) of this Final Judgment with respect to Defendant's efforts to preserve the Divestiture Assets. Defendant shall deliver to Plaintiff an affidavit describing any changes to the efforts and actions outlined in Defendant's earlier affidavits filed pursuant to this section within thirty calendar days after the change is implemented. The United States shall take all necessary steps to keep the information received pursuant to this section confidential.

D. Defendant shall preserve all records of all efforts made to preserve and divest the Divestiture Assets.

IX. Financing

Defendant shall not finance all or any part of any divestiture made pursuant to Sections IV or VI of this Final Judgment.

X. Preservation of Assets

Until the divestiture required by the Final Judgment has been accomplished:

A. Defendant shall take all steps necessary to ensure that the Divestiture Assets will be maintained and operated as an ongoing, economically viable and active competitor in the provision of electricity; and that, except as necessary to comply with Sections X (B) to X (K) of this Final Judgment, the management of any electricity generating facilities shall be kept separate and apart from the management of Defendant's other businesses and will not be influenced by Defendant, and the books, records, and competitively sensitive sales, marketing and pricing information associated with electricity generating facilities will be kept separate and apart from that of Defendant's other businesses.

B. Defendant shall use all reasonable efforts to maintain and increase sales of electricity by the Divestiture Assets, and Defendant shall use reasonable efforts to maintain and increase promotional, advertising, sales, marketing, and merchandising support for wholesale electricity sold in California.

C. Defendant shall take all steps necessary to ensure that the Divestiture Assets are fully maintained in operable condition and shall maintain and adhere to normal maintenance schedules for the Divestiture Assets.

D. Defendant shall provide and maintain sufficient lines of sources of credit to maintain the Divestiture Assets as viable, ongoing businesses.

E. Defendant shall provide and maintain sufficient working capital to maintain the Divestiture Assets as viable ongoing businesses.

F. Defendant shall not, except as part of a divestiture approved by the United States, remove, sell, or transfer any of the Divestiture Assets, other than sales in the ordinary course of business.

G. Unless it has obtained the prior approval of the United States, Defendant shall not terminate or reduce the current employment, salary, or benefit arrangements for any personnel employed by Defendant who work at, or have managerial responsibility for, electricity generating facilities, except in the ordinary course of business.

H. Defendant shall continue all efforts in progress to obtain or maintain all permits necessary for operating their electricity generating capacity.

I. Defendant shall take no action that would jeopardize its ability to divest the Divestiture Assets as viable, ongoing businesses.

J. Defendant shall appoint a person or persons to oversee the Divestiture Assets, and who will responsible for Defendant's compliance with Section X of this Final Judgment.

K. Prior to the sale of Divestiture Assets, Enova shall not transfer any of the Divestiture Assets to any affiliate not regulated as a public utility by the CPUC.

XI. Compliance Inspection

Only for the purposes of determining or securing compliance with the Final Judgment and subject to any legally recognized privilege, from time to time:

A. Duly authorized representatives of the Plaintiff, including consultants and other persons retained by the United

States, upon written request of the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to Defendant made to their principal offices, shall be permitted:

1. Access during office hours of Defendant to inspect and copy all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or under the control of Defendant, who may have counsel present, relating to enforcement of this Final Judgment; and

2. Subject to the reasonable convenience of Defendant and without restraint or interference from it, to interview, either informally or on the record, its officers, employees, and agents, who may have counsel present, regarding any such matters.

B. Upon the written request of the Assistant Attorney General in charge of the Antitrust Division made to Defendant's principal offices, Defendant shall submit such written reports, under oath if requested, with respect to any matter contained in the Final Judgment.

C. No information or documents obtained by the means provided in Section VIII or Section XI of this Final Judgment shall be divulged by a representative of the Plaintiff to any person other than a duly authorized representative of the Executive Branch of the United States, except in the course of legal proceedings to which the Plaintiff is a party, including grant jury proceedings, or for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

D. If at the time information or documents are furnished by Defendant to Plaintiff, Defendant represents and identifies in writing the material in any such information or documents to which a claim of protection may be asserted under Rule 26(c)(7) of the Federal Rules of Civil Procedure, and Defendant marks each pertinent page of such material, ''Subject to claim of protection under Rules 26(c)(7) of the Federal Rules of Civil Procedure,'' then ten calendar days notice shall be given by Plaintiff to Defendant prior to divulging such material in any legal proceeding, other than a grant jury proceeding.

XII. Retention of Jurisdiction

Jurisdiction is retained by this Court for the purpose of enabling any of the parties to this Final Judgment to apply to this Court at any time for such further orders and direction as may be necessary or appropriate for the construction or carrying out of this Final Judgment, for the modification of any of the provisions hereof, for the enforcement of compliance herewith, and for the punishment of any violations hereof.

XIII. Termination and Modification

A. This Final Judgment will expire on the tenth anniversary of the date of its entry unless the Final Judgment is terminated pursuant to Section XIII(B); provided, however, the Final Judgment will terminate when the United States notifies Enova and the Court that Enova has provided to the United States documentation sufficient to prove (1) that the merger between Enova and Pacific identified in the Complaint has been terminated; or (2) that an Independent System Operator has assumed control of Pacific's gas pipelines within California in a manner satisfactory to the United States. The United States shall, in its sole discretion, determine whether the documentation proffered by Enova is sufficient.

B. After five years from the date it is entered, this Final Judgment shall terminate if Defendant demonstrates to the Court that (1) it no longer owns any of its existing nuclear assets, or (2) such assets are no long in operation, or (3) the output of those nuclear assets is required by law or regulation to be sold at a fixed price.

C. Enova's obligation to divest an asset shall terminate if any governmental authority permanently revokes any license or permit necessary for the operation of such asset, properly exercises power or eminent domain with respect to such asset, or enters into settlement agreement with Enova regarding he disposition of such asset to a third party.

D. Modification of Section V.

1. In the event that Defendant divests all of its existing nuclear generation assets, the total ownership capacity limit in Section V(B)(1) of this Final Judgment will increase to 800 MW; however, in no event shall the total ownership capacity limit in Section V(B)(1) exceed the greater of 500 MW or 10% of Defendant's total electricity retail sales.

2. In the event that Defendant's total retail electricity sales at any point exceed 8,000 MW capacity, the total capacity ownership limit in Section V(B)(1) of this Final Judgment will be increased up to 10% of such retail electricity sales.

XIV. Effect of Regulatory Approvals

The approvals by the United States required by his Final Judgment for sale of Divestiture Assets are in addition to the necessary approvals by the CPUC or any other governmental authorities for the sale of such assets.

XV. Public Interest

Entry of this Final Judgment is in the public interest.

Dated: _____

_____

United States District Judge

Competitive Impact Statement

The United States, pursuant to Section 2(b) of the Antitrust Procedures and Penalties Act (''APPA''), 15 U.S.C. § 16 (b)–(h), files this Competitive Impact Statement relating to the proposed Final Judgment submitted for entry in this civil antitrust proceeding.

I. Nature and Purpose of the Proceeding

The United States filed a civil antitrust Complaint on March 9, 1998, alleging that the proposed merger of Pacific Enterprises (''Pacific'') and Enova Corporation (''Enova'') would violate Section 7 of the Clayton Act, 15 U.S.C. § 18. The Complaint alleges that Pacific is a California gas utility company and Enova is a California electric utility company, and that this transaction would give the combined company (''PE/Enova'') both the incentive and the ability to lessen competition in the market for electricity in California. In particular, this acquisition would give PE/Enova the incentive and ability to limit the supply of natural gas to California electric power plants, raising their costs and the price California consumers pay for electricity. The acquisition is thus likely to lessen competition substantially among providers of electricity, and so violate Section 7 of the Clayton Act. The prayer for relief in the Complaint seeks (1) a judgment that the proposed acquisition would violate Section 7 of the Clayton Act; (2) a preliminary and permanent injunction preventing consummation of the proposed merger; (3) an award to the United States of the costs of this action; and (4) such other relief as is proper.

At the same time the Complaint was filed, the United States also filed a proposed settlement that would permit Pacific Enova to merge, but requires a divestiture that would preserve competition in the market for electricity in California. This settlement consists of a Stipulation and Order (''Stipulation'') and a proposed Final Judgment (''Final Judgment'').

The proposed Final Judgment orders Enova to sell all of its rights, titles, and interests in Encina and South Bay electricity generation facilities located at Carlsbad and Chula Vista, California (the ''Divestiture Assets''), to a

purchaser or purchasers acceptable to the United States in its sole discretion.[1] Enova must submit required applications to divest the assets no later than ninety days after entry of the Final Judgment, and complete the divestiture as soon as practicable after receipt of all necessary government approvals, in accordance with the procedures specified in the proposed Final Judgment. The Stipulation and Final Judgment also require Enova to ensure that until the divestiture mandated by the Final Judgment has been accomplished, the management of any electricity generating facilities will be kept separate and apart from the management of Enova's other businesses.

The United States and Enova have stipulated that the proposed Final Judgment may be entered after compliance with the APPA. Entry of the proposed Final Judgment would terminate this action, except that the Court would retain jurisdiction to construe, modify, or enforce the provisions of the proposed Final Judgment and to punish violations of it.

II. Description of the Events Giving Rise to the Alleged Violation

A. Enova, Pacific, and the Proposed Transaction

Enova, a California corporation headquartered in San Diego, California, owns San Diego Gas & Electric Co. (''SDG&E''), which is an electric utility that serves the San Diego area. Through SDG&E, Enova is a major provider of electricity in southern California, with approximately $1.6 billion in annual electricity sales. It sells electricity generated by plants that use coal, gas, nuclear power, and hydropower for fuel.

Pacific, through its wholly owned subsidiary Southern California Gas Company, is virtually the sole provider of natural gas transportation services to plants in southern California that use natural gas to produce electricity (''gas-fired generators'' or ''gas-fired plants''). Pacific is also the sole provider of natural gas storage services throughout all of California.

Under an Agreement and Plan of Merger and Reorganization dated October 12, 1996, Enova and Pacific will each become wholly owned subsidiaries of a common holding company parent as soon as all state and federal regulatory approvals have been obtained.

B. Trade and Commerce

The Complaint alleges that the effect of the merger of Pacific and Enova would be to lessen competition substantially in the provision of electricity in California during high demand periods.

California's electricity industry is dominated by Enova and two other regulated, investor-owned utilities. Electricity services are also provided by California public power providers such as municipalities, water districts, irrigation districts and the state of California. As a result of a legislatively mandated restructuring, the California electric power market will experience significant changes in 1998. As of March 31, 1998, most electricity generated in California is bought and sold through the California Power Exchange (''the pool''), a central, computerized bidding system that matches electricity supply and demand during every half-hour period during the day. State regulations require regulated utilities to buy and sell all their electricity through the pool during a four-year transition period.[2]

With the pool, all sellers of electricity send in bids for every half hour in which they want to sell electricity. Similarly, all buyers of electricity send in bids for every half hour in which they wish to buy. The pool allocates power until all demand is met. The price per unit of electricity for any given half hour is determined by the most expensive unit sold that half hour with all sellers receiving that price, regardless of their costs or their bids. Nuclear-powered generators, however, will continue to receive regulated rates for at least four years after the California pool began operation.

Currently, regulated electric utilities sell over 80% of all retail electricity in California. Because these utilities must buy all of their electricity from the pool, the pool prices—the price the utilities pay for the electricity they distribute—will directly affect the price most consumers in California pay for electricity.

Electricity sold in California is generated from power plants using one of four fuels—gas, coal, hydropower, and nuclear—and the costs of generating electricity from these plants differ significantly. Although certain gas-fired plants are more efficient than others, gas-fired plants are in general the most costly to operate. Because they cost the most to operate, the gas-fired plants will bid the highest prices into the pool and are the last ones to be turned on to meet consumer demand for electricity. They operate about 30% to 50% of the time, primarily during periods of high electricity demand, such as the summer when consumer use of air conditioning and other electric-powered appliances increases and less expensive hydroelectric power is unavailable. During these periods, the gas-fired plants, as the most costly to operate and thus the highest bidders into the pool, are able to set the price for all electricity sold through the pool.

Gas-fired power plants cannot and do not switch to other fuels in response to price increases in natural gas transportation or storage services, and in California Pacific controls almost all gas-fired generators' access to gas supply because the state of California has granted Pacific a monopoly on transportation of natural gas within southern California. Consequently, 96% of gas-fired generators in southern California buy gas transportation services from it. Pacific also has a monopoly on all natural gas storage services throughout California. Although regulated by the California Public Utilities Commission (''CPUC''), Pacific has the ability to restrict the availability of gas transportation and storage to consumers, including gas-fired generators, by limiting their supply or cutting them off entirely. Limiting or cutting off gas supply raises the price gas-fired plants pay for delivered natural gas and in turn raises the cost of the electricity they produce.

C. The Relevant Market

The Complaint alleges that the provision of electricity in California during high demand periods constitutes a relevant market for antitrust purposes—that is, in the language of the Clayton Act, it is a ''line of commerce'' and is in a ''section of the country.''

Consumers of electricity in California cannot and do not switch to other products in response to an increase in the price of electricity. Thus, a small but significant and nontransitory increase in prices for electricity would not cause a significant number of electricity consumers to substitute other energy sources for electricity, and electricity is a relevant product for antitrust purposes.

During periods of high demand, California consumers can only obtain electricity from local power plants. There is very limited electricity transmission capacity into California,

[1] The Final Judgment provides that the approvals by the United States required by this Final Judgment for sale of these assets are in addition to the necessary approvals by the California Public Utilities Commission (''CPUC'') or any other governmental authorities for the sale of such assets.

[2] Under these state regulations, the utility companies continue to own California's electricity transmission grid. The transmission grid, however, is under the operational control of an Independent Systems Operator (''ISO''), and distribution continues to be regulated by the CPUC.

with only two major transmission lines leading into the state, one from the hydroelectric and coal-rich northwestern United States, and one from several coal and nuclear plants in Arizona. During peak hours, the two major transmission lines are filled to capacity, and generation located within the state must supply the remaining electricity required by California consumers. Thus, in periods of high demand, consumers are unable to turn sources of electricity generated outside of California, and California is therefore a relevant geographic market for antitrust purposes.

D. Anticompetitive Consequences of the Acquisition

The Complaint alleges that, if the proposed transaction would have the following effects, among others, unless it is restrained:

1. Competition in the market for electricity in California during high demand periods may be substantially lessened; and

2. Prices for electricity to consumers in California during high demand periods are likely to increase.

By virtue of its monopoly over natural gas transportation and storage, Pacific currently has the ability to increase the price of electricity, when during high demand periods, electricity from California gas-fired generators is needed to supplement less costly electricity. Pacific can restrict gas-fired generators' access to gas, which has the effect of raising the cost of gas-fired generators in general. Alternatively, Pacific can cut off or impede the more efficient gas generators' access to gas, leaving higher-cost generators to meet consumer demand for electricity. In either case, Pacific is able to increase the cost of electricity from gas-fired plants, thereby increasing the prices they bid into the pool and ultimately the price of electricity sold through the pool. But Pacific currently owns no electricity generation plants that would benefit from an increase in the pool price for electricity.

Enova, on the other hand, controls over 2600 MW of electricity, some of which comes from lower cost plants that run most of the time, and as a consequence, would benefit from an increase of the price of electricity sold through the pool. However, Enova currently has no ability to increase the price of electricity by raising the costs of competing electric utilities because it does not control any input, such as gas.

Once Pacific's control of gas is combined with Enova's low-cost electricity generation facilities, the merged firm, PE/Enova, would have the ability to raise electricity prices by limiting gas supply to competing gas-fired generators, as well as the incentive to do so. PE/Enova's ownership of lower-cost generation would enable it to profit substantially from any increase in the price of electricity sold through the pool, and these profits would more than offset any losses from reducing its gas transportation and storage sales to competing gas-fired plants. The merged firm, PE/Enova, would thus have the incentive and ability to lessen competition in the market for electricity in California. As a result, consumers would likely pay higher prices for electricity.

E. Entry

Successful entry or expansion in either the market for electricity generation or the market for intrastate natural gas transportation and storage in California would not be timely, likely, or sufficient to prevent any harm to competition. Entry or expansion would be difficult, time consuming, and costly, as well as extremely unlikely. Entry into electricity generation could counteract a post-merger price increase only if the entrants provided significant generation capacity and were not dependent on natural gas to generate electricity. Entry by building new hydro-powered, coal-fired, or nuclear-powered generators is highly unlikely, however. Each of these face substantial safety, environmental, and other regulatory barriers that would make entry costly, time consuming, and uncertain. Similarly, entry by building new lines to transmit electricity from outside California requires myriad environmental, safety, and zoning approvals, which would be difficult, costly, an time consuming to obtain. Finally, California's present regulatory scheme makes it economically impossible for alternative suppliers of natural gas transportation to enter the California market. California's pipeline certification process discourages entry by intrastate firms, while its restrictions on access to intrastate gas transportation markets discourages entry by interstate pipelines.[3]

III. Explanation of the Proposed Final Judgment

The proposed Final Judgment would preserve the competition that would have been lost in California's emerging competitive market for electricity had the PE/Enova merger gone forward as originally structured. Within eighteen months after filing the proposed Final Judgment, Defendant must sell all of Enova's rights, titles, and interests in the Divestiture Assets. The assets and interests will be sold to a purchaser or purchasers acceptable to the United States in its sole discretion. In addition, the Final Judgment limits the ability of the merged company to reacquire or control any similar assets, or to enter into contracts to manage generating plants in California.

A. Divestiture

The Final Judgment requires Defendant to sell all generation assets that would likely give PE/Enova the incentive to raise electricity prices.[4] To that end, the Final Judgment requires Defendant to divest all of its low-cost gas generators—1644 MW of generation assets in total. In particular, Defendant is required to divest South Bay plant (951 MW) in Chula Vista, California, and the Encina plant (693 MW) in Carlsbad, California. Because these generators operate in almost all hours of the year and are relatively low-cost, if PE/Enova were to own them, it could earn substantial profits (revenues exceeding its costs) by restricting the supply of natural gas which, as explained above, would increase the overall price for electricity in the pool and thus the price PE/Enova would receive for electricity.

Under the Final Judgment, Enova is required to use its best efforts to sell the Divestiture Assets under auction procedures approved by the CPUC. Enova has already requested that the CPUC begin an auction of all of the Divestiture Assets.[5] Under the Final Judgment, bid proposals will be submitted to the United States for review to determine whether the divestiture to that bidder would be acceptable.

Defendant will have eighteen months after entry of the Final Judgment to auction the Divestiture Assets.[6] The United States may extend this eighteen-month period, and both parties may jointly agree to extend the auction

[3] Entry into gas storage requires access to appropriate geologic formations, such as drained aquifers and abandoned gas fields and sale mines of a particular size and porosity, which, in California, are all owned by Pacific.

[4] The relief in the proposed Final Judgment is intended to remedy only those anticompetitive effects stemming from the PE/Enova merge. Nothing in the Proposed Final Judgment is intended to limit the United States' ability to investigate or to bring actions, where appropriate, challenging other past or future activities of Pacific or Enova.

[5] The CPUC proceeding contemplates 18 months for completion of the divestitures. *See Application of San Diego Gas & Electric Company (U 902–E) for Authority to Sell Electrical Generation Facilities and Power Contracts* before the CPUC (Dec. 19, 1997).

[6] The divestiture period, which is longer than the usual period permitted by the Division, avoids unnecessary conflict with the ongoing state regulatory process for divestiture.

period further. If any part of the Divestiture Assets are not sold within the eighteen months or any extension, Defendant must withdraw those assets from the California auction process and allow them to be sold by a trustee, under specific procedures designed to ensure expeditious sales.

Enova is not required to divest certain generation assets that are not likely to provide an incentive to raise pool prices. These are combustion turbine assets (''CTAs''), nuclear assets, cogeneration assets presently under contract (''Cogeneration Assets''), and a long-term contract with Public Service Company of New Mexico (''New Mexico Contract'').[7]

1. CTAs—The CTAs are seventeen generators scattered throughout California, none of which exceed 20 MW capacity. They are fueled primarily by natural gas, and in some cases by diesel fuel. They are very expensive to run and were built to be used only at times of the very highest peak demand. Owning CTAs gives PE/Enova little, if any, incentive to raise electricity prices—even with increased electricity prices, PE/Enova cannot count either on selling the electricity from these generators or obtaining a price that significantly exceed their costs. Further, air pollution restrictions may prevent operation of certain CTAs during peak summer hours.

2. Nuclear—Enova holds a 20% (or 430 MW) non-operating interest in the San Onofre Nuclear Generating Station (''SONGS'') and its output. PE/Enova, however, will not receive the pool price for SONGS electricity for at least the next four years, because nuclear plants will remain price regulated. If nuclear power prices become deregulated after 2001, the Final Judgment provides that (1) SONGS capacity will count towards calculation of Defendant's reacquisition cap (see discussion of cap, *infra*); and (2) the Final Judgment will remain in effect for ten years instead of five.

3. Congeneration Assets—The cogeneration assets comprise nine contracts of no more than 50 MW each, for a total of 207 MW. Their output is more costly than most of the electricity produced in California and will be sold at a regulated rate. Retention of these assets, therefore, does not provide PE/Enova with the incentive to increase the pool price for electricity.

4. The New Mexico Contract—This contract provides Enova with 100 MW. Given the other divestitures, the small amount of capacity involved, and the fact that the contract expires in less than three years, it provides little incentive to raise the pool price.

B. Limitations on Acquisition

1. *Reacquistion.* The Final Judgment limits Enova's ability to reacquire the same kind of assets that it has been ordered to divest: existing, low-cost assets inside California. These assets are referred to in the Final Judgment as ''California Generation Facilities.[8] At any time during the Final Judgment, if Defendant owns or controls more than 500 MW (total) of California Generating Facilities,[9] then it cannot acquire or gain control of additional California Generation Facilities without prior approval of the United States.[10] Because the Divestiture Assets count towards calculation of the 500 MW acquisition cap, Enova cannot acquire or gain control of any more California Generation Facilities without prior approval by the United States until Enova substantially completes the divestiture.

Prior approval of subsequent acquisitions ensures that PR/Enova does not circumvent the divestiture ordered by the Final Judgment by acquiring or controlling generating facilities that give it the same incentive to raise the pool price for electricity as the Divestiture Assets did. Because of the California electricity market restructuring (which includes CPUS orders requiring major divestiture from regulated utilities), unusual and significant amounts of generating capacity will be readily available for purchase, lease, or contractual control for the next few years.

2. *The Acquisition Cap.* The Final Judgment allows the merged company to own or control 500 MW of existing California Generation Facilities. As a California retail distributor, PE/Enova may operate more effectively if it owns or controls some local capacity. This 500 MW capacity provides PE/Enova a source of back-up electricity for its 1600 MW retail sales in case of problems with electricity supply bought on the open market. At the same time, it does not provide PE/Enova with sufficient wholesale electricity sales to give it the incentive to raise the pool price for electricity by reducing its gas sales.

3. *Limitation Applicable Only to Existing California Assets.* The Final Judgment does not impose the prior approval requirement on Enova's acquisition of assets outside of California. As noted above, Pacific has the ability to raise the price of electricity during high demand periods because significant transmission constraints limit electricity imports from outside of the state. These import constraints mean that PE/Enova cannot count on the sale in the California pool of electricity from assets outside California, and thus acquisition of such assets would not give it the incentive to raise the pool price.

In addition, the Final Judgment does not prevent PE/Enova from building new capacity in California, or from acquiring capacity built in California after January 1, 1998. New capacity will only be built in California if the output is inexpensive enough to be sold in many hours. By increasing the amount of less expensive power available to meet demand, new, low-cost capacity will reduce the number of hours in which the most costly gas-fired capacity is needed. This in turn will limit PE/Enova's ability to raise the pool price since it is more costly and difficult for PE/Enova to restrict gas to more numerous low-cost plants. For the same reasons, the Final Judgment allows the merged company to acquire or gain control of plants that are rebuilt, repowered, or activated out of dormancy after January 1, 1998. Output from such plants is the equivalent of output from new-build capacity.

Finally, Enova may own, operate, and control any cogeneration or renewable resources and may enter into tolling agreements and reverse tolling agreements,[11] so long as it does not

[7] Although the Final Judgment does not place any additional obligation on the Defendant to sell any assets beyond South Bay and Enicina, the Defendant has applied to the CPUC to sell all its generation assets, including the nuclear assets, the CTAs, and the Cogeneration Assets, in the CPUC auction. *See Application of San Diego Gas & Electric Company (U 902–E) for Authority to Sell Electrical Generation Facilities and Power Contracts* before the CPUC (Dec. 19, 1997).

[8] The Final Judgment specifically defines ''California Generation Facilities'' to mean ''(1) electricity generation facilities in California in existence on January 1, 1998, excluding such facilities that are rebuilt, repowered, or activated out of dormancy after January 1, 1998, as long as such rebuilding, repowering, or activation out of dormancy project, if done by Defendant, begins within one year of purchase; and (2) any contract for operation and sale of output from generating assets of the Los Angeles Department of Water and Power.''

[9] A contract with Portland Gas & Electric for 75 MW, along with the same amount of firm transmission capacity, is included in the 500 MW cap, because it is a source of low-cost generation that can be sold in the pool. The Final Judgment allows Defendant to keep the contract, which expires Dec. 31, 2013, but reduces the cap by 75 MW until the contract is divested.

[10] The Final Judgment defines ''acquire'' to include ''obtaining any interest in any electricity generating facilities or capacity,'' and defines ''control'' to mean ''have the ability to set the level of output of an electricity generation facility.''

[11] Tolling agreements allow one company to produce electricity with its own gas at another company's generator for a set fee. Reverse tolling

Continued

control the plan's output level. None of these arrangements or facilities will provide PE/Enova significant additional ability or incentive to raise the price for electricity by reducing its gas sales.

C. Limitations on Management Contracts

The Final Judgment provides a check on Enova's ability to acquire control of California Public Power Provider (''CPPP'') owned assets through management contracts.[12] With the exception of Los Angeles Department of Water and Power's (''LADWP'') facilities, the generation facilities owned by CPPPs are primarily small, gas- and oil-fired or hydroelectric plants. Management contracts enable CPPPs to hire experts in generation management to run their plants for them. The current investor-owned utilities, including Enova, plan to compete for these contracts. Under these contracts, the manager may obtain control of the generation facilities and all or most of the profits which, if PE/Enova were the manager, could give it the incentive to raise electric prices.

The Final Judgment directs that Defendant shall provide notice to the United States of any management contract that Defendant enters, unless such management contract is reportable under the Hart-Scott-Rodino Antitrust Improvements Act. The notice provision balances the efficiencies of competition for CPPP management contracts with the possible anticompetitive effect from Defendant controlling CPPP assets. It enables the United States to monitor Defendant's level of capacity control without removing it as a viable competitor for these contracts.

If PE/Enova were to enter into a management contract with LADWP, however, it would be required to obtain prior approval from the United States. LADWP controls 3700 MW of capacity in or directly linked to California. A large part of this capacity is low cost. Absent the prior approval requirement, the merged company could regain in one transaction even more incentive to raise the pool price than it had before auctioning the Divestiture Assets. The probable competitive harm threatened by Defendant's sudden reacquisition of all or a substantial part of LADWP's 3700 MW of generation via management contacts more than offsets possible efficiencies gained by Enova bidding on a LADWP management contracts.

D. Termination or Modification of the Final Judgment

The Final Judgment—and its prior approval and notice obligations—remain in effect until the tenth anniversary of the date of its entry unless the Final Judgment is terminated earlier under specific conditions. The Final Judgment also provides that the reacquisition limitations will be modified under certain conditions.

1. *Termination of the Final Judgment.* The Final Judgment provides that it shall terminate at any time if the United States determines that the merger between Enova and Pacific identified in the Complaint has been terminated. It will also terminate if the United States determines that an Independent System Operator (''ISO'') has assumed control of Pacific's gas pipelines within California. In that event, PE/Enova will lose the ability to control access to gas transportation and storage. Without these tools, the merged company will not be able to raise the price for electricity sold through the pool by reducing its gas sales, and the basis for the Final Judgment would be removed.

In addition, the decree will terminate after five years under certain conditions. As noted above, the decree imposes continuing prior approval and notice obligations to ensure that PE/Enova does not simply reacquire assets similar to those it has divested, which it could readily do during the restructuring of California's electricity market.[13] Most of the changes in ownership in electric generation and control should occur in the next five years. Hence termination of the decree at the end of five years would be reasonable.

There would be a cause for concern, however, if PE/Enova could sell SONGS capacity at the unregulated pool price—it would be in essence be acquiring 430 MW of output without opportunity for the government to challenge. For this reason, the decree will terminate in five years only if (1) Enova no longer owns any of its existing nuclear assets; (2) its nuclear assets are no longer in operation; or (3) the output of those nuclear assets is required by law or regulation to be sold at a fixed price.

Finally, the Final Judgment will partially terminate as to any Divestiture Asset if any governmental authority permanently revokes any license or permit necessary for the operation of such asset, properly exercises power or eminent domain with respect to such asset, or enters into a settlement agreement with Enova regarding the disposition of such asset to a third party.

2. *Modification of Reacquisition Limits.* The Final Judgment provides that the 500 MW ownership cap may increase under two conditions: (1) If Enova divests all of its existing nuclear generation assets, the acquisition cap will increase to 800 MW; and (2) if defendant's total retail electricity sales at any point exceed 8,000 MW the ownership cap will be increased up to 10% of such retail electricity sales. The first condition allows an adjustment of the ownership cap in the event the SONGS is sold to replace a portion of the SONGS generation. (The 500 MW cap is a cap on acquisitions in addition to holding SONGS.) The second condition provides for the possibility that SONGS is not sold but that Enova's retail sales exceed 8,000 MW, and it allows defendant sufficient local generation to back up its expended retail sales.

E. Trustee Provisions

Until the ordered divestiture takes place, Enova must take all reasonable steps necessary to accomplish the divestiture, and cooperate with any prospective purchaser. If defendant does not accomplish the ordered divestiture within the specified time period, the proposed Final Judgment provides for procedures by which the Court shall appoint a trustee to complete the divestiture. In that case, Defendant must cooperate fully with the trustee.

If a trustee is appointed, the proposed Final Judgment provides that Defendant will pay all costs and expenses of the trustee. The trustee's compensation will be structured so as to provide an incentive for the trustee to obtain the highest price for the assets to be divested, and to accomplish the divestiture as quickly as possible. After the effective date of his or her appointment, the trustee shall serve under such other conditions as the Court may prescribe. After his or her

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agreements allow a gas supplier to stop providing natural gas to a generator at the supplier's discretion. The Final Judgment provides that Defendant may enter into tolling and reverse tolling agreements with any electricity generation facilities in California, provided Defendant does not control such facilities; provided further, that all such tolling and reverse tolling agreements include the following provision: ''In accordance with the Final Judgment in *United States* v. *Enova Corporation*, entered on [date], Enova's successors and their affiliates shall not have any ability to set the level of output of this electricity generation facility.''

[12] The Final Judgment defines a specific type of management services contract—a ''California Public Power Generation Management Services Contract''—to mean ''a bona fide contract for managing the operation and sale of output from California Generation Facilities owned by a municipality, an irrigation district, other California state authority, or their agents on January 1, 1998; provided, however, that a contract for managing the operation and sale of output from generation assets of LADWP shall not be deemed a California Public Power Generation Management Services Contract.''

[13] As discussed above in Section III(B)(1), significant amounts of generating capacity will be available for purchase, lease, or contractual control during the next few years.

appointment becomes effective, the trustee will file monthly reports with the parties and the Court, setting forth the trustee's efforts to accomplish the divestiture. At the end of six months, if the divestiture has not been accomplished, the trustee shall file promptly with the Court a report that sets forth (1) the trustee's efforts to accomplish the divestiture, (2) the reasons, in the trustee's judgment, why the divestiture has not been accomplished, and (3) the trustee's recommendations. The trustee's report will be furnished to the parties and shall be filed in the public docket, except to the extent the report contains information the trustee deems confidential. The parties each will have the right to make additional recommendations to the Court. The Court shall enter such orders as it deems appropriate to accomplish the purposes of this Final Judgment.

F. Provisions for Separate Management

The Stipulation and Final Judgment require Enova to ensure that, until the divestiture mandated by the Final Judgment has been accomplished, the management of any electricity generating facilities shall be kept separate and apart from the management of defendant's other businesses, and will not be influenced by defendant. Enova must appoint a person or persons to oversee the Divestiture Assets and to be responsible for it's compliance with these provisions.

IV. Remedies Available to Potential Private Litigants

Section 4 of the Clayton Act, 15 U.S.C. § 15, provides that any person who has been injured as a result of conduct prohibited by the antitrust laws may bring suit in federal court to recover three times the damages the person has suffered, as well as costs and reasonable attorney's fees. Entry of the proposed Final Judgment will neither impair nor assist the bringing of any private antitrust damage action. Under the provisions of Section 5(a) of the Clayton Act, 15 U.S.C. § 16(a), the proposed Final judgment has no *prima facies* effect in any subsequent private lawsuit that may be brought against Enova.

V. Procedures Available for Modification of the Proposed Final Judgment

The United States and the defendant have stipulated that the proposed Final Judgment may be entered by the Court after compliance with the provisions of the APPA, provided that the United States has not withdrawn its consent. The APPA conditions entry upon the Court's determination that the proposed Final Judgment is in the public interest.

The APPA provides a period of at least sixty days preceding the effective date of the proposed Final Judgment within which any person may submit to the United States written comments regarding the proposed Final Judgment. Any person who wishes to comment should do so within sixty days of the date of publication of this Competitive Impact Statement in the **Federal Register**. The United States will evaluate and respond to the comments. All comments will be given due consideration by the United States, which remains free to withdraw its consent to the proposed Final Judgment at any time prior to entry. The comments and the responses of the United States will be filed with the Court and published in the **Federal Register.**

Written comments should be submitted to: Roger W. Fones, Chief, Transportation, Energy, & Agriculture Section, Antitrust Division, United States Department of Justice, 325 Seventh Street, N.W., Suite 500, Washington, DC 20530.

The proposed Final Judgment provides that the Court retains jurisdiction over this action, and the parties may apply to the Court for any order necessary or appropriate for the modification, interpretation, or enforcement of the Final Judgment.

VI. Alternatives to the Proposed Final Judgment

The United States considered, as an alternative to the proposed Final Judgment, a full trial on the merits of its Complaint against Defendant. The United States is satisfied, however, that the divestiture of the assets and other relief contained in the proposed Final Judgment will preserve viable competition in the market for electricity in California that otherwise would be affected adversely by the acquisition. Thus, the proposed Final Judgment would achieve the relief the government would have obtained through litigation, but avoids the time, expense, and uncertainty of a full trial on the merits of the government's Complaint.

VII. Standard of Review Under the APPA for Proposed Final Judgment

The APPA requires that proposed consent judgments in antitrust cases brought by the United States be subject to a sixty-day comment period, after which the Court shall determine whether entry of the proposed Final Judgment ''is in the public interest.'' In making that determination the Court *may* consider.

(1) The competitive impact of such judgment, including termination of alleged violations, provisions of enforcement and modifications, duration or relief sought, anticipated effects of alternative remedies actually considered, and any other considerations bearing upon the adequacy of such judgment;

(2) the impact of entry of such judgment upon the public generally and individuals alleging specific injury from the violations set forth in the complaint including consideration of the public benefit, if any, to be derived from a determination of the issues at trial.

15 U.S.C. § 16(e). As the United States Court of Appeals for the District of Columbia Circuit has held, this statute permits a court to consider, among other things, the relationship between the remedy secured and the specific allegations set forth in the government's complaint, whether the Final Judgment is sufficiently clear, whether enforcement mechanisms are sufficient, and whether the Final Judgment may positively harm third parties. *See United States* v. *Microsoft,* 56 F.3d 1448, 1461–62 (D.C. Cir. 1995).

In conducting this inquiry, ''the Court is nowhere compelled to go to trial or to engage in extended proceedings which might have the effect of vitiating the benefits of prompt and less costly settlement through the consent decree process.''[14] Rather,

absent a shoring of corrupt failure of the government to discharge its duty, the Court, in making its public interest finding, should * * * carefully consider the explanations of the government in the competitive impact statement and its response to comments in order to determine whether those explanations are reasonable under the circumstances.

United States v. *Mid-America Dairyman. Inc.*, 1977–1 Trade Cas. ¶ 61,508, at 71,980 (W.D. Mo. 1977).

Accordingly, with respect to the adequacy of the relief secured by the decree a court may not ''engage in an unrestricted evaluation of what relief would best serve the public.'' *United States* v. *BNS, Inc.*, 858 F.2d 456, 462 (9th Cir. 1988), *quoting United States* v. *Bechtel Corp.*, 648 F.2d 660, 666 (9th

[14] 119 Cong. Rec. 24598 (1973), *See also United States* v. *Gillette Co.*, 406 F. Supp. 713, 715 (D. Mass. 1975). A ''public interest'' determination can be made properly on the basis of the Competitive Impact Statement and Response to Comments filed pursuant to the APPA. Although the APPA authorizes the use of additional procedures, *see* 15 U.S.C. § 16(f), those procedures are discretionary. A court need not invoke any of them unless it believes that the comments have raised significant issues and that further proceedings would aid the court in resolving those issues. *See* H.R. Rep. 93–1463, 93rd Cong. 2d Sess. 8–9, *reprinted in* (1974) U.S. Code Cong. & Ad. News 6535, 6538.

Cir.) *cert denied,* 454 U.S. 1083 (1981); *see also Microsoft,* 56 F.3d at 1460–62. Precedent requires that

> the balancing of competing social and political interests affected by a proposed antitrust consent decree must be left, in the first instance, to the discretion of the Attorney General. The court's role in protecting the public interest is one of insuring that the government has not breached its duty to the public in consenting to the decree. The court is required to determine not whether a particular decree is the one that will best serve society, but whether the settlement is ''*within the reaches of the public interest.*'' More elaborate requirements might undermine the effectiveness of antitrust enforcement by consent decree.

United States v. *Bechtel,* 648 F.2d at 666 (citations omitted) (emphasis added.[15]

The proposed Final Judgment, therefore, should not be reviewed under a standard of whether it is certain to eliminate every anticompetition effect of a particular practice or whether it mandates certainty of free competition in the future. Court approval of a final judgment requires a standard more flexible and less strict than the standard required for a finding of liability. ''[A] proposed decree must be approved even if it falls short of the remedy the court would impose on its own, as long as it falls within the range of acceptability or is 'within the reaches of the public interest.' '' *United States* v. *American Tel. & Tel. Co.,* 552 F. Supp. 131, 150 (D.D.C. 1982) (citations omitted) (quoting *United States* v. *Gillette Co.,* 406 F. Supp 713, 716 (D. Mass. 1975)), *aff'd sub nom, Maryland* v. *United States,* 460 U.S. 10Q1 (1983), *United States* v. *Alcan Aluminum. Ltd.,* 605 F. Supp. 619, 622 (W.D. Ky. 1985).

VIII. Determinative Documents

There are no determinative materials of documents within the meaning of the APPA that were considered by the United States in formatting the proposed Final Judgment.

Dated: June 8, 1998.

Respectfully submitted,

Jade Alice Eaton*

Andrew K. Rosa

Trial Attorneys.

U.S. Department of Justice, Antitrust Division, Transportation, Energy & Agriculture Section, 325 Seventh Street, N.W., Suite 500, Washington, DC 20004, (202) 307–6316.

*Counsel of Record.

[15] *See United States* v. *BNS, Inc.* 858 F.2d at 463; *United States* v. *National Broadcasting Co.,* 449 F. Supp. 1127, 1143 (C.D. Cal. 1978); *United States* v. *Gillette Co.,* 406 F. Supp. at 716. *See also United States* v. *American Cyanamid Co.,* 719 F.2d 558, 565 (2d Cir. 1983).

Certificate of Service

I hereby certify that I have caused a copy of the foregoing Competitive Impact Statement to be served on counsel for defendant in this manner in the manner set forth below:

By first class mail, postage prepaid:

Steven C. Sunshine,

Shearman & Sterling, 801 Pennsylvania Avenue, N.W., Washington, DC 20004.

Jade Alice Eaton,

Antitrust Division, U.S. Department of Justice, 325 Seventh Street, N.W., Suite 500, Washington, DC 20530, (202) 307–6456, (202) 616–2441(Fax).

[FR Doc. 98–16218 Filed 6–17–98; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

[Civil No. 96–2031]

Proposed Modified Final Judgment and Memorandum In Support of Modification

Notice is hereby given that a Modified Final Judgment, Motion to Modify Final Judgment, Memorandum in Support of the Modification of the Final Judgment, Stipulation and Order, and Hold Separate Stipulation and Order have been filed with the United States District Court in the District of Columbia, in *United States et al* v. *USA Waste Services, Inc., et al.,* Civil No. 96–2031.

The existing Final Judgment stems from a 1996 acquisition of Sanifill, Inc., by USA Waste. The Final Judgment was entered to resolve competitive concerns that the Antitrust Division had about the impact of the acquisition in Houston, Texas. Pursuant to the Final Judgment, USA Waste divested Sanifill's small container commercial hauling assets and a USA Waste disposal site in Houston and sold 2,000,000 tons of air space rights for ten years at two USA Waste landfills in the Houston area. The assets were purchased by TransAmerican Waste Industries, Inc. On January 26, 1998, TransAmerican and USA Waste entered into an agreement whereby TransAmerican would be merged into USA Waste, and the Houston assets TransAmerican purchased from USA Waste would be owned by USA Waste.

On May 5, 1998, the United States filed a proposed Modified Final Judgment to modify the Final Judgment in this case. The United States maintained that the proposed acquisition of TransAmerican's commercial hauling and disposal assets in the Houston area would violate the original Final Judgment. The proposed Modified Final Judgment requires USA Waste to divest the TransAmerican commercial small container and disposal assets in the Houston area and provide 2,000,000 tons of air space rights for ten years at two USA Waste landfills in the Houston area.

The Hold Separate Stipulation and Order and the Stipulation and Order ensure that the provisions of the proposed Modified Final Judgment will be observed and that the assets to be divested will be held separate and maintained as a viable competitive entity until the divestiture takes place.

Public comments on the proposed Modified Final Judgment should be directed to J. Robert Kramer, Chief, Litigation II Section, Antitrust Division, United States Department of Justice, 1401 H Street, NW, Suite 3000, Washington, DC 20530 (telephone: 202/307–0924). Such comments and responses thereto will be filed with the Court.

Constance K. Robinson,

Director of Operations & Merger Enforcement.

Stipulation and Order

To further the objectives of the Modified Final Judgment filed with the Court in this matter, it is stipulated by and between the United States of America (''United States''), the State of Texas (''Texas''), USA Waste Services, Inc. (''USA Waste''), and TransAmerican Waste Industries, Inc. (''TransAmerican''), by their respective attorneys, as follows:

1. The Court has jurisdiction over the subject matter of this action and over the United States, Texas, USA Waste, and TransAmerican, and venue of this action is proper in the United States District Court for the District of Columbia.

2. The parties stipulate that a Modified Final Judgment in the form hereto attached may be filed and entered by the Court, upon the motion of any party or upon the Court's own motion, at any time after completion of the procedures specified in the United States' Explanation of Procedures filed herewith without further notice to any party or other proceedings, provided that the United States and Texas have not withdrawn their consent, which they may do at any time before the entry of the proposed Modified Final Judgment by serving notice thereof on USA Waste and TransAmerican and by filing that notice with the Court.

3. USA Waste and TransAmerican shall abide by and comply with the provisions of the proposed Modified Final Judgment pending entry of the

proposed Modified Final Judgment, or until expiration of time for all appeals of any court ruling declining entry of the proposed Modified Final Judgment, and shall, from the date of the signing of this Stipulation, comply with all the terms and provisions of the proposed Modified Final Judgment as though they were in full force and effect as an order of the Court.

4. This Stipulation shall apply with equal force and effect to any amended proposed Modified Final Judgment agreed upon in writing by the parties and submitted to the Court.

5. In the event (a) the United States and Texas have withdrawn their consent, as provided in paragraph 2 above, or (b) the proposed Modified Final Judgment is not entered pursuant to this Stipulation, the time has expired for all appeals of any Court ruling declining entry of the proposed Modified Final Judgment, and the Court has not otherwise ordered continued compliance with the terms and provisions of the proposed Modified Final Judgment, then the United States, Texas, USA Waste, and TransAmerican are released from all further obligations under this Stipulation, and the making of this Stipulation shall be without prejudice to any party in this or any other proceeding.

6. USA Waste and TransAmerican represent that the divestiture ordered in the proposed Modified Final Judgment can and will be made, and that USA Waste and TransAmerican will later raise no claim of hardship or difficulty as grounds for asking the Court to modify any of the divestiture provisions contained therein.

Dated: May 5, 1998.

For the United States:

Frederick H. Parmenter

Virginia Bar No.: 18184, U.S. Department of Justice, Antitrust Division, 1401 H Street, N.W., Suite 3000, Washington, D.C. 20530, (202) 307–0620.

For the State of Texas

Dan Morales

Texas Attorney General.

Mark Tobey

Assistant Attorney General, Chief, Antitrust Section, Texas Bar No.: 20082960.

Kim Van Winkle

Assistant Attorney General, Texas Bar No.: 24003104.

Office of the Attorney General of Texas, P.O. Box 12548, Austin, Texas 78711–2546, (512) 463–2185.

For USA Waste Services, Inc.

James R. Weiss

District of Columbia Bar No.: 379798, Preston, Gates, Ellis & Rouvelas Meeds, 1735 New York Avenue, N.W., Suite 500, Washington, D.C. 20006–5209, (202) 662–8425.

For TransAmerican Waste Industries, Inc.

J. David Green

Sr. Vice President & General Counsel, TransAmerican Waste Industries, Inc., 10554 Tanner Road, Houston, Texas 77041, (713) 956–1212.

Order

It is So Ordered, this 6th day of May, 1998.

Gladys Kessler,

United States District Judge.

Modified Final Judgment

Whereas, the United States of America (''United States''), the State of Texas (''Texas''), and the Commonwealth of Pennsylvania (''Pennsylvania'') filed a Complaint in this action on August 30, 1996 and a Final Judgment was entered on December 17, 1996.

And whereas, the United States, Texas, USA Waste Services, Inc. (''USA Waste'') and TransAmerican Waste Industries, Inc. (''TransAmerican''), by their respective attorneys have consented to the entry of this Modified Final Judgment without trial or adjudication of any issue of fact or law herein, and without this Modified Final Judgment constituting any evidence against or an admission by the United States, Texas, USA Waste, or TransAmerican with respect to any issue of law or fact herein;

And whereas, USA Waste and TransAmerican have agreed to be bound by the provisions of this Modified Final Judgment pending its approval by the Court.

And whereas, prompt and certain divestiture of the Houston Divestiture Assets to assure that competition is not substantially lessened in the Houston Area is the essence of this agreement;

And whereas, USA Waste and TransAmerican have represented to the United States and Texas that the divestiture required below can and will be made and that they will later raise no claims of hardship or difficulty as grounds for asking the Court to modify any of the divestiture provisions contained below;

And whereas, the United States and Texas believe that entry of this Modified Final Judgment is in the Public Interest;

Now, therefore, it is hereby *Ordered, Adjudged, and Decreed* that this Modified Final Judgment, shall modify the provisions in the Final Judgment relating to the Houston Divestiture Assets and the Houston area in the following ways:

I. Definitions

As used in this Modified Final Judgment:

A. Solid waste hauling means the collection and transportation to a disposal site of municipal solid waste (but not construction and demolition waste; medical waste; organic waste; special waste, such as contaminated soil; sludge; or recycled materials) from residential, commercial and industrial customers.

B. Solid waste disposal means the disposal of Type 1 or 4 solid waste into disposal sites approved by the Texas Natural Resources Conservation Commission for Type 1 or Type 4 waste. Type 1 waste is municipal solid waste and Type 4 waste is dry waste such as construction and demolition waste.

C. USA Waste means USA Waste Services, Inc., a Delaware corporation with its headquarters in Houston. Texas, and its successors and assigns, their subsidiaries, affiliates, directors, officers, managers, agents and employees.

D. TransAmerican means TransAmerican Waste Industries, Inc., A Delaware corporation with its headquarters in Houston, Texas and its successors, and assigns, their subsidiaries, affiliates, directors, officers, managers, agents and employees.

E. Houston Area means Harris County, Texas; Chambers County, Texas; Brazoria County, Texas; Fort Bend County, Texas; Montgomery County, Texas; Walker County, Texas; and Galveston County, Texas.

F. Houston Hauling Assets means the front load commercial business of TransAmerican that provides solid waste hauling services in the Houston Area. These assets include all customer lists, contracts and accounts, including

all contracts for disposal of solid waste at disposal facilities, all trucks, containers, equipment, material, and supplies associated with these assets, and the garages, including all associated equipment, located at 10554 Tanner Road, Houston, Texas, 77041 and 999 Ashland, Channelview, Texas 77530.

G. Sunray Assets means the operating, permitted Type 4 landfill (also known as the North County Landfill) and other related assets of TransAmerican with an office at 2015 Wyoming in League City, Texas. These assets include the current permit Number 1849 and permit application Number 1849A filed with the Texas Natural Resources Conservation Commission, all customers lists, contracts and accounts, including all equipment, material, and supplies associated with these assets.

H. *Airspace Assets* means the right to dispose, over a ten-year period of up to a total of 2,000,000 tons of municipal solid waste in amounts of up to a total of 270,000 tons per year at the Hazelwood Landfill located at 4971 Tri-City Beach Road in Baytown, Texas and the Brazoria County Landfill located at 10310 FM 523 in Angleton, Texas.

I. *Houston Divestiture Assets* refers to the Houston Hauling assets, Sunray Assets, and Airspace Assets.

J. *Small Container* means a 1 to 10 cubic yard container.

II. Jurisdiction

This Court has jurisdiction over the subject matter of this action and over the United States, Texas, USA Waste, and TransAmerican and venue of this action is proper in the United States District Court for the District of Columbia.

III. Applicability

A. The provisions of this Modified Final Judgment apply to USA Waste and TransAmerican, their successors and assignees, their subsidiaries, affiliates, directors, officers, managers, agents, and employees, and all other persons in active concert or participation with any of them who shall have received actual notice of this Modified Final Judgment by personal service or otherwise.

B. USA Waste and TransAmerican shall require, as a condition of the sale or other disposition of all or substantially all of the Houston Divestiture Assets, that the acquiring party or parties agree to be bound by the provisions of this Modified Final Judgment.

IV. Divestiture of Assets

A. USA Waste and TransAmerican agree within 90 days from the filing of this Modified Final Judgment to divest the Houston Divestiture Assets, unless the United States, after consultation with Texas, consents that only some portion of the Houston Divestiture Assets need be divested. USA Waste and TransAmerican further agree to notify the United States and Texas in writing immediately when they have completed the divestitures.

B. Unless the United States, after consultation with Texas, otherwise consents, divestiture under Section IV.A, or by the trustee appointed pursuant to Section V, shall be accomplished in such a way as to satisfy the United States, in its sole determination after consultation with Texas, that the Houston Hauling Assets can and will be operated by the purchaser as a viable, ongoing business engaged in solid waste hauling, and that the Sunray Assets can and will be operated by the purchases as a viable, ongoing business engaged in solid waste disposal in the Houston Area. Divestiture under Section IV.A or by the trustee, shall be made to a purchaser or purchasers for whom it is demonstrated to the satisfaction of the United States, after consultation with Texas, that (1) the purchase or purchases is or are for the purpose of competing effectively in solid waste hauling, dry waste disposal, or both, and (2) the purchaser or purchasers has or have the managerial, operational, and financial capability to compete effectively in solid waste hauling and/or disposal.

C. In accomplishing the divestitures ordered by this Modified Final Judgment, USA Waste and TransAmerican promptly shall make known, by usual and customary means, the availability of the Houston Divestiture Assets described in this Modified Final Judgment. USA Waste and TransAmerican shall inform any person making an inquiry regarding a possible purchase that the sale is being made pursuant to this Modified Final Judgment and provide such person with a copy of this Modified Final Judgment. USA Waste and TransAmerican shall also offer to furnish to all bona fide prospective purchasers, subject to customary confidentiality assurances, all information regarding the Houston Divestiture Assets customarily provided in a due diligence process except such information subject to attorney-client or work-product privileges. USA Waste and TransAmerican shall make available such information to the United States and Texas at the same time such information is made available to any other person. In giving notice of the availability of the Houston Hauling Assets, defendants shall not exclude any persons bound by any non-compete obligations to Sanifill, Inc., or TransAmerican.

D. USA Waste and TransAmerican shall not require of the purchaser or purchasers, as a condition of sale, that any current employee of the Houston Divestiture Assets be offered or guaranteed continued employment after the divestiture.

E. USA Waste and TransAmerican shall take all reasonable steps to accomplish quickly the divestiture contemplated by this Modified Final Judgment.

F. As part of the sale of the Airspace Assets, USA Waste and TransAmerican will include an agreement to accept waste from the purchaser or anyone designated by the purchaser to dispose of waste at the landfills. As agents of the purchaser, USA Waste and TransAmerican will operate the gate, scale house, and disposal area under terms and conditions no less favorable than those provided to USA Waste's and TransAmerican's vehicles or the vehicles of any municipality in the Houston Area, except as to price and credit terms.

V. Appointment of Trustee

A. In the event that USA Waste and TransAmerican have not divested all of their assets required by Section IV.A by the time set forth in Section IV.A, the Court shall, on application of the United States, after consultation with Texas, appoint a trustee selected by the United States to effect the divestiture required by Section IV.A. After the appointment of a trustee becomes effective, only the trustee shall have the right to sell the assets required to be divested pursuant to Section IV.A. The trustee shall have the power and authority to accomplish the divestiture at the best price then obtainable upon a reasonable effort by the trustee, subject to the provisions of Section VI of this Final Judgment, and shall have such other powers as the Court shall deem appropriate. USA Waste and TransAmerican shall not object to a sale by the trustee on any grounds other than the trustee's malfeasance, or on the grounds that the sale is contrary to the express terms of this Modified Final Judgment. Any such objections by USA Waste or TransAmerican must be conveyed in writing to the United States, Texas, and the trustee within ten (10) days after the trustee has provided the notice required under Section VI.

B. The trustee shall serve the cost and expense of USA Waste and TransAmerican, on such terms and conditions as the Court may prescribe, and shall account for all monies derived from the sale of the assets sold by the

trustee and all costs and expenses so incurred. After approval by the Court of the trustee's accounting, including fees for its services, all remaining money shall be paid to USA Waste and TransAmerican and the trust shall then be terminated. The compensation of such trustee shall be reasonable and based on a fee arrangement providing the trustee with an incentive based on the price and terms of the divestiture and the speed with which it is accomplished.

C. USA Waste and TransAmerican shall use their best efforts to assist the trustee in accomplishing the required divestiture. The trustee and any consultants, accountants, attorneys, and other persons retained by the trustee shall have full and complete access to the personnel, books, records, and facilities of the Houston Divestiture Assets, and USA Waste and TransAmerican shall develop financial or other information relevant to such assets as the trustee may reasonably request, subject to reasonable protection for trade secret or other confidential research, development, or commercial information. USA Waste and TransAmerican shall take no action to interfere with or to impede the trustee's accomplishment of the divestiture.

D. After its appointment, the trustee shall file monthly reports with the United States, Texas, USA Waste, TransAmerican, and the Court setting forth the trustee's efforts to accomplish the divestiture ordered under this Modified Final Judgment. If the trustee has not accomplished such divestiture within six months after its appointment, the trustee shall thereupon promptly file with the Court a report setting forth (1) the trustee's efforts to accomplish the required divestiture, (2) the reasons, in the trustee's judgment, why the required divestiture has not been accomplished, and (3) the trustee's recommendations. The trustee shall at the same time furnish such report to the United States, Texas, USA Waste, and TransAmerican, who shall each have the right to be heard and to make additional recommendations consistent with the purpose of the trust. The Court shall thereafter enter such orders as it shall deem appropriate in order to carry out the purpose of the trust, which may, if necessary, include extending the trust and the term of the trustee's appointment by a period requested by the United States, after consultation with Texas.

E. USA Waste and TransAmerican shall give 30 days notice to the United States and Texas prior to acquiring any interest that is not otherwise reportable under the Hart-Scott-Rodino Act in any assets, capital stock, or voting securities, other than in the ordinary course of business, of any person that, at any time during the twelve months immediately preceding the acquisition, was engaged in the solid waste hauling industry in the Houston Area where the person had small container revenues in excess of $500,000 per year or total revenues in excess of $1 million per year. However, nothing herein shall preclude USA Waste or TransAmerican from acquiring less than five (5) percent of the stock of a publicly traded company.

F. USA Waste and TransAmerican shall give 30 days notice to the United States and Texas prior to acquiring any interest that is not otherwise reportable under the Hart-Scott-Rodino Act in any assets, capital stock, or voting securities, other than in the ordinary course of business, of any person that, at any time during the twelve months immediately preceding the acquisition, was engaged in the municipal solid waste or dry waste disposal industry in the Houston Area, where the revenues of that person, when aggregated with the revenues of any person or persons acquired in the previous six months, exceed the revenue limits of paragraph E above. However, nothing herein shall preclude USA Waste or TransAmerican from acquiring less than five (5) percent of the stock of a publicly traded company.

G. The purchaser or purchasers of the Houston Divestiture Assets, or any of them, shall not, without the prior written consent of the United States, after consultation with Texas, sell any of those assets to, or combine any of those assets with, those of USA Waste or TransAmerican during the life of this Modified Final Judgment. Furthermore, the purchaser or purchasers of the Houston Divestiture Assets, or any of them, shall notify the United States and Texas 45 days in advance of any proposed sale of all or substantially all of the assets, or change in control over those assets, acquired pursuant to this Modified Final Judgment.

VI. Notification

A. USA Waste, TransAmerican, or the trustee, whichever is then responsible for effecting the divestiture required herein, shall notify the United States and Texas of any proposed divestiture required by Section IV or V of this Modified Final Judgment. If the trustee is responsible, it shall similarly notify USA Waste and TransAmerican. The notice shall set forth the details of the proposed transaction and list the name, address, and telephone number of each person not previously identified who offered or expressed an interest or desire to acquire any ownership interest in the Houston Divestiture Assets or any of them, together with full details of the same. Within fifteen (15) days after receipt of the notice, the United States and TransAmerican may request additional information concerning the proposed divestiture, the proposed purchaser and any other potential purchaser. USA Waste and TransAmerican or the trustee shall furnish the additional information within fifteen (15) days of the receipt of the request. Within thirty (30) days after receipt of the notice or within fifteen (15) days after receipt of the additional information, whichever is later, the United States, after consultation with Texas, shall notify in writing USA Waste and TransAmerican and the trustee, if there is one, if it objects to the proposed divestiture. If the United States fails to object within the period specified, or if the United States notifies in writing USA Waste and TransAmerican and the trustee, if there is one, that it does not object, then the divestiture may be consummated, subject only to USA Waste's and TransAmerican's limited right to object to the sale under Section V.A. Upon objection by the United States, after consultation with Texas, or by USA Waste and TransAmerican under Section V.A, the proposed divestiture shall not be accomplished unless approved by the Court.

B. Thirty (30) days from the date when USA Waste and TransAmerican consummate the acquisition, but in no event later than May 30, 1998, and every thirty (30) days thereafter until the divestiture has been completed, USA Waste and TransAmerican shall deliver to the United States and Texas a written report as to the fact and manner of compliance with Section IV of this Modified Final Judgment. Each such report shall include, for each person who during the preceding thirty (30) days made an offer, expressed an interest or desire to acquire, entered into negotiations to acquire, or made an inquiry about acquiring any ownership interest in the Houston Divestiture Assets or any of them, the name, address, and telephone number of that person and a detailed description of each contact with that person during that period. USA Waste and TransAmerican shall maintain full records of all efforts made to divest the Divestiture Assets or any of them.

VII. Financing

USA Waste and TransAmerican shall not finance all or any part of any purchase made pursuant to Section IV or V of this Modified Final Judgment without the prior written consent of the

United States, after consultation with Texas.

VIII. Preservation of Assets

Until the divestitures required by the Modified Final Judgment have been accomplished:

A. USA Waste and TransAmerican shall take all steps necessary to ensure that the Houston Hauling Assets will be maintained and operated in the ordinary course of business and consistent with past practices, and shall (1) maintain all insurance policies and all permits that are required for the operation of the assets, and (2) maintain books of account and records in the usual, regular, and ordinary manner and consistent with past practices.

B. USA Waste and TransAmerican shall take all steps necessary to ensure that the Sunray Assets will be maintained and operated as an independent, ongoing, economically viable and active competitor in the provision of dry waste disposal services in the Houston Area, with management operations, books, records and competitively-sensitive sales, marketing and pricing information and decision-making kept separate and apart from, and not influenced by, that of TransAmerican's solid waste hauling and disposal business.

C. USA Waste and TransAmerican shall use all reasonable efforts to maintain and increase sales of solid waste hauling and disposal services provided by the Houston Divestiture Assets, and they shall maintain at 1997 or previously approved levels, whichever is higher, promotional, advertising, sales, marketing and merchandising support for such services.

D. USA Waste and TransAmerican shall take all steps necessary to ensure that the Houston Divestiture Assets are fully maintained in operable condition, and shall maintain and adhere to normal or previously approved repair, improvement and maintenance schedules for the Houston Divestiture Assets.

E. USA Waste and TransAmerican shall not, except as part of a divestiture approved by the United States and Texas, remove, sell or transfer any Houston Divestiture Assets, other than solid waste hauling and disposal services provided in the ordinary course of business.

F. USA Waste and TransAmerican shall take no action that would jeopardize the sale of the Houston Divestiture Assets.

G. USA Waste and TransAmerican shall appoint a person with oversight responsibility for the Houston Divestiture Assets to insure compliance with this section of the Modified Final Judgment.

IX. Compliance Inspection

For the purpose of determining or securing compliance with this Modified Final Judgment, and subject to any legally recognized privilege, from time to time.

A. Duly authorized representatives of the United States and Texas including consultants and other persons retained by the plaintiffs, shall, upon the written request of the Assistant Attorney General in charge of the Antitrust Division or the Attorney General of the State of Texas, respectively, and on reasonable notice to USA Waste and TransAmerican made to its principal offices, be permitted:

1. Access during office hours to inspect and copy all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or under the control of USA Waste and TransAmerican, which have counsel present, relating to any matters contained in this Modified Final Judgment; and

2. Subject to the reasonable convenience of USA Waste and TransAmerican and without restraint or interference from them, to interview their directors, officers, employees, and agents who may have counsel present, regarding any such matters.

B. Upon the written request of the Assistant Attorney General in charge of the Antitrust Division or the Attorney General of the State of Texas, respectively, made to USA Waste and TransAmerican at their principal offices, USA Waste and TransAmerican shall submit such written reports, under oath if requested, with respect to any of the matters contained in this Modified Final Judgment as may be requested.

C. No information nor any documents obtained by the means provided in this Section IX shall be divulged by any representative of the United States or the Office of the Attorney General of Texas to any person other than a duly authorized representative of the Executive Branch of the United States or of the Office of the Attorney General of Texas, except in the course of legal proceedings to which the United States or Texas is a party (including grand jury proceedings), or for the purpose of securing compliance with this Modified Final Judgment, or as otherwise required by law.

D. If at the time information or documents are furnished by USA Waste and TransAmerican to the United States and Texas, USA Waste and TransAmerican represent and identify in writing the material in any such information or documents for which a claim of protection may be asserted under rule 26(c)(7) of the Federal Rules of Civil Procedure, and USA Waste and TransAmerican mark each pertinent page of such material, ''Subject to claim of protection under Rule 26(c)(7) of the Federal Rules of Civil Procedure,'' then the United States and Texas shall give ten (10) days notice to USA Waste and TransAmerican prior to divulging such material in any legal proceeding (other than a grand jury proceeding) to which USA Waste or TransAmerican is not a party.

X. Retention of Jurisdiction

Jurisdiction is retained by this Court for the purpose of enabling any of the parties to this Modified Final Judgment to apply to this Court at any time for such further orders and directions as may be necessary or appropriate for the construction, implementation, or modification of any of the provisions of this Modified Final Judgment, for the enforcement of compliance herewith, and for the punishment of any violations hereof.

XI. Termination

This Modification Final Judgment will expire on the tenth anniversary of the date of its entry.

XII. Public Interest

Entry of this Modified Final Judgment is in the public interest.

Dated: _____

_____

United States District Judge

Certificate of Service

I hereby certify that copies of the Modified Final Judgment, Motion of the United States and Texas for Modification of the Final Judgment, United States' Explanation of Procedures, Hold Separate Stipulation and Order, Stipulation and Order, and Memorandum of the United States in Support of Modification of the Final Judgment have been served upon USA Waste Services, Inc., TransAmerican Waste Industries, Inc., and the Office of the Attorney General of Texas, by placing copies of the foregoing documents in the U.S. Mail, directed to each of the foregoing parties at the addresses given below, this 6th day of May, 1998.

USA Waste Services, Inc., c/o James R. Weiss, Esq., Preston, Gates, Ellis & Rouvelas Meeds, Suite 500, 1735 New York Avenue, NW., Washington, DC 20006–5209.

TransAmerican Waste Industries, Inc., J. David Green, Esq., Sr. Vice President

and General Counsel, 10554 Tanner Road, Houston, Texas 77041.
Mark Tobey, Assistant Attorney General, Chief, Antitrust Section, Office of the Attorney General of Texas, P.O. Box 12548, Austin, Texas 78711–2546.

Frederick H. Parmenter,

U.S. Department of Justice, Antitrust Division, 1401 H Street, NW., Suite 3000, Washington, DC 20530.

Memorandum of the United States and Texas in Support of Modification of the Final Judgment

The United States of America (''United States'') and the State of Texas (''Texas'') submit this memorandum in support of their motion to modify the Final Judgment entered in the above-captioned matter. Filed with the memorandum is a Stipulation and Order, a Hold Separate Stipulation and Order, a Motion for Modification of the Final Judgment, an Explanation of Procedures, and a proposed Modified Final Judgment. In accordance with the provisions of the Stipulation and Order, USA Waste Services, Inc. (''USA Waste'') and TransAmerican Waste Industries, Inc. (''TransAmerican'') have agreed to be bound by the Modified Final Judgment following consummation of the merge and pending entry of the Modified Final Judgment. Similarly, in accordance with the Hold Separate Stipulation and Order, USA Waste and TransAmerican have agreed to hold the Houston Divestiture Assets separate and maintain them as competitively viable entities after the consummation of the merger and entry of the Modified Final Judgment. The proposed Modified Final Judgment only modifies the provisions of the Final Judgment relating to the Houston, Texas area. It does not have any impact, and is not meant to have any impact, on the provisions relating to Johnstown, Pennsylvania. The modifications are necessary to ensure that the original intent of the Final Judgment, to prevent competition from being lessened in the Houston refuse hauling and disposal markets, is preserved. Consequently, the modifications are in the public interest.

I. Background

On August 30, 1996, the United States filed a civil antitrust Complaint in the above-styled action alleging that the proposed acquisition of the voting stock of Sanifill, Inc. (''Sanifill'') by USA Waste would violate Section 7 of the Clayton Act, 15 U.S.C. 18. The Complaint alleged that the combination of these competitors would lessen competition substantially in the provision of small containerized waste hauling services and landfill disposal services in the Houston, area, among other geographic locations. The Houston area encompasses Harris County, Texas; Chambers County, Texas; Brazoria County, Texas; Fort Bend Count, Texas; Montgomery County, Texas; Walker County, Texas; and Galveston County, Texas, including the municipalities located, in whole or in part, in those counties (''Houston market'').

When the Complaint was filed, the United States also filed a proposed settlement that was set forth in a proposed Final Judgment that permitted USA Waste to complete its acquisition of Sanifill, but required certain divestitures that would preserve competition in the Houston area. On December 17, 1996 after the comment period required by the Antitrust Penalties & Procedures Act (''APPA''), 15 U.S.C. 16, had passed, the Court entered the Final Judgment finding that it was in the public interest. On January 31, 1997, various waste hauling and disposal assets located in the Houston area where purchased by TransAmerican from USA Waste. Section V.G. of the Final Judgment required: (1) the purchaser of the divested hauling and disposal assets (e.g., Trans-American) to give the United States and Texas 45 days notice in advance of any sale of the assets, and (2) the purchaser would not sell the divested assets to be defendants (e.g., USA Waste) during the life of the decree.

On February 26, 1998, TransAmerican notified the United States and Texas, as required by the Final Judgment, that TransAmerican had undertake to merge itself with USA Waste. The proposed merger of TransAmerican with USA Waste would permit USA Waste to acquire the TransAmerican Houston assets that TransAmerican was prohibited from selling to USA Waste by the Final Judgment. On April 9, 1998, the United States sent a letter to USA Waste and TransAmerican notifying them that based on its investigation and consultation with Texas, it could not give its consent to USA Waste's proposed purchase of the Houston assets. The United States and Texas were concerned that the acquisition would substantially lessen competition in the provision of small containerized waste hauling services and landfill disposal services in the Houston area. USA Waste and TransAmerican were substantially informed that the United States would undertake to enforce the Final Judgment if concerns about small containerized hauling and landfills in the Houston market were not resolved. The assets in the Houston area which were of concern to the United States that USA Waste would require through the merger were: (1) the TransAmerican frontload commercial assets (''Houston Hauling Assets''). (2) a TransAmerican Type 4 landfill and related assets (''the Sunray Assets''), and (3) the rights TransAmerican had acquire to dispose of 2,000,000 tons of municipal solid waster (''MSW'') for ten years at a maximum rate of 270,000 tons a year at the USA Waste Hazlewood Landfill located at 4791 Tri-City Beach Road, Baytown, Texas 77520 and the USA Waste Brazoria County Landfill located at 10310 FM 523, Angleton, Texas. (''Airspace Assets''). Together the Houston Hauling Assets, Sunray Assets, and Airspace Assets are known as the Houston Divestiture Assets.

To prevent competition from being substantially lessened for small containerized hauling and landfill disposal in the Houston area, and to permit USA Waste to complete TransAmerican's merger with USA Waste, the United States has filed with the Court a proposed settlement that supplements the Final Judgment entered by the Court on December 17, 1996. It requires USA Waste to divest the Houston Divestiture Assets.

The proposed Modified Final Judgment orders USA Waste to divest the Houston Divestiture Assets. In addition, USA Waste must complete the divestiture of the Houston Divestiture Assets within ninety (90) days after the date on which the proposed Modified Final Judgment was filed (i.e., May 6, 1998), in accordance with the procedures specified therein.

The Stipulation and Order, Hold Separate Stipulation and Order, and proposed Modified Final Judgment require USA Waste to ensure that, until the divestitures mandated by the proposed Modified Final Judgment have been accomplished, the Houston Hauling Assets and the Sunray Assets will be maintained and operated as an independent, ongoing, economically viable and active competitor. USA Waste must preserve and maintain the assets to be divested as salable, ongoing concerns, with competitively sensitive business information and decision-making divorced from that of USA Waste. USA Waste will appoint a person or persons to monitor and ensure its compliance with these requirements of the proposed Modified Final Judgment.

The United States, Texas, USA Waste, and TransAmerican have stipulated that the proposed Modified Final Judgment may be entered after compliance with the 60-day comment period provided for in the United States' Explanation of

Procedures. Entry of the proposed Modified Final Judgment would terminate any need for action regarding the proposed merger of TransAmerican with USA Waste, except that the Court would retain jurisdiction to construe, modify, or enforce the provisions of the proposed Modified Final Judgment and to punish violations thereof.

II. Description of the Events Giving Rise to the Proposed Modified Final Judgment

USA Waste is a Delaware corporation with its principal office in Houston, Texas. USA Waste is engaged in providing nonhazardous solid waste hauling and/or disposal in 49 states and the District of Columbia. In 1997, USA Waste had total revenues of over $1.6 billion.

TransAmerican is a Delaware corporation with its principal office in Houston, Texas. TransAmerican is engaged in providing nonhazardous solid waste hauling and/or disposal in five states. In 1996 TransAmerican had total revenues of over $16 million.

On January 26, 1998, USA Waste entered into an agreement and plan of merger whereby TransAmerican's stock would be acquired for approximately $125,470,000. This transaction is of concern to the United States and Texas because it would take place in the highly concentrated Houston small container hauling and landfill disposal industries and violate the December 17, 1996 Final Judgment entered in this action.

The Transaction's Effects in the Houston Market

A. The Solid Waste Hauling Industry

The United States asserts that small containerized hauling services and landfill disposal services constitute lines of commerce, or relevant product markets, for antitrust purposes, and that the Houston area constitutes an appropriate section of the country, or relevant geographic market. The United States maintains that the effect of USA Waste's acquisition may be to lessen competition substantially in the provision of small containerized hauling services and landfill disposal services in the Houston market. As a result, when USA Waste undertook to acquire TransAmerican, the United States took the position that USA Waste could not obtain the small containerized hauling and landfill assets it divested to TransAmerican 18 months ago to resolve anticompetitive concerns that arose in August 1996, when USA Waste purchased Sanifill.

Solid waste hauling involves the collection of paper, food, construction material and other solid waste from homes, businesses and industries, and the transporting of that waste to a landfill or other disposal site. These services may be provided by private haulers directly to residential, commercial and industrial customers, or indirectly through municipal contracts and franchises.

Service to commercial customers accounts for a large percentage of total hauling revenues. Commercial customers include restaurants, large apartment complexes, retail and wholesale stores, office buildings, and industrial parks. These customers typically generate a substantially larger volume of waste than that generated by residential customers. Waste generated by commercial customers is generally placed in metal containers of one to ten cubic yards provided by their hauling company. One to ten cubic yard containers are called ''small containers.'' Small containers are collected primarily by front-end load vehicles that lift the containers over the front of the truck by means of a hydraulic hoist and empty them into the storage section of the vehicle, where the waste is compacted. Specially-rigged rear-end load vehicles can also be used to service some small container customers, but these trucks generally are not as efficient as front-end load vehicles and are limited in the size of containers they can safely handle. Front-end load vehicles can drive directly up to a container and hoist the container in a manner similar to a forklift hoisting a pallet; the containers do not need to be manually rolled into position by a truck crew as with a rear-end load vehicle. Service to commercial customers that use small containers is called ''small containerized hauling service.''

Solid waste hauling firms also provide service to residential and industrial (or ''roll-off'') customers. Residential customers, typically households and small apartment complexes that generate small amounts of waste, use noncontainerized solid waste hauling service, normally placing their waste in plastic bags or trash cans at curbside. Rear-end load vehicles are generally used to collect waste from residential customers and from those commercial customers that generate relatively small quantities of solid waste, similar in amount and kind to those generated by residential customers. Generally, rear-end loaders use a two or three person crew to manually load the waste into the rear of the vehicle.

Industrial or roll-off customers include factories and construction sites. These customers either generate non-compactible waste, such as concrete or building debris, or very large quantities of compactible waste. They deposit their waste into very large containers (usually 20 to 40 cubic yards) that are loaded onto a roll-off truck and transported individually to the disposal site where they are emptied before being returned to the customer's premises. Customers, like shopping malls, use large, roll-off containers with compactors. This type of customer generally generates compactible trash, like cardboard, in very great quantities, it is more economical for this type of customer to use roll-off service with a compactor than to use a number of small containers picked up multiple times a week.

There are no practical substitutes for small containerized hauling service. Small containerized hauling service customers will not generally switch to noncontainerized service because it is too impractical and costly for those customers to bag and carry their trash to the curb for hand pick-up. Small containerized hauling service customers also value the cleanliness and relative freedom from scavengers afforded by that service. Similarly, roll-off service is much too costly and takes up too much space for most small containerized hauling service customers. Only customers that generate the largest volumes of solid waste can economically consider roll-off service, and for customers that do generate large volumes of waste, roll-off service is usually the only viable option.

Solid waste hauling services are generally provided in very localized areas. Route density (a large number of customers that are close together) is necessary for small containerized solid waste hauling firms to be profitable. In addition, it is not economically efficient for trash hauling equipment to travel long distances without collecting significant amounts of waste. Thus, it is not efficient for a hauler to serve major metropolitan areas from a distant base. Haulers, therefore, generally establish garages and related facilities within each major local area served.

The United States asserts that USA Waste's acquisition of TransAmerican would substantially lessen competition for the provisions of small containerized hauling service in the Houston market. Actual and potential competition between USA Waste and TransAmerican for the provision of small containerized hauling service in the Houston market will be eliminated.

USA Waste and TransAmerican are two of the largest providers of small

containerized hauling service in the Houston market. In the Houston market, USA Waste has 28 percent share and TransAmerican has a 7 percent share. The acquisition would give USA Waste a 35 percent share of the market.

Solid waste hauling is an industry highly susceptible to tacit or overt collusion among competing firms. Overt collusion has been documented in more than a dozen criminal and civil antitrust cases brought in the last decade and a half. Such collusion typically involves customer allocation and price fixing, and where it has occurred, has been shown to persist for many years.

The elimination of one of a small number of significant competitors, such as would occur as a result of the proposed transaction in the alleged market, significantly increases the likelihood that consumers in these markets are likely to face higher prices or poorer quality service. A new entrant cannot constrain the prices of larger incumbents until it achieves minimum efficient scale and operating efficiencies comparable to the incumbent firms. In small containerized hauling service, achieving comparable operating efficiencies requires achieving route density comparable to existing firms, which typically takes a substantial period of time. A substantial barrier to entry is created by the use of long-term contracts coupled with selective pricing reductions to specific customers to deter new entrants into small containerized hauling service and to hinder them in winning enough customers to build efficient routes. Further, even if a new entrant endures and grows to a point near minimum efficient scale, the entrant will often be purchased by an incumbent firm and will be removed as a competitive threat.

B. Landfill Disposal Services

Most commercial solid waste is taken by haulers to landfills for disposal. Access to a suitable municipal solid waste (''MSW'') landfill at a competitive price is essential to a hauling company performing commercial containerized hauling service because disposal costs account for approximately 30–50 percent of the revenues received for this service. Suitable MSW landfills are difficult and time consuming to obtain because of the scarcity of appropriate land, high capital cost, local resident opposition, and government regulation. Several years are required to process an application, with no guarantee of success.

In Texas, dry waste can be taken to what is referred to as a dry waste (Type 4) landfill. Access to a suitable landfill at a competitive price is essential to a hauling company collecting dry waste because disposal costs can account for over 60% of the revenues for this service. Dry waste landfills are difficult and time consuming to obtain because to permit and build a Type 4 landfill in Texas, one must go through a process similar to that for permitting a Type 1 landfill. Several years are required to process an application, with no guarantee of success.

TransAmerican's merger with USA Waste will substantially lessen competition for landfill service in the Houston market. Actual and potential competition between USA Waste and TransAmerican for the provision of MSW and dry waste landfill service in the Houston market will be eliminated. USA Waste is the largest owner of dry waste landfill services in the Houston market. In the Houston area, there are 18 Type 4 landfills in the Houston area. USA Waste has eleven dry waste landfills (four operating) and TransAmerican has one. Concerning Type 1 MSW landfills, there are nine in the Houston area that are owned by three firms. Through the Final Judgment, TransAmerican obtained access to the USA Waste Type 1 landfills for a period of ten years thereby assuring it disposal access for the MSW it hauls.

As a result of the acquisition, the concentration of dry waste landfill services in the Houston market will be substantially increased, which is likely to result in price increases. Furthermore, a small containerized hauling competitor with guaranteed access to Type 1 landfills will be removed from the Houston area. In the Houston market, there are no alternative types of facilities available for the disposal of either MSW waste or dry waste. Although dry waste can be taken to either a MSW or a dry waste landfill, prices at the MSW landfill are significantly higher than at the dry waste landfill, so that MSW landfills are not normally used for dry waste. Accordingly, haulers are not likely to switch to another disposal service despite an increased concentration in the ownership of MSW or dry landfills and a likely price increase resulting from the merger.

C. Harm to Competition as a Consequence of the Acquisition

The United States asserts that the transaction would have the following effects, among others: competition for the provision of small containerized hauling service and landfill disposal service in the Houston market will be substantially lessened; actual and potential competition between USA Waste and TransAmerican in the provision of small containerized hauling service and landfill disposal service in the Houston market will be eliminated; and prices for small contianerized hauling service and landfill disposal service in the Houston market are likely to increase above competitive levels.

III. Explanation of the Proposed Modified Final Judgment

The provisions of the proposed Modified Final Judgment are designed to eliminate the anticompetitive effects of the acquisition in small containerized hauling services in the Houston market by ensuring that the intent of the provisions of the Final Judgment relating to the Houston market and the Houston Divestiture Assets entered by the Court on December 17, 1996 are enforced and a new, independent and economically viable competitor is established in the Houston market. The proposed Modified Final Judgment requires USA Waste and TransAmerican, within 90 days of May 6, 1998, to divest, as viable ongoing business, the Houston Hauling Assets, Sunray Assets and the Airspace Assets. The divestitures would include the small containerized hauling service assets, landfill disposal assets, and such other assets as may be necessary to ensure the viability of the small container and landfill businesses. If USA Waste and TransAmerican cannot accomplish these divestitures within the above-described period, the proposed Modified Final Judgment provides that, upon application (after consultation with Texas) by the United States, the Court will appoint a trustee to effect divestiture.

The proposed Modified Final Judgment provides that these assets must be divested in such a way as to satisfy the United States (after consultation with Texas) that the operations can and will be operated by the purchaser or purchasers as viable, ongoing businesses that can compete effectively in the relevant market. USA Waste and TransAmerican must take all reasonable steps necessary to accomplish the divestitures, shall cooperate with bona fide prospective purchasers and, if one is appointed, with the trustee.

If a trustee is appointed, the proposed Modified Final Judgment provides that USA Waste and TransAmerican will pay all costs and expenses of the trustee. The trustee's commission will be structured so as to provide an incentive for the trustee based on the price obtained and the speed with which divestiture is accomplished. After his or her appointment becomes effective, the

trustee will file monthly reports with the United States, Texas, USA Waste, TransAmerican and the Court, setting forth the trustee's efforts to accomplish divestiture. At the end of six months, if the divestiture has not been accomplished, the trustee and the United States, Texas, USA Waste, and TransAmerican will make recommendations to the Court which shall enter such orders as appropriate in order to carry out the purpose of the trust, including extending the trust or the term of the trustee's appointment.

In addition, the proposed Modified Final Judgment intends to eliminate the anticompetitive effects of the acquisition in the Houston Area market for MSW disposal services by requiring USA Waste and TransAmerican to sell the rights to dispose of 2 million tons of MSW waste over ten years at USA Waste's only two MSW landfills in the area. The proposed Modified Final Judgment limits the amount disposed of in any one year to 270,000 tons and requires that USA Waste will provide the necessary services to dispose of the waste to the purchaser or any agents designated by the purchaser in a nondiscriminatory manner. The availability of this landfill capacity helps to ensure the success of any entity purchasing the Houston Hauling Assets in competing with other haulers in the Houston market.

Pursuant to its terms, the proposed Modified Final Judgment mandates that USA Waste and TransAmerican divest TransAmerican's sole dry waste (Type 4) landfill (the North County Landfill) in the Houston area market. The divestiture of the North County Landfill will help moderate any possible anticompetitive effect related to the merger and its impact on dry waste landfills in the Houston area market.

Finally, the requirement of the proposed Modified Final Judgment that USA Waste and TransAmerican provide 30 days written notice of any proposed purchase of significant waste hauling or disposal companies in the Houston market ensures that the U.S. Department of Justice and the State of Texas General's Office will be able to review, consider and oppose if necessary any future consolidation in the market for a period of ten years.

IV. Modification is in the Public Interest

Uncontested motions to modify the Final Judgment are granted if the proposed modification is within the reaches of the public interest. *See, e.g., United States* v. *Western Electric Co.*, 993 F.2d 1572, 1576 (D.D.C. 1993) (*Citing United States* v. *Western Electric Co.*, 900 F.2d 283, 307 (D.D.C. 1990) (hereinafter *Triennial Review*)). In the context of an uncontested motion to modify an existing consent decree, the ''public interest'' standard ''directs the district court to approve an uncontested modification so long as the resulting array of rights and obligations is within the zone of settlements consonant with the public interest today.'' United States v Western Electric 1993 F.2d at 1576 (*quoting Triennial Review*, 900 F.2d at 307) (emphasis in original). Thus, ''it is not up to the court to reject an agreed-on change simply because the proposal diverged from *its view* of the public interest. Rather, the court [is] bound to accept any modification that the Department (with the consent of third parties, we repeat) reasonably regarded as advancing the public interest.'' *United States* v. *Western Electric Co.*, 993 F.2d at 1576. *See also United States* v. *Microsoft Corp.*, 56 F.3d 1448, 1461–62 (D.C. Cir. 1995); *United States* v. *Bechtel Corp.*, 648 F.2d 660, 666 (9th Cir.), *cert. denied*, 454 U.S. 1083 (1981); *United States* v. *BNS.* Inc., 858 F.2d 456, 462 (9th Cir. 1988). Precedent requires that the balancing of competing social and political interests affected by a proposed antitrust consent decree must be left, in the first instance, to the discretion of the Attorney General. The court's role in protecting the public interest is one of insuring that the government has not breached its duty to the public in consenting to the decree. The court is required to determine not whether a particular decree is one that will best serve society, but whether the settlement is 'within the reaches of the *public interest*.' More elaborate requirements might undermine the effectiveness of antitrust enforcement by consent decree.

Bechtel, 648 F.2d at 666 (*emphasis added*); *See BNS*, 858 F.2d at 463; *United States* v. *National Broadcasting Co.*, 449 F. Supp. 1127, 1143 (C.D. Cal. 1978) *See also Microsoft*, 56 F.3d at 1461.

V. Conclusion

For all of the foregoing reasons, the proposed modification is in the public interest, and the motion to enter the Modified Final Judgment should be granted. Respectfully submitted.

Dated: May 5, 1998.

For the United States

Frederick H. Parmenter

Virginia Bar No.: 18184, Attorney, U.S. Department of Justice, Antitrust Division, 1401 H Street, N.W., Washington, D.C. 20530, (202) 307–0620.

For the States of Texas

Dan Morales,

Texas Attorney General.

Mark Tobey,

Assistant Attorney General, Chief, Antitrust Section, Texas Bar No.: 20082960.

Kim Van Winkle,

Assistant Attorney General, Texas Bar No.: 24003104.

Office of the Attorney General of Texas, P.O. Box 12548, Austin, Texas 78711–2546, (512) 463–2185.

Motion of the United States and Texas for Modification of The Final Judgment

The United States of America (''United States'') and the State of Texas (''Texas'') move this Court to modify the Final Judgment in the above-captioned matter as to the provisions relating to the Houston Divestiture Assets and the Houston area. This motion is based on the following grounds:

I. Definitions

1. *USA Waste* means USA Waste Services, Inc., a Delaware corporation with its headquarters in Houston, Texas, and its successors and assigns, their subsidiaries, affiliates directors, officers, managers, agents and employees.

2. *Houston Area* means Harris County, Texas; Chambers County, Texas; Brazoria County, Texas; Fort Bend County, Texas; Montgomery County, Texas; Walker County, Texas; and Galveston County, Texas.

3. *Houston Hauling Assets* means the frontload commercial business of TransAmerican that provides solid waste hauling services in the Houston Area. These assets include all customer lists, contracts and accounts, including all contracts for disposal of solid waste at disposal facilities, all trucks, containers, equipment, material, and supplies associated with these assets, and the garages, including all associated equipment, located at 10554 Tanner Road, Houston, Texas 77041 and 999 Ashland, Channelview, Texas 77530.

4. *Sunray Assets* means the operating, permitted Type 4 landfill (also known as the North County Landfill) and other related assets of TransAmerican with an office at 2015 Wyoming in League City, Texas. These assets include the current permit Number 1849 and permit application Number 1849A filed with the Texas Natural Resource Conservation Commission, all customer lists, contracts and accounts, including

all equipment, material, and supplies associated with these assets.

5. *Airspace Assets* means the right to dispose, over a ten-year period of up to a total of 2,000,000 tons of municipal solid waste in amounts of up to a total of 270,000 tons per year at the Hazlewood Landfill located at 4971 Tri-City Beach Road in Baytown, Texas and the Brazoria County Landfill located at 10310 FM 523 in Angleton, Texas.

6. *Houston Divestiture Assets* means the Houston Hauling Assets, Sunray Assets, and Airspace Assets.

II. Background and Objectives

1. On August 30, 1996, the United Texas, and Pennsylvania filed a complaint in the above-cationed case alleging that USA Waste's acquisition of Sanifill, Inc. (''Sanifill'') violated Section 7 of the Clayton Act, 15 U.S.C. 18. The complaint alleged that the combination of USA Waste and Sanifill would substantially lessen competition in providing hauling and disposal services in the Houston Area and Johnstown, Pennsylvania.

2. On December 17, 1996, the Court entered a Final Judgment which directed the defendants to divest the Houston Divestiture Assets and undertake certain measure in Johnstown to alleviate the competitive harm of the acquisition.

3. The Houston Divestiture Assets were purchased by TransAmerican on January 31, 1997.

4. On January 26, 1998, USA Waste entered into an agreement with TransAmerican pursuant to which USA Waste proposed to merge TransAmerican with USA Waste. The value of the proposed transaction is approximately $125,470.000.

5. On February 26, 1998, TransAmerican notified the United States and Texas as required by the Final Judgment that TransAmerican has undertaken to merge itself with USA Waste. Section V.G. of the Final Judgment requires the purchaser of the Houston Divestiture Assets (e.g., TransAmerican) to give the United States and Texas 45 days notice in advance of any sale of the Houston Divestiture assets and that the purchaser shall not sell the Houston Divestiture Assets to the defendants (e.g., USA Waste) during the life of the decree.

6. On April 9, 1998, the United States sent a letter to USA Waste and TransAmerican notifying them that based on its investigation consultations with Texas, it could not give its consent to USA Waste's proposed purchase of the Houston assets.

7. USA Waste and TransAmerican have agreed to the prompt and certain divestiture of the Houston Divestiture Assets as a viable business operation to a third party or parties to assure that competition is not substantially lessened in the Houston Area.

8. For the purpose of accomplishing the divestiture of the Houston Divestiture Assets, USA Waste and TransAmerican authorize the United and Texas to state that they concur in this motion.

9. The United States does not believe that that proposed Modified Final Judgment is subject to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16. However, the United States intends to follow the comment procedures outlined in the attached Explanation of Procedures. After completion of the procedures, the United States will file another motion requesting that the Court enter the attached Modified Final Judgment.

Respectfully submitted.

Dated: May 5th, 1998

For the United States:

Frederick H. Parmenter,

Virginia Bar No.: 18184, U.S. Department of Justice, Antitrust Division, 1401 H Street, N.W., Suite 3000, Washington, D.C. 20530, (202) 307–0620.

For The State of Texas

Dan Morales,

Texas Attorney General.

Mark Tobey,

Assistant Attorney General, Chief, Antitrust Section, Texas Bar No.: 20082960.

Kim Van Winkle,

Assistant Attorney General, Texas Bar No.: 24003104.

Office of the Attorney General of Texas, P.O. Box 12548, Austin, Texas 78711–2546, (512) 463–2185.

Hold Separate Stipulation and Order

It is hereby stipulated and agreed by and between the United States of America, the State of Texas, USA Waste Services, Inc., and TransAmerican Waste Industries, Inc., subject to approval and entry by the Court, that:

I. Definitions

As used in this Hold Separate Stipulation and Order:

A. *Solid waste hauling* means the collection and transportation to a disposal site of municipal solid waste (but not construction and demolition waste; medical waste; organic waste; special waste, such as contaminated soil; sludge; or recycled materials) from residential, commercial and industrial customers.

B. *USA Waste* means USA Waste Services, Inc., a Delaware corporation with its headquarters in Houston, Texas, and its successors and assigns, their subsidiaries, affiliates, directors, officers, managers, agents and employees.

C. *TransAmerican* means TransAmerican Waste Industries, Inc., a Delaware corporation with its headquarters in Houston, Texas and its successors and assigns, their subsidiaries, affiliates, directors, officers, managers, agents and employees.

F. *Houston Area* means Harris County, Texas; Chambers County, Texas; Brazoria County, Texas; Fort Bend County, Texas; Montgomery County, Texas; Walker County, Texas; and Galveston County, Texas.

G. *Houston Hauling Assets* means the frontload commercial business of TransAmerican that provides solid waste hauling services in the Houston Area. These assets include all customer lists, contracts and accounts, including all contracts for disposal of solid waste at disposal facilities, all trucks, and containers, equipment, material, and supplies associated with these assets, and the garages, including all associated equipment, located at 10554 Tanner Road, Houston, Texas 77041 and 999 Ashland, Channelview, Texas 77530.

H. *Sunray Assets* means the operating, permitted Type 4 landfill (also known as the North County Landfill) and other related assets of USA Waste with an office at 2015 Wyoming in League City, Texas. These assets include the current permit Number 1849 and permit application Number 1849A filed with the Texas Natural Resource Conservation Commission, all customer lists, contracts and accounts, including all equipment, material, and supplies associated with these assets.

I. *Airspace Assets* means the right to dispose, over a ten-year period of up to a total of 2,000,000 tons of municipal solid waste in amounts of up to a total of 270,000 tons per year at the Hazlewood Landfill located at 4971 Tri-City Beach Road in Baytown, Texas and the Brazoria County Landfill located at 10310 FM 523 in Angleton, Texas.

J. *Houston Divestiture Assets* means to the Houston Hauling Assets, Sunray Assets, and Airspace Assets.

II. Objectives

The Modified Final Judgment filed in this case is meant to ensure USA Waste's prompt divestiture of the Houston Divestiture Assets for the purpose of maintaining a viable competitor in the waste disposal and hauling business in the Houston area to remedy the effects that the United States and Texas allege would otherwise result from USA Waste's proposed acquisition of TransAmerican. This Hold Separate

Stipulation and Order ensures, prior to such divestiture, that the Houston Hauling Assets and the Sunray Assets which are being divested be maintained as independent, economically viable, ongoing business concerns, and that competition is maintained during the pendency of the divestiture.

III. Hold Separate Provisions

Until the divestiture required by the Modified Final Judgment has been accomplished:

A. USA Waste shall preserve, maintain, and operate the Houston Hauling Assets and the Sunray Assets as independent competitors with management, sales, and operations held entirely separate, distinct and apart from those of USA Waste. USA Waste shall not coordinate the marketing or sale of its waste disposal and hauling business with the waste disposal and hauling business at the Houston Hauling Assets and the Sunray Assets. Within thirty (30) days of the entering of this Order, USA Waste will inform the United States and Texas of the steps taken to comply with this provision.

B. USA Waste shall take all steps necessary to ensure that the Houston Hauling Assets and the Sunray Assets will be maintained and operated as independent, ongoing, economically viable and active competitors in the waste disposal and hauling business in the Houston area; and that the management of the Houston Hauling Assets and the Sunray Assets will not be influenced by USA Waste, and the books, records, competitively sensitive sales, marketing and pricing information, and decision-making associated with the Houston Hauling Assets and the Sunray Assets will be kept separate and apart from the operations of USA Waste. USA Waste's influence over the Houston Hauling Assets and the Sunray Assets shall be limited to that necessary to carry out USA Waste's obligations under this Order and the Modified Final Judgment.

C. USA Waste shall use all reasonable efforts to maintain and increase waste disposal and hauling sales at the Houston Hauling Assets and the Sunray Assets, and shall maintain at 1997 or previously approved levels, whichever are higher, promotional, advertising, sales, technical assistance, marketing and merchandising support for the disposal and hauling of waste associated with the Houston Hauling Assets and the Sunray Assets.

D. USA Waste shall provide sufficient working capital to maintain the Houston Hauling Assets and the Sunray Assets as economically viable, ongoing businesses.

E. USA Waste shall take all steps necessary to ensure that the Sunray Assets are fully maintained in operable condition at no lower than its current rated capacity, and shall maintain and adhere to normal repair and maintenance schedules for the Houston Hauling Assets and the Sunray Assets.

F. USA Waste shall not, except as part of a divestiture approved by the United States and Texas, remove, sell, lease, assign, transfer, pledge or otherwise dispose of any assets of the Houston Hauling Assets and the Sunray Assets, including intangible assets that relate to the permits described in Section I of the Modified Final Judgment.

G. USA Waste shall maintain, in accordance with sound accounting principles, separate, accurate and complete financial ledgers, books and records that report on a periodic basis, such as the last business day of every month, consistent with past practices, the assets, liabilities, expenses, revenues and income of the Houston Hauling Assets and the Sunray Assets.

H. Except in the ordinary course of business or as is otherwise consistent with this Hold Separate Agreement, USA Waste and TransAmerican shall not hire and USA Waste and TransAmerican shall not transfer or terminate, or alter any current employment or salary agreements for any USA Waste or TransAmerican employees who (I) on the date of the signing of this Agreement, work at the Houston Hauling Assets or the Sunray Assets or (ii) are members of management referenced in Section III(I) of this Order.

I. Until such time as the Houston Hauling Assets and the Sunray Assets are divested, the Assets to be Divested shall be managed by Ted Meyer of TransAmerican. Ted Meyer shall have complete managerial responsibility for the Houston Hauling Assets and the Sunray Assets, subject to the provisions of this Order and the Modified Final Judgment. In the event that Ted Meyer is unable to perform his duties, USA Waste shall appoint, subject to the United States' and Texas' approval, a replacement within ten (10) working days. Should USA Waste fail to appoint a replacement acceptable to the United States and Texas within ten (10) working days, the United States and Texas shall appoint a replacement.

J. USA Waste shall take no action that would interfere with the ability of any trustee appointed pursuant to the Modified Final Judgment to complete the divestiture pursuant to the Modified Final Judgment to a suitable purchaser.

K. this Hold Separate Stipulation and Order shall remain in effect until consummation of the divestiture contemplated by the Modified Final Judgment or until further Order of the Court.

Dated: May 5, 1998.

For the United States:

Frederick H. Parmenter,

Virginia Bar No.: 18184, U.S. Department of Justice, Antitrust Division, 1401 H Street, N.W., Suite 3000, Washington, D.C. 20530, (202) 307–0620.

For the State of Texas

Dan Morales,

Texas Attorney General.

Mark Tobey,

Assistant Attorney General, Chief, Antitrust Section, Texas Bar No.: 20082960.

For USA Waste Services, Inc.

James R. Weiss,

District of Columbia Bar No.: 379798, Preston, Gates, Ellis & Rouvelas Meeds, 1735 New York Avenue, N.W., Suite 500, Washington, D.C. 20006–5209, (202) 662–8425.

For TransAmerican Waste Industries, Inc.

J. David Green,

Sr. Vice President & General Counsel, TransAmerican Waste Industries, Inc., 10554 Tanner Road, Houston, Texas 77041, (713) 956–1212.

Kim Van Winkle,

Assistant Attorney General, Texas Bar No.: 24003104, Office of the Attorney General of Texas, P.O. Box 12548, Austin, Texas 78711–2546, (512) 463–2185.

Order

It is so ordered, this 6th day of May, 1998.

Gladys Kessler,

United States District Judge.

[FR Doc. 98–16216 Filed 6–17–98; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Enterprise Computer Telephony Forum

Notice is hereby given that, on June 25, 1997, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. § 4301 *et seq.* (''the Act''), the Enterprise Computer Telephony Forum (''ECTF'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

Specifically, Deutsche Telekom, Berlin, GERMANY; and Excel, Inc., Hyannis, MA, have become Principal Members. Ariel Corp., Cranbury, NJ; Comdial Corporation, Charlottesville, VA; DeTeWe Kommunikations, Berlin, GERMANY; Dictaphone, Stratford, CT; Eastman Kodak, Rochester, NY; Force Computers, San Jose, CA; Mitsubishi Electronics Corp., Kanagawa, JAPAN; Offnet SPA, Rome, ITALY; Phillips Business Communications, Hilversum, THE NETHERLANDS; Summa Four, Inc., Manchester, NH; and Vanguard, Morris Plains, NJ, have become Auditing Members.

Precision Systems, Inc. and Voice Technologies Group are no longer Principal Members.

Ascom Telecom Ltd, Berkeley Speech Technologies; and Digital Systems International, are no longer Auditing Members.

No other changes have been made in the membership, nature or objectives of ECTF. Membership remains open, and ECTF intends to file additional written notifications disclosing all changes in membership.

On February 20, 1996, ECTF filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on May 13, 1996 (61 FR 22074).

The last notification was filed with the Department on May 2, 1997. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on November 28, 1997 (62 FR 63387).

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 98–16219 Filed 6–17–98; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—National Center for Manufacturing Sciences, Inc.

Notice is hereby given that, on April 10, 1998, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), the National Center for Manufacturing Sciences, Inc. (''NCMS'') filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, the following companies were accepted as active members of NCMS: Dow-United Technologies Composite Products, Inc., Wallingford, CT; OG Technology, Inc., Ann Arbor, MI; Preco Industries, Inc., Lenexa, KS; Steel Products Division (United Defense Systems, L.P.), Anniston, AL; MicroDexterity Systems, Inc., Carbondale, CO. Also approved for affiliate membership in NCMS were: Alberta Research Council, Edmonton, Alberta, CANADA; Interconnection Technology Research Institute, Austin, TX; Industry Canada, Ottawa, Ontario, CANADA; Materials and Manufacturing Ontario, Mississauga, Ontario, CANADA; National Research Council, Ottawa, Ontario, CANADA.

The following companies recently resigned from membership in NCMS: Angle, Inc., Springfield, VA; SDL, Inc., San Jose, CA; American Foundrymen's Society, Des Plains, IL; Gear Research Institute, Evanston, IL.

No other changes have been made in either the membership or planned activity of the group research project. membership remains open, and NCMS intends to file additional written notification disclosing all changes.

On February 20, 1987, NCMS filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on March 17, 1987 (52 FR 8375).

The last notification was filed with the Department on October 20, 1997. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on November 28, 1997 (62 FR 63388).

Constance K. Robinson,

Director of Operations Antitrust Division.

[FR Doc. 98–16217 Filed 6–17–98; 8:45 am]

BILLING CODE 4410–11–M

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Advisory Committee on Preservation Meeting

Notice is hereby given that the National Archives Advisory Committee on Preservation will meet Tuesday, August 11, 1998, from 9 a.m. to 4 p.m. in lecture room A of the National Archives at College Park, 8601 Adelphi Rd., College Park, MD 20740–6001.

The agenda for the meeting will be Charters reencasement needs and reencasement design concept.

This meeting will be open to the public. For further information, contact Alan Calmes at (301) 713–7403.

Dated: June 12, 1998.

John W. Carlin,

Archivist of the United States.

[FR Doc. 98–16224 Filed 6–17–98; 8:45 am]

BILLING CODE 7515–01–P

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Engineering Education and Centers; Notice of Meeting

In accordance with Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel Engineering Education and Centers (#173).

Date/Time: July 9–10, 1998, 7:30 a.m.–5:30 p.m.

Place: National Science Foundation, Room 580, 4201 Wilson Boulevard, Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: Mary Poats, Program Manager, Engineering Education and Centers Division, National Science Foundation, Room 585 4201 Wilson Boulevard, Arlington, VA 22230.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate proposals submitted to the Combined Research-Curriculum Development Program.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b. (c) (4) and (6) of the Government in the Sunshine Act.

Dated: June 15, 1998.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 98–16245 Filed 6–17–98; 8:45 am]

BILLING CODE 7555–01–M

PANAMA CANAL COMMISSION

Extension of a Currently Approved Collection of Information

AGENCY: Panama Canal Commission.

ACTION: Notice.

SUMMARY: In accordance with the requirements of the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 109 Stat. 163), this notice announces the Panama Canal Commission (PCC) is planning to submit to the Office of Management and Budget a Paperwork

Reduction Act Submission (83-I) for an extension of a currently approved collection of information entitled ''Procurement-Related Forms and Contract Clauses,'' OMB No. 3207–0007.

DATES: Written comments on this proposed action regarding the collection of information must be submitted by August 17, 1998.

ADDRESSES: Address all comments concerning this notice to Edward H. Clarke, Desk Officer for Panama Canal Commission, Office of Information and Regulatory Affairs, Room 10202, New Executive Office Building, Office of Management and Budget, Washington, D.C. 20503.

FOR FURTHER INFORMATION CONTACT: Ruth Huff, Office of the Secretary, Panama Canal Commission, 202–634–6441.

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. Collection of information is defined in 44 U.S.C. 3502 (3) and 5 CFR 1320.3 (c). Section 3506 (c)(2)(A) of the Paperwork Reduction Act of 1995 requires agencies to provide a 60-day notice in the **Federal Register**, and otherwise consult with members of the public and affected agencies concerning each proposed collection of information, by soliciting 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 collection will have practical utility; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) enhance the quality, utility, and clarity of the information to be collected; and (d) minimize the burden of the collection of information on those who are to respond, including through the use of automated collection techniques or other forms of information technology.

Title: Procurement-Related Forms and Contract Clauses.

Type of Request: Extension of a currently approved collection.

Background: The information requested is authorized by the Panama Canal Commission Acquisition Regulation, codified at 48 Code of Federal Regulations Chapter 35.

Abstract: On September 15, 1982, the Panama Canal Commission submitted to OMB a request for approval of the forms used by the Commission in connection with the procurement of supplies, services, and construction required by the Panama Canal Commission for the operation and maintenance of the Panama Canal. OMB approved this collection for use through September 30, 1985, and assigned it OMB No. 3207–0007. On August 30, 1985, the Commission requested extension of the expiration date of the collection of information designated Procurement-Related Forms through September 30, 1988. Prior to the expiration, the Commission requested another extension and received approval through December 1992. On October 7, 1992, the Commission submitted to OMB for approval the collection ''Procurement-Related Forms and Contract Clauses.'' OMB approved the collection through October 31, 1995. On July 12, 1995, the Commission submitted a request for revision of this collection and received approval through August 31, 1998. The forms are used to furnish the information required by solicitation provisions or contract clauses.

Annual Burden Hours: 19,853.

Estimated Number of Respondents: 69,092.

Estimated Total Hours per Response: 30 minutes.

Frequency of Collection: On occasion.

Affected Public: Business or other for profit.

Jacinto Wong,

Chief Information Officer, Senior Official for Information Resources Management.

[FR Doc. 98–16157 Filed 6–17–98; 8:45 am]

BILLING CODE 3640–04–P

POSTAL RATE COMMISSION

Sunshine Act Meetings

NAME OF AGENCY: Postal Rate Commission.

TIME AND DATE: 10:30 a.m., July 23, 1998.

PLACE: Commission Conference Room, 1333 H Street, NW, Suite 300, Washington, DC 20268–0001.

STATUS: Open.

MATTERS TO BE CONSIDERED: To discuss and vote on the Postal Rate Commission Budget for FY 1999 and election of a Vice Chairman.

CONTACT PERSON FOR MORE INFORMATION: Margaret P. Crenshaw, Secretary, Postal Rate Commission, Suite 300, 1333 H Street, NW, Washington, DC 20268–0001, (202) 789–6820.

Dated: June 16, 1998.

Margaret P. Crenshaw,

Secretary.

[FR Doc. 98–16339 Filed 6–16–98; 11:46 am]

BILLING CODE 7710–FW–M

SECURITIES AND EXCHANGE COMMISSION

Issuer Delisting; Notice of Application to Withdraw From Listing and Registration; (Equus II Incorporated, Common Stock, $.001 Par Value) File No. 1–11362

June 12, 1998.

Equus II Incorporated (''Company'') has filed an application with the Securities and Exchange Commission (''Commission''), pursuant to Section 12(d) of the Securities Exchange Act of 1934 (''Act'') and Rule 12d2–2(d) promulgated thereunder, to withdraw the above specified security (''Security'') from listing and registration on the American Stock Exchange, Inc. (''Amex'' or ''Exchange'').

The reasons cited in the application for withdrawing the Security from listing and registration include the following:

The Company's Security has been listed for trading on the Amex and, pursuant to a Registration Statement on Form 8–A which became effective on May 20, 1998, the New York Stock Exchange, Inc. (''NYSE''). Trading in the Company's Security on the NYSE commenced at the opening of business on May 20, 1998, and concurrently therewith such Security was suspended from trading on the Amex.

The Company has complied with Rule 18 of the Amex by filing with such Exchange a certified copy of resolutions adopted by the Company's Board of Director's authorizing the withdrawal of its Security from listing and registration on the Amex and by setting forth in detail to such Exchange the reasons for such proposed withdrawal, and the facts in support thereof. In making the decision to withdraw its Security from listing on the Amex, the Company considered the expense of maintaining a dual listing.

The Exchange has informed the Company that it has no objection to the withdrawal of the Company's Security from listing and registration on the Amex.

By reason of section 12(b) of the Act and the rules and regulations thereunder, the Company shall continue to be obligated to file reports under Section 13 of the Act with the Commission and the NYSE.

Any interested person may, on or before July 6, 1998, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549, facts bearing upon whether the application has been made in accordance with the rules of the Exchange and what terms,

if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 98–16246 Filed 6–17–98; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–23249; 812–10904]

New York Life Capital Corporation; Notice of Application

June 12, 1998.

AGENCY: Securities and Exchange Commission (''SEC'').

ACTION: Notice of application under section 6(c) of the Investment Company Act of 1940 (the ''Act'') for an exemption from all provisions of the Act.

SUMMARY OF APPLICATION: Applicant, New York Life Capital Corporation, requests an order that would permit it to sell certain debt securities and use the proceeds to finance the business activities of its parent company and certain companies controlled by the parent company.

FILING DATES: The application was filed on December 18, 1997, and amended on April 28, 1998, and June 4, 1998.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on July 8, 1998 and should be accompanied by proof of service on the applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, N.W., Washington, D.C. 20549. Applicant, 51 Madison Avenue, New York, New York 10010.

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 from the SEC's Public Reference Branch, 450 Fifth St., N.W., Washington, D.C. 20549 (tel. 202–942–8090).

Applicant's Representations

1. Applicant is a Delaware corporation and a wholly-owned indirect subsidiary of New York Life Insurance Company (''New York Life''). New York Life is a mutual insurance company organized under the laws of the State of New York. New York Life, directly and through its subsidiaries, provides various financial services including the sale of group pension products, health insurance, annuities, brokerage services, investment advisory services, mutual funds, and variable life and annuity insurance products. New York Life is exempt from regulation under the Act by section 3(c)(3) of the Act.

2. Applicant was formed in 1995 for the purpose of financing the business operations of New York Life and its subsidiaries (''Controlled Companies''). Applicant's primary function to borrow funds through the sale of short-term, medium-term, and long-term debt securities as well as non-voting preferred stock, and to lend the proceeds from these offerings to New York Life and its Controlled Companies to help finance their operations. Certain of the Controlled Companies are exempt from regulations under the Act by certain provisions of section 3(c) of the Act. None of the Controlled Companies to which applicant may lend will be relying on sections 3(c)(1) or 3(c)(7) of the Act.

3. All of applicant's debt securities and non-voting preferred stock issued to or held by the public will be unconditionally guaranteed by New York Life as to the payment of, as applicable, principal, interest, premium, dividends, liquidation preference and sinking fund payments. In the event of any default in payment of these amounts, the public holders of the securities may institute legal proceedings directly against New York Life without first proceeding against applicant. Furthermore, any convertible or exchangeable securities issued by applicant shall be convertible or exchangeable only for securities issued by New York Life or for applicant's debt securities or non-voting preferred stock.

4. Applicant will invest in or loan at least 85% of any cash or cash equivalents raised by applicant to New York Life and its Controlled Companies as soon as practicable, but in no event later than six months after applicant receives the cash or cash equivalents. If applicant borrows amounts in excess of the amounts required by New York Life and its Controlled Companies, applicant will invest this excess in certain temporary investments pursuant to rule 3a–5 under the Act discussed below.

Applicant's Legal Analysis

1. Applicant requests an order under section 6(c) of the Act exempting it from all provisions of the Act. Applicant states that rule 3a–5 under the Act provides an exemption from the definition of investment company for certain companies organized primarily to finance the business operations of their parent companies or companies controlled by their parent companies.

2. Rule 3a–5(b)(2) provides that a ''parent company'' is a company that derives its non-investment company status from section 3(a) of the Act, the rules under section 3(a) of the Act, or section 3(b) of the Act. Rule 3a–5(b)(3)(i) in relevant part defines a ''company controlled by the parent company'' to be a corporation, partnership, or joint venture that is not considered an investment company under section 3(a) of the Act, the rules under section 3(a) of the Act, or section 3(b) of the Act.

3. Applicant states that New York Life may not qualify as a ''parent company'' under rule 3a–5(b)(2) because it derives its non-investment company status from section 3(c)(3) of the Act. Applicant also states that certain Controlled Companies that may receive loans from applicant, may not qualify as a ''company controlled by the parent company'' under rule 3a–5(b)(3)(i) because these Companies derive their non-investment company status from sections 3(c)(2), 3(c)(3), 3(c)(5), or 3(c)(6) of the Act.

4. Applicant asserts that neither New York Life nor these Controlled Companies engage primarily in investment company activities. If New York Life, or any of its Controlled Companies, were itself to issue the debt obligations that are to be issued by applicant and use the proceeds for its own purposes or advance them to its subsidiaries, neither New York Life nor any of its Controlled Companies would be subject to regulation under the Act. New York Life has chosen instead to use applicant as a vehicle for this borrowing for reasons unrelated to the regulatory purposes of the Act.

5. Section 6(c) of the Act provides that the SEC may exempt any person,

security or transaction, or any class or classes of persons, securities or transactions, from any provision or provisions of the Act when the exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Applicant states that for the reasons given above its request for exemptive relief meets the standards of section 6(c).

Applicant's Condition

Applicant agrees that the order granting the requested relief will be subject to the following condition:

1. Applicant will comply with all of the provisions of rule 3a–5 under the Act, except: (a) New York Life will not meet the portion of the definition of parent company in rule 3a–5(b)(2)(i) solely because it is excluded from the definition of investment company under section 3(c)(3) of the Act; and (b) Controlled Companies will not meet the portion of the definition of ''company controlled by the parent company'' in rule 3a–5(b)(3)(i) solely because they are excluded from the definition of investment company by sections 3(c)(2), 3(c)(3), 3(c)(5), or 3(c)(6) of the Act, provided that any such entity excluded from the definition of investment company under section 3(c)(5) of the Act will fall within section 3(c)(5)(A) or section 3(c)(5)(B) solely by reason of its holdings of accounts receivable of either their own customers or of the customers of other New York Life Controlled Companies, or by reason of loans made by it to such New York Life Controlled Companies or customers, provided further, that any such entity excluded from the definition of investment company pursuant to section 3(c)(6) of the Act will not be engaged primarily, directly or through majority-owned subsidiaries, in one or more of the businesses described in section 3(c)(5) of the Act (except as permitted in this condition).

For the SEC, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 98–16259 Filed 6–17–98; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94–409, that the Securities and Exchange Commission will hold the following meetings during the week of June 22, 1998.

An open meeting will be held on Monday, June 22, 1998, at 11:00 a.m.

A closed meeting will be held on Monday, June 22, 1998, following the 11:00 a.m. closed meeting. A closed meeting will be held on Tuesday, June 23, 1998, at 10:00 a.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(4), (8), (9)(A) and (10) and 17 CFR 200.402(a)(4), (8), (9)(i) and (10), permit consideration of the scheduled matters at the closed meeting.

Commissioner Unger, as duty officer, voted to consider the items listed for the closed meeting in a closed session.

The open meeting scheduled for Monday, June 22, 1998, at 11:00 a.m., will be:

The Commission will hear oral argument on an appeal by Laurie Jones Canady, formerly a salesperson with Merrill Lynch, Pierce, Fenner & Smith Incorporated, from an administrative law judge's initial decision. For further information, contact Kermit B. Kennedy at (202) 942–0879.

The closed meeting scheduled for Monday, June 22, 1998, following the 11:00 a.m. open meeting, will be:

Post argument discussion.

The subject matter of the closed meeting scheduled for Tuesday, June 23, 1998, at 10:00 a.m., will be:

Institution and settlement of injunctive actions.

Institution and settlement of administrative proceedings of an enforcement nature.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: The Office of the Secretary at (202) 942–7070.

Dated: June 16, 1998.

Jonathan G. Katz,

Secretary.

[FR Doc. 98–16344 Filed 6–16–98; 11:46 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: [63 FR 32273, June 12, 1998].

STATUS: Closed Meeting.

PLACE: 450 Fifth Street, N.W., Washington, D.C.

DATE PREVIOUSLY ANNOUNCED: June 12, 1998.

CHANGE IN THE MEETING: Correction.

The Commission considered the following item at a closed meeting held on Tuesday, June 16, 1998, at 10:00 a.m. The item was inadvertently omitted from the notice announced in the **Federal Register** on June 12, 1998 (63 FR 32273).

Post argument discussion.

Commissioner Unger, as duty officer, determined that Commission business required the above change and that no earlier notice thereof was possible.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact:

The Office of the Secretary (202) 942–7070.

Dated: June 16, 1998.

Jonathan G. Katz,

Secretary.

[FR Doc. 98–16345 Filed 6–16–98; 11:46 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–40080; File No. SR–CBOE–98–24]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Chicago Board Options Exchange, Inc., Relating to ILX Fees

June 9, 1998.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 2, 1998, the Chicago Board Options Exchange, Inc. (''CBOE'' or ''Exchange''), filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the CBOE. The Commission

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CBOE proposes to revise the monthly fees for ILX optional features available to members. These fees are currently set forth in Regulatory Circular 95–74. The CBOE will issue a new regulatory circular, as set forth below. Proposed new language is in italics; proposed deleted language is in brackets.

REGULATORY CIRCULAR [RG 95–74]
RG 98–

DATE: [September 8, 1995]

TO: CBOE [Member Firms] *Members/ Member Firms*
FROM: [Department of Trading Operations] *Market Operations Systems Operations*

RE: [Monthly Fees for Optional ILX Features/Entitlements] *Revised Monthly ILX Fees for Optional Features/Entitlements*

The following is a listing of optional features or entitlements *now* available from ILX, in addition to the basic ILX package [covered by the $350.00 monthly fee].* The optional features fees below are stated on a monthly, per ILX terminal basis.

New Feature Available:	*FEE/month*	*Each addl. terminal*
Firse Call Analysis Estimate	*$25.00*	*same*
[NOW AVAILABLE:		
Options Analytics (OPA)	$50.00	same
Intermediate Charts CIT	$20.00	"
CTI real time intraday charting (CTI)	$35.00	"]
[FEATURE:] Feature:		
Block Ticker [(BLT)]	$10.00	["]*same*
[Business Pulse (BPP	$10.00	"]
Futures Montage [(FUT)]	$25.00	["] *same*
Market Guide [(MGD)]	[$70.00] *$50.00*	["] *$20.00*
NASDAQ Static Level II	*$35.00*	*same*
NASDAQ Dynamic Level II	*$175.00*	*same*
Options Analytics w/Intermediate Charts	*$25.00*	*same*
Options on Futures Montage [(OFM)]	$25.00	["] *same*
Portfolio Watch [(PTF)]	[$125.00] *$25.00*	[$25.00] *same*
Select Ticker *(additional window fee)* [(SLT)]	$10.00	same
Ticker [(TKR)]	$10.00	["] *same*
Traders Portfolio [(TRP)]	[$125.00] *$40.00*	[$40.00] *same*
[CHARTS:] Charts:		
[Basic Historical (HST)	$25.00	same
Real Time/Intraday (CHI)	$45.00	"
Advanced (WCA)	$60.00	"
Additional Windows (CHT)	$10.00	"]
Windows Advanced Historical	*$60.00*	*same*
Windows Advanced Historical & Real-Time	*$100.00*	*same*
[NEWS:] News:		
[Dow Jones & Reuters	$101.00	"]
Dow Jones Headlines & Retrieval	*$79.00*	"
Reuters Headlines & Retrieval	*$35.00*	"
[EXCHANGES:] Exchanges:		
Chicago Board of Trade [(CBT)]	$66.00	[$11.50] *$12.00*
Commodities Exchange Center [(CEC)]	$100.00	[21.00] *$11.00*
Kansas City Board of Trade [(KCB)]	[$11.50] *$14.50*	[$1.50] *$3.25*
Mid-America Commodity Exchange	*$9.50 per user (additional user windows at no charge).*	
NASDAQ-Level II	*$50*	*same*
New York Commodity Exchange	*$63.00*	*$12.00*
New York Mercantile [(NYM)]	[$62.50]*$63.00*	[$11.50] *$12.00*

Members who wish to [receive] *access* optional ILX features on *ILX kiosk terminals, or member firms who wish to receive optional ILX features* at their ILX workstation terminals may direct any questions to Steve Pawloski at 786–7789 in Trading Operations.

*[The first Select Ticker window will be no charge, each additional window will be the rate shown.] *The basic package now includes at no additional cost a Business Pulse window (several economic/business reports for the current day) and one Select Ticker window (combined NYSE, AMEX, Nasdaq, US Options and US Equities trades throughout the day).*

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the CBOE included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The CBOE has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The CBOE proposes to revise monthly fees for optional ILX news and information services available to members on the CBOE trading floor. ILX Systems is an information vendor. The proposed changes result from ILX's recently announced changes to features and/or fees.

In the past, the Commission approved the basic ILX package fee and optional ILX news and information service fees for member firms accessing the services from terminals located in trading floor booths.[3] Members can now more readily access optional ILX services from numerous CBOE-owned kiosk terminals located throughout the trading floor, as well as from firm booth terminals.

The revised ILX fees will be outlined in detail in a Regulatory Circular which will be issued to the Exchange's membership.[4] An individual member can request optional ILX features to be displayed on a CBOE-owned kiosk terminal by submitting to the Exchange an Entitlement Request form, and entering an ILX user identification number of the kiosk terminal. ILX will then switch on the chose feature(s) or ''entitlement(s)'' from a remote location to enable that terminal to receive the data.

The revised ILX optional fees will be effective retroactive to May 1, 1998.[5]

2. Statutory Basis

The CBOE believes that the proposed rule change is consistent with Section 6(b)(4) of the Act,[6] in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among CBOE members, issuers, and other persons using CBOE facilities.

B. Self-Regulatory Organization's Statement on Burden on Competition

The CBOE does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change establishes or changes a due, fee, or other charge imposed by the Exchange and, therefore, has become effective pursuant to Section 19(b)(3)(A) of the Act[7] and subparagraph (e)(2) of Rule 19b–4 thereunder.[8] At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, 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, 450 Fifth Street, N.W., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of CBOE. All submissions should refer to File No. SR–CBOE–98–24 and should be submitted by July 9, 1998.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Jonathan G. Katz,

Secretary.

[FR Doc. 98–16260 Filed 6–17–98; 8:45 am]

BILLING CODE 8010–01–M

[3] In 1994, the CBOE established a monthly $350 fee for the basic ILX news package to members with ILX/WDN PC terminals at their floor booth locations. *See* Securities Exchange Act Release No. 33983 (April 29, 1994), 59 FR 23756 (May 6, 1994). In 1995, the CBOE established monthly fees for optional ILX news, market data and informational features available on terminals at member firm booth locations. *See* Securities Exchange Act Release No. 36349 (October 6, 1995), 60 FR 53651 (October 16, 1995).

[4] The Regulatory Circular will list all currently available ILX optional features and current fees, although some fees have not changed since the 1995 filing referenced in note 3 above.

[5] In April 1998, the CBOE filed with the Commission a proposed rule change to revise the same ILX fees. *See* SR–CBOE–98–18. In May 1998, the CBOE withdrew that filing and replaced it with this filing, SR–CBOE–98–24, to make technical corrections to the fees. Based on SR–CBOE–98–18 becoming effective on filing, the CBOE began charging the revised ILX fees (as those fees were stated in SR–CBOE–98–24) to members as of May 1, 1998.

[6] 15 U.S.C. 78f(b)(4).

[7] 15 U.S.C. 78s(b)(3)(A).

[8] 17 CFR 204.19b–4(e)(2).

[9] 17 CFR 200.30–3)a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–40083; File No. SR–OCC–98–03]

Self-Regulatory Organizations; The Options Clearing Corporation; Order Granting Accelerated Approval of a Proposed Rule Change Relating to the Stock Loan/Hedge Program

June 11, 1998.

On April 13, 1998, The Options Clearing Corporation (''OCC'') filed with the Securities and Exchange Commission (''Commission'') a proposed rule change (File No. SR–OCC–98–03) pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'').[1] Notice of the proposal was published in the **Federal Register** on June 4, 1998.[2] No comment letters were received. For the reasons discussed below, the Commission is granting accelerated approval of the proposed rule change.

I. Description

OCC's stock loan/hedge program (''hedge program'') is a clearing system for stock loans between OCC clearing members.[3] The rule change amends OCC's By-Laws and Rules governing the hedge program.[4]

A. Stock Loan Initiation and Mark-to-Market Payments

Currently under the hedge program, a stock loan is initiated when two hedge clearing members agree on the terms of the loan.[5] Next, the lending clearing member transfers the stock to OCC's account at a ''correspondent depository''

[1] 15 U.S.C. 78s(b)(1).

[2] Securities Exchange Act Release No. 40042 (May 28, 1998), 63 FR 30544 (June 4, 1998).

[3] For a complete description of the hedge program, refer to Securities Exchange Act Release No. 32638 (July 15, 1993), 58 FR 39264 (July 22, 1993) [File No. SR–OCC–92–34] (order approving proposed rule change).

[4] For a detailed section-by-section discussion of the specific changes to OCC's By-Laws and Rules refer to Securities Exchange Act Release No. 40042, *supra* note 2. The rule change adds a new Rule 2201 to OCC's rules. As a result, Rules 2201–2210 have been renumbered 2202–2211 and they are referred to in this order by their revised numbers.

[5] Clearing members that are approved to participate in the hedge program are referred to as ''hedge clearing members.'' A clearing member that lends stock through the hedge program is referred to as a ''lending clearing member,'' and a clearing member that borrows stock through the hedge program is referred to as a ''borrowing clearing member.''

(*i.e.*, a clearing agency which is registered with the Commission, which acts as a securities depository and at which OCC has an account). OCC then directs the correspondent depository to redeliver the stock to the borrowing clearing member against payment of the required collateral amount. OCC then pays the required collateral amount to the lending clearing members.

Under the rule change, OCC will not participate in a stock loan transaction until after the hedge clearing members that are parties to the stock loan have transferred the securities and required collateral between themselves through the facilities of The Depository Trust Company (''DTC''). Upon receiving notice of the stock loan from DTC, OCC will verify the accuracy of the clearing members' account numbers and the information supplied to OCC with respect to the transaction. If this information is verified, OCC will accept the loan into the hedge program. Upon OCC's acceptance of the loan, the stock loan contract will be replaced by two parallel contracts with congruent terms: one between the lending clearing member and OCC as stock borrower and one between the borrowing clearing member and OCC as stock lender. If OCC rejects a stock loan transaction, the transaction will remain in effect between the lending clearing member and the borrowing clearing member but will be outside the hedge program.

B. Eligible Stock

Currently, the only stocks that are eligible for the hedge program are stocks that are the underlying stocks for stock option contracts. Under the rule change, all equity securities that are eligible for deposit at DTC will be eligible for the hedge program (other than any stock as to which OCC has made a determination pursuant to Article XXI, Section 2(c) of its By-Laws to terminate all outstanding stock loans relating to that stock).

C. Collection of Margin on Stock Loan and Borrow Positions

Currently a hedge clearing member is required to deposit margin with OCC to cover OCC's risk that the market will move against the member's stock loan and borrow positions during a day and that the member will fail before making the required mark-to-market payment on the next business day. All stock loan and stock borrow positions are taken into account in calculating each clearing member's obligation to deposit ''additional margin'' with OCC and may generate either an increased additional margin requirement (if the stock loan or borrow positions do not hedge other positions of the clearing member) or a reduced additional margin requirement (if the stock loan or borrow positions do hedge other positions of the clearing member).

Under the rule change, a clearing member will be able to designate one or more of its accounts with OCC as ''margin-ineligible.'' If an account is designated as margin-ineligible, OCC will not include any stock loan and stock borrow positions carried in that account in the calculation of the clearing member's additional margin obligations. However, margin-ineligible accounts will be subject to the other elements of OCC's protection and back-up systems (such as OCC's clearing fund and its concentration monitoring surveillance system) to mitigate OCC's risk with respect to the positions carried in those accounts.

Rule 601 currently provides that additional margin calculations are based in part on the ''gross'' stock loan and borrow positions of a hedge clearing member (*i.e.*, without regard to whether a position on the other side of the market is carried in the account). The rule change amends Rule 601(c) to state that additional margin on margin-eligible stock loan and borrow positions will be based only on the ''net'' stock loan or borrow position in an account in a manner analogous to the method that OCC uses for options.

D. Stock Loan and Borrow Baskets

Under the rule change, a clearing member will be able to instruct OCC to treat specified stock loan positions in an account as constituting a ''stock loan basket'' and may instruct OCC to treat specified stock borrow positions in an account as constituting a ''stock borrow basket.'' All stock loan baskets and all stock borrow baskets will be subject to margin under OCC's Rule 602.[6] Currently, the hedge program has no provisions for stock loan and borrow baskets.

The rule change amends the definition of ''class group'' in Rule 602(b)(2) to state that OCC will treat any stock loan basket or stock borrow basket defined by a clearing member as within the class group identified by the clearing member even if the stock loan or borrow positions the basket do not replicate the composition or weighting of the index group for the class group and even if the stocks underlying the identified stock loan or borrow positions are not even included in the index group. However, a stock loan or borrow basket that does not meaningfully replicate the composition and weighting of the index group for a class group will be subject to a large haircut when OCC takes the basket into account in determining the additional margin requirement for the class group.[7] In addition, the rule change amends Rule 602(c)(1)(ii)(A) to state that if a clearing member defines two or more stock loan baskets or two or more stock borrow baskets in an account as within the same class group, OCC will take each basket into account separately and calculate a ''haircut'' for each separately in determining additional margin for the class group.

The rule change also adds Rule 602(f)(8) which sets forth OCC's procedures if a hedge clearing member modifies a stock loan or borrow position that is completely or partly included in a stock loan basket or stock borrow basket. Rule 602(f)(8) states that if a hedge clearing member reduces or terminates one or more of the stock loan or borrow positions that are included in a stock loan or borrow basket OCC will regard any stock loan or borrow positions remaining in the basket as a new basket in the same class group as the previous basket unless the hedge clearing member instructs OCC otherwise. In addition, Rule 602(f)(8) states that if a hedge clearing member reduces a stock loan or borrow position that is partially included in a stock loan or borrow basket OCC will regard the entire remaining stock loan or borrow position as having been withdrawn from the basket unless the hedge clearing member instructs OCC otherwise through standing instructions or timely instructions after the reduction of the position.

E. Stock Loan Termination and Hedge Member Suspension

Under the current hedge program, the termination of a stock loan begins when the borrowing clearing member transfers the stock to OCC's account at the corresponding depository. Next, OCC directs the correspondent depository to redeliver the stock to the lending clearing member against payment of the collateral amount to OCC. OCC then pays the collateral amount to the borrowing clearing member. Under the rule change, a stock loan will be terminated when the borrowing clearing member transfers the stock to the lending clearing member's account at DTC against payment by the lending

[6] OCC rule 602 describes the calculation of margin requirements for securities which are neither equity securities nor based on equity securities. This margin system is sometimes referred to as OCC's ''NEO'' or ''non-equity option'' margin system.

[7] OCC's authority to determine haircuts is set forth in OCC Rule 602(c)(1)(ii)(C)(1).

clearing member of the collateral amount.

The rule change adds an interpretation to section 2 of Article XXI of the By-Laws to address situations in which the termination of a stock loan is reported to OCC at a settlement price (*i.e.*, the amount of collateral that the lending clearing member must return to the borrowing clearing member) that is not consistent with OCC's records. A similar interpretation is added to Rule 2209 to address situations in which OCC receives a report of the termination either of a purported stock loan that does not exist on OCC's records or of a stock loan on OCC's records in a quantity that does not match the quantity in the termination report. In each case, the interpretation states that OCC's records will be dispositive in both of these situations and that OCC will not accept any responsibility for reconciling the discrepancy between its record and those of the affected clearing members.

The rule change also provides for an alternative termination process if OCC has suspended a hedge clearing member. Under the rule change, Rules 2202(c) and 2208(c) are amended to give OCC the express authority to instruct each hedge clearing member on the other side of a suspended clearing member's stock loans to terminate the stock loan in a manner other than the standard terminated described above. The rule change amends Rules 2210(b) and 2211 to allow OCC to direct the hedge clearing member that has not been suspended to use the collateral to buy in the loaned stock (if the suspended clearing member is the borrowing clearing member) or to sell out the loaned stock and apply the proceeds to the repayment of the collateral (if the suspended clearing member is the lending clearing member).

The rule changes amends Rule 2210(a) to state that if DTC suspends one of the parties to a stock loan prior to the time at which OCC would have otherwise accepted the stock loan into the hedge program, OCC will not accept the stock loan. Rule 2210(a) is also amended to state that OCC will accept any stock loan that complies with the completeness and accuracy requirements of Rule 2202(b) even if OCC suspends one of the hedge clearing members which is a party to the stock loan prior to the time at which OCC accepts the stock loan.[8]

[8] In such cases, OCC will instruct the hedge clearing member that has not been suspended to terminate the stock loan contract through the process set forth in revised Rules 2210(b) and 2211, as described above.

II. Discussion

Section 17A(b)(3)(F) of the Act[9] requires that the rules of a clearing agency by designed to remove impediments to and perfect the mechanism of the national system for the prompt and accurate clearance and settlement of securities transactions. The Commission believes that the rule change is consistent with OCC's obligation under Section 17A(b)(3)(F) because it should increase the use of OCC's hedge program which should in turn help to improve the efficiency and safety of stock lending transactions. Specifically, the Commission believes that increased use of the hedge program should reduce exposure to counterparty default, increase payment netting, reduce collateral requirements, and apply advanced clearing and risk management practices to the stock loan market. Accordingly, the Commission believes that the rule change should enable OCC to remove impediments to and help perfect the mechanism of the national system for the prompt and accurate clearance and settlement of securities transactions.

OCC requested that the Commission approve the proposed rule change prior to the thirtieth day after the publication of notice of the filing. The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after publication of notice because such approval should allow OCC to provide needed assurances to clearing members that the hedge program will be implemented, should OCC to institute changes to the hedge program to make it more attractive to clearing members and should allow OCC to train hedge clearing members on the new system interfaces. These changes should result in increased efficiency in the clearance and settlement process for OCC's clearing members that use the hedge program. The Commission also notes that the use of the hedge program is not mandated by OCC.

III. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule change is consistent with the requirements of the Act and in particular with Section 17A of the Act[10] and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (File No. SR–OCC–98–03) be and hereby is approved.

[9] 15 U.S.C. 78q–1(b)(3)(F).

[10] 15 U.S.C. 78q–1.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[11]

Jonathan G. Katz,

Secretary.

[FR Doc. 98–16262 Filed 6–17–98; 8:45 am]

BILLING CODE 8010–01–M

[11] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–40088; File No. SR–Phlx–98–25]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Regarding the Temporary Relocation of Phlx Dell Options to the American Stock Exchange, Inc. Trading Floor

June 12, 1998.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 12, 1998,[3] the Philadelphia Stock Exchange, Inc. (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The 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

Phlx is proposing to rent facilities from the American Stock Exchange Inc. (''Amex'') for the trading of options on Dell Computer Inc. (''Dell'') on the Amex for up to six months to address the exigency of extraordinary contract and trade volume, unique to Phlx-traded Dell options (''Phlx Dell options''). Specifically, Phlx proposes to utilize the options floor trading space and facilities, including the quotation, order entry, processing, execution, trade reporting and comparison functions, of Amex for Phlx member trades in Phlx Dell options. Thus, Amex would rent to Phlx a facility on Amex's New York

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] On June 12, 1998, the Exchange filed Amendment No. 1 to the proposed rule filing, the substance of which is incorporated into the notice. *See* letter from Edith Hallahan, Associate General Counsel, Phlx, to Michael Walinskas, Deputy Associate Director, Market Regulation, Commission, dated June 11, 1998.

floor for all Phlx Dell option series, with related support services. These options would continue to trade pursuant to Phlx rules, subject to Phlx supervision. As part of this arrangement, the Phlx specialist in Dell options, Phlx Registered Options Traders (''ROTs'') and Phlx floor brokers would trade Phlx Dell options on the Amex, and Amex floor brokers would be deputized as Phlx members to trade Phlx Dell options, as discussed further below.

The Exchange requests the Commission to find good cause, pursuant to Section 19(b)(2) of the Act, for approving the proposed rule change prior to the thirtieth day after publication in the **Federal Register.** The Exchange requests accelerated approval of the proposal to promptly facilitate an orderly, temporary relocation of Phlx Dell options to the Amex, in the interest of fair and orderly markets. As discussed in detail below, this arrangement, which is for a six-month period, addresses the exigency of recent extraordinary order and contract volume in Dell options, in light of the critical needs of order entry firms and their customers to receive prompt execution reports.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to establish a temporary facility in New York to permit the trading of Phlx Dell options on Amex, to immediately improve the handling of Dell options by using Amex's options trading floor space and attendant technology. Recently, Phlx Dell options have been heavily traded on the Phlx [4], accounting for daily volumes of roughly 30,000 contracts and as much as 69,000 contracts on a single day.[5] This volume has increased steadily and dramatically over months, and, most recently, over the past several weeks, with the concomitant increase in order traffic, including cancel-replace orders. At the same time, trading in the stock of Dell computer has been active, due to various industry and corporate events.

In response to these events and others, the Phlx has been implementing technological improvements respecting its Automated Options Market (''AUTOM'') System, and, specifically, upgrading the features available to Phlx specialists respecting the electronic limit order book. These improvements have benefited customers using the AUTOM System as well as the specialists and ROTs trading options on the Exchange. Phlx is committed to continuing to improve its systems. The development of AUTOM's X-Station reflects this commitment; its continued roll-out and improvements reflect the Exchange's commitment to address the needs created by active options such as Dell. The key features include improved cancellation order processing and contra-side ''Wheel'' enhancements. The X-Station continues to address the needs of the ever-changing options marketplace.

While Phlx has made significant enhancements to address higher volumes, they have been insufficient to address the critical needs of the order entry firms and their customers in the uniquely active Phlx Dell options. As Phlx Dell options volume has skyrocketed, the Exchange has faced delays in transaction reporting to order entry firms, due to the time intensity associated with ticket matching and key punching, exacerbated by the number of contra-side participants to Phlx Dell options trades. Certainty as to an order's status is essential in the options markets, particularly where the stock is volatile, such as in the computer industry.[6]

Accordingly, the Exchange is now proposing to move Dell options to a rented facility at Amex to immediately improve the processing of the increasing volume of Phlx Dell options trades with attendant increases in trade reporting.[7] Promptly renting and using Amex's facilities for Phlx Dell options trading should help protect investors and the public interest by providing a technologically appropriate facility for Phlx Dell options trading, pending further enhancements on the Phlx floor.

In short, the extraordinary volume in Phlx Dell options has given rise to this arrangement, which is specific to Phlx Dell options, as no other Phlx option currently generates this volume of quotes, orders and trades.[8] Thus, the Exchange believes that the immediate and critical technological need is unique to Phlx Dell options and has arisen with such speed and magnitude that prompt relocation is necessary to enable the specialist unit and the Exchange to provide the most efficient and effective service to customers and the investing public with respect to Phlx Dell options.

Phlx is requesting immediate accelerated approval of this rule change for such time as this arrangement to trade Phlx Dell options through Amex facilities is in effect, up to six months. The rules, policies and procedures associated with this move are discussed below. Trading of Phlx Dell options through the Amex facilities will remain subject to all of Phlx's rules, except for certain appropriate exceptions as enumerated below. Phlx will pay Amex for its facilities and other services provided for under the arrangement. As part of this relocation, the Exchange notes that operational functions respecting these options will be handled by Amex systems, including quotation processing, booking orders, transactions processing, trade correction, and clearing through OCC.[9] Accordingly, trades cleared by OCC may have Amex identifier codes on certain OCC reports, although OCC has agreed to advise its members that Phlx Dell options are registered, listed and traded under the rules of Phlx. While Amex systems rather than the AUTOM system will be used, Phlx Rule 1080 will continue to

[4] Dell options volume increased 163% in 1997 from the first quarter to the fourth quarter of 1997.

[5] 69,063 Dell options contracts traded on February 19, 1998, with 9,952 orders and 8,599 trades processed.

[6] Many member firms and customers use options as ''insurance'' or ''hedges'' in connection with trading and investment strategies in underlying securities. Timely reports of option trade executions and corrections are critical to the execution of these strategies and, more generally, meeting customer expectations and needs.

[7] The Phlx will continue the implementation of electronic order book feature upgrades on its own floor.

[8] The next most active option has recently traded 89% less than Dell options, on average. In the first five months of 1998, Dell options accounted for 22.5% of Phlx volume, as compared to 14% in 1997.

[9] Phlx Dell options are currently registered by The Options Clearing Corporation (''OCC'') as securities listed on Phlx via a Form 8 amendment under the Act. Trading Phlx Dell options using rented facilities on the floor of Amex is no way suggests that these options are listed on the Amex. Indeed, in October 1989, when options listed on the Pacific Stock Exchange were physically moved to the Amex, Chicago Board Options Exchange, New York Stock Exchange and the Phlx due to an earthquake, OCC did not register those options at any other exchanges. *See* Securities Exchange Act Release No. 27365 (October 19, 1989), 54 FR 43511 (October 25, 1989) (SR–Phlx–89–52).

apply, except for those parameters in the rule that are not currently compatible with Amex system configurations. Specifically, until such time as the relevant Amex systems can be reconfigured to apply Phlx parameters to the Dell options, Amex parameters will apply regarding the maximum order six eligible for electronic delivery to the trading floor, and the specific order types that may be accommodated in the system.[10] Phlx will notify its members of its relocation of Phlx Dell options and of all necessary changes in applicable system parameters. Phlx intend to retain its authority to apply the parameters specified in its own rules and procedures at such time as Amex systems can be reconfigured to accommodate them. Members firms will be timely notified of all such system changes.

As a result of being traded through the Amex facility, Phlx Dell options would become eligible or order delivery and execution through the Amex Order File (''AOF''), a host order processing system that includes a variety of subsystems, including the automatic execution (''AUTO–EX'') system.[11] Thus, the benefits of quick and efficient order entry and execution that small order entry systems provide will continue to be available to Phlx Dell options customers.

Phlx will permit, and has made arrangements with Amex to facilitate, Phlx members who are floor brokers to have physical access to the Phlx Dell post in New York for trading and order execution of orders in Phlx Dell options only. Phlx is also proposing to deputize Amex floor brokers as Phlx members for purposes of Phlx Dell options order handling to permit them to execute Phlx Dell options orders as brokers. Phlx states that such deputization is consistent with prior Commission-approved practices respecting the use of another exchange facility to trade options.[12] Deputization of Amex floor brokers will provide an additional method for the submission and execution of orders in Phlx Dell options, which is beneficial to investors. Deputized Amex floor brokers executing orders in Phlx Dell options will be subject to all provisions in Phlx rules that would apply today to a Phlx member in the course of his acting as a floor broker for an order in the Phlx Dell options on the Phlx trading floor. However, an exception is that, deputized Amex floor brokers, as such, will be deemed to have satisfied, and the Phlx will waive specific compliance with, rules governing or applying to the maintenance of a person's or a firm's status as a Phlx member, including all dues, fees and charges imposed generally upon Phlx members based on their status as such. In that regard, Amex procedures respecting the admission and qualification of members to trade on the Amex will be deemed to satisfy Phlx Rule 1061 regarding registration of floor brokers. In addition, with respect to deputized Amex floor brokers, the Exchange will waive application of Phlx Rule 1062, as a letter of authorization from a clearing member is not requisite for Amex floor brokers and is not considered necessary to protect the interests of either other members or the public. Phlx believes that the overall regulatory framework of the Amex adequately addresses the subject matter of these rules.[13]

The Phlx specialist unit would continue to act as such in Phlx Dell options in New York, and any Phlx ROTs choosing to trade Phlx Dell options would be eligible to do so at the Amex facility. Recognizing the two-sided market-making obligations associated with good faith market maker margin treatment, the Exchange notes that Phlx ROTs would be required to be physically present executing trades in person on the Amex floor to receive favorable margin treatment respecting Phlx Dell options, unless they were acting pursuant to Phlx Rule 1014.01 respecting off-floor orders. Otherwise, such ROTs would be subject to customer margin treatment respecting opening transactions.

As discussed above, Phlx Dell options would continue to trade pursuant to Phlx rules. Accordingly, the minimum trading increment, strike price, position and exercise limits, and other trading related rules of Phlx would govern, subject only to system configuration issues discussed below. As Phlx rules will apply to Phlx Dell options trading but such trading will be conducted through Amex systems, surveillance reports will be generated by the Amex systems, but surveillance respecting Phlx Dell options trading will remain the responsibility of Phlx. With respect to trading floor disputes, Phlx rules and procedures will apply, such that Floor Officials versed in Phlx rules, policies and procedures will be appointed to act at the Phlx's New York facility. With respect to FLEX options trading, Phlx Rule 1079 will govern, although Amex systems will process such trades, possibly necessitating immaterial procedural changes for Phlx FLEX trades relating to symbols and Request-for-Quote processing.

With respect to the liability provision of Phlx By-Law Article XII Section 12–11, the use of the facilities includes the Phlx Dell option facility on the Amex. Thus, non-liability for damages sustained by a member or member organization growing out of the use or enjoyment by such member organization of the facilities afforded by the Exchange for the conduct of their business should be extended to Amex systems and facilities provided under this temporary arrangement for Phlx Dell options trading on Amex as well as to Amex floor brokers who may trade Phlx Dell options pursuant to the deputization discussed above. In addition, by accepting this arrangement, Phlx, its members and employees shall accept the same limitations on the liability of Amex, as provided in the Amex Constitution and rules with respect to the use of Amex facilities for the conduct of business, as such limitations apply to any Amex member, member organization or employee thereof in the conduct of his or its business on Amex.

Because Phlx Dell options trading on Amex will be processed through Amex systems, such trades will appear in market data systems as Amex trades and may be cleared with other Amex trades, though the appropriate transaction volume will subsequently be attributed to the Phlx for various purposes, including the determination of Options Price Reporting Authority (''OPRA'') revenues. Phlx transaction fees will continue to apply. Similarly, for technological reasons, a quotation through the Amex system will appear as an ''Amex'' quote, although in actuality it is a Phlx quote being processed by Amex. Notwithstanding the above, through dissemination of information memoranda to members and member organizations, it should be abundantly clear that Phlx Dell options are listed, traded and supervised according to Phlx rules and not the rules of any other exchange. Phlx has taken steps to advise member firms of the change in trading venue, so that member firms can make all necessary system and order routing changes that may be required and thereby reduce the risk of investor confusion in the trading of Dell options.

[10] In addition, the specialist will not be able to be assured the first trade of the day on AUTO–EX, pursuant to Phlx Floor Procedure Advice F–24.

[11] The AOF also interfaces with the Amex Options Display Book (''AODB''), the Amex's electronic order book for options, which accommodates not only small orders sent in electronically, but also larger orders entered from the trading floor.

[12] *See supra* note 9. As discussed in that note, there was no required for OCC to re-register Pacific Stock Exchange options at each temporary facility after the 1989 earthquake.

[13] *See* Amendment No. 1, *supra* note 3.

These steps will include notice to members and an educational session with Phlx for deputized Amex members who will be trading Dell options at the new facility. Phlx will monitor events and take additional steps as necessary to address specific confusion.[14]

With respect to disciplinary jurisdiction, the Exchange would continue to retain such jurisdiction over its members at the Amex facility for violations of Phlx rules. Because Phlx rules apply to trading in Phlx Dell options on the Amex, Phlx Rules 60, respecting order and decorum on the trading floor, and 970, respecting the minor rule violation enforcement and reporting plan, apply. Phlx would assume disciplinary jurisdiction over Amex floor brokers deputized to trade Phlx Dell options, pursuant to an acknowledgment signed by such Amex floor brokers that participation in the Phlx Dell option trading crowd triggers such jurisdiction. Deputized Amex floor brokers will also be required to attend a seminar familiarizing them with Phlx rules before they are permitted to execute orders as a floor broker in the Phlx Dell option.

2. Statutory Basis

For the reasons discussed above, the Exchange believes that the proposed rule change is consistent with Section 6 of the Act[15] in general, and in particular, with Section 6(b)(5),[16] in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, as well as to protect investors and the public interest by providing a Phlx facility on the Amex for the trading of Phlx Dell options.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

No written comments were either solicited or received.

III. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Phlx. All submissions should refer to File No. SR–Phlx–98–25 and should be submitted by July 9, 1998.

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

The Commission finds that Phlx's proposal to immediately establish a satellite trading facility on Amex to trade Phlx Dell options is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange. Specifically, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act[17] in that the arrangement between Phlx and Amex fosters cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities. The proposal should also help protect investors and the public interest by immediately providing a technologically appropriate facility to trade the Phlx Dell options and by permitting the prompt and effective processing of the increasing number of Dell options trades.

The Commission believes that it is reasonable, given the exigent circumstances of the recent extremely heavy trading of Dell options, for Phlx to move the trading of Dell options to a leased trading floor located at Amex. Amex is particularly well-suited to accommodate the trading of Dell options in a manner that is consistent with the promotion of fair and orderly markets and investor protection. In particular, Amex is an already established self-regulatory organization (''SRO'') that is subject to its own rules and regulations and the rules and regulations of the federal securities laws. Moreover, Amex has the necessary technological systems in place to ensure that orders for actively traded options, such as Dell, are routed, executed and processed in a prompt and efficient manner. The Commission notes that the trading volume in Phlx Dell options has increased steadily and dramatically over the past few months, particularly in the past several weeks, and that trading in Dell stock has also been active, due to various industry and corporate events. This increase in volume in Dell options trading has been accompanied by an increase in order traffic. As the volume has increased, Phlx has faced delays in transaction reporting to order entry firms, and this delay has been heightened by the number of contra-side participants to Phlx Dell option trades. The Commission understands that Phlx is committed to making the necessary systems improvements to accommodate very actively traded options such as Dell in the future. Presently however, the Commission believes it is essential to allow Phlx Dell options to trade through facilities that are technologically capable of supporting the magnitude of the trading volume that trading in Dell options commands. Accordingly, a temporary transfer of trading in Phlx Dell options to the Amex floor is an appropriate means of ensuring that the investing public has available a reliable trading venue for Dell options.

The Commission believes that, given the unique circumstances of the trading of Phlx Dell options on Phlx, Phlx has devised a regulatory framework that will reasonably ensure adequate regulatory oversight of the trading of Dell options on the Amex floor. As discussed above, Phlx is proposing to establish a satellite trading floor where Phlx floor brokers can trade Phlx Dell options pursuant to Phlx rules. The Phlx specialist in Dell options will continue to act as the specialist in Dell options on the Amex satellite floor, and any Phlx ROTs choosing to trade Phlx Dell options would be eligible to do so at the Amex facility. Phlx will continue to be responsible for surveillance of Phlx members trading in Dell options on the Amex floor, retaining jurisdiction over those members for violations of Phlx rules. Floor officials familiar with Phlx rules, policies and procedures will be assigned to act at the Phlx's Amex facility to resolve trading floor disputes.[18] While it is true that, to

[14] *See* Amendent No. 1, *supra* note 3.

[15] 15 U.S.C. 78f(b).

[16] 15 U.S.C. 78f(b)(5).

[17] 15 U.S.C. 78f(b)(5).

[18] Phlx Rule 1079 will continue to apply to the trading of Dell FLEX options, although Amex systems will process such trades, which may

Continued

obtain the benefit of Amex's advanced technology and system, certain Phlx rules will not apply to the trading of Dell options on Amex,[19] the use of Phlx of Amex systems (such as AOF) that have already been approved by the Commission is an appropriate regulatory alternative under the circumstances. In light of the exigent circumstances, the Commission believes that the proposed solution is an appropriate measure that provides adequate regulatory protections.

The Commission also believes that it is consistent with the Act for Phlx to deputize Amex floor brokers as Phlx members, to trade Dell options, to help ensure sufficient access by the investing public to Phlx's satellite facility at Amex. The Commission notes that it has, on a prior occasion, authorized similar deputization to allow for the use of another exchange facility to trade options.[20] As noted above, the deputized Amex floor brokers would be subject to all provisions in Phlx rules that would apply today to a Phlx member in the course of his acting as a floor broker for an order in the Phlx Dell options on the Phlx trading floor, with certain minor appropriate exceptions. In addition, Phlx will have disciplinary jurisdiction and oversight over deputized Amex floor brokers relating to the trading of Dell options on the Amex floor. Finally, deputized Amex floor brokers will be required to attend a training seminar to familiarize them with Phlx rules and any relevant distinctions between Phlx rules and Amex rules before they will be allowed to execute orders as a floor broker in the Phlx Dell options.

Phlx's proposed view that Phlx By-Law Article XII, Section 12–11, which disclaims Phlx's liability to Phlx members for damages growing out of the use and enjoyment of Phlx's facilities, is applicable to Phlx business conducted on the Amex floor, is appropriate given that Phlx is leasing such space and will be conducting its business through such facilities. Likewise, it is appropriate for those Phlx members that are temporarily re-located to the Amex facility to accept the same limitations on liability of the Amex. These Phlx members will utilize the applicable Amex systems in a nearly identical fashion to which they would have relied on Phlx systems prior to the move. Therefore, this requirement is a reasonable component of the agreement to allow Phlx to create a temporary trading facility on Amex in Dell options.

Phlx essentially concludes that Phlx Dell options that will be traded on its temporary Amex facility should not be considered Amex-traded options for securities registration purposes and notes that in October 1989, when options listed on PCX were physically moved to Amex and other options exchanges, due to an earthquake, ''OCC did not register those options at any other exchanges.'' The Commission believes that the continued trading of Phlx Dell options by Phlx using leased space on the floor of Amex does not cause such options to cease to be option traded on Phlx and that, accordingly, OCC does not need to amend its 1934 Act Registration to re-characterize these options as options listed or traded on another exchange.

Finally, the Commission notes that, to minimize investor confusion in the trading of Dell options, Phlx has stated that it will provide adequate notice to its members to ensure that they and the investing public are aware that Phlx Dell options are listed, traded and supervised according to Phlx rules, but are to be traded at a facility of Phlx located on the Amex floor. Phlx states that it has taken steps to advise member firms of the change in trading venue, so that they can make necessary system and order routing changes. These steps will include notice to members and an educational session with Phlx of deputized Amex members who will be trading Dell options at the new facility. Phlx is committed to monitoring events and will take additional steps as necessary to address specific confusion. These additional steps could include issuing press releases or making needed information otherwise available to Phlx's members and to the public.

For the reasons discussed above, the Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing in the **Federal Register**. The Commission believes that it is necessary to approve Phlx's proposal on an accelerated basis to protect the trading interests of the investing public, due to the exigency of transferring the trading of Phlx Dell options from the Phlx trading floor, which is not currently capable of managing the high trading volume of Dell options, to another SRO floor where the Dell options can be effectively and efficiently traded.

It is therefore ordered, pursuant to Section 19(b)(2)[21] of the Act that the proposed rule change (SR–Phlx–98–25) is hereby approved on an accelerated basis through December 12, 1998.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[22]

Jonathan G. Katz,

Secretary.

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BILLING CODE 8010–01–M

necessitate procedural changes for Phlx FLEX trades relating to symbols and Request-for-Quote processing.

[19] *See* Discussion section, *supra.*

[20] *See supra* note 9.

[21] 15 U.S.C. 78s(b)(2).

[22] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Released No. 34–40082; File No. SR–Phlx–98–19]

Self-Regulatory Organization; Notice of Filing of Proposed Rule Change by the Philadelphia Stock Exchange, Inc., and Amendment No. 1 Thereto Relating to When a Security is Considered Open For Trading

June 10, 1998.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on May 1, 1998, the Philadelphia Stock Exchange, Inc. (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Phlx. On May 22, 1998, the Phlx filed an amendment to the proposal.[3] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Phlx proposes to amend Phlx Rules 1047 (Trading Rotations, Halts and Suspensions), 1047A (Trading Rotations, Halts or Reopenings), and Option Floor Procedure Advice G–2 (''Advice G–2'') (Trading Rotations, Halts or Reopenings), to clarify when a security is consider open for trading. Specifically, and underlying security

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from Linda S. Christie, Counsel, Phlx, to Yvonne Fraticelli, Attorney, Division of Market Regulation (''Division''), Commission (May 22, 1998) (''Amendment No. 1''). In Amendment No. 1 Phlx replaces the phase ''principal exchange'' in Rule 1047 with the phrase ''primary market'' to provide consistency with the language in the proposed amendments to Phlx Rule 1047A and Option Floor Procedure Advice G–2. Corresponding with Amendment No. 1, the word ''exchange'' should be replaced by the word ''market'' in the amended portion of Phlx Rule 1047. Telephone conversation between Linda S. Christie, Counsel, Phlx, and Marc McKayle, Attorney, Division, Commission (May 26, 1998).

shall be considered open for trading where a transaction has been reported or an opening indication disseminated, whichever occurs first, and there has not been an indication of a delayed opening given.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Phlx included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Phlx has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The Phlx proposes amending Phlx Rules 1047 (Trading Rotations, Halts and Suspensions), 1047A (Trading Rotations, Halts or Reopenings), and Options Floor Procedure Advice G–2 (Trading Rotations, Halts or Reopenings) to clarify when a security is open. These provisions govern the various types of option rotations. Commentary .01(a) of Rule 1047 pertains to opening rotations, specifying that the opening rotation in each class of potions shall be held promptly following the opening of the underlying security on the principal market where it is traded. However, neither Commentary .01 of Rule 1047, Rule 1047A, or Advice G–2 delineates when a security is considered open for trading. For clarification purposes, the Phlx proposes amending Rule 1047 Commentary .01(a) to indicate that an underlying security shall be deemed to have opened on the primary market where it is traded it such market has either (1) reported a transaction in the underlying security, or (2) disseminated an opening quotation for the underlying security and given no indication of a delayed opening.[4] A corresponding amendment is also proposed for Rule 1047A and Advice G–2. Thus, the proposal is intended to correct an ambiguity and expressly provide in Exchange rules that an opening quote signals the opening of a security.[5] The proposal should promote more prompt options openings by not requiring a transaction to occur in the underlying security.

The proposed rule change is consistent with Section 6 of the Act, in general,[6] and Section 6(b)(5),[7] in particular, in that it is designed to promote just and equitable principles of trade, prevent fraudulent and manipulative acts and practices, to foster cooperation and coordination with persons engaged in relating, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, as well as to protect investors and the public interest. By clarifying the Exchange's provisions concerning options openings and encouraging more prompt openings, the aim of the Act should be achieved.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Phlx does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days 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 Phlx consents, the Commission will:

(A) by order approve such proposed rule change, or,

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW, Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the Phlx. All submissions should refer to File No. SR–Phlx–98–19 and should be submitted by July 9, 1998.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Jonathan G. Katz,

Secretary.

[FR Doc. 98–16261 Filed 6–17–98; 8:45 am]

BILLING CODE 8010–01–M

[4] Telephone conversation between Linda S. Christie, Counsel, Phlx, and Yvonne Fraticelli, Attorney and Marc Mckayle, Attorney, Division of Market Regulation, Commission (May 28, 1998).

[5] Only quotations disseminated at the opening of a trading day will be deemed to have opened the market in an underlying security. Stale quotations disseminated on a prior trading day will be ineffective under this proposed rule change. Telephone conversation between Linda S. Christie, Counsel, Phlx, and Yvonne Fraticelli, Attorney, and Marc McKayle, Attorney, Division, Commission (May 8, 1998).

[6] 15 U.S.C. 78f.

[7] 15 U.S.C. 78f(b)(5).

[8] 17 CFR 200.30–3(a)(12)

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Reports, Forms and Recordkeeping Requirements: Agency Information Collection Activity Under OMB Review

AGENCY: Office of the Secretary, DOT.

ACTION: Notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected burden. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on March 9, 1998, [63 FR 11472].

DATES: Comments must be submitted on or before July 20, 1998.

FOR FURTHER INFORMATION CONTACT: Judith Street, ABC–100; Federal Aviation Administration; 800 Independence Avenue, SW.;

Washington, DC 20591; Telephone number (202) 267–9895.

SUPPLEMENTARY INFORMATION:

Federal Aviation Administration (FAA)

Title: Physiological Training.

OMB Control Number: 2120–0101.

Type of Request: Extension of currently approved collection.

Form(s): AC Form 3150–7.

Affected Public: Individuals or households.

Abstract: This collection of information is used to determine if the applicants meet the qualifications for the voluntary physiological training under the FAA/USAF training agreement.

Annual Estimated Burden Hours: 458 hours.

Addressee: Send comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725—17th Street, NW., Washington, DC 20503, Attention FAA Desk Officer.

Comments are invited on: whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

A comment to OMB is most effective if OMB receives it within 30 days of publication.

Issued in Washington, D.C. on June 12, 1998.

Phillip A. Leach,

Clearance Officer, United States Department of Transportation.

[FR Doc. 98–16145 Filed 6–17–98; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[RST–97–5]

The New Jersey Transit Rail Operations, Incorporated

The New Jersey Transit Rail Operations, Inc., (NJT) has petitioned the Federal Railroad Administration (FRA) seeking a waiver of compliance with the requirements of Title 49 CFR Part 213.233(c). NJT proposes to substitute the operation of a track geometry measuring car over main track and sidings quarterly in place of one of the currently required twice weekly visual inspections.

The FRA issued two public notices seeking comments of interested parties. After examining the railroad's proposal and the available facts, FRA has determined that a public hearing is necessary before a final decision is made on this proposal.

Accordingly, a public hearing is hereby set for 9:00 a.m. EDT, on Tuesday, August 4, 1998 in the Peter W. Rodino Federal Building, 970 Broad Street, Rooms 204–205, in Newark, New Jersey. Interested parties are invited to present oral statements at the hearing

The hearing will be an informal one and will be conducted in accordance with Rule 25 of the FRA Rules of Practice (Title 49 CFR part 211.25), by a representative designated by the FRA.

The hearing will be a nonadversary proceeding and, therefore, there will be no cross-examination of persons presenting statements. The FRA representative will make an opening statement outlining the scope of the hearing. After all initial statements have been completed, those persons wishing to make brief rebuttal statements will be given the opportunity to do so in the same order in which they made their initial statements. Additional procedures, if necessary for the conduct of the hearing, will be announced at the hearing.

Issued in Washington, D.C. on June 8, 1998.

Grady C. Cothen, Jr.,

Deputy Associate Administrator for Safety Standards and Program Development.

[FR Doc. 98–16158 Filed 6–17–98; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Notice of Application for Approval of Discontinuance or Modification of a Railroad Signal System or Relief From the Requirements of Title 49 Code of Federal Regulations Part 236

Pursuant to Title 49 Code of Federal Regulations (CFR) Part 235 and 49 U.S.C. App. 26, the following railroads have petitioned the Federal Railroad Administration (FRA) seeking approval for the discontinuance or modification of the signal system or relief from the requirements of 49 CFR Part 236 as detailed below.

Block Signal Application (BS–AP)–No. 3472

Applicants:

Burlington Northern and Santa Fe Railway Company, Mr. William G. Peterson, Director Signal Engineering, 4515 Kansas Avenue, Kansas City, Kansas 66106

Union Pacific Railroad Company, Mr. Phil Abaray, Chief Engineer—Signals/Quality, 1416 Dodge Street, Room 1000, Omaha, Nebraska 68179–1000

Burlington Northern and Santa Fe Railway Company and Union Pacific Railroad Company, jointly seek approval of the proposed discontinuance and removal of the traffic control system, on the single main track, between Sherman, Texas, milepost 645.9 and South Sherman, Texas, milepost 649.9, on the Texas Division, Madill Subdivision, including conversion of three power-operated switches to hand operation, removal of all associated signals, and implementation of Track Warrant Control Rules as the method of operation.

The reasons given for the proposed changes are to improve operating efficiency and reduce maintenance costs of plants no longer needed.

BS–AP–No. 3473

Applicant: CSX Transportation, Incorporated, Mr. R. M. Kadlick, Chief Engineer Train Control, 500 Water Street (S/C J–350), Jacksonville, Florida 32202

CSX Transportation, Incorporated seeks approval of the proposed temporary discontinuance of the signal system, on the two main tracks, at ''J Tower,'' milepost BI–3.10, in Willard, Ohio, on the Willard Terminal Subdivision, Baltimore Service Lane, for approximately 120 days, and govern train movements by Yard Limit Rules under the direction of a Switch Tender. The proposal is associated with major modifications in track and signal arrangements, including installation of a traffic control system.

The reason given for the proposed changes is to safely and efficiently expedite train movements during construction and cut-over.

BS–AP–No. 3474

Applicant: Wisconsin Central Limited, Mr. Glenn J. Kerbs, Vice President Engineering, 3000 Minnesota Avenue, Stevens Point, Wisconsin 54481

Wisconsin Central Limited seeks approval of the proposed modification of the signal system, on the two main tracks and siding, near Slinger, Wisconsin, milepost CM122.60, Chicago Subdivision, consisting of the removal of the existing interlocking plant, installation of two power-operated switches for the new connection tracks

at the northeast and southwest quadrants, relocation of the east end of siding at Slinger to the west out of the curve, and conversion of the east and west siding switches to hand operation, equipped with electric locks.

The reason given for the proposed changes is to eliminate the blockage of a state highway and traffic in the town of Slinger, associated with interchange switching movements. The proposed new alignment and construction of a set out track at Ackerville will remove switching moves from Slinger.

BS–AP–No. 3475

Applicant: Burlington Northern and Santa Fe Railway Company, Mr. William G. Peterson, Director Signal Engineering, 4515 Kansas Avenue, Kansas City, Kansas 66106

Burlington Northern and Santa Fe Railway Company seeks approval of the proposed modification of the traffic control system, on the north main track, at milepost 55.7, near Lincoln, Nebraska, on the Nebraska Division, Creston Subdivision, consisting of the discontinuance and removal of Holding Signal N55.71

The reason given for the proposed changes is that the upgrade of the highway crossing warning devices at milepost 55.8 has eliminated the need for Holding Signal N55.71.

BS–AP–No. 3476

Applicant: Union Pacific Railroad Company, Mr. Phil Abaray, Chief Engineer—Signals/Quality, 1416 Dodge Street, Room 1000, Omaha, Nebraska 68179–1000

Union Pacific Railroad Company seeks approval of the proposed discontinuance and removal of the automatic block signal system, on the single main track, between milepost 185 and milepost 195, near Houston, Texas, on the Houston Subdivision, consisting of the removal of Signals: D (milepost 185.7), 21, 32, 37, 38, 52, 56, 59, 69, 78, 79, 88, 89, 98, 99, and 108; conversion of Signal 25 to a D signal; installation of a new D signal at milepost 188.2; and the establishment of Yard Limits as the method of operation.

The reason given for the proposed changes is that signals are no longer required under train operating practices.

BS–AP–No. 3477

Applicant: Paducah & Louisville Railway, Incorporated, Mr. C. D. Edwards, General Supervisor of Signals and Structures, 1500 Kentucky Avenue, Paducah, Kentucky 42003

Paducah & Louisville Railway, Incorporated seeks approval of the proposed discontinuance and removal of the automatic block signal system, on the single main track, between Charolais, milepost J154.18 and Dawson Springs, milepost J163.73, in Hopkins County, Kentucky, consisting of the removal of all existing signals in the area, and installation of an operative approach signal near milepost J163.8.

BS–AP–No. 3478

Applicant: CSX Transportation, Incorporated, Mr. R. M. Kadlick, Chief Engineer Train Control, 500 Water Street (S/C J–350), Jacksonville, Florida 32202

CSX Transportation, Incorporated seeks approval of the proposed discontinuance and removal of the automatic block signal system, on the single main track, between Ames, Indiana, milepost 00Q–148.4 and Greencastle, Indiana, milepost 00Q–176.7, on the Monon Subdivision, Chicago Service Lane, and operate exclusively under a Direct Traffic Control Block System. The proposal includes the installation of operative approach signals at Ames and Greencastle.

The reason given for the proposed changes is to eliminate facilities no longer needed in present day operation.

BS–AP–No. 3479

Applicant: South Orient Railroad Company, LTD., Mr. Roy D. Williams, Chief Operating Officer, 210 South Main Street, Brownwood, Texas 76801

The South Orient Railroad Company, LTD. seeks approval of the proposed permanent discontinuance and removal of the traffic control system, on the single main track, between Birds Siding, milepost 1.3 near Fort Worth, Texas, and Rickers, milepost 134.5, near Brownwood, Texas, on the Dublin Subdivision.

The reason given for the proposed changes is that the railroad's operation does not warrant a signal system.

Any interested party desiring to protest the granting of an application shall set forth specifically the grounds upon which the protest is made, and contain a concise statement of the interest of the Protestant in the proceeding. The original and two copies of the protest shall be filed with the Associate Administrator for Safety, FRA, 400 Seventh Street, S.W., Mail Stop 25, Washington, D.C. 20590 within 30 calendar days of the date of publication of this notice. Additionally, one copy of the protest shall be furnished to the applicant at the address listed above.

FRA expects to be able to determine these matters without an oral hearing. However, if a specific request for an oral hearing is accompanied by a showing that the party is unable to adequately present his or her position by written statements, an application may be set for public hearing.

Issued in Washington, D.C. on June 9, 1998.

Grady C. Cothen, Jr.,

Deputy Associate Administrator for Safety Standards and Program Development.

[FR Doc. 98–16177 Filed 6–17–98; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–98–3813; Notice 1]

Application for Determination of Inconsequential Noncompliance to Federal Motor Vehicle Safety Standard 108—Lamps, Reflective Devices and Associated Equipment

General Motors Corporation (GM), has determined that blackout paint on the rear window of the 1997 GM EV1 (electric vehicle) may cause the center high-mounted stop lamp (CHMSL) to fail to meet the photometric requirements of Federal Motor Vehicle Safety Standard (FMVSS) No. 108—*Lamps, Reflective Devices and Associated Equipment.* Pursuant to 49 U.S.C. 30118 and 30120, GM has applied to the National Highway Traffic Safety Administration (NHTSA) for a decision that the noncompliance is inconsequential as it relates to motor vehicle safety. GM has submitted a noncompliance notification to the agency pursuant to 49 CFR Part 573, ''Defects and Noncompliance Reports.''

This notice of receipt of an application is published under 49 U.S.C. 30118 and 30120 and does not represent any agency decision or other exercise of judgment concerning the merits of the application.

During the inclusive manufacturing dates from August 1996 to June 1997, GM produced 624 model year 1997 EV1 electric cars, that may have CHMSLs that fail to meet FMVSS No. 108.

GM claims that only 290 of the vehicles in the field are covered by this application, and that the other vehicles are within GM's control, and will be remedied before delivery to retail customers.

GM states that the EV1 CHMSL meets the requirements of FMVSS No. 108 Figure 10—Photometric Requirements for Center High-Mounted Stop Lamps. However, when the CHMSL is mounted in the vehicle, the blackout paint on the rear window may inadvertently obscure

a portion of the CHMSL's photometric output. GM states that if the worst case build condition were present on a vehicle, blackout paint would obscure the portion of the CHMSL corresponding to the 5D (5 degrees below horizontal) photometric requirements .

GM believes that this noncompliance is inconsequential to motor vehicle safety for the following reasons:

The EV1 sits low to the ground, so light provided by the CHMSL is visible to drivers of other vehicles, even with the bottom of the CHMSL obscured.

The specified range of photometric output for a CHMSL, from 10U to 5D, was developed from SAE J186a and is presumably intended to allow manufacturers latitude in locating CHMSLs for the myriad of vehicle designs, while assuring sufficient signal light to drivers of following vehicles. Because the EV1 CHMSL is so low to the ground, the 5D angle is far less significant to following drivers than it would be if mounted higher.

A perceived benefit of the CHMSL is the ability it provides following drivers to see through intervening vehicles. Because the EV1 and its CHMSL are low to the ground, a following driver's ability to see the CHMSL through intervening vehicles is not compromised by the lost light at the lower portion of the CHMSL.

To reduce aerodynamic drag, the EV1 was designed to be extremely narrow. As a consequence of its narrow profile, the stop lamps are in close proximity to the CHMSL (510 mm from the center of the brake lamp to the center of the CHMSL). This minimizes the effect of the obscured portion of the CHMSL.

Except for 5D, the EV1 CHMSL meets all other requirements of FMVSS No. 108, and the photometric output of the stop lamps, which are supplemented by the CHMSL, far exceed the FMVSS No. 108 minimum requirements.

GM is not aware of any accidents, injuries, owner complaints or field reports related to this issue.

Additionally GM provided two figures (which are available in the application filed in the public docket) that illustrate rear stop lamp visibility to following vehicle drivers, to support the claims for inconsequentiality.

Interested persons are invited to submit written data, views, and arguments on the application described above. Comments should refer to the docket number and be submitted to: Docket Management, Room PL–401, 400 Seventh Street, SW, Washington, DC 20590. It is requested but not required that six copies be submitted. Docket hours are 10:00 A.M. to 5:00 P.M.

All comments received before the close of business on the closing date indicated below will be considered. The application and supporting materials, and all comments received after the closing date, will also be filed and will be considered to the extent possible. When the application is granted or denied, the notice will be published in the **Federal Register** pursuant to the authority indicated below.

Comment closing date: July 20, 1998.

(49 U.S.C. 30118 and 30120; delegations of authority at 49 CFR 1.50 and 501.8)

Issued on: June 12, 1998.

L. Robert Shelton,

Associate Administrator for Safety Performance Standards.

[FR Doc. 98–16230 Filed 6–17–98; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–98–3869]

Western Star Trucks, Inc.; Receipt of Application for Determination of Inconsequential Noncompliance

Western Star Trucks, Inc. of Kelowna, British Columbia, Canada, has applied to be exempted from the notification and remedy requirements of 49 U.S.C. Chapter 301 ''Motor Vehicle Safety'' for noncompliance with 49 CFR 571.205, Federal Motor Vehicle Safety Standard No. 205, ''Glazing Materials,'' on the basis that the noncompliance is inconsequential to motor vehicle safety. Western Star Trucks has filed an appropriate report pursuant to 49 CFR Part 573 ''Defect and Noncompliance Information Reports.''

This notice of receipt of an application is published under 49 U.S.C. 30118 and 30120 and does not represent any agency decision or other exercise of judgement concerning the merits of the application.

Paragraph S6.2 of Standard No. 205 specifies that a number designating the material used, the symbol ''DOT,'' and the manufacturer's code mark, shall be marked on all glazing materials by the prime glazing material manufacturer.

Vehicles Involved

Western Star Constellation Series truck/tractor manufactured between January 17, 1996 and February 3, 1998 equipped with 58″ or 72″ sleepers with side windows. The serial numbers of the affected vehicles fall with the range, 944129 to 953410.

Number of Vehicles

Eight hundred ninety-one (891) vehicles manufactured as of February 3, 1998, potentially contain the noncompliance.

Description of the Noncompliance

Certain Western Star Constellation truck/tractors were equipped with 58″ or 72″ sleepers with side windows which were not marked per the requirements of S6 of Federal Motor Vehicle Safety Standard (FMVSS) 205. The window glazing is not marked per the requirements of Section 6 of ANS Z26. They also were not marked with the symbol ''DOT'' or the manufacturer's code mark per S6.2 of FMVSS 205. The window glazing does, however, meet the physical requirements of FMVSS 205 and is located out of the truck/tractor driver's compartment in an area where highway visibility is not required.

Supporting Information

Although the glazing is not marked per the requirements of FMVSS 205, the glazing has been tested and complies to Item AS–2 of ANSIZ26.1 per the attached report 1/95, from Inchcape Testing Test Services.

The sleeper windows, Western Star Trucks part numbers 63320–3562 and 63320–3563, were purchased from Sun-view Industries Ltd., 15915 Bentley Pl., Box 1079, Summerland, British Columbia, Canada, VOH 1ZO. Sun-view in turn purchased the 3 mm glazing from Wescan Glass—Burnaby, 3153 Thunderbird Cres., Burnaby, British Columbia, V5A 3G2 (A division HGP Industries, Inc., Moorestown, NJ). The attached test report was provided by Inchcape Testing for the test performed on the glass that Wescan provides to Sun-view.

The test report 1/95 indicates that the 3 mm glazing meets the requirements for AS–2 (Safety Glazing Material for Use Anywhere in Motor Vehicle Except Windshields). However, the sleeper windows only need meet AS–5 as they are at a height not requisite with highway visibility, and are ''glazing to the rear of the driver in trucks or truck tractor cabs where other means of affording visibility of the highway to the side and rear of the vehicle are provided.''

Interested persons are invited to submit written data, views and arguments on the application of Western Star, described above. Comments should refer to the Docket Number and be submitted to: Docket Management, Room PL 401, 400 Seventh Street, SW., Washington, DC, 20590. It is requested but not required that six copies be submitted.

All comments received before the close of business on the closing date indicated below will be considered. The application and supporting materials, and all comments received after the closing date will also be filed and will be considered to the extent possible. When the application is granted or denied, the Notice will be published in the **Federal Register** pursuant to the authority indicated below.

Comment closing date: July 20, 1998.

(49 U.S.C. 30118, 30120; delegation of authority at 49 CFR 1.50 and 49 CFR 501.8)

Issued on: June 12, 1998.

L. Robert Shelton,

Associate Administrator for Safety Performance Standards.

[FR Doc. 98–16210 Filed 6–17–98; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

Actions on Exemption Applications

AGENCY: Research and Special Programs Administration, DOT.

ACTION: Notice of actions on exemption applications.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, exemptions from the Department of Transportation's Hazardous Materials Regulations (49 CFR Part 107, Subpart B), notice is hereby given of the actions on exemption applications in JANUARY–APRIL 1998. The modes of transportation involved are identified by a number in the ''Nature of Application'' portion of the table below as follows: 1—Motor vehicle, 2—Rail freight, 3—Cargo vessel, 4—Cargo aircraft only, 5—Passenger-carrying aircraft. Application numbers prefixed by the letters EE represent applications for Emergency Exemptions. It should be noted that some of the sections cited were those in effect at the time certain exemptions were issued.

Issued in Washington, DC, on May 15, 1998.

J. Suzanne Hedgepeth,

Director, Office of Hazardous Materials, Exemptions and Approvals.

MODIFICATION EXEMPTIONS

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemptions thereof
970–M	DOT–E 970	Callery Chemical Corp., Pittsburgh, PA.	49 CFR 173.21(f)(3), 173.302(g).	Authorizes the transportation of diboran classed as a Division 2.3 material in DOT Specification 3AA cylinders overpacked in certain insulated drums or wooden boxes. (modes 1, 2).
5493–M	DOT–E 5493	Montana Sulphur & Chemical Co., Billings, MT.	49 CFR 173.314(c)	Authorizes the shipment of hydrogen sulfide in DOT–105A600W tank cars. (mode 2).
6117–M	DOT–E 6117	Montana Sulphr & Chemical Co., Billings, MT.	49 CFR 173.314(c)	Authorizes the transport of hydrogen sulfide in DOT Specification 105A600W tank car tanks or proposed DOT Specification 120A600W tank car tanks.
7026–M	DOT–E 7026	Walter Kidde Aerospace, Wilson, NC.	49 CFR 173.304 (a)(1), 175.3, 178.47.	Authorizes the manufacture, marking and sale of a non-DOT specification welded steel pressure vessel, for transportation of a compressed gas. (modes 1, 2, 5).
7835–M	DOT–E 7835	Matheson Gas Products, East Rutherford, NJ.	49 CFR 177.848(d)	Authorizes the transport of compressed gas cylinders bearing the flammable gas label, the oxidizer label, or the poison gas label and tank car tanks bearing the poison gas label on the same vehicle. (mode 1).
8230–M	DOT–E 8230	Olin Corporation, Norwalk, CT.	49 CFR 173.178, 173.243.	Authorizes the shipment of certain Division 5.1 materials in non-DOT specification containers. (modes 1, 2, 3, 4).
9184–M	DOT–E 9184	The Carbide/Graphite Group, Inc., Louisville, KY.	49 CFR 173.178	Authorizes the shipment of calcium carbide and substances which in contact with water emit flammable gases, solid n.o.s. (strontium aluminate), in polyethylene-lined woven polypropylene collapsible bags in truckload or carload lots only. (modes 1, 2).
9413–M	DOT–E 9413	EM Science, Cincinnati, OH.	49 CFR 173.286	Authorizes the transport of a chemical kit which contains small amounts of hydrochloric acid and zinc powder. (mode 1).
9610–M	DOT–E 9610	Alliant Techsystems Inc., Hopkins, MN.	49 CFR 172.203 (a), (e), 172.204, 173.29 (a), (d), Parts 107, Appendix B (2), (3), Parts 171–189.	Authorizes the transport of DOT Specification 21C fiber drums which contain not more than 5 grams of smokeless powder essentially without regulation. (modes 1, 2).
9791–M	DOT–E 9791	Pressed Steel Tank Co., Inc., Milwaukee, WI.	49 CFR 173.301(h), 173.302(a), 173.34 (a)(1), 178.37.	Authorizes the manufacture, marking, and sale of a high strength, non-specification cylinder conforming in part with the DOT–3AA specification for transportation of certain nonflammable, nonliquefied compressed gases. (mode 1).
9791–M	DOT–E 9791	Pressed Steel Tank Co., Inc., Milwaukee, WI.	49 CFR 173.301(h), 173.302(a), 173.34 (a)(1), 178.37.	Authorizes the manufacture, marking, and sale of a high strength, non-specification cylinder conforming in part with the DOT–3AA specification for transportation of certain nonflammable, nonliquefied compressed gases. (mode 1).

MODIFICATION EXEMPTIONS—Continued

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemptions thereof
10798–M	DOT–E 10798	Olin Corporation, Norwalk, CT.	49 CFR 174.67 (i) and (j).	Authorizes tank cars, containing chlorine, to remain standing with unloading connections attached when no product is being transferred. (mode 2)
11054–M	DOT–E 11054	Welker Engineering Co., Sugar Land, TX.	49 CFR 178.36, Subpart C.	Authorizes the manufacture, mark and sell of non-DOT specification cylinders conforming to 3A specification for use in shipment of various hazardous materials classed in Class 3, Division 2.1 and 2.3. (modes 1, 2, 3, 4)
11644–M	DOT–E 11644	United States Can Company, Elgin, IL.	49 CFR 173.1200 (a)(8), 173.304(e), 173.306(a), 178.33a.	To authorize the transportation in commerce of a non-DOT specification three-piece inside metal container with welded side seam and double seamed ends conforming to DOT-Specification 2Q for use in transporting R–134a (1, 1, 2, tetrafluoroethane). (modes 1, 2, 3, 4)
11790–M	DOT–E 11790	United States Enrichment Corporation, Bethesda, MD.	49 CFR 172.302(c)	To authorize the transportation of uranium hexafluoride in non-DOT 5A specification cylinders without required markings. (mode 1)
11888–M	DOT–E 11888	Alliant Techsystems, Inc., Hopkins, MN.	49 CFR 172.101	Request for an emergency exemption in order to transport an explosive 1.1A in a solution of ethanol and water. (mode 1)
11962–M	DOT–E 11962	Bayer Corp., Pittsburgh, PA.	49 CFR 173.212	Bayer is requesting an emergency exemption to transport pure sodium in a chemical process vessel (accumulator). (mode 1)
11984–M	DOT–E 11984	Trans World Airlines, Inc., Kansas City, MO.	49 CFR 172.102 (c)(1) special provision 60.	Request for an emergency exemption from the requirement for a second safety mechanism when shipping oxygen generators. (modes 1, 4)
11986–M	DOT–E 11986	U.S. Department of Defense, Falls Church, VA.	49 CFR 176.136 (a) and (b).	Request for emergency exemption to authorize the stowage of Division 1.2, comp. group L explosives in a freight container below deck aboard large, med. speed roll on/roll off vessels. (mode 3)
11989–M	DOT–E 11989	U.S. Department of Defense, Falls Church, VA.	49 CFR 172.504, 172,504, 176.83(9b), 176.83(9b), 176.83(9d), 176.83(9d), 176.83(9f).	Request for an emergency exemption from segregation requirements aboard vessels for explosive materials. (mode 3)
12007–M	DOT–E 12007	SCC Products, Hollister, CA.	49 CFR 173.40	Request for packaging not authorized for Chloropicrin (mode 1)
12009–M	DOT–E 12009	U.S. Department of Justice, Washington, DC.	49 CFR 173.304	Request for an emergency exemption to transport anhydrous ammonia in cylinders that are not authorized or exceed the maximum storage density. (mode 1)
12013–M	DOT–E 12013	All Pure Chemical Company, Walnut Creek, CA.	49 CFR 172.302, 177.834(h), part 173, subparts d & F.	Request for an emergency exemption to authorize the discharge of certain cleas 8 liquids from IBCs without removing tanks from the vehicles on which they are transported. (mode 1)
12018–M	DOT–E 12018	MVE, Inc., New Prague, MN.	49 CFR 173.320	Request for emergency exemption to authorize the bulk transportation of refrigerated liquids in cargo tanks when the tanks are not mounted on motor vehicles. (modes 1, 3)

NEW EXEMPTIONS

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
11739–N	DOT–E 11739	Oceaneering Space Systems, Houston, TX.	49 CFR 178.57	To authorize the manufacture, mark and sale of a breathing and cooling system consisting of a non-specification cylinder, comparable to a DOT Specification 4L cylinder, containing a Division 2.2 material (modes 1, 2, 3, 4, 5)
11759–N	DOT–E 11759	E.I. DuPont de Nemours & Co., Inc., Wilmington, DE.	49 CFR 179.15(a)	To authorize the transportation in commerce of 112S400W and 112S500W tanks cars equipped with 1.5 inch Crosby JQ relief valves for use in transporting Division 6.1 material. (mode 2)

NEW EXEMPTIONS—Continued

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
11762–N	DOT–E 11762	Owens Fabricators, Inc., Baton Rouge, LA.	49 CFR 178.245–1(a)	To authorize the manufacture, mark and sale of DOT-Specification 51 portable tanks constructed in accordance with Part UHT of the ASME Code that are not postweld heat treated for the transport of certain Class 2 material (modes 1, 2, 3)
11769–N	DOT–E 11769	Great Western Chemical Co., Portland, OR.	49 CFR 177.834(h)	To authorize the unloading of various Class 8 material from truck-mounted intermediate bulk containers. (mode 1)
11770–N	DOT–E 11770	Gas Cylinder Technologies Inc., Tecumseh, ON.	49 CFR 173.301, 173.302, 173.304.	To authorize the transportation in commerce of non-DOT specification cylinders comparable to DOT 3E for use in transporting liquified and non-liquified compressed gases, Division 2.1 and 2.2. (modes 1, 2)
11798–N	DOT–E 11798	Air Products & Chemicals, Inc., Allentown, PA.	49 CFR 173.34 (e)(15), 173.34 (e)(15)(ii).	To authorize the transportation in commerce of DOT specification 3A or 3AA cylinders for use in transporting various gases classed in Division 2.1. (modes 1, 2, 3, 4, 5)
11809–N	DOT–E 11809	Laidlaw Environmental Services Inc., Columbia, SC.	49 CFR 173.156 (b)(1)(iii)	To authorize the transportation in commerce of consumer commodities from a manufacturer, a distribution center, or a retail outlet to a disposal facility from more than one offeror. (mode 1)
11811–N	DOT–E 11811	Laidlaw Environmental Services Inc., Columbia, SC.	49 CFR 172.202(c)	To authorize the transportation in commerce of various household hazardous wastes to be transported without having the quantity and unit measurement shown on the shipping paper. (mode 1)
11872–N	DOT–E 11872	Polymet Alloys, Inc., Saginaw, AL.	49 CFR 172.101, B105 & B106.	To authorize the transportation in commerce of water reactive, solid, Division 4.3 in flexible intermediate bulk containers. (modes 1, 2, 3)
11881–N	DOT–E 11881	Wampum Hardware Co., New Galilee, PA.	49 CFR 176.168(e)	To authorize the transportation in commerce of explosives classed in Division 1.1, 1.4 and 1.5 on the same vehicle aboard ferry vessel for quarry operations. (mode 3)
11899–N	DOT–E 11899	Carleton Technologies Inc., Orchard Park, NY.	49 CFR 178.65	To authorize the transportation in commerce of a sealed high pressure gas cylinder system, equipped with twin pyrotechnic cutters, Division 1.4D, charged with Nitrogen, Division 2.2, to be offered for shipment as a Division 2.2. (modes 1, 2, 3, 4)
11913–N	DOT 11913	Wheatland Tube Company, Wheatland, PA.	49 CFR 178.507(6)	To authorize the transportation in commerce of Class 9 Hazardous Material in 16 gauge 1A2 drums in weight that exceed the quantity limitation as presently authorized. (mode 1)
11914–N	DOT–E 11914	Glowmaster Corp., Garfield, NJ.	49 CFR 173.304 (d)(3)(ii), 178.33.	To authorize the transportation in commerce of a Division 2.1 hazardous materials in nonrefillable non-DOT specification inside container conforming with the DOT Specification 2P except for size, testing requirements and markings. (modes 1, 2, 3, 4)
11917–N	DOT–E 11917	Sexton Can Co., Martinsburg, WV.	49 CFR 173.304(a), 178.65.	To authorize the manufacture, marking and sale of a non-DOT specification cylinder to be used for the transportation in commerce of certain Division 2.2 materials. (modes 1, 2, 3, 4)
11924–N	DOT–E 11924	U.F. Strainrite, Lewiston, ME.	49 CFR 173.12(b)	To authorize the manufacture, marking and sale of a corrugated fiberboard box for use as the outer packaging for lab pack applications for use in transporting various classes of hazardous wastes. (modes 1, 2, 3)
11930–N	DOT–E 11930	Boeing North American, Inc., Downey, CA.	49 CFR 173.226, 173,336	To authorize the transportation in commerce of non-specification propellant tanks designed to military specification, non-pressurized during shipment, containing hazardous materials classed in Division 6.1 and 2.3, to be transported in non-specification packaging. (modes 1, 3)
11942–N	DOT–E 11942	DowElanco, Indianapolis, IN.	49 CFR 172.203(a), 172.302(c), 173.227.	To authorize the transportation in commerce of a Division 6.1, liquid PIH material meeting Hazard Zone B, in DOT specifications 4BW cylinders authorized under Sec. 173.227, but do not meet the general packaging provisions for liquid poisonous materials in cylinders required under Sec. 173.40 (mode 1)

NEW EXEMPTIONS—Continued

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
11953–N	DOT–E 11953	Manchester Tank, Brentwood, TN.	49 CFR 178.61(a)	To authorize the transportation in commerce of DOT 4B cylinders that are exempt from the maximum 1,000 pound water capacity requirement. (modes 1, 2, 3, 4)
11967–N	DOT–E 11967	Savage Industries Inc., Norristown, PA.	49 CFR 174.67(i) & (j)	To authorize tank cars to remain connected during unloading of various hazardous materials to remain connected during unloading without the physical presence of an unloader. (mode 2)
11980–N	DOT–E 11980	American Type Culture Collection (ATCC), Rockville, MD.	49 CFR 173.196, 178.609	To authorize the transportation in commerce of infectious substances in small quantities in glass, plastic vials and ampules in mechanical freezers. (mode 1)
11981–N	DOT–E 11981	The Dexter Corporation, Electric Materials Division, Londonderry, NH.	49 CFR 173.28(b)(2)	To authorize the one-time reuse of 1H1 plastic drums without performing the leakproofness test and marking the drums as would otherwise be required by Sec. 173.28(b)(2). (mode 1)
11993–N	DOT–E 11993	Breed Technologies, Inc., Lakeland, FL.	49 CFR 173.301(h), 173.302, 173.306 (d)(3).	To authorize the manufacture, mark and sale of non-DOT specification cylinders for use as components of automobile vehicle safety systems. (modes 1, 2, 3, 4)
11999–N	DOT–E 11999	Rhone-Poulenc, Shelton, CT.	49 CFR 174.67(i)&(j)	To authorize the rail cars to remain connected during unloading operation of Class 3 and 8 material without the physical presence of an unloader. (mode 2)
12014–N	DOT–E 12014	The Trane Co., TEN–E Packaging Services, Newport, MN.	49 CFR 173.305 (e)(1)	To authorize the transportation in commerce of used refrigerating machines containing no more than 1000 pounds of class A refrigerants classed as Division 2.2. (mode 1)
12015–N	DOT–E 12015	Elf Atochem North America, Inc., Philadelphia, PA.	49 CFR 174.67(i)&(j)	To authorize the tank cars containing various hazardous materials to remain standing with unloading connections attached when unloading has been temporarily discontinued or unloading in complete without the physical presence of an unloader. (mode 2)
12023–N	DOT–E 12023	Apollo Industries, N. Clarendon, VT.	49 CFR 171.5, 171.5 (a)(1)(ii), 178.603.	To authorize the manufacture, marking, and sale and use of an alternative discharge control system for cargo tanks used for the transportation in commerce of liquefied compressed gases. (mode 1)
12024–N	DOT–E 12024	Warner-Lambert Co., Morris Plains, NY.	49 CFR 171–180	To authorize the the transportation of various health care and consumer products, meeting the definition of hazardous materials, across public roadway to be transported as unregulated. (mode 1)
12038–N	DOT–E 12038	Duracool Limited, Edmonton, Alberta, CN.	49 CFR 173.306 (a)(3)	To authorize the transportation in commerce of Hydrocarbon Blend B refrigerant gas, Division 2.1, in non-DOT specification containers similar to DOT2Q cans with overpack. (modes 1, 2, 3)
12045–N	DOT–E 12045	Jefferson Smurfit Corp., Fernandina Beach, FL.	49 CFR 174.67(i)&(j)	To authorize tank cars loaded with chlorine to stand with unloading connections attached after unloading is completed and remain attached to transfer connection without the physical presence of an unloader. (mode 2)

EMERGENCY EXEMPTIONS

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
EE 11998–N	DOT–E 11998	Safety-Kleen Oil Recovery, East Chicago, IN.	49 CFR 172.102, SP B74.	To authorize the emergency transportation of seventeen (17) DOT Specification 105J200W tank cars transporting RQ Waste Toxic Liquids, corrosive, Inorganic, n.o.s., Division 6.1 and Class 8, Poison Inhalation hazard zone B not meeting SP B74. (mode 2)
EE 12010–N	DOT–E 12010	Laidlaw Environmental, Columbia, SC.	49 CFR 173.244	Request for an emergency exemption to transport non-DOT spec tanks containing sodium. (mode 1)
EE 12013–N	DOT–E 12013	All Pure Chemical Co., Wash DC.	49 CFR 172.302, 177.834(h), part 173, subpart D & F.	Request for an emergency exemption to authorize the discharge of certain cleas 8 liquids from IBCs without removing tanks from the vehicles on which they are transported. (mode 1)

EMERGENCY EXEMPTIONS—Continued

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
EE 12018–N	DOT–E 12018	MVE, Inc., New Prague, MN.	49 CFR 173.320	Request for emergency exemption to authorize the bulk transportation of refrigerated liquids in cargo tanks when the tanks are not mounted on motor vehicles. (modes 1, 3)
EE 12028–N	DOT–E 12028	Van Waters & Rogers Inc., Carencro, LA.	49 CFR 173.24(b), 179.300–12(b).	Request for an emergency exemption to move a ton container of chlorine that has a leak but has been equipped with an emergency ''B'' kit. (mode 1)
EE 12040–N	DOT–E 12040	Airpack of Virginia, Inc., Sterling, VA.	49 CFR 172.102(c)(1) ...	To authorize the emergency one-time transportation in commerce of remnant Oxygen generators and parts. (mode 1)
EE 12041–N	DOT–E 12041	GE Plastics, Pittsfield, MA.	49 CFR 173.182(c)(30)	Request for an emergency exemption to use alternate methods of testing cylinders. (mode 1)
EE 12042–N	DOT–E 12042	E.I. duPont de Nemours & Co., Wilmington, DE.	49 CFR 172.302(c), 180.407(h)(1).	Request for an emergency exemption to transport a damaged cargo tank containing hydrogen fluoride, anhydrous. (mode 1)
EE 12047–N	DOT–E 12047	True Drilling Co., Casper, WY.	49 CFR 171.2	Request for an emergency exemption to transport flammable liquids in packages that are not authorized in the HMR. (mode 1)
EE 12049–N	DOT–E 12049	Nevada Goldfields Inc., McGrath, AK.	49 CFR 172.101(9)(b) ...	Request for an emergency exemption to permit transporting a 4.2 material in packages that exceed the quantity limitation per package for cargo aircraft only. (mode 5)
EE 12058–N	DOT–E 12058	Zenon	49 CFR 123	To authorize the one-time emergency transportation of calcium hypochlorite and a corrosive solid, n.o.s. in non-specification packaging overpacked in a metal housing. (mode 4)
EE 12059–N	DOT–E 12059	Nalco/Exxon Energy Chemicals, Anchorage, AL.	49 CFR 172.101(9)(b) ...	Request for an emergency exemption to permit amounts of a corrosive material to exceed the package quantity limitations in 172.101 for cargo aircraft. (mode 5)
EE 12062–N	DOT–E 12062	Vulcan Chemicals, Birmingham, AL.	49 CFR 173.242	Request for an emergency exemption to continue to use a non-DOT specification tank to transport a 6.1 material. (mode 1)

DENIALS

11561–N Request by Solkatronic Chemicals Fairfield, NJ to authorize the transportation in commerce of stainless steel refillable containers on vehicles other than company-owned or exclusive-use vehicles denied April 6, 1998.

11905–N Request by Russell-Stanley Corp. Red Bank, NJ to authorize the transportation in commerce of certain steel and plastic UN drums that may not comply with the design performance stack test denied February 24, 1998.

11905–P Request by Russell-Stanley Corporation (M–4231) Wilmington, DE to authorize the transportation in commerce of certain steel and plastic UN drums that may not comply with the design performance stack test denied February 24, 1998.

11905–P Request by Russell-Stanley Corporation (M–4232) Addison, IL to authorize the transportation in commerce of certain steel and plastic UN drums that may not comply with the design performance stack test denied February 24, 1998.

11905–P Request by Russell-Stanley Corporation (M–4233) Monmouth Junction, NJ to authorize the transportation in commerce of certain steel and plastic UN drums that may not comply with the design performance stack test denied February 24, 1998.

11905–P Request by Russell-Stanley Corporation (M–4234) Lithonia, GA to authorize the transportation in commerce of certain steel and plastic UN drums that may not comply with the design performance stack test denied February 24, 1998.

11905–P Request by Russell-Stanley Corporation (M–4235) Conroe, TX to authorize the transportation in commerce of certain steel and plastic UN drums that may not comply with the design performance stack test denied February 24, 1998.

11905–P Request by Russell-Stanley Corporation (HD) Bramalea ONT, CN to authorize the transportation in commerce of certain steel and plastic UN drums that may not comply with the design performance stack test denied February 24, 1998.

11918–N Request by E.I. DuPont de Nemours & Co., Inc. Wilmington, DE to authorize the transportation in commerce of tank cars without head and thermal protection for use in transporting Class 2 material denied April 21, 1998.

11925–N Request by Concorde Battery Corp. West Covina, CA to authorize the transportation in commerce of non-spillable aircraft batteries which have been altitude tested at a pressure less than the test pressure set forth in the regulations, overpacked in non-specification fiberboard boxes to be transported without required markings and labels denied February 26, 1998.

11948–N Request by Sumitomo Corporation San Francisco, CA to authorize the transportation in commerce of non-specification cylinders manufactured and filled in Japan for use in transporting certain compressed gases denied January 9, 1998.

11987–N Request by Exceed, Inc. Oklahoma City, OK to authorize the manufacture, marking and sale of a specially designed combination packaging for use in transporting infectious substances, Division 6.2 in vials denied February 13, 1998.

12000–N Request by Primex Technologies St. Petersburg, FL to authorize the transportation in commerce of Division 1.3C material in M13A2 metal containers without required labeling denied February 26, 1998.

12025–N Request by South Florida Plastics Opa-Locka, FL to authorize an emergency exemption to use a UN jerry can that fails the drop test denied January 13, 1998.

12027–N Request by Amato Industries Silver Spring, MD to authorize an emergency exemption to remit reuse of 15 gallon plastic containers without performing leakproofness tests denied April 20, 1998.

[FR Doc. 98–16144 Filed 6–17–98; 8:45 am]
BILLING CODE 4909–60–M

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

Office of Hazardous Materials Safety; Notice of Applications for Exemptions

AGENCY: Research and Special Programs Administration, DOT.

ACTION: List of applicants for exemptions.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, exemptions from the Department of Transportation's Hazardous Materials Regulations (49 CFR part 107, subpart B), notice is hereby given that the Office of Hazardous Materials Safety has received the applications described herein. Each mode of transportation for which a particular exemption is requested is indicated by a number in the ''Nature of Application'' portion of the table below as follows: 1—Motor vehicle, 2—Rail freight, 3—Cargo vessel, 4—Cargo aircraft only, 5—Passenger-carrying aircraft.

DATES: Comments must be received on or before July 20, 1998.

ADDRESS COMMENT TO: Dockets Unit, Research and Special Programs Administration, Room 8421, DHM–30, U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate. If confirmation of receipt of comments is desired, include a self-addressed stamped postcard showing the exemption application number.

FOR FURTHER INFORMATION: Copies of the applications (See Docket Number) are available for inspection at the New Docket Management Facility, PL–401, at the U.S. Department of Transportation, Nassif Building, 400 7th Street, SW., Washington, DC 20590.

This notice of receipt of applications for new exemptions is published in accordance with part 107 of the Hazardous Materials Transportation Act (49 U.S.C. 1806; 49 CFR 1.53(e)).

Issued in Washington, DC, on June 11. 1998.

J. Suzanne Hedgepeth,

Director, Office of Hazardous Materials Exemptions and Approvals.

NEW EXEMPTIONS

Application No.	Docket No.	Applicant	Regulation(s) affected	Nature of exemption thereof
12079–N	RSPA–1998–3920	ASAHI SEISAKUSHO CO., LTD, Saitama, 339–0078, Japan.	49 CFR 173.301(h), 173.302(a)(1), 173.305(a), 173.34(a)(1).	To authorize the manufacture, mark and sale of non-DOT specification cylinders comparable to a DOT specification 3AA for use as a scuba diving cylinder containing a Division 2.2 gas. (modes 1, 2, 3, 4)
12083–N	RSPA–1998–3934	Northern Indiana Fuel & Light Co., Inc., Auburn, IN.	49 CFR 173.29(a)	To authorize the bulk transportation in commerce of residual quantities of Class 3 material to be transported in specially designed tanks. (mode 1)
12084–N	RSPA–1998–3941	AlliedSignal Inc., Morristown, NJ.	49 CFR 173.34(e)(11)	To authorize an alternative schedule for retesting of DOT 4B, 4BA and 4BW cylinders used in transporting refrigerant gases and blends. (modes 1, 2, 3)
12086–N	RSPA–1998–3942	Yale University, New Haven, CT.	49 CFR 173.196(a)(ii)(b)	To authorize an alternative packaging for use in transporting used syringes classed as Infectious substances, Division 6.2. (mode 1)
12087–N	RSPA–1998–3943	LND, Inc., Fairfield, CT ...	49 CFR 172.101, Co. 9, 173.306, 175.3.	To authorize the manufacture, mark, and sale of non-DOT specification metal containers containing Boron Trifluoride, classed as 2.3 for use in radiation detectors. (modes 1, 2, 3, 4, 5)
12088–N	RSPA–1998–3936	Westvaco, Richmond, VA	49 CFR 173, 177, 178 & 180.	To authorize the transportation in commerce of samples of hazardous materials in compatible containers as essentially unregulated. (mode 1)

[FR Doc. 98–16167 Filed 6–17–98; 8:45 am]
BILLING CODE 4910–60–M

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

Office of Hazardous Materials Safety; Notice of Applications for Modification of Exemption

AGENCY: Research and Special Programs Administration, DOT.

ACTION: List of applications for modification of exemptions.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, exemptions from the Department of Transportation's Hazardous Materials Regulations (49 CFR part 107, subpart B), notice is hereby given that the Office of Hazardous Materials Safety has received the applications described herein. This notice is abbreviated to expedite docketing and public notice. Because the sections affected, modes of transportation, and the nature of application have been shown in earlier **Federal Register** publications, they are not repeated here. Requests for modifications of exemptions (e.g. to provide for additional hazardous materials, packaging design changes, additional mode of transportation, etc.) are described in footnotes to the application number. Application numbers with the suffix ''M'' denote a modification request. These applications have been separated from the new applications for exemptions to facilitate processing.

DATES: Comments must be received on or before July 6, 1998.

ADDRESS COMMENTS TO: Dockets Unit, Research and Special Programs Administration, U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate. If confirmation of receipt of comments is desired, include a self-addressed stamped postcard showing the exemption number.

FOR FURTHER INFORMATION: Copies of the applications are available for inspection in the Dockets Unit, Room 8426, Nassif Building, 400 7th Street SW, Washington, DC.

MODIFICATION OF EXEMPTIONS

Application No.	Docket No.	Applicant	Exemption
1862–M		Greer Hydraulics, Incorporated, Rockford, IL [1]	1862
8915–M		Advanced Silicon Materials, Inc., Moses Lake, WA [2]	8915
10784–M		The United States Secret Service, Washington, DC [3]	10784
11703–M		Walter Kidde Portable Equipment Company, Inc., Mebane, NC [4]	11703
11725–M		Dynatherm Corporation, Hunt Valley, MD [5]	11725

[1] To modify the exemption to provide for several design changes.
[2] To modify the exemption to provide for rail as an additional mode of transportation for transportation of Silane gas, 2.1.
[3] To reissue an exemption originally issued on an emergency basis to authorize the shipment of first aid/trauma kits, containing oxygen in DOT Specification 3AA2015 cylinders, in the passenger compartment of commercial aircraft.
[4] To modify the exemption to provide for passenger aircraft as an additional mode of transportation for use in transporting Division 2.2 materials.
[5] To authorize party status and to authorize a similar non-DOT specification heat pipe assembly for shipment of certain liquefied and compressed gases.

This notice of receipt of applications for modification of exemptions is published in accordance with part 107 of the Hazardous Materials Transportations Act 49 U.S.C. 1806; 49 CFR 1.53(e)).

Issued in Washington, DC, on June 11, 1998.

J. Suzanne Hedgepeth,

Director, Office of Hazardous Materials, Exemptions and Approvals.

[FR Doc. 98–16168 Filed 6–17–98; 8:45 am]

BILLING CODE 4910–60–M

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 33605]

J.K. Lines, Inc.—Acquisition and Operation Exemption—Line of The Burlington Northern and Santa Fe Railway Company

J.K. Lines, Inc. (JK), a Class III rail carrier, has filed a notice of exemption under 49 CFR 1150.41 to acquire and operate approximately 2 miles of rail line, the track right-of-way, and certain adjacent real estate owned by The Burlington Northern and Santa Fe Railway Company (BNSF).[1] The line covers seven parcels extending from the end of BNSF's track in Joliette, ND, at milepost 179.55, south to the North Dakota Highway No. 5 right-of-way line, near milepost 177.44. J.K. Line will provide common carrier rail service on the involved line through a subcontractor.

The transaction was scheduled to be consummated on or shortly after May 31, 1998.

If this notice contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke does not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 33605, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, N.W., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Jeffrey O. Moreno, Donelan, Cleary, Wood & Maser, P.C., 1100 New York Ave., N.W., Suite 750, Washington, D.C. 20005.

Board decisions and notices are available on our website at ''WWW.STB.DOT.GOV.''

Decided: June 10. 1998.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary,

[FR Doc. 98–15973 Filed 6–17–98; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 33604]

Lone Star Railroad, Inc.—Acquisition Exemption—Union Pacific Railroad Company

Lone Star Railroad, Inc. (LSRI), a Class III rail carrier, has filed a notice of exemption under 49 CFR 1150.41 to acquire through lease a Union Pacific Railroad Company rail line as follows: all Abilene, TX yard tracks south of the Abilene wye track and south of the east-west main line, including the A&S Industrial Lead from milepost 0.0 to milepost 4.30, a distance of approximately 8.24 miles, at Abilene, Taylor County, TX.

The transaction was scheduled to be consummated on or shortly after May 26, 1998.

This proceeding is related to STB Finance Docket No. 33604 (Sub-No. 1), *Southern Switching Company—Operation Exemption—Lone Star Railroad, Inc.,* wherein Southern Switching Company (SSC), also a Class III rail carrier, has concurrently filed a notice of exemption to operate the Abilene line pursuant to an operating agreement with LSRI.[1]

If the notice contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke does not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 33604, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, N.W., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Thomas F. McFarland, Jr., 20 North Wacker Drive, Suite 1330, Chicago, IL 60606–2902.

Decided: June 12, 1998.

[1] J.K. Line certifies that the projected revenues do exceed those that would qualify as Class III rail carrier.

[1] LSRI and SSC are commonly controlled by Gregory B. Cundiff. *See Gregory B. Cundiff—Continuance in Control Exemption—Lone Star Railroad, Inc. and Southern Switching Company,* Finance Docket No. 32501 (ICC served May 27, 1994).

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 98–16319 Filed 6–17–98; 8:45 am]

BILLING CODE 4915–00–P .

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 33604 (Sub–No. 1)]

Southern Switching Company—Operation Exemption—Lone Star Railroad, Inc.

Southern Switching Company (SSC), a Class III rail carrier, has filed a notice of exemption under 49 CFR 1150.41 to operate over approximately 8.24 miles of railroad leased by Lone Star Railroad, Inc. (LSRI). The involved trackage is as follows: all Abilene, TX yard tracks south of the Abilene wye track and south of the east-west main line, including the A&S Industrial Lead from milepost 0.0 to milepost 4.30, at Abilene, Taylor County, TX.

The transaction was scheduled to be consummated on or shortly after May 26, 1998.

This proceeding is related to STB Finance Docket No. 33604, *Lone Star Railroad, Inc.—Acquisition Exemption—Union Pacific Railroad Company,* wherein LSRI has concurrently filed a notice of exemption to acquire through lease the Abilene line from Union Pacific Railroad Company.[1]

If the notice contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 33604 (Sub-No. 1), must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, NW, Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Thomas F. McFarland, Jr., 20 North Wacker Drive, Suite 1330, Chicago, IL 60606–2902.

Decided: June 12, 1998.

[1] LSRI and SSC are commonly controlled by Gregory B. Cundiff. *See Gregory B. Cundiff—Continuance in Control Exemption—Lone Star Railroad, Inc. and Southern Switching Company,* Finance Docket No. 32501 (ICC served May 27, 1994).

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 98–16318 Filed 6–17–98; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

June 10, 1998.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

Dates: Written comments should be received on or before July 6, 1998 to be assured of consideration.

Special Request: In order to conduct the surveys described below at the beginning July 1998, the Department of the Treasury is requesting that the Office of Management and Budget (OMB) review and approve this information collection by June 23, 1998. To obtain a copy of this study, please contact the Internal Revenue Service Clearance Officer at the address listed below.

Internal Revenue Service (IRS)

OMB Number: 1545–1432.

Project Number: M:SP:V 98–011–G.

Type of Review: Revision.

Title: 1998 Second Quarter Automated 941 TeleFile Customer Survey.

Description: The 941 TeleFile automated customer satisfaction survey is part of the 1998 941 Quality Measurement plan and is designed as one means of evaluating the effectiveness of the 941 TeleFile system. This survey requests information about satisfaction and whether the business filer would be willing to use the TeleFile system again.

Respondents: Business or other for-profit.

Estimated Number of Respondents: 1,385.

Estimated Burden Hours Per Respondent: 1 minute.

Frequency of Response: Quarterly.

Estimated Total Reporting Burden: 23 hours.

Clearance Officer: Garrick Shear (202) 622–3869, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, N.W., Washington, DC 20224.

OMB Reviewer: Alexander T. Hunt (202) 395–7860, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 98–16226 Filed 6–17–98; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Submission to OMB for Review; Comment Request

June 10, 1998.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

Dates: Written comments should be received on or before July 25, 1998 to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545–1420.

Form Number: IRS Form 8849.

Type of Review: Extension.

Title: Claim for Refund of Excise Taxes.

Description: Internal Revenue Code (IRC) section 6402, 6404, and sections 301.6402–2, 301.6404–3 of the regulations, allow for refunds of taxes (except income taxes) or refund, abatement, or credit of interest, penalties, and additions to tax in the event of errors or certain actions by IRS. Form 8849 is used by taxpayers to claim refunds of excise taxes.

Respondents: Business or other for-profit, Individuals or households, Not-for-profit institutions, Farms, Federal Government, State, Local or Tribal Government.

Estimated Number of Respondents/Recordkeepers: 125,292.

Estimated Burden Hours Per Respondent/Recordkeeper:

Recordkeeping—35 hr., 9 min.
Learning about the law or the form—1 hr., 30 min.

Preparing, copying, assembling, and sending the form to the IRS—2 hr., 7 min.

Frequency of Response: Quarterly, Weekly, Annually.

Estimated Total Reporting/ Recordkeeping Burden: 890,507 hours.

OMB Number: 1545–1596.

Form Number: IRS Form 8857.

Type of Review: Extension.

Title: Request for Innocent Spouse Relief.

Description: Section 6103(e) of the Internal Revenue Code allows taxpayers to request, and IRS to grant, ''innocent spouse'' relief when: taxpayer filed a joint return with tax substantially understated; taxpayer establishes no knowledge of, or benefit from, the understatement; and it would be inequitable to hold the taxpayer liable. GAO Report GAO/GGD–97–34 recommended IRS develop a form to make relief easier for the public to request.

Respondents: Individuals or households.

Estimated Number of Respondents: 11,667.

Estimated Burden Hours Per Respondent:

Learning about the law or the form—14 minutes

Preparing the form—16 minutes

Copying, assembling, and sending the form to the IRS—20 minutes

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 9,684 hours.

Clearance Officer: Garrick Shear (202) 622–3869, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW, Washington, DC 20224.

OMB Reviewer: Alexander T. Hunt (202) 395–7860, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 98–16227 Filed 6–17–98; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Submission to OMB for Review; Comment Request

June 12, 1998.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

Dates: Written comments should be received on or before July 20, 1998 to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: New.

Form Number: None.

Type of Review: New collection.

Title: Late Paid Schedule C Health Care Study.

Description: This is a survey for quantitative research to identify potential causes and remedies for late payment of federal income taxes by Form 1040 Schedule C filers in the Health Care industry. The data developed in this research will be used to formulate treatments for late payments by heal care sole proprietors.

Respondents: Business or other for-profit.

Estimated Number of Respondents: 1,430.

Estimated Burden Hours Per Respondent: 7 minutes.

Frequency of Response: Annually.

Estimated Total Reporting Burden: 170 hours.

OMB Number: 1545–0160.

Form Number: IRS Form 3520-A.

Type of Review: Extension.

Title: Annual Information Return of Foreign Trust With a U.S. Owner.

Description: Section 6048(b) requires that foreign trusts with at least one U.S. beneficiary must file an annual information return on Form 3520-A. The form is used to report the income and deductions of the foreign trust and provide statements to the U.S. owners and beneficiaries. IRS uses Form 3520-A to determine if the U.S. owner of the trust has included the net income of the trust in it's gross income.

Respondents: Individuals or households, Business or other for-profit.

Estimated Number of Respondents/ Recordkeepers: 500.

Estimated Burden Hours Per Respondent/Recordkeeper:

Recordkeeping—36 hr., 21 min.

Learning about the law or the form—2 hr., 59 min.

Preparing and sending the form to the IRS—3 hr., 42 min.

Frequency of Response: Annually.

Estimated Total Reporting/ Recordkeeping Burden: 21,515 hours.

OMB Number: 1545–1597.

Revenue Procedure Number: Revenue Procedure 98–27.

Type of Review: Extension.

Title: Qualified Intermediaries (QI).

Description: Revenue Procedure 98–27 describes application procedures for becoming a qualified intermediary (QI) and the requisite agreement that a QI must execute with the IRS.

Respondents: Business or other for-profit.

Estimated Number of Respondents/ Recordkeepers: 88,504.

Estimated Burden Hours Per Respondent/Recordkeeper:

Estimated Time for a QI Account Holder—30 minutes

Estimated Time for a QI—2,093 hours

Frequency of Response: On occasion.

Estimated Total Reporting/ Recordkeeping Burden: 301,393 hours.

Clearance Officer: Garrick Shear (202) 622–3869, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW, Washington, DC 20224.

OMB Reviewer: Alexander T. Hunt (202) 395–7860, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 98–16228 Filed 6–17–98; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

June 12, 1998.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before July 6, 1998 to be assured of consideration.

SPECIAL REQUEST: In order to conduct the focus group interviews described below at the beginning July 1998, the Department of the Treasury is requesting that the Office of Management and Budget (OMB) review and approve this information collection by June 19, 1998. To obtain a copy of this study, please contact the Internal Revenue Service Clearance Officer at the address listed below.

Internal Revenue Service (IRS)

OMB Number: 1545–1432.
Project Number: M:SP:V 98–010–G.
Type of Review: Revision.
Title: Proposed Incentives, Rewards and Customer Service Products Focus Group Interviews (Electronic Tax Administration (ETA)).

Description: The purpose of the focus group interviews will be to gather opinions and ideas from tax practitioners, Certified Public Accountants, enrolled agents, and attorneys about some incentives or customer service products. These focus groups interviews (one each day) will be held at each of the four IRS 1998 Nationwide Tax Forums sponsored by the Electronic Tax Administration Office. The forums will be held as follows: Philadelphia: July 8–9; Las Vegas: August 5–6; St. Louis: August 19–20; and New Orleans: September 2–3.

Respondents: Business or other for-profit.

Estimated Number of Respondents: 80 (10 participants times 8 groups).

Estimated Burden Hours Per Respondent:

Screening—5 minutes.
Focus Group Interview Sessions—2 hours.

Frequency of Response: Other (conducted at 4 forums).

Estimated Total Reporting Burden: 180 hours.

Clearance Officer: Garrick Shear (202) 622–3869, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, N.W., Washington, DC 20224.

OMB Reviewer: Alexander T. Hunt (202) 395–7860, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 98–16229 Filed 6–17–98; 8:45 am]

BILLING CODE 4830–01–P

UNITED STATES ENRICHMENT CORPORATION

Sunshine Act Meeting

BILLING CODE: 8720–01.

AGENCY: United States Enrichment Corporation.

SUBJECT: Board of Directors.

TIME AND DATE: 8:00 a.m., Tuesday, June 16, 1998.

PLACE: USEC Corporate Headquarters, 6903 Rockledge Drive, Bethesda, Maryland 20817.

STATUS: This meeting has been canceled.

CONTACT PERSON FOR MORE INFORMATION: Elizabeth Stuckle at 301/564–3399.

Dated: June 15, 1998.

William H. Timbers, Jr.,

President and Chief Executive Officer.

[FR Doc. 98–16338 Filed 6–16–98; 10:39 am]

BILLING CODE 8720–01–M

UNITED STATES INFORMATION AGENCY

Proposed Information Collection

AGENCY: United States Information Agency.

ACTION: Comment request; Proposed New Collection: USIA Evaluation of the Use of Arrival Host Families.

SUMMARY: The United States Information Agency, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to comment on an information collection requirement concerning the proposed public use form entitled, ''USIA Evaluation of the Use of Arrival Host Families''. This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13; 44 U.S.C. 3506(c)(2)(A)).

The information collection activity involved with this program is conducted pursuant to the mandate given to the United States Information Agency under the terms and conditions of the Mutual Educational and Cultural Exchange Act of 1961, Public Law 87–256, 22 U.S.C. 2451, and section 101(a)(15)(J) of the Immigration and Nationality Act, as amended. The Exchange Visitor Program regulations in 22 CFR part 514 implement the Act; the regulations in 22 CFR 514.25 specifically govern the high school exchanges (''Secondary school students'').

DATES: Comments are due on or before August 17, 1998.

COPIES: Copies of the Request for Clearance (OMB 83–I), supporting statement, and other documents that will be submitted to OMB for approval may be obtained from the USIA Clearance Officer. Comments should be submitted to the Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for USIA, and also to the USIA Clearance Officer.

FOR FURTHER INFORMATION CONTACT: Agency Clearance Officer, Ms. Jeannette Giovetti, United States Information Agency, M/AOL, 301 Fourth Street, SW., Washington, DC 20547, telephone (202) 619–4408, internet address: JGiovett@USIA.GOV; and OMB review: Ms. Victoria Wassmer, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Docket Library, Room 10202, NEOB, Washington, DC 20503, Telephone (202) 395–3176.

SUPPLEMENTARY INFORMATION: Public reporting burden for this collection of information is estimated to average thirty (30) minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Responses are voluntary and respondents will be required to respond an average of 2 times. Comments are requested on the proposed information collection concerning (a) whether the proposed collection of information is necessary for the proper performance of the agency, including whether the information has practical utility; (b) the accuracy of the Agency's burden estimates; (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. Send comments regarding this burden estimate or any other aspect of this collection of information to the United States Information Agency, M/AOL, 301 Fourth Street, SW., Washington, DC 20547; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Docket Library, Room 10202, NEOB, Washington, DC 20503.

Current Actions: USIA is requesting OMB revision and approval of this new collection for a three-year period.

Title: USIA Evaluation of the Use of Arrival Host Families.

Form Numbers: N/A.

Abstract: USIA strives to evaluate the policies, attainment of program goals, impact and administration of all its exchanges. To that end, USIA proposes to conduct a one-time evaluation project during the 1998–99 Academic year to evaluate the quality of and impact on foreign high school students placed in arrival host families (temporary living arrangements).

Proposed Frequency of Responses:

No. of Respondents—6,520

Recordkeeping Hours—.50

Total Annual Burden—3,260

Dated: June 12, 1998.

Rose Royal,

Federal Register Liaison.

[FR Doc. 98–16178 Filed 6–17–98; 8:45 am]

BILLING CODE 8230–01–M

UNITED STATES INFORMATION AGENCY

College and University Partnerships Program for Armenia, Azerbaijan, Georgia, and Moldova

ACTION: Request for proposals.

SUMMARY: The Office of Academic Programs of the United States Information Agency's Bureau of Educational and Cultural Affairs announces an open competition for an assistance award program. Accredited, post-secondary educational institutions meeting the provisions described in IRS regulation 26 CFR 1.501(c) may apply to develop a partnership with (a) foreign institution(s) of higher education from Armenia, Azerbaijan, Georgia, or Moldova in specified fields.

Proposed projects must be eligible in terms of countries/localities and disciplines as described in the section entitled ''Eligibility'' below.

Participating institutions exchange faculty and administrators for a combination of teaching, lecturing, faculty and curriculum development, collaborative research, and outreach, for periods ranging from one week (for planning visits) to an academic year. The FY 98 program will also support the establishment and maintenance of Internet and/or e-mail communication facilities as well as interactive distance learning programs at foreign partner institutions. Applicants may propose other project activities not listed above that are consistent with the goals and activities of the College and University Partnerships Program (CUPP).

The program awards up to $200,000 for a three-year period to defray the cost of travel and per diem with an allowance for educational materials and some aspects of project administration. Grants awarded to organizations with less than four years of experience in conducting international exchange programs will be limited to $60,000.

Overall grant-making authority for this program is contained in the Mutual Educational and Cultural Exchange Act of 1961, Pub. L. 87–256, as amended, also known as the Fulbright-Hays Act. The purpose of the Act is ''to enable the Government of the United States to increase mutual understanding between the people of the United States and the people of other countries * * *; to strengthen the ties which unite us with other nations by demonstrating the educational and cultural interests, developments, and achievements of the people of the United States and other nations * * * and thus to assist in the development of friendly, sympathetic and peaceful relations between the United States and the other countries of the world.'' The funding authority for the program cited above is provided through the Freedom for Russia and Emerging Eurasian Democracies and Open Markets Support Act of 1992 (Freedom Support Act). Programs and projects must conform with Agency requirements and guidelines outlined in the Solicitation Package. USIA projects and programs are subject to the availability of funds.

ANNOUNCEMENT TITLE AND NUMBER: All communications with USIA concerning this RFP should refer to the College and University Partnerships Program for Armenia, Azerbaijan, Georgia, and Moldova and reference number E/ASU–98–11.

DEADLINE FOR PROPOSALS: All copies must be received at the U.S. Information Agency by 5 p.m. Washington, DC time on Monday, August 10, 1998. Faxed documents will not be accepted at any time. Documents postmarked by the due date but received at a later date will not be accepted.

Approximate program dates: Grants should begin on or about September 30, 1998.

Duration: September 30, 1998—August 31, 2001.

FOR FURTHER INFORMATION, CONTACT: Office of Academic Programs; Advising, Teaching, and Specialized Programs Division; Specialized Programs Unit, (E/ASU) room 349, U.S. Information Agency, 301 4th Street, SW., Washington, DC 20547, telephone: (202) 619–4126, fax: (202) 401–1433, internet: jcebra@usia.gov to request a Solicitation Package containing more detailed award criteria; all application forms; and guidelines for preparing proposals, including specific criteria for preparation of the proposal budget.

TO DOWNLOAD A SOLICITATION PACKAGE VIA INTERNET: The entire Solicitation Package may be downloaded from USIA's website at http://www.usia.gov/education/rfps. Please read all information before downloading.

TO RECEIVE A SOLICITATION PACKAGE VIA TAX ON DEMAND: The entire Solicitation Package may be received via the Bureau's ''Grants Information Fax on Demand System'', which is accessed by calling 202/401–7616. Please request a ''Catalog'' of available documents and order numbers when first entering the system.

Please specify USIA Program Officer Jonathan Cebra on all inquiries and correspondences. Interested applicants should read the complete **Federal Register** announcement before sending inquiries or submitting proposals. Once the RFP deadline has passed, Agency staff may not discuss this competition in any way with applicants until the Bureau proposal review process has been completed.

SUBMISSIONS: Applicants must follow all instructions given in the Solicitation Package. The original and 10 copies of the application should be sent to: U.S. Information Agency, Ref.: E/ASU–98–11, Office of Grants Management, E/XE, Room 326, 301 4th Street, SW., Washington, DC, 20547.

Applicants must also submit the ''Executive Summary'' and ''Proposal Narrative'' sections of the proposal on a 3.5″ diskette, formatted for DOS. This material must be provided in ASCII text (DOS) format with a maximum line length of 65 characters. USIA will transmit these files electronically to USIS posts overseas for their review, with the goal of reducing the time it takes to get posts' comments for the Agency's grants review process.

DIVERSITY, FREEDOM AND DEMOCRACY GUIDELINES: Pursuant to the Bureau's authorizing legislation, programs must maintain a non-political character and should be balanced and representative of the diversity of American political, social, and cultural life. ''Diversity'' should be interpreted in the broadest sense and encompass differences including, but not limited to ethnicity, race, gender, religion, geographic location, socio-economic status, and physical challenges. Applicants are strongly encouraged to adhere to the advancement of this principle both in program administration and in program content. Please refer to the review criteria under the 'Support for Diversity' section for specific suggestions on incorporating diversity into the total proposal. Pub. L. 104–319 provides that ''in carrying out programs of educational and cultural exchange in countries whose people do not fully enjoy freedom and democracy'', USIA ''shall take appropriate steps to provide opportunities for participation in such programs to human rights and democracy leaders of such countries.'' Proposals should account for advancement of this goal in their program contents, to the full extent deemed feasible.

SUPPLEMENTARY INFORMATION:

Guidelines

The College and University Partnership Program for Armenia, Azerbaijan, Georgia, and Moldova is limited to specific academic disciplines.

For Georgia and Azerbaijan, eligible disciplines include:

(1) Law;

(2) Business/economics/trade;

(3) Government/public policy/public administration; and

(4) Journalism/communications.

The eligible discipline for Armenia is journalism; please note that the Journalism Faculty of Yerevan State University is the only eligible NIS partner institution.

The eligible discipline for Moldova is political science; please note that Moldovan State University is the only eligible partner institution.

Proposals must focus on curriculum, faculty, and staff development in one or more of these eligible disciplines. Administrative reform at the foreign partner may also be a project component.

Projects should involve the development of new academic programs or the building and/or restructuring of an existing program or programs, and should promote higher education's role in the transition to market economies and open democratic systems. Feasibility studies to plan partnerships will not be considered.

Whenever feasible, participants should make their training and personnel resources, as well as results of their collaborative research, available to government, NGOs, and business.

Participating institutions should exchange faculty and/or staff members for teaching/lecturing and consulting. At least once, one U.S. participant should be in residence at the foreign partner institution for one semester to serve in a coordinating role.

U.S. institutions are responsible for the submission of proposals and should collaborate with their foreign partners in planning and preparing proposals. U.S. and foreign partner institutions are encouraged to consult about the proposed project with USIA E/ASU staff in Washington, DC. Preference will be given to proposals which demonstrate evidence of previous relations with the foreign partner institution(s).

U.S. Partner and Participant Eligibility

In the U.S., participation in the program is open to accredited two- and four-year colleges and universities, including graduate schools. Applications from consortia of U.S. colleges and universities are eligible. Secondary U.S. partners may include relevant non-governmental organizations, non-profit service or professional organizations. The lead U.S. institution in the consortium is responsible for submitting the application and each application from a consortium must document the lead school's started authority to represent the consortium. Participants representing the U.S. institution who are traveling under USIA grant funds must be faculty, staff, or advanced graduate students from the participating institution(s) and must be U.S. citizens.

Foreign Partner and Participant Eligibility

Overseas, participation is open to recognized, degree-granting institutions of post-secondary education, which may include internationally recognized and established independent research institutes. Secondary foreign partners may include relevant governmental and non-governmental organizations, non-profit service or professional organizations. Participants representing the foreign institutions must be faculty, staff or advanced students of the partner institution, and the citizens, nationals, or permanent residents of the country of the foreign partner, and be qualified to hold a valid passport and U.S. J–1 visa.

Foreign partners from the following countries are eligible:

Armenia—only the journalism faculty of Yerevan State University is eligible.

Azerbaijan—any recognized, degree-granting post-secondary educational institution is eligible.

Georgia—any recognized, degree-granting post-secondary educational institution is eligible.

Moldova—only Moldovan State University is eligible.

Partnerships including a secondary foreign partner from a non-NIS country are eligible; however, with the exception noted below, USIA will not cover overseas non-NIS partner institution costs.

In order to promote regional cooperation, limited funds may be budgeted for the exchange, as part of this partnership agreement, of faculty between NIS institutions and institutions of higher learning in Central and Eastern Europe (Albania, Bosnia, Bulgaria, Croatia, Czech Republic, Estonia, Hungary, Latvia, Lithuania, the Former Yugoslav Republic of Macedonia, Moldova, Poland, Romania, Serbia and Montenegro, Slovakia, Slovenia).

Ineligibility

A proposal will be deemed technically ineligible if:

(1) It does not fully adhere to the guidelines established herein and in the Solicitation Package;

(2) It is not received by the deadline;

(3) It is not submitted by the U.S. partner;

(4) One of the partner institutions is ineligible;

(5) The academic discipline(s) is/are not listed as eligible in the RFP, herein;

(6) The amount requested of USIA exceeds $200,000 for the three-year project.

Please refer to program-specific guidelines (POGI) in the Solicitation Package for further details.

Notice

The terms and conditions published in this RFP are binding and may not be modified by any USIA representative. Explanatory information provided by the Agency that contradicts published language will not be binding. Issuance of the RFP does not constitute an award commitment on the part of the Government. The Agency reserves the right to reduce, revise, or increase proposal budgets in accordance with the needs of the program and the availability of funds. Awards made will be subject to periodic reporting and evaluation requirements.

Notification

Final awards cannot be made until funds have been appropriated by Congress, allocated and committed through internal USIA procedures.

Dated: June 12, 1998.

John P. Loiello,

Associate Director for Educational and Cultural Affairs.

[FR Doc. 98–16179 Filed 6–17–98; 8:45 am]

BILLING CODE 8230–01–M

Corrections

Federal Register

Vol. 63, No. 117

Thursday, June 18, 1998

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF AGRICULTURE

Forest Service

Committee of Scientists Meetings

Correction

In notice document 98–15427 beginning on page 31715 in the issue of Wednesday, June 10, 1998, make the following correction:

On page 31715, in the third column, in the **SUMMARY**, in the 20th line, ''commit'' should read ''comment''.

BILLING CODE 1505-01-D

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

Correction

In notice document 98–15856, beginning on page 32656, in the issue of Monday, June 15, 1998, in the **DATES** section, in the fourth line, ''July 6, 1998'' should be added following ''before''.

BILLING CODE 1505-01-D

Federal Register

Thursday
June 18, 1998

Part II

Department of Labor

Occupational Safety and Health Administration

29 CFR Parts 1910 and 1926

Standards Improvement (Miscellaneous Changes) For General Industry and Construction Standards; Paperwork Collection for Coke Oven Emissions and Inorganic Arsenic; Final Rule

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Parts 1910 and 1926

[Docket No. S–778]

RIN 1218–AB 53

Standards Improvement (Miscellaneous Changes) for General Industry and Construction Standards; Paperwork Collection for Coke Oven Emissions and Inorganic Arsenic

AGENCY: Occupational Safety and Health Administration, Labor.

ACTION: Final rule.

SUMMARY: The Occupational Safety and Health Administration (OSHA) is removing from the Code of Federal Regulations or revising provisions in its standards that are out of date, duplicative, unnecessary, or inconsistent. The Agency is making these regulatory changes to reduce the burden imposed on the regulated community by these provisions and to respond to a March 4, 1995 memorandum from the President. In this document, substantive changes are made to both health and safety standards that will revise or eliminate duplicative, inconsistent, or unnecessary regulatory requirements without diminishing employee protections. Changes being made to health standards include reducing the frequency of required chest x-rays and eliminating sputum-cytology examinations for workers covered by the coke oven and inorganic arsenic standards, and changing the emergency-response provisions of the vinyl chloride standard. Changes being made to OSHA safety standards include eliminating the public safety provisions of the temporary labor camp standard, eliminating unnecessary cross-references in the textile industry standards, and others. OSHA estimates that these changes will result in annualized savings for employers of over $9,600,000 and in reducing paperwork burden of 6600 hours annually.

EFFECTIVE DATE: This final rule becomes effective August 17, 1998.

ADDRESSES: Send petitions for review of this final rule to the Associate Solicitor for Occupational Safety and Health, Office of the Solicitor, Room S–4004, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, DC 20210.

For additional copies of this rule contact U.S. Department of Labor, Occupational Safety and Health Administration, Office of Publications, Room N–3101, 200 Constitution Avenue, N.W., Washington, DC 20210, (202) 219–9667.

For an electronic copy of this **Federal Register** notice, contact the Labor News Bulletin Board at (202) 219–4748; or OSHA's Web Site on the Internet at http://www.osha.gov. For news releases, fact sheets, and other short documents, contact OSHA FAX at (900) 555–3400 at $1.50 per minute.

FOR FURTHER INFORMATION CONTACT: Bonnie Friedman, Director, Office of Information and Consumer Affairs, Occupational Safety and Health Administration, Room N–3637, U.S. Department of Labor, 200 Constitution Avenue N.W., Washington, DC 20210, (202) 219–8151.

SUPPLEMENTARY INFORMATION:

Table of Contents

References to the rulemaking record are provided in the text of the preamble. References are identified as ''Ex.'' followed by a number to designate the reference in this rulemaking docket, S–778. For example, ''Ex. 3'' means exhibit three in Docket S–778. Exhibit 3 is a copy of the ''Notice of Proposed Rulemaking for Miscellaneous Changes to General Industry and Construction Standards; Proposed Paperwork Collection, Comment Request for Coke Oven Emissions and Inorganic Arsenic'', the first step in the rule-making action being completed today, which was published in the **Federal Register** on July 22, 1996 (61 FR 37849).

A list of exhibits and copies of the exhibits are available in the OSHA Docket Office, Room N–2625, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, DC 20210, (202) 219–7894.

I. Background

OSHA has made a continuing effort to eliminate confusing, outdated, and duplicative requirements from its standards and regulations. In 1978 and again in 1984, the Agency conducted revocation and revision projects that resulted in the elimination of hundreds of unnecessary provisions. In response to the President's Memorandum of March 4, 1995, which requested Agencies to review and stream-line their regulations, the Agency continued this effort by conducting a line-by-line review of its regulations to determine where they could be eliminated, simplified or clarified. As a result of this review, OSHA completed a document on May 31, 1995, entitled ''OSHA's Regulatory Reform Initiatives'' (Ex. L–5). That document detailed the Agency's findings as to which regulations could be deleted or revised without reducing employee health and safety. OSHA stated in that document that clarifying, deleting, or revising these regulations would improve employer compliance and, consequently, enhance safety and health protection for employees.

The Agency began the rulemaking process that would implement the changes identified in the review with an administrative notice that made minor clarifications and technical amendments to OSHA standards (61 FR 9228, March 7, 1996). In a second notice, duplicate health provisions from the shipyard and construction standards were eliminated and replaced with cross-references to the identical text in the general industry standards (61 FR 31427, June 20, 1996). Eliminating these duplicate provisions

has reduced the number of pages devoted to OSHA rules in the Code of Federal Regulations (CFR) without changing the substantive requirements of the standards.

On July 22, 1996 (61 FR 37849), OSHA proposed substantive changes to certain standards that the Agency believed are unnecessary to, duplicative of, or inconsistent with the protection of worker safety and health. OSHA requested comments and set 60 days for their receipt. The final changes supported by the public record, and reflected in the **Federal Register** notice being published today, complete the regulatory action initiated with the July, 1996 **Federal Register** notice. OSHA is also reducing paperwork burden by deleting the requirements for sputum-cytology examinations and reducing the frequency of chest x-rays for workers covered by the arsenic and coke oven emissions standards.

II. Distribution Table

For the convenience of the public, OSHA is providing a distribution table, below, which shows the section designations of those existing OSHA General Industry rules that are being removed, removed and reserved, and redesignated in this rulemaking action.

Old Section (29 CFR 1910)	New Section (29 CFR 1910)
110(b)(15)(vi)	Removed.
110(b)(15)(vii)	Removed.
110(b)(15)(viii)	Removed.
110(b)(15)(ix)	110(b)(15)(vi).
110(c)(2)(i)	110(c)(2).
110(c)(2)(ii)	Removed.
110(c)(2)(iii)	Removed.
110(c)(2)(iv)	Removed.
110(e)(10)	Removed and Reserved.
110(g)	Removed and Reserved.
111(f)(7)	Removed and Reserved.
111(f)(8)	Removed and Reserved.
141(a)(2)(i)	Removed.
141(a)(2)(ii)	Removed Paragraph Designation.
141(a)(2)(iii)	Removed Paragraph Designation.
141(a)(2)(iv)	Removed Paragraph Designation.
141(a)(2)(v)	Removed Paragraph Designation.
141(a)(2)(vi)	Removed Paragraph Designation.
141(a)(2)(vii)	Removed Paragraph Designation.
141(a)(2)(viii)	Removed Paragraph Designation.
141(a)(2)(ix)	Removed Paragraph Designation.
141(a)(2)(x)	Removed Paragraph Designation.
141(a)(2)(xi)	Removed Paragraph Designation.
142(a)(4)	Removed.
151	Added Appendix A.
156(f)(2)(iii)	Removed.
183(a)	Removed and Reserved.
261(a)(3)(ii)	Removed.
261(a)(3)(iii)	261(a)(3)(ii) .
261(a)(3)(iv)	Removed.
261(a)(3)(v)	Removed.
261(a)(3)(vi)	Removed.
261(a)(3)(vii)	261(a)(3)(iii).
261(a)(3)(viii)	261(a)(3)(iv).
261(a)(3)(ix)	Removed.
261(a)(3)(x)	261(a)(3)(v).
261(a)(3)(xi)	Removed.
261(a)(3)(xii)	Removed.
261(a)(3)(xiii)	Removed.
261(a)(3)(xiv)	261(a)(3)(vi).
261(a)(3)(xv)	Removed.
261(a)(3)(xvi)	261(a)(3)(vii).
261(a)(3)(xvii)	Removed.
261(a)(3)(xviii)	Removed.
261(a)(3)(xix)	Removed.
261(a)(3)(xx)	Removed.
261(a)(3)(xxi)	261(a)(3)(viii).
261(a)(3)(xxii)	Removed.
261(a)(3)(xxiii)	261(a)(3)(ix).
261(a)(3)(xxiv)	Removed.
261(a)(3)(xxv)	Removed.
261(a)(3)(xxvi)	Removed.
261(a)(3)(xxvii)	Removed.
261(b)(1)	Removed.
261(b)(2)	Removed.
261(b)(3)	Removed.
261(b)(4)	261(b)(1).
261(b)(5)	Removed.
261(b)(6)	Removed.
261(b)(7)	261(b)(2).
261(c)(2)(vi)	Removed.

Old Section (29 CFR 1910)	New Section (29 CFR 1910)
261(c)(2)(vii)	Removed.
261(c)(2)(viii)	261(c)(2)(vi).
261(c)(6)(i)	261(c)(6).
261(c)(6)(ii)	Removed.
261(c)(7)(i)	261(c)(7).
261(c)(7)(ii)	Removed.
261(d)(1)(i)	261(d)(1).
261(d)(1)(ii)	Removed.
261(e)(3)	Removed and Reserved.
261(e)(7)	Removed and Reserved.
261(e)(9)	Removed and Reserved.
261(g)(1)(iv)	Removed.
261(g)(1)(v)	261(g)(1)(iv).
261(g)(2)(i)	Removed.
261(g)(2)(ii)	261(g)(2)(i).
261(g)(2)(iii)	261(g)(2)(ii).
261(g)(15)(iv)	Removed.
261(g)(15)(v)	261(g)(15)(iv).
261(g)(15)(vi)	Removed.
261(h)(2)(iii)	Removed.
261(h)(2)(iv)	261(h)(2)(iii).
261(j)(1)(iv)	Removed and Reserved.
261(j)(3)	Removed and Reserved.
261(j)(4)(ii)	Removed.
261(j)(4)(iii)	261(j)(4)(ii).
261(j)(4)(iv)	261(j)(4)(iii).
261(j)(4)(v)	261(j)(4)(iv).
261(j)(4)(vi)	261(j)(4)(v).
261(j)(5)(iv)	Removed.
261(j)(6)(ii)	Removed.
261(j)(6)(iii)	261(j)(6)(ii).
261(k)(2)(i)	Removed.
261(k)(2)(ii)	261(k)(2)(i).
261(k)(2)(iii)	261(k)(2)(ii).
261(k)(2)(iv)	261(k)(2)(iii).
261(k)(2)(v)	261(k)(2)(iv).
261(k)(2)(vi)	261(k)(2)(v).
261(k)(4)	Removed and Reserved.
261(k)(16)	Removed and Reserved.
261(m)(2)	Removed and Reserved.
261(m)(4)	Removed and Reserved.
261(m)(5)(i)	Removed.
261(m)(5)(ii)	Removed.
261(m)(5)(iii)	261(m)(5).
262(c)(3)	Removed and Reserved.
262(c)(4)	Removed and Reserved.
262(gg)	Removed and Reserved.
262(ll)(1)	Removed.
262(ll)(2)	262(ll).
262(qq)(1)	Removed.
262(qq)(2)	Removed.
262(rr)	Removed.
265(a)(1)	265(a).
265(a)(2)	Removed.
265(c)(3)(i)	Removed and Reserved.
265(c)(10)	Removed and Reserved.
265(c)(14)	Removed and Reserved.
265(c)(16)	Removed and Reserved.
265(c)(17)	Removed and Reserved.
265(c)(22)	Removed and Reserved.
265(c)(24)(iv)(a)	Removed.
265(c)(24)(iv)(b)	265(c)(24)(iv).
265(c)(24)(iv)(c)	Removed.
265(c)(26)(i)	Removed and Reserved.
265(c)(30)(vi)	Removed and Reserved.
265(c)(30)(x)	Removed and Reserved.
265(e)(3)(ii)(d)	Removed and Reserved.
265(f)(9)	Removed.
265(g)	Removed.
265(h)	Removed.
265(i)	Removed.
267	Removed and Reserved.
268(f)	Removed and Reserved.
1017(g)(5)(i)	Removed.

Old Section (29 CFR 1910)	New Section (29 CFR 1910)
1017(g)(5)(ii)	Removed.
1017(g)(6)	1017(g)(5) .
1017(g)(7)	1017(g)(6).
1018(n)(2)(ii)(C)	Removed.
1018(n)(2)(ii)(D)	1018(n)(2)(ii)(C).
1018(q)(2)(iii)(F)	Removed.
1018(q)(2)(iii)(G)	Removed.
1018(q)(2)(iii)(H)	Removed.
1018 App C, Section I, General	Removed ''(4) A sputum cytology examination;''.
1018 App C, Section I, General	Redesignated paragraph 5 as paragraph 4
1018 App C, Section I, General	Removed entire section entitled ''III. Sputum cytology''.
1029(j)(2)(vii)	Removed.
1029(j)(2)(viii)	1029(j)(2)(vii). Added new 1029(j)(3)(iv).
1029(j)(3)(iv)	1029(j)(3)(v).

III. Summary and Explanation

In this section, OSHA explains the changes made to each regulatory provision being removed, revised, or redesignated. First, the changes that were proposed in the July 1996 Notice of Proposed Rulemaking (NPRM) and the reasons for proposing those changes are discussed. Next, any comments that OSHA received about the proposed changes are identified and addressed. Finally, the action that OSHA is taking with regard to the proposed changes is explained.

The proposed changes to Part 1910 standards are listed first, followed by those for Part 1926. Within this framework, provisions that received either no comments or positive comments only are listed first, in numerical order, followed by the few provisions for which minor varied comments were received.

Amendments to Part 1910 That Received No Comments or Positive Comments Only

A. Explosives and Blasting Agents (§ 1910.109)

Paragraph (d)(1)(iv) of § 1910.109 prohibits the transporting of blasting caps on a vehicle that is carrying other explosives. However, The Department of Transportation (DOT) has issued regulations that provide an approved method for safely transporting blasting caps on the same vehicle with other explosives. Therefore, OSHA proposed to amend paragraph (d)(1)(iv) of 29 CFR 1910.109 to permit transporting blasting caps on the same vehicle with other explosives if they are transported in accordance with the method specified in the DOT regulations at 49 CFR 177.835(g)(3)(i).

OSHA received supporting comments (e.g. Ex. 4: 1,10) on the proposed provision, and no commenter opposed the proposed action. As a result, OSHA is amending paragraph (d)(1)(iv) of § 1910.109 as proposed.

Paragraph (e)(2)(i) of § 1910.109 requires that boxes and packaging materials that have previously contained explosives not be used again and be destroyed by burning at an approved outdoor location. However, environmental agencies often will not permit the burning of these materials. Additionally, DOT permits the re-use of such packaging materials if such re-use is accomplished in accordance with certain criteria contained in 49 CFR 173.28.

OSHA proposed to amend paragraph (e)(2)(i) to permit reusing uncontaminated containers and packaging materials if such re-use is accomplished in accordance with DOT regulations.

All of the comments OSHA received on this provision supported the proposed action. For example, the Institute of Manufacturers of Explosives (IME) (Ex. 4: 10 pp. 1–2) stated:

In addition, IME supports OSHA's amendment to § 1910.109 (e)(2)(i). The amended regulation will allow companies to reuse, rather than burn, uncontaminated packaging materials. As a result, companies will not be forced to violate state or local prohibitions against burning in order to comply with OSHA, or vice versa.

Accordingly, OSHA is amending paragraph (e)(2)(i) of § 1910.109 as proposed.

B. Storing and Handling of Liquefied Petroleum Gases (§ 1910.110)

Paragraphs (b)(15)(v)–(vii) of § 1910.110 contain requirements for the location of backflow check valves, excess-flow valves, and shutoff valves on tank cars and transport trucks. Paragraph (b)(15)(viii) of § 1910.110 contains requirements for locating tank cars and transport trucks during loading and unloading operations.

OSHA had proposed to delete paragraphs (b)(15)(v)–(viii) of § 1910.110, because the design of transportation vehicles and the safe location of such vehicles during loading and unloading operations are under the jurisdiction of DOT and not OSHA. Upon further review of these paragraphs, OSHA has concluded that paragraph (b)(15)(v) is not under the jurisdiction of DOT, since it addresses valves associated with storage tank piping located at a worksite. Accordingly, OSHA is retaining paragraph (b)(15)(v) and deleting paragraphs (b)(15)(vi)–(viii). OSHA is also redesignating paragraph (b)(15)(ix) as new paragraph (b)(15)(vi) of § 1910.110.

Paragraphs (c)(2)(ii)–(iv) of § 1910.110 contain specifications for marking LPG cylinders. OSHA proposed deleting these marking specifications because they duplicate DOT requirements. No comments were received on the proposed changes, and OSHA is deleting the text of paragraphs (c)(2)(ii)–(iv). OSHA is also redesignating paragraph (c)(2)(i) as new paragraph (c)(2).

Paragraph (e)(10) of § 1910.110 contains limitation requirements on the capacity of LPG containers that are used to fuel passenger carrying vehicles. OSHA proposed deleting these requirements pertaining to passenger carrying vehicles because they are under the jurisdiction of DOT. No comments were received on the proposed changes, and OSHA is deleting the text of paragraph (e)(10) of § 1910.110 and reserving the paragraph designation.

Paragraph (g) of § 1910.110 contains requirements for installing LP-gas systems on commercial vehicles. OSHA proposed deleting these requirements because the installation of LP-gas systems on commercial vehicles is under the jurisdiction of DOT. No comments were received on the proposed changes. OSHA, therefore, is deleting the text from paragraph (g) of § 1910.110 and reserving the paragraph designation.

C. Storing and Handling of Anhydrous Ammonia (§ 1910.111)

Paragraph (f)(7) of § 1910.111 contains safety requirements for full trailers and semitrailers that transport ammonia. Paragraph (f)(8) of § 1910.111 contains requirements to protect such vehicles from collision. Because full trailers and semitrailers that transport ammonia are under the jurisdiction of DOT, OSHA proposed deleting the text of paragraphs (f)(7) and (f)(8) of § 1910.111 and reserving the paragraph designations.

OSHA received no comments on the proposed changes, and the text of paragraphs (f)(7) and (f)(8) of § 1910.111 is therefore being deleted and the paragraph designations are being reserved.

D. Sanitation (§ 1910.141)

OSHA proposed deleting the definition of ''lavatory'' given in paragraph (a)(2)(i) of § 1910.141. This definition stated that ''*lavatory* means a basin or similar vessel used exclusively for washing of hands, arms, faces, and head.'' OSHA believes that the meaning of the term Lavatory is self-explanatory in the context of the section and that deleting this definition will not diminish the health of employees in affected workplaces. No comments were received in opposition to the proposed deletion of the definition of ''lavatory'' in § 1910.141. The definition of ''lavatory'' is, therefore, being deleted from § 1910.141. Further, to conform to the format typically found in other OSHA standards, all paragraph designations for the definitions within paragraph (a)(2) of § 1910.141 are also being removed.

E. Temporary Labor Camps (§ 1910.142)

Paragraph 1910.142(a)(4) provides regulations for closing temporary labor camps. Upon closing a camp site, the regulations require the employer to collect all refuse, garbage, and manure, to fill all privy pits, to lock and secure any remaining privy buildings, and to leave all grounds and buildings in a clean and sanitary condition.

Because this paragraph deals with closing the site, which occurs after the employees have left, this paragraph does not relate to worker safety but to public safety, which is outside the Agency's mission. For these reasons, OSHA proposed removing paragraph 1910.142(a)(4). No comments were received on this issue, and paragraph 1910.142(a)(4) is accordingly being removed. OSHA notes, however, that employers may be responsible for adhering to other standards related to public health and safety in the locality or State in which the camp site is located.

F. Safety Color Code for Marking Physical Hazards (§ 1910.144)

Section 1910.144 provides guidance on the colors to use to mark physical hazards. These colors were required so that emergency devices and physical hazards could be identified quickly by employees. OSHA proposed removing these requirements from 29 CFR part 1910 because they have relatively narrow scope and for employers desiring guidance in this area, the American National Standards Institute standard ANSI Z535.1–91, Safety Color Code is available. No comments were received on this issue. However on reconsideration, OSHA has decided to retain this section to indicate that proper color coding is necessary for worker protection in emergencies.

G. Fire Brigades (§ 1910.156)

Section 1910.156 contains requirements for organizing, training, and providing personal protective equipment for members of fire brigades. Requirements for negative-pressure self-contained breathing apparatus are listed in § 1910.156(f)(2)(iii). These requirements were intended to remain mandatory for 18 months after the National Institute for Occupational Safety and Health (NIOSH) certified a positive-pressure breathing apparatus with the same or longer service life as the then required negative-pressure breathing apparatus. The 18-month period was to allow employers to phase in the new apparatus.

NIOSH has since certified a positive-pressure breathing apparatus, and the 18 month phase-in period has ended. This paragraph is therefore unnecessary and OSHA proposed removing it. There were no comments on the proposed change, and OSHA is therefore removing § 1910.156(f)(2)(iii) as proposed.

H. Helicopters (§ 1910.183)

Paragraph 1910.183(a) states that helicopter cranes are expected to comply with any applicable regulations of the Federal Aviation Administration (FAA). OSHA does not have the statutory authority to enforce FAA regulations for helicopters (found at 14 CFR part 133) and therefore proposed removing this paragraph. There were no comments on the proposed change and OSHA is therefore removing paragraph 1910.183(a) and reserving the paragraph designation as proposed.

I. Pulp, Paper, Paperboard Mills (§ 1910.261)

Section 1910.261 contains requirements that apply to establishments where pulp, paper, and paperboard are manufactured and converted. Paragraphs (a), (b), (c), (d), (e), (g), (h), (j), (k), and (m) of § 1910.261 require these establishments to comply with a number of standards of the American National Standards Institute (ANSI). Including these ANSI standards in § 1910.261 duplicates other standards in part 1910 that apply to general industry as a whole, cover the same hazards, and in many cases, share the same source materials as the provisions in § 1910.261.

All but one of the ANSI standards referenced in § 1910.261 were source documents for OSHA standards that have general application without regard to any specific industry. For example, ANSI Standard A12.1–1967, Safety Requirements for Floor and Wall Openings, Railings, and Toeboards is referenced in paragraph 1910.261(a)(3)(ii) and is also the source standard for Section 1910.23, Guarding Floor and Wall Openings and Holes.

OSHA believes that the OSHA standard, codified in Section 1910.23, provides equivalent or better protection for workers in this industry than the ANSI standard, A12.1–967, which is referenced in § 1910.261. Accordingly, OSHA proposed deleting paragraph 1910.261(a)(3)(ii).

Similarly, there are a number of other OSHA standards that OSHA believes can provide equivalent or better protection for pulp and paper workers than the ANSI standards referenced in paragraphs (a), (b), (c), (d), (e), (g), (h), (j), (k), and (m) in Section 1910.261. For this reason, OSHA proposed deleting many provisions of § 1910.261 and applying the corresponding provisions found elsewhere in part 1910. The following table lists the OSHA standards that were proposed for deletion, the referenced ANSI standards, and the OSHA standards that will provide equivalent or better protection.

Deleted standard	Referenced ANSI standard	Equivalent OSHA standard
1910.261(a)(3)(ii)	A12.1–1967	§ 1910.23
1910.261(a)(3)(iv)	A14.1–1968	§ 1910.25

Deleted standard	Referenced ANSI standard	Equivalent OSHA standard
1910.261(a)(3)(v)	A14.2–1956	§ 1910.26
1910.261(a)(3)(vi)	A14.3–1956	§ 1910.27
1910.261(a)(3)(ix)	B15.1–1953	§ 1910.219
1910.261(a)(3)(xi)	B30.2–1967	§ 1910.179
	B30.5–1968	§ 1910.180
1910.261(a)(3)(xii)	B30.2–1967	§ 1910.179
1910.261(a)(3)(xiii)	B30.2–1943	§ 1910.179
	B30.5–1968	§ 1910.180
1910.261(a)(3)(xv)	B56.1–1969	§ 1910.178
1910.261(a)(3)(xvii)	0.1–1954	§ 1910.213
		§ 1910.214
1910.261(a)(3)(xviii)	Z4.1–1968	§ 1910.141
1910.261(a)(3)(xix)	Z9.1–1951	§ 1910.94
1910.261(a)(3)(xx)	Z9.2–1960	§ 1910.94
1910.261(a)(3)(xxiv)	Z35.1–1968	§ 1910.145
1910.261(a)(3)(xxv)	Z87.1–1968	§ 1910.133
1910.261(a)(3)(xxvi)	Z88.2–1969	§ 1910.134
1910.261(a)(3)(xxvii)	Z89.1–1969	§ 1910.135
1910.261(b)(1)	B15.1–1953	§ 1910.219
1910.261(b)(2)	Z24.22–1957	§ 1910.132
	Z87.1–1968	§ 1910.133
	Z88.2–1968	§ 1910.134
	Z89.1–1969	§ 1910.135
1910.261(b)(3)	A12.1–1967	§ 1910.23
1910.261(b)(6)	B56.1–1969	§ 1910.178
1910.261(c)(2)(vi)	B30.2–1967	§ 1910.179
1910.261(c)(3)(i)	A12.1–1967	§ 1910.23
	A14.1–1968	§ 1910.25
	A14.2–1956	§ 1910.26
	A14.3–1956	§ 1910.27
1910.261(c)(8)(i)	B30.2–1967	§ 1910.179
1910.261(c)(11)	B56.1–1969	§ 1910.30
1910.261(d)(1)(ii)	Z87.1–1968	§ 1910.133
1910.261(e)(3)	B15.1–1955	§ 1910.219
1910.261(e)(7)	O1.1–1961	§ 1910.213
1910.261(e)(9)	B15.1–1953	§ 1910.219
1910.261(g)(15)(vi)	Z4.1–1968	§ 1910.141
1910.261(h)(2)(iii)	K13.1–1967	§ 1910.134
	Z88.2–1967	
1910.261(j)(1)(iv)	B15.1–1958	§ 1910.219
1910.261(j)(3)	A12.1–1967	§ 1910.23
1910.261(j)(4)(ii)	A12.1–1967	§ 1910.23
1910.261(j)(5)(iv)	B15.1–1953	§ 1910.219
1910.261(j)(6)(ii)	B15.1–1953	§ 1910.219
1910.261(k)(2)(i)	B15.1–1953	§ 1910.219
1910.261(k)(4)	A12.1–1967	§ 1910.23
1910.261(m)(2)	B56.1–1969	§ 1910.178
1910.261(m)(4)	Z87.1–1968	§ 1910.133
1910.261(m)(5)(i)	Z87.1–1968	§ 1910.132
1910.261(m)(5)(ii)	B56.1–1969	§ 1910.178

Similarly, OSHA believes that the OSHA standard, § 1910.95, Occupational Noise Exposure, provides worker protection that is at least equivalent to that provided by the ANSI standard, Z24.22–1957, Method of Measurement of Real-Ear Attenuation of Ear Protectors, that is referenced in § 1910.261(a)(3)(xxii). OSHA, therefore, proposed removing § 1910.261(a)(3)(xxii) to eliminate this duplicate coverage.

Paragraph (b)(5) of § 1910.261 requires workers in the pulp, paper and paperboard industry who enter closed vessels, tanks, chip bins, and similar equipment to follow specific procedures and wear personal protective equipment. This standard, however, does not provide the necessary requirements for monitoring, testing, and communication that are critical when working in a confined space.

OSHA proposed deleting paragraph (b)(5) of § 1910.261 for two reasons. First, § 1910.146, Permit-Required Confined Spaces, provides better protection for workers required to work in a confined space. Section 1910.146 provides a comprehensive regulatory program within which employers can effectively protect employees working in confined spaces. This program addresses the ongoing need for monitoring, testing, and communication at these workplaces. Second, employers are required to comply with § 1910.146 when a specific industry standard does not completely address the known hazards of working in a confined space, a principle noted in paragraph (c)(2) of § 1910.5. This means that employers must already comply with § 1910.146 rather than paragraph (b)(5) of § 1910.261.

Paragraph (c)(2)(vii) of § 1910.261 requires employers to provide personal protective equipment to workers on a job basis. Since employers are required to comply with the general requirements for personal protective equipment in § 1910.132, OSHA proposed removing paragraph (c)(2)(vii) to eliminate this

duplication of requirements in a way that will not decrease worker protection.

Paragraphs (c)(6)(ii) and (c)(7)(ii) of § 1910.261 require employers to provide workers with personal protective equipment and ear protection when the noise level may be harmful. Since employers are required to comply with the general requirements for personal protective equipment in § 1910.132 and the general requirements for occupational noise exposure in § 1910.95, OSHA proposed removing paragraphs (c)(6)(ii) and (c)(7)(ii) to eliminate this duplication of requirements.

Paragraphs (g)(1)(iv) and (k)(16) of § 1910.261 are specific electrical standards prescribed for the pulp, paper, and paperboard industry that require compliance with subpart S, Electrical, in OSHA's standards. Since all of general industry is required to comply with all of subpart S for electrical standards, OSHA proposed removing paragraphs (g)(1)(iv) and (k)(16) of § 1910.261 to eliminate this duplication.

Paragraph (g)(2)(i) of § 1910.261 requires employers to provide gas masks to employees working in the acid department. Since employers are required to comply with the general requirements for respiratory protection in § 1910.134, OSHA proposed removing paragraph (g)(2)(i) to eliminate this regulatory duplication.

Paragraph (g)(15)(iv) of § 1910.261 is a standard prescribed for the pulp, paper, and paperboard industry that addresses lead dust exposure and requires compliance with § 1910.1000, Air Contaminants. Since employers are required to comply with all of § 1910.1000, including paragraph 1910.1025 which addresses lead exposure, OSHA proposed removing paragraph (g)(15)(iv) to eliminate this duplication.

All of the proposed changes to § 1910.261 adopted by this notice were supported by two commenters, American Forest & Paper Association (AFPA) and the Pacific Coast Association of Pulp and Paper Manufacturers (PCAP&PM) (Exs.4–15, 4–24). The AFPA stated that ''AFPA wishes to commend OSHA for the substantial efforts which the Agency has made to remove or revise standards that are obsolete, duplicative, unnecessary, or inconsistent for maintaining employee protection''. There were no comments opposing these changes and OSHA is therefore removing the paragraphs listed above and shown on the table from § 1910.261, for the reasons stated above and given in the proposal.

AFPA also recommended that OSHA delete a number of other provisions. OSHA believes these suggestions require additional study and there needs to be more extensive opportunity for comment on them. Rather than holding up the deregulatory changes in this document, OSHA will consider including those suggestions in its next proposal to eliminate unneeded provisions.

J. Textiles (§ 1910.262)

For the purpose of eliminating duplicate standards coverage, OSHA proposed to delete a number of standards in § 1910.262 that reference general occupational safety and health standards. The following table lists the standards OSHA proposed to delete. The referenced general OSHA standards will continue to apply to employers in the Textile industry.

Deleted standard	Referenced OSHA standard
1910.262(c)(3)	1910.219
1910.262(c)(4)	1910.141
1910.262(gg)	1910.219
1910.262(ll)(1)	1910.23
1910.262(qq)(1)	1910.132; 1910.133; 1910.134
1910.262(qq)(2)	1910.134
1910.262(rr)	1910.1000; 1910.94(d)

No comments were received on this issue, and OSHA is therefore deleting the standards listed in the table above.

Paragraph (c)(8) of § 1910.262 requires employers to identify physical hazards in accordance with the requirements of § 1910.144. Section 1910.144 provides guidance on the colors to use to mark physical hazards. As noted earlier in Section F of this preamble, OSHA has decided to retain this provision to indicate that proper color coding is necessary for worker protection in emergencies. Because OSHA is retaining § 1910.144, which is referenced in § 1910.262(c)(8), OSHA will also retain § 1910.262(c)(8).

No comments were received on this issue, and OSHA is therefore retaining § 1910.262(c)(8).

K. Sawmills (§ 1910.265)

Section 1910.265 contains safety requirements for sawmill operations including, but not limited to, log and lumber handling, sawing, trimming, and planing; waste disposal; dry kiln operation; finishing; shipping; storage; yard and yard equipment; and for power tools and related equipment used in connection with such operations. Certain paragraphs of § 1910.265 incorporate and apply general occupational safety and health standards that apply to all employment covered by 29 CFR part 1910. As required in paragraph (a)(2) of this section, such standards apply to sawmill operations in accordance with the rules of construction set forth in § 1910.5. For example, the general standard regarding mechanical power-transmission apparatus in § 1910.219 is applicable to employment in sawmill operations covered in § 1910.265, but it is also incorporated by reference in paragraph (c)(22) of § 1910.265. OSHA believes that this repetition does not enhance worker safety, and therefore proposed removing paragraph (c)(22) of § 1910.265. Also, since § 1910.5 applies to all industries, including the sawmill industry, OSHA proposed removing paragraph (a)(2) of § 1910.265, which merely references § 1910.5.

Similarly, to eliminate duplicate standards coverage, OSHA proposed deleting various provisions currently found in § 1910.265 that reference general occupational safety and health standards. The following table lists the standards OSHA proposed deleting and the referenced general OSHA standards that will continue to apply to sawmills.

Deleted standard	Referenced OSHA standard
1910.265(c)(3)(i)	1910.23
1910.265(c)(10)	1910.25–27
1910.265(c)(14)	1910.110
1910.265(c)(16)	1910.106
1910.265(c)(17)(i)	1910.1000
1910.265(c)(17)(ii)	Subpart I
1910.265(c)(17)(iii)	1910.94(d)
1910.265(c)(22)	1910.219
1910.265(c)(26)(i)	1910.219
1910.265(c)(30)(vi)	1910.219
1910.265(c)(30)(x)	1910.178
1910.265(e)(3)(ii)(d)	1910.219
1910.265(f)(9)	1910.219
1910.265(g)	Subpart I
1910.265(h)	1910.141
1910.265(i)	Subpart L

Paragraph (c)(11) of § 1910.265 requires employers to mark physical hazards as specified in § 1910.144. Section 1910.144 provides guidance on the colors to use to mark physical hazards. As noted earlier in Section F of this preamble, OSHA is retaining § 1910.144 since the Agency believes that proper color coding is necessary for worker protection in emergencies. Since OSHA is retaining § 1910.144, which is referenced in § 1910.265(c)(11), OSHA will also retain § 1910.265(c)(11).

Paragraph (c)(24)(iv)(a) of § 1910.265 requires employers to inspect slings daily when in use, and to remove a sling from service if it is found to be defective. In addition, paragraph

(c)(24)(iv)(c) of § 1910.265 requires employers to provide suitable protection between the sling and the sharp unyielding surfaces of the load to be lifted. These provisions duplicate some of the general requirements for the use of slings in § 1910.184, which also includes provisions for sling inspection, removal, and protection. OSHA proposed deleting paragraphs (c)(24)(iv)(a) and (c)(24)(iv)(c) to eliminate the duplication of requirements for slings in § 1910.265.

The American Forest & Paper Association (AFPA) (Ex. 4–15) supported the changes to the provisions in Section 1910.265 that had been proposed by OSHA and that are now made final by this notice. There were no comments opposing these changes, and OSHA is therefore deleting the standards as proposed. The AFPA (Ex. 4–15) also suggested several other changes. OSHA concluded that they need further study, and rather than delaying this final rule, OSHA will consider including them in the next proposal to eliminate unnecessary provisions.

L. Agricultural Operations (§ 1910.267)

Section 1910.267 previously contained part 1910 requirements applicable to agricultural operations. These requirements were moved to § 1928.21 in 1975 (40 FR 18268). Since that time, § 1910.267 has been used simply to refer employers to § 1928.21 to locate these requirements. OSHA believes that § 1910.267 is now unnecessary and proposed removing and reserving this section.

No comments were received on this issue, and OSHA is therefore removing § 1910.267 and reserving this section.

M. Vinyl Chloride (§ 1910.1017)

OSHA proposed deleting paragraphs (g)(5) (i) and (ii) of § 1910.1017, vinyl chloride, which was promulgated in 1974. These paragraphs addressed entry into unknown and hazardous vinyl-chloride atmospheres. Paragraph (g)(5)(i) allows entry into unknown concentrations of vinyl chloride or concentrations greater than 36,000 ppm (lower explosive limit) only for purposes of life rescue. Paragraph (g)(5)(ii) allows entry into concentrations of vinyl chloride of less than 36,000 ppm, but greater than 3,600 ppm, only for purposes of life rescue, firefighting, or securing equipment that will prevent a greater release of vinyl chloride.

In 1989, OSHA promulgated industry-wide provisions addressing emergency response with respect to entry into unknown or hazardous atmospheres under § 1910.120, the Hazardous Waste Operations and Emergency Response (HAZWOPER) standard (54 FR 9317, Mar. 6, 1989). Included in the scope of the HAZWOPER standard are requirements for ''Emergency response operations for release of, or substantial threats of release of, hazardous substances without regard to the location of the hazard.'' Thus, vinyl chloride, which is a ''hazardous substance'' as defined under the HAZWOPER standard, is covered by the emergency response provisions in both the vinyl chloride and HAZWOPER rules. With regard to overlapping provisions, the HAZWOPER standard specifically states in paragraph (a)(2)(i) that ''If there is a conflict or overlap [between emergency-response provisions in § 1910.120 and provisions in substance-specific standards], the provisions more protective of employee safety and health shall apply. * * *''

At the time it proposed to revoke the vinyl chloride provisions, OSHA believed that the emergency-response provisions in § 1910.120 were more protective overall than the relevant provisions in the vinyl chloride standard. Further, the provisions of § 1910.120, which require employers to develop a broad program to respond appropriately to any potential emergency situation, were viewed by the Agency as giving employers more flexibility to tailor and implement effective, comprehensive emergency-response programs to suit their needs. Key provisions in § 1910.120(q) that would apply where there is a potential emergency associated with the release of vinyl chloride address the following: development and implementation of an emergency response plan, paragraph (q)(1); required elements of the emergency response plan, paragraph (q)(2); procedures for handling emergency response, paragraph (q)(3); using skilled support personnel, paragraph (q)(4); using specialist employees, paragraph (q)(5); training emergency personnel, paragraphs (q) (6), (7), and (8); medical surveillance and consultation for emergency-response personnel, paragraph (q)(9); using chemical protective clothing, paragraph (q)(10); and procedures for post-emergency operations, paragraph (q)(11).

OSHA continues to believe that deleting § 1910.1017(g)(5) (i) and (ii) in favor of § 1910.120 will not result in an increased risk to the safety or health of employees engaged in vinyl chloride emergency response operations. The Agency solicited comment on the question of the sufficiency of § 1910.120 to address the protection of vinyl chloride emergency response employees, if the emergency response provisions currently in the vinyl chloride standard were deleted.

Comments were received which fully supported the proposed action. The Vinyl Institute (Ex. 4–11) commented as follows:

> In the event of a vinyl chloride incident during transportation, storage, or manufacture, it is necessary to respond quickly to stop or minimize any release and prevent the situation from escalating. Because of the quantity of material that potentially could be involved, such an incident or leak, if not quickly corrected, could create a cloud of explosive gas within a relatively short time. The emergency response provisions contained in the Hazardous Waste Operations and Emergency Response (HAZWOPER) standard would enable the emergency responders to appropriately respond to the incident. In contrast, the vinyl chloride standard can be interpreted to prevent action if the exposure concentration is unknown or if it is expected to exceed 36,000 ppm and life rescue is not necessary.
>
> Following good emergency response practices and acting consistently with the HAZWOPER standard should produce the optimum results while protecting the life and safety of employees and other potentially exposed individuals. In addition, eliminating the emergency response provisions of the vinyl chloride standard clarifies which standard should govern in the event of such an emergency incident.
>
> OSHA's proposal to delete two specific emergency response provisions in the vinyl chloride standard and rely on the emergency response provisions in HAZWOPER will result in optimal responsive action. The HAZWOPER standard is flexible enough to allow responders and companies to develop comprehensive emergency response programs that can be adapted to the particular factual circumstances of a vinyl chloride incident.

The Vinyl Chloride Panel Transportation Committee of the Chemical Manufacturers Association (Ex. 4–12A) commented that:

> The Committee agrees with OSHA's proposal, and believes that the emergency response criteria in the HAZWOPER standard are more appropriate than the relevant provisions of the current vinyl chloride standard. HAZWOPER recognizes that entry into an unknown concentration or a confined space may be necessary for reasons other than life rescue, in order to avoid catastrophic human or environmental threats. Unlike the current vinyl chloride standard, the HAZWOPER provisions are flexible enough to allow responders and companies to develop comprehensive emergency response programs that suit their individual needs.

OSHA received no comments objecting to this proposed action.

Based on the reasoning set forth in the Notice of Proposed Rulemaking (NPRM)

(61 FR 37849, July 22, 1996), the discussion of the issues in this notice, and on supporting comments submitted to the record, OSHA has determined that deleting paragraphs (g)(5) (i) and (ii) from the vinyl chloride standard (29 CFR 1910.1017) is appropriate, and this final rule accomplishes that action.

N. Inorganic Arsenic (§ 1910.1018) and Coke Oven Emissions (§ 1910.1029)

OSHA proposed to revise the existing medical surveillance requirements in paragraph (n) of 29 CFR 1910.1018 that address inorganic arsenic and paragraph (j) of 29 CFR 1910.1029 that address coke oven emissions exposure with respect to sputum-cytology examinations and chest x-rays.

Those changes are being made in accordance with Section 6(b)(7) of the OSH Act which provides that ''The Secretary, in consultation with the Secretary of Health, Education and Welfare, may by rule promulgated pursuant to Section 553 of Title 5, United States Code, make appropriate modifications in the foregoing requirements relating to the use of labels or other forms of warning, monitoring or measuring, and medical examinations, as may be warranted by experience, information, or medical or technological developments acquired subsequent to the promulgation of the relevant standard''.

Specifically, OSHA proposed to delete the requirement in paragraph (n)(2)(ii)(C) of § 1910.1018 (the inorganic arsenic standard) that provides for sputum-cytology examination, as well as the requirement in paragraph (j)(2)(vii) of § 1910.1029 (The coke oven emission standard) that provides for sputum-cytology examination. Sputum-cytology examinations were originally included in the medical surveillance programs for inorganic arsenic and coke oven workers based on OSHA's belief that such examinations were useful in lung cancer screening. Subsequent studies indicate that sputum-cytology does not improve survival.

OSHA also proposed to revise the requirement in paragraph (n)(3)(ii) of § 1910.1018 of the inorganic arsenic standard that provided for a semi-annual chest x-ray for employees who are 45 years of age or older or who have 10 or more years of arsenic exposure over the action level. OSHA also proposed to change the required frequency of chest x-rays for these employees from semi-annual to annual. Likewise, OSHA proposed to amend the requirement in § 1910.1029, paragraph (j)(3)(ii) of the coke oven emissions standard, which provides for a semi-annual chest x-ray for employees 45 years of age or older or with 5 or more years of employment in a regulated area. OSHA proposed to amend the coke oven standard provision to require an annual chest x-ray in the medical surveillance program for the group of employees noted above. OSHA originally promulgated the provision for semi-annual x-rays in the belief that semi-annual examinations were appropriate for certain coke oven workers for lung cancer screening. Subsequent studies indicate that annual screening is equally effective.

The basis for OSHA's final determinations with respect to its proposed treatment of the relevant sputum-cytology provisions is given below, followed by a discussion addressing the relevant x-ray provisions.

Sputum-cytology. When OSHA issued its coke oven emission standard in 1976 and inorganic arsenic standard in 1978, it included sputum-cytology as a medical screening technique for lung cancer. Medical opinion at the time believed that this would improve lung cancer survival rates for those at higher risk, such as arsenic and coke oven emission exposed workers.

Two subsequent studies of persons at high risk of lung cancer did not indicate any improved survival from sputum-cytology screening. Therefore, OSHA proposed to delete the requirements.

Two randomized controlled studies evaluated the benefits of sputum-cytology examinations as a screening tool for lung cancer in a high-risk group, male smokers 45 years of age and older. The two studies included the Johns Hopkins Lung Project [Ex. 1–3] and the Memorial Sloan-Kettering Lung Project [Ex. 1–4], both part of the National Cancer Institute Cooperative Early Lung Cancer Detection Program. Together, the studies included 20,427 male smokers. These men were assigned at random to a dual-screen group (in which subjects underwent an annual chest radiograph, and sputum-cytologic study every 4 months) or to a single-screen group (in which annual chest radiographic screening was performed).

For both studies, there were no significant survival differences between the dual-screen and single-screen groups in the total number of lung-cancer cases, the number of late-stage lung-cancer cases, the number of resectable lung cancers, five year (Sloan Kettering) and eight year (Johns Hopkins) survival rates and the number of lung-cancer deaths. Therefore, sputum-cytology did not add any benefit to a lung cancer screening program that already included annual chest x-rays. Other evaluations of the same studies, (Chest X-ray Screening Improves Outcome in Lung Cancer, A Reappraisal of Randomized Trials on Lung Cancer Screening) (Ex. 1–1), and (The National Cancer Institute Cooperative Early Lung Cancer Detection Program) (Ex. 1–2), reached the same conclusion.

There are no controlled studies on the impact of sputum-cytology directly on inorganic arsenic and coke oven emission exposed workers. But inorganic arsenic and coke oven emission exposed workers are similar to the smokers studied in that both groups include older males that are placed at higher risk of lung cancer through inhalation.

The American Cancer Society's recommendations for early detection of cancer in asymptomatic persons do not include the use of sputum-cytology examinations [Ex. 1–7]. The Society's decision in this regard was based on the lack of epidemiological evidence that would support the use of sputum-cytology screening, and the risks and costs associated with false positive exams (Ex. 1–8).

OSHA solicited comments on these conclusions with respect to the value of sputum-cytology exams, and requested submission of other data and views that would support or dispute the Agency's proposed findings and conclusions.

OSHA received no comments objecting to this proposed action. Comments were submitted which support the Agency's proposal and conclusions with respect to the questionable value of sputum-cytology as a useful lung cancer screening technique (Exs. 4–2, 4–7, 4–17, 4–22, 4–27).

James Craner, MD, MPH, and a Board-Certified Occupational Medicine physician stated:

> I fully concur with the proposal to eliminate sputum cytology examinations for the reasons that OSHA has cited. In my experience, I have also found this test to be inaccurate with a significant false positive rate, particularly in smokers. The test is expensive for employers, uncomfortable for employees, and generates unacceptable costs and anxiety for all involved in chasing (false) positive results. [Ex. 4–17]

Newport News Shipbuilding's Director of Environmental Health and Safety (Ex. 4–27) commented that:

> In the 17 years since this regulation was established there has been considerable further experience with cytology and screening techniques in general. This experience and the scientific literature published since 1978 established that bronchial cytology is of no added value in the protection of industrial workers against the health hazards of arsenic.

An analysis of the NNS experience of bronchial cytology revealed that since inception of the program well over 1000 cytological examinations have been done. No case of dysplasia has been detected. This contrasts with the 16 per 1000 found in the Mayo lung project which used multiple screening techniques for cancer in high risk persons.

Also in support of OSHA's proposal, The American Iron and Steel Institute (AISI) commented that:

As OSHA points out, sputum cytology examinations were originally included in the [coke oven emissions] standard based on the belief that they ''were useful in screening for lung cancer.'' See 61 Fed. Reg. at 37855–56. Studies and information that have become available since the standard was promulgated show this belief to have been incorrect. Two large-scale studies (the Johns Hopkins and Sloan-Kettering Lung Projects) of male smokers 45 years of age or older (a high risk group) found that sputum cytology had no significant value as a screening tool for lung cancer when used in addition to annual x-ray screening. [Ex. 4–22]

AISI further indicated that:

Experience in the steel industry is consistent with the results of the Johns Hopkins and Sloan-Kettering Studies. From 1977 through 1990, the cytology laboratory at Shadyside Hospital in Pittsburgh, PA, performed almost 71,000 sputum cytology examinations of coke oven workers from various steel companies. Only two definite malignancies were detected in all of these examinations, for a detection rate of 0.000028 [Ex. 4–22]

Based on their experience, AISI asserts that ''* * * sputum cytology has not been of any more benefit in terms of lung cancer screening under the Coke Oven Emissions Standard than it was in the Johns Hopkins and Sloan-Kettering studies.'' (Ex. 4–22)

The studies indicate the sputum-cytology screening does not appear to improve survival rates of groups at higher risk of lung cancer beyond that which would be accomplished through annual chest x-rays. Arsenic and coke-oven emission exposed workers fit in this category. The commenters support this analysis and have provided additional data which tends to support these conclusions. Since the studies and analysis do not indicate survival benefits, OSHA is deleting the requirements for sputum-cytology in the inorganic arsenic and coke oven emission standards as proposed.

X-Rays. As noted above, OSHA proposed to revise the requirements in the inorganic arsenic and coke oven standards for chest x-rays from semi-annual to annual for higher risk workers covered by those standards. The basis for the proposal was studies that indicate that semi-annual x-rays did not improve lung cancer survival rates over annual x-rays.

This evidence continues to show that employees at a higher risk of lung cancer from exposures to inorganic arsenic and coke oven emissions profit from a medical surveillance program, including annual chest x-rays, for the early detection of lung cancer.

As discussed in the Notice of Proposed Rulemaking (NPRM), two recent randomized controlled studies were conducted on a group at high risk for developing lung cancer (namely, male smokers 45 years of age or older), and were evaluated with respect to the utility of periodic x-rays. These studies, which included the Mayo Lung Project [Ex. 1–9] and the Czechoslovak Study [Ex. 1–10], were designed specifically to assess the efficacy of chest x-rays in detecting early-stage lung cancer among the members of this group. The studies compared a number of outcomes between experimental groups that were assessed using chest x-rays administered at periodic intervals (4 months in the Mayo Lung Project and 6 months in the Czechoslovak Study) and control groups receiving less infrequent or, in some cases, no chest x-rays. (Participants in both the experimental and control groups were administered chest x-rays at the beginning of each study to ensure that they had no detectable lung tumors that would bias the research outcomes.)

These studies (Exs. 1–9, 1–10) found that periodic chest x-rays led to enhanced detection of early-stage lung cancer and, consequently, higher rates of resectability for this cancer. As demonstrated by a subsequent analysis of these studies (Lung Cancer Detection, Results of Randomized Prospective Study in Czechoslovakia) (Ex. 1–11), lung-cancer-specific survival based on fatality rate (i.e., number of deaths per diagnosed cases) improved significantly. This analysis also showed that the lower fatality rate among the experimental groups was not the result of over diagnosis for lung cancer or lead-time bias. For the Mayo Lung Project and the Czechoslovak Study, respectively, fatality rates of persons diagnosed with lung cancer were found to be 59% and 78% in the experimental groups, and 72% and 95% in the control group.

The efficacy of chest x-rays was also demonstrated by analyzing the outcomes for the few experimental group participants who did not undergo surgery when diagnosed with early-stage lung cancer, either because they refused surgery or surgery was contraindicated. This analysis was part of the research described in Exhibit 1–11, which combined the outcomes for experimental group participants in the Mayo Lung Project with similar experimental group participants from two other groups (the Memorial Sloan-Kettering Project and the Johns Hopkins Lung Project). The 5 year fatality rate for the nonsurgery participants was about 90 percent, compared with a 30-percent fatality rate for those participants who underwent cancer surgery. This comparison provides strong support for the efficacy of chest x-rays in detecting early-stage lung cancer and enhancing the survival of those participants who undergo subsequent surgery for removal of a detected tumor. Additionally, this comparison indicates that over-diagnosis and lead-time biases did not contribute significantly to the fatality-rate differences obtained between the experimental and control groups in the Mayo Lung Project and Czechoslovak Study.

Based on this discussion, OSHA concludes that employees exposed to inorganic arsenic and coke oven emissions continue to need medical surveillance to detect lung cancer, and that periodic chest x-rays are a necessary part of the medical surveillance to improve detection and survival from lung cancer. OSHA proposed reducing the frequency of chest x-rays from semi-annually to annually for older persons with higher risk exposures.

This frequency is based, in part, on an analysis described in Exhibit 1–11 showing that the 5-year fatality rate (about 30–35 percent) for persons diagnosed with lung cancer was the same for the experimental-group participants in the Mayo Lung Project, which administered chest x-rays every 4 months, and the experimental-group participants in the Memorial Sloan-Kettering Project and Johns Hopkins Lung Project, which performed chest x-rays once a year. [See also Exs. 1–12 and 1–13] This analysis demonstrates that fatality rates did not differ in any practical or statistically significant fashion across these three major studies. Frequent chest x-rays very slightly increase cancer rates from radiation and therefore should not be given more frequently than necessary from a health perspective.

In summary, large randomized controlled studies demonstrate that semi-annual chest radiography screenings show no benefit over annual screenings. The studies also demonstrate that annual chest radiography screening of high-risk individuals, including workers exposed to inorganic arsenic and coke oven emissions results in earlier detection of lung cancer and improved survival.

Several commenters (Exs. 4–17, 4–22) suggested that intervals between x-rays

for high-risk workers could be longer than 1 year; however, the Agency is aware of no data to demonstrate with reasonable confidence what longer interval, if any, would not reduce survival rates. In addition, no such data were received by OSHA in response to the proposal. OSHA therefore concludes that an annual x-ray provision is reasonable for the reasons set forth in the proposal and this final notice. Moreover, if the Agency has erred in this instance, it has done so on the side of over-protection rather than under-protection, as sanctioned by the U.S. Supreme Court in Industrial Union Department v. American Petroleum Institute, 448 U.S. 607 (1980).

OSHA solicited comments and data in the proposal to reduce the frequency of chest x-rays from semi-annual to annual for certain workers exposed to inorganic arsenic and coke oven emissions. OSHA received no comments objecting to this proposed action. Comment was received supporting the proposal (Exs. 4–7, 4–17, 4–22, 4–27).

AISI commented that:

* * * the requirement for semiannual x-rays originally was included in the Coke Oven Emissions Standard ''in the belief that semiannual examinations were valid for screening for lung cancer.'' *See* 61 Fed. Reg. At 37856/2. Since then, the results of several large randomized control studies have become available. These studies, the Mayo Lung Project and Czechoslovak Study, indicate that periodic chest x-rays do lead to enhanced detection of early-stage lung cancer. *See* 61 Fed. Reg. At 37856/3. However, when the results of the Mayo Lung Project (where chest x-rays were taken every four months) were compared to the results of the Johns Hopkins and Sloan-Kettering studies described above (where chest x-rays were taken only once a year), it was found that the fatality rates ''did not differ in any practical or statistically-significant fashion across these three major studies.'' See 61 Fed. Reg. At 37856/1.

What this demonstrates, as OSHA correctly points out, is that ''semiannual chest radiography screenings show no benefit over annual screenings.'' *Id.* That being the case, OSHA clearly is justified in finding that ''an annual chest x-ray satisfies the purpose of the medical surveillance program required under the standard.'' *See* 61 Fed. Reg. At 37856/1. A contrary conclusion not only would impose unjustified burdens on coke oven employers, it also would continue to expose coke oven employees to an increased risk of cancer associated with the performance of unnecessary diagnostic x-rays. For that reason, the Energy Technology Committee of the American College of Occupational and Environmental Medicine has cautioned against the routine administration of chest x-rays and stated that for individuals at increased risk of lung disease or cancer, such as persons exposed to pulmonary irritants or carcinogens, ''a chest x-ray every 12–24 months may be justified.'' (See American College of Occupational and Environmental Medicine Guidelines for Use of Routine X-Ray Examinations in Occupational Medicine; ACOEM Membership Directory 1995/1996: Addendum at 517.)

The semiannual chest x-rays currently required under the standard do not provide a significant benefit over annual chest x-ray screening in terms of early lung cancer detection...Chest x-rays under the Coke Oven Emissions Standard should, therefore, be required no more often than annually.'' (Ex. 4–22)

With respect to the arsenic standard, James Craner, MD, MPH stated that ''* * * I agree with the proposal to reduce the frequency of chest x-ray examinations' (Ex. 4–17).

In summary, available data do not indicate that semi-annual x-rays provide additional protection than do annual x-rays in improving the detection of and survival from lung cancer for higher risk persons. The record strongly supports this analysis and OSHA's proposal to reduce the x-ray frequencies from semi-annual to annual for certain workers exposed to inorganic arsenic and coke oven emission. OSHA concludes that this final action will not reduce the health of affected workers and accordingly finalizes the changes proposed.

Amendments to Part 1910 That Received Varied Comments

O. Explosives and blasting agents (§ 1910.109)

In 1978 OSHA published a final rule (43 FR 49726) which revoked certain requirements that were called ''nuisance standards'' because they did not deal directly with workplace safety and health or were within the jurisdiction of some other regulatory agency. Among the requirements revoked were the three columns of Table H–21 (American Table of Distances for Storage of Explosives)(ATD)that specified minimum distances between explosive storage magazines and inhabited buildings, passenger railways, and public highways because they dealt with public and property protection and not employee protection.

Paragraph (c)(1)(vi) of § 1910.109 was inadvertently overlooked during the 1978 rulemaking and still makes reference to the three columns of Table H–21 which were revoked. Therefore, OSHA proposed to delete the phrase in paragraph (c)(1)(vi) which made reference to these three revoked columns. OSHA also proposed to delete the word ''manufacture'' from footnote number 5 of Table H–21 to clarify that the Table applies only to the storage of explosives in magazines.

In response to the proposal, the Institute of Makers of Explosives (IME) objected to OSHA making changes to Table H-21, which is a revised version of the American Table of Distances (ATD) that is published by the IME. The IME (Ex. 4–10) asserted that the portion of the ATD published as Table H–21 comes from an outdated version of the ATD; 1991 is the current publication date for the ATD. This commenter also stated that Table H–21 only provides the distances applicable to barricaded magazines, and that OSHA fails to provide the unbarricaded distances, which are significantly greater, and which are necessary to fully protect on-site workers.

In expressing its concern, the IME (Ex. 4–10, pg.2) stated:

The ATD, in its entirety, provides anyone storing explosives with all of the key parameters for maintaining sufficient distances between magazines and buildings on-site, as well as between on-site magazines and inhabited buildings, passenger railways, and public highways. IME is adamant that an understanding of, and adherence to, all of the distances is necessary to maintain the safety of every explosives manufacturing and storage site. IME thus requires that those who use the copyright protected ATD must publish the entire ATD, with all its footnotes and columns, verbatim. In the interest of promoting overall safety, the IME suggests that OSHA publish the entire ATD.

OSHA is appreciative of the comment expressed by IME; however, after a careful evaluation of this issue, OSHA has concluded that IME's suggestion to publish the entire ATD will require additional study. In addition, the public, and specifically the user community has not had notice or an opportunity to comment on this suggestion. Therefore, more extensive opportunity is needed for public comment to be expressed on this issue. Rather than holding up the deregulatory changes in this document, OSHA will consider this suggestion in its next proposal on technical amendments to the OSHA standards. However OSHA will make the minor corrections proposed so the existing language will be consistent and correct.

P. Medical Services and First Aid (§ 1910.151)

Section 1910.151 states the employer's obligation to have medical services available to provide advice on workplace health matters, and for use by employees if needed.

Paragraph (b), in particular, requires the availability of first aid services for workplaces that do not have medical providers nearby. This paragraph also requires that employers have on hand first aid supplies approved by the consulting physician.

OSHA proposed amending § 1910.151(b) so that the approval of first aid supplies by the consulting physician is no longer required, although the standard would continue to require that adequate supplies be available. Commercial first aid kits that meet the needs of most employers and most work sites are readily available. If the workplace had unusual hazards or posed special problems that would require modifying a commercial first aid kit or developing a specialized kit, the Agency expected the employer to provide those special items. An employer who was unsure whether a commercially available kit was sufficient could seek professional advice. Such advice, however, would not have been required by OSHA as a matter of course.

Two commenters, Occupational Health Network and Gundersen Clinic Ltd. (Exs. 4–18, 4–23) opposed this amendment. One of the commenters (Ex. 4–23) said:

> While indeed commercial first aid kits are readily available and often meet the needs of many employers and many work sites, such first aid kits have been available for many years. We find that employers need improved first aid attention and protocols for use of specific first aid supplies that are in tune with the types of problems identified on their incident reports and OSHA 200 logs.

American Pulpwood Association, Inc., Southwestern Bell Telephone Company, Bell Atlantic, and Nynex (Ex. 4–5, 4–6, 4–19, 4–20, respectively) urged OSHA to adopt the proposed amendment. For example, Southwestern Bell Telephone Company said:

> Southwestern Bell Telephone Company provides employees' vehicles and work locations with the most up-to-date and well-stocked first aid kits available. We continually monitor their use and revise the kits accordingly.

Nynex stated:

> The wide variety of commercially available first aid kits have proven to be adequate for occupational settings.

After a review of the comments, OSHA concludes that workers will continue to be well protected after the change. Employers still must provide adequate first aid supplies for their workplace and can be cited if they fail to do so. As discussed below, there are many sources of information on appropriate supplies such as that provided by the American National Standards Institute (ANSI) and the American Society For Testing and Materials (ASTM). The employer may also consult with appropriate medical professionals, emergency rooms, and local fire/rescue departments if the employer prefers. If there are unique hazards in the employer's workplace, the requirement for providing adequate first aid supplies means that the employer must provide adequate supplies for those professionals who would determine what additional supplies are needed. Accordingly, OSHA is adopting the proposed amendment to § 1910.151(b).

Since some employers may find it useful to refer to a list of basic first aid supplies, OSHA is providing a reference to this information in a new non-mandatory Appendix A to § 1910.151. The Appendix refers to ANSI standard ANSI Z308.1–1978, ''Minimum Requirements for Industrial Unit-type First-aid Kits.'' OSHA is aware that ANSI Z308.1 is currently under revision. When ANSI issues its revision to the Z308.1 standard, OSHA may revise Appendix A to reference the revised ANSI standard, if the Agency determines that the new edition is as effective as the earlier edition. In addition, at that time OSHA will consider adding other consensus standards on first aid kits as references in the Appendix.

In providing references to applicable voluntary consensus standards, OSHA is complying with Section 12(d)(1) of the National Technology Transfer Act of 1995 (P.L. 104–113) which states that all Federal agencies shall use applicable technical standards that are developed by voluntary consensus standards bodies as a means to carry out their policy objectives or activities.

Q. Telecommunications (§ 1910.268)

Paragraph (f) of existing § 1910.268 contains requirements for rubber insulating equipment (gloves and blankets) used at telecommunications centers and field installations. In the notice of proposed rulemaking, OSHA presented several reasons why it believed that § 1910.268(f) was unnecessary. First, the general industry standard found at 29 CFR 1910.137, Electrical Protective Equipment, addresses all rubber insulating equipment, and removing § 1910.268(f) would eliminate this duplication of standards and the associated compliance problems. Second, § 1910.137 provides more comprehensive employee protection, since it covers requirements for manufacture and marking, electrical proof tests, test and maximum use voltages, test intervals, workmanship, and in-service care and use. Third, § 1910.137 is written in performance language that provides employers with flexibility in meeting the standard. Thus, OSHA believed that paragraph (f) of § 1910.268 could be removed without diminishing employee safety and health.

OSHA received seven comments from the telecommunications industry objecting to the proposed removal of this paragraph (Exs. 4–4, 4–6, 4–8, 4–9, 4–14, 4–19, 4–20). These commenters argued that applying § 1910.137 to their rubber gloves would increase the frequency with which the gloves had to be tested from every 9 months under § 1910.268(f) to every 6 months under § 1910.137. The commenters stated that this would increase the cost of testing rubber gloves without a commensurate increase in safety. Mr. James M. Degen of NYNEX (Ex. 4–20) worded the industry's arguments as follows:

> NYNEX does not agree, however, with OSHA's proposal to revoke the requirements for rubber insulating equipment used at telecommunications centers and field installations [29 CFR 1910.268(f)] . . . Specifically, 1910.268(f) requires the electrical testing of rubber insulating gloves on a nine month interval, while 1910.137 requires that these tests be conducted on a six month interval. NYNEX finds that the test interval in 1910.268(f) is adequate for the telecommunications industry and should be maintained for the following reasons:
>
> 1. In contrast to the electric utility industry, telecommunications workers do not work with or otherwise handle live electric lines. Rubber insulating gloves are used as a precautionary measure against an unintentional contact with energized conductors or equipment.
>
> 2. The national consensus standard that is referenced as a source of the requirements of 1910.137, ASTM F496–93b, Standard Specification for In-Service Care of Insulating Gloves and Sleeves, recognizes this difference between the electric utility industry and telecommunications in paragraph 7.3, which states:
>
> ''Industries, such as telecommunications, that utilize insulating gloves as precautionary protection against unintentional contact with energized conductors, may increase the maximum interval between issue and retest to nine months.''
>
> 3. NYNEX has not experienced any work-related injuries or fatalities as a result of the failure of rubber insulating gloves.
>
> 4. Finally, shortening the retest interval from nine months to six months would result in a fifty percent increase of direct costs to NYNEX amounting to $165,000 per year, as well as a fifty percent increase of indirect costs attributed to the administrative and lost productive time associated with exchanging, testing and reissuing of insulating gloves. These increased costs to NYNEX, as well as the rest of the telecommunications industry, will not result in any demonstrable improvement in employee safety.

OSHA agrees with this commenter's rationale. Paragraph (f)(5) of § 1910.268 reads as follows:

> (5) The employer is responsible for the periodic retesting of all insulating gloves,

blankets, and other rubber insulating equipment. This retesting shall be electrical, visual and mechanical. The following maximum retesting intervals shall apply:

Gloves, blankets, and other insulating equipment	Natural rubber	Synthetic rubber
	Months	
New	12	18
Re-issued	9	15

By contrast, Table I–6 in § 1910.137 sets intervals for testing rubber insulating equipment that differ from the intervals for such equipment in the telecommunications. Table I–6 requires rubber blankets to be tested before first use and every 12 months thereafter. It requires rubber insulating gloves to be tested before first use and every 6 months thereafter. No distinction is made between natural and synthetic rubber.

As noted by the commenters, removing § 1910.268(f) in its entirety would effectively increase the amount of testing performed by telecommunications employers on rubber gloves.[1] This would consequently increase the industry's testing costs.

Employees performing telecommunications work wear rubber insulating gloves to protect them against accidental contact with energized parts. These employees use specific work practices required in § 1910.268, including maintaining minimum approach distances from energized parts, to protect them against electric shock hazards. The gloves provide secondary protection in case the work practices are not followed. This contrasts with the way rubber insulating gloves are used for other types of electrical work, such as electric power transmission and distribution work. In this type of work, employees wearing rubber insulating gloves handle energized conductors directly, and the gloves provide the primary form of protection for the worker.

All the commenters on this issue maintained that they had experienced no injuries as a result of the failure of rubber insulating gloves. For these reasons, OSHA has decided not to remove § 1910.268(f)(5).

[1] The testing intervals for synthetic rubber insulating blankets would also be shorter. However, the commenters did not object on that basis. Additionally, the national consensus standard for this equipment, American Society for Testing and Materials F479 Specification for In-Service Care of Insulating Blankets, which formed the basis for the test intervals in § 1910.137, provides a maximum interval of 12 months between tests, regardless of whether the rubber is natural or synthetic.

OSHA is also retaining paragraph (f)(6) of Section 1910.268 because of its connection with paragraph (f)(5). This paragraph requires that rubber gloves and blankets be marked to indicate compliance with the test schedule required under paragraph (f)(5) and that rubber gloves be destroyed if they fail the tests or if they are otherwise found to be defective.

OSHA continues to believe that the remaining provisions contained in existing § 1910.268(f) unnecessarily duplicate requirements in § 1910.137. None of the interested persons who commented on § 1910.268(f) presented reasons why any paragraphs other than § 1910.268 (f)(5) and (f)(6) should be retained. Therefore, the Agency is revising paragraph (f)(1), removing paragraphs (f)(2) through (f)(4) and (f)(7) through (f)(9) and redesignating paragraphs (f)(5) and (f)(6) as (f)(2) and (f)(3) of § 1910.268. Paragraph (f)(1) as revised explains that 1910.137 applies to telecommunications except for Table I–6.

Amendments to Part 1926 That Received No Comments or Positive Comments Only

A. Incorporation by reference (§ 1926.31)

This final rule amends § 1926.31 to clarify that only mandatory provisions of standards incorporated by reference are adopted as OSHA standards.

As stated in the proposal, based on its ongoing review of compliance and enforcement activities and recommendations from its Advisory Committee on Construction Safety and Health (ACCSH), OSHA is aware that difficulties have arisen regarding certain provisions of part 1926 that were adopted under section 6(a) of the Act. Many of the standards adopted under Section 6(a) were American National Standards Institute (ANSI) or National Fire Protection Association (NFPA) consensus standards which were incorporated by reference and contained advisory provisions (e.g., use the word ''should'' rather than ''shall'').

In the past, OSHA maintained that all standards, regardless of whether the term ''should'' or ''shall'' is used, created mandatory compliance responsibilities. Employers have consistently challenged this position on the basis that Section 6(a) of the Act only gave OSHA the authority to adopt ANSI standards verbatim. In ANSI standards, using the term ''should'' means that the provision is only advisory. Therefore, employers maintained that ANSI ''should'' standards could only be advisory when adopted or incorporated by reference by OSHA under Section 6(a).

OSHA's ability to enforce ''should'' standards has been denied by the Occupational Safety and Health Review Commission and by most of the appellate courts in which contested cases have been heard. For example, in *Marshall* v. *Pittsburgh-Des Moines Steel Company,* 584 F.2d 638, 643–44 (1978), the Third Circuit Court of Appeals determined that ''should'' standards were merely advisory because the consensus organization had reached ''substantial agreement'' that these provisions be viewed only as *recommendations,* and not as mandatory standards.

The courts have also ruled that failure to adopt an ANSI provision verbatim renders the resulting OSHA Section 6(a) provision invalid and unenforceable [see *Usery* v. *Kennecott Copper Corporation,* 577 F.2d 1113, 1117 (10th Cir. 1977)].

Although the ''should'' standards have not been enforceable in and of themselves, OSHA has used them to help demonstrate the existence of ''recognized hazards'' under the general duty clause [Section 5(a)(1)] of the Act. However, the Review Commission has ruled that, as long as the ''should'' provision remains in effect as an OSHA standard, OSHA may not issue a general duty clause citation for the hazard it addresses (see A. Prokosch & Sons Sheet Metal and Mid Hudson Automatic Sprinkler, 1980 CCH OSH ¶ 24,840).

In order to address these issues, the Agency is revising § 1926.31(a) to clarify that only the mandatory requirements of incorporated consensus standards are adopted as OSHA standards. The removal of the advisory provisions will also simplify and streamline the existing Part 1926 standards.

In 1984, OSHA conducted a rulemaking for 29 CFR part 1910 (General Industry Standards) that was similar to the one described above for the construction standards in part 1926. At that time, paragraph (a)(1) of § 1910.6 was revised to clarify that ''only the mandatory provisions * * * of standards incorporated by reference are adopted as standards under the Occupational Safety and Health Act'' (49 FR 5318).

In the present rule making, OSHA proposed to revise paragraph (a) of § 1926.31 to read the same as § 1910.6 by adding a sentence to existing § 1926.31(a) to read as follows: ''Only the mandatory provisions (i.e., provisions containing the word ''shall'' or other mandatory language) of standards incorporated by reference are adopted as standards under the

Occupational Safety and Health Act.'' No comments were received on the proposed revision, and this paragraph (§ 1926.31(a)) is therefore being revised as proposed.

B. Flammable and combustible liquids (§ 1926.152)

Paragraph (a)(1) of § 1926.152 requires employers to use a safety can, which is defined as a container with a capacity of 5 gallons or less that is equipped with a spring-closing lid and spout cover, a means to relieve internal pressure, and a flash arresting screen, for the storage, use, and handling of flammable and combustible liquids. As stated in the proposal, while approved metal safety cans are still acceptable, various nationally recognized testing laboratories have also approved the use of plastic safety cans for flammable liquids. The Agency has determined that Department of Transportation (DOT) approved containers of 5 gallon capacity or less that are not equipped with a spring closing lid, spout cover, and flash-arresting screen are also acceptable for the storage, use, and handling of flammable and combustible liquids because they sufficiently reduce the risk from fire, spills and explosions.

Furthermore, the Agency has determined that it is sufficient to require the use of the original container only for quantities of flammable liquids that are one gallon or less because that will adequately protect against the risk of fire and explosion. Where the original container is available, the employer may choose to use it instead of an approved safety can for quantities of one gallon or less. If the original container is not available, an approved safety can must be used.

One comment was received on the proposed revision to § 1926.152(a)(1), (Ex. 4–2). This commenter supported the proposed revision as written. Based on the reasons stated above, OSHA is revising § 1926.152(a)(1) as proposed.

C. Initiation of explosive charges—Electric blasting (§ 1926.906)

OSHA proposed revising paragraph (q) of § 1926.906 to allow the use of other types of specifically designed instruments, in addition to those equipped with silver chloride cells, when testing circuits to charged holes.

The general industry standard, § 1910.109(e)(4)(vii), Explosives and Blasting Agents, states that ''Blasters, when testing circuits to charged holes, shall use only blasting galvanometers designed for this purpose.'' The standard does not specifically require using silver chloride cells. In addition, the Mine Safety and Health Administration (MSHA) currently allows for the use of a blasting galvanometer or other instruments that are specifically designed for testing blasting circuits (30 CFR CH.1 § 56.6407). The revision of § 1926.906(q) will correct the inconsistency with the above mentioned standards.

One comment was received on the proposed revision to § 1926.906(q). This commenter (Ex. 4–10) substantially supported the proposed revision to § 1926.906(q). OSHA is therefore revising § 1926.906(q) as proposed.

Amendments to Part 1926 That Received Varied Comments

D. Medical services and first aid (§ 1926.50)

OSHA proposed revising paragraphs (d)(1) and (d)(2) of § 1926.50 to eliminate the requirement for physician approval of first aid supplies. As stated in the proposal, since first aid kits that are commercially available will meet the needs of most employers, it is unnecessary for most employers to have a physician approve the contents of a first aid kit. However, if the workplace has unusual hazards or special situations which would require modification of a commercial first aid kit, or the development of a specialized kit, the Agency expects that the employer will provide these special items. If the employer is unsure whether a commercially available kit is sufficient, professional advice should be obtained. Such advice, however, would not be required as a matter of course. The Agency believes that this change will allow the employer more flexibility in meeting the first aid requirements without affecting employee safety.

No comments were received on this proposed revision; however, nine comments were received addressing the proposal to revise the identical provision in the General Industry standard § 1910.151(b) (Exs. 4–5, 4–6, 4–18, 4–19, 4–20, 4–23, 4–26, 4–28 and 4–30). Those comments are discussed in the General Industry section above. In addition, as stated in the § 1910.151(b) discussion, OSHA is providing a reference for basic first aid supplies and their use in a new non-mandatory Appendix A to § 1910.151. In order to be consistent with the General Industry standards, and for the reasons stated in the discussion of the General Industry standard, this final rule revises § 1926.50 in the same manner as § 1910.151 with the addition of a non-mandatory Appendix A to § 1926.50.

Appendix A for § 1910.151 includes a statement that employers are to follow the provisions of § 1910.1030(d)(3) of the OSHA standard on occupational exposure to blood borne pathogens (56 FR 64175). As that standard is not applicable to employers in the construction industry, this statement is not repeated in Appendix A to § 1926.50. Additional First aid supplies (other than those referenced in Appendix A) may be necessary to address specific work hazards and prevalent injuries.

OSHA is revising Paragraph (f) of § 1926.50 to limit the requirement for posting the telephone numbers of physicians, hospitals or ambulances to those areas where the 911 emergency number is not available. OSHA believes that requiring all employers to post the numbers where the 911 emergency number is available could lead to confusion and might slow emergency response, and would place an unnecessary burden on the employers.

IV. Summary of the Final Economic Analysis Introduction

Based on the record of this rulemaking, this final rule eliminates a number of provisions in OSHA standards that are duplicative, unnecessary, or potentially in conflict with the rules of other Federal agencies. All of the changes OSHA is making are expected to benefit the regulated community by making the rules clearer, simple and easier to understand and apply. Quantifiable economic benefits can be estimated only for four of these changes, however.[2] By eliminating these ''problem provisions'' from its standards, this Standards Improvement rule will lessen the burden employers currently experience, and will, in turn, generate cost savings. No commenters disputed these findings, reported by OSHA in the Preliminary Economic Analysis that accompanied the proposed rule. The following paragraphs discuss the Final Economic Analysis in detail.

First Aid Kits

The final rule eliminates the requirements in § 1910.151(b) and § 1926.50(d)(1) that employers must have certain first aid supplies approved by a consulting physician before they are used. This requirement applied only in cases where no infirmary, clinic, or hospital was in close proximity to the worksite and the employer intended to treat first aid injuries at the site.

[2] For example, the Duke Power Company [Ex. 4–2] applauded OSHA's elimination of a provision (§ 1926.152) on storage cans for flammable and combustible liquids that conflicts with a DOT requirement on the same topic. Unfortunately, the Agency does not have sufficient data to estimate the apparent cost savings from this change.

Although the number of establishments meeting these criteria is not known, the Agency believes that its estimate of 10 percent of establishments is reasonable, and no commenter disagreed with this estimate. The provisions being eliminated did not specify how the physician was to provide this consultation, but OSHA assumed that, at most, five minutes of a physician's time, valued at $100/hr,[3] would be required to approve the contents of the first aid kit at these establishments. For purposes of this analysis, OSHA also assumed that the physician provided five minutes of his or her time at an hourly wage rate, i.e., at a cost of $8.33.

The analysis further assumed that the physician would need to approve the first aid supplies once every 10 years, after which time the development of new kinds of medical supplies and the possibility of new hazards at the worksite would make a new consultation necessary. The cost of five minutes of a physician's time annualized over 10 years is $1.19 per year.

The Agency estimates that approximately 6.4 million employers fall under OSHA jurisdiction and will be affected by this change [*County Business Patterns,* 1993]. Of these, 10% would be affected by the change; the annualized cost for employers to comply with these provisions in the past was approximately $761,600 ((6.4 million × 10%) × $1.19). By eliminating the requirement for a physician's approval of an establishment's first aid kit, OSHA will eliminate this burden.

Coke Oven Emissions

The final rule will eliminate the requirement at § 1910.1029(j) for employers to conduct semiannual sputum cytology tests and will reduce the frequency at which they must supply chest x-rays from twice a year to once a year for workers who are 45 years of age or older or who have five or more years of employment in areas defined by the standard as regulated areas. Regulated areas encompass the coke oven battery, including topside and its machinery, pushside and its machinery, cokeside and its machinery, and battery ends; the wharf; the screening station; and the beehive oven and its machinery.

The Inflationary Impact Statement developed by OSHA in support of the Coke Oven standard (§ 1910.1029), [*Inflationary Impact Statement: Coke Oven Emissions, 1976*] estimated total employment in coke ovens at 29,600 workers. The same analysis estimated that 75 percent of these employees worked in regulated areas. The *1992 Census of Manufacturers* (Industry Series) indicated total employment for SIC 33121 (Coke Oven and Blast Furnace Products) at 8,600 and total production person-hours at 15.7 million. A separate Census Industry Series count specific to coke ovens indicates a total of 11.2 million production person-hours, which constitutes approximately 71 percent of SIC 3312's productive person-hours, suggesting a current total number of 6,135 coke oven workers.

Assuming that the proportion of coke oven employees working in regulated areas has remained constant, approximately 4,600 coke oven employees currently work in regulated areas. Approximately 30 percent of the workforce in 1994 was over 45 years of age [BLS data presented in *Statistical Abstract of the United States, 1995,* p. 402]. Turnover rates in SIC 33, which includes coke ovens, are estimated at 5 percent annually [*National Occupational Exposure Survey: Analysis of Management Interview Responses, 1988*]. Thus, approximately 77 percent of the current regulated area workforce will have been exposed to coke oven emissions for five years or more.[4] Adjusting this percentage to reflect the assumption that 30 percent of employees are over 45 years of age yields an estimate of 84 percent[5] of coke oven employees (3,864 workers) potentially affected by the revocation or revision of these requirements.

Data for 1994 obtained from the Physician Payment Review Commission [E-mail from Christopher Hogan, PPRC, to Tom Mockler, OSHA] indicate that the average x-ray charge nationally is $54.40 and the average lab charge for cytological examination of bodily fluids is $51.90. (OSHA assumes that the additional average charge of $19.00 for sputum specimen collection is included in the fee for the medical exam required by the standard.) Therefore the savings associated with the elimination of one chest x-ray and two sputum cytologies annually is $158.20 per worker ($54.40 for one x-ray, and $103.80 for two sputum cytology tests). For the group of 3,864 employees, the annual savings is thus $611,285.

The American Iron and Steel Institute (AISI) [Ex. 4–22] agreed with the Preliminary Economic Analysis's finding that this change would save employers money. AISI's analysis, which assumed higher wage rates and a larger affected population than OSHA's analysis, estimated a cost savings of $925,000 per year. Thus, the Agency's cost savings estimate for this regulatory action may be understated.

Inorganic Arsenic

As in the case of the coke oven standard, OSHA is eliminating the requirement for sputum cytology and reducing the frequency of chest x-ray exams from semi-annual to annual for workers exposed above the inorganic arsenic action level of 5μg/m^3 (29 CFR 1910.1018). Paragraph (n) of § 1910.1018 formerly required employees exposed above the action level for 30 days per year to receive these medical surveillance elements semi-annually if they were 45 years of age or older or had had more than 10 years of exposure above the action level.

The **Federal Register** notice for the inorganic arsenic rulemaking [May 5, 1978, p. 19585] indicated that, of 660,000 workers exposed to inorganic arsenic, 7,400 were exposed above an 8-hour TWA 4μg/m^3, i.e., close to or above the action level. Although arsenic uses and related exposures have shifted over time, the level of inorganic arsenic use in the U.S. appears to be approximately the same as it was at the time of the original rulemaking.[6] Therefore, for the purposes of this analysis, the Agency assumes that the size of the exposed population is unchanged.

At the time of the original rulemaking, the Inflationary Impact Statement [*Inflationary Impact Statement: Inorganic Arsenic,* 1976] estimated that 50% of employees exposed above the action level would need the semi-annual x-ray exams, based on OSHA's analysis of age, job tenure and turnover. Using the same assumptions, the Agency estimates that approximately 3,700 workers will be affected by the final rule's revision to this provision. This change will eliminate the need for x-ray and sputum cytology testing valued at $158.20 (see the explanation above for coke ovens for cost details) for 3,700 employees, for an annual cost savings of $584,340.

Pulp and Paper

OSHA's existing pulp and paper standard, § 1910.261, contains paragraph (b)(5), ''vessel entering,'' which states:

[3] Opportunity cost measured as the market price for occupational physical exams, i.e., at the rate of about $100 an hour.

[4] $(1-0.05)^5 = 0.77$ This calculation assumes an equal probability of turnover in each year thereafter.

[5] $((0.77) \times (1-0.30)) + (0.30) = 0.84$ All other things equal, at least 30 percent of those with 5 or more years of exposure would be over 45.

[6] Based on the estimated level of raw arsenic trioxide consumed in the U.S. [*Arsenic: Industrial, Biomedical, Environmental Perspectives,* 1983, p. 7; Bureau of Mines, Mineral Commodity Summary, 1995].

Lifelines and safety harness shall be worn by anyone entering closed vessels, tanks, chip bins, and similar equipment, and a person shall be stationed outside in a position to handle the line and to summon assistance in the case of emergency.

Paragraph (b)(5) also prescribes other safety precautions for similar confined spaces in pulp and paper mills.

OSHA is eliminating these specific separate requirements for confined space entry in pulp and paper mills and instead is cross-referencing § 1910.146, OSHA's generic permit-required confined space standard. In other words, employers in the pulp and paper industry will no longer have to comply with § 1910.261(b)(5) but will instead be required to comply with § 1910.146. § 1910.146 requires employers to assess the hazards associated with their confined spaces and take appropriate safety precautions to deal with those hazards. Although § 1910.146 may require employers under certain circumstances to complete additional checklists, conduct training, and plan for rescue, depending on the hazard(s) present, pulp and paper mill employers will in some cases no longer need to require employees to wear lifelines or provide for outside ''attendants'',[7] as was required by § 1910.261.

The costs of complying with § 1910.146 in the pulp and paper industry were included in OSHA's supporting Regulatory Impact Analysis [*Final Regulatory Impact Analysis and Regulatory Flexibility Analysis of the Final Permit-Required Confined Spaces Standard,* December 1992]. They were estimated to be approximately $4 million. No economic or technological feasibility problems were identified.

By deleting the more rigid confined space requirements of the pulp and paper industry-specific standard and requiring employers to comply with the more performance-oriented requirement for attendants and lifelines of the permit-required confined spaces standard, OSHA is simultaneously relieving a burden and enhancing safety. Based on the underlying analysis used by OSHA in producing the RIA for § 1910.146, a comparison of the costs associated with the requirement that an attendant be present (§ 1910.261 (b)(5)) with the more flexible requirements in § 1910.146 indicates a savings to employers of approximately 450,000 person-hours annually. Given the hourly compensation rate of $17 used in the RIA, this represents an annual savings of $7.7 million.

In summary, by revoking or revising these four unnecessary or duplicative requirements, the Agency is reducing annual employer burdens related to first aid kits by $761,000, to medical surveillance for coke oven emission workers by $611,285 and inorganic arsenic workers $584,340, and to confined space entry in pulp and paper mills by $7.7 million, for a total annualized employer savings of $9,656,625.

Technological Feasibility

OSHA could not identify any provision of the final rule that raised technological feasibility problems for employers. OSHA therefore concludes that technological feasibility is not an issue for the changes made to these standards in this regulatory action.

V. Regulatory Flexibility Certification

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*), as amended, requires that the Agency examine its regulatory actions to determine if they have a significant economic impact on a substantial number of small entities. As stated at the time of the proposal, and confirmed by this final economic analysis and comments to the record, these modifications to existing regulations are expected to reduce the regulatory burden on all affected employers, large and small. No commenters disputed this conclusion. For that reason, the Agency hereby certifies that the final rule will not have a significant economic impact on a substantial number of small entities.

VI. Environmental Assessment

The final rule has been reviewed in accordance with the requirements of the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321 *et seq.*), the regulations of the Council of Environmental Quality (CEQ) (40 CFR part 1500), and DOL NEPA procedures (29 CFR part 11). As a result of this review, OSHA has concluded that the rule will have no significant environmental impact.

VII. International Trade

This revision and revocation of OSHA standards is not likely to have a significant effect on international trade, since the changes involve the revocation of obsolete provisions, consolidation of repetitious provisions, and clarification of confusing language.

VIII. Paperwork Reduction Act

The Office of Management and Budget (OMB) has approved the information collection requirements contained in the final ''Standards Improvement For General Industry and Construction Standards'' standard. OMB has approved the collections of information contained in the Inorganic Arsenic standard and has assigned the OMB Control Number of 1218–0104 to these collections. OMB has also approved the collections of information contained in the Coke Oven Emissions standard and has assigned the OMB Control Number of 1218–0128 to them. Both approvals expire on 3/31/2000. Under 5 CFR 1320.5(b), an agency may not conduct or sponsor a collection of information unless: (1) the collection of information displays a currently valid OMB control number; and (2) the agency informs the potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

IX. Federalism

This revision and revocation of OSHA standards has been reviewed in accordance with Executive Order 12612 (52 FR 41685, October 30, 1987), regarding Federalism. This Order requires that agencies, to the extent possible, refrain from limiting State policy options, consult with States prior to taking any actions which would restrict State policy actions, and take such actions only when there is clear constitutional authority and the presence of a problem of national scope. The Order provides for preemption of State law only if there is a clear Congressional intent for the Agency to do so. Any such preemption is to be limited to the extent possible.

Section 18 of the Occupational Safety and Health Act (OSH Act) expresses Congress' intent to preempt State laws relating to issues on which Federal OSHA has promulgated occupational safety and health standards. Under the OSH Act, a State can avoid preemption in issues covered by Federal standards only if it submits, and obtains Federal approval of, a plan for the development of such standards and their enforcement. Occupational safety and health standards developed by such Plan States must, among other things, be at least as effective in providing safe and healthful employment and places of employment as the Federal standards.

The revision and revocation of standards is meant to reduce the volume and complexity of OSHA standards, and

[7] For example, § 1910.146(c)(5) states that, if an employer can certify that ventilation alone can reliably control atmospheric hazards in a space, and that is the only hazard posed by the space, the employer is exempt from many requirements of the standard, including the need for an outside attendant. Similarly, in § 1910.146(k)(3), employers are expressly exempt from using a lifeline if such usage is either valueless or counterproductive from a safety standpoint.

to improve compliance by employers, without diminishing worker safety and health. Those States which have elected to participate under Section 18 of the OSH Act are not preempted by the revocation and revision of these standards and will be able to address any special conditions within the framework of the Federal Act while ensuring that the State standards are at least as effective as the Federal standard.

X. State Plan Standards

The States with their own approved occupational safety and health plans must have at least as effective standards in place within 6 months of the publication date of the final standard. These States are: Alaska, Arizona, California, Connecticut (for State and local government employees only), Hawaii, Indiana, Iowa, Kentucky, Maryland, Michigan, Minnesota, Nevada, New Mexico, New York (for State and local government employees only), North Carolina, Oregon, Puerto Rico, South Carolina, Tennessee, Utah, Vermont, Virginia, Virgin Islands, Washington, and Wyoming.

XI. Authority and Signature

This document was prepared under the direction of Charles N. Jeffress, Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

List of Subjects

29 CFR Part 1910

Business and industry, Coke oven emission, Explosives, Fire prevention, Hazardous substances, Inorganic arsenic, Occupatioal safety and health.

29 CFR Part 1926

Construction industry, Electric power, First-aid, Fire prevention

Signed at Washington, D.C. this 11th day of June 1998.

Charles N. Jeffress,

Assistant Secretary of Labor.

Accordingly, pursuant to sections 4, 6, 6(b) (7) and 8 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657), section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 333) and Secretary of Labor's Order No. 6–96 (62 FR 111), 29 CFR Parts 1910 and 1926 are amended as set forth below.

PART 1910—[AMENDED]

Subpart H—Hazardous Materials

1. The authority citation for subpart H is revised to read as follows:

Authority: Sections 4, 6, and 8 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657); Secretary of Labor's Order No. 12–71 (36 FR 8754), 8–76 (41 FR 25059), 9–83 (48 FR 35736), or 6–96 (62 FR 111), as applicable, and 29 CFR part 1911.

1a. Remove the phrase, ''from inhabited buildings, passenger railways, and public highways and'' from paragraph (c)(1)(vi) of § 1910.109.

2. Remove the words, ''manufacture and'' from the first sentence in footnote number 5, of Table H–21, of § 1910.109.

3. Revise paragraphs (d)(1)(iv) and (e)(2)(i) of § 1910.109 to read as follows:

§ 1910.109 Explosives and blasting agents.

* * * * *

(d) * * *

(1) * * *

(iv) Blasting caps or electric blasting caps shall not be transported over the highways on the same vehicles with other explosives, unless packaged, segregated, and transported in accordance with the Department of Transportation's Hazardous Materials Regulations (49 CFR parts 177–180).

* * * * *

(e) * * *

(2) * * *

(i) Empty containers and paper and fiber packing materials which have previously contained explosive materials shall be disposed of in a safe manner, or reused in accordance with the Department of Transportation's Hazardous Materials Regulations (49 CFR parts 177–180).

§ 1910.110 [Amended]

1. Remove paragraphs (b)(15)(vi) through (b)(15)(viii) of § 1910.110, and redesignate paragraph (b)(15)(ix) as (b)(15)(vi).

2. Remove paragraphs (c)(2)(ii) through (c)(2)(iv) of § 1910.110 and redesignate paragraph (c)(2)(i) as (c)(2).

3. Remove and reserve paragraph (e)(10) of § 1910.110.

4. Remove and reserve paragraph (g) of § 1910.110.

§ 1910.111 [Amended]

5. Remove and reserve paragraphs (f)(7) and (f)(8) of § 1910.111.

Subpart J—General Environmental Controls

1. The authority citation for subpart J is revised to read as follows:

Authority: Sections 4, 6, and 8 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657); Secretary of Labor's Order No. 12–71 (36 FR 8754), 8–76 (41 FR 25059), 9–83 (48 FR 35736), or 6–96 (62 FR 111), as applicable, 29 CFR Part 1911.

§ 1910.141 [Amended]

2. Remove paragraph (a)(2)(i) of § 1910.141 and all paragraph designations for the definitions within paragraph (a)(2) of § 1910.141.

§ 1910.142 [Amended]

3. Remove paragraph (a)(4) of § 1910.142.

Subpart K—Medical and First Aid

1. The authority citation for subpart K is revised to read as follows:

Authority: Sections 4, 6, and 8 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657); Secretary of Labor's Order No. 12–71 (36 FR 8754), 8–76 (41 FR 25059), 9–83 (48 FR 35736), or 6–96 (62 FR 111), as applicable, 29 CFR part 1911.

2. Revise the final sentence in paragraph (b) of § 1910.151 to read as follows:

§ 1910.151 Medical services and first aid.

* * * * *

(b) * * * Adequate first aid supplies shall be readily available.

* * * * *

3. In § 1910.151, add Appendix A to read as follows:

Appendix A to § 1910.151—First aid kits (Non-Mandatory)

First aid supplies are required to be readily available under paragraph § 1910.151(b). An example of the minimal contents of a generic first aid kit is described in American National Standard (ANSI) Z308.1–1978 ''Minimum Requirements for Industrial Unit-Type First-aid Kits.'' The contents of the kit listed in the ANSI standard should be adequate for small worksites. When larger operations or multiple operations are being conducted at the same location, employers should determine the need for additional first aid kits at the worksite, additional types of first aid equipment and supplies and additional quantities and types of supplies and equipment in the first aid kits.

In a similar fashion, employers who have unique or changing first-aid needs in their workplace may need to enhance their first-aid kits. The employer can use the OSHA 200 log, OSHA 101's or other reports to identify these unique problems. Consultation from the local fire/rescue department, appropriate medical professional, or local emergency room may be helpful to employers in these circumstances. By assessing the specific needs of their workplace, employers can ensure that reasonably anticipated supplies are available. Employers should assess the specific needs of their worksite periodically and augment the first aid kit appropriately.

If it is reasonably anticipated that employees will be exposed to blood or other potentially infectious materials while using first aid supplies, employers are required to provide appropriate personal protective equipment (PPE) in compliance with the provisions of the Occupational Exposure to Blood borne Pathogens standard,

§ 1910.1030(d)(3) (56 FR 64175). This standard lists appropriate PPE for this type of exposure, such as gloves, gowns, face shields, masks, and eye protection.

Subpart L—Fire Protection

1. The authority citation for subpart L is revised to read as follows:

Authority: Sections 4, 6, and 8 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657); Secretary of Labor's Order No. 12–71 (36 FR 8754), 8–76 (41 FR 25059), 9–83 (48 FR 35736), or 6–96 (62 FR 111) as applicable; 29 CFR part 1911.

§ 1910.156 [Amended]

2. Remove paragraph (f)(2)(iii) of § 1910.156.

Subpart N—Materials Handling and Storage

1. The authority citation for subpart N is revised to read as follows:

Authority: Sections 4, 6, and 8 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657); Secretary of Labor's Order No. 12–71 (36 FR 8754), 8–76 (41 FR 25059), 9–83 (48 FR 35736), or 6–96 (62 FR 111), as applicable; and 29 CFR part 1911.

§ 1910.183 [Amended]

2. Remove and reserve paragraph (a) of § 1910.183.

Subpart R—Special Industries

1. The authority citation for subpart R is revised to read as follows:

Authority: Sections 4, 6, and 8 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657); Secretary of Labor's Order No. 12–71 (36 FR 8754), 8–76 (41 FR 25059), 9–83 (48 FR 35736), or 6–96 (62 FR 111), as applicable; and 29 CFR part 1911.

§ 1910.261 [Amended]

2. Remove the following paragraphs in § 1910.261: (a)(3) (ii), (iv) through (vi), (ix), (xi) through (xiii), (xv), (xvii) through (xix), (xx), (xxii), (xxiv) through (xxvii).

3. The following paragraphs in § 1910.261 are redesignated as follows:

a. paragraph (a)(3)(iii) as paragraph (a)(3)(ii),

b. paragraph (a)(3)(vii) as paragraph (a)(3)(iii),

c. paragraph (a)(3)(viii) as paragraph (a)(3)(iv),

d. paragraph (a)(3)(x) as paragraph (a)(3)(v),

e. paragraph (a)(3)(xiv) as paragraph (a)(3)(vi),

f. paragraph (a)(3)(xvi) as paragraph (a)(3)(vii),

g. paragraph (a)(3)(xxi) as paragraph (a)(3)(viii),

h. paragraph (a)(3)(xxiii) as paragraph (a)(3)(ix).

4. Remove paragraphs (b)(1) through (b)(3), (b)(5), and (b)(6) of § 1910.261.

5. Redesignate paragraph (b)(4) as paragraph (b)(1) and paragraph (b)(7) as paragraph (b)(2) of § 1910.261.

6. Remove the following paragraphs in § 1910.261: (c) (2)(vi), (2)(vii), (6)(ii), and (7)(ii).

7. Remove and reserve the following paragraphs of § 1910.261: (c) (3)(i), (8)(i), and (11).

8. The following paragraphs in § 1910.261 are redesignated as follows:

a. paragraph (c)(2)(viii) as paragraph (c)(2)(vi),

b. paragraph (c)(6)(i) as paragraph (c)(6),

c. paragraph (c)(7)(i) as paragraph (c)(7),

d. paragraph (d)(1)(i) as paragraph (d)(1).

9. Remove paragraph (d)(1)(ii) of § 1910.261.

10. Remove and reserve paragraphs (e)(3), (e)(7), and (e)(9) of § 1910.261.

11. Remove paragraphs (g)(1)(iv) and (g)(2)(i) of § 1910.261.

12. Remove paragraphs (g)(15)(iv) and (g)(15)(vi) of § 1910.261.

13. The following paragraphs in § 1910.261 are redesignated as follows:

a. paragraph (g)(1)(v) as paragraph (g)(1)(iv),

b. paragraph (g)(2)(ii) as paragraph (g)(2)(i),

c. paragraph (g)(2)(iii) as paragraph (g)(2)(ii),

d. paragraph (g)(15)(v) as paragraph (g)(15)(iv).

14. Remove paragraph (h)(2)(iii) of § 1910.261, and redesignate (h)(2)(iv) as (h)(2)(iii).

15. Remove paragraphs (j)(1)(iv), (j)(4)(ii), (j)(5)(iv) and (j)(6)(ii) of § 1910.261.

16. Remove and reserve paragraph (j)(3) of § 1910.261.

17. The following paragraphs in § 1910.261 are redesignated as follows:

a. paragraph (j)(4)(iii) through paragraph (j)(4)(vi) as paragraph (j)(4)(ii) through paragraph (j)(4)(v),

b. paragraph (j)(6)(iii) as paragraph (j)(6)(ii).

18. Remove paragraph (k)(2)(i) of § 1910.261, and redesignate paragraphs (k)(2)(ii) through (k)(2)(vi) as paragraphs (k)(2)(i) through (k)(2)(v), respectively.

19. Remove and reserve paragraphs (k)(4) and (k)(16) of § 1910.261.

20. Remove and reserve paragraphs (m)(2) and (m)(4) of § 1910.261.

21. Remove paragraphs (m)(5)(i) and (m)(5)(ii) of § 1910.261.

22. Redesignate paragraph (m)(5)(iii) of § 1910.261 as paragraph (m)(5), and add a heading to paragraph (m)(5) to read ''Unloading Cars.''

§ 1910.262 [Amended]

23. Remove and reserve paragraphs (c)(3) and (c)(4) of § 1910.262.

24. Remove and reserve paragraph (gg) of § 1910.262.

25. Remove paragraphs (ll)(1), (qq), and (rr) of § 1910.262.

26. Redesignate paragraph (ll)(2) of § 1910.262 as paragraph (ll).

§ 1910.265 [Amended]

27. Remove paragraph (a)(2) of § 1910.265.

28. Redesignate paragraph (a)(1) of § 1910.265 as paragraph (a).

29. Remove and reserve paragraphs (c)(3)(i), (c)(10), (c)(14), and (c)(16) of § 1910.265.

30. Remove and reserve paragraph (c)(17) of § 1910.265.

31–32. Remove and reserve paragraph (c)(22) of § 1910.265.

33. Remove paragraph (c)(24)(iv)(*a*) of § 1910.265 and redesignate paragraph (c)(24)(iv)(*b*) as paragraph (*c*)(24)(iv).

34. Remove paragraph (c)(24)(iv)(c) of § 1910.265.

35. Remove and reserve paragraphs (c)(26)(i), (c)(30)(vi), (c)(30)(x), and (e)(3)(ii)(*d*) of § 1910.265.

36. Remove paragraphs (f)(9), (g), (h), and (i) of § 1910.265.

§ 1910.267 [Removed and Reserved]

37. Remove and reserve § 1910.267.

§ 1910.268 [Amended]

38. Revise paragraph (f)(1), remove paragraphs (f)(2) through (f)(4) and (f)(7) through (f)(9) and redesignate paragraphs (f)(5) and (f)(6) as (f)(2) and (f)(3) as follows:

§ 1910.268 Telecommunications.

* * * * *

(f) *Rubber insulating equipment.* (1) Rubber insulating equipment designed for the voltage levels to be encountered shall be provided and the employer shall ensure that they are used by employees as required by this section. The requirements of § 1910.137, Electrical Protective Equipment, shall be followed except for Table I–6.

* * * * *

Subpart Z—Toxic and Hazardous Substances

1. The authority citation for subpart Z is revised to read as follows:

Authority: Sections 4, 6, and 8 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657); Secretary of Labor's Order No. 12–71 (36 FR 8754), 8–76 (41 FR 25059), 9–83 (48 FR 35736), or 6–96 (62 FR 111), as applicable; and 29 CFR part 1911.

All of subpart Z issued under sec. 6(b) of the Occupational Safety and Health Act, except those substances that have exposure limits listed in Tables Z–1, Z–2, and Z–3 of 29 CFR 1910.1000. The latter were issued under sec. 6(a) (29 U.S.C. 655(a)).

Section 1910.1000, Tables Z–1, Z–2 and Z–3 also issued under 5 U.S.C. 553, Section 1910.1000 Tables Z–1, Z–2, and Z–3 not issued under 29 CFR part 1911 except for the arsenic (organic compounds), benzene, and cotton dust listings.

Section 1910.1001 also issued under section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 333) and 5 U.S.C. 553.

Section 1910.1002 not issued under 29 U.S.C. 655 or 29 CFR part 1911; also issued under 5 U.S.C. 553.

Sections 1910.1018, 1910.1029 and 1910.1200 are also issued under 29 U.S.C. 653.

§ 1910.1017 [Amended]

2. In § 1910.1017, remove paragraph (g)(5).

3. Redesignate paragraphs (g)(6) and (g)(7) of § 1910.1017 as paragraphs (g)(5) and (g)(6), respectively.

4. In § 1910.1018, remove paragraph (n)(2)(ii)(C); redesignate paragraph (n)(2)(ii)(D) as (n)(2)(ii)(C); add the word ''and'' after paragraph (n)(2)(ii)(B); and revise the reference in paragraph (n)(3)(i) that reads ''(n)(2)(ii)(A) (B) and (D)'' to read ''(n)(2)(ii)''; and revise paragraph (n)(3)(ii) to read as follows:

§ 1910.1018 Inorganic arsenic.

* * * * *

(n) * * * *

(3) * * * *

(ii) The employer shall provide the examinations specified in paragraphs (n)(2)(i) and (n)(2)(ii)(B) and (C) of this section at least semiannually, and the x-ray requirement specified in paragraph (n)(2)(ii)(A) of this section at least annually, for other covered employees.

* * * * *

§ 1910.1018 [Amended]

5. In § 1910.1018, remove paragraphs (q)(2)(iii)(F), (q)(2)(iii)(G), and (q)(2)(iii)(H); and insert the word ''and'' after paragraph (q)(2)(iii)(D).

6. In Appendix A to § 1910.1018, revise paragraph VI to read as follows:

Appendix A to § 1910.1018—Inorganic Arsenic Substance Information Sheet

* * * * *

VI. MEDICAL EXAMINATIONS

If your exposure to arsenic is over the Action Level (5 mg/m3)—(including all persons working in regulated areas) at least 30 days per year, or you have been exposed to arsenic for more than 10 years over the Action Level, your employer is required to provide you with a medical examination. The examination shall be every 6 months for employees over 45 years old or with more than 10 years exposure over the Action Level and annually for other covered employees. The medical examination must include a medical history; a chest x-ray; skin examination and a nasal examination. The examining physician will provide a written opinion to your employer containing the results of the medical exams. You should also receive a copy of this opinion. The physician must not tell your employer any conditions he detects unrelated to occupational exposure to arsenic but must tell you those conditions.

Appendix C—[Amended]

* * * * *

7. In Appendix C to § 1910.1018, Section I, General, remove paragraph (4) which reads ''(4) A Sputum Cytology examination;'' redesignate paragraph (5) as paragraph (4); and insert the word ''and'' after paragraph (3).

8. In Appendix C to § 1910.1018, remove the entire section entitled ''III. Sputum Cytology''.

9. In § 1910.1029, remove paragraph (j)(2)(vii) and redesignate paragraph (j)(2)(viii) as paragraph (j)(2)(vii) and insert the word ''and'' after paragraph (j)(2)(vi).

10. In paragraph (j)(3)(ii) of § 1910.1029, the reference ''(j)(2)(i)–(viii)'' is revised to read ''(j)(2)(i) and (j)(2)(iii) through (vii).''

11. In paragraph (j)(3)(iii) of § 1910.1029, the reference ''(j)(2)(i)–(viii)'' is revised to read ''(j)(2)(i) and (j)(2)(iii) through (vii).''

12. In § 1910.1029, redesignate paragraph (j)(3)(iv) as paragraph (j)(3)(v), and add a new paragraph (j)(3)(iv) to read as follows:

§ 1910.1029 Coke oven emissions.

* * * * *

(j) * * *

(3) * * *

(iv) The employer shall provide the x-ray specified in paragraph (j)(2)(ii) of this section at least annually for employees covered under paragraph (j)(3) of this section.

13. In Appendix A to § 1910.1029, paragraph VI is revised to read as follows:

Appendix A to § 1910.1029—Coke Oven Emissions Substance Information Sheet

* * * * *

VI. MEDICAL EXAMINATIONS

If you work in a regulated area at least 30 days per year, your employer is required to provide you with a medical examination every year. The medical examination must include a medical history, a chest x-ray, pulmonary function test, weight comparison, skin examination, a urinalysis, and a urine cytology exam for early detection of urinary cancer. The urine cytology exam is only included in the initial exam until you are either 45 years or older, or have 5 or more years employment in the regulated areas when the medical exams including this test, but excepting the x-ray exam, are to be given every six months; under these conditions, you are to be given an x-ray exam at least once a year. The examining physician will provide a written opinion to your employer containing the results of the medical exams. You should also receive a copy of this opinion.

14. In Appendix B to § 1910.1029, Section II, paragraph A is revised to read as follows:

Appendix B to § 1910.1029—Industrial Hygiene and Medical Surveillance Guidelines

* * * * * *

II. Medical Surveillance Guidelines

A. *General.* The minimum requirements for the medical examination for coke oven workers are given in paragraph (j) of the standard. The initial examination is to be provided to all coke oven workers who work at least 30 days in the regulated area. The examination includes a 14″ × 17″ posterior-anterior chest x-ray reading and a ILO/UC rating to assure some standardization of x-ray reading, pulmonary function tests (FVC and FEV 1.0), weight, urinalysis, skin examination, and a urinary cytologic examination. These tests are needed to serve as the baseline for comparing the employee's future test results. Periodic exams include all the elements of the initial exams, except that the urine cytologic test is to be performed only on those employees who are 45 years or older or who have worked for 5 or more years in the regulated area; periodic exams, with the exception of x-rays, are to be performed semiannually for this group instead of annually; for this group, x-rays will continue to be given at least annually. The examination contents are minimum requirements; additional tests such as lateral and oblique x-rays or additional pulmonary function tests may be performed if deemed necessary.

15. In Appendix B to § 1910.1029, Section II, the paragraphs entitled ''C. Sputum Cytology,'' are removed.

PART 1926—[AMENDED]

Subpart C—General Safety and Health Standards

1. The authority citation for subpart C is revised to read as follows:

Authority: Sec. 107, Contract Work Hours and Safety Standards Act (40 U.S.C. 333); secs. 4, 6, and 8, Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657); Secretary of Labor's Order No. 12–71 (36 FR 8754), 8–76 (41 FR 25059), 9–83 (48 FR 35736), or 6–96 (62 FR 111), as applicable; and 29 CFR part 1911.

2. Revise paragraph (a) of § 1926.31 to read as follows:

§ 1926.31 Incorporation by reference.

(a) The standards of agencies of the U.S. Government, and organizations which are not agencies of the U.S. Government which are incorporated by reference in this part, have the same

force and effect as other standards in this part. Only the mandatory provisions (i.e., provisions containing the word ''shall'' or other mandatory language) of standards incorporated by reference are adopted as standards under the Occupational Safety and Health Act. The locations where these standards may be examined are as follows:

(1) Offices of the Occupational Safety and Health Administration, U.S. Department of Labor, Frances Perkins Building, Washington, DC 20210.

(2) The Regional and Field Offices of the Occupational Safety and Health Administration, which are listed in the U.S. Government Manual.

* * * * *

Subpart D—Occupational Health and Environmental Controls

1. The authority citation for subpart D is revised to read as follows:

Authority: Sec. 107, Contract Work Hours and Safety Standards Act (40 U.S.C. 333); secs. 4, 6, and 8, Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657); Secretary of Labor's Order No. 12–71 (36 FR 8754), 8–76 (41 FR 25059), 9–83 (48 FR 35736), or 6–96 (62 FR 111), as applicable; and 29 CFR part 1911.

2. Revise paragraphs (d)(1), (d)(2) and (f) of § 1926.50 to read as follows:

§ 1926.50 Medical services and first aid.

* * * * *

(d)(1) First aid supplies shall be easily accessible when required.

(2) The contents of the first aid kit shall be placed in a weatherproof container with individual sealed packages for each type of item, and shall be checked by the employer before being sent out on each job and at least weekly on each job to ensure that the expended items are replaced.

* * * * *

(f) In areas where 911 is not available, the telephone numbers of the physicians, hospitals, or ambulances shall be conspicuously posted.

* * * * *

4. In § 1926.50, add Appendix A to read as follows:

Appendix A to § 1926.50—First aid Kits (Non-Mandatory)

First aid supplies are required to be easily accessible under paragraph § 1926.50(d)(1). An example of the minimal contents of a generic first aid kit is described in American National Standard (ANSI) Z308.1–1978 ''Minimum Requirements for Industrial Unit-Type First-aid Kits''. The contents of the kit listed in the ANSI standard should be adequate for small work sites. When larger operations or multiple operations are being conducted at the same location, employers should determine the need for additional first aid kits at the worksite, additional types of first aid equipment and supplies and additional quantities and types of supplies and equipment in the first aid kits.

In a similar fashion, employers who have unique or changing first-aid needs in their workplace, may need to enhance their first-aid kits. The employer can use the OSHA 200 log, OSHA 101's or other reports to identify these unique problems. Consultation from the local Fire/Rescue Department, appropriate medical professional, or local emergency room may be helpful to employers in these circumstances. By assessing the specific needs of their workplace, employers can ensure that reasonably anticipated supplies are available. Employers should assess the specific needs of their worksite periodically and augment the first aid kit appropriately.

If it is reasonably anticipated employees will be exposed to blood or other potentially infectious materials while using first-aid supplies, employers should provide personal protective equipment (PPE). Appropriate PPE includes gloves, gowns, face shields, masks and eye protection (see ''Occupational Exposure to Blood borne Pathogens'', 29 CFR 1910.1030(d)(3)) (56 FR 64175).

Subpart F—Fire Protection and Prevention

1. The authority citation for subpart F is revised to read as follows:

Authority: Sec. 107, Contract Work Hours and Safety Standards Act (40 U.S.C. 333); secs. 4, 6, and 8, Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657); Secretary of Labor's Order No. 12–71 (36 FR 8754), 8–76 (41 FR 25059), 9–83 (48 FR 35736), or 6–96 (62 FR 111) as applicable; and 29 CFR part 1911.

2. In § 1926.152, revise paragraph (a)(1) to read as follows:

§ 1926.152 Flammable and combustible liquids.

(a) * * * (1) Only approved containers and portable tanks shall be used for storage and handling of flammable and combustible liquids. Approved safety cans or Department of Transportation approved containers shall be used for the handling and use of flammable liquids in quantities of 5 gallons or less, except that this shall not apply to those flammable liquid materials which are highly viscid (extremely hard to pour), which may be used and handled in original shipping containers. For quantities of one gallon or less, the original container may be used, for storage, use and handling of flammable liquids.

Subpart U—Blasting and Use of Explosives

1. The authority citation for subpart U is revised to read as follows:

Authority: Sec. 107, Contract Work Hours and Safety Standards Act (40 U.S.C. 333); secs. 4, 6, 8, Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657); Secretary of Labor's Order No. 12–71 (36 FR 8754), 8–76 (41 FR 25059), 9–83 (48 FR 35736), or 6–96 (62 FR 111), as applicable; and 29 CFR part 1911.

2. Revise paragraph (q) of § 1926.906 to read as follows:

§ 1926.906 Initiation of explosive charges—electric blasting.

* * * * *

(q) Blasters, when testing circuits to charged holes, shall use only blasting galvanometers or other instruments that are specifically designed for this purpose.

* * * * *

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Thursday
June 18, 1998

Part III

Department of Agriculture

Cooperative State Research, Education, and Extension Service

Submission for OMB Review; Comment Request; Notice

DEPARTMENT OF AGRICULTURE

Cooperative State Research, Education, and Extension Service

Special Research Grants Program, Food Safety Research, Fiscal Year 1998 Request for Proposals

AGENCY: Cooperative State Research, Education, and Extension Service (CSREES).

ACTION: Announcement of availability of grant funds and Request for Proposals (RFP) for the Special Research Grants Program, Food Safety Research.

SUMMARY: CSREES announces the availability of grant funds and requests proposals for the Special Research Grants Program, Food Safety Research for fiscal year (FY) 1998. The amount available for support of this program in FY 1998 is approximately $1,869,545.

This RFP sets out the objectives for these projects, the eligibility criteria for projects and applicants, the application procedures, and the set of instructions needed to apply for a Food Safety Research Project grant.

DATES: Applications must be received on or before August 3, 1998. Proposals received after August 3, 1998, will not be considered for funding.

ADDRESSES: To obtain a copy of this RFP and application materials for the FY 1998 Special Research Grants Program, Food Safety Research, contact the Proposal Services Unit, Office of Extramural Programs; USDA/CSREES at (202)401–5048. Application materials may also be requested via Internet by sending a mesage with your name, mailing address (not e-mail) and telephone number to psb@reeusda.gov that states that you wish to receive a copy of the RFP and application materials for the FY 1998 Special Research Grants Program, Food Safety Research.

FOR FURTHER INFORMATION CONTACT: Dr. Anne Bertinuson, Cooperative State Research, Education, and Extension Service, U.S. Department of Agriculture, STOP 2220, 1400 Independence Avenue, S.W., Washington, D.C. 20250–2220; telephone (202) 401–6825; Internet: abertinuson@reeusda.gov; or Dr. William Wagner, Cooperative State Research, Education, and Extension Service, U.S. Department of Agriculture, STOP 2220, 1400 Independence Avenue, S.W., Washington, D.C. 20250–2220; telephone (202) 401–4952; Internet: wwagner@reeusda.gov.

Table of Contents

Part I—General Information

A. Legislative Authority

The authority for this program is contained in section 2(c)(1)(A) of the Act of August 4, 1965, Pub. L. 89–106, as amended (7 U.S.C. 450i(c)(1)(A)). This Program is subject to the administrative provisions found in 7 CFR Part 3400 (56 FR 58147, November 15, 1991) for the Special Research Grants Program which set forth procedures to be followed when submitting grant proposals, rules governing the evaluation of proposals, the awarding of grants, and post-award administration of such grants. However, where there are differences between this RFP and the administrative provisions, the RFP shall take precedence.

In accordance with the statutory authority, grants awarded under the Special Research Grants Program are for the purpose of conducting research to facilitate or expand promising breakthroughs in areas of the food and agricultural sciences of importance to the United States.

B. Definitions

For the purpose of awarding grants under this program, the following definitions are applicable in addition to the definitions identified in 7 CFR Part 3400.

(1) *Authorized departmental officer* means the Secretary or any employee of the Department who has the authority to issue or modify grant instruments on behalf of the Secretary.

(2) *Authorized organizational representative* means the president, director, or the chief executive officer of the applicant organization or the official, designated by the president, director, or chief executive officer of the applicant organization, who has the authority to commit the resources of the organization.

(3) *Grant* means the award by the Secretary of funds to a grantee to assist in meeting the costs of conducting, for the benefit of the public, an identified project which is intended and designed to establish, discover, elucidate, or confirm information or the underlying mechanisms relating to a research program area identified in this program solicitation.

(4) *Principal Investigator/Project Director* means the single individual designated by the grantee in the grant application and approved by the Secretary who is responsible for the scientific and technical direction of the project.

(5) *Prior approval* means written approval evidencing prior consent by an authorized departmental officer as defined in (1) above.

(6) *Secretary* means the Secretary of Agriculture and any other officer or employee of the Department to whom the authority involved may be delegated.

C. Eligibility

Proposals may be submitted by State agricultural experiment stations, all colleges and universities, other research institutions and organizations, Federal agencies, private organizations or corporations, and individuals. Proposals must be directly related to ensuring the safety of imported and domestic fruits and vegetables. Although an applicant may be eligible based on its status as one of these entities, there are factors which may exclude an applicant from receiving Federal financial and nonfinancial assistance and benefits under this program (e.g., debarment or suspension of an individual involved or a determination that an applicant is not responsible based on submitted organizational management information).

Part II—Program Description

A. Purpose and Scope of the Program

Proposals are invited for competitive grant awards under the Special Research Grants Program, Food Safety Research for FY 1998. The purpose of this grant program is to support problem-solving food safety research that addresses National emerging issues in food safety. The first year of this program will focus on research needs under the President's Initiative to Ensure the Safety of Imported and Domestic Fruits and Vegetables. Proposals are encouraged that address:

(1) developing safe and efficacious techniques to enhance or ensure safety

of fresh and minimally processed imported and domestic fruits and vegetables;

(2) developing means to prevent infection and cross-contamination of fresh and minimally processed imported and domestic fruits and vegetables by microbial pathogens during harvesting, handling, transportation, and distribution;

(3) developing procedures for sampling fresh and minimally processed imported and domestic fruits and vegetables to accurately detect the presence of microbial pathogens.

Encouragement is also given for proposals which address minor fruit and vegetable crops. Proposals should describe how the research will be transferred for implementation. Thus, partnerships are encouraged with potential users of the new practices or technologies.

B. Available Funds and Award Limitations

Funds will be awarded on a competitive basis to support research projects that address food safety research that focuses on ensuring the safety of imported and domestic fruits and vegetables. Matching funds are encouraged but not required. The total amount of funds available in FY 1998 for support of this program is approximately $1,869,545. Each proposal submitted in FY 1998 shall request funding for a period not to exceed two years. Funding for additional years will depend upon the availability of funds, progress toward objectives, and program priorities. FY 1998 awardees would need to recompete in future years for additional funding.

Congress, in Section 716 of the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act for FY 1998, Pub. L. 105–86, encourages entities receiving Federal financial assistance to use grant funds to purchase only American-made equipment or products in the case of any equipment or product authorized to be purchased with funds provided under this program.

Part III—Preparation of a Proposal

A. Program Application Materials

Program application materials will be made available to interested entities upon request. These materials include information about the purpose of the program, how the program will be conducted, and the required contents of a proposal, as well as the forms needed to prepare and submit grant applications under the program. To obtain program application materials, please contact the Proposal Services Unit; Office of Extramural Programs; Cooperative State Research, Education, and Extension Service; U.S. Department of Agriculture; STOP 2245; 1400 Independence Avenue, S.W.; Washington, D. C. 20250–2245; Telephone: (202) 401–5048. When contacting the Proposal Services Unit, please indicate that you are requesting application materials for the Special Research Grants Program, Food Safety Research.

Application materials may also be requested via Internet by sending a message with your name, mailing address (not e-mail) and telephone number to psb@reeusda.gov that states that you wish to receive a copy of the application materials for the Special Research Grants Program, Food Safety Research. The materials will then be mailed to you (not e-mailed) as quickly as possible.

B. Content of a Proposal

(1) General

The proposal should follow these guidelines, enabling reviewers to more easily evaluate the merits of each proposal in a systematic, consistent fashion:

(a) The proposal should be prepared on only one side of the page using standard size (8½″ x 11″) white paper, one inch margins, typed or word processed using no type smaller than 12 point font, and single spaced. Use an easily readable font face (e.g., Geneva, Helvetica, CG Times).

(b) Each page of the proposal, including the Project Summary, budget pages, required forms, and any appendices, should be numbered sequentially in the upper right-hand corner.

(c) The proposal should be stapled in the upper left-hand corner. Do not bind. An original and 9 copies (10 total) must be submitted in one package, along with 20 copies of the ''Project Summary'' as a separate attachment.

(2) Cover Page

Each copy of each grant proposal must contain an ''Application for Funding'', Form CSREES–661. One copy of the application, preferably the original, must contain the pen-and-ink signature(s) of the proposing principal investigator(s)/project director(s)(PI/PD) and the authorized organizational representative who possesses the necessary authority to commit the organization's time and other relevant resources to the project. Any proposed PI/PD or co-PI/PD whose signature does not appear on Form CSREES-661 will not be listed on any resulting grant award. Complete both signature blocks located at the bottom of the ''Application for Funding'' form.

Form CSREES–661 serves as a source document for the CSREES grant database; it is therefore important that it be completed accurately. The following items are highlighted as having a high potential for errors or misinterpretations:

(a) Title of Project (Block 6). The title of the project must be brief (80-character maximum), yet represent the major thrust of the effort being proposed. Project titles are read by a variety of nonscientific people; therefore, highly technical words or phraseology should be avoided where possible. In addition, introductory phrases such as ''investigation of'' or ''research on'' should not be used.

(b) Program to Which You Are Applying (Block 7). ''Special Research Grants Program, Food Safety Research'' should be inserted in this block. You may ignore the reference to a **Federal Register** announcement.

(c) Program Area and Number (Block 8). The name of the program area, ''Food Safety Research,'' should be inserted in this block. You should ignore references to the program number and the **Federal Register** announcement.

(d) Type of Award Request (Block 13). Check the box adjacent to ''New.'' Leave the section adjacent to ''Prior USDA Award No.'' blank.

(e) Principal Investigator(s)/Project Director(s) (Block 15). The designation of excessive numbers of co-PI/PD's creates problems during final review and award processes. Listing multiple co-PI/PD's, beyond those required for genuine collaboration, is therefore discouraged. Note that providing a Social Security Number is voluntary, but is an integral part of the CSREES information system and will assist in the processing of the proposal.

(f) Type of Performing Organization (Block 18). A check should be placed in the box beside the type of organization which actually will carry out the effort. For example, if the proposal is being submitted by an 1862 Land-Grant institution but the work will be performed in a department, laboratory, or other organizational unit of an agricultural experiment station, box ''03'' should be checked. If portions of the effort are to be performed in several departments, check the box that applies to the individual listed as PI/PD #1 in Block 15.a.

(g) Other Possible Sponsors (Block 22). List the names or acronyms of all other public or private sponsors

including other agencies within USDA and other programs funded by CSREES to whom your application has been or might be sent. In the event you decide to send your application to another organization or agency at a later date, you must inform the identified CSREES program manager as soon as practicable. Submitting your proposal to other potential sponsors will not prejudice its review by CSREES; however, duplicate support for the same project will not be provided.

(3) Table of Contents

For consistency and ease in locating information, each proposal must contain a detailed Table of Contents just after the Cover Page. The Table of Contents should include page numbers for each component of the proposal. Page numbers, shown in the upper right-hand corner, should begin with the first page of the Project Summary.

(4) Project Summary

The proposal must contain a Project Summary of 250 words or less on a separate page. The summary must be self-contained and describe the overall goals and relevance of the project. The summary should also contain a listing of the major organizations participating in the project. The Project Summary should immediately follow the Table of Contents. In addition to the summary, this page must include the title of the project, the name of the applicant organization, the authorized organizational representative, and the principal investigator(s)/project director(s), followed by the summary.

(5) Project Narrative

PLEASE NOTE: The Project Narrative shall not exceed 15 pages. This maximum has been established to ensure fair and equitable competition. Reviewers are instructed that they need to read only the first 15 pages of the Project Narrative and to ignore information on additional pages.

(a) Objectives—Clear, concise, complete, and logically arranged statement(s) of specific aims of the proposed effort must be included in all proposals.

(b) Procedures—The procedures or methodology to be applied to the proposed effort should be explicitly stated. This section should include but not necessarily be limited to:

(i) a description of the proposed investigations and/or experiments in the sequence in which it is planned to carry them out;

(ii) techniques to be employed, including their feasibility;

(iii) kinds of results expected;

(iv) means by which data will be analyzed or interpreted;

(v) pitfalls which might be encountered; and

(vi) limitations to proposed procedures.

(c) Justification—This section should include in-depth information on the following, when applicable:

(i) estimates of the magnitude of the food safety problem and its relevance to ongoing National food and agricultural research programs;

(ii) importance of starting the work during the current fiscal year, and

(iii) reasons for having the work performed by the proposing institution.

(d) Cooperation and Institutional Units Involved—Cooperative and multi-State (regional) applications are encouraged. Identify each institutional unit contributing to the project. Identify each State in a multiple-State proposal and designate the lead State. When appropriate, the project should be coordinated with the efforts of other State and/or national programs. Clearly define the roles and responsibilities of each institutional unit of the project team, if applicable.

(e) Literature Review—A summary of pertinent publications with emphasis of their relationship to the effort being proposed should be provided and should include all important and recent publications from other institutions, as well as those from the applicant institution. The citations themselves should be accurate, complete, and written in an acceptable journal format.

(f) Current Work—Current unpublished institutional activities to date in the program area under which the proposal is being submitted should be described.

(g) Equipment and Facilities—All facilities which are available for use or assignment to the project during the requested period of support should be reported and described briefly. Any potentially hazardous materials, procedures, situations, or activities, whether or not directly related to a particular phase of the effort, must be explained fully, along with an outline of the precautions to be exercised. Examples include work with toxic chemicals and experiments that may put human subjects or animals at risk.

All items of major instrumentation available for use or assignment to the proposed project also should be itemized. In addition, items of nonexpendable equipment needed to conduct and bring the project to a successful conclusion should be listed, including dollar amounts and, if funds are requested for their acquisition, justified.

(h) Project Timetable—The proposal should outline all important phases as a function of time, year by year, for the entire project, including periods beyond the grant funding period.

(6) Key Personnel

All senior personnel who are expected to be involved in the effort must be clearly identified. For each person, the following should be included:

(a) an estimate of the time commitment involved;

(b) vitae of the principal investigator(s)/project director(s), senior associate(s), and other professional personnel. This section should include vitae of all key persons who are expected to work on the project, whether or not CSREES funds are sought for their support. The vitae should be limited to two (2) pages each in length, excluding publications listings; and

(c) a chronological listing of the most representative publications during the past five (5) years. This listing must be provided for each professional project member for whom a vita appears. Authors should be listed in the same order as they appear on each paper cited, along with the title and complete reference as these usually appear in journals.

(7) Collaborative and/or Subcontractual Arrangements

If it will be necessary to enter into formal consulting or collaborative arrangements with other individuals or organizations, such arrangements should be fully explained and justified. In addition, evidence should be provided that the collaborators involved have agreed to render these services. A letter of intent from the individual or organization will satisfy this requirement.

All anticipated subcontractual arrangements should be explained and justified in this section. A proposed statement of work and a budget for each arrangement involving the transfer of substantive programmatic work or the providing of financial assistance to a third party must be provided. Agreements between departments or other units of your own institution and minor arrangements with entities outside of your institution (e.g., requests for outside laboratory analyses) are excluded from this requirement.

If you expect to enter into subcontractual arrangements, please note that the provisions contained in 7 CFR Part 3019, USDA Uniform Administrative Requirements for Grants and Agreements with Institutions of

Higher Education, Hospitals, and Other Non-Profit Organizations, and the general provisions contained in 7 CFR Part 3015.205, USDA Uniform Federal Assistance Regulations, flow down to subrecipients. In addition, required clauses from 7 CFR Part 3019 Sections 40–48 (''Procurement Standards'') and Appendix A (''Contract Provisions'') should be included in final contractual documents, and it is necessary for the subawardee to make a certification relating to debarment/suspension.

(8) Certifications

Note that by signing the Form CSREES–661 the applicant is providing the required certifications set forth in 7 CFR Part 3017, as amended, regarding Debarment and Suspension and Drug-Free Workplace, and 7 CFR Part 3018, regarding Lobbying. The certification forms are included in the application package for informational purposes only. These forms should not be submitted with your proposal since by signing the Form CSREES–661 your organization is providing the required certifications.

If the project will involve a subcontractor or consultant, the subcontractor/consultant should submit a Form AD–1048 to the grantee organization for retention in their records. This form should not be submitted to USDA.

(9) Additions to the Project Narrative

Each project narrative or description is expected to be complete in itself. However, in those instances in which the inclusion of additional information is deemed necessary, appendices may be either attached or submitted as part of the proposal. Material in the appendices must be identified, and if not attached to each proposal must be identified with the title of the project and the name(s) of the PI/PD's as they appear on the Form CSREES–661. Examples of material suitable as appendices include photographs that do not reproduce well, reprints, and other pertinent materials which are deemed to be unsuitable for inclusion in the body of the proposal.

(10) Budget

Prepare the budget form (Form CSREES–55) in accordance with instructions provided. A budget form is required for each year of requested support. In addition, a cumulative budget is required detailing the requested total support for the overall project period. (For example, for a two-year project, the proposal would include three budget forms; one for each of the two years of the project and one cumulative budget for the full two years.) The budget form may be reproduced as needed by applicants. Funds may be requested under any of the categories listed on the form, provided that the item or service for which support is requested is allowable under the authorizing legislation, the applicable Federal cost principles and these program guidelines, and can be justified as necessary for the successful conduct of the proposed project. Applicants must also include a budget narrative to explain and justify their budgets. The following guidelines should be used in developing your proposal budget(s):

(a) Salaries and Wages. Salaries and wages are allowable charges and may be requested for personnel who will be working on the project in proportion to the time such personnel will devote to the project. If salary funds are requested, the number of Senior and Other Personnel and the number of CSREES Funded Work Months must be shown in the spaces provided. Grant funds may not be used to augment the total salary or rate of salary of project personnel or to reimburse them for time in addition to a regular full-time salary covering the same general period of employment. Salary funds requested must be consistent with the normal policies of the institution.

(b) Fringe Benefits. Funds may be requested for fringe benefit costs if the usual accounting practices of your institution provide that institutional contributions to employee benefits (social security, retirement, etc.) be treated as direct costs. Fringe benefit costs may be included only for those personnel whose salaries are charged as a direct cost to the project.

(c) Nonexpendable Equipment. Nonexpendable equipment means tangible nonexpendable personal property including exempt property charged directly to the award having a useful life of more than one year and an acquisition cost of $5,000 or more per unit. As such, items of necessary instrumentation or other nonexpendable equipment should be listed individually by description and estimated cost in the budget narrative. This applies to revised budgets as well, as the equipment item(s) and amount(s) may change. Congress, in the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 1998, Pub. L. 105–86, encourages entities to use Federal grant funds to purchase only American-made equipment or products.

Note: For projects awarded under the authority of Sec. 2(c)(1)(A) of Pub. L. 89–106, no funds will be awarded for the renovation or refurbishment of research spaces; the purchase or installation of fixed equipment in such spaces; or for the planning, repair, rehabilitation, acquisition, or construction of a building or facility.

(d) Materials and Supplies. The types of expendable materials and supplies which are required to carry out the project should be indicated in general terms with estimated costs in the budget narrative.

(e) Travel. The type and extent of travel and its relationship to project objectives should be described briefly and justified. For both domestic and foreign travel, provide the purpose, the destination, method of travel, number of persons traveling, number of days, and estimated cost for each trip in the budget narrative. Airfare allowances normally will not exceed round-trip jet economy air accommodations. U.S. flag carriers must be used when available. See 7 CFR Part 3015.205(b)(4) for further guidance.

(f) Publication Costs/Page Charges. Anticipated costs of preparing and publishing results of the research being proposed (including page charges, necessary illustrations, and the cost of a reasonable number of coverless reprints) may be estimated and charged against the grant.

(g) Computer (ADPE) Costs. Reimbursement for the costs of using specialized facilities (such as a university- or department-controlled computer mainframe or data processing center) may be requested if such services are required for completion of the work.

(h) All Other Direct Costs. Anticipated direct project charges not included in other budget categories must be itemized with estimated costs and justified in the budget narrative. This applies to revised budgets as well, as the item(s) and dollar amount(s) may change. Examples may include space rental at remote locations, subcontractual costs, charges for consulting services, telephone, facsimile, shipping costs, and fees for necessary laboratory analyses. You are encouraged to consult the ''Instructions for Completing Form CSREES–55, Budget,'' of the Application Kit for detailed guidance relating to this budget category.

(i) Indirect Costs. Section 712 of Pub. L. 105–86 limits indirect costs for this program to 14 percent of total Federal funds provided under each award. Therefore, the recovery of indirect costs under this program may not exceed the lesser of the grantee institution's official negotiated indirect cost rate or the equivalent of 14 percent of total Federal

funds awarded (TFFA). If no rate has been negotiated, a reasonable dollar amount (equivalent to or less than 14 percent of total Federal funds requested) in lieu of indirect costs may be requested, subject to approval by USDA.

(j) Cost-sharing. Cost-sharing is encouraged; however, cost-sharing is not required nor will it be a direct factor in the awarding of any grant.

(11) Current and Pending Support

All proposals must list any other current public or private support (including in-house support) to which key personnel identified in the proposal have committed portions of their time, whether or not salary support for person(s) involved is included in the budget. Analogous information must be provided for any pending proposals that are being considered by, or that will be submitted in the near future to, other possible sponsors, including other USDA programs or agencies. Concurrent submission of identical or similar proposals to the possible sponsors will not prejudice proposal review or evaluation by the Administrator for this purpose. However, a proposal that duplicates or overlaps substantially with a proposal already reviewed and funded (or that will be funded) by another organization or agency will not be funded under this program. The application material includes Form CSREES–663, ''Current and Pending Support,'' which is suitable for listing current and pending support. Note that the project being proposed should be included in the pending section of the form.

(12) Compliance With the National Environmental Policy Act (NEPA)

As outlined in 7 CFR Part 3407 (the Cooperative State Research, Education, and Extension Service regulations implementing NEPA), the environmental data for any proposed project is to be provided to CSREES so that CSREES may determine whether any further action is needed. In some cases, however, the preparation of environmental data may not be required. Certain categories of actions are excluded from the requirements of NEPA.

In order for CSREES to determine whether any further action is needed with respect to NEPA, pertinent information regarding the possible environmental impacts of a particular project is necessary; therefore, Form CSREES–1234, ''NEPA Exclusions Form,'' must be included in the proposal indicating whether the applicant is of the opinion that the project falls within a categorical exclusion and the reasons therefor. If it is the applicant's opinion that the proposed project falls within the categorical exclusions, the specific exclusion must be identified. Form CSREES–1234 and supporting documentation should be placed after Form CSREES–661, ''Application for Funding,'' in the proposal.

Even though a project may fall within the categorical exclusions, CSREES may determine that an Environmental Assessment or an Environmental Impact Statement is necessary for an activity. This will be the case if substantial controversy on environmental grounds exists or if other extraordinary conditions or circumstances are present which may cause such activity to have a significant environmental effect. However, this rarely occurs.

(13) Assurance Statement(s) (Form CSREES–662)

A number of situations encountered in the conduct of projects require special assurance, supporting documentation, etc., before funding can be approved for the project. In addition to any other situation that may exist with regard to a particular project, it is expected that some applications submitted in response to these guidelines will include the following:

(a) Recombinant DNA or RNA Research. As stated in 7 CFR 3015.205(b)(3), all key personnel identified in the proposal and all endorsing officials of the proposing organization are required to comply with the guidelines established by the National Institutes of Health entitled, ''Guidelines for Research Involving Recombinant DNA Molecules,'' as revised. If your project proposes to use recombinant DNA or RNA techniques, the application must so indicate by checking the ''yes'' box in Block 19 of Form CSREES–661 and by completing Section A of Form CSREES–662. For applicable proposals recommended for funding, Institutional Biosafety Committee approval is required before CSREES funds will be released.

(b) Animal Care. Responsibility for the humane care and treatment of live vertebrate animals used in any grant project supported with funds provided by CSREES rests with the performing organization. Where a project involves the use of living vertebrate animals for experimental purposes, all key project personnel and all endorsing officials of the proposing organization are required to comply with the applicable provisions of the Animal Welfare Act of 1996, as amended (7 U.S.C. 2131 et seq.) and the regulations promulgated thereunder by the Secretary in 9 CFR Parts 1, 2, as amended, 3, as amended, and 4 pertaining to the care, handling, and treatment of these animals. If your project will involve these animals or activities, you must check the ''yes'' box in Block 20 of Form CSREES–661 and complete Section B of Form CSREES–662. In the event a project involving the use of live vertebrate animals results in a grant award, funds will be released only after the Institutional Animal Care and Use Committee has approved the project.

(c) Protection of Human Subjects. Responsibility for safeguarding the rights and welfare of human subjects used in any grant project supported with funds provided by CSREES rests with the performing organization. Guidance on this issue is contained in the National Research Act, Pub. L. No. 93–348, as amended, and implementing regulations established by the Department under 7 CFR Part 1c. If you propose to use human subjects for experimental purposes in your project, you should check the ''yes'' box in Block 21 of Form CSREES–661 and complete Section C of Form CSREES–662. In the event a project involving human subjects results in a grant award, funds will be released only after the appropriate Institutional Review Board has approved the project.

Part IV—Submission of a Proposal

A. What To Submit

An original and nine copies of the complete proposal must be submitted. Each copy of the proposal must be stapled in the upper left-hand corner. DO NOT BIND. In addition, submit 20 copies of the proposal's Project Summary. All copies of the proposal and Project Summary must be submitted in one package.

B. Where and When To Submit

Proposals must be received on or by August 3, 1998. Proposals may be sent by First Class mail, but applicants are strongly encouraged to send their proposal by certified mail and obtain a receipt to document the mailing. Proposals sent via the U.S. Postal Service must be sent to the following address:

Special Grants Program—Food Safety Research c/o Proposal Services Unit, Office of Extramural Programs
USDA/CSREES, STOP 2245, 1400 Independence Avenue, SW., Washington, DC 20250–2245
Telephone: (202) 401–5048

Note: Applicants are strongly encouraged to submit their completed proposals via overnight mail or delivery services to ensure

timely receipt by the USDA and to obtain a receipt to document dispatch of the proposal.

Hand-delivered proposals or those delivered by an overnight express service should be brought to the following address:

Special Grants Program—Food Safety Research, c/o Proposal Services Unit, Office of Extramural Programs.
USDA/CSREES, Room 303, Aerospace Center, 901 D Street, SW., Washington, DC 20024, Telephone: (202) 401–5048

C. Acknowledgment of Proposals

The receipt of all proposals will be acknowledged in writing and this acknowledgment will contain an identifying proposal number. Once your proposal has been assigned an identification number, please cite that number in future correspondence.

Part V—Selection Process and Evaluation Criteria

A. Selection Process

Applicants should submit fully developed proposals that meet all the requirements set forth in this request for proposals.

Each proposal will be evaluated in a two-part process. First, each proposal will be screened to ensure that it meets the requirements as set forth in this request for proposals. Second, proposals that meet these requirements will be technically evaluated by a peer review panel.

The individual peer panel members will be selected from among those persons recognized as specialists who are uniquely qualified by training and experience in their respective fields to render expert advice on the merit of the proposals being reviewed. The individual views of the panel members will be used by CSREES staff to determine which proposals should be recommended to the Administrator (or his designee) for final funding decisions.

There is no commitment by USDA to fund any particular proposal or to make a specific number of awards. Care will be taken to avoid actual and potential conflicts of interest among reviewers. Evaluations will be confidential to USDA staff members, peer panel reviewers, and the proposed principal investigator(s)/project director(s), to the extent permitted by law.

B. Evaluation Criteria

In accordance with the provisions of 7 CFR 3400.5, the evaluation factors below will be used in lieu of those contained in 7 CFR 3400.15 in reviewing applications submitted in response to this request for proposals on National issues for food safety in fruits and vegetables:

(1) Scientific merit of the proposal (represents 50% of the evaluation).

- Conceptual adequacy of the hypothesis or approach as related to the program objectives in reducing microbial contamination of fresh fruits and vegetables;
- Clarity and delineation of proposed project objectives as related to National issues and objectives;
- Adequacy of the description of the proposed work;
- Suitability and feasibility of the methodology for implementation in reducing microbial contamination of fresh fruits and vegetables;
- Probability of success of the project; and
- Novelty, uniqueness, and originality.

(2) Qualifications of the proposed project personnel and adequacy of the facilities (represents 25% of the evaluation).

- Training and demonstrated awareness of previous alternative approaches to relevant objective(s) listed in the Request for Proposals and performance record and/or potential for future accomplishments;
- Time allocated for systematic attainment of objectives;
- Institutional experience and competence in food safety of fruits and vegetables; and
- Adequacy of available or obtainable support personnel, facilities, and instrumentation.

(3) Adoption or transfer of technology strategies (represents 25% of the evaluation).

- Established or documented linkage with industry partner(s); and
- Clear and effective plan for educational outreach and technology transfer to end users in fruit and vegetable industry.

Part VI—Additional Information:

A. Access to Peer Review Information

Copies of summary reviews, not including the identity of the reviewers, will be sent to all applicant PI/PD's automatically, after the review process has been completed.

B. Grant Awards

(1) General

Within the limit of funds available for such purpose, the Administrator shall make grants to those responsible, eligible applicants whose proposals are judged most meritorious under the procedures set forth in this request for proposals. The date specified by the Administrator as the effective date of the grant shall be no later than September 30 of the Federal fiscal year in which the project is approved for support and funds are appropriated for such purpose, unless otherwise permitted by law. It should be noted that the project need not be initiated on the grant effective date, but as soon thereafter as practical so that project goals may be attained within the funded project period. All funds granted by CSREES under this request for proposals shall be expended solely for the purpose for which the funds are granted in accordance with the approved application and budget, the regulations, the terms and conditions of the award, the applicable Federal cost principles, and the Department's assistance regulations (Parts 3015, 3016, and 3019 of 7 CFR).

(2) Organizational Management Information

Specific management information relating to an applicant shall be submitted on a one-time basis as part of the responsibility determination prior to the award of a grant identified under this part if such information has not been provided previously under this or another program for which the sponsoring agency is responsible. Copies of forms recommended for use in fulfilling the requirements contained in this section will be provided by the sponsoring agency as part of the preaward process.

(3) Grant Award Document and Notice of Grant Award

The grant award document shall include at a minimum the following:

(a) Legal name and address of performing organization or institution to whom the Administrator has awarded a grant under the terms of this request for proposals;

(b) Title of project;

(c) Name(s) and address(es) of PI/PD's chosen to direct and control approved activities;

(d) Identifying grant number assigned by the Department;

(e) Project period, specifying the amount of time the Department intends to support the project without requiring recompetition for funds;

(f) Total amount of Departmental financial assistance approved by the Administrator during the project period;

(g) Legal authority(ies) under which the grant is awarded;

(h) Approved budget plan for categorizing allocable project funds to accomplish the stated purpose of the grant award; and

(i) Other information or provisions deemed necessary by CSREES to carry out its respective granting activities or to accomplish the purpose of a particular grant.

The notice of grant award, in the form of a letter, will be prepared and will provide pertinent instructions or information to the grantee that is not included in the grant award document.

CSREES will award standard grants to carry out this program. A standard grant is a funding mechanism whereby CSREES agrees to support a specified level of effort for a predetermined time period without additional support at a future date.

C. Use of Funds; Changes

(1) Delegation of Fiscal Responsibility

The grantee may not in whole or in part delegate or transfer to another person, institution, or organization the responsibility for use or expenditure of grant funds.

(2) Reporting Requirements

The grantee must prepare an annual report that details all significant activities towards achieving the goals and objectives of the project. The narrative should be succinct and be no longer than five pages, using 12-point, single-spaced type. A budget summary should be attached to this report, which will provide an overview of all monies spent during the reporting period.

(3) Changes in Project Plans

(a) The permissible changes by the grantee, PI/PD, or other key project personnel in the approved project grant shall be limited to changes in methodology, techniques, or other aspects of the project to expedite achievement of the project's approved goals. If the grantee and/or the PI/PD's are uncertain as to whether a change complies with this provision, the question must be referred to the Authorized Departmental Officer (ADO) for a final determination.

(b) Changes in approved goals or objectives shall be requested by the grantee and approved in writing by the ADO prior to effecting such changes. In no event shall requests for such changes be approved which are outside the scope of the original approved project.

(c) Changes in approved project leadership or the replacement or reassignment of other key project personnel shall be requested by the grantee and approved in writing by the awarding official of CSREES prior to effecting such changes.

(d) Transfers of actual performance of the substantive programmatic work in whole or in part and provisions for payment of funds, whether or not Federal funds are involved, shall be requested by the grantee and approved in writing by the ADO prior to effecting such transfers, unless prescribed otherwise in the terms and conditions of the grant.

(e) Changes in Project Period: The project period may be extended by CSREES without additional financial support, for such additional period(s) as the ADO determines may be necessary to complete or fulfill the purposes of an approved project. Any extension of time shall be conditioned upon prior request by the grantee and approval in writing by the ADO, unless prescribed otherwise in the terms and conditions of a grant.

(f) Changes in Approved Budget: Changes in an approved budget must be requested by the grantee and approved in writing by the ADO prior to instituting such changes if the revision will involve transfers or expenditures of amounts requiring prior approval as set forth in the applicable Federal cost principles, Departmental regulations, or in the grant award.

D. Other Federal Statutes and Regulations That Apply

Several other Federal statutes and regulations apply to grant proposals considered for review and to project grants awarded under this program. These include but are not limited to:

7 CFR Part 1—USDA implementation of the Freedom of Information Act.

7 CFR Part 3—USDA implementation of OMB Circular No. A–129 regarding debt collection.

7 CFR Part 15, subpart A—USDA implementation of Title VI of the Civil Rights Act of 1964, as amended.

7 CFR Part 3015—USDA Uniform Federal Assistance Regulations, implementing OMB directives (i.e., Circular Nos. A–21 and A–122) and incorporating provisions of 31 U.S.C. 6301–6308 (formerly the Federal Grant and Cooperative Agreement Act of 1977, Pub. L. 95–224), as well as general policy requirements applicable to recipients of Departmental financial assistance.

7 CFR Part 3016, as amended—Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments.

7 CFR Part 3017—USDA implementation of Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants).

7 CFR Part 3018—USDA implementation of Restrictions on Lobbying. Imposes prohibitions and requirements for disclosure and certification related to lobbying on recipients of Federal contracts, grants, cooperative agreements, and loans.

7 CFR Part 3019—USDA implementation of OMB Circular A–110, Uniform Administrative Requirements for Grants and Agreements With Institutions of Higher Education, Hospitals, and Other Nonprofit Organizations.

7 CFR Part 3052 (62 FR 45947)—USDA implementation of OMB Circular No. A–133, Audits of States, Local Governments, and Non-profit Institutions.

7 CFR Part 3407—CSREES procedures to implement the National Environmental Policy Act of 1969, as amended.

29 U.S.C. 794 (section 504, Rehabilitation Act of 1973) and 7 CFR Part 15B (USDA implementation of statute)—prohibiting discrimination based upon physical or mental handicap in Federally assisted programs.

35 U.S.C. 200 et seq.—Bayh-Dole Act, controlling allocation of rights to inventions made by employees of small business firms and domestic nonprofit organizations, including universities, in Federally assisted programs (implementing regulations are contained in 37 CFR Part 401).

E. Confidential Aspects of Proposals and Awards

When a proposal results in a grant, it becomes a part of the record of the Agency's transactions, available to the public upon specific request. Information that the Secretary determines to be of a privileged nature will be held in confidence to the extent permitted by law. Therefore, any information that the applicant wishes to have considered as privileged should be clearly marked as such and sent in a separate statement, two copies of which should accompany the proposal. The original copy of a proposal that does not result in a grant will be retained by the Agency for a period of one year. Other copies will be destroyed. Such a proposal will be released only with the consent of the applicant or to the extent required by law. A proposal may be withdrawn at any time prior to the final action thereon.

F. Regulatory Information

For the reasons set forth in the final Rule-related Notice to 7 CFR Part 3015, subpart V (48 FR 29115, June 24, 1983), this program is excluded from the scope of the Executive Order 12372 which requires intergovernmental consultation with State and local officials. Under the

provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the collection of information requirements contained in this Notice have been approved under OMB Document No. 0524–0022.4

Done at Washington, D.C., this 11 day of 1998.

Colien Hefferan,

Acting Administrator, Cooperative State Research, Education, and Extension Service.

[FR Doc. 98–16152 Filed 6–17–98; 8:45 am]

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federal register

Thursday
June 18, 1998

Part IV

Department of Agriculture

Cooperative State Research, Education, and Extension Service

Pest Management Alternatives Program: Addressing Food Quality Protection Act Issues (FY 1998); Grant Funds Availability and Proposal Requests; Notice

DEPARTMENT OF AGRICULTURE

Cooperative State Research, Education, and Extension Service

Special Research Grants Program—Pest Management Alternatives Research: Special Program Addressing Food Quality Protection Act Issues for Fiscal Year 1998; Request for Proposals

AGENCY: Cooperative State Research, Education, and Extension Service, USDA.

ACTION: Notice of availability of grant funds and request for proposals.

SUMMARY: Proposals are invited for competitive grant awards under the Special Research Grants Program titled ''Pest Management Alternatives Program: Addressing Food Quality Protection Act Issues for Fiscal Year 1998.'' This program addresses anticipated changes in pest management on food, feed, livestock, and ornamental commodities resulting from implementation of the Food Quality Protection Act of 1996 (FQPA), Pub. L. No. 104–170.

The goals of this program are to: (1) Develop commodity profiles that summarize production practices, pesticide use/usage data, and available pest management alternatives for pesticides considered a high priority for tolerance reassessment under FQPA; and (2) Develop and demonstrate alternatives and possible mitigation strategies to ensure that producers have reliable methods of managing pests.

DATES: Proposals are due July 20, 1998.

ADDRESSES: Proposals sent by First Class mail must be sent to the following address: Special Research Grants—Pest Management Alternatives; c/o Proposal Services Unit; Office of Extramural Programs; Cooperative State Research, Education, and Extension Service; U.S. Department of Agriculture; STOP 2245; 1400 Independence Avenue, S.W.; Washington, D.C. 20250–2245. Telephone: (202) 401–5048.

Proposals that are delivered by Express mail, courier service, or by hand must be sent to the following address: Special Research Grants—Pest Management Alternatives; c/o Proposal Services Unit; Office of Extramural Programs; Cooperative State Research, Education, and Extension Service; U.S. Department of Agriculture; Room 303, Aerospace Center; 901 D Street, S.W.; Washington, D.C. 20024. Telephone: (202) 401–5048.

FOR FURTHER INFORMATION CONTACT: Michael Fitzner, Cooperative State Research, Education, and Extension Service; U.S. Department of Agriculture; STOP 2220; 1400 Independence Avenue, S.W.; Washington, D.C. 20250–2220. Telephone: (202) 401–4939; fax number: (202) 401–6156; e-mail address: mfitzner@reeusda.gov.

SUPPLEMENTARY INFORMATION:

Table of Contents

Authority and Eligibility

This program is administered by the Cooperative State Research, Education, and Extension Service (CSREES), United States Department of Agriculture (USDA). The authority is contained in section 2(c)(1)(A) of the Act of August 4, 1965, Pub. L. No. 89–106, as amended (7 U.S.C. 450i(c)(1)(A)). Under this authority, subject to the availability of funds, the Secretary may make grants, for periods not to exceed five years, to State agricultural experiment stations, all colleges and universities, other research institutions and organizations, Federal agencies, private organizations or corporations, and individuals for the purpose of conducting research to facilitate or expand promising breakthroughs in areas of the food and agricultural sciences of importance to the United States.

Proposals from scientists affiliated with non-United States organizations are not eligible for funding nor are scientists who are directly or indirectly engaged in the registration of pesticides for profit; however, their collaboration with funded projects is encouraged.

The Pest Management Alternatives Program was established to support the development and implementation of pest management alternatives when regulatory action by the Environmental Protection Agency (EPA) or voluntary cancellation by the registrant results in the unavailability of certain agricultural pesticides or pesticide uses. The program was created to meet the policy goals set forth in sections 1439 and 1484 of the Food, Agriculture, Conservation and Trade Act of 1990, Pub. L. No. 101–624. These activities pertain to pesticides identified for possible regulatory action under section 210 of the Food Quality Protection Act of 1996, which amends the Federal Insecticide, Fungicide, and Rodenticide Act. The program has been developed pursuant to the Memorandum of Understanding (MOU) between USDA and EPA signed August 15, 1994, and amended April 18, 1996, which establishes a coordinated framework for these two agencies to support programs that make alternative pest management materials available to agricultural producers when regulatory action by EPA or voluntary cancellation by the registrant results in the unavailability of certain agricultural pesticides or pesticide uses. In this MOU, USDA and EPA agreed to cooperate in conducting the research, technology transfer, and registration activities necessary to ensure adequate pest management alternatives are available to meet important agricultural needs for situations in which regulatory action would result in pest management problems. Any proposal meeting the criteria under this request for proposals will be considered for funding provided the eligibility requirements are met.

Available Funding and Eligibility

The amount available for support of this program in fiscal year (FY) 1998 is approximately $1,500,000. It is anticipated that EPA will provide $124,000 in support of Objective 1. Section 712 of the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 1998, Pub. L. No. 105–86, prohibits CSREES from paying indirect costs on competitively awarded research grants that exceed 14 percent of total Federal funds provided for each award under this program. In addition, section 716(b) of that Act directs that, in the case of any equipment or product that may be authorized to be purchased with funds under this program, entities receiving such grant funds are encouraged to use such funds to purchase only American-made equipment or products.

Applicable Regulations

This program is subject to the administrative provisions for the Special Research Grants Program found in 7 CFR Part 3400 (56 FR 58147, November 15, 1991), which set forth procedures to be followed when submitting grant proposals, rules governing the evaluation of proposals, the processes regarding the awarding of grants, and regulations relating to the post-award administration of such grants. Other Federal statutes and regulations apply to grant proposals considered for review or to grants

awarded under this program. These include, but are not limited to:

7 CFR Part 3019—USDA Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations; and

7 CFR Part 3052—Audits of States, Local Governments, and Non-Profit Organizations.

Program Description

This competitive grants program supports efforts to modify existing pest management approaches or develop new methods that address needs created by the implementation of FQPA. The program also addresses the need for collection of information for regulatory decision making and for prioritization of research and education needs. This information includes pesticide use and usage on commodities (including livestock and ornamentals), potential alternatives for pesticides on EPA's priority list (see Appendix I), integrated pest management programs, pesticide resistance management strategies, and potential mitigation strategies for reducing dietary risk.

In FY 1998, CSREES will provide funding for projects that: (1) Develop pest management profiles summarizing practices for specific commodities or commodity groups (including livestock and ornamentals), and (2) Identify and develop replacement or mitigation technologies for pesticides included on EPA's priority list (Appendix I). Proposals must either develop Commodity and Pest Management Profiles (Objective 1) or develop *both* Commodity and Pest Management Profiles (Objective 1) *and* replacement or mitigation technologies (Objective 2). Applicants are encouraged to collaborate with staff involved in university pesticide impact assessment programs and integrated pest management programs to develop Commodity and Pest Management Profiles. The two objectives are described below.

I. Commodity and Pest Management Profiles

Profiles are needed for commodities that depend heavily on pesticides included on EPA's priority list (see Appendix I and Appendix II). Profiles should document the importance of priority pesticides to pest management on the commodities addressed by the proposal. Profiles should describe the production process and provide data on pesticide use (how, why, what, when and where pesticides are used) and usage (how much is used, e.g., percentage crop treated) patterns, pest management practices used by growers, and pest management practices ready for implementation but not yet widely used. Profiles should also indicate whether pesticides on the priority list (Appendix I) are important to integrated pest management programs or to strategies to manage resistance to other pesticides, and whether there are any potential labeled or unlabeled alternatives (chemical or nonchemical) to replace priority list pesticides on a specific commodity or commodity group. Alternatives can include other pesticides, biological controls, pest resistant varieties, or cultural practices. In addition, practices or procedures that have the potential to mitigate dietary risk from priority list pesticides should be described. Pest management profiles should follow the format presented in Appendix III. The sources for information used in preparing pest management profiles should be provided in the ''References'' section. Potentially affected growers or commodity groups must be involved in the development of commodity and pest management profiles. *Profiles must be completed within six months after receipt of funding.* Priority will be given to proposals addressing one or more commodities that depend heavily on pesticides included on EPA's priority list (see Appendix I and Appendix II); however, proposals addressing commodities not included in the list will be considered.

II. Replacement or Mitigation Technologies

Funding is available to support projects to develop and demonstrate pest management alternatives or risk mitigation strategies for one or more of the priority pesticides (Appendix I) for which there are few or no effective alternatives on any given commodity. The focus should be on modification of existing approaches or introduction of new methods, especially biologically based methods, that can be rapidly brought to bear on pest management challenges resulting from implementation of FQPA. Durability and practicality of the proposed pest management option(s) or mitigation procedure(s), and compatibility with integrated pest management systems, are critical. Both technological and economic feasibility should be considered. Pest management alternatives or risk mitigation options identified should address various risk concerns including dietary, occupational and non-occupational exposure, ground and surface water, and other ecological risks.

Note: The development of replacements for methyl bromide is being supported by other funding agencies and will not be supported by the Pest Management Alternatives Program.

Proposals will show evidence that producers, commodity groups, and other affected user groups are involved in project design and will be supportive of the project if funded. Public-private partnerships and matching resources from non-Federal sources, including producer or commodity groups, are encouraged. Proposals should show potential for commercialization (including product registration if necessary) of any new technologies that are developed.

Proposal Format

Members of review committees and the staff expect each project description to be complete in itself. The administrative provisions governing the Special Research Grants Program, 7 CFR Part 3400, set forth instructions for the preparation of grant proposals. The following requirements deviate from those contained in § 3400.4(c). The following provisions of this solicitation shall apply. Proposals should adhere to the format requirements for the specific objective addressed by the proposal format below. Items three through six should be no more than 12 pages in length, numbered, and single-spaced with text on one side of the page using a 12 point (10 cpi) type font size and one-inch margins.

(1) Application for Funding (Form CSREES–661). All proposals must contain an Application for Funding (Form CSREES–661), which must be signed by the proposed principal investigator(s) and by the cognizant Authorized Organizational Representative who possesses the necessary authority to commit the applicant's time and other relevant resources. Principal investigators who do not sign the proposal cover sheet will not be listed on the grant document in the event an award is made. The title of the proposal must be brief (80-character maximum), yet represent the major emphasis of the project. Because this title will be used to provide information to those who may not be familiar with the proposed project, highly technical words or phraseology should be avoided where possible. In addition, phrases such as ''investigation of'' or ''research on'' should not be used.

(2) Table of Contents. For ease in locating information, each proposal must contain a detailed table of contents just after the proposal cover page. The Table of Contents should include page numbers for each component of the

proposal. Pagination should begin immediately following the Table of Contents.

(3) Executive Summary. Describe the project in terms that can be understood by a diverse audience of university personnel, producers, various public and private groups, budget staff, and the general public. This should be on a separate page, no more than one page in length and have the following format: Name(s) of principal investigator(s) and institutional affiliation, project title, key words, and project summary.

(4) Problem Statement. Identify the pest management problem addressed, its significance, and options for solution. Identify the commodities (from the commodity list, Appendix II) and the pesticides (from the priority list, Appendix I) that will be addressed by the proposed project. Proposals can address commodities not listed in Appendix II as long as priority pesticides are used in the production system. Describe the production area addressed (including acreage), frequency and severity of losses to pests controlled with priority pesticides (Appendix I), and the potential applicability to other production regions (if the proposal addresses Objective 2). Provide sources of data and other information on pesticide use, usage patterns, and pest management practices. As appropriate, proposals should address issues as they relate to current integrated pest management and crop production practices, technologic and economic feasibility of potential new practices, and their potential durability.

(5) Objectives. Provide clear, concise, complete, and logically arranged statements of the specific aims of the proposed effort.

(6) Research, Education, and Technology Transfer Plan. This section is only needed if the proposed project includes development of replacement or mitigation technologies (Objective 2). Proposals should provide a detailed plan for the research, education, and technology transfer required to implement the alternative solution in the field, and should identify milestones.

(7) User Involvement. Describe role of producers, commodity groups, and other end-users in identifying the need for the work being proposed, and their anticipated involvement in the project if funded. Competitive proposals will demonstrate involvement of affected user groups in project design, implementation, and funding.

(8) Facilities and Equipment. All facilities and major items of equipment that are available for use or assignment to the proposed research project during the requested period of support should be described. In addition, items of nonexpendable equipment necessary to conduct and successfully complete the proposed project should be listed with the amount and justification for each item.

(9) Collaborative Arrangements. If the nature of the proposed project requires collaboration or subcontractual arrangements with other research scientists, corporations, organizations, agencies, or entities, the applicant must identify the collaborator(s) and provide a full explanation of the nature of the collaboration. Funding contributions by collaborators that will be used to accomplish the stated objectives should be identified. Evidence (i.e., letters of intent) should be provided to assure peer reviewers that the collaborators involved have agreed to render this service. In addition, the proposal must indicate whether or not such a collaborative arrangement(s) has the potential for conflict(s) of interest.

(10) Personnel Support. To assist peer reviewers in assessing the competence and experience of the proposed project staff, key personnel who will be involved in the proposed project must be clearly identified. For each principal investigator involved, and for all senior associates and other professional personnel who are expected to work on the project, whether or not funds are sought for their support, the following should be included:

(i) An estimate of the time commitments necessary;

(ii) Curriculum vitae. The curriculum vitae should be limited to a presentation of academic and research credentials, or commodity production knowledge or experience with that commodity (e.g., educational, employment and professional history, and honors and awards). Unless pertinent to the project, to personal status, or to the status of the organization, meetings attended, seminars given, or personal data such as birth date, marital status, or community activities should not be included. Each vitae shall be no more than two pages in length, excluding the publication lists; and

(iii) Publication List(s). A chronological list of all publications in refereed journals during the past four years, including those in press, must be provided for each professional project member for whom a curriculum vitae is provided. Authors should be listed in the same order as they appear on each paper cited, along with the title and complete reference as these items usually appear in journals.

(11) Budget. A detailed budget is required for each year of requested support. In addition, a summary budget is required detailing requested support for the overall project period. A copy of the form which must be used for this purpose (Form CSREES–55), along with instructions for completion, is included in the Application Kit and may be reproduced as needed by applicants. Funds may be requested under any of the categories listed, provided that the item or service for which support is requested may be identified as necessary for successful conduct of the proposed project, is allowable under applicable Federal cost principles, and is not prohibited under any applicable Federal statute. However, the recovery of indirect costs under this program may not exceed the lesser of the grantee institution's official negotiated indirect cost rate or the equivalent of 14 percent of total Federal funds awarded. This limitation also applies to the recovery of indirect costs by any subawardee or subcontractor, and should be reflected in the subrecipient budget.

Note: For projects awarded under the authority of Sec. 2(c)(1)(A) of Pub. L. No. 89–106, no funds will be awarded for the renovation or refurbishment of research spaces; the purchase or installation of fixed equipment in such spaces; or for the planning, repair, rehabilitation, acquisition, or construction of a building or facility.

(12) Research Involving Special Considerations. If it is anticipated that the research project will involve recombinant DNA or RNA research, experimental vertebrate animals, or human subjects, an Assurance Statement, Form CSREES–662, must be completed and included in the proposal. Please note that grant funds will not be released until CSREES receives and approves documentation indicating approval by the appropriate institutional committee(s) regarding DNA or RNA research, animal care, or the protection of human subjects, as applicable.

(13) Current and Pending Support. All proposals must contain Form CSREES–663 listing this proposal and any other current public or private research support (including in-house support) to which key personnel identified in the proposal have committed portions of their time, whether or not salary support for the person(s) involved is included in the budget. Analogous information must be provided for any pending proposals that are being considered by, or that will be submitted in the near future to, other possible sponsors, including other USDA programs or agencies. Concurrent submission of identical or similar proposals to other possible sponsors

will not prejudice proposal review or evaluation by the Administrator of CSREES for this purpose. However, a proposal that duplicates or overlaps substantially with a proposal already reviewed and funded (or that will be funded) by another organization or agency will not be funded under this program.

(14) Additions to Project Description. The Administrator of CSREES, the members of peer review groups, and the relevant program staff expect each project description to be complete while meeting the page limit established in this section (Proposal Format). However, if the inclusion of additional information is necessary to ensure the equitable evaluation of the proposal (e.g., photographs that do not reproduce well, reprints, and other pertinent materials that are deemed to be unsuitable for inclusion in the text of the proposal), then 14 copies of the materials should be submitted. Each set of such materials must be identified with the name of the submitting organization, and the name(s) of the principal investigator(s). Information may not be appended to a proposal to circumvent page limitations prescribed for the project description. Extraneous materials will not be used during the peer review process.

Note: Specific organizational management information relating to an applicant shall be submitted on a one-time basis prior to the award of a grant for this program if such information has not been provided previously under this or another program for which the sponsoring agency is responsible. If necessary, USDA will contact an applicant to request organizational management information once a proposal has been recommended for funding.

Compliance with the National Environmental Policy Act

As outlined in 7 CFR Part 3407 (CSREES's implementation of the National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321 *et seq.*)), the environmental data or documentation for any proposed project is to be provided to CSREES in order to assist CSREES in carrying out its responsibilities under NEPA. In some cases, however, the preparation of environmental data or documentation may not be required. Certain categories of actions are excluded from the requirements of NEPA. The USDA and CSREES exclusions are listed in 7 CFR 1b.3 and 7 CFR 3407.6, respectively.

In order for CSREES to determine whether any further action is needed with respect to NEPA (e.g., preparation of an environmental assessment (EA) or environmental impact statement (EIS)), pertinent information regarding the possible environmental impacts of a proposed project is necessary; therefore, the National Environmental Policy Act Exclusions Form (Form CSREES–1234) provided in the Application Kit must be included in the proposal indicating whether the applicant is of the opinion that the project falls within one or more of the categorical exclusions. Form CSREES–1234 should follow Form CSREES–661, Application for Funding, in the proposal.

Even though a project may fall within the categorical exclusions, CSREES may determine that an EA or an EIS is necessary for an activity, if substantial controversy on environmental grounds exists or if other extraordinary conditions or circumstances are present that may cause such activity to have a significant environmental effect.

Proposal Evaluation

Priority will be given to proposals that address one or more of the commodities listed in Appendix II; however, proposals addressing commodities not included in this list will be considered. Proposals will be evaluated for relevancy (Criterion 1, 25 points) by representatives from USDA, EPA, appropriate farm and commodity organizations, and consumer groups. Methodology and scientific rigor (Criteria 2–6, 75 points) will be evaluated by panel with appropriate IPM and pesticide expertise. Panel members will include representatives with appropriate science backgrounds from land-grant universities (including IPM, IR–4, and the National Agricultural Pesticide Impact Assessment Program), USDA, EPA, and other organizations as appropriate. Funding determinations will be made by the Administrator of CSREES, in consultation with the Administrator of EPA or her designee, based on technical merit and targeted need areas.

Proposals that will only develop Crop and Pest Management Profiles (Objective 1) will be evaluated as a separate group, and will not be scored on potential to reduce reliance (Criterion 4).

The following criteria will be used in evaluating proposals:

1. Relevance to Program Objectives (25 points)
2. Importance of the Problem (Problem Statement) (15 points)
3. Appropriateness of Methods in Meeting Objectives (20 points)
4. Potential to Reduce Reliance (20 points)
5. Level of User Involvement (10 points)
6. Appropriateness of the Budget (10 points)

Confidentiality

CSREES receives grant proposals in confidence and will protect the confidentiality of their contents to the maximum extent permitted by law. Information contained in unfunded proposals will remain the property of the applicant. However, CSREES will retain one copy of all proposals received for a one year period; extra copies will be destroyed.

When a proposal results in a grant, it becomes a part of the public record, available to the public upon specific request under the Freedom of Information Act (FOIA). Information that the Secretary of Agriculture determines to be of a privileged nature will be held in confidence to the extent permitted by law. Therefore, any information that the applicant wishes to have considered as privileged should be clearly marked by the applicant with the term ''confidential proprietary information.''

How to Obtain Application Materials

Copies of this solicitation, the administrative provisions for the Program (7 CFR Part 3400), and the Application Kit, which contains required forms, certifications, and instructions for preparing and submitting applications for funding, may be obtained by contacting: Proposal Services Unit; Office of Extramural Programs; Cooperative State Research, Education, and Extension Service; U.S. Department of Agriculture; STOP 2245; 1400 Independence Avenue, S.W.; Washington, D.C. 20250–2245; Telephone: (202) 401–5048. When contacting the Proposal Services Unit, please indicate that you are requesting forms for the Special Research Grants Program ''Pest Management Alternatives Research: Special Program Addressing Food Quality Protection Act Issues.

Application materials may also be requested via Internet by sending a message with your name, mailing address (not e-mail) and telephone number to psb@reeusda.gov that states that you wish to receive a copy of the application materials for the FY 1998 Special Research Grants Program—Pest Management Alternatives Research: Special Program Addressing Food Quality Protection Act Issues. The materials will then be mailed to you (not E-mailed) as quickly as possible.

Proposal Submission

What to Submit

An original and 20 copies of a proposal must be submitted. Each copy

must be stapled securely in the upper left-hand corner (DO NOT BIND). All copies of the proposal must be submitted in one package.

Where and When to Submit

Proposals must be received by July 20, 1998. Proposals sent by First Class mail must be sent to the following address: Special Research Grants—Pest Management Alternatives, c/o Proposal Services Unit, Office of Extramural Programs, Cooperative State Research, Education, and Extension Service U.S. Department of Agriculture, STOP 2245, 1400 Independence Avenue, S.W., Washington, D.C. 20250–2245, *Telephone:* (202) 401–5048.

Proposals that are delivered by express mail, a courier service, or by hand must be submitted to the following address (note that the zip code differs from that shown above): Special Research Grants—Pest Management Alternatives; c/o Proposal Services Unit; Office of Extramural Programs; Cooperative State Research, Education, and Extension Service; U.S. Department of Agriculture; Room 303, Aerospace Center; 901 D Street, S.W.; Washington, D.C. 20024; Telephone: (202) 401–5048.

Additional Information

For reasons set forth in the final rule-related Notice to 7 CFR Part 3015, Subpart V (48 FR 29115, June 24, 1983), this program is excluded from the scope of Executive Order No. 12372 which requires intergovernmental consultation with State and local officials. Under the provisions of the Paperwork Reduction Action of 1995 (44 U.S.C. chapter 35), the collection of information requirements contained in this Notice have been approved under OMB Document No. 0524–0022.

Done at Washington, D.C., on this 11th day of June, 1998.

Colien Hefferan,

Acting Administrator, Cooperative State Research, Education, and Extension Service.

PRIORITY LIST OF PESTICIDES

[Pesticides that will be first to undergo review of tolerances by EPA, as required by the Food Quality Protection Act of 1996]

ORGANOPHOSPHATES

Acephate—I
Azinphos-methyl—I
Bensulide—H
Chlorethoxyfos—I
Chlorpyrifos—I
Chlorpyrifos methyl—I
Coumaphos—I
DEF—Defoliant
Diazinon—I
Dichlorvos—I
Dicrotophos—I

PRIORITY LIST OF PESTICIDES—Continued

[Pesticides that will be first to undergo review of tolerances by EPA, as required by the Food Quality Protection Act of 1996]

Dimethoate—I
Disulfoton—I
Ethion—I
Ethoprop—I, N
Ethyl parathion—I
Fenamiphos—I, N
Fenitrothion—I
Fenthion—I
Fonofos—I
Isofenphos—I
Malathion—I
Methamidophos—I
Methidathion—I
Methyl parathion—I
Naled—I
Oxydemeton methyl—I
Phorate—I
Phosmet—I
Phostebupirim—I
Pirimiphos methyl—I
Profenofos—I
Propetamphos—I
Sulfotepp—I
Sulprofos—I
Temephos—I
Terbufos—I
Tetrachlorvinphos—I
Trichlorfon—I

CARBAMATES

2EEEBC—F
Aldicarb—I, N
Asulam—H
Bendiocarb—I
Benomyl—F
Carbaryl—I
Carbendazim—F
Carbofuran—I, N
Chlorpropham—H
Desmidipham—H
Fenoxycarb—I
Formetanate HC—I
Methiocarb—I
Methomyl—I
Oxamyl—I, N
Phenmedipham—H
Propamocarb hydrochloride—F
Propoxur—I
Thiodicarb—I
Thiophanate methyl—F
Troysan KK—AM, F

POTENTIAL CARCINOGENS (B1's AND B2's)

Acetochlor—H
Aciflourfen sodium—H
Alachlor—H
Amitrol—H
Cacodylic acid—H
Captan—F
Chlorothalonil—F
Creosote—wood preservative
Cyproconazole—F
Daminozide (Alar)—growth retardant
ETO—fumigant, sterilant
Fenoxycarb—IGR
Folpet—F
Formaldehyde—fumigant, germicide

PRIORITY LIST OF PESTICIDES—Continued

[Pesticides that will be first to undergo review of tolerances by EPA, as required by the Food Quality Protection Act of 1996]

Heptachlor—I
Iprodione—F
Lactofen—H
Lindane—I
Mancozeb—F
Maneb—F
Metam sodium—F, I, H, N, soil fumigant
Metiram—F
MGK repellent—repellent, synergist
Orthophenylphenol—AM, F, virucide
Oxythioquinox—I
Pentachlorophenol—F
Pronamide—H
Propargite—I
Propoxur—I
Propylene oxide—AM, I, F
Telone—N, soil fumigant
Terrazole—F
Thiodicarb—I
TPTH—F
Vinclozolin—F

AAbbreviations: AM = antimicrobial; I = insecticide; F = fungicide; IGR = insect growth regulator; H = herbicide; N = nematicide.

Appendix II

USDA and EPA have determined that production of the following commodities may depend heavily on the pesticides included on the priority list (Appendix I). The possible regulatory impacts of FQPA for these commodities are not known. To answer questions that may arise during FQPA implementation, Pest Management Profiles are critical for these commodities. Priority will be given to proposals that address one or more of the commodities on this list.

alfalfa (seed, forage)
artichoke
asparagus
avocado
barley
beans (dry, lima, snap)
beets
blackberry
blueberry
broccoli
brussels sprouts
canola
carrot
cauliflower
celery
citrus
clover seed
cole crops
collards
cranberry
cucumber
date
eggplant
endive
fig
filberts
garlic
green onions

greens
hops
kale
kiwi
lettuce
livestock
mango
melons
mint
okra
onion
ornamentals (nursery, greenhouse)
parsley
peach
peanut
pear
peas (dry, green, processed)
peppers (bell, sweet, hot)
pineapple
pistachio
potato
pumpkin
radish
spinach
squash
stonefruit
sugarbeet
sweet potato
tomato
turnip
watermelon

Appendix III

FQPA instructs USDA and EPA to obtain use and usage data for major and minor crops. Commodity and Pest Management Profiles will help USDA and EPA better understand the impacts of FQPA implementation on individual commodities by providing an overview of the production system. The crop profiles should include *typical* use information (not simply what pesticide labels state) and should be presented in the following format:

[insert name of commodity(ies) and state(s)/region covered by profile here]

Production Facts: State/region ranking in the national production of the commodity; state/region contribution to total U.S. production of the commodity (percent); state/region yearly production numbers for the last 3 to 5 years (total acres grown; total acres harvested) and cash value; production costs on a yearly basis; portion of commodity for fresh market v. that for processing.

Production Regions: Define the production regions for the commodity within your state/region.

Cultural Practices: Describe the cultural practices used for producing this commodity within your state (e.g., soil types, irrigation practices, land preparation, planting times, thinning practices, etc.). Highlight intrastate or regional differences if they exist.

Pest Management

For All Pests: Identify the pests needing to be managed (diseases, insects, nematodes, vertebrates, weeds, etc.), frequency of occurrence (yearly, sporadic, weather related), the damage they do, percentage of acres infested with the pest (for each growing season or crop cycle), pest life cycles, critical timing of control measures, yield losses attributed to each pest. Note any regional differences that may occur within the state or region covered by this profile.

Chemical Controls: For each pest discussed above identify the active ingredients from Appendix I that are used to control that pest; include chemical name, trade name, formulations, percent crop treated, type of application (aerial, ground, chemigation, banded, broadcast, in-furrow, etc.), *typical* application rates, timing (pre-plant, foliar, 5-leaf stage, etc.), *typical* number of applications per growing season or crop cycle, *typical* pre-harvest interval. Identify importance to IPM or resistance management programs. Discuss efficacy issues for each active ingredient.

Chemical and Nonchemical Alternatives: Discuss availability and efficacy issues associated with alternatives for pest/pesticide combinations discussed above. Chemical alternatives that also are priority pesticides (Appendix I) should be identified as such. Include a description of possible IPM strategies that could reduce reliance on priority pesticides identified in Appendix I.

Cultural Control Practices: Identify and discuss any cultural practices (e.g., planting dates, resistant varieties, row spacing) used to manage pests.

Biological Controls: Discuss any biological control programs that are relevant for the pest/commodity; include pheromone use if applicable.

Other issues: Discuss any export issues (international or interstate) or food processor restrictions that may limit the use of a given active ingredient, or any other relevant issues involving pesticide use on this commodity.

Key Contacts: Identify commodity experts within the state or production region by specialty.

Cite References: Identify sources of pesticide use and usage data, pest management practices, etc.

[FR Doc. 98–16153 Filed 6–17–98; 8:45 am]

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federal register

Thursday
June 18, 1998

Part V

Department of Agriculture

Cooperative State Research, Education, and Extension Service

Agricultural Telecommunications Program (FY 1998): Proposals Solicitation; Notice

DEPARTMENT OF AGRICULTURE

Cooperative State Research, Education, and Extension Service

Notice of Fiscal Year 1998 Agricultural Telecommunications Program; Solicitation of Proposals

AGENCY: Cooperative State Research, Education, and Extension Service, USDA.

SUMMARY: The Cooperative State Research, Education, and Extension Service is soliciting proposals under the Agricultural Telecommunications Program. The Agricultural Telecommunications Program is authorized in Section 1673 of the Food, Agriculture, Conservation, and Trade Act of 1990, Pub. L. 101–624 (7 U.S.C. 5926). It is anticipated that grants will be awarded competitively under the program in support of the following program areas: (1) Program Delivery and Innovative Program Development/ Production, and (2) Capacity Building.

DATE: Applications must be received on or before August 17, 1998. Proposals received after August 17, 1998 will not be considered for funding.

ADDRESSES: *Proposals sent by First Class mail must be sent to the following address:* Agricultural Telecommunications Program, c/o Proposal Services Unit, Office of Extramural Programs, Cooperative State, Research, Education, and Extension Service, U.S. Department of Agriculture, STOP 2245, 1400 Independence Avenue, S.W., Washington, D.C. 20250–2245. *Telephone:* (202) 401–5048.

Proposals that are delivered by Express mail, courier service, or by hand must be sent to the following address: Agricultural Telecommunications Program, c/o Proposal Services Unit, Office of Extramural Programs, Cooperative State, Research, Education, and Extension Service, U.S. Department of Agriculture, Room 303, Aerospace Center, 901 D Street, S.W., Washington, D.C. 20024. *Telephone:* (202) 401–5048.

For programmatic issues contact: Cathy Bridwell; Cooperative State Research, Education, and Extension Service; U.S. Department of Agriculture; STOP 2216; 1400 Independence Avenue, S.W.; Washington, D.C. 20250–2216; telephone (202) 720–6084; Internet: cbridwell@reeusda.gov

For administrative issues contact: the Grants Management Branch, Office of Extramural Programs; Cooperative State Research, Education, and Extension Service; U.S. Department of Agriculture; STOP 2246; 1400 Independence Avenue, S.W.; Washington, D.C. 20250–2246; telephone (202) 401–5050.

Table of Contents

Part I—Program Description

A. Purpose

Proposals are requested for the purpose of awarding competitive grants for fiscal year (FY) 1998 under the Agricultural Telecommunications Program (Program). Grants will be awarded to eligible institutions to assist in the development and utilization of an agricultural communications network to facilitate and to strengthen agricultural extension, resident education and research, and domestic and international marketing of United States commodities and products through a partnership between eligible institutions and the U.S. Department of Agriculture (USDA). The network will employ satellite and other telecommunications technology to disseminate and to share academic instruction, cooperative extension programming, agricultural research, and marketing information. The authority for this Program is contained in Section 1673 of the Food, Agriculture, Conservation, and Trade Act of 1990, Pub. L. 101–624 (7 U.S.C. 5926). This Program is administered by the Cooperative State Research, Education, and Extension Service (CSREES) of USDA.

B. Available Funding

For FY 1998, $873,000 is available for the Program. Grants under this Program may provide funds for no more than 50 percent (50%) of the cost of a proposed project, unless otherwise determined by the Secretary in accordance with the provisions of Sec. 1673(g) of Pub. L. 101–624 (7 U.S.C. 5926(g)). Project funds will be awarded for one fiscal year. Applicants may recompete for additional funding, but projects will not be renewed. Funds will be awarded for no more than $50,000 for Capacity Building projects. Funds will be awarded for no more than $100,000 for Program Delivery and Innovative Program Development/Production projects.

C. Matching Funds Requirement

A grant awarded under this Program must be matched by the recipient with equal funds from a non-Federal source unless otherwise determined by the Secretary in accordance with the provisions of Sec. 1673(g) of Pub. L. 101–624 (7 U.S.C. 5926(g)). The matching requirement must be satisfied through allowable costs incurred by the recipient or subrecipient and through third party in-kind contributions.

D. Eligibility

Proposals are invited from accredited institutions of higher education. Applicants must demonstrate that they participate in a network that distributes programs consistent with the following objectives: (1) make optimal use of available resources for agricultural extension, resident education, and research by sharing resources between participating institutions; (2) improve the competitive position of United States agriculture in international markets by disseminating information to producers, processors, and researchers; (3) train students for careers in agriculture and food industries; (4) facilitate interaction among leading agricultural scientists; (5) enhance the ability of United States agriculture to respond to environmental and food safety concerns, and; (6) identify new uses for farm commodities and to increase the demand for United States agricultural products in both domestic and foreign markets.

Pursuant to Sec. 1673(e) of Pub. L. 101–624 (7 U.S.C. 5926(e)), preferential consideration will be given to applications that—(i) are submitted by institutions affiliated with an established agricultural telecommunications network that distributed programs to a wide geographical area; or (ii) demonstrate the need for such assistance, taking into consideration the relative needs of all applicants and the financial ability of the applicants to otherwise secure or create the telecommunications system.

These preferences will be factored into the evaluation of the Partnerships and Collaboration and Project Need Criteria, respectively.

E. Definitions

For the purpose of awarding funding under this Program, the following definitions are applicable:

(1) *Accredited institutions of higher education* means a college or university which is an educational institution in any State which: (a) admits as regular students only persons having a certificate of graduation from a school providing secondary education, or the recognized equivalent of such a certificate; (b) is legally authorized within such State to provide a program of education beyond secondary education; (c) provides an educational program for which a baccalaureate degree or any other higher degree is awarded; (d) is a public or other nonprofit institution; and (e) is accredited by a nationally recognized accrediting agency or association.

(2) *Administrator* means the Administrator of the Cooperative State Research, Education, and Extension Service (CSREES) and any other officer or employee of the Department to whom the authority involved may be delegated.

(3) *Agricultural telecommunications* means those activities established to encourage development and utilization of an agricultural communications network employing satellite and other telecommunications technologies to disseminate and to share academic instruction, cooperative extension programming, agricultural research, and marketing information.

(4) *Authorized departmental officer* means the Secretary of the U.S. Department of Agriculture (USDA) or the individual acting within the scope of delegated authority, who is responsible for awarding and administering grants on behalf of the Secretary.

(5) *Authorized organizational representatives* means the president or chief executive officer of the applicant organization or the official, designated by the president or chief executive officer of the applicant organization, who has the authority to commit the resources of the organization.

(6) *Budget period* means the interval of time (usually 12 months) into which the project period is divided for budgetary and reporting purposes.

(7) *Cash contributions* means the applicant's cash outlay, including the outlay of money contributed to the applicant by non-Federal third parties.

(8) *Communications network* refers to television or cable television origination or distribution equipment, signal conversion equipment (including both modulators and demodulators), computer hardware and software, programs or terminals, or related devices, used to process and exchange data through a telecommunications system in which signals are generated, modified or prepared for transmission, or received, via telecommunications terminal equipment or via telecommunications transmission.

(9) *Delivery* means the transmission and reception of programs by facilities that transmit, receive, or carry data between telecommunications terminal equipment at each end of a telecommunications circuit or path.

(10) *Department* or *USDA* means the United States Department of Agriculture.

(11) *Equipment* means tangible personal property including exempt property charged directly to the award having a useful life of more than one year and an acquisition cost of $5,000 or more per unit.

(12) *Facilities* includes microwave antennae, fiberoptic cables and repeaters, coaxial cables, communications satellite ground station complexes, and copper cable electronic equipment associated with telecommunications transmission and similar items subject to the approval of the authorized departmental officer.

(13) *Grant* means the award by the authorized departmental officer of funds to an accredited institution of higher education to assist in meeting the costs of conducting, for the benefit of the public, as identified project which is intended and designed to accomplish the purpose of the program as identified in these guidelines.

(14) *Grantee* means the organization designated in the grant award document as the responsible legal entity to which a grant is awarded.

(15) *Matching* means that portion of allowable project costs not borne by the Federal Government, including the value of in-kind contributions.

(16) *Peer Review Panel* means a group of experts qualified by training and experience in particular fields to give expert advice on the merit of grant applications in such fields, who evaluate eligible proposals submitted to this program in their personal area(s) of expertise.

(17) *Prior approval* means written approval evidencing prior consent by an authorized departmental officer as defined in (4) above.

(18) *Project* means the particular activity within the scope of the program supported by a grant award.

(19) *Project director* means the single individual designated by the grantee in the grant application and approved by the authorized departmental officer who is responsible for the direction and management of the project.

(20) *Project period* means the period, as stated in the award document and modifications thereto, if any, during which Federal sponsorship begins and ends.

(21) *Satellite ground station complex* includes transmitters, receivers, and communications antennae at the Earth station site together with the interconnecting terrestrial transmission facilities (including cables, line, or microwave facilities) and modulating and demodulating equipment necessary for processing traffic received from the terrestrial distribution system prior to transmission via satellite and the traffic received from the satellite prior to transfer to terrestrial distribution systems.

Part II—Program Areas

A. Program Delivery and Innovative Program Development/Production

1. Description

Applicants may submit a proposal in the Program Delivery and Innovative Program Development/Production area requesting funding to: (1) operate an agricultural communications network, employing satellite and other telecommunications technology, to deliver Cooperative Extension programming, academic instruction, agricultural research and marketing information through partnership(s) between eligible institutions and the Department; or, (2) develop distance education programming. The project goal(s) and objective(s) must be clearly stated in the proposal. Proposals in this area must clearly target a systematic approach to building an infrastructure to deliver programming at a distance or must demonstrate an innovation to developing distance education programming.

Each proposal will be evaluated based on three broad principles: (1) Is there a real need for the project; (2) will the strategy identified meet the need; and (3) is the project sustainable?

Each proposal must document the need for the project, based on literature review, case studies, audience analysis and/or needs assessment.

The project strategy should reflect an integrated approach to instructional design including subject-matter content, educational methodology and compatible production and delivery techniques. The approach described must meet the identified need.

Evidence must be given that the project will be supported by the institution or by other groups or

institutions that may wish to continue the project.

2. Project Narrative

The narrative portion of the proposal must describe how the project meets the three broad principles identified above. It must not exceed 20 pages in length and no additional material or appendix will be considered. The narrative should contain the following sections:

(a) Project Need. Describe the background and situation leading to the need for the project. The project must be based on a need articulated by an audience or on a needs assessment. Describe the targeted audience(s) for whom the project will be designed including pertinent history identified in need, demographics, and expected impact on audience. If appropriate, describe the methodology and results of the needs assessment. Demonstrate the need for assistance under this Program, including financial ability or inability to otherwise pursue the proposed program.

(b) Strategy. (i) *Partnerships and Collaboration*. Describe partnerships and collaborations fostered through this project including expected impact and benefit to those involved such as learner, institution, agency, state, and nation. Partners are defined as all those who will collaborate on the project. Submit evidence that partnerships are in place, and that those partners have a substantial role and interest in the project. Examples of role and interest might include joint risk-taking and shared benefits. Include information about any current affiliations with established agricultural telecommunications networks that distribute programs to a wide geographical area.

(ii) *Appropriate Distance Learning Technologies.* Describe appropriate distance learning technologies including, but not limited to, internet, multimedia, audio/visual, and other telecommunications technologies to be developed or employed in this project.

(iii) *Infrastructure.* Describe a framework representing both the technological and human infrastructure for this project including, but not limited to, technical trouble-shooting, scheduling and operation management, and learner and program support. Evidence of learner support includes, but is not limited to, facilitation of access, accommodation for diversity in special needs and learning styles, and recognition of need for alternative modes of program design and delivery.

(iv) *Innovation.* Describe the innovative application of distance education/learning delivery identified in the project. Examples of innovation may include, but are not limited to, approaches in reaching audiences, methods of connectivity and/or interaction, use of existing resources with innovations in the teaching/learning transaction, and entrepreneurial approaches to distance education delivery.

(v) *Outreach Plan.* Describe a plan for informing others about positive and negative outcomes, results, lessons learned, innovative ideas, and research findings from the project.

(vi) *Evaluation Plan.* Describe both formative and summative design for evaluating specific aspects of the project. These designs may include methods for evaluating the overall effectiveness of the Program in terms of teaching and learning, behavior change/problem-solving, immediate application, meeting learner needs, and/or potential for replication.

(c) Sustainability. (i) *Project Sustainability.* Include strong evidence of the project's ability to continue and grow after receiving the funding. Examples may include replication by others; continued funding other than from this Program, or opportunities for sale of products; and/or use of ideas and results of project by others.

(ii) *Cost/Benefit.* Include a cost-benefit analysis of the proposed project, including comparison to other delivery methods, relative benefit to learner, and staffing costs versus benefits.

B. Capacity Building

1. Description

Applicants submitting proposals in the Capacity Building area should target the development of capacity in the area of distance education at the university, state, regional, national or international level. Proposals must include a detailed plan for assessing capacity or a plan for targeting need based on a completed needs assessment.

Each proposal will be evaluated based on three broad principles: (1) Is there a real need for the project; (2) will the strategy identified meet the need; and (3) is the project sustainable?

Each proposal must document the need for the project, based on literature review, case studies, audience analysis and needs assessment.

The project strategy should reflect an integrated approach to instructional design including subject-matter content, educational methodology and compatible production and delivery techniques. The approach described must meet the identified need.

Evidence must be given that the project will be supported by the institution or by other groups of institutions that may wish to continue the project.

2. Project Narrative

The narrative portion of the proposal must describe how the project meets the three broad principles identified above. It must not exceed 20 pages in length and no additional material or appendix will be considered. The narrative should contain the following sections:

(a) Project Need. Describe the background and situation leading to the need for the project. The project must be based on a need articulated by an audience or on a needs assessment. Describe the targeted audience(s) for whom the project will be designed including pertinent history identified in need, demographics, and expected impact on the targeted audience(s). If appropriate, describe the methodology and results of the needs assessment. Applicants should describe how the capacity built will improve program production or program delivery. Demonstrate the need for assistance under this Program, including financial ability or inability to otherwise pursue the proposed program.

(b) Strategy. (i) *Capacity Assessment.* Include a detailed assessment of capacity or a fully developed plan for assessing capacity. Areas of consideration include, but are not limited to: faculty/staff development; support resources; production/technical capability; delivery capability; building learner capacity.

(ii) *Evaluation Plan.* Describe both formative and summative design for evaluating specific aspects of the project. These designs may include methods for evaluating the overall effectiveness of program in terms of teaching and learning, behavior change/problem-solving, immediate application, meeting learner need, and/or potential for replication.

(iii) *Outreach Plan.* Describe a plan for informing others about positive and negative outcomes, results, lessons learned, innovative ideas, research findings from the project.

(c) Sustainability. (i) *Sustainability.* Include strong evidence of the project's ability to continue and grow after receiving the funding. Examples may include replication by others; continued funding other than from this Program, or opportunities for sale of products; and/or use of ideas and results of project by others.

(ii) *Institutional Commitment.* Discuss institutional commitment to the project. For example, substantiate that the institution(s) attributes a priority to the project; discuss how the project will contribute to the achievement of the

institution's(s') long-term (five- to ten-year) goals; explain how the project will help satisfy the institution's(s') high priority objectives; or show how this project is linked to and supported by the institution's(s') strategic plan.

(iii) *Partnerships and Collaboration.* Describe partnerships and collaborations fostered through this project including expected impact and benefit to those involved such as the learner, institution, agency, state, and nation. Partners are defined as all those who will collaborate on the project. Submit evidence that partnerships are in place, and that those partners have a substantial role and interest in the project. Examples of role and interest might include joint risk taking and shared benefits. Include information about any current affiliations with established agricultural telecommunications networks that distribute programs to a wide geographical area.

Part III—Preparation of a Proposal

A. Program Application Materials

Copies of this solicitation and the Application Submission Package, which contains required forms, certifications, and instructions for preparing and submitting project applications, may be obtained by contacting: Agricultural Telecommunications Program, c/o Proposal Services Unit, Office of Extramural Programs, Cooperative State Research, Education, and Extension Service, U.S. Department of Agriculture, Stop 2245, 1400 Independence Avenue, S.W., Washington, DC 20250–2245. *Telephone:* (202) 401–5048.

Application materials may also be requested via internet by sending a message with your name, mailing address (not e-mail) and telephone number to psb@reeusda.gov stating that you wish to receive a copy of the application materials for the FY 1998 Agricultural Telecommunications Program. The materials will then be mailed to you (not e-mailed) as quickly as possible.

B. Content of a Proposal

1. Cover Page. Complete the ''Project Application'' form, Form CFR–2101, in its entirety. a. One copy of the ''Project Application'' form must contain the pen-and-ink signatures of the project director and authorized organizational representative for the applicant organization.

b. Note that by signing the ''Project Application'' form the applicant is providing the required certifications set forth in 7 CFR Part 3017, as amended by 61 FR 250, January 4, 1996, regarding Debarment and Suspension and Drug-Free Workplace, and 7 CFR Part 3018, regarding Lobbying. The certification forms are included in the application package for informational purposes only. It is not necessary to submit the forms to USDA.

2. Table of Contents. For ease in locating information, each proposal must contain a detailed table of contents just after the proposal cover page. The Table of Contents should include page numbers for each component of the proposal. Pagination should begin immediately following the Table of Contents.

3. Project Summary. The proposal must contain a project summary of 200 words or less on a separate page. This page must include the title of the project and the names of the project director and the applicant organization, followed by the summary. The summary should be self-contained, and should describe the situation, targeted audience, purpose of the project, program goal, methodology, and expected outcomes of the project.

4. Program Areas. Each proposal must identify the area under which funds are requested and contain the required information for that area. Note that the project narrative should be limited to 20 pages in length.

5. Staffing Pattern and Procedure. Each proposal must describe the staff needed for project administration, instructional design/curriculum development, production, evaluation, and marketing/promotion. The narrative should demonstrate that the staffing and implementation procedure will result in an integrated approach involving content specialists, instructional designers, and quality production resources, and that the individual staff members proposed are qualified to perform these roles. The emphasis of the narrative should be placed on the relationship of the staff expertise to the proposed effort.

6. Personnel Support. To assist peer reviewers in assessing the competence and experience of the proposed project staff, key personnel who will be involved in the proposed project must be identified clearly. For each project director involved, and for all senior associates and other professional personnel who are expected to work on the project, whether or not funds are sought for their support, the following should be included:

(a) An estimate of the time commitments necessary;

(b) A curriculum vitae limited to the presentation of academic, research and extension credentials, e.g., educational, employment and professional history, and honors and awards, with emphasis on their relationship to the effort being proposed. Unless pertinent to the project, to personal status, or the status of the organization—meetings attended, seminars given, or personal data such as birth date, marital status, or community activities should not be included. The vitae shall be no more than two pages in length, excluding the publication list(s); and

(c) Publication List(s). A chronological list of the most representative publications during the past five years as it relates to the proposed effort, including those in press, must be provided for each professional project member for whom a curriculum vitae is provided. Authors should be listed in the same order as they appear on each paper cited, along with the title and complete reference as these items usually appear in journals.

7. *A. Budget.* A detailed budget is required for each year of funding requested. In addition, a summary budget is required detailing requested support for the overall project period. The budget form may be reproduced as needed by applicants. Funds may be requested under any of the categories listed on the form, provided that the item or service for which support is requested is allowable under the authorizing legislation, the applicable Federal cost principles, and this solicitation, and can be justified as necessary for the successful conduct of the proposed project.

The following guidelines should be used in developing your proposal budget(s):

(a) *Salaries and Wages.* Salaries and wages are allowable charges and may be requested for personnel who will be working on the project in proportion to the time such personnel will devote to the project. If salary funds are requested, the number of Professionals and Other Personnel and the number of full-time equivalents (FTE) must be shown in the spaces provided. Grant funds may not be used to augment the total salary or rate of salary of project personnel or to reimburse them for time in addition to a regular full-time salary covering the same general period of employment. Salary funds requested must be consistent with the normal policies of the institution and with OMB Circular No. A–21, Cost Principles for Educational Institutions. Administrative and Clerical salaries are normally classified as indirect costs. However, if requested under A., **they must be fully justified.**

(b) *Fringe Benefits.* Funds may be requested for fringe benefit costs if the usual accounting practices of the

institution provide that institutional contributions to employee benefits (social security, retirement, etc.) be treated as direct costs. Fringe benefit costs may be included only for those personnel whose salaries are charged as a direct cost to the project. See OMB Circular No. A–21, Cost Principles for Educational Institutions, for further guidance in this area.

(c) *Nonexpendable Equipment.* Nonexpendable equipment means tangible nonexpendable personal property including exempt property charged directly to the award having a useful life of more than one year and an acquisition cost of $5,000 or more per unit. As such, items of necessary instrumentation or other nonexpendable equipment should be listed individually by description and estimated cost. This applies to revised budgets, as the equipment item(s) and amount(s) may change. Each applicant also must attach to its budget an analysis of the costs and benefits of purchasing (or leasing) different types of facilities, equipment, components, hardware and software, and other items.

In addition, pursuant to Section 716(b) of Pub. L. 105–86 (the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 1998), in the case of any equipment or product that may be authorized to be purchased with funds provided under this program, entities receiving such funds are encouraged to use such funds to purchase only American-made equipment or products.

Note: Sec. 1673(g)(2) of Pub. L. 101–624 identifies that not more than 10% of the funds appropriated for this program may be applied to the acquisition and installation of nonexpendable equipment.

(d) *Materials and Supplies.* The types of expendable materials and supplies which are required to carry out the project should be indicated in general terms with estimated costs.

(e) *Travel.* The type and extent of travel and its relationship to project objectives should be described briefly and justified.

(f) *Publication Costs/Page Charges.* Anticipated costs of preparing and publishing results of the project being proposed (including page charges, necessary illustrations, and the cost of a reasonable number of coverless reprints) may be estimated and charged against the grant.

(g) *Computer (ADPE) Costs.* Reimbursement for the costs of using specialized facilities (such as a university or department-controlled computer mainframe or data processing center) may be requested if such services are required for completion of the work.

(h) *All Other Direct Costs.* Anticipated direct project charges not included in other budget categories must be itemized with estimated costs and justified on a separate sheet of paper attached to the budget. This applies to revised budgets, as the item(s) and dollar amount(s) may change. Examples may include space rental at remote locations, subcontractual costs, and charges for consulting services. Applicants are encouraged to consult the ''Instructions for Completing the Agricultural Telecommunications Program Budget,'' for detailed guidance relating to this budget category.

(i) *Indirect Costs.* If requested, the current rate negotiated with the cognizant Federal negotiating agency should be used. Indirect costs may not exceed the negotiated rate. If no rate has been negotiated, a reasonable dollar amount in lieu of indirect costs may be requested, which will be subject to approval by USDA.

B. Matching funds. (1) Proposals must include written verification of commitments of matching support (including both cash and in-kind contributions) from third parties. Written verification means:

(a) For any third party cash contributions, a separate pledge agreement for each donation, signed by the authorized organizational representatives of the donor organization and the applicant organization, which must include: (1) the name, address, and telephone number of the donor; (2) the name of the applicant organization; (3) the title of the project for which the donation is made; (4) the dollar amount of the cash donation; and (5) a statement that the donor will pay the cash contribution during the project period; and

(b) For any third party in-kind contributions, a separate pledge agreement for each contribution, signed by the authorized organizational representatives of the donor organization and the applicant organization, which must include: (1) the name, address, and telephone number of the donor; (2) the name of the applicant organization; (3) the title of the project for which the donation is made; (4) a good faith estimate of the current fair market value of the in-kind contribution; and (5) a statement that the donor will make the contribution during the grant period.

(2) The sources and amount of all matching support from outside the applicant institution should be summarized on a separate page and placed in the proposal immediately following the budget form and any attachment thereto. All pledge agreements must be placed in the proposal immediately following the summary of matching support.

(3) Applicants should refer to OMB Circulars A–110, ''Uniform Administrative Requirements for Grants and Agreements With Institutions of Higher Education, Hospitals and Other Non-Profit Organizations,'' and A–122, ''Cost Principles for Non-Profit Organizations,'' for further guidance and other requirements relating to matching and allowable costs.

8. Current and Pending Support. All proposals must list any other current public or private support (including in-house support) to which key personnel identified in the proposal have committed portions of their time, whether or not salary support for person(s) involved is included in the budget. Analogous information must be provided for any pending proposals that are being considered by, or that will be submitted in the near future to, other possible sponsors, including other USDA programs or agencies. Concurrent submission of identical or similar proposals to the possible sponsors will not prejudice proposal review or evaluation by the Administrator for this purpose. However, a proposal that duplicates or overlaps substantially with a proposal already reviewed and funded (or that will be funded) by another organization or agency will not be funded under this program.

9. Compliance with the National Environmental Policy Act (NEPA). As outlined in 7 CFR Part 3407 (the CSREES regulations implementing NEPA), the environmental data or documentation for any proposed project is to be provided to CSREES in order to assist CSREES in carrying out its responsibilities under NEPA. In some cases, however, the preparation of environmental data may not be required. Certain categories of actions are excluded from the requirements of NEPA.

In order for CSREES to determine whether any further action is needed with respect to NEPA (e.g., preparation of an environmental assessment (EA) or environmental impact statement (EIS)), pertinent information regarding the possible environmental impacts of a proposed project is necessary; therefore, the National Environmental Policy Act Exclusions Form (Form CSREES–1234) provided must be included in the proposal indicating whether the applicant is of the opinion that the project falls within one or more of the categorical exclusions. Form CSREES–

1234 should be included at the end of the proposal. Even though a project may fall within the categorical exclusions, CSREES may determine that an EA or an EIS is necessary for an activity, if substantial controversy on environmental grounds exists or if other extraordinary conditions or circumstances are present which may cause such activity to have a significant environmental effects.

Part IV—Submission of a Proposal

A. What To Submit

An original and eight copies of the proposal must be submitted. Each copy of each proposal must be stapled securely in the upper left hand corner (Do Not Bind). All copies of the proposal must be submitted in one package.

B. Where and When To Submit

Proposals must be received on or before (60 days from date of publication).

Proposals sent by First Class mail must be sent to the following address: Agricultural Telecommunications Program, c/o Proposal Services Unit, Office of Extramural Programs, Cooperative State Research, Education, and Extension Service, U.S. Department of Agriculture, STOP 2245, 1400 Independence Avenue, S.W., Washington, D.C. 20250–2245, *Telephone:* (202) 401–5048.

Proposals that are delivered by Express mail, courier service, or by hand must be submitted to the following address (Note that the zip code differs from that shown above): Agricultural Telecommunications Program, c/o Proposal Services Unit, Office of extramural Programs, Cooperative State Research, Education, and Extension Service, U.S. Department of Agriculture, Room 303, Aerospace Center, 901 D Street S.W., Washington, D.C. 20024, *Telephone:* (202) 401–5048.

Part V—Selection Process and Evaluation Criteria

A. Selection Process

1. All proposals will be acknowledged.

2. Each proposal will be evaluated in a two-part process. First, each proposal will be screened to ensure it meets the requirements as set forth in this solicitation. Proposals that meet these requirements will be technically evaluated by a peer review panel using the criteria identified in the annual solicitation, as appropriate. Each proposal will be judged on its own merits.

3. Final decisions will be made by USDA based upon the individual views of the panel members and consideration of other factors, including the budget limitation.

B. Evaluation Criteria

The maximum score a proposal can receive is 100 points. The peer review panel will be selected and organized to provide maximum expertise and objective judgment in the evaluation of proposals. In the event the number of proposals accepted exceed dollars available, proposals will be ranked and support levels will be recommended by the panel(s) within the limitation of total funding available in FY 1998. The projects will be judged based on the following criteria.

1. Program Delivery and Innovative Program Development/Production

(a) Project Need—40 points.

Did the proposal describe the background and situation leading to the need for the project? Is the project based on a need articulated by an audience, or on a needs assessment? Are the targeted audience(s) for whom the project will be designed described, including pertinent history identified in need, demographics, and expected impact on audience? If appropriate, are methodology and results of needs assessment described? Did the proposal demonstrate the need for assistance under this Program, including a statement of financial ability or inability to otherwise pursue the proposed program and the impact of participation in this Program on this ability?

(b) Strategy—40 points. (1) *Partnerships and Collaboration.* Are partnerships and collaborations fostered through this project described, including expected impact and benefit to those involved such as learner, institution, agency, state, and nation? Is there evidence that partnerships are in place, and that those partners have a substantial role and interest in the project and are examples of role and interest given, including joint risk taking and shared benefits? Is evidence provided of any current affiliations with established agricultural telecommunications networks that distribute programs to a wide geographical area?

(ii) *Alternative Distance Learning Technologies.* Does the proposal include a plan for the development and employment of alternative distance learning technologies including, but not limited to, internet, multimedia, audio/visual, and other telecommunications technologies?

(iii) *Infrastructure.* Does the proposal include a framework representing both the technological and human infrastructure including, but not limited to, technical trouble-shooting, scheduling and operation management, and learner and program support? Is there evidence of learner support including, but not limited to, facilitation of access, accommodation for diversity in special needs and learning styles, and recognition of need for alternative modes of program design and delivery?

(iv) *Innovation.* Does the proposal describe how the application of distance education/learning delivery identified in the project is innovative? Are examples provided that may include, but are not limited to, approaches in reaching audiences; methods of connectivity and/or interaction; use of existing resources with innovations in the teaching/learning transaction; entrepreneurial approaches to distance education delivery.

(v) *Outreach Plan.* Is there an outreach plan articulating an approach for informing others about positive and negative outcomes, results, lessons learned, innovative ideas, and findings from the project?

(vi) *Evaluation Plan.* Are both formative and summative design for evaluating specific aspects of the project described? Do they include evaluating the overall effectiveness of program in terms of teaching and learning, behavior change/problem-solving, immediate application, meeting learner needs, and/or potential for replication?

(c) Sustainability—20 points. (i) *Project Sustainability.* Does the proposal present strong evidence of the project's ability to continue and grow after receiving the funding? Does this evidence include replication by others; continued funding other than from this program, or opportunities for sale of products; and/or use of ideas and results of project by others?

(ii) *Cost/Benefit.* Does the proposal include a cost-benefit analysis of the proposed project, including comparison to other delivery methods, relative benefit to learner, and staffing costs versus benefits?

2. Capacity Building

(a) Project Need—20 points. Did the proposal describe the background and situation leading to the need for the project? Is the project based on a need articulated by an audience, or on a needs assessment? Are the targeted audience(s) for whom the project will be designed described, including pertinent history identified in terms of need, demographics, and expected impact on an audience? If appropriate, are the

methodology and results of needs assessment described? Did the applicant describe how the capacity built will improve program production or program delivery? Did the proposal demonstrate the need for assistance under this Program, including a statement of financial ability or inability to otherwise pursue the proposed program and the impact of participation in this Program on this ability?

(b) Strategy—30 points. (i) *Capacity Assessment.* Is a detailed assessment of capacity or a fully developed plan for assessing capacity included? Does the assessment include faculty/staff development; support resources; production/technical capability; delivery capability; building learner capacity?

(ii) *Evaluation Plan.* Are both formative and cummative design for evaluating specific aspects of the project described? Do they include evaluating the overall effectiveness of the Program in terms of teaching and learning, behavior change/problem-solving, immediate application, meeting learner needs, and/or potential for replication?

(iii) *Outreach.* Does the outreach plan articulate an approach for informing others about positive and negative outcomes, results, lessons learned, innovative ideas, and findings from the project?

(c) Sustainability—50 points. (i) *Sustainability.* Does the proposal present strong evidence of the project's ability to continue and grow after receiving the funding? Does this evidence include replication by others; continued funding other than from this Program, or opportunities for sale of products; and/or use of ideas and results of project by others?

(ii) *Institutional Commitment.* Does the proposal discuss the institutional commitment to the project? Does the proposal substantiate that the institution(s) attributes a priority to the project; discuss how the project will contribute to the achievement of the institution's(s') long-term (five- to ten-year) goals; explain how the project will help satisfy the institution's(s') high priority objectives; or show how this project is linked to and supported by the institution's(s') strategic plan?

(iii) *Partnerships and Collaboration.* Are partnerships and collaborations fostered through this project described, including expected impact and benefit to those involved such as learner, institution, agency, state, and nation? Is there evidence that partnerships are in place, and that those partners have a substantial role and interest in the project? Are examples of role and interest given including joint risk taking and shared benefits? Is evidence provided of any current affiliations with established agricultural telecommunications networks that distribute programs to a wide geographical area?

Part VI—Supplementary Information

A. Access to Peer Review Information

Information regarding the peer review process will be made available to the extent permitted under the Freedom of Information Act (5 U.S.C. 552), the Privacy Act (5 U.S.C. 552a), and implementing Departmental and other Federal regulations. Implementing Departmental regulations are found at 7 CFR Part 1.

B. Grant Awards

1. General

Within the limit of funds available for such purpose, the awarding official of CSREES shall make grants to those responsible, eligible applicants whose proposals are judged most meritorious in the announced program area and under the procedures set forth in this solicitation. The date specified by the Administrator as the effective date of the grant shall be no later than September 30 of the Federal fiscal year in which the project is approved for support and funds are appropriated for such purpose, unless otherwise permitted by law. It should be noted that the project need not be initiated on the grant effective date, but as soon thereafter as practicable so that project goals may be attained within the funded project period. All funds granted by CSREES under this solicitation shall be expended solely for the purpose for which the funds are granted in accordance with the approved application and budget, the terms and conditions of the award, the applicable Federal cost principles, and the Department's assistance regulations (Parts 3015, 3016, and 3019 of 7 CFR).

2. Organizational Management Information

Specific management information relating to an applicant shall be submitted on a one-time basis as part of the responsibility determination prior to the award of a grant identified under this part if such information has not been provided previously under this or another program for which the sponsoring agency is responsible. Copies of forms recommended for use in fulfilling the requirements contained in this section will be provided by the sponsoring agency as part of the preaward process.

3. Grant Award Document and Notice of Grant Award

(a) The grant award document shall include, at a minimum, the following:

(1) Legal name and address of performing organization.

(2) Title of project.

(3) Name(s) and address(es) of Project Director(s).

(4) Identifying grant number assigned by the Department.

(5) Project period, which specifies how long the Department intends to support the effort.

(6) Total amount of Departmental financial assistance approved during the project period.

(7) Legal authority under which the grant is awarded.

(8) Approved budget plan for categorizing project funds to accomplish the stated purpose of the grant award.

(9) Other information or provisions deemed necessary by the Department to carry out its granting activities or to accomplish the purpose of a particular grant.

(b) The notice of grant award, in the form of a letter, will provide pertinent instructions and information to the grantee which are not included in the grant award document described above.

C. Use of Funds; Changes

1. *Delegation of fiscal responsibility.* The grantee may not in whole or in part delegate or transfer to another person, institution, or organization the responsibility for use or expenditure of grant funds.

2. *Change in project plans.* (a) The permissible changes by the grantee, project director(s), or other key project personnel in the approved project grant shall be limited to changes in methodology, techniques, or other aspects of the project to expedite achievement of the project's approved goals. If the grantee and/or the project director(s) are uncertain as to whether a change complies with this provision, the question must be referred to the Authorized Departmental Officer (ADO) for a final determination.

(b) Changes in approved goals, or objectives, shall be requested by the grantee and approved in writing by the ADO prior to effecting such changes. In no event shall requests for such changes be approved which are outside the scope of the original approved project.

(c) Changes in approved project leadership or the replacement or reassignment of other key project personnel shall be requested by the grantee and approved in writing by the ADO prior to effecting such changes.

(d) Transfers of actual performance of the substantive programmatic work in

whole or in part and provisions for payment of funds, whether or not Federal funds are involved, shall be requested by the grantee and approved in writing by the ADO prior to effecting such transfers.

3. *Changes in project period.* The project period may be extended by CSREES without additional financial support, for such additional period(s) as the ADO determines may be necessary to complete or fulfill the purposes of an approved project. Any extension of time shall be conditioned upon prior request by the grantee and approval in writing by the ADO, unless prescribed otherwise in the terms and conditions of a grant.

4. *Changes in approved budget.* Changes in an approved budget must be requested by the grantee and approved in writing by the ADO prior to instituting such changes if the revision will result in a need or claim for the award of additional funds or involve transfers or expenditures of amounts requiring prior approval as set forth in the applicable Federal cost principles, Departmental regulations, or in the grant award.

D. Other Federal Statutes and Regulations that Apply

Several other Federal statutes and/or regulations apply to grant proposals considered for review and to project grants awarded under this part. These include but are not limited to:

7 CFR Part 1—USDA implementation of the Freedom of Information Act.

7 CFR Part 3, as amended by 62 FR 40924 and 60451—USDA implementation of OMB Circular A–129, regarding debt collection.

7 CFR Part 15, subpart A—USDA implementation of Title VI of the Civil Rights Act of 1964, as amended.

7 CFR Part 3015, as amended by 62 FR 45947—USDA Uniform Federal Assistance Regulations, implementing OMB directives (i.e., Circular Nos. A–21, and A–22) and incorporating provisions of 31 U.S.C. 6301–6308 (formerly the Federal Grant and Cooperative Agreement Act of 1977, Pub. L. 95–224), as well as general policy requirements applicable to recipients of Departmental financial assistance.

7 CFR Part 3017, as amended by 61 FR 250, January 4, 1996—USDA implementation of Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants).

7 CFR Part 3018—USDA implementation of Restrictions on Lobbying. Imposes prohibitions and requirements for disclosure and certification related to lobbying on recipients of Federal contracts, grants, cooperative agreements, and loans.

7 CFR Part 3019, as amended by 62 FR 45934—USDA implementation of OMB Circular A–110, Uniform Administrative Requirements for Grants and Other Agreements With Institutions of Higher Education, Hospitals, and Other Nonprofit Organizations.

7 CFR Part 3052—USDA implementation of OMB Circular No. A–133, Audits of States, Local Governments, and Nonprofit Institutions.

7 CFR 3407—CSREES procedures to implement the National Environmental Policy Act of 1969, as amended.

29 U.S.C. 794 (section 504, Rehabilitation Act of 1973) and *7 CFR Part 15B* (USDA implementation of statute), prohibiting discrimination based upon physical or mental handicap in Federally assisted programs.

35 U.S.C. 200 et seq.—Bayh-Dole Act, controlling allocation of rights to inventions made by employees of small business firms and domestic nonprofit organizations, including universities, in Federally assisted programs (implementing regulations are contained in 37 CFR part 401).

E. Other Conditions

The Department may, with respect to any grant, impose additional conditions prior to or at the time of any award when, in the Department's judgment, such conditions are necessary to assure or protect advancement of the approved project, the interests of the public, or the conservation of grant funds.

Done at Washington, D.C., on this 11th day of June, 1998.

Colien Hefferan,

Acting Administrator, Cooperative State Research, Education, and Extension Service.

[FR Doc. 98–16155 Filed 6–17–98; 8:45 am]

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federal register

Thursday
June 18, 1998

Part VI

Department of Education

Office of Special Education and Rehabilitative Services, National Institute on Disability and Rehabilitation Research: Applications Invitation for New Awards Under Certain Programs (FY 1999); Notice

DEPARTMENT OF EDUCATION

[CFDA Nos.: 84.133F, 84.133G, and 84.133P]

Office of Special Education and Rehabilitative Services; National Institute on Disability and Rehabilitation Research Notice Inviting Applications for New Awards Under Certain Programs for Fiscal Year 1999

Note to Applicants: This notice is a complete application package. Together with the statute authorizing the programs and applicable regulations governing the programs, including the Education Department General Administrative Regulations (EDGAR), this notice contains information, application forms, and instructions needed to apply for a grant under these competitions.

These programs support the National Education Goal that calls for all Americans to possess the knowledge and skills necessary to compete in a global economy and exercise the rights and responsibilities of citizenship.

The estimated funding levels in this notice do not bind the Department of Education to make awards in any of these categories, or to any specific number of awards or funding levels, unless otherwise specified in statute.
APPLICABLE REGULATIONS: The Education Department General Administrative Regulations (EDGAR), 34 CFR parts 74, 75, 77, 80, 81, 82, 85, and 86; and the following program regulations:

Research Fellowships—34 CFR part 356.

Field-Initiated Projects—34 CFR part 350.

Advanced Rehabilitation Research Training Projects—34 CFR part 350.

Program Title: Research Fellowships.

CFDA Number: 84.133F.

Purpose: The purpose of the Research Fellowship program is to build research capacity by providing support to highly qualified individuals, including those who are individuals with disabilities, to perform research on the rehabilitation of individuals with disabilities. Fellows may conduct original research in any area authorized by section 204 of the Rehabilitation Act of 1973, as amended. Fellows may address problems encountered by persons with disabilities in their daily lives that are due to the presence of a disabling condition, problems associated with the provision of rehabilitation services to individuals with disabilities, and problems connected with the conduct of disability research.

The program provides two categories of Fellowships: Merit Fellowships and Distinguished Fellowships. To be eligible for a Distinguished Fellowship, an individual must have seven or more years of research experience in subject areas, methods, or techniques relevant to rehabilitation research and must have a doctorate, other terminal degree, or comparable academic qualifications. To be eligible for a Merit Fellowship, an individual must have either advanced professional training or experience in independent study in an area which is directly pertinent to disability and rehabilitation.

The Fellowship awards are for twelve months and include a fixed stipend and a flat rate allowance for research and research-related expenses including travel expenses. Applicants are not required to submit budget proposals.

Selection Criteria: The Secretary evaluates applications for Fellowships according to the following criteria in 34 CFR 356.30.

(a) Quality and level of formal education, previous work experience, and recommendations of present or former supervisors or colleagues that include an indication of the applicant's ability to work creatively in scientific research; and

(b) The quality of a research proposal of no more than 12 pages containing the following information:

(1) The importance of the problem to be investigated to the purpose of the Act and the mission of NIDRR.

(2) The research hypotheses or related objectives and the methodology and design to be followed.

(3) Assurance of the availability of any necessary data resources, equipment, or institutional support, including technical consultation and support where appropriate, required to carry out the proposed activity.

Eligible Applicants: Only individuals are eligible to be recipients of Fellowships. Institutions are not eligible to be recipients of Fellowships.

Program Authority: 29 U.S.C. 761a(d).

APPLICATION NOTICE FOR FISCAL YEAR 1999 RESEARCH FELLOWSHIPS, CFDA NO. 84.133F

Funding priority	Deadline for transmittal of applications	Estimated number of awards	Maximum award amount (per year) *	Project period (months)
Research Fellowships	September 30, 1998	10	Merit: $45,000 Distinguished: $55,000.	12

NOTE: The Secretary will reject without consideration or evaluation any application that proposes a project funding level that exceeds the stated maximum award amount (See 34 CFR 75.104(b)).

Program Title: Field-Initiated Projects.

CFDA Number: 84.133G.

Purpose: Field-Initiated (FI) projects must further one or more of the following purposes: Develop methods, procedures, and rehabilitation technology, that maximize the full inclusion and integration into society, employment, independent living, family support, and economic and social self-sufficiency of individuals with disabilities, especially individuals with the most severe disabilities; and improve the effectiveness of services authorized under the Act. Field-Initiated projects carry out *either* research activities *or* development activities.

In carrying out a research activity, a grantee must identify one or more hypotheses, and based on the hypotheses identified, perform an intensive systematic study directed toward new or full scientific knowledge, or understanding of the subject or problem studied.

In carrying out a development activity, a grantee must use knowledge and understanding gained from research to create materials, devices, systems, or methods beneficial to the target population, including design and development of prototypes and processes. Target population means the group of individuals, organizations, or other entities expected to be affected by the project. More than one group may be involved since a project may affect those who receive services, provide services, or administer services.

There are two different sets of selection criteria for FI projects: one set to evaluate applications proposing to carry out research activities, and a second set to evaluate applications proposing to carry out development activities. The set of FI selection criteria that will be used to evaluate an

application will be based on the applicant's designation of the type of activity that the application proposes to carry out.

AN APPLICANT FOR A FIELD-INITIATED PROJECT SHOULD CLEARLY IDENTIFY ON THE COVER PAGE OF THE APPLICATION WHETHER THE PROPOSAL IS FOR A RESEARCH OR DEVELOPMENT PROJECT.

Invitational Priorities:

The Secretary is particularly interested in applications that address one of the following invitational priorities. However, under 34 CFR 75.105(c)(1) an application that meets an invitational priority does not receive competitive or absolute preference over other applications. The invitational priorities are: (1) The marketing of disability-related products, services, and publications; (2) issues related to the implementation of the Americans with Disabilities Act on individuals with disabilities from minority backgrounds, especially Asian-Americans; (3) the needs of individuals with a combination of significant physical and speech disabilities; and (4) issues related to the effectiveness of alternative rehabilitation treatments such as acupuncture, exercise, and therapeutic massage.

Selection Criteria: Research Project.

The Secretary uses the following criteria to evaluate a Field-Initiated Project application that proposes to carry out *research activities.*

(a) *Importance of the problem* (15 points total).

(1) The Secretary considers the importance of the problem.

(2) In determining the importance of the problem, the Secretary considers the following factors:

(i) The extent to which the applicant clearly describes the need and target population (5 points).

(ii) The extent to which the proposed activities further the purposes of the Act (4 points).

(iii) The extent to which the proposed project will have beneficial impact on the target population (6 points).

(b) *Design of research activities* (40 points total).

(1) The Secretary considers the extent to which the design of research activities is likely to be effective in accomplishing the objectives of the project.

(2) In determining the extent to which the design is likely to be effective in accomplishing the objectives of the project, the Secretary considers the following factors:

(i) The extent to which the research activities constitute a coherent, sustained approach to research in the field, including a substantial addition to the state-of-the-art (10 points).

(ii) The extent to which the methodology of each proposed research activity is meritorious, including consideration of the extent to which—

(A) The proposed design includes a comprehensive and informed review of the current literature, demonstrating knowledge of the state-of-the-art (5 points);

(B) Each research hypothesis is theoretically sound and based on current knowledge (5 points);

(C) Each sample population is appropriate and of sufficient size (5 points);

(D) The data collection and measurement techniques are appropriate and likely to be effective (4 points); and

(E) The data analysis methods are appropriate (4 points).

(iii) The extent to which anticipated research results are likely to satisfy the original hypotheses and could be used for planning additional research, including generation of new hypotheses where applicable (7 points).

(c) *Design of dissemination activities* (5 points total).

(1) The Secretary considers the extent to which the design of dissemination activities is likely to be effective in accomplishing the objectives of the project.

(2) In determining the extent to which the design is likely to be effective in accomplishing the objectives of the project, the Secretary considers the following factors:

(i) The extent to which the materials to be disseminated are likely to be effective and usable, including consideration of their quality, clarity, variety, and format (2 points).

(ii) The extent to which the materials and information to be disseminated and the methods for dissemination are appropriate to the target population, including consideration of the familiarity of the target population with the subject matter, format of the information, and subject matter (2 points).

(iii) The extent to which the information to be disseminated will be accessible to individuals with disabilities (1 point).

(d) *Plan of operation* (6 points total).

(1) The Secretary considers the quality of the plan of operation.

(2) In determining the quality of the plan of operation, the Secretary considers the adequacy of the plan of operation to achieve the objectives of the proposed project on time and within budget, including clearly defined responsibilities, and timelines for accomplishing project tasks (6 points).

(e) *Adequacy and reasonableness of the budget* (4 points total).

(1) The Secretary considers the adequacy and the reasonableness of the proposed budget.

(2) In determining the adequacy and the reasonableness of the proposed budget, the Secretary considers the following factors:

(i) The extent to which the costs are reasonable in relation to the proposed project activities (2 points).

(ii) The extent to which the budget for the project, including any subcontracts, is adequately justified to support the proposed project activities (2 points).

(f) *Plan of evaluation* (10 points total).

(1) The Secretary considers the quality of the plan of evaluation.

(2) In determining the quality of the plan of evaluation, the Secretary considers the following factors:

(i) The extent to which the plan of evaluation provides for periodic assessment of progress toward—

(A) Implementing the plan of operation (3 points); and

(B) Achieving the project's intended outcomes and expected impacts (2 points).

(ii) The extent to which the plan of evaluation provides for periodic assessment of a project's progress that is based on identified performance measures that—

(A) Are clearly related to the intended outcomes of the project and expected impacts on the target population (3 points); and

(B) Are objective, and quantifiable or qualitative, as appropriate (2 points).

(g) *Project staff* (15 total points).

(1) The Secretary considers the quality of the project staff.

(2) In determining the quality of the project staff, the Secretary considers the extent to which the applicant encourages applications for employment from persons who are members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disability (2 points).

(3) In addition, the Secretary considers the following:

(i) The extent to which the key personnel and other key staff have appropriate training and experience in disciplines required to conduct all proposed activities (5 points).

(ii) The extent to which the commitment of staff time is adequate to accomplish all the proposed activities of the project (3 points).

(iii) The extent to which the key personnel are knowledgeable about the methodology and literature of pertinent subject areas (5 points).

(h) *Adequacy and accessibility of resources* (5 points total).

(1) The Secretary considers the adequacy and accessibility of the applicant's resources to implement the proposed project.

(2) In determining the adequacy and accessibility of resources, the Secretary considers the following factors:

(i) The extent to which the applicant is committed to provide adequate facilities, equipment, other resources, including administrative support, and laboratories, if appropriate (3 points).

(ii) The extent to which the facilities, equipment, and other resources are appropriately accessible to individuals with disabilities who may use the facilities, equipment, and other resources of the project (2 points).

Selection Criteria: Development Project.

The Secretary uses the following criteria to evaluate a Field-Initiated Project application that proposes to carry out *development activities.*

(a) *Importance of the problem* (15 points total).

(1) The Secretary considers the importance of the problem.

(2) In determining the importance of the problem, the Secretary considers the following factors:

(i) The extent to which the applicant clearly describes the need and target population (5 points).

(ii) The extent to which the proposed activities further the purposes of the Act (4 points).

(iii) The extent to which the proposed project will have beneficial impact on the target population (6 points).

(b) *Design of development activities* (40 points total).

(1) The Secretary considers the extent to which the design of development activities is likely to be effective in accomplishing the objectives of the project.

(2) In determining the extent to which the design is likely to be effective in accomplishing the objectives of the project, the Secretary considers the following factors:

(i) The extent to which the plan for development, clinical testing, and evaluation of new devices and technology is likely to yield significant products or techniques, including consideration of the extent to which—

(A) The proposed project will use the most effective and appropriate technology available in developing the new device or technique (6 points);

(B) The proposed development is based on a sound conceptual model that demonstrates an awareness of the state-of-the-art in technology (9 points);

(C) The new device or technique will be developed and tested in an appropriate environment (6 points);

(D) The new device or technique is likely to be cost-effective and useful (5 points);

(E) The new device or technique has the potential for commercial or private manufacture, marketing, and distribution of the product (9 points); and

(F) The proposed development efforts include adequate quality controls and, as appropriate, repeated testing of products (5 points).

(c) *Design of dissemination activities* (5 points total).

(1) The Secretary considers the extent to which the design of dissemination activities is likely to be effective in accomplishing the objectives of the project.

(2) In determining the extent to which the design is likely to be effective in accomplishing the objectives of the project, the Secretary considers the following factors:

(i) The extent to which the materials to be disseminated are likely to be effective and usable, including consideration of their quality, clarity, variety, and format (2 points).

(ii) The extent to which the materials and information to be disseminated and the methods for dissemination are appropriate to the target population, including consideration of the familiarity of the target population with the subject matter, format of the information, and subject matter (2 points).

(iii) The extent to which the information to be disseminated will be accessible to individuals with disabilities (1 point).

(d) *Plan of operation* (6 points total).

(1) The Secretary considers the quality of the plan of operation.

(2) In determining the quality of the plan of operation, the Secretary considers the adequacy of the plan of operation to achieve the objectives of the proposed project on time and within budget, including clearly defined responsibilities, and timelines for accomplishing project tasks (6 points).

(e) *Adequacy and reasonableness of the budget* (4 points total).

(1) The Secretary considers the adequacy and the reasonableness of the proposed budget.

(2) In determining the adequacy and the reasonableness of the proposed budget, the Secretary considers the following factors:

(i) The extent to which the costs are reasonable in relation to the proposed project activities (2 points).

(ii) The extent to which the budget for the project, including any subcontracts, is adequately justified to support the proposed project activities (2 points).

(f) *Plan of evaluation* (10 points total).

(1) The Secretary considers the quality of the plan of evaluation.

(2) In determining the quality of the plan of evaluation, the Secretary considers the following factors:

(i) The extent to which the plan of evaluation provides for periodic assessment of progress toward—

(A) Implementing the plan of operation (3 points); and

(B) Achieving the project's intended outcomes and expected impacts (2 points).

(ii) The extent to which the plan of evaluation provides for periodic assessment of a project's progress that is based on identified performance measures that—

(A) Are clearly related to the intended outcomes of the project and expected impacts on the target population (3 points); and

(B) Are objective, and quantifiable or qualitative, as appropriate (2 points).

(g) *Project staff* (15 total points).

(1) The Secretary considers the quality of the project staff.

(2) In determining the quality of the project staff, the Secretary considers the extent to which the applicant encourages applications for employment from persons who are members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disability (2 points).

(3) In addition, the Secretary considers the following:

(i) The extent to which the key personnel and other key staff have appropriate training and experience in disciplines required to conduct all proposed activities (5 points).

(ii) The extent to which the commitment of staff time is adequate to accomplish all the proposed activities of the project (3 points).

(iii) The extent to which the key personnel are knowledgeable about the methodology and literature of pertinent subject areas (5 points).

(h) *Adequacy and accessibility of resources* (5 points total).

(1) The Secretary considers the adequacy and accessibility of the applicant's resources to implement the proposed project.

(2) In determining the adequacy and accessibility of resources, the Secretary considers the following factors:

(i) The extent to which the applicant is committed to provide adequate facilities, equipment, other resources, including administrative support, and laboratories, if appropriate (3 points).

(ii) The extent to which the facilities, equipment, and other resources are

appropriately accessible to individuals with disabilities who may use the facilities, equipment, and other resources of the project (2 points).

Eligible Applicants: Public and private organizations, including institutions of higher education and Indian tribes and tribal organizations, are eligible to apply for awards under this program.

Program Authority: 29 U.S.C. 762.

APPLICATION NOTICE FOR FISCAL YEAR 1999 FIELD-INITIATED PROJECTS, CFDA NO. 84.133G

Funding priority	Deadline for transmittal of applications	Estimated number of awards	Maximum award amount (per year)*	Project period (months)
Field-Initiated Projects	September 30, 1998	30	$150,000	36

NOTE: The Secretary will reject without consideration or evaluation any application that proposes a project funding level that exceeds the stated maximum award amount (See 34 CFR 75.104(b)).

Program Title: Advanced Rehabilitation Research Training Projects.

CFDA Number: 84.133P.

Purpose: Advanced Rehabilitation Research Training (ARRT) Projects must provide research training and experience at an advanced level to individuals *with doctorates or similar advanced degrees* who have clinical or other relevant experience. ARRT Projects train rehabilitation researchers, including individuals with disabilities, with particular attention to research areas that support the implementation and objectives of the Rehabilitation Act and that improve the effectiveness of services authorized under the Act.

ARRT Projects must carry out all of the following activities: recruit and select candidates for advanced research training; provide a training program that includes didactic and classroom instruction, is multidisciplinary, and emphasizes scientific methodology, and may involve collaboration among institutions; provide research experience, laboratory experience or its equivalent in a community-based research setting, and a practicum that involve each individual in clinical research and in practical activities with organizations representing individuals with disabilities; provide academic mentorship or guidance, and opportunities for scientific collaboration with qualified researchers at the host university and other appropriate institutions; and provide opportunities for participation in the development of professional presentations and publications, and for attendance at professional conferences and meetings as appropriate for the individual's field of study and level of experience.

Selection Criteria: Advanced Rehabilitation Research Training Projects

The Secretary uses the following criteria to evaluate an Advanced Rehabilitation Research Training Project application.

(a) *Importance of the problem* (10 points total).

(1) The Secretary considers the importance of the problem.

(2) In determining the importance of the problem, the Secretary considers the extent to which the applicant proposes to provide training in a rehabilitation discipline or area of study in which there is a shortage of qualified researchers, or to a trainee population in which there is a need for more qualified researchers (10 points).

(b) *Design of training activities* (40 points total).

(1) The Secretary considers the extent to which the design of training activities is likely to be effective in accomplishing the objectives of the project.

(2) In determining the extent to which the design is likely to be effective in accomplishing the objectives of the project, the Secretary considers the following factors:

(i) The extent to which the proposed training methods are of sufficient quality, intensity, and duration (5 points).

(ii) The extent to which the proposed training materials and methods are accessible to individuals with disabilities (6 points).

(iii) The extent to which the applicant's proposed recruitment program is likely to be effective in recruiting highly qualified trainees, including those who are individuals with disabilities (7 points).

(iv) The extent to which the proposed didactic and classroom training programs emphasize scientific methodology and are likely to develop highly qualified researchers (6 points).

(v) The extent to which the quality and extent of the academic mentorship, guidance, and supervision to be provided to each individual trainee are of a high level and are likely to develop highly qualified researchers (6 points).

(vi) The extent to which the type, extent, and quality of the proposed clinical and laboratory research experience, including the opportunity to participate in advanced-level research, are likely to develop highly qualified researchers (5 points).

(vii) The extent to which the opportunities for collegial and collaborative activities, exposure to outstanding scientists in the field, and opportunities to participate in the preparation of scholarly or scientific publications and presentations are extensive and appropriate (5 points).

(c) *Plan of operation* (10 points total).

(1) The Secretary considers the quality of the plan of operation.

(2) In determining the quality of the plan of operation, the Secretary considers the following factors:

(i) The adequacy of the plan of operation to achieve the objectives of the proposed project on time and within budget, including clearly defined responsibilities, and timelines for accomplishing project tasks (5 points).

(ii) The adequacy of the plan of operation to provide for using resources, equipment, and personnel to achieve each objective (5 points).

(d) *Collaboration* (5 points total).

(1) The Secretary considers the quality of collaboration.

(2) In determining the quality of collaboration, the Secretary considers one or more of the following factors:

(i) The extent to which the applicant's proposed collaboration with one or more agencies, organizations, or institutions is likely to be effective in achieving the relevant proposed activities of the project (2 points).

(ii) The extent to which agencies, organizations, or institutions demonstrate a commitment to collaborate with the applicant (2 points).

(iii) The extent to which agencies, organizations, or institutions that commit to collaborate with the applicant have the capacity to carry out collaborative activities (1 point).

(e) *Adequacy and reasonableness of the budget* (10 points).

(1) The Secretary considers the adequacy and the reasonableness of the proposed budget.

(2) In determining the adequacy and the reasonableness of the proposed budget, the Secretary considers the following factors:

(i) The extent to which the costs are reasonable in relation to the proposed project activities (4 points).

(ii) The extent to which the budget for the project, including any subcontracts, is adequately justified to support the proposed project activities (3 points).

(iii) The extent to which the applicant is of sufficient size, scope, and quality to effectively carry out the activities in an efficient manner (3 points).

(f) *Plan of evaluation* (10 points).

(1) The Secretary considers the quality of the plan of evaluation.

(2) In determining the quality of the plan of evaluation, the Secretary considers the following factors:

(i) The extent to which the plan of evaluation provides for periodic assessment of progress toward—

(A) Implementing the plan of operation (2 points); and

(B) Achieving the project's intended outcomes and expected impacts (2 points).

(ii) The extent to which the plan of evaluation will be used to improve the performance of the project through the feedback generated by its periodic assessments (2 points).

(iii) The extent to which the plan of evaluation provides for periodic assessment of a project's progress that is based on identified performance measures that—

(A) Are clearly related to the intended outcomes of the project and expected impacts on the target population (2 points); and

(B) Are objective, and quantifiable or qualitative, as appropriate (2 points).

(g) *Project staff* (10 points total).

(1) The Secretary considers the quality of the project staff.

(2) In determining the quality of the project staff, the Secretary considers the extent to which the applicant encourages applications for employment from persons who are members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disability (2 points).

(3) In addition, the Secretary considers the following:

(i) The extent to which the key personnel and other key staff have appropriate training and experience in disciplines required to conduct all proposed activities (2 points).

(ii) The extent to which the commitment of staff time is adequate to accomplish all the proposed activities of the project (2 points).

(iii) The extent to which the key personnel are knowledgeable about the methodology and literature of pertinent subject areas (2 points).

(iv) The extent to which the project staff includes outstanding scientists in the field (1 point).

(v) The extent to which key personnel have up-to-date knowledge from research or effective practice in the subject area covered in the priority (1 point).

(h) *Adequacy and accessibility of resources* (5 points).

(1) The Secretary considers the adequacy and accessibility of the applicant's resources to implement the proposed project.

(2) In determining the adequacy and accessibility of resources, the Secretary considers the following factors:

(i) The extent to which the applicant is committed to provide adequate facilities, equipment, other resources, including administrative support, and laboratories, if appropriate (2 points).

(ii) The quality of an applicant's past performance in carrying out a grant (1 point).

(iii) The extent to which the applicant has appropriate access to clinical populations and organizations representing individuals with disabilities to support advanced clinical rehabilitation research (1 point).

(iv) The extent to which the facilities, equipment, and other resources are appropriately accessible to individuals with disabilities who may use the facilities, equipment, and other resources of the project (1 point).

Eligible Applicants: Institutions of higher education are eligible to receive awards under this program.

Program Authority: 29. U.S.C. 761a(k).

APPLICATION NOTICE FOR FISCAL YEAR 1999 ADVANCED REHABILITATION RESEARCH TRAINING PROJECTS, CFDA NO. 84.133P

Funding priority	Deadline for transmittal of applications	Estimated number of awards	Maximum award amount (per year)*	Project period (months)
Advanced Rehabilitation Research Training Projects.	September 30, 1998	5	$150,000	60

NOTE: The Secretary will reject without consideration or evaluation any application that proposes a project funding level that exceeds the stated maximum award amount (See 34 CFR 75.104(b)).

Instructions for Application Narrative

Recommended Page Limits: Field-Initiated and Advanced Rehabilitation Research Projects

The Secretary strongly recommends that applicants for FI or ARRT projects:

(1) Include a one-page abstract in their application;

(2) Limit Part III—Application Narrative to no more than 50 double-spaced 8½″ x 11″ pages (on one side only) with one inch margins (top, bottom, and sides);

(3) Double-space (no more than 3 lines per vertical inch) all sections of text in the application narrative; and

(4) Use no smaller than a 12-point font, and an average character density no greater than 14 characters per inch.

The recommended application narrative page limit does not apply to: Part I—the electronically scannable form; Part II—the budget section (including the narrative budget justification); and Part IV—the assurances and certifications. Also, the one-page abstract, resume(s), bibliography, or letters of support, while considered part of the application, are not subject to the recommended page limitation. Applicants should note that reviewers are not required to review any information provided in addition to the application information listed above.

The recommendations for double-spacing and font do not apply within charts, tables, figures, and graphs, but the information presented in those formats should be easily readable.

AN APPLICANT FOR A FIELD-INITIATED PROJECT SHOULD CLEARLY IDENTIFY ON THE COVER PAGE OF THE APPLICATION

WHETHER THE PROPOSAL IS FOR A RESEARCH OR DEVELOPMENT PROJECT.

Strict Page Limits: Research Fellowships

The research proposal for a Fellowship application must be limited to no more than 12 pages.

Note: The Secretary will reject without consideration or evaluation any application for a Research Fellowship that does not adhere to the 12-page limit.

Instructions for Transmittal of Applications

(a) If an applicant wants to apply for a grant, the applicant shall—

(1) Mail the original and two copies of the application on or before the deadline date to: U.S. Department of Education, Application Control Center, Attention: (CFDA # [Applicant must insert number and letter]), Washington, D.C. 20202–4725, or

(2) Hand deliver the original and two copies of the application by 4:30 p.m. [Washington, D.C. time] on the deadline date to: U.S. Department of Education, Application Control Center, Attention:

(CFDA # (Applicant must insert number and letter)), Room #3633, Regional Office Building ı3, 7th and D Streets, S.W., Washington, D.C.

(b) An applicant must show one of the following as proof of mailing:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary.

(c) If an application is mailed through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

Notes: (1) The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an applicant should check with its local post office.

(2) An applicant wishing to know that its application has been received by the Department must include with the application a stamped self-addressed postcard containing the CFDA number and title of this program.

(3) The applicant must indicate on the envelope and—if not provided by the Department—in Item 10 of the Application for Federal Assistance (Standard Form 424) the CFDA number—and letter, if any—of the competition under which the application is being submitted.

Application Forms and Instructions

The appendix to this application is divided into four parts. These parts are organized in the same manner that the submitted application should be organized. These parts are as follows:

Part I: Application for Federal Assistance (Standard Form 424 (Rev. 4–88)) and instructions.

Part II: Budget Form—Non-Construction Programs (Standard Form 524A) and instructions.

Part III: Application Narrative.

Additional Materials

Estimated Public Reporting Burden.

Assurances—Non-Construction Programs (Standard Form 424B).

Certification Regarding Lobbying, Debarment, Suspension, and Other Responsibility Matters: and Drug-Free Work-Place Requirements (ED Form 80–0013).

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion: Lower Tier Covered Transactions (ED Form 80–0014) and instructions.

(Note: ED Form GCS–014 is intended for the use of primary participants and should not be transmitted to the Department.

Disclosure of Lobbying Activities (Standard Form LLL (if applicable) and instructions; and Disclosure Lobbying Activities Continuation Sheet (Standard Form LLL-A).

An applicant may submit information on a photostatic copy of the application and budget forms, the assurances, and the certifications. However, the application form, the assurances, and the certifications must each have an original signature. No grant may be awarded unless a completed application form has been received.

FOR APPLICATIONS CONTACT: The Grants and Contracts Service Team, Department of Education, 600 Independence Avenue S.W., Switzer Building, 3317, Washington, D.C. 20202, or call (202) 205–8207. Individuals who use a telecommunications device for the deaf (TDD) may call the TDD number at (202) 205–9860. The preferred method for requesting information is to FAX your request to (202) 205–8717.

Electronic Access to This Document

Anyone may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or portable document format (pdf) on the World Wide Web at either of the following sites:

http://ocfo.ed.gov/fedreg.htm
http://www.ed.gov/news.html

To use the pdf you must have the Adobe Acrobat Reader Program with Search, which is available free at either of the preceding sites. If you have questions about using the pdf, call the U.S. Government Printing Office at (202) 512–1530 or, toll free at 1–888–293–6498.

Anyone may also view these documents in text copy only on an electronic bulletin board of the Department. Telephone: (202) 219–1511 or, toll free, 1–800–222–4922. The documents are located under Option G—Files/Announcements, Bulletins and Press Releases.

Note: The official version of this document is the document published in the **Federal Register**.

Program Authority: 29 U.S.C. 760–762.

Dated: June 10, 1998.

Curtis L. Richards,

Acting Assistant Secretary for Special Education and Rehabilitative Services.

Appendix

Application Forms and Instructions

Applicants are advised to reproduce and complete the application forms in this Section. Applicants are required to submit an original and two copies of each application as provided in this Section.

FREQUENT QUESTIONS

1. CAN I GET AN EXTENSION OF THE DUE DATE?

No! On rare occasions the Department of Education may extend a closing date for all applicants. If that occurs, a notice of the revised due date is published in the **Federal Register**. However, there are no extensions or exceptions to the due date made for individual applicants.

2. WHAT SHOULD BE INCLUDED IN THE APPLICATION?

The application should include a project narrative, vitae of key personnel, and a budget, as well as the Assurances forms included in this package. Vitae of staff or consultants should include the individual's title and role in the proposed project, and other information that is specifically pertinent to this proposed project. The budgets for both the first year and all subsequent project years should be included.

If collaboration with another organization is involved in the proposed activity, the application should include assurances of participation by the other parties, including written agreements or assurances of cooperation. It is *not* useful to include general letters of support or endorsement in the application.

If the applicant proposes to use unique tests or other measurement instruments that are not widely known in the field, it would be helpful to include the instrument in the application.

Many applications contain voluminous appendices that are not helpful and in many cases cannot even be mailed to the reviewers. It is generally not helpful to include such things as brochures, general capability statements of collaborating organizations, maps, copies of publications, or descriptions of other projects completed by the applicant.

3. WHAT FORMAT SHOULD BE USED FOR THE APPLICATION?

NIDRR generally advises applicants that they may organize the application to follow the selection criteria that will be used. The specific review criteria vary according to the specific program, and are contained in this Consolidated Application Package.

4. MAY I SUBMIT APPLICATIONS TO MORE THAN ONE NIDRR PROGRAM COMPETITION OR MORE THAN ONE APPLICATION TO A PROGRAM?

Yes, you may submit applications to any program for which they are responsive to the program requirements. You may submit the same application to as many competitions as you believe appropriate. You may also submit more than one application in any given competition.

5. WHAT IS THE ALLOWABLE INDIRECT COST RATE?

The limits on indirect costs vary according to the program and the type of application. Applicants for an Advanced Rehabilitation Research Training project must limit indirect charges to 8 percent. Applicants for a Field-Initiated project program should limit indirect charges to the organization's approved rate. If the organization does not have an approved rate, the application should include an estimated actual rate. Fellowship awards are made to individuals, therefore indirect cost rates do not apply.

6. CAN PROFITMAKING BUSINESSES APPLY FOR GRANTS?

Yes. However, for-profit organizations will not be able to collect a fee or profit on the grant, and in some programs will be required to share in the costs of the project.

7. CAN INDIVIDUALS APPLY FOR GRANTS?

No. Only organizations are eligible to apply for *grants* under NIDRR programs. However, individuals are the only entities eligible to apply for *fellowships*.

8. CAN NIDRR STAFF ADVISE ME WHETHER MY PROJECT IS OF INTEREST TO NIDRR OR LIKELY TO BE FUNDED?

No. NIDRR staff can advise you of the requirements of the program in which you propose to submit your application. However, staff cannot advise you of whether your subject area or proposed approach is likely to receive approval.

9. HOW DO I ASSURE THAT MY APPLICATION WILL BE REFERRED TO THE MOST APPROPRIATE PANEL FOR REVIEW?

Applicants should be sure that their applications are referred to the correct competition by clearly including the competition title and CFDA number, including alphabetical code, on the Standard Form 424, and including a project title that describes the project.

10. HOW SOON AFTER SUBMITTING MY APPLICATION CAN I FIND OUT IF IT WILL BE FUNDED?

The time from closing date to grant award date varies from program to program. Generally speaking, NIDRR endeavors to have awards made within five to six months of the closing date.

Unsuccessful applicants generally will be notified within that time frame as well. For the purpose of estimating a project start date, the applicant should estimate approximately six months from the closing date, but no later than the following September 30.

11. CAN I CALL NIDRR TO FIND OUT IF MY APPLICATION IS BEING FUNDED?

No. When NIDRR is able to release information on the status of grant applications, it will notify applicants by letter. The results of the peer review cannot be released except through this formal notification.

12. IF MY APPLICATION IS SUCCESSFUL, CAN I ASSUME I WILL GET THE REQUESTED BUDGET AMOUNT IN SUBSEQUENT YEARS?

No. Funding in subsequent years is subject to availability of funds and project performance.

13. WILL ALL APPROVED APPLICATIONS BE FUNDED?

No. It often happens that the peer review panels approve for funding more applications than NIDRR can fund within available resources. Applicants who are approved but not funded are encouraged to consider submitting similar applications in future competitions.

BILLING CODE 4000–01–P

INSTRUCTIONS FOR THE SF 424

This is a standard form used by applicants as a required facesheet for preapplications and applications submitted for Federal assistance. It will be used by Federal agencies to obtain applicant certification that States which have established a review and comment procedure in response to Executive Order 12372 and have selected the program to be included in their process, have been given an opportunity to review the applicant's submission.

Item:	Entry:
1.	Self-explanatory.
2.	Date application submitted to Federal agency (or State if applicable) & applicants control number (if applicable).
3.	State use only (if applicable).
4.	If this application is to continue or revise an existing award, enter present Federal identifier number. If for a new project, leave blank.
5.	Legal name of applicant, name of primary organizational unit which will undertake the assistance activity, complete address of the applicant, and name and telephone number of the person to contact on matter related to this application.
6.	Enter Employer Identification Number (EIN) as assigned by the Internal Revenue Service.
7.	Enter the appropriate letter in the space provided.
8.	Check appropriate box and enter appropriate letter(s) in the space(s) provided: - "New" means a new assistance award. - "Continuation" means an extension for an additional funding/budget period for a project with a projected completion date. - "Revision" means any change in the Federal Government's financial obligation or contingent liability from an existing obligation.
9.	Name of Federal agency from which assistance is being requested with this application.
10.	Use the Catalog of Federal Domestic Assistance number and title of the program under which assistance is requested.
11.	Enter a brief descriptive title of the project, if more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications use a separate sheet to provide a summary description of this project.
12.	List the State and area (county, city, etc.) the applicant is applying to serve **with this application.**
13.	Self-explanatory.
14.	List the applicant's Congressional District and any District(s) affected by the program or project.
15.	Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate only the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 15.
16.	Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process.
17.	This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.
18.	To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. (Certain Federal agencies may require that this authorization be submitted as part of the application).

U.S. DEPARTMENT OF EDUCATION

BUDGET INFORMATION

NON-CONSTRUCTION PROGRAMS

OMB Control No. 1880--0538

Expiration Date: 10/31/99

Name of Institution/Organization

Applicants requesting funding for only one year should complete the column under "Project Year 1." Applicants requesting funding for multi-year grants should complete all applicable columns. Please read all instructions before completing form.

SECTION A - BUDGET SUMMARY
U.S. DEPARTMENT OF EDUCATION FUNDS

Budget Categories	Project Year 1 (a)	Project Year 2 (b)	Project Year 3 (c)	Project Year 4 (d)	Project Year 5 (e)	**Total (f)**
1. Personnel						
2. Fringe Benefits						
3. Travel						
4. Equipment						
5. Supplies						
6. Contractual						
7. Construction						
8. Other						
9. Total Direct Costs (lines 1-8)						
10. Indirect Costs						
11. Training Stipends						
12. Total Costs (lines 9-11)						

ED FORM NO. 524

Name of Institution/Organization	Applicants requesting funding for only one year should complete the column under "Project Year 1." Applicants requesting funding for multi-year grants should complete all applicable columns. Please read all instructions before completing form.

SECTION B - BUDGET SUMMARY
NON-FEDERAL FUNDS

Budget Categories	Project Year 1 (a)	Project Year 2 (b)	Project Year 3 (c)	Project Year 4 (d)	Project Year 5 (e)	**Total (f)**
1. Personnel						
2. Fringe Benefits						
3. Travel						
4. Equipment						
5. Supplies						
6. Contractual						
7. Construction						
8. Other						
9. Total Direct Costs (lines 1-8)						
10. Indirect Costs						
11. Training Stipends						
12. Total Costs (lines 9-11)						

SECTION C - OTHER BUDGET INFORMATION (see instructions)

ED FORM NO. 524

Public reporting burden for this collection of information is estimated to vary from 13 to 22 hours per response, with an average of 17.5 hours, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the U.S. Department of Education, Information Management and Compliance Division, Washington, D.C. 20202-4651; and the Office of Management and Budget, Paperwork Reduction Project 1875-0102, Washington, D.C. 20503.

INSTRUCTIONS FOR ED FORM NO. 524

General Instructions

This form is used to apply to individual U.S. Department of Education discretionary grant programs. Unless directed otherwise, provide the same budget information for each year of the multi-year funding request. Pay attention to applicable program specific instructions, if attached.

Section A - Budget Summary
U.S. Department of Education Funds

All applicants must complete Section A and provide a breakdown by the applicable budget categories shown in lines 1-11.

Lines 1-11, columns (a)-(e): For each project year for which funding is requested, show the total amount requested for each applicable budget category.

Lines 1-11, column (f): Show the multi-year total for each budget category. If funding is requested for only one project year, leave this column blank.

Line 12, columns (a)-(e): Show the total budget request for each project year for which funding is requested.

Line 12, column (f): Show the total amount requested for all project years. If funding is requested for only one year, leave this space blank.

Section B - Budget Summary
Non-Federal Funds

If you are required to provide or volunteer to provide matching funds or other non-Federal resources to the project, these should be shown for each applicable budget category on lines 1-11 of Section B.

Lines 1-11, columns (a)-(e): For each project year for which matching funds or other contributions are provided, show the total contribution for each applicable budget category.

Lines 1-11, column (f): Show the multi-year total for each budget category. If non-Federal contributions are provided for only one year, leave this column blank.

Line 12, columns (a)-(e): Show the total matching or other contribution for each project year.

Line 12, column (f): Show the total amount to be contributed for all years of the multi-year project. If non-Federal contributions are provided for only one year, leave this space blank.

Section C - Other Budget Information
Pay attention to applicable program specific instructions, if attached.

1. Provide an itemized budget breakdown, by project year, for each budget category listed in Sections A and B.

2. If applicable to this program, enter the type of indirect rate (provisional, predetermined, final or fixed) that will be in effect during the funding period. In addition, enter the estimated amount of the base to which the rate is applied, and the total indirect expense.

3. If applicable to this program, provide the rate and base on which fringe benefits are calculated.

4. Provide other explanations or comments you deem necessary.

Public reporting burden for these collections of information is estimated to average 30 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Send comments regarding this burden estimate or any other aspect of these collections of information, including suggestions for reducing this burden, to: the U.S. Department of Education, Information Management and Compliance Division, Washington, D.C. 20202-4651; and to the Office of Management and Budget, Paperwork Reduction Project 1820-0027, Washington, D.C. 20503.

Research Fellowships (CFDA No. 84.133F) 34 CFR Part 356.

Field-Initiated Research (CFDA No. 84.133G) 34 CFR Parts 350

Research Training and Career Development Program - (CFDA No. 84.133P) 34 CFR Part 350.

NOTICE TO ALL APPLICANTS

Thank you for your interest in this program. The purpose of this enclosure is to inform you about a new provision in the Department of Education's General Education Provisions Act (GEPA) that applies to applicants for new grant awards under Department programs. This provision is section 427 of GEPA, enacted as part of the Improving America's Schools Act of 1994 (Pub. L. 103-382).

To Whom Does This Provision Apply?

Section 427 of GEPA affects applicants for new discretionary grant awards under this program. ALL APPLICANTS FOR NEW AWARDS MUST INCLUDE INFORMATION IN THEIR APPLICATIONS TO ADDRESS THIS NEW PROVISION IN ORDER TO RECEIVE FUNDING UNDER THIS PROGRAM.

What Does This Provision Require?

Section 427 requires each applicant for funds (other than an individual person) to include in its application a description of the steps the applicant proposes to take to ensure equitable access to, and participation in, its federally assisted program for students, teachers, and other program beneficiaries with special needs.

This section allows applicants discretion in developing the required description. The statute highlights six types of barriers that can impede equitable access or participation that you may address: gender, race, national origin, color, disability, or age. Based on local circumstances, you can determine whether these or other barriers may prevent your students, teachers, etc. from equitable access or participation. Your description need not be lengthy; you may provide a clear and

succinct description of how you plan to address those barriers that are applicable to your circumstances. In addition, the information may be provided in a single narrative, or, if appropriate, may be discussed in connection with related topics in the application.

Section 427 is not intended to duplicate the requirements of civil rights statutes, but rather to ensure that, in designing their projects, applicants for Federal funds address equity concerns that may affect the ability of certain potential beneficiaries to fully participate in the project and to achieve to high standards. Consistent with program requirements and its approved application, an applicant may use the Federal funds awarded to it to eliminate barriers it identifies.

What are Examples of How an Applicant Might Satisfy the Requirement of This Provision?

The following examples may help illustrate how an applicant may comply with section 427.

(1) An applicant that proposes to carry out an adult literacy project serving, among others, adults with limited English proficiency, might describe in its application how it intends to distribute a brochure about the proposed project to such potential participants in their native language.

(2) An applicant that proposes to develop instructional materials for classroom use might describe how it will make the materials available on audio tape or in braille for students who are blind.

(3) An applicant that proposes to carry out a model science program for secondary students and is concerned that girls may be less likely than boys to enroll in the course, might indicate how it intends to conduct "outreach" efforts to girls, to encourage their enrollment.

We recognize that many applicants may already be implementing effective steps to ensure equity of access and participation in their grant programs, and we appreciate your cooperation in responding to the requirements of this provision.

Estimated Burden Statement

According to the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number. The valid OMB control number for this information collection is 1801-0004 (Exp. 8/31/98). The time required to complete this information collection is estimated to vary from 1 to 3 hours per response, with an average of 1.5 hours, including the time to review instructions, search existing data resources, gather and maintain the data needed, and complete and review the information collection. If you have any comments concerning the accuracy of the time estimate(s) or suggestions for improving this form, please write to: U.S. Department of Education, Washington, DC 20202-4651.

OMB Approval No. 0348-0040

ASSURANCES- NON-CONSTRUCTION PROGRAMS

Note: Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the awarding agency. Further, certain Federal awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

As the duly authorized representative of the applicant I certify that the applicant:

1. Has the legal authority to apply for Federal assistance, and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project costs) to ensure proper planning, management, and completion of the project described in this application.

2. Will give the awarding agency, the Comptroller General of the United States, and if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.

3. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.

4. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.

5. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§4728-4763) relating to prescribed standards for merit systems for programs funded under one of the nineteen statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).

6. Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. §794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C. §§ 6101-6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§ 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. 290 dd-3 and 290 ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the as amended, relating to non-discrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.

7. Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.

8. Will comply with the provisions of the Hatch Act (5 U.S.C. §§1501-1508 and 7324-7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.

9. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§276a to 276a-7), the Copeland Act (40 U.S.C. §276c and 18 U.S.C. §§874) and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 327-333), regarding labor standards for federally assisted construction subagreements.

10. Will comply, if applicable, with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234) which requires recipients in a special flood hazard area to participate in the program and to purchase flood insurance if the total cost of insurable construction and acquisition is $10,000 or more.

11. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91-190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to

EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§ 1451 et seq); (f) conformity of Federal actions to State (Clear Air) Implementation Plans under Section 176(c) of the Clear Air Act of 1955, as amended (42 U.S.C. 7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended, (P.L. 93-523); and (h) protection of endangered species under the Endangered Species Act of 1973, as amended, (P.L. 93-205).

12. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§1271 et seq) related to protecting components or potential components of the national wild and scenic rivers system.

13. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. 469a-1 et seq.).

14. Will comply with P.L. 93-348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.

15. Will comply with the Laboratory Animal Welfare Act of 1966 (P.L. 89-544, as amended, 7 U.S.C. 2131 et seq.) pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.

16. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§ 4801 et seq.) which prohibits the use of lead based paint in construction or rehabilitation of residence structures.

17. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act of 1984.

18. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations and policies governing this program.

Signature of Authorized Certifying Official	Title	
Applicant Organization		Date Submitted

SF 424 (4-88) Back

CERTIFICATIONS REGARDING LOBBYING; DEBARMENT, SUSPENSION AND OTHER RESPONSIBILITY MATTERS; AND DRUG-FREE WORKPLACE REQUIREMENTS

Applicants should refer to the regulations cited below to determine the certification to which they are required to attest. Applicants should also review the instructions for certification included in the regulations before completing this form. Signature of this form provides for compliance with certification requirements under 34 CFR Part 82, "New Restrictions on Lobbying," and 34 CFR Part 85, "Government-wide Debarment and Suspension (Nonprocurement) and Government-wide Requirements for Drug-Free Workplace (Grants)." The certifications shall be treated as a material representation of fact upon which reliance will be placed when the Department of Education determines to award the covered transaction, grant, or cooperative agreement.

1. LOBBYING

As required by Section 1352, Title 31 of the U.S. Code, and implemented at 34 CFR Part 82, for persons entering into a grant or cooperative agreement over $100,000, as defined at 34 CFR Part 82, Sections 82.105 and 82.110, the applicant certifies that:

(a) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the making of any Federal grant, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal grant or cooperative agreement;

(b) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal grant or cooperative agreement, the undersigned shall complete and submit Standard Form - LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions;

(c) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subgrants, contracts under grants and cooperative agreements, and subcontracts) and that all subrecipients shall certify and disclose accordingly.

2. DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS

As required by Executive Order 12549, Debarment and Suspension, and implemented at 34 CFR Part 85, for prospective participants in primary covered transactions, as defined at 34 CFR Part 85, Sections 85.105 and 85.110--

A. The applicant certifies that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;

(b) Have not within a three-year period preceding this application been convicted of or had a civil judgement rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c)Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and

(d) Have not within a three-year period preceding this application had one or more public transaction (Federal, State, or local) terminated for cause or default; and

B. Where the applicant is unable to certify to any of the statements in this certification, he or she shall attach an explanation to this application.

3. DRUG-FREE WORKPLACE (GRANTEES OTHER THAN INDIVIDUALS)

As required by the Drug-Free Workplace Act of 1988, and implemented at 34 CFR Part 85, Subpart F, for grantees, as defined at 34 CFR Part 85, Sections 85.605 and 85.610 -

A. The applicant certifies that it will or will continue to provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing an on-going drug-free awareness program to inform employees about-

(1) The dangers of drug abuse in the workplace;

(2) The grantee's policy of maintaining a drug-free workplace;

(3) Any available drug counseling, rehabilitation, and employee assistance programs; and

(4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will-

(1) Abide by the terms of the statement; and

(2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;

(e) Notifying the agency, in writing, within 10 calendar days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to: Director, Grants Policy and Oversight Staff, U.S. Department of Education, 600 Independence Avenue, S.W. (Room 3652, GSA Regional Office Building No. 3), Washington, DC 20202-4248. Notice shall include the identification number(s) of each affected grant;

(f) Taking one of the following actions, within 30 calendar days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted-

(1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or

(2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e), and (f).

B. The grantee may insert in the space provided below the site(s) for the performance of work done in connection with the specific grant:

Place of Performance (Street address. city, county, state, zip code)

_____

_____

_____

Check **[ ]** if there are workplaces on file that are not identified here.

DRUG-FREE WORKPLACE
(GRANTEES WHO ARE INDIVIDUALS)

As required by the Drug-Free Workplace Act of 1988, and implemented at 34 CFR Part 85, Subpart F, for grantees, as defined at 34 CFR Part 85, Sections 85.605 and 85.610-

A. As a condition of the grant, I certify that I will not engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance in conducting any activity with the grant; and

B. If convicted of a criminal drug offense resulting from a violation occurring during the conduct of any grant activity, I will report the conviction, in writing, within 10 calendar days of the conviction, to: Director, Grants Policy and Oversight Staff, Department of Education, 600 Independence Avenue, S.W. (Room 3652, GSA Regional Office Building No. 3), Washington, DC 20202-4248. Notice shall include the identification number(s) of each affected grant.

As the duly authorized representative of the applicant, I hereby certify that the applicant will comply with the above certifications.

NAME OF APP LICANT	PR/AWARD NUMBER AND / OR PROJECT NAME
PRINTED NAME AND TITLE OF AUTHORIZED REPRESENTATIVE	
SIGNATURE	DATE

ED 80-0013

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion -- Lower Tier Covered Transactions

This certification is required by the Department of Education regulations implementing Executive Order 12549, Debarment and Suspension, 34 CFR Part 85, for all lower tier transactions meeting the threshold and tier requirements stated at Section 85.110.

Instructions for Certification

1. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.

2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

3. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

4. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," " person," "primary covered transaction," " principal," proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.

5. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

6. The prospective lower tier participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion-Lower Tier Covered Transactions," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may but is not required to, check the Nonprocurement List.

8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

Certification

(1) The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

(2) Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

NAME OF APPLICANT	PR/AWARD NUMBER AND/OR PROJECT NAME
PRINTED NAME AND TITLE OF AUTHORIZED REPRESENTATIVE	
SIGNATURE	DATE

ED 80-0014, 9/90 (Replaces GCS-009 (REV.12/88), which is obsolete)

DISCLOSURE OF LOBBYING ACTIVITIES

Approved by OMB
0348-0046

Complete this form to disclose lobbying activities pursuant to 31 U.S.C 1352
(See reverse for public burden disclosure.)

1. Type of Federal Action: ☐ a. contract b. grant c. cooperative agreement d. loan e. loan guarantee f. loan insurance	2. Status of Federal Action: ☐ a. bid/offer/application b. initial award c. post-award	3. Report Type: ☐ a. initial filing b. material change For Material Change Only: year _____ quarter ____ date of last report

4. Name and Address of Reporting Entity: ☐ Prime ☐ Subawardee Tier _____, *if known:* Congressional District, *if known:*	5. If Reporting Entity in No.4 is Subawardee, Enter Name and Address of Prime: Congressional District, *if known:*
6. Federal Department/Agency:	7. Federal Program Name/Description: CFDA Number, *if applicable*:
8. Federal Action Number, *if known:*	9. Award Amount, *if known:* $
10. a. Name and Address of Lobbying ~~Entity~~ Registrant *(if individual, last name, first name, MI):*	b. Individuals Performing Services *(including address if different from No. 10a) (last name, first name, MI):*
~~11. Amount of Payment *(check all that apply):*~~ ~~$ _____ ☐ actual ☐ planned~~	~~13. Type of Payment *(Check all that apply):*~~ ~~☐ a. retainer~~ ~~☐ b. one-time fee~~ ~~☐ c. commission~~ ~~☐ d. contingent fee~~ ~~○ e. deferred~~ ~~☐ f. other; specify: _____~~
~~12. Form of Payment *(check all that apply):*~~ ~~☐ a. cash~~ ~~☐ b. in-kind; specify: nature _____ value _____~~	

~~14. Brief Description of Services Performed or to be Performed and Date(s) of Service, including officer(s), employee(s), or Member(s) contacted, for Payment Indicated in Item 11:~~

_____
~~*(attach Continuation Sheet(s) SF-LLL-A, if necessary)*~~

~~15. Continuation Sheet(s) SF-LLL attached: ☐ Yes ☐ No~~

16. Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to the Congress semi-annually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.	Signature: _____ Print Name: _____ Title: _____ Telephone No.: _____ Date:
Federal Use Only	**Authorized for Local Reproduction** **Standard Form - LLL**

INSTRUCTIONS FOR COMPLETION OF SF-LLL, DISCLOSURE OF LOBBYING ACTIVITIES

This disclosure form shall be completed by the reporting entity, whether subawardee or prime Federal recipient, the initiation or receipt of a covered Federal action, or a material change to a previous filing, pursuant to title 31 U.S.C. section 1352. The filing of a form is required for each payment or agreement to make payment to any lobbying entity for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a covered Federal action. ~~Use the SF-LLL-A Continuation Sheet for additional information if the space on the form is inadequate.~~ Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered Federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered Federal action.

2. Identify the status of the covered Federal action.

3. Identify the appropriate classification of this report. If this is a follow up report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered Federal action.

4. Enter the full name, address, city, state and zip code of the reporting entity. Include Congressional District, if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be, a prime or subaward recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the 1st tier. Subawards include but are not limited to subcontracts, subgrants and conract awards under grants.

5. If the organization filing the report in item 4 checks "Subawardee" then enter the full name, address, city, state and zip code of the prime Federal recipient. Include Congressional District, if known.

6. Enter the name of the Federal agency making the award or loan commitment. Include at least one organizational level below agency name, if known. For example, Department of Transportation, United States Coast Guard.

7. Enter the Federal program name or description for the covered Federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans, and loan commitments.

8. Enter the most appropriate Federal identifying number available for the Federal action identified in item 1 (e.g., Request for Proposal (RFP) number; Invitation for Bid (IFB) number, grant announcement number; the contract, grant, or loan award number; the application/proposal control number assigned by the Federal agency). Include prefixes, e.g., "RFP-DE-90-001."

9. For a covered Federal action where there has been an award or loan commitment by the Federal agency, enter the Federal amount of the award/loan commitment for the prime entity identified in item 4 or 5.

10. (a) Enter the full name, address, city, state, and zip code of the ~~lobbying entity~~ registrant under the Lobbying Disclosure Act of 1995 engaged by the reporting entity identified in item 4 to influence the covered Federal action.

    (b) Enter the full names of the individual(s) performing services, and include full address if different from 10(a). Enter Last Name, First Name, and Middle Initial (MI).

~~11. Enter the amount of compensation paid or reasonably expected to be paid by the reporting entity (item 4) to the lobbying entity (item 10). Indicate whether the payment has been made (actual) or will be made (planned). Check all boxes that apply. If this a material change report, enter the cumulative amount of payment made or planned to be made.~~

~~12. Check the appropriate box(es). Check all boxes that apply. If payment is made through an in-kind contribution, specify the nature and value of in-kind payment.~~

~~13. Check the appropriate box(es). Check all boxes that apply. If other specify nature.~~

~~14. Provide a specific and detailed description of the services that the lobbyist has performed, or will be expected to perform, and the date(s) of any services rendered. Include all preparatory and related activity, not just time spent in actual contact with Federal officials. Identify the Federal official(s) contacted or the officer(s), employee(s), or Member(s) of Congress that were contacted.~~

~~15. Check whether or not a SF-LLL-A Continuation Sheet(s) is attached.~~

16. The certifying official shall sign and date the form, print his/her name, title, and telephone number.

DUNS Number Instructions

D-U-N-S No.: Please provide the applicant's D-U-N-S Number. You can obtain your D-U-N-S Number at no charge by calling **1-800-333-0505** or by completing a D-U-N-S Number Request Form. The form can be obtained via the Internet at the following URL:

http://www.dnb.com/dbis/aboutdb/intlduns.htm

The D-U-N-S Number is a unique nine-digit number that does not convey any information about the recipient. A built in check digit helps assure the accuracy of the D-U-N-S Number. The ninth digit of each number is the check digit, which is mathematically related to the other digits. It lets computer systems determine if a D-U-N-S Number has been entered correctly.

Dun & Bradstreet, a global information services provider, has assigned D-U-N-S numbers to over 43 million companies worldwide.

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This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with ''P L U S'' (Public Laws Update Service) on 202–523–6641. This list is also available online at http://www.nara.gov/fedreg.

The text of laws is not published in the **Federal Register** but may be ordered in ''slip law'' (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO Access at http://www.access.gpo.gov/su_docs/. Some laws may not yet be available.

H.R. 824/P.L. 105–179

To redesignate the Federal building located at 717 Madison Place, NW., in the District of Columbia, as the ''Howard T. Markey National Courts Building''. (June 16, 1998; 112 Stat. 510)

H.R. 3565/P.L. 105–180

Care for Police Survivors Act of 1998 (June 16, 1998; 112 Stat. 511)

S. 1605/P.L. 105–181

Bulletproof Vest Partnership Grant Act of 1998 (June 16, 1998; 112 Stat. 512)

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